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UGANDA

# A Media Minefield

Increased Threats to Freedom of Expression in Uganda

HUMAN  
RIGHTS  
WATCH



## **A Media Minefield**

### **Increased Threats to Freedom of Expression in Uganda**

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## A Media Minefield

### Increased Threats to Freedom of Expression in Uganda

|                                                                                    |           |
|------------------------------------------------------------------------------------|-----------|
| <b>I. Map of Uganda .....</b>                                                      | <b>1</b>  |
| <b>II. Summary.....</b>                                                            | <b>2</b>  |
| <b>III. Recommendations .....</b>                                                  | <b>7</b>  |
| <b>IV. Methodology.....</b>                                                        | <b>9</b>  |
| <b>V. The State of Media Freedom in Uganda .....</b>                               | <b>10</b> |
| Background .....                                                                   | 10        |
| Criminal Charges against Journalists .....                                         | 14        |
| Cases against Print Journalists .....                                              | 16        |
| Criminal Charges against Radio Journalists .....                                   | 18        |
| Threats to Radio Journalists outside Kampala .....                                 | 19        |
| The September Riots' Impact on Freedom of Expression .....                         | 23        |
| Origins and Course of the Violence.....                                            | 24        |
| Physical Assaults on Journalists.....                                              | 25        |
| Closures of Radio Stations .....                                                   | 27        |
| The Government's Response to Criticism over the Closures .....                     | 31        |
| Long-Term Suspension of Open-Air Broadcasting .....                                | 34        |
| Effects of the September Riots on Radio Stations outside Kampala .....             | 35        |
| <b>VI. Chilling Effect and Concerns for 2011 Elections Coverage .....</b>          | <b>39</b> |
| Intimidation Leading to Censorship and Self-Censorship.....                        | 39        |
| Opposition Access to the Airwaves.....                                             | 42        |
| <b>VII. Applicable International and National Law .....</b>                        | <b>45</b> |
| Uganda's International Obligations .....                                           | 45        |
| Ugandan National Law .....                                                         | 47        |
| Overly Broad Powers of Media Regulatory Bodies .....                               | 49        |
| The 2010 Draft Amendments to the Press and Journalist Act.....                     | 53        |
| <b>Annex: Criminal Cases Pending against Journalists and Talk Show Hosts .....</b> | <b>56</b> |
| <b>Acknowledgements.....</b>                                                       | <b>60</b> |



## I. Map of Uganda



Map No. 3862 Rev. 4 UNITED NATIONS  
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Department of Public Information  
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## II. Summary

*The media today in Uganda is more like public relations reporting. If you stick to real issues, you may not remain in the profession. You'll be in danger.*

—Radio journalist in Hoima district

*Journalists are not free to do their jobs. In most cases, they really have the information. They have done investigations, have the documents, but then they sit on it. If it relates to [local government people] or a minister, even when they have the proof to pin down the person, the radio stations will sit on it, because they fear the consequences.*

—Radio journalist in Fort Portal district

*I'm a journalist. I have to inform people what is going on, but if you deny me that right, it's like you're forcing me to go astray ... We're not free to report as we should anymore.*

—Radio journalist in Masaka district

As Uganda plans for general elections in 2011, freedom of expression across the country is in significant jeopardy. On a superficial level, Ugandan media seem to enjoy considerable latitude, especially those based in Kampala, which regularly carry a range of opinions, including occasional criticism of government policies. In reality, however, as Human Rights Watch has found, genuinely free and independent journalism is under threat, particularly outside the capital. The government deploys a wide range of tactics to stifle critical reporting, from occasional physical violence to threats, harassment, bureaucratic interference, and criminal charges. Increasing use of these tactics during the political unrest in September 2009, and in the run-up to the February 2011 vote, threatens to fatally undermine media freedoms necessary for a free and fair election.

Uganda has notionally had open multiparty politics since 2005, after 19 years of *de facto* one-party rule under the National Resistance Movement (NRM), led by President Yoweri Museveni who took power in 1986. Political parties now actively vie for public support, hold rallies, and promote candidates for public office. But this process of opening up political space has been extremely uneven in practice and has resulted in increasingly arbitrary state attacks on the media as the ruling party faces more and more public and open criticism.

Since the previous political campaigns in 2005, at least 40 criminal charges have been levied against journalists and talk show panelists.

This report shows that since 2005, attempts by Ugandan journalists to conduct independent political reporting and analysis in print and on radio have been met by increasing government threats, intimidation, and harassment. Human Rights Watch conducted more than 90 interviews over the course of nine months in 2009 and early 2010 that document the aggressive and arbitrary nature of state responses to criticism of the central government and the ruling NRM party. In some cases, these threats are overt, such as public statements by a resident district commissioner that a journalist should be “eliminated,” or a police summons on charges of sedition, incitement to violence, or promoting sectarianism for criticizing government action in a newspaper article. In many more cases, the threats are covert, such as phone calls—some anonymous and others from well-known ruling party operatives—intimating violence or loss of employment if a journalist pursues a certain issue or story.

Some journalists cope by steering clear of any reporting that may attract government attention or sanction, succumbing to the chilling effect of harassment. Self-censorship is especially prevalent among radio station reporters and talk show hosts based outside Kampala who broadcast in Uganda’s local languages in districts where legal protections and international scrutiny are the most lacking. The hesitation of those reporters to address sensitive political issues has a particularly pronounced effect on Ugandans’ access to information about key issues in the lead-up to the elections, as most still get their news and information from local language radio.

The Ugandan government uses its national laws to bring charges against journalists, restrict the number of people who can lawfully be journalists, revoke broadcasting licenses without due process of law, and practice other forms of repression. Similar laws and procedures exist in other countries, but in Uganda, the government uses the laws in partisan ways to create a minefield for media owners and reporters who speak or write about issues that the government deems politically sensitive or controversial. Several government-controlled bodies, including the Broadcasting Council, the Media Council, and the Uganda Communications Commission (UCC) wield broad, ill-defined, and unchecked powers to regulate the media. Many of the sanctions they levy have been determined to be in violation of freedom of expression by international experts.

These kinds of restrictions—on both media outlets and individual journalists—were fully on view in September 2009, when Uganda experienced two days of rioting. Government troops



responded to rioters throwing stones, blocking roads and lighting debris on fire with excessive lethal force, resulting in the deaths of at least 40 people. The riots occurred when the NRM government instructed state agencies to block the visit of a cultural leader of Uganda's largest ethnic group, the Baganda, from visiting an area that was historically part of his kingdom. Luganda-speaking radio stations voiced support for the Buganda cultural leader and encouraged listeners to show that support by traveling to the area during the planned visit.

In response, the NRM-controlled regulatory body governing radio in Uganda, the Broadcasting Council, suspended the licenses of three Luganda-speaking stations and withdrew the license of another, Central Broadcasting Station (CBS)—all without notice or a prior court order. Police and soldiers threatened journalists trying to photograph and report on the unfolding events. In the wake of the riots, the Broadcasting Council also pressured these and other stations to suspend specific journalists whom the Council deemed had “incited violence.” The Council officially banned any open-air broadcasting—a very popular forum for public debate in local communities, known as *bimeeza* in Luganda—in the country on any topic. CBS remained off air at the time of writing, while the other three stations have informally negotiated with authorities to return to the airwaves.

The government-sanctioned media clampdown during and after the September riots and the criminal charges levied against numerous print journalists appear to have led local government officials and NRM party operatives to believe they should take similar action. Human Rights Watch research found that journalists based in rural districts are increasingly subjected to intimidation, threats, charges, and, to a lesser extent, physical attacks while trying to report on local political matters.

Rural radio journalists, in particular, have been targets of serious and repeated threats to their lives and their jobs. The perpetrators are often pro-NRM government officials—especially resident district commissioners who represent the President's office at the district level—or police and intelligence officials who are retaliating against criticism or reporting on official misconduct, such as alleged corruption, mismanagement, or human rights violations. In many instances, when threatening reporters, local government officials specifically referred to what happened in Kampala during the riots as evidence of the power of the state to stop negative reporting. Because local government officials are perceived to be closely aligned with police, instances of threats and intimidation have gone largely unreported and without proper investigation or prosecution. When instances have been made public, no investigation has taken place.

Several of Uganda's national laws are inconsistent with its obligations under international law and its constitution, and the government exploits vagueness in national laws to suppress critical appraisals. It does so by charging journalists with crimes and granting media regulatory bodies broad powers to restrain speech through the revocation of licenses. Under international human rights law, namely the International Covenant on Civil and Political Rights (ICCPR), governments are allowed to restrict speech in specific instances to protect narrowly determined interests, such as national security or public morals. However, such restrictions must meet several high hurdles. First, the restriction must be prescribed clearly and narrowly by law; second, it must have the genuine purpose and effect of protecting such interests; and third, it must be the least restrictive means available.<sup>1</sup> Ugandan laws criminalizing certain types of speech are overly vague and broad, which makes even innocuous public statements open to criminalization. For example, the crime of "promoting sectarianism," is defined as "any act which is likely to ... promote ... feelings of ill will or hostility among or against any ethnic group or body of persons on account of religion, tribe or ethnic or regional origin."

Ugandan government authorities use these laws not to safeguard national security, but rather to stifle speech. For example, a reporter in Gulu district was charged with criminal libel for writing an article on public allegations of corruption by a deputy resident district commissioner, despite the fact that the reporter sought comment from the commissioner himself and then quoted him in the article. Another journalist was charged with sedition for commenting on radio that President Museveni had a "poor quality upbringing."

According to international standards as set out by the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted by a group of experts in international law, national security, and human rights and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, governments should permit and tolerate these types of speech. Both international and African standards on freedom of expression, including rulings by the African Commission on Human and Peoples' Rights, recognize that the threshold for restricting criticism of public officials, who are accountable to citizens, is higher than for private individuals.

Human Rights Watch recommends that Ugandan government officials and ruling party members immediately end harassment, threats, and abuse of journalists. Government

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<sup>1</sup> UN Human Rights Committee, General Comment No. 10, Freedom of Expression (Article 19), U.N. Doc. 29/06/83 (1983), para. 4; and Johannesburg Principles on National Security, Freedom of Expression, and Access to Information (Johannesburg Principles), adopted on October 1, 1995.

officials, particularly the president and the ministers of information and security, should publicly condemn threats to the media and insist that local officials tolerate independent reporting in local languages. Police and prosecutors should investigate and prosecute incidents of threats, harassment, and intimidation of journalists. The government should also repeal or amend its laws to bring them into line with their international obligations and the rights enshrined in Uganda's constitution. The statutes of the various media regulatory bodies should also be amended without delay to ensure that the bodies can act independently, without inappropriate government interference. Any suspension of broadcasting licenses must be carried out with regard to the due process rights of both journalists and media owners, including requiring police or the regulatory bodies to present evidence of criminal activity before a court of law before preventing any speech.

The Ministry of Information has stated that draft amendments to the Press and Journalist Act will shortly be before cabinet. In the January 2010 draft—leaked allegedly by government sources to civil society—instead of bringing Ugandan law into line with international norms, the amendments seek to impose further restrictions on free expression, extending to print media the arbitrary and overly burdensome regulations that now govern broadcast media. For example, the Media Council would be empowered to deny licenses based on its assessment of the newspaper's "values." Heads of media houses would also be subject to broader criminal liability through the creation of new crimes. The amendments must be scrutinized against the three-part test as set out in international norms requiring that any restriction on speech first be narrowly prescribed in law, second, that it be levied for a genuine and permissible reason, and third, that the least restrictive means possible be utilized.

Candidates have begun informal campaigning for Uganda's 2011 elections. At the same time, the government's harassment and intimidation of the independent media's political programming is also increasing. Opposition presidential candidate Dr. Kizza Besigye and other opposition candidates allege that they have had difficulty getting airtime on rural radio stations, and some radio talk show hosts state they are not permitted by station owners or managers to host some opposition members. For free, fair, and credible elections to take place in 2011, the government should protect freedom of expression and refrain from harassing or targeting critical journalists or media outlets at both the national and local levels.

### **III. Recommendations**

#### **To the President, the Government of Uganda, and NRM Officials**

- Issue a clear and public statement to all government officials and members of the ruling NRM party to refrain from any intimidation, obstruction, threats, harassment, and arbitrary arrest of journalists, talk show moderators, and news editors, and state that such incidents will be immediately investigated and prosecuted.
- Revise the structure of the Broadcasting Council and the Media Council to establish them as independent bodies that can protect the media from illegitimate government interference and promote diversity in and access to the media.
- Order the re-opening of CBS radio.
- Allow full, open reporting and comment on any issues of pressing public interest, including politics, in Uganda.
- Conduct an impartial investigation, led by independent experts, into the arrests and beatings of journalists during the 2009 riots and hold all those responsible accountable.
- Announce thorough and impartial investigations by independent experts into threats and intimidation of radio and print journalists reportedly carried out by resident district commissioners and their staff.
- Cease further arbitrary closures of radio stations, television stations, and/or newspapers without a court order.
- Ensure that government officials, especially at the local level, and ruling-party activists cease blocking opposition parties' access to the media, either directly or via pressure on media owners and station managers.
- Amend the Press and Journalist Act, the Electronic Media Act, and the Penal Code to bring them into line with Uganda's constitution and its obligations under international law regarding freedom of expression.
- Respect and support the self-regulation systems of media practitioners, such as the Independent Media Council.

#### **To the Parliament of Uganda**

- Review laws comprehensively, including the Press and Journalist Act, the Electronic Media Act, and the Penal Code and make amendments as needed to bring them into

line with Uganda's constitution and its obligations under international law regarding freedom of expression. Initiate a review of Uganda's many regulatory bodies by the end of 2010 and consult broadly with stakeholders, with the aim of increasing transparency and objectivity in media oversight.

- If tabled unchanged in Parliament, reject the January 2010 draft amendments to the Press and Journalist Act.

#### **To Uganda's Development Partners, particularly the Partners in Democracy Group**

- Publicly express concern over the restrictions of freedom of expression, and urge the Ugandan government to make a public statement calling on all government officials and NRM members to refrain from harassing or threatening members of the media, including radio journalists based outside Kampala.
- Enhance monitoring and reporting of media freedom violations related to coverage of election-related issues, particularly outside Kampala. Such monitoring should take place during campaign period, primaries, on election day, and through possible run-offs.
- Publicly press the Ugandan government to reform its laws and rationalize the powers of its regulatory institutions well in advance of the 2011 elections to bring them into compliance with Uganda's human rights obligations; provide technical support and assistance to these efforts.

#### **To the African Commission on Human and Peoples' Rights (including its Special Rapporteur on Freedom of Expression in Africa), the UN Human Rights Council, and the UN Special Rapporteur on Freedom of Opinion and Expression**

- Seek an invitation from the Ugandan government to visit the country and assess media laws and freedom of expression, both in Kampala and at radio stations based outside Kampala, in advance of the 2011 elections.

#### **To Uganda's Various Journalists' Associations**

- Promote compliance with the code of ethics promulgated by the Independent Media Council.
- Promote the voluntary publication of apologies, corrections, and replies for inaccurate or unfair statements.

## IV. Methodology

This report is based on research by Human Rights Watch carried out in Uganda from September 2009 to April 2010. Human Rights Watch interviewed over 90 individuals, including 70 print and radio journalists, news editors, station managers, and talk show hosts. Researchers also interviewed radio station owners, members of civil society, Ugandan lawyers and academics with expertise in media and freedom of expression, local government officials, police, media regulators, and representatives of political parties. Ministerial officials were given the opportunity to respond to the report's findings and their comments are represented here.

Human Rights Watch carried out interviews in Kampala, Jinja, Mbale, Soroti, Tororo, Masaka, Mbarara, Rukungiri, Kanungu, Kasese, Fort Portal, Hoima, Gulu, and Lira districts. Researchers contacted journalists from other areas which were not visited and interviewed them either via telephone or during their visits to Kampala. There is not a radio station in every district in Uganda, so areas were selected for concentrations of radio outlets as well as broadcasting coverage. Researchers selected interviewees so as to gain the broadest possible range of opinion among those working in the media, often interviewing multiple people at multiple radio stations in the same geographic or broadcast area. Interviews took place with those working for both government-owned stations and independently-owned media houses, though a majority worked for independently-owned stations. Particular effort was made to identify journalists and talk show hosts reporting or moderating debate on political events. All interviews were in English and often lasted more than one hour. The vast majority were one-on-one interviews. No compensation or any form of remuneration was offered or provided to any person interviewed for this report.

Many interviewees voiced serious concerns for their physical well-being or maintaining their employment or their businesses. They asked that their names be withheld. We have complied with this request, and intentionally omitted, in some highly sensitive cases, identifying details of individuals who met with our researchers or locations of the interviews.



## V. The State of Media Freedom in Uganda

*No journalist should be afraid in Uganda except those that are seditious.*

—Hon. Kabakumba Matsiko, Uganda’s minister of information<sup>2</sup>

Tolerance of criticism and protection of free speech in Uganda fluctuates based on political factors. Campaign and election seasons are particularly tense, when violations of freedom of expression tend to escalate. Uganda is currently gearing up to hold presidential and parliamentary elections in February 2011, only the second multiparty election in Uganda’s history. In 2005, a popular referendum instituted multiparty democracy, at the same time as the ruling party pushed through an amendment to the constitution to lift the two-term limit on the tenure of the presidency.<sup>3</sup> President Museveni was re-elected in the first multiparty elections in 2006. He has now been in office for 24 years.

In the period since the establishment of multiparty rule, the government has used legal and extrajudicial means to repress the media. Given the relatively strong stance of the courts, criminal charges, though often leveled against journalists, are not the strongest means at the government’s disposal. As documented below, in the numerous instances where government threats and intimidation are leveled extrajudicially, through anonymous phone calls, casual or confidential meetings, or by the arbitrary edicts of regulatory bodies with broad ill-defined powers and no due process guarantees, the court’s protections are of little comfort to members of the media. The effect of such threats is particularly dramatic in rural areas outside the capital, where the resident district commissioners’ power is largely unchecked, and such threats seriously inhibit free expression. Given this context, the outbreak of political violence in September 2009 gave rise to an even more intense wave of repression against the media, as the government strove to keep control of the information environment.

### Background

Under every Ugandan government since 1962, journalists who have spoken out against government policies have faced physical violence, criminal charges, threats, and

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<sup>2</sup> Human Rights Watch interview with Hon. Kabakumba Matsiko, minister of information, April 9, 2010.

<sup>3</sup> For more, see Human Rights Watch, *In Hope and Fear: Uganda’s Presidential and Parliamentary Polls*, no. 1, February 2006, <http://www.hrw.org/node/77858>.

imprisonment.<sup>4</sup> President Museveni and the ruling National Resistance Movement (NRM) came to power in 1986 and instituted the “Movement” system, which denied other political parties the right to operate for almost 20 years.<sup>5</sup>

Uganda’s first private radio station, Radio Sanyu, opened in 1993, ending the state’s monopoly on radio broadcast that had been in place since colonialism.<sup>6</sup> Ugandan media experts have noted that during President Museveni’s first two terms in office, the NRM government tolerated more outspoken criticism than did previous regimes.<sup>7</sup> However, others argue that radio liberalization in Uganda was principally about an NRM economic strategy of privatization and “a freeing of business space than as a deliberate strategy of enhancing media freedom.”<sup>8</sup>

Uganda’s 1995 constitution, a product of national consultation, contains strong provisions on freedom of expression.<sup>9</sup> However, while the NRM government has permitted more radio stations to function since coming to power, it has also passed a series of increasingly repressive laws and has expanded the number of government regulatory bodies, which have mandates to oversee, control, and monitor the media.

An estimated 200 FM frequencies in Uganda operate in scores of local languages.<sup>10</sup> Radio continues to be the primary source of information throughout the country, and stations are owned by a range of actors. Some stations are owned directly by government via the public broadcaster, Uganda Broadcasting Corporation, or by the state corporation Vision Group, which owns a large number of radio stations and newspapers in a diverse array of local languages. A large number of radio stations are owned by government ministers, parliamentarians, and business people with established connections to the ruling party. Others are owned by independent business people and churches.<sup>11</sup>

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<sup>4</sup> For history on freedom of the media in Uganda, see Adewale Maja-Pearce, “The Press in East Africa,” *Index on Censorship* 21, no. 7 (July-August 1992), pp. 51-68.

<sup>5</sup> For more on the Movement system, see Human Rights Watch, *Hostile to Democracy: The Movement System and Political Repression in Uganda*, October 1999, <http://www.hrw.org/node/78340>.

<sup>6</sup> See East Africa Media Institute, *Uganda: FM Stations - Quantity without Quality*, November 2007.

<sup>7</sup> See Bernard Tabire, “The Press and Political Repression, Back to the Future?,” *Journal of Eastern African Studies*, July 2007.

<sup>8</sup> Human Rights Network (HURINET), *Counting the Human Rights Costs of the September 2009 riots*, February 2010, p. 26.

<sup>9</sup> Constitution of Uganda, 1995, art. 29.

<sup>10</sup> Human Rights Watch interview with chairman of the Broadcasting Council, March 15, 2010. Not all of the frequencies that have been assigned by government regulatory bodies actually broadcast on a regular basis.

<sup>11</sup> “Radio stations licensed and operating in Uganda,” Uganda Media Council fact sheet, undated, <http://www.mediacouncil.ug/docs/Radio%20Stations.doc> (accessed April 26, 2010).

Currently, five separate entities all have some formal overlapping mandate to control, monitor, discipline, and/or sanction journalists and media houses. All are subject to direct government control. Contrary to internationally accepted standards, and in contrast with several other African jurisdictions, there are no provisions in law requiring the regulatory bodies to be independent of government interference.<sup>12</sup> This structure leaves the media, and especially those who are critical of government action, extremely vulnerable to closure or other punitive action. In addition, it is widely believed that others in government, particularly the Internal Security Organization, the domestic intelligence body, monitor the media and react, often to suppress critical reporting.

- The Press and Journalist Act established a **Media Council** responsible for the regulation of media.<sup>13</sup> The Media Council regulates the conduct of journalists; arbitrates disputes between the public and media or the state and the media; disciplines journalists, editors, and publishers; and censors films, videotapes, and plays.<sup>14</sup> The Minister of Information has the power to appoint a majority of members,<sup>15</sup> and to write regulations for the statute.<sup>16</sup> The law requires the editor in charge of any mass media organization to register with the Media Council and to provide “such other particulars as may be prescribed by the Council,” in effect an unlimited amount of information.<sup>17</sup>

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<sup>12</sup> In both Ghana and South Africa, the independence of the broadcasting regulatory body is explicit. See Constitution of South Africa, 1996, sec. 192 and Constitution of Ghana, 1992, sec. 172. On the requirement to have an independent regulatory body, see African Commission on Human and Peoples’ Rights Declaration of Principles on Freedom of Expression in Africa, Principle VII. Article 19, “Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation,” March 2002, <http://www.article19.org/pdfs/standards/accessairwaves.pdf> (accessed March 28, 2010).

<sup>13</sup> In 1997, plaintiffs challenged the Press and Journalist Statute. The Constitutional Court decided on procedural rather than substantive grounds to dismiss the challenge. The Court based its decision on differing rules of procedure between cases brought directly to it by way of petition and those referred to it by another court. Uganda Journalists Safety Committee, *Mohammed Katende, Peter Bahemuka v. Attorney General*, Constitutional Petition No. 7/97, 1997.

<sup>14</sup> Press and Journalist Act, 1995, sec. 9(1). In 2005, the Media Council determined that the women’s rights organization Akina Mama Wa Afrika could not hold a charity event where *The Vagina Monologues* would be presented. The council determined that the play “prominently promotes and glorifies acts of unnatural sex, masturbation, lesbianism or homosexuality.”

<sup>15</sup> According to section 8 of the Press and Journalist Act, the Media Council shall consist of “(a) the director of information or a senior officer from the Ministry responsible for information, who shall be the secretary to the council; (b) two distinguished scholars in mass communication appointed by the Minister in consultation with the National Institute of Journalists of Uganda; (c) a representative nominated by the Uganda Newspapers Editors and Proprietors Association; (d) four representatives of whom—(i) two shall represent electronic media; and (ii) two shall represent the National Institute of Journalists of Uganda; (e) four members of the public not being journalists, who shall be persons of proven integrity and good repute of whom—(i) two shall be nominated by the Minister; and (ii) one shall be nominated by the Uganda Newspapers Editors and Proprietors Association; (iii) one shall be nominated by the journalists; and (f) a distinguished practising lawyer nominated by the Uganda Law Society. The persons referred to in paragraphs (c), (d), (e) and (f) shall be appointed by the Minister.”

<sup>16</sup> Press and Journalist Act, sec. 42.

<sup>17</sup> *Ibid*, sec. 5.

- The **Broadcasting Council**, created by the 1996 Electronic Media Act, grants licenses, regulates radio and television stations, arbitrates disputes between broadcasters and the public, and “coordinate[s] and exercise[s] control over” broadcasters.<sup>18</sup> The Council is a government body, comprised of 12 people, all either government representatives or directly appointed by the Minister of Information without any public consultation.<sup>19</sup> The law explicitly states that the Council is subject to the “directions” of the Minister of Information.<sup>20</sup> The Council is charged with enforcing vaguely worded “minimum broadcasting standards,” prohibiting broadcasters from airing programs offending public morality, promoting violence or ethnic prejudice, distorting facts, or creating public insecurity or violence.<sup>21</sup>
- The Uganda Communications Act establishes the **Uganda Communications Commission (UCC)**.<sup>22</sup> The UCC is a regulatory body mandated to allocate and license frequencies of the radio spectrum, promote competition among communications operators, and regulate the telecommunications industry.<sup>23</sup> Its vision is to facilitate development through “universal access to communications services largely delivered through the private sector.”<sup>24</sup> In April 2010, the Uganda Communications Commission and the Broadcasting Council announced that the two would merge into one body.<sup>25</sup> The current chairperson of the Broadcasting Council will head a board that will manage the merging process.<sup>26</sup>
- Officially, the **Media Centre**, created under the Office of the President in 2005, is the central site for access to government press statements. There is no statutory basis for the Centre. Its objective is “[t]o cause positive and factual public awareness of government in the media.”<sup>27</sup> During the run-up to the 2006 elections, the Media

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<sup>18</sup> Electronic Media Act, 1996, sec. 10.

<sup>19</sup> Five are government members: the director of broadcasting or a Ministry of Information official, as well as a Ministry of Culture official, a Ministry of Communication official, a Ministry of Education official, and a Uganda Revenue Authority official. The nongovernmental members are three representatives of TV, radio, and video operators, two members of the public of “proven integrity,” and one lawyer. Electronic Media Act, sec. 9(1).

<sup>20</sup> Electronic Media Act, sec. 9(5).

<sup>21</sup> For example, in 2007, the council imposed a two-week suspension on Capital Radio talk show host Gaetano Kaggwa, and WBS TV talk show host Peter Kibazo, for hosting gays and lesbians on their programs. Similarly, in 2004, the council forced Simba FM to pay a fine and publish a public apology for hosting homosexuals on a radio program, allegedly for offending public morals. “Broadcasting Council’s Position on Simba FM’s Hosting of Homosexuals,” Broadcasting Council, 2004.

<sup>22</sup> Uganda Communications Act, 1997, sec. 3.

<sup>23</sup> Uganda Communications Act, 1997, sec. 4.

<sup>24</sup> Uganda Communications Commission website, <http://www.ucc.co.ug/> (accessed April 23, 2010).

<sup>25</sup> Cyprian Musoke, “Broadcasting Council, UCC Merged,” *The New Vision*, April 6, 2010.

<sup>26</sup> Ibid.

<sup>27</sup> Media Centre, “About us,” undated, <http://www.mediacentre.go.ug/details.php?catId=10> (accessed April 27, 2010).

Centre usurped some of the powers of the Media Council. The Media Centre set out to investigate and accredit foreign journalists and prohibited a KFM Radio journalist from moving outside a 100-kilometer radius of Kampala city.<sup>28</sup> Critics have pointed out that the Centre has often operated as a “political prop, acting largely as the information outlet for the National Resistance Movement rather than as an independent government agency.”<sup>29</sup>

- The police **Media Crimes Department** was established two years ago to investigate alleged crimes committed via print and broadcast.<sup>30</sup> The department monitors the media closely and summons journalists, talk show panelists, and others for questioning, curtailing freedom of expression via intimidation in and of itself, even if charges never go forward.<sup>31</sup> Official statistics as to how many cases are under investigation or pending with the department are not publicly available. According to one knowledgeable police source, in its first year of operation, the department submitted 90 cases to the Directorate of Public Prosecutions and 12 were allowed to proceed.<sup>32</sup>

## Criminal Charges against Journalists

Criminal charges against journalists in retaliation for critical speech are increasingly common in Uganda, though in the rare instances when a case goes before a judge, courts have often protected journalists from the full repressive potential of this tactic. Since 2005, close to thirty journalists working at Kampala-based print publications have received a barrage of well-publicized police summonses. Some concluded in criminal charges that are still pending.<sup>33</sup> At least 10 radio journalists and talk show panelists have also been charged

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<sup>28</sup> Osservatorio di Pavia, UJSC - DEMGroup, “Report on the Uganda 2006 Elections Media Coverage,” [www.osservatorio.it/download/Uganda%20Election%20Coverage.pdf](http://www.osservatorio.it/download/Uganda%20Election%20Coverage.pdf) (accessed April 26, 2010), p. 4.

<sup>29</sup> Foundation for Human Rights Initiative, “Freedom of Expression, Report for the Period June 1-November 30, 2007,” <http://www.fhri.or.ug/Freedom%20Research%20June%20-%20November%202007%20.pdf> (accessed April 26, 2010), p. 28.

<sup>30</sup> Human Rights Watch interview with Gen. Kale Kayihura, inspector general of police, September 30, 2009. Initially, the political and media offenses departments were under one commissioner, but that changed after a recent restructuring in the police forces. The current head of the department told Human Rights Watch that his office’s narrow focus is necessary because “the media’s crimes are sensitive, and require dedicated staff to look critically at the cases, to be concerned about freedom of expression and deal carefully with the media community.” Human Rights Watch interview with Commissioner Simon Kuteesa, March 23, 2010.

<sup>31</sup> Human Rights Watch interview with Ugandan media expert, Kampala, April 5, 2009.

<sup>32</sup> Human Rights Watch interview with police officer, former staff member of the Media Crimes Department, April 2009.

<sup>33</sup> These journalists at Kampala-based print publications include Andrew Mwenda, Angelo Izama Ben Byaruhanga, Bernard Tabaire, Charles Bichachi, Chris Obore, Daniel Kalinaki, Dalton Kyesiga, David Enyaku, Emmanuel Gyezaho, Henry Ochieng, Hussein Bogere, James Tumusiime, Joachim Buwembo, John Njoroge Bichachi, Johnson Taremwa, Joseph Were, Jude Luggya, Kevin Aliro, Michael Ssali, Moses Akena Paul Harera, Richard Tusiime, Robert Mukasa, Robert Mwangje, Rodney Muhumuza, and Ssemujju Ibrahim Nganda. See the annex of this report.

with crimes.<sup>34</sup> All are out on bail, and none have ever been convicted of any crime.<sup>35</sup> Some faced multiple charges from multiple incidents.<sup>36</sup> These criminal cases stem from the publication or broadcasting of reports that were critical of government programs or policies or allegedly insulted government officials. Charges range from libel to more serious accusations of sedition.

Because of pending constitutional challenges to several “media crimes,” many cases against journalists do not proceed. In June 2009, the Constitutional Court ruled that criminal libel is constitutional, but an appeal to the Supreme Court is pending.<sup>37</sup> The constitutionality of the sedition statute is also currently being reviewed by the Constitutional Court, and all prosecutions under the law have been suspended pending its ruling, though, as stated previously, the Media Crimes Department of Uganda’s Criminal Investigations Directorate (CID) continues to summon, question, and charge journalists with sedition.<sup>38</sup>

In the few cases that have come before the courts, judges have upheld the right to freedom of speech as enshrined in the Ugandan constitution. The Ugandan Supreme Court recognized the relationship between free speech and democratic governance in *Obbo & Mwenda v. Attorney-General*, a landmark 2004 case. Deeming the crime of “publishing false news” unconstitutional, Justice Mulenga wrote:

A person’s expression or statement is not precluded from constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views. Indeed the protection is most relevant and required where a person’s

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<sup>34</sup> The radio journalists and talk show panelists charged with crimes include Basajjamivule Nsolonkamwe, David Rubombora, Gerald Kankya, Joram Bintamanya, Moses Kasibante, Prosper Businge, Robert Kalundi Serumaga, Siraje Lubwama, Steven Rawgweri, and William Gonza. Other radio journalists who were summoned to police include Meddie Nsereko and Oskar Ssemweya. See the annex of this report.

<sup>35</sup> The only journalist to be convicted of a crime since President Museveni took office is Haruna Kanaabi, who spent five months in prison in 1995. He had been charged with sedition and publication of false news for a tongue-in-cheek article entitled, “Rwanda is now a Ugandan province.” He was then editor of the newspaper *Shariyat*. Human Rights Watch, *Hostile to Democracy*, October 1999, p. 118.

<sup>36</sup> For example, Andrew Mwenda, formerly with *The Daily Monitor* and now the editor of *The Independent* magazine, is currently facing 22 different criminal charges from incidents over the last five years. “Attacks on the Press 2009: Uganda,” Committee to Protect Journalists, February 16, 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-uganda.php> (accessed April 16, 2010).

<sup>37</sup> Four Daily Monitor journalists, Joachim Buwembo, Bernard Tabaire, Robert Mukasa, and Emmanuel Gyezaho were charged with criminal libel. Mohamed Hassim Keita, “In Ugandan Courts, Important Press Battles,” Committee to Protect Journalists Blog, June 22, 2009, <http://www.cpj.org/blog/2009/06/in-ugandan-courts-important-press-battles.php> (accessed March 29, 2010).

<sup>38</sup> “Ugandan Paper’s Cartoon of President Draws Interrogation,” Committee to Protect Journalists press release, August 28, 2009, <http://cpj.org/2009/08/ugandan-papers-cartoon-of-president-draws-interrog.php> (accessed March 28, 2010).



views are opposed or objected to by society or any part thereof, as “false” or “wrong.” ... A democratic society respects and promotes the citizen’s individual rights to freedom of expression because it derives a benefit from the exercise of that freedom by its citizens. In order to maintain that benefit, a democratic society chooses to tolerate the exercise of the freedom even in respect of ‘demonstrably untrue and alarming statements,’ rather than to suppress them.<sup>39</sup>

The protections of due process afforded in formal court proceedings have been a source of assurance for some journalists. For example, one radio journalist in Kasese district told Human Rights Watch, “We’re worried for arrest but even if we are arrested, if we’re subjected to a fair trial, we think we shall succeed.”<sup>40</sup> Due process is available when formal charges go to trial, but these instances are rare due to both the pending constitutional petitions of various criminal charges and the fact that cases are seldom pursued to trial.

### *Cases against Print Journalists*

The majority of the currently pending charges are against journalists from the *Daily Monitor*, a publication that is at times perceived to be a platform for the opposition, though journalists working for other publications have also been charged.<sup>41</sup> Most recently, Angelo Izama, a senior reporter with the Monitor group, and Henry Ochieng, editor of *Sunday Monitor News*, were charged on February 4, 2010 with criminal libel, based on a complaint from the president.<sup>42</sup> Izama wrote a piece of political analysis published on December 19, 2009 about the risk of political violence during the 2011 election in which he compared Museveni to former Philippine President Ferdinand Marcos.<sup>43</sup>

On August 11, 2009 *Daily Monitor* journalist Moses Akena, based in Gulu, was charged with criminal defamation for an article that appeared on August 7, 2009. In the article, Akena quoted the Gulu district speaker from a press conference in which he said that the deputy

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<sup>39</sup> *Charles Onyango Obbo and Andrew Mwenda v. Attorney General*, Supreme Court of Uganda, Constitutional Appeal No. 2 of 2002, February 11, 2004.

<sup>40</sup> Human Rights Watch interview with journalist, Kasese, February 24, 2010.

<sup>41</sup> Daily Monitor-related cases include those against Andrew Mwenda, Angelo Izama, Bernard Tabaire, Daniel Kalinaki, Emmanuel Gyezaho, Henry Ochieng, Joachim Buwembo, Robert Mukasa and Moses Akena, as well as summonses issued to Chris Obore, Hussein Bogere, Jude Luggya, Michael Ssali, Paul Harera, Robert Mwangje, and Rodney Muhumuza. See the annex of this report.

<sup>42</sup> Both were released on bail of 100,000 Ugandan shillings (around US\$50), pending trial. “Museveni accuses two Ugandan journalists of libel,” Committee to Protect Journalists press release, February 4, 2010, <http://cpj.org/2010/02/museveni-accuses-two-ugandan-journalists-of-libel.php> (accessed March 23, 2010).

<sup>43</sup> Angelo Izama, “Preparing for the 2011 elections by arming the troops” *The Daily Monitor*, December 19, 2009.

resident district commissioner, Milton Odong, gave 60 iron sheets donated by the president's office to his friends instead of to the intended needy families.<sup>44</sup> Akena interviewed Odong on the phone about the allegations and published his denials in the article. Other journalists, including radio journalists from the government-owned Mega FM, covered the press conference and broadcast the allegations on air but were never charged.

Human Rights Watch interviewed Odong about the criminal defamation charges against Akena, but Odong denied any knowledge of the case. He said that journalists should be careful of "reporting maliciously." He said that "professional journalism" involved interviewing both sides to write a balanced story. Odong denied ever being contacted by Akena on the story.<sup>45</sup> After being charged, Akena was released on bail but is still regularly reporting to court. The case has not gone to trial.

The multiple charges against *Monitor* journalists in particular are not surprising to Ugandan media experts. According to Charles Onyango-Obbo, one of the founding editors of the *Monitor*, "He [Museveni] sees our [*Monitor's*] attitude as hostility. He realises that he cannot escape from it so he says to us that it is important to understand the nature of the state and the recourses that the state has. The state basically has the laws and the power of coercion."<sup>46</sup>

Journalists from other publications have also faced charges. Andrew Mwenda, formerly with the *Daily Monitor* and now the editor of the *Independent* magazine, is currently facing 22 different criminal charges from incidents over the last five years.<sup>47</sup> James Tumusiime and Ssemujju Ibrahim Nganda, working with the independent *Weekly Observer* newspaper also have pending charges. In 2005, the two were summoned to police, held for five hours and eventually charged with "promoting sectarianism." The charges stemmed from an article citing the opposition Forum for Democratic Change (FDC) as having accused Museveni and three top military officials of persecuting opposition leader Dr. Kizza Besigye on ethnic grounds.<sup>48</sup> The case has not gone to trial because of the pending constitutional challenge.

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<sup>44</sup> Moses Akena, "Gulu Officials Row Over IDPs' Iron Sheets," *The Daily Monitor*, August 7, 2009.

<sup>45</sup> Human Rights Watch interview with Gulu Deputy Resident District Commissioner Milton Odong, March 10, 2010.

<sup>46</sup> Nicole Stremlau, *The Press and Consolidation of Power in Ethiopia and Uganda*, May 2008, doctoral thesis, Development Studies Institute, London School of Economics (LSE), on file with Human Rights Watch.

<sup>47</sup> "Attacks on the Press 2009: Uganda," Committee to Protect Journalists, February 16, 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-uganda.php> (accessed April 16, 2010).

<sup>48</sup> "Uganda," Committee to Protect Journalists, December 13, 2005, <http://cpj.org/2005/12/uganda-1.php> (accessed April 27, 2010).

Even when criminal cases are slow to proceed, the requirements of police bond or court bail serve as a form of harassment for journalists. At one point, *Monitor* journalist Angelo Izama was reporting to police on a weekly basis for months until he was eventually charged with libel. James Tumusiime from the *Weekly Observer* has been reporting at regular intervals since being charged in 2005.<sup>49</sup> For three years, he and co-accused were required to report each month until the court changed the requirement to reporting every six months.<sup>50</sup>

### *Criminal Charges against Radio Journalists*

Radio journalists have also faced criminal charges for their reporting and political commentary, though rarely. Moderator William Gonza and five panelists who regularly discussed issues in their community on two Life FM radio talk shows in Fort Portal were arrested and charged with incitement to commit an offence and criminal libel in January 2008.<sup>51</sup> The charges stemmed from discussions about an incident in October 2007 during which royal guards from the area's tribal kingdom, the Batoro, allegedly destroyed Life FM's transmitter using acid, in order to silence criticism from the radio station.<sup>52</sup> The panelists made statements on January 3 and 7, 2008 about the delay of the police investigations into the acid attack and the state's failure to prosecute and punish the perpetrators.<sup>53</sup>

Shortly after the arrest of these six people, the Broadcasting Council sent "confidential" letters to all Fort Portal radio stations naming the six as being banned indefinitely from broadcasting on any radio station.<sup>54</sup> The Council sent a separate letter to Life FM concerning William Gonza's failure to perform his duties as a moderator.<sup>55</sup> As a result, Life FM informed the five panelists that their shows would be suspended until further notice.<sup>56</sup> A Life FM letter

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<sup>49</sup> Human Rights Watch interview with James Tumusiime, April 7, 2009.

<sup>50</sup> Human Rights Watch telephone interview with James Tumusiime, March 29, 2010.

<sup>51</sup> Those five panelists were Gerald Kankya, Joram Bintamanya, Prosper Businge, Dan Rubombora, and Steven Rwagweri. The two talk shows were *Twerwaneho* ("Let's Fight for Ourselves") and *Ensonga Ha Nsonga* ("Reason Upon Reason"). Human Rights Watch interview with Gerald Kankya, Kampala, March 24, 2010; and *Prosecutor v. Businge Prosper & 5 Others*, Chief Magistrate's Court of Fort Portal, FPT-00-CR-Co-0039/2008, CRB-043/2009, September 23, 2009.

<sup>52</sup> Human Rights Watch interview with Gerald Kankya, Kampala, March 24, 2010.

<sup>53</sup> For example, they discussed a letter that the regional police commander wrote to the inspector general of police requesting his intervention in Fort Portal. Annexure to *Prosecutor v. Businge Prosper & 5 Others*, Chief Magistrate's Court of Fort Portal, FPT-00-CR-Co-0039/2008, CRB-043/2009, September 23, 2009.

<sup>54</sup> Human Rights Watch interview with Gerald Kankya, Kampala, March 24, 2010.

<sup>55</sup> *Ibid.*; and Human Rights Watch telephone interview with journalist in Fort Portal, March 26, 2010.

<sup>56</sup> Letter from Life FM to Youth for Development Twerwaneho Program, January 10, 2008, on file with Human Rights Watch.

to Gonza suspending him for a month stated, “You put our station at risk by antagonizing the government.”<sup>57</sup>

The six successfully challenged the government in court while they faced their criminal charges. In February 2008, they sued the state for the reinstatement of the two radio shows. The following month, the court ruled that the shows would be allowed to return on air and that the police had violated the six people’s constitutional rights to free speech.<sup>58</sup> Judge Rugadya Atwoki wrote in his decision, “I tried hard to find the justification for the suspension of the programme, but I did not find any.”<sup>59</sup> All the defendants were eventually acquitted of all criminal charges in September 2009 for lack of evidence.<sup>60</sup> The six are currently suing the state for unlawful arrest, illegal detention, and malicious prosecution.<sup>61</sup> The five panelists did not return to air until March 2010, after they had been off-air for more than two years.<sup>62</sup>

## Threats to Radio Journalists outside Kampala

There is a widespread belief among journalists outside Kampala that they are more vulnerable than those in the capital.<sup>63</sup> They are paid less, often work without contracts, and voiced a serious lack of confidence that their station owners would provide legal services if they got into trouble for their reporting. The lack of active civil society or lawyers in many rural districts also means that journalists who are threatened by state actors rarely find anyone who can come to their assistance. Most threats come either directly from police or from people who work closely with police, such as the resident district commissioners (RDCs) and their staff, and go completely undocumented and unreported. Journalists simply change their reporting, focusing on issues less likely to get them into trouble while they try to maintain their employment to support their families.

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<sup>57</sup> Letter from Life FM to Gonza William, February 5, 2008, on file with Human Rights Watch.

<sup>58</sup> *Dan Rubombora & 4 Others v. Attorney-General*, High Court of Uganda at Fort Portal, HCT-01-CV-MA-0019-2008, March 14, 2008.

<sup>59</sup> *Dan Rubombora & 4 Others v. Attorney-General*, High Court of Uganda at Fort Portal, HCT-01-CV-MA-0019-2008, March 14, 2008, p. 10. Judge Atwoki cited Justice Mulenga in the Supreme Court case *Charles Onyango Obbo and Andrew Mwenda v. Attorney General*: “Freedom of expression extends to holding, reviewing, and imparting all forms of opinions, ideas, and information. It is not confined to categories, such as correct opinion, sound ideas or truthful information.” *Charles Onyango Obbo and Andrew Mwenda v. Attorney General*, Constitutional Appeal No. 2 of 2002, February 11, 2004.

<sup>60</sup> *Prosecutor v. Businge Prosper & 5 Others*, Chief Magistrate’s Court of Fort Portal, FPT-00-CR-Co-0039/2008, CRB-043/2009, September 23, 2009.

<sup>61</sup> Notice to Attorney-General of Uganda from Kaahwa, Kafuuzi, Bwiruka & Co. Advocates, November 12, 2009. On file with Human Rights Watch.

<sup>62</sup> Human Rights Watch telephone interview with Gerald Kankya, March 28, 2010. They merged their two former talk shows into one, called “Twerwaneho Listener’s Club.”

<sup>63</sup> Human Rights Watch interview with journalist, Masaka, February 22, 2010.

RDCs are the local representative of the President's office present in each district and are directly appointed by the president.<sup>64</sup> Among other roles at the district level, RDCs chair the district security committee and the intelligence committee.<sup>65</sup> Largely because of the perception that these individuals are close to the president, they wield tremendous power at the local level, despite overlapping roles with the elected district council chairs. As one journalist in a rural area told Human Rights Watch, "It depends on the type of RDC in a given area, but generally, an RDC is not friendly to media and media houses. You can't argue with him. He has orders and you do what he wants."<sup>66</sup>

Numerous radio journalists described to Human Rights Watch incidents in which they had been threatened, harassed, and intimidated by local government officials, particularly RDCs, district internal security officials, and ruling party "mobilizers" because of their reporting, covering opposition events, or trying to access government information. Topics that incur government interference and the extent of the intimidation vary by geographical area, and depend on personalities of key security and government officials, as well as the perceived strength of the ruling and opposition parties in a given area.

Political talk shows, involving invited guests and a moderator discussing current political issues, are a forum that appears to draw the greatest intensity of intimidation and threats. In several districts, RDCs had told station managers and talk show hosts that they had to submit lists of all invited guests to the RDC's office for approval, as a "security measure."<sup>67</sup> In some instances, RDCs told radio stations that certain people could not be discussed.

In Mbale, a talk show host had been told directly by the then-RDC what to cover during his shows.

The RDC told me, 'Don't host these people, don't allow them any airtime. Don't raise these issues.' When there was [the] controversial issue of [the] land bill, people here didn't want me to talk about it. The land bill was very

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<sup>64</sup> Constitution of Uganda, art. 203.

<sup>65</sup> National Security Council Act, 2000, sec. 6. Resident district commissioners are legally supposed to be senior civil servants but these individuals routinely campaign for the ruling party. Many have NRM paraphernalia present in their offices and on the walls.

<sup>66</sup> Human Rights Watch interview with station manager and journalist, Kihhi, February 24, 2010.

<sup>67</sup> Human Rights Watch interview with journalists, Soroti, December 8, 2009; and Kasese, February 24, 2010.

controversial, and people were very sensitive about it. I got some threats, some funny calls at night and daytime.<sup>68</sup>

One political talk show moderator and journalist from Jinja told Human Rights Watch that he had been directly threatened by local security operatives and ruling party “mobilizers” or “cadres” as they are known locally, three times in the recent past. His programming usually involves discussing politics, hosting politicians, and taking callers. The first threats came in 2008, when he discussed on air why the government was considering classifying Mbarara as a city before Jinja. He questioned whether this was because Jinja’s elected leadership is predominantly from the opposition. After the broadcast, he received anonymous phone calls threatening him with violence if he did not stop talking about that issue. His bosses advised him to simply follow the commands of the callers.

In October 2009, the same Jinja journalist again received threatening calls when he held an on-air debate with callers about who the legitimate king of Busoga should be. The topic was particularly controversial because there had been allegations that President Museveni had supported one person over another who was thought to be loyal to the opposition, in an attempt to draw Busoga support during the 2011 elections.<sup>69</sup> After the broadcast, the journalist received a phone call from the NRM chief mobilizer in the area, telling him that he was becoming a problem. “He told me that security people are now looking at my movements.” The journalist was eventually called by the police and told to leave the issue alone.

Most recently, the same journalist ran a program to discuss the successes and failures of the ruling party since coming to office 24 years ago. The show was topical, as it was broadcast on the occasion of the 2010 National Resistance Movement party day celebrations. After the program, the moderator received phone calls from the Regional Internal Security Officer (RISO) warning him that what was discussed was not appropriate, but without any specific references to what had been said. Later, the area’s chief NRM mobilizer again found the moderator at a local restaurant and threatened him, “We don’t want to hear any of that,” he told the journalist. “You can disappear and no one will know where we have taken you.”<sup>70</sup>

After his experiences, the journalist now admits that he has changed his programming. “I feel so badly, I fear to even say it, but I censor myself now. Some things don’t work here and

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<sup>68</sup> Human Rights Watch interview with journalist, Soroti, December 8, 2009.

<sup>69</sup> For more, see Issac Mufumba, “The battle for Kyabazinga still rages on,” *The Independent*, August 5, 2009.

<sup>70</sup> Human Rights Watch interview with journalist and talk show host, Jinja, February 8, 2010.

we should talk about them, but these people make me feel I cannot do my job. I need to say things that I cannot say.”<sup>71</sup>

Another talk show moderator described how he ended up in police custody, despite trying to follow all the rules and broadcasting standards, particularly to ensure that all sides are represented in a debate. He told Human Rights Watch:

The Broadcasting Council tells us to record every program that goes on air, so I told the production manager assistant to go and make a recording. I was supposed to host one parliamentarian from the Forum for Democratic Change, one Democratic Party member, and one NRM minister. [The NRM person] didn’t come. And so we hosted the talk show and waited for him, but unfortunately he never came. Later I realized the recording wasn’t being done [because of a technical problem]. Police stormed the studio. I was called to write a statement. I was told to go back to police on Monday. The officer in charge of the Criminal Investigations Department told me he’d detain me. He told me, “There’s not much I can do.” He had received a phone call “from above,” meaning from [the President’s office]. He said, ‘Your issue is complex, so I leave it to politicians.’ I was behind bars and eventually released at an awkward hour, at 8 p.m. I was never charged. But I was required to go to police twice a week for three to four months. Up to the last day, I went to police. They told me, ‘Your case has been dismissed because the Director of Public Prosecutions has no interest in it.’ During this time, my boss was given options for how to deal with me—to dismiss me, to send me on forced leave, to remove me from the early morning programs, which are key for discussions, and to keep me in a musical program. I was forced to work during the daytime, from 2-5pm, just on music and entertainment. I lost interest. Up-country, you can’t talk issues.”<sup>72</sup>

In some parts of the country, police and government officials appear to act with impunity, threatening journalists who seek sensitive information, for example about local-level corruption, or when the topic involves the government or police being derelict in their duties. A journalist in Lira district described how he eventually dropped a story in 2009 about police losing track of criminal files when the District Police Commander (DPC) threatened him. The journalist told Human Rights Watch, “we asked the DPC why that file was lost, and we were

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<sup>71</sup> Human Rights Watch interview with journalist and talk show host, Jinja, February 8, 2010.

<sup>72</sup> Human Rights Watch interview with journalist, Soroti, December 8, 2009.



pressing him to tell us in what circumstances files get lost. He said that there are certain parameters we should not cross. He was telling us we were going too far. He threatened us, so we had to stop there.”<sup>73</sup>

In February 2010, Charles Osendro, a journalist at Radio Unity in Lira, was temporarily detained by the District Police Commander (DPC) of Apac district. Osendro was interviewing the police in Apac about a murder.<sup>74</sup> One of the suspects had reportedly turned himself in to police and allegedly implicated others in the murder. However, no further action had followed. Trying to gather information for a news story on these events, Osendro questioned the police about their failure to investigate the crime. Police allowed their answers to be recorded, but at the end of the interview, Osendro’s identification card and recorder were confiscated. A police officer allegedly told Osendro, “This man is not going, and he’s not going with our voice.”<sup>75</sup> When Osendro refused to delete the recordings, he was detained for four hours. He was ultimately released when police hired staff from another local radio station to delete the digital recordings. Osendro was released without charge.<sup>76</sup> He has tried to file a complaint with police but they told him that they had not received any communication from their bosses to accept his complaint. Osendro did speak to the Regional Police Commander, who apologized for the DPC’s actions but declined to accept Osendro’s formal complaint.

Responding to allegations that rural journalists’ freedom to access and disseminate information was particularly precarious, Minister of Information Matsiko voiced considerable surprise that journalists would hesitate to report on sensitive political issues, such as corruption or human rights abuses. She said that government has a “zero tolerance policy” on corruption and encouraged journalists to cover that topic. She admitted that certain local government officials might act “excessively” towards journalists but she said she was unaware of any concrete examples.

## **The September Riots’ Impact on Freedom of Expression**

The riots that shook Kampala in September 2009 unleashed a torrent of repression not only against perceived opposition forces, but also against the media. Though this crackdown did result in a handful of new criminal cases against journalists and politicians, largely for

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<sup>73</sup> Human Right Watch interview with journalist, Lira, March 9, 2010.

<sup>74</sup> Human Rights Watch interview with Charles Osendu Osendro, Unity Radio, Lira, March 9, 2010.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

sedition and incitement to violence, the state's main weapons consisted of extra-judicial measures such as station closures, warnings to avoid particular content, and the prohibition of a popular broadcast format. During the heat of the riots, journalists were illegally detained and physically assaulted as well. The ripple effects of this repression continue to inhibit free speech and to curtail the right to information for many Ugandans. Government officials, both at the time of the riots and subsequently, have justified station closures as necessary to prevent dissemination of material likely to incite the population against the government. However, analysis by Human Rights Watch and others suggests that these actions have been taken largely as a means to stifle legitimate political speech. Pre-existing government hostility to stations perceived as too critical or not deferential enough to government perspectives played a large role in closure decisions.

### *Origins and Course of the Violence*

On September 10 and 11, 2009, political discord between the central government and the Buganda<sup>77</sup> cultural institution sparked riots that left at least 40 people dead in Kampala.<sup>78</sup> Baganda youth began rioting when police blocked a delegation representing the Buganda kingdom from visiting Kayunga district. Police also refused to guarantee the security of the cultural king of Buganda, known as the *Kabaka*, who was planning to visit Kayunga for National Youth Day two days later.<sup>79</sup> The visit was opposed by leaders of the Banyala ethnic group in Kayunga, who allegedly reject the *Kabaka's* authority.<sup>80</sup>

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<sup>77</sup> Buganda is a region of Uganda in the central region of the country. The people of Buganda are Baganda (Muganda, in the singular) and they speak the Luganda language. The Baganda are the largest ethnic group in Uganda. Like some of the traditional royals in Uganda, the Baganda have a customary government structure with no constitutional powers. The government is led by the king, known as the *Kabaka* and a prime minister, known as the *Kattikiro*.

<sup>78</sup> Police have officially said that the total number of dead is 27. Based on recently available information, Human Rights Watch believes the real number to be higher than 40. Mulago hospital records indicate that 17 people died there, 11 of gunshot wounds. City morgue records indicate that 13 dead bodies were taken there. Human Rights Watch is aware of at least 10 other deaths in which bodies were not brought to hospitals or morgues. See also "Uganda: Investigate Use of Lethal Force during Riots," Human Rights Watch news release, October 1, 2009. <http://www.hrw.org/node/85870>.

<sup>79</sup> Al-mahdi Ssenkabiwa, Musa Ismail Ladu, and Robert Mwanje "Kabaka Condemns Creation of Chiefdoms," *The Daily Monitor*, August 25, 2009.

<sup>80</sup> The role of cultural royalty such as the *Kabaka* in Uganda has been the source of debate historically and remains controversial. President Milton Obote outlawed all cultural leaders in 1966. Museveni permitted them to return in 1995, allegedly for the purpose of winning political support from the four historical Ugandan kingdoms of Buganda, Bunyoro, Busoga, and Tooro. The 1995 constitution bars these "cultural leaders" from politics, but they continue to wield significant influence over their communities, particularly during elections. Constitution of Uganda, 1995, art. 246. In this instance, President Museveni had recently voiced support for the Banyala king and the restoration of the Banyala cultural institution, which had been part of the Buganda kingdom previously. This move was thought by some to be evidence of Museveni's election strategy of "divide and rule"—recognizing multiple ethnic leaders to reduce the power and influence of some of the more prominent cultural leaders, such as the *Kabaka*. See Charles Jjuko, "President Museveni backs Banyala Chief," *The New Vision*, December 14, 2008.

The *Kabaka's* supporters took to the streets to protest the police interference in his freedom of movement. Human Rights Watch documented numerous instances of the unnecessary use of lethal force by military police during the two-day period.<sup>81</sup> Military police, allegedly looking for rioters, shot through doors and into residences and businesses, killing some people and seriously injuring others. Some protesters resorted to violence in some areas of Kampala, burning at least five cars, one passenger bus, and one delivery truck, blocking some main roads with burning tires and debris, looting shops, and throwing rocks at police and the armed forces. A factory and a police station were burned down.

Police charged thirty people, who were alleged to have destroyed property, with terrorism.<sup>82</sup> The government took swift action against Luganda-speaking radio stations, allegedly for inciting the public to commit violence, and forcibly pulled them off air on the first day of the riots.<sup>83</sup>

The tension further escalated in March 2010 when the cherished Baganda royal tombs of Kasubi burned down under unclear circumstances. The following day, protesters attempted to thwart President Museveni's visit to the site. Security forces wearing civilian clothes fired on the unarmed protesters, killing three people.<sup>84</sup> Shortly after the incident, two political talk show panelists were arrested and charged with sedition in Fort Portal district after commenting on a radio talk show that, among other things, the President should not have tried to visit the tombs when people were clearly upset by what had happened in September.<sup>85</sup>

### *Physical Assaults on Journalists*

Journalists have often complained that police and military do not distinguish between the media and others during politically charged events, such as riots and demonstrations. According to the Human Rights Network for Journalists, a local nongovernmental organization documenting threats to media freedom, 35 journalists were physically attacked

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<sup>81</sup> "Uganda: Investigate Use of Lethal Force during Riots," Human Rights Watch news release, October 1, 2009, <http://www.hrw.org/node/8587>.

<sup>82</sup> Herbert Ssemugo, "Riot Suspects Face Terrorism Charges," *The New Vision*, September 21, 2009, <http://allafrica.com/stories/200909220159.html> (accessed April 7, 2010).

<sup>83</sup> Juliet Waiswa, "Ssuubi FM Apologises Over September Riots," *The New Vision*, November 4, 2009, <http://allafrica.com/stories/200911050185.html> (accessed April 7, 2010).

<sup>84</sup> Rodney Muhumuza, "Anger responds to fire at Kasubi," *The Daily Monitor*, March 18, 2010; and Milton Olupot and Catherine Bekunda, "Parliament condemns Kasubi fire and shooting of civilians," *The New Vision*, March 18, 2010.

<sup>85</sup> Felix Basiime and John Nyanzi, "Two Held Over Talk On Mayombo's Demise," *The Daily Monitor*, April 2, 2010; and Human Rights Watch telephone interview with lawyer for the defendants, April 6, 2010.

or threatened with physical violence in 2009.<sup>86</sup> During the September riots, several journalists alleged they had been beaten by police and military while trying to document the unfolding chaos. Photojournalists, especially those that documented killings by state agents, appear to have been specifically targeted for abuse.

Edward Echwalu, the photo editor at the independently-owned *Observer* newspaper, was in downtown Kampala when he was alerted that someone had been killed nearby around 3 p.m. on September 10, 2009, just as the riots were starting. He took pictures of the dead body of a young man who had been shot by police. After taking the pictures, Echwalu left the scene and later came upon a group of 10 soldiers.

He told Human Rights Watch:

They saw me and asked me what I was doing. I tried to give them my business card, show them my ID, but they refused. I showed them my photos because I knew they can be ruthless. When they saw the pictures of the dead body, they didn't like those pictures; they were uncomfortable. I was beginning to explain the situation when the military police, about six of them, started beating me, telling me to delete the photos.

He was detained for about two hours, and then taken behind a fire station by a group of civilian and military police.

They told me to show them the pictures. They beat and kicked me. They said, 'People will give us a hard time as a result of these pictures.' These people were really beating me. It was 6:30, getting dark, and they were going to take me to the barracks. I was scared, and I thought, 'This is going to be a long night.'<sup>87</sup>

Eventually, Echwalu was released after contacting his editors and after police had forcibly deleted three photos from his camera. No charges were ever brought against him and no one was ever held responsible for the beating.

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<sup>86</sup> Press Freedom Index – 2009, Human Rights Network for Journalists, on file with Human Rights Watch.

<sup>87</sup> Human Rights Watch interview with Edward Echwalu, Kampala, September 17, 2009.

Prominent journalist Robert Kalundi Serumaga, immediately after speaking on a talk show on September 11, 2009, was assaulted outside the Wavah Broadcasting Station (WBS) studio in Kampala by men in civilian clothing and forced into an unmarked car.<sup>88</sup> The men did not identify themselves or the reason for his arrest. During transport, they beat and choked Serumaga and at one point tried to gouge his eyes when he tried to defend himself. He was taken to an illegal place of detention in Kireka, a neighborhood of Kampala where at least 23 others who had also been arrested during the protests were being held. The following morning he was brought to the Central Police Station and held for three days without charge. No one has been held accountable for the illegal manner of Serumaga's arrest or initial illegal detention.

On September 15, Serumaga was charged with six counts of sedition and released on bail. One of the charges stemmed from stating that President Museveni suffered from a "very poor quality upbringing."<sup>89</sup> The Broadcasting Council also suspended Serumaga from hosting or moderating talk shows on air.<sup>90</sup>

Physical assaults on journalists have gone largely uninvestigated by the Ugandan police. Because police and other security forces are often the perpetrators of such violence, journalists told Human Rights Watch they are very reluctant to report physical abuse by government agents.<sup>91</sup>

### *Closures of Radio Stations*

The number of instances of license suspension by the Broadcasting Council has increased generally in recent years. The closures appear to be tied to open criticism of government or the ruling party or granting significant airtime to members of the opposition but the precise reasons for the suspensions are never made fully public and rarely do cases go before courts of law.<sup>92</sup> At most, the Broadcasting Council may communicate in written form that stations are in violation of its vague "minimum broadcasting standards."<sup>93</sup>

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<sup>88</sup> "Uganda: End Media Clampdown," Human Rights Watch news release, September 15, 2009, <http://www.hrw.org/node/85602>.

<sup>89</sup> "But I'm sorry to say we are also suffering from what seems to be very poor quality breeding, or very poor quality upbringing on the part of Yoweri Museveni, ok?" "What Serumaga said on WBS TV [Re-print of Serumaga's charge sheet]," *The Observer*, September 20, 2009, [http://www.observer.ug/index.php?option=com\\_content&task=view&id=5126&Itemid=59](http://www.observer.ug/index.php?option=com_content&task=view&id=5126&Itemid=59) (accessed March 23, 2010).

<sup>90</sup> Anthony Wesaka, "Journalists sue broadcasting council, govt," *Saturday Monitor*, December 5, 2009.

<sup>91</sup> In one very recent positive example, on February 23, 2010, the Kampala High Court ordered the government of Uganda to compensate two Wavah Broadcasting Service (WBS TV) journalists who were tortured by police in 2008.

<sup>92</sup> For instance, the Broadcasting Council temporarily closed KFM twice, once for eight days in 2005 for statements made by journalist Andrew Mwenda that the Ugandan government was responsible for the helicopter crash that killed Southern

During the 2009 September riots, the Council abruptly shut down four Luganda-speaking radio stations—Radio Sapientia, Radio Two (also known as *Akaboozi ku Bbir*), Radio Ssuubi, and Central Broadcasting Station (CBS). These radio stations, like many others, were trying to manage coverage of the dramatic unfolding events on the streets of Kampala. Many stations were taking calls from people who were reporting what they were witnessing with their own eyes. Before the closure, CBS, for example, had a reporter live in Kayunga relaying what was transpiring during the attempted visit of the Buganda prime minister.

The closures occurred without any official or written warning to radio station owners or managers. In most instances, government agents broke into the transmission room of the radio stations, and confiscated studio transmission links. Although there is a statutory provision that the Broadcasting Council has power to confiscate equipment, there is no explicit statutory language granting the Council power to suspend, revoke, or cancel licenses.<sup>94</sup> The Council has interpreted its own mandate broadly to include powers to suspend licenses, stating that “coordinate, exercise and supervise as provided in terms section 10(1) of the Electronic Media Act in ordinary English mean to make things work effectively as a whole, watch over, order, limit, instruct, regulate or stop.”<sup>95</sup> The Minister of Information had responded to the absence of a statutory basis for canceling licenses by drafting extra terms and conditions, which are now compulsory for all those seeking a broadcasting license. According to those terms, any violation of the terms can lead to the immediate loss of the license.<sup>96</sup>

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Sudanese government official John Garang. *In the Matter of the Suspension of the Broadcasting License of KFM Ltd.*, No. 1 of 2005, Broadcasting Council, August 18, 2005.

<sup>93</sup> This was the case in the closure of Choice FM in Gulu, which was temporarily closed by the Council in the wake of the 2006 elections. There is no specific description of what was broadcast that warranted closure of the station and no citation to a specific part of any transmission broadcast. Several people interviewed by Human Rights Watch indicated that Choice FM had routinely given a platform to opposition candidates for parliament during the 2006 elections and that many of them had ultimately been elected. Human Rights Watch interview with radio journalists, Gulu, March 8, 2010. Some knowledgeable sources speculated that this closure was punishment for not having supported ruling party candidates. Letter on file with Human Rights Watch. The Broadcasting Council also claimed that the station had failed to renew its annual license and therefore was broadcasting illegally.

<sup>94</sup> Human Rights Watch interviews with Professor Frederick Juuko, Kampala, September 21, 2009; and with media lawyer Kenneth Kakuru, Kampala, February 10, 2010.

<sup>95</sup> *In the Matter of the Suspension of the Broadcasting License of KFM Ltd.* No. 1 of 2005, Broadcasting Council, August 18, 2005.

<sup>96</sup> Human Rights Watch interview with chairman, Broadcasting Council, March 15, 2010. One of these provisions requires broadcasters to “allocate time to promote government programs.” The terms also require broadcasters to purchase equipment to enable the station to receive a live signal feed from Uganda Broadcasting Corporation TV and radio in the event the president wishes to speak to the country using all radio and television stations at the same time. Another regulation forbids radio owners from transferring or selling their licenses without prior approval from the council. “Terms and Conditions for Operating Broadcasting License in Uganda,” on file with Human Rights Watch.

After the shutdown, some stations received letters from the council stating that their broadcasts had violated the “minimum broadcasting standards” by inciting the public to violence, but the letters did not specify how broadcasting standards had been violated or what part of their broadcast was in violation. Nor did the letters have any citations to specific language spoken. In the case of CBS, the Broadcasting Council letter refers to several meetings which had taken place with CBS management since 2007, during which CBS had agreed and then failed to complete a litany of tasks to maintain their broadcasting license. Among other requirements, CBS was required to “guide personalities who are invited to discuss talk shows by giving them guidelines,” “ensure that producers/presenters strictly adhere to the script during discussions,” “scrutinize topics in respect of their sensitivity in relation to the public, invite two persons with divergent views to discuss each topics in order to ensure balance,” “minimize programmes that bring confrontation with Central Government”, to invite the Council to the station so that Council staff could “give guidelines to discussants as to how programmes should be presented,” and to inform the Council of actions taken against some specific producers and presenters.<sup>97</sup>

The Minister of Information, Hon. Kabakumba Matsiko, stated to the press that the riots had been preceded by “inflammatory and sectarian broadcasts from various radio stations, which systematically incited the listeners to cause chaos and destruction wherever they could.”<sup>98</sup> The government has never backed up those allegations by presenting the transcripts of what exactly was said that incited the public to commit violence.<sup>99</sup>

The government’s real motivation for the closures was made plain on September 10, 2009, when the president gave a detailed speech before the Buganda Parliamentary Caucus on why the *Kabaka* was being prevented from going to Kayunga. He said that one of the conditions for the *Kabaka* to visit Kayunga would be for CBS to “stop forthwith the campaign against the NRM.”<sup>100</sup> He also said “decisive action will be taken on any media house that continues the practice of incitement.”<sup>101</sup>

Broadcasting Council officials met with other stations after the riots to warn them about their content. In reaction, some stations changed programming in an effort to stay on air. Capital

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<sup>97</sup> Letter from chairman of the Broadcasting Council to the general manager of CBS, September 11, 2009, on file with Human Rights Watch.

<sup>98</sup> Press statement of Hon. Kabakumba Matsiko, September 11, 2009, on file with Human Rights Watch.

<sup>99</sup> By law, all radio broadcasters are required to keep recordings of all broadcasts for at least 30 days.

<sup>100</sup> Speech of President Yoweri Museveni, September 10, 2009, <http://www.statehouse.go.ug/news.php?catId=2&item=634> (accessed April 16, 2010).

<sup>101</sup> *Ibid.*



Radio management, for example, sent out a memo to employees on September 29, 2009 saying that after having met with the Broadcasting Council, “[a]ll content related to Buganda, the Buganda kingdom and the institution of the *Kabaka*—will not be aired ... unless as positive stories run in the [government-owned newspapers] covered in the press review.” Management also said those on-air could not discuss the Buganda football tournament finals, could not play songs related to Buganda issues, and must generally stop all comment or news coverage that relates to the *Kabaka* or to the cultural Baganda government known as Mengo.<sup>102</sup>

Producers interviewed by Human Rights Watch reported that they had actively tried to present all sides of the issues and had invited various government officials to be interviewed during the riots, but they had not appeared.<sup>103</sup> These producers therefore felt that accusations that they had not balanced their broadcasts with divergent viewpoints were unfair, but in the end, apologizing was easier than fighting on principle in the courts. The closures left station owners, managers, and journalists without clear recourse and without income.<sup>104</sup> According to media reports, station owners appear to have informally negotiated with the Broadcasting Council or other government authorities, including the president’s office directly, as to what they needed to do to get back on air.<sup>105</sup> Media owners were not willing to be interviewed about the content of those negotiations. Within a few months, three of the four stations were back on air, having apologized and fired some of their broadcasters. Central Broadcasting Services (CBS), owned in part by the Buganda kingdom, remains off the air at the time of writing.

The informal negotiation process between the Broadcasting Council and station owners gives the Broadcasting Council, as well as other government and security officials not legally involved in regulating the media, tremendous power to arbitrarily set additional terms and conditions at a time when stations are not generating any revenue—when owners are most vulnerable to pressure. According to the chairman of the National Association of Broadcasters, radio station owners must “play it carefully” to get back on air.<sup>106</sup> In these moments, there is no impartial inquiry into the content of the radio broadcasts. The

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<sup>102</sup> Capital Radio Management Memorandum, on file with Human Rights Watch.

<sup>103</sup> Human Rights Watch interview with radio station managers and producers, September 15 and 17, 2009.

<sup>104</sup> All four were closed down on September 10, 2009. Sapientia went back on air by September 16, 2009. Radio Two went back on air on November 3, 2009. Radio Suubi went back on air on January 12, 2010. CBS is still off air.

<sup>105</sup> Edris Kiggundu and Moses Talemwa, “Why CBS license was revoked,” *The Observer*, September 21, 2009.

<sup>106</sup> Human Rights Watch interview with Hon. Capt. Francis Babu, chairman of the National Association of Broadcasters, Kampala, March 11, 2010.

government, through the Council, has all the power to curtail freedom of expression without any safeguards, as Council members and staff act as both prosecutor and judge.

The content of what was broadcast on CBS and how the station might return to the airwaves remains very controversial. General David Tinyefuza, Senior Presidential Advisor/Coordinator of Internal and External Security organizations wrote in the independently owned *Daily Monitor* newspaper that CBS “not only engage[d] in hosting and broadcasting inflammatory statements of opposition politicians, but it also engaged in promoting an anti-government political agenda, actively de-campaigning government programmes.”<sup>107</sup>

He issued an explicit set of conditions for the radio station to return on air, including the replacement of the station’s management, admission of wrongdoing in a letter from the station owners to government, removing the *Kabaka* as a shareholder in the station, relocation of the station to an area more easily accessible to “people who keep law and order,” and reapplication for a broadcasting license.<sup>108</sup> President Museveni’s press secretary was quoted in the press as saying that CBS would not return to the air until it apologized to government.<sup>109</sup> Such direct interference with content and editorial decision-making violates international human rights law and constitutional requirements to protect freedom of expression.

### *The Government’s Response to Criticism over the Closures*

The Ugandan government has repeatedly alleged that by shutting down radio stations it acted to limit the worsening of public disorder, while refusing to point to specific statements made by broadcasters that constituted incitement. Minister of Information Matisko, in an interview with Human Rights Watch, claimed that broadcasting during the riots by CBS was “no different from *Milles Collines*” in Rwanda, a reference to the radio station where broadcasters explicitly directed people to kill Tutsis in the lead up to the 1994 genocide. Because the matter is currently before court, she would not comment on the specific evidence of criminal wrongdoing by CBS broadcasters. She admitted, however, that even without the events of September, CBS could and should have been shut down.<sup>110</sup>

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<sup>107</sup> “Tinyefuza’s Take on CBS Question,” *The Daily Monitor*, January 31, 2010, <http://www.monitor.co.ug/News/Insight/-/688338/852468/-/view/printVersion/-/1olier8z/-/index.html> (accessed April 16, 2010).

<sup>108</sup> Ibid.

<sup>109</sup> Mercy Nalugo and Emmanuel Mulondo, “State House: CBS must apologise,” *The Daily Monitor*, March 30, 2010.

<sup>110</sup> Human Rights Watch interview with Hon. Kabakumba Matsiko, minister of information, April 9, 2010.

Chairman of the Broadcasting Council Godfrey Mutabazi justified the Council's actions in similar terms to Human Rights Watch.<sup>111</sup> He said that the Council acts mostly in "emergencies, on sensitive issues, and when someone is careless." Regarding the riots, he said the Council had received a complaint from the Inspector General of Police earlier in the week stating that there was likely to be a security situation in Kayunga and that some broadcasters needed to be careful. The Chairman said that he phoned some stations owners, including CBS, to warn them to be careful about their broadcasts, and that many of them "responded well." He said that Police told the public not to go to Kayunga, and some radio stations were contradicting those orders.

Human Rights Watch had multiple Luganda speakers listen to recordings of both CBS frequencies from the week of the riots. Numerous efforts to mobilize the public to go to Kayunga and support the *Kabaka* were clearly broadcast both by advertisers, announcements, and on-air personalities. Human Rights Watch did not hear any specific references encouraging people to use weapons or commit any violent acts. After Human Rights Watch inquiries to the Council regarding specific time codes where broadcasters incited the public to commit violence, Council legal staff said that it was not possible to point to specific statements made on the radio stations that led to the closures, but rather one needed to listen to the past two years of broadcasts on CBS to understand the problem.<sup>112</sup>

As for the closures, the Chairman said that the law was "very clear" and that his council had the power to revoke, suspend, and withdraw a license. He said that the riots were a time of emergency. "It would have been irresponsible for me to hear that people were dying on the streets and that the radios were encouraging people where to go and what to do. We had to close them down. If everyone is blaming FM stations, we must take action," he told Human Rights Watch and made reference to the Rwandan genocide as an example where radio stations had incited the public to commit crimes.<sup>113</sup>

Council legal staff explained that typically before suspending a license, the Council would request a recording from a station after receiving a complaint. Then the station manager would be invited for a meeting to discuss the findings. However in the case of the riots, the Chairman argued that public safety dictated immediate action. The Council has never sought a court order to withdraw or suspend a license. According to the Council, in the case of Radio

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<sup>111</sup> Human Rights Watch interview with Godfrey Mutabazi, chairman of the Broadcasting Council, March 15, 2010.

<sup>112</sup> Human Rights Watch interview with legal staff of the Broadcasting Council, March 25, 2010.

<sup>113</sup> Human Rights Watch interview with Godfrey Mutabazi, chairman of the Broadcasting Council, March 15, 2010.

2, Radio Sapientia, and Radio Ssuubi, their licenses were suspended and not withdrawn because they had “clean records,” meaning no significant previous complaints against them. CBS had a “bad history” and there had been several meetings between the Council and the management over the previous year. Council staff told Human Rights Watch that they had been “very lenient” with CBS which had allowed the situation to degenerate until the license was withdrawn on September 10, 2010.<sup>114</sup>

The Council chairman disputed the notion of any government interference with council decisions, saying that the council has no links to police or intelligence organizations and that it takes action independently. He said the police would only be used as an escort when confiscating equipment, if needed. He encouraged broadcasters who had problems with the Council to appeal his decisions to court. The Chairman’s statement contradicts public statements by Presidential Press Secretary Tamale Mirundi who, while addressing a press conference in March 2010, said that the decision to close CBS was “a Cabinet decision.”<sup>115</sup>

It is clearly possible that media outlet owners might have fired presenters in the wake of the riots as a strategy to ward off the possibility of forced suspension by the Broadcasting Council. Council staff agreed that there are occasions when the Council writes letters to broadcasters stating that a certain journalist or on-air personality must be suspended pending an investigation, but admitted that the Council doesn’t have the power to directly fire or sack journalists. Rather, that is the domain of the Media Council. The Chairman said that they can only “prevail on station operators” during the negotiations at the end of investigations.<sup>116</sup> The local nongovernmental organization Human Rights Network for Journalists wrote that 18 presenters, talk show hosts, and managers were “fired under state duress” in 2009 alone.<sup>117</sup> The Broadcasting Council disputed that number but was not willing to respond to each case with specifics. Two journalists, Kalundi Serumaga and Geoffrey Ssebagala filed a lawsuit against the Broadcasting Council and the Attorney General in December 2009 seeking compensation for having been suspended from their jobs as talk show moderators via orders from the Broadcasting Council to their media houses.<sup>118</sup>

No one interviewed by Human Rights Watch disputes that CBS has been very critical of several NRM initiatives, such as the land bill and the blockage of *Kabaka’s* Kayunga trip.

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<sup>114</sup> Human Rights Watch interview with legal staff of the Broadcasting Council, March 25, 2010.

<sup>115</sup> Mercy Nalugo and Emmanuel Mulondo, “State House: CBS must apologise,” *The Daily Monitor*, March 30, 2010.

<sup>116</sup> Human Rights Watch interview with Godfrey Mutabazi, chairman of the Broadcasting Council, March 25, 2010.

<sup>117</sup> Press Freedom Index – 2009, Human Rights Network for Journalists, on file with Human Rights Watch.

<sup>118</sup> Anthony Wesaka, “Journalists sue broadcasting council, govt” *Saturday Monitor*, December 5, 2009.

Audio recordings from the station make those sentiments very clear. Journalists and media experts agreed that if radio stations had incited people to commit violence, they should be condemned and prosecuted for that, but many felt that government authorities had failed to be specific about how what was aired in September would have qualified as incitement to violence, and left the media community guessing as to how to avoid punitive action while still reporting on unfolding political events in a truthful and independent manner.

### *Long-Term Suspension of Open-Air Broadcasting*

One of most enduring impacts of the media clampdown after the September riots was the official ban on all *bimeeza*, a Luganda word meaning live open-air broadcasting in public places.<sup>119</sup> Several radio stations, particularly in Kampala, had run these programs for years. Generally, a moderator or host would present a topic for conversation and the microphone would be open to anyone who wanted to speak. The *bimeeza* were very popular and gave people an opportunity to express frustrations, raise problems in their communities, and occasionally confront government officials.<sup>120</sup> It also provided a free platform to participate in public life for those who could not afford the money to call in to a studio program.

On September 11, 2009, the second day of the riots, the Broadcasting Council issued a statement ordering radio stations to “suspend the broadcast of *bimeeza* programs until an adequate legal and technical framework has been provided for.”<sup>121</sup> The chairman stated, as he had previously in some private letters to radio stations, that *bimeeza* do not comply with the Electronic Media Act because a license is granted to a station in a particular location in a specific geographical area where the broadcast is to be made, and because radio stations lacked “adequate technical facilities.” Presumably, this refers to the fact that most *bimeeza* broadcasters do not have pre-listening facilities installed that enable the broadcasters to edit out offending language. He also stated that “presenters and producers are unable to control the crowd as it would be the case in a studio environment.”<sup>122</sup>

The suspension of these programs remains in effect at the time of writing, and the Broadcasting Council could not state when the “appropriate regulatory framework” for *bimeeza* would be promulgated.<sup>123</sup> This suspension has significantly violated rights to

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<sup>119</sup> The singular of *bimeeza* in Luganda is *kimeeza*.

<sup>120</sup> Human Rights Watch interview with radio journalist, Soroti, December 8, 2009.

<sup>121</sup> Press Statement of Broadcasting Council Chairman Godfrey Mutabazi, September 11, 2009, on file with Human Rights Watch.

<sup>122</sup> Ibid.

<sup>123</sup> Human Rights Watch interview with Godfrey Mutabazi, chairman of the Broadcasting Council, Kampala, March 15, 2010.

freedom of expression and information across Uganda. Many of the journalists and civil society members interviewed by Human Rights Watch said that the lack of *bimeeza* country-wide left an information gap in communities. Throughout the country, stations running *bimeeza* on any topic were forced to comply with the suspension, even if programming was unrelated to the riots or to politics at all.

For example, just before the riots took place, Pascal Mweruka, a program presenter at Radio Buddu in Masaka, had plans to hold a *kimeeza* to discuss how the police and citizens could work harder to promote security and human rights in their community. The local police had been invited and agreed to attend the program. But after the riots, Mweruka was allegedly warned by government officials that the topic was “too political.” He told the BBC World Service Trust, “This is the community I’m serving and people are entitled to their rights. And when I’m denied the chance of broadcasting a show about what these people are facing, then I’m not doing my duty.”<sup>124</sup>

Many stations told Human Rights Watch that they often covered topics such as corruption, health care, infrastructure, and development issues in *bimeeza*. Security officials have told station managers that they must now hold these programs inside their studios, but given space constraints, this limitation has severely curtailed audience participation. For example, *Parliament-wa*, a *kimeeza* run on Radio King in Gulu used to have over 100 people come to listen and speak when the program was allowed to broadcast from a downtown restaurant. Since the suspension by the Broadcasting Council, according to editors, fewer than 10 people come to the studio to participate.<sup>125</sup>

### *Effects of the September Riots on Radio Stations outside Kampala*

In the days immediately following the September riots, radio stations outside Kampala faced significant challenges as journalists and managers questioned how to broadcast political content without having the problems that the four stations in Kampala had experienced. Simultaneously, the Broadcasting Council’s Kampala media clampdown prompted local government officials outside Kampala to follow suit, arbitrarily violating freedom of expression under the guise of national security.

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<sup>124</sup> Rachael Borlase, “Uganda’s Clampdown Threatens Open Media,” BBC, [http://www.bbc.co.uk/worldservice/trust/whatwedo/where/africa/uganda/2009/09/090929\\_uganda\\_kimeeza.shtml](http://www.bbc.co.uk/worldservice/trust/whatwedo/where/africa/uganda/2009/09/090929_uganda_kimeeza.shtml) (accessed April 16, 2010).

<sup>125</sup> Human Rights Watch interview with journalist, Gulu, March 8, 2010.

Journalists and station managers interviewed by Human Rights Watch said that resident district commissioners (RDCs) and their deputies took an active role in controlling what was broadcast in the wake of the riots by calling meetings with station managers. In Mbale, during the riots in Kampala, the RDC called and visited radio stations and ordered them to stop political talk shows and *bimeeza*.<sup>126</sup> The RDC then convened a meeting of management from all Mbale radio stations in early October to inform them that political talk shows could resume but that they must either refuse callers or censor them before allowing them on air.<sup>127</sup> According to media reports, other conditions set by the RDC's office included a ban on discussing sensitive political matters and censoring opposition politicians who appear on live talk shows.<sup>128</sup> The RDC told reporters that live call-ins must be banned because callers "insult the president and despise government programs."<sup>129</sup> One of the stations, Open Gate Radio, could not air its political talk show for a period of three weeks following the riots.<sup>130</sup>

Mbale Deputy RDC Henry Faustine Nalyanya told Human Rights Watch, "The talk shows were banned because people, instead of talking, want[ed] to instigate riots" but he gave no examples from Mbale of instances in which that had occurred.<sup>131</sup> He said he was acting on orders from Minister of Information Kabakumba Matsiko who phoned him on September 11, 2009 to "tell radios not to talk about the riots because it will incite the public."<sup>132</sup>

One of the journalists in Mbale said that he was surprised not to be permitted to carry out his programming plans. "We were not going to talk about riots in Kampala," he said. "The talk show was going to be about education ... It wasn't related to the riots."<sup>133</sup> Another journalist, commenting on the RDC's order to refuse callers said, "To me, that's closing down the program because I can't speak for the callers."<sup>134</sup>

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<sup>126</sup> The deputy RDC paid a visit to one of the radio stations on September 11, 2009, and signed its guestbook with the message, "Visit . . . for to transmit the message of stopping all bimeza talk shows. Until further notice. Thank you for the cooperation." Copy on file with Human Rights Watch.

<sup>127</sup> Human Rights Watch interview with radio journalist, Mbale, December 7, 2009.

<sup>128</sup> Joe Elunya, "Mbale RDC Lifts Ban on Radio Talk Shows," Uganda Radio Network, September 25, 2009.

<sup>129</sup> Ibid.

<sup>130</sup> Human Rights Watch interview with radio journalist, Mbale, December 9, 2009.

<sup>131</sup> Human Rights Watch interview with Deputy RDC Henry Faustine Nalyanya, Mbale, December 10, 2009.

<sup>132</sup> Ibid.

<sup>133</sup> Human Rights Watch interview with radio journalist, Mbale, December 7, 2009.

<sup>134</sup> Human Rights Watch interview with radio journalist, Mbale, December 7, 2009.



Radio Buddu in Masaka did not air news on any topic on September 11 or 12, 2009, and the weekly press review usually broadcast on Saturday mornings was also cancelled.<sup>135</sup> According to media reports, these actions were prompted because the Broadcasting Council had threatened to close the station.<sup>136</sup> The Chairman of the Council confirmed to the media that Radio Buddu and another station “are on a list of radio stations blacklisted for airing stories inciting pro-*Kabaka* riots in central Uganda.”<sup>137</sup> The station also fired three employees for conduct during the riot period, for reportedly playing a Buganda song and erroneously reporting that the Broadcasting Council—and not media house management—had banned the Baganda anthem from the airwaves, despite a subsequent on-air apology for the error.<sup>138</sup>

As a result of the riots, journalists in Masaka reported that certain songs, guests, and topics were considered off-limits. One journalist declined to play certain Baganda cultural songs “because of the tension.”<sup>139</sup> Another stated he could host opposition party members before, but not after, the riots.<sup>140</sup> “[Opposition presidential candidate Dr. Kizza Besigye] has not been on any radio station in Masaka since the riots. He used to call. We gave him a line, but after the riots, not again,” said another journalist.<sup>141</sup>

Radio station managers and owners told journalists that the discussion of certain topics, such as the causes or events of the riots, was considered impermissible on air just after the riots, because of the potential threat of closure. “Talking about Buganda versus government, we can’t talk about that. Like CBS, you can’t talk about it. You can’t talk about killings during riots, because people were even beaten here [in Masaka]. If the RDC gets to know, then you are in trouble,” a journalist told Human Rights Watch.<sup>142</sup>

A journalist from Kasese district in western Uganda said that the radio closures in Kampala changed the content of some broadcasts. “It was a terrible situation,” he told Human Rights

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<sup>135</sup> Edward Bindhe, “Buddu FM, Best FM Suspend News Bulletins over Closure Threats,” Uganda Radio Network, September 12, 2009.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Human Rights Watch interview with journalists, Masaka, February 22, 2010. The three individuals fired were Herbert Kabanda, Omulangira Ndawula Jjuuko, and Anthony Lubuka.

<sup>139</sup> Human Rights Watch interview with radio journalist, Masaka, February 22, 2010.

<sup>140</sup> Human Rights Watch interview with radio journalist, Masaka, February 22, 2010.

<sup>141</sup> Human Rights Watch interview with radio journalist, Masaka, February 22, 2010.

<sup>142</sup> Human Rights Watch interview with radio journalist, Masaka, February 22, 2010.

Watch. “We talked about the details on [the September riots], but director came and said, no, stop. So we stopped. We also fear to be closed down now.”<sup>143</sup>

A journalist from Gulu in northern Uganda told Human Rights Watch that since the riots, the deputy RDC has threatened stations with closure. “He told us that radios that are against the government will be shut down, like those in Kampala.”<sup>144</sup>

In an effort to avoid trouble, many journalists and station managers said that they made a conscious choice to change their programming to steer away from political reporting. One journalist said that he opted to focus programs on what he felt would be “safe topics” such as agriculture, or he played music instead of discussing politics as he usually did.<sup>145</sup> In Hoima district, one talk show host said that he focused on religion and culture to avoid political discussions for about three weeks after the riots.

One journalist from Masaka said that he was aware of many issues related to the September riots, such as people held beyond the constitutional limits in police jails, and some of the killings by state agents. He researched some of the people who were injured or arrested for rioting, but then:

Because of the tension and fear we had during that period, we decided to throw away such stories. Any moment you put on air anything concerning the riots, how people suffered, [security operatives] will come. So we’ve not been free to cover the necessary information from the people. Interviewing people affected by the riots, putting it on air, I can’t do it.<sup>146</sup>

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<sup>143</sup> Human Rights Watch interview with journalist, Kasese, February 24, 2010.

<sup>144</sup> Human Rights Watch interview with journalist, Gulu, March 8, 2010.

<sup>145</sup> Human Rights Watch interview with journalist, Masaka, February 22, 2010.

<sup>146</sup> Human Rights Watch interview with journalist, Masaka, February 22, 2010.

## VI. Chilling Effect and Concerns for 2011 Elections Coverage

Human Rights Watch and others documented threats to freedom of expression in the lead-up to previous elections in Uganda, and the current climate appears worryingly unchanged.<sup>147</sup> Threats, intimidation, and the flood of criminal charges against journalists have unsurprisingly had a chilling effect on political coverage and political debate, particularly outside Kampala. The negative impact is compounded by the fact that those responsible for preventing and investigating threats are often deemed to be closely allied with the perpetrators. The threats and criminal charges are serious, but they are only the visible tip of the iceberg. These events “chill” the entire media environment by fostering self-censorship and widespread uncertainty about the limits of legitimate criticism of government. Moreover, they have the effect of limiting access to the airwaves and to print media for opposition candidates for office, a prerequisite for any legitimately free and fair election contest.

### Intimidation Leading to Censorship and Self-Censorship

Radio owners, journalists, and other media experts told Human Rights Watch of significant concerns for how journalists could impartially report on key political issues as the 2011 presidential and parliamentary elections draw near. At an event in Hoima district in November 2009 Minister of Information Hon. Kabakumba Matsiko allegedly told media outlets to “stick to [their] mission and vision and do not incite the public against their government and leaders.”<sup>148</sup> Statements by local government officials, especially outside Kampala, have not helped to decrease fears. Deputy Resident District Commissioner of Gulu district in Northern Uganda, Milton Odong told reporters in March 2009 that there would be a crackdown on journalists who failed to “cooperate with the government and offer President Museveni favorable coverage ahead of the 2011 elections.”<sup>149</sup>

Reporters told Human Rights Watch of concerns for their physical safety, particularly during opposition campaign events and in constituencies where the opposition was likely to win votes, as police and security forces are likely to be heavily deployed there. This has already

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<sup>147</sup> Human Rights Watch, *In Hope and Fear: Uganda's Presidential and Parliamentary Polls*, no. 1, February 2006, <http://www.hrw.org/node/77858>. See also US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices – 2005: Uganda,” March 8, 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61598.htm> (accessed April 16, 2010).

<sup>148</sup> Edward Ssekika, “Minister warns media, clergy of hard times” *The Observer*, November 2-4, 2009.

<sup>149</sup> Audio recording on file with Human Rights Watch.

proved to be a problem during recent by-elections. On February 16, 2010, during a parliamentary by-election in Mbale, radio journalist Jennifer Akurut—working for Signal FM—was beaten by police. She was wearing her press ID while trying to cover opposition supporters celebrating the announced victory of their candidate. A group of three policemen surrounded Akurut and one of them hit her with a baton. She used her hand to block the blow and received a serious injury to her hand that ultimately required surgery to stop internal bleeding. She filed a complaint at police, but the perpetrator was never identified.<sup>150</sup>

Opposition political events remain a very difficult issue for rural radio stations to cover, particularly in local languages. A journalist who broadcasts in his local language on radio, but also writes in English for Uganda’s only national wire service, Uganda Radio Network (URN), noted the differences between what he can cover for each media outlet.

On radio, stories about [the opposition party Forum for Democratic Change], we handle them with care. Sometimes our independence lacks, sometimes you can’t report facts as you see them. You’re told to withhold some information. You can only state that [opposition leader Dr. Besigye] came, but you can’t say what he said, because mostly he is critical of government. For example, I didn’t write about Dr. Besigye’s rally being teargassed here, but I did for URN. At URN, I am more independent and I write facts as I see them. URN exercises my real journalism. But here, in my language that may not be the case.<sup>151</sup>

Covering opposition events can also lead to threats and intimidation outside Kampala. In March 2009, deputy RDC of Gulu Milton Odong said at a public event that he was aware of one journalist, Sam Lawino from the independently-owned *Daily Monitor* newspaper, who intended to report on a strike planned by the Uganda Young Democrats at a time while President Museveni was to be in town. Odong said that “people like this journalist must be eliminated.”<sup>152</sup> He further stated that his office would be tracking Lawino’s movements, including his phone calls, and that his office would be dealing with journalists who were

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<sup>150</sup> Human Rights Watch telephone interview with journalist Jenny Akurut, Kampala, March 24, 2010.

<sup>151</sup> Human Rights Watch interview with journalist, location withheld, February 18, 2010. Uganda Radio Network is an independent agency that serves the Ugandan media with news articles and audio programming. Subscribers pay for such content, and edit it as they wish. It only operates in English.

<sup>152</sup> Audio recording on file with Human Rights Watch. See also Paul Amoru, “RDC Threatens to Eliminate Reporter,” *The Daily Monitor*, March 23, 2009.

seen as undermining government programs and offering the opposition a platform to embarrass the government.<sup>153</sup>

The Northern Uganda Media Club hosted the event where Odong spoke and was attended by journalists. According to Lawino, Odong later privately apologized for the remarks, but he never made any public apology to the journalists present at the event.<sup>154</sup> In an interview with Human Rights Watch, Odong denied any knowledge of any journalist in Gulu named Sam Lawino.<sup>155</sup> This is the same deputy RDC who in August 2009 pushed for criminal libel charges to be brought against *Daily Monitor* reporter Moses Akena. (See earlier section.)

Local government officials may label critical journalists as “the opposition,” and decide that independent stations work for the opposition when they cover opposition political party events or when they host opposition members on talk shows.<sup>156</sup> Because of this, political talk show hosts stated fears for their programming and their own safety.

Many journalists admitted that the upcoming election compels them to avoid certain stories that they fear will get them into trouble with authorities or might cause station owners to be pressured to fire them. One station manager from Mbale told Human Rights Watch:

Why should I report about something that will put me in trouble? I have a child, and a wife. So, I censor myself. That’s what I’ve always told my people here; I tell them to censor themselves to stay safe. Before putting on air anything about government, think twice. If you decide to do it as a professional journalist, just think of the consequences for yourself.<sup>157</sup>

One journalist said that elections are a particularly difficult time for journalists.

According to ruling government, anything that threatens their interest, like speaking the truth about something that will affect the vote, journalists will not [be able to confirm that information with relevant authorities.] That’s what I’m saying. The situation will be tense [during elections], especially here

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<sup>153</sup> Ibid.

<sup>154</sup> Human Rights Watch interview with Sam Lawino, Gulu, March 8, 2010.

<sup>155</sup> Human Rights Watch interview with Milton Odong, deputy RDC in Gulu, March 10, 2010.

<sup>156</sup> In Northern Uganda, during the long conflict with the LRA, journalists who covered crimes by the army were labeled as rebel supporters.

<sup>157</sup> Human Rights Watch interview with station manager, Mbale, December 9, 2009.

in Teso region, where we have a lot of guns; it'll be difficult for journalists to operate. That's why many human rights issues come up here in Soroti but they hardly get to press.<sup>158</sup>

## Opposition Access to the Airwaves

Uganda's minimum broadcasting standards require that, when a broadcast "is in respect to a contender for public office," television and radio stations, whether state or privately owned, must allow equal coverage to all contenders.<sup>159</sup> During the 2006 presidential and parliamentary elections, Human Rights Watch documented instances in which the ruling party was granted significantly more airtime than opposition parties.<sup>160</sup> In the time before the formal beginning of the campaigns, there are a myriad of subtle and overt ways that the opposition is denied fair access to the media.

Human Rights Watch interviewed journalists and talk show hosts who said they feared hosting members of the opposition on talk shows, particularly opposition presidential contender Dr. Kizza Besigye, from the Forum for Democratic Change (FDC). While some station managers said they would be willing to host Besigye, several said that either they or their owners were reluctant to give a platform to someone perceived to be extremely critical of government policies and particular government officials because they fear a loss of advertisers, loss of NRM loyalties, or the negative consequences of perceived affiliation with the "opposition." In one recent instance, according to news reports, President Museveni asked radio station owner and NRM parliamentarian Felix Okot Ogong to publicly apologize after his station hosted opposition presidential candidate Olara Otunnu from the Uganda People's Congress (UPC). During the broadcast, Otunnu accused the NRM government of having committed genocide in the long-running war in Northern Uganda.<sup>161</sup>

According to media reports and opposition spokespeople, Besigye has been stopped from appearing on Nenah FM in Moroto district and at Luo FM in Pader district, after having paid for airtime.<sup>162</sup> In Moroto, the RDC allegedly told the station manager that the show with

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<sup>158</sup> Human Rights Watch interview with journalist, Soroti, December 8, 2009.

<sup>159</sup> Electronic Media Act of 1996, First Schedule, (d).

<sup>160</sup> See Human Rights Watch, *In Hope and Fear: Uganda's Presidential and Parliamentary Polls*, no. 1, February 2006, <http://www.hrw.org/en/reports/2006/02/14/hope-and-fear>.

<sup>161</sup> Hudson Apunyo and Mercy Nalugo, "Radio station apologises to President for hosting Otunnu," *The Daily Monitor*, April 16, 2010. Police have summoned Otunnu for questioning over his remarks. Mercy Nalugo, "Otunnu goes to court over police summons," *The Daily Monitor*, April 26, 2010.

<sup>162</sup> Human Rights Watch interview with Wafula Oguttu, April 9, 2010. The money was eventually refunded in both cases.

Besigye could not occur one hour before show time, because security officials had not been informed of the program—despite advertisements about the show having run on air.<sup>163</sup>

Efforts to control opposition access to the airwaves clearly vary. In some instances, RDCs write or speak to media owners informing them not to host Besigye and other lower-level opposition supporters. In some instances, RDCs come to the station to prevent the broadcast. Some station managers told Human Rights Watch that their owners gave in to the RDC's pressure, while others rejected the RDC's demands and, as of yet, had not faced any punitive consequences.<sup>164</sup> In one instance, a radio station owner allegedly told his station manager that the owner would lose his job with the central government if his station hosted Besigye.<sup>165</sup>

Financial incentives also come into play. It is common practice for candidates to pay a radio station for airtime, but some journalists noted that opposition parties were sometimes forced to pay significantly higher prices than the ruling NRM party or that prices are increased after contracts have been signed. FDC spokesperson Wafulu Oguttu told Human Rights Watch that in his experience, FDC pays roughly three times what the ruling party would pay for airtime.<sup>166</sup> In one instance, a station manager indicated that an opposition party would pay around 400,000 Uganda shillings (200 USD) for an hour of airtime, but the NRM is "subsidized," paying around 150,000 Uganda shillings (75 USD) on the same station.<sup>167</sup> The president himself is often hosted on radio stations, even during campaigning, for free.

In other instances, where a station owner agreed to host Besigye, the RDC intervened to control which moderator would host him, including replacing an experienced talk show moderator in one instance in favor of someone deemed by the RDC to be more partial to government views.<sup>168</sup>

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<sup>163</sup> Mubatsi Asinja Habati and Joshua Masinde, "Besigye, Otunnu face tough times without FM radio," *The Independent*, February 24, 2010. Gerald Bareebe and David Mafabi, "Govt official cancels Besigye's radio show," *The Daily Monitor*, November 17, 2009.

<sup>164</sup> Human Rights Watch interview with journalists and station managers, Hoima and Fort Portal Districts, March 2010.

<sup>165</sup> Human Rights Watch interview with journalists, location withheld, February 2010.

<sup>166</sup> Human Rights Watch interview with Wafulu Oguttu, spokesperson, Forum for Democratic Change, April 9, 2010.

<sup>167</sup> Human Rights Watch interview with journalist, location withheld, February 18, 2010.

<sup>168</sup> Human Rights Watch interview with talk show host, location withheld, February 2010.



In at least some instances, media owners simply fear unknown consequences, despite the possible financial benefits of hosting the opposition leader. One station manager told Human Rights Watch:

Besigye came here and he was interested in our radio because he targets youth, and we have [a] big listenership among youth. We have a strategic position, a large area, but for certain reasons, our colleagues got scared and we had to tell him to go away. Proprietors get scared. The owner told me it will be dangerous for us.<sup>169</sup>

The government of Uganda must address this subtle control of the airwaves early enough so that voters receive the necessary access to information, particularly before the 2011 election.

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<sup>169</sup> Human Rights Watch interview with station manager, location withheld, February 2010.

## VII. Applicable International and National Law

Uganda is obligated to respect the right to freedom of expression of all persons under international law and Uganda's constitution. However, several of its national laws are inconsistent with these obligations. As Human Rights Watch has documented in this report, the Ugandan government uses these laws to revoke or suspend broadcasting licenses, bring charges against individuals, restrict the number of people who can lawfully be journalists, and practice other forms of repression of the media. If the government presses on with its current plans to amend the Press and Journalist Act, Ugandan media law will move still farther away from international free speech standards.

### Uganda's International Obligations

Uganda is a party to the International Covenant on Civil and Political Rights (ICCPR),<sup>170</sup> which under article 19 imposes legal obligations on states to protect freedom of expression and information:

Everyone shall have the right to hold opinions without interference; Everyone shall have the right to freedom of expression; this right shall include 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 his choice.<sup>171</sup>

The ICCPR permits governments to impose certain restrictions or limitations on freedom of expression, if such restriction is provided by law and is necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>172</sup>

The UN Human Rights Committee, which monitors state compliance with the ICCPR, has stated that "the legitimate objective of safeguarding and indeed strengthening national unity

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<sup>170</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Uganda June 21, 2005, art. 19.

<sup>171</sup> *Ibid.*, art. 19.

<sup>172</sup> *Ibid.*, art. 19(3).

under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights.”<sup>173</sup>

Uganda is also a party to the African Charter on Human and Peoples’ Rights (ACHPR),<sup>174</sup> which in article 9 states “every individual shall have the right to receive information”<sup>175</sup> and “every individual shall have the right to express and disseminate his opinions within the law.”<sup>176</sup> The African Commission’s 2002 Declaration of Principles on Freedom of Expression in Africa sets out regional norms guaranteeing free expression.<sup>177</sup> The African Commission has held that governments should not enact provisions which limit freedom of expression “in a manner that override constitutional provisions or undermine fundamental rights guaranteed by the [Charter] and other international human rights documents.”<sup>178</sup>

Ugandan authorities regularly state that broadcasts are “inciting the public to commit violence” as the rationale for why suspensions and closures are necessary. The tension between the right to free expression and information on the one hand, and national security on the other, has been the subject of much inquiry by courts, international bodies, and scholars. A group of experts in international law, national security, and human rights issued the Johannesburg Principles on National Security, Freedom of Expression and Access to Information on October 1, 1995.<sup>179</sup>

Over time, these Principles have come to be widely recognized as an authoritative interpretation of the relationship between these rights and interests, reflecting the growing body of international legal opinion and emerging customary international law on the subject.

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<sup>173</sup> *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994), para. 9.7

<sup>174</sup> African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Uganda May 10, 1986.

<sup>175</sup> Banjul Charter, art. 9.

<sup>176</sup> *Ibid.*, (right to receive information and express opinions).

<sup>177</sup> Uganda is a member of the African Union, the successor to the Organization of African Unity (OAU), whose commission adopted the 2002 Declaration of Principles on Freedom of Expression at its 32<sup>nd</sup> Ordinary Session in Banjul, the Gambia, from October 17-23, 2002.

<sup>178</sup> *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, African Commission on Human and Peoples’ Rights, Comm. No. 102/93 (1998), <http://www1.umn.edu/humanrts/africa/comcases/102-93.html> (accessed April 27, 2010).

<sup>179</sup> The Johannesburg Principles set out standards for the protection of freedom of expression in the context of national security laws. They were adopted on October 1, 1995, by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. They have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and referred to by the Commission in their annual resolutions on freedom of expression every year since 1996. Johannesburg Principles on National Security, Freedom of Expression, and Access to Information (Johannesburg Principles), adopted on October 1, 1995, <http://www1.umn.edu/humanrts/instreet/johannesburg.html> (accessed April 27, 2010).

The principles set out guidelines on restrictions on free speech, including the principle that governments must use the least restrictive means possible in prohibiting speech that is contrary to legitimate national security interests.<sup>180</sup> According to the principles, national security interests do not include “protect[ing] a government from embarrassment or exposure of wrongdoing.”<sup>181</sup>

Some restrictions on free speech—such as criminalizing incitement to violence—are permitted under international law in the context of protecting national security, but such restrictions must meet several high hurdles. First, restrictions must be prescribed by law, and they must be accessible, clear, narrowly drawn, and subject to judicial scrutiny.<sup>182</sup> Second, the restriction must have both the genuine purpose and the demonstrable effect of protecting national security.<sup>183</sup> Third, the restriction must apply only where the expression poses a serious threat, is the least restrictive means available, and is compatible with democratic principles.<sup>184</sup>

Various human rights bodies and courts around the world have determined that protection of freedom of expression must include tolerance from public officials regarding open criticism.<sup>185</sup> As the African Commission stated, “People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether.”<sup>186</sup>

## Ugandan National Law

Uganda’s constitution guarantees every person the right to freedom of speech, including “freedom of the press and other media.”<sup>187</sup> Article 43 of the constitution states that limitations on human rights must be acceptable and demonstrably justifiable in a free and

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<sup>180</sup> Johannesburg Principles, prin. 1.3.

<sup>181</sup> Ibid., prin. 2.

<sup>182</sup> Ibid., prin. 1.1.

<sup>183</sup> Ibid., prin. 1.2.

<sup>184</sup> Ibid., prin. 1.3.

<sup>185</sup> European Court of Human Rights, *Lingens v. Austria*, judgment of July 8, 1986, application no. 9815/82, [www.echr.coe.int](http://www.echr.coe.int) para. 42.

<sup>186</sup> Media Rights Agenda, Constitutional Rights Project, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, 105/93, 128/94, 130/94, 152/96, [http://www.achpr.org/english/activity\\_reports/activity12\\_en.pdf](http://www.achpr.org/english/activity_reports/activity12_en.pdf) (accessed April 27, 2010), para. 74.

<sup>187</sup> Constitution of Uganda, 1995, art. 29(1)(a) “Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media”.

democratic society.<sup>188</sup> However, several criminal laws in Uganda claw back those constitutional protections. Uganda's Penal Code Act criminalizes certain conduct by journalists, such as the crimes of sedition,<sup>189</sup> promoting sectarianism,<sup>190</sup> incitement to violence,<sup>191</sup> and libel.<sup>192</sup> Criminal charges against journalists in Uganda are most often brought on these grounds.<sup>193</sup> Under the 2002 Anti-Terrorism Act, a journalist may be imprisoned for up to 10 years if found guilty of publishing or airing information that is deemed to promote terrorism. Under the act, coverage of opposition politicians, dissidents, and rebels is potentially criminal.<sup>194</sup> Critics have said that the overly broad definition of "terrorism" in the statute prevents journalists from accurately reporting on clashes between the government and rebel groups without risking imprisonment and potentially implicates those whose views are in opposition to those of the government.<sup>195</sup>

The definitions of the crimes as set out in the penal code are vague and overly broad and therefore have little predictive value for what speech is or is not permissible. Statutes that are overly broad can ultimately lead to abusive prosecutions of legitimate political speech. For example, the statutory definition of promoting sectarianism is "any act which is likely to degrade, revile or expose to hatred or contempt ... or promote in any other way, feelings of ill will or hostility among or against any group or body of persons on account of religion, tribe or ethnic or regional origin."<sup>196</sup> There is no explicit requirement that the speaker actually intend to degrade when speaking. The crime of sedition, currently being challenged before the Constitutional Court,<sup>197</sup> includes conduct committed with the intent to "bring into hatred

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<sup>188</sup> Ibid., art. 43.

<sup>189</sup> Penal Code Act, 1950, sec. 40. The constitutionality of this charge is pending before the Constitutional Court.

<sup>190</sup> Ibid., sec. 41.

<sup>191</sup> Ibid., sec. 51.

<sup>192</sup> Ibid., sec. 179, prohibiting libel, which includes the publishing of defamatory matter.

<sup>193</sup> Following riots on September 11-12, 2009, Kalundi Serumaga of Radio One was charged with sedition. In August 2009, three staff members of *The Independent*, including Andrew Mwenda, were summoned and interrogated for sedition after publishing an editorial cartoon of Museveni. Mwenda currently faces a charge of sedition from 2005, and 21 criminal charges on grounds of incitement to violence and criminal libel. Reporter Angelo Izama and Editor Henry Ochieng of *The Monitor* were arrested and charged with criminal libel on February 4, 2010, for comparing President Yoweri Museveni to former Philippines leader Ferdinand Marcos. "Museveni accuses two Ugandan journalists of libel," Committee to Protect Journalists press release, February 4, 2010, <http://cpj.org/2010/02/museveni-accuses-two-ugandan-journalists-of-libel.php> (accessed March 23, 2010).

<sup>194</sup> 2002 Anti-terrorism Act.

<sup>195</sup> See Judge S. B. Bossa and Titus Mulindwa, *The Anti-Terrorism Act, 2002 (Uganda): Human Rights Concerns and Implications*, a paper presented on September 15, 2004 to the International Commission of Jurists, [http://www.icj.org/IMG/pdf/Paper\\_Bossa.pdf](http://www.icj.org/IMG/pdf/Paper_Bossa.pdf) (accessed April 27, 2010), p. 8.

<sup>196</sup> Penal Code Act, 1950, sec. 41.

<sup>197</sup> See *East Africa Media Institute and Andrew Mwenda v. the Attorney General*, 2005. A section of the Penal Code outlawing "publication of false news" was overturned by a 2004 Supreme Court ruling declaring the provision unconstitutional. See

or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution.”<sup>198</sup>

These definitions cover an impermissibly broad range of conduct and have been used to target journalists who are critical of government officials (see Annex). Vague provisions such as these are susceptible to a wide interpretation by both authorities and those subject to the law. As a result, they can lead to abuse as authorities may apply them in situations that bear no relationship to the original purpose of the law or to the legitimate aim sought to be achieved. As international experts have noted, “vague provisions also fail to provide sufficient notice of exactly what conduct is prohibited or prescribed. As a result, they exert an unacceptable chilling effect on freedom of expression as individuals stay well clear of the potential zone of application in order to avoid censure.”<sup>199</sup> These criminal provisions leave journalists and their editors in a constant guessing game as to what will or will not antagonize the government or specific members of that government and in the process deprive the public of its right to receive critical information.

### *Overly Broad Powers of Media Regulatory Bodies*

The government’s direct control over private broadcasting owners deserves the closest scrutiny, especially because of the critical importance of radio for informing Uganda’s citizens. As the preamble to the 2002 Declaration on Freedom of Expression in Africa notes, radio has a “capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy.... [O]ral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting.”

The structure and broad legal powers of the Broadcasting Council are a serious impediment to the protection of freedom of expression in Uganda, in particular its direct subordination to the minister of information with no guarantees of independence. The world’s four special rapporteurs with specific mandates on freedom of expression publicly jointly declared that “Regulation of the media ... is legitimate only if it is undertaken by a body which is protected

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*Charles Onyango Obbo and Andrew Mwenda v. Attorney General*, Constitutional Appeal No. 2 of 2002, February 11, 2004, challenging section 50 of the Penal Code Act.

<sup>198</sup> Penal Code Act, 1950, sec. 39.

<sup>199</sup> The Supreme Court of Gambia, Civil Suit No. 5/2005, Written Comments Submitted by ARTICLE 19, Global Campaign For Free Expression, and the Open Society Institute Justice Initiative regarding the National Media Commission Act of Gambia, 2002.

against political and other forms of unwarranted interference, in accordance with international human rights standards.”<sup>200</sup>

The Broadcasting Council’s requirements for an annual broadcasting license and the grounds for revoking a license are unclear in law and are open to abuse.<sup>201</sup> A one-year license is a serious burden on owners who have invested significant financial capital to function. One year is considerably shorter than the license duration permitted in several other African countries. For example, South Africa, Malawi, Tanzania, and Zambia allow between 10 and three years.<sup>202</sup> Kenya currently permits indefinite licenses.<sup>203</sup>

Under the terms of Ugandan law, the Broadcasting Council also has complete discretion when granting licenses as long as “such conditions as it [the Broadcasting Council] may deem fit” are met.<sup>204</sup> This catch-all standard is systematically unfair and arbitrary. Owners cannot predict what conditions may be required, and those conditions can change at any time.

The Broadcasting Council also has wide powers under the law to “confiscate any electronic apparatus which is used in contravention” of the Electronic Media Act.<sup>205</sup> The Council can and does make its own determination as to who has contravened the Act, and seizes equipment without any hearing. It is a criminal offense for any person to attempt to

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<sup>200</sup> Joint Declaration on Diversity in Broadcasting, signed by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe’s Representative on Freedom of the Media, the Special Rapporteur on Freedom of Expression of the Organization of American States, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights, December 12, 2007, [http://www.osce.org/documents/rfm/2007/12/28855\\_en.pdf](http://www.osce.org/documents/rfm/2007/12/28855_en.pdf) (accessed April 27, 2010).

<sup>201</sup> Electronic Media Act, 1996, sec. 6(3).

<sup>202</sup> In South Africa, broadcasting licenses for commercial radio stations are renewable every 10 years and for community radio stations are renewable every five years. Human Rights Watch telephone interview with Independent Communications Authority of South Africa, March 29, 2010. South Africa Electronic Communications Act, No. 36 of 2006, sec. 19. In Malawi, radio licenses are renewable every seven years. Human Rights Watch telephone interview with Malawi Communications Regulatory Authority, March 29, 2010. Malawi Communications Act 1998, sec. 51. In Tanzania, a broadcasting license for radio stations is renewable every three years. Human Rights Watch telephone interview with Tanzania Communications Regulatory Authority, April 1, 2010. Tanzania Broadcasting Services Act, 1993, sec. 12. Tanzania Communications Regulatory Authority Act No. 12 of 2003 Regulations, sec. 18, first schedule. Zambia’s broadcasting licenses are valid for seven years. Human Rights Watch telephone interview with Zambian Ministry of Information and Broadcasting Services, March 31, 2010. Zambia National Broadcasting Corporation Amendment Act of 2002.

<sup>203</sup> In Kenya, licenses currently last indefinitely, but under a pending amendment bill, this may be reduced to five years for commercial radio stations and three years for community radio stations. Human Rights Watch telephone interview with Communications Commission of Kenya, March 29, 2010; Kenya Information and Communications Act, 1999, sec. 36; and Kenya Communications Commission Amendment Bill, 2008.

<sup>204</sup> Electronic Media Act, sec. 6(2)(b).

<sup>205</sup> *Ibid.*, sec. 25.



stop the council from confiscating the equipment.<sup>206</sup> The person whose equipment is confiscated has no clear recourse set out in law to challenge the seizure and to reclaim the confiscated items. The powers of the council to confiscate equipment without due process violates several rights enshrined in the constitution and in international human rights law, including the right to free speech,<sup>207</sup> the right not to be arbitrarily deprived of property,<sup>208</sup> and the right to a fair hearing.<sup>209</sup>

Under the minimum standards, broadcasters must also present programs that are “balanced to ensure harmony.”<sup>210</sup> The law is silent on the definition of harmony, which body has powers to determine it, or how council decisions regarding these standards may be appealed.

The Broadcasting Council is not subject to adequate controls or procedural safeguards in issuing determinations on the suspension or revocation of licenses or applying fines and penalties. By drafting terms and conditions to vest itself with the power to cancel broadcasting licenses, the Ministry of Information has acted outside its powers. Parliament, not ministries, should make laws in a transparent process with public consultation for the enforcement of rights and freedoms under the Ugandan constitution. Broad powers, not set out in clear laws, to interfere with freedom of expression violate Ugandans’ constitutional rights.<sup>211</sup>

The Media Council’s powers also violate international human rights standards by severely restricting access to the profession of journalism. In Uganda, all journalists must hold certificates issued by the Media Council in order to “practice journalism.”<sup>212</sup> The definition for “practicing journalism” is very broad: “[A] person is deemed to practice journalism if he or she is paid for the gathering, processing, publication or dissemination of information; and such person includes a freelance journalist.”<sup>213</sup> In addition, journalists must renew their

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<sup>206</sup> Electronic Media Act, sec. 25(4).

<sup>207</sup> Constitution of Uganda, 1995, art. 29(1)(2); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Uganda June 21, 1995, art. 19.

<sup>208</sup> Constitution of Uganda, 1995, art. 26; and ICCPR, art. 1.

<sup>209</sup> Constitution of Uganda, 1995, art. 42; and ICCPR, art. 14.

<sup>210</sup> Electronic Media Act, First Schedule, Minimum Broadcasting Standards.

<sup>211</sup> Constitution of Uganda, art. 50(4).

<sup>212</sup> Press and Journalist Act, sec. 27(3).

<sup>213</sup> *Ibid.*, sec. 27(5).

licenses on an annual basis and pay fees.<sup>214</sup> It is also a criminal offense to practice journalism without a license.<sup>215</sup>

There is a disciplinary committee, a sub-group of the executive committee of the Media Council, which issues decisions on complaints against journalists. The disciplinary committee can admonish a journalist, force the journalist to issue a public apology, and/or suspend the journalist from working for up to six months; the same committee can force the journalist's employer to pay damages to an injured party.<sup>216</sup> After suspension, a journalist may appeal the disciplinary committee's decision to the High Court, but may not work as a journalist while the appeal is pending.<sup>217</sup>

Deprivation of livelihood is prohibited in Article 40(2) of the Ugandan constitution, which guarantees every person in Uganda "the right to practice his or her profession and to carry on any lawful occupation." Journalists can be subjected simultaneously to an array of proceedings for the same act—a complaints proceeding before the Disciplinary Committee, criminal prosecution, and a civil suit if sued by an aggrieved party. The powers of the committee to suspend a journalist from working or to award compensation to aggrieved parties do not have the same safeguards of due process in court proceedings.

By law, one must be a member of the National Institute of Journalism of Uganda (NIJU) in order to practice journalism.<sup>218</sup> One must have a university degree in journalism or mass communications, or in another discipline with additional qualifications in journalism, plus a year of experience as a journalist in order to be a member of NIJU.<sup>219</sup> When faced with similar situations, the Zambian High Court and the Inter-American Court of Human Rights determined that membership in such unions as a requirement to be a journalist violates free

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<sup>214</sup> Press and Journalist Act, secs. 16(1), 27(1), and 27(2).

<sup>215</sup> *Ibid.*, sec. 27(4). Practicing journalism without a certificate is punishable by a fine of up to 300,000 Ugandan shillings (about US\$150) and in case of failure to pay the fine, imprisonment up to three months.

<sup>216</sup> *Ibid.*, sec. 33. This mechanism exists in law but so far, it has never sanctioned a journalist.

<sup>217</sup> *Ibid.*, sec. 34.

<sup>218</sup> *Ibid.*, sec. 13.

<sup>219</sup> Press and Journalist Statute, sec. 15.

speech rights.<sup>220</sup> In Uganda, journalists' failure to fulfill education requirements comes under scrutiny when they have committed other media offenses.<sup>221</sup>

### *The 2010 Draft Amendments to the Press and Journalist Act*

A January 2010 draft amendment to the Press and Journalist Act threatens to codify into law even more restrictive requirements, extending to print media the government's arbitrary rule over broadcasts. The three major English local newspapers criticized a leaked draft of the amendments in a March 15, 2010 common editorial stating that the amendments "seek to destroy critical and independent journalism by giving the government the power to determine what is fit to print and what is not."<sup>222</sup>

Thus far the government has not released an official version of the amendments. Minister of Information Matsiko confirmed the existence of amendments to Human Rights Watch but would not share a copy of the draft, and said that there would be public discussion of the content of the bill at the appropriate time.<sup>223</sup> She confirmed that the central legislative gap that government felt needed to be addressed is the lack of legal requirements for newspapers to be registered and licensed, and for government to have the power to hold newspapers to specific terms and conditions, or lose those licenses. She denied that the ongoing process of legislative amendment was in any way related to the 2011 elections.

The draft amendments require newspapers to be both registered with<sup>224</sup> and licensed by<sup>225</sup> the Media Council on an annual basis; failure to do either is punishable by up to two years

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<sup>220</sup> *Francis Peter Kasoma v. Attorney General*, High Court of Zambia, 95/HP/29/59, August 22, 1997; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism Case*, Inter-American Court of Human Rights, 1985, judgment printed in *Human Rights Law Journal*, vol. 7., no. 1, 1986. See generally, Article 19, *Freedom Subject to License: Attempts to License Journalists in Uganda, Zambia and Other Commonwealth Africa Countries*, March 1999.

<sup>221</sup> For example, shortly after the September riots, the Broadcasting Council requested the curriculum vitae of program managers and presenters at Radio Buddu in Masaka following the playing of a Buganda song and erroneous reporting that the Broadcasting Council was prohibiting Buganda songs from playing on air in Kampala. Shortly thereafter, three staff members were fired. Human Rights Watch interview with journalist, Masaka, February 22, 2010.

<sup>222</sup> "Government must not kill free press," editorial appearing in *The Daily Monitor*, *The New Vision*, and *The Observer*, March 15, 2010. It has also been criticized by international organizations working to protect freedom of expression. See Article 19, "Memorandum on the Press and Journalist Act and the Press and Journalist (Amendment) Bill 2010 of Uganda," March 2010, <http://www.article19.org/pdfs/analysis/uganda-memorandum-on-the-press-and-journalist-act-and-the-press-and-journali.pdf> (accessed April 26, 2010).

<sup>223</sup> Human Rights Watch interview with Hon. Kabakumba Matsiko, minister of information, April 9 2010.

<sup>224</sup> "The proprietor of a newspaper shall not operate a newspaper unless it is registered.... A person who contravenes [this requirement] commits an offence and is on conviction liable to ... imprisonment not exceeding two years." The Press and Journalist (Amendment) Bill, 2010, sec. 2.

<sup>225</sup> "A person shall not operate a newspaper unless there is in force in relation to the newspaper a license issued by the Council. An application for a license shall be in the form prescribed by Regulations." *Ibid.*, sec. 6. "A person who operates a

imprisonment. Under the draft amendments, the Media Council has unlawfully broad discretion in granting licenses, which could lead to arbitrary and selective licensing. Among the vague criteria the council takes into account when issuing licenses are the “social, cultural and economic values of the newspaper.”<sup>226</sup>

The Council retains power to revoke newspapers’ licenses for:

- (a) Publishing material that is prejudicial to national security, stability and unity;
- (b) Publishing any matter that is injurious to Uganda’s relations with new neighbors or friendly countries;
- (c) Publishing material that amounts to economic sabotage; and
- (d) Contravention of any condition imposed on the license.<sup>227</sup>

By operation of the final clause, (d), the Media Council can reserve the right to revoke licenses under virtually any circumstance.

This kind of content-based limitation on print media licensing violates international standards. The Declaration on Freedom of Expression in Africa states that “[a]ny registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.”<sup>228</sup> Registration of print media should be automatic once owners have complied with technical requirements administered by a body fully independent of government. As international experts in freedom of expression have stated, “Periodicals should not be subject to a licensing regime; anyone who wishes to produce a publication should be allowed to do so without restraint.”<sup>229</sup>

The draft amendments make editors criminally liable for two new crimes—publishing material that is “prejudicial to national security or stability and unity or utterances that are injurious to relations between Uganda and her neighbors or friendly countries” and

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newspaper without a license ... commits an offence and is liable on conviction to ... imprisonment not exceeding two years.” Ibid., sec. 6.

<sup>226</sup> “The Council shall before issuing a license under this section take in account ... proof of existence of adequate technical facilities ... and social, cultural and economic values of the newspaper.” Ibid., sec. 6.

<sup>227</sup> The Press and Journalist (Amendment) Bill, 2010, sec. 6.

<sup>228</sup> The Declaration on Freedom of Expression in Africa, sec. VIII, (1).

<sup>229</sup> Article 19, International Centre against Censorship, and the Centre for Media Freedom in the Middle East and North Africa, “The 1995 Press Law of the Palestinian National Authority,” June 1999, [www.article19.org/pdfs/analysis/palestine.prs.99.pdf](http://www.article19.org/pdfs/analysis/palestine.prs.99.pdf) (accessed March 28, 2010).

publishing material that “amounts to economic sabotage.”<sup>230</sup> These crimes are punishable by up to two years imprisonment. These definitions of crimes are overly vague and fail to meet international standards for national security-related restrictions on speech as set out in the Johannesburg Principles.<sup>231</sup> According to the Johannesburg Principles, criticism of one’s own government is protected speech, as is criticism of other governments.<sup>232</sup> The creation of new speech crimes is unnecessary and must in any event meet the high hurdles set out in the Johannesburg Principles to be permissible restrictions on free speech according to international law.

Broadly, these proposed amendments indicate a troubling trend in the wrong direction for the protection of freedom of expression in Uganda at a particularly sensitive time. Political reporting and debate is vitally important, and will likely constitute a greater share of the content of print and broadcast media during campaigning in the lead-up to the early 2011 elections.

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<sup>230</sup> The Press and Journalist (Amendment) Bill, 2010, sec. 9.

<sup>231</sup> Johannesburg Principles, prin. 1.

<sup>232</sup> *Ibid.*, prin. 7.

## Annex: Criminal Cases Pending against Journalists and Talk Show Hosts

| Journalist                 | Employer          | Charge or Summons                                       | Date of charge or summons to police | Status of Case                                                                                                                                                      |
|----------------------------|-------------------|---------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Andrew Mwenda              | Independent       | Sedition                                                | August 28, 2009                     | Trial suspended pending Constitutional Court ruling on challenge to sedition law                                                                                    |
|                            |                   | Summons                                                 | May 20, 2008                        |                                                                                                                                                                     |
|                            |                   | Sedition                                                | May 9, 2008                         | Trial suspended pending Constitutional Court ruling on challenge to sedition law                                                                                    |
|                            |                   | Summons                                                 | May 2, 2008                         |                                                                                                                                                                     |
|                            |                   | Summons                                                 | April 29, 2008                      |                                                                                                                                                                     |
|                            | Monitor, KFM      | Sedition (10 counts), Promoting sectarianism (5 counts) | November 2, 2005                    | Mounted constitutional challenge against laws on sedition and promoting sectarianism, <i>East Africa Media Institute and Andrew Mwenda vs. the Attorney General</i> |
| Angelo Izama               | Monitor           | Criminal libel                                          | February 4, 2010                    | Released on bail, trial began on February 25, 2010                                                                                                                  |
|                            |                   | Criminal libel                                          | January 28, 2008                    | Released on bail                                                                                                                                                    |
| Basajjamivule Nsolonkambwe | Akaboozi Ku Bbiri | Incitement to violence                                  | September 28, 2009                  |                                                                                                                                                                     |
| Ben Byaruhanga             | Red Pepper        | Sedition                                                | March 24, 2010                      |                                                                                                                                                                     |
| Bernard Tabaire            | Monitor           | Criminal libel                                          | January 29, 2008                    | Constitutional Court ruled that criminal libel is constitutional, and an appeal to the Supreme Court is currently pending                                           |
|                            |                   | Summons                                                 | September 3, 2007                   | Repeated appearances on police bond until summons was suspended                                                                                                     |
| Charles Bichachi           | Independent       | Sedition                                                | August 28, 2009                     | Released on bail                                                                                                                                                    |
|                            |                   | Sedition                                                | May 9, 2008                         | Trial suspended pending Constitutional Court ruling on challenge to sedition law                                                                                    |
| Chris Obore                | Monitor           | Summons                                                 | September 3, 2007                   | Repeated appearances on police bond until summons was suspended                                                                                                     |
| Daniel Kalinaki            | Monitor           | Forgery                                                 | August 21, 2009                     | Case extended to March 29 because DPP did not have police file                                                                                                      |
| Dalton Kwesiga             | Red Pepper        | Sedition                                                | March 24, 2010                      |                                                                                                                                                                     |

|                       |                   |                                                                       |                    |                                                                                                                                                |
|-----------------------|-------------------|-----------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| David Enyaku          | New Vision        | Criminal trespass                                                     | June 1, 2005       | Released on bail                                                                                                                               |
| David Rubombora       | Panelist, Life FM | Criminal libel (3 counts), incitement to commit an offence (3 counts) | January 8, 2008    | Acquitted of all charges due to lack of evidence on September 23, 2009                                                                         |
| Emmanuel Gyezaho      | Monitor           | Criminal libel                                                        | January 28, 2008   | Constitutional Court ruled that criminal libel is constitutional, and an appeal to the Supreme Court is currently pending                      |
| Gerald Kankya         | Panelist, Life FM | Criminal libel (3 counts), incitement to commit an offence (3 counts) | January 8, 2008    | Acquitted of all charges due to lack of evidence on September 23, 2009                                                                         |
| Henry Ochieng         | Monitor           | Criminal libel                                                        | February 4, 2010   | Released on bail, trial began on February 25, 2010                                                                                             |
|                       |                   | Forgery                                                               | August 21, 2009    | Case extended to March 29 because DPP did not have police file                                                                                 |
|                       |                   | Summons                                                               | September 3, 2007  | Repeated appearances on police bond until summons was suspended                                                                                |
| Hussein Bogere        | Monitor           | Summons                                                               | January 23, 2007   |                                                                                                                                                |
| James Tumusiime       | Observer          | Promoting sectarianism                                                | December 13, 2005  | Released on bail, trial started on June 23, 2006, suspended pending Constitutional Court ruling on constitutionality of promoting sectarianism |
|                       |                   | Summons                                                               | February 3, 2005   |                                                                                                                                                |
| Joachim Buwembo       | Monitor           | Criminal libel                                                        | January 29, 2008   | Constitutional Court ruled that criminal libel is constitutional, and an appeal to the Supreme Court is currently pending                      |
| John Njoroge Bichachi | Independent       | Sedition                                                              | May 9, 2008        | Trial suspended pending Constitutional Court ruling on challenge to sedition law                                                               |
| Johnson Taremwa       | Red Pepper        | Sedition                                                              | March 24, 2010     |                                                                                                                                                |
| Joram Bintamanya      | Panelist, Life FM | Criminal libel (3 counts), incitement to commit an offence (3 counts) | January 8, 2008    | Acquitted of all charges due to lack of evidence on September 23, 2009                                                                         |
| Joseph Were           | Independent       | Sedition                                                              | August 28, 2009    | Released on bail                                                                                                                               |
| Jude Luggya           | Monitor           | Summons                                                               | January 23, 2007   |                                                                                                                                                |
| Kevin Aliro           | Observer          | Summons                                                               | February 3, 2005   |                                                                                                                                                |
| Meddie Nsereko        | CBS               | Summons                                                               | October 29, 2008   |                                                                                                                                                |
| Michael Ssali         | Monitor           | Summons                                                               | January 23, 2007   |                                                                                                                                                |
| Moses Akena           | Monitor           | Criminal libel                                                        | August 11, 2009    | Released on bail                                                                                                                               |
| Moses Kasibante       | CBS               | Sedition                                                              | September 27, 2009 |                                                                                                                                                |
| Oskar Ssemweya        | Capital Radio     | Summons                                                               | October 29, 2008   |                                                                                                                                                |



|                         |                   |                                                                       |                       |                                                                                                                                                 |
|-------------------------|-------------------|-----------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Paul Harera             | Monitor           | Summons                                                               | January 23, 2007      |                                                                                                                                                 |
| Prosper Businge         | Panelist, Life FM | Criminal libel (3 counts), incitement to commit an offence (3 counts) | January 8, 2008       | Acquitted of all charges due to lack of evidence on September 23, 2009                                                                          |
|                         |                   | Summons                                                               | April 1, 2010         | Released on police bond                                                                                                                         |
| Richard Tusiime         | Red Pepper        | Sedition                                                              | February 16, 2007     | Released on bail                                                                                                                                |
| Robert Kalundi Serumaga | Radio One         | Sedition (6 counts)                                                   | September 15, 2009    | Case stayed pending decision by Constitutional Court on challenge to sedition law                                                               |
| Robert Mukasa           | Monitor           | Criminal libel                                                        | January 28, 2008      | Constitutional Court ruled that criminal libel is constitutional, and an appeal to the Supreme Court is currently pending                       |
| Robert Mwangje          | Monitor           | Summons                                                               | January 23, 2007      |                                                                                                                                                 |
| Rodney Muhumuza         | Monitor           | Summons                                                               | January 23, 2007      |                                                                                                                                                 |
| Siraje Lubwama          | CBS               | Sedition                                                              | After August 19, 2009 | On Jan 12, 2010, court suspended case pending Constitutional Court ruling on challenge to sedition law                                          |
| Ssemujju Ibrahim Nganda | Observer          | Promoting sectarianism, Incitement to violence                        | October 1, 2008       |                                                                                                                                                 |
|                         |                   | Promoting sectarianism                                                | December 13, 2005     | Released on bail, trial started on June 23, 2006, suspending pending Constitutional Court ruling on constitutionality of promoting sectarianism |
|                         |                   | Summons                                                               | February 3, 2005      |                                                                                                                                                 |
| Steven Rwagweri         | Panelist, Life FM | Criminal libel (3 counts), incitement to commit an offence (3 counts) | January 8, 2008       | Acquitted of all charges due to lack of evidence on September 23, 2009                                                                          |
| William Gonza           | Life FM           | Criminal libel (3 counts), incitement to commit an offence (3 counts) | January 8, 2008       | Acquitted of all charges due to lack of evidence on September 23, 2009                                                                          |

Number of journalists summoned or charged since 2005: 39

Number of charges since 2005: 43

Sedition: 14

Promoting Sectarianism: 4

Criminal Libel: 14

Incitement to violence: 2

Incitement to commit an offence: 6

Forgeries: 2

Criminal trespass: 1

Number of official police summons not resulting in charges: 18

**Note:** This information was collected based on news reports and interviews with journalists' lawyers. It is not necessarily exhaustive. It also does not include charges pending against others, such as opposition parliamentarians, for comments made during radio broadcasts. There are at least eight opposition parliamentarians with pending criminal charges including sedition, promoting sectarianism, and inciting violence.

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# A Media Minefield

## Increased Threats to Freedom of Expression in Uganda

As Uganda's government plans for presidential and parliamentary elections in February 2011, freedom of expression across the country is in significant jeopardy. The government—which has been under the control of President Yoweri Museveni and his ruling National Resistance Movement party for 24 years—is clamping down on journalists who criticize its actions, voice support for the opposition, or report on alleged human rights abuses, corruption, and state mismanagement. Human Rights Watch has found over the course of 90 interviews that Ugandan print and radio journalists are facing increasing criminal charges, threats, and harassment.

*A Media Minefield* details how Ugandan authorities have brought charges against over 30 journalists, revoked or suspended the broadcasting licenses of several radio stations, and practiced other forms of partisan repression of the media over the last several years. When violent riots erupted in Kampala in September 2009, the government closed four radio stations, arrested and abused a prominent talk show moderator, beat and detained journalists attempting to record the unfolding events, and banned the broadcast of open-air public debates indefinitely. The national regulatory body that carried out the radio closures and the broadcast bans is, contrary to international standards, not independent of government interference and takes punitive action against stations without any regard for due process.

Authorities in rural districts subsequently echoed the government's actions in the capital, harassing and threatening journalists with violence, arrest, or closure of their stations for reporting on politics, the opposition, and other sensitive local issues. Self-censorship due to fears of overt or covert state sanction has had a "chilling effect" on political reporting, particularly on stations broadcasting in local languages outside of Kampala.

The government is currently considering draft amendments to media laws that will further imperil freedom of expression. Formal and informal harassment of the media will be a major barrier to free and fair elections in Uganda. Human Rights Watch calls on the government to stop intimidation, threats, and physical attacks against journalists, to allow open reporting and commentary on any issue of public concern, including political commentary, and to conduct investigations into the unlawful arrests and beatings of journalists during the September 2009 riots.

*A group of people listening to the radio in Soroti District, Uganda.*

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