Defending Journalism Against State Repression: Legal Mobilization for Media Freedom in Uganda

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ABSTRACT

How can journalist groups and media organizations use legal strategies to defend media freedom in semi-authoritarian contexts? Whereas a sizeable social science literature has explored the structural determinants of media freedom, this paper studies how social movement actors can mobilize to protect media freedoms. Through a case study of recent struggles for media freedom in Uganda, we analyse how journalist groups and media organizations have used legal strategies to defend their freedom to report against a semi-authoritarian regime that increasingly clamps down on independent media. Drawing on numerous interviews with key actors, our analysis suggests that Uganda’s so-called media fraternity has sometimes been able to push back state repression or advance the institutional framework for media freedom. Specifically, legal mobilization has been successful when the media fraternity has been able to mobilize broad and rapid support and organize sustained public advocacy, and when the journalist or media outlet in question has public credibility. By providing a better account of when and why the media freedom movement has been able to successfully challenge government repression, this paper also contributes a better understanding of legal mobilization by journalist and media organizations that should be relevant beyond the case of Uganda.

KEYWORDS

Legal mobilization; media freedom; repression; social movements; strategic litigation; Uganda

Introduction

How can journalist groups and media organizations use legal strategies to defend media freedom in semi-authoritarian contexts? In almost all parts of the world, media freedom is in decline (Freedom House 2019). A sizeable research literature explores the structural determinants of media freedoms, for example, regime type (Stier 2015), media ownership (Djankov et al. 2003), media system (Hallin and Mancini 2011; Frère 2015), resources available for autocratic regimes (Egorov, Guriev, and Sonin 2009), foreign direct investments (Dutta and Roy 2009) and what leads governments to crack down on media freedoms (VonDoepp and Young 2013; Kellam and Stein 2016).

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However, the role that social movement actors can play in defending media freedom remains less explored. Previous studies suggest that civil society organizations may play a decisive role in securing media freedom (Tapsell 2013; Robie 2014; VonDoepp 2017; Salazar 2019), that cooperation between the media and civil society organizations may be essential for securing media freedom as well as other rights in autocratic states (White 2017, 24) and that domestic and global networks collaborating can push governments to stop endemic impunity for crimes against journalists (Relly and De Bustamante 2017). Such findings raise questions about when and how groups can successfully mobilize to defend media freedom—especially so in societies where a semi-authoritarian regime seeks to control the media sector.

Through a case study of recent struggles for media freedom in Uganda, this paper seeks to answer the research question: How can journalist groups and media organizations use legal strategies to defend media freedom against a semi-authoritarian regime that increasingly clamps down on independent media? The empirical material consists chiefly of 40 semi-structured interviews conducted between November 2018 and January 2019 with journalists, media owners, lawyers, activists, researchers and politicians in Uganda. The paper demonstrates that although media freedom is deteriorating and most media houses and individual journalists struggle to survive economically and generally lack resources, Uganda’s so-called media fraternity (which includes individual journalists and other media professionals as well as press freedom groups and media houses that actively participate in the struggle for media freedom), often in collaboration with transnational organizations, has sometimes been able to use legal actions to push back state repression or advance the institutional framework for media freedom. Specifically, the paper indicates that successful legal actions are facilitated by sustained public advocacy, the ability to mobilize broad and rapid support, and that the journalist or media outlet in question has public credibility.

Addressing an understudied phenomenon, this article makes theoretical, empirical and practical contributions. Where social movement studies tend to see the media as a resource or arena for mobilization, we employ social mobilization theory to investigate journalist and media organizations as mobilizing actors per se. Thereby, the article contributes new knowledge of how journalist groups, media organizations and media owners, supported by other freedom of expression organizations and transnational allies, can take legal action to strike back against government repression of media independence. By understanding when and why the media movement has been able to win those battles, we can draw lessons that are illuminating to similar struggles in other contexts. Uganda is a case of a “pluralist authoritarian” media system (Frère 2015), characterized by constitutional guarantees of media freedom, a pluralist media landscape, independent journalists and an absence of censorship, while at the same time, the state is using a range of legal and extra-legal measures to control the flow of information. The paper helps in advancing an emerging agenda of research on African journalism (Sampaio-Dias et al. 2019, 5), but pluralist authoritarian media systems are also found elsewhere (Simon 2015). Finally, considering the still vibrant but deteriorating state of independent media in Uganda, the article provides knowledge about how the media sector can defend its rights against government repression.

The paper is structured in four parts: Section 2 accounts for the deteriorating state of media freedom in Uganda under the presidency of Yoweri Museveni and the opportunities for legal mobilization to resist that trend. In section 3, we devise a theoretical framework drawing on sociolegal mobilization theory. In section 4, we describe our method and
how the data has been analysed. In section 5, we employ the theoretical framework to analyse three types of legal mobilization campaigns where the media freedom movement has achieved successes: challenging, respectively, repressive laws (5.1); media shutdowns (5.2); and impunity for crimes against journalists (5.3). Section 6 discusses the empirical findings, before we conclude.

**Context: Legal Struggles for Media Freedom in Uganda**

In the last decade, media freedom has declined in almost all parts of the world (Freedom House 2019). Media professionals are increasingly being threatened, harassed, assaulted and killed (Simon 2015; Hughes and Vorobyeva 2019). Most of the attacks remain unresolved which fosters a culture of impunity causing fear and self-censorship among journalists (Waisbord 2002). There are many sorts of perpetrators, but governments are among the fiercest (Graber 2015, 237). Governments are also increasingly suppressing critical expression through a range of measures: national security prosecutions, laws on terrorism, withdrawal of government advertisements, etc. (Simon 2015).

Uganda is no exception to this development: the conditions for independent media have deteriorated quickly. From 2002 to 2020, Uganda has fallen from rank 52 to 125 out of 180 countries in the World Press Freedom Index (Reporters Without Borders 2020). During that period President Yoweri Museveni, who came to power in 1986, and his ruling party the National Resistance Movement (NRM) have tightened their grip on power. The NRM government is a semi-authoritarian or a “hybrid” regime (Tripp 2010): since 1995 Uganda has a multi-party system and a democratic constitution that guarantees freedom of expression and freedom of the press, yet the regime has recurrently been clamping down on dissenting voices. Government has shrunk the democratic space and twice changed the constitution to allow Museveni to continue to run for president, removing a two-term limit in 2005 and a 75-year presidential age limit in 2017. Violations of media freedom are especially severe during elections, social unrest, or when journalists are exposing corruption or other governmental wrongdoings (Human Rights Watch 2010; HRNJ-Uganda 2019b). Cohen and McIntyre (2020) suggest that the paradoxical situation with a liberalized media system with many different media houses and at the same time governmental crackdowns on media freedom blurs the line between a free press and a restricted press, and that the resulting self-censorship and lack of critical reporting may strengthen existing power structures.

The history of the media sector in Uganda is like a never-ending sword-play between publishers and the government, in which periods of a vibrant media industry have been followed by periods of state repression since the 1920s (Stremlau 2018, 36). As in many other African countries, journalists and the media played an important part in the independence movement; once the new leaders turned authoritarian, journalists and the media turned against the new government (White 2017, 16–17). During the last period of liberalization in Uganda in the 1990s, a number of newspapers, radio stations and broadcasters were established, which created a relatively strong media industry now struggling to protect its rights. As NRM controls virtually every aspect of political life, journalists and media organizations have used legal actions to defend media freedom (Lugalambi and Tabaire 2010, 18; Stremlau 2018, 136). Only two years after the new constitution was adopted in 1995, journalists filed the first major constitutional appeal in the
Constitutional Court: the case Onyango-Obbo & Mwenda v. Attorney General. Subsequent changes to the legal opportunity structure (as discussed below) in combination with a few landmark court room victories have encouraged media organizations to make litigation a prime strategy. Furthermore, arbitrary arrests and charges against journalists as well as systemic impunity for crimes against journalists, have also made legal strategies necessary.

Journalists and media organizations are not alone in using legal strategies in Uganda. Over the last 20 years, the opportunity for strategic litigation has opened up somewhat. The 1995 constitution offers several opportunities for legal action. Its Chapter 4 establishes a Bill of Rights, including Article 29 guaranteeing freedom of expression and media freedom. The constitution also offers access to courts. Article 50 gives any individual whose rights are infringed the right to seek redress in court and any person or organization can make a case against the violation of a third party’s human rights. Moreover, Article 137 grants the Constitutional Court the power to interpret if any law or act by any authority is inconsistent with the constitution.

However, while on paper the constitution provides opportunities for pursuing legal action, courts began only by 2005 to shift from judicial restraint, dismissing cases on basis of procedural technicalities, to a more progressive interpretation of the constitution (Kyomuhendo 2019). This shift coincided with heightened political tensions, leading civil society organizations increasingly to use courts to defend civil and political rights. Strategic litigation is now a well-established practice and has been used to assert, inter alia, freedom of assembly, freedom of speech, women’s rights and environmental causes (Kyomuhendo 2019). Some of the major cases—which we will analyse in detail below—have involved journalists, including Onyango-Obbo & Mwenda v. Attorney General, in which the Supreme Court finally nullified the law against publication of false news, and Mwenda v. Attorney General, in which the Constitutional Court nullified the law on sedition. Even though the recent upsurge in strategic litigation hardly amounts to a “rights revolution” (Epp 1998), the courtroom successes have been important symbolic political victories that have halted democratic regression and reinvigorated the movement for media freedom.

To sum up, media freedom groups seeking to challenge state repression face a legal opportunity structure that is relatively open compared to the political opportunity structure. However, even though Uganda has a relatively accessible system, justiciable constitutional rights, and judges not outright hostile to movement demands, social movements are routinely prevented from having their grievances redressed through courts. Key obstacles include endemic corruption in the judiciary, political manipulation of the judges, and individual judges who are partial (Kyomuhendo 2019, 22ff). To explain how media organizations tackle such obstacles through strategic litigation, we suggest to draw on mobilization theory.

**Theory: Legal Mobilization for Media Freedom**

In this paper, we seek to understand how journalist groups and media organizations come together as a social movement engaged in a form of contentious politics—that is, acting collectively to make claims on government (McAdam, Tarrow, and Tilly 2009). Social mobilization research tends to regard mass media either as a competitive public
sphere that sets constraints and opportunities for civil society mobilization (Koopmans 2004); as part of the “ideological state apparatus” reproducing a hegemonic system of rule, hostile to progressive demands (cf. Cammaerts 2012); or as a resource groups can employ to lower the transaction costs of mobilization. By contrast, this paper focuses on journalist and media groups as mobilizing actors.

Our analytical focus is on legal mobilization. Narrowly defined, legal mobilization entails that an agent purposively uses the law by invoking a formal institutional mechanism (Lehoucq and Taylor 2020). However, movements often combine court litigation and other formal legal actions with auxiliary repertoires, such as protest, lobbying or advocacy, and litigation success often hinges on coordinating it with broader strategies (e.g., Dotan 2015). For social movements, legal mobilization is a double-edged sword: Its complex, indeterminate and contingent effects sometimes offset its transformative, empowering potential (McCann 2006). For the media fraternity in Uganda, entering the legal arena is not necessarily a proactive choice; rather, journalist and media groups are forced to mobilize law as self-defence against government repression.

The public professional role of journalists or the business interest of media organizations entail specific conditions for their collective mobilization. Journalists and media outlets are often targeted by government sanctions, but their public role and their control of flows of information may also provide strategic advantages to which other types of social movements often lack direct access. Yet even as media organizations have particular liabilities and assets for social mobilization, the basic determinants of successful contention are likely to be the same as for any other type of social movement. For their mobilization to succeed, they need to overcome the problems of collective action (Lichbach 1998). For journalists and media organizations, defending media freedom is an apparent collective good, but given that government may punish those who do, individual journalists, organizations and media outlets may be deterred from participating in producing it. Thus, even if individual members of the media fraternity may support the aim to defend media freedom, they are also disincentivized to participate in contentious actions directed at the government.

In order to overcome such collective action problems, groups must be able to exploit opportunity, mobilize resources and employ appropriate strategies (cf. Martin 2015). As argued above, legal opportunity in Uganda has been structurally open to litigation since the adoption of the 1995 constitution and, following landmark cases around 2005, the judiciary has also become more suscepitive to claims brought by civil society actors. However, opportunity per se is insufficient to account for successful concerted action by the media fraternity. Since legal action is often too costly for individual agents lacking the expertise and money to defend media freedom in courts, the sustained mobilization necessary to achieve substantial change also requires collective mobilization of resources in civil society—a “support structure”, consisting of advocacy organizations, willing and able lawyers, and sources of financing (Epp 1998, 18ff). A civil society support structure can provide individuals with legal aid and expertise, engage in public advocacy, and create networks for communication. Funding is essential since court processes are costly and time-consuming. Yet successful mobilization relies not only on material resources, but also on immaterial resources, such as moral support (expressions of solidarity, celebrity endorsements, public support, etc.) and organizational strategies, i.e., shared
repertoires or routine performances a movement can employ in its mobilization (Wacken-hut 2017, 30).

**Methods and Data**

In order to examine how media groups mobilize to defend media freedom, 40 semi-structured in-depth interviews were carried out from November 2018 to January 2019. Using a snowball sampling technique, the sample included (1) representatives from major journalists and media rights organizations, (2) victims, organizers and lawyers in campaigns against media freedoms violations, and (3) other individuals who, according to informants, had made an impact on the cause for media freedom. We sought to ensure maximal variation in terms of professional background, type of media house, location and gender. At the time of the interview, 25 of the interviewees worked as professional journalists—in radio, TV, online and print media; in private, community and state media; and in small and big media houses. Beside active professional journalists, the sample also included interviewees knowledgeable about media freedom in Uganda in their capacity of members of parliament, researchers, lawyers, media owners, employees at civil society organizations devoted to media development and/or freedom of expression or human rights activists. Most of these had earlier been working as journalists. The sample was composed of 30 men and 10 women. A majority lived and worked in Kampala, the capital of Uganda, while 15 lived and worked in the rural cities and towns of Mbarara, Bushenyi, Lira, Arua, Soroti and Gulu—a variation essential since journalists face different challenges in rural areas compared to Kampala.

Participation in the study was voluntary. The first author conducted all interviews after having obtained the participant’s informed consent and permission to record the interview. Interviews took place in safe locations chosen by the participant, lasted from 30 to 90 min, and were later transcribed. To ensure the safety of the participants, all recordings and data were stored on an encrypted hidden disk on a computer. When we present our results in the analysis section, we withhold sensitive personal details where necessary to protect participants and preserve confidentiality as per our agreements.

The interviews focused on strategies to defend media freedom, with questions structured around four overarching themes: (a) How the groups react to threats to or violations of media freedom and the actions they take to promote or defend media freedom; (b) What makes a group’s actions successful, and how activists define success in mobilization; (c) How groups mobilize support and collaborate with other actors (national or transnational) and the (dis)advantages of such collaboration; (d) the opportunities and threats activists see in the struggle for enhanced media freedom.

The information gathered from the interviews was categorized in terms of actions in defence of media freedom, mobilizing strategies, and factors that seemed to facilitate successful mobilization. The analysis focused on legal mobilization, which emerged as a key strategy that included several successes and also has been emphasized in earlier research (Tripp 2010, 96ff; Lugalambi and Tabaire 2010, 18; Stremlau 2018, 136). A central issue in the analysis was to understand how the informants define “success”. Following our informants’ interpretation, success could be either on the personal or organizational level, for example the ability to continue working on investigative stories despite assaults, arrests, charges or other governmental actions to stop that specific story or to re-open closed
down media outlets, or on the level of social intuitions, for example legal or policy
changes. In the complex political environment of a semi-authoritarian state, it seems
necessary for media organizations to simultaneous mobilize on all levels. Although the
goal is legal or policy changes, such achievements are worth little if you can’t defend
them on a daily basis against corrupt officials.

To corroborate and complement the interviews, we collected and analysed reports
from media organizations, official documents, media reporting and social media postings;
we integrate these supplementary data in our account of the legal strategies in the next
section.

Findings and Analysis

In this section, we present three prominent legal strategies used by media groups in
Uganda to defend media freedom: legal action to challenge repressive laws (5.1); legal
action against closures, bans and suspensions (5.2); and the struggle to end impunity
for crimes against journalists (5.3).

Legal Action to Contest Repressive Laws

A key problem for journalists in Uganda is laws that the government uses to suppress
freedom of expression. Since NRM seized power in 1986, many journalists have been
charged with crimes relating to speech (Stremlau 2018, 134) and journalists are routinely
arbitrarily arrested and charged with criminal offences (Human Rights Watch 2010; HRNJ-
Uganda 2019b). The laws used against journalists include acts prohibiting sedition, pro-
motion of sectarianism, criminal defamation, criminal libel, incitement of violence, and
computer misuse. Here, we shall analyse how journalists and media organizations have
defended themselves against criminal charges and also disputed the constitutionality
of some of these laws.

In most cases, the challenge is to get a fair trial without undue delay. Many cases
brought against journalists never proceed to a trial (Human Rights Watch 2010, 14) and
when they do the government risks losing the case (Lugalambi and Tabaire 2010, 14).
However, the arrests and charges have a chilling e
effect on media and disrupt the work
and life of journalists, as one legal expert puts it:

They know it is bogus charges. The intention is not to have an outcome. The intention is to
keep you busy. (Interview 12)

Furthermore, the investigation and judicial process may go on for years. For instance, a
journalist in the city of Lira was charged with treason in 2011, detained for nearly one year
and then had to report regularly to a police station for another six years until the charges
finally were dropped (interview 9 and 15). The seven-year long quasi-investigation pro-
duced no evidence whatsoever. One person involved in the case is certain the charges
were false and used only to harass and intimidate:

There was no evidence. There was nothing. […] Many cases are of the same kind. Justice is
delayed. That is the challenge. (Interview 15)
However, other journalists have given up their investigative reporting or stopped working entirely as journalists after they have been summoned, threatened and charged too many times. In the words of a former journalist:

The government comes after you. They are threatening, assaulting and arresting journalists. They frame it another way. They frame it as you got arrested for that and that. But when you are interrogated they tell the real cause, that you are a journalist. My wife said that I should quit, that it isn’t worth it. Many journalists have quitted. That’s what you do when you have a chance. (Interview 1)

To avoid getting stuck in lengthy judicial processes, media organizations have developed a strategy of quick response. The idea is to get the journalist in question out of detention before the slow machinery of the judiciary has begun to work. The strategy requires an organization with advocacy skills and legal expertise that is able to quickly mobilize support. For example, a reporter in the city of Arua was summoned on charges of criminal defamation when he investigated a story about a police officer that allegedly had sexually harassed and manhandled a woman (interview 16 and 17). Just in time before the reporter was handcuffed, he managed to call a friend who mobilized the West Nile Press Association (WENPA), a regional organization with some 50 members. Eight people immediately walked together to the police station and successfully demanded his release without any charge.

There are numerous examples of this kind of quick mobilization. The Northern Uganda Media Club (NUMEC) in the city of Gulu and The Foreign Correspondents’ Association Uganda (FCAU) have also acted in comparable ways (interview 5, 9, 22, 32, 33, 34, 35, and 36). A member of FCAU testifies to the importance of swift action after one member was arrested:

[The association] was really quick and put the story out on social media everywhere. People were phoning the police chief, there were politicians asking what is going on. […] The key is that we have good contacts with other journalists, with media houses, with diplomats and embassies and with government officials. The goal is to act quickly and rapidly. If you wait until they are in the system, it is harder to get them out of the system. (Interview 22)

A final example of quick action is when a team of investigative reporters from NBS TV and BBC got arrested in February 2019 as they were about to publish a story on corrupt government officials diverting and selling drugs from hospitals (HRNJ-Uganda 2019a). When the reporters were arrested, the media movement reacted in social media and provided massive media coverage, while several national as well as transnational organizations condemned the arrests. The public pressure forced the police to back down and admit they had made a mistake, although the judicial process is not yet formally ended. The team could thus continue their investigation.

These examples show that the movement can successfully mobilize quickly in two different ways: either through smaller, specialized civil society organizations, professional associations and activist networks built on a high level of trust and solidarity, or through a larger campaign in social and traditional media—a viable strategy if the arrested journalist is well-known and well-respected, as in the case of the NBS TV and BBC reporters. However, the situation is quite different for journalists who lack resources, who work in the rural areas, or who stand outside social and political networks (Stremlau 2018, 136). A senior journalist in Kampala phrases it like this:
Personally, if I am in trouble, I think they would support me. But I have also observed that it depends on the personal network. I am a pretty experienced journalist which means I have people who have known me longer, people that are my friends. They will come to my rescue because they are my friends. And my friends are high-profile, so others will follow my high-profile friends to fight for me. And once you have enough journalists in your corner, others will follow. That is more about me as an individual than me as a journalist. In other cases, you have a journalist in jail, and other journalists are just looking on because they do not know her. (Interview 23)

In addition to defending individual journalists charged with criminal offences, media organizations have also challenged the constitutionality of some of the laws that are used to limit freedom of expression. The first case involved Charles Onyango-Obbo and Andrew Mwenda, who were charged in a Magistrate Court in Kampala with publication of false news in 1997. The law on false news stemmed from colonial times and criminalized publication of “any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace” (Tabaire 2007, 193). Onyango-Obbo and Mwenda were charged for publishing an article in the *Sunday Monitor*, a major independent newspaper in Uganda, in which they reported that a foreign newspaper had claimed the president of Congo had given the Uganda government gold in exchange for military support (Supreme Court of Uganda 2004). They had to appear in court more than 30 times before they finally were exonerated two years later. However, in the meantime Onyango-Obbo and Mwenda had challenged their prosecution in the Constitutional Court, arguing that the case brought against them and the law on false news were unconstitutional. They lost in the Constitutional Court, but backed by both Nation Media Group (an international media conglomerate that owns the *Daily/Sunday Monitor*) and several national and transnational media organizations, they appealed to the Supreme Court. In 2004, the Supreme Court found that the prosecution and the law on false news were inconsistent with the Constitution and therefore declared the law on false news null and void (Supreme Court of Uganda 2004).

The court victory was a “watershed in the continuing struggle for freedom of the press in Uganda” (Tabaire 2007, 194). The judgment delivered by Justice Mulenga is an empathetic defence for freedom of expression:

> Protection of the fundamental human rights […] is a primary objective of every democratic constitution, and as such is an essential characteristic of democracy. In particular, protection of the right to freedom of expression […] is the bedrock of democratic governance. Meaningful participation of the governed in their governance, which is the hallmark of democracy, is only assured through optimal exercise of the freedom of expression. This is as true in the new democracies as it is in the old ones. (cited in Kyomuhendo 2019, 17)

The next year, in 2005, Mwenda opened yet another case with the help of the East African Media Institute (EAMI), a regional media development organization. This time, Mwenda had been charged with sedition after having criticized Museveni in a radio talk show, and he responded by challenging the constitutionality of the laws on sedition and promotion of sectarianism (Global Freedom of Expression 2010). The Uganda Penal Code defined sedition as publishing statements aimed at bringing hatred, contempt or disaffection against the president, the government or the judiciary, while promoting sectarianism is defined as statements that promote hostility against any group of persons on account of religion, tribe or ethnic origin. Mwenda argued the laws violated Articles 29
and 43 in the constitution that guarantee the right to freedom of expression (Global Freedom of Expression 2010). In 2010, as Mwenda faced 18 charges of sedition, the Constitutional Court finally declared the law on sedition null and void (HRNJ-Uganda 2010), but upheld the law on promoting sectarianism (Global Freedom of Expression 2010). Inspired by those victories other journalists and media organizations have also challenged provisions of the Press and Journalists Act, sections of the Communications Act, and the Anti-Pornography Act (interview 5, 25 and 27). These cases are pending in court at the time of writing.

Another long-standing court battle concerns the law on criminal defamation, which prohibits publishing anything that injures another person’s reputation and which is routinely used against journalists (see for example HRNJ-Uganda 2019b). In 2009, the Constitutional Court upheld criminal defamation in a case where four journalists from the Daily Monitor had been charged and had responded by challenging the constitutionality of the law (Global Freedom of Expression 2009). However, in 2014 several civil society organizations filed a complaint with the East African Court of Justice, a regional tribunal created under the East African Community Treaty in 1999. The case concerns late correspondent Ronald Ssembuusi, who in 2011 was convicted to one year in prison for criminal defamation, having reported about corruption (Global Freedom of Expression 2014). Ssembuusi passed away in 2015, but the case to challenge the law on criminal defamation is still pursued by Human Rights Network for Journalists Uganda (HRNJ-Uganda), the Ugandan civil rights organization Chapter Four, and the UK-based Media Defence League Initiative (MLDI), which contend that the way criminal defamation is defined in Uganda violates the principles of the East African Community Treaty (HRNJ-Uganda 2015b, 22). Several other international NGOs have joined as amicus curiae, offering legal expertise. International legal support has also been crucial in the earlier cases, for example when Onyango-Obbo and Mwenda challenged the law on false news. A lawyer describes the value of this support:

We are a common law country [which means] the judiciary system relies on decisions by other courts and superior courts. The judges seem to be persuaded by decisions from commonwealth countries such as UK, Canada, South Africa. These international interventions help to bring expertise and international comparison. [...] Secondly, it brings additional political support and public scrutiny, and sometimes attention from foreign governments in these cases. (Interview 27)

To sum up, despite corruption in the judiciary, the media sector has retained respect for the courts and acts on the presumption it can get fair trials (Stremlau 2018, 135)—partly because it has no other choice: journalists are continually dragged to court on various charges and do what they can to protect themselves and, by extension, freedom of expression. Moreover, inspired by the constitution and landmark rulings, the media movement has begun using litigation in a more strategic way to enhance media freedoms. HRNJ-Uganda and other organizations have been educating journalists around the country on their rights and how to successfully navigate the judicial system (interview 5, 6, 12, 15, 16, 31 and 32).
Legal Action Against Closures, Bans and Suspensions

Another campaign the media movement has been waging is to resist closures of media outlets, bans on reporting, or suspensions of individual journalists, which are regularly ordered by state agencies such as the Uganda Communications Commission (UCC), Resident District Commissioners (RDCs) or lower courts. The UCC especially has extensive power to regulate media. It can order the closure of newspapers, radio stations and broadcasters; ban media from covering certain events or from employing certain individuals as for example talk show hosts; and force media outlets to suspend journalists. Such closures, bans and suspensions are often arbitrary and politically motivated (HRNJ-Uganda 2019b, 25) and media organizations have turned to litigation in several cases.

A successful public interest litigation case concerned a ban on media coverage of a court hearing in 2015 in which a police officer was accused of leaking information. The Uganda Court Reporters Association (UCRA) challenged the ban in the High Court, with support form HRNJ-Uganda, Centre for Legal Aid (a rights assistance group in Kampala), and UK-based MLDI (HRNJ-Uganda 2014). The plaintiffs argued that the ban on media coverage contradicted Article 41 of the Constitution, which guarantees a right of access to information. Media covered this lawsuit extensively and media freedom organizations provided public advocacy about the right to information. Eventually, the High Court ordered that the court hearings should be open to journalists (HRNJ-Uganda 2014).

A lawyer who has been involved in several public interest lawsuits on media freedoms underlines that public advocacy is essential for winning such cases:

[Public interest litigation] requires a very intense public advocacy accompanying the case. You must raise the stakes. You must argue this case both in court but also in the court of public opinion. Our approach to public interest litigation has been non-traditional. We will make all the noise about this case to make sure that the court knows how important this matter is for us. (Interview 27)

A more recent case is legal action to abolish a UCC order of 30 April 2019 to suspend 39 journalists working at 13 different media outlets (Reporters Without Borders 2019). The suspensions were quickly condemned by national as well as transnational civil society organizations and at least 14 countries (Kigongo 2019). The order was issued just a few days before World Press Freedom Day on May 3, which media organizations consequently used to demonstrate against UCC. The Uganda Journalists Association (UJA) took the lead and appealed the UCC order to the High Court. On May 23 the High Court halted the UCC order with address to the civil and political rights enshrined in the Constitution (Kigongo 2019). The final decision is yet to come at the time of writing.

Media activists have also used a combination of legal action and public advocacy to re-open media outlets that have been closed by either the UCC or the police. Two cases spotlight when (and when not) the movement can mobilize support against closures. On 20 May 2013, the Daily Monitor was raided and closed down after it had published a letter exposing an assassination plan (Committee to Protect Journalists 2013). Two radio stations affiliated with the Daily Monitor that had retold the story were also closed down, as well as the tabloid Red Pepper. The closures evoked national and transnational condemnation, legal action, and street demonstrations in which the police assaulted
journalists and demonstrators (Committee to Protect Journalists 2013). The *Daily Monitor* offices remained a “crime scene” for 11 days before they were reopened (BBC News 2013).

By contrast, when the police raided and closed down the tabloid *Red Pepper* on 21 November 2017, arresting and charging five directors and three editors with treason for reporting about an alleged military coup in Rwanda, the arrestees remained in jail for 29 days before they were granted bail, and the paper remained closed for more than two months (Davidson 2018). *Red Pepper* had difficulties mounting support beyond the obvious media freedom organizations, and the support was sometimes accompanied with an excuse—that for the sake of media freedom the paper needs to be supported despite its often sensational reporting (Quintal 2017). A demonstration in support of *Red Pepper* only attracted a few journalists (interview 20). Similarly, when Unity FM in northern Lira was closed down by the police in November 2018, it gained little support since it was accused of breaching professional journalism standards (Rupiny 2018). It took more than a month before it was allowed to reopen with restrictions (HRNJ-Uganda 2018).

The lawyer cited above describes what makes mobilization possible:

> One is the credibility of the person involved. It is easier if the person that is being prosecuted is a person that is credible and that people believe in him or her. Two, it is also much easier if the person works for a credible media house. [...] The reputable media house will get public support because of the good work that they do. The third one is the kind of issue they are involved in, because there are some issues that do not attract public sympathy and support. Especially cases on civil and political rights tend to attract a lot of public support and discussion. (Interview 27)

To sum up, media organizations exploit legal opportunities to challenge bans, closures and suspensions. By whatever means the UCC and other government agencies are restricting media freedom, sustained public advocacy and protests (“raising the stakes” and “making noise”) seem to facilitate a positive outcome. Further, the reputation and credibility of the involved media outlet matters for the ability to mobilize support and thus “make noise”.

### End Impunity for Crimes Against Journalists

The fight against impunity is a top priority for media organizations in Uganda, since threats and physical assaults on journalists are one of the most common violations of media freedom (HRNJ-Uganda 2019b). The perpetrators vary but the most common are the Uganda Police Force (UPF), the Uganda People’s Defense Forces (UPDF) or other security organizations. Typically, when covering a political rally on which the security organizations are cracking down, journalists are often the first target because they have cameras (interviews 22 and 27). To end impunity, media organizations are trying to open criminal cases against the perpetrators. But even if there are a few cases of civilian perpetrators being held accountable, police officers have only been prosecuted twice, resulting in only one conviction, whereas military personnel have never been prosecuted (HRNJ-Uganda 2019b, 47).

An example of how extensive mobilization and advocacy may contribute to end impunity is the only lawsuit thus far that resulted in a police officer being convicted. The police officer brutally assaulted Wavamunno Broadcasting Station (WBS) reporter Andrew
Lwanga on 12 January 2015, when he was covering a demonstration by unemployed youths (HRNJ-Uganda 2015a). The response was immediate. Other journalists at the spot had filmed the incident and photos were posted on social media by both individuals and media outlets (see, for example, NTV Uganda 2015), and the assault was condemned straight away by several national and transnational organizations (for example, interview 3, 5, 21, 27 and 31).

The following day, HRNJ-Uganda used the momentum to mobilize further. They held a press conference and arranged a public demonstration, intending to march to the UPF headquarters. Despite police blocks, tear gas to disperse the demonstration and arrests of the presumed leaders, the protesters were able to deliver a petition to the Inspector General of Police. As an effect, the faulting police officer was suspended from work (interview 5 and 21).

The judicial process took over two years until the final conviction. Meanwhile, media groups provided sustained public advocacy and media coverage. The campaign Save Andrew Lwanga raised money for medical bills, to which transnational organizations (International Federation of Journalists, Committee to Protect Journalists [CPJ], and the Rory Peck Trust) also contributed. Eventually, even President Museveni officially acknowledged the case and released funds for medical treatment (Ndagire 2016). HRNJ-Uganda also checked on the judiciary to ensure a fair trial. They provided evidence, and a few times they even had to go searching for the investigative police officer as his absence from court hearings otherwise would slow down the process (interview 5, 9 and 21).

A legal officer with insight in the Lwanga case stresses the importance of putting pressure:

We played a big role in that case, because often the state attorneys are compromised, but with the watching eyes from HRNJ-Uganda it becomes very hard for them to be compromised. […] In the beginning they were trying to play around with the evidence, but what we did was to give a lot of publicity to the case. Then it becomes very hard for the police officer to compromise the judiciary officer. (Interview 9)

Several interviewees highlight the importance of internal solidarity, sustained public advocacy and media coverage to put pressure on the judiciary in this case. Staff at HRNJ-Uganda as well as Andrew Lwanga were threatened during the process and given personal offers to let the case be (interview 5, 9 and 21). In the end, the penalty was lenient: the police officer was fined one million Shillings (approximately 280 USD) and had to pay five million Shillings in compensation. Nevertheless, the conviction was considered a success. It was the first time a police officer had been convicted of assaulting a journalist, sending an important signal that no one is guaranteed impunity.

What distinguishes the Andrew Lwanga case is the unprecedented legal mobilization. Some argue that the case was won because of the brutality of the assault and the abundant evidence (photos and videos of the incident) at hand, but there are other cases that have been as brutal, for example, the shooting by soldiers of Julius Odeke, a freelance photographer covering election violence, in February 2011 (interview 3, 4; Committee to Protect Journalists 2011), and several recent attacks have been captured on film.

A difficulty in mobilizing against impunity is the precarious situation of journalists and the corrupt judiciary. Most journalists in Uganda are freelancers with little pay, no job
security, and no legal support from their media houses. They lack the time, resources and allies to pursue court cases, and therefore often drop charges in exchange of compensation. A senior journalist who has supported several individual journalists in a precarious situation explains the security organizations’ tactic:

They beat them. They destroy their equipment. Then they give them money to keep quiet. (Interview 3)

Journalists who sue the police also risk getting into trouble. A journalist who was assaulted by the police while doing a story on election fraud explained that he had to withdraw the case because his employer pressured him and stopped offering him jobs (interview 6). Another interviewee summarizes the choices facing an assaulted journalist:

Many of them don’t want to go to court. […] They find it too expensive and too unpredictable. They prefer to do out-of-court settlements. […] They are interested in compensation. They need their gadgets back, otherwise they can’t work. You are on your own, so you have to make a decision: Am I going to the legal route to set a precedent or am I going the practical and say I have to live, I have to pay school fees for my children, I have to feed my family? The decision is not just legal, it is socio-economic issues. (Interview 12)

In such circumstances, even an official apology and economic compensation may be regarded as a success. For instance, in August 2018, the journalist James Akena was beaten by soldiers. The incident was captured on video that circulated worldwide on social media, and national and transnational civil society organizations condemned the assault. It was one of several similar incidents around the same time, and HRNJ-Uganda gave an “ultimatum” to the UPDF that they would organize street protests if the military refused to negotiate. The sustained public advocacy and calls for protests pressured the military to give an official apology (Reporters Without Borders 2018) and they made individual deals with the assaulted journalists (interview 5 and 29). UPDF’s concessions were considered a success, since no military personnel so far has been prosecuted for crimes against journalists.

For this type of action, interviewees stress the importance of support from Uganda’s international allies or major donor countries, but critique from organizations such as CPJ, Reporters Without Borders (RSF), and Amnesty International can also be crucial, as a senior journalist and media freedom advocate recognizes:

[Transnational support] makes a lot of difference because that is a message that is passed very clearly to the perpetrators, that the world is watching. (Interview 31)

To sum up, ending impunity is difficult because the perpetrators represent powerful institutions at the heart of government. Nevertheless, in some cases the media movement has managed to hold perpetrators to account, or at least get an official apology and compensation. These cases have been marked by extensive media coverage, internal solidarity inside the media fraternity, sustained public advocacy, transnational support, and (the threat of) disruptive actions.

**Discussion: Legal Mobilization Support Structure in Uganda**

A broad, loose alliance of activists, media organizations, professional associations, and media companies struggles for media freedom in Uganda. As a collective, they are
rather well-resourced: in the best of circumstances, they have financial resources through the independent media companies, some of which are international; access to and control of media outlets for advocacy work; human resources, including some of Uganda’s most prolific social media celebrities; and transnational support, from embassies as well as transnational human rights organizations. There is also at least one organization—the HRNJ-Uganda—devoted solely to researching and fighting for media freedom. Over the years, several lawyers and legal experts have developed expertise and loyalty for the cause of media freedom and media organizations continually provide journalists around the country trainings in security, law and rights.

In the examples of successful litigation analysed above, the media freedom movement has managed to mobilize these resources to defend media freedom and, in some cases, even to enhance the institutional framework for its protection. Factors facilitating a positive outcome seems to be internal solidarity within the media fraternity, sustained public advocacy, and intensive media coverage; that the journalist or media outlet in question has social capital and public credibility; that larger networks than the most obvious civil society organizations are activated; that the case gets international attention and support; and disruptive actions that renders the case attention and empowers the journalists. With enough outside pressure, the judiciary is more likely to interpret the constitution in favour of the media or to uphold the rule of law against political interests.

However, these individual cases remain isolated exceptions in an overall environment of shrinking democratic space and media freedoms. From the outside, one is stunned by how seemingly easily the police and military continue to assault journalists despite the conviction in the Andrew Lwanga case; how the UCC becomes bolder in its restrictions, despite contradictive court orders; and how parliament continues to pass laws that infringe freedom of expression, despite earlier decisions by the Constitutional and Supreme Court to nullify such laws. Of course, the shrinking space indicates the extensive power of the NRM government, and its determination to remain in power and silence any dissent before it escalates to mass protest, but it also signals that media organizations lack coordination and resources for widespread and sustained litigation. Several interviewees said that change would be possible if the media sector acted in unity and with persistence and resolution. One leading media freedom advocate highlights the need to be persistent:

We need sustained pressure, not just a one-off. We need sustained working together, we need energies that are pulled together in the same direction. If we did that, we could reduce the cases and send a very strong signal and message. (Interview 31)

Other interviewees said that the media is “disorganized” and “not up to the game” and another recent study similarly found that the journalists in Uganda need a unifying and powerful association or union in order to improve press freedom (Cohen and McIntyre 2020, 662f).

So why is the media freedom movement disunited? The journalists are organized in different groups. Two organizations operate on a national scale: Uganda Journalists Association (UJA), which has been criticized for being compromised by the government, and Uganda Journalists Union (UJU), which only unites a small portion of the media employees. A number of regional organizations and professional associations have
often proved more effective in defending their members’ rights than both the UJA and the UJU. Some of our interviewees were self-critical of the inability to unite in at least some kind of umbrella organization or network. Others claimed it is the result of the government’s deliberate “divide and rule” tactic.

In the struggle for media freedom, the independent media rights group HRNJ-Uganda has taken informal leadership. Founded in 2005 by journalists and activists who had suffered state repression and acknowledged the need for a civil society organization for the defence of media freedom, HRNJ-Uganda now has a few hundred members across the country and a small secretariat that includes legal officers. Its basic idea is to function as a network. Journalists across the country are reporting violations to the national secretariat, which can activate support for important cases. Despite HRNJ-Uganda’s effort to function as a network, its resources are too limited to mobilize every time the government violates media freedom. As many civil society organizations in Uganda, HRNJ-Uganda depends on donations, which makes funding insecure and risks compromising the group, as some are criticizing it for being accountable to foreign donors rather than to journalists in Uganda.

Conclusion

This paper has analysed how journalist and media organizations are using legal strategies against state repression. In Uganda, the main threat to media freedom is the police, military and media regulatory agencies cracking down on media. Yet this paper has shown that media organizations are sometimes able to use legal action to defend themselves against state repression and, in a few cases, have successfully advanced the institutional framework for media freedom.

Some might argue that the minor legal, political and policy changes that the media freedom movement has achieved are futile in a time when strong political forces are diminishing media space. Certainly, the media fraternity in Uganda is swimming against the tide—but it is nevertheless, or even precisely because of that, even more important to understand what the media freedom movement can do to resist repression and defend media freedom.

This study shows that the media freedom movement in Uganda is yet to reap the benefits of its legal victories: there is still nearly total impunity for police and military crimes against journalists and the state agency UCC is increasingly intervening against independent reporting. To turn the tables, there is a need for more sustained and persistent legal mobilization which would require a stronger legal mobilization support structure. Even though many groups and individuals, some of them influential, are working for media freedom, their lack of organization, coordination and funding are obstacles they need to overcome in order to mobilize successfully.

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