



**Strathmore**  
UNIVERSITY

**IGNORANCE OF A NATION: THE ABUSE OF THE RIGHT TO  
INFORMATION IN UGANDA AND ITS POSSIBLE SOLUTIONS.**

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## **DECLARATION**

I, Mirembe Priscilla, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....

Supervisor: .....

## **ABSTRACT**

Uganda is party to many international treaties that aim at fighting for human rights. It has even taken the initiative to draft laws in accordance with those treaties and also establish platforms where people can access government information. However, all this is on paper as the government continues to greatly abuse the rights of its citizens. Two of the ways the right to access information has been abused is evidenced by police brutality towards journalists and the announcement of H.E Yoweri Kaguta Museveni as president in 2016 following unaccounted for information of votes during the 2016 Presidential Election. Without proper access to information, the populace is left ignorant of their rights, something which aids abuse of the other rights given that the right to information is a foundational right. In return, this greatly hinders economic growth and development as it denies the citizens a democratic government which allows them to take part in decision making as well as holding their leaders accountable.

This therefore calls for novel measures to ensure that the right to information is achieved. The police force should put emphasis on integrity during training. The judiciary should establish a functioning body aimed at checking the integrity of the judges and magistrates. The judiciary should also welcome the idea of information sharing on the existing international platforms in order to break free from negative traditions. Greater penalties should be employed on the culprits. Government officers should be financially empowered by the government. An independent body should be created to oversee the realisation of the right in question.

## **ABBREVIATIONS**

AFIC: African Freedom of Information Centre

AYG: Ask Your Government

CMJA: Commonwealth Magistrates and Judges Association

EAC: East African Community

EAMJA: East African Magistrates and Judges Association

EC: Electoral Commission

GDP: Gross Domestic Product

ICC: International Criminal Court

La CADA: La Commission d'accès aux documents administratifs

NCDC: National Curriculum Development Centre

NGOs: Non-Government Organisations

OTT tax: over-the-top tax

UCC: Uganda Communications Commission

UDHR: Universal Declaration of Human Rights

UNDP: United Nations Development Programme

## **CASELAW**

*Amama Mbabazi v Museveni and Others* (2016) Supreme Court of Uganda.

*Raila Amolo Odinga and another v Independent Electoral and Boundaries Commission and 2 others* [2017] eKLR.

## **LIST OF LEGISLATIONS**

Constitution of the Republic of Uganda, 1995.

Access to Information Act, 2005.

Access to Information Regulations, 2011.

Excise Duty (Amendment) Act, 2018.

Judicature Act, Chapter 13 of the Laws of Uganda.

## **LIST OF INTERNATIONAL INSTRUMENTS**

UNGA, *Universal Declaration of Human Rights*, Resolution 217A (III) 21 January 1987.

UNGA, *International Covenant on Civil and Political Rights*, Resolution No. 2200A (XXI) 16 December 1966.

*African Charter on Human and People's Rights*, 27 June 1981, OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982).

# CHAPTER ONE

## 1.1 BACKGROUND

‘The right to access information is fundamental for the proper functioning of a democracy and is a necessity for accountability, transparency and participation of citizens in the governance of the state’.<sup>1</sup> It is through this right that the government is mandated to provide information to the citizens and with this knowledge, they are able practice their other rights and freedoms in a better and much more formal way for example, freedom of expression. It is also through this right that the government is able to be held accountable for its actions because they are out and visible for the public to critic and judge.

Uganda has taken a number of steps to ensure the realisation of the right to access information. First and foremost, it is party to a number of international and regional treaties that support it. This entails the Universal Declaration of Human Rights (UHDR),<sup>2</sup> from which other treaties that Uganda is party to derive their law for example, International Covenant on Civil Political Rights (ICCPR)<sup>3</sup> and the African Charter on Human and People’s Rights (ACHPR)<sup>4</sup>.

Article 19 of the UDHR provides that, ‘Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’<sup>5</sup> Similar provisions are made in the ACHPR under Article 9(1)<sup>6</sup> and Article 19(2) of the ICCPR.<sup>7</sup>

Uganda has also formulated domestic laws to ensure the realisation of this right. It is evidently provided for in the Constitution under Article 41 (1) which provides that,

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<sup>1</sup> Kyogabirwe L, ‘The right to information in Uganda: Unclogging the bottlenecks’ Open Net Africa, 30 January 2017 <https://www.opennetafrika.org/the-right-to-information-in-uganda-unclogging-the-bottlenecks/> on 18<sup>th</sup> February 2019.

<sup>2</sup> UNGA, *Universal Declaration of Human Rights*, Resolution 217A (III) 21 January 1987.

<sup>3</sup> UNGA, *International Covenant on Civil and Political Rights*, Resolution No. 2200A (XXI) 16 December 1966.

<sup>4</sup> *African Charter on Human and People’s Rights*, OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982) 27 June 1981.

<sup>5</sup> Article 19, *Universal Declaration of Human Rights*, 21 January 1987, 217A (III).

<sup>6</sup> Article 9(1), *African Charter on Human and People’s Rights*, 27 June 1981, OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982).

<sup>7</sup> Article 19 (2), *International Covenant on Civil Political Rights*, 16 December 1966. No. 2200A (XXI).

‘Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person’.<sup>8</sup>

The government of Uganda took an even further step of enacting the Access to Information Act, 2005 which aims at making real Article 41 (1) of the Constitution. This Act pushes for an efficient, effective way of obtaining access to information and related issues.<sup>9</sup> This came along with new developments that include; The establishment of the Ministry of ICT and National Guidance (MoICT&NG) with an objective to formulate and implement ICT policies,<sup>10</sup> development of the Government Communication Strategy to set up an effective, well-coordinated and proactive communication system across government and with the public that will meet the nation’s information needs,<sup>11</sup> provision of Public Education Airtime on radio stations in every district across the country to sensitize the public on service delivery and development issues,<sup>12</sup> and establishment of the Government Citizens Interaction Centre (GCIC) to enhance the monitoring of service delivery and provide a channel for feedback and suggestions from citizens.

With all these laws, the government of Uganda is still failing to curb the never-ending challenges that the right to access information is facing. Some of these challenges include but not exhaustively, non-compliance of ministers to present annual reports, high costs of acquiring information, a large scope of exceptions provided by the Access to Information Act, 2005, ignorance of the people that is, the ministers and citizens.

## **1.2 STATEMENT OF THE PROBLEM**

The people’s fundamental human right of access to information is being abused despite the presence of legislation and other ground measures to help achieve it.

## **1.3 STATEMENT OF OBJECTIVES**

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<sup>8</sup> Article 41 (1) *Constitution of the Republic of Uganda*, 1995.

<sup>9</sup> Access to Information Act, 2005.

<sup>10</sup> <https://ict.go.ug/about-us/> on 20 February 2019.

<sup>11</sup> <http://www.cabinetgovernment.net/docs/addis-ababa/3c-uganda-government-communciation-strategy.pdf> on 20 February 2019.

<sup>12</sup> <https://ugandaradionetwork.com/story/guidelines-on-the-provision-of-free-broadcast-air-time-to-publicize-government-programs> on 8 February 2019.

To solve the above problem, several objectives have to be worked out to curb this injustice which include the following.

- a. To determine what the right to access to information entails.
- b. To determine the different ways, it has been abused or limited.
- c. To determine the different solutions currently available, both efficient and inefficient.
- d. To formulate the most effective solutions that can be considered to satisfy this inherent right.

## **1.4 HYPOTHESIS**

Micromanagement, establishment of strict laws and penalties, and emphasis of integrity within government bodies shall help boost the realisation of the right to access information in Uganda.

## **1.5 RESEARCH QUESTIONS.**

The questions to answer in order to solve the problem are:

- a. What does the right to access to information entail?
- b. What are the different ways it has been abused or limited?
- c. What are the different available solutions that the government has come up with to try and curb the ways it is being abused?
- d. What effective solutions can Uganda adopt and implement in order to stop the abuse of the right to information?

## **1.6 LITERATURE REVIEW**

In his writing, 'Uganda, it's Your Right to Get Information,' Vincent Babalanda states that 'freedom of access to information is a human right and forms one of the defining characteristics of a democratic nation. It is the basis of an open government because it gives practical meaning to the principle of participatory democracy.'<sup>13</sup> The principle is mainly based on an informed citizenry that is capable of rationally choosing its leaders based on the strength of their records and also able to hold the government accountable. This, he says improves and strengthens transparency and accountability of the public sector, hence curbing the abuse of power, violation of human rights and exposing of corrupt officials. He then cited the Uganda

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<sup>13</sup> Babalanda V, 'Uganda, it's Your Right to Get Information' The Monitor, 18 October 2006 [http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/uganda/its\\_ur\\_rt\\_to\\_get\\_info\\_vincent\\_babalanda.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/uganda/its_ur_rt_to_get_info_vincent_babalanda.pdf) on 21<sup>st</sup> February 2019.

Constitutional Commission (the Odoki Commission) to further portray the importance and character of the right to access information. This was a commission established to investigate the disrespect of human rights and lack of democratic values. It pointed out that, ‘the fundamental freedom of expression and the right of every person to information is a very important right, at the core of the struggle for the defence of human rights and democracy.’<sup>14</sup> Further, the Commission recommended that ‘public officials should freely disclose information they come across in the course of their duties, provided it’s not classified’.<sup>15</sup>

However, Collaboration on International ICT Policy in East and Southern Africa (CIPESA), a leading centre for research and analysis of information aimed to enable policy makers in East and Southern Africa understand ICT policy issues and to improve governance and livelihoods, released a report that set out the different ways the right to access to information is being violated by the government.<sup>16</sup> These included:

- a) Noncompliance by Ministers: Every minister is required to hand in an annual report to the legislature for records or for access to information in the public bodies under their ministries indicating all business carried out as provided for in Section 43 of the Access to Information Act.<sup>17</sup> However, no such report has been made from ministers since 2005 when the Law was passed.<sup>18</sup>
- b) Wide exemptions to accessible information created by the Access to Information Act. Under article 41, the Constitution of the Republic of Uganda, 1995 provides for two exceptions: where the release of the information is likely to prejudice the security or sovereignty of the State, or interfere with the right to privacy of any other person.<sup>19</sup> However, the Access to Information ACT 2005 lists exemptions which are too wide in scope and contradict the constitution. For instance, it grants permission to the government to hold back information related to the operation of public bodies,<sup>20</sup> as well as commercial information if release of the information could put the third party “at a disadvantage in contractual or commercial

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<sup>14</sup> <http://constitutionnet.org/vl/item/1995-uganda-constitutional-commission-report> on 21 February 2019.

<sup>15</sup> <http://constitutionnet.org/vl/item/1995-uganda-constitutional-commission-report> on 21 February 2019.

<sup>16</sup> CIPESA, ‘The State of Access to Information in Uganda’ 7 April 2017 [https://cipesa.org/?wpfb\\_dl=241](https://cipesa.org/?wpfb_dl=241) on 21 February 2019.

<sup>17</sup> Section 43, *Access to Information Act*, 2005.

<sup>18</sup> CIPESA, ‘The State of Access to Information in Uganda’ 7 April 2017 [https://cipesa.org/?wpfb\\_dl=241](https://cipesa.org/?wpfb_dl=241) on 21 February 2019.

<sup>19</sup> Article 41, *Constitution of the Republic of Uganda*, 1995.

<sup>20</sup> Section 33 (5), *Access to Information Act*, 2005.

negotiations.”<sup>21</sup> More exemptions exist which include, cabinet minutes and those of its committees, limit the enjoyment of the right to information by restricting access to vital records.<sup>22</sup>

- c) High levels of bureaucracy. CIPESA also cited the Access to Information Act, 2005 section 3(d) which states that, ‘every citizen has a right to access information easily and in a timely manner.’<sup>23</sup> The Act goes on to provide for a time limit of 21 days for the request of information by a citizen to be responded to. However, CIPESA establishes that ‘in Uganda, there is delayed release of information which makes the realisation of the right impracticable in some scenarios for example if the information was needed for an investigation or any other urgent matter.’<sup>24</sup>

Gaia Larsen, Carole Excell and Peter G Vert also unveiled another bump to the realisation of the right to access information which is, the lack of guidance for implementing agencies. These authors go on to cite the Access to Information Act, 2005 which state that ‘the regulations may provide “uniform criteria” for information officers to apply when deciding which records to make available proactively,<sup>25</sup> as well as further directions on how to interpret exceptions in the Act.<sup>26</sup> The regulations may also cover other administrative or procedural matters as “necessary to give effect to the Act.”<sup>27</sup> Moreover, there are several sections in this Act that would benefit from further explanation, including Section 7 which requires every public agency to publish a manual on how to access information held by that agency at least once every two years.<sup>28</sup> ‘However, the fact that the Minister fails to give further instructions on the interpretation of the Act, the information officers are left with the burden of interpreting it, yet some of them aren’t well versed with it and other related regulations, leading to subjective decisions on what is to be released and what to be withheld.’<sup>29</sup>

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<sup>21</sup> Section 27(1) (c) (i), *Access to Information Act*, 2005.

<sup>22</sup> Part III, *Access to Information Act*, 2005.

<sup>23</sup> Section 3(d), *Access to Information Act*, 2005.

<sup>24</sup> CIPESA, ‘The State of Access to Information in Uganda’ 7 April 2017 [https://cipesa.org/?wpfb\\_dl=241](https://cipesa.org/?wpfb_dl=241) on 21 February 2019.

<sup>25</sup> Section 47(1) (e), *Access to Information Act*, 2005.

<sup>26</sup> Section 47(1) (f), *Access to Information Act*, 2005.

<sup>27</sup> Section 47(1) (g), *Access to Information Act*, 2005.

<sup>28</sup> Section 7, *Access to Information Act*, 2005.

<sup>29</sup> Gaia L, Carole E and Peter GV, ‘Uganda’s access to information regulation: Another bump in the road to transparency’ *World Resources Institute*, 2011, 1-3 [https://pdf.wri.org/uganda\\_access\\_to\\_information\\_regulations\\_2011-06-30.pdf](https://pdf.wri.org/uganda_access_to_information_regulations_2011-06-30.pdf) on 21 February 2019.

A number of solutions have been put in place by the government to put a halt to the derogation of this right. The most basic steps taken are the formulation of laws and ratification of treaties that aim at protecting this right. For example, the Constitution of Uganda, 2005, and ratification of international treaties such as the African Charter on Human and People's Rights (ACHPR), the Universal Declaration of Human Rights (UHDR), and the International Covenant on Civil Political Rights (ICCPR).

Other ground measures have been taken. These include:

- a) The Office of the Prime Minister (OPM) through the Ministry of Information and National Guidance launched the Ask Your Government (AYG) online platform ([www.askyourgov.ug](http://www.askyourgov.ug)).<sup>30</sup> This was in partnership with Africa Freedom of Information Centre (AFIC) and the CIPESA. It is aimed at promoting Ugandan citizens' right to information in support of transparency, accountability and good governance. This however has faced a number of challenges for example, continued hesitation to share information and lack of knowledge of the laws.
- b) The government established a national television, Uganda Broadcasting Corporation and Radio Uganda as a platform to ensure accurate, timely and reliable reporting of events and presentation of programmes that contribute to social economic development with emphasis on national unity in cultural diversity.<sup>31</sup> This however is not the most watched television channel in the country therefore posing a hindrance. The most watched television channels in Kampala, the capital city according to a June 2016 survey by Ipos, a research firm, is NTV Uganda, which is a private entity and doesn't air government-based programmes.<sup>32</sup>

## 1.7 THEORETICAL FRAMEWORK

In his theory of structural functionalism, Emile Durkheim posits that a human society is like an organism and is made up of structures called social institutions.<sup>33</sup> All these institutions perform different governance functions for the society. According to this theory, as a result of being interrelated and interdependent, one organ can affect the others and ultimately the

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<sup>30</sup> Africa Freedom for Information Centre, 'Uganda launches portal to support citizen's right to information' <https://africafoicentre.org/uganda-launches-portal-to-support-citizens-right-to-information/> on 20<sup>th</sup> February 2019.

<sup>31</sup> <https://ict.go.ug/about-us/agencies/uganda-broadcasting-corporation/> on 20<sup>th</sup> February 2019.

<sup>32</sup> Wesonga N, 'Uganda; NTV most watched in Kampala' AllAfrica, 26 June 2016 <https://allafrica.com/stories/201606271142.html> on 20<sup>th</sup> February 2019.

<sup>33</sup> <http://faculty.lahoreschool.edu.pk/Academics/Lectures/anis/Functionalism.pdf> on 20<sup>th</sup> February 2019.

whole.<sup>34</sup> This therefore calls for the exercise of the transparency theory that posits that the conduct of official business should be in such a way that substantive and procedural information is available to, and broadly understandable by, people and groups in society, subject to reasonable limits protecting security and privacy.<sup>35</sup> This will help the people notice the discrepancies in the institutions and have a say on it hence boost democracy in that society.

In reference to this research, the different government bodies are institutions that help in running of the republic of Uganda. In order to ensure proper governance and effectiveness, there has to be transparency in all their undertakings so that the public is able to monitor and make an opinion on the different institutions so as to hold them accountable for their actions and also, safe guard their rights. Without this, democracy will be under looked and it shall give room to vices in governance such as corruption and abuse of human rights that will affect the growth of the nation. Therefore, the right to access information should be upheld for its a foundational right of the other rights.

## **1.8 SIGNIFICANCE OF THE STUDY**

There is insufficient research on the best possible solution to the limitation of the right to access information which creates a necessity to do more. The solutions already provided for in Uganda for this problem are not effective and are just on paper but not practical. Further still, others cannot be handled by Uganda's economy. A comparison was done of the current provided solutions with those enforced in the United States of America, and other developed countries and those in Uganda were found wanting. Better measure from other countries were put into consideration. Also, a great number of novel and practical ideas were brainstormed that will make a greater impact in the Republic of Uganda.

## **1.9 ASSUMPTION**

If laws that are greatly stringent to the government officials are formulated and more practical solutions formulated, the abuse of the right to access information will be conquered. This is because the officials shall take more care when carrying out their duties as far as information provision is concerned. Also, practical solutions will yield more results than mere theories that are relied on.

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<sup>34</sup> <http://faculty.lahoreschool.edu.pk/Academics/Lectures/anis/Functionalism.pdf> on 20<sup>th</sup> February 2019.

<sup>35</sup> <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010193.pdf> on 20 February 2019.

## **1.10 RESEARCH METHODOLOGY**

The research will mainly rely on secondary research methods. The researcher shall mainly examine and interpret existent academic articles about the topic as well as valid reports from credible bodies. Secondly, the researcher shall also carry out brainstorming in order to come up with novel solutions to the phenomenon.

## **1.11 CHAPTER BREAKDOWN**

The dissertation shall consist of five chapters.

The first chapter shall give an introduction of the right to access information in Uganda. In this chapter still, the problem question, objectives, hypothesis and research questions shall be discussed. In addition, a literature review, a summary of the theoretical framework, significance of the study, assumptions and research methodology shall be discussed.

The second chapter shall be discussing the theoretical framework. This shall be done by giving a brief history of the theory, showing how it works, its limitations and how it merges with the topic of discussion.

The third chapter shall be stipulating the different ways the right to access to information is being abused in Uganda. To discuss this, online journal articles by credible authors and organisations and case law will be relied on.

This chapter shall be stipulating the different solutions that the government of the Republic of Uganda has put into practice. With reliance on online government records and online reports by credible bodies, the dissertation shall present the methods that have been effective and those that have failed up to date, give reasons of why and how.

The fourth chapter shall be presenting the suggested novel and efficient methods that the government can take up to curb this vice to the right to access information. Brainstorming as well as analysis of efficient methods exercised in other states shall be the main means used to formulate this chapter. The suggestions intended shall be more efficient and more stringent on the government officers.

Lastly, a conclusion based on the analysis of all the chapters above shall be given to sum up the entire dissertation. All this shall be to chronologically show the need and purpose of putting into place more stringent measures to ensure the enjoyment of the right to access to information in Uganda.

## **1.12 DURATION**

The research shall take one year and a half.

## CHAPTER TWO

### 2.1 THEORETICAL FRAMEWORK AND METHODOLOGY

This chapter provides a breakdown of theories that apply to the topic that is, Structural Functionalism theory and Social Conflict theory. It is these theories that will be relied on to show the need of tackling the topic of the abuse of the right to information, and why it must be solved.

The discussion under this chapter will entail a brief introduction as well as the history of the Structural Functionalism theory. This then will be followed by its limitations that will introduce the Social Conflict theory and in conclusion, a demonstration of how Structural Functionalism theory merges with the topic of the paper. Lastly, the research methodology shall be described.

### 2.2 STRUCTURAL FUNCTIONALISM THEORY

Structural functionalism or otherwise known as functionalism is a sociological and anthropological perspective which sets out to interpret society as a structure with interrelated parts.<sup>36</sup> It is a theoretical approach that sees society as a complex and interconnected system, whose individual parts work in unity to promote stability and harmony in the system as a whole. As popularised by Herbert Spenser, social functionalism understands society to be made up of different “organs” that work together towards the effective functioning of the “body” as a whole.<sup>37</sup>

### 2.3 HISTORY OF STRUCTURAL FUNCTIONALISM

This theory is not a work of a single man or of single and unified exposition. Different theorists write about it, using different terminologies and include different phenomena under a variety of similar terms. Structural Functionalism theory was first tackled by Henri de Saint-Simon, who proposed one of the first documented attempts to the study of society. However, it was August Comte who came up with a model on which the theory developed. Other functionalism theorists include; Radcliffe-Brown, Talcott Parsons, Robert K. Merton, Max Weber, Gabriel Almond and Bingham Powell.<sup>38</sup> All the theorists argue that the way an organism relates to its

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<sup>36</sup> Donald WH, ‘Structural-Functionalism; Grand Theory or Methodology?’ *School of Management, University of Leister*, 2011, 1-14 <https://vdocuments.site/structural-functionalism-harper.html> on 25 October 2019.

<sup>37</sup> Donald WH, ‘Structural-Functionalism; Grand Theory or Methodology?’ *School of Management, University of Leister*, 2011, 1-14 <https://vdocuments.site/structural-functionalism-harper.html> on 25 October 2019.

<sup>38</sup> <<https://pdfs.semanticscholar.org/e18e/bb90f04789a82025424551263f85cee366a1.pdf>> on 25 October 2019.

environment, the interrelatedness of parts within its overall system, as well as how it goes about maintaining its overall system when balanced, could serve as a model for the study of society.<sup>39</sup> The aim of this theory is to show how interrelated the different sub-systems of a society need to communicate and work together to ensure development and stability of the main system (state), failure to which, the system will collapse. This paper will concentrate mainly of the works of Talcott Parsons and Emile Durkheim.

## 2.4 HOW STRUCTURAL FUNCTIONALISM FUNCTIONS

Durkheim was concerned with the question of how certain societies maintain internal stability and survive over time. He proposed that such societies tend to be segmented, with equivalent parts held together by shared values, common symbols or, as his nephew Marcel Mauss held, systems of exchanges. In modern complicated societies, members perform very different tasks, resulting in a strong interdependence. Based on the metaphor above of an organism in which many parts function together to sustain the whole, Durkheim argued that complicated societies are held together by organic solidarity (social integration that arises out of the need of individuals for one another's services).<sup>40</sup>

As a strong believer in Durkheim's work, Talcott Parsons came up with the Grand theory of Structural Functionalism that was greatly based on his work (Durkheim).<sup>41</sup>

It should be noted that Structural Functionalism has a central concept of "function" which is broken down into two concepts known as "eufunction" and "dysfunction" referring to system maintaining and system disrupting activities respectively.<sup>42</sup>

Talcott Parsons put emphasis on the concept of the "functional prerequisites" of the system. These refer to the essential functional problems which every social system must solve in order to continue existing as independent and distinctive hence making the system eufunctional. They are basically four functional prerequisites which include:

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<sup>39</sup> Donald WH, 'Structural-Functionalism; Grand Theory or Methodology?' *School of Management, University of Leister*, 2011, 1-14 <https://vdocuments.site/structural-functionalism-harper.html> on 25 October 2019.

<sup>40</sup> <https://pdfs.semanticscholar.org/e18e/bb90f04789a82025424551263f85cee366a1.pdf> on 25 October 2019.

<sup>41</sup> Donald WH, 'Structural-Functionalism; Grand Theory or Methodology?' *School of Management, University of Leister*, 2011, 1-14 <https://vdocuments.site/structural-functionalism-harper.html> on 25 October 2019.

<sup>42</sup> Hudson J, 'Structural Functional Theory, Social Work Practice and Education' *The Journal of Sociology & Social Welfare*: Vol. 5: Iss. 4, Article 4, 1978, 481-495, <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1296&context=jssw> on 25 October 2019.

- ✓ Goal attainment: This refers to the coordination of activities in such a way that a system moves toward whatever goals it has set for itself.
- ✓ Adaptation to the external situation of the system. Included in these are not only the problems of coming to terms with the environment but also the active manipulation of either the environment or the system itself.
- ✓ Integration. This is an internal problem that refers to the relations of individual social actors in the system to one another and the problem of establishing and maintaining a level of solidarity or cohesion among them.
- ✓ Pattern maintenance and tension management. These are both concerned with conditions internal to the system itself which have consequences for system functioning. The problem of pattern maintenance and tension management is essentially that faced by the social actor in reconciling the various norms and demands imposed by his participation in any particular subsystem with those of other sub-systems in which he also participates.

These functional prerequisites are handled by different actors or sub-systems in a society. Parsons argues that the economy is the adaptive sub-system of the society; that is, economic institutions are primarily developed to deal with adaptive problems faced by the social system.<sup>43</sup> With respect to problems of pattern maintenance and tension management, the family is regarded as the primary sub-system to handle it because the family is the major socializing agency of society; and as a result of the extent to which it plays a part in the day to day management of tension, Parsons sees the family as having primacy in dealing with the pattern maintenance and tension management system needs while educational institutions, religious groupings, and hospitals are secondarily included.<sup>44</sup> Goal attainment problems fall within the primacy of the state, more specifically, the government.<sup>45</sup> In short, the task of defining system goals and moving toward them is primarily the delegated responsibility of government. The

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<sup>43</sup> Hudson J, 'Structural Functional Theory, Social Work Practice and Education' *The Journal of Sociology & Social Welfare*: Vol. 5: Iss. 4, Article 4, 1978, 481-495 <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1296&context=jssw> on 25 October 2019.

<sup>44</sup> Hudson J, 'Structural Functional Theory, Social Work Practice and Education' *The Journal of Sociology & Social Welfare*: Vol. 5: Iss. 4, Article 4, 1978, 481-495 <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1296&context=jssw> on 25 October 2019.

<sup>45</sup> Hudson J, 'Structural Functional Theory, Social Work Practice and Education' *The Journal of Sociology & Social Welfare*: Vol. 5: Iss. 4, Article 4, 1978, 481-495 <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1296&context=jssw> on 25 October 2019.

integrative sub-system is the most diffuse of all and is divided among the state, the church, and many other structures about which important cultural values are focused.<sup>46</sup>

A day to day example of structural functionalism would be, a family taking children to school to educate them, schools to rely on the government to fund them, provide equipment and ensure political stability to ensure a favourable environment, and government to rely on the schools to produce educated and disciplined law abiding citizens who will pay taxes, vote and also get involved in other developmental works. This is similar to the functions of the body, for example: the body is made up of very many organs and in order for an individual to keep healthy, the organs have to carry their different functions harmoniously. For example, the heart pumps blood all over the body to ensure that all organs are oxidised, the liver helps break down toxins in the consumed food in the digestive system, and the kidneys help in the excretion of excess water and toxins in the body in form of urine. The brain, by the help of the nervous system sends messages to these different organs to ensure that they function how they ought to and in the right time, failure of this, the body malfunctions.

The purpose of fulfilling these structural problems is to ensure that the structural/dynamic equilibrium is balanced that is, a balance within the interdependent sub-systems.<sup>47</sup>

## 2.5 LIMITATIONS OF THE THEORY

While functionalism assumes a unified and stable relationship between the different subsystems of society; with each subsystem working towards the organic unity and development of the society, it is constantly under scrutiny.

An outstanding sociological theory that often challenges structural functionalism is known as the Conflict theory, a prominent work of Karl Marx. The Conflict theory argues that society is not best understood as a complex system striving for equilibrium but rather as a competition.

It claims that society is in a state of perpetual conflict due to a high competition for limited resources<sup>48</sup> which include money, sexual partners, leisure, power and property. The competition is usually among broader social structures and organizations such as governments,

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<sup>46</sup> Hudson J, 'Structural Functional Theory, Social Work Practice and Education' *The Journal of Sociology & Social Welfare*: Vol. 5: Iss. 4, Article 4, 1978, 481-495 <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1296&context=jssw> on 25 October 2019.

<sup>47</sup> <https://pdfs.semanticscholar.org/e18e/bb90f04789a82025424551263f85cee366a1.pdf> on 25<sup>th</sup> October, 2019.

<sup>48</sup> <http://www.sociology.org.uk/notes/pctmmarx.pdf> on 27 October 2019.

religions, and organizations for resources in their inherent inequalities. This is due to the fact that some people and organizations have more resources that is, power and influence and use those resources to maintain their positions of power in society.

The Conflict theory thus holds that social order is sustained by superiority and power of the upper class over the lower class, rather than harmony.<sup>49</sup> According to the Conflict theory, those with wealth and power try to hold on to it by any means possible, chiefly by suppressing the powerless. A basic assumption of the Conflict theory is that individuals and groups within society will work to maximize their own benefits.

The Conflict theory focuses on the competition between groups within society over limited resources, and views social and economic institutions as tools of the struggle between groups or classes, used to maintain inequality and the dominance of the ruling class.<sup>50</sup> This directly questions the idea that the different subsystems of society work collectively toward the development of the societal system.

One of the primary contributions the conflict theory presents over the structural-functional approach is that it is ideally suited for explaining social change, a significant problem in the structural-functional approach.<sup>51</sup> Such social change includes wars and revolutions, wealth and poverty, and discrimination and it ascribes most of the fundamental developments in human history, such as democracy and civil rights. On the other hand, functionalism fails to even account for these instances of social change.

In a nutshell, the following are three primary assumptions of modern Conflict theory:

- All social relationships are characterised with competition for scarce resources.
- All social structures are characterised with inequalities in power and benefit sharing. The people that benefit more from a given structure always ensure that it survives.
- Change in society is a result of conflict between rival interests rather than through adaptation. Change is usually sudden and revolutionary rather than progressive.

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<sup>49</sup> Guclu I, *Karl Marx and Ralf Dahrendorf: A Comparative Perspective on Class Formation and Conflict*. ESKİŞEHİR OSMANGAZİ ÜNİVERSİTESİ İİBF DERGİSİ 2014, 151-167.

<sup>50</sup> Anthony Oberschall, *Theories of Social Conflict*, Annual Reviews 1978, 291.

<sup>51</sup> Lewis AC, *Social Conflict and the Theory of Social Change*, Vol. 8, No. 3, Wiley on behalf of The London School of Economics and Political Science, 1957, 197-207.

## **2.6 MERGE OF THE THEORY WITH THE TOPIC**

According to the Structural Functionalism theory, the society is meant to work together in its different subsystems to ensure harmony and development. However, when we apply this theory to the situation in Uganda characterised with poor governance and abuse of human rights such as the right to access information by government officials, we immediately and clearly see that its limitations are evident. These limitations are further connected to the main underlying idea of the Conflict theory; that is, competition and change.

The differentiated subsystems in Uganda do not work together in harmony. We constantly see the repeated struggle and competition for the limited resources which create selfishness within the individuals in the different subsystems who choose to exploit the resources, and because they cannot account for their use of the resources, they fail to produce reports hence the violation of the right to access of information. All this is supported by the porous laws legislated by the government that have loopholes which protect the selfish.

The loopholes are corruption and the many limitations to the right to information. For purposes of safeguarding selfish interests, the powerful toy with the different body organs to satisfy their desires by corrupting the system in all ways possible. When it comes to the numerous limitations, these are posited in the Access to Information Act 2005<sup>52</sup> of Uganda they are used by the government officials to cover up their devious activities in the political, economic and social settings in the name of the right to privacy and national security. Sometimes, many leaders rely on these provisions out of ignorance, thinking that they are not accountable to the public when it comes to certain activities and at the end of the day, no accountability is made. With the above shortcomings, the illegal and selfish works of individuals in different subsystems continue to thrive in the shadows since the public knows nothing of them, leading to dysfunction of the whole system. This is no wonder because when the rotting starts with the controlling and overseeing subsystem of the society that is, the government, the same effects might be seen in the lower subsystems like the hospitals, schools and the families.

Under ideal circumstances, one would expect the Structural Functionalism theory to function just fine, but in reality, it is otherwise and this needs to be ratified.

## **2.7 RESEARCH METHODOLOGY**

With the aim of analysing how the right to information has been abused by the government of Uganda and to determine better ways of curbing this concern, the researcher carried out online

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<sup>52</sup> Part III, *Access to Information Act, 2005*.

research. The researcher analysed a variety of books, journals, articles and other resources that were available online to assess the data on the research questions. All sources relied on are evidenced in the bibliography. A comparison of the data acquired from the above sources was made to the laws touching the right to access information to determine the effort of the government of Uganda in relation to the specified examples that were expounded on. The researcher also carried out a caselaw comparison between Uganda and exemplary countries when it comes to upholding the right to access information.

In addition to that, the researcher brainstormed some of the novel solutions that could be employed and backed them up with credible data.

The above methodology was suitable because the online data relied on was acquired from credible websites.

## CHAPTER THREE

### AN EXPLANATION OF THE RIGHT TO ACCESS INFORMATION AND CASE STUDY ANALYSIS OF ITS VIOLATION IN UGANDA

#### 3.1 INTRODUCTION

This chapter seeks to answer how the right to access information has been abused in Uganda. First, it aims at defining what the right to information is and where it is provided for in the legal framework of Uganda. Next, a case study on violence against journalists and the concerns of the 2016 Presidential Elections shall be analysed to illustrate how the government of Uganda has abused the right to access information. Various sources will be used to support the authenticity of the information. For each of the two case studies, the different solutions that the government has come up with will be presented and thoroughly analysed to determine the scope of their impact.

#### 3.2 WHAT IS THE RIGHT TO INFORMATION

The Access to Information Act 2005 defines information to include “written, oral, electronic and visual information”.<sup>53</sup> The right of citizens to access information is provided for in the UDHR under Article 19. This posits that ‘individuals have the right to receive as well as impart information’.<sup>54</sup> The UDHR provisions are to be upheld by individuals, private entities, and governments and all their entities as well. For the purpose of this dissertation, the discussion is centred on the responsibilities placed on the government. It should be noted that all governments that are party to the UDHR are to incorporate the different rights into their statutes; Uganda is a party.<sup>55</sup> It is from those provisions that the rights can be upheld. In Uganda, the right to access information is provided for in the Constitution under the Bill of Rights, Article 41<sup>56</sup>, the Access to Information Act<sup>57</sup> and Access to Information Regulations<sup>58</sup> legislation.

According to the United Nations Development Programme (UNDP), the purpose of this right is to ensure transparency, accountability and public participation, for the purposes of

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<sup>53</sup> Part II, *Access to Information Act*, 2005.

<sup>54</sup> Article 19, *Universal Declaration of Human Rights*.

<sup>55</sup> Uganda became party to it on 21 January 1987.

<sup>56</sup> Article 41 (1), *Constitution of the Republic of Uganda*, 1995.

<sup>57</sup> *Access to Information Act*, 2005.

<sup>58</sup> *Access to Information Regulations*, 2011.

development and democracy that is, to create a government of the people by the people for the people. It would be extremely hard to get effective ideas of people in the decision-making process of the country if all they know is partial, false or nothing.

However, the right does have limitations to it because some information held by the government is to be held as classified and is protected from the public. This can be in situations under the general limitations of human rights provided for in the Bill of Rights under Article 43 of the Constitution.<sup>59</sup> Limitations can also extend to scenarios where the information relates to the records of the Cabinet, any information that tramples on an individual's right to privacy and commercial information provided by a third party to the government.<sup>60</sup>

### **3.3 WAYS THE RIGHT TO ACCESS INFORMATION HAS BEEN ABUSED BY GOVERNMENT IN UGANDA (2016 TO DATE)**

This section will concentrate on two major occurrences in Uganda: first, the continuous violence against journalists and second, the disastrous presidential election of 2016 that was characterised by injustices towards opposition presidential candidates, unaccounted for ballots and police violence towards voters as expounded on below.

#### **3.3.1 CONTINUOUS VIOLENCE AGAINST JOURNALISTS BY LAW ENFORCING BODIES**

A journalist is defined as 'a person whose job is to collect and write news stories for magazines, television, radio or newspapers.'<sup>61</sup> Journalists and the media play a huge role in informing the populace and calling for accountability from people in advantaged positions like in the government. They tend to cover different occurrences around a nation and air them to the public in order to keep them alert and informed. Of late, the work of journalists has been greatly hampered by the violence towards them by the police, army and other peacekeeping groups like the Local Defence Units that were recently established. According to the statistics drawn by the Committee to Protect Journalists, violence against journalists was not that much of a national issue until 2017.<sup>62</sup> It has been documented that there were over 117 cases registered, and the main culprits were the police, but also the army, local government and the

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<sup>59</sup> Article 43, *Constitution of the Republic of Uganda*, 1995.

<sup>60</sup> <https://barefootlaw.org/access-to-government-information-in-uganda/> on 17<sup>th</sup> November, 2019.

<sup>61</sup> Oxford Learner's Dictionary, 7 ed.

<sup>62</sup> <https://cpj.org/africa/uganda/> on 27<sup>th</sup> November 2019.

Uganda Communications Commission (UCC) were reported to take part in this.<sup>63</sup> It is also on record that these cases of violence escalated to 163 in 2018.<sup>64</sup>

Journalists and media houses have been violated in various ways. For example, while on duty, they are beaten and arrested arbitrarily incommunicado, their equipment broken or taken and also deprived of their freedom of expression through demonstrations. The president H.E Yoweri Kaguta Museveni once degraded their work by referring to them as mere parasites.<sup>65</sup> There was also a case where the UCC directed seven radio stations and six television stations to suspend their staff which included producers for allegedly breaching the media standards by airing content that was deemed extremist (for the purpose of inciting and misleading the public.)<sup>66</sup> This arbitrary act by the UCC was traced back to the content that was aired on 29 April 2018. Live footage of the arrest of prominent opposition leader, Hon. Robert Kyagulanyi Ssentamu, commonly known as 'Bobi Wine'.<sup>67</sup> These stations included: Akaboozi FM, BBS TV, Beat FM, Bukedde TV, Capital FM, CBS FM, Kingdom TV, NBS TV, NTV, Pearl FM, Salt TV, Sapientia FM and Simba FM.<sup>68</sup>

Violence towards journalists and media houses never crops up if the occasion covered is to portray the propaganda of the National Resistance Movement (NRM). However, the opposite is true. Evidence of this would be the scenario stated above where media houses were called to suspend their staff.

### **3.3.2 THE DISCREPANCIES IN THE 2016 PRESIDENTIAL ELECTIONS**

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<sup>63</sup> Anena H, 'Report shows rise in violence against Ugandan media' African Centre for Media Excellence, 29 May 2019 <https://acme-ug.org/2019/05/29/report-shows-rise-in-violations-against-ugandan-media/> on 27 November 2019.

<sup>64</sup> Anena H, 'Report shows rise in violence against Ugandan media' African Centre for Media Excellence, 29 May 2019 <https://acme-ug.org/2019/05/29/report-shows-rise-in-violations-against-ugandan-media/> on 27 November 2019.

<sup>65</sup> <https://rsf.org/en/uganda> on 27 November 2019.

<sup>66</sup> Kabuubi R, 'Ugandan regulator suspends staff from 13 outlets that covered Bobi Wine' Committee to Protect Journalists, 2 May 2019 <https://cpj.org/2019/05/ugandan-regulator-suspends-staff-from-13-outlets-t.php> on 27 November 2019.

<sup>67</sup> Bobi Wine is his stage name as a musician, his initial profession before he joined politics.

<sup>68</sup> McCrocklin S, 'Uganda television and radio ratings report: Q4 2019' Media Audience Measurement, 25 March 2020, <https://www.geopoll.com/blog/uganda-audience-measurement-q4-2019/> on 23 April 2020.

On 18 February 2016, Uganda held its general elections to put in power the current president and parliament. Many concerns arose before, during and after these elections.<sup>69</sup> Those that touched on the matter of right to access information are expounded on below.

There was a total shutdown of social media country wide on the D-day. People were not able to access any social media platform where news stations were airing live.<sup>70</sup>

Blocking of opposition leaders, Kiiza Besigye and Amama Mbabazi from talking to their supporters. Besigye was put under house arrest. The arrest commenced on 19 February 2016. During this time, Besigye was not allowed to move outside his home and visitors were also highly restricted from accessing it. According to Fred Enanga, the Uganda Police spokesperson, Besigye was held under Section 24 of the Police Act which gave them the authority to carry out a preventive arrest and detention because they deemed his movement in the public a threat.<sup>71</sup> This arrest went on for a prolonged period of time that it even denied him a chance to challenge the results of the elections.

National media and information stations did not even offer coverage and access to all the presidential candidates during campaigns which was in contravention of Article 67(2) of the Constitution which posits that ‘no candidate shall be denied access and use of state owned communication media’.<sup>72</sup> This was also in contravention of Article 67(3) which states that ‘presidential candidates must be given equal time and space on state owned media to present their program to the people.’<sup>73</sup>

As a result, a presidential election petition was filed on 1<sup>st</sup> March 2016 to challenge the declaration on H.E Museveni as the legitimate ruler inter alia the above concerns during the

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<sup>69</sup> Kaka J, ‘Uganda’s 2016 Elections: Another Setback for Democracy in Africa’ The Global Servatory, 24 February 2016 <https://theglobalobservatory.org/2016/02/ugandas-2016-elections-another-setback-for-democracy-in-africa/> on 27 November 2019.

<sup>70</sup> Olukotun D, Kenyanito E, ‘Uganda Blocks Twitter and Facebook on Election Day in Latest Internet Shutdown’ Access Now, 18<sup>th</sup> February 2016 <https://www.accessnow.org/uganda-twitter-facebook-mtn-block/> on 27 November 2019.

<sup>71</sup> Butty J, ‘Uganda’s Besigye house arrest reaches 40<sup>th</sup> day’ Voice of Africa News, 29 March 2016 <https://www.voanews.com/africa/ugandas-besigye-house-arrest-reaches-40th-day> on 10 June 2020.

<sup>72</sup> Article 67 (2), *Constitution of the Republic of Uganda*, 1995.

<sup>73</sup> Article 67 (3), *Constitution of the Republic of Uganda*, 1995.

election period. In the detailed judgment of *Amama Mbabazi v Museveni and Others* (2016),<sup>74</sup> the first two issues were:

1. ‘Whether there was noncompliance with the provisions of the Presidential Elections Act and Electoral Commission Act, in the conduct of the 2016 presidential election.
2. Whether the said election was not conducted in accordance with the principles laid down in the Constitution, Presidential Elections Act, and the Electoral Commission Act.’

The following were the court findings:

- a) On the issue of denying Amama Mbabazi’s agents information, the court found that in certain cases, the petitioner’s polling agents were surely denied information, which they had the right to view.<sup>75</sup>
- b) On the issue of alleged non-compliance by the Electoral Commission during the process of counting, tallying, transmission and declaration of results, the court found that cases of such existed on a few polling stations.<sup>76</sup>

Even with such findings, the court passed judgment in favour of Yoweri Kaguta Museveni, the Electoral Commission and Attorney General stating that there was no substantive damage done. The above demonstrates the abuse of the right to information because even up to now, the people of Uganda do not know where some of the votes that were declared by the Electoral Commission (EC) came from. Questions still exist on the information that was presented to them without first being viewed by the poll agents of opposition parties. The above acts questioned the accountability and transparency of the judiciary and the EC in their dealings.

In addition, the government also introduced a new tax through parliament on 1 July 2018, requiring an excise duty on “over-the-top” (OTT) services over social media.<sup>77</sup> This followed a brief tweet by the president stating that “social media encourages gossip”,<sup>78</sup> something that

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<sup>74</sup> *Amama Mbabazi v Museveni and Others* (2016) Supreme Court of Uganda, 4.

<sup>75</sup> *Amama Mbabazi v Museveni and Others* (2016) Supreme Court of Uganda, 23.

<sup>76</sup> *Amama Mbabazi v Museveni and Others*, (2016) Supreme Court of Uganda, 24.

<sup>77</sup> Section 6 (g), *Excise Duty (Amendment) Act, 2018*.

<sup>78</sup> Pollicy, ‘Offline and out of pocket: The impact of the social media tax in Uganda on access, usage, income and productivity’ Genderit.org, 28 January 2019 <https://www.genderit.org/resources/offline-and-out-pocket-impact-social-media-tax-uganda> on 28 November 2019.

insinuates that the law was mainly to satisfy the opinions of the president. In a letter to Ugandan citizens, the president justified this tax by expressing that the tax is intended to reduce borrowing from other countries and to improve the ratio between GDP and tax. In the national budget speech for 2018/19, it was projected that OTT tax would generate a projected revenue of up to Uganda shillings 486 billion, an equivalent of US dollars 129 million per year by 2022-2023.<sup>79</sup>

Due to the introduction of the above tax, internet use dropped from 47 percent to 35 percent.<sup>80</sup> Given the fact that a significant number of media institutions circulate news via social media and other online apps, there was bound to be a negative impact by the introduction of the OTT tax.

There was a drop in the level of engagement that viewers had with social media posts.<sup>81</sup> A significant drop in accessing social media was reported. While 33% of respondents would access social media platforms more than ten times a day prior to the tax, this number dropped down to just 6.6% after the taxation.<sup>82</sup> This tax to some extent jeopardised the free movement of information in a democracy because it reduced the number of people who can access the internet for information in the country.

### **3.4 WHAT THE GOVERNMENT HAS DONE TO UPHOLD THE RIGHT TO ACCESS INFORMATION**

To say that the government is trying to put right this discrepancy would be a lie. Yes, it has statutes that stipulate the right, come up with different platforms for people to express their concerns such as the Ask Your Government (AYG) online platform as outlined in Chapter 1,<sup>83</sup> but when it comes to acting towards evidently achieving this right, nothing has been done. The struggle has been left in the hands of Non-Government Organisations (NGOs) and international

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<sup>79</sup> Pollicy, 'Offline and out of pocket: The impact of the social media tax in Uganda on access, usage, income and productivity' Genderit.org, 28 January 2019 <https://www.genderit.org/resources/offline-and-out-pocket-impact-social-media-tax-uganda> on 28 November 2019.

<sup>80</sup> Nanfuka J, 'How social media taxes can burden news outlets: The case of Uganda' CIMA Digital Report, 14 May 2019 <https://www.cima.ned.org/publication/how-social-media-taxes-can-burden-news-outlets-the-case-of-uganda/> on 28<sup>th</sup> November 2019.

<sup>81</sup> Nanfuka J, 'How social media taxes can burden news outlets: The case of Uganda' CIMA Digital Report, 14 May 2019 <https://www.cima.ned.org/publication/how-social-media-taxes-can-burden-news-outlets-the-case-of-uganda/> on 28 November 2019.

<sup>82</sup> Pollicy, 'Offline and out of pocket: The impact of the social media tax in Uganda on access, usage, income and productivity' Genderit.org, 28 January 2019 <https://www.genderit.org/resources/offline-and-out-pocket-impact-social-media-tax-uganda> on 28 November 2019.

<sup>83</sup> Chapter 1, para 3.

human rights bodies such as the Human Rights Committee to fight for the fulfilment and protection of the right to information.

### **3.5 CONCLUSION**

Therefore, something new and practical has to be put in place to ensure that the right to information and other corresponding rights are provided, protected and preserved by the government of Uganda. These can be novel or borrowed, as is the African political and legislative culture.

## CHAPTER FOUR

### EFFECTIVE SOLUTIONS TO THE ABUSE OF THE RIGHT TO ACCESS INFORMATION IN UGANDA

#### 4.1 INTRODUCTION

This chapter seeks to present the different novel and alternative systems and methods that the government of Uganda can employ to ensure that the right to access information is realised. However, the Ugandan problem is quite complicated. As demonstrated in Chapter One, all the basics have been put in place by the government, namely, legislation<sup>84</sup>, being party to related treaties and conventions,<sup>85</sup> creation of national television,<sup>86</sup> and an online portal for people to seek information and inquire directly about different national information.<sup>87</sup> However this has not been enough.

#### 4.2 SOLUTIONS TO CURB THE CONTINUOUS ABUSE OF THE RIGHT TO ACCESS INFORMATION BY THE GOVERNMENT

##### 4.2.1 Ensuring the Uganda Police is non-partisan.

The Uganda Police is suspected to be partisan, in favour of government interests over those of the people, in this case, opposition leaders. As laid out in chapter 3,<sup>88</sup> numerous reports exist to show that the Uganda Police, when carrying out its law enforcement duties during political rallies, has little or no respect for the people in opposition. This therefore raises the concern that it acts in favour of the interests of the party in power, NRM. Any activity carried out by opposition is considered an incitement of violence and hate speech, even when the people sought permission from the right organisations and have a positive aim for the public. Therefore, actions must be carried out to ensure that the police are non-partisan, pro-people, and are a professional force so that they are able to give way for the free flow of any news, so long as it doesn't contravene the law. Without this, journalists shall continue to be abused,

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<sup>84</sup> Access to Information Act, 2005.

<sup>85</sup> *Universal Declaration of Human Rights*.

<sup>86</sup> <https://ict.go.ug/about-us/agencies/uganda-broadcasting-corporation/> on 20 February 2019.

<sup>87</sup> <https://africafoicentre.org/uganda-launches-portal-to-support-citizens-right-to-information/> on 20 February 2019.

which shall jeopardise airing of information to the public, hence violating the right to access to information.

One of the ways this can be done is through ensuring that the philosophy of service is revised, more so from the time of recruitment where the police-training course strongly introduces the concept of selflessness, honesty and most especially integrity to national service.

“Integrity is being the person in private that your pastor thinks you are on Sunday morning,” said Dr. Patrick Calhoun who has 24 years’ experience with the Tulsa Police Department in the United States of America.<sup>89</sup>

Law enforcement is centered around rendering the service to others. However, this service is highly without a great level of integrity. When the public is guaranteed of quality service and protection, trust is earned. This idea needs to be reinforced in the minds of those who are signing up for service as it is necessary in maintaining great national service. It also helps to reduce corruption and bribery as societal values of good come first in service.

According to Calhoun, “Integrity is also the essential ingredient in leading others. As people in the criminal justice system, integrity is the difference between a just system and a corrupt one. Without integrity, you don’t have leadership, you have intimidation.”<sup>90</sup>

#### **4.2.2 Checking the judiciary**

The lack of effective response by the judiciary to outstanding cases of abuse of the right to access information needs to be checked. Given the analysis of the Presidential Election Petition 2016 and how lightly the Supreme Court took the matter by rendering cases of abuse of the right to information insignificant, change needs to be done in that sector of the government.

As provided for in the Constitution of Uganda, 1995, the only provisions provided that can lead to the limitation of the right to access information are, ‘if the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person’.<sup>91</sup> This was not the case during the 2016 presidential election petition. The Electoral Commission (EC), the body in charge of ensuring free and fair elections decided to carry out its work in an incompetent manner, yet the judiciary took it as a slight matter to the extent that the findings did not affect their decision. This is in reference to the *Amama Mbabazi v Museveni and others* case<sup>92</sup> as presented in chapter 3.

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<sup>89</sup> <https://degrees.snu.edu/blog/what-makes-a-good-police-officer> on 10 June 2020.

<sup>90</sup> <https://degrees.snu.edu/blog/what-makes-a-good-police-officer> on 10 June 2020.

<sup>91</sup> Article 41, *Constitution of the Republic of Uganda*, 1995.

<sup>92</sup> *Amama Mbabazi v Museveni and Others* (2016) Supreme Court of Uganda.

Therefore, the judiciary needs to be checked. There is need for it to take a leaf from the strong judicial systems in other countries that uphold justice and integrity. The best example is the Kenya Supreme Court, and how it handled the 2017 Election Petition.<sup>93</sup> The court found that the Independent Electoral and Boundaries Commission failed to conduct the presidential election in a manner consistent with the dictates of the Constitution of Kenya 2010 and *inter alia* the Elections Act, Chapter 7 of the Laws of Kenya. In addition, the court found that the Independent Electoral and Boundaries Commission committed irregularities in the transfer of results and particulars regarding the matter. The court was satisfied that the above impugned the integrity of the entire presidential election and therefore it held that:

*“i. A declaration is hereby issued that the Presidential Election held on 8th August 2017 was not conducted in accordance with the Constitution and the applicable law rendering the declared result invalid, null and void.*

*ii. A declaration is hereby issued that the 3rd Respondent was not validly declared as the President elect and that the declaration is invalid, null and void;*

*iii. An order is hereby issued directing the 1st Respondent to organize and conduct a fresh Presidential Election in strict conformity with the Constitution and the applicable election laws within 60 days of this determination under Article 140(3) of the Constitution.”*

During its annual general meetings, the Uganda Judicial Officers’ Association (UJOA) should endeavour to organise talks with judicial officers from other states that have done a great job of justice and going beyond the norm. For example, it will be very significant if the President of the Supreme Court of Kenya, Chief Justice David Kenani Maraga is invited to speak at the meeting. Such speeches will open the mind of many judges and magistrates and push them to break bondages and set precedent for the legal sphere.

The East African Magistrates and Judges Association (EAMJA) is one of the existing platforms in the region that can be used to exercise these meetings. The EAMJA is used as a platform by East African judges to hold dialogues on pressing matters in the region. For example, on the 21<sup>st</sup> to 27<sup>th</sup> October 2018, East African judges utilised this association to hold a conference to

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<sup>93</sup> Raila Amolo Odinga and another v Independent Electoral and Boundaries Commission and 2 others [2017] eKLR.

discuss the judicial role in deepening regional integration and the Post-2015 Development Agenda.<sup>94</sup> The EAMJA was also granted an observer status by the East African Community (EAC).<sup>95</sup> With such powers, the EAMJA can monitor the implementation of measures discussed in such conferences, give reports which can be used to ensure adherence to the regulations generated touching the matter. An alternative to the above association is the Commonwealth Magistrates and Judges Association (CMJA).

Secondly, a mechanism of questioning judicial officers over outstandingly questionable judgments should be created. UJOA should create a body run by fellow judicial officers to table various judicial issues among which should be the issue of judicial officers making unjustifiable and questionable decisions in legal suits. Even if such meetings will be held after the fact, it will help check the officers in their future cases. In situations where a judgment is deemed to have been made on corrupt grounds, stricter measures should be taken like striking out one's practicing license. Just like any other authority, this body will have to be backed up by a set of regulations and guidelines to ensure efficiency and effectiveness. Amendments in the Judicature Act Chapter 13 of the Laws of Uganda shall be necessary as well to make provisions that establish this body. Section 40<sup>96</sup> of the Judicature Act establishes the Rules Committee. As stipulated in Section 41<sup>97</sup>, there is a body that has vast functions relating to the formulating of rules to regulate the practice and procedure of the Supreme Court, the Court of Appeal, the High Court and all other courts subordinate to the High Court in Uganda. However, this body has no function in relation to questioning the credibility of decisions made by judges and magistrates.

Yes, an appeal system does exist as to enable parties to appeal decisions made by courts subordinate to the Court of Appeal. However, creation of an overseeing body with power to summon judges and magistrates on matters touching unjustified, unlawful and vague decisions will efficiently help check judicial officers. This body shall be greatly effective if it is mainly composed of legal scholars and experts. A composition such as that of the Rules Committee as stipulated in Section 40 will be problematic in situations where the judge in question also sits on that committee.

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<sup>94</sup> International Commission of Jurists, Kenyan Section, *2018 East African Magistrates and Judges Association (EAMJA) Conference Report*, 21<sup>st</sup>-27<sup>th</sup> October 2018, 8-47.

<sup>95</sup> <https://www.eamja.org/> on 10<sup>th</sup> June 2020.

<sup>96</sup> Section 40, *Judicature Act*, Chapter 13.

<sup>97</sup> Section 41, *Judicature Act*, Chapter 13.

### 4.2.3 Educating both the public and government officials

The public has not been effectively educated about the different human rights inter alia the right to access information. One can attribute this to the fact that the specific bodies assigned that duty are government bodies which are party to the injustice hence they do not want to jeopardise their positions by opening the eyes of the public.

This therefore calls for an initiative to enlighten the public. This can be through the education system. Since it is the obligation of the government to ensure that all human rights are protected and achieved, the government should implement subjects in schools that enlighten people. The National Curriculum Development Centre (NCDC) is the body responsible for all education curriculum in Uganda. Instilling and promoting national unity and understanding of social and civic responsibility is one of objectives of secondary education as expressed by NCDC.<sup>98</sup> However, none of the subjects offered namely, Mathematics, Biology, Chemistry, History, English, Literature, directly speaks to human rights.<sup>99</sup> Education institutions should move beyond just creating a path for people to get jobs, but also to enlighten the public about the different practical issues around them. With commencement of human rights centred courses, the people will get to know their rights and therefore encourage them to fight back when they are being abused.

Currently, it has been the opposition leaders and journalist organisations spearheading the fight for respect of human rights which include the right to access information as well as Non-Government Organisations (NGOs). The fight by opposition leaders can be evidenced by lawsuits such as the *Amama Mbabazi v Museveni and Others*. Hon. Kyagulanyi took it to a global sphere by taking part in international interviews where he talks about the abuse of human rights in Uganda.<sup>100</sup> Journalists, through their different associations have also carried out demonstrations and petitioned the Uganda Police on matters touching police brutality towards them.<sup>101</sup> Such acts have greatly raised awareness among Ugandans and even the world. However, more needs to be done from the core foundation, which is through the education system.

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<sup>98</sup> <https://www.ncdc.go.ug/curriculum-type/secondary-curriculum> on 11 June 2020.

<sup>99</sup> <https://www.ncdc.go.ug/curriculum-type/secondary-curriculum> on 11 June 2020.

<sup>100</sup> 'Uganda: Bobi Wine Highlights Human Rights Abuse in a US Conference' Region Week, 2 July 2019 <https://regionweek.com/uganda-bobi-wine-highlights-human-rights-abuse-in-a-us-conference/> on 11 June 2020.

<sup>101</sup> Human Rights Network for Journalists, 'Ugandan Journalist Deliver Petition to Police despite Heavy Resistance' Ifex, 5 November 2019 <https://ifex.org/ugandan-journalists-deliver-petition-to-police-despite-heavy-resistance/> on 11 June 2020.

As for government officials, seminars, workshops and conferences need to be applied for efficiently and purposefully for sensitization and training.

#### **4.2.4 Penalties**

Punishment should be rendered to government officials and bodies that abuse the right to access information. These penalties should be of a strict liability nature in that the officers who undertake the violence are punished or the body itself like the Uganda Police carries the burden to ensure no free passes or loopholes that can give the violators an escape route. These penalties should however be proportionate to the abuse administered so that it doesn't cause the officers to hold back from their duties in fear of extreme punishment. The penalties can be in the form of fines, firing, imprisonment and apologies. This should apply to the ministers, the police, and even individuals that seem to be expendables. The existence of the International Criminal Court (ICC) is playing a great role when it comes to penalising mass abusers of human rights which also includes former presidents for example former president of Liberia, Charles Taylor.<sup>102</sup> With such in place, in case H.E Yoweri Kaguta Museveni is suspected to be behind such acts, given that these gruesome acts favour him at the expense of the opposition, he shall be held liable.

#### **4.2.5 Creating a body that monitors the status of the right to access information in Uganda**

To ensure that all the above fall in place, an overseeing body should be established. Just like France has La Commission d'accès aux documents administratifs (la CADA), an administrative body in charge of ensuring easy access of administrative documents in public archives, Uganda should take a leaf and form a body that will be effective in the Ugandan setting. France has been among the countries at the forefront when it comes to the fight for human rights and liberties since 1789 through the Declaration of the Rights of the Man and of the Citizen of 1789.<sup>103</sup> With such an exemplary background, the French man's methods can be referred to.

La CADA is an independent administrative organisation that holds the responsibility of ensuring freedom of access to administrative documents and public archives by persons, natural or legal.<sup>104</sup> If Uganda puts into place a body with a similar ideology, it will help make

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<sup>102</sup>Human Rights Watch, 'Sierra Leone: Landmark Conviction of Liberian Ex-President' Refworld, 26 April 2012 <https://www.refworld.org/docid/4f9a67012.html> on 11 June 2020.

<sup>103</sup> [https://avalon.law.yale.edu/18th\\_century/rightsof.asp](https://avalon.law.yale.edu/18th_century/rightsof.asp) on 11 June 2020.

<sup>104</sup> <https://www.data.gouv.fr/en/organizations/commission-d-acces-aux-documents-administratifs-cada/> on 11 June 2020.

information freely available to the people. Giving it power to represent will make it even stronger because it will be able to act as an advocate to people whose right to access information has been abused.

For effectiveness, this body should be made up of civilians and a few government officials, especially those from the Inspector General of Government office since it is the oversight body over the government. The reason behind this is that it is hard for an offender to be the judge of himself, he shall be lenient with himself at the expense of the victim. Therefore, for equity and justice to prevail, both the parties, that is, the civilians and the government should form this body. The body should be granted powers of arbitration, that their decision can be final on a matter.

## CHAPTER FIVE

### 5.1 CONCLUSION

Given the different cases presented in chapter 3<sup>105</sup>, Uganda is currently running on the principles and concepts of the Social Conflict theory. It is characterised with people in the government limiting the rights of the citizens to safeguard their selfish interests. It is doing this by using government bodies like the police, army and EC to satisfy this evil propaganda. This in return is jeopardising the relationship between the government and the citizens because it is suppressing the rights of the citizens.

The government needs to change the way it is functioning to ensure that it harmonises its relationship with the citizens that it is obligated to for the purposes of development and growth of the nation.

This therefore calls the government of Uganda to employ more systematic and realistic methods, tied to the concepts of Structural Functionalism that will help boost the relationship between the different organs and sectors of the state. Suggestions to this include, checking the judiciary, educating both the public and government officials, penalties and creation of an independent body aimed at monitoring the right to access information.<sup>106</sup> The most prominent way of doing this is to ensure efficient transfer of information between these different sectors, and this will prominently be through ensuring that it observes, respects, protects, promotes and fulfils the right to access information.

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<sup>105</sup> Chapter 3, 16-21.

<sup>106</sup> Chapter4, 22-28.

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