



17<sup>th</sup> August 2020

MR. Bagiire Vincent Waiswa  
Permanent Secretary,  
Ministry of ICT and National Guidance,  
P.O. Box 7817,  
KAMPALA

Dear Sir,

**RE: PETITION ON REGULATIONS GOVERNING THE CREATIVE INDUSTRY IN UGANDA**

Reference is made to your letter of REF. No. ADM 70/92/01, dated 12<sup>th</sup> August 2020 and with respect to the captioned matter wherein you requested the Uganda National Cultural Forum to submit the provisions of contention in Statutory Instruments Number 79 and 80 of 2019 not later than the 19<sup>th</sup> August 2020.

Our response is as follows, starting with a highlight of the points in contention:

**1. Constitutionality of the Stage Plays and Public Entertainment Act**

The Stage Plays and Public Entertainment Act came into force on 30<sup>th</sup> September 1943. At the time it came into force a number of legal and human rights instruments as we know them today were not in place. For this reason, the Act has provisions that provide for excesses that are in violation of the constitution. Article 274(1) of the constitution mandates persons enforcing law in Uganda to construe existing law with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution. We therefore recommend that when making regulations, the minister must take into consideration key constitutional provisions and make necessary modifications so as to avoid acting unconstitutional.

**2. Delegated legislation must conform to mother law**

Under the principles of delegated legislation, any form of delegated legislation such as a statutory instrument must conform to the form and letter of the mother

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law. This principle governs all forms of delegated legislation in Uganda and across the world.

The Stage Plays and Public Entertainment Rules, 2019 have provisions that go against the spirit of the Act and these are ultra vires. For example, Under S.1 of the Act, a licensing authority is council of a city or municipality or the council of a town in which a theatre is situated. This is the body that should be issuing theatre licenses. However, the regulations move this power from local authority and give it to Uganda Communications Commission. This is tantamount to amending the mother law.

### 3. The Stage Plays and Public Entertainment Rules, S.I No. 80 of 2019

Under these rules, one must have a permit to stage a play, a concert or any form of public entertainment (**Rules 2 & 6**). Failure to have a permit is punishable by a fine or imprisonment for six months or both (**Rule 14**).

UCC has wide powers to charge fees for the permits; regulate the content of what is to be performed and, on top of the fees for the permits, the applicant has to pay extra money to facilitate the attendance of a UCC officer (**Rule 5**). The Act of facilitating a law enforcement officer undermines neutrality of law enforcement. A victim of the law or the accused cannot be seen to facilitate the law enforcer. Government should be able to pay and facilitate its own law enforcement agencies to carry out their duties.

Moreover, a UCC inspector has the power to withdraw the permit even when the concert or play is on-going. Denying a UCC officer entry can lead to imprisonment for a year (**Rule 14**).

The requirements when applying for a permit may include a certificate of censorship issued by the media council. There is also a compulsory requirement for an English translation of every work (**Rule 7(2) (c)**). Restricting to English language undermines the right for artists to exercise their culture and other languages. Art as a form of expression cannot be restricted to a language. This restriction is unjustifiable and can be said to violate article 37 (right to culture) and article 43, that prohibits suspension of rights if it is not justifiable beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution.

A person cannot advertise a play or concert using any means without authorization from UCC and UCC will not grant authorization if one has not been cleared by a local government entity, e.g. KCCA in Kampala (**Rule 9**). The provision creates extra layers of approval that are unnecessarily burdensome and

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may limit artists from doing their work. The limitation undermines article 40(2) of the constitution which provides that Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.

#### 4. The Uganda Communications (Film, Documentaries and Commercial Still Photography) Regulations, S.I. No. 79 of 2019

Under these regulations a person needs a license to produce a film, motion picture, documentary, commercial still photography and any other content or to engage in the business of film production (**Reg. 2 & 6**). Another license is required to broadcast the same on TV, internet or any other channel (**Reg.2**).

A person while applying for the license will be required to describe all the scenes of the film or documentary; attach a detailed budget showing how much is to be paid to the actors; technicians and other professionals and also attach proof of his/her financial capacity (**Reg.7**). UCC may also require a bank guarantee or bond (**Reg. 10**). Requirement of bank bond is unnecessary since government suffers no loss if a person fails to meet costs of shooting a film or photography. This should be left to individuals to find their own means of shooting their films. It is also likely to undermine shooting of amateur photography and films hence killing the industry. The provision is an unnecessary restriction violating Article 40 of the Constitution

UCC has powers to monitor the content and confiscate the equipment at their discretion (**Reg. 5**). UCC also has power to restrict production of certain content in public interest or content that has no educational purpose (**Reg .13 also see -The UCC (Content) Regulations, 2019**). Powers of UCC to confiscate property does not require UCC to carry out investigations or establish if there is a prema facie case. The provisions violate the presumption of innocence set out under Article 28 of the Constitution.

A person cannot advertise without authorization from UCC (**Reg. 14**). A permit is also required to have a film, documentary or commercial still Photography shown in a cinematograph theatre (**Reg. 16**).

Penalties for the offences under these regulations include imprisonment for one year (**Reg. 18**).

We are mindful of your letter of 12<sup>th</sup> August 2020 asking us to submit our responses to regulations number 79 of 2019 and 80 of 2019, nonetheless, we believe it is also pertinent that we raise our concerns on other UCC regulations that negatively affect the creative industry. As follows;

#### A. The Communications (Fees) regulations

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The fees Regulations are made under the Uganda Communications (Film, Documentaries and Commercial Still Photography) Regulations. We shall restrict ourselves to fees charged to persons in connection with issues relating to stage plays and films (part F of the regulations).



The Regulations provide for a number of licenses including a filming permit, a filming license (local or foreign), a public performance permit, or a license to have commercial still photography. Most of the licenses are vague and not grounded in law.

For example, whereas R. 6 of the Uganda Communications (Film, Documentaries and Commercial Still Photography) Regulations provide for license for film producer and film production, there is no mention of filming permit, yet paragraph (f)(7) and (8) provide for permits. It is therefore not clear when such permits are required and how to apply for them. This makes these provisions ultra vires.

Charging fees for commercial still photography is broad and can be abused. For example, it is not clear if photo studios like ones producing passport size photographs are expected to pay licenses, the same applies to persons taking photos for social events such as weddings, birthday party etc. the law should be made clear or even remove this requirement.

Fees relating to stage play are wrongly made under the Uganda Communications Act, yet S. 17 of the Stage Plays and Public Entertainment Act clearly provides for the minister to make Regulations for such fees. Fees made under a different law can be ultra vires since they do not apply to the parent law. All stage play and public performance related fees should be made under S. 17 of the Stage Plays and Public Entertainment Act.

**B. The Uganda Communications (Content) Regulations, 2019**

R. 5 provides for the Commission to regulate all content by operators, service providers and content being transmitted. This legalizes state variance which is a violation of article 27(2) of the Constitution which provides that no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property. The only exceptions to this rule have been where there is a court order for specific security provisions.

In the same line R. 6 that provides for ordering private providers to have equipment that will monitor content is a violation of Article 26 of the Constitution and should be repealed. It also violates article 27 on the right to property where the Commission seeks to confiscate property that does not have content

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monitoring equipment. Content monitoring should not be left to the Commission and is an issue where only court can grant such an order.

R. 8 which provides for the kind of content that is not allowed is broad and vague and can be used to abuse art and other forms of expression. For example, what amounts to abusive language, offensive communication, blasphemy etc. is not clearly defined. In relation to culture and art some aspects of culture that are accepted in one community may be considered blasphemous or unacceptable in another. This would violate freedom of expression and the right to culture.

### Recommendations:

We recommend:-

- a) That UCC in its regulatory mandate should stick to setting broadcasting standards and should not interfere with content creation as that would be squarely ultra vires the provisions in the parent Acts (as explained below);
- b) That content creation be regulated under the Copyright and Neighbouring Rights Act, 2006 which is the primary Act for copyright matters;
- c) That a minimum of six months should be provided for proper stakeholder consultations;
- d) That sector experts in the area of intellectual property should guide the process of consultation and eventual preparation of regulations that are more favorable to the creative industry;
- e) That government should consider benchmarking, particularly with neighbouring countries in the region, for generation of more effective regulations that will build the industry.

**We also want to draw your attention to the parent Act from which the Stage Plays and public Entertainment Rules 2019 are drawn:**

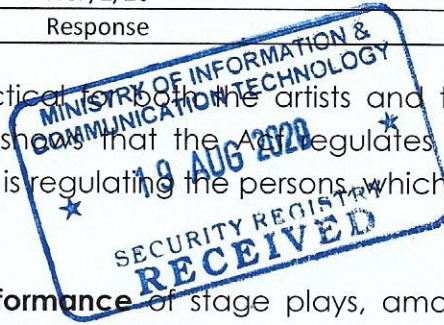
#### 1. The Stage Plays and Public Entertainment Act, 1943

Under **the interpretation section**, definitions of public entertainment, stage play and theatre, are rather broad and subject to abuse. Definitions should be clear and precise. This requires amendment for clarity purposes.

**Section 2 on licensing of theatres and safety of persons attending them** is too broad in regard to who should get a license. It covers all kinds of venues and acts inclusive of religious events, schools and education as well as charitable events.

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This should be amended to make it practical for the artists and the law enforcers. Suffice to add that Section 2 shows that the Act regulates venues whereas the regulation (S.I. No. 80 of 2019) is regulating the persons, which makes the regulations *ultra vires* the Act.



**Section 4 on necessity for permit for performance** of stage plays, amounts to censoring of content. This is in violation of the Constitution – (Article 29(1) (a) and (b)) on freedom of expression and conscience and Article 2 of UN General Assembly resolution 53/144 declaration on rights and responsibilities of individuals, groups and organs of society. This should be repealed.

**Section 7** provides for refusal of permits giving the Council too much powers to grant or not grant a permit. The provisions give the Council discretion to grant a permit when it deems fit. This is contrary to provisions in Articles 28 and 42 of the Constitution on a right to just and fair treatment in administrative decisions. The grounds for refusal of permit should be set out in the law and well spelled out so as to be in line with Article 28 and 42 of the Constitution.

**Section 9 provides for permission for exhibition of posters.** This may be potentially abused to curtail freedom of expression. It can also be used to violate Article 29 of the Constitution on freedom of expression, since it requires approval and this goes to the content in the poster. This should also be repealed.

**Section 13 provides for appeal to the Minister** and makes the Minister's decision final. This undermines the right to seek redress and violates Articles 28 and 42 of the Constitution. This should be repealed.

**Section 16(2) creates Council's power to order for surrender of the script.** The provision where the Council can give conditions as it deems fit to release the script is excessive and can potentially undermine freedoms of expression, speech and access to justice. This should be repealed.

Our recommendation is that this Act be repealed subject to Article 2 (2) of the 1995 Constitution, as it has no place in a free and democratic society. Much as we have a few suggestions as to how the regulatory environment for the creative industry can be improved, it is our humble prayer that the recommendations outlined above can be taken into account to ensure that there is effective consultation and involvement of all stakeholders in the improvement of the legislative space.

Talent should not be licensed. It is naturally given and people should be allowed to carry on their talent. There should be no license or permit for conducting stage

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plays and public performances as this can violate the right to work. However, government should be free to tax artists from the Ministry of Information & Communication Technology.

The Ministry should seek to promote our culture and Uganda systems; Ugandan language should not be subjected to English translations.

Related to the above, fees should be in Uganda shillings or use of currency points as set by all other laws.

In conclusion the various obligations imposed on the creative industry are oblivious of the fact that government will be killing upcoming talent and talent development since there are individuals who may not afford to pay all the various licenses and permits or meet the obligations under the different laws.

We are hopeful that the recommendations earlier stated in this response will be considered.

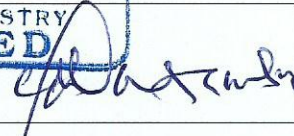
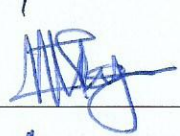
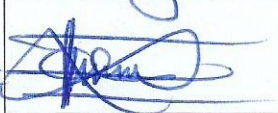


Thank you.

Dated this \_\_\_\_\_ day of August 2020.

Signed for and on behalf of:

No.	Association	Name	Signature
1.	Uganda National Cultural Forum	Regina Dee Kazembe	
2.	Uganda Musicians Association (UMA)	Tugume Kyeliff	
3.	UGANDA FILM COUNCIL	RHONNIE NKAUBO ABRAHAM	
4.	Federation of Gospel Artists Uganda	Kenze wisdom	
5.	Uganda Talent Manager's Association - UTAMA	Emmett Mubwa aka Emma Carls	
6.	THE UGANDA COMEDIANS ASSOCIATION	BVAIWHO HANNINGTON	

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7.	National Book Trust of Uganda	Batambuzi Charles	
8.	Female Performing Artists Uganda	Ndagire Mariam	
9.	Uganda Songwriters' Association	KATEREGGA John	
10.	Audio producers ASSOCIATION uganda (APAU)	KIGOONYA DAVID Luitu	
11.	National Union of Creative, performing Artists and Allied workers	C.S Anita Nansisi Sseruwagi	
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