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FREEDOM OF EXPRESSION AND THE RIGHT TO INSULT IN UGANDA: THE CASE OF PRAISE ALOIKIN OPOLOJE

What the Constitution, the courts and the international instruments say about speech that offends

Authors



Isaac Kimaze Ssemakadde SC



Phillip Karugaba

> **"**The right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information. Subject to the limitation under Article 43, a person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views. Indeed, the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as 'false' or 'wrong'."
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> **Per Mulenga JSC in the landmark case of Charles Onyango-Obbo and Andrew Mwenda v. Attorney General, Constitutional Appeal No 2 of 2002**

Praise Aloikin Opoloje was recently arrested following a viral video in which she called the Chief of Defence Forces, General Muhoozi Kainerugaba, a cabbage, among other things. Opoloje describes herself as a civil liberties defender and is the winner of the 2024 EU Human Rights Defender Award.

The case has sparked intense public debate, including all-night X (Twitter) Spaces sessions hosted by the Uganda Law Society that have drawn over 25,000 listeners. The sessions featured some of the most forthright language heard in Ugandan public discourse, as speaker after speaker exercised what they regard as a right to insult, a right articulated and exercised by the exiled President of the Uganda Law Society, Isaac Kimaze Ssemakadde.

The claimed right to insult allegedly clashes directly with some norms in our diverse cultures, which demand decorum and respectful language when addressing those in authority or elders.

This article explores freedom of expression and its limits in Uganda, to determine whether insulting language is a criminal offence or whether there is a right to insult a public official.

The short answer

Insult, on its own, cannot ground a criminal penalty in Uganda.

The Supreme Court of Uganda has ruled that the State is not the judge of what is true or acceptable to say. Guidance from the UN Human Rights Committee states that public figures, including heads of state, must accept criticism and that insult alone does not justify penalties. The African Commission on Human and Peoples' Rights also calls on States to repeal laws that criminalise insult. Some limits on speech remain legitimate, but they must be narrow, set out in law and demonstrably justifiable.

The constitutional anchor

Article 29(1)(a) of the Constitution guarantees every person the right to freedom of speech and expression.

Article 43 allows rights to be limited to avoid prejudice to the rights of others or to the public interest. However, any such limitation must not go beyond what is acceptable and demonstrably justifiable in a free and democratic society. This is what Mulenga JSC called *"the limitation upon the limitation"*. Every restriction on speech must pass that test, and the State carries the burden of justifying it. The State therefore does not have a blank cheque to limit constitutional rights.

Although freedom of expression is not among the rights listed in Article 44 as non-derogable, meaning rights that can never be taken away, suspended or compromised even during a state of emergency, it should be recalled that the rights not listed as non-derogable nonetheless contain elements that cannot be made subject to lawful limitation.

In other words, each such right has a non-derogable element, known as the *"irreducible minimum content"*, that enjoys absolute protection in all circumstances, lest the right lose all meaning.

The right to hold an opinion, however scornful or insulting it may sound, is non-derogable; its suspension can never become necessary, even in a state of emergency.

Limits to freedom of expression that remain

Limits on freedom of expression remain justified in three areas: (1) incitement to violence, discrimination or hostility; (2) civil liability for defaming a private person; and (3) narrow security and public order restrictions that meet the Article 43 test.

Those who defend insult laws make serious points. Article 43 expressly protects the public interest; persons in public office retain their dignity and reputation; and some words directed at officials may cross into threats or incitement. These concerns are real, but each is already met by narrower tools: civil defamation claims, and offences that target threats and incitement rather than offence or disrespect. None requires the criminal law to punish insult as such.

Civil remedies have their own limits. In *Moses Ali (RIP) v Monitor Publications*, the plaintiff sued over a story titled *"Diabetic men more prone to impotence"*, which claimed that *"people who are overweight are more likely to suffer from diabetes than their lean counterparts"* and carried a full-size photograph of him. He claimed that the story implied he was overweight, obese and impotent, exposing him to ridicule and injuring his character, credit and reputation. The court held that publishing a person's photograph is not actionable unless it is defamatory, however much annoyance it may cause. It refused to award damages for the suggestion that a person has a disease, describing this as part of the primitive (and now unenforceable) law of insult. Even in civil law, then, offence alone is not enough.

In *Beti Olive Kamya Turomwe v Miria Matembe,* the epithet *"political prostitute"* was deemed a political metaphor and not a literal defamatory fact. The court balanced protection of reputation against free public discourse and found the challenged broadcasts were predominantly political opinion and commentary about a public official in matters of public interest. The court accepted that the defendant had a substantive factual basis for critical assertions and that fair comment and constitutional protections applied.

Onyango-Obbo and the words of Mulenga JSC

The leading case is *Charles Onyango-Obbo and Andrew Mwenda v Attorney General (Supreme Court, 2004).* The Court struck down the offence of publishing false news. The appellants, the Editor and Senior Reporter of the Monitor newspaper, had written a story alleging that President Laurent Kabila of the Democratic Republic of Congo had paid Uganda in gold for services rendered by the latter during the struggle against Mobutu Sese Seko.

The duo's petition to the Constitutional Court, which hears questions about the interpretation of the Constitution, was dismissed, with the Court finding that the offence of publishing false news was not inconsistent with freedom of speech.

Their appeal to the Supreme Court, Uganda's highest court, succeeded, resulting in the seminal judgment that has underpinned the right to freedom of expression ever since.

Mulenga JSC (RIP), who wrote the lead judgment, started with the Constitution as a whole, stating that the Bill of Rights protects social, cultural and economic rights alongside civil and political ones, and that the Constitution records the people's decision to build a free and democratic society.

From there he turned to the decision of the European Court of Human Rights in *Lingens v Austria.* That court described free speech as one of the foundations of a democratic society and one of the basic conditions for its progress. It protects more than welcome or harmless ideas. It also covers ideas that *"offend, shock or disturb"* the State or any section of the population, because there is no democratic society without pluralism, tolerance and broadmindedness.

He then made the point that gives the case its force: freedom of speech is indivisible. It cannot be denied to some ideas while being preserved for others. No person, committee or government has the wisdom to separate truth from falsehood for the rest of us.

Three principles follow: (1) the State is not the referee of truth; (2) protection does not depend on whether the speech is good, polite or accurate; and (3) every restriction must be demonstrably justifiable in a free and democratic society.

If the Constitution protects ideas that **"offend, shock or disturb"** the State itself, it cannot sensibly allow the State to punish a citizen for **offending, shocking or disturbing** an officer of the State. Insulting a public figure falls squarely within the speech this reasoning protects.

The International Covenant on Civil and Political Rights ("the Covenant")

Under Article 19(1) of the Covenant, everyone may hold opinions without interference. Under Article 19(2), everyone enjoys the freedom to "seek, receive and impart information and ideas of all kinds", through any medium.

Article 19(3) permits restrictions that are provided by law and necessary to protect the rights or reputations of others, national security, public order, or public health or morals. Article 20 requires States to prohibit advocacy of national, racial or religious hatred that amounts to incitement to discrimination, hostility or violence. This exception is narrow.

General Comment No. 34: addressing insult

The Human Rights Committee's General Comment No. 34 (2011) is the authoritative interpretation of Article 19 of the Covenant.

According to the Comment, political discourse and commentary on public affairs enjoy strong protection, even when many find the expression deeply offensive. It also provides that the fact that an expression insults a public figure is *"not sufficient to justify the imposition of penalties".* All public figures, including those holding the highest political authority, are legitimately open to criticism. States should not prohibit criticism of institutions such as the army or the administration. The Comment also says that States should consider decriminalising defamation and that imprisonment is never an appropriate penalty for it. Public officials, in short, must accept a high degree of criticism, including criticism expressed in insulting terms.

The African framework

African Charter on Human and Peoples' Rights, Article 9

The Charter protects the right to receive information and to express and disseminate opinions within the law.

Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)

Principle 22 of the Declaration calls on States **"to repeal laws that criminalise sedition, insult and publication of false news."**

The same principle calls on States to review criminal restrictions on content and to replace criminal defamation and libel laws with civil remedies. This is the clearest provision in any instrument addressing insult. It is soft law (not binding in itself), but it states the African Commission's authoritative position. The Constitutional Court invoked this principle in *Alternative Digitalk v Attorney General*, which nullified the Penal Code offence of criminal libel.

The Declaration expects public figures to tolerate more criticism than private persons, and discourages heavy sanctions for defamation because they deter people from speaking.

The Declaration permits States to prohibit incitement to hatred, discrimination or violence. Principle 23(3), however, is unequivocal: **"States shall not prohibit speech that merely lacks civility or which offends or disturbs."**

Konaté v Burkina Faso

In this 2014 decision of the African Court on Human and Peoples' Rights, a journalist was jailed for defaming a prosecutor. The Court held that the sentence violated the Charter. It further held that public figures must tolerate more criticism than private persons and that imprisonment for defamation is disproportionate, save in serious and exceptional cases such as incitement to violence or hatred. The Court then required Burkina Faso to amend its laws.

Strictly, a judgment of the African Court binds the State that was party to the case. The Supreme Court acknowledged in *Attorney General v Kabaziguruka* that the African Court's interpretation of States' obligations under the Charter carries great weight for Uganda as a State party, so Konaté is highly authoritative guidance for Ugandan courts.

Uganda's courts: nullifying offences one by one and breaking new ground for freedom of speech



An examination of decisions of Uganda's highest courts shows a steady and progressive adoption of high standards for protecting freedom of speech, reflecting the essential role of this basic right in a democracy and in the realisation of other human rights.

- **False news, 2004.** The Supreme Court struck down the false news offence in *Onyango-Obbo v Attorney General.*
- **Sedition, 2010.** The Constitutional Court struck down the sedition offence in *Mwenda and EAMI v Attorney General.*
- **Offensive communication, 2023.** The Constitutional Court struck down the offence of offensive communication in Karamagi and *Shaka v Attorney General.*
- **Criminal libel, March 2026.** The Constitutional Court struck down the offence of criminal libel in *Alternative Digitalk v Attorney General.*

The cultural argument on decorum

Some opponents of a right to insult argue that rude, vulgar and offensive language or conduct is contrary to Ugandan culture. That may well be true of ordinary conversation. The Banyankole call it "okukuna": being decent in conversation.

However, insult and vulgar gestures have long had a place in protest across Ugandan cultures. By way of illustration, a woman exposing her nakedness in anger, as was reportedly done in protest land grabs in Amuru, is regarded in some communities as the highest form of protest and is taken as a curse. Omal Lakana (Adok Too)'s Acholi protest song against colonial forced labour, whose words cannot be printed here, is another example.

In any event, General Comment No. 34, cited above, makes clear that restrictions on expression for the protection of morals should not be based on principles drawn exclusively from tradition or religion. Any restriction must be set out in law, given the serious curtailment of human rights it entails. The African Commission's Declaration takes a similar position.

The courts have already considered this argument. As noted above, in *Onyango-Obbo* the Government argued that freedom of expression could be restricted by reference to local values, conditions or circumstances (cultural relativism), and the Supreme Court rejected the argument. Then Commissioner for Civil Litigation, Cheborion Barishaki (now a Justice of the Court of Appeal/Constitutional Court), persuaded the Constitutional Court that local values and traditions should guide interpretation, but failed in the Supreme Court.

The Court was unanimous that the baseline for protection was the "universal values" of democracy and freedom, not local values and traditions. Tsekooko JSC (RIP) dismissed as without foundation the argument that the test of what is demonstrably justifiable in a free and democratic society must be a subjective one based on local circumstances. Oder JSC (RIP) insisted that the test must conform to what is universally accepted as a democratic society. He added:

> ***"I have not the slightest doubt that when the framers of the Constitution committed the people of Uganda to building a democratic society, they did not mean democracy according to the standard of Uganda with all that it entails. They meant democracy as universally known."***

Byamugisha JSC (RIP) addressed cultural relativism directly:

> ***".....this means that our society must learn to accommodate a wide variety of views, beliefs etc. even if such views or beliefs are repugnant and contrary to our own."***

The idea of a distinct Ugandan standard of democracy, human rights and free speech has therefore been considered and rejected by the Supreme Court, and it should not be revived.

The State's attempts to roll back progress on freedom of speech

While the courts have moved steadily towards greater protection of freedom of speech, the State has moved in the opposite direction, re-enacting and relabelling provisions that have been struck down.

For example, 15 years after the Supreme Court struck down the offence of *"false news"*, Regulation 110(e) of the Uganda Communications (Licensing) Regulations 2019 created the offence of *"publishing fake news".* The Regulations do not define the offence.

Similarly, the offences of sedition and criminal libel were recast as the offence of offensive communication under the Computer Misuse Act (itself struck down in 2023), and as hate speech and spreading false or malicious information under the Computer Misuse (Amendment) Act 2022. On 17 March 2026, the Constitutional Court struck down the amendment on procedural grounds. Regrettably, the Director of Public Prosecutions has called on Parliament to re-enact these provisions.

In *Mwenda* (2010), the Constitutional Court struck down sedition, including the provision that criminalized conduct intended **"to bring into hatred or contempt or to excite disaffection against the administration of justice."** In effect, the Court abolished the archaic offence of contempt of court by scandalising the judiciary or insulting judges.

Despite that, the same power has recently been resurrected by the Supreme Court and High Court to punish speech that can no longer be charged as sedition. Ivan Ssebadukka, Hassan Male Mabirizi Kiwanuka, and ULS President Isaac Kimaze Ssemakadde have all been convicted for that revived contempt and sentenced to long imprisonment terms.

The principles in *Onyango-Obbo, Mwenda, Karamagi and Alternative Digitalk* must be applied to the substance of an offence, not its label.

Lessons from the United Kingdom

Earlier this year the Metropolitan Police announced that it would no longer respond to calls over insults and routine arguments, nor would itinvestigate non-crime hate speech. While the matter is still controversial, it does give a sign of the times.

Conclusion

Speech that causes harm may be regulated. Speech that causes offence may not be criminalised.

The Constitution, Uganda's courts and the international and African standards point in the same direction. Restrictions on speech must be narrow and demonstrably justifiable; the courts have struck down false news, sedition, offensive communication and criminal libel in turn; and an offence must be judged by its substance, not its label.

On that footing, calling the Chief of Defence Forces a "cabbage" is not an offence under Ugandan law, and the government's reliance on a SIM card offence to justify Aloikin Opoloje's arrest and detention has deceived no one. The task now is to make that clear to those who arrest, prosecute, legislate and regulate, and to the public the law exists to protect.

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