

ELECTION INTEGRITY AND THE 2020/2021 GENERAL ELECTIONS IN UGANDA



Key Issues Paper

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Introduction

This paper defines electoral integrity as any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle¹. The term also generally refers to “soundness or an unimpaired condition”, so that to speak about an election with integrity means referring to an election “conducted competently and professionally”². Therefore, election integrity means that soundness and ethical practice must persist throughout an entire electoral cycle, not just on Election Day itself.

Free and fair elections are the hallmark of a well-functioning democracy and the foundation of a legitimate and stable government. The general election system including the model of the election management body, nature of electoral laws, levels of civic consciousness, the manner in which candidates raise and spend funds during election campaigns all have a significant bearing on the kind of elections a society is bound to have and broadly affect the democratic operating environment³.

Uganda has had six general elections since its independence in 1962⁴. Each of the elections has been a learning experience, revealing areas that require strengthening in Uganda’s electoral system. The independence of the Electoral Commission; its budgeting and funding; voter and civic education; the role of security agencies in elections; party registration and financing; electoral disputes resolution; electoral boundary demarcation; and election management body institutional strengthening have consistently come out as key areas that call for review in light of the electoral dynamics, not just in previous elections but also ahead of the 2021 General Elections in Uganda.

This paper provides a recap of the key integrity issues that relate to Uganda’s electoral process and proposes concrete recommendations to address them. It explores stakeholder confidence in the Electoral Commission; accountability by other institutions relevant to the electoral process; provides an overview of the rule of law in the context of elections; and concludes by highlighting the issues affecting the creation of a level playing field for candidates in the 2021 elections. These themes represent some of the critical areas that must be re-examined to ensure the integrity and credibility of the electoral process in Uganda. The purpose of this paper is to flag critical areas that are likely to affect the integrity of the 2021 general election as well as propose early corrective measures. The paper is written in the spirit of guiding constructive public discourse around elections as well as galvanizing state and non-state actions to promote a credible, free, and fair election.

1.0 Key Aspects of Electoral Integrity Interrogated

1.1 Confidence in the Electoral Commission

The Electoral Commission is established under Article 60 and mandated under Article 61 of the Constitution of the Republic of Uganda 1995 (as amended) to organize, conduct, and supervise regular, free, and fair elections and referenda, among other functions. In order to fulfill its mandate, the Commission is guided by its mission and vision. The Commission’s mission is to: organize and conduct regular, free, and fair elections and referenda professionally, impartially, and efficiently. It envisions being a model institution and center of excellence in Election Management.

As Uganda approaches the 2021 general elections, there is a growing consensus on the urgent need to address the trust deficit Ugandans have towards the electoral process. The widely held views among election stakeholders with regard to the questionable independence and credibility of the Electoral Commission presents undesirable ramifications including continued disengagement of voters from electoral processes, search for undemocratic alternatives; and potential for rejection of election results by losers with the prospect of violence. It is critical that Uganda learns from experiences elsewhere in Africa and aligns itself with the best electoral practices on the continent.

Prior to the 2011, 2016, and 2021 elections, there were amendments to the Constitution of Uganda; the Presidential Elections Act, 2005; the Parliamentary Elections Act, 2005; the Electoral Commission Act, Cap 240; the Local Govern-

¹ Kofi Annan Foundation, 2012

² https://aceproject.org/ace-en/topics/ei/explore_topic_new

³ *Towards Reforming Uganda’s Electoral Commission; critical areas and reform options, Working paper series, 2013*

⁴ *December 1980 National Assembly Elections; 1996 General Elections; 2001 General Elections; 2006 General Elections; 2011 General Elections; and 2016 General Elections*

ment Act; the Political Parties and Organisations Act, 2005; the National Women Council Act, Cap 318 and the National Youth Council Act, Cap 319. The amendments have mainly touched on the administrative side of elections. Although the changes were a step in the right direction, they remain limited and major impeding deficiencies in the electoral legal framework still endure. As such, there is an urgent need for both legislative and constitutional reviews to address these deficiencies. Critical areas of focus in such efforts would include the role of state security agencies in elections; involvement of civil servants in partisan electoral activities; use of state resources in electioneering especially by incumbents; campaign financing, the participation of media, civil society, and minority communities; electoral violence; management of election results; and election-dispute adjudication.

Conducting the 2021 General Election during the COVID-19 pandemic presents peculiar dynamics to the electoral process. Besides the three (3) months' disruption to the EC strategic plan and roadmap to the 2021 general elections – between March and June 2020, the pandemic has also prompted significant changes to the laws, regulations, and guidelines of managing elections. The EC, Uganda Police Force (UPF), and the Uganda Communications Commission (UCC), all key players in the electoral process have emphasized and integrated the Standard Operating Procedures (SoPs) issued to the public by the Ministry of Health to ensure public health and safety during the electoral period. The SoPs stress digital forms of campaigning alongside championing Covid-19 preventive measures including social distancing, hand washing, and wearing facemasks. The digital forms of campaigning adopted by the EC in Guidelines in each electoral process are perceived as exclusionary considering the reach of both new and conventional forms of media including TV, radio, and internet. In addition, the directive by the EC to abolish campaign rallies and to limit Presidential, Parliamentary and Local Government campaign meetings to about 70 people has been rejected by some candidates as impractical. Stakeholders perceive digital campaigns as unfair and only intended to benefit incumbents, most of whom own private media houses⁵. Besides, despite the investment in the SoPs, enforcement to ensure adherence has been weak and Police have enforced the guidelines selectively. Political party primary elections conducted between August and October 2020 revealed sheer disregard of the SoPs by political parties, candidates as well as the general public.

Aspects such as completing meaningful electoral reforms; procurement of electoral materials; completion of the national voters' register; engagement with stakeholders; and con-

ducting civic and voter education have been affected by the context under which the 2021 general elections will be held. The mysterious resignation of eight (8) senior EC officials in July 2020, which was shrouded in mixed messages, equally had an effect on the confidence that stakeholders have in the EC. Whereas the EC came out to report that the officials had resigned voluntarily, President, Yoweri Museveni while speaking at a public function in September 2020 asserted that he had sacked them as part of his fight against graft in the EC. Stakeholders were concerned that the action of the President could have compromised the independence of the EC as he usurped the role of the EC and the Public Service as provided for in Section 5 of the Electoral Commission Act.

Preparations to conduct the 2021 general elections were interrupted by the Covid-19 pandemic. The roadmap released on December 11 2018 was revised four (4) times between 2019 and June 2020. The fourth revision was done to redeem time lost during the Covid-19 lockdown⁶. Additionally, funding gaps were sighted in the rescheduling of activities on the roadmap during the initial three successive revisions. Whereas it is possible that the revisions in the implementation of the roadmap were inevitable, it is also arguable that the initial three revisions could have been avoided if the Government had sufficiently funded the EC in time. The latest review of the roadmap came under a lot of public scrutiny following statements from the EC that President Museveni had been consulted to provide a green light to the (funding of the) revised roadmap. To many stakeholders and analysts, this action compromised the independence of the EC considering that President Museveni had by then indicated his interest in running for the presidency. It painted the EC as one that was favoring the ruling NRM party over the rest of the political parties. Pundits argued that, if EC had wanted to consult stakeholders before the revised roadmap was released, then it should have consulted all political parties.

Major procurements related to electoral material have enlisted controversy, which has partly resulted in court action and delayed execution of procurements. It is feared that lapses in major procurement could be evidenced by logistical and operational challenges during and after Election Day. Considering that the 2021 general election is tech-based, fit-for-purpose technology ought to have been procured well in time, deployed, and tested for usability. Without ample time for user testing and correction, there could likely be operational difficulties. With hardly two months to the election, it is not yet clear how election results will be transmitted from polling stations to the tally center. It is also not clear how transparency in the process will be ensured to enhance

⁶ Government of Uganda imposed a Covid-19 prevention countrywide lockdown between March and June 2020.

⁵ African Center for Media Excellence (ACME)



public trust in the outcome of the elections at various levels. Further, while the Electoral Commission Act, 2005 enjoins the Minister of Justice and Constitutional Affairs to table before Parliament the type of technology to be used in an election, such an instrument is yet to be tabled.

Multi-million dollar procurements of electoral materials including ballot papers, biometric voter verification kits, and the electronic results transmission and display system have been caught up in procurement controversies. Besides being done too late in the elections calendar, the procurements have become a subject of legal battles. For instance, the Electoral Commission successfully awarded five (5) foreign companies “best-evaluated bidder” to print ballot papers for the presidential, parliamentary and local government elections. Two (2) are based in the UAE, two (2) in the UK, and one (1) in South Africa. Following claims from the Uganda Printers and Packages Association (UPPA) that the EC did not pay sufficient attention to the “Buy Uganda, Build Uganda” policy, on 1 October 2020, the Public Procurement and Disposal of Assets Authority halted the procurement until they have heard the case.

It should be noted that the sanctity of ballot papers is critical to a free and fair election. Ballot paper printing is a high volume, short turnaround time process that demands total accuracy. It is, therefore, necessary for the Electoral Commission to have total confidence in the capacity, quality control procedures, integrity, and security of ballot printing contractors. Prior to selecting the design of the ballot papers, Election Management Bodies (EMBs) usually consider the time ballot papers take to print and whether potential contractors are capable of meeting the print specifications⁷. According to Article 62 of the 1995 Constitution of Uganda, the Electoral Commission shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority. The Electoral Commission should be allowed by all stakeholders to exercise its independence in this process. Transparency should continue to be exercised in the process of selecting the firm that will print the ballot papers for the 2021 elections taking into account the concerns expressed by stakeholders in the election process⁸.

⁷ The Electoral Knowledge Network (ACE)

⁸ Accredited CSO Election Observers in Uganda (ACFODE, ACFIM, AYDEL, CCG, UYONET, UNNGOF, WDN-U), 2020/2021 Statement on the Printing of ballot papers for the 2021 general elections in Uganda, October 30 2020

There are reports that the procurement of biometric voter verification kits was fraught with conflict of interest. The tender was awarded to Smartmatic, which provided the Biometric Voter Verification System and Kits to the Electoral Commission in 2016. While procurement of the system costs just under USD 18 million, an upgrade to the same system for 2021 will cost USD 22 million. Additionally, the procurement contract for the electronic results transmission system was awarded to a US-based company, Avante International. Whereas this company is known to have provided similar services for Uganda's 2016 general election, there are unconfirmed allegations of price inflation this time around that is delaying the commencement of the procurement process.

Experiences from the 2016 general elections show that operational challenges allegedly handicapped EC in terms of delivery of materials to polling stations at the legally prescribed times (before 7:00 am) to allow for the commencement of voting at 7:00 am especially in urban areas like Kampala, Wakiso, and Mukono⁹.

While there have been some reforms tackling legislative issues arising from the 2016 elections, it is not clear whether EC has implemented any administrative reforms to remedy the late delivery of polling materials. It is important to note that out of about 43 by-elections conducted between 2016 and 2019, 13 received voting materials at least 2 hours after the official opening time of polling stations (in the respective by-elections).

1.2 Section Two: Accountability by other institutions relevant to the electoral process

Genuine democratic elections serve to resolve peacefully the competition for political power within a country and thus are central to the maintenance of peace and stability. Where governments are legitimized through genuine democratic elections, the scope for non-democratic challenges to power is reduced¹⁰. Genuine democratic elections are a requisite condition for democratic governance because they are the vehicle through which the people of a country freely express their will, on a basis established by law, as to who shall have the legitimacy to govern in their name and their interests¹¹. Genuine democratic elections cannot be achieved unless a wide range of other human rights and fundamental freedoms can be exercised on an ongoing basis without discrimination based on race, color, sex, language, religion, political or other opinions, national or social origin, property,

⁹ <https://www.ec.or.ug/news/18022016-delay-opening-polls-kampala-and-wakiso-districts>

¹⁰ *Declaration Principles for International Election Observation and Code of Conduct for International Election Observers (2005)*

¹¹ *Ibid 1*

birth or another status, including among others disabilities, and without arbitrary and unreasonable restrictions. They, like other human rights and democracy more broadly, cannot be achieved without the protections of the rule of law. These precepts are recognized by human rights and other international instruments and by the documents of numerous intergovernmental organizations¹².

Uganda is a signatory to international declarations and regional legal instruments like the Universal Declaration of Human Rights and the International Covenant on Civil and Political rights which *inter alia* provide that everyone has the right and must be provided with the opportunity to participate in the government and public affairs of his or her country, without any discrimination prohibited by international human rights principles and without any unreasonable restrictions. This right can be exercised directly, by participating in referendum, standing for elected office, and by other means, or can be exercised through freely chosen representatives. In order for citizens to effectively participate in an election, the integrity of an election must be upheld by the institutions given authority by the laws of Uganda to ensure a free, credible, and fair election. The institution mandated by the Constitution to organize, supervise, and conduct elections in Uganda is the Electoral Commission (EC). The EC works with other institutions and organizations of the State and non-state actors to perform its mandate. The State institutions that work with the EC to ensure that the elections are free, credible, and fair include the Uganda Human Rights Commission, Uganda Communications Commission, and the Uganda Police Force. The EC also works with non-State actors like the media, Non-Governmental Organizations, and other CSOs.

1.2.1 Uganda Human Rights Commission (UHRC)

UHRC is established under Article 51 of the Constitution of Uganda. Article 52 of the Constitution provides for its functions which among others include: to receive and investigate complaints of human rights violations, coordinate and support civic education, and update Parliament on the human rights situation in Uganda. UHRC is mandated by Article 52 (1) (g) of the Constitution of Uganda to formulate, implement and oversee programs intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people.

In the 2018/2019 financial year (FY), the approved budget of UHRC was 18 billion shillings¹³. The projections for the

¹² *Ibid 1*

¹³ *Justice, Law and Order, Vote budget framework paper FY 2018/2019 of Uganda Human Rights Commission*

financial year 2019/2020 was 21 billion shillings while the budget projection for the financial year 2020/2021 is 24 billion shillings. With a few months left to the general elections of 2021, one would have expected the UHRC to receive a substantial increase in its budget due to its role in implementing civic education programs. A trend analysis of funding to UHRC confirms that civic education is underfunded in spite of the critical role it plays in empowering citizens to effectively participate in governance processes.

According to the budget framework paper for FY 2018/2019, the major challenges noted by the UHRC with regard to the budget allocation for FY 2018/2019 were as follows:

- i) Inadequate and old tools of the trade to perform the mandates of and functions of the Commission especially the few and an obsolete fleet of vehicles which are in poor condition;
- ii) Only two civic education vans inadequately serve the entire country to cause meaningful impact; and
- iii) Staff turnover due to low motivation and remuneration.

In the financial year 2018/2019, UHRC requested an additional 1.5 billion for human rights education to enable the institution to conduct massive training for security agents mainly Uganda Police Force. The UHRC further noted that if these funds were not allocated, the country risked an increment in cases of torture, inhuman and degrading treatment of citizens by state and non-state actors in their line of duty as well as increased lawlessness and disrespect of the law. The UHRC also requested for 2 billion for Information, Education, and Communication (IEC) materials in schools, billboards, for security agents among others.

Underfunding of the UHRC and lack of a substantive Chairperson following the death of Mr. Medi Kagawa, the former Chairperson has affected the work of the UHRC despite the existence of a vice-chairperson. This has had negative consequences for all stakeholders especially citizens as Ugandans prepare to vote in 2021. It is widely acknowledged that incidents of high handedness by security agents especially while managing public order are a result of insufficient training by the UHRC. Some of these actions by security agencies have been condemned by members of the ruling NRM¹⁴, opposition political parties, CSOs, and members of the general public. A few months to the election, incidents of violence and limited civic awareness of duty bearers and *14 NRM Communications Manager on October 19 2020 on a show on NTV condemns raid on NUP offices and said: the ground must be leveled for everybody so that we don't prepare the opposition to say we lost because of this.. <https://youtu.be/1fXLgb-pd74>*

citizens continue to affect the integrity of the 2021 elections. Some of these violations could have been prevented if the UHRC was sufficiently funded and with a substantive chairperson to play its role in the elections.

1.2.2 Uganda Communications Commission (UCC)

UCC was established to implement the provisions of the UCC Act 2013 in accordance with the laws of Uganda, with the principal goal of developing modern communications infrastructure in Uganda, in conformity with the operationalization of the Telecommunications Policy. The Commission is mandated to undertake a range of functions including licensing and standards, spectrum management, tariff regulation, research and development, consumer empowerment, and policy advice, and implementation.

Civic engagement is important to the success of an election. Freedom of assembly, association, expression, movement, and speech are central to civic engagement and empowerment. Limited media coverage in Uganda and constraints on the media by UCC have affected the conduct of a free and fair election. Vulnerable groups and their rights to participate in an election largely conducted in the media have had negative implications on women, PWDs, and youth due to the social and economic factors that affect their access to media. This is further compounded by the ban on mass rallies due to the Covid-19 pandemic that imposed restrictions on freedom of movement and limitations on the proximity of persons in any gathering to prevent the spread of the pandemic.

UCC's previous directives to 13 radio and television stations to suspend some staff accusing them of airing programs that give undue prominence to specific individuals such as opposition's Robert Kyagulanyi have affected the credibility of the Institution especially within the opposition political parties and sections of the public. Police' action of switching off three (3) radio stations in Kabale, Jinja, and Mubende districts as they hosted prominent opposition leader Kizza Besigye has also negatively affected the credibility of UCC, with questions on its capacity to exercise its powers to advance freedom of speech and expression which are especially critical in an election¹⁵. These actions have led to reluctance by opposition politicians to petition UCC when they are aggrieved. In addition, some candidates are skeptical about filing their campaign programs on community radios and outdoor megaphones with the EC returning officers and police even when this will create order in the campaign process because of their mistrust of the Police's ability to enforce the guidelines fairly and professionally.

¹⁵ Human Rights Watch report on Uganda (2019)

Due to Covid-19, the EC has advised candidates to mainly utilize digital forms of campaigning alongside controlled meetings of not more than 70 people – which respect the Standard Operating Procedures issued by the Ministry of Health. According to UCC, there are 310 radio stations, 39 TV stations more than 59 registered online broadcasters, which can be leveraged for political campaigns. The EC has further advised candidates to use social media, robocalls, SMS, and community radio stations. The guidance by the EC to candidates to use media and regulated platforms has been met with reservations for the following reasons:

- i) The EC has limited itself to issuing guidance and not directives to state media. For example, a directive that threatens the loss of a license if a state-owned media station fails to adhere to S.24 of the Presidential Elections Act may lead to adherence to the law. It is yet to be seen whether/or not state-owned media will adhere to the guidance by the EC.
- ii) According to the vice-chairperson of the National Association of Broadcasters, in spite of the guidance by EC to all public and private media to make the rate cards and available time on their media, public, radio, and television air-time will be offered to the highest bidders¹⁶. This will lead to exclusion from the media of some candidates especially women, youth, and PWDs who may not necessarily be able to pay for the airtime due to the inherent social-economic marginalization in Ugandan society.
- iii) State actors including senior public servants like Resident District Commissioners (RDC) and Police have been accused by some opposition politicians of denying them access to radios and TVs. According to Commissioner Stephen Tashobya,¹⁷ the EC has met with the implicated RDCs and Police officers¹⁸ and educated them on the law on equal access to state-owned media and the right to freedom of expression through the media. The National Unity Platform (NUP), an opposition party has accused radio stations in Lira district of denying them access allegedly following directives from UCC restricting their newsrooms from airing NUP related activities. Lango Radio Owners Association alleges that orders from RDCs are clear that no NUP candidates should appear on any radio program¹⁹. UCC has not issued any public statements contrary to these allegations.
- i) Violence against journalists by security agencies continues to affect the freedom of the media to perform their duties to inform and educate the public. According to a 2019 report by the Human Rights Network for Journalists-Uganda, “violations against journalists include arrests, confiscation of cameras and other equipment, vandalizing equipment, assault, deleting footage, raiding broadcast studios and interrupting programs, blocking journalists from accessing news scenes and sources.²⁰”.
- i) Denial of access to UCC for individuals or organizations who allege infringement on their rights and freedoms has affected redress and tracking of cases. UCC claims that they have not received written, formal complaints by candidates/political parties when they are denied access to media²¹.
- i) Most of the principles on equality and fair treatment of candidates as provided for in UCC regulations of 2019 have remained on paper. For instance, while the regulations require broadcasters to publish rate cards, there is no clear sanction for those media houses who do not adhere to such a regulation.
- i) Prohibitive costs to access media e.g. OTT tax and high cost of data in order to access social media affect access and usage by candidates and voters thereby limiting information and diversity of perspectives on the elections. Uganda’s Internet cost is the highest in East Africa. A recent study by UCC put the cost of acquiring 1 gigabyte of

¹⁶ <https://www.facebook.com/NETPILuganda/posts/3271300819632184>

¹⁷ Ibid 7

¹⁸ In July 2020 Police in Jinja tried to stop Hon. Robert Kyagulanyi from speaking on a local radio station in Jinja district but were denied access. In June 2020, police blocked Hon. Robert Kyagulanyi from accessing BCU radio in Mbale where he had paid 1.2 million for airtime. In the process, chaos ensued forcing police to fire live bullets and teargas to disperse his supporters. Police officers who commanded the operation has since been sued by Hon. Robert Kyagulanyi. In July 2020, police blocked the Democratic party President Hon. Nobert Mao from accessing Victoria Broad Link radio for a Sunday political talk show. This is inspite of the fact that on July 29 2020, the station manager had written to Kiira Regional Police and Jinja covid task force informing them that the radio would host Hon. Mao on a talk show either physically or via Zoom (Daily Monitor, August 23 2020

¹⁹ Emmanuel Busingye of Ekyooto Uganda media which can be accessed on ekyooto.co.uk; October 19 2020

²⁰ <https://acme-ug.org/2020/08/04/police-named-leading-perpetrators-of-violence-against-journalists-for-the-seventh-year/>

²¹ Ibid 4

the internet in Uganda at UGX 9,81922, compared to Kenya, Tanzania, and Rwanda at UGX 8,863, UGX 8,017, and UGX 8,017 respectively.

An informed citizen is critical to the development of a country. Disenfranchising citizens from listening to all candidates in order to effectively participate in elections affects their choice of leaders and reduces the participation of citizens in the governance of their country. If citizens and candidates are not able to equitably participate in an election, the integrity of an election is affected.

1.3 Rule of Law

Enforcement of the election laws equally on all participants in an election is important for promoting integrity in elections. Equal application of election laws ensures the accountability of election authorities and other participants in the electoral process and deters improper or illegal behavior. Enforcement jurisdiction of election laws in Uganda is assigned to the justice system, the police, and the courts, but administrative sanctions are also provided for in less serious cases.

According to Article 211 (3) of the Constitution of Uganda, “The Uganda Police shall be nationalistic, patriotic, professional, disciplined, competent and productive and its members shall be citizens of Uganda of good character”. This provision of the Constitution is important as the Police exercises its mandate.

One of the major issues emerging from the enforcement of the laws on the 2020/2021 elections is the Police’ selective application of laws. Accusations of bias against the Police were expressed during the NRM primary elections in Koboko Municipality for Member of Parliament²³. Occasionally, police officers have been caught on camera abusing their mandate outside the instructions of their commanders²⁴.

The incursion on NUP by security officers including Police and the Uganda Peoples Defense Forces (UPDF) allegedly to enforce a directive to confiscate all attire resembling military wares on October 14 2020 can be interpreted as an ill-political motive that was aimed at intimidating and disorganizing NUP election preparations one day to nominations for Members of Parliament and two weeks to nominations for presidential candidates. In addition, the removal of the billboards belonging to NUP president, Hon. Robert Kyagulanyi from the Central Business of Kampala city on October 15 2020 by security officers while leaving those of other presidential candidates like H.E. Yoweri Museveni further denotes bias against one candidate and can contribute to eroding voter confidence in the electoral process ahead of the 2021 general elections.

The apology by the Police to the Buganda Kingdom and the Catholic Church for firing tear gas at a clan meeting and the subsequent transfer of commanders from the region has raised questions within the public. It is notable that the Police in the same region have been implicated in severally assaulting the area MP, Francis Zaake²⁵ without being held accountable.

These incidences can be interpreted as discrimination against candidates in the electoral process because of the obstacles that hinder their participation in electoral processes based on their political affiliation or other opinions, regardless of whether they belong to the same party or another party.

With regard to the role of the Courts in the enforcement of election laws, the major case that was determined by the Courts on October 21 2020 involved respondents, NUP leaders, the Electoral Commission, and the Attorney General. The respondents were sued by four former members of the NURP which transformed into NUP. The Judge ruled in favor of the respondents to the effect that:

“It is the responsibility of the High Court as custodian of justice and the Constitution and rule of law to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest

²² <https://www.monitor.co.ug/Business/Prosper/Why-Uganda-Internet-cost-highest-East-Africa/688616-5442208-xb08c2z/index.html#:~:text=In%20Summary&text=A%20recent%20study%20by%20telecom,respectively%2C%20Uganda's%20is%20the%20highest.>

²³ NEW-U Preliminary Statement on the NRM Primary elections issued on September 6 2020 [https://wdnimages134834-prod.s3.us-east-2.amazonaws.com/public/National%20Election%20Watch-Uganda%20\(NEW-U\)%20Statement%20on%20the%20NRM%20Primaries%20for%20MP,%20Sep%206%202020.pdf](https://wdnimages134834-prod.s3.us-east-2.amazonaws.com/public/National%20Election%20Watch-Uganda%20(NEW-U)%20Statement%20on%20the%20NRM%20Primaries%20for%20MP,%20Sep%206%202020.pdf)

²⁴ <https://twitter.com/MwesigyeWalter/status/1318950717995077633?s=09>

²⁵ On April 19 2020, the Regional Police Commander SSP Kagarura Bob and SP Mwine the DPC of Mityana on instructions of the RPC arrested Hon. Zaake for distributing food. He was later transferred to Special Investigations Division and charged for disobedience of lawful orders and negligent acts likely to spread a disease. Hon. Zaake was admitted to Iran Uganda Hospital in Naguru on allegations that he was tortured during and after arrest. Later he was taken to Mityana court for plea on the sanctioned charges. The Magistrate advised that the State should first treat Hon. Zaake before plea taking.

and public good. This court declines to entertain the application since it was not brought under any known procedure and secondly it was made to avoid the time limit of 3 months within which an application for judicial review should have been brought. The judicial review guidelines or rules equally provide for locus standi and this would have been the threshold before the applicants would seek to challenge the actions of a party. It is an abuse of court process²⁶. The case was dismissed with costs to the respondents.

The courts will continue to be watched closely as the ultimate dispensers of justice in election disputes brought before them due to the critical role that they play in enhancing the integrity of elections.

1.4 Impediments to a level playing field for all candidates in the 2021 elections

Media plays an indispensable role in the proper functioning of a democracy. Discussion of the media's functions within electoral contexts often focuses on its "watchdog" role: by unfettered scrutiny and discussion of the successes and failures of candidates and or their political parties, the Electoral Commission management of media especially around voter education, and the role of media regulator – Uganda Communications Commission (UCC). Ahead of the 2021 general elections, media is playing a more important role as it is set to be the main conveyer of campaign messages with the adoption of digital campaigns as a response to the Covid-19 pandemic. It is however important to note that Uganda's media infrastructure is not fully developed. Some regions in Uganda do not have access to radio networks. In 2015, for example, the BBC World Service's nationally representative survey found that only a third of Ugandans had a working TV (34%) and only 13% of the adult population had access to the Internet within their household. More so, the Uganda National Household Survey 2016/17 found great variation in television ownership across regions with Kampala having the most households (42%) while only 3% of households owned a television individually in Kigezi and (2%) in Teso, Bukedi and Acholi regions. This situation is worse for West Nile which reported 1% and almost 0% in Karamoja regions. Even for households that have radio sets, access is often limited to men in the family, which disproportionately affects women. Limiting campaigns to digital platforms will greatly affect citizens' participation in electoral processes. It is possible that about 30% of the electorate with no access to radio, TV, or phone may not be in a position to access information to enable them to make meaningful choices.

Election campaign finance refers to the resources acquired and spent by electoral candidates and political parties be-

²⁶ *Miscellaneous cause no.226 of 2020*

fore and during election campaigns. For the purpose of monitoring, the project defines campaign spending as expenditure incurred by or on behalf of a political party to promote a party or candidate during the election campaign. It includes expenditure incurred when resources are spent by a political party or individual candidates or third parties, such as private companies, foundations, or other NGOs, state, and public institutions or institutions supported by the state.

The commercialization of elections is yet another issue that has over the years impaired the integrity of the electoral process in Uganda.²⁷ Research indicates that there is an increasing level of apathy in electoral processes unless there is financial or other inducements for participation²⁸. Citizens are 'facilitated' to vote in the elections, and this applies to public officers who in addition to receiving cash, also utilize large amounts of funds which are used for voter inducement, while public officers use government vehicles during the campaigns, local councilors are used as campaign agents and the national broadcaster tends to bias its coverage towards NRM leaning candidates²⁹. The 2016 general election, for instance, cost the taxpayer close to 3 trillion shillings (2.4 trillion campaign spend, and about 500 billion shillings spent by the EC)³⁰. That is about 12.5% of Uganda's annual budget. This amount excludes approximately 1.6 trillion shillings, most of which went to enhancing security (including paying crime preventers). The NRM political primary elections held ahead of the 2021 general elections evidenced the use of excess funds to bribe voters as well as procure media. It is likely, that this has set the pace for the extent to which money will be used in the main election.

The release of 15 billion by the Ministry of Finance and Economic Planning to the Electoral Commission has triggered the debate on why the funds were released during an election period and yet the EC was instructed to allocate the funds using the numerical strength of political parties contrary to S.14(b) of the PPOA as amended which provides that "in respect of elections, Government shall finance political organizations and parties on an equal basis;". This and the huge amounts of money used to bribe voters if unchecked through legal or administrative measures could border on subverting the free will of choice.

Elections generally provide potential triggers for violence and a number of the fault lines that have existed in the past, still

²⁷ *Sabiti Makara et al, 2014, Elections in a Hybrid Regime; Revisit the 2011 Ugandan Polls, p.178*

²⁸ *Claire Médard & Valérie Golaz (2013) Creating dependency: land and gift-giving practices in Uganda, Journal of Eastern African Studies, 7:3, 549-568, DOI: 10.1080/17531055.2013.811027*

²⁹ *See various DEMGroup election monitoring reports for the 2011 and the 2006 Uganda general elections*

³⁰ *Research by Alliance for Campaign Finance (ACFIM)*

prevail.³¹ Previous national elections in 2001, 2006, 2011, and 2016 were marred by politically motivated violence, intimidation, and bribery of voters. Many of the incidents were neither investigated nor prosecuted, a failure that reinforces a culture of impunity. In the run-up to the 2021 elections, some opposition party members are already facing trumped-up charges. On-going unclear recruitments of LDUs have been a subject of debate three months to the election. Police brutality occasionally witnessed at opposition political party activities has been and remains concerning. Analysts believe that actions of security agents oftentimes trigger violent scenes in what would ideally be peaceful electoral activities.

For Uganda's elections to be conducted freely and fairly, the country's laws need to be enforced equally for all parties during the campaign. Perpetrators of politically motivated violence and electoral offenses, such as bribery and intimidation of voters, should be held to account for their actions. Police and prosecutors should investigate electoral malpractice and violent crimes independently and impartially and ensure respect for the rule of law.

Without these safeguards, the integrity of the electoral process will be undermined. Uganda's government should treat seriously those incidents that can ultimately deny voters their rights to expression, association, and the right to vote. The lack of accountability for election-related violations can sow the seeds of civil unrest if political opposition is quashed.

Youth comprise 75 percent of the current population of Uganda³². In past elections, the youth have been accused of being used to commit acts of violence and malpractices, they have also suffered from disenfranchisement particularly youth in schools because election processes like registration at times are not streamlined enough with school time tables to ensure that the youth participate in all electoral processes. Ahead of the 2021 general elections, it is estimated that about 1.5 million youth who will be 18 years + at the time of the 2021 polls were left out of the voters register because of the voter registration exercise closing too early in the election calendar (23rd December 2019). Besides being disenfranchised, the frustration that this exclusion built could easily be exploited by politicians to foment violence during voting.

In addition, Youth elections in previous elections have allegedly been characterized by rigging and malpractices.

2.0 Recommendations

1. UCC should focus more on the quality of media and not only quantity to enhance public affairs programming that empowers citizens prior to, during, and after an election.
2. UCC should issue public statements on its roles during an election and the rights of candidates, political parties, CSOs, and citizens with regard to access to the media during an election. In order to build public confidence, UCC should inform the public regularly on the number and types of cases it receives and how the cases are resolved.
3. The EC should make directives and not prescribe guidance. For example, the EC should issue directives to state-owned media to adhere to the provisions of S.24 of the Presidential Elections Act or risk losing their licenses.
4. Security agents who abuse the rights of journalists, citizens, and candidates regardless of a political party should be held individually accountable and prosecuted through the Courts of law. This may deter others from abusing the rights of journalists, candidates, and citizens.
5. Sufficient resources should be appropriated by Parliament to the UHRC to conduct continuous civic education and for training security agents on human rights and their roles in a multiparty political dispensation.
6. The EC should run regular media messages to inform the public about ongoing processes within the election cycle, be seen to intervene if candidates complain about a process within the election cycle, and reveal the resolutions on the way forward for the issues resolved with candidates and parties. This will create transparency in the process and build public confidence in the role of the EC as the institution mandated to organize, conduct, and supervise the elections.
7. The Ministry of Finance, Planning, and Economic Development should explain why it has consistently ignored appropriating funds to finance political parties in line with provision 14(b) of the Political Parties and Organizations Act (as amended).

³¹ Akijul (Enabling Change) "Conflict Risk Assessment and Mitigation mechanisms for the 2011 and 2016 Elections"

³² Uganda Population report (2013)

8. The Ministry of Finance Planning and Economic Development should without delay, appropriate funds, and finance registered political parties on an equal basis in respect of elections 2021. Short of this the ministry risks being held in contempt of section 14(b) of the Political Parties and Organizations Act (as amended).
9. The Electoral Commission should make publicly accessible (also in line with the Access to Information Act 2005), information on how Government financing to political parties has been utilized and accounted for by the recipient political parties since 2011.
10. EC should invest in regular stakeholder engagements that bring together political parties, candidates, security agencies, and media. The engagements are anticipated to keep stakeholders informed about developments in the electoral process as well as open formal lines of feedback.



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