



# PROACTIVE DISCLOSURE OF INFORMATION AND ELECTIONS IN UGANDA

(2021 General Elections)

AN ASSESSMENT OF UGANDA'S COMPLIANCE WITH THE **GUIDELINES ON ACCESS TO INFORMATION AND ELECTIONS IN AFRICA**, ISSUED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

GOVERNANCE      FREEDOM      INDEPENDENCE  
DEMOCRACY      CREDIBILITY      TRANSPARENCY  
MEDIA      INFORMATION      CITIZENS  
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## GLOSSARY OF ABBREVIATIONS

<b>ACFIM</b>	Alliance for Campaign Finance Monitoring
<b>ACFODE</b>	Action for Development
<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>AIA</b>	Access to Information Act
<b>ATI</b>	Access to Information
<b>AU</b>	African Union
<b>BVVK</b>	Biometric Voter Verification Kit
<b>CCEDU</b>	Citizens Coalition for Electoral Democracy in Uganda
<b>CSOs</b>	Civil Society Organisations
<b>DGF</b>	Democratic Governance Facility
<b>DP</b>	Democratic Party
<b>EC</b>	Electoral Commission
<b>EAC</b>	East African Community
<b>ECA</b>	Electoral Commission Act
<b>ECOWAS</b>	Economic Community of West African States
<b>EGs</b>	Electoral Guidelines
<b>EMB</b>	Election Management Body
<b>EU</b>	European Union
<b>FDC</b>	Forum for Democratic Change
<b>FOWODE</b>	Forum for Women in Democracy
<b>HRC</b>	Human Rights Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IEC</b>	Independent Electoral Commission
<b>IGAD</b>	Intergovernmental Authority on Development
<b>IRCU</b>	Inter-Religious Council of Uganda
<b>ISPs</b>	Internet Service Providers
<b>LCs</b>	Local Councils
<b>LGA</b>	Local Governments Act
<b>NAB</b>	National Association of Broadcasters
<b>NGOs</b>	Non-Governmental Organisations
<b>NRM</b>	National Resistance Movement
<b>NUP</b>	National Unity Platform
<b>OTT</b>	Over The Top
<b>PJA</b>	Press and Journalist Act
<b>SADC</b>	South African Development Community
<b>SDGs</b>	Sustainable Development Goals
<b>UBC</b>	Uganda Broadcasting Corporation
<b>UCA</b>	Uganda Communications Act
<b>UCC</b>	Uganda Communications Commission
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UHRC</b>	Uganda Human Rights Commission
<b>UPC</b>	Uganda People's Congress
<b>UPDF</b>	Uganda People's Defence Forces
<b>USE</b>	Uganda Securities Exchange
<b>WPA</b>	Whistle-blowers' Protection Act



## PREFACE

I am delighted to contribute the preface for this report on Proactive Disclosure of Information and Elections in Uganda during the 2021 general elections. The initiative was commissioned by the Centre for Human Rights, University of Pretoria (the Centre), as part of a research series that assesses State compliance with the Guidelines on Access to Information and Elections in Africa (the Guidelines). The Guidelines were adopted by the African Commission on Human and Peoples' Rights (ACHPR) on 10 November 2017, during its 61st Ordinary Session. This normative instrument provides guidance to electoral stakeholders who have a duty to proactively disclose information in their possession or control towards enhanced election transparency, integrity and legitimacy. The electoral stakeholders identified in the Guidelines are: authorities responsible for appointing the Election Management Bodies; Election Management Bodies; political parties and candidates; law enforcement agencies; election observers and monitors; media and online media platform providers; media regulatory bodies; and civil society organisations. The Ugandan report is the fourth in the research series after South Africa (2019), Ghana (2020), and Tanzania (2020).

The Guidelines seek to promote the realisation of the right of access to information, as stipulated under Article 9 of the African Charter on Human and Peoples' Rights (African Charter). Access to information is not only an autonomous right but enables the exercise of other rights protected under the Charter, including Article 13 on the right to participate in the affairs of one's Government. The ACHPR adopted the Guidelines to reinforce the normative protection for access to information and connected rights along with other soft law instruments such as the Model Law on Access to Information for Africa (2013) and the Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019). This normative basis aims to enhance political stability and good governance in Africa through regular, transparent, free, fair and credible elections. To achieve this, citizens must have access to accurate, reliable and timely information throughout the electoral process. Without this information, they cannot exercise their right to meaningful political participation. The interdependence between the right to access to information and political participation is reiterated in various instruments within the African Union (AU) including the African Charter on Democracy, Elections, and Governance (ACDEG), the AU Declaration on the Principles Governing Democratic Elections in Africa, and other international and regional frameworks.

States Parties to the African Charter, including Uganda, have an obligation to adopt legislative, judicial and other measures to give effect to the Guidelines. This report assesses Uganda's compliance with the Guidelines during the 2021 general elections and specifically evaluates the extent to which Uganda's legal and institutional framework promotes proactive information disclosure. It further assesses the performance of key election stakeholders in proactively disclosing public interest information before, during, and after the general elections held on 14 January 2021. The report's evaluation highlights positive progress but also reveals a number of issues of concern. I offer some reflections on these findings in my capacity as the Special Rapporteur on Freedom of Expression and Access to Information in Africa.

Firstly, I wish to commend the government of Uganda and its Electoral Commission (EC) for overcoming the challenges of the COVID-19 pandemic to organise the 2021 general elections. Indeed, as recognised by the Government in what was characterised as 'scientific' or 'virtual' elections, Information and Communication Technologies (ICTs) and the media played a crucial role in ensuring access to information during the 2021 general elections. However, reports of the misuse of COVID-19 regulations to clamp down on the campaign activities of the opposition, and limit avenues for access to information are viewed with concern.

The Constitution of Uganda grants its citizens the right to access information held by the State or any other State organ, with only certain exemptions in place. Commendably, Uganda passed the Access to Information Act (AIA) in 2005, further reinforced by the Access to Information Regulations of 2011. However, the report's findings reveal that the Act and the Regulations introduced new exemptions not envisioned by the Constitution and international and regional law, necessitating its revision or narrow interpretation.

Importantly, the Uganda Constitution provides for the independence of the EC. However, the report notes the transparency and limited stakeholder involvement in selecting and appointing EC members that may have implications for its independence. Given the importance of an independent and competent Election Management Body (EMB) in delivering free, fair and credible elections, Uganda is urged to adopt more transparent and participatory appointment procedures.

The EC's efforts to facilitate access to information during the 2021 elections through media briefings, social media, websites, and its national and regional offices are appreciated. The EC is urged to reflect on the shortcomings revealed in the report including poor inclusivity of persons with disabilities (PWDs) and illiterate individuals, unjustified denial of information requests, and failure to avail the national voters register for inspection on its website. The post-election period also offers a crucial opportunity to assess the identified technical glitches such as the malfunctioning of biometric voter verification kits, late delivery of polling materials, and delivery of incorrect ballot papers. The EC should put in place the necessary measures and systems to reduce such problems in future elections. Further, in fulfilling the judgement in *Kalali Steven v. Attorney General & Electoral Commission*, the Government of Uganda and the EC are urged to adopt necessary and reasonable measures to ensure the realisation of the right of political participation for Ugandans in the diaspora, and prisoners.

Equally noteworthy are the findings on proactive disclosure by other electoral stakeholders. Political parties, election observers, law enforcement, media and media regulatory bodies, election observers and monitors, and civil society organisations are urged to consider the Guidelines and the recommendations of the report to improve their information disclosure practices. On the part of law enforcement, the reported heavy-handed approach in implementing COVID-19 measures by law enforcement agencies in Uganda that disproportionately affected the opposition members and their supporters is regrettable. Further, while national security is a legitimate ground for restricting access to information, it should not be abused to defeat the exercise of the right. In particular, law enforcement should disclose information on charges and location of arrested and detained persons throughout the electoral process. Law enforcement agencies are urged to respect the rights of arrested and detained persons, and their right to a fair trial.

Additionally, of due note is the regrettable implementation of an internet shutdown during the 2021 general elections by the Uganda government. Access to the internet is increasingly indispensable to the realisation of freedom of expression, access to information and other civil and political rights as well as socio-economic rights. More so, in the context of an election that largely relied on ICTs and the media. In this regard, Guidelines 26, 27 and 28 obligate internet regulatory bodies to refrain from shutting down the internet or any media during elections. Any internet shutdown is only permissible in exceptional cases under international law. The underlying reason should be proactively disclosed and be authorised by law; serve a legitimate aim; and be necessary and proportionate in a democratic society. Any such decision should also be subject to judicial review. The Uganda Government is urged to adhere to relevant international and regional normative standards on freedom of expression and access to information to promote meaningful political participation in elections by refraining from shutting down the internet.

The report is an invaluable resource to electoral stakeholders to assess their performance with regard to compliance with the Guidelines and other international, regional and national frameworks on access to information. In undertaking State reporting obligations under Article 62 of the African Charter, Uganda should report on the progress made towards the fulfilment of its obligations under these instruments. In this regard, shadow or parallel reports submitted by Non-Governmental Organisations to complement the State report, in accordance with Rule 79(3) of the African Commission's 2020 Rules of Procedure, are welcome.

Finally, I would like to express my gratitude to the Centre for Human Rights for delivering another report in the series assessing State compliance with the Guidelines. It is my hope that this report will add to existing literature and serve as a basis for decision-making by electoral stakeholders, and greater advocacy for the implementation of the Guidelines and other relevant instruments.

**Honourable Commissioner Ourveena Geereesha Topsy-Sonoo**  
*Special Rapporteur on Freedom of Expression and Access to Information in Africa*  
*African Commission on Human and Peoples' Rights*

## BACKGROUND TO THE REPORT

The official accounts of Uganda's history reveal a deeply divided country in constant search of a unified identity. Prior to colonial rule, ethnic divisions were visible.<sup>1</sup> These divisions were later enhanced by colonialism that enforced the imperial agenda on a divide and rule basis.<sup>2</sup> Racial and ethnic tensions exacerbated class divisions. When colonial rule ended, Uganda's combined communities needed to reconcile. Bloodshed, violence, and oppression often followed. Still divided, political parties with tribal and ethnic agendas failed to accommodate non-aligned voters.

The use of violence to silence critical voices became increasingly common. Assassinations of prominent leaders who were critical of state abuse of power became an option for power hungry rulers who saw it as a more effective way of suppressing opposing views. Democracy drew further away from realisation than it had ever been. Military juntas seized power through coups with the promise of change and democracy, but the situation only worsened as living conditions worsened, and state abductions increased. Reform attempts had previously occurred, such as when the National Resistance Army took power. It sought to drastically improve the situation by establishing a quasi-welfare state through the use of resistance councils to address grassroots issues affecting communities.<sup>3</sup>

Rebel movements such as the Lord's Resistance Army continued to destabilise northern Uganda, causing death, displacement, and oppression. It took several years to resolve the conflict in northern Uganda and to put an end to atrocities. The legacy of violence continued to be visible in the state's political affairs. Oppression of political opponents still continues to go unchecked. Arrests of political opponents and illegal detentions are the norm in Uganda's electoral process. Internet shutdowns under the guise of public security pave the way for restrictions on constitutionally protected rights such as freedom of expression and the right to information.

The story of violence and oppression continues. The brutal methods of state control and governance have not changed, but have evolved to counter new threats to their legitimacy. The legislature has aided this trend by enacting ambiguously broad laws that allow the state to clamp down on freedoms such as online expression. This legacy has not spared elections. Ugandan elections began in 1962, with the Uganda People's Congress and the Kabaka Yekka parties winning the majority of parliamentary seats. Uganda's first government was the upshot.<sup>4</sup> This election was characteristically more secretive and only major stakeholders held a monopoly over relevant electoral information throughout the country. In 2005, the Access to Information Act (AIA) was enacted to provide for the right of access to information in light of article 41 of the Constitution. This Act came prior to the 2006 elections. During this period, there was relatively lower interaction between the AIA and other existing electoral laws. Future elections also gave little consideration to such laws.

When Uganda held presidential elections in 2016, opposition candidate Kizza Besigye was subjected to state-perpetrated violence. He was placed under house arrest and detained in police cells on several occasions. This election laid the groundwork for a crackdown on the right to information. A social media ban was ostensibly implemented to reduce election malpractice. However, this did little to alleviate criticism about the conduct of the 2016 elections by election observers who reported numerous cases of voter irregularities. This was primarily as a result

1 A Lancaster 'The Divisive Nature of Ethnicity in Ugandan Politics Before and After Independence' (2022) E-International Relations <https://www.e-ir.info/pdf/21303> (accessed 12 September 2022).

2 A Cohen 'Uganda's Progress and Problems' (1957) 56 African Affairs 111-122.

3 YG Museveni Sowing the Mustard Seed (2016).

4 The Parliament of the Republic of Uganda 'History of Parliament' [https://web.archive.org/web/20100220164717/http://www.parliament.go.ug/index.php?option=com\\_content&task=view&id=4&Itemid=3](https://web.archive.org/web/20100220164717/http://www.parliament.go.ug/index.php?option=com_content&task=view&id=4&Itemid=3) (accessed 31 May 2022).

of low levels of civic education regarding the use of biometric voter verification systems, the dispatch and delivery of election material, and delays in the voting process, among other things.<sup>5</sup> This pattern has persisted to the present day. The 2021 elections represent a culmination of tensions that seem to grow much more intense with each election year. The run-up to this election was marked by voter intimidation, an internet shutdown, voting irregularities, and crackdowns by security forces on opposition election monitors, which resulted in the confiscation of Declaration of Results Forms (DR forms), among other actions.<sup>6</sup> This election was not only about power, but also about who could control information and access to information. Whoever controlled the flow of information had the ability to manipulate the election in their favour, even at the expense of civilian lives. This behaviour was an implicit attack on the right to information, with the effect of undermining the presidential election in 2021.

The report seeks to investigate the concept of access to information against the backdrop of Uganda's past and present political landscape, focusing on how this right has been exercised specifically in the electoral process. The Guidelines on Access to Information and Elections in Africa is the primary point of reference for this assessment.

## OBJECTIVES OF THE RESEARCH

The major objective of the research was to evaluate the realisation of the right of access to information during the 2021 general elections in Uganda against the expectations under the Guidelines. It also sought to specifically assess the performance of stakeholders in the 2021 electoral process of Uganda such as the Election Management Body (EMB), the appointing authority, law enforcement agencies, political parties and candidates, media and regulatory bodies, election observers and monitors, and civil society in proactively disclosing election related information in accordance with selected guiding frameworks. The study also considered the relevant national access to information legislative framework vis-à-vis the electoral legal framework of Uganda, and the state's other regional and international human rights obligations. With the elections conducted in the context of the COVID-19 pandemic, the research also assessed the impact of the response measures adopted by the Government of Uganda (GoU).

## JUSTIFICATION OF THE RESEARCH

The recently concluded 2021 general election in Uganda presented an opportunity to comprehensively assess how specific stakeholders in the country have promoted access to information during the electoral process. It is hoped that this research will contribute to a larger body of work on the right of access to information in Africa, particularly assessments of information disclosure practices during elections, in line with normative obligations, specifically the Guidelines. This broader literature is useful to guide the contributions, decisions, actions, and/or advocacy efforts by future researchers, electoral stakeholders, and decision makers.

## SCOPE OF THE RESEARCH

The scope of this research was limited to conducting a holistic assessment of how specific stakeholders have promoted or deepened access to information during the 2021 electoral process in Uganda. This included highlighting areas in which the expectations of the Guidelines were either met, partially met, not met or exceeded. It also includes other best practices; major gaps; challenges; and recommendations. Against the backdrop of the relevant legal and institutional framework on elections and access to information in Uganda, the research also sought to

5 J Kaka 'Uganda's 2016 Elections: Another Setback for Democracy in Africa' <https://theglobalobservatory.org/2016/02/ugandas-2016-elections-another-setback-for-democracy-in-africa/> (accessed 31 May 2023).

6 Africa Center for Strategic Studies 'Untangling Post-Election Uganda' <https://africacenter.org/spotlight/untangling-post-election-uganda/> (accessed 31 May 2022).

determine the extent to which specific stakeholders in Uganda’s 2021 electoral process promoted or deepened access to information relying on the provisions of the Guidelines as a checklist.

## **RESEARCH METHODOLOGY**

The methodology which was adopted in this research took the form of a desk review of the primary and secondary legal instruments and available documentary materials; and interviews with key electoral stakeholders from participating institutions. This research also made use of the text of the Guidelines for each of the electoral stakeholders as a framework in conducting each segment of the assessment. It also took into consideration the national access to information legislative framework as well as other regional and international human rights instruments.

## **OUTLINE OF THE RESEARCH**

This report has four sections. Section one sets the stage by introducing the right of access to information generally and in the Ugandan context. Section two gives an insight into the background to the 2021 ‘scientific’ general election and the stakeholders listed in the Guidelines. Section three is a review of how each of the electoral stakeholders, measured against the expectations in the Guidelines, facilitated access to information during the electoral process in Uganda. Section four is the overall conclusion which also proposes recommendations that are aimed at stimulating reform with regards to the domestic implementation of the Guidelines in Uganda.

## **LIMITATIONS OF THE RESEARCH**

The researchers obtained some of the initial information for this research through interviews with the relevant stakeholders at different times between December 2020 and February 2021, which is the period before and after the 2021 ‘scientific’ general elections. The researchers supplemented the interviews with data or information contained in subsequent election reports when they become available after January 2021.

It is also possible that some relevant information obtained after the completion of the research report will not be reflected therein. This is due to the fact that some stakeholders such as, opposition political parties and security agencies, only feel comfortable conducting interviews and granting access to specific information months after the general election, if ever. It is also worth noting that some sections of the research dealing with different stakeholders may differ in terms of scope, approach, and level of detail, depending on the availability of information on different stakeholders, the capacity and resources of the researcher, and the specifics of the requirements for each stakeholder as specified in the relevant section of the Guidelines. This study highlights and harmonises the various antitheses by relying on unique features that cut across most stakeholder approaches to arrive at an informed perspective on information access in Uganda’s 2021 electoral process.

## **ABOUT THE TEAM**



# Part One: Country Background

## Chapter 1



# PART ONE: COUNTRY BACKGROUND

## CHAPTER 1: ACCESS TO INFORMATION AND ELECTIONS IN UGANDA

### 1.1 INTRODUCTION

On 14 January 2021, the Republic of Uganda held presidential and parliamentary elections. This was the country's sixth general election since the adoption of the current Constitution in 1995. General elections in Uganda, held every five years, are a defining feature of the country's democratic processes. This is due to the country's history of political instability and violent means of changing governments. The organisation of Uganda's electoral processes has gradually improved over the years, partly due to the need to meet international standards, but also to avoid repeating the mistakes of previous governments. A history of poorly organised elections had plunged the country into a vicious cycle of violence.

Uganda held the 2021 presidential and parliamentary elections simultaneously. The presidential election was essentially a two-horse race between incumbent President Yoweri Kaguta Museveni Tibuhaburwa of the National Resistance Movement (NRM) and Hon. Robert Sentamu Kyagulanyi, a serving Member of Parliament (MP) and the president of the National Unity Party (NUP). According to the Electoral Commission (EC) of Uganda, 59.35% (10 744 319) of the 18 103 603 registered voters were able to vote on Election Day. President Museveni and Hon. Kyagulanyi scored 58.38% and 35.08%, respectively.<sup>7</sup> At the parliamentary level, of the 499 MPs who were elected, the NRM registered the highest number (316) of new MPs followed by the independents (73), NUP (61), the Forum for Democratic Change (FDC) (28), the Democratic Party (DP) (9), the Uganda People's Congress (UPC) (10), Peoples' Progressive Party (PPP) (1), and the Justice Forum (JEEMA) (1).<sup>8</sup>

The 2021 election presented the GoU and the EC with unprecedented challenges. These arose as a result of the election being held during the height of the COVID-19 pandemic. As a result, the GoU and the EC were forced to perform a difficult balancing act: holding a free and fair election on the one hand, while keeping the public safe in the midst of the COVID-19 pandemic on the other. The GoU was not willing to consider postponing the election. The EC issued new Electoral Guidelines (EGs) in June 2020, prescribing virtual campaigns primarily through the use of ICT solutions such as the media and the internet, thus the slogan "scientific" election. These new EGs, enacted to supplement the GoU's COVID-19 control measures, imposed restrictions on face-to-face interactions between candidates and voters, mass gatherings, processions, and public rallies during the electoral cycle.<sup>9</sup> According to the EC, the new EGs were aimed at ensuring that the citizens were protected from COVID-19 while also ensuring that the electoral cycle was not disrupted. As a result, the EC banned physical campaigns in a number of districts

7 EC 'Publishing of the Final Results for Presidential Elections 2021' <https://www.ec.or.ug/news/publishing-final-results-presidential-elections-2021> (accessed 29 January 2021).

8 Independent Reporter 'DP Pleased with Performance in Parliamentary Elections' The Independent 18 January 2021 <https://www.independent.co.ug/dp-pleased-with-performance-in-parliamentary-elections/> (accessed 30 January 2021).

9 Ministry of ICT & National Guidance 'Press statement on Scientific Elections Roadmap' (2020) <https://ict.go.ug/wp-content/uploads/2020/06/Press-Statement-on-Scientific-Electioctions-Road-Map.pdf> (accessed 02 July 2021).



in Uganda which were also perceived as opposition strongholds.<sup>10</sup> This adversely affected the citizens' right of access to information since they were not able to effectively access the programmes and manifestos of the candidates so as to make informed decisions on who to vote for.<sup>11</sup>

The general election was also characterised by violence and arrests of opposition politicians and candidates by the security forces. Many Ugandans also reportedly lost their lives during this election period due to electoral related violence by the security forces.<sup>12</sup> For example, over 50 Ugandans were killed by security forces during November 2020 protests sparked by the violent arrest of NUP's Mr. Robert Kyagulanyi, the leading opposition presidential candidate, while campaigning in eastern Uganda.<sup>13</sup> Mr. Kyagulanyi was arrested allegedly for gathering crowds and conducting his campaigns in a manner which was likely to spread COVID-19 among the public. It is suggested that the 2021 general election was the most violent election that Ugandans had ever witnessed.<sup>14</sup> This was due to the fact that many Ugandans believed that the government was using COVID-19 as a weapon to curtail campaigns and assemblies by opposition political candidates.<sup>15</sup> Many of the campaign rallies of the two opposition frontrunner candidates were violently dispersed with teargas and live bullets, while the two candidates were arrested on several occasions.<sup>16</sup> Several instances of abductions, murders, and illegal detentions were reportedly committed against members in the opposition.<sup>17</sup>

While this violence and disruption of campaigns was ongoing, the EC's silence drew criticism from the opposition political parties who accused them of complicity in all these events.<sup>18</sup> The EC often asserted that it had no powers to prevail over the security forces to stop the violence. The control measures which were imposed by the GoU to curb the prevalence of COVID-19 were flouted by candidates from both the ruling party and opposition parties.<sup>19</sup> Campaign messaging revolved around unresolved challenges such as youth unemployment, corruption, poverty, nepotism, and land evictions.

The presidential election results were declared within 48 hours after the closure of the polls as required by section 57(1) of the Presidential Elections Act.<sup>20</sup> The most prominent blow on access

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10 J Bwire 'EC bans campaign meetings in Kampala, Wakiso and 10 other districts' The Daily Monitor 26 December 2020 <https://www.monitor.co.ug/uganda/news/national/ec-bans-campaign-meetings-in-kampala-wakiso-and-10-other-district-s-3240024> (accessed 5 January 2021).

11 As above.

12 As above.

13 A Bagala 'Death toll from riots rises to 50' The Daily Monitor, 24 November 2020 <https://www.monitor.co.ug/uganda/special-reports/death-toll-from-riots-rises-to-50--320832> (accessed 15 January 2021).

14 J Burke & S Okiror 'Bobi Wine protests: Death toll rises in Uganda's worst unrest in years' The Guardian 19 November 2020 <https://www.theguardian.com/world/2020/nov/19/bobi-wine-protests-death-toll-rises-in-ugandas-worst-unrest-in-years> (accessed 15 January 2021).

15 Human Rights Watch 'Uganda Authorities Weaponize Covid-19 For Repression' <https://www.hrw.org/node/377081/printable/print> (accessed 15 January 2021).

16 Agence France-Presse 'Uganda wraps up violent and chaotic election campaign' The Daily Monitor 8 January 2021 <https://www.monitor.co.ug/uganda/news/national/uganda-wraps-up-violent-and-chaotic-election-campaign-3251436> (accessed 19 January 2021).

17 Human Rights Watch 'Uganda: Hundreds Disappeared, 'Tortured'' <https://www.hrw.org/news/2022/03/22/uganda-hundreds-disappeared-tortured> (accessed 28 September 2022).

18 As above.

19 Monitor Team 'Candidates flout Covid rules as cases soar' The Daily Monitor 7 December 2020 <https://www.monitor.co.ug/uganda/special-reports/elections/candidates-flout-covid-rules-as-cases-soar--3221208> (accessed 18 January 2021).

20 The Commission shall ascertain, publish and declare in writing under its seal the results of the presidential election within 48 hours from the close of polling. The Presidential Elections Act [https://ulii.org/akn/ug/act/2005/16/eng@2020-07-27#part\\_VII\\_sec\\_57](https://ulii.org/akn/ug/act/2005/16/eng@2020-07-27#part_VII_sec_57) (accessed 7 March 2023).

to information on election day was the government-ordered nationwide internet shutdown under the guise of national security. Internet shutdowns during elections have become the norm in most authoritarian African countries. This compromised access to information during the election process and explains the Commission's arrangement of having a centralised command centre to declare the results from all centres. During an interview with officials from the EC about whether the use of technology as an aid to the electoral process rather than a threat, issues such as network connectivity and interoperability were raised as impediments.

## 1.2 THE NEXUS BETWEEN ACCESS TO INFORMATION AND POLITICAL PARTICIPATION

Access to information is a crucial enabling right for meaningful public participation in electoral and democratic processes.<sup>21</sup> It is a fundamental principle in any democratic nation. The principle implies that the public and the mass media are entitled to some form of transparency in relation to public activities.<sup>22</sup> It is vital for the public to have access to updated, relevant, truthful, affordable, accurate, understandable, and timely information. A fully informed citizenry with access to information is able to interpret and understand the messages and manifestos of political candidates during the campaign period.

The existence of a strong access to information legislation is also essential to maintaining and sometimes restoring public confidence in public institutions by subjecting the activities of those institutions to public scrutiny.<sup>23</sup> Whereas, the public should have access to information in the possession of the state or its organs, the public should equally have access to information in the possession of private bodies which may be of public interest.<sup>24</sup> Internationally, the right to access information, usually linked with freedom of expression, has been reinforced and stressed along the lines of participation in electoral processes.

At the international level, instruments such as the International Covenant on Civil and Political Rights (ICCPR)<sup>25</sup> require that every citizen should have the right and the opportunity, without any of the distinctions and without unreasonable restrictions:<sup>26</sup>

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

The conduct of public affairs is broad. It relates to the exercise of political power, specifically legislative, executive and administrative powers that must be exercised with a view of creating constitutional protections towards article 25 of the ICCPR. States are required to take effective steps to ensure that all persons entitled to vote are able to exercise that right.<sup>27</sup>

21 It is suggested herein that access to information largely determines the effectiveness of governance in nation building processes at DL Marais, M Quayle & JK Burns 'The role of access to information in enabling transparency and public participation in governance: A case study of access to policy consultation records in South Africa' (2017) 9 African Journal of Public Affairs 37.

22 Ministry of Justice Sweden Public Access to Information and Secrecy (2020) 7.

23 G Tumushabe 'Towards Environmental Accountability: Freedom of Access to Information Legislation for Uganda' in K Kakuru & I Ssekyaana (eds) Handbook on Environmental Law in Uganda (2005) 154.

24 General principles, The Guidelines.

25 Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. See <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed 3 December 2020).

26 Art 25 ICCPR.

27 United Nations Human Rights Council/ CCPR General Comment 25 on the Right to Participate in Public

Under the African Charter on Human and Peoples' Rights (African Charter), every citizen has the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.<sup>28</sup> It is considered that article 9(1) of the African Charter on access to information is essential for the full realisation or implementation of article 13(1) of the African Charter on the right to freely participate in government affairs, including electoral processes. Similarly, the 2007 African Charter on Democracy, Elections, and Governance (ACDEG)<sup>29</sup> requires state parties to reaffirm their commitment to holding regular transparent, free, and fair elections in accordance with the African Union (AU) Declaration on the Principles Governing Democratic Elections in Africa,<sup>30</sup> which include fair and equitable access for contesting parties and candidates to state-controlled media during elections.<sup>31</sup>

Principle four of the AU Declaration on the Principles Governing Democratic Elections in Africa emphasises the rights held by political parties and individuals to campaign and express political opinions with 'full access to the media and information within the limits of the laws of the land.'<sup>32</sup> The regulatory landscape around the right of access to information is mainly guided by soft law instruments which are non-binding in nature. However, inasmuch as they derive from binding normative frameworks, these instruments offer crucial guidance towards the realisation of the right to access information. As a result, considering that these two rights are inextricably linked, the right to information has significant implications for the right to participate in electoral processes.

### 1.3 LEGAL FRAMEWORK ON THE RIGHT OF ACCESS TO INFORMATION

The right of access to information has been defined as the right to seek, receive and impart information held by public bodies. This is embedded deeply in the right to freedom of expression which is subject to certain limitations.

### 1.4 INTERNATIONAL FRAMEWORK

#### *i. The Universal Declaration of Human Rights, 1948*

Article 19 of the Universal Declaration of Human Rights (UDHR)<sup>33</sup> establishes the right to freedom of expression which encompasses the freedom to hold opinions without interference, and to seek, receive and impart information or ideas through any media regardless of frontiers.

#### *ii. The International Covenant on Civil and Political Rights*

The ICCPR provides for the right to freedom of expression, which encompasses the 'freedom to seek, receive and impart information and ideas of all kinds.'<sup>34</sup>

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Affairs, Voting Rights and the Right of Equal Access to Public Services paras 5 & 11 <https://www.refworld.org/docid/453883fc22.html> (accessed 7 December 2020).

28 Art 13(1) African Charter.

29 ACDEG <https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf> (accessed 7 December 2020).

30 African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII) (2002) <https://www.eisa.org/pdf/au2002declaration.pdf> (accessed 7 December 2020).

31 Article 17 ACDEG.

32 OAU/AU Declaration on the Principles Governing Democratic Elections in Africa <https://www.eisa.org/pdf/au2002declaration.pdf> (accessed on 7 March 2023).

33 Universal Declaration of Human Rights, 1948 <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 3 December 2020).

34 article 19(2) ICCPR.

### *iii. The Brisbane Declaration: Freedom of Information and the Right to Know, 2010*

This Declaration<sup>35</sup> re-echoes that in promoting democracy, and observance and respect of human rights and fundamental freedoms, the right to know and press freedom are extremely essential. This is solely based on the notion that democratic participation, informed decision-making, public office monitoring, and enhancement of transparency as well as accountability are critically based on the information available or made available.

## **1.5 REGIONAL FRAMEWORK**

### *i. The African Charter on Human and People's Rights*

According to the African Charter, every individual has the right to receive information.<sup>36</sup> It further provides that every individual has the right to express and disseminate his opinions within the law.<sup>37</sup> The African Charter also establishes the African Commission on Human and Peoples' Rights (African Commission).<sup>38</sup> The African Commission, which was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. The mandate of the African Commission is the protection and promotion of human and people's rights, and interpretation of the African Charter including its provisions on access to information.

In accordance with its mandate, the African Commission established the mechanism of the Special Rapporteur on Freedom of Expression on 7 December 2004, with the specific mandate of monitoring member states' compliance with the article 9 of African Charter on freedom of expression and advising on the same. The mechanism was also tasked with researching national media legislation, policies, and practises in member states.

At its 42nd meeting in Congo Brazzaville in November 2007, the African Commission expanded the Special Rapporteur's mandate to include access to information. The new title was 'Special Rapporteur on Freedom of Expression and Access to Information in Africa'.<sup>39</sup> The new mandate amplified the complementary nature of the two rights of access to information and freedom of expression as per articles 9(1) and 9(2) of the African Charter. In a bid to elaborate on article 9 of the Charter, the African Commission adopted the Declaration of Principles on Freedom of Expression in Africa in 2002.<sup>40</sup> The 2002 Declaration was subsequently reviewed and updated. The revised Declaration of Principles on Freedom of Expression and Access to Information in Africa (the Declaration) was adopted during the 65th Ordinary Session of the African Commission in 2019.<sup>41</sup> The revision was to include access to information and align the Declaration with evolving standards and practices as well as developments in the online sphere on access to information and freedom of expression.<sup>42</sup>

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35 Child Rights International Network 'The Brisbane Declaration: Freedom of Information and the Right to Know' <https://archive.crin.org/en/library/legal-database/brisbane-declaration-freedom-information-right-know.html> (accessed 3 December 2022).

36 Article 9(1) African Charter.

37 Article 9(2) African Charter.

38 Article 30 African Charter.

39 CHR & Others 'Proactive Disclosure of Information and Elections in South Africa' (2021) 1 [https://www.chr.up.ac.za/images/researchunits/dgdr/documents/reports/Proactive\\_Disclosure\\_of\\_Information\\_and\\_Elections\\_in\\_South\\_Africa.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/reports/Proactive_Disclosure_of_Information_and_Elections_in_South_Africa.pdf) (accessed 3 December 2020).

40 This Declaration was adopted through Resolution 62(XXXII) of the African Commission on 23 October 2002, at the 32rd Ordinary Session in Banjul, The Gambia.

41 African Commission 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019) [https://www.chr.up.ac.za/images/researchunits/dgdr/documents/ati/Declaration\\_of\\_Principles\\_on\\_Freedom\\_of\\_Expression\\_ENG\\_2019.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/ati/Declaration_of_Principles_on_Freedom_of_Expression_ENG_2019.pdf)(accessed 5 December 2020).

42 CHR & Others (n 39) 1.

In 2013, the African Commission adopted the Model Law on Access to Information for Africa (Model Law).<sup>43</sup> The African Commission realised the need to promote the domestic implementation of access to information legal frameworks by the member states of the African Charter in accordance with article 9(1).<sup>44</sup> Following the said adoption, the African Commission authorised the Special Rapporteur to spearhead the process of urging African states to utilise it as a guide for the domestic implementation of access to information legal regulatory frameworks.<sup>45</sup>

In light of the above, under the stewardship of the Special Rapporteur, the African Commission adopted the Guidelines on Access to Information and Elections in Africa in 2017.<sup>46</sup> The rationale of the Guidelines was to provide direction on access to information in the electoral process as a means of strengthening democratic governance in Africa. This was premised on previous experiences across the African continent where the lack of information during elections threatened peace, security and stability. The Guidelines therefore stipulate the minimum standards for access to information applicable to each category of stakeholders involved in the electoral processes such as: the authority responsible for appointing an election management body; the electoral management body; political parties and candidates; law enforcement agencies; election monitoring and observation groups; media and online media platform providers; media regulatory bodies; and civil society organisations.<sup>47</sup>

Therefore, the domestic implementation of the Guidelines requires member states to adopt legislative and other measures to improve the landscape of access to information in the electoral process as a means of strengthening democratic governance in their countries.

Furthermore, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights was adopted on 10 June 1998.<sup>48</sup> The African Court on Human and Peoples' Rights (African Court) has determined some cases regarding the right to freedom of expression, right to information, and freedom of association. In *Lohé Issa Konaté v. Burkina Faso*,<sup>49</sup> the Court emphasised the importance of an independent and professional press to freedom of expression. Therefore, states are obligated to protect and ensure the realisation of freedom of expression and access to information, and refrain from conduct that would ultimately impede the realisation of these rights.

43 African Commission 'Model Law on Access to Information for Africa' (2013) [https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model\\_law\\_on\\_ati\\_in\\_africa/model\\_law\\_on\\_access\\_to\\_information\\_en.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model_law_on_ati_in_africa/model_law_on_access_to_information_en.pdf) (accessed 5 December 2020).

44 This Model Law was adopted through Resolution 167(XLVIII) of the African Commission on 24 November 2010 48th Ordinary Session in Banjul, The Gambia.

45 ACHPR Model Law on Access to Information for Africa. The Law is premised on a growing international and local concern of the right to access information and the need for legislative reform around the area. The Model Law states in its preface that it is '... a non-binding document crafted specifically as a tool to guide law makers in translating obligations emanating from international treaties into detailed national legislation.' The status of the Model Law as non-binding on parties is important in determining the strides that countries can make under it in the context of securing the right to access to information having provided states with wide wiggle room in terms of adopting or rejecting its stance on state obligations and the rights of citizen.

46 Adopted by the African Commission on 10 November 2017, during its 61st Ordinary Session, which took place in Banjul, The Gambia [https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/guidelines\\_on\\_access\\_to\\_information\\_and\\_elections\\_in\\_africa\\_en.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/guidelines_on_access_to_information_and_elections_in_africa_en.pdf) (accessed 5 December 2020).

47 CHR & Others (n 39).

48 The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998) [https://au.int/sites/default/files/treaties/36393-treaty-0019\\_-\\_protocol\\_to\\_the\\_african\\_charter\\_on\\_human\\_and\\_peoplesrights\\_on\\_the\\_establishment\\_of\\_an\\_african\\_court\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf) (accessed 5 December 2020).

49 *Lohé Issa Konaté v Burkina-Faso* No. 004/2013, African Court on Human and Peoples' Rights <https://www.african-court.org/en/images/Cases/Judgment/Judgment%20Appl.004-2013%20Lohe%20Issa%20Konate%20v%20Burkina%20Faso%20-English.pdf> (accessed 7 December 2020).

## *ii. The Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People, 2008*

The Declaration<sup>50</sup> recognises that in order for open and informed debate to take place in a democratic society, freedom of expression and access to information are required, thereby promoting government transparency and accountability, and encouraging citizen participation. In doing so, the Declaration encourages member states to ensure that public bodies adhere to the principles of open government, transparency, accountability, and open access to information.

## **1.6 DOMESTIC FRAMEWORK**

### *i. The Constitution of the Republic of Uganda, 1995 as amended*

In Uganda, the right to information is guaranteed by the Constitution.<sup>51</sup> According to article 41 of the Constitution, every citizen has the right to access information held by the state or any other organ or agency of the state, unless the release of the information is likely to jeopardise the state's security or sovereignty, or interfere with the right to privacy of any other person.<sup>52</sup> The judiciary has pronounced itself on article 41 in *Zachary Olum and Another v Attorney General*.<sup>53</sup> The Constitutional Court stated that the constitutional right to information cannot be limited by requiring a citizen to obtain leave of parliament before accessing it.

### *ii. The Access to Information Act, 2005*

The Constitution of Uganda further requires parliament to make laws prescribing the classes of information referred to by the Constitution, and the procedure for obtaining access to that information.<sup>54</sup> In compliance with the above, the Parliament of Uganda enacted the Access to Information Act (AIA)<sup>55</sup> in 2005. As a result, the AIA became Uganda's national law on access to information. The AIA gives effect to article 41 of the Constitution regarding access to information held by the state and other citizens other than those in the exempted category. Further, the AIA is for promoting an effective, efficient, accountable, and transparent government. It is also a framework for protecting those who disclose sensitive and vital information, for example, on maladministration, corruption, and human rights violations.<sup>56</sup> More specifically, the AIA provides that every citizen has a right of access to information and records in the possession of the state or any public body, 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.

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50 The Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People (2008) [https://en.unesco.org/sites/default/files/maputo\\_declaration.pdf](https://en.unesco.org/sites/default/files/maputo_declaration.pdf) (accessed 5 December 2020).

51 Comparative Constitutional Project 'Uganda's Constitution of 1995 with Amendments through 2017' [https://www.constituteproject.org/constitution/Uganda\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Uganda_2017.pdf?lang=en) (accessed 5 December 2020).

52 Article 41(1) Constitution.

53 *Zachary Olum and Another v Attorney General* (Constitutional Petition-1999/6) [1999] UGCC 7 <https://old.ulii.org/ug/judgment/constitutional-court-uganda/1999/7> (accessed on 7 March 2023).

54 Article 41(2) Constitution.

55 Access to Information Act 6 of 2005 <http://judiciary.go.ug/files/downloads/access%20to%20information%20Act2005.pdf> (accessed 5 December 2020).

56 Sec 3 Access to Information Act.

### *iii. The Access to Information Regulations, 2011*

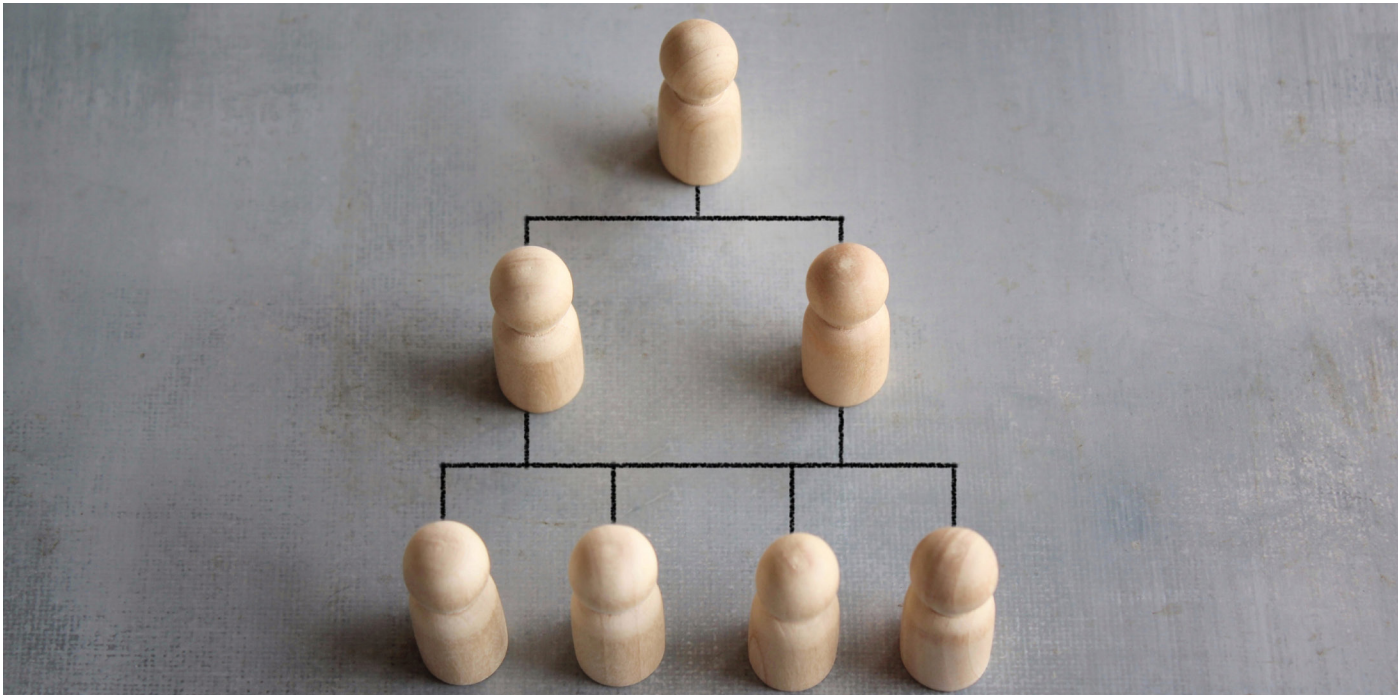
These Regulations<sup>57</sup> were enacted to operationalize the AIA in giving guidance to access of records, and the procedure to be undertaken.

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57 The Access to Information Regulations 17 of 2011 <https://chapterfouruganda.org/sites/default/files/downloads/The-Access-to-Information-Regulations-2011.pdf> (accessed 5 December 2020).



**Part Two: Assessment Of Stakeholders' Compliance With The Guidelines**  
Chapter 2





# PART TWO: ASSESSMENT OF STAKEHOLDERS' COMPLIANCE WITH THE GUIDELINES

## CHAPTER 2: APPOINTING AUTHORITY AND ELECTION MANAGEMENT BODY

### 2.1 INTRODUCTION

According to the Guidelines, 'appointing authority' refers to any person or institution within a state party that is authorised by law to oversee the appointment of members of the election management body.<sup>58</sup> In the case of Uganda, 'appointing authority' refers to the President of Uganda who nominates and appoints the members (chairperson and commissioners) of the EC after they have been vetted and approved by parliament.<sup>59</sup> However, numerous calls have been made over the years to make the selection and appointment of EC members more transparent and inclusive, involving civil society, political parties, and the Judicial Service Commission. An underlying justification is that it will make the EC more independent and impartial, given that the president, the appointing authority, has historically been a presidential candidate. The EC's officials have cited article 61 of the Constitution as the source of the Commission's independence, arguing that independence stems from the Constitution rather than individuals or institutions.

The Guidelines define an 'Election Management Body' (EMB) as the body or bodies in charge of electoral administration. Its mandate is the management of some or all of the elements that are necessary for the conduct of elections, as well as direct democracy instruments such as referendums, citizens' initiatives, and recall votes, to the extent that they are part of the legal framework.<sup>60</sup> In Uganda, the EMB is the EC. As mandated by article 61 of the Ugandan Constitution, it is tasked with ensuring that regular, free, and fair elections are held.<sup>61</sup> The Constitution further requires the EC to organise, conduct and supervise elections and referenda; to demarcate constituencies in accordance with the provisions of this Constitution; to ascertain, publish and declare in writing under its seal the results of the elections and referenda; to compile, maintain, and revise and update the voters' register.<sup>62</sup> It also hears and determines election complaints arising before and during polling and formulates and implements civic educational programmes relating to elections.<sup>63</sup> Thus, the EMB is crucial in ensuring that elections are conducted in a non-partisan and transparent manner.<sup>64</sup> The Guidelines require EMBs to facilitate access to information as part of their operational functions.<sup>65</sup>

The Electoral Commission Act (ECA) requires the EC to perform certain duties, including, but not limited to, taking measures to ensure that the entire electoral process is conducted under

58 Guideline 1.

59 Art 60(1) Constitution.

60 Guideline 1.

61 Art 61(a) Constitution.

62 Art 61(b)-(g) Constitution.

63 Art 61(b)-(g) Constitution.

64 CHR & Others (n 39) 18.

65 Guidelines 13-19.

conditions of freedom and fairness; and taking steps to ensure that there are secure conditions required for the conduct of any election in accordance with the Act or any other law.<sup>66</sup> The words ‘taking measures’ and ‘taking steps’ used in the above provisions of the ECA lead one to believe that this includes proactive disclosure of information by the EC. Furthermore, the ECA requires the Commission to promote and regulate civic and voter education of Ugandan citizens, including the use of sign language where practicable.<sup>67</sup> All the above duties impose an obligation on the EC to ensure that the right of access to information is enhanced during electoral processes in Uganda.

### **2.1.1 APPOINTMENT OF THE ELECTION MANAGEMENT BODY**

Whereas the Constitution provides for the appointment of the members of the EC, these provisions are not detailed.<sup>68</sup> The president appoints the members of the EC with the approval of parliament. Prior to appointing the members of the EC, it is unclear if the president officially consults any individuals or institutions. The vetting also occurs in private sessions further fostering perceptions of non-transparency. Other than some media coverage, there is limited publicity about the nomination and vetting of the members of the EC.

According to guideline 15, an EMB is required to proactively disclose information relating to its membership including: details of the professional background of its members; policy on declaration of assets and interests by its members; and its code of conduct and ethics. Whereas the ECA is silent on the appointment procedure and requirements of the members of the EC, the Constitution of Uganda highlights the appointment process, conditions of service, and the termination of service of these members.

According to the Constitution, the members of the EC should be persons of high moral character, proven integrity and who possess considerable experience and demonstrated competence in the conduct of public affairs.<sup>69</sup> The Constitution further provides that the members of the EC should hold office for seven years, and their appointment renewed for only one more term.<sup>70</sup> The Constitution also grants the president powers to remove a member of the EC in limited circumstances such as: inability to perform the functions of his or her office arising out of physical or mental incapacity;<sup>71</sup> misbehaviour or misconduct;<sup>72</sup> or incompetence.<sup>73</sup> Although not clearly specified, the Constitution entitles members of the EC to emoluments or remuneration as determined by parliament.<sup>74</sup> To date, the exact or precise remuneration and emoluments of the members of the EC in Uganda is not publicly known nor is it on the EC’s website.

In a nutshell, the Constitution of Uganda, to some extent, complies with the requirements spelt out in the Guidelines concerning the nomination and appointment process of the members of the EMB. But the same constitutional provisions do not impose a duty on the EC to proactively disclose the various categories of information relating to its operational procedures.

### **2.1.2 RECORD KEEPING AND ACCESS PROCEDURES**

The duty imposed on the EC to enhance and facilitate the right of access to information in Uganda is derived from the AIA. Although the AIA has provisions which can adequately

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66 Sec 12(1) & (f) Electoral Commission Act.

67 Sec 12(1)(g) Electoral Commission Act.

68 Art 60(1) Constitution.

69 Art 60(2) Constitution.

70 Art 60(3) Constitution.

71 Art 60(8)(a) Constitution.

72 Art 60(8)(b) Constitution.

73 Art 60(8)(c) Constitution.

74 Art 60(6) Constitution.

facilitate the proactive disclosure of information by the EC,<sup>75</sup> the EC often withholds information which should be automatically availed. It also declines information requests from electoral stakeholders such as candidates, political parties, the media, civil society and the general public.<sup>76</sup> This is most prevalent in cases where the EC suspects that the information sought has a bearing on its processes and activities.<sup>77</sup>

Nonetheless, the EC, on a regular basis (especially during the electoral period), proactively discloses information to the public through print and electronic media briefings, social media, its website, sensitisation drives, periodic performance reports, mobile applications, and thematic publications. The EC also accredits the media, agents of candidates, candidates, and election observers and monitors for purposes of accessing the tallying centres at the districts, and the national tallying centre where election results are relayed to the country. In addition to its headquarters in Kampala, the EC also has regional offices at the districts where electoral stakeholders and the general public can physically access information. Furthermore, the EC often partners with civil society organisations such as the Citizens Coalition for Electoral Democracy in Uganda (CCEDU) for purposes of conducting voter education, election monitoring, and dissemination of relevant information.

The EC's information and record disclosure mechanisms do not adequately cater for Persons with Disabilities (PWDs) and illiterate persons. For instance, the EC does not develop publications or ballot papers in braille. Most of its publications are in English which adversely affects the citizens or electoral stakeholders who only understand the local languages. It is also important to note that the EC mainly makes information disclosures during the electoral period, that is, general elections and by-elections, but the situation is quite different in some periods in the pre and post-election phases.

A PDF copy of the ECA is available on the EC website<sup>78</sup> although it is not very easy to locate as one has to scroll through several resources to find it.<sup>79</sup> It is equally not easy for one to locate the subsequent amendments to the ECA on the same website. In the alternative, the ECA and its subsequent amendments can easily be accessed via a Google search and other government ministry, department and agency websites.

### **2.1.3 ELECTION MANAGEMENT BODY MEMBERSHIP DETAILS**

The particulars of the current members or commissioners of the EC are accessible on its website.<sup>80</sup> The current EC is composed of Justice Simon Mugenyi Byabakama (Chairperson), Hajjat Aisha Lubega (Vice Chairperson), Peter Emorut (Commissioner), Justine Ahabwe Mugabi (Commissioner), Stephen Tashobya (Commissioner), Mustapha Ssebagala Kigozi (Commissioner), and Nathaline Etomaru (Commissioner).

The code of conduct of the members of the EC is governed by chapter fourteen of the Constitution which provides for the leadership code of conduct. This leadership code of

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75 Sec 8 Access to Information Act.

76 M Ntezza 'EC Declines to Release President Museveni's Academic Papers' 21 Chimp Reports September 2020 <https://chimpreports.com/ec-declines-to-release-president-musevenis-academic-papers/> & M Thembo-Kahungu, 'MPs Accuse EC of Double Standards on Bobi Wine, Museveni Papers' The Daily Monitor 24 September 2020 <https://www.monitor.co.ug/uganda/news/national/mps-accuse-ec-double-standards-bobi-wine-museveni-papers-2371436> (accessed 15 February 2021).

77 As above.

78 Electoral Commission 'Home' <https://www.ec.or.ug> (accessed 13 February 2021).

79 The Electoral Commission Act Chapter 140 <https://www.ec.or.ug/docs/Electoral%20Commission%20Act,%20Uganda.pdf> (accessed 13 February 2021).

80 Electoral Commission 'Organizational Structure' <https://www.ec.or.ug/commissioners> (accessed on 15 February 2021).

conduct is enforced by the Inspectorate of Government (IG).<sup>81</sup> The Constitution also requires that parliament shall establish a legal Leadership Code of Conduct for persons holding such offices as may be specified by parliament.<sup>82</sup>

To this effect parliament enacted the Leadership Code Act in 2002<sup>83</sup> which requires public officers such as the members of the EC to declare their income, assets and liabilities to the IG.<sup>84</sup> The Leadership Code Act also requires members of the EC to disclose any conflict of interest.<sup>85</sup> In 2017 parliament amended the Leadership Code Act to give effect to article 235(a) of the Constitution by providing for the establishment, composition, jurisdiction and functions of the Leadership Code Tribunal, to strengthen the enforcement of the Code and for other related matters.<sup>86</sup>

#### **2.1.4 INTERNAL MECHANISMS, RECRUITMENT, PROCUREMENT AND REPORTING**

The Constitution provides for the composition of the EC, qualifications of the members and commissioners, procedures of appointment, and tenure of office.<sup>87</sup> The EC is headed by a chairperson who should be a judge of the High Court or qualifies to be a judge of the High Court, a vice chairperson, and five commissioners. This organisational structure of the EC is readily available on its website.<sup>88</sup> The ECA establishes the position of the Secretary to the EC who is a public officer appointed by the EC in consultation with the Public Service Commission (PSC).<sup>89</sup> The Secretary to the EC is the chief accounting officer of the EC and is also the head of the EC secretariat, with the duty to supervise all other staff of the EC. The ECA also provides for other employees and officers of the EC necessary for the discharge of its functions.<sup>90</sup> These other employees and officers of the EC are appointed by the EC in consultation with the PSC.<sup>91</sup> According to the ECA, public officers from other government ministries, departments and agencies may be seconded to the service of the EC.<sup>92</sup> Similarly to the recruitment and appointment of the members and commissioners of the EC, the recruitment of the other employees and officers is not proactively disclosed or publicised.

The EC annually compiles reports and other relevant documents such as election results, registration statistics and the electoral map of Uganda which are available on its website.<sup>93</sup> The ECA also requires the EC to produce and submit to parliament through the Minister of Justice and Constitutional Affairs a report on any election conducted by it within six months after the declaration of the results of the election.<sup>94</sup>

The Constitution and the ECA also have provisions on the allocation of funds and expenses of the EC. According to the Constitution, parliament should ensure that adequate funds and facilities

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81 Art 234 Constitution.

82 Art 233 Constitution.

83 Leadership Code Act of 2002 [https://www.igg.go.ug/media/files/publications/The\\_Leadership\\_Code\\_Act\\_2002.pdf](https://www.igg.go.ug/media/files/publications/The_Leadership_Code_Act_2002.pdf) (accessed on 15 February 2021).

84 Part II Leadership Code Act.

85 Part III Leadership Code Act.

86 Leadership Code (Amendment) Act 5 of 2017 [https://www.igg.go.ug/media/files/publications/Leadership\\_Code\\_Act\\_2017.pdf](https://www.igg.go.ug/media/files/publications/Leadership_Code_Act_2017.pdf) (accessed on 7 March 2023).

87 Art 60 Constitution.

88 EC (n 80).

89 Sec 5(1) Electoral Commission Act.

90 Sec 5(5) Electoral Commission Act.

91 Sec 5(6) Electoral Commission Act & Art 65 Constitution.

92 Sec 5(7) Electoral Commission Act.

93 EC 'Elections and Results' <https://www.ec.or.ug/elections> (accessed 16 February 2021).

94 Sec 12(1)(o) Electoral Commission Act.

are allocated to the EC.<sup>95</sup> The EC should be self-accounting, and shall directly deal with the Minister of Finance.<sup>96</sup> All funds and expenses of the EC should be drawn from the consolidated fund.<sup>97</sup> The ECA requires that all funds of the EC should be administered and controlled by the Secretary to the EC.<sup>98</sup> Furthermore, the funds of the EC may, with the prior approval of the Minister responsible for finance, include grants and donations from sources within or outside Uganda.<sup>99</sup> The funds and expenses of the EC are audited by the Auditor General and subject to the Public Finance Management Act of 2015.<sup>100</sup>

The EC often carries out procurement procedures especially prior to the elections including securing electoral materials (such as ballot papers and equipment) and warehousing space. The procedures are governed or regulated by the Public Procurement and Disposal of Public Assets (PPDA) Act.<sup>101</sup> The EC posts announcements and advertisements relating to invitations for procurement and supply bids on its website.<sup>102</sup> However, media reports indicate that the procurement procedures of the EC have been riddled with corruption and abuse of office which has necessitated the intervention of the president.<sup>103</sup>

## **2.1.5 PRE-ELECTION PROACTIVE DISCLOSURE**

### ***i. Electoral calendar***

The EC published a detailed electoral calendar or roadmap for the 2021 general elections on its website.<sup>104</sup> The Local Governments Act (LGA) of 1998<sup>105</sup> requires the EC to issue a public notice published in the official Gazette and public media appointing a day or days on which elections of all or a category of local government councils or administrative councils shall take place.<sup>106</sup> The Presidential Elections Act of 2005<sup>107</sup> provides for the publication of polling stations and candidates by stating that the EC should, by notice in the Gazette, publish a list of the polling stations in each constituency at least 14 days before nomination, and a list of the names of the nominated candidates in alphabetical order with surnames first.<sup>108</sup>

### ***ii. Delimitation of electoral boundaries***

The Constitution and the ECA task the EC with the demarcation of constituencies, the number of which is as prescribed by a parliamentary resolution.<sup>109</sup> However, there are concerns that parliament has usurped the powers of the EC to delimit electoral boundaries through the

95 Art 66(1) Constitution.

96 Art 66(2) Constitution.

97 Art 66(3) Constitution.

98 Sec 9(1) Electoral Commission Act.

99 Sec 9(3) Electoral Commission Act.

100 Public Finance Management Act 3 of 2015 [https://www.ugandainvest.go.ug/wp-content/uploads/2016/02/Uganda\\_Public\\_Finance\\_Management\\_Act\\_2015\\_3.pdf](https://www.ugandainvest.go.ug/wp-content/uploads/2016/02/Uganda_Public_Finance_Management_Act_2015_3.pdf) (accessed 16 February 2021).

101 Public Procurement and Disposal of Public Assets Act 1 of 2003 [https://www.ppda.go.ug/download/ppda\\_act/ppda\\_act/Reprint-of-the-PPDA-Act-2003.pdf](https://www.ppda.go.ug/download/ppda_act/ppda_act/Reprint-of-the-PPDA-Act-2003.pdf) (accessed 16 February 2021).

102 EC 'Tenders' <https://www.ec.or.ug/tenders> (accessed 15 February 2021).

103 'Top EC Bosses Fired Amidst Graft Probe' The Daily Monitor 22 July 2020 <https://www.monitor.co.ug/uganda/news/national/top-ec-bosses-fired-amidst-graft-probe-1904342> (accessed 15 February 2021).

104 EC 'Revised Milestones for the Roadmap for 2021 General Election' <https://www.ec.or.ug/election/revised-milestones-roadmap-2021-general-election> (accessed 16 February 2021).

105 Local Governments Act Chapter 243 of 2000 <https://media.ulii.org/files/legislation/akn-ug-act-1997-5-eng-2000-12-31.pdf> (accessed 16 February 2021).

106 Sec 107 Local Government Act.

107 Presidential Elections Act 16 of 2005 <https://ulii.org/akn/ug/act/2005/16/eng@2020-07-27/source.pdf> (accessed 16 February 2021).

108 Section 29(1) Presidential Elections Act.

109 Art 61(c) Constitution & sec 11(1) Electoral Commission Act.

creation of constituencies. In the case of *Kwizera v Attorney General & Another*, the petitioner sought a declaration by the Constitutional Court that parliament's creation of new municipalities as constituencies was invalid.<sup>110</sup> The petitioner also requested a declaration that the resolution passed by parliament to create new constituencies without consulting the EC was null and void. The Constitutional Court ruled that it was a violation of article 63 of the Constitution for parliament to perform both functions of prescribing and demarcating constituencies. The Court confirmed that the EC was responsible for demarcating constituencies.

### *iii. Voter registration and compilation of voters registers*

The voter registration exercise by the EC in Uganda is regulated by the Constitution and the ECA. The Constitution requires the EC to compile, maintain, revise and update the voters register.<sup>111</sup> The ECA further mandates the EC to compile, maintain and update, on a continuing basis, a national voters register, containing the names of all persons entitled to vote in any national or local government election.<sup>112</sup> Furthermore, the ECA imposes an obligation on the EC to maintain, as part of the voters register, a voters roll for each constituency and each polling station within the constituency.<sup>113</sup>

The LGA states that the voters registers and rolls maintained under the parliamentary elections law or any other law relating to general elections in Uganda apply to the elections of local governments.<sup>114</sup> The EC should continuously maintain and update the different voter registers or rolls for the district elections.<sup>115</sup>

### *iv. Inspection of voters register*

The ECA provides that the voters roll for every constituency should be open to inspection by the public, free of charge, at the office of the returning officer during office hours, and shall also be made available at the sub county headquarters and at each polling station within the constituency.<sup>116</sup> According to the ECA, the EC should oversee the printing of the voters roll for each constituency and any person may obtain it from the Commission, on payment of such charges and subject to such conditions as may be prescribed, copies of any voters roll for the constituency or for a parish or ward within it.<sup>117</sup> The EC is further required to publish a notice in the Gazette declaring the purpose of the printed voters roll, which is the identification of voters for that election.<sup>118</sup>

Before any election is held, the EC is required by notice in the Gazette, to appoint a period of not less than 21 days during which a copy of the voters roll for each parish or ward should be displayed for public scrutiny and during which any objections or complaints in relation to the names included in the voters roll or corrections should be raised or filed.<sup>119</sup> It is also important to note that the EC website has a voter locator or voter search portal where a registered voter can cross check or confirm their voter status including their polling station.<sup>120</sup> However, at the

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110 *Kwizera v Attorney General & Anor* Constitutional Petition No. 20 of 2018, [2019] UGCC 13 (27 December 2019) <https://ulii.org/akn/ug/judgment/ugcc/2019/13/eng@2019-12-27/source.pdf> (accessed 16 February 2021).

111 Art 61(e) Constitution.

112 Sec 18(1) Electoral Commission Act.

113 Sec 18(2) & (3) Electoral Commission Act.

114 Sec 106(1) Local Government Act.

115 Sec 106(2) Local Government Act.

116 Sec 24(1) Electoral Commission Act.

117 Sec 24(3) Electoral Commission Act.

118 Sec 24(4) Electoral Commission Act.

119 Sec 25(1) Electoral Commission Act.

120 EC 'Voter locator' <https://www.ec.or.ug/search/byid/> (accessed 17 February 2021).

time of writing this report, the national voters register used during the 2021 general elections was not available on the EC website for inspection.

#### *v. Special voting*

The ECA provides for special voting procedures by requiring the EC to take necessary steps to ensure that persons with disabilities are enabled to vote without any hindrance.<sup>121</sup> However, Uganda's electoral regulatory framework does not provide for special voting procedures for prisoners and Ugandans in the diaspora. Nonetheless, there is now a court judgement on the right of prisoners and Ugandans in the diaspora to vote. In the case of *Kalali Steven v Attorney General & Electoral Commission*, the applicant sought a declaration from the High Court that the exclusion of Ugandans in the diaspora and prisoners in Uganda from participating in the forthcoming electoral process was not only illegal and a violation of their fundamental right to vote but was also segregated and discriminatory.<sup>122</sup> The Court, presided over by Mugambe J., ruled in favour of the applicant and directed the respondents to implement measures to facilitate effective participation of Ugandans in the diaspora and prisoners in the 2021 electoral process.

However, the EC informed the country that it would be unable to implement the Court's decision during the 2021 electoral cycle because the final national voters register had already been compiled and no additions were possible. According to the EC, this would be implemented in the general elections in 2026.

#### *vi. Registration of political parties*

The Constitution of Uganda guarantees the right to form political parties and any other political organisation.<sup>123</sup> An organisation is not permitted to operate as a political party or organisation unless it conforms to the principles laid down in the Constitution and is registered.<sup>124</sup> Parliament is thus mandated to regulate the financing and functioning of political organisations.<sup>125</sup> Consequently, the Parliament of Uganda enacted the Political Parties and Organisations Act of 2005 (PPOA) that provides for the criteria and requirements for the registration of political parties in Uganda.<sup>126</sup>

The EC website has detailed procedures on how to register a political party in Uganda in accordance with the relevant legal framework.<sup>127</sup> The website also has a list of all the registered political parties in Uganda and their respective symbols.<sup>128</sup> Furthermore, the EC website has the Member of Parliament (MP) election results for the 2021 general election clearly indicating the political party for each MP.<sup>129</sup> However, whereas the EC website has the presidential election results for the 2021 general elections, these results do not indicate the candidates' political party.<sup>130</sup>

121 Sec 12(1)(k) Electoral Commission Act.

122 *Kalali v Attorney General & Anor* (Miscellaneous Cause No. 35 of 2018) [2020] UGHCCD 172 (17 June 2020) (Kalali Case) <https://ulii.org/akn/ug/judgment/ughccd/2020/172/eng@2020-06-17> (accessed 17 February 2021).

123 Art 72(1) Constitution.

124 Art 72(2) Constitution.

125 Art 72(3) Constitution.

126 Part II Political Parties and Organizations Act <https://ulii.org/akn/ug/act/2005/18/eng@2005-11-21> (accessed on 7 March 2023).

127 EC 'Political Party Registration' <https://www.ec.or.ug/political-party-registration> (accessed 17 February 2021).

128 EC 'Political Parties' <https://www.ec.or.ug/political-parties> (accessed 17 February 2021).

129 EC 'Member of Parliament Election Results 2021' [https://www.ec.or.ug/ecresults/2021/MPS\\_RESULTS\\_2021.pdf](https://www.ec.or.ug/ecresults/2021/MPS_RESULTS_2021.pdf) (accessed 17 February 2021).

130 EC 'Presidential Election Final Results 2021' [https://www.ec.or.ug/ecresults/2021/Summary\\_PRESIDENT\\_FINAL\\_2021.pdf](https://www.ec.or.ug/ecresults/2021/Summary_PRESIDENT_FINAL_2021.pdf)

### *vii. Nomination of candidates*

Nomination of candidates may be made by a registered political organisation or political party sponsoring a candidate or by an independent candidate.<sup>131</sup> The Parliamentary Elections Act<sup>132</sup> and the Presidential Elections Act of 2005<sup>133</sup> requires the EC to issue a notice in the Gazette allocating two days for the nomination of candidates to take place, indicating the places and times fixed for the nomination of candidates, and the timeline of each nomination day.<sup>134</sup>

The Parliamentary Elections Act and the Presidential Elections Act both have elaborate provisions on the procedures of nominating parliamentary and presidential candidates respectively.<sup>135</sup> The EC website contains information on: nomination forms for all aspiring candidates for various elective positions;<sup>136</sup> nominated candidates for parliamentary and local government council elections;<sup>137</sup> guidelines for nominations of presidential,<sup>138</sup> parliamentary,<sup>139</sup> and local government candidates<sup>140</sup>; guidelines for verification of supporters of nomination of presidential candidates;<sup>141</sup> and basic requirements for nomination as a candidate for the general elections.<sup>142</sup>

### *viii. Code of conduct*

The code of conduct which includes the responsibilities of political parties and candidates is contained in section 1 of the PPO (Amendment) Act, 2020 which amended section 9 of the PPOA, 2005.<sup>143</sup> The section requires that a political party or organisation, a leader, official, candidate, member, agent or representative of a political party or organisation shall adhere to the code of conduct for political parties and organisations set out in the Fourth Schedule to the Act.<sup>144</sup> It prescribes, among other things, observance of the rule of law; prohibition of abuse of position; prohibition of the use of violence or intimidation in any form; prevention of influence peddling; and non-use of inflammatory or dissenting language. The Fourth Schedule bestows the power

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(accessed 17 February 2021).

- 131 Sec 10 of the Parliamentary Elections Act 17 of 2005 <https://aceproject.org/ero-en/regions/africa/UG/uganda-parliamentary-elections-act-2005/> (accessed 17 February 2021) & sec 9 of the Presidential Elections Act.
- 132 Parliamentary Elections Act (n 131).
- 133 The Presidential Act 16 of 2005 (n 108).
- 134 Sec 9 Parliamentary Elections Act & sec 8 Presidential Elections Act.
- 135 Sec 11 Parliamentary Elections Act & sec 10 Presidential Elections Act.
- 136 EC 'Nomination Forms' <https://www.ec.or.ug/nomination-forms> (accessed 17 February 2021).
- 137 EC 'Nominated Candidates for Parliamentary and Local Government Councils Elections 2021' <https://www.ec.or.ug/info/nominated-candidates-parliamentary-and-local-government-councils-elections-2021> (accessed 17 February 2021).
- 138 EC 'Guidelines to Nominations of Presidential Candidates' <https://www.ec.or.ug/info/guidelines-nominations-presidential-candidates> (accessed 17 February 2021).
- 139 EC 'Guidelines for Nomination of Members of Parliament Candidates' <https://www.ec.or.ug/news/guidelines-nomination-candidates-parliamentary-elections-2021> (accessed 17 February 2021).
- 140 EC 'Guidelines for Nomination of Local Government Candidates' <https://www.ec.or.ug/info/guidelines-nomination-local-governement-candidates> (accessed 17 February 2021).
- 141 EC 'Guidelines for Verification of Supporters of Nomination of Presidential Candidates October 2020' [guidelines-verification-supporters-nomination-presidential-candidates-october-2020](https://www.ec.or.ug/info/guidelines-verification-supporters-nomination-presidential-candidates-october-2020) (accessed 17 February 2021).
- 142 EC 'Basic Requirements for Nomination as Candidate for 2020-2021 General Elections' <https://www.ec.or.ug/election/basic-requirements-nomination-candidate-2020-2021-general-elections> (accessed 17 February 2021).
- 143 Political Parties and Organisations Act (Amendment) Act 2020. <https://www.parliament.go.ug/cmis/views/9385ddfc-ae97-4ed0-8bbb-b4ad630e14df%253B1.0> (accessed 23 May 2023)
- 144 Sec 1 Political Parties and Organisations (Amendment) Act.



of implementing and enforcing the code of conduct on the National Consultative Forum (NCF), which is established by section 20 of the PPOA, 2005.

### *ix. Complaints*

Any complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, is examined and decided by the EC. Where the irregularity is confirmed, the EC should take necessary action to correct the irregularity and any effects it may have caused.<sup>145</sup> If a complainant is dissatisfied with a decision made by the Commission, they can appeal to the High Court.<sup>146</sup> In cases where a person's nomination paper is rejected or deemed void, the returning officer shall immediately notify the person of the decision, giving reasons for the decision. The person shall have the right to appeal the decision to the EC, which may confirm or reverse the returning officer's decision.<sup>147</sup>

The EC in some cases disqualified candidates from contesting after complaints were raised against their candidature.<sup>148</sup> According to the EC's 2021 elections report to parliament, a total of 462 complaints were handled by the EC in the 2020/2021 election cycle as compared to 277 complaints in the 2015/2016 election cycle.<sup>149</sup> It is also worth noting that the United Nations Development Programme (UNDP) invited proposals or bids from qualified individuals or institutions in September 2020 to design and supply an e-complaints management system for the EC to support the 2020/2021 Uganda elections.<sup>150</sup> At the time of writing this research report, it could not be established whether the above procurement was successfully concluded, or if this e-complaints management system for the EC was used during the 2021 elections.

### *x. Appeals*

As earlier stated, any person aggrieved by a decision of the EC may appeal to the High Court.<sup>151</sup> Similarly, a person aggrieved by a decision of the Commission in respect of a demarcation of a boundary may appeal to a tribunal consisting of three persons appointed by the Chief Justice; and the Commission shall give effect to the decision of the tribunal.<sup>152</sup> Furthermore, a person aggrieved by a decision of the above-mentioned tribunal may appeal to the High Court.<sup>153</sup> Subsequently, a decision of the High Court on an appeal is final.<sup>154</sup> Parliament is required to make laws which provide for the procedures enabling the expeditious disposal of appeals related to electoral processes.<sup>155</sup> To this effect parliament has enacted the Presidential Elections Act and the Parliamentary Elections Act.<sup>156</sup>

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145 Sec 15(1) Electoral Commission Act.

146 Sec 15(2) Electoral Commission Act.

147 Sec 14 Presidential Elections Act & sec 16 Parliamentary Elections Act.

148 The Independent 'EC Cancels Nomination of Six Candidates in Bukedea Woman MP Race' The Independent 31 October 2020 <https://www.independent.co.ug/ec-cancels-nomination-of-six-candidates-in-bukedea-woman-mp-race/> (accessed 18 February 2021).

149 EC 'The Electoral Commission of Uganda Report on the 2020/2021 General Elections' [https://www.ec.or.ug/sites/default/files/docs/EC%20REPORT%202020\\_2021.pdf](https://www.ec.or.ug/sites/default/files/docs/EC%20REPORT%202020_2021.pdf) (accessed on 7 March 2023).

150 United Nations Development Programme 'Request for Proposals to Design and Supply of E-Complaints Management System for the EC to Support the 2020/2021 Elections in Uganda' <https://procurement-notices.undp.org> (accessed 18 February 2021).

151 Art 64(1) Constitution.

152 Art 64(2) Constitution.

153 Art 64(3) Constitution.

154 Art 64(1) Constitution.

155 Art 64(5) Constitution.

156 Secs 59-61 Presidential Elections Act & secs 60-66 Parliamentary Elections Act.

## *xi. Voter education*

The EC is required to formulate, implement, promote and regulate civic and voter education programmes.<sup>157</sup> The EC has published a Voter Education Handbook which was designed to assist voters to fully understand the whole electoral process, and is readily available on the EC website.<sup>158</sup> The EC has also published voter education messages for the general elections (presidential, parliamentary, district and lower local governments) designed to assist voters to make informed decisions about the electoral process. These messages are readily available on the EC's website.<sup>159</sup>

The EC website has a portal that is dedicated to voter training and education during the electoral process.<sup>160</sup> The EC also designs and develops voter education materials in different languages spoken in Uganda, conducts voter education drives through the use of caravans, and places advertisements in the media.<sup>161</sup> However, the EC does not conduct voter education in prisons since prisoners are not yet allowed to vote despite a court ruling in their favour.<sup>162</sup>

The EC also has powers to accredit any non-partisan individual, group of individuals, or an institution or association to carry out voter education subject to guidelines determined by the Commission and published in the Gazette.<sup>163</sup> Thus, the EC often partners with civil society organisations such as the Citizens Coalition for Electoral Democracy in Uganda (CCEDU), and religious institutions such as the Inter-Religious Council of Uganda (IRCU).

## *xi. Service providers*

The selection and regulation of service providers to the EC in Uganda is regulated by the Public Procurement and Disposal of Public Assets (PPDA) Act.<sup>164</sup>

## *xii. Election Observers*

Election observers, within the context of Uganda's electoral processes, may consist of individuals, groups or institutions both international and local. The requirements and procedures for the accreditation of election observers in Uganda by the EC are provided for under section 16 of the Electoral Commission Act and sections 84 to 86 of the Electoral Act.

The EC in 2016 went a step further by developing and adopting guidelines in the form of the General Elections Handbook for Observers which is also available on the EC website.<sup>165</sup> The Handbook provides for the objective of observation, scope of observation, the role of election observers, and the code of conduct for election observers.<sup>166</sup>

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157 Art 61(g) Constitution & sec 12(1)(g) Electoral Commission Act.

158 EC 'Voter Education Handbook' [https://www.ec.or.ug/pub/voter\\_education.pdf](https://www.ec.or.ug/pub/voter_education.pdf) (accessed 18 February 2021).

159 EC 'Voter Education Messages' [https://www.ec.or.ug/pub/VE\\_messages.pdf](https://www.ec.or.ug/pub/VE_messages.pdf) (accessed 18 February 2021).

160 EC 'Voter Education and Training' <https://www.ec.or.ug/voter-education-training> (accessed 18 February 2021).

161 NTV Uganda 'EC Launches Voter Education Campaign' <https://www.ntv.co.ug/ug/news/national/ec-launches-voter-education-campaign--3209786> (accessed 18 February 2021).

162 *Kalali case* (n 122).

163 Sec 12(1)(i) Electoral Commission Act.

164 PPDA Act (n 101).

165 EC 'General Elections Handbook for Observers' <https://www.ec.or.ug/info/general-elections-handbook-observers> (accessed 18 February 2021).

166 As above.

Disclosure of information on the types of election observers admitted can be availed to a requester upon request at any of the EC regional offices including the head office. The deployment measures and procedures of observers across the various polling stations across the country are not determined by the EC. The observers determine the areas they intend to cover during their tour of duty and disclose this in the observer report that is submitted to the EC after elections. During the 2021 general elections, the EC accredited at least nine CSOs in Uganda to observe the elections.<sup>167</sup>

### *xiii. Media*

The EC accredits all local and international media who intend to cover elections in Uganda. The EC developed an accreditation form for reporters for the general elections which is readily available on its website.<sup>168</sup> Furthermore, the EC in 2016 also developed and adopted Guidelines for Media in Uganda During Electoral Process which provide for the code of conduct of the media during elections. These Guidelines are available on the EC's website.<sup>169</sup>

## **2.1.6 ELECTION DAY AND RESULTS ANNOUNCEMENTS**

### *i. Voting stations*

Each returning officer may, with the approval of the EC, establish within each parish or ward within his or her electoral district, as many polling stations as are convenient for the casting of votes. Considerations include the distances to be travelled by voters to polling stations, the number of voters in the constituency, and the geographical features of the constituency.<sup>170</sup> The EC is required to publish, by notice in the Gazette, a list of the polling stations in each constituency at least 14 days before nomination.<sup>171</sup> Thereafter, the EC shall forward the list of polling stations to all returning officers, and the returning officers should ensure that the lists relevant to each constituency are published widely in that constituency.<sup>172</sup>

Polling stations in Uganda open at 7am and close at 4pm.<sup>173</sup> However, where necessary, the EC can extend the voting time beyond 4pm if there are any eligible voters in the polling station, or on the queue who have not been able to vote before the polling closing time.<sup>174</sup>

### *ii. Information flow from close of voting to results declaration*

Right from the time voting commences at the various polling stations around the country, right up to the time when the EC declares the final results after the counting process, the EC usually ensures that there is continuous dissemination of information to the public. This is done through the media at press briefings, announcements at the district and national vote tally centres, social media, and on the EC's website. According to the regulatory framework on elections in

167 Independent Reporter 'EC confirms nine internal election observers ahead of 2021 polls' *The Independent* 22 June 2020 (accessed 18 February 2021).

168 EC 'Application Form for Accreditation as a Reporter for the 2020/2021 General Election' <https://www.ec.or.ug/sites/default/files/2020-2021-general-elections/Application%20Form%20for%20Media%20Accreditation%202020ver.1.pdf> (accessed 19 February 2021).

169 EC 'Guidelines for Media in Uganda During Electoral Process' <https://www.ec.or.ug/pub/Media%20Guidelines%202016%20General%20Elections.pdf> (accessed 19 February 2021).

170 Sec 33(1) Electoral Commission Act.

171 Sec 29(1) Presidential Elections Act & sec 28(1) Parliamentary Elections Act.

172 Sec 29(2) Presidential Elections Act & sec 28(2) Parliamentary Elections Act.

173 Presidential Elections (Amendment) Act 14 of 2015 <https://ulii.org/akn/ug/act/2015/14/eng@2015-10-01> (accessed 19 February 2021) & Parliamentary Elections (Amendment) Act 15 of 2015 <https://ulii.org/akn/ug/act/2015/15/eng@2015-10-01/source.pdf> (accessed 19 February 2021).

174 Sec 30(5) Presidential Elections Act & sec 29(5) Parliamentary Elections Act.

Uganda, information flow starts with the vote counting at each polling station and a declaration by the presiding officer. The subsequent processes are the filling in of the declaration of results forms at each polling station witnessed by the agents of the candidates, collection of results from the polling stations at collection centres (usually at the districts) by the returning officer, tallying of results by the returning officer, and the declaration by the returning officer of the total number of votes obtained by each candidate (including the winner). Finally, the final results are transmitted to the EC by the returning officer.<sup>175</sup> For the declaration of results of a presidential election, the EC is required to ascertain, publish and declare in writing under its seal the results of the presidential election within 48 hours from the close of polling.<sup>176</sup>

### *iii. Technical glitches*

Several technical glitches or practical concerns were raised during the 2021 general elections, including the malfunctioning of biometric voter verification kits (BVVK), poor quality indelible ink, late delivery of polling materials, and delivery of wrong ballot papers, at times, with the names or pictures of some candidates missing. The specifics or types of technical flaws or concerns are frequently disseminated via the media, the EC website and social media handles, candidates and their agents, and political parties.<sup>177</sup>

Technical glitches or practical concerns are first expressed by presiding officers at polling stations, who then communicate with their supervisors, who then communicate with the regional offices at the districts. If technical issues cannot be resolved at the regional offices, they are forwarded to the EC headquarters in Kampala for resolution. These technical flaws or concerns, as well as the steps taken to address them, are compiled in the report that the EC submits to parliament following the election, as required by law.<sup>178</sup>

### *iv. Complaints and petitions*

A candidate's agents and any voter present at a polling station may raise and present in writing complaints relating to the voting at the polling station and shall have the right to obtain information from the presiding officer concerning the counting process.<sup>179</sup> During the counting of votes a candidate or a candidate's agent or any voter present may raise any objection during the counting of the votes, and each presiding officer is required to keep a record, in the report book, of every objection made to any ballot paper found in the ballot box, and thereafter, decide every question arising out of the objection.<sup>180</sup> The complaints received by the EC from political parties, the public and candidates are recorded internally and may be made available upon request at any of the EC regional offices or headquarters in Kampala. Some of the complaints received by the EC during the 2021 election were about police brutality towards some of the

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175 Secs 48-56 Presidential Elections Act & secs of 47-59 Parliamentary Elections Act.

176 Sec 57(1) Presidential Elections Act.

177 J Barigaba 'Uganda Poll Officials Resort to Manual Register as Biometric Machine Fail' *The East African* 14 January 2021 <https://www.theeastafrican.co.ke/tea/news/east-africa/biometric-systems-fail-in-uganda-3257180> (accessed 19 February 2021); Monitor Team 'Failed Biometric Machines, Broken Ballot Boxes Mar Start of Voting' *The Daily Monitor* 14 January 2021 <https://www.monitor.co.ug/uganda/news/national/problems-glitches-uganda-election-2021-3257172> (accessed 19 February 2021) & Independent Reporter 'Voting Delays at Polling Stations Across Kampala over Late Delivery of Materials' *The Independent* 25 January 2021 <https://www.independent.co.ug/voting-delays-at-polling-stations-across-kampala-over-late-delivery-of-materials/> (accessed 19 February 2021).

178 Sec 12(1)(o) Electoral Commission Act.

179 Sec 47(1) Presidential Elections Act & sec 46(1) Parliamentary Elections Act.

180 Sec 49(1) Presidential Elections Act & sec 48(1) Parliamentary Elections Act.

candidates.<sup>181</sup> These complaints however were met with a poor response from the EC that only requested law enforcement follow the right procedure.<sup>182</sup>

## **2.1.7 POST-ELECTION**

Following the completion of elections, an Election Management Body shall proactively disclose the following information: (a) progress in meeting timelines for the declaration of collated results, which shall be within a reasonable time or as stipulated by law; (b) declaration and publication of final election results, down to the polling station level; and (c) details of all objections, complaints, or petitions received and how they were addressed.

### ***i. Timelines***

When it comes to the declaration of results of a presidential election, the EC is required to ascertain, publish and declare in writing under its seal the results of the presidential election within 48 hours from the close of polling.<sup>183</sup> The presidential election was conducted on 14 January 2021 and the results were declared on 16 January 2021 by the Chairperson of the EC, Justice Simon Byabakama.<sup>184</sup> These presidential election results are available on the EC's website.<sup>185</sup> However, the Parliamentary Elections Act does not impose a timeframe within which the EC should declare the results of the parliamentary election. Real time coverage or live tallying of results tallies are often broadcasted in the media from the district tally centres and the national tally centre in Kampala throughout the vote tallying process up to the time of the final declaration of results.

### ***ii. Results declaration***

After the vote tallying process, the returning officers, on behalf of the EC, then make the final declaration of the seat allocations for the legislature and local government councils at the regional EC offices located at the districts. The tallying and declaration of the final presidential election results is not done at the regional tallying centres by the district presiding officers, but by the Chairperson of the EC who is the national returning officer at the national tally centre in Kampala. The full results for individual polling stations are also readily available on the EC website.

### ***iii. Seat allocations***

The seat allocations in Uganda for the parliamentary and local government councils are premised on political parties which sponsor candidates who participate in the general elections. These seat allocations are calculated by the EC when the results for all the polling stations across the country have been tallied and declared. The EC then makes a public declaration of the final results highlighting the seat allocations in the media and on its website.<sup>186</sup>

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181 P Ahimbisibwe 'Stop Police Brutality, Candidates Urge EC' *The Daily Monitor* 17 November 2020 <https://www.monitor.co.ug/uganda/news/national/stop-police-brutality-candidates-urge-ec-3027650> (accessed 18 February 2021).

182 As above.

183 Sec 57(1) Presidential Elections Act.

184 DV Ajuna 'Museveni Wins as Poll Dispute Claims Fly' *The Daily Monitor* 16 January 2021 <https://www.monitor.co.ug/uganda/news/national/museveni-wins-as-poll-dispute-claims-fly-3258772> (accessed 19 January 2021).

185 EC 'Publishing of the Final Results for Presidential Elections 2021' <https://www.ec.or.ug/news/publishing-final-results-presidential-elections-2021> (accessed 19 February 2021).

186 EC '2021 General Elections Results' <https://www.ec.or.ug/2021-general-elections> (accessed 19 February 2021).

#### *iv. Evaluation reports*

The EC is supposed to produce and submit to parliament through the Minister of Justice and Constitutional Affairs a report on any election conducted by it within six months after the declaration of the results of the election.<sup>187</sup> The 2021 election report released in July 2021 highlights the fact that the roadmap to the general elections was wholly funded by the government, the strategic planning objectives undertaken to ensure that the elections were inclusive, and voter education drives that for instance relied on 4 048 institutions to carry out sensitization drives.<sup>188</sup>

## **2.2 CONCLUSION**

According to the above, the EC in Uganda largely complied with the Guidelines. It is hoped that this research report will provide useful insights for the EC in evaluating its processes and mechanisms for proactive information disclosure during electoral processes. A review of the relevant literature and legal provisions demonstrates that the EC needs to adequately integrate information disclosure mechanisms in the public interest about its processes in order to increase public participation in electoral processes. This will not only increase transparency in the electoral process, but also public trust in the EC's ability to carry out its legal mandate in accordance with the provisions of the Constitution and the ECA.

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187 Sec 12(1)(o) Electoral Commission Act.

188 EC 'The Electoral Commission report on the 2020/2021 general elections'  
[https://www.ec.or.ug/sites/default/files/docs/EC%20REPORT%202020\\_2021.pdf](https://www.ec.or.ug/sites/default/files/docs/EC%20REPORT%202020_2021.pdf)  
(accessed on 7 March 2023).



# **Part Two: Assessment Of Stakeholders' Compliance With The Guidelines**

## Chapter 3



# CHAPTER 3:

## POLITICAL PARTIES AND CANDIDATES

### 3.1 INTRODUCTION

Section 2 of the Political Parties and Organizations Act 2005<sup>189</sup> defines a political party as a political organisation whose objects include influencing the political process or sponsoring a political agenda, whether or not it also seeks to sponsor or offer a platform to a candidate for election to a political office or to participate in national governance at any level. Political parties play an important role in ensuring fair play in electoral competition, as well as safeguarding the manner in which the rules governing the electoral process are enforced towards a genuine democratic election.<sup>190</sup> In most legislative systems, political parties are the main vehicle through which candidates are elected to political positions.<sup>191</sup> Multi-party democracy, which facilitates the functioning of political parties, was re-introduced in Uganda in 2005, through a referendum and subsequently a constitutional amendment. Previously, the Constitution only provided for the movement political system of government which prevented political candidates from presenting candidates for elections.<sup>192</sup>

In Uganda, the Political Parties and Organizations Act provides the national framework on political parties.<sup>193</sup> The EC is responsible for the registration of political parties or organisations, and maintenance of their register.<sup>194</sup> Political parties in Uganda are public bodies since they are established by an Act of Parliament, and those that have representatives in parliament are funded by the GoU annually using public funds. Also, under section 4 and the Second Schedule of the Leadership Code Act, the members of the national executive political parties in Uganda are deemed to be public officials of a political nature who are required to declare to the Inspectorate of Government their assets and liabilities. This means that article 41 of the Constitution on access to information in the possession of the state or state organ, and the AIA which provides for access to information and records in the possession of the state or public body, applies to political parties in Uganda.

Thus, political parties and candidates should proactively disclose information regarding their activities and operations as per the requirements of the Guidelines. For the purposes of this research report, only a handful or selected political parties out of the 26 registered parties<sup>195</sup> will be used as examples.

#### 3.1.1 PROACTIVE INFORMATION DISCLOSURE BY POLITICAL PARTIES

##### *i. Constitution, names of office bearers and policies*

A party constitution is a prerequisite in the registration of political parties and organisations in Uganda. The formal application to the EC must be accompanied by two copies of the constitution

189 The Political Parties and Organizations Act 18 of 2005 <https://www.ec.or.ug/docs/political%20parties%20and%20organisation%20Act%202005.pdf> (accessed 5 February 2021).

190 P Marloe *Promoting legal frameworks for democratic elections* (2008) 1.

191 J Ballington 'Strengthening internal political party democracy: Candidate recruitment from a gender perspective' (2004) <https://www.idea.int/sites/default/files/speeches/Strengthening-Internal-Political-Party-Democracy-Candidate.pdf> (accessed 5 February 2021).

192 S Makara 'The challenge and prospect of multiparty democracy in Uganda' in Y Kiranda & M Kamp (eds) *The state of multiparty democracy in Uganda* (2010) 34.

193 Secs 4 & 6(1) Political Organisations Act.

194 As above.

195 EC 'Political Parties' <https://www.ec.or.ug/political-parties> (accessed 21 February 2021).



duly signed by authorised officers of the political party or organisation.<sup>196</sup>

The Alliance for National Transformation (ANT) political party, has its constitution,<sup>197</sup> office bearers,<sup>198</sup> and its policies, which are referred to as its transformation agenda,<sup>199</sup> readily accessible and available on its website.

The constitution of the National Resistance Movement (NRM) is readily available on its website.<sup>200</sup> Its vision, mission, and aims are also available.<sup>201</sup> The NRM's website further gives information on the set-up of its office bearers with the Central Executive Committee (CEC) as the highest organ.<sup>202</sup> However, the same website does not give the particulars of the actual office bearers at the CEC level such as names, qualifications, and gender. A further search on the NRM website reveals that its policies are not listed anywhere.

The Forum for Democratic Change (FDC) has its constitution listed as one of its publications.<sup>203</sup> Office bearers referred to as the leadership,<sup>204</sup> and policies also referred to as its Policy Agenda are readily available on its website.<sup>205</sup> Despite the fact that the FDC website has information on its office bearers, it does not go a step further to elaborate on their profiles or bio-data.

The constitution of the National Unity Platform (NUP) political party was not readily available on its website at the time of publishing this report. While there was a quick link for documents and policies, and an 'about us' link that may have contained this information, the links were not functional. The home page however details their mission, vision and core values, and contains a biography of their president, Hon. Kyagulanyi Ssentamu Robert.<sup>206</sup>

An online search did not return any results indicating that the Democratic Party (DP) had a functioning website. However, DP is active on social media as it has a Facebook page (Democratic Party Uganda) and a Twitter handle (@DPSecretariat1).

## *ii. Symbols, logos or trademarks*

In Uganda, registering political parties and organisations entails submitting a formal application to the EC, along with a detailed description of the identifying symbols, slogans, and colours of the political party or organisation, if any.<sup>207</sup> The EC is not permitted to register any political party or organisation whose name, symbol, slogan, or colour is similar to that of a previously registered political party or organisation.<sup>208</sup> Political parties' symbols, logos, and colours are

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196 Sec 7(1)(a) Political Parties and Organisations Act.

197 ANT 'Party Documents' <https://theallianceug.com/page/party-documents#> (accessed 19 February 2021). See also, <https://fs.go.iopw.com/filesserver/webftp/216/constitution%20A6%20%20FINAL.pdf> (accessed 19 February 2021).

198 ANT 'Interim Executive Committee' <https://theallianceug.com/page/committee> (accessed 19 February 2021).

199 ANT 'Party Documents' <https://theallianceug.com/page/party-documents#> (accessed 19 February 2021). See also, <https://fs.go.iopw.com/filesserver/webftp/216/Alliance%20Transformation%20Agenda%20Final.pdf> (accessed 19 February 2021).

200 NRM 'Our Constitution' <https://www.nrm.ug/index.php/node/387> (accessed 19 February 2021).

201 NRM 'About NRM' <https://www.nrm.ug/index.php/about> (accessed 19 February 2021).

202 NRM 'Central Executive Committee' <https://www.nrm.ug/index.php/party-organs/central-executive-committee> (accessed 19 February 2021).

203 FDC 'Publications' <https://fdc.ug/publications/> (accessed 19 February 2021).

204 FDC 'Leadership' <https://fdc.ug/leadership/> (accessed 19 February 2021).

205 FDC 'Publications' <https://fdc.ug/publications/> (accessed 19 February 2021).

206 NUP 'Home' <https://nupuganda.org/#> (accessed 19 February 2021).

207 Sec 7(1)(c) Political Parties and Organisations Act.

208 Sec 7(5)(a) Political Parties and Organisations Act.

provided for and described in their respective constitutions, and websites, and the EC's register and website.

According to the FDC's constitution, the party flag shall comprise of the colours: sky blue, red, yellow and green, and in which is superimposed the hand showing the "V" sign and the key being the symbol of the party.<sup>209</sup> The FDC party symbol is also available on the EC website.<sup>210</sup> The ANT constitution provides that the party flag comprises the colours: purple, orange, white and red.<sup>211</sup> The symbol of ANT is a lighting bulb.<sup>212</sup> According to the EC's website, the party symbol for the Justice Forum (JEEMA) is a weighing scale.<sup>213</sup> The NRM's identifying features with respect to colour are a combination of blue, yellow, red, and green.<sup>214</sup> The NRM symbol is a yellow bus, thumbs up, and open book.<sup>215</sup>

### *iii. Number of registered members*

A thorough search conducted on the websites of selected political parties revealed that no details concerning the exact number of registered members were available. It is possible to argue that these parties rely on other less advanced modes of keeping members' registers whose effectiveness is not immune to question or critique. Most political parties in Uganda often reveal through the media the number of registered members during electoral periods especially during the selection of party flag bearers. For instance, it was reported in the media that by July 2020 the NRM had compiled a party voter register containing over eleven million voters who were slated to participate in the party primaries aimed at electing party flag bearers.<sup>216</sup>

Whereas, the constitutions of NRM, Forum for Democratic Change and ANT have provisions on membership, specifically the types of membership, procedure, keeping of a members' register, payment of membership fee, and who qualifies to be a member, these political parties have not proactively disclosed information concerning their number of registered members.

### *iv. Criteria and procedure for nomination and election of candidates for internal and external office*

According to the PPOA, every political party or organisation is required to elect persons as may be determined by its members as representatives of the executive committee of the political party or organisation with due consideration for gender equity.<sup>217</sup> This election should be conducted at regular intervals not exceeding five years.<sup>218</sup>

The ANT constitution establishes the National Vetting Committee, which examines and vets the candidature of every aspirant for the presidential nomination. According to the ANT constitution, the national chairperson of the party is elected by the national delegates conference by a simple majority of the votes cast and should hold office for five years, not exceeding two terms. Furthermore, article 7.7 of the ANT constitution establishes an Electoral Commission of the party with the main responsibility of organising, managing and overseeing all party elections. All members of ANT who meet the national legal requirements are eligible

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209 Art 4 FDC Constitution.

210 EC 'Political Parties' <https://www.ec.or.ug/political-parties> (accessed 19 February 2021).

211 Art 2 ANT Constitution.

212 As above.

213 EC 'Justice Forum (JEEMA)' <https://www.ec.or.ug/party/justice-forum-jeema> (accessed 19 February 2021).

214 Second Schedule NRM Constitution.

215 As above.

216 M Matovu 'Over 11 Million Voters to Participate in NRM Primaries' *The Nile Post* 21 July 2020 <https://nilepost.co.ug/2020/07/21/over-11-million-voters-to-participate-in-nrm-primaries/> (accessed 19 February 2021).

217 Sec 10(2) Political Parties and Organisations Act.

218 Sec 10(2) Political Parties and Organisations Act.

to become candidates at various levels.<sup>219</sup> The ANT presidential candidate is elected by the national delegate's conference, and a parliamentary candidate for a constituency is elected by a constituency electoral college that is determined by the party's Electoral Commission.<sup>220</sup>

In FDC, the constitution establishes the electoral committee which is the line committee in respect of electoral matters relating to policy but not operational matters.<sup>221</sup> The FDC constitution also establishes an Electoral Commission of the party with the main responsibility of organising, managing and overseeing all party elections.<sup>222</sup> The FDC constitution also provides for the conduct of party primaries and highlights the various electoral colleges for member of parliament, district woman member of parliament, district chairperson, city mayor, and local government councillors.<sup>223</sup> In June 2020 the FDC issued a new road map for identification of the party's candidates preparation for the 2021 general election. This new roadmap which commenced with picking of expression of interest forms, returning expression of interest forms, compilation of the list of candidates, validation of submitted documents, nomination of candidates, campaigns, cleaning of the voter's register, and election of party flag bearers at the primaries, is readily available on the FDC website.<sup>224</sup>

On the other hand, the NRM political party constitution requires that its national conference should, amongst its functions, elect the national chairperson, first national vice chairperson, second national vice chairperson, regional vice chairpersons, and the presidential candidate who will be sponsored by NRM in national elections. According to the NRM constitution, the central executive committee of the NRM recommends to the national executive committee NRM candidates seeking nomination for the above offices to be sponsored by NRM in national elections. The NRM constitution establishes the Electoral Commission which is primarily responsible for organising and conducting elections within the organs of NRM. Under article 39 of the NRM constitution, all members who meet national legal requirements are eligible to become candidates for NRM at various levels.<sup>225</sup>

For every elective national and local government office, primaries are supposed to be held within NRM to determine NRM's candidate for president, parliament, local government chairpersons, and local government councillors.<sup>226</sup> In September 2020, the NRM's Electoral Commission issued guidelines for its party flag bearers at the parliamentary level.<sup>227</sup> In these guidelines, it disclosed that party primaries would be held in 151 districts, 351 constituencies and 69 075 villages, and the mode of election would not be by secret ballot but by lining up behind a preferred candidate or their representative.<sup>228</sup>

## ***v. Dispute resolution and appeals***

The PPOA establishes the national consultative forum for political parties and organisations whose functions include the resolution of disputes among political parties and organisations.<sup>229</sup>

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219 Art 9.1 ANT Constitution.

220 Arts 9.2.1 & 9.3.1 ANT Constitution.

221 Art 27(1)(C) FDC Constitution.

222 Art 29 FDC Constitution.

223 Art 33 FDC Constitution.

224 FDC 'Candidates Identification Roadmap for 2021 General Election' [fdc-candidates-identification-roadmap-for-2021-general-election](#) (accessed 20 February 2021).

225 Art 39(1) NRM Constitution.

226 Article 39(2) NRM Constitution.

227 'NRM Issues Guidelines for Party Primaries' *The Daily Monitor* 2 September 2020 <https://www.monitor.co.ug/uganda/news/national/nrm-issues-guidelines-for-party-primaries-1932824> (accessed 20 February 2021).

228 As above.

229 Sec 20(4)(e) Political Parties and Organisations Act.

A perusal of some constitutions of political parties revealed that most of them presumed that disputes will revolve around disciplinary, nomination and election matters.

The political parties also have their own internal mechanisms of dispute resolution. For example, the ANT political party has a national disciplinary committee as one of the standing committees of its national council.<sup>230</sup> The national disciplinary committee has the power to investigate complaints concerning the misconduct of a member. It is responsible for making a full, faithful and impartial inquiry into any complaint referred to it; and reporting in writing, the results of the inquiry and the reasons leading to the conclusions reached. It also proposes recommendations to the executive committee based on the results of the inquiry.<sup>231</sup> The recommendations of the national disciplinary committee to the executive committee automatically come into full force and effect where no appeal is lodged against them.<sup>232</sup> The ANT national disciplinary committee, with the approval of the national executive committee, is also required to come up with disciplinary guidelines, including the code of conduct, the procedure, and penalties.<sup>233</sup> Each district is also required to have a district disciplinary committee with jurisdiction in all matters affecting discipline in the district.<sup>234</sup> Whereas, the ANT constitution is not clear on where appeals from the district disciplinary committee will be handled, it is presumed that the national disciplinary committee will deal with such appeals.

With regard to electoral matters, an aspirant within ANT who is dissatisfied with the finding of the vetting committee can appeal against it to the national executive committee within 48 hours of receipt of notice of the finding by filing a written appeal with the secretary general.<sup>235</sup> Thereafter, the national executive committee gives its decision which is deemed to be final.<sup>236</sup>

Amongst the standing committees, the FDC constitution provides for the establishment of the committee on discipline at the national, district, constituency, sub-county, parish and village level.<sup>237</sup> The functions of the FDC committees on discipline include: exercising discipline over all members of the party, enforcing the code of conduct, and any other such matter as the national council may from time to time direct.<sup>238</sup> The FDC constitution also establishes the national election tribunal whose main function is to resolve disputes arising out of party elections.<sup>239</sup> Furthermore, Forum for Democratic Change makes use of the elders committee to arbitrate disputes between organs and leadership of the party or its leadership.<sup>240</sup>

The NRM has an ethics and discipline commission among the party commissions established under article 15. Its functions include: advising the central executive committee on measures to foster ethics and discipline; monitor enforcement of the code of conduct; and advise the disciplinary committees on the performance of their functions. The NRM code of conduct, which is provided for in the fourth schedule to the constitution, establishes disciplinary committees at the parish, sub-county, town council, municipal, division, district, and national level to enforce observance of the code of conduct.<sup>241</sup> The NRM code of conduct further provides for the composition, jurisdiction, proceedings and the implementation of decisions of the disciplinary

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230 Art 1.11.1 ANT Constitution.  
231 Art 1.11.3 ANT Constitution.  
232 Art 1.11.6 ANT Constitution.  
233 Art 1.11.7 ANT Constitution.  
234 Art 1.11.2 ANT Constitution.  
235 Art 1.1.4 ANT Constitution.  
236 As above.  
237 Art 27(1)(A)(i) FDC Constitution.  
238 Art 27(1)(A)(iv) FDC Constitution.  
239 Art 27(1)(G) FDC Constitution.  
240 Art 27(1)(I) FDC Constitution.  
241 Rule 7 NRM Code of Conduct.

committees.<sup>242</sup> In September 2020, NRM constituted an election disputes tribunal consisting of about 20 lawyers to expeditiously hear and determine all the election petitions.<sup>243</sup> This election disputes tribunal confirmed and overturned a number of victories of the candidates. There was an incident where the election disputes tribunal failed to determine the winner among the two frontrunners for the Mawogola North constituency and referred the matter to the central executive committee for a final decision.<sup>244</sup> Eventually, even the central executive committee failed to make a decision on the actual winner, so it was recommended that Mawogola North constituency would not have an NRM flag bearer.<sup>245</sup>

In as much as, the constitutions of most political parties in Uganda provide for some dispute resolution and appeals mechanisms, this research report observed that all of them are silent on judicial review arrangements. Such measures are crucial in case a member of the party is aggrieved with a party decision.

In the case of *Ssemwanga Godfrey and 32 others v Democratic Party*,<sup>246</sup> the High Court emphasised that the requirement to exhaust a public body's internal dispute mechanism is mandatory in nature, to the extent that failure to do so renders an application brought by an individual before court incompetent and premature. If there is an alternative remedy available under statutory law, it is preferable to pursue that remedy first. When there is a specific statutory provision that would meet the needs of the case, the court's inherent jurisdiction should not be invoked. This is the only way to strengthen institutions and their structures.

#### ***vi. Public participation, including any special mechanisms for persons with disabilities***

A review of the constitutions of some political parties, such as the NRM, Forum for Democratic Change and ANT, reveals that there are no express provisions facilitating public participation in party activities. However, the same constitutional provisions may imply that political parties have a duty to interact with the public on occasion during recruitment of new party members, campaigns, compilation and popularisation of manifestos, and collection of signatures for nomination in national elections. While political parties may not directly engage the public in party activities, members of parliament from those parties fill the void by actively promoting the party's ideology through activities such as fundraising and establishing welfare programmes on behalf of the party.<sup>247</sup>

Whereas, most party constitutions provide for the election of party flag bearers at the parliamentary and local government level, there is no special mention of initiatives specifically targeting empowering the disabled or people with special needs to participate in internal party activities. On a positive note, most party constitutions provide for quotas of positions which should be reserved for women within the party organs and structures.<sup>248</sup>

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242 Rules 8-12 NRM Code of Conduct.

243 M Matovu 'NRM Sets up Tribunal to Resolve Disputes' *The Nile Post* 21 September 2020 <https://nilepost.co.ug/2020/09/21/nrm-sets-up-tribunal-to-resolve-disputes/> (accessed 18 February 2021) & MT Kahangu '14 Lawyers to Hear 370 NRM Election Petitions' *The Daily Monitor* 14 September 2020 <https://www.monitor.co.ug/uganda/news/national/14-lawyers-to-hear-370-nrm-election-petitions-1938702> (accessed 18 February 2021).

244 KP Reporter 'No NRM Flag Bearer in Mawogola North NRM Insists' *The Kampala Post* 24 December 2020 <https://kampalapost.com/content/no-flag-bearer-mawogola-north-election-nrm-insists> (accessed 24 February 2021).

245 Independent Reporter 'No NRM Candidate for Mawogola North as Kaguta, Kutesa are Nominated as Independents' *The Independent* 17 October 2020 <https://www.independent.co.ug/no-nrm-candidate-for-mawogola-north-as-kaguta-kutesa-are-nominated-as-independents/> (accessed 24 February 2021).

246 *Ssemwanga & 31 Ors v Democratic Party* Misc Cause 59 of 2020 [2020] UGHCCD 196 <https://ulii.org/akn/ug/judgment/ughccd/2020/196/eng@2020-09-18> (accessed 24 February 2021).

247 Interview with Hon Asuman Basaliwra, MP.

248 See above.

## *vii. Financial disclosures*

Political parties in Uganda mainly derive their funding from member subscriptions, donations from well-wishers, contributions from their MPs, local council chairpersons and councillors, and funding from the government for political parties with representatives in parliament under the Inter-Party Organisation for Dialogue (IPOD).<sup>249</sup> A search conducted on most of the selected political party websites revealed there was often a prominent link inviting donations for the party.

The Constitution of Uganda requires political parties by law to account for the sources and use of their funds and assets.<sup>250</sup> The PPOA requires every political party or organisation to maintain at its national head office, an accurate and permanent financial record. This includes contribution, donation or pledge of contribution or donation whether in cash or in kind; statement of its accounts; and any property that belongs to the political party or organisation, including the mode of acquisition.<sup>251</sup> The above-mentioned records should be accessible to any member of the political party or organisation.<sup>252</sup> The accounts of every political party or organisation should be audited annually but not later than six months after its financial year by an auditor from a recognised professional body.<sup>253</sup> Furthermore, a copy of the audited accounts of every political party or organisation should be filed with the EC within six months from the end of its financial year.<sup>254</sup> Despite the requirement to file audited accounts with the EC, there are no proactive disclosures about the financial information of political parties on their websites. While these audit reports might not be available online, political parties avail these records to members during meetings.<sup>255</sup>

Political parties are required to source for funding in a transparent manner and take into account national security interests. Thus, sourcing for funds from bodies or institutions whose objective is to overthrow the government is expressly prohibited by law.<sup>256</sup> In addition, they are barred from receiving financial assistance from terrorist organisations.<sup>257</sup>

While some political parties, such as the NRM, FDC and DP are known to own assets in the form of buildings in which their headquarters and other party organs are housed, it is unknown whether they derive income from these assets or whether they own other assets from which they accrue income. Political parties that field candidates in general elections never make proactive disclosures in the media or on their websites about how much money they spend during elections.

An interview with Hon Basaliwra Asuman, an MP, on the question around political party transparency reveals that political parties for instance have internal transparency initiatives. These are mainly proactive information disclosure checks within the constitutions of political parties. These include regular party meetings where party members are given an opportunity to inspect books of accounts.

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249 IPOD is a political party dialogue forum formed by political parties in Uganda to encourage cooperation and collaboration across party lines. The initiative was arrived at in 2010 by six political parties that signed a memorandum of understanding. This initiative represents the willingness in political party spaces to set aside differences and engage in constructive dialogue on issues affecting the country.

250 Art 71(e) Constitution.

251 Sec 12(1)(a)-(c) Political Parties and Organisations Act.

252 Sec 12(2) Political Parties and Organisations Act.

253 Sec 12(3) Political Parties and Organisations Act.

254 Sec 12(4) Political Parties and Organisations Act.

255 Interview with EC official.

256 Sec 14(5)(a) Political Parties and Organisations Act.

257 Sec 14(5)(b) Political Parties and Organisations Act.



# **Part Two: Assessment Of Stakeholders' Compliance With The Guidelines**

## Chapter 4



# CHAPTER 4:

## ELECTION OBSERVERS AND MONITORS

### 4.1 INTRODUCTION

Within the wider context of Uganda's electoral processes, election observers contribute to the transparency, public confidence and fairness of elections. The reports generated by election observers often contain recommendations which are used as a basis for improving future electoral processes. Some citizens' perceptions about elections in Uganda are not premised on what they see, hear or even what the government says, but on what the election observers disclose in their findings.

Within the context of Ugandan elections, there are two broad categories of observers namely national and international observers.<sup>258</sup> During the 2021 general elections, the EC accredited at least 9 CSOs in Uganda to observe the elections, and a limited number of international observers.<sup>259</sup> The international observers were mainly from the AU and the EAC.<sup>260</sup> Election observers from around the African continent such as the AU and the East African Community (EAC) have often been criticised for rubber stamping the election outcomes in Uganda as largely being free and fair despite glaring shortcomings.<sup>261</sup> Surprisingly, the European Union (EU) and American election observers who previously observed Uganda's elections opted not to observe the 2021 general election amidst claims that they had been denied accreditation by the EC.<sup>262</sup> The Guidelines require election observers and monitors to ensure that they proactively disclose information as part of their operational functions.<sup>263</sup>

Election observers facilitate the full enjoyment of the right to vote for every Ugandan who is eighteen years and above as per the provisions of article 59(1) of the Constitution.<sup>264</sup> The ECA under section 16(1) grants authority to the EC to accredit election observers. Further to section 16(2) of the ECA, the EC in 2016 adopted the General Elections Handbook for Observers (Handbook) to guide election observers in the performance of their duties during the electoral process.<sup>265</sup> According to the Handbook, the main objective of the election observation is to ascertain the fairness and freeness of the process and render credibility to the election results to both the national and international community.<sup>266</sup> The role of persons or institutions accredited as observers by the EC during electoral processes include: verification for the purposes of determining the sufficiency of the electoral legal framework for holding free and fair general elections; observing and verifying the impartiality and legality of the decisions of the EC and

258 As above.

259 Independent Reporter (n 167).

260 As above.

261 N Atukunda 'Elections were free and fair, EAC observers say' 17 January 2021 *The Daily Monitor* <https://www.monitor.co.ug/uganda/news/national/elections-were-free-and-fair-eac-observers-say-3259748> (accessed 8 February 2021).

262 E Biryabarema 'EU says won't monitor Uganda election, limiting poll's international scrutiny' *Reuters* 16 November 2020 <https://www.reuters.com/article/uk-uganda-politics-idUKKBN27W1H5> (accessed 9 February 2021) & Reuters Staff 'U.S. cancels its observation of Uganda's presidential election' *Reuters* 13 January 2021 <https://www.reuters.com/article/us-uganda-election-idUSKBN2911C0> (accessed 9 February 2021).

263 Guideline 23.

264 Under this provision, every Ugandan citizen of 18 years and above has the right to vote.

265 EC 'General Elections Handbook for Observers' <https://www.ec.or.ug/sites/default/files/press/Electoral%20commission%20manual.pdf> (accessed 18 February 2021).

266 As above.



its officers; following the procedures outlined in the EC's guidelines, the electoral laws, and the Constitution; and ascertaining voter/public awareness of the entire election process. Other duties include studying voter/public participation in the general election campaign process/ programs; studying the ease with which those campaigning can reach the public; studying the role of stakeholders, such as the government, electoral commission, media, police, political parties, candidates, voters, and so on; and observing and verifying the process as outlined in Uganda's electoral laws.<sup>267</sup> As part of the accreditation process, the Handbook requires election observers to comply with the Code of Conduct for Election Observers.

It is an offence for a person, group or institution to observe any election without prior accreditation from the EC.<sup>268</sup> Any accredited election observer is required to make a written report to the EC on their observation not later than six months after the declaration of the results of the election or such earlier date as the EC may specify in writing.<sup>269</sup> Furthermore, any person, group or institution who observes any election without prior accreditation from the EC or fails to submit the required written report to the EC not later than six months after the declaration of results is liable on conviction to a fine, not exceeding 300 000 Uganda Shillings (approximately USD 81) or to imprisonment not exceeding six months or both.<sup>270</sup>

While the Handbook meets the Guidelines' requirements for a code of conduct and election mission observation reports, it falls short of requiring election observer missions to disclose the names and details of key office bearers, conflicts of interest, and sources of funding. The detailed observer reports disclosing information about their observations during the 2021 general elections were not readily available on the EC website at the time of writing this report. Based on previous elections, most election observers accredited by the EC frequently make preliminary statements immediately after election results are declared and then submit detailed reports to the EC several months later.

#### **4.1.1 INFORMATION DISCLOSURE BY ELECTION OBSERVERS AND MONITORS**

Guideline 23 requires election observers and monitors to proactively disclose the following categories of information:

- Names and details of key office bearers in the observer or monitoring mission;
- Code of conduct for observers and monitors;
- Financial or non-financial assistance received from any donor or any political party or candidate, including the incumbent government;
- The Election Observation Mission Report, specifying the methodology, deployment plan as well as the assessment of the conduct and outcome of the elections. This shall be published widely and timeously, with preliminary reports issued within 30 days and final reports issued within 90 days;
- Conflict of interest or political affiliations of local observers or monitors, if any; and
- Sources of funding for any organisations conducting opinion and exit polls and parallel voter tabulation.

Observers of the 2021 general elections fell short in the disclosure of the information as is discussed hereunder. The different observer missions undertook launches prior to the elections wherein they disclosed the purpose of the missions, the number of observers comprising the mission, the areas at which they would be stationed for observation, and support staff. For example, the EAC election observation mission at the launch disclosed that the mission would comprise 74 observers and support staff drawn from the East African Legislative Assembly,

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267 As above.

268 As above. See also sec 16(4) Electoral Commission Act.

269 Sec 16(5) Electoral Commission Act.

270 Sec 16(6) Electoral Commission Act.

East African Court of Justice, EAC Secretariat and the Electoral Management bodies, Ministries of EAC Affairs and Human Rights Commissions of the EAC Partner States.<sup>271</sup>

The Intergovernmental Authority on Development (IGAD) disclosed that the observer mission to the 2021 general elections was composed of 22 observers from IGAD's secretariat and specialised institutions, and led by Hon. Siraj Fegessa.<sup>272</sup> Hon. Siraj is the Director of the Peace and Security Division of IGAD.<sup>273</sup> The websites of the missions disclosed in summary the number of observers in the mission, the areas of deployment and the leaders of the missions.<sup>274</sup> This disclosure partly complied with the requirements of Guideline 23 on disclosure of the names and details of key office bearers in the mission.

According to the EC report on the elections, 2 817 observers were accredited.<sup>275</sup> Majority of the observers did not disclose all the information as required under Guideline 23. There is no evidence that such disclosure was done by the different observers. The EC website does not disclose or detail any reports submitted to it by the observers. This lack of information hinders the ability to assess with certainty the extent to which observers complied with Guideline 23 on disclosure of information. It is difficult to determine whether or not they obtained any financial assistance from political parties, their source of funding and any conflicts of interest that could have arisen at the time.

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271 EAC 'EAC Election Observation Mission to the 2021 Uganda General Election launched'  
<https://www.eac.int/press-releases/1922-eac-election-observation-mission-to-the-2021-uganda-general-election-launched> (accessed 19 February 2021).

272 IGAD 'IGAD Election Observation Mission for the 2021 General Elections in Uganda'  
<https://igad.int/igad-election-observation-mission-for-the-2021-general-elections-in-uganda/>  
(accessed 20 February 2021).

273 As above.

274 As above & EAC (n 271).

275 EC 'The Electoral Commission Report on the 2020/2021 General Elections'  
<https://www.ec.or.ug/general-elections-report-2020-2021>



# Part Two: Assessment Of Stakeholders' Compliance With The Guidelines

## Chapter 5



# CHAPTER 5:

## LAW ENFORCEMENT AGENCIES

### 5.1 INTRODUCTION

'Law enforcement agencies' refers to the state institutions charged with maintaining law and order during the course of the electoral process, including police, military and intelligence operatives.<sup>276</sup> Elections in Uganda, just like in many other African countries, are often characterized by violence, demonstrations, riots and electoral malpractices, all of which require the intervention of the law enforcement agencies. Law enforcement agencies that are common feature in Uganda's elections include the police, Local Defence Units (LDU), and the army. During the 2021 general elections, these law enforcement agencies were accused of triggering electoral violence by arresting opposition candidates, and teargassing and dispersing their rallies under the guise of enforcing COVID-19 control measures.<sup>277</sup>

The Uganda Police Force (Uganda Police) is the law enforcement agency primarily charged with keeping law and order throughout the country generally, including during elections. Chapter 12 of the Constitution of Uganda, which deals with defence and national security, provides for the establishment of the Uganda Police.<sup>278</sup> The Constitution also requires the Uganda Police to be nationalistic, patriotic, professional, disciplined, competent and productive, and its members should be citizens of Uganda of good character.<sup>279</sup> The functions of the Uganda Police include: protecting life and property, preserving law and order, preventing and detecting crime, and cooperating with the civilian authority and other security organs established under the Constitution and with the population generally.<sup>280</sup>

Cooperating with the civilian authority and the general public would include proactive disclosure of information relating to their operations and implementing provisions of the AIA. Free flow of information between communities and law enforcement agencies such as the police is critical in all phases of the election process.<sup>281</sup> This level of interaction is beneficial to law enforcement as it promotes civic understanding, cooperation and support, informs expectations, and promotes confidence in law enforcement.<sup>282</sup> The mutual sharing of information from national through to local levels can be instrumental for the effective exercise of the right to vote, for public order policing, and for democratic political activity.<sup>283</sup> Liaisons with other security agencies include calling for backup or support from other security agencies such as Uganda Peoples Defence Forces (UPDF), LDUs, and intelligence services as the practice has been during elections.

The Constitution requires parliament to regulate the Uganda Police by making laws for their organisation and administration, ensuring that members of the Uganda Police are recruited from every district of Uganda, and regulating generally the Uganda Police.<sup>284</sup> To this effect,

276 Guideline 1.

277 S Namwase 'Uganda: The Unsurprising Pre-Election Violence by Security Forces' *The Africa Report* 14 January 2021 <https://www.theafricareport.com/59129/uganda-the-unsurprising-pre-election-violence-by-security-forces/> (accessed 6 February 2021).

278 The Constitution of Uganda provides for a police force to be known as the Uganda Police Force and such other police forces in Uganda as Parliament may by law prescribe. Art 211(1) Constitution.

279 Art 211(3) Constitution.

280 Art 212 Constitution.

281 CHR & Others (n 39).

282 As above.

283 As above.

284 Art 214 Constitution.

parliament enacted the Police Act<sup>285</sup> which provides for the structure, organisation and functions of the police force, a police disciplinary code of conduct, a Police Welfare Fund, a police tender board and for other matters connected with or incidental with the functioning of the Uganda Police.<sup>286</sup> Although the Uganda Police is a department under the Ministry of Internal Affairs, the oversight and accountability function over it is exercised by the parliamentary committee on defence and internal affairs.

An examination of the proactive release of information by the Uganda Police while carrying out their law enforcement duties during the 2021 general election revealed some attempts to meet their responsibilities under the Guidelines. Proactive release of information during the electoral process was primarily done by police spokespersons during press briefings or interviews almost every day at different intervals. During these press briefings or interviews, Uganda police released information about election crime incidents, police misconduct, deployment plans, cautions and warnings to the public or candidates, enforcement of COVID-19 control measures, and joint operations with other security agencies. Aside from police-initiated information disclosures, it is important to note that responses to information requests to the police by other electoral stakeholders and the public, such as the whereabouts of those arrested during elections, particularly from the opposition, were not always readily available. Arguably, the AIA's provisions have done little to compel the Uganda Police to make certain information automatically available to the public.

While section 8 of the AIA requires the automatic disclosure and availability of certain records, the Constitution under article 41 and part III of the AIA provide for several grounds of refusal, including security reasons, which legitimately allow the Uganda Police to refuse or withhold certain information. However, in such cases, the Uganda Police should justify the refusal or limitation of access to information sought or requested based on the law.

The Guidelines require that in ensuring the maintenance of law and order during the course of the electoral cycle, law enforcement agents shall proactively disclose information as part of their operational functions.<sup>287</sup> The Guidelines also allow for the denial of information requests when the release of such information would jeopardise law enforcement.

### **5.1.1 INFORMATION DISCLOSURE BY LAW ENFORCEMENT AGENCIES**

#### *i. Code of conduct and roles during the electoral period*

The Uganda Police did not proactively disclose to the public the code of conduct which was specifically dedicated to their operations during the electoral period. The Police Act establishes the disciplinary code of conduct which is the basis for disciplinary control of all police officers and other persons employed in the force.<sup>288</sup> The persons who are subject to the Uganda Police code of conduct include: an attested member of the force, a person enlisted as a police officer or who is under training as a police officer, a member of the local administration police force, a special constable, a police officer employed on contract, a member of a security organisation placed under the command of the inspector general for the performance of police duties, and any other person who accepts to perform duties in the force.<sup>289</sup>

According to the Police Act, the power of disciplinary control of a police officer of or above the rank of assistant commissioner vests in the police authority and below the rank of assistant

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285 The Police Act Chapter 303 of 2006 [https://www.upf.go.ug/download/legal\\_mandate/The-Police-Act.pdf](https://www.upf.go.ug/download/legal_mandate/The-Police-Act.pdf) (accessed 6 February 2021).

286 As above.

287 Guideline 24.

288 Sec 44(1) Police Act.

289 Sec 45 Police Act.

commissioner vests in the police council acting through a police disciplinary court.<sup>290</sup> The Uganda Police disciplinary code of conduct established by the Police Act is set out in the Schedule to the same Act and provides for among others: obligations of police officers, offences by police officers, causing loss to government, spread of harmful propaganda, insubordinate or oppressive conduct, offences in relation to official documents, disobedience of lawful orders, neglect of duty, breach of confidence, corrupt practises, interdiction and suspension, and modes of complaint of police officers. Little to no implementation can be seen of this system of reprimand to the extent that even where there was a pressing need to apply these mechanisms after the execution of several citizens during the November 2020 protests, there was nothing done to hold errant officers accountable, rather statements in support of these gruesome acts were issued by the Minister of Defence.<sup>291</sup>

The UPDF assists the Uganda Police in maintaining peace, security, and order during elections as provided by article 212(d) of the Constitution, and sections 42 and 43 of the UPDF Act. The UPDF Act establishes a code of conduct for the defence forces in order to guide and discipline members of the defence forces. The code of conduct for the armed forces, which is outlined in the seventh schedule to the UPDF Act, addresses, among other things, relationships with the public, tendencies detrimental to the cohesion of the armed forces, education, unit administration, and assisting members of the public.

An analysis of the Uganda Police and the UPDF codes of conduct, read independently or jointly, appear to be generalised and not tailored to adequately apply to security operations during elections. From what transpired in the course of the security operations during the 2021 election period, the Uganda Police and the UPDF appeared to display their continued role of enforcing the COVID-19 control measures rather than keeping peace and order. Arrests, disappearances, and detentions were prevalent. This often led to violent clashes between the citizens and candidates, and the security forces thereby, precipitating electoral violence.<sup>292</sup> It is therefore imperative that the Uganda Police and the UPDF adopt codes of conduct which are specifically tailored to fit the election season, and adhere to them.

## *ii. Training and operational plans and manuals*

Apart from the press releases and briefings by the Uganda Police summarising or giving an overview of the training and operational plans, no detailed information was proactively released to the public about the same. For instance, the Uganda Police disclosed on its website that it had recruited Election Special Police Constables (SPCs) who were to be trained for two weeks.<sup>293</sup> In one of its weekly press briefings, the Uganda Police also disclosed to the public that the security agencies had increased their vigilance and preparedness towards elections.<sup>294</sup> According to the Uganda Police website, these Election SPCs were going to provide security services at the various polling stations across the country.<sup>295</sup> It was also reported that the Uganda Police had developed a master plan for the 2021 general election in which the country had been divided into 13 election zones to ensure that the elections were peaceful.<sup>296</sup>

290 Sec 46 Police Act.

291 'Gen Tumwine: Police have a right to kill if attacked' *The Independent* 20 November 2020 <https://www.independent.co.ug/gen-tumwine-police-has-a-right-to-kill-if-attacked/> (accessed 30 September 2022).

292 Namwase (n 277).

293 W Kamusiime 'Election SPCs to Report for Training' *Uganda Police Force* 27 November 2020 <https://www.upf.go.ug/election-spcs-to-report-for-training/> (accessed 21 February 2021).

294 W Kamusiime 'Increased Vigilance and Security Preparedness' Towards Elections' *Uganda Police Force* 4 January 2021 <https://www.upf.go.ug/increased-vigilance-and-security-preparedness-towards-elections/> (accessed 21 February 2021).

295 As above.

296 A Bagala 'Police Roll Out Security Master Plan for 2021 Elections' 20 September 2020 *The Daily Monitor* <https://www.monitor.co.ug/uganda/news/national/police-roll-out-security-master-plan-2021-elections-2303924> (accessed 22 February 2021).

It is proposed that, in the future, security agencies go beyond simply providing generalised press briefings and releases about their training and operational plans during elections, and instead go the extra mile by proactively disclosing detailed information to the public via their websites or the media. It is clear that the Ugandan public had to rely on the media rather than proactive disclosures by security agencies for information relating to election training and operational plans, which falls short of the Guidelines' requirements.

### *iii. Deployment plans*

The Uganda Police did not disclose the exact number of personnel that were deployed before, during and after the electoral period. However, media reports indicated that the Uganda Police intended to recruit 80 000 police officers ahead of the 2021 general elections.<sup>297</sup> According to the same media reports, a total of 70 000 SPCs envisaged to be recruited towards elections, and an additional 10 000 were to join the regular police force which stood at 44 601.<sup>298</sup> At the time of writing this research report, it could not be independently verified if the Uganda Police actually recruited all the proposed 80 000 officers.

Similarly, the UPDF did not proactively disclose information to the public relating to the exact number of officers that were deployed before, during and after the elections. Media reports indicated that the UPDF leadership had resolved to deploy 13 000 personnel to monitor the 2021 general elections.<sup>299</sup> The same media reports indicated that when approached, the UPDF spokesperson, Brigadier Flavia Byekwaso, declined to divulge details on the exact number, citing security reasons. She only confirmed that there was enough security to cover the whole country. A possible exception to disclosure.<sup>300</sup>

Despite limited information on the exact number of security personnel that were deployed across the country during the electoral period, there was undoubtedly a heavy presence of the Uganda Police and the UPDF. This was reaffirmed by the election observer missions, who in their preliminary observer reports, indicated that the Election Day had generally been peaceful due to the heavy presence of the security agencies.

Inadequate information disclosures about deployment plans by the Uganda Police and the UPDF before, during and after elections is an area which requires improvement so as to comply with the requirements of the Guidelines.

### *iv. Budgetary allocations and actual expenditure*

In the financial year 2019/2020 the approved annual budget for the Uganda Police was 824.9 billion Uganda shillings (approximately USD 224 000 000).<sup>301</sup> For the 2020/2021 financial year, the approved annual budget for the Uganda Police was 986.9 billion Uganda shillings (approximately USD 268 000 000).<sup>302</sup> Security agencies in Uganda often incur extra expenses

297 '2021 Elections: Police to Recruit 80,000 Officers' *The Daily Monitor* 9 February 2019 <https://www.monitor.co.ug/uganda/news/national/2021-elections-police-to-recruit-80-000-officers-1806050> (accessed 22 February 2021) & Independent Reporter 'UPDF prepares 13,000 personnel for elections' *The Independent* 5 January 2021 <https://www.independent.co.ug/updf-prepares-13000-personnel-for-elections/> (accessed 31 May 2023).

298 As above.

299 The Independent Reporter (n 297).

300 As above.

301 Ministry of Finance, Planning and Economic Development 'Vote Budget Framework Paper FY 2020/2021' [https://www.finance.go.ug/sites/default/files/National%20Budget%20Framework%20Paper%20FY%202020-21\\_0.pdf](https://www.finance.go.ug/sites/default/files/National%20Budget%20Framework%20Paper%20FY%202020-21_0.pdf) (accessed 21 February 2021).

302 Ministry of Finance, Planning and Economic Development 'Approved Estimates of Revenue and Expenditure FY 2020/2021' <https://budget.finance.go.ug/content/approved-budget-estimates-534> (accessed 21 February 2021).

during the electoral period which are outside their ordinary budgets approved by parliament. This then requires parliamentary approval for additional supplementary budgets to cover operational expenses during the electoral period. At the time of writing this research report, no information was available on approximately how much money the Uganda Police received and spent during the electoral period, and neither has it made any disclosures on the same. Media reports indicate that in October 2020, parliament passed a one-billion-dollar budget (USD 1 000 000 000) of which approximately eight million dollars (USD 8 000 000) was allocated to the Uganda Police for meals and fuel.<sup>303</sup> It is believed that this supplementary budget to the Uganda Police went towards funding its operations for the electoral period, since the 14 January 2021 election date was only a few months away.

Like the Uganda Police, the UPDF also did not make any proactive disclosures of information relating to its budgetary allocations and actual expenditures during elections. The scanty information relating to the UPDF's budgetary allocations and actual expenditures during the electoral period was accessed through the media. It was reported that in January 2020, the Ministry of Defence, under which the UPDF falls, had requested parliament for an additional 16.2 billion Uganda shillings (approximately USD 4 400 000) to manage the 2021 general election.<sup>304</sup> Furthermore, in March 2020, the Ministry of Defence in its policy statement submitted to parliament, indicated that it had earmarked 12.9 billion Uganda shillings (approximately USD 3 500 000) for the recruitment and training of 4000 new recruits ahead of the 2021 general elections.<sup>305</sup> Media reports further indicated that in October 2020, parliament passed a 3.7 trillion Uganda shillings (approximately USD 1 000 400 000) budget of which 1.1 trillion Uganda shillings (approximately USD 298 900 000) was allocated to UPDF for classified expenditures.<sup>306</sup> It is believed all or a portion of the above-mentioned budgetary allocations to the UPDF went towards funding its operations for the electoral period.

#### ***v. Details of any reported election related crimes***

During the 2021 election period the Uganda Police reported a number of election related crimes. Some suspected offenders were arrested and charged in court while others were released on police bond. These reports were released by the Uganda Police mainly during press briefings and releases by its national and regional spokespersons on a daily basis. The Police Annual Crime Report of 2021 reported that a total of 797 cases of political/electoral and media offences were reported to the police by the end of 2021.<sup>307</sup> This number is aggregated and does not specifically cover the period of the elections.

Thus, the Ugandan public and electoral stakeholders had to rely on the media for information on reported election related crimes. For instance, the police spokesperson, Mr. Fred Enanga, informed journalists that police and other security agencies had registered 173 election related offences and arrested a total of 223 suspects on allegations of violating election laws during the 2021 elections.<sup>308</sup> Out of the 223 suspects who were arrested, 23 were released on bond

303 Independent Reporter 'Parliament Passes UGX 3.7 Trillion Supplementary Budget' *The Independent* 21 October 2020 <https://www.independent.co.ug/parliament-passes-ugx-3-7-trillion-supplementary-budget/> (accessed 21 February 2021).

304 F Amongin 'Defence Asks for Shs16b to Manage 2021 Elections' *The Daily Monitor* 19 January 2020 <https://www.monitor.co.ug/uganda/news/national/defence-asks-for-shs16b-to-manage-2021-elections--1870478> (accessed 21 February 2021).

305 'Defence Plans to Spend Shs3 Trillion from June' *The Daily Monitor* 31 March 2021 <https://www.monitor.co.ug/uganda/news/national/defence-plans-to-spend-shs3-trillion-from-june-1883296> (accessed 21 February 2021).

306 The Independent Reporter 'Parliament Passes UGX 3.7 Trillion Supplementary Budget' *The Independent* 21 October 2020 <https://www.independent.co.ug/parliament-passes-ugx-3-7-trillion-supplementary-budget/> (accessed 21 February 2021).

307 Uganda Police Force 'Annual Crime Report 2021' <https://www.upf.go.ug/wp-content/uploads/2022/05/ACR2021.pdf?x89335> (accessed on 23 May 2023)

308 B Tumusiime 'Security Agencies Arrest 223 During Elections' *The Daily Monitor* 19 January 2021 <https://>



and four were charged in court.<sup>309</sup> However, the police spokesperson did not disclose what happened to the remaining 176 suspects who had been arrested. According to Mr. Enanga, the suspects were arrested for offences ranging from assault, voter bribery, impersonation, giving false information, and destruction of property, among others.<sup>310</sup>

It is important to note that in the post-election period, information disclosures on reported election crimes, including the number of cases reported and steps taken to investigate, prosecute or withdraw such cases, were not as frequent as compared to the pre-election period and election day. For instance, there have been disproportionate arrests of opposition supporters in the post-election period especially by the UPDF. However, the Uganda Police has in most instances failed to proactively disclose information about why these people were arrested or where they were being detained.<sup>311</sup>

In March 2021, the Minister of Internal Affairs Gen. Jeje Odong tabled before parliament a list of persons that had been arrested and detained by the UPDF.<sup>312</sup> Despite these disclosures, some of the opposition MPs claimed that the list of 177 persons did not contain all the names of the persons who had been arrested by the UPDF and were in detention.<sup>313</sup> The lists submitted by NUP for instance contained 243 names of missing persons. The list had been compiled using the internal party mechanism that allowed the party to track missing persons by issuing phone numbers through which friends or family of disappeared persons could seek assistance.<sup>314</sup>

Proactive disclosure by law enforcement agencies regarding the number of cases reported and steps taken to investigate, prosecute or withdraw such cases during electoral processes, enhances transparency, accountability and the protection of fundamental human rights. So as to comply with the requirements of the Guidelines, law enforcement agencies should systematically and periodically proactively disclose such information to the public in all phases of the election including the post-election period, given finalisation and prosecutorial outcomes.<sup>315</sup>

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[www.monitor.co.ug/uganda/news/national/security-agencies-arrest-223-during-elections-3261742](https://www.monitor.co.ug/uganda/news/national/security-agencies-arrest-223-during-elections-3261742) (accessed 22 February 2021).

309 As above.

310 As above.

311 A Bagala 'We Don't Know Whereabouts of Missing People – Govt' *The Daily Monitor* 28 January 2021 <https://www.monitor.co.ug/uganda/news/national/we-don-t-know-whereabouts-of-missing-people-govt-3271450> (accessed 22 February 2021).

312 J Bwire 'Minister Odongo Tables Before Parliament List of 177 Missing Ugandans' *The Daily Monitor* 4 March 2021 <https://www.monitor.co.ug/uganda/news/national/minister-odongo-tables-before-parliament-list-of-177-missing-ugandans-3311826> (accessed 22 February 2021).

313 Grapevines Updates 'Where are the Others? MPs Contest Minister Jeje Odongo's Incomplete List of Abducted Ugandans' *The Grapevine* 5 March 2021 <https://www.thegrapevine.co.ug/where-are-the-others-mps-contest-minister-jeje-odongos-incomplete-list-of-abducted-ugandans/> (accessed 22 February 2021).

314 D Wandera 'List: NUP releases names of 243 missing Ugandans' 3 March 3. <https://www.monitor.co.ug/uganda/news/national/nup-releases-its-list-of-243-missing-ugandans-3310236> (accessed 30 September 2022).

315 CHR & Others (n 39).



**Part Two: Assessment Of Stakeholders' Compliance With The Guidelines**  
Chapter 6



# CHAPTER 6:

## MEDIA AND INTERNET REGULATORY BODIES

### 6.1 INTRODUCTION

Media and internet regulatory bodies are undoubtedly important features of any government's efforts to ensure that the citizens' right of access to information during electoral processes are upheld through information dissemination by media and internet service providers. In Uganda, the media and internet regulatory bodies mainly include the Uganda Communications Commission (UCC) and the Media Council, which are established by the Uganda Communications Act (UCA),<sup>316</sup> and the Press and Journalist Act (PJA).<sup>317</sup>

The Guidelines require media and internet regulatory bodies to adopt media coverage regulations during elections to ensure fair and balanced coverage of the electoral process, as well as transparency about political advertising policy on media and online media platforms. As part of their operational functions, such bodies should proactively disclose information to the public.<sup>318</sup>

#### **6.1.1 RELEVANT REGULATORY BODIES AND INFORMATION DISCLOSURES FOR COMPLAINT PROCEDURES**

The UCC was established under section 4 of the UCCA with the principal goal of developing modern communications infrastructure in Uganda. The primary mandate of the UCC is to regulate the communications sector, which includes telecommunications, broadcasting, radio communication, postal communications, data communication, and infrastructure.<sup>319</sup> Thus, the UCC is not only the regulator, but also a facilitator and promoter of sustainable growth and development of Uganda's communications sector.<sup>320</sup> Amongst its functions under section 5 of the Act, the UCC is required to: monitor, inspect, licence, supervise, control and regulate communications services;<sup>321</sup> and promote and safeguard the interests of consumers and operators as regards the quality of communications services and equipment.<sup>322</sup>

The Act also requires the UCC to receive, investigate and arbitrate complaints relating to communications services, and take the necessary action.<sup>323</sup> The UCC's mandate also includes investigating complaints relating to any matter within its functions such as: communications services or apparatus provided or supplied in Uganda;<sup>324</sup> and any representation made to it by or on behalf of a person whom the UCC considers to have an interest in the matter which is the subject of the representation.<sup>325</sup> On its website, the UCC has a portal where complaints and inquiries are registered.<sup>326</sup> This portal has sections on particulars of the complainant,

316 The Uganda Communications Act 13 of 2013 <https://ulii.org/akn/ug/act/2013/1/eng@2013-01-18> (accessed on 7 March 2023).

317 Press and Journalist Act part III <https://ulii.org/akn/ug/act/statute/1995/6/eng%402014-02-10> (accessed on 7 March 2023).

318 Guideline 25.

319 UCC 'The Mandate of the UCC' <https://www.ucc.co.ug/about-ucc/> (accessed 20 February 2021).

320 As above.

321 Sec 5(1)(b) Uganda Communications Act.

322 Sec 5(1)(k) Uganda Communications Act.

323 Sec 5(1)(j) Uganda Communications Act.

324 Sec 45(a) Uganda Communications Act.

325 Sec 45(b) Uganda Communications Act.

326 UCC 'Complaints and Inquiries' <https://www.ucc.co.ug/complaints-inquiries/> (accessed 20 February 2021).

complaints information, and facts or explanation of the complaint.<sup>327</sup> The UCC website also has a portal detailing the complaints handling procedures, where consumers of all communication services who are dissatisfied with services rendered to them by any of the operators have a right to redress the situation through lodging of complaints to the UCC.<sup>328</sup>

The Media Council is another regulatory body established by section 8 of the PJA. The Media Council specialises in mass media regulation, press freedom advocacy, disciplinary control, and film classification.<sup>329</sup> Amongst its functions as provided for under section 9 of the PJA, the Media Council is required to: regulate the conduct and promote good ethical standards and discipline of journalists;<sup>330</sup> and promote, generally, the flow of information.<sup>331</sup> The PJA establishes a Disciplinary Committee of the Media Council under section 30 consisting of the chairperson of the Media Council (who is the chairperson of the committee), the secretary to the Media Council, (who is the secretary to the committee) and four members elected by the Council from within.<sup>332</sup> The Media Council also has a complaints handling mechanism, where a written complaint or an allegation against a journalist, which if proved would constitute professional misconduct, may be made to the disciplinary committee by any person.<sup>333</sup> The First Schedule of the PJA provides for the procedure to be followed by the disciplinary committee in the hearing of a complaint.<sup>334</sup>

After hearing the accused journalist and considering the evidence presented, the disciplinary committee may dismiss the complaint if no grounds for disciplinary action is proven. If a ground for disciplinary action is otherwise proven, it may impose any or a combination of penalties including admonishment, apology, suspension of practising certificate, and compensation,<sup>335</sup> A journalist or complainant aggrieved by the decision or order of the disciplinary committee may appeal against the decision or order to the High Court within fourteen days from the date on which the report of the disciplinary committee was delivered to that journalist or complainant.<sup>336</sup> The Media Council's website has information on the Media Council disciplinary committee rules of procedure which should be followed by aggrieved complainants.<sup>337</sup> According to the Media Council website, any person aggrieved by any publication or media organisation may make a written complaint to the Media Council of Uganda setting out the grounds for the complaint and the remedy or remedies sought.<sup>338</sup>

The National Association of Broadcasters (NAB), which was founded in 1999, is a voluntary non-profit member association of electronic broadcasting companies, and all organisations involved in electronic broadcasting.<sup>339</sup> However, NAB has no established complaints and compliance mechanisms, but rather relies on UCC as the sector regulator. NAB acts as an intermediary among its members and also regulates the actions of its members to prevent

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327 As above.

328 UCC 'Complaint Handling Procedure' <https://www.ucc.co.ug/complaint-handling-procedure/> (accessed 20 February 2021).

329 Media Council of Uganda 'About the Media Council' <https://mediacouncil.go.ug/media-council-2/> (accessed 21 February 2021).

330 Sec 9(1)(a) Press and Journalist Act.

331 Sec 9(1)(d) Press and Journalist Act.

332 Sec 30(1)(a)-(c) Press and Journalist Act.

333 Sec 31(1) Press and Journalist Act.

334 Sec 32 Press and Journalist Act.

335 Sec 33 Press and Journalist Act.

336 Sec 34 Press and Journalist Act.

337 Media Council of Uganda 'Disciplinary Committee Rules' <https://mediacouncil.go.ug/disciplinary-committee-rules/> (accessed 21 February 2021).

338 As above.

339 NAB 'Executive Summary' <https://nab.co.ug/> (accessed 21 February 2021).

the need for extreme measures by the government that may affect the whole industry.<sup>340</sup>

Unfortunately, there was no available information on the complaints or petitions received by the above regulatory bodies during the 2021 general elections. In the absence of this information, it is difficult to determine how complaints are practically handled.

### **6.1.2 INTERNET SHUTDOWNS**

The internet is a powerful tool for ensuring full enjoyment of the right to information during electoral processes. However, internet shutdowns have gained popularity in developing countries including Uganda, The Gambia, India, Guinea, Belarus, Burundi, Kyrgyzstan, Tanzania, and Togo as a tool for restricting press freedom and information access. These shutdowns are usually accompanied by reasons such as security concerns that could jeopardise the electoral process. Internet shutdowns undermine the internet's positive role in promoting credible elections and building a strong democracy.

The UCC, as the sector regulator, has twice directed Internet Service Providers (ISPs) to shut down the internet during elections in Uganda in contradiction with guidelines 26 and 27.<sup>341</sup> According to the UCC, the internet was shut down for security purposes and to prevent the spread of 'fake' news which would have disrupted the 2016 and 2021 general elections.<sup>342</sup>

While governments have limited leeway to impose restrictions on internet access under international law, these should be authorised by law, serve a legitimate aim, and be necessary and proportionate in a democratic society.<sup>343</sup> According to the International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>344</sup> states may limit the enjoyment of certain rights only to the extent that this is compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.<sup>345</sup> Similarly, according to the ICCPR, the exercise of freedom of expression entails special duties and responsibilities.<sup>346</sup> It may therefore be subject to certain restrictions, but these should only be such as are provided by law and are necessary for the respect of the rights or reputations of others and for the protection of national security, public order, public health or morals.<sup>347</sup> The Human Rights Committee (HRC) which monitors the implementation of the ICCPR also stated that:<sup>348</sup>

*When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.*

340 NAB 'Objectives' <https://nab.co.ug/about/> (accessed 21 February 2021).

341 J Bwire 'UCC Orders Social Media Shutdown Ahead of Tense Poll' *The Daily Monitor* 12 January 2021 <https://www.monitor.co.ug/uganda/news/national/ucc-orders-social-media-shutdown-ahead-of-tense-poll-3254532> (accessed 28 February 2021).

342 MT Kahungu & B Tumusiime 'Museveni Explains Why Government Closed Social Media Ahead of Election' *The Daily Monitor* 13 January 2021 <https://www.monitor.co.ug/uganda/news/national/museveni-explains-why-government-closed-social-media-ahead-of-election-3255504> (accessed 28 February 2021).

343 Guideline 27.

344 ICESCR [https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch\\_iv\\_03.pdf](https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf) (accessed 7 March 2023).

345 Art 4 ICESCR.

346 Art 19(3) ICCPR.

347 Art 19(3) (a) & (b) ICCPR.

348 HRC, General Comment No 34, CCPR/C/GC/34 para 35 <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (accessed 7 March 2023).

In Uganda, the Constitution lays the foundation for the parameters within which limitations may be imposed on certain human rights by providing that public interest shall not permit any limitation of the enjoyment of the rights and freedoms beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution.<sup>349</sup> In the case of *Charles Onyango Obbo and Andrew Mujuni Mwenda v Attorney General*,<sup>350</sup> the Supreme Court noted that the constitutional limitations on freedom of expression provide a yardstick by which to gauge whether any limitation imposed on human rights is acceptable and demonstrably justifiable in a free and democratic society.<sup>351</sup> Restricting access to information should ideally resonate with the principles espoused in this decision.

In as much as the protection of national security may be a legal justification for imposing limitations on the enjoyment of the right of access to information through internet shutdowns, what happens in Uganda during elections is unjustified, unreasonable and violates the Constitution. For instance, the internet shutdown not only affected the electoral processes, but also impacted other aspects of society such as health, education, trade, finance and the economy.<sup>352</sup> Also, the internet was shut down for a period which was unreasonably and unnecessarily long. The blend of partial and complete internet shutdown was imposed on 12 January 2021 and was fully restored on 10 February 2021.<sup>353</sup> At the time of writing this research report, the internet had been fully restored for most sites.<sup>354</sup>

It is argued that ensuring internet access during elections not only improves information access, but also promotes transparency and trust in the electoral process. As a result, the government should refrain from implementing internet shutdowns.

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349 Art 43(2)(c) Constitution.

350 *Charles Onyango Obbo and Anor v Attorney General* (Constitutional Appeal No. 2 of 2002) [2004] UGSC 81 (10 February 2004) Constitutional Appeal No. 2 of 2002 <https://ulii.org/ug/judgment/supreme-court-uganda/2004/81#:~:text=The%20central%20issue%20in%20this,this%20appeal%2C%20are%20practising%20journalists> (accessed 7 March 2023).

351 Lead judgment by Justice Joseph Mulenga.

352 IM Ladu 'Internet Shutdown Stalls Business, Government Agencies' *The Daily Monitor* 19 January 2021 <https://www.monitor.co.ug/uganda/news/national/internet-shutdown-stalls-businesses-government-agencies--3261392> (accessed 21 February 2021) & IM Ladu 'How Internet Shutdown Stalled Business' *The Daily Monitor* 11 February 2021 <https://www.monitor.co.ug/uganda/news/national/how-internet-shutdown-stalled-businesses-3287376> (accessed 21 February 2021).

353 J Bwire 'Govt Lifts Internet Shutdown Imposed Over Election' *The Daily Monitor* 10 February 2021 <https://www.monitor.co.ug/uganda/news/national/govt-lifts-internet-shutdown-imposed-over-election-3286184> (accessed 21 February 2021).

354 J Kamoga 'Uganda Restores Social Media, Facebook Still Blocked' *The East African* 11 February 2021 <https://www.theeastafrican.co.ke/tea/news/east-africa/uganda-restores-social-media-3287024> (accessed 21 February 2021).



# **Part Two: Assessment Of Stakeholders' Compliance With The Guidelines**

## Chapter 7



# CHAPTER 7:

## THE MEDIA AND ONLINE MEDIA SERVICE PROVIDERS

### 7.1 INTRODUCTION

Uganda has a diverse media landscape, which includes broadcasting, print, and online media. In comparison to the public broadcaster, the Uganda Broadcasting Corporation (UBC), the private media dominates both radio and television audiences and viewership.<sup>355</sup> Nation Media Group (NMG), Next Media Services, and pay television service provider Multichoice are among Uganda's prominent private broadcasters. Vision Group, NMG, The Independent, Red Pepper, and Next Media Services are among the notable print and online media companies. Roke Telecom, Liquid Telecom, Africa Online, Smile Telecom, Reliable Communications, Infocom, TruIT Uganda, MTN Mobile, Uganda Telecom, and Airtel Uganda are some of the Internet Service Providers (ISPs) in Uganda.

Media and online media service providers in Uganda are regulated by the PJA and UCA. Media regulation is a contentious subject.<sup>356</sup> Self-regulation is not addressed in any law or government policy, but some industry players and government officials believe it is necessary.<sup>357</sup> Thus, some media and online media service providers in Uganda have adopted self-regulating measures, internal complaints mechanisms, and codes of conduct.

In Uganda, the media and online media service providers play an important role in electoral processes, particularly in terms of citizens' or voters' right to access information about electoral processes. This was true during the 2021 elections, which, due to the COVID-19 pandemic, were deemed to be 'scientific' or 'virtual,' with a heavy reliance on the media and Information and Communications Technology (ICT) platforms, according to the EC's June 2020 Electoral Guidelines. Despite the important role of the media in enhancing proactive disclosure of information during electoral processes, there have been, and continue to be, instances where the government interferes with the right to an independent and free media. The government usually dictates how the internal operations of media houses should be conducted, including ordering for the suspension of employees who report on controversial matters involving politicians, especially from the opposition.<sup>358</sup> The media has also been subject to state harassment.<sup>359</sup> Furthermore, affordability of and access to online media in Uganda had been curtailed by the over-the-top (OTT) tax that was applicable to the use of social media of 0.05 per cent per day.<sup>360</sup> The tax was later scrapped on account of its ineffectiveness.

355 BBC Media Action 'Uganda Media Landscape Report of 2019' [https://www.communityengagementhub.org/wp-content/uploads/sites/2/2019/09/Uganda-Media-Landscape-report\\_BBC-Media-Action\\_February-2019.pdf](https://www.communityengagementhub.org/wp-content/uploads/sites/2/2019/09/Uganda-Media-Landscape-report_BBC-Media-Action_February-2019.pdf) (accessed 21 February 2021).

356 EC Maracatho 'Broadcasting Governance and Development in Museveni's Uganda' (2015) 36 *African Journalism Studies* 16.

357 As above.

358 'UCC orders 13 radio stations, TVs to suspend staff' *The Independent* 2 May 2019 <https://www.independent.co.ug/ucc-orders-13-radio-stations-tvs-to-suspend-staff/> (accessed 10 February 2021) & Our Reporter 'Bobi Wine: UCC orders suspension of 39 journalists at 13 media houses' *The Observer* 1 May 2029 <https://observer.ug/news/headlines/60575-ucc-orders-suspension-of-39-journalists-at-13-media-houses> (accessed 10 February 2021).

359 Freedom House 'Uganda Country Report' (2021) <https://freedomhouse.org/country/uganda/freedom-world/2021> (accessed 20 February 2021).

360 R Ratcliffe & S Okiror 'Millions of Ugandans quit internet services as social media tax takes effect' *The Guardian* 27 February 2019 <https://www.theguardian.com/global-development/2019/feb/27/millions-of-ugandans-quit-internet-after-introduction-of-social-media-tax-free-speech> (accessed 10 February 2021).



The Guidelines require that print, broadcast and online media, whether publicly or privately owned, proactively disclose information as part of their operational functions.<sup>361</sup>

### **7.1.1 PROACTIVE DISCLOSURE OF INFORMATION BY PUBLIC MEDIA**

The public media in Uganda has a constitutionally recognized role with reference to enhancing the right of access to information during electoral processes. According to the Constitution, all presidential candidates should be given equal time and space on the state-owned media to present their programmes to the people.<sup>362</sup> The UBC, which is an agency under the Ministry of ICT and National Guidance, is the national broadcaster of Uganda. It was established by the UBC Act of 2005<sup>363</sup> (UBCA) and started broadcasting in November 2005.<sup>364</sup> The establishment of the UBC resulted from the merger of Uganda Television and Radio Uganda which were founded in October 1963.<sup>365</sup> The UBC operates four TV channels and 11 radio channels.<sup>366</sup> The functions of UBC include: ensuring a sustainable system of gathering, analysing, storage and dissemination of information to the public; maintaining a responsible editorial independence and setting national broadcasting standards through exemplary performance; and providing electronic media and consultancy services that educate and guide the public.<sup>367</sup>

Section 22 of the UBCA requires the Board to have an editorial policy to establish effective machinery for wide coverage of events throughout the world and in Uganda in particular; voice public opinion and criticism of a given public policy in a fair and objective manner; uphold the integrity of the Republic of Uganda and promote harmonious relationships among its people, neighbours, and the world at large; and collect, process, analyse, and propagate news and comment truthfully, honestly, and fairly without jeopardising peace and harmony in the country. Further, it should ensure that the Corporation does not broadcast any material that is indecent, obscene, or offensive to public morals or religious convictions, or that is likely to jeopardise the safety of the state or public order between sections of the population; and ensure that the Corporation's broadcasting adheres to the Broadcasting Council's code of conduct.

Aside from what is provided for in the UBC Act, there is no internal editorial policy available online, that is, on UBC's website or elsewhere. A hard copy version was also not available at the time of writing this report. It is unclear whether such a policy exists. It is proposed that an editorial policy that goes beyond what is specified in the UBC Act should clearly define UBC's mandate, editorial and programming processes, and increase transparency and accountability to citizens. The policy as well as UBC's information disclosure practices should cover election coverage in a fair and balanced manner. It should also include political advertising, party election broadcasts and political coverage, politically biased programme sponsorships, conflict of interest, political inclination of editorial staff, opinion polling, and association with political parties or their members. The current state of affairs at the UBC is not in compliance with the provisions of guideline 29(a)–(g) of the Guidelines.

However, in November 2020, the UCC formulated and adopted guidelines specifically tailored to regulate the use of media during the general elections and campaigns.<sup>368</sup> These

361 Guideline 29.

362 Art 67(3) Constitution.

363 Sec 3 Uganda Broadcasting Corporation Act 5 of 2005  
<https://media.ulii.org/files/legislation/akn-ug-act-2005-5-eng-2005-05-20.pdf> (accessed 10 February 2021).

364 Ministry of ICT & National Guidance 'Uganda Broadcasting Corporation'  
<https://ict.go.ug/about-us/agencies/uganda-broadcasting-corporation/> (accessed 26 February 2021).

365 As above.

366 UBC 'UBC Television' <https://www.ubc.go.ug/tv/> & UBC 'UBC Radios' <https://www.ubc.go.ug/ubc-radios/> (accessed 27 February 2021).

367 Sec 5 Uganda Broadcasting Corporation Act.

368 UCC 'Guidelines on the Use of Media During the General Elections and Campaigns' November 2020 <https://uccinfo.blog/2020/11/20/guidelines-on-the-use-of-media-during-the-general-elections-and-campaigns-2021/>

guidelines impose certain obligations on state-owned media, aimed at protecting the rights of the citizens and candidates which include: duty to inform; voter education; duty of balanced coverage and impartiality; direct access for party broadcasts and/or advertising; news coverage; running orders; refusal to broadcast; and prohibited content.<sup>369</sup>

The UBC Act establishes UBC as a state broadcaster, with the government as the sole shareholder.<sup>370</sup> In practice, the GoU exercises significant control over the public broadcaster. Whereas UBC extensively covered the polling day, at the time of writing this research report, there were no details on the coverage plan for election day which is a requirement of guideline 29(j) of the Guidelines. The UBC's criteria for selection of election commentators and other experts on that polling day was also not readily available as per guideline 29(k) of the Guidelines.

The UBC was repeatedly accused of limited coverage, especially of opposition candidates, during the 2021 general elections and previous elections. UBC however, denied these claims. In the case of *Kizza Besigye v Uganda Broadcasting Corporation (UBC)*,<sup>371</sup> the High Court held that the plaintiff's equal rights to media were violated by UBC as a public broadcaster during the February 2011 general elections which he was entitled to as any other presidential candidate.<sup>372</sup> Similarly, in the presidential election petition case of *Amama Mbabazi v Yoweri Kaguta Museveni & Others*, the Supreme Court found that UBC the national broadcaster failed to provide equal coverage to all presidential candidates as required by article 67(3) of the Constitution and section 24(1) of the ECA.<sup>373</sup> Such actions by the UBC as a national broadcaster contradict guideline 29 (f) of the Guidelines on time allotment.

At the time of writing this report, there was also no evidence that UBC had published or developed an access to information manual of functions and index of records as required by section 7 of the AIA.

### **7.1.2 PROACTIVE DISCLOSURE OF INFORMATION BY PRIVATE MEDIA**

The private media constitutes the largest percentage of Uganda's media sector. There are nearly 300 licensed radio stations and over 30 (free to air) TV stations serving an estimated population of over 39 million.<sup>374</sup> Radio is more popular than TV mainly due to poverty and high electricity tariff rates.<sup>375</sup> While a good number of these media houses have websites, only a handful of these media houses disclose detailed information on their internal editorial policies. Nation Television (NTV), which is a brand of the NMG, is one of the few private media houses with an elaborate editorial policy on its website.<sup>376</sup> This editorial policy provides for media guidelines, core values, role of editors, professional obligations, staff development, operational and administrative procedures and the code of conduct.<sup>377</sup>

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(accessed 20 February 2021).

369 As above.

370 Sec 3 Uganda Broadcasting Corporation Act.

371 F Kalule 'UBC discrimination against Besigye costs taxpayers 80 million' The CEO East Africa 27 February 2018 <https://www.ceo.co.ug/ubc-discrimination-against-besigye-costs-taxpayers-shs80bn/> (accessed 20 February 2021) & 'Besigye Wins case against UBC, awarded 80M' The Daily Monitor 13 January 2021 <https://www.monitor.co.ug/uganda/news/national/besigye-wins-case-against-ubc-awarded-shs80m-1742370> (accessed 31 May 2023).

372 As above.

373 *Kizza Besigye v Uganda Broadcasting Corporation (UBC)*, Presidential Election Petition No. 01 of 2016 [2016] UGSC 3 (31 March 2016.) <https://ulii.org/akn/ug/judgment/ughccrd/2022/22/eng@2022-06-03> (accessed 31 May 2023).

374 BBC Media Action (n 355).

375 As above.

376 NTV 'Editorial Policy' <http://www.ntvuganda.co.ug/editorial-policy/> (accessed 21 February 2021).

377 As above.

The Vision Group is another publicly listed media house with a detailed editorial policy. It is a multimedia business, housing newspapers, magazines, internet publishing, televisions, radios, commercial printing, advertising and distribution services. Although the policy is not readily available on its website, it is nonetheless available elsewhere on the internet.<sup>378</sup> This editorial policy provides for principles, ethics, content, resources, positions and implementation.<sup>379</sup> The editorial policies of the NMG and the Vision Group comply with the requirements of guidelines 29(a), (b), (c), (d), (f), (g), and (h) of the Guidelines.

Even without detailed editorial policies, the other private media houses can rely on the provisions of the UCA and the Press and Journalist (Amendment of Fourth Schedule) Instrument of 2014.<sup>380</sup> Section 39(1) of the UCA empowers the UCC to prescribe the terms and conditions of all licensed operators. This means that such terms and conditions prescribed by UCC can be relied on by those private media houses without editorial policies. Similarly, the Press and Journalist (Amendment of Fourth Schedule) Instrument of 2014 provides for the professional code of ethics for journalists and editors. An assessment of section 39(1) of the UCA and the provisions of the Press and Journalist (Amendment of Fourth Schedule) Instrument of 2014 revealed they met the requirements of guideline 29(a), (b), (c), (d), (f), (g), and (h) of the Guidelines.

Most private media organisations in Uganda hosted election pundits, political analysts, and other experts, however few (such as NTV and NBS Television)<sup>381</sup> publicised their election coverage plans or the identity of the experts in advance but not the criteria for selection of experts. Although this is a requirement of guidelines 29(j) and (k), the non-disclosure of election commentators, political analysts, and other specialists, and election coverage plans, is founded on the assumption that these are private media house affairs. Additionally, several private media houses are active on social media sites such as Twitter and Facebook. Many of these social media platforms were affected by the government's internet blockade on election eve and the days that followed disrupting access to information through these platforms.

Concerning conflict of interest under guideline 29(m) of the Guidelines, a number of privately-owned media houses, particularly those operating in the countryside, are owned by politicians, most of whom are affiliated with the ruling NRM.<sup>382</sup> Such media outlets are often reluctant to host guests or run opposition political party programmes. During the counting of results, some radio stations were shut down thereby preventing them from announcing results from regional tallying centres. Some opposition MPs owned these radio stations.<sup>383</sup> For media organisations registered openly on the Uganda Securities Exchange (USE) (such as the Vision Group), and major media houses like the NMG and Next Media Group, which owns NBS Television, ownership information is drawn from their annual reports.<sup>384</sup>

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378 Vision Group 'Editorial Policy' <https://issuu.com/newvisionpolicy/docs/243661083-editorial-policy-complete> (accessed 21 February 2021).

379 As above.

380 Press and Journalist (Amendment of Fourth Schedule) Instrument, 2014 <https://ulii.org/akn/ug/act/si/2014/5/eng%402014-02-10> (accessed on 7 March 2023).

381 See for example, [https://m.facebook.com/nbstelevision/photos/daniel-ruhweza-elections-always-come-with-a-lot-of-excitement-adhering-to-sops-i/3592527234171549/?locale=ms\\_MY](https://m.facebook.com/nbstelevision/photos/daniel-ruhweza-elections-always-come-with-a-lot-of-excitement-adhering-to-sops-i/3592527234171549/?locale=ms_MY) (accessed on 31 May 2023).

382 EC Maractho (n 356); C Onyango-Obbo *On the short and long leash* (1996) & M Nogara 'Role of media in curbing corruption: The case of Uganda under President Yoweri K. Museveni during the "no-party" system' January 2009 [https://www.un.org/esa/desa/papers/2009/wp72\\_2009.pdf](https://www.un.org/esa/desa/papers/2009/wp72_2009.pdf) (accessed 21 February 2021).

383 Human Rights Network for Journalists- Uganda 'Two Ugandan radio stations in Jinja shut down following elections' 22 January 2021 <https://ifex.org/two-ugandan-radio-stations-in-jinja-shut-down-following-elections/> (accessed 30 September 2022).

384 For Vision Group, annual reports are available at <https://www.visiongroup.co.ug/annual-reports/> (accessed 7 March 2023). For NMG, annual reports are available at <https://www.nationmedia.com/annualreport2021/> (accessed 7 March 2023).

### 7.1.3 PROACTIVE DISCLOSURE OF INFORMATION BY ONLINE PLATFORM PROVIDERS

Online service providers play a vital role in enhancing proactive disclosure and access to information during electoral processes. Due to the COVID-19 control measures that were imposed by the government to mitigate the spread of the pandemic, many candidates mainly relied on the internet, especially social media, to reach their voters and the citizens generally.<sup>385</sup> In the run-up to the 2021 elections, there was increased registration of internet service providers, including online publishers, online news platforms, and online radio and television operators. However, critics were of the view that this move was geared towards granting the state a monopoly over information and control of that information.<sup>386</sup>

Currently, online platforms in Uganda have the ability to transmit information and messages about electoral processes more quickly and widely than traditional media. Similarly, online platforms can disseminate false news, which has the potential to influence electoral processes. For example, a few days before the election, a false rumour circulated that Ugandans who wanted to vote for Hon. Robert Kyagulanyi (the leading opposition presidential candidate) would do so on 14 January 2021, while those who wanted to vote for incumbent President Yoweri Museveni would do so on 15 January 2021. It took the president's intervention to set the record straight that voting would take place on 14 January 2021 for all contenders. The UCCA and the Computer Misuse Act of 2011<sup>387</sup> both contain provisions that may limit the spread of 'fake news' during electoral processes. Section 5(1) of the Act requires the UCC to monitor, inspect, licence, supervise, control, and regulate communications services, including setting standards, monitoring, and enforcing compliance with regards to content.

The Computer Misuse Act of 2011 as amended by the Computer Misuse (Amendments) Act, 2022<sup>388</sup> establishes a number of computer misuse offences, including unauthorised information disclosure, cyber harassment, cyber stalking, misuse of social media, and hate speech.<sup>389</sup> While supporters assert that the legislation aims to promote responsible online behaviour, critics have decried that the Act impedes the realisation of digital rights including freedom of expression and access to information given its disproportionate implementation towards silencing critical voices.<sup>390</sup>

Furthermore, international online service providers in particular, social media companies such as Facebook and Twitter, adopt measures of identifying and curtailing the spread of harmful content on their platforms as provided in their community guidelines.<sup>391</sup> In such cases, Facebook and Twitter shield their subscribers from harmful content by taking it down or limiting its visibility, including suspending the offending accounts.<sup>392</sup> For example, a few days before

385 A Kakande 'Analysis of Uganda's Social Media Data Regarding the 2021 General Presidential Elections: Understanding Uganda's Presidential Nomination Week through the eyes of Social Media' *Medium* 22 November 2020 <https://towardsdatascience.com/analysis-of-ugandas-social-media-data-regarding-the-2021-general-presidential-elections-3dd52a23cedb> (accessed 22 February 2021).

386 W Edrine 'Registration of online publishers and broadcasters threatens free expression in Uganda' *CIPESA Blog* 16 September 2020 <https://cipesa.org/2020/09/registration-of-online-publishers-and-broadcasters-threatens-free-expression-in-uganda/> (accessed 12 October 2022).

387 The Computer Misuse Act of 2011 <https://media.ulii.org/files/legislation/akn-ug-act-2011-2-eng-2011-02-14.pdf> (accessed 19 February 2023).

388 LEXOTA 'Uganda' <https://lexota.org/country/uganda/> (accessed 19 February 2023).

389 Part IV Computer Misuse Act.

390 J Nanfuka 'A section of Uganda's Computer Misuse Act outlawed! But, the greater part of the law remains thorny' *CIPESA Blog* 12 January 2023 <https://cipesa.org/2023/01/a-section-of-ugandas-computer-misuse-act-outlawed-but-the-greater-part-of-the-law-remains-thorny/#:~:text=The%20law%20on%20computer%20misuse,offence%20is%20punishable%20by%20a> (accessed 19 February 2023).

391 Facebook 'Terms and Policies' [https://www.facebook.com/policies\\_center/](https://www.facebook.com/policies_center/) (accessed 22 February 2021). See also, Twitter 'Rules and Policies' <https://help.twitter.com/en/rules-and-policies/twitter-rules> (accessed 22 February 2021).

392 As above.

the general election, Facebook blocked the accounts of some NRM officials and a number of supporters or influencers of the NRM for spreading misleading information.<sup>393</sup> This action angered the GoU, which accused Facebook of being biased and sympathetic to the opposition, leading to the banning of the site in Uganda.<sup>394</sup> During the ban, it was only accessible through a Virtual Proxy Network (VPN) and only became fully accessible in June 2021, upon restoration by the government.<sup>395</sup>

The aforementioned domestic legal framework for online media service providers, combined with the terms and policies of international online service providers, demonstrate a reasonable level of compliance with guideline 29(b), (f), (h), I (l), and (m) (m).

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393 AFP 'Facebook accuses blocked top Uganda officials of engaging in 'inauthentic behaviour' The Daily Monitor 11 January 2021 <https://www.monitor.co.ug/uganda/news/national/facebook-accuses-blocked-top-uganda-officials-of-engaging-in-inauthenticbehaviour--3253498> & Sunrise Reporter 'NRM-leaning bloggers blocked on FB, Instagram' The Sunrise 10 January 2021 <https://sunrise.ug/news/202101/nrm-leaning-bloggers-blocked-on-fb-instagram.html> (accessed 23 February 2021).

394 H Athumani 'Ugandan Government Restores Social Media Sites, Except Facebook' *Voice of America* 10 February 2021 <https://www.voanews.com/africa/ugandan-government-restores-social-media-sites-except-facebook> (accessed 23 February 2021) & Independent Reporter 'Why Ugandans are still using VPN despite restored access to social media' *The Independent* 22 February 2021 <https://www.independent.co.ug/why-ugandans-are-still-using-vpn-despite-restored-access-to-social-media/> (accessed 24 February 2021).

395 G Olukya 'Ugandan government quietly restores Facebook' <https://www.aa.com.tr/en/africa/ugandan-government-quietly-restores-facebook/2281259> (accessed 19 February 2023).



## **Part Two: Assessment Of Stakeholders' Compliance With The Guidelines**

### Chapter 8



# CHAPTER 8:

## CIVIL SOCIETY ORGANISATIONS

### 8.1 INTRODUCTION

Civil Society Organisations (CSOs) also known as Non-Governmental Organisations (NGOs), play an important role in Uganda's electoral processes. Those involved in civic and voter education, as well as election observation, increase citizen participation in electoral processes. The Ugandan Constitution states that everyone has the right to freedom of association, which includes the right to form and join associations or unions, including civic organisations.<sup>396</sup> In 2020, Uganda had an estimated CSO network of close to 13 000 organisations.<sup>397</sup>

The legal framework which regulates the existence and functioning of CSOs consists of the Constitution under article 29 and the NGO Act of 2016.<sup>398</sup> The NGO Act defines an NGO as a legally constituted non-governmental organisation under this Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes.<sup>399</sup> The NGO Act establishes an institutional framework in the form of the NGO Bureau whose duties include the registration, and renewal of annual operation permits and regulation of activities of NGOs.<sup>400</sup> It is an offence for an NGO to operate in Uganda without a permit or licence from the NGO Bureau.<sup>401</sup> Thus, all NGOs intending to operate in Uganda are required to apply to the NGO Bureau for a registration permit,<sup>402</sup> which takes up to 45 days.<sup>403</sup> An NGO is required to apply for renewal of its registration permit within six months before the expiry of its current permit.<sup>404</sup>

CSOs often secure their funding from local and foreign donors, the government or its agencies and departments, fellow NGOs, and citizens. However, the COVID-19 pandemic and its adverse effects, such as the economic meltdown, led donors and the government to cut down on their funding support to NGOs.<sup>405</sup> According to a report by the Albertine Watchdog, COVID-19 affected the operations of local NGOs at the national level and at the community level by curtailing their funding and human capital, while equally affecting the lives of the local beneficiaries.<sup>406</sup> Furthermore, the report indicated that a number of Ugandan NGOs were expected to lose 85% of their income because many of them had run out of funds and halted activities.<sup>407</sup> Worse, in February 2021, the GoU suspended the activities of the Democratic Governance Facility (DGF),

396 Art 29(1)(e) The Constitution.

397 MIA 'The National Bureau for NGOs' <http://www.mia.go.ug/content/about-national-bureau-ngos#:~:text=The%20Act%20mandates%20it%20to,register%20at%20the%20NGO%20Bureau> (accessed 20 February 2021).

398 The Long title to the Act establishes the import of the Act which is to replace the Non-Governmental Organisation Act in order to provide a conducive and enabling environment for the NGO sector. Available at Non-Governmental Organisation Act 05 of 2016 <https://ulii.org/akn/ug/act/2016/5/eng%402016-03-03> (accessed 7 March 2023).

399 Sec 3 Non-Governmental Organisation Act.

400 Secs 5 & 6 Non-Governmental Organisation Act.

401 Sec 40 Non-Governmental Organisation Act.

402 Sec 29 Non-Governmental Organisation Act.

403 Sec 31(3) Non-Governmental Organisation Act.

404 Sec 32 Non-Governmental Organisation Act.

405 Albertine Watchdog 'Covid-19 Effects on Ugandan NGOs' Operations and Financial Capabilities' 29 April 2021 <https://www.albertinewatchdog.org/2020/04/29/covid-19-effects-on-ugandan-ngos-operations-and-financial-capabiities/> (accessed 23 February 2021).

406 As above.

407 As above.

a consortium of foreign governments that came together to pull resources for supporting democracy and good governance in Uganda, allegedly for subversive activities, such as facilitating the opposition in Uganda.<sup>408</sup> DGF was one of the largest donors for Ugandan CSOs. The Ugandan government has also frozen the bank accounts of some CSOs on allegations of money laundering through the Central Bank and the Financial Intelligence Authority (FIA).<sup>409</sup>

The role of CSOs in Uganda’s election processes has been limited, particularly when it comes to voter education. The EC has mostly retained this responsibility in accordance with its legal mandate under section 12(1)(g) of the ECA. This restricted NGOs to an oversight role in ensuring that the EC conducts voter education successfully. As a result, CSOs confined their engagement in elections to monitoring election and campaign financing. Some voter education initiatives by CSOs, like Citizens’ Coalition for Electoral Democracy in Uganda (CCEDU’s) “Topowa” (Honour Your Vote Campaign), are more of voter mobilisation campaigns, encouraging residents to vote in big numbers on election day. Nonetheless, the EC accredited 46 CSOs to conduct voter education for the 2021 election cycle.<sup>410</sup>

Some of the prominent CSOs which often participate in electoral and democratic processes include CCEDU, National NGO Forum,<sup>411</sup> Action for Development (ACFODE),<sup>412</sup> Forum for Women in Democracy (FAWODE),<sup>413</sup> and Alliance for Campaign Finance Monitoring (ACFIM).<sup>414</sup> Subject to exceptional circumstances in which it can be shown that their operations will suffer demonstrable harm, the Guidelines require CSOs involved in the electoral process to proactively disclose certain information as part of their operational functions.<sup>415</sup>

### 8.1.1 PROACTIVE DISCLOSURE OF INFORMATION BY CSOS

Below is a table, which summarises CSOs’ compliance with the Guidelines:

<b>Disclosure Compliance Checklist</b>	CCEDU	NGO Forum	ACFODE	FAWODE	ACFIM
<b>Organisational aims and objectives</b>	Yes	Yes	Yes	Yes	Yes
<b>Membership and composition</b>	Yes, only NGOs	Yes, only NGOs	No	Yes,	Yes
<b>Details of key staff and office bearers</b>	Yes	Yes	Yes, only Ex. Director	Yes, only board details	No

408 K Kazibwe ‘Museveni Directs Suspension of Uganda’s Biggest NGO Donor Fund Over Subversion’ *The Nile Post* 3 February 2021 <https://nilepost.co.ug/2021/02/03/museveni-directs-suspension-of-ugandas-biggest-ngo-donor-fund-over-subversion/> (accessed 23 February 2021).

409 D Kiyonga ‘In the Name of National Security, or Silencing Civil Society’ *The Daily Monitor* 6 December 2020 <https://www.monitor.co.ug/uganda/magazines/people-power/in-the-name-of-national-security-or-silencing-civil-society--3220434> (accessed 23 February 2021) & The Independent ‘NGOs Plead with Government Over Frozen Bank Accounts’ 7 January 2021 <https://www.independent.co.ug/ngos-plead-with-government-over-frozen-bank-accounts/> (accessed 23 February 2021).

410 Independent Reporter ‘46 CSOs Accredited to Conduct 2021 Voter Education in Uganda’ *The Independent* 30 September 2020 <https://www.independent.co.ug/46-csos-accredited-to-conduct-2021-voter-education-in-uganda/> (accessed 23 February 2021).

411 For more information, go to <https://ngoforum.or.ug/> (accessed on 7 March 2023).

412 For more information, go to <https://acfode.or.ug/> (accessed on 7 March 2023).

413 For more information, go to <https://fowode.org/> (accessed on 7 March 2023).

414 For more information, go to <https://politicalfinanceafrica.org/> (accessed on 7 March 2023).

415 Guideline 30.

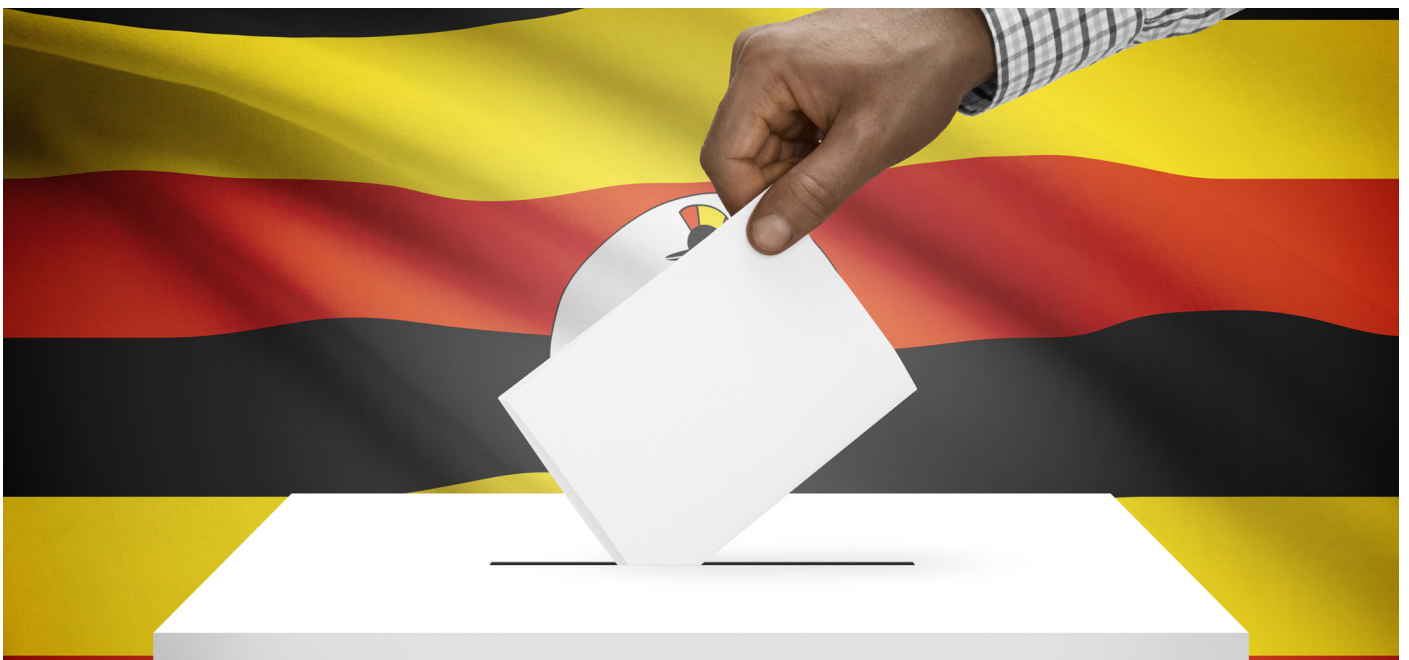


<b>Funding sources</b>	No	Yes	Yes, only referred to as partners	Yes, only in annual reports	Yes (donations)
<b>Operational plans, methodology, manuals, civic and voter education implementation</b>	Yes	Yes	Yes	Yes	Yes
<b>Possible conflict of interest</b>	No	No	No	No	No
<b>Campaign funders</b>	No	Yes	No	Yes, only in annual reports	No

A closer examination of the above table reveals that the majority of the CSOs sampled are membership organisations; that their purposes and objectives are characterised as ‘what we do’; and that there is a visible overlap between ‘sources of funding’ and ‘campaign funders.’



**Part Three: Assessment Of Stakeholders' Compliance With The Guidelines**  
Chapter 9



# PART THREE: CONCLUSION AND RECOMMENDATIONS

## CHAPTER 9:

### CONCLUDING REMARKS ON THE RIGHT OF ACCESS TO INFORMATION AND THE RIGHT TO VOTE IN UGANDA

This study assessed Uganda's adherence to the Guidelines in the context of the 2021 general elections. The review was also based on an examination of the international and national legal frameworks governing the right to information in the context of the right to vote. This country assessment underscored the importance of the right to information in fully exercising the right to vote, and allowing the electorate citizens to effectively participate in electoral processes as voters or candidates.

The requirement of proactive disclosure of information during elections is extended not only to the state, and its agencies and departments but to other electoral stakeholders including the EC and the relevant appointing body, political parties and candidates, law enforcement agencies, election monitoring and observation groups, media and online media platform providers, media regulatory bodies, and civil society organisations.

According to the June 2021 EC Electoral Guidelines (EGs), the 2021 general election would largely rely on ICT solutions and platforms, which were termed as 'virtual' or 'scientific' in nature. However, in Uganda, inadequate internet access and the high cost of using these ICT platforms have a negative impact on proactive information dissemination and active engagement in election processes. It is hoped that the government will remove all barriers to full enjoyment of the right to information during electoral processes, such as total internet shutdowns and arbitrary media censorship. Suspicion on the side of citizens and secrecy on the part of the government and state organisations such as the EC are common features of Uganda's electoral landscape. Proactive disclosure of information can ameliorate the above.

#### **RECOMMENDATIONS ON COMPLIANCE WITH THE GUIDELINES**

While Uganda's regulatory framework on access to information and elections includes provisions to encourage proactive disclosure of information by electoral players, there is need to enhance implementation. Electoral players have, to some extent, implemented the requirements on access to information and elections, but there is still much potential for improvement. The following are some recommendations aimed at enhancing the implementation of the Guidelines in Uganda.

#### **9.1 OVERSIGHT AND THE EFFECTIVE DOMESTIC IMPLEMENTATION OF THE GUIDELINES**

Wide electoral stakeholder sensitization about the Guidelines, and strategic oversight and the domestic implementation of the Guidelines will enhance the proactive disclosure of information by electoral stakeholders in Uganda. It is therefore imperative that the electoral stakeholders in Uganda oversee and implement the Guidelines.

More importantly, the Uganda Human Rights Commission (UHRC) should consistently hold the government accountable to its obligations arising from international human rights standards,<sup>416</sup> in order to promote compliance with the duty to provide information as one of the prerequisites for participatory democracy.

The UHRC should also advise the government on the appropriate domestic measures to give effect to the full operationalization of the Guidelines; conduct capacity building for selected electoral stakeholders on the domestic implementation of the Guidelines; and spearhead the process of preparing the required reports to the African Commission on Uganda's compliance with the Guidelines.

## 9.2 AMENDMENT OF THE ACCESS TO INFORMATION ACT

The provisions of the AIA should be aligned with those of relevant regional and international instruments deemed as ideal hallmarks of access to information, such as the Model Law, the Guidelines, and the Declaration. This increases the relevance of the law in meeting the needs of the people.

Furthermore, the AIA should be revised to include a duty to develop, store, maintain, organise, and manage records, regardless of the medium of storage, in order to promote public access to information, in accordance with guideline 4 of the Guidelines.

It is also worth noting that the AIA does not establish any institutional framework to ensure compliance and enforcement of its requirements. As a result, in amending the AIA, parliament should consider addressing this gap.

## 9.3 APPOINTING AUTHORITY

Members of the EMB are appointed by the president with the approval of parliament. The EMB consists of a chairperson, a deputy chairperson and five other members.<sup>417</sup> This nomination procedure has been criticised for being opaque and limited because it only involves the president and parliament, excluding other important players. It also compromises the independence of the EC in contradiction with article 62 of the Constitution.

The president's nomination and selection of the members of the EC should be made more public in order to involve and attract the participation of other stakeholders such as the public, the judicial service commission, civil society organisations, and political parties. Instead of conducting it behind closed doors, the vetting process by parliament should be more open and transparent, including input from the public and other stakeholders.

## 9.4 ELECTION MANAGEMENT BODY

The EMB is the EC, which is required by the Ugandan Constitution to ensure that regular, free, and fair elections are held.<sup>418</sup>

During elections, the EC should devote more effort to voter education. The 14 January 2021 polling day was preceded by a 68-day campaign period in which there was hardly any voter education. Advertisements posted by the EC largely promoted voting, and adherence to

416 These instruments include: the African Charter and the soft law instruments made thereunder including the Guidelines on Access to Information and Elections in Africa, the Declaration of Principles on Freedom of Expression and Access to Information in Africa, and the Model Law on Access to Information for Africa.

417 See art 60(1) Constitution.

418 Art 61(a) Constitution.

COVID-19 control measures including social distancing and handwashing.

There should be disclosure of internal handbooks used to instruct polling assistants, constables, and presiding officers. These internal handbooks or training manuals should explicitly state what information and action the public should anticipate from election personnel.

All domestic and international procurement transactions involving election materials, such as, ballots, ICT infrastructure and equipment, warehouses, trucks, and stationary should be made public. In such cases, the EC members and staff should disclose any conflicts of interest.

The EC should publicise and proactively disclose information relevant to the registration of new political parties and the renaming or rebranding of existing political parties on its website and on the media. This will allow the public to engage meaningfully in such processes.

The EC should disclose information relating to the declaration of assets and liabilities as required by section 9 of the PPOA. Given many Ugandans do not have access to the Gazette, the EC should additionally post the information on their website and in the media.

All necessary information about the nominated candidates who desire to run for political offices must be made public. Details such as academic qualifications, dates of birth, and names, should not be suppressed. This information is selectively released by the EC upon public request.

## **9.5 ELECTION OBSERVERS**

Election observation missions should make public the breadth of their mandate as well as the expected outcomes of their tours of duty. This will not only assist manage citizens' expectations in host countries, but also avoid pushback from host countries.

Election observation missions should also make their terms of reference, rules of conduct, conflicts of interest, political or religious connections, deployment plans and strategies, financing sources, and logistical arrangements public.

Reports prepared by election observer missions following each election should be reduced to reader friendly versions, translated into widely used local languages, and distributed widely around the country. These reports should also be inclusively structured to accommodate the disabled or others with special needs.

## **9.6 POLITICAL PARTIES AND CANDIDATES**

Political parties and candidates should declare their campaign funding sources to the EC and the public. This would ensure accountability and transparency and reveal whether political parties or candidates (especially incumbents) are misusing state resources to fund their operations.

Political parties should update their websites and include information about their manifestos, membership criteria and numbers, internal democratic processes, compliance with relevant regulatory frameworks, polling agents, fielded candidates, campaign information, assets, and audit reports.

## **9.7 LAW ENFORCEMENT AGENCIES**

The UPDF, LDUs, and the Uganda Police are prominent features of Uganda's elections, and the 2021 electoral cycle was no exception. Law enforcement agencies should proactively disclose and publish information about their role (including joint operations) to the public before,

during, and after the election process to avoid being perceived as unnecessarily interfering with the electoral process or usurping the EC's powers.

Law enforcement agencies should disclose and publish information about their operational procedures during electoral processes, such as the types of security outfits deployed, electoral crime statistics, incidents of misconduct by security officers and action taken against them, electoral violence hotspots, complaints procedure and grievance handling mechanisms, and detention facilities where electoral offenders are held.

Law enforcement authorities should publish their responses to information requests from the EC, media, and political parties, and the general public. National security exceptions should not be misused to deny access to information.

## **9.8 MEDIA AND ONLINE MEDIA SERVICE PROVIDERS**

Media and online media service providers were expected to play an important role in the 2021 “scientific” general election, which heavily relied on ICT platforms. Going forward, the media and online media service providers should disclose election coverage schedules, applicable charges to those who want to use their platforms, political bias or inclination, their codes of ethics, criteria for selection of commentators and analysts, and the sources of the election results transmitted to the public after voting day. The media and online service providers should be proactive in disclosing their editorial policies, election coverage protocols, and conflicts of interest to the public.

In the event that an offended citizen wishes to file a complaint, the media and online media service providers should proactively disclose and advertise the complaints and grievance redress procedures in a reader friendly format.. In the event that a complainant is dissatisfied with how the media or internet service provider handled their problem, such complaints and grievance redress mechanisms should clearly disclose the appeals process for further action.

The media and online service providers should expose the perpetrators who harass, assault, and arrest them, limiting or impeding their ability to execute their primary duty of informing the public throughout electoral processes.

## **9.9 MEDIA AND ONLINE MEDIA REGULATORY BODIES**

The Uganda Communications Act (UCA) gives the UCC broad authority as an information regulator. As a result, the UCC should ensure that Ugandans’ right to information is respected or effectively implemented locally by electoral stakeholders. Within the context of electoral processes, the UCC should also ensure that citizens have full access to information and freedom of expression by compelling electoral stakeholders such as the media and online media service providers to adopt a culture of information sharing and proactive disclosure of information. The UCC should also advise the government on other legal, and necessary and proportionate methods of maintaining national security during elections rather than shutting down the internet. Internet shutdowns restricts citizens’ access to information during elections, and contradicts international and regional law. Furthermore, the UCC should hold accountable the national broadcaster, UBC, to ensure that all electoral candidates receive equal and non-discriminatory media coverage.

## 9.10 CIVIL SOCIETY ORGANISATIONS (CSO'S)

Government should promote an enabling environment for the operation of CSOs. They are undoubtedly critical players in civic education, election monitoring and also providing necessary support in lobbying for better election policies, laws and practices. Therefore, the EC and other state players should view them as willing supporters of the election process and support them for the benefit of the common client – the people of the nation.



# **Part Three: Assessment Of Stakeholders' Compliance With The Guidelines**

## Chapter 10





# CHAPTER 10:

## EXTENSIVE AND COMPARATIVE UTILISATION OF THIS RESEARCH REPORT

While this report assessed Uganda's electoral stakeholders' compliance with the Guidelines, it is hoped that other African states will draw lessons from the findings of the report, in their efforts to comply with the said Guidelines.

It is also desired that academics, researchers, and policymakers will use this research report for comparative studies in generating comparable research for other African countries. This will establish the groundwork for unified advocacy for the enjoyment of the right to information prior to, during, and after electoral processes, and the effective implementation of the Guidelines across the continent.

Furthermore, country research reports on compliance with the Guidelines are expected to spark regional efforts by the East African Community, South African Development Community, and Economic Community of West African States, and others to implement and monitor compliance with the Guidelines. Such regional initiatives will also stimulate the implementation of peer review procedures aimed at encouraging compliance with the Guidelines and reducing recurrent or ongoing acts of noncompliance.





**GOVERNANCE**

**FREEDOM**

**INDEPENDENCE**

**DEMOCRACY**

**CREDIBILITY**

**TRANSPARENCY**

**MEDIA**

**INFORMATION**

**CITIZENS**

**VOTE**

**ELECTIONS**

**BALLOT**

**RIGHTS**

