

# CIVIL SOCIETY ORGANIZATIONS' STATEMENT ON THE PRE-POLLING SITUATION AS UGANDANS PREPARE TO VOTE IN THE 2021 GENERAL ELECTIONS

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January 7, 2020

Ugandans will go to the polls to elect a President and Members of Parliament on January 14, 2021. While the election campaigns have been marred by-election violence, deaths, arrests amidst COVID19, we hope polling day will be peaceful and that all female and male voters will be allowed to exercise their right to vote free from fear, intimidation, and threats by candidates, candidate agents and state agents. The analysis of today's pre-polling day statement is informed by observations by CSOs in different parts of Uganda, media reports, and interviews with key actors in the electoral process from nominations to the election campaign period.

As part of the international community, Uganda is expected to adhere to international principles and standards for holding free and fair elections. These principles and standards guide the development and implementation of election systems, laws, policies, and procedures concerning democratic election processes. Article 21, Section 3 of the United Nations (UN) Universal Declaration of Human Rights (1948) enshrines this cornerstone precept: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." The International Covenant on Civil and Political Rights (ICCPR) (1966) stipulates that: "Every citizen must be provided the right and opportunity, without discrimination based on distinctions of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" and without unreasonable restrictions, to "vote and to be elected at genuine periodic elections."

UN General Comment 25 on ICCPR Article 25: The right to participate in public affairs, voting rights and the right of equal access to public service (1996) articulates, among other criteria for democratic elections, the following principles: *Freedom of political association*, i.e. to form and/or join political parties; *Freedom of peaceful assembly*, i.e. to hold and participate in political events and rallies; *Freedom of movement*, i.e. to travel without undue restriction to build electoral support; *Freedom of information*, i.e. to seek, receive, and offer information to make informed choices; *Freedom of political expression*, i.e. to articulate support for a choice without recrimination/counter-accusations and; *Freedom from coercion*, i.e. to exercise political choice without intimidation or fear of retribution. Based on the principles and standards for holding genuinely free and fair elections, CSOs in Uganda have observed the pre-election process and issued several statements on voter registration, political party primary elections and other candidate selection processes, nominations of candidates at various levels, and the campaign process. As Ugandans prepare for the polls, CSOs are extremely concerned that most of the standards for holding free and fair elections have not been adhered to with regard to the 2020/21 election process in Uganda.

1. With regard to the standard **that the electorate must be free and must believe it is free to make political choices without intimidation, bribery, undue influence, or fear of retribution for their vote:** The electoral process has been marred with open bribery without fear of repercussions despite the penalties against bribery as provided for in Section 64 of the Presidential and Section 68<sup>1</sup> of Parliamentary Elections Act. The pre-campaign study by the Alliance for Finance Monitoring (ACFIM) conducted in one-fifth of Uganda's districts found that aspirants for Parliament, district chairpersons, and mayorship had spent at least 250 billion shillings three months before the official campaign kicked off.

The campaign period has also been characterized by killings<sup>2</sup>, beatings, arrests of mainly opposition agents and supporters, and violent dispersal of opposition supporters using tear gas, rubber bullets, and live

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<sup>1</sup> S.68 of the Parliamentary Elections Act: A person who, either before or during an election with intent, either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any money, gift or other consideration to that other person, commits the offence of bribery and is liable on conviction to a fine not exceeding seventy-two currency points or imprisonment not exceeding three years or both.

<sup>2</sup> President Museveni has publicly stated that 54 people were killed on November 18 and 19 2020 in the protest and unrests that followed the arrest of opposition Presidential candidate Robert Kyagulanyi

ammunition. As a result, most voters have not had an opportunity to listen to the candidates' messages in order to inform their choices on polling day. Presidential candidates Robert Kyagulanyi (NUP) and Patrick Amuriat Oboi have been arrested, teargassed, pepper-sprayed, and their supporters injured and some killed in the case of Robert Kyagulanyi. The major reason given by security agencies for the violence by security agents against the two candidates has been the failure of the duo to abide by COVID19 guidelines. It is important to note that there has hardly been any voter education on the role of citizens in ensuring that campaign meetings are held within the stipulated number of 200 people per meeting. The security agencies have not produced any evidence to show that the candidates are ferrying voters to their campaign meetings. Several NRM candidates especially at the Parliamentary level have held large rallies and processions with limited or no interference by the Police. This aloofness of the police in this regard has been called out by the NRM Secretariat head of Communication. It can therefore be concluded that COVID19 guidelines have been disproportionately used by security agencies to restrict the campaign meetings of the opposition thereby affecting their right to communicate to citizens to inform voters' choices on polling day.

**Kidnaps and abductions of opposition candidates and supporters have been rampant:** By December 31, 2020, the number of abductions of opposition candidates and voters was unknown. However, relatives and friends of the missing persons posted pictures and calls for assistance to find their loved ones on Twitter and Facebook. The major affected political parties in this regard were the National Unity Platform (NUP) and the Forum for Democratic Change (FDC). Some of the relatives of the abductees have accused security agencies of the abductions<sup>3</sup>. The security agencies have not released a statement to respond to the allegations leveled against them for the enforced disappearances. Statements by some UPDF officers to the effect that they cannot allow some candidates to become Commander in Chief of the armed forces<sup>4</sup> undermine the requirement for the army to be professional and to abstain from partisan politics. The statements also undermine the essence of election and the right of citizens to choose who will govern them.

The election campaigns are also held in an environment in which political parties and candidates do have adequate freedom and opportunity to communicate their messages to the public. Most of the Presidential candidates have had their campaigns interfered with by security agencies. The most affected candidates have been candidates Robert Kyagulanyi (NUP) and Patrick Amuriat (FDC). The several episodes of election violence observed and disruptions of opposition campaign programs by the security forces made it impractical for some of the opposition presidential candidates to campaign smoothly. The blockages of campaign venues; switching off of radio station signals amidst radio talk shows of some Presidential candidates<sup>5</sup>; assault of journalists<sup>6</sup> and sometimes complete denial of access to radio<sup>7</sup>, contrary to the S.21 (2) of the Presidential Elections Act<sup>8</sup>, defeats the purpose of campaigning.

## **2. The electorate must be adequately informed about the electoral contestants to make a genuine choice:**

On December 26 2020 the Electoral Commission without consultation of the political parties/candidates and an official letter from the Ministry of Health made public to Ugandans announced through media that election campaigns would be canceled in 11 districts of Uganda<sup>9</sup>. The cancellation was allegedly done to reduce the spread of COVID19. An analysis by the Daily Monitor newspaper on December 29 2020 showed that the numbers of COVID19 infections in the districts affected by the ban were not the highest in the country. The pronouncement by the EC is contrary to the principle of accountability required by the Electoral Commission in line with international standards which expects policy sessions of Electoral Management Bodies to be open to the scrutiny of political contestants. In addition, the EC during the issuance of the Statement of the ban on

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<sup>3</sup> NTVUganda, December 29 2020; <http://www.ntv.co.ug>

<sup>4</sup> Javira Ssebawami, PML online paper, January 9 2020 "Captain Sula Sserunjogi speaking to a congregation at Butologo hill during the fifth day of the great trek code named Africa kwetu is quoted to have said: It is true this country is a democracy but we can't allow such a thing to happen Bobi Wine Being Commander in Chief

<sup>5</sup> See Daily Monitor <https://www.monitor.co.ug/uganda/oped/editorial/ec-must-pronounce-itself-on-agago-police-boss-act>

<sup>6</sup> Ashiraf Kasirye (URN and Ghetto Media), Ali Mivule (NTV)

<sup>7</sup> Robert Kyagulanyi Robert ejected from Spice Fm radio on November in Hoima district confirmed by observers

<sup>8</sup> The act provides that every candidate may hold individual public campaign meetings in any part of Uganda in accordance with any existing law

<sup>9</sup> The districts affected by the ban on campaign meetings are: Kampala, Luwero, Wakiso, Mbarara, Kasese, Junja, Kabarole, Tororo, Kalungu and Kazo.

campaign meetings in the selected districts did not provide alternatives to parties/candidates on how they would campaign following the ban. The EC could have paid for airtime in media houses to enable candidates to campaign to ensure a level playing field. This decision was therefore contrary to the international standard for holding free and fair elections which requires political contestants to be given a fair chance of reaching the voters.

An accurate voters' register is a core pre-requisite for a free and fair election. The discrepancy in figures of the voters on the register following the update exercise and pronouncement and placing of total number of voters of **17,658,527** on the EC website dated September 2020 and the newly released figures of registered voters of **18,103,603 affects voters confidence in the polls.** It is therefore important for the EC to explain to Ugandans the discrepancy in the figures shared in September 2020 following the update of the voters' register and the figures released on January 6 2021 by the EC Chairperson through a press statement.

3. **The news media must be free to gather and impart information about political contestants and issues of political importance:** Security agencies have deliberately targeted journalists covering the opposition presidential candidates contrary to this standard. The attacks and assault of journalists on the opposition presidential campaign trails is deeply concerning bearing in mind the important role the media plays in an election, especially, one held with restrictions on rallies due to COVID19. Human Rights Network of Journalists (HNRJ) Uganda has reported over 100 cases of human rights violations against journalists. Journalists have been attacked by security agents even when in branded cars and jackets marked press. On December 27, 2020, for instance, Ali Mivule of NTV while covering Presidential candidate Robert Kyagulanyi as he proceeded to his campaigns in Lwengo district from Masaka district accused the police commanding officer, whom he identified as Enoch Abaine, of turning his tear gas gun on journalists. *"I had full body armor, and I had the headgear. I was fully identified as a journalist. But all of a sudden, Abaine pointed the tear gas gun at me and shouted, 'Collateral damage.' And he didn't even hold back. Again, he cocked that tear gas gun and then pointed at us," he said*<sup>10</sup>.

Cameraman Ashraf Kasirye, of Ghetto TV, was shot with a rubber bullet just above his left eye on the same day. He is still in the hospital<sup>11</sup>. Robert Sempala, National Coordinator of the Human Rights Network for Journalists notes that in the past, security forces attacking journalists have not been held accountable, saying impunity for such crimes is entrenched<sup>12</sup>. On December 10, 2020, which is International Human Rights day and is commemorated around the world, the Media Council canceled accreditation of all foreign journalists and directed them to apply for and obtain a Special Media Pass. By December 31, 2020, all media outlets and media workers in Uganda were also required to apply afresh for accreditation<sup>13</sup>. The directive can be interpreted as the latest move by the government to manage information about the election campaigns that have been marred by violence against leading opposition candidates and supporters<sup>14</sup>. Further, the absence of the National Institute of Journalists (NIJU), which by law is supposed to enroll journalists to whom the regulator Media Council would then issue practicing certificates, as well as the fact that the Media Council is not fully constituted has affected the credibility of the directives<sup>15</sup>.

The Uganda Communication Commission has also been biased and gotten involved in taking over online television stations of opposition presidential candidate Robert Kyagulanyi which it then gave for usage to Presidential candidate Yoweri Museveni. This follows a complaint UCC sent to Google urging it to block the online stations that covered Presidential candidate Robert Kyagulanyi.

4. **Citizen organizations must be able to participate in the electoral process to help educate other citizens about the importance of the elections and must be free to monitor every aspect of the electoral process:** Most NGOs that planned to observe the 2021 general election applied for accreditation from the Electoral

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<sup>10</sup> <https://www.voanews.com/africa/ugandan-journalists-injured-while-covering-opposition-campaign>

<sup>11</sup> Ibid 6

<sup>12</sup> Ibid 6

<sup>13</sup> Clare Muhindo, December 31 2020; acme-ug.org

<sup>14</sup> Ibid 11

<sup>15</sup> Ibid 11

Commission. To date, several national organizations that applied for accreditation to observe the election process have not received accreditation despite fulfilling all the conditions set by the Electoral Commission. The accredited NGOs through the Ugandan National NGO Forum despite writing three letters to meet the EC on various issues including their findings on the election processes prior to polling day did not receive any response from the EC. Unlike in the past, accredited observers within the CSO sector were not invited to observe the process of receiving ballot papers and parking in preparation for polling day.

The absence of dialogue on emerging issues observed in the electoral process has distanced the EC from citizens' organizations. It has affected the role the observers play in highlighting emerging issues, affirming good practices adopted by the EC in conducting and supervising the election, and proposing alternatives to improve gaps in the election process. The EC's reluctance to have regular meetings with stakeholders, lack of consultative meetings, and lack of a feedback mechanism between the Electoral Commission at the national level and stakeholders in the election especially those which are not political parties has affected the credibility of the process. This lack of dialogue has partly contributed to acrimony between the EC and stakeholders in the election. The failure by EC to communicate resolutions reached in meetings with political parties/candidates to the public has partly contributed to mistrust for the EC and limited adherence to guidelines at different stages of the election process.

5. **The due process of law and equal protection of the law must be available to provide appropriate, immediate, and effective remedies for citizens and electoral contestants in order to guarantee the integrity of the electoral process and peaceful resolution of complaints:** With regard to the role of the Courts in the enforcement of election laws, the major case that was determined by the Courts on October 21, 2020, involved respondents, NUP leaders, the Electoral Commission, and the Attorney General. The respondents were sued by four former members of the NURP which transformed into NUP. The Judge ruled in favor of the respondents. The courts will continue to be watched closely as the ultimate dispensers of justice in election disputes brought before them due to the critical role that they play in enhancing the integrity of elections. The judiciary needs to increase civic awareness on their role in the election in order to enhance confidence in peaceful methods of dispute resolution by parties/candidates aggrieved by the outcome of the election.

## **WHAT OBSERVERS WILL LOOK OUT FOR ON POLLING DAY**

What the foregoing observations reveal is that the integrity of the 2020/21 electoral process has been affected by major infractions to the independence of the electoral commission, unfair treatment of opposition candidates and their agents, partisan involvement of security agencies, and continued narrowing space for operations of civil society organizations and journalists. As we look towards polling day, observers will assess the level of inclusiveness, transparency, and accountability in the election process. On polling day, observers will look out for the following:

**Inclusiveness:** *right and opportunity to vote regardless of gender, race, age, literacy, disability, access to polling stations to all voters without fear of intimidation or violence from partners, security agencies, the gender of the polling officials and candidate agents; Right of candidates to exercise their right to vote free from intimidation, threats, restrictions on the right to movement.*

**Transparency:** *Access by observers and candidate agents to polling stations and tally centers; transparency in the transmission of results totally centers and tallying of results; access to election results at the polling stations to all voters by adherence to the legal requirement for presiding officers to post a copy of the declaration of results form at a conspicuous place at the polling station*

**Accountability:** *Electoral accountability includes the need to provide effective remedies to citizens for violations of electoral rights, the need to hold electoral authorities responsible for administration, and hold liable those who conduct acts that affect electoral rights. Observers will look at: Effective redress for election rights violations at the polling station and tally centers and accountability of electoral authorities to their mandate as enshrined in the electoral laws at the polling station and tally centers.*