

# **MEDIA AND ELECTIONS IN UGANDA**

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## MEDIA AND ELECTIONS IN UGANDA

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### 1. INTRODUCTION.

In his book *'The End of History and the Last Man'*, **Francis Fukuyama** postulated that liberal democracy constituted 'the end point of mankind's ideological revolution and the 'final form of human government'.<sup>1</sup> Fukuyama envisaged liberal democracy as a 'more pluralist model', giving rise to a free state whose values include good governance, respect for individual rights and freedoms, better delivery of services and political empowerment. Largely driven by this ideology, Huntington argued that in such a political model, 'the right to speak, publish, assemble and organise' would be supreme.<sup>2</sup> In tandem with this school of thought, Roper argued that 'democracy is responsive, guarantees liberties, encourages participation and ultimately promotes political equality'.<sup>3</sup> Participation, a key ingredient of this model, it is argued, promotes 'active citizenship' as opposed to a 'passive society' and confers a 'sense of freedom' to the individual.<sup>4</sup>

In a liberal democratic state, the media plays an important role in building an informed society. Citizens need credible information from media that can moderate debate and provoke meaningful conversations that can lead to societal transformation. The media has a more critical role: through its traditional function – to inform, educate and entertain, it plays a catalytic role of deepening and institutionalising democracy.

Though considered as the 'fourth estate', the media and government in many neo-liberal African countries including Uganda is at loggerheads. Chinje, argues that government and media are two sides of the same coin. If they fight they destroy the coin. While government brings policy, the media should bring information about those policies to enrich the ideas and improve their implementation for the good of society.<sup>5</sup> According to **Mukum Mbaku**, Senior Fellow at the US-based Brookings Institution's Africa Growth Initiative, free and independent media is instrumental in cleaning up corruption and enhancing bureaucratic accountability.<sup>6</sup>

Journalists see themselves as watchdogs . To enable the media to function effectively as such, journalists need to be guaranteed the constitutional rights to freedom of speech and expression. The right to freedom of opinion and expression is provided for in Article 29 (1) (a) of the Constitution of Uganda, Article 19 of the UDHR, Article 9 of the ACHPR; Article 19, and Article 25 of the ICCPR .<sup>7</sup> But in practice what does the right to freedom of speech and expression including the media mean?

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<sup>1</sup> Francis Fukuyama *End of History and the Last Man* (London: Penguin Books, 1992) xi.

<sup>2</sup> Samuel P. Huntington *The Third Wave: Democratization in the Late Twentieth Century* (Norman and London: University of Oklahoma Press, 1991).

<sup>3</sup> Jon Roper *Democracy and its Critics: Anglo-American Democratic Thought in the Nineteenth Century* (London: Unwin Hyman Ltd, 1984) 204.

<sup>4</sup> Roper op cit note 3.

<sup>5</sup> A New Era for African Media 'available at <https://www.un.org/africarenewal/magazine/august-2016/new-era-african-media> [accessed 30 April,2019].

<sup>6</sup> Ibid.

<sup>7</sup> Adopted on 16 December 1966, UN General Assembly Resolution 2200A (XXI), 21 UN GAOR Supp (NO.16) at 52, UN Doc A/6316,999 UNTS 171, entered into force on 23 March 1976.

## 2. THE NORMATIVE FRAMEWORK OF FREEDOM OF OPINION AND EXPRESSION INCLUDING THE MEDIA.

### **Article 29 (1) (a) Constitution of the Republic of Uganda, 1995 (as amended).**

Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.

### **Article 19 Universal Declaration of Human Rights (1948)**

Every one has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### **Article 9 of the African Charter on Human and People's Rights (1986)**

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

### **Article 19 of the International Covenant on Civil and Political Rights (1966)**

1. Every one shall have the right to hold opinions without interference.
2. Every one shall have the right to freedom of expression ; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities . It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For the respect of the rights or reputations of others;
  - (b) For the protection of national security or public order (ordre public), or of public health or morals.

### **Article 25 of the ICCPR, 1966**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions :

- (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.

The UN Human Rights Committee, in its observations and conclusions has provided an authoritative interpretation of these rights in its General Comment NO. 34.<sup>8</sup>

First, the obligation to respect freedoms of opinion and expression is binding on every state and its organs (executive, legislative and judicial) and other public or governmental authorities at national, regional or local level.<sup>9</sup> This is an *obligation to respect and protect* and requires states to ensure protection of persons including journalists from any acts of public bodies, private persons or entities that would impair the enjoyment of these rights. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference.

All forms of opinion are protected, whether political, scientific, historic, moral or religious. Such opinions may be actual, perceived or supposed. Criminalisation of a person for holding an opinion is prohibited. The harassment, intimidation or stigmatisation of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.<sup>10</sup> Freedom to express one's opinion includes freedom not to express one's opinion. It is prohibited for any one to coerce any person for holding or not holding an opinion.<sup>11</sup> This right does not permit any exception or restriction.

The right to freedom of expression (Article 19, Paragraph 2) imposes an obligation on state parties to guarantee the right to freedom of expression, including the right to seek, receive, and impart information and ideas of all kinds regardless of any frontiers. It includes political discourse, commentary on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse, as well as commercial advertising.<sup>12</sup> The right embraces even expression that may be regarded as deeply offensive although such expression may be subject to some restriction.<sup>13</sup>

All forms of expression and means of their dissemination is protected: spoken, written, sign language and non-verbal expression as images and objects of art.<sup>14</sup> Means of expression may include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They also include all forms of audio-visual as well as electronic and internet-based modes of expression.

The right to freedom of expression including the media recognises a free, uncensored and unhindered press or other media as a cornerstone of a democratic society.<sup>15</sup> The right to freedom of expression recognises the right of the media to receive information on the basis of which it carries out its function. The freedom of the media to free communication of information and ideas about public and political issues between citizens, candidates and elected representatives for the effective exercise of the right to vote is recognised. The right requires a free press and other media to comment on public issues without censorship or restraint and to inform public opinion.<sup>16</sup>

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<sup>8</sup> Human Rights Committee One Hundred and Second Session, Geneva, 11-29 July 2011, CCPR/C/GC/34.

<sup>9</sup> General Comment No.31, 4.

<sup>10</sup> Mpaka-Nsusu v. Zaire, No. 157/1983; Primo Jose Essono Mika Miha v. Equatorial Guinea, No. 414/1990.

<sup>11</sup> Yong-Joo Kang v. Republic of Korea, No.878/1999.

<sup>12</sup> Ballantyne v. Canada, Nos. 359/1989 and 385/1989.

<sup>13</sup> Ross v. Canada, No. 736/97.

<sup>14</sup> Hak-Chul Sin v Republic of Korea, No. 926/2000.

<sup>15</sup> Marques de Morais v. Angola, No.1128/2002.

<sup>16</sup> General Comment No.25 on article 25 (participation in public affairs and the right to vote).

The right to freedom of expression including the media recognises the emergence of new communication technologies such as, internet and mobile based electronic communication and encourages states parties to take steps to foster the independence and access to this new media.

The right imposes a duty on states to ensure that public broadcasting services operate in an independent manner.<sup>17</sup> States should guarantee their independence and editorial freedom. States have also duty to enact freedom of information legislation to ensure access to information.

The right to freedom of expression (paragraph 3) carries with it special duties and responsibilities. It permits restrictions of the right in respect to the rights or reputations of others or protection of national security or public order, health or morals. However, when a state party imposes restrictions on the exercise of freedom of expression, such restriction should not put the right in jeopardy; the right and restriction, and norm and exception must not be reversed.<sup>18</sup> And where restrictions are imposed, the restrictions must be 'provided by law', and such restrictions must conform to the strict tests of 'necessity and proportionality'.<sup>19</sup> Such restrictions must be applied for the purposes for which they were prescribed and must be directly related to the specific need on which they were predicated.<sup>20</sup>

Even where restrictions are provided by law, such laws must not confer unfettered discretion to the concerned party to restrict freedom of expression. Laws must provide sufficient guidance to ascertain what sorts of expression are restricted; laws must not provide for penalties that are inconsistent with the right such as corporal punishment; while restrictions against acts that constitute intimidation or coercion to protect the right to vote is permissible, such restrictions must not impede political debate, including calls for boycott of non-compulsory vote. Laws that seek to suppress or withhold information from the public of legitimate public interest that does not harm national security or to prosecute journalists, researchers, human rights defenders are not permissible.<sup>21</sup>

Restrictions must be not 'overbroad'; restrictive measures must conform to the principle of 'proportionality'; appropriate to achieve the stated purpose, for example, such restriction should not fetter public debate about figures in the public and political domain.<sup>22</sup> Where the restriction is intended to curb a particular threat, the precise nature of the threat must be determined, there must be a direct connection between the expression and the threat.

Restrictions on political discourse such as limiting access of opposition politicians to media outlets are prohibited.<sup>23</sup> Forms of expressions concerning public figures, including those exercising the highest political authority such as heads of state and government and political opposition are legitimate. Laws that broadly provide for punishment for disrespect for authority, defamation of the

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<sup>17</sup>17 Concluding observations on Republic of Moldova (CCPR/CO/75/MDA).

<sup>18</sup> General Comment No. 27.

<sup>19</sup> Velichkin v. Belarus, No. 1022/2001.

<sup>20</sup> General Comment No.2.

<sup>21</sup> Concluding observations on the Russian Republic (CCPR/CO/79/RUS).

<sup>22</sup> General Comment No.27, para. 14

<sup>23</sup> Concluding observations on Togo (CCPR/CO/76/TGO).

head of state calling for stiffer punishment must be impugned. State parties should not prohibit criticism of institutions, such as the army or the administration.<sup>24</sup>

Legislative and administrative frameworks that provide for the regulation of the mass media must be consistent with provisions in paragraph 3. Regulatory systems should distinguish between the print and broadcast sectors and the internet. Placing a ban on a particular newspaper because of its content is prohibited. State parties must avoid imposing onerous licensing conditions and fees on the broadcast media including community and commercial stations.<sup>25</sup> The criteria for application of such conditions must be reasonable, clear, and transparent. Licensing regimes should provide for equitable allocation of access and frequencies.

States should establish an independent and public broadcasting licensing authority with power to examine broadcasting applications and to grant licenses.<sup>26</sup> State parties should not have monopoly control over the media and a state party is obligated to promote plurality of the media. Systems of government subsidy to media outlets and the placing of government advertisements should not be used to impede freedom of expression.

Penalisation of a media outlet, publishers or journalist solely for being critical of the government or political system cannot amount to a justified restriction of freedom of expression.<sup>27</sup> Any restrictions on the operation of websites, blogs or any other internet-based, electronic dissemination is incompatible with paragraph 3.

Journalism is a function shared by a wide range of actors: professional full time reporters and analysts, bloggers, and a system of registration or licensing or accreditation that is restrictive is incompatible with this freedom. States are required to respect the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.

Defamation laws must be crafted with care not to stifle press freedom or freedom of expression. Penal defamation laws should include such defences as the defence of truth, particular care should be taken to acknowledge statements published in error without malice. States should also consider decriminalisation of defamation, and where a person is indicted for criminal defamation, the trial must be conducted expeditiously to avoid a chilling effect on the person concerned and others.

Given the above parameters, what is the role of media in Elections in Uganda?

### 3. MEDIA AND ELECTIONS IN UGANDA

The media plays a crucial role during elections by informing the public and acting as a watch dog, but in several instances it has been accused of fuelling election-related violence through its reporting. The extent to which it promotes political discourse and free communication of information and ideas about public and political issues between citizens, candidates and elected representatives in an election depends on the extent to which the right to freedom of opinion, speech and expression is

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<sup>24</sup> Concluding observations on Cost Rica (CCPR/C/CRI/CO/5).

<sup>25</sup> Concluding observations on Gambia (CCPR/CO/75/GMB).

<sup>26</sup> Concluding observations on Lebanon (CCPR/CO/79/ADD.78).

<sup>27</sup> Concluding observations on Peru (CCPR/CO/70/PER).

respected and guaranteed. Freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.

Uganda has held five General, Parliamentary and Local Council elections (1996, 2001, 2006, 2011, and 2016) since the adoption of the 1995 Constitution. Each of these elections, in varying degrees, experienced politically motivated violence and human rights abuses by political party candidates, members, and supporters as well as human rights violations, including excessive use of force by law enforcement personnel. The tension between the ruling party (NRM) and opposition parties over a number of issues relating to the conduct of the elections, including disagreements over the voters's register and the credibility of the Electoral Commission accounts for much of the electoral-related violence. During the 2006, and 2016 elections, there were reported clashes between supporters of NRM and FDC in the pre-election period, and numerous cases of intimidation by security forces were reported by the media. **Nicole and Monroe** report that the level of overt intimidation and violence was lower in 2006 compared to 2001, when 17 people died as a result of election-related violence.<sup>28</sup>

The media was faulted for reporting poorly and amplifying hate speech. Major TV stations that broadcast provisional results that were unconfirmed faced pressure from state officials. **The Daily Monitor** produced its own benchmarks for coverage of the election which were communicated to representatives of political parties. Parties were invited to complain if their candidate was not receiving adequate coverage. Newspaper editors, and major TV stations such as NTV and NBS faced significant pressure from the Broadcasting Council, Ministry of Internal Affairs, the Electoral Commission and the police who urged the Daily Monitor and its affiliated station, KFM from compiling results independently. KFM's signal was blocked and the Monitor's news website was made inaccessible for several days after voting. These were only made possible after protracted negotiations with the government.<sup>29</sup>

The issue of media coverage during elections remains thorny. Despite explicit provisions on broadcasting standards, specifically under the Electronic Media Act, which in the First Schedule, requires that in elections for public office, the electronic media- whether privately or publicly owned- must afford equal coverage to all candidates, key opposition leaders have had their media coverage of their campaigns, in particular radio talk shows, arbitrarily blocked or stopped. To some, some sections of the media are biased, either in favour of the opposition or the incumbent. Media outlets that are owned by politicians are known to take sides either covertly or overtly, oscillating towards being partisan. To those who oscillate towards the regime in power, and particularly government owned media, they prefer to practice 'peace journalism', often ignoring the so-called 'controversial stories'.

Elections have also become an important source of revenue for the media with wealthy candidates and political parties spending large amounts of money in political advertising. As such, coverage is often skewed in favour of those who can afford the high cost of advertising. In a country where elections are fiercely fought because the state is seen as a resource, where winning elections makes

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<sup>28</sup> Nicole Stremmlau and Monroe E. *Media, Elections and Political Violence in East Africa: Towards a Comparative Framework: An Annenberg-Oxford Occasional Paper in Communications Policy Research* (Annenberg School Communication, University of Pennsylvania), 2009.

<sup>29</sup> Ibid.

access to state resources possible, stakes remain very high. Traditional media especially radio is therefore critical in enabling the public to make informed choices.

There were examples of state interference in media freedom before, during the polls, including intimidation and arrest of broadcasters, and blocking of radio signals when election results were being reported during the 2006 and 2016 elections. Public platforms popularly known as *Bimeeza* have since been banned. In a recent report issued by *Reporters without Borders*, Uganda has been ranked 22nd in Africa press restriction. According to the report, 'any criticism of the authorities can result in journalists being beaten, abducted or deprived of their equipment with impunity'. The report further notes that 'during elections, the Internet is disconnected or access to social networks blocked'. The media are threatened with closure when they cover opposition activities. A daily tax on use of social networks and their associated messaging services, the first of its kind in Africa, was introduced in 2018, further undermining journalists and media outlets. On the pretext of combatting gossip, the tax penalizes journalists and bloggers who frequently use these services to produce and share information.

In 1997, Parliament passed the Uganda Communications Act, establishing the Uganda Communications Commission (UCC) to regulate the national communications sector. The UCC has broad powers over licensing and which are subject to abuse. Using this power, UCC has on several occasions issued directives to media houses that undermine the freedom of the media. The most recent directive to NBS threatening to sack their employees over news coverage of the arrest of Bobi Wine explains the overbroad powers of the Commission.

In the run up to the elections a number of journalists have faced arbitrary arrests and have been harassed and intimidated in the course of their work by the police, other law enforcement officials and individual political candidates and their supporters. In 2010, for example, there were a number of instances where journalists were physically assaulted by aides or supporters of political candidates, the police or security personnel while reporting violations to the electoral process including political violence. All journalists believed that they were attacked because the politicians believed that media coverage of malpractices would lead to adverse media publicity to the politicians or their supporters. To date, despite reporting the incidents, no investigations were conducted and no action has been taken to bring the perpetrators to justice.

Finally, the advent of digital media has turned the media landscape upside down. The news cycle moves at lightning speed, thanks to twittering, blogging and citizen journalism. More people use smart phones to receive digital news ever before. To remain accessible, conventional media practitioners are adapting to new media that is time-sensitive and more interactive. Advocacy journalism is growing exponentially- as bloggers and citizen journalists mobilize for various causes including good governance. Moving forward more will need to be done to increase investigative stories to expose corruption, curb impunity, more particularly in authoritarian regimes. The media has to rethink its purpose in a fast changing Africa. The 'informational role' may have to be 're-discovered'.

#### 4. CONCLUSION

As the news media positions itself to cover the next general elections in 2021, it must recognise that its role has changed considerably in Africa and beyond. While mainstream media remains an important space for public debate, it can no longer afford to remain silent in the face of renewed



threats. For it to survive it has to migrate to cell phones and the internet and generate content in local languages. News content needs to be accessible to the majority of citizens, who are not literate in the English language. Besides the changing media landscape, the media in Uganda has to be proactive to address the growing censorship, strict laws, and political interference that are still major threats to media freedom and the watch dog role of the media during elections. Legal reforms are needed to reign in the overbearing and intrusive Uganda Communications Commission, and adoption of a law on the use of technology in elections, ensuring equal use of state media by both government and opposition candidates may go along way in ensuring free, fair and inclusive elections.

I thank you.