

# Uganda

## Management of Elections

A study by AfriMAP  
and  
The Open Society Initiative for Eastern Africa

By Margaret Sekaggya



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# Acronyms

ACDEG	African Charter on Democracy Elections and Governance
ACFODE	Action for Development
ACHPR	African Charter on Human and Peoples' Rights
APRM	African Peer Review Mechanism
AU	African Union
AU Declaration	AU Declaration on the Principles Governing Democratic Elections in Africa
CBO	community-based organisations
CDG	Centre for Democratic Governance
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CEJOCU	Civic Education Joint Coordination Unit
CP	Conservative Party
CSO	civil-society organisations
CSSDA	Solemn Declaration on the Conference on Security, Stability, Development and Cooperation in Africa
DDP	Deepening Democracy Programme
DEMG	Democracy Monitoring Group
DFID	UK Department for International Development
DP	Democratic Party
EAC	East African Community, composed of Uganda, Kenya, Tanzania, Rwanda and Burundi
EALA	East African Legislative Assembly
EC	Electoral Commission
ECOWAS	Economic Community of West African States
ECOWAS Protocol	Protocol on Democracy and Good Governance
FDC	Forum for Democratic Change
HRC	Human Rights Commission
HURIPEC	Human Rights And Peace Centre
HURNIT	Human Rights National Initiative

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IRCU	Religious Council of Uganda
JEEMA	Justice Forum
KY	Kabaka Yekka
LRPC	EAC's Legal, Rules and Privileges Committee
MS Uganda	an affiliate of Action Aid
NAWO	National Association of Women Organisations
NCF	National Consultative Forum
NEMGroup	National Election Monitoring Group
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organisation
NOCEM	National Organisation for Civic Education and Monitoring
NRA	National Resistance Army
NRM	National Resistance Movement (formed from the NRA)
OAU	Organisation of African Unity
OHCHR	UN High Commissioner for Human rights
OSIEA	Open Society Initiative for Eastern Africa
PDP	People's Development Party
PPP	People's Progressive Party
RDC	Resident District Commissioners
SADC	Southern African Development Community
SDP	Social Democratic Party
TIU	Transparency International Uganda
UBC TV	Uganda Broadcasting Corporation
UDHR	Universal Declaration of Human Rights
UgSh	Ugandan Schilling
UHRC	Uganda Human Rights Commission
UJCC	Uganda Joint Christian Council
UNDP	UN Development Programme
UPC	Uganda People's Congress
UPDF	Uganda People's Defence Force
USAID	United States Agency for International Development
VAGS	voluntary action groups

# Foreword

Uganda will hold its second multiparty elections in February 2011. In 2005, the Ugandan parliament abolished the constitutional limit on presidential terms, paving the way for President Museveni to remain in power indefinitely. Democratic gains made at the start of President Yoweri Museveni's 24-year rule are being steadily eroded through repressive legislation, harassment of critics and opposition leaders, and impunity for those in power. There are growing concerns about the country's ability to hold transparent, free and fair elections under the current electoral laws. Piecemeal amendments to the laws, including the creation of new districts, are being passed that slowly undermine a level playing field. The president and the ruling party enjoy substantial advantages over the political opposition through the use of state resources. Political opposition leaders and independent media are harassed, including through the use of politically motivated criminal charges and the threat of violence.

This study on the management of elections in Uganda could not come at a better time as the country moves towards parliamentary and presidential elections in early 2011. The last general elections held in 2006 – the first under a multi-party system since 1980 – were controversial and the results contested. To what extent have things changed? Are ordinary Ugandans able to influence the political direction of their country through the ballot box? Are the electoral institutions independent and fair? Is there an enabling environment for the political opposition to hold meetings and to have equal access to state media coverage?

The study examines the current legislative framework, the context for elections in Uganda, and the functioning of the electoral mechanisms. The report makes detailed recommendations which aim to empower the various stakeholders and policy-makers to improve electoral processes in Uganda. The stakeholders consulted strongly emphasised three particular recommendations: the need for greater transparency of government institutions; the need for a forum in which all stakeholders could engage in constructive debate and dialogue; and the need for accurate voter information and education. To avoid delays in handling complaints during and after the electoral process, the report also recommends improvements in the resolution mechanisms of the Electoral Commission.

The Open Society Initiative for Eastern Africa hopes that this detailed analysis will contribute to the debate on what reforms could improve the electoral systems in Uganda. Ultimately, the goal is to promote democratic decision-making in Uganda that is in compliance with the norms of the African Union on good governance and democracy.

Binaifer Nowrojee  
Director  
Open Society Initiative for Eastern Africa

# Background and methodology for this report

The Open Society Initiative for Eastern Africa (OSIEA) commissioned this study on the Ugandan election management system from Ms Margaret Sekaggya, director of the Human Rights Centre Uganda and UN Special Rapporteur on the Situation of Human Rights Defenders. The aim of the study is to evaluate the compliance of Ugandan electoral law and practice with international and regional standards governing the conduct of elections. This task is urgent and important in light of Uganda's upcoming 2011 presidential and legislative elections, and the tensions that have surrounded the process during the lead-in period. The study covers four broad areas: the compliance of Uganda's national law with international standards, the preconditions for electoral participation, the electoral process and management, and electoral dispute resolution. On the preconditions for elections, the study focuses on respect for the people's rights to assemble, vote and conduct campaigns; on the electoral process, the study considers in particular the functioning of the Electoral Commission (EC); and on election dispute resolution, the report considers the role of both the commission and the courts.

The study was undertaken by the lead consultant, Ms Margaret Sekaggya. Face-to-face interviews were held with key stakeholders, including randomly selected members of central and local governments, non-governmental organisation representatives and individual voters. Initial studies began with interviews with the chairperson and secretary of the EC. Other interviews were held with key stakeholders in the districts of Kanungu, Gulu, Mbarara, Mbale, Kabarole, Mukono, Jinja and Kampala. Specific stakeholders interviewed included returning officers of the EC in different regions, politicians from the opposition and current government, religious leaders of different denominations and affiliations, opinion leaders, executive councillors, law enforcement agencies, civil-society representatives, and election registration officers. Other sources of information included secondary literature such as media reports, EC reports, and both national and international election monitoring reports and laws. Stakeholders from a wide variety of sectors contributed their input to this report during a validation workshop held on 19 August 2010 in Kampala, Uganda.



# **Part I**

## **Executive summary**



Uganda is scheduled to hold parliamentary and presidential elections in early 2011. The last general elections held in 2006, the first under a multi-party system since 1980, were controversial and the results contested. A Supreme Court judgment on the presidential elections confirmed the existence of significant irregularities, but ultimately declined to declare that the result was invalid. This report considers the current situation in relation to the legislative framework, the context for elections in Uganda and the functioning of the Electoral Commission (EC), with the aim of contributing to the process of ensuring that the 2011 elections are more widely accepted than those of 2006.

The findings of the report address fundamental issues relating to:

- The legal and institutional framework relating to elections in Uganda;
- Exercising freedom of association and the right to organise during the electoral process;
- Access to the media by political actors of different political parties and leanings;
- Exercise of freedom of expression and assembly during the electoral process;
- The legal and institutional framework for election management in Uganda;
- Independence and effectiveness of the EC;
- Voter education and participation;
- Voter registration exercises;
- Electoral malpractices; and
- Dispute resolution mechanisms.

The report finds that Uganda's legislative framework is mostly in compliance with international and African standards, though there are some significant exceptions in relation to freedom of assembly and association, and the rules for party funding. In practice, there are much more serious concerns, especially about the respect for the rights of opposition parties to organise and the media to report on political developments, the lack of a 'level playing field' in access to resources, and the threat of violence during the campaign. The functioning of the EC has been heavily criticised by opposition parties and civil-society observers. Though some of these criticisms may be unfair in relation to the current members of the Commission, in that the Commission is constrained by a lack of resources and a lack of legal powers, it is also the case that the effectiveness of the Commission has left something to be desired. Many observers of the process, including the recent review of Uganda by the African Peer Review Mechanism

(APRM), have recommended that steps be taken to increase the independence of the Commission by strengthening the process for appointing commissioners and providing them with greater security of tenure.

Essential steps for the free and fair conduct of the 2011 elections in Uganda have been left very late in the process. Some electoral laws have been adopted or amended only during 2010, making it difficult to ensure that all those who need to be familiar with them, including staff of the EC, can be educated on their content. A Code of Conduct for political parties and a National Consultative Forum (NCF) to resolve issues among stakeholders had been formally adopted in August 2010, but are yet to become functional.

Some of the recommendations to strengthen the electoral process in Uganda can only be taken over the long term, in time for the 2016 polls. But others can be adopted immediately for the 2011 elections. In particular, the EC should be empowered to deal with electoral violence by suspending candidates responsible for creating such violence; the codes of conduct for political parties and media should be formulated and publicised in all local languages; and the NCF should be operationalised with full representation of all political parties.

## 1. Compliance of Ugandan electoral legislation with international standards

The significant international instruments referred to in this report are the Universal Declaration of Human Rights (UDHR, Article 21), the International Covenant on Civil and Political Rights (ICCPR, Article 25), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Article 25), and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, Article 7). Uganda is a party to the three treaties: the ICCPR, ICERD and CEDAW. Regionally, this study looks to the African Charter on Democracy Elections and Governance (ACDEG), which Uganda has signed but not yet ratified, and the 2002 AU Declaration on the Principles Governing Democratic Elections in Africa (AU Declaration). This study also considers other non-binding international and regional instruments that offer useful guidance on basic election standards.

Generally, elections must be transparent, periodic, and genuine, so as to ensure that the will of the people is the basis of a government's authority. International instruments forbid discrimination on any grounds that constrain these individual rights, requiring that states prove reasonable and objective criteria established by law in order to infringe upon these rights for any reason. Electoral freedom is the ability of the people to freely express their will, determine their political status and choose their representatives without coercive pressure, which is ensured by Article 69(1) of the 1995 Ugandan Constitution. The specific rights that electoral freedom encompasses include the right of equal access to direct or indirect political participation; the right to non-discrimination; and the freedoms of expression, assembly, association, and access to media. Furthermore, states are required to ensure that elections proceed smoothly and produce fair outcomes by passing clear laws regarding electoral management and election dispute mechanisms; and establishing independent institutions, such as an EC and observers to enforce and monitor these election management laws. It is especially crucial that the

government implements adequate voter education and takes proactive measures to prevent election-related violence.

Uganda's legislation generally complies with international and regional standards, with four main exceptions: the NGO Registration (Amendment) Act 2006; the Political Parties and Organisations (Amendment) Act 2010; laws restricting media freedom and freedom of assembly; and inadequate legislation relating to a state of emergency and election-related violence. The removal of term limits from the presidency in a 2005 amendment to the Constitution also contravenes guidelines adopted by the African Union (AU).

One of the main overall complaints in the current pre-election period is that new election-related laws were not passed sufficiently in advance of the February 2011 elections, making it extremely difficult or impossible for the responsible institutions to implement the measures, due to budgetary and other hindrances. Another major gap that has caused significant grievance is the government's failure to implement codes of conduct for political parties and for the media. The Political Parties and Organisations Act 2005 provides for the adoption of Code of Conduct for political parties and the establishment of a NCF for parties, and for the EC to resolve issues in advance of the elections. At the time of writing this report, the NCF had been launched, with one of the opposition parties taking the position of vice-chairperson, but had been unable to appoint a chair because of the non-attendance of the ruling party. The NGO Registration (Amendment) Act 2006 enables the government to exercise considerable control over the operations of civil-society organisations through the required registration process for non-governmental organisations (NGOs), and also expands the government's power to regulate the dissolution of NGOs. Under this Act, the government has ample room to manipulate its powers and prevent some NGOs from existing or operating consistently. This could have serious implications for the electoral process because NGOs are a crucial part of the civil-society sector that monitors elections.

The Political Parties and Organisations (Amendment) Act 2010 includes funding provisions that discriminate against small political parties. The Act guarantees equal levels of financing to all political organisations and parties specifically for election-related activities. However, the level of funding each party will receive for normal day-to-day activities is based on the number of representatives the party has in Parliament. Since the ruling party, the National Resistance Movement (NRM), has the majority of seats in Parliament, there appears to be an inherent bias against smaller political parties with little or no parliamentary representation, especially since they already face financial disadvantages. Furthermore, the distinction between which activities are elections-related and which are day-to-day is not made clear, so in practice the ruling party will be assured more government funding that could be used toward elections than the other registered contending parties.

Although the political and democratic climate in recent years has created some openings that allow citizens and media to criticise the political system and individual politicians without fear of reprisals, the Penal Code Act still criminalises materials alleged to be seditious, sectarian and defamatory, and the Anti-Terrorism Act 2002 prohibits 'promoting terrorism' without expressly defining what acts constitute the promotion of terrorism. It would be easy for security

or other forces to declare that opposition campaign statements or actions are seditious if they wanted to suppress their political voices. A statutory instrument adopted in 2007 under the Police Act restricts gatherings of more than 25 people.

Finally, there are insufficient laws in place to provide assurance in case of a state of emergency or election-related violence. In August 2010, a variety of stakeholders came together in different settings to discuss the establishment of national conflict-mitigation infrastructures and early warning mechanisms, so it remains to be seen whether or not these will be implemented before February 2011. At the time of writing this report, the Code of Conduct for political parties had also yet to be implemented, although it is provided for in a legislative mandate.

## **2. Context for the electoral process in Uganda**

The research found that the practical application of Uganda's electoral laws does not comply with legislative mandates with regard to media freedom, and the freedoms of assembly, association, and participation. The media representatives interviewed felt pressure from various sources, including politicians who own private media outlets in specific districts, and the perceptions of what types of stories the public wants to hear or read. With regard to freedom of assembly, many respondents, especially those in rural areas, reported intimidation of opposition politicians and supporters, perpetrated in large part by police and army personnel. According to some respondents, this intimidation and harassment of opposition politicians and supporters has always been present in election periods, regardless of which party was in the majority. Freedom of participation in the electoral process is also hindered by persistent problems with voter registration, by gender discrimination entrenched in some cultural practices and norms, and by limited access to voting procedures for people with disabilities.

One of the main concerns regarding the potential for election-related violence is whether or not frustrated political actors will actually utilise the established mechanisms for election dispute resolution. Since 1980, election periods in Uganda have been characterised by escalated tensions between social, religious, ethnic and political groups. Some of the main risk factors for electoral violence in February 2011 that are currently present include the lack of credibility of the electoral process; the commercialisation of elections; conflicts between and within political parties; underlying historic tensions; concerns over the security forces' reliability; conduct of candidates and political parties; and improper use of and conduct by the media. While none of these is determinative of whether or not there will be violence, the failure to address them significantly increases the potential for conflicts that can or will become violent.

In response, the UHRC and other key stakeholders – including representatives of the major political parties, the heads of the security forces, the EC, religious leaders, civil-society organisations and international monitors such as the Office of the UN High Commissioner for Human rights (OHCHR) and the UN Development Programme (UNDP) – have come together to chart a way forward in detecting and mitigating electoral violence. The institutions in place to mitigate electoral violence – including the EC, the Human Rights Commission, the courts, government-appointed committees, civil-society organisations, traditional and religious

leaders, and police and security forces – all have the potential to prevent or curtail violence, if they organise, work together, and are able to access the resources needed to do so.

### **3. The Electoral Commission**

Another source of heated dispute in the current pre-election period has been over the composition and functioning of Uganda's Electoral Commission (EC), particularly because many allege that the Commission is inefficient and is not independent. The Commission's mandate in the Constitution and in national law provides for its independence. Many respondents felt that the commissioners in particular are not independent due to the fact that they are appointed by a majority party that is putting up its candidates for re-election. Although the process for appointing commissioners is the same as that for many other government officials, including for High Court judges, members of the EC do not enjoy the same security of tenure as judges. Allegations of the Commission's incompetence stem from the complaints filed in the Supreme Court after the 2006 elections – but although the Court found that there were many malpractices and inconsistencies, they declared the results valid and did not declare the EC to be incompetent.

One of the most salient sources of the Commission's lack of independence is its inadequate funding. The Commission's budgetary allocations are insufficient to fulfil all of its mandated tasks, and these shortcomings are especially noticed in the failure to adequately address voter harassment and intimidation. In addition, new election laws from 2009 and 2010 have broadened the scope of the Commission's mandate, though these have not been included in the Commission's budget. This lack of financial resources and autonomy critically limits the Commission's efficiency and effectiveness, and also reduces its credibility in the eyes of stakeholders and the general public.

Voter registration and polling processes, which fall under the EC's mandated activities, have been continually flawed and heavily criticised. Problems with the voters' register cited in previous elections, including duplicate names, missing names, and names registered in the wrong district, have not been adequately addressed, and have already been seen in advance of February 2011. There is controversy over the way that votes are counted, tallied and transmitted. Although the EC established a National Tally Centre, accessible to representatives from all political parties, to receive and verify results from the District Tally Centres, many critics feel that the use of telephones to convey results from districts is neither secure nor reliable. Overall public perceptions of the EC tend to be quite negative – this lack of confidence in the main election management body and its procedures undermines the security of the whole process, and can lead to either voter apathy or violent outbursts from a frustrated citizenry.

### **4. Election dispute resolution**

The electoral laws in Uganda provide clear mechanisms for disputing election results, and the EC established methods to facilitate this process, including a National Information and Complaints Desk. However, since the 2001 elections, the validity of electoral results has

consistently been a matter of dispute, and many stakeholders complain about how long the adjudicatory processes take.

## 5. Recommendations

Previous elections in Uganda have been fraught with malpractice and instances of violence. For an election to be deemed free and fair requires the following conditions, as the Supreme Court ruled:

... sufficient time given for all stages of the elections, nominations campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections, and citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officials. There must be a leveling of the ground so that the incumbents or government ministers and officials do not have an unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence, coercion or anything intended to subvert the will of the people. The election procedures should guarantee the secrecy of the ballot, the accuracy of counting and the announcement of the results, in a timely manner. Election law and guidelines for those participating in elections should be made and published in good time.<sup>1</sup>

This report makes detailed recommendations listed at the end of each chapter, all of which aim to empower the various stakeholders and policy makers to ensure that future elections in Uganda are free and fair. The ability of these stakeholders to implement these recommendations in advance of February 2011 depends on many internal and external factors, the most significant of which is likely to be the availability of necessary funding.

The stakeholders consulted strongly emphasised three recommendations in particular: the need for greater transparency of government institutions; the need for a forum in which all stakeholders could engage in constructive debate and dialogue; and the need for proactive voter education and social messaging, including stringent measures against deliberate or negligent publishing of slander and false information.

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<sup>1</sup> Justice Benjamin Odoki in Election Petition No. 1 of 2006.

## **Part II**

### **Managing elections in Uganda**



# 1

## History and context

Under the current 1995 Constitution as amended, Uganda is a presidential republic with a multi-party democratic parliamentary system. The president is the Head of State and Head of government, and the Commander-in-Chief of the armed forces. The government exercises executive power, as well as legislative power in conjunction with the Parliament of Uganda. The Constitution provides for universal suffrage for all citizens over age 18. The president is elected by popular vote to a five-year term, but there is currently no limit to how many terms a president can serve. The president appoints the cabinet members from outside Parliament or from a group of popularly elected legislators, and the Prime Minister assists the president in supervising the Cabinet. The National Assembly has 333 members, 215 of whom are elected directly in single-seat constituencies. Of the remaining 118 seats, 80 are filled with women representatives elected by direct vote, one for each of Uganda's 80 districts. The final 25 Members of Parliament represent 'special interest' groups and are selected through a complicated regional electoral college system. Currently, the special interest seats include ten MPs who represent Uganda's armed forces (the Uganda People's Defence Force, UPDF); five youth representatives; five MPs who represent people with disabilities; and five MPs who represent workers.

Uganda's first national election was the 1962 National Assembly election, which formed Uganda's first post-independence government. The 1962 Constitution provided for a balance between a federal and a unitary state, based on compromise between supporters of a nationalist or traditional framework for government. An alliance between the Uganda People's Congress (UPC) and Kabaka Yekka (KY) parties won the majority of parliamentary seats, and Milton Obote became the executive Prime Minister. Through the UPC-KY coalition,

the Baganda king Kabaka Mutesa became the ceremonial president, but the coalition soon fell apart, and the Kabaka was forced to flee the country when Obote ordered an armed attack on the Kabaka's palace. After the abrogation of the 1962 Constitution, which gave rise to the 1966 Constitution, a centralised parliamentary system of government was introduced, that abolished all federal elements. The Constitution stipulated that the party elected with the greatest numerical strength would form the executive government. He abrogated the Constitution in 1966 and declared himself president when Parliament tried to demand an investigation into his alleged involvement in a gold smuggling scheme. In 1967, a republican constitution with an executive president was formally adopted, which also removed all recognition of traditional leadership positions. In 1969, political parties were banned after an assassination attempt on President Obote, and a state of emergency introduced. Obote's regime, which lasted until he was overthrown in 1971 by the army and Idi Amin, is often described as dictatorial, and was marked by torture (carried out by Obote's secret police) and corruption.

Obote and his UPC party ruled under a one-party system until it was overthrown by Idi Amin's 1971 military coup, after which even the UPC was banned, making Uganda a no-party state. During Amin's violent, repressive and bloody eight-year regime, he ruled the country by decrees. Amin was overthrown in 1979 by Tanzanian forces, after which a military junta, of which current President Yoweri Museveni was a senior member, organised elections for 1980. These 1980 elections were organised by an electoral body established by a military commission. There was widespread concern about the nomination and appointment of members to this body, which cast the legitimacy of impartial administration in doubt.<sup>2</sup> The elections which were characterised by gerrymandering, ballot-box stuffing, coercion, violence and obvious fraud, resulted in the junta issuing an outright declaration of Obote as the winner of the Presidency. Having been outmanoeuvred, Museveni declared an armed rebellion and launched the gruesome five-year Uganda 'Bush War' against Obote's government, after which Museveni and his National Resistance Army (NRA) took power in 1986.

From 1986, there were no presidential elections for a full decade, until after the new Constitution of 1995 was implemented, and Museveni's new National Resistance Movement (NRM, formed from the NRA) ruled under the no-party 'Movement' system of government. Under the Movement system, which lasted until the Constitution was amended in 2005 to allow multi-party elections, the Constitution mandated that only NRM members could stand for elections on individual merit. However, in the 2001 elections, Museveni's former physician, Dr Kiiza Besigye, campaigned for Presidency under the NRM umbrella. The 2001 elections were characterised by the same gross electoral malpractices that plagued the 1980 elections. In addition, opposition MPs were harassed, and the media was seen to be strongly biased in favour of the incumbent President Museveni.

In a referendum on the political system held in 2000 under the terms of the 1995 Constitution, Ugandans voted to retain the then existing Movement system. However, in 2005,

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<sup>2</sup> 'Electoral Reforms in Uganda', Report by the Foundation for Human Rights Initiative, 2008, p.80.

Parliament approved a constitutional amendment proposed by the NRM which allowed a return to multi-party politics while also scrapping presidential term limits.

The multi-party elections of 2006 saw only slight improvements from 2001, notably in the area of media freedom. Dr Besigye ran against President Museveni for the second time, but not as the leader of a new political party, the Forum for Democratic Change (FDC), and garnered 37.39% of the votes, as against Museveni's 59.26% majority. Dr Besigye's Supreme Court case regarding the 2006 elections has become famous due to the ruling that Museveni was the rightful winner despite the Court's acknowledgement of widespread electoral malpractices and vote rigging which were considered not to have substantially affected the results of the elections.

The 2011 election will be Uganda's second multi-party election since 1980. One of the main goals of all stakeholders is to avoid violence during and around the elections, and inclusive multi-stakeholder meetings have been carried out to identify early warning mechanisms and to build violence-prevention infrastructures. In addition, Parliament has attempted to pass laws to help provide standardised regulations on electoral administration and management, and the Electoral Commission (EC) has sought to implement positive changes such as increased voter education and the introduction of a biometric registration system. However, many worry that these reforms are 'too little, too late', and that the measures and systems existing still are not strong enough to ensure free and fair elections in February 2011.

# 2

## Compliance of Ugandan law with standards for free and fair elections

This chapter considers the extent to which Uganda’s domestic legal framework on elections is in compliance with the relevant international standards. The next chapter will consider the extent of this compliance in practice.

### **A. International, regional and national legal frameworks**

International and regional standards on elections are based on three central rights: the right to take part in government; the right to vote and to be elected; and the right to enjoy equal access to the public service.<sup>3</sup> Within this overall framework of rights, the international standards for elections can be placed into three basic categories – general standards, standards on the rights of individuals in the election process, and standards that national bodies must fulfil in the electoral process.

### **International standards**

Of significance internationally are the Universal Declaration of Human Rights (UDHR, Article 21), the International Covenant on Civil and Political Rights (ICCPR, Article 25), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Article 25), and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, Article 7). Uganda is a party to the three treaties: the ICCPR, ICERD and

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<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR), Article 25. See also: Universal Declaration of Human Rights (UDHR), Article 21.

CEDAW.<sup>4</sup> In 1996, the UN Human Rights Committee (HRC), responsible for monitoring compliance with the ICCPR, adopted a General Comment on ‘The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’, which provides an authoritative interpretation of states’ duties under Article 25 of the Covenant.<sup>5</sup>

There are numerous other non-binding standards at the international level. Two in particular, which were adopted by the Inter-Parliamentary Union (IPU), can be highlighted here.<sup>6</sup> In 1994, the IPU adopted a Declaration on Criteria for Free and Fair Elections, setting out standards on the rights and responsibilities of voters, candidates, parties and the state. This was supplemented in 1997 by a Universal Declaration on Democracy, which provides additional guidance on appropriate standards at international level.

## **African Union standards**

Article 13 of the African Charter on Human and Peoples’ Rights (ACHPR) provides that:

1. Every citizen shall have 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;
2. Every citizen shall have the right of equal access to the public service of his country; and
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Since the ACHPR was adopted, many African standards have elaborated on these rights. The Constitutive Act of the African Union, which came into force in 2001, states that one of its objectives is to ‘Promote democratic principles and institutions, popular participation and good governance’ (Article 3(g)); and that its principles include ‘Respect for democratic principles, human rights, the rule of law and good governance’ (Article 4 (m)). The African Charter on Democracy Elections and Governance (ACDEG), adopted by the AU in 2007, expanded on the basic rights set out in the ACHPR in relation to specific democratic standards, though it is not yet in force. ACDEG considers a broader range of issues than only elections, but in addition to its own provisions on elections it also endorses the 2002 AU Declaration on the Principles Governing Democratic Elections in Africa (AU Declaration), which provides greater detail on election management.

In 2000, the Organisation of African Unity (OAU), the AU’s predecessor, adopted a ‘Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government’ that remains applicable for the AU. At the same summit in 2000, the OAU also adopted a Solemn Declaration on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), followed two years later by a Memorandum of Understanding

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<sup>4</sup> Uganda acceded to the ICCPR in 1995, to the ICERD in 1980 and to the CEDAW in 1985.

<sup>5</sup> UN Human Rights Committee, ‘The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25),’ CCPR/C/21/Rev.1/Add.7, General Comment No.25, 12 July 1996.

<sup>6</sup> The IPU is the International Organisation of Parliaments, established in 1889.

on the CSSDCA, which both provide important contributions on democratic standards applicable for AU member states. In 2002, the AU Assembly also adopted the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (the NEPAD Declaration), which provided more detail on the commitments of the New Partnership for Africa's Development (NEPAD) adopted the previous year, and, among other things, committed African states to 'the inalienable right of the individual to participate by means of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office'.<sup>7</sup> In 2004 the AU adopted election observation and monitoring guidelines to govern AU election monitoring missions, drawing on other international election monitoring standards and providing additional indications of the minimum criteria for democratic elections in Africa. These documents are guiding standards for the AU, though, like the AU Declaration, they are not treaties open for ratification by member states.

Although Uganda signed the ACDEG in 2008, it has not yet ratified the treaty. However, in international law, Uganda is still regarded as bound to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. As a member state of the AU, Uganda should also be guided by the AU Declaration, the CSSDCA, the OAU framework on unconstitutional changes of government, and the NEPAD Declaration. The ACDEG requires states to 'promote the holding of regular free and fair elections to institutionalise legitimate authority of representative government as well as democratic change of governments; [and to] Prohibit, reject and condemn unconstitutional change of government in any member state as a serious threat to stability, peace, security and development'. The AU Declaration also highlights that the democracy-building principles behind free and fair elections are crucial to conflict prevention, management and resolution. This goal is critically important considering that Uganda's democratic record has been marred by three coups d'état<sup>8</sup> and two military interventions<sup>9</sup> since independence, and the ethnic unrest and episodes of violence that have occurred in recent years.

## Regional standards

Other regions on the continent have adopted standards that provide important additional guidance on the acceptable norms for African elections, though they are not directly applicable to Uganda. Within the Economic Community of West African States (ECOWAS), the Protocol on Democracy and Good Governance (ECOWAS Protocol), advocates free, fair and transparent elections with emphasis on zero tolerance for power obtained or maintained by unconstitutional means. The Protocol encourages popular participation in decision-making, strict adherence to democratic principles and decentralisation of power at all levels of governance. In the Southern African Development Community (SADC), the SADC Principles and Guidelines Governing

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<sup>7</sup> NEPAD Declaration, Article 7.

<sup>8</sup> In 1966, Prime Minister Milton Obote toppled President Edward Muteesa II. In 1971, army chief, Commander Idi Amin overthrew President Obote. In 1985, General Tito Okellon toppled Milton Obote's second government.

<sup>9</sup> In 1979, the Tanzanian Army and the Ugandan National Liberation Front/Army joined forces against Idi Amin. In 1986, the National Resistance Army (NRA) launched a rebellion against the second Obote administration on the grounds that the 1980 general elections were rigged.

Democratic Elections (SADC Principles) focus specifically on elections and is binding in the SADC region; the SADC Parliamentary Forum also adopted its own Norms and Standards for Elections in the SADC Region, from which inspiration can be drawn.

The East African Community (EAC), composed of Uganda, Kenya, Tanzania, Rwanda and Burundi, seeks to become a full-fledged political federation by 2015. To this end, the East African Legislative Assembly (EALA) was created with the power to enact laws relevant to the EAC's purpose on behalf of the member countries.<sup>10</sup> Bills adopted by the EALA are submitted by the speaker of the Assembly to the heads of state of EAC member countries. The heads of state have the power to grant or refuse assent to the Bill. In order for the Bill to become an Act, which makes it legislatively binding on each EAC member state, the EAC heads of state must all assent to the Bill's provisions. Each member state would be required to implement the provisions of an Act passed by the EAC.

Currently before the EALA is the EAC Elections Bill, which has the dual goals of entrenching a democratic culture of transparent electoral processes and preventing conflict in the region. The Elections Bill was introduced as a private member's bill by Wandera Ogalo, a Ugandan MP. It seeks to create an East African Electoral Commission that would manage free, fair and credible electoral processes in the EAC region. Once established, this regional Commission would be recognised as an organ of the EAC with perpetual succession, capable of suing and being sued in its name. The Commission would be mandated to provide for the registration and management of election registers, manage demarcation of constituency boundaries, coordinate appointment of election offices and manage procedures at elections and other incidental matters. The Commission would also hear and determine election complaints alleging any irregularities at any stage of the electoral process.<sup>11</sup> It would regulate parliamentary and presidential general elections in the five member states of the EAC.

The EAC Elections Bill has not progressed beyond the Assembly because the Assembly still awaits the comments requested from relevant national stakeholders and from the EAC's Legal, Rules and Privileges Committee (LRPC) before engaging in debates on the Bill. The LRPC has delayed submitting its report on the Elections Bill for nearly two years, and many important national stakeholders have yet to respond to letters sent in 2008 by the LRPC seeking responses, comments and proposals, in accordance with Rule 67 of the EALA's Rules of Procedure. The Government of the Republic of Uganda was listed as one of the stakeholders that has yet to respond, though the Uganda Joint Christian Council and the EC of Uganda have both issued the requested responses.<sup>12</sup> As of the end of August 2010, this news from 18 February 2010 is the last update on the progress of the debate and the implementation of the Elections Bill.

One of the most significant benefits to Uganda of having a regional EC is that it would likely mitigate or eliminate the ongoing heated disputes over the independence of Uganda's electoral

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<sup>10</sup> The East African Legislative Assembly (EALA) was created by Article 9 of the Amended Treaty for the Establishment of the East African Community ('the EAC Treaty'), and was inaugurated in 2001. The EALA's full mandate is enumerated in Articles 48–65 of the EAC Treaty.

<sup>11</sup> Part IV Section 20(1) of the Bill.

<sup>12</sup> East African Community Press Release, 'EALA Postpones Debate on EAC Elections Bill to April', 18 February 2010; [www.eac.int](http://www.eac.int).

management and monitoring bodies. Although the EAC Elections Bill's provisions could not be implemented before the 2011 elections, swift cooperation by the Ugandan government in getting the bill passed could help ensure that the EAC Electoral Commission is running by the 2016 Elections.

## **National standards**

The Republic of Uganda's legislative framework is found principally in the 1995 Constitution, inclusive of amendments up to 21 November 2005, which is the supreme law of Uganda and has binding force on all authorities and persons throughout the country.<sup>13</sup> Under this framework, Parliament's legislative powers and all the other organs of government are subordinate to the supremacy of the Constitution. Election standards in Uganda are governed by the 1995 Constitution, the Presidential Elections Act of 2005, the Political Parties and Organisations Act of 2005 (Political Parties Act), the Parliamentary Elections Act of 2005, and the Electoral Commission Act of 1997. The provisions of the Political Parties Act have been amended twice, through the Political Parties and Organisations (Amendment) Act of 2009 and the Political Parties and Organisations (Amendment) Act of 2010.

The Presidential Elections Act provides further specifications for presidential elections, including the qualifications for candidates and the manner of establishing equivalent qualifications. It also provides procedural standards for nomination, campaigning, polling, counting and tallying votes, declaring results of a presidential election and challenging the declared results. The Political Parties Act implemented the multiparty system of government in Uganda and provided rules for party leadership, elections, party funding, and a Code of Conduct for political parties. The Act provides a basis to enhance transparency and accountability in relation to the financing of political parties.

## **B. General standards for the electoral process**

Elections must be free and fair, they must be transparent, and they must occur periodically. The UDHR states that the will of the people, as expressed through periodic and genuine elections, shall be the basis of a government's authority.<sup>14</sup> International instruments forbid discrimination on any grounds that constrain these individual rights, requiring that states prove reasonable and objective criteria, established by law, in order to infringe upon these rights for any reason. Although there are a number of fundamental criteria in international law for free and fair elections, there is no legal instrument that outlines specific procedural requirements. Therefore, the general standards in place give governments some freedom to choose the means by which they will achieve the international electoral standards.

## **Freedom and fairness**

The primary indicator of electoral freedom is the ability of the people to freely express their

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<sup>13</sup> Uganda Constitution, Article 2.

<sup>14</sup> Universal Declaration on Human Rights, Article 21(3).

will, and to determine their political status and their representatives without coercive pressure.<sup>15</sup> The international principles on electoral fairness are mostly governed by the UDHR and the ICCPR, as elaborated in such documents as the UN Human Rights Committee's 1996 General Comment. The ICCPR lays out all the basic requirements for free and fair elections. Firstly, individuals have the right to self-determination, which includes the right to freely determine one's own political status.<sup>16</sup> While there have been different discussions over the precise interpretation of this article, which originally primarily related to freedom from colonial domination, it is increasingly agreed that the concept of self-determination also includes the principle of democratic government.<sup>17</sup> Secondly, individuals have the right to equal access to political participation, whether direct or indirect, including the right to vote and the right to run for political office.<sup>18</sup> States are required to prevent discrimination of all kinds and to pass and enforce legislation that ensures that all citizens, especially groups that otherwise might be disenfranchised, have equal access to their civil and political rights.<sup>19</sup> These rights and duties enumerated in the ICCPR are inherent, and cannot be bestowed or removed by any state.

The UN Human Rights Committee General Comment interprets these rights to require universal and equal suffrage; bar discrimination in the absence of a clearly defined and justified reason that arises due to exceptional circumstances; bar residency requirements for citizens to vote in national elections; and require that residency requirements for local and regional elections be reasonable. In addition, the Human Rights Committee states that any deprivation of the right to vote or to be elected is only to be allowed in very limited circumstances supported by the state's national law and Constitution, and in accordance with international principles. It asserts that freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote, and therefore requires that states implement positive measures to overcome specific obstacles to the enjoyment of these rights, such as illiteracy, language barriers, poverty, and any impediments to freedom of movement that prevent eligible people from exercising the right to vote.

Regionally, the ACDEG and AU Declaration provide for elections to be conducted 'freely and fairly' and 'under democratic constitutions and in compliance with supportive legal instruments', including a system of separation of powers that ensures independence of the judiciary. Among other things, the AU Declaration provides that states should take 'all necessary measures and precautions' to prevent election fraud.

Article 69(1) of the 1995 Ugandan Constitution stipulates a process for the establishment of government, conferring on the electorate the right to choose a political system of their choice through free and fair elections or referendums. In this regard there are three constitutionally-permissible political systems in Uganda: the Movement political system, the multi-party political

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<sup>15</sup> Ibid.

<sup>16</sup> International Covenant on Civil and Political Rights (ICCPR), Article 1(1).

<sup>17</sup> See, for example: *Katangese Peoples' Congress v. Zaire*, African Commission on Human and Peoples' Rights, Comm. No.75/92, 1995.

<sup>18</sup> ICCPR, Article 25.

<sup>19</sup> Ibid., Article 2.

system, and any other democratic and representative political system.<sup>20</sup> The Constitution stipulates the principles to which the Movement political system must conform, as well as the fundamental features and principles of the multi-party political system; it is silent, however, with regard to the features and principles attached to the third political system provided.<sup>21</sup> Overall, Uganda's legislation recognises the importance of conducting free and fair elections and requires that the country's elections proceed accordingly. Compliance in practice, however, will be determined by assessing the compliance with the rest of the electoral administration requirements.

## **Transparency and accountability**

The whole electoral process must be transparent in order for it to be considered free and fair. Both the government and the EC are responsible for ensuring transparency through positive legislation and through vigilant measures taken during election periods. Parties to ACDEG 're-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa'. The AU Declaration states generally that states are required to ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers and monitors. They must also ensure that there are competent legal authorities to arbitrate in the event of disputes arising from the conduct of elections.<sup>22</sup>

In West Africa, the ECOWAS Protocol calls for more detailed measures to ensure transparency. For example, it mandates that no substantial modification shall be made to the electoral laws in the last six months before the elections, except with the consent of a majority of political actors. Among the concerns in the lead-up to the 2011 elections in Uganda, has been the late adoption of many critical laws setting the framework for the process (though, so far, they have been enacted more than six months from the anticipated date).

Section 29 of Uganda's Presidential Elections Act 2005 requires that the list of all presiding officers and polling assistants is published, which helps minimise suspicions of fraud in electoral administration and creates more transparency in the polling officials. The Political Parties and Organisations Act shifts the responsibility for party registration from the Registrar of Companies to the EC.

Section 29 of Uganda's Presidential Elections Act 2005 requires that the list of all presiding officers and polling assistants is published, which helps minimise suspicions of fraud in electoral administration and creates more transparency in the polling officials. The Political Parties and Organisations Act also seeks to enhance electoral transparency and accountability by shifting the responsibility for party registration to the EC.

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<sup>20</sup> Constitution of Uganda, Article 69(2)

<sup>21</sup> *Ibid.*, Articles 70 and 71.

<sup>22</sup> Part III (c) and (i) of the AU Declaration on Principles Governing Democratic Elections in Africa.

## Periodicity

In conformity with international law, elections must be conducted on a periodic basis, within a framework of laws that guarantees the effective exercise of voting rights.<sup>23</sup> International instruments do not prescribe a specific schedule of electoral periodicity, but there is a general consensus that elections must be held frequently enough to ensure that the governmental authority continues to reflect the will of the people, which, as previously stated, is a fundamental aspect of governmental legitimacy. Generally, scheduled elections may not be postponed, except for when a public emergency makes it necessary to do so, and even then, postponement may only be to the extent strictly required by the exigencies of the situation. In addition, the election calendar must be widely available in the public domain, so that potential candidates can prepare themselves to campaign effectively, so that voters can inform themselves, and so that the relevant institutions can take all necessary measures to ensure that free and fair elections are smoothly administered.

The AU Declaration requires that elections be ‘at regular intervals, as provided for in National Constitutions’, while for West Africa, the ECOWAS Protocol requires that all elections shall be organised on the dates or at periods fixed by the Constitution or by the electoral laws. The CSSDCA MOU, meanwhile, specified that the AU should adopt a Code of Conduct for political office holders that stipulates ‘an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates’.<sup>24</sup> The NEPAD Declaration also refers to leaders having a ‘fixed term of office’.<sup>25</sup>

The Ugandan Constitution requires periodic elections for the president<sup>26</sup> and for Parliament.<sup>27</sup> It states that parliamentary elections must be held in the last 30 days of the term, and that the presidential elections must be held in the first 30 days of the incumbent president’s last 90 days of term. Presidential elections can only be postponed in a few limited cases, namely when an election has been validly challenged and annulled, or when an election must be postponed due to a state of war or a state of emergency. If such latter cases occur, Parliament shall prescribe the revised election schedule to which the government must adhere.<sup>28</sup>

Under the terms of the 2005 constitutional amendments, Uganda has no term limits for the presidency.<sup>29</sup> The 2009 Country Review Report for Uganda prepared by the APRM, included a commitment in the National Programme of Action, agreed with the government for a review of the Constitutional Amendment that removed the two-term limit for the president’s office.<sup>30</sup>

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<sup>23</sup> See UDHR Article 12, paragraph 3 and ICCPR Article 25(b).

<sup>24</sup> CSSDCA MOU, Key Performance Indicator 16.

<sup>25</sup> NEPAD Declaration, Article 7.

<sup>26</sup> Uganda Constitution (1995), Article 103(3).

<sup>27</sup> *Ibid.*, Article 81.

<sup>28</sup> *Ibid.*, Article 103(3).

<sup>29</sup> *Ibid.*, Article 81.

<sup>30</sup> APRM Country Review Report, p.348.

## c. Election standards on the right to vote, organise and campaign

### Freedom of participation

#### *The right to vote and be voted for without discrimination*

Under international law, states have only very limited permission to place restrictions on the right to vote. Each country's laws must include guarantees of the right to vote at referendums and at elections and effective mechanisms for enforcing every eligible citizen's free exercise of the right to vote. This right may only be subject to reasonable restrictions such as a minimum voter age limits. Restricting the right to vote based on physical disability, educational limitations or illiteracy, or property requirements are examples of unreasonable limitations.<sup>31</sup> In addition to refraining from restricting the right to participate, international law further requires states to proactively help enable individuals to exercise their ability to participate in the electoral process. The UN Human Rights Committee's 1996 General Comment requires that states implement positive measures to overcome specific obstacles to the enjoyment of the right to assemble, associate, and engage in politics. Examples of such obstacles include illiteracy, language barriers, poverty, and any impediments to freedom of movement that prevent eligible people from exercising the right to vote, and states are required to take active measures against them.

The right to freedom from discrimination based on gender or any other grounds is guaranteed by Articles 2 and 7 of the UDHR, and is further defined in Articles 2(1), 3 and 26 of the ICCPR. States have a positive duty to protect citizens from discrimination in the electoral process, as well as a negative duty to themselves refrain from discriminating against others. Only a few limited types of discrimination are permitted, such as those aimed at correcting past discrimination (e.g. affirmative action); otherwise the state is absolutely bound to ensure that all eligible citizens have equal access to all electoral events. A voting environment where discrimination is treated with impunity is likely to foster intimidation and manipulation of the electorate.

Regionally, the ACDEG and the AU Declaration guarantee individuals and political parties the right to campaign and express political opinions, within the limits of national law. ACDEG's principles include 'strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law'. In addition to echoing the non-discrimination language included in the ACHPR and in international instruments on elections, the AU Declaration requires states specifically to encourage African women to participate in all aspects of the electoral process.<sup>32</sup> Similarly, the ECOWAS Protocol advocates for its West African member states to take all appropriate measures to ensure that women have equal rights with men to vote and be voted for in elections, to participate in the formulation of

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<sup>31</sup> United Nations Centre for Human Rights, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, United Nations, New York and Geneva, 1994, p.9.

<sup>32</sup> AU Declaration, Part III(j).

government policies and the implementation thereof, and to hold public offices and perform public functions at all levels of governance.

The promotion of public participation in the process of governmental decision-making is a significant feature of the 1995 Constitution.<sup>33</sup> Article 38(1) recognises the right of every Ugandan to participate in the affairs of government individually or through representatives. With respect to representation of minority groups, the Constitution<sup>34</sup> and the Parliamentary Elections Act 2005 establish that the Parliament should be composed of members directly elected to represent constituencies. There shall be one female representative, elected through universal suffrage, for every one of Uganda's districts, and twenty-five representatives of special interest groups, elected by electoral colleges, for the army, youth, workers and disabled people. The interests of women and disabled people have been recognised in the Act in compliance with the different international instruments.<sup>35</sup> Article 33 of the Constitution further ensures equality for women in the recognition of their rights.<sup>36</sup>

These constitutional provisions protect and enhance the rights and work of civil-society organisations. For civil-society organisations to be effective and impartial, it is crucial that their autonomy is recognised and protected, so that they can carry out their activities without fear or favour. The right to electoral participation provided for in Article 38 is key to the work of civil-society organisations, which often monitor and follow up on government policies, practices and performance.

### *Voter eligibility requirements*

International law requires fairness in voter registration requirements. Voter education and voter registration laws are necessary to ensure that the right to participate is effectively exercised by an informed community. Where voter registration is required, it should be implemented without imposition of any obstacles. Any residence requirements posed must be reasonable and should not be invoked so as to exclude the homeless from voting. The Human Rights Committee General Comment bars residency requirements for citizens altogether for national elections, but recognises that residency requirements for local and regional elections are reasonable.

According to the Uganda Constitution, every citizen of Uganda 18 years of age or above has a right and duty to register and for public elections and referendums. The state is required to take all necessary steps to ensure that all qualified citizens register and exercise their right to vote. Parliament must make laws to facilitate the ability of citizens with disabilities to register and vote.<sup>37</sup> The Electoral Commission Act further stipulates that eligible voters must be

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<sup>33</sup> Paragraph 11 (Democratic Principles) of the National Objectives and Directive Principles of State Policy of the Constitution.

<sup>34</sup> Uganda Constitution (1995), Article 76.

<sup>35</sup> United Nations Convention on the Elimination of all Forms of Discrimination against Women (1979), United Nations Convention on the Political Rights of Women (1990), Protocol to the African Charter on Human and Peoples' Rights on the Women in Africa, United Nations Declaration on the Rights of Disabled People (1975).

<sup>36</sup> Article 33(4) reads: 'Women shall have the right to equal treatment with men, and that right shall include equal opportunities in political, economic and social activities.' and Article 33(5) recognises the importance of affirmative action in ensuring that women are able to realize their rights.

<sup>37</sup> Uganda Constitution (1995), Article 59.

registered to vote in either the parish or ward where the person resides or from where she or he originates.<sup>38</sup>

### *Requirements to run for political office*

International legal provisions carry very little guidance on the pre-requisite qualifications that potential candidates must meet in order to run for political office. The IPU Declaration on Free and Fair Elections generally states that governments and legislatures shall determine the criteria for electoral participation. It further states that the right to run for office is only subject to restrictions ‘of an exceptional nature,’ namely, any threat to national security, public order, public health or morals, or the rights and freedoms of other citizens. Regional mandates do not give any guidance as to what requirements political candidates must meet.

According to the Ugandan Constitution and the Presidential Elections Act of 2005, a presidential candidate must be a Ugandan citizen by birth, and be between ages 35 and 75. In addition, the candidate must be qualified to be a MP, meaning a registered voter with a minimum formal education of advanced level standard or its equivalent.<sup>39</sup> This educational requirement is taken seriously, and candidates are required to provide documented proof of their education level to the National Council for Higher Education. The penalty for forging educational documentation for the purposes of qualifying for candidacy includes the possibility of imprisonment for three–ten years.<sup>40</sup> A person is not eligible to be a MP, and is therefore not eligible to run for president if she or he: is of unsound mind; holds an office that is connected with the conduct of elections; is a traditional or cultural leader; has been declared bankrupt under any Ugandan law, and has not yet been discharged; is under death sentence or a jail term that is nine months or longer, without an option to pay a fine; or has been convicted within the past seven years of a crime of dishonesty or ‘moral turpitude’ or of contravention of any elections-related law in an election conducted by the EC.<sup>41</sup>

## **Freedom of assembly and freedom of association**

The right to assemble allows citizens to take part in the conduct of public affairs and exert influence in public debates and dialogue. Especially around elections, freedom of assembly enables citizens to organise, and allows NGOs and informal groups to help monitor electoral freedoms, educate voters and encourage active and informed participation. The right to freely assemble is guaranteed in Article 21 of the ICCPR. Political rallies and public demonstrations are essential to educating voters and disseminating information about the electoral process. So long as the assembly is non-violent, it may, by law, only be subject to narrow restrictions, in the interest of national security or public order, or for the protection of public health, morals, or the rights and freedoms of individuals. The ACHPR provides for freedom of assembly in its Article 11. The AU Declaration requires states to safeguard the civil liberties of all citizens including ‘freedom of movement, assembly, association, expression, and campaigning as well as access

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<sup>38</sup> Electoral Commission Act, Article 19(1).

<sup>39</sup> Presidential Elections Act 2005, Article 4; Uganda Constitution (1995), Article 15, Clause 7.

<sup>40</sup> Presidential Elections Act 2005, Article 5.

<sup>41</sup> Presidential Act 2005, Article 4.

to the media on the part of all stakeholders, during electoral processes’.

Domestically, the freedom of assembly is provided for in Article 29(i)(d) of the 1995 Constitution, which states that every person has the right to freely ‘assemble and demonstrate together with others peacefully and unarmed’.

The freedom to organise and associate is broad, and includes the freedom to form and participate in political parties or other political organisations. In protecting the right to freedom of association, states incur both positive and negative duties. In addition to not hindering this fundamental freedom, states should actively seek to promote it by, for example, ensuring that all political parties enjoy equal rights and equal access to state resources, including public funds. Article 22 of the ICCPR lays out a broad scope for the right to freedom of association. The freedom of association is subject to the same narrow limitations as the freedom of assembly.<sup>42</sup> The UN Human Rights Committee’s General Comment declare that states cannot impose any ‘unreasonable’ limitations on the right to freely organise and associate.<sup>43</sup> The ACHPR provides for freedom of association in its Article 10.

In relation to political parties specifically, African standards have recognised the particular challenges of political organisation in highly diverse societies. The CSSDCA memorandum of understanding committed African states to adopting ‘enabling legislations on the formation and operation of political parties to ensure that such parties are not formed and operated on the basis of ethnic, religious, sectarian, regional or racial extremism’. Similarly, in West Africa under the ECOWAS Protocol, political parties have the right to carry out their activities freely, within the limits of domestic laws. Their formation and their activities must not be based on ethnic, religious, regional or racial considerations. Political groups must participate freely and without hindrance or discrimination in any electoral process, and the freedom of opposition must be guaranteed.<sup>44</sup>

Domestically, Article 29(i)(e) of the Constitution states that every person has the right to freedom of association, including the freedom to form and join political organisations. As related to elections, the right to freedom of association implicates the right to form political parties, and therefore relies heavily on the equitable access to state funding, freedom of speech, and freedom of access to information and the media. This is reinforced in Articles 71 and 72, which restate the right to form ‘political parties and any other political organisation’; and provide principles for the organisation of political parties, including that they shall not be based on ‘sex, ethnicity, religion or other sectional division’, that they shall respect internal democracy, and that Parliament should provide legislation to regulate ‘the financing and the functioning of political organisations’.

However, there are legislative restrictions on freedom of assembly and freedom of association. For example, Statutory Instrument No.53 of the Police Act, which came into effect in September, 2007, places restrictions on meetings of more than 25 people. The APRM Country Review Report for Uganda recommended the repeal of this provision.<sup>45</sup>

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<sup>42</sup> ICCPR, Article 22.

<sup>43</sup> United Nations Human Rights Committee, ‘General Comment on Standards for Democratic Elections’, 1996.

<sup>44</sup> Article 1 (b), (c), (d) and (i).

<sup>45</sup> APRM Country Review Report for Uganda, 2009, paragraphs 276 and 284.

The NGO Registration (Amendment) Act 2006, which amended the NGO Registration Act of 1989, places a significant legislative hindrance on the exercise of the freedoms of assembly and association of CSOs by allowing the government to exercise considerable control over their operations. It does so through the required process by which NGOs must register. Uganda's government-run National Board of Non-Governmental Organisations has the authority to monitor NGO operations and develop policy guidelines for community-based organisations (CBOs). In addition to the existing requirement that they register with the National Board, the Registration (Amendment) Act further requires NGOs to obtain a periodic permit in order to operate. The Act also expands the Ministry's power to regulate the dissolution of NGOs. Giving the government such expansive powers over the ability of NGOs to assemble significantly threatens their ability to exist and consistently carry out operations. This could have serious implications for the electoral process because NGOs are a crucial part of the civil-society sector that monitors elections, and the government could manipulate their powers under this Act by preventing some NGOs from functioning.

## Funding of political parties

There are regional standards on the funding of political parties that require that fund distribution is impartial and well-regulated,<sup>46</sup> and that it is directed not only to all Parties represented in Parliament, but also to political bodies that have significant electoral support and that have candidates contesting in the elections.<sup>47</sup> At the continental level, the AU Declaration requires all state parties to ensure the availability of adequate logistics and resources for carrying out democratic elections, especially by ensuring funding for all registered political parties, in order to enable them to effectively organise their work and participate in the electoral process.<sup>48</sup> The CSSDCA specifically provides for 'disclosure of campaign funding sources and for proportionate state funding of all political parties, to ensure transparency, equity and accountability in electoral contests', while also providing for public funding of political parties based on a threshold of voter support.<sup>49</sup>

In line with this commitment, the SADC Principles and Guidelines Governing Democratic Elections also state that funding of political parties must be transparent and based on agreed threshold in accordance with the laws of the land.<sup>50</sup> The ECOWAS Protocol provides that each member state may adopt a system for financing political parties, in accordance with criteria set under the law.<sup>51</sup>

Domestic legislation about the funding of political parties mostly focuses on restrictions to accessing government funds, rather than provisions ensuring equitable access to funds. The constitutional language merely states that political parties are required by law to account for

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<sup>46</sup> IPU Universal Declaration on Democracy, Article 12.

<sup>47</sup> Council of Europe Venice Commission, 'Guidelines on the Financing of Political Parties', Part (a).

<sup>48</sup> AU Declaration on Principles Governing Democratic Elections in Africa, Part III(g).

<sup>49</sup> CSSDCA Memorandum of Understanding, Key Performance Indicators 20 and 23.

<sup>50</sup> SADC Principles and Guidelines Governing Democratic Election, Article 4..

<sup>51</sup> *Ibid.*, Article 1 (i).

the sources and uses of their funds and assets.<sup>52</sup> Part V of the Presidential Elections Act 2005 provides that the EC shall offer each candidate a contribution amounting to one-thousand currency points as a contribution to be used solely for the election, in addition to other facilities as may be approved by Parliament.<sup>53</sup> The Political Parties and Organisations Act 2005 does not include provisions to ensure equitable funding, but rather merely outlines rules that parties must follow in collecting and accounting for campaign funds raised.

The funding provisions in the Political Parties and Organisations (Amendment) Act 2010 discriminate against small political parties in their day-to-day operations. Political parties and organisations are entitled to use government funds and public resources for their activities, subject to monitoring by the Auditor General. On the one hand, for elections, the Act guarantees equal levels of financing to all political organisations and parties.<sup>54</sup> For normal day-to-day activities, however, the level of funding each party will receive for these activities is based on the number of representatives the party has in Parliament.<sup>55</sup> It is clear that the ruling party, the NRM, has the majority of seats in Parliament, so there appears to be an inherent bias against smaller political parties with little or no parliamentary representation, especially since they already face financial disadvantages. The distinction between elections-related activities and day-to-day activities is not made clear. Without explicit guidelines to this regard, the ruling and larger parties will undeniably have more disposable funding to use in preparation for elections, or even for staffing and other resources that are fundamental to, but not directly related to, electoral campaigns. Therefore, when applied in practice, this Amendment Act means that the ruling party will be assured more government funding that could be used toward elections than the other registered contending parties. It thus becomes very difficult indeed to establish and campaign with a new party.

This situation contradicts the AU's standards, namely the AU Declaration and CSSDCA,<sup>56</sup> and guidelines in the international standards such as those of the Inter-Parliamentary Union.<sup>57</sup> The APRM Country Review Report for Uganda recommended that a system should be set up to 'Provide public funding for political parties represented in Parliament on a proportional and equitable basis, and have the EC manage it'.<sup>58</sup> While the current arrangement might be argued to be proportional according to the criterion of existing representation in parliament, it is not equitable since it does not take account of the existing resources available to the ruling party nor the level of support that a party may have in the country even if not represented in Parliament.

## Code of conduct for political parties

A crucial instrument to ensure the freedom and fairness of elections is the establishment of an enforceable Code of Conduct for political parties. Article 17 (4) of ACDEG requires state

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<sup>52</sup> Uganda Constitution (1995), Article 71(e).

<sup>53</sup> Presidential Elections Act 2005, Part V, Section 22(2).

<sup>54</sup> The Political Parties and Organisations (Amendment) Act 2010, 9 April 2010, Section 14A(b).

<sup>55</sup> *Ibid.*, Section 14A(c).

<sup>56</sup> African Union Declaration on the Principles Governing Democratic Elections in Africa, Section III(g).

<sup>57</sup> IPU Universal Declaration on Democracy, Article 12; and IPU Declaration on Criteria for Free and Fair Elections, Article 4.1.

<sup>58</sup> APRM Country Review Report for Uganda, January 2009, paragraph 284.

parties to 'ensure that there is a binding Code of Conduct governing legally recognised political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels'. The IPU Declaration on Criteria for Free and Fair Elections says that states should 'Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period'.<sup>59</sup>

Domestically, Article 72(2) of the Constitution requires Parliament to regulate the functioning of political parties. The Political Parties and Organisations Act 2005 provides both for a Code of Conduct and for the establishment of a 'National Consultative Forum' (NCF) where political parties and the electoral commission (and a representative of the Attorney General) may discuss and try to avoid points of conflict and tension, and ensure that the Code of Conduct is followed.<sup>60</sup>

The NCF is supposed to give political actors a much-needed setting in which political party leaders and other key stakeholders can engage in constructive debates over policy and procedural best practices. Currently disputes between these actors spill over into the media, which can bias and polarise the public. The NCF was only launched on 17 August 2010 in an event presided over by all electoral commissioners and attended by representatives from 28 of the registered 38 political parties.

The Political Parties and Organisations (Amendment) Act 2009 provides for the appointment, tenure and office of a chairperson for the NCF, who must be selected from the party with the most representatives in Parliament,<sup>61</sup> which is the NRM. The chairperson was supposed to be nominated at the 17 August meeting, but participants were not able to do so because no NRM representatives were present. Opposition party members present at the meeting complained that the NRM was not being fully co-operative and that the representatives sent by the NRM to meetings about the NCF could not make independent decisions.<sup>62</sup> Participants did nominate Amanya Mushega, a former member of the East African Legislative Assembly, as vice-chairperson.<sup>63</sup>

The Code of Conduct will fill a critical gap by providing a regularised set of standards binding on all political candidates for issues that are currently highly contentious, such as the misuse of government resources, the content and tone of official statements made to the media, and the conduct of political rallies. Parliament should approve the Code urgently so that it can be brought into effect and widely publicised..

## Freedom of speech and expression

Voters must be free to support or oppose the government without any kind of undue influence or coercion that may distort or inhibit free expression. This crucial right to freedom of opinion

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<sup>59</sup> IPU Declaration, Article 4(2).

<sup>60</sup> Political Parties and Organisations Act, Articles 19 and 20.

<sup>61</sup> *Ibid.*, Article 20(A).

<sup>62</sup> See: Maseruka, Josephine 'Political parties launch joint forum', *The New Vision*, Tuesday 17 August 2010.

<sup>63</sup> *Ibid.*

is provided in international law by Article 19 of the ICCPR,<sup>64</sup> which includes no provision for restriction of the right. The right to freedom of expression under Article 19 can be narrowly limited in the interest of respecting the rights and reputations of others and for the protection of public order and national security.<sup>65</sup> While it seems that state authorities could easily circumvent their duty to protect freedom of expression by citing fabricated concerns for public order, this limitation on expression is interpreted very narrowly. When reviewing such cases, the UN Human Rights Committee requires states to have detailed and credible concrete evidence of a serious threat to national security or public order. The right to freedom of information is an extension of the freedom of expression, as it conveys the right to disseminate information, which is especially important for building an informed electorate. Article 19, paragraph 2 of the ICCPR protects the freedom to seek, receive and impart information in any form, including through verbal, written or artistic means.

These international principles are reflected also in the African Charter on Human and Peoples' Rights, ACDEG, the African Youth Charter, and other standards at African level, including the AU Declaration, CSSDCA and numerous other documents.

In domestic legislation, the Article 29(1)(a) of the 1995 Constitution provides for freedom of speech and expression, which includes freedom of the press and other media. This is in compliance with international standards.

## **Freedom of information and access to the media**

The right to freedom of information is an extension of the freedom of expression, since it conveys the right to disseminate information and opinions. Press freedom is crucial to realising democracy and good governance. It enhances discussion, dialogue, consultation and the flow of information, and ensures checks and balances on the Executive. Critically, it enhances democracy by enforcing transparency and accountability to the people from whom the mandate to govern is obtained.

Article 19, paragraph 2 of the ICCPR protects the freedom to seek, receive and impart information in any form, including through verbal, written or artistic means. The ability of media agents to enjoy freedom of information is especially important for building an informed electorate. The Inter-Parliamentary Union Declaration encourages the media to adopt a Code of Conduct to govern the election campaign and the polling period.<sup>66</sup> Article 17(3) of ACDEG provides for states to 'Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections'. Part IV of the AU Declaration guarantees individuals and political parties the right to express political opinions with full access to the media.<sup>67</sup>

Domestically, Article 29(1)(a) of the 1995 Constitution provides for the right to freedom of expression and speech, which includes freedom of the press and other media. The legal

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<sup>64</sup> ICCPR, Article 19, paragraph 1.

<sup>65</sup> *Ibid.*, paragraph 3.

<sup>66</sup> IPU Declaration on Free and Fair Elections, Article 4(2).

<sup>67</sup> AU Declaration on Principles Governing Democratic Elections in Africa, Part IV(5).

framework governing access to media includes the Press and Journalists Act (Cap 105, 2000),<sup>68</sup> the Electronic Media Act (Cap 104, 1996) and the Access to Information Act (2005).<sup>69</sup> These laws regulate the role of the media in the electoral process. However, according to some stakeholders, the Access to Information Act has not been implemented due to a lack of established regulations. The Ministry of Information should adopt regulations for the Access to Information Act so that it can be properly implemented.<sup>70</sup>

The Presidential Elections Act 2005 provides that political candidates must have freedom of expression and free access to information. It states that during the campaign period, every public officer, authority and institution shall give equal treatment to all candidates and their agents.<sup>71</sup> It also states that every political candidate shall enjoy complete and unhindered freedom of expression and access to information in the exercise of their right to campaign.<sup>72</sup> The Press and Journalist Act and the Electronic Media Act both establish regulatory bodies for the media. The Media Council regulates print media, including the conduct, ethical standards and discipline of journalists. The Electronic Media Act provides for setting up a Broadcasting Council that will license and regulate radio and television stations and will deal with all matters relating to the electronic media. The legislative mandate for a Media Council seems to fall in-line with the IPU's provision encouraging the establishment of a Code of conduct for the media (as well as political parties and candidates), but there does not seem to be an established Code of Conduct specifically for the electoral process. Uganda's constitutional provisions comply with the Declaration on the Principles of Freedom of Expression. The political and democratic climate in recent years has created some openings that have allowed citizens and media to criticise the political system and individual politicians without generalised fear of reprisals.<sup>73</sup>

Despite the constitutional guarantees of freedom of the press and enactment of legislation that expands this right, there are some laws that still restrict the freedom of the media. Requirements for journalists to register with the Media Council have been resisted in practice, since it is regarded as being very restrictive; journalists have established their own Independent Media Council, claiming the right to self-regulate rather than be subjected to government regulation.<sup>74</sup> Legislative hindrances to the free access of information and the media include the Penal Code Act, which still criminalises materials alleged to be seditious, sectarian and defamatory, and the Anti-Terrorism Act 2002, which prohibits 'promoting' terrorism<sup>75</sup> but does not expressly define what acts constitute the promotion of terrorism. It would be easy for security or other forces to declare that opposition campaign statements or actions are

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<sup>68</sup> Section 3(1) of the Press and Journalists Act (PJA), Cap. 105, provides that 'a person may, subject to the provisions of this Statute, publish a newspaper'.

<sup>69</sup> Section 5(1) of the Access to Information Act 2005 allows citizens to access information that is in possession of the State or any State agency, except where accessing the information would prejudice the State's security or would interfere with any individual's right to privacy.

<sup>70</sup> This recommendation comes from feedback from the validation workshop for this report, 19 August 2010.

<sup>71</sup> Presidential Elections Act 2005, Section 23(1).

<sup>72</sup> *Ibid.*, Sub-section (2).

<sup>73</sup> 'Public Broadcasting in Africa Series: Uganda', OSIEA, Open Society Foundations Media Programme and AfriMAP, 2010, p.29.

<sup>74</sup> *Ibid.*, pp.31–32.

<sup>75</sup> Section 8(b) makes it an offence to disseminate and publish news or materials that promote terrorism.

sedition if they wanted to suppress their political voices. In light of these issues, the National Programme of Action arising from Uganda's review by the APRM committed the government to 'Review existing laws regarding press freedom and their implementation, with a view to removing contradictions and undue restrictions'. In a landmark case on freedom of expression, the Constitutional Court of Uganda declared the law on sedition unconstitutional on 25 August 2010.<sup>76</sup>

## D. Preventing electoral malpractices

### Electoral fraud

With respect to electoral fraud, Part III(f) of the AU Declaration requires all state parties to take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security. This is echoed in Article 75 of the SADC Principles and Guidelines.

Uganda's Anti-Corruption Act 2009 defines various types of corruption; the types pertinent to electoral fraud include diversion of public funds, influence-peddling, conflict of interest, abuse of authority, and embezzlement. The Act also provides offences and penalties for the various types of fraud.<sup>77</sup> The Presidential Elections Act 2005 has an even more extensive list of types of electoral malpractices and the penalties that they incur. The enumerated offences include: giving or receiving bribes in any form (Article 64); obstructing a candidate physically or otherwise in any way (Articles 66–68); falsely defaming candidates in any way (Article 69); tampering with ballots or the individual exercise of voting rights (Articles 72 and 75); and coercing voters with undue direct or indirect influence (Article 76). In addition, it lists some offences that are prohibited on voting day that infringe upon the rights of voters, the rights of candidates, and the ability of election officers and monitors to carry out their work. Most offences are punishable with a fine and/or a prison sentence of up to three years. The types of electoral fraud enumerated in the Electoral Commission Act are procedural, and pertain mostly to offences during the voter registration process.<sup>78</sup>

### Independent observers

States are required by international law to ensure impartial administration of the elections, which includes any and all measures necessary to prevent fraud. This may entail establishing an EC and/or inviting observers, both local and international, and seeking advisory services, both of which may be available from regional bodies as well as the United Nations.<sup>79</sup> Under Article 19 of the ACDEG, state parties are required to inform the AU Commission of scheduled elections and invite an AU observer mission, guaranteeing conditions of security, access to

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<sup>76</sup> *Andrew Mujuni Mwenda and the Eastern African Media Institute (U) Ltd vs. Attorney General*, Consolidated Constitutional Petitions No.12 of 2005 and No.3 of 2006, Constitutional Court, Judgment 25 August 2010.

<sup>77</sup> The Anti-Corruption Act 2009, Part II, Sections 26–35.

<sup>78</sup> The Electoral Commission Act, Sections 26–28.

<sup>79</sup> 'The Framework for Future Efforts at Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections', UN Commission on Human Rights, 1959.

information, non-interference, freedom of movement and full cooperation. Any observers, whether in the form of domestic non-governmental bodies or foreign groups, must be non-partisan, neutral and objective, so as to imbue confidence in the electorate. The absence of this popular confidence in the true impartiality of election observers may serve to decrease both willingness to participate in the electoral processes as well as impair the ability for individuals to freely express their political will without fear of reprisal. In the interest of ensuring transparency in the electoral process, the AU Declaration requires all state parties to accredit independent as well as domestic national election observers.<sup>80</sup>

## E. Dispute settlement mechanisms

International law does not provide a lot of guidance for how states should resolve disputes that arise during the electoral process. Generally, there is consensus that the judiciary complements independent electoral bodies, and is often the highest level of appeal for certain electoral disputes. The UN recognises the importance of an independent judiciary in general, and requires that the constitution or statutory laws guarantee that the judicial body is free from restrictions, improper influences or pressures, whether direct or indirect. It is incumbent upon the state to implement all measures necessary to ensure that the judiciary remains independent and free from bias or fraud.

Regionally, the AU Declaration requires all state parties to establish competent legal entities such as effective Constitutional Courts that can arbitrate disputes arising from the conduct of elections. Part IV(6) of the AU Declaration gives individual and political parties the right to appeal and to obtain timely hearings against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.

Domestically, disputes over election results can be filed with the EC, which is authorised to hear complaints and render decisions. Anyone aggrieved by an EC decision that arises before or during polling may appeal to the Supreme Court for a final decision; there are no further appeals available for election-related disputes beyond the Supreme Court.<sup>81</sup> This is in compliance with regional legislative mandates, and it includes an appeal of the actual results of a presidential election, which is governed by Article 104 of the Constitution.<sup>82</sup> The Parliamentary Elections Act establishes that any petition challenging parliamentary elections shall be filed in the High Court within 30 days after the EC publishes the final election results in the Gazette. The High Court then has a maximum of six months to render a decision on the petitions.<sup>83</sup>

## F. States of emergency

International standards relating to states of emergency and democratic transitions are relevant in countries like Uganda, where the post-independence years have been marked by alternating

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<sup>80</sup> African Union Declaration on the Principles Governing Democratic Elections in Africa, Part III(g-i).

<sup>81</sup> Uganda Constitution (1995), Article 64.

<sup>82</sup> After the Electoral Commission announces the election results, any aggrieved presidential candidate has ten days to file a petition with the Supreme Court on the grounds that the election was not valid. The Court must then make an expeditious inquiry and make a determination within 30 days. The Court may choose to (a) dismiss the petition, (b) declare which of the candidates was validly elected, or (c) annul the election and hold a new election within 20 days of annulment.

<sup>83</sup> Parliamentary Elections Act 2005, Section 63(9).

military and democratically-elected regimes. First and foremost, states must review or adopt legislation that clearly defines what can constitute a state of emergency, as well as the extent to which the constitutional order – including guaranteed rights and individual freedoms – may be altered in the event of an emergency situation. Generally, a state of emergency should only be declared when a public emergency ‘threatens the life of the nation’ in such a way that cannot be adequately addressed by the Constitution and existing law. The state of emergency must be declared before any exceptional measures are put in place. The measures imposed must be strictly required to meet the exigencies of the situation, they may not be discriminatory on any basis, and they strictly may not in any way infringe upon international standards on the right to life – freedom from torture, slavery, and cruel and unusual punishment. Lastly, during a state of emergency, no one can be held responsible for prior actions that subsequently become criminal offences, nor can heavier penalties be imposed retroactively based on the state of emergency laws and measures.<sup>84</sup> While restrictions on freedom of expression, for example, may be allowed during an emergency, the restrictions should be the minimum possible.<sup>85</sup>

As previously mentioned, Article 103(3)(d) of the Ugandan Constitution merely states that if a presidential election cannot be held due to a state of war or a state of emergency, then Parliament shall prescribe the revised period during which the elections shall be held. There are also legislative provisions that give the EC the power to adapt election monitoring mechanisms (e.g. number of election officers at polls) in the case of an emergency.<sup>86</sup> However, Ugandan legislation regarding the calling a state of emergency does not meet the level of specificity required by international law – especially with regard to what a state of emergency is, when one can be called, and what consequences a state of emergency has on rights, freedoms and the electoral process. This is of particular concern for the upcoming elections due to concerns that general unrest and societal instability may lead to riots. If this happened, and a state of emergency were called, the mechanisms are not in place to ensure transparency in the electoral process and the safeguarding of human rights.

## G. Voter education

The IPU Declaration states: ‘[a] sustained state of democracy requires a democratic climate and culture constantly nurtured and reinforced by education and other vehicles of ... information. Hence, a democratic society must be committed to education in the broadest sense of the term, and more particularly civic education and the shaping of a responsible citizenry’.<sup>87</sup> To this end, it requests that states ‘ensure the permanent enhancement of equality, transparency and education and to remove obstacles such as ignorance, intolerance, apathy, the lack of genuine choices and alternatives and the absence of measures designed to redress imbalances or

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<sup>84</sup> ICCPR, Article 4; United Nations Centre for Human Rights, ‘Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections,’ United Nations, New York and Geneva, 1994. See also the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms In a State of Emergency.

<sup>85</sup> See the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39, 1996.

<sup>86</sup> The Electoral Commission Act, Article 50(1).

<sup>87</sup> IPU Universal Declaration on Democracy, Part 19.

discrimination of a social, cultural, religious and racial nature, or for reasons of gender'.<sup>88</sup> From this it is clear just why it is so critically important to educate voters on the democratic principles and values related to their voting rights. Governments are expected to work in close cooperation with civil-society groups and other stakeholders to implement civic programmes that can help achieve this goal.<sup>89</sup>

Regionally, the AU Declaration also requires all state parties to work in close cooperation with civil-society groups and other relevant stakeholders to promote civic and voters' education on democratic principles and values.<sup>90</sup> The SADC Principles and Guidelines Governing Democratic Elections also has a general requirement that member states ensure and implement voter education, but does not include a more specific mandate.<sup>91</sup>

In Uganda, the Constitution gives to the EC the responsibility of formulating and implementing election-related voter education programmes.<sup>92</sup> Article 12 of the Electoral Commission Act takes up and essentially re-delegates this responsibility by accrediting any non-partisan individual, group, institution or association to carry out voter education, subject to the Commission's guidelines.

## H. Conclusion and recommendations

Uganda's legislation mostly conforms with international standards and provide reasonable safeguards to facilitate free and fair elections, though there are gaps and places where national law is in conflict with international standards. There are also subordinate pieces of legislation that impose restrictions on political actors, civil-society organisations, media and voters themselves and as such negate the application of international standards.

In April 2007, the EC proposed 18 amendments concerning electoral laws to the Minister of Justice and Constitutional Affairs. These amendments were meant to:

- Require national media to allocate sufficient time and space for registered political parties;
- Require organisations to periodically conduct voter education;
- Modify the Local Government Act to determine the role and participation of political parties and organisations in the electoral process;
- Modify the Local Government Act to establish a cut-off date for the creation of new districts at least one year before the elections;
- Amend laws to fill the lacunas created by the Constitutional Court in Petition No.8 of 2006;<sup>93</sup>
- Amend the Electoral Commission Act to enable the ECs to defer the implementation

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<sup>88</sup> IPU Universal Declaration on Democracy, Part 18.

<sup>89</sup> IPU Declaration on Criteria for Free and Fair Elections, Article 4(1).

<sup>90</sup> AU Declaration, Part III(e).

<sup>91</sup> Article 2(1)(8) of the Guidelines.

<sup>92</sup> Uganda Constitution (1995), Article 61.

<sup>93</sup> The lacunas are related to the qualifications of being a Member of Parliament vis-a-vis special interest groups like the army. See Article 80(4) and Article 78 (1) (c) of the 1995 Constitution.

- of any electoral laws passed less than one year prior to the election date; and
- Consolidate the various electoral laws.<sup>94</sup>

Some of these amendments have been passed, others have not been addressed. Those amendments that have been made have been adopted very late in the process, against the Commissions own recommendations: the Political Parties and Organisations (Amendment) Act 2010, the Parliamentary Elections (Amendment) Act 2010, the Electoral Commission (Amendment) Act 2010, and the Presidential Elections (Amendment) Act 2010 all entered into law less than one year before the 2011 elections.

Uganda must streamline all its legislation to ensure that the electoral process is conducted in-line with international standards and guidelines on handling elections. In particular:

- In line with the commitment made in the National Programme of Action arising from the APRM process Uganda should undertake a review of ‘all electoral laws and other relevant legislation to ensure that they promote a vibrant multiparty system’.
- The government should request the assistance of the African Union’s Democracy and Electoral Assistance Unit and the Democracy and the Electoral Assistance Fund, to provide advisory services or assistance for strengthening and developing the electoral institutions and processes in Uganda before 2011.
- The Minister of Justice and Constitutional Affairs should expedite the drafting of the Code of Conduct for political parties and table it before Parliament for approval, and the EC and the political parties must publicise, implement, enforce and adhere to it, respectively.
- The new NGO Registration (Amendment) Act must be assessed and revised so that the government does not have such expansive powers over civil society and the rights to assemble. In particular, Parliament must reassess the periodic permit requirement, as well as the extent of the government’s power over the dissolution of NGOs.
- The Political Parties and Organisations (Amendment) Act 2010 must be revised to provide for ‘equitable’ funding as opposed to ‘tilted’ funding for day-to-day activities based on numerical strength in Parliament. In addition, the distinction between election-related activities and day-to-day activities should be clearly defined, so that parties know exactly what their day-to-day funding can be used for. In practice, this law is biased in favour of the incumbent ruling party, which has majority representation in Parliament; thus, it contradicts international standards relating to equitable funding to political parties in an electoral process. Political parties must also engage in fundraising and also encourage their members to contribute towards the financing of the party.
- In the interest of ensuring free access to the media, and in-line with the recommendations of the APRM, the Uganda Law Reform Commission and Parliament should review legislation that affects the media, such as the Penal Code and the Anti-Terrorism Act,

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<sup>94</sup> To have all laws related to elections reflected in one legislation instead of having them scattered in many pieces of legislation.

with a view to repealing those provisions that violate international standards.

- The government should respond to the East African Community's request for information so as to not be a hindrance on the progress of the Election Bill and the establishment of the East African EC, which aims to regulate election procedures and ensure electoral security.
- The government should take steps to ensure that Uganda ratifies the African Charter on Democracy Elections and Governance as soon as possible.

# 3

## Context for the electoral process in Uganda

This chapter presents information from interviews held with different respondents all over the country concerning the conduct and management of elections in Uganda. The specific focus of these interviews was on the context of respect for those human rights that most directly affect the electoral process, including access to media, freedom of assembly, freedom to organise and associate and civic rights and duties, all critical for the overall right to participate. Despite the concerns expressed in the previous chapter, there is consensus in the sentiments expressed across the board from all stakeholders interviewed that the most crucial concern is not with the quantity or quality of Uganda's electoral laws, but rather, with the implementation – or lack thereof – of these laws: 'What we need in Uganda is not new laws but the implementation and enforcement of the existing ones. We should concentrate more on why and how we can enforce our laws and not on how to multiply them'.<sup>95</sup>

### A. Access to media

A free and fair election is not only about casting a vote in proper conditions, but also about having adequate information about parties, policies, candidates and the election process itself so that voters can make an informed choice. From the study, it is apparent that, beyond the problematic legal framework outlined in the previous chapter, censorship is being imposed in practice on opposition groups, especially in state-run media but also in some privately owned

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<sup>95</sup> Paper presented by Retired Justice George Wilson Kanyeihamba during a conference on Democracy and Governance at the Mbarara University Faculty of Development Studies on 11 July 2009 and reproduced in *The Weekly Observer*, 26 July 2009.

media houses. In the period leading up to the 1980 elections, political parties were each allotted equal time on selected state media, or radio and TV. However, this has not been the case in the recent elections; it is imperative that all parties in the political process be given equitable airtime, especially in broadcast media run by the state.

The journalists interviewed from all regions in both print and electronic media strongly expressed the view that the Media and Broadcasting Councils both have excessive powers over the media houses and practitioners and are not independent of government, whom the journalists often criticise. They point to the composition of the Media Council and the Broadcasting Council, the majority of whose members are politically nominated and appointed by the minister responsible for information. Several journalists were of the view that media freedom has been narrowed by laws that provide a weighty role to government-controlled regulatory bodies who are vested with powers to decide how the media as an independent industry should operate.

According to the EC, 'the media play a crucial role in disseminating information and relaying events in the course of elections and sensitising the population through coverage of the electoral process. Their coverage must be balanced and fair'.<sup>96</sup> This study discovered that access to the media is not balanced at all, and varies for different political actors. In Uganda, print and electronic media are run and operated at two levels. There are government-run media outlets such as the Uganda Broadcasting Corporation and the New Vision. The latter is composed of subsidiaries, such as FM radio stations (Vision Radio and Radio West) and local newspapers (e.g. Orumuri, Bukedde, Rupiny and Etop). There are also many privately owned newspapers, such as the Monitor, the Observer, the East African, and Red Pepper. However, it has been noted that the state-run media often gives more coverage to the ruling party candidates than to the opposition groups.<sup>97</sup>

The market in which the media operates is another factor that determines coverage of news stories relating to political actors. As one media practitioner in Mbarara put it: 'Stories must be saleable because we are in the market to sell'.<sup>98</sup> A journalist interviewed from Western Uganda stated that media coverage is also dependent on the prevailing political climate.. He gave an example of the instance when the opposition candidate Dr Kiiza Besigye appealed to the citizens in Central Uganda to boycott the New Vision and its sister papers as a result of a story that was run in relation to the cultural kingdom of Buganda that was deemed demeaning. This, in view of the journalist was counterproductive and thus the print media did not give any coverage to Dr Besigye during that period. Beti Kamyia, the leader of the Uganda Federal Alliance was also quoted in one of the local dailies as stating that, 'I didn't know media houses personalise political issues. I have been blacked out and they have refused even my apologies for anything I might have done wrong'.<sup>99</sup>

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<sup>96</sup> Commissioner Jenny B.Okello, 'Managing Successful Free and Fair Elections'. A paper delivered at a lecture for the Police Training School, Kabalye Masindi, 13 November 2009.

<sup>97</sup> Survey carried out by DemGroup, Uganda Media Coverage of the 2006 Elections, 1 February – 10 March 2006.

<sup>98</sup> Senior news reporter with a local newspaper in Mbarara.

<sup>99</sup> 'Kamyia is in media blackout', *Sunday Monitor*, 30 March 2010, p.17.

It was also observed by a journalist interviewed from Mbarara that most of the private radio stations are owned by politicians, especially by ruling party members, and thus they determine how much time to allocate to any given candidate. In turn, opposition politicians tend to be hostile to such private stations, thus further complicating the problem. According to one news editor in Mbale, their radio station, despite being private, cannot just host any political leader, especially on political talk shows. In their view, it is a risk to allow political actors from the opposition to feature on their talk shows. This view was expressed by a large number of people who asserted that many journalists and media outlets now practise self-censorship for fear of prosecution or loss of broadcasting licenses, which must be obtained on an annual basis.

Another journalist interviewed in Mbale indicated that private FM stations are both community radios and business ventures and therefore whoever can afford to pay the radio station fees will get as much coverage as the costs. She noted that when a ruling party candidate is hosted, the candidate often dictates the amount of time that they should be allocated by insisting on extra hours as opposed to the one-hour policy as set by the radio station. This, in her view, was tantamount to intimidation. She added that other times authorities such as the Resident District Commissioners have to be informed in order to get clearance to host a political leader from the opposition.

In all the regions visited, the EC officials interviewed categorically stated that they have no control over the media houses, whether public or private and as such could not influence equitable distribution of airtime to all political parties.

## **B. Freedom of assembly**

Freedom of expression and assembly are necessary tenets for any successful democratic process and as such cannot be done without, or restricted unnecessarily, in a democratic society. During the study, it was observed that this was one of the most infringed-upon rights, especially the opposition party's right to freely express itself. Unruly individuals from other political parties, militia groups and, most disturbingly of all, the police themselves are at times responsible for these violations.

In some parts of Western Uganda such as Ntungamo district, interviewees revealed that the freedom to assemble and address citizens is not fully enjoyed or exercised by members of the opposition. During the course of the study, reports of intimidation against opposition candidates and their supporters were registered in all the regions visited. The major perpetrators of this intimidation were the security personnel such as the police and army. There were similar sentiments raised in the district of Bushenyi where state agents are accused of taking sides during the campaigns and allowing the ruling party candidates to freely assemble and campaign as much as they wish while the opposition groups are restricted in terms of location of the assemblies and the duration. It is perceived by a number of respondents that a considerable number of candidates belonging to the ruling party are deemed untouchable during the electoral campaigns and on many occasions seem to operate outside the confines of the law.

In other regions like Fort Portal, respondents queried whether citizens are aware of the existence of the freedom of assembly and freedom to debate on political issues. This is in reference to rural areas as opposed to urban areas. In regions like Kanungu, the respondents who were interviewed that belong to the opposition groups expressed high levels of intimidation and expressed fears about attempting to publicly participate in policy debates and campaign against the ruling party. Candidates belonging to the ruling party seem to have an upper hand. It was reported by respondents in Kanungu that often times the state apparatus, in form of security agents, have been deployed to ensure that the opposition cannot mobilise themselves during the campaigns. This at times has led to clashes and violent conflicts between the two different groups.

In areas where ruling party supporters are dominant, such as Fort Portal, people interviewed expressed that the freedom to assemble freely and campaign is to a large extent enjoyed by the NRM, but the opposition parties do not enjoy the same right. It was generally observed in that region that the minority who belong to opposition groups are incapable of identifying themselves with their own parties or political groups for fear of being ostracised.

In Northern Uganda (Gulu), it was observed that the ruling party (irrespective of the government in place) has always interfered with the enjoyment of the freedom to assemble by the opposition. Incumbent leaders during different regimes often blocked other opposition groups from holding rallies using the different arms of government.

In Lango region, it was observed that citizens enjoy the freedom to assemble and campaign freely to a large extent, save for a few incidences that often occur in urban areas where one group uses hooligans to disrupt another group's rally.

In Kansanga in May 2010, members of the public had gathered to have a consultative meeting with their MP (Makindye East) when the police disrupted the meeting and arrested some individuals. In June 2010, members of the Inter Party Cooperation (the coalition of opposition parties) staged a demonstration at the Clock Tower in Nakivubo and Women for Peace staged a demonstration against the EC at its office with the objective of 'forcing' them to step down. This led to serious assault and arrest by the police and a militia group, claiming they were holding an illegal rally or assembly.<sup>100</sup>

### **c. Freedom of organisation and association**

While Ugandan law provides for the full exercise of free association, it has been observed that in practice it is enjoyed in varying degrees by the political groups interviewed.

Uganda has over 20 registered political parties, but only seven of these are visibly active.<sup>101</sup> Several of the other parties were registered by individuals but have never been established as active political actors.

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<sup>100</sup> 'Kiboko squad resurfaces as police break anti-EC demo', *Daily Monitor*, 10 June 2010; and '35 women arrested over anti-EC demo', *Daily Monitor*, 19 June 2010.

<sup>101</sup> The visible parties are: NRM, UPC, DP, CP, JEEMA, FDC and the PPP.

## **Inequitable access to resources for ruling and opposition parties**

The freedom to associate is not fully enjoyed by opposition groups due to lack of visible structures, especially in the regions visited for this study. This lack of visibility arises from the fact that most political parties are unable to organise and mobilise their supporters because their funds are limited or non-existent. In Gulu, Mbarara, Kanungu, Fort Portal and Mbale, some parties had no designated office space, so meetings with party representatives were held in either hotels or private offices.

The NRM ruling party, however, were noted to be using space in offices adjacent to the Resident District Commissioner's office (RDC) in Gulu district. Respondents often mentioned that it is common to find local councillors doing the work of and sharing resources with the NRM, thus giving the NRM an unfair advantage over the rest of the parties contending in the 2011 elections.

A large number of respondents interviewed in Central Region expressed their dissatisfaction over the inequitable distribution of funds to parties for their normal day-to-day activities. As noted in the chapter on the legal framework for elections in Uganda, the Political Parties and Organisations (Amendment) Act 2010 allocates funding based on each party's numerical strength in Parliament.<sup>102</sup> It was stated that the ruling party has the majority of seats in Parliament and therefore the discontent expressed centred on the bias and financial impediments already faced by political parties that have little or no parliamentary representation.

One of the opposition political parties' representatives in Central Region reported that the EC has also frustrated political parties' freedom to organise and associate with others. He stated that when the party lodged documents for amendment in their constitution to be gazetted by the EC, the Commission kept on requesting different requirements every time the party officials attempted to follow up the progress of their lodgement. This he stated has frustrated the party operations.

These problems were noted by the foreign observer groups that had the following verdict in respect to the 2006 presidential and parliamentary elections in Uganda.

Overall, however, the elections fell short of full compliance with international principles for genuine democratic elections, in particular because of a level playing field was not in place. Despite the adoption of a multi-party system and its officially sanctioned organs remained intact, active and funded by the state throughout the election period, with the effect that the president and his part enjoyed substantial advantages of incumbency and existing legal presidential privileges. Further, the president and his party the National Resistance Movement utilised state resources in support of their campaigns including use of government cars, personnel and advertising, and received overwhelming and positive coverage on state television and radio.<sup>103</sup>

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<sup>102</sup> Political Parties and Organisations (Amendment) Act 2010, Section 14A.

<sup>103</sup> The European Observation Mission Report as cited in the Presidential Election Petition No.1 of 2006, p.124.

## **Constraints on civil-society organisations engaged in civic education**

All the NGOs interviewed countrywide were critical of the NGO Registration (Amendment) Act 2006, which gives the government considerable control over the registration and operation of civil-society organisations. In particular, they criticised the requirements that NGOs must be monitored by a board that is heavily composed of and controlled by government representatives from various ministries, the Office of the Prime Minister, the Internal Security Organisation and the External Security Organisation.<sup>104</sup> They expressed concerns over their human rights work being viewed as political and hence being stifled by local district authorities in their operations.

## **D. Ensuring participation for all Ugandans**

### **Gender discrimination**

It was noted that vulnerable groups are at times denied freedom of participation in the electoral process. Respondents in both Gulu and Jinja noted that disenfranchisement of women occurs sometimes as a result of some cultural practices that are highly demanding of women. Such cultures expect women to undertake housekeeping duties to the extent that they generally would not be expected to be outside their homes during the day, even to attend to electoral activities. Thus, these women are denied their constitutional rights to vote.

### **Access to voting for persons with disabilities**

People with disabilities do not fare well in the electoral process either. While the Constitution instructs Parliament to make laws to provide for the facilitation of citizens with disabilities to register and vote, this has not been put into effect. Therefore, people with visual impairments and other sensory disabilities often face extra challenges in participating in the electoral process. The UN Convention on the Rights of Persons with Disabilities, which entered into force in 2008, requires by its Article 29 that states 'ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected'. Uganda is a party to that treaty.

According to the National Union of Women with Disabilities (NUWODE), Ugandans with various disabilities<sup>105</sup> experience routine discrimination in their communities, which extends to the electoral process. During elections, there are no special arrangements made for people with disabilities, thus impairing their ability to freely associate and to freely exercise their basic right to vote. Necessary arrangements such as tricycles or wheelchairs, crutches, and calipers for the disabled are expensive, and disabled voters cannot afford them. To comply with international and regional commitments and domestic legislation, the government should undertake to assist these voters so that they can freely and easily participate in the electoral process.

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<sup>104</sup> The Board has powers to: issue registration certificates and annual licenses subject to conditions 'generally as it may think fit' to insert in the registration certificate information particularly relating to: a) the operation of the organisation, b) where the organisation may carry out its activities, c) staffing of the organisation (see Section 2 (2) of the Act).

<sup>105</sup> The disabilities referenced by NUWODE include physical disabilities, blindness, deafness and epilepsy.

## Ugandans living abroad

While the 1995 Constitution guarantees the right to vote for all citizens, in reality Ugandan nationals who live abroad temporarily or permanently and who are outside the country when elections take place are often disenfranchised because of a lack of procedures enabling them to exercise that right. Provisions must be put in place to permit these nationals to take part in the political future of their country. The Ministry of Justice and Constitutional Affairs in conjunction with Parliament should consider a review of the electoral laws to cater for all citizens living outside the country to be allowed to vote in national elections.

## E. Civic education

As indicated from the interviews conducted, the incentives that motivate Ugandans to participate in the electoral process vary widely. Individual reasons cited by a number of respondents interviewed countywide include: the desire to change the government or leadership, excitement due to publicity of the elections, and ethnic ties to particular candidates. Those who vote to change the political leadership are guided by the different party manifestos, but the majority in rural areas also seek inducements, for example, money, soap and salt, from the potential candidates. A respondent in Jinja stated that, 'It is the hand that gives that receives'. Those who vote along ethnic lines expressed the desire to vote for a candidate belonging to the same ethnicity. Some citizens do not participate in the electoral process; their non-participation has been attributed to voter apathy, explained as having no faith in elected leaders, or to a belief that elections do not cause any significant changes in their lives.

It was also acknowledged by all respondents across the country that the level of awareness especially in rural areas about the value of elections and voting is very low. All respondents reiterated the importance of continuous and intensive country wide civic education to ensure that all citizens are empowered to make informed choices during elections. The majority of the rural population is in need of broad-based civic education – touching on such themes as nation-building, democracy, governance and human rights. There is a wide information gap between rural and urban areas and this has contributed to the commercialisation of election campaigns and to voter apathy.

Interviews revealed that a large number of people, perceive civic education as voter education, yet civic education is more than voter education; it involves knowing one's rights as a citizen and being aware of how to fully participate in bringing positive change in the community. There are numerous civil-society organisations, and also government agencies, providing civic education across the country, however, their initiatives have not been coordinated, are sporadic and the impact has not been assessed. It has also been noted that civic education carried out during the run up to election periods has created a lot of mistrust, suspicion, raised tensions among the electorate and been misconstrued as partisan or opposition attempts to win votes.

A respondent expressed concern over the fact that many civic education programmes are initiated without any baseline surveys carried out and this has meant that the programmes were not well-targeted, while it is difficult to evaluate the effect they achieved. He also noted that civic

education campaigns are usually introduced and intensified around the election periods<sup>106</sup> with a greater concentration on voter education which has led to a lot of mistrust among citizens about the purpose of the education.

In 1994, the EC accredited a number of civil-society organisations to monitor elections; among these was the National Organisation for Civic Education and Monitoring (NOCEM) which was involved in civic education and was active during the time of elections. It issued reports and pointed out a number of election malpractices that characterised the 1994 election of delegates to the Constituent Assembly. Thereafter, the Democracy Monitoring Group (DEMG) was formed by a consortium of four civil-society organisations. The members of DEMG are Uganda Joint Christian Council (UJCC), Action for Development (ACFODE), Transparency International Uganda (TIU), and the Centre for Democratic Governance (CDG). DEMG has accumulated experience in monitoring elections in Uganda since 1994. In 1996 it worked as Civic Education Joint Coordination Unit (CEJOCU), and in 2001 under the name National Election Monitoring Group (NEMG).

The Uganda Human Rights Commission has a constitutional mandate to provide civic education to enhance respect of human rights and create awareness on the constitution. It spearheaded the first efforts to draft the first civic education elective core curriculum. In 2004, the UHRC together with five civil-society organisations which included MS Uganda (an affiliate of Action Aid), UJCC and National Association of Women Organisations participated in the National Civic Education Programme and prepared the National Curriculum Framework which was published to provide a general body of material on civic education, which everyone could use. The programme was implemented all over the country but it ran for a short time due to limited funding. Although no impact evaluation was carried out, the report on the programme revealed that the major challenges included demand for allowances mainly by the local authorities, limited transport means, insecurity in some sub-counties, timing of the programme in relation to election campaigns and the negative attitude by some of the community leaders.

The majority of the civic education programmes have been concentrated around the election periods and there is need for continuous education to be carried out among the public and in schools. The challenge that has always been faced is the failure of these projects to be sustained over long periods due to donor funding limitations to particular periods. An example of these is the funding that was provided to the Uganda Human Rights Commission provided by the European Union to carry out civic education at grassroots levels in the communities of Uganda, and was characterised by a series of activities that range from 'training of trainers' workshops for voluntary action groups (VAGS) and political commissars of the Uganda People's Defence Forces. It also involved carrying out of human rights trainings for district human rights desks and/or committees and sensitisation of human rights and peace clubs. The project ran from January 2009 and ended in April 2010. Presently, the 'Deepening Democracy Programme' (DDP) funded by a group of Uganda's development partners is supporting the

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<sup>106</sup> Attempts to engage citizens in civic education were carried out during the Constituent Assembly, 1996; Referendum, 2000; and election periods, 2001 and 2006; which leads one to question whether these efforts were not civic education but voter education.

Uganda Human Rights Commission in setting up an advisory group on civic education to ensure consistency of messaging and adhesion to minimum standards.

The EC informed the researchers for this report that it only engages in voter education which is tagged to particular activities such as voter registration, and its funding is constrained and cannot permit the EC to carry out any civic education. It noted that it accredits civil-society organisations to carry out civic education but these are also challenged by funding limitations.

A number of respondents shared their weariness with the lecture methods employed by some civic facilitators during workshops, indicating that more often than not use of visual aids such as drama and videos would have a greater impact. It was also noted that follow up is rarely done to ensure that the information shared during the training of trainers has been passed on to the communities.

## **F. Donor support for the democratic process**

Political parties and candidates are key stakeholders in elections. Parties and candidates are also actors that have the potential to be destructive in the electoral process. Practices of vote-buying, proliferation of defamation and hate speech in campaigns, voter intimidation by party officials, corruption in decision-making, and the systematic exclusion of certain sectors of society constitute examples of where political parties threaten the functioning of democratic systems rather than supporting it.

There are currently 36 registered political parties in Uganda. Of these, only seven are represented in Parliament: the National Resistance Movement (NRM); the Forum for Democratic Change (FDC); Uganda People's Congress (UPC); Democratic Party (DP); the Social Democratic Party (SDP); the Justice Forum (JEEMA) and the Conservative Party (CP). A number of these parties (the CP, JEEMA and the SDP) have only one MP. Notable among those not represented in Parliament are the People's Progressive Party (PPP); and the People's Development Party (PDP).

For any engagement with these political parties a number of issues need to be taken into consideration, these include the multi-party system and the fact that the political playing field remains un-levelled in favour of the NRM. As such, donors operating in Uganda need to be cognisant of the implications of this, for the ruling party and for opposition parties.

International donors have and continue to play a significant role in financing and monitoring Uganda's elections. In the 1990s, the UNDP was the lead institution for donors who wanted to co-finance Uganda's elections. The UNDP's mandate involved managing a donors' basket fund, and recruiting and supervising specialised technical assistance to support the EC and civil-society organisations to carry out tasks allocated to them.

The Deepening Democracy Programme (DDP) was established for an initial period between April 2008 and December 2011, and is a basket fund.<sup>107</sup> The programme aims to support the work of Ugandan partners to strengthen democratic governance in the country, including the conduct of free and fair elections, an autonomous and robust Parliament, an

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<sup>107</sup> Six development partners have committed funding for the DDP including Norway, Denmark, Sweden, Ireland, UK and the Netherlands.

active citizenry, an effective multi-party political system, strong civil-society organisations able to hold political leaders to account, and a free media providing reliable information. The programme includes components to support Parliament, civil society, media, EC, Uganda Human Rights Commission and political parties.<sup>108</sup>

The DDP has so far provided grants to three political parties – the FDC, the UPC and the PPP. It has also supported an inclusive inter-party dialogue involving the six political parties represented in Parliament. Under the terms of this initial set of agreements with the political parties the grants are aimed to train party leaders and prospective representatives, conduct party elections, hold delegates' conferences and enhance intra-party communication. In addition, the SDP has received in-kind assistance towards the organisation of its National Council meeting.

DDP's grant funding strictly follows the requirements of the 1995 Constitution and electoral laws, which allow parties to receive grants, donations and gifts and services in kind from foreign governments. DDP only provides funding up to the amount that parties themselves have raised annually, on average, over the last three years, and no higher than the legal limit set in the Political Parties and Organisations Act of 2005.<sup>109</sup>

As part of its efforts to help strengthen democratic governance in Uganda, the DDP aims to assist in improving the credibility and integrity of the 2011 elections. It has also provided funding to the EC, with the majority of funding directed at the voter registration process, staff training and promoting dialogue between the EC and political parties.

Other donors who have assisted the political party activities include the Open Society Initiative for Eastern Africa (OSIEA), which has sponsored a series of meetings organised by HURNIT and HURIPPEC on the potential for electoral violence in which political parties have participate. In addition, the Konrad Adenauer Stiftung, Friedrich Ebert Stiftung, UK Department for International Development (DFID) and the USAID, which all work through civil-society organisations to support the democratisation process.

## **G. Election violence: Early warning signs and mitigation mechanisms**

Since 1980, election periods in Uganda have been characterised by escalated tensions between social, religious, ethnic and political groups that are not prevalent or are not so openly hostile during normal times. These tensions have repeatedly escalated into outbreaks of violence, both on a large scale, as in the five-year 'bush wars' of the early 1980s, and on a smaller scale in localised but still deadly flare-ups like the September 2009 riots in Kampala. Some of the existing historical conflicts that contribute to the potential for electoral violence in 2011 are the tensions between the Baganda Kingdom and the national government, which provoked the September 2009 riots; old, persistent ethnic tensions, border disputes and disputes over natural resources.

In particular, it is important to highlight the potential for conflicts over oil revenues as

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<sup>108</sup> See [www.ddp.ug](http://www.ddp.ug) accessed 26 August 2010.

<sup>109</sup> UgSh 400 000 000.

excavations of the recently discovered oil reserves in the north and west progress. Additionally, Uganda's increased population growth in recent years, the use of otherwise arable land for oil wells, and the gradual return of war-displaced IDPs to their former home areas have exacerbated land scarcities and conflicts over land. While these particular issues of disputes over ethnicity and resources cannot be rapidly addressed in advance of February 2011, it is important that the nation's leaders encourage constituents not to let these problems become a sticking point over which violent retaliation arises.

In response, the UHRC and other stakeholders such as the DDP and the NGO Akijul have come together to initiate a national dialogue on pioneering an early warning system and standardised violence-prevention measures. In doing so, UHRC convened all the key stakeholders – representatives of the major political parties, the head of the security forces, the EC heads, religious leaders, civil-society organisations and international monitors such as the OHCHR and UNDP – to chart a way forward in detecting and mitigating electoral violence.<sup>110</sup>

### Early warning signs

According to a report by Akijul on the context for the 2011 elections, 28% of Ugandans think there definitely will be violence, and 23% feel that they will likely be victims or targets of that violence. The main risk factors the study cited for electoral violence in February 2011 are: the lack of credibility of the electoral process; the commercialisation of elections; conflicts between and within political parties; underlying historic tensions; concerns over the security forces; conduct of candidates and political parties; and improper use of and conduct by media. While none of these is determinative of whether or not there will be violence, the failure to address them significantly increases the potential for conflicts that can or will become violent.

As parliamentary polling continues and as presidential campaigns commence, the need for violence pre-emption and rapid responses will become even more apparent and exigent. On 3 August 2010, the *New Vision* reported how clashes between adherents of different political parties turned deadly when armed men besieged NRM polling stations during party primaries and attacked District Chairman Richard Waya.<sup>111</sup>

### Commercialisation of elections

Many of the stakeholders present at the 'National Conference on Prevention of Conflict in the 2011 Elections' convened by the Uganda Human Rights Commission on 29–30 July 2010 condemned the commercialisation of electoral processes in Uganda, saying that elections have become a 'do or die' affair for candidates. By this, they were referring to the alarming trend whereby candidates pour all of their time, energy and personal resources into financing their campaigns for office (even going so far as to mortgage their houses), with the expectation of winning. In addition to placing impossibly high stakes upon the election day results for those

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<sup>110</sup> From 29–30 July 2010, the Uganda Human Rights Commission held a conference in Entebbe titled 'National Conference on Prevention of Conflict in the 2011 Elections'. The conference was co-sponsored by Deepening Democracy Programme, and the dialogue was based on the findings from the Akijul Report. Participants from all the main stakeholder sectors were present.

<sup>111</sup> 'Gunshots, chaos mar NRM polls', *The New Vision*, 3 August 2010.

who do not win, this also creates a ripe breeding ground for corruption in office amongst those who do win, because they have foregone all of their financial resources with the expectation of reaping considerable financial gain in their political offices. Under such circumstances, politicians may resort to more extreme tactics, including corruption and incitation of violence, to try and secure office. Those who do not win and who feel cheated may also resort to extreme tactics, including violence, to protest having lost everything through allegedly unfair means. While post-election counselling exists to guide the election losers on a proper path, it often comes too late – this is yet another reason why the Code of Conduct for political actors is crucial. In addition, the EC should implement pre-election counselling, so that the loss of an election does not lead to the kind of personal financial and emotional ruin that can push candidates to respond violently.

## **Violence mitigation**

At the National Conference, many stakeholders expressed a desire to increase the use of the traditional conflict-mitigation mechanisms particular to each tribe.<sup>112</sup> In a few ethnic groups these institutions are well established and respected, are highly organised, and have sufficient resources; in many, however, this is not the case. Therefore, while a violence mitigation approach cannot rely solely on traditional dispute resolution institutions, they can be an extremely valuable resource especially in particular areas.

Similarly, the leaders of religious institutions in Uganda are also involved in politics and can be some of the country's strongest advocates for peaceful democratic development, if encouraged to engage positively in electoral processes. For example, the UJCC and the Inter-Religious Council of Uganda (IRCU) have been actively engaged in fostering political dialogue and mediating conflicts.<sup>113</sup>

As is the primary concern with the national institutions in place to monitor elections and mitigate violence, one of the main concerns around the traditional and religious leaders is that they can or have been 'bought', so that they are no longer impartial actors within the political arena. Some of the methods for mitigating election violence include long-term changes, such as reducing unemployment, while others can be addressed immediately, in advance of the 2011 elections.

## **H. Recommendations**

### **Freedom of expression and access to media**

- Ministry of Information and National Guidance: The Ministry should withdraw the proposed amendments on the Press and Journalist Act which seeks to create new licensing conditions for print media or else it should involve journalists in the reform of the media law.

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<sup>112</sup> Traditional institutions in Uganda were reinstated as a conflict mitigation avenue in 1993. See Part 4 and p.65 of the Akijul Report.

<sup>113</sup> Akijul Report, p.66.

- The National Association of Broadcasters: Private stations should also explore possibilities of extending free or subsidised airtime to the electoral body and other civil-society organisations to sensitise the citizenry about the whole electoral process from the laws relating to elections, voting and the announcement of results; including the rights, fundamental freedoms and duties of citizens.
- The Management of state owned media at UBC TV and radio should ensure fair and equitable coverage of election news including candidates, political parties and their agendas.
- The Electoral Commission, Media and Broadcasting Council should work jointly to take tangible action against media houses and individuals who breach electoral laws relating to media coverage.
- The Parliament should amend the Electronic Media Act make the Broadcasting Council an autonomous and independent regulatory body that reports to Parliament and not the Minister for Information.
- The Broadcasting Council should be empowered to perform its functions of monitoring the performance of broadcasters and in particular ensuring that there is equitable access to the media by all candidates.

### **Freedom of association and assembly**

- All stakeholders (government/political parties) must ensure the right to hold peaceful, open and public demonstrations without undue restriction.
- Electoral Commission, police and Electoral Offences Squad: There is need to strictly monitor and sanction parties and individuals that abuse public office through the use of public vehicles and goods in electoral campaigns. The police need to be trained, specifically under the Electoral Offences Squad, so they can properly carry out their duties to observe human rights standards while ensuring that electoral processes are free and fair. In particular, all security forces must be trained on how to manage crowds and demonstrations, in order to allow for the right to assemble peacefully.
- The Security Agencies have stated that they lack sufficient funding to carry out their mandate with respect to elections. Government should allocate sufficient funds specifically for public order management well in advance of elections, in order to prevent violence during the election period.
- The ministries responsible for justice, law and order, and all security agencies must investigate the issue of the Kiboko squad<sup>14</sup> and take all necessary measures to prevent them and other paramilitary groups from operating. All security agents must be instructed to detain any Kiboko or paramilitary squads if they are seen in action.
- The Uganda Human Rights Commission should carry out constant mass sensitisation on fundamental freedoms, such as the freedom to associate and assemble, including circumstances under which such rights can be restricted. They should especially direct

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<sup>14</sup> The Kiboko Squad is a semi para-military group that often springs up on the streets in big numbers with long menacing sticks to clobber anybody trying to demonstrate. 'Kiboko' is a Swahili word that means a stick.

such education toward law enforcement agencies and other security personnel, such as the army.

## **Promoting participation by all**

- The government should endeavour to make special provisions to ensure the participation of all Ugandans in elections, including vulnerable groups such as the elderly or people with disabilities, as well as women at all levels of the process.
- The Uganda Law Reform Commission should review the laws of other countries relating to voting by citizens outside the country and make proposals for law reform to ensure that Ugandans living abroad can participate in elections.

## **Donor support for the democratic process**

- There is need for coherent, harmonised and well-coordinated strategies by donors on how to engage with the ruling party (at present NRM has not applied for a grant) and how to increase its participation in the inter-party dialogue.
- The increased coordination among the donor community, especially under the basket fund, in relation to stakeholders under the political process is highly encouraged.
- There is need for donors to review and agree upon a uniform strategy for funding to all parties in order to strengthen the functioning and increase participation of all political parties.
- Donor engagement with stakeholders should be more long term, in order to increase the sustainability of interventions by stakeholders and to create room for visible and positive impact in the political processes of the country.

## **Civic education**

- Civic education must be continuous and therefore government, assisted by donors, should ensure that civic education is carried out even after election periods. This would require setting up a special fund for national civic education and funds would be managed and disbursed through the UHRC, the EC and committed civil-society organisations and CBOs should play an active role.
- The donor community should offer consistent funding as well as technical assistance in terms of curriculum development for all levels of education, and training of facilitators.
- The Ministry of Information and National Guidance should introduce a policy that provides for subsidised air time in the mass media (radio and television) so that programmes that are pro-people, in local languages and pass on public information are utilised to maximise impact.
- The Ministry of Education should introduce an all inclusive, balanced civic education module into the education curriculum right from primary levels to secondary levels, drafted with the input of all stakeholders to ensure its acceptability at all levels. This process should be monitored by civil-society organisations

- The Uganda Human Rights Commission, civil-society organisations and other agencies engaged in civic education should improve the methodology with which civic education is delivered, so as to increase to the numbers of individuals who are trained in ways that are most conducive to impact. It has been noted that active, participatory teaching methods and use of visual aids conducted by high quality instructors are necessary to achieve impact on individual attitudes and behaviours.
- Resident District Commissioners in particular should be trained and sensitised in electoral and human rights standards.
- The Uganda Human Rights Commission and other stakeholders should also carry out baseline surveys before commencing civic education to understand the concerns of the target groups and in order to tailor the programmes to the needs of the people.

### **Avoiding election violence**

- Though quite broad, three of the strongest and most-emphasised recommendations that came out of the National Conference regarding ways to prevent electoral violence were: the need for greater transparency of national institutions, the need for a forum or forums in which all stakeholders could engage in constructive debate and dialogue, and the need for proactive voter education and social messaging, including stringent measures against deliberate or negligent publishing of slander and false information.
- There is need to build trust and foster dialogue based upon a sincere commitment to cooperation, collaboration and mutual respect by all stakeholders, in order to have a meaningful role in the democratic process. All political parties should cooperate with the EC in the establishment and functioning of the NCF, to ensure that alleged violations of the Code of Conduct can be swiftly dealt with. In particular, the ruling party should participate in the meetings of the NCF.
- As a long term measure to curb electoral malpractices and violence, there should be a provision in the law that bans any individuals found guilty by courts of law of electoral offences from participating in elections for a period not less than ten years.

# 4

## Election administration: Assessing the Electoral Commission

### A. International principles relating to electoral administration

Under international and regional law, states are required to have in place an impartial institutional body, such as an EC, to manage elections. In addition to being neutral, the EC must be all-inclusive, non-discriminatory, competent, accountable, staffed by qualified personnel and backed by some legal authority. The EC should be in charge of everything to do with the administration of elections, including party registration and education of voters.<sup>15</sup> The AU Declaration requires all state parties to establish impartial, all-inclusive, competent and accountable national electoral bodies that are staffed by qualified personnel, as well as competent legal entities, including effective Constitutional Courts, to arbitrate in the event of disputes arising from the conduct of elections.<sup>16</sup> For West Africa, the ECOWAS Protocol states that the bodies responsible for organising the elections shall be independent or neutral and shall have the confidence of all the political actors. Where necessary, appropriate national consultations shall be organised to determine the nature and the structure of the bodies.<sup>17</sup>

These requirements entail careful attention to provisions of appointment, remuneration,

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<sup>15</sup> IPU Declaration on Free and Fair Elections, Article 4(2).

<sup>16</sup> African Union Declaration on Principles Governing Democratic Elections in Africa, Part III(c).

<sup>17</sup> Article 2 of the Protocol.

duties, powers, qualifications and reporting structure of electoral staff.<sup>118</sup> Legal guarantees should be in place to insulate electoral administration from bias or corruption. Adequate advance training should be provided to all election officials. All electoral activities, including the decision-making process, the legal process and the organisation of events should be conducted in a wholly transparent manner.<sup>119</sup>

## **B. National legal and institutional framework for the Electoral Commission**

Article 60 of Uganda's 1995 Constitution creates the EC and outlines requirements for the Commission's staff. Article 61 of the Constitution and Article 12 of the Electoral Commission Act enumerate the EC's functions, which include organising, supervising and safeguarding free and fair elections; demarcating constituencies; ascertaining and publishing official election and referendums results; ensuring the necessary security provisions are in place; hearing elections complaints; implementing civic education programmes; and compiling and updating the register of voters.

The vision of the EC is to 'promote peaceful continuity of governance through an impeccable electoral process'. Its standing resolution is to 'promote public confidence in the EC as a credible institution in charge of management of the electoral process through a transparent, accountable and efficient human resource, conducting continuous voter education and update of the voters' register in order to deliver peaceful, free and fair elections and referendums in accordance with the Constitution'.<sup>120</sup>

The Commission is composed of a chairperson, deputy-chairperson and five other members, who are appointed by the president with the approval of Parliament.<sup>121</sup> The majority of the commissioners of the current EC were appointed to conduct the 2006 elections, and were re-appointed in 2009, including Dr Badru Kiggundu as chairperson, Mr Joseph Biriboonwa as vice-chairperson, Mr Tom Buruku, Dr Jenny B. Okello, Mr Steven Ongaria and Ambassador Sisye Kiryapawo. Mrs Justine Mugabi was first appointed in 2009 to replace Sister Magoba, a former deputy-chairperson who retired. They were recruited through sourcing from various professional groups, and vetted by parliament.

The Secretary heads the Secretariat, assisted by the Directors of Elections and Finance and Administration. Under the Directorate of Elections are five departments: Legal and Public Relations, Voter Registration, Data Processing, Voter Education and Training, and Election Management. The departments in the Directorate of Finance and Administration are Finance, Administration, Human Resources, and Planning and Research. There are also subordinate district-level electoral offices, which are headed by district registrars.

Each district in Uganda is meant to have one district office. However, in July 2010, legislators

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<sup>118</sup> 'A handbook on the Legal, Technical and Human Rights Aspects of Elections Human Rights and Elections', Professional Training Series, No.2, , United Nations Centre for Human Rights.

<sup>119</sup> Ibid., p.15.

<sup>120</sup> Report of the 2005/06 General elections by Electoral Commission, August 2006.

<sup>121</sup> Uganda Constitution (1995), See Article 60(1).

nearly doubled the number of existing districts, to over one hundred districts. When asked if this would affect the EC, the EC staff interviewed anticipated no impact, since population in the districts remains relatively stable; thus, they expressed no intention of increasing the number of district offices. There are currently about 79 district offices, and the EC does not have the financial resources to expand to over one hundred regional offices. It remains to be seen whether this re-districting will impact the EC's efficiency in managing the upcoming elections. At present, each district office keeps about four permanent staff. The EC hires scores of temporary staff during elections and referendums, and feels that the current staffing levels are adequate for the work that they do outside of the election periods.

The current EC has conducted 19,892 elections ranging from presidential to parliamentary elections countrywide between 23 February 2006 – the first to be held under a multi-party political system since 1980 – and 30 June 2009.<sup>122</sup> As of June 2009, 19 892 elections had been held, 74 election petitions instituted, 50 cases won and 24 cases lost.<sup>123</sup> According to its own account, it has also satisfactorily handled hundreds of complaints and has improved the quality of elections across the country through disciplining staff involved in electoral malpractices by banning them from employment with the EC and blacklisting them. They have also removed chief administrative officers and chiefs from electoral administration and replaced them with Commission staff such as district returning officers.<sup>124</sup>

### **c. Independence of the Electoral Commission**

Article 62 of Uganda's Constitution states that the EC shall be independent subject to the Constitution's provisions, and 'shall not be subject to the direction or control of any person or authority' in the performance of its functions. Some of the key indicators of an independent EC include the impartiality of Commission staff and election administrators, a free and fair process of voter registration, the existence of a Code of Conduct for elections, and the extent to which the Commission seeks to ensure that the whole process is free and fair.

The importance of the EC's independence is especially implicated in some of the Commission's mandated functions, including the distribution and collection of ballot boxes, registering political parties,<sup>125</sup> and ensuring that all election officers and candidates comply with the provisions of all electoral laws.

Despite these legal provisions relating to the appointment and independence of the EC, many political groups strongly believe that the Commission is not independent and does not reflect diversity as expected in a multi-party dispensation. In particular, there are concerns related to the system for appointments to the EC, security of tenure for commissioners, and the Commission's lack of financial autonomy.

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<sup>122</sup> Oryem, Alfred Okello, 'Preparing for 2011: The view from inside', Paper presented at workshop on the theme: 'Preventing a Kenya from happening in Uganda: Towards an early warning mechanism to prevent election violence in 2011', February 2010.

<sup>123</sup> Biribonwa, Joseph N., deputy-chairperson Electoral Commission, 'Taking Stock: A Strategic Review of Uganda's Peace Building Infrastructure', Protea Hotel, 28 July 2010.

<sup>124</sup> Ibid

<sup>125</sup> The Political Parties and Organisations Act 2005 gives Uganda's Electoral Commission the responsibility of registering political parties.

## Appointment of commissioners

The commissioners are nominated and appointed by the President, with the approval of Parliament, and the law requires that Commission members must have ‘high moral character, proven integrity and... [must] possess considerable experience and demonstrated competence in the conduct of public affairs’. Each Commissioner’s term lasts seven years and is only renewable once. Parliament determines their remuneration.<sup>126</sup>

The nomination processes of all constitutional bodies and the judiciary follow the same procedure, which is appointment by the president, on approval of Parliament. There are instances where Parliament has rejected the president’s nominees on various grounds. The independence of the person appointed is thus dependent on the personal integrity and professionalism of the individual, and their ability to resist pressure from all sides.

Some fears expressed by the people and the opposition parties are that the President’s involvement in the nomination of electoral commissioners, while he is also a competitor in the same elections, could compromise the independence of the EC as a body. There was also criticism and suspicion about the ‘hurried manner’ in which the Parliamentary Appointments Committee<sup>127</sup> vetted and approved the current membership of the Commission, since the proceedings of the Committee are considered confidential. This was after the President proposed names of the current MPs, confirmed them through the parliamentary appointments committee chaired by the Speaker of Parliament and composed of both the opposition and the ruling party.

To this effect, some MPs have sought to have some provisions of the Constitution amended as part of the core electoral reforms aimed at ensuring the independence of the EC. The proposed amendment is in relation to Article 60(t) where the power of appointing members of the EC is taken away from the President and given to an impartial Judicial Service Commission to increase the EC’s independence. This view also calls for consultation with all stakeholders on the composition of the Commission. The current process ensures that only the president’s nominees are appointed. In a Parliament heavily dominated by the president’s party, all his nominees are always appointed.

One civil-society activist in Jinja said, ‘The Commission can be influenced and is not independent. There is need for reforms in the electoral body composition to reflect diversity, since we are in a multi-party dispensation’. Another activist in Mbarara noted, ‘An Electoral Commission that is appointed by a competitor in any election cannot be seen to be independent’. A public servant in Mbarara suggested, ‘It would be proper to change the appointing authority. An independent body, such as the Public Service Commission, should be responsible for appointing the members’.

These issues were also raised by Uganda’s Country Self Assessment Report prepared for the APRM, which noted controversy about the independence of the EC from the ruling NRM

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<sup>126</sup> Uganda Constitution (1995), Article 60.

<sup>127</sup> Appointments Committee of Parliament is headed by the Speaker of Parliament and is responsible for approving presidential nominations for constitutional bodies such as the Electoral Commission.

and the executive arm of government and about security of tenure for the commissioners.<sup>128</sup> The APRM Panel recommended that Uganda ‘Devise a system of appointing electoral commissioners so that only non-partisan, independent and professional people with a high reputation are selected’.<sup>129</sup>

## Dismissals from the Electoral Commission

Perhaps more importantly than the appointments process, electoral commissioners do not enjoy security of tenure as judges do, and are also subject to term limits, so even without a formal process to remove them, they could simply not be reappointed..

The provisions on dismissals of commissioners are provided for under article 60(8) of the Constitution which states that a member of the commission may be removed from office by the President only for inability to perform the functions of his or her office arising out of physical or mental incapacity; misbehaviour or misconduct; or incompetence. Accordingly, for the government to dismiss any of the commissioners, it would require a reason that falls into the above categories to avoid litigation arising out of such dismissals. There is no authority that has found the current members of the EC as incompetent. The Supreme Court ruling on the Presidential Election Petition No.1 of 2006, brought by opposition presidential candidate Kiiza Besigye was highly critical of some aspects of electoral management, but did not comment or allude to the competence of the members of the Commission.

The independent Country Review Report produced by the APRM Panel of Eminent Persons noted that the EC itself had raised the issue of security of tenure, since, although the grounds for removal are very limited, ‘unlike the judiciary and the IGG, where the dismissal of a top official requires a probe by a tribunal, electoral commissioners can be removed by the president without a tribunal to establish circumstances for their dismissal’.<sup>130</sup> It recommended that Uganda ‘Institutionalise security of tenure for members of the EC by ensuring that dismissal is dependent on recommendations of a tribunal’.<sup>131</sup>

## Funding

The EC is self-accounting, and its administrative expenses are charged on a Consolidated Fund.<sup>132</sup> The law guarantees adequate resources and facilities to enable it to perform its functions.<sup>133</sup> This in essence means that it should not be subjected to cuts or reductions by the Ministry of Finance. In practice, however, the EC does not enjoy financial autonomy or adequate resources.

Like all self-accounting institutions in Uganda, the EC is subject to the Medium Term

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<sup>128</sup> Country Self Assessment Report, as reported in the APRM Country Review Report for Uganda, January 2009, paragraph 249.

<sup>129</sup> *Ibid.*, paragraph 284.

<sup>130</sup> *Ibid.*, paragraph 265.

<sup>131</sup> *Ibid.*, paragraph 284.

<sup>132</sup> A consolidated fund is a framework into which shall be paid all revenues or other monies raised or received for the purpose of, or on behalf of, or in trust for, the government.

<sup>133</sup> Uganda Constitution (1995), Article 66(1).

Expenditure Framework (MTEF), which in essence is a ‘budget ceiling’ which government institutions should not exceed when budgeting for every financial year. It provides a realistic figure that the Ministry of Finance will be able to provide to any given institution. This figure is always short of what the EC budgets for and therefore they have to appeal to Parliament to get the Ministry of Finance to increase their budget through either an increment or provide for a supplementary budget request. For example, the MTEF ceiling for the financial year 2009/10 was revised from 12 billion Ugandan Shillings (UgSh) to UgSh 31 billion for elections, and yet the Commission requires UgSh 644 907 279<sup>34</sup> in order to re-organise polling stations; recruit, train and deploy election officers/voter-educators; update the national voter’s register using the biometric method; and procure equipment, vehicles, and furniture and election materials. According to the EC ‘If this ceiling is not raised upwards, it poses big challenges to the Commission (...) there cannot be a free and fair election unless there is good preparation and adequate funding to the process’.<sup>35</sup>

Therefore although Article 61(i) stipulates that Parliament shall ensure that adequate resources and facilities are provided to the Commission to enable it to perform its functions, the Ministry of Finance, Planning and Economic Development does not usually live up to its expectations. The budget submitted to Parliament is often reduced and the one approved does not sufficiently cover all election activities. This explains the continual shortage of funds to carry out vital programmes such as civic education and the recruitment of quality and well-trained staff. These issues were also pointed out by the APRM report for Uganda, which recommended that funding for the EC be increased; a point agreed to in the National Programme of Action.

Often times the EC is faced with challenges relating to inadequate funding. Even where those insufficient funds have been approved, they have not been released in a timely manner, so the Commission is unable to recruit well-trained election officials and staff who can act impartially, independent of any political interests. Poor quality staff can always be compromised during the electoral process through bribery to allow multiple voting, ballot stuffing and manipulation of results. They can also be a subject of intimidation knowing that they are not professional enough to withstand such vices from political actors who threaten them with loss of their jobs. The funding problem affects the EC’s ability to adequately procure electoral materials and other logistical support necessary in preparing for elections. In some districts, such as Mbale and Kanungu, the electoral managers (returning officers) lack logistical support, such as vehicles, to enable them reach all the constituencies under their jurisdiction. The EC has an old fleet of vehicles, which presents very high repair costs while their budget can only allow them to procure two vehicles per year.<sup>36</sup>

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<sup>34</sup> At the time of writing this report, the exchange rate for Ugandan Shillings was approximately: UgSh 2 400 = US\$ 1 and UgSh 2 900 = € 1.

<sup>35</sup> Report of the Legal and Parliamentary Affairs Committee on the Ministerial Policy statement for the Electoral Commission for the year 2009/10, p.12.

<sup>36</sup> Office of the Auditor General of Government, Annual Report to Parliament 2009, Vol. 2, Central Government Audit Report.

## D. An assessment of the Electoral Commission in administering elections in Uganda

### Voter registration

During the course of this study, voter registration updates were on going and it was noted that some citizens often wait too long to engage in the electoral process by, for example, not ensuring that they have properly registered before the deadline. Interviews carried out revealed that many respondents recalled searching for their names on the displayed register at the last minute or even on the actual voting day. It was regretted that this leads to voter disenfranchisement, since the voter who does not find his or her name recorded on the register cannot vote.

In response to complaints about the voter register, and in preparation for the 2011 elections, the EC introduced a biometric registration system as a way to improve and eliminate weaknesses and malpractices in the electoral processes. This was in-line with the commitment made in the Uganda APRM National Programme of Action that the 'voters' register [should be] cleaned and updated'.<sup>137</sup> However, there were complaints by some citizens interviewed in the Central region of having been left out of the voter's register due to problems encountered during the register update, including lack of adequate equipment that slowed registration, which led to an extension of the registration period.<sup>138</sup> There were also allegations that the some of the registration officers, who were reportedly keeping the computer equipment in their private homes, added 'ghost voters' to the register.

A respondent from Gulu noted that there were multiple registrations of voters from different locations in Northern Uganda which has made the registration process a big challenge. He stated that the problem was worsened by the return of former internally displaced persons who registered at their former locations but who have also either intentionally or unintentionally registered in new locations.

Despite the weaknesses involved in registering citizens, the EC recorded positive initiatives relating to the wide publicity of the electoral process through publishing registration information and the invitation of citizens through the media and other campaigns to participate in all electoral processes. These have tremendously increased the level of participation in comparison to previous electoral preparations, such as those of 2001 and 2006.

The study found that, generally, many Ugandans across all sectors tend to get excluded from the electoral process due to the slow and inconvenient registration processes, which cause them to miss voter registration deadlines. It was noted by a respondent from Mbarara that the elderly suffer from a restriction on their rights, especially in villages, where it is more difficult for them to access registration and polling stations, especially when the only mode of access is on foot.

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<sup>137</sup> APRM Country Review Report for Uganda, p.348.

<sup>138</sup> Voter registration run from 3 May to 4 June 2010 and was extended to 14 June 2010.

## Polling process

The EC is supposed to ensure the prompt delivery of election materials such as election kits for the registration process, enough equipment such as cameras and computers, staff professionalism in the administration of the process, and sufficient resources to pay electoral officials manning electoral activities.

Traditionally, the set-up of polling stations is expected to start at 7:00am in a gazetted zone. As required by law, polling can only start with the arrival of at least five registered voters. At every polling station there must be a presiding officer, four polling assistants and an election constable (police officer). Where there are more than 1 000 voters at a polling station, two constables would be deployed. Transparent ballot boxes are used, which increases accountability and electoral security.

In the past, there have been criticisms of the way polling issues are handled. Such allegations include voters being duly registered and holding of voter's cards but still being unable to vote because their names did not appear on the voters roll, voters being transferred without their knowledge, deregistration and deletion of voters' names. Accordingly a Justice of the Supreme Court ruled in connection with the 2006 elections:

On the evidence adduced, I am satisfied that quite a number of voters were disenfranchised or denied the right to vote through removal of their names from the register during the exercise of cleaning or up-dating the voters register. Disenfranchisement can be effected by law or by action or omission of electoral officials. In the instant case it seems that some voters were disenfranchised by change in the law requiring them to register either where they originate or reside, and not where they work. Some voters who registered where they work could have been removed from the voters roll due to this change in the law. But there was also evidence that those who ceased to reside in the parishes where they were registered were also removed from the voters register allegedly on the recommendations of parish tribunals.<sup>139</sup>

Similarly in the May 2010 by-election in Mukono north, it was reported: 'At several polling stations, voters complained about missing names on the register, delay of the delivery of election materials and the presence of people claiming to be election officials'. At Seeta Church of Uganda polling station, a voter found that someone had already voted on his behalf; however, a member of the EC who was presiding over the polls cleared him to vote. In the same constituency there were reports of voting materials being unattended while others were misplaced. Voting materials for Sonde polling station No.3 had been delivered to Nkuzanyana. At the same polling stations, two presiding officers emerged, each claiming to manage the station. In other instances, ballot boxes were uncollected (e.g. at Goshenland polling station

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<sup>139</sup> Justice Benjamin Odoki, in the Presidential Election Petition No.1 of 2006.

No.13). It was also reported that some presiding officers had no appointment letters issued by the EC. One election monitor from the Inter-Party Cooperation (IPC) stated, 'In fact, if any one of us wanted to walk away with a ballot box, it was the easiest thing to do at Goma sub-county. The EC seemed not to care, and if they did, they were thoroughly exposed as an incompetent lot. Imagine a whole national institution failing to organise credible elections in one constituency'.<sup>140</sup>

## Counting votes

After the close of polling procedures, ballot boxes are opened, votes counted, relevant declaration of results filed and signed by presiding officers and willing candidates' agents. The results are then announced at the polling station in the presence of the public. In spite of such clear methods of counting votes, there has been tension in some areas, whenever counting takes place, leading to disputes of results by candidates of either side. For example, in the by-election in Mukono North there was a dispute over results from Kalagala polling station in Kyampisi, where one candidate received 500 votes against another who had 50 votes. Results from Nama at Walusubi church polling station were cancelled over an irregularity. None of the two competing candidates could accept the results since they both traded accusations of vote rigging, harassment of supporters and infringement by security agencies and government operatives.

## Transmitting and tallying results

The announced results at each polling station are delivered to sub-county headquarters with a sealed declaration of results form, routed to the districts for tallying and thereafter the returning officer declares the winner. This differs from the presidential elections where the returning officers at the districts capture results with computerised tally sheet software for onward transmission to the National Tally Centre. The manner in which the transmission and tallying of results has often been criticised and was a subject of discussion before the Supreme Court in the Presidential Election Petition No.1 of 2006. For example, the Court noted the following: 'In my view, the use of telephones to transmit results is not prohibited by any electoral law. Section 56 is silent on the matter. Its use is clearly a controversial issue as it may be manipulated and abused to transmit inaccurate results'.

The EC has been criticised for handling election results without following the set laws. In the same case, the Supreme Court ruled:

This Court found that there was non-compliance by the 1st Respondent with the provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act, in the counting and tallying of results. This finding arose out of the complaint that the 1st Respondent did not validly declare the result in accordance with said laws. It was also alleged

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<sup>140</sup> Nganda, Semujju 'EC weakness exposed in Mukono', *The Observer*, 26 May 2010.

that the 1st Respondent declared results from the districts without return forms, reports from returning officers, tally sheets, and declaration of results forms. While the Court found that the results were validly declared it found that there had been some inaccuracies in the counting and tallying of results in some polling stations.<sup>141</sup>

## Declaring election results

The EC is the only institution with the Constitutional mandate to declare results of elections and referendums. In preparation for tallying results, the EC previously used appropriate tallying software that had been designed and tested for such purposes. Insofar as general elections are concerned, the returning officers captured such results from sub-counties to the districts using the software, and announced results at the District Tally Centre. In respect to the presidential elections, the Commission set up a National Tally Centre which consisted of a communication room with telephone, data/internet and fax lines to receive results. A computer room with networked computers, printers and photocopiers were provided. A verification desk, responsible for verifying results transmitted from districts, verified results after being captured in the computers and sharing information pertaining to results with party/candidate representatives that were present at the time.

Other facilities at the National Tallying Centre included a desk for political party/candidate agents present to witness and monitor the results, a boardroom for meetings and a briefing centre for the dissemination of information and relaying of provisional results. This tally centre was accessible to Party/Candidates representatives, accredited observers, the media and other stakeholders. Despite the presence of the above mechanisms, opposition groups have since 2001 not received the EC's announcements of results as genuine results. This has always been attributed to different factors, as quoted below:

Electoral process in the 2006 presidential elections beginning with the campaign period up to polling day was characterised by acts of intimidation, lack of freedom and transparency, unfairness and violence, disenfranchisement of voters by deleting their names, bribery and intimidation, allowing multiple voting and vote stuffing, failure to cancel results at polling stations where gross malpractices took place, failure to declare results in accordance with the law, and failure to take measures to ensure that the entire electoral process was conducted under conditions of freedom and fairness.<sup>142</sup>

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<sup>141</sup> Presidential Election Petition No.1 of 2006.

<sup>142</sup> Ibid.

## Failure to address intimidation and harassment

The EC has not been empowered by law to effectively handle challenges such as intimidation and the harassment of political actors by militia groups, especially in urban areas.

During the 2006 elections, the forms of election violence reported included the intimidation of opponent supporters; threats through agents, phone calls and public and radio statements; assaults; killings; intimidation, arrests and beatings by security personnel; and destruction of property.<sup>143</sup> There were hot spot areas of reported violence in all of Uganda's five geographical regions.

After these violent incidents were reported, the main complaint that arose is that the EC's handling of the cases was extremely slow and altogether inadequate, especially at the district level – in large part, it seems that this can be attributed to inadequate resources and funding.<sup>144</sup> However, there has not been any attempt to put in place safety measures relating to the pre-election period or electoral processes, such as holding peaceful assemblies and exercising the right to association and holding campaigns freely.

The denial of freedom of expression and speech, especially on the media waves by state agents, is something that the EC has failed to handle as an electoral body knowing that the overall credibility of an electoral process is substantially dependent on all relevant groups (including political parties, government, civil society and the media) being aware of and participating in the debate surrounding the formation of the electoral structure and processes.

In areas such as Kampala, militia groups such as the Kiboko squad<sup>145</sup> continue to subject people to intimidation and beatings during electoral activities that include peaceful assembly and campaigns.

The Political Parties and Organisations Act, passed in 2005, mandates the Minister of Justice and Constitutional Affairs (in consultation with the EC and the political parties and organisations) to prescribe a Code of Conduct for political parties and political organisations. This Code of Conduct should then be approved by Parliament. As noted in the chapter on the compliance of Uganda's law with international principles and standards on free elections, the president has assented to such a code, but it is yet to be implemented

The main concerns around the lack of credibility of the electoral process focus on the capacity and integrity of the EC, both in public perception and in reality. Many of the negative public perceptions of the EC arose from the Supreme Court's criticisms of the Commission in their judgments on petitions following the 2006 elections, which carried strong criticisms regarding the administration of elections. Although the Supreme Court's criticisms did not declare the whole EC inadequate, nor did they condemn the elections as invalid or a failure, many people carry this interpretation based on the judgments. When carrying out voter education, the EC needs to dispel misconceptions and enhance confidence in their capabilities

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<sup>143</sup> 'Towards the Uganda 2011 Elections: An Assessment of Conflict Risks and Mitigating Mechanisms,' Akijul Report, sponsored by the Deepening Democracy Programme, April 2010, p.42.

<sup>144</sup> *Ibid.*, p.43.

<sup>145</sup> *Op. cit.* <sup>144</sup>.

by enlightening the stakeholders and the general public about their procedures, highlighting their successes, and acknowledging their shortcomings.

## E. Public perceptions of the Electoral Commission

Many sections of society feel that the EC is a biased and incompetent institution unable to conduct a free and fair election in Uganda. According to the Opposition Chief Whip in Parliament, ‘... the Electoral Commission as presently constituted is incapable of organising free and fair elections in accordance with the law. It is well known even beyond Uganda’s borders that it is not independent and has no will to uplift its performance standards. In short, if it is not overhauled or reconstituted, it will not be able to organise credible elections in 2011.’<sup>146</sup> Many citizens say that they will continue to question the independence of the EC and hold demonstrations until they see it disbanded.

Media reports quoting various personalities illustrate perceptions of citizens towards the EC, especially the chairperson of the EC, Eng. Badru Kiggundu. Examples include:

- ‘Most opposition MPs accused the EC of being ‘incompetent and biased’ and called on Kiggundu’s team to resign.’<sup>147</sup>
- ‘Is there any activity that a Commission led by Professor Badru Kiggundu can properly execute? Mismanaging elections, perhaps.’<sup>148</sup>
- ‘Any blood that shall be shed in an attempt to dislodge the EC is blood on the hands of Kiggundu and his team. They have the court judgement that clearly shows that they are incapable.’<sup>149</sup>

The EC considers the current public perception of ‘being partisan’ and not credible due to the appointment of commissioners by the incumbent candidate as merely ‘negative perception’ and ‘bias’ towards the institution. The EC is of the view that most stakeholders in the electoral processes hold such negative perceptions because they do not know the legal electoral provisions, and as such are not aware that all actions are performed within the confines of the law, including the process of appointing the commissioners. They for example stated that they nominated a presidential candidate, Dr Kizza Besigye (from the opposition, who at that time was in prison) against the advice of the Attorney General, who was of the opinion that a person in prison cannot be nominated as a presidential candidate. This they claimed, was a huge attribute of their independence. They, in turn, blamed some citizens for failing to exercise their civic duties of turning up to register, analysing the displayed registers in time to ascertain if any anomalies or omissions existed and report the anomalies to the electoral officers for correction. Other shortcomings cited, include the failure to vote and to place representatives at polling stations to ascertain the results of an election; bribing voters through the distribution

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<sup>146</sup> Ezati Wadri, Kassiano ‘We must avoid another doubtful election’, (Part2), *The Weekly Observer*, 19 May 2010.

<sup>147</sup> Nalugo, Mercy ‘Extend voter registration exercise, legislators tell EC’, *Daily Monitor*, 13 May 2010, p.5.

<sup>148</sup> Nganda, Ssemujju ‘Kiggundu’s EC is incompetent’, *The Observer*, 12 May 2010.

<sup>149</sup> Dr Kiiza Besigye, FDC President.

of essential commodities like sugar and salt after midnight to influence their voting patterns; violence instigated by some parties through the use of militias; and diversion of electoral staff by some political groups during the electoral process through the giving of false information in specific polling stations. This, in the view of the Commission, accounts for such negative misgivings and the failure to accept defeat by some candidates.<sup>150</sup>

## **F. Conclusions and recommendations:**

The main question leading up to the elections in February 2011 is whether the EC meets international standards and whether it is capable of organising free and fair elections. For any electoral management body to be credible and effective, sufficient and timely funds must be made available, and there must be personnel and election officials who are impartial and independent.

Administering democratic elections requires that the EC be, and be seen to be, impartial and independent of government or other influence. This is a critical area, as the election administration machinery makes and implements important decisions that can influence the outcome of an election. The political circumstances of the particular country under consideration need to be taken into account when assessing the legal framework regulating the EC.

Although important improvements could be made to the existing legal framework on electoral processes, the law is for the most part sufficient to ensure a free and fair election, if implemented as stipulated in both the Constitution and other enabling laws. What is required is to ensure compliance with the law by all stakeholders in electoral process. The EC's failure to address the constant harassment, arrests and intimidations which political groups and some individuals are subjected to by the police and Kiboko squads, has severely undermined its credibility in Uganda. The EC as an electoral body must also address the denial of freedom of expression and speech especially the domination of broadcast media by the government and ruling party. The overall credibility of an electoral process is dependent on all relevant groups, including political parties, government, civil society and the media, being aware of and participating in the debate surrounding the formation of the electoral process.

The APRM National Programme of Action makes the following commitments that are particularly relevant to the EC:

- Adequate resources should be provided to the EC;
- Enhance the credibility of the electoral process and the legitimacy of electoral outcomes, in particular by addressing contentious issues such as the voters' register, disenfranchisement, boundary demarcation, voter intimidation, vote buying, election violence, and access to media during elections; and
- Review all electoral laws to ensure they promote a vibrant multi-party system (including the first-past-the-post electoral system).

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<sup>150</sup> Interview with the Electoral Commission chairperson and secretary, 3 March 2010.

Government needs to respond to concerns about the independence of the EC that have been raised in the past, including the recommendations of the APRM Country Review Report.

- The Uganda Law Reform Commission should be requested to lead a review of the legal framework for the EC, in particular to institutionalise security of tenure for members of the EC and to devise a system of appointing electoral commissioners so that only non-partisan, independent and professional people with a high reputation are selected.
- Government must increase the resources it allocates to the EC, to ensure the Commission's efficiency and effectiveness. The Ministry of Finance should always consult the EC before setting budget ceilings (MTEF) to enable the EC come to up with realistic budgets. Efficiency and effectiveness is dependent on several factors, including staff professionalism, resources and, most importantly, sufficient time to organise the election and train those responsible for its execution.
- Elections should be managed by a specialised group of highly trained and committed election staff who are permanent employees of the EC.
- The Electoral Commission must ensure that the voter register is accurate, credible and reliable. Voter education with regard to registration should address what citizens should be equipped with when going to register.
- The EC should provide appointment letters and special identification tags to differentiate election officials from other individuals with hidden motives during the polling process. A list of election officials officiating at every polling station should be shared with all political parties participating in the elections and this should also apply to political parties in respect to their agents posted at polling stations.
- The process of implementing the Code of Conduct should be expedited. There is need to ensure respect of the electoral laws relating to campaigns and the holding of rallies at all times and avoid interferences between supporters of one party and another during the electoral campaigns that often leads to clashes and eventual violence. The Code of Conduct should empower the EC to take action against any political party or organisation that is involved in electoral malpractices including violence.
- Civic education by the EC and other stakeholders, including political parties and civil-society organisations, should educate the public about the proper role of the Commission in electoral administration, to ensure that there is proper understanding of the correct procedures and vigilance against abuses – and thus confidence in the integrity of the electoral process and the EC.
- The EC should establish a special desk to record, monitor and respond to political events relating to the exercise of the freedom of assembly and speech, freedom to associate and campaign freely. Allegations of conduct that amounts to a criminal offence should be systematically reported to the police, with a record of when the incident was reported; the Commission should seek to follow up to find out what action was taken in respect of each incident reported.

- The EC should be empowered by legislation to impose stiff penalties on candidates and other stakeholders that engage in any electoral malpractices, and they should be barred from contesting again for political seats for a period not less than seven years.
- As a supplement to the Code of Conduct for political parties, which urgently needs to be implemented, the EC should introduce pre-election counselling for all political candidates, in addition to the existing post-election counselling, so that candidates do not treat elections as a 'do or die' affair.

# 5

## Dispute resolution

### **A. Legislation relating to electoral disputes and resolutions**

The Constitution of the Republic of Uganda 1995, the Presidential Elections Act 2005, the Parliamentary Elections Act 2005 and the Electoral Commission Act 1997 provide for ways and means in which electoral disputes shall be dealt with by the EC and by courts of law such as tribunals. Article 61(f) of the Constitution empowers the EC to hear and determine election complaints arising before and during polling. In addition, Article 64(1) provides that any aggrieved person may appeal to the High Court a decision on an elections complaint. While any dispute relating to demarcation of electoral boundaries may be appealed to a tribunal and further appeals can be before the High Court, whose decision shall be final in respect to the above.

### **B. Electoral adjudication by the Electoral Commission**

The EC has been involved in dispute resolution during and after polling. For example in the year 2005/06 the EC handled a total of 856 complaints which ranged from questionable academic papers during nominations, resignations (failure to resign from public office), intimidation during campaigns/polling, missing/misallocations of symbols and names of candidates, under aged persons in the register, double registration, request to nullify declared results, voter bribery, ballot stuffing, defacing of posters, disrupting rallies and use of abusive language.<sup>151</sup>

The courts of law do also determine or resolve electoral disputes. In 2006, the courts

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<sup>151</sup> Electoral Commission Report 2005/06, Table 12a, p.43.

received 122 post-election petitions/complaints,<sup>152</sup> some of which have been resolved, while others are yet to be resolved. There has been a general complaint in the delays at which election petitions are disposed off especially the parliamentary and local government election petitions. Another concern is the high awards provided to successful litigants that discourage potential litigants from petitioning courts whenever they are not satisfied with the results of an election.

The EC, in fulfilling its mandate to hear and determine complaints before and during elections, initiated mechanisms to address any disputes including:

- Installing a toll free line to allow any complainants to access the EC at the headquarters to report any complaints arising before and during an election.
- Establishment of a national information/complaints desk on different polling days to receive, handle, and resolve complaints; and promptly respond to queries from election officials and the general public using such facilities and fax machines and telephone lines. These are extended to districts and with an officer specifically recruited and assigned such duty under the supervision of a returning officer.<sup>153</sup>

In the view of the Commission, these arrangements helped to resolve complaints at the headquarters and in districts.<sup>154</sup>

### **c. Contesting parliamentary elections**

Section 60(3) of the Parliamentary Elections Act 2005 provides that every ‘election petition shall be filed within 30 days after the day on which the result of the election is published by the EC in the Gazette’.

The Act also spells out grounds for setting aside an election, and these include:

- Non-compliance with the provisions of the Act;
- Failure to conduct an election in accordance with the provisions and that non-compliance and failure affected the election results in a substantial manner;
- That a person other than the one elected won the election;
- An illegal practise or any other offence was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; and
- The candidate was at the time of her or his election unqualified or disqualified for election as a MP.

In the 2006 elections, the High Court resolved several parliamentary election petitions and annulled a number of results. For instance, in *Abdu Katuntu vs. Ali Kirunda Kivenjinja and The Electoral Commission*, the petitioner and first respondent contested for the parliamentary

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<sup>152</sup> Ibid, p.44.

<sup>153</sup> Ibid, p.50.

<sup>154</sup> Ibid, p.51.

seat in Bugweri County, Iganga district in 2006. The petitioner filed a petition on the following grounds: the electoral process was non-compliant with the provisions and principles of the Parliamentary Elections Act 2005, failure to conduct the election in compliance with the provisions and principles in the electoral law benefitted the first respondent and affected the final result in a substantial manner; the first respondent personally or through his agents, with his knowledge, consent or approval, committed numerous election offences and illegal practises.<sup>155</sup>

The Court ruled that there was widespread intimidation, violence and torture by gangs trained and deployed by the first respondent, and furthermore that incidents of multiple voting occurred at a number of polling stations. The Court concluded that there were instances of non-compliance with the provisions and principles established in the Parliamentary Elections Act and this affected the results of the election in a substantial manner.

## D. Contesting presidential elections: Validity of electoral results

The question of how valid Uganda's previous elections have been since 2001 is contentious, and disputes have always been resolved by the courts of law. In some constituencies and in general elections, candidates opted to seek redress in the courts of law where they were either upheld and by-elections held, while others were dismissed due to lack of sufficient evidence. Following the presidential elections of 2006, the runner-up in the vote, Col. (Rtd) Dr Kiiiza Besigye, sought to have the results declared null and void based on malpractices and irregularities that were not in conformity with the electoral laws. The following issues were framed at the hearing of the petition in the Supreme Court:

1. Whether there was non-compliance with the provisions of the Constitution, Presidential Elections Act and Electoral Commission Act, in the conduct of the 2006 Presidential Election.
2. Whether the said Election was not conducted in accordance with principles laid down in the Constitution, Presidential Elections Act and the Electoral Commission Act.
3. Whether if either issue 1 or 2 or both is answered in the affirmative, such non-compliance with the said laws and principles affected the results of the election in a substantial manner.
4. Whether the alleged illegal practices or any electoral offences in the petition, were committed by the 2nd Respondent personally, or by his agents with his knowledge and consent or approval.
5. Whether the petitioner is entitled to the reliefs sought.

The Court's decision on the issues framed above was as follows:

'On issue No.1, court found that there was non-compliance with the

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<sup>155</sup> Abdu Katuntu vs. Ali Kirunda Kivenjinja and the Electoral Commission, Election Petition No.7 of 2006.

provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act, in the conduct of the 2006 Presidential Elections, by the 1st Respondent in the following instances:

- (a) In disenfranchisement of voters by deleting their names from the voters register or denying them the right to vote.
- (b) In the counting and tallying of results.

On issue No.2, there was non-compliance with the principles laid down in the Constitution, the Presidential Elections Act, and the Electoral Commission Act, in the following areas:

- The principle of free and fair elections was compromised by bribery and intimidation or violence in some areas of the country.
- The principles of equal suffrage, transparency of the vote, and secrecy of the ballot were undermined by multiple voting and vote stuffing, in some areas.

On issue No.3, by a majority decision of four to three, the Court found that it was not proved to the satisfaction of the Court, that the failure to comply with the provisions and principles laid down in said Acts and the Constitution, as found in the first and second issues, affected the results of the presidential election in a substantial manner.

On issue No.4, by a majority decision of five to two, court found that no illegal practice or any other offence, was proved to the satisfaction of the Court, to have been committed in connection with said election, by the 2nd Respondent, Y. K. Museveni, personally or by his agents with his knowledge and consent or approval.'

In the result, by a majority decision, it was ordered that the petition be dismissed, 'with no order as to cost'.<sup>156</sup>

## **E. Conclusion and recommendations**

While the EC has put in place mechanisms to resolve disputes during elections, Courts have also been criticised for not explaining fully the contradictions and significance of their judgments relating to electoral petitions, such as the recent presidential petition, where they have cited the phrase, 'failure to substantively affect the outcome' of an election. And yet at the same time ruling that the elections were not free and fair and were not held in accordance with the law governing elections.

In order to address the malpractices during and after elections, it is recommended that the EC's legal department be immediately reinforced to expeditiously handle electoral disputes.

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<sup>156</sup> *Col. (Rtd) Dr Kiiza Besigye vs. Electoral Commission and Yoweri Kaguta Museveni*, Election Petition No.1 of 2006.

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Ms Margaret Sekaggya is the founder/director of Human Rights Centre Uganda and currently the United Nations Special Rapporteur on the Situation of Human Rights Defenders.

Ms Sekaggya holds a Bachelor of Laws degree (LLB) from Makerere University and a Master of Laws degree (LLM) from the University of Zambia. A lawyer of long-standing experience, she went on to work in the Judiciaries of Uganda and Zambia, and also worked for over seven years with the United Nations Institute for Namibia. She has taught law in various institutions including the Law Development Centre, Uganda. She was a commissioner with the Uganda Interim Electoral Commission (EC), which organised the 1996 elections.

After her appointment as a High Court judge, Ms Sekaggya was appointed to found the Uganda Human Rights Commission (UHRC) in 1996, of which she was chairperson between 1996 and 2008.

During her time as chairperson of the UHRC, Ms Sekaggya represented the Commission at both local and international forums, including the annual representation at the United Nations Human Rights Council in Geneva. She has also assisted in the setting up of other National Human Rights Commissions in Malawi, Liberia and Sierra Leone. Furthermore, she has also served as chairperson of both the network of African National Human Rights Institutions, and the Commonwealth National Human Rights Institution Forum.

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In January 2009 Ms Sekaggya founded the Human Rights Centre, Uganda, a non-governmental organisation which aims to improve the environment for human rights defenders working in Uganda.

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