

# DEEPENING DEMOCRACY IN UGANDA

## Legislative and Administrative Reforms Ahead of 2011 Elections



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*ACODE Policy Briefing Paper, No. 19, 2007*

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**Cover Photo:** An elderly man casting his vote.

*Courtesy: The New Vision Library.*

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## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENTS.....</b>	<b>ii</b>
<b>LIST OF ACRONYMS.....</b>	<b>iv</b>
<b>1.0. INTRODUCTION.....</b>	<b>1</b>
<b>2.0. KEY GAPS IN THE CONDUCT OF ELECTIONS.....</b>	<b>5</b>
2.1. Delays in Enactment of Relevant Laws.....	6
2.2. Unfairness of the Laws.....	7
2.3. Independence of the Electoral Commission.....	8
2.4. Administration of the Elections .....	10
2.5. Election Violence.....	12
2.6. Intimidation and Harassment.....	13
2.7. Party Financing and Campaign Finance Legislation..	14
2.8. Use of State Resources.....	16
2.9. Security Agencies and Para-military Groups.....	17
2.9.1. Strict Liability for Election Offences.....	19
2.9.2. Size of Parliament .....	20
2.9.3. Political Commitment to Reform.....	21
<b>3.0. RECOMMENDATIONS AND PROPOSALS FOR REFORM.....</b>	<b>21</b>
<b>4.0. CONCLUSION.....</b>	<b>26</b>
<b>PUBLICATIONS IN THIS SERIES.....</b>	<b>29</b>

## **ACKNOWLEDGEMENTS**

This policy briefing paper presents a summary of findings from a study on the legal and administrative reforms that the Government needs to undertake in order to facilitate the proper functioning of a multiparty political system in Uganda. In July 2005 Ugandans voted through a national referendum to change from the Movement Political System to the Multiparty Political System after 20 years under the National Resistance Movement (NRM) administration (1986-2005). The paper underpins the fact that the first multiparty elections in February 2006 after nearly 25 years were marred by political violence and multiple irregularities.

Managing democratic transitions is always tricky, fragile and challenging. The return of political pluralism needed to be done with the necessary safeguards such as conducting nation-wide civic education to build the civic competence of citizens about the workings of a multiparty system. It was also necessary to put in place—and in good time—the legal and administrative mechanisms that manage political change and the tension that is always associated with such changes.

We believe that without the necessary safeguards—legal, administrative, and civic responsibility—it may be difficult for the country to consolidate and scale up democracy and good governance.

ACODE would like to acknowledge the support of DANIDA (Human Rights and Good Governance Programme) which made it possible for us to undertake the research work on legal and administrative reforms that are required for deepening democracy in Uganda.

We wish also to extend our sincere thanks to the entire research team of ACODE that read the draft report and provided useful comments for improvement of the work. The intellectual input

and objective critique from the research team continues to be the landmark in ACODE which makes the organization unique as it strives to extend the frontiers of knowledge and making policy work for the people.

## **LIST OF ACRONYMS**

<b>ACODE</b>	Advocates Coalition for Development and Environment
<b>AG</b>	Attorney General
<b>DP</b>	Democratic Party
<b>DEMGrouP</b>	Democracy Monitoring Group
<b>EC</b>	Electoral Commission
<b>EU</b>	European Union
<b>FDC</b>	Forum for Democratic Change
<b>LCs</b>	Local Councils
<b>LDUs</b>	Local Defense Units
<b>MP</b>	Member of Parliament
<b>NRM</b>	National Resistance Movement
<b>PMU</b>	Project Management Unit
<b>UPC</b>	Uganda People's Congress
<b>UBC</b>	Uganda Broadcasting Corporation
<b>UPDF</b>	Uganda People's Defense Force
<b>UPF</b>	Uganda Police Force
<b>UTODA</b>	Uganda Taxi Operators and Drivers Association
<b>RDC</b>	Resident District Commissioner

## 1.0. INTRODUCTION

In July 2005 Ugandans voted through a national referendum to change to Multi-party politics after nearly 20 years of the Movement Political System under the National Resistance Movement (NRM) administration (1986-2005). Although the referendum was not without controversy – the mainstream political parties boycotted the exercise – it was held in a Uganda that was very different from the one Yoweri Museveni’s NRM/A had taken charge of in 1986. When the NRM/A captured power in January 1986 after waging a successful guerrilla war against the Obote II Government and the subsequent overthrow of Gen. Tito Okello’s military junta, the State in Uganda had literally collapsed. Insecurity and urban banditry were the order of the day. The economy had all but collapsed, with citizens lacking basic goods such as salt, sugar, and soap. Infrastructure had also decayed after several years of neglect.

The NRM administration quickly set to work on economic recovery and also introduced a new political order known as the Movement political system, arguing that it was most suited for Uganda, which lacked a sizeable middle class. The Movement system, also described as “no-party democracy” by its promoters, espoused the principles of individual merit by political leaders, inclusiveness, broad-basedness and popular participation.

Ten years down the road, the country had registered some significant socio-political progress under the Movement system. However, the continued ban on political party activity had “led many analysts to question the extent of real competition, and hence Uganda’s credentials as a democracy”.<sup>1</sup> This was particularly given that although other political groups had been banned from campaigning and sponsoring candidates, the ruling National

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<sup>1</sup> Logan, C.J., Muwanga, N., Sentamu, R., & Bratton, M. (2003). “Insiders and outsiders: varying perceptions of democracy and governance in Uganda.” Afrobarometer Working Paper, No. 27, p.1. et al, 2003, p.1.



Resistance Movement itself operated like a political party.<sup>2</sup> While President Yoweri Museveni and the NRM continued to propound the Movement's "individual merit" system, most elections were in fact run under what Nelson Kasfir described as "a de facto, though unacknowledged, form of party competition".<sup>3</sup> The Movement Secretariat and NRM leaders sponsored Movement supporters in elections, and openly campaigned against candidates supporting multi-party politics.

In fact, in March 2003, the Constitutional Court ruled that the Movement was not a political system, but a political organisation that, among others, had a symbol, and sponsored candidates for elections. The import of this ruling was that the ban on the activities of other political parties had effectively turned Uganda into a one-party state, which the Constitution prohibited.

The 2006 elections were, therefore, supposed to be a landmark. But the first multi-party elections in nearly 25 years showed both the promise and challenges of the new political dispensation. Ominously, as in all previous elections since the promulgation of the 1995 Constitution, which was supposed to create a new political culture based on citizen power, the enabling legislative and administrative framework for the new multi-party electoral exercise had been slow to emerge and it was concluded very late. The dominance of the ruling NRM, including its access to state resources, which were flagrantly used to mobilise support for the incumbent and the ruling party gave it an unfair advantage over an opposition that had been on the leash until only a couple of months before the elections.<sup>4</sup> Episodes of violence during the campaigns and on election day in some parts of the country also

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<sup>2</sup> Human Rights Watch (1999). *Hostile to democracy: the movement system and political repression in Uganda*. New York: Human Rights Watch; Oloka-Onyango, J. (2000). "New wine in new bottles? Movement politics and one-partyism in Uganda." . In J. Mugaju & J. Oloka-Onyango (Eds), *No-party democracy in Uganda: myths and realities* (pp.40-59). Kampala: Fountain Publishers.

<sup>3</sup> Kasfir, N. (1998). "'No-party democracy' in Uganda." *Journal of Democracy*, 9(2): 58.

undermined the integrity and credibility of the new electoral competition. Meanwhile, the Electoral Commission faced several capacity and logistical challenges, as well as serious allegations of bias. All independent monitoring reports about the 2006 elections pointed out glaring problems involving the registration of voters and cleaning of the voters register; inadequate civic education; unequal access of candidates to public media; bribery, intimidation and harassment of voters; as well as irregularities in polling and counting procedures. Independent observers and the opposition also decried the abuse of state resources by the incumbent President and some ministers. The failure to enforce several provisions of the electoral law, as well as inadequate civic education ahead of the elections all combined to give birth to a highly disputed exercise.

Although international observers concluded that the elections generally reflected the will of the people, they were also quick to point out their serious shortcomings. For instance, the European Union Observer Mission said in its final report that the elections fell short of full compliance with international principles for genuine democratic elections, in particular because a level playing field was not in place.

The Supreme Court also found unanimously that there was non-compliance with the provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act in the conduct of the 2006 presidential elections. The Court also unanimously found that there was non-compliance with the principles laid down in the Constitution and both enabling Acts above<sup>5</sup>. Specifically, the Supreme Court found that “the principle of free and fair elections was compromised by bribery, intimidation and violence in some

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<sup>4</sup> One commentator, Makerere University law professor Joe Oloka-Onyango, went as far as saying, tongue in cheek, that he would eat his shoes if incumbent Yoweri Museveni lost the election. See J. Oloka-Onyango, “Multiplying the ‘jiggers’ in the feet of officialdom: Reflections on the challenges facing civil society in a multiparty dispensation”. Keynote Presentation at the Reflection Dinner for the Civil Society Steering Committee; Kampala, January 20, 2006.

<sup>5</sup> Supreme Court Ruling : FDC’s President Rtd. Col Dr. Kizza Besigye against NRM’s President Yoweri Museveni 2006 Presidential Elections.

areas of the country” and that the principles of equal suffrage, transparency and secrecy were infringed upon by multiple voting, vote stuffing and incorrect methods of ascertaining the results.<sup>6</sup>

The constrained competitive environment before and during the 2006 elections, and indeed, all previous elections since the country’s independence in 1962, is at the core of this paper. The paper is based on a critical examination of existing laws governing the electoral process and the functioning of political parties. It also presents a brief analysis of actual practice during Uganda’s shaky democratic transition. The paper finally presents a legislative and administrative agenda for the reform of existing laws and administrative mechanisms that negatively impact on the democratisation process and the functioning of a multiparty system of government.

The evidence on which this paper is based shows that the return to multi-party politics has not yet translated into a transition to democracy. One possible cynical interpretation is that the 2006 elections and the political process leading to them, simply gave the ruling NRM a new cloak of legitimacy without entrenching real political competition. A more optimistic interpretation is that the mere existence of functioning political parties and the holding of regular elections, even when they are flawed, are still important for democratic transitions to the extent that it can gradually expand the horizons of possibilities.

Whatever the case, clearly there are still considerable levels of dissatisfaction with the rules and mechanisms that provide the framework for electoral-based democracy in Uganda. As the country moves towards the next elections slated for 2011, comprehensive electoral reform is still crucial. By electoral reform, we are referring to legal (including constitutional), legislative, administrative, as well as political changes geared towards

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<sup>6</sup> By a vote of four to three, the Supreme Court ruled that the irregularities had not been enough to substantially affect the result of the elections.

increasing the “responsiveness of the electoral processes to public desires and expectations by enhancing impartiality, inclusiveness, transparency, integrity and accuracy”.<sup>7</sup> Such a programme should have clear legislative and administrative actions required and identification of the institutions responsible for taking action.

One major challenge for the electoral reform process may be the “inherent bias for continuity” as the ruling party, which has a clear majority in Parliament, may have a vested interest in the status quo. Indeed, even in developed democracies, it is somewhat unusual for ruling parties that benefit from existing systems to sponsor changes that would weaken their advantage.

In the end, then, electoral reform will require not only the political will to institute legal and constitutional changes to allow the contest for power to be more transparent and fair but also a shared will between the rulers and the governed to make the new rules of the game work.

## **2.0. KEY GAPS IN THE CONDUCT OF ELECTIONS**

Among the key problems identified in the conduct of elections are delays in the enactment of enabling laws; unfairness of some laws; the composition and independence of the Electoral Commission; poor administration of elections; non-compliance with the Constitution and electoral laws; violence, intimidation and harassment; lack of campaign finance legislation; unnecessary involvement of security agencies and para-military groups; and political commitment to reform.

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<sup>7</sup> Chiroro, B. (2007). “Electoral Systems and Processes in Southern Africa: Towards reform.” Accessed on June 27, 2007 from URL: [www.zesn.org.zw](http://www.zesn.org.zw)

## 2.1. Delays in Enactment of Relevant Laws

Uganda enjoys the dubious distinction of enacting new legislation for every election held since the promulgation of the new Constitution 1995. Worse still, the relevant electoral laws and guidelines are often passed or issued very late in the process. For instance, the Political Parties and Organisations Act, 2005 was assented to by the President on 16th of November 2005 and it came into operation on 21st November 2005, leaving the opposition parties very little time within which to organise and carry out their campaigns.

The delay in assenting to the amended Political Parties and Organisations Act also meant that for several months after the referendum that returned the country to multi-party politics, opposition political parties and organisations were, quite literally, dressed up with nowhere to go, as they could not legally open up branches or recruit members. Perhaps not surprisingly, the opposition parties were unable to present candidates in several constituencies for the parliamentary and local council elections as a result of this hiccup.

These delays created uncertainties about the election. For instance, in early December 2005, the chairperson of the Electoral Commission, Dr. Badru Kiggundu, said he could not name a date for the election because “right now, my hands are tied waiting for the laws to be sorted out”.<sup>8</sup>

The delays also meant that some potential candidates were denied the right to participate in the elections by presenting themselves to the Electorate. This was especially so with the clause introduced by Constitutional (Amendment) Bill No. 3, which requiring civil and public servants who wished to stand for election as Members of Parliament to resign their offices 90 days before the nomination

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<sup>8</sup> Electoral Commission chairperson Dr Badru Kiggundu in interview reported by The East African newspaper, December 06, 2005.

day. The Parliamentary Elections Act 2005 came into operation on the 21st November 2005 and the nominations were set for 12th and 13th January 2006. There were, therefore, only 52 days between the commencement of the Act and the nominations.

Whether these delays are a result of innocent mistakes on the part of the Executive and the Legislature, or deliberate delaying tactics, incompetence, or both, they have had a direct and negative impact on the quality of the elections, as Supreme Court Justice Bert Katureebe noted in his ruling on Kizza Besigye's petition challenging the 2006 presidential election outcome. He said: "When the electoral laws are passed late and with little or no time to correct anomalies and contradictions in them, the Electoral Commission is left with no time to attend to all the issues and problems that arise since it is trying to beat the constitutional deadline of holding the elections."<sup>9</sup>

## **2.2. Unfairness of the Laws**

Many of the laws and structures in place during the transition period were a relic of the no-party system and, according to critics, designed to perpetuate the Movement's hold on to political power. The delay in passing those laws meant that there was hardly time to roll back the in-built perks for incumbency and level the playing field. For instance, the Presidential Election law allowed the President to use resources "ordinarily attached to his office". As a result, the President was able to use the Presidential Press Unit and Helicopter, which gave the incumbent considerable advantage over his opponents, especially when the campaign period was limited to only about two months.

Debate over the unfairness of the laws was loudest over section 59 of the Presidential Elections Act, which provides that the Supreme Court can only annul the outcome of an election if it is satisfied

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<sup>9</sup> Extract from Supreme Court Judge Bert Katureebe's ruling in Dr Kizza Besigye's petition against the outcome of the 2006 presidential election.

that non-compliance with the law substantially affected the results. Therefore, while the Supreme Court unanimously found that there had been non-compliance with specific provisions and principles of the law, the majority ruled that this had not substantially affected the outcome.

Justice George Kanyeihamba, one of the three judges who voted to overturn the election, argued in his judgement that the provision placed a burden on judges to make mathematical calculations instead of looking at the credibility of the evidence presented. "There can be no justification for the view that since these illegalities, irregularities and malpractices were few and far in between, they did not constitute enough evidence. Such justification would, in my view, be fallacious," he noted.

But the law is also unfair to petitioners, as Besigye noted. "The Constitution and legal framework are not only grossly unfair to the petitioner but favour perpetrators of electoral malpractices," he said. "The petitioner has only 10 days to prepare and lodge the petition (compared with the Parliamentary Elections where the petitioner has 30 days within which to lodge a petition)."

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

The Electoral Commission displayed some remarkable independence, particularly in allowing FDC candidate Kizza Besigye to be nominated while in detention, against the written wishes of the Attorney General Prof. Khiddu Makubuya who argued that his nomination, if permitted, would be "tainted with illegalities".<sup>10</sup> Although some of the Commission's actions were widely hailed, the Commission was generally accused of bias and subservience to the interests of the incumbent and the ruling party.

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<sup>10</sup> FHRI first Interim Election Report, 16th February 2006.

The composition of the EC Commissioners for example, the manner of the appointment of its members, as well as their tenure of office continued to be hotly contested.



*First Left - Dr. Kiiza Besigye attending one of the workshops organized by ACODE on "Strengthening Government Opposition Relations"*

The Commission also carried out open consultations with all political parties and agreed on a common code of conduct for the election without seeming to give any favours to any party, including the ruling NRM. The EC was further commended for the timely issuing of election guidelines for both the parliamentary and presidential elections.

The Electoral Commission was generally commended for availing copies of the voters' register and number of registered voters per polling station to all political parties, candidates and other stakeholders including observers; publicizing the list of polling stations in the entire country in the print media; regularly holding meetings with representatives of political parties and candidates to iron out emerging issues at various levels, as well as regularly briefing the media and observers to keep them abreast about the electoral process.

However, the independence of the Commission (or lack thereof) remained a particular cause for concern to the opposition. In the run-up to the 2006 elections, the opposition parties and candidates had variously argued that members of the Commission were not independent of interference from the President, who had appointed them, with one opposition candidate describing the Commission as the President's "walking stick".

For instance, in what was widely interpreted as subservience to the appointing authority, Chairperson Kiggundu and Secretary Sam Rwakoojo attended a press conference addressed by President



Museveni at State House on July 12, 2005 ahead of the referendum on the political systems later that month.

In its final report on the 2006 election, the EU Observer Mission noted: “Despite the efforts of the Electoral Commission to demonstrate independence from the Executive, it did not retain the full confidence of all political parties, even after establishing inter-party liaison committees and showing flexibility and a high degree of even handedness in dealing with complaints and concerns from political parties”.<sup>11</sup>

## **2.4. Administration of the Elections**

Independent monitoring reports about the 2006 general elections pointed out serious shortcomings in the processes of voter registration, cleaning of the voters’ register, civic education, enforcement of campaign regulations, intimidation and harassment of voters; as well as irregularities in polling and counting procedures.

The EC did not strictly enforce compliance with its own guidelines against any of the candidates both in the presidential and parliamentary elections. For instance, the Foundation for Human Rights Initiative (FHRI) noted that in all the areas that they monitored, candidates violated the election laws and the guidelines issued by the EC. They further observed that the failure by the EC to enforce compliance with the guidelines reduced the confidence in the electoral process and raised the issue of the commission’s ability to manage the elections. Non-compliance by candidates included carrying out campaigns in places not indicated on official candidate programmes, campaigning without having submitted any campaign programmes, or not sticking to the plans submitted to the EC, which in a few incidents led to clashes among rival supporters. Candidates throughout the country also routinely,

<sup>11</sup> EU Election Observer Mission, Uganda 2006, Final Report on the Presidential and Parliamentary Elections.

campaigned outside the stipulated 6.00 p.m. deadline.

Also, the requirement of equal access to public media was blatantly flouted, but those responsible got away with it. In a survey of election coverage between January and February 10, 2006, DEMGroup found that the State broadcaster, UBC TV, had accorded 62.4 percent of its election coverage to candidate Museveni, some 11.5 percent had gone to Besigye, while the three other candidates sharing the rest. UBC Radio (News Hour) gave 61 percent coverage to Museveni, 9.7 percent to Besigye and 28.3 percent to Miria Obote. The two other candidates, Ssebaana Kizito and Abed Bwanika hardly received any coverage.<sup>12</sup>

Article 61 (g) of the Constitution provides that one of the functions of the Electoral commission shall be to formulate and implement civic educational programmes relating to elections. However, indications and findings from election observers were that generally little or no civic education was conducted. The lack of voter education was best manifested by the number of spoilt ballots countrywide, which were more than the total votes garnered by the last three candidates.<sup>13</sup> There were also accusations that in some places where voter education was carried out, it was conducted in a partisan manner.<sup>14</sup>

The failure to plan for, and update polling stations also threatened to undermine the credibility of the elections. Several election observer reports noted that the placement of polling stations by the EC was not planned and updated from previous elections. According to the guidelines issued by the EC, polling stations were supposed to be located in open areas or in large halls. On polling day, the distance from the presiding officer was supposed

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<sup>12</sup> State of the Electoral Process, Democracy Monitoring Group, February 2006.

<sup>13</sup> According to the results released by the Electoral Commission, the total votes cast were 7,230,456 reflecting 69.19%, while invalid votes were 295,525 (4.09%). A total of 10,450,788 voters were registered at the 9,786 polling stations. Ssebaana Kizito got 109,583 votes (1.58%), Bwanika 65,874 (0.95%) and Miria Obote last with 57,071 (0.82%). Source: New Vision, March 16th 2006.

<sup>14</sup> Democracy Monitoring Group 2006 report.

to be about 15 metres to the ballot ticking basin and 10 metres to the ballot box, while the crowd was supposed to keep at least 20 metres away.

However, some areas designated as polling stations did not have sufficient space for even the setting up of one polling area. In such cases, it was inevitable that on polling day, the stations had to be moved, and voters were not always adequately informed of the new locations. This caused long delays in the entire process, as well as discouraging some people from voting.

The update of the voters' registers also remained problematic. The display of the voters' register from 23rd December to 17th January brought to the fore several errors, including the placement of wrong photos and inclusion of dead people. Of much greater concern, however, was the fact that in some areas, the names of people who had registered mainly during the extension granted in November did not appear in the register. In some cases several people who had registered earlier and had cards did not appear on the register. In other cases some people's names were actually on the register but in areas where they did not register to vote and they were not aware of it. This led to the disenfranchisement of many eligible voters .<sup>15</sup>

## **2.5. Election Violence**

Election violence has been very much a part of all three presidential and parliamentary elections held since 1995. The violence, perpetuated by both civilians and security personnel, has manifested itself in various forms in some cases resulting into the loss of life. The 2001 election witnessed such a level of violence that a Parliamentary committee was set up to investigate this violence.

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<sup>15</sup> The Electoral Commission acknowledged that it deleted 153,162 voters from the electoral register countrywide. Source: New Vision, 28th March 2006. Although independent observers put it at close to a million.

Various election monitors and observers documented several incidents of violence and intimidation in the 2006 elections, although the levels were widely considered lower than in 2001. In one of the most notable incidents, on 15th February at Bulange in Kampala, FDC supporters' were shot at by Lt. Ramathan Magara, the commanding officer of the Reserve force in Mengo based in the office of the Rubaga Deputy RDC Fred Bamwine. Three people were killed and many others injured in this attack. At Summit View Barracks polling station in Kololo, the DP candidate for Kampala Central LC III Chairperson Mr. Charles Sserunjogi was stabbed and suffered serious knife injuries on the polling day. His assailants were in the company the NRM-O candidate for the same post and who eventually won the elections. There were also serious cases of violence reported in Bugembe, Jinja district and Idudi in Iganga District .<sup>16</sup>

## **2.6. Intimidation and Harassment**

Intimidation and harassment also featured highly during the election process. Often, it was intended to dissuade potential voters from making a free choice of a candidate or party.

At both the New and Old Taxi parks in Kampala, Uganda Taxi Operators Association (UTODA) the body that manages the parks reportedly expelled from the parks all taxi drivers who openly supported FDC/Besigye. Monitors were told that UTODA had directed all drivers and conductors that the organisation's official support was for candidate Museveni and the NRM. No taxi displaying Besigye's poster would be allowed to enter the parks, and drivers who were expelled were only allowed back after declaring their support for candidate Museveni and the NRM .<sup>17</sup>

Some allegations harassment and intimidation of voters were also made against government officials such as RDCs as well as

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<sup>16</sup> Coalition for Election Finance Monitoring (CEFIM) 2006 General Elections report; Pg 27.

<sup>17</sup> UJSC Preliminary Report on the state of Media Coverage of the 2006 General Elections.

security personnel who openly displayed bias towards the ruling party. In Agule Parish, Bugondo sub-county, in Soroti, military personnel stationed in the district convened a public meeting which people were forced to attend on 4th February 2006. Several armed UPDF soldiers also attended the public meeting. They went on to inform the people that should Museveni and the NRM lose in the constituency as happened in 2001, they would all see trouble when the elections were over. The FDC Parliamentary candidate for Kasilo County, Mr. Elijah Okupa, was warned against “misleading” the people by campaigning for FDC .<sup>18</sup>

## **2.7. Party Financing and Campaign Finance Legislation**

Political parties had not made declarations to the Electoral Commission by February 2006 as required by law mainly because of delays in their registration. Most of the parties had registered in late 2004 and early 2005, making their declarations of assets and liabilities within sixty days after the first year of registration impracticable—at least not before the 2006 elections. According to the law, political parties such as the Uganda Peoples Congress, which was registered in March 2005, and the Democratic Party could only submit their declarations by May 2006 and September 2006 respectively.

Although the Political Parties and Organizations Act provides for public access to information such as the declarations of assets and audited statements of accounts of political parties, this information was not available by the time of the elections.

Such information should be made available to the general public as a tool to monitor compliance with those requirements before and immediately after elections. Provision of such information at later dates of convenience to political parties does not only lead to a breach of legal requirements, but also undermines the very reasons for which the information is meant to be public.

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<sup>18</sup> Coalition for Election Finance Monitoring (CEFIM) 2002 General Elections report.

According to the EC by Jan., 2007, no political party has made any declarations regarding their source of funding. Parties like FDC, JEMA and PUM however, attempted to include “some” sources of funding in the declarations of their Audited Books of Account but this could not be considered conclusive. In fact, most of the declarations to this effect only highlighted sources from internally generated funds .<sup>19</sup>

By July 2007, only 15 out of the 33 registered parties had submitted audited accounts. The NRM and DP were among those that had not submitted their accounts.<sup>20</sup>

As provided for in the law, the Electoral Commission provided Ug Shs 20 million to each of the candidates who contested in the 2006 presidential elections. Each of the candidates was required to account for the use of public resources such as the UShs. 20 million and other facilities within 30 days after the election. By the end of April 2006, other than independent candidates none of the candidates had submitted their accountability to the EC.<sup>21</sup>

Records at the Electoral Commission show that UPC and DP have not submitted accountability for the UShs. 20 million while the NRM submitted their accountability in April 2007, one year after the legal deadline. The FDC on the other hand submitted their accountability in the record time of one month but it was not accepted by the EC because of alleged irregularities.<sup>22</sup> All Independent candidates submitted their accountabilities of UShs. 20 million and the other facilities provided by the EC within the stipulated 30 days.

Curiously, the Parliamentary Elections Act does not have any provisions on the financing of candidates or requiring candidates

<sup>19</sup> Electoral Commission Records July 2007.

<sup>20</sup> Telephone interview with Mr. Okello Jabweli, Public Relations Officer of the Electoral Commission, 23rd July 2007.

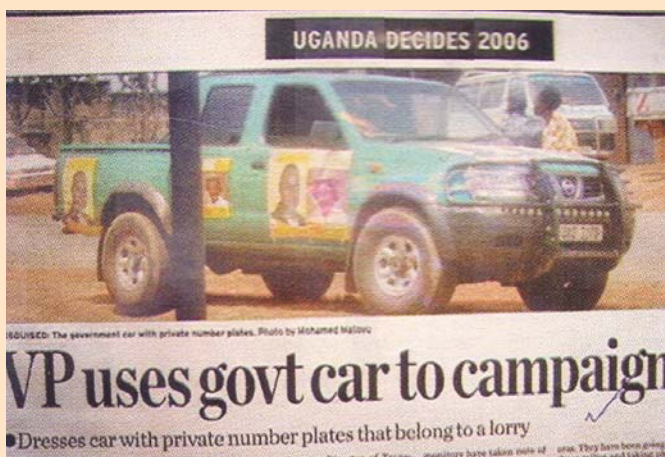
<sup>21</sup> CEFI (2006). Monitoring Campaign Financing and Misuse of Public Resources During the 2006 General Elections in Uganda, p.22.

<sup>22</sup> Electoral Commission records, July 2007 Presidential Act .

to disclose or report their sources of campaign funds. It is also important to note that both the Presidential and Parliamentary Elections laws are generally silent on campaign expenditure. Both the legal framework and policy guidelines do not provide the details of acceptable forms of expenditure.

## 2.8. Use of State Resources

Section 27 (1) of the Presidential Elections Act prohibits presidential candidates from “using government or public resources for the purpose of campaigning for election” except as authorised under the Act. Section 27(2) adds, however, that an incumbent President who is a candidate “may continue to use Government facilities during the campaign, but shall only use those Government facilities which are ordinarily attached to and utilised by the holder of that office”. Controversy remains over the definition for “ordinarily attached,” which leaves the law quite open to abuse.<sup>23</sup> DEMGroup has noted that it is difficult to implement this section of the Presidential Elections Act since not many people know the usual facilities attached to the President. Although the law requires the Minister of Public service to lay before Parliament a list of such facilities, this was never implemented.



**Daily Monitor Photo: The Vice President used a government car to campaign. The government number plates however, were replaced with a private lorry's number plate to disguise the identity**

In the circumstances, as FDC's Legal Secretary Dan Wandera Ogalo argues, the provision disadvantages the incumbent's challengers. “What are those facilities that are ordinarily attached? It means the incumbent can use a helicopter to cover all the islands of Bugiri and his competitors will not,” he said. “The President will use the chopper and his assistants will

<sup>23</sup> Presidential Act is vague, flouted. Sunday Monitor - 22nd January 2006, p.10.

use the vehicles and will thoroughly comb a district within a day. The law is used to favour the incumbent.”

Section 25 (1) of the Parliamentary Elections Act also prohibits Ministers, holders of public office, including employees of statutory corporations or companies where the government has a controlling interest, from “using government or public resources for the purpose of campaigning for election”. Similarly, during the campaign period, the section restricts such a candidate to the “use of official facilities ordinarily attached to his or her office to the execution of her official duties”. The Electoral Commission is required to write to the minister or a holder of a political office “to state in writing the facilities ordinarily attached to any office held by that person.... and the candidate shall comply with the requirement”. The same notion of “ordinarily attached” facilities poses problems and remains open to abuse.

## **2.9. Security Agencies and Para-military Groups**

The elections of 1996, 2001, and 2006 provided a good opportunity to measure the country’s ability to demilitarise the electoral process, as well as the ability of those security agencies with a role to play during elections to rise above petty, personal and partisan interests, and act in the public interest.

Unfortunately, in both the 2001 and 2006 elections, the security agencies were variously accused of politically partisan actions in favour of the incumbent, including intimidation and violence against opposition candidates and their supporters, as well as other forms of electoral malpractices.

In Bugondo, Soroti, the UPDF soldiers took an active role in campaigning for the incumbent and issuing threats against the opposition. The Constitution of Uganda provides that the UPDF



should be non-partisan and national in character.<sup>24</sup> Principle II of The code of Conduct for Security Personnel<sup>25</sup> enjoins security forces to remain neutral and not to overtly participate in partisan political activities. The Code further requires them to restrict themselves to the maintenance of law and order.



*Daily Monitor Photo: Roit Police confront demonstrators at the streets of Kampala city after the arrest of the FDC leader, Kizza Besigye*

Some of the issues that arise out of the conduct of security agencies during election periods include the failure to keep the peace; militarisation of the police force; partisan application of electoral and other relevant laws; violation of constitutional rights under the aegis of the Police Act and the rise of illegitimate

militia and paramilitary groups. The police force was, in many cases, also poorly facilitated and resourced.

The 2006 election also saw the emergence of election militia and paramilitary groups that perpetuated a lot of the violence that marred the polls. In Teso region, members of the Arrow Boys militia, recruited to protect the local population against attacks by the Lord's Resistance Army rebels and Karimojong cattle rustlers, became special election constables to assist the police. This was in spite of the fact that two of their leaders, Musa Ecweru and Mike Mukula were NRM candidates in the election in the area.

The parties contesting in the election also formed youth brigades, ostensibly to keep vigil at polling stations and ensure that the ballot boxes were not tampered with. As a result; there emerged a myriad of nondescript militias, some armed, across the country.

<sup>24</sup> Constitution of the Republic of Uganda 1995, Article 208(2)

<sup>25</sup> The code of Conduct for Security Personnel During an Electoral Process -2006

For instance, On February 2, 2006, unidentified armed men in NRM party colours were involved in a clash with FDC supporters in Iganga. On February 8, the Movement Secretariat claimed that they were LDUs who are party supporters. The NRM's deputy spokesman Mr. Ofwono Opondo said there was no law against LDUs carrying guns or belonging to a political party. This was incorrect. While there was no law expressly barring the LDUs from either belonging to a political party or carrying guns, security agencies had agreed on six principles to guide them during the election, including the principle of neutrality during the electoral process.<sup>26</sup>

Furthermore, the presence of armed men in ruling party T-shirts and openly campaigning for its candidates in a hotly-contested parliamentary race made a free and fair election impossible. The High Court found, in a subsequent election petition, from the area by the losing opposition candidate, and the Court of Appeal agreed, that the election had been characterised by fear and intimidation and had been neither free nor fair.<sup>27</sup>

### **2.9.1. Strict Liability for Election Offences**

One of the main weaknesses of the electoral machinery in Uganda has been following up on individuals who violate electoral laws or commit election related offences. Election offences are clearly spelt out in electoral legislation such as the Presidential Elections Act and the Parliamentary Elections Act and are further elaborated in the guidelines made by the EC for the various stakeholders.

During the 2006 election, in a bid to curb irregularities during the campaigns and whole electoral process, the Electoral Commission together with the Uganda Police established an Election Offences Squad as well as a Complaints Desk at the EC head office and at all EC district offices. In December 2006, Police Spokesperson

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<sup>26</sup> Principle 6 of the Code of Conduct for Security Agencies

<sup>27</sup> See court ruling in *Abdu Katuntu vs. Kirunda Kivejinja & another*, 2007

Asuman Mugenyi announced that it was investigating 152 electoral offences. The majority of cases (108) involved supporters of the NRM as opposed to 32 cases involving FDC supporters and three DP supporters. None of these cases, including the many others reported in the run up, on polling day and post election period, however, was ever fully pursued to a logical conclusion. This begs the question, was a special squad set up to just document electoral offences? Moreover, as noted earlier, the EC did not strictly enforce compliance with the guidelines against any of the candidates both presidential and parliamentary and it was not simply a matter of impartiality.

## 2.9.2. Size of Parliament

To achieve effective representation, the country needs a Parliament where MPs are remunerated competitively and are provided with physical and research infrastructure as well as proper constituency



*The Speaker of Parliament Hon. Edward Sekandi giving a Keynote Address at ACODE's Workshop on Government-Opposition Relations at Sheraton Hotel in August, 2007.*

service facilities. The current size of Parliament is too big for proper remuneration and facilitation. Yet, the government is still creating more districts, which is likely to generate more constituencies and therefore more members of Parliament.

A large Parliament is too expensive for a poor country. Yes, democracy is not cheap, but effective representation is not guaranteed by large numbers. It is rather the quality of individual legislators, the level of their facilitation, their

responsiveness to aspirations of constituents as well as the political environment within which they operate.

### 2.9.3. Political Commitment to Reform

Several problems discussed above such as the delays in enacting relevant legislation as well as the blatant violation of electoral laws and regulations leave serious questions on whether the country's leadership and ruling party want an open and fair contest. None other than Prof. Khiddu Makubuya, now the Attorney General, had aptly noted way back that constitutional and legislative reforms alone were not sufficient to guarantee free and fair elections. "Other things matter and will make the decisive difference," he wrote. "These include democratically-oriented leaders who believe in free and fair elections whether these leaders are in government, the judiciary, religious bodies, business, etc; as well as politically conscious citizens who will not tolerate electoral injustices..."<sup>28</sup>

In the following section, we outline some steps that can be considered for discussion or implementation to address the shortcomings in the situational analysis above.

## 3.0. RECOMMENDATIONS AND PROPOSALS FOR REFORM

### *Delayed enactment of laws*

- Parliament should initiate a national dialogue on electoral law reform with participation of all stakeholders in government, civil society and the private sector to carry out the necessary reforms well ahead of the 2011 elections; and
- Civil society organisations and the Electoral Commission should conduct public awareness of the legal regime governing the conduct of elections in order to generate public pressure on Parliament and the Executive to pass or amend relevant laws at least one year before the next elections in 2011.

### *Fairness of the laws*

- Parliament should amend the Presidential Elections Act to

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<sup>28</sup> The cost of Democracy: the role of Elections ; Makubuya, 1996, p.583

ensure that a reasonable amount of time of at least two months is available for petitioners to gather the necessary information needed to build credible cases;

- To restore faith in post-presidential election petitions, Parliament should amend the Act's requirement that presidential elections can only be overturned if there is evidence that the violation of laws had a "substantial" impact on the outcome; and
- Parliament should amend other provisions of the Presidential Elections Act and Parliamentary Elections Act that appear to give undue advantage to incumbents. Section 27 (1) of the Presidential Elections Act is one such example.

#### *Independence of the Electoral Commission*

- Parliament should amend the Electoral Commission Act to introduce a transparent and publicly accountable system for the nomination, selection and appointment of commissioners and staff. One of possibilities is to consider the use of a "search committee" for members to be appointed to the Commission, in consultation with the Chief Justice and the Leaders of Political Parties;
- Parliament should also amend the Electoral Commission Act to 'strengthen the security of tenure' of the commissioners and clearly spell out their responsibilities; and
- Parliament should ensure that a balance of interests/political shades is represented on the Commission. The EC Act should make it mandatory that some of the commissioners be nominated by the opposition.

#### *Administration of Elections*

- Parliament should ensure that the government streamlines and adequately finances the budget of the Electoral Commission to enable it perform its constitutional duties;
- The Electoral Commission, the Uganda Human Rights Commission, civil society, and all stakeholders should embark on continuous civic education before, during and after

elections;

- Parliament should amend electoral laws to strictly place sanctions on candidates and parties that violate electoral laws and regulations; and
- Parliament should amend electoral laws to place sanctions on public media that disregard or fail to implement legal regulations on equal access for and treatment of candidates.

#### *Party financing*

- The Electoral Commission should send timely reminders to political parties that fail to comply with the disclosure requirements, and go ahead to take legal action in the event that these parties do not respond immediately after the legal grace period is over; and
- Parliament should regularly (annually) require the Electoral Commission to come out with official statements on parties that have not fulfilled the declaration and disclosure requirements in the law.

#### *Election campaign finance*

- The overall legal framework on the use of public/state resources is riddled with a lot of vagueness and should be amended by Parliament. For example, the entitlements of the President in the Presidential Elections Act should be listed in a manner that increases transparency and complies with both the spirit and the letter of the law;
- The use by incumbents of “ordinarily attached” official facilities, other than those related to their personal security, should be restricted to the execution of official duties only;
- Parliament should bear pressure on the EC to increase its vigilance and ensure that political parties and candidates comply with the disclosure and reporting requirements enshrined in the law;
- In order to ensure transparency of political finance but also empower voters to make informed choices, Parliament should amend the relevant laws to make disclosure of income a pre-

election requirement. Candidates should be required to list their campaign income and sources every three months in the year before the elections. This information should be made publicly available, in a timely manner;

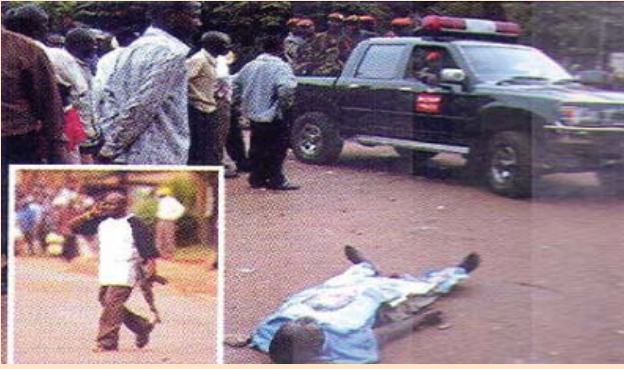
- Parliament should amend electoral laws on campaign finance so that they contain limits on large private donations in order to promote fair competition between political parties;
- All stakeholders should give careful consideration to the benefits of state funding of parties and candidates and to the encouragement of citizens' participation through small donations and membership fees. In a young democracy like Uganda's consideration should also be given to limiting corporate and foreign support; and
- Parliament should amend the relevant electoral laws to provide clear sanctions or penalties for non-compliance with the requirements to submit returns on campaign income and expenditure after the elections.

#### *Failure to maintain law and order*

- The police training curriculum should include human rights, peace education and democracy so as to improve the police's appreciation of human rights and other fundamental freedoms during elections including keeping law and order in a non-partisan manner. The Human Rights Commission and civil society organisations should support the police by facilitating training in the identified disciplines; and
- The government should prosecute all cases of electoral malpractices fairly and transparently. Such cases should be followed up immediately after the elections preferably during the first year.

#### *Demilitarization of Electoral Process and Enforcement of Electoral Laws*

- The government should eliminate and desist from the use of para-military groups and other security agencies during



**New Vision Photo:** A man lies dead after a soldier attached to the office of the deputy RDC Rubaga (inset) fired live bullets into the crowd of FDC supporters who were waiting to greet their presidential candidate at Bulange

elections. Consequently there is a need to build the capacity of the police force to provide law and order during elections; and

- The government through the Electoral Commission should clearly spell out the relationship between the security agencies ensuring that police maintains leadership of election law enforcement.

### *Rise of election militia/paramilitary groups*

- Parliament should enact or enforce legislation to prevent or criminalise the formation of private or partisan militia, especially during elections.

### *Size of Parliament*

- Parliament should commit “class suicide” and reduce its numbers for effective representation in a new democracy.

### *Political Commitment to Reform*

- The government through Parliament and the Electoral Commission should generate national, bi-partisan dialogue on the political reforms required in the country and the way to carry them out. National dialogue should bring on board representatives from all political parties, government bodies, civil society, the media and the donor community. Dialogue should start immediately in the first year after elections and continue on an annual basis.



## 4.0. CONCLUSION

The regular choice of leaders through free, fair, and transparent elections is one of the cornerstones of democracy. In fact, some have argued that “the most basic requirement for democracy is that citizens be empowered to choose and remove leaders”.<sup>29</sup> Of course those who define democracy procedurally on the basis of electoral competition would not be content simply because elections have been held. It matters also whether the competition was fair; “whether all potential candidates had the opportunity to offer themselves for office, to express their political views openly, and to form political associations to aggregate support behind their bid for power.”<sup>30</sup> It matters also whether citizens could freely access information about the political process and whether the media were free to disseminate information and ideas without undue hindrance.

In other words, elections alone are an insufficient condition for both political competition and democracy. Political competition requires open electoral contest but also a good degree of “institutional pluralism in civil and political society”<sup>31</sup> and, in particular, the ability of political parties and civil society groups to communicate their messages to the public in between elections, and to publicly challenge or engage incumbent groups. It also includes the rights of citizens to form or join political and civil groups (at both local and national levels) that mediate between the state and citizens, including the right to carry out grassroots and national mobilization of support, and to engage in opposition (or support) of the government.<sup>32</sup>

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<sup>29</sup> Bratton, M. & Van de Walle, N. (1997). *Democratic experiments in Africa: regime transitions in comparative perspective*. p.12. Cambridge: Cambridge University Press.

<sup>30</sup> Bratton & van de Walle, 1997, p.13; see also ARD Inc. (2005). “Uganda: Democracy and governance assessment report,” p.16.

<sup>31</sup> Bratton & Van de Walle, 1997, p.68

<sup>32</sup> For more on political competition or contestation, see Dahl, R. A (1971). *Polyarchy: Participation and opposition*. New Haven & London: Yale University Press.

As an electoral reform conference in Dakar, Senegal concluded in 2005, “The fact that elections are conducted in most post-colonial African countries on a regular basis is of no real consequence if electoral competition is undermined by an uneven playing field i.e.

- The incumbent has access to and uses state resources as his own cheque book;
- State media is biased towards the ruling party;
- The electoral process is in the hands of the dominant party due to the composition of the electoral commissioners and the way in which they are nominated;
- Limited resources for citizen education programmes about why it is important to participate in elections and how to keep the political parties accountable;
- No real possibility for power alternation; and
- Limited participation by an ever-increasing skeptical and disaffected citizenry.”<sup>33</sup>

The evidence from Uganda appears to suggest that what the country witnessed in 2006 was in many ways not different from the above prognosis. It was at best a transition to a *pseudo-democracy*.<sup>34</sup>

Even where many reforms were well intentioned, there was poor implementation and enforcement. The evidence shows that in the absence of strong political will to allow the contest for political power through democratic means, most reforms proposed will not be worth the paper on which they are written.

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<sup>33</sup> “Electoral Reform in Africa: Exploring Regional Responses.” Report of the Electoral Reform Conference at the Goree Institute, Dakar, January 2005.

<sup>34</sup> Larry Diamond has defined pseudo-democracies as “Electoral regimes that have multiple parties and many other constitutional features of electoral democracy but that lack at least one key requirement: an arena of contestation sufficiently fair that the ruling party can be turned out of power.” i.e. “the existence of formally democratic political institutions such as multi-party electoral competition masks (often in part to legitimate) the reality of authoritarian domination.” [See Diamond, L. (1999). *Developing Democracy: Toward Consolidation*. The Johns Hopkins University Press: Baltimore & London]. In their democracy and governance assessment report on Uganda, ARD Inc. argued that “the era of political pluralism conceals the continuities in President Museveni’s authoritarian leadership style” (ARD, 2005, p.10).

The last two presidential elections have both ended up being determined by the Supreme Court. The Court was unanimous in its finding that the 2006 election was not entirely free and fair –although they ruled that this did not substantially affect the outcome of the poll. Three of the seven judges on the Supreme Court bench say this requirement for substantial proof places a mathematical burden on them that hinders punitive and restorative prescriptions for the abuse of law and process.

In his response to the Supreme Court ruling, FDC leader Besigye, the losing petitioner, warned that this requirement meant that future election disputes would be taken to alternative courts, such as the one President Museveni took in 1981, when he started a war to protest against the rigging of elections the previous year. Indeed, if electoral reforms are not addressed seriously, those ominous words might find appeal among disaffected political opponents after the 2011 elections with undesirable consequences.

Transition to democracy is always tricky, challenging and fragile. To address such a premise, adequate reforms have to be made in time. This paper has offered some suggestions on reforms that need to be made or deepened. The most important of these, however, is the need to ensure a shared will, between the rulers and the governed, to make governance transparent and equitable, and make the contest for political power free and fair.

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