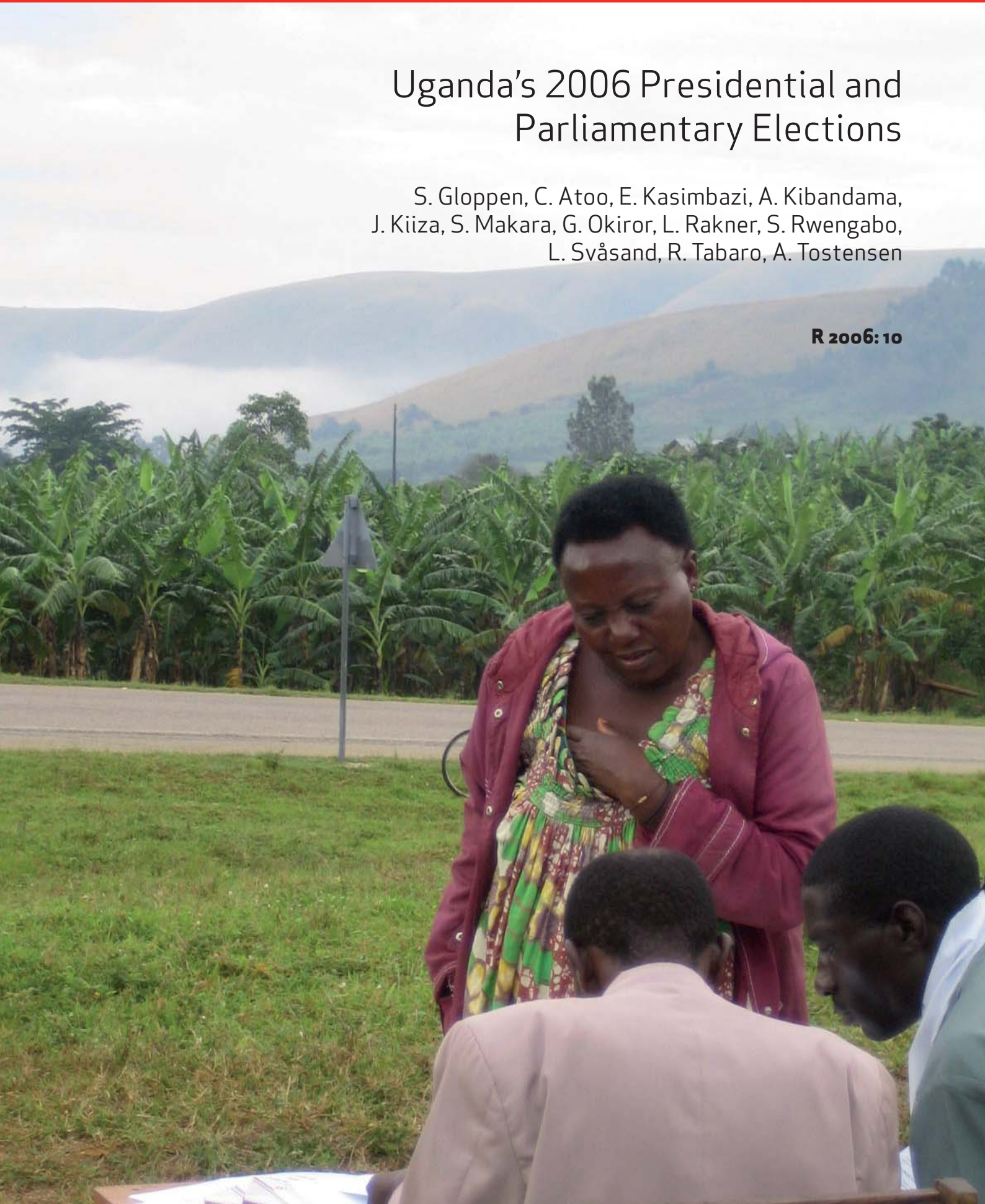


CMIREPORT

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The 2006 Presidential and Parliamentary Elections in Uganda: Institutional and Legal Context

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Introduction: The electoral cycle

On Thursday 23 February 2006 Ugandan voters decided who will govern for the next five years.¹ These were the first multi-party elections in the country since 1980 and marked the end of 20 years of “no-party democracy”.² It was also the first tripartite elections, with voters electing the President and parliamentary representatives (including special seats for women) on the same day. An important day indeed,³ but elections are more than the casting and counting of votes. Much is decided in the weeks and months prior to election day, and events in the aftermath of the polling may alter the outcome. To judge an election on the basis of a narrow focus on the polling and tallying of results, and perhaps the last part of the campaign, often yields a very different verdict than if the basis for analysis is the broader process, where the parameters and structures are set that underpin and restrain the electoral process.

This report analyses the 2006 presidential and parliamentary election in terms of the broader process starting with the processes of setting the rule for political contestation, through the registration of voters and parties, the nomination of parties and candidates, the campaign, the voting, counting and tallying and finally, the handling of election complaints. The report shows how problems and irregularities at various stages of the election cycle tilted the playing field and compromised the integrity of the 2006 elections.

The report comes out of research collaboration between the departments of Political Science and Public Administration, Public and Comparative Law (Makerere University) and the Chr. Michelsen Institute in Bergen, Norway. The project analyses the development of democratic processes in Uganda by focusing on institutions aimed at securing democratic accountability. To ensure that elected political leaders ‘play by the rules’ and act in accordance with their mandate without violating citizens’ rights, is a key challenge for new democracies in sub-Saharan Africa, and elections and succession ‘test’ the strength of political institutions to check against executive dominance. In many cases incumbents find ways to win electoral mandates without opening for genuine political competition, and we ask to what extent the institutions established to guard against executive dominance in Uganda were able to exercise their functions in the context of the 2006 elections.

The research project examines four sets of institutions charged with ensuring an impartial and fair electoral process: the institutions comprising the electoral channel, the party system, parliament, and the judiciary.⁴ These four institutions are interdependent but also partly autonomous from each other and to understand how they operate and interact is necessary in order to grasp the degree of democratic institutionalisation. The quality and impartiality of the *electoral administration* is central for whether an election is seen as a legitimate process for delegation of authority from citizens to representatives. In new democracies the organisation of the electoral process is often characterised by ambiguous rules and problems associated with enforcement of the rules. The *political party* has become a most significant actor in electoral processes and democratic governance. Parties also serve to link citizens with *parliament*, which represents the citizens in setting the rules of the electoral game, influencing policy decisions and acting as an institutional

¹ Local council elections were held later: L.C.5 Elections on March 2, and L.C.3 Elections on 10 March 2006.

² In the previous elections held since the coming into power of the National Resistance Movement in 1986, presidential and parliamentary candidates all ran under the Movement umbrella, competing on the basis of individual merit.

³ The local elections were, however, held on different dates as were the elections of representatives to parliament for special groups (the army, workers, youth, and people with disabilities).

⁴ The study is designed to allow comparisons with findings from similar research projects in Zambia (CMI and Institute of Economic and Social Research, University of Zambia, 2000-2002) and Malawi (CMI and Centre for Social Research, Chancellor College, Malawi, 2003-2006).

check on executive power. The *judiciary* is the ultimate interpreter of the constitutional and legal rules.

We have followed these institutions throughout the electoral cycle, with key informant interviews and more intensive observation during critical periods such as during the referendum on the 28 July 2005,⁵ and the period around the 23 February elections. The findings in this report are based on key informant interviews and observations in Kampala and in five districts throughout the country – Hoima; Kamuli; Masaka; Ntungamo; and Soroti – where party strength differed considerably, spanning from the NRM stronghold in Ntungamo to FDC territory in Soroti.⁶

The administration of the electoral process

The credibility and competence of the electoral administration is crucial to the integrity of any election and to the legitimacy of the results. Uganda's Electoral Commission (EC) is created by law, The Electoral Commission Act 1997, under Chapter 5 of the Constitution of Uganda. Under article 62 of the Constitution, the EC shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority. This article is the basis upon which the EC claims its authority and independence as the sole organisation responsible for conducting and managing elections in the country. In terms of its appointment and constitution, the EC is constituted by seven persons, including the chairperson and deputy chairperson, all appointed by the President and approved by the parliament. The members are supposed to be people of high moral and social standing and integrity.

To build legitimacy and credibility and to allay the suspicion of government bias were major challenges for the EC. The present Commission was appointed in 2002 – by President Museveni under the movement system – and the opposition remained convinced that the EC was a protégé of the government, unable to execute its functions impartially and judiciously in the new multi-party dispensation. The commissioners were referred to as “the President’s People”, alluding to their appointment and dismissal at the President’s will, and the likelihood that they would favour the incumbent President and his party.⁷ Constitutional guarantees of independence were deemed insufficiently backed by institutional arrangements, and the appointment procedures unable to guard against executive influence. The political opposition proposed a new EC composed of members drawn from various political parties, but this was rejected.⁸ The Commission itself maintained that as a constitutional body, with a clear mandate and jurisdiction, it was sufficiently independent to execute its functions without fear or favour.⁹ The Chairman defended the appointment procedures by arguing that the EC is as independent as the judiciary – judges, like the EC Commissioners, are appointed by the President, without their legitimacy and trust being compromised. The lack of confidence in the ability of the EC to function as an independent institution became central to debates about opening political space for multiparty contest, which started in 2003. The new EC also faced the challenge of ensuring a conducive environment for elections as violence had been

⁵ See the CMI/MUK report, “Lessons from the Referendum for the 2006 Elections” (October 2005) at <http://cmi.no/pdf/?file=/uganda/doc/CMI-Makerere-referendum-report-October-05.pdf>.

⁶ See election reports from each of the districts at <http://cmi.no/uganda/?id=9&Research-Notes>. These districts comprise a certain spread of constituencies but are not representative of the country as a whole. The number of polling stations visited varied between districts but most teams observed the opening, closing and counting at one and the same polling station, while moving about the constituencies in the course of the day. A number of ‘election scouts’ were recruited to extend the coverage; they reported intermittently by telephone to the teams.

⁷ The term is, however, ambiguous and may also indicate that the commissioners are diligent persons, ready to serve national interests rather than those of the appointing authority. Less ambiguously, the FDC president repeatedly referred to the EC as “Museveni’s walking stick”.

⁸ The Speaker of parliament Hon. Sekandi argued that the *status quo* should be retained as tampering with the EC structure would require amendment of the Constitution. (*New Vision* 1 October 2005)

⁹ Personal interview with the Chairman of the EC, February 2006.

rampant in the 2001 elections.¹⁰ The new commission also inherited operational challenges as the former commission had failed to produce a reliable, computerised voters' register.

Figure 1: The electoral cycle

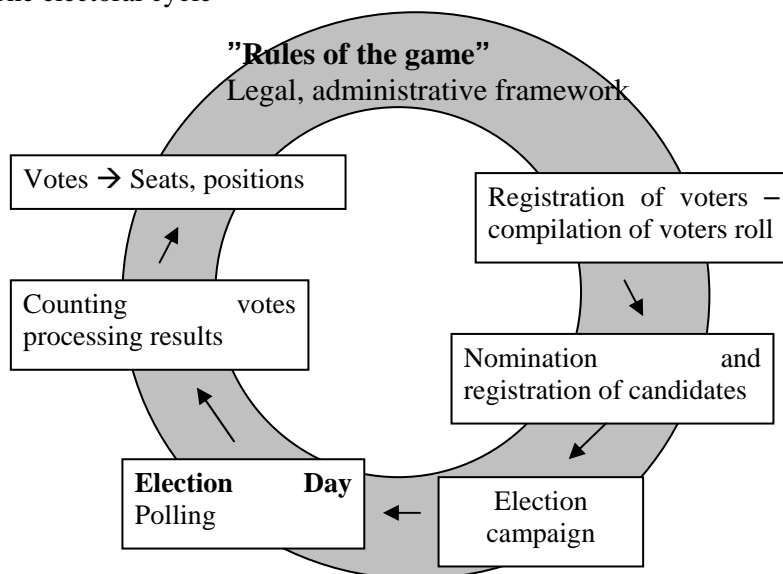


Figure 1 indicates how the electoral cycle starts as the previous election ends. The various stages may overlap in time, but represent distinct phases of the election process.

- The first phase is the establishment of the *rules of the game*; the legal framework regulating the election process and the *election administration structures* tasked with organising the process and secure a level playing field for the contestants. Deliberation and contestation over the rules, including the demarcation of electoral districts, tends to dominate early in the electoral cycle, but underpins the entire process and may surface at any stage. The fairness and quality of the rules, as they are implemented throughout the electoral process are fundamental for the fairness of any election.
- The second stage is *registration and education of voters*. This determines who gets to vote, and how informed their choices are. Biases at this stage, whether due to manipulation or incompetence, may greatly influence the election results.
- The third step in the electoral cycle is *the registration of parties and the nomination of candidates*. This involves both party internal processes of choosing candidates and the official registration by the electoral administration. Eligibility criteria and the procedures and costs imposed in this process may effectively bar, or impede certain parties or candidates, which can decisively influence election outcomes.
- The *election campaign* is a crucial phase of any electoral process. Political balance in media coverage and access to financial and other resources for campaigning, and fair enforcement of the regulations on campaign activities are central aspects at this stage.
- Then comes the *voting and tallying* – ‘the election’ in common parlance. Intimidation of voters, ballot stuffing and other forms of rigging may influence results, as well perceptions of whether the election is free and fair and the outcome legitimate.

¹⁰ In an interview with the Chairman of the Electoral Commission, Eng. Badru Kiggundu, he suggested that the Commission had an immense duty to “clean” this image by cooperating with government and the police to ensure that the elections are properly secured. He argued that the numbers of police remain few, about 15,000, when the Polling Stations were 17,000.

- The post-polling process includes the distribution of positions of power and the *handling of complaints challenging the election outcome*, requiring resolution by legal institutions. Legal disputes may, however arise at any stage of the process.

Results of the 2006 Presidential and Parliamentary elections

While emphasising that the elections must be understood and evaluated in terms of the broader process, our starting point will be the election results. It should be noted that the final results are still not available. Four months after the elections, the Electoral Commission has still not published the official results from the parliamentary elections, and indicates that they will only be ready in late July. In the meantime, the new Parliament is in operation. The full results from the Presidential Elections are only recently published.

The presidential election was effectively a two horse race between President Yoweri Kaguta Museveni, the incumbent since 1986 who was the candidate for the National Resistance Movement Organisation (NRM-O)¹¹ and Dr. Kizza Besigye, a retired army colonel who was Museveni's main challenger in the 2001 presidential election and now the candidate of the newly established Forum for Democratic Change (FDC). With 65.8 per cent of the 10.5 million registered voters casting their ballot, Museveni and Besigye polled 59 and 37 per cent of the votes, respectively. Two "old" parties, established before independence, each fielded a presidential candidate. Miria Obote, the wife of former president Milton Obote was the Uganda Peoples Congress (UPC) candidate, while John Ssebaana Kizito, former Mayor of Kampala, won the Democratic Party (DP) nomination. Abed Bwanika, ran as an independent. As Table 1 shows, the latter three shared just over three per cent of the vote.

There was a marked regional division in the voting pattern. The North supported Besigye, while voters in the Western part of Uganda overwhelmingly voted in support of president Museveni. The margins were narrower in Central and Eastern Uganda, but Museveni received a comfortable majority in both of these regions.

Table 1: The 2006 presidential election results by region¹²

Candidate/party	Number of votes nationally	Percentage share of total vote	Central region (30% of voters)	Eastern region (25% of voters)	Northern region (16% Of voters)	Western region (29% of voters)
Museveni/NRM-O	4,078,677	59.28	61.8	56.0	29.6	78.5
Besigye/FDC	2,570,572	37.36	34.7	41.2	62.9	20.0
Ssebaana/DP	109,055	1.59	2.7	0.9	2.4	0.6
Bwanika/Independent	65,344	0.95	0.6	1.0	2.2	0.5
Miria Obote/UPC	56,584	0.82	0.2	0.8	3.0	0.2

¹¹ When the National Resistance Movement ceased to exist as a political system, and was transformed into a party it formally became the NRM-O. However it is still commonly referred to as the NRM and the terms are here used interchangeably

¹² Source: The Electoral Commission at <http://www.ec.or.ug/detail.php?p=14> and the *New Vision* at <http://newvisionuganda.info/election/>

The parliamentary elections, held simultaneously with the presidential election on 23 February, elected representatives (MPs) from 216 constituencies and 69 district women representatives.¹³ In addition, 25 special interest group representatives were chosen in separate elections: 10 from the army; 5 youth MPs; 5 worker MPs; and 5 representatives for people with disabilities, bringing the total number of MPs in the Eighth Parliament to 309.¹⁴ Altogether 28 per cent of the new MPs are women (88 out of 309), a slight improvement of the gender balance from the previous period. Yet, 72 of these seats are specially designated for women.¹⁵ There are only 13 women among the 215 ordinary constituency MPs (6 per cent).¹⁶ There are also two women army representatives, a woman MP representing youth, and a women workers' MP. The representation of persons with disabilities improved, as one of their previous special representatives returned as a directly elected MP.

Table 2 shows the distribution of parliamentary seats between the parties, and gives a regional breakdown of the results. The bold figures indicate the actual number of MP won by each party and how these were distributed between the regions, while the percentages given below each of these numbers show the relative strength of the parties at the national level (as percentage of total MPs) and in each region (as percentage of total seats for the region).

Table 2: The Eight Parliament, election results by region¹⁷

Party name	Number and share of seats	Central region	Eastern region	Northern region	Western region	Special seats
National Resistance Movement (NRM-O)	205 66.3%	49 (67%)	61 (73%)	18 (32%)	63 (89%)	14 (56%)
Forum For Democratic Change (FDC)	37 12.0%	4 (5%)	15 (18%)	16 (28%)	2 (3%)	
Democratic Party (DP)	8 2.6%	8 (11%)				
Uganda Peoples Congress (UPC)	9 2.9%		1 (1%)	8 (14%)		
Justice Forum (JEEMA)	1 0.3%	1 (1%)				
Conservative Party (CP)	1 0.3%	1 (1%)				
Independents	37 12.0%	10 (14%)	6 (7%)	14 (25%)	6 (8%)	1 (4%)
Non Partisan (UPDF)	10 3.2%					10 (40%)
Vacant ¹⁸	1 0.3%			1 (2%)		
Total no of seats	99.9	73	83	57	71	25

¹³ District Women Representatives are also directly elected by the full electorate. Voters were given three ballots: for the presidential election; for the directly elected constituency MP, and for the woman representative.

¹⁴ Parliament grew from 295 to 309 members following the creation of 13 new districts and a new constituency.

¹⁵ In addition to one women MP for each of the 69 districts, there is a designated women worker representative; a female youth representative and a woman representative for people with disabilities as well as two woman army MPs, as stipulated in the Parliamentary Elections Act of 2005 (section 8).

¹⁶ In the previous parliamentary period 8 women were among the directly elected MPs.

¹⁷ The final results had at the time of writing (June 2006) not been released by the Electoral Commission. The figures here have been compiled from a list of MPs provided by the parliamentary staff in mid May 2006, at the time of the opening of Parliament and from various news sources; the *New Vision* election results web page at <http://newvisionuganda.info/election/>; Uganda Gazette on March 27, cited in <http://www.monitor.co.ug/news/news040411.php>; and media reports on a late election "Eriyo Retains Woman MP Seat", *New Vision* 24 April 2005 at <http://allafrica.com/stories/200604241248.html>. See also the Electoral Commission web page at <http://www.ec.or.ug/>.

¹⁸ The vacant seat is for Dodoth county constituency whose re-elected MP Ark Ael Lodou (NRM) died before Parliament was sworn in (*The New Vision*, 16 May 2006, <http://allafrica.com/stories/200605170683.html>).

As the table indicates, the parliamentary race, like the presidential election, was mainly between the NRM and the FDC. But here the FDC's performance was much weaker. They only captured 37 out of 309 parliamentary seats (12 per cent), far less than Besigye's share of the presidential vote (37 per cent). The opposition was weakened beyond their numbers by the electoral defeat of many of their most experienced and profiled MPs, such as Augustine Ruzindana and Salaamu Musumba of the FDC, and the UPC's Aggrey Awori and Cecilia Ogwal.

The other opposition parties did better in the parliamentary election than in the presidential poll: UPC won 9 representatives; the DP 8; while the Conservative Party and JEEMA each won a seat. As many as 37 seats went to independents, 21 of whom were NRM members who lost in the party primaries. Of these 17 are reported to have negotiated a post-election agreement with the NRM.¹⁹ The 10 army representatives are nominally non-partisan, but likely to vote with the government.²⁰ The results are not yet final, and some uncertainties remain as to the exact size of the opposition, both with regard to the loyalty of independents; the outstanding election; and the outcome of the many petitions pending before the courts. But even on the most conservative estimate the NRM has secured a two-thirds legislative majority, enabling them to amend the constitution single-handedly.

Why did the opposition perform so poorly in the parliamentary elections?

This can in part be ascribed to the parties' own strategic choices: the opposition failed to unite behind a single candidate for each parliamentary constituency, which had more of an impact than in the case of the presidential election. The FDC also focussed their resources almost exclusively on the presidential poll, at the cost of a vigorous parliamentary campaign. The opposition thus gave the NRM less of a fight for the parliamentary seats than could otherwise have been the case.

Voting patterns should also be understood on the basis of the constellation of political identities and loyalties in the Ugandan population. Many expected traditional party affiliations to resurface with multiparty politics, but the weak results for the traditional parties indicate that party loyalty played a minor role in determining voter behaviour. Regional voting patterns are, however, striking and similar for the presidential and parliamentary elections with the opposition winning in the North and in Kampala and the NRM dominating in Western Uganda, and, to a somewhat lesser extent, in the Central and Eastern Regions. An overview over regional voting patterns and some tentative explanations are given below.

Central Uganda, home to the Kingdom of Buganda and the capital city of Kampala, was traditionally the turf of the DP. This time around the NRM dominated the region, save for Kampala, which voted overwhelmingly for the opposition and to some extent urban areas like Masaka. In Kampala, the NRM won only one of the nine seats. The DP captured three; the FDC won two (including the Rubaga North Constituency won by Beti Kamywa, one of the FDC's most prominent politicians); Jeema, the CP, and an independent candidate won a seat each. The opposition's focus on governance issues did not find the same resonance among rural Ugandans that it had with

¹⁹ President Museveni reportedly met top officials of the NRM immediately after the elections to discuss the fate of the successful NRM-independents, and instructed his party officials to raise money to meet the cost of their campaigns (*Weekly Observer*, 2-8 March 2006). The remaining independents are predominantly members who lost nomination processes in their respective parties. For example, all the seven independent MPs from Lango (Lira, Apac) lost in the UPC internal electoral process.

²⁰ At the opening of the Eight Parliament the Speaker, Edward Ssekandi said that the UPDF was a national army and could not belong to the opposition (*The New Vision* 18 May 2006, <http://www.newvision.co.ug/D/8/12/499314>). Army MPs have previously voted consistently with the government and on the rare occasion of dissent, such as during the voting on the Constitutional (Amendment) No.3 Bill, tough measures were taken by the army council.

educated urban dwellers. A factor that may have contributed to the NRM's strength in the Central region is the restoration of the Buganda Kingdom and President Museveni's promises of federal status for Buganda.

Western Uganda is the home turf of both Museveni and Besigye. Traditionally a UPC stronghold, voting patterns changed with the coming into power of Museveni and the NRM, who won overwhelming victories in this region, both in the presidential and parliamentary elections. The NRM campaigned heavily in the Western region, with observers reporting that a lot of money was used to court the vote of the people. This was particularly striking in Ruhaama constituency where the First Lady, Janet Museveni, won an overwhelming victory over FDC's Augustine Ruzindana, the former Inspector-General of Government. The South also voted predominantly in favour of Museveni and the NRM, with the notable exception of Kasese. Some see Kasese's FDC vote as an ethnic protest; traditional Kingdoms have been restored in other parts of the country, but the Bakonjo people have not been offered their Kingdom status.

Eastern Uganda was traditionally a UPC stronghold. This time the votes split between the NRM and the FDC. In Teso region the NRM incumbent MPs suffered great setbacks at the hands of their FDC opponents. Ten of the region's MP's – nine of them NRM candidates – were voted out of office.²¹ On the other hand, previous opposition strongholds such as Busoga, suffered reversals, including the loss by the FDC Vice President Salaamu Musumba to NRM's Asuman Kiyingi. Like in Buganda, the restoration of the Busoga Kingdom, a strong cultural symbol, may have contributed to the NRM triumph in the Busoga sub region.

The Northern Region saw the FDC triumph over the NRM, with the districts of Gulu, Kitgum, Pader, Lira, and the newly created district of Amolatar, all voting massively against President Museveni and the NRM. The UPC's presidential candidate, Miria Obote, received little support from the late President Milton Obote's home region and traditional UPC stronghold. Obote's son Akena did, however, win a parliamentary seat for the UPC in Lira. Since the overthrow of Obote in 1985, the region has strongly opposed to the NRM. In recent years the region has suffered onslaught by Joseph Kony's Lord's Resistance Army, who has left thousands of people dead and over a million internally displaced persons (IDPs) living in camps. The Karamojong cattle rustlers have added to the insecurity and loss of livelihood due to cattle theft. A combination of these factors and poverty has made this fertile ground for the opposition.

Religious affiliations previously played a major role in shaping voting outcomes in Uganda, with Roman Catholics predominantly voting DP and Anglicans voting UPC, but religion did not seem to influence the outcome of the 2006 elections. The regionally divided voting pattern indicates that ethnic factors may have been at play, although less directly than in the earlier elections. The two major contestants for the presidency both came from Western Uganda, and the opposition voters largely united behind the ethnically diverse FDC's call for change. It remains to be seen whether the diminished role of religion and traditional party loyalty is a lasting phenomenon, giving way to two strong political parties. The current electoral weakness of the traditional parties can also be understood as a consequence of organisational problems, fierce in-fighting over positions and a high number of independent candidates.

Last, but not least, the nature of the electoral process itself worked to weaken the opposition generally, and particularly in the parliamentary elections. Important factors include:

- Palpable weaknesses in electoral administration, including failure to enforce rules and regulations to secure a level playing field, which benefited the incumbent;
- Vast disparities in campaigning resources and media access;
- Slow enactment of electoral regulations, which created time constraints for the opposition parties and hampered the development of their organisational structures, the fielding of candidates and campaign capacity;
- Adverse litigation hampering Besigye and the FDC throughout the campaign;

²¹ *The New Vision*, 27 February 2006.

- Intimidation and irregularities: and
- A pronounced military presence, affecting the political climate.

The report will analyse these factors throughout the various phases of the electoral process.

Setting the rules

Parliament played a pivotal role in setting and changing the rules of the political game that formed the playing field in which electoral contestation unfolded. The legal framework for the 2006 elections was finalised only three months prior to the elections. As Table 3 indicates, it consists of a range of legislative instruments:

Table 3: The legal framework of the 2006 elections

- | |
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| <ul style="list-style-type: none"> • <i>The 1995 Constitution</i> (as amended in 2005) establishes the Electoral Commission (EC) and mandates it to organize, conduct and supervise regular, free and fair elections and referenda in accordance with the constitution (Article 60, 61). The Constitution provides for the election of the president by adult suffrage through a secret ballot and no longer restricts the number of terms a president can serve. It also provides for the election of members of parliament through election of candidates by plurality vote in single member constituencies, as well as by special elections for particular groups (women, the army, workers, youth and people with disabilities) and for the election of local government councils and officials. • <i>The Presidential Elections Act</i> (No. 16 of 2005) is largely similar to the Presidential Elections Act for the 2001 elections, but was amended to provide for the election of a president through multi party elections. It provides rules regarding the qualifications of presidential candidates, and procedures for their nomination, campaigning, polling, counting and tallying. Significantly, to win the Presidency the successful candidate must garner a majority of the votes cast. If none of the contestants secures 50 per cent or more in the first round, a run-off election is required between the two candidates who got most votes in the first round. • <i>The Parliamentary Elections Act</i> (No. 17 of 2005) provides a detailed framework for the organisation and conduct of parliamentary elections in a multiparty setting, including criteria for the nomination of candidates. There was debate on whether it should provide for the representation of special groups (women; army; workers; youth; and people with disabilities) but the arrangement was retained. • <i>The Electoral Commission Act</i> (Cap. 140) provides for the organisation and general set-up of the Uganda Electoral Commission. The composition of the EC, and the role of the executive in appointing commissioners, has been subject to much criticism. • <i>The Political Parties and Organisations Act</i> (No. 18 of 2005) operationalises the multiparty system of government in Uganda. It allows registered parties to organise and mobilise voters throughout the country; shifts responsibility for party registration to the Electoral Commission; provides rules for party leadership elections and party funding; and a code of conduct for political parties. • <i>The Local Government Act</i> (Cap 243 as amended) regulates and governs the conduct of local government elections. • <i>The Press and Journalists Act</i> (Cap 105, 2000), the <i>Electronic Media Act</i> (Cap 104, 1996) and the <i>Access to Information Act</i> (2005) regulates the role of the media in the electoral process. Their ability to report on state institutions is, however, limited by the <i>Penal Code</i> (Cap 120) and to some extent the <i>Anti Terrorism Act</i> (2003). |
|--|

The Electoral Commission also issued several guidelines, including *Campaign Guidelines for Presidential Elections*, which regulated the use of government resources, candidates' rights, security, protection and facilitation of candidates and their meetings; and *Nomination Guidelines for Members of Parliament*, clarifying and providing for the qualifications for members of parliament, the nomination procedures, factors which may invalidate a nomination, inspection of nomination papers and offences related to the nomination process. Together these laws and regulations provide a comprehensive – and complex – framework for the organisation and conduct of the presidential, parliamentary and local elections.

Two particularly consequential changes of the rules were made in the course of 2005. Firstly, the political system was changed. The *Movement system* professed that all Ugandan citizens were part of it. As political parties were perceived to be divisive, electoral contestation was to be based on the merits of individual candidates rather than choice between contrasting platforms. On 28 July 2005 the electorate went to the polls to decide whether to retain the Movement system or replace it with a multi-party system. Both the opposition and the incumbent NRM favoured a change towards multipartyism, but there was controversy over whether or not to hold a referendum – the opposition saw the exercise as a strategically motivated waste of money and time, arguing that alternative mechanisms for constitutional change would accomplish the same quicker and cheaper. Of the votes cast in the poorly attended referendum 92.5 per cent favoured a return to multi-party politics.

Most controversial was the lifting of the two-term limit on presidential office. The constitutional amendment – removing the term limit on the presidential office – meant that the incumbent president again could stand as a candidate, which technically was his third (under the 1995 Constitution) but arguably his fifth because he had been at the helm since the NRM take-over in 1986. The amendment was criticised domestically and internationally. Serious concern was expressed about the removal of one of the few barriers against the imperial presidency which has been so disastrous for the continent, and the breach of the democratic principle against self-serving constitutional changes by incumbents. Some donors responded by suspending aid.

From a democratic perspective, the major problem with the legal framework – apart from the lifting of the presidential term limits – was the timing. The Attorney-General presented the legislation to Parliament very late; it was passed in a rush, and still left very little time before the deadline for nominations and the official campaign period. The Political Parties and Organisations Act, the Presidential Elections Act, and the Parliamentary Elections Act were all assented to on 16 November and commenced on 21 November 2005. Campaign Guidelines were issued on 1 December 1, with the campaigns starting on 19 December.

The time constraints created by the delays in passing the necessary legislation was very unfortunate from the perspective of creating a level playing field. It had adverse effects on the management of the electoral process, constraining the establishment of operational EC structures at all levels and adversely affected the EC's programmes, including voter education. The draft Code of Conduct for political parties and candidates was never made into regulations by the responsible minister.

The late finalisation of this complex electoral framework also hampered the opposition parties' ability to operate effectively; open branch offices; hold grassroots elections; nominate candidates; and mobilise financial, logistical and other political resources to facilitate their campaigns.²² While the NRM had structures throughout the country, effectively providing an infrastructure for the NRM-O, time to build an organisation on the ground was critical both for the young FDC (established in December 2004), and for the traditional parties, who for 20 years were restricted in their activities. Consequently, the opposition did not manage to field parliamentary candidates in all constituencies. Out of a total of 215 constituencies, the FDC nominated candidates in 127, UPC in 74 and DP in 68 constituencies, leaving the NRM to take home 14 parliamentary

²² The content of some provisions further added to the time-constraints, such as the rule that candidates for parliamentary seats who hold public positions have to resign 90 days prior to the nomination.

(and even more local council) seats unopposed.²³ Where they had candidates the opposition lacked the mobilisation capacity on the ground to match the NRM machinery.

Registration of political parties

The registration of political parties is regulated by the Political Parties and Organisations Act (PPOA). A court ruling on 16 November 2004 nullified sections 18 and 19 of the PPOA (2002), which prohibited parties from sponsoring or campaigning for any candidate in any election.²⁴ Provided that they were registered, parties could now open offices throughout the country, organise meetings and rallies and nominate candidates for offices. Existing parties were required to re-register by 17 April 2005.

To be registered a party had to apply to the Registrar-General's office.²⁵ The application must be signed by at least 50 registered voters in at least two-thirds of Uganda's 69 districts. The party's assets must be declared upon registration. The party must also submit its constitution, a list of its officers, party programme and party symbol. Following registration it is expected that a party must provide an audited financial report six months after registration.

The act also regulates internal party affairs. Parties are required to consider gender equity when electing members of the executive committee and such elections must be held at "regular intervals not exceeding five years." (PPOA, Part III. 10). The party must be able to document all contributions, financial and otherwise, including those provided by the party founders. Parties based on sex, race, colour, ethnic origin or religion, are not allowed and all parties must be of "a national character". (Part II, 5.1). Non-Ugandans may not be elected to office in a party, and a party may not accept more than 20,000 currency points (currently UGX 400 million) annually from a single non-Ugandan contributor or more than 200,000 currency points (currently UGX 4 billion) in total from foreign contributors (Part III, 14). Military, police and prison personnel, traditional leaders, and employees in government companies, are not permitted to be members of parties (Part III, 16).

A national consultative forum for parties was established with a representative for each registered party with the purpose of discussing matters with the Electoral Commission. By the date set for nomination of parliamentary candidates (12–13 January 2006) 31 parties had registered. One party registered three weeks *after* the nomination date.²⁶

The NRM was the first party to register. The party filed its application on 27 June 2003 and was registered four months later. Other applications for registration took longer. The Registrar General's office claimed that substantial financial constraints prevented them from carrying out the verification of signatures in time. It is not clear whether these financial constraints were *politically* constructed, as the opposition claimed, or genuine reflections of the economic constraint. However, there seems to be little evidence that the registration of the NRM was accomplished in a shorter time than the major opposition parties.²⁷

The parties themselves also contributed to the registration delays. The Democratic Party (DP), for example, applied for registration in 2004, but within the party two factions emerged – one led by the party President-General, Paul Ssemogerere and the other, by the controversial Hajji Nassar Ssebagala. Each of these factions sought, unsuccessfully, to register the party. A court ruling

²³ NRM won at least 7 directly elected seats unopposed (Bbale; Bufumbira East; Buvuma; Kibanda islands; Kibanda and Nyabushozi, Pian and Sheema North). In addition, a number of District Women seats and special interest group seats were returned unopposed. Representatives. In 18 constituencies NRM-O candidates only ran against independents, usually their own people who were defeated in the primaries. No opposition party won any seat unopposed, but in a few constituencies the UPC only ran against independents.

²⁴ The PPOA was subsequently amended and the new version adopted in November 2005.

²⁵ The PPOA (2005) transferred registration responsibility to the Electoral Commission.

²⁶ Source: Office of Assistant Registrar-General.

²⁷ Based on a comparison of the date of the application to be registered and the official registration date.

ordered the factions to sort out their differences or else lose the chance of being registered. The two factions were reconciled – at least temporarily – on 16 May 2005 and the Democratic Party was registered on 13 July 2005.

The requirement that old parties had to re-register affected the party building period prior to the election campaign. NRM was operating as a party by the end of 2003, but for the two old parties, DP and UPC formal operation could not take place until the end of March 2005 for UPC and mid-July 2005 for DP. UPC party building efforts were also frustrated by a conflict between the party leader, Milton Obote, who was in exile in Lusaka, and domestic party officers. Following the death of Obote in the autumn of 2005, his widow was nominated to be the party's presidential candidate. The FDC's party building efforts were similarly hampered by the exile of its de facto leader, Kizza Besigye. Although the FDC could build on a previous network (Reform Agenda) the late start meant that none of the opposition parties was able to mobilise a nation wide grass root organisation challenging the NRM.

Registration of voters

The voters' register forms a centrepiece of election management. In 2000 the EC undertook to make a photograph-bearing voters' register in preparation for the 2001 elections. This could not be finalised and voters were allowed to vote with neither cards nor photographs on the register. The register, the basis on which more than 11 million people voted, was widely criticised as inflated with duplicate registrations, ghost voters, the underage and non-citizens, opening for possibilities of vote rigging. In March and April 2005, the EC carried out a voters' register update exercise where 680,611 new voters were registered, bringing the number of registered voters to 8.52 million. The Commission displayed the voters' register between 24 May and 13 June and by the time of the 28 July 2005 referendum 8.54 million voters were registered, 47 per cent of whom reportedly turned up to vote.²⁸

After the referendum, the EC initiated a new registration exercise. They set aside the existing register, which was deemed unworthy of archival storage and destroyed. In the 30 days from 29 September to 28 October 2005 they carried out what was termed *Update of the Photograph-Bearing Voters' Register and Issuance of Photograph-Bearing Voters' Cards*.²⁹ Everyone was required to update their particulars in the register. New voters were registered and transfers, deletions, recording of missing and mismatched particulars, retaking of missing photographs and other improvements were undertaken.³⁰

The voter registration process was scheduled to close on 28 October 2005, but with the return of the FDC leader Kizza Besigye from exile in South Africa, many voters, especially urban residents, wanted last minute registration. Public demands lead to an extra two days of registration and by the end of this exercise more than 2 million new voters had registered, bringing the total to 10.6 million. The EC chairman complained of Ugandans waiting until the last minute, and declined further extension by referring to the lack of funds and the fixed timetable for the elections.³¹ Opposition leaders complained that their prospective voters were not given sufficient time to register, and blamed the EC for being hesitant towards extensions only because the last minute voters were likely to be supporters of the opposition parties.

²⁸ The opposition claimed the official figure was inflated to prevent embarrassment for the government.

²⁹ The Commission is constitutionally required to display the voters' register for 21 days, and due to cries over failure to register by many voters and pressure from politicians, this was extended for an additional 9 days.

³⁰ During the update, photographers and card issuance officers were accessible at the polling stations, but with only one camera for two parishes there were logistical problems.

³¹ Additional registration would require an extension of the constitutional deadline for the elections, requiring that presidential and parliamentary elections be held 12 March and 12 May 2006.

The cleaning of the voters register also turned out to be controversial. The register was displayed between 22 December 2005 and 11 January 2006 and voters were urged to confirm their polling stations and check the correctness of their particulars, report cases of missing photographs, and collect their voters' cards.³² They were also asked to report cases of deceased, non-citizens, underage persons (below 18 years), and those who migrated or transferred to other parishes and ghost voters. According to the EC, the register had a total of 10,606,402 voters at the start of the display exercise. After deletions recommended by Parish Tribunals the number decreased to 10,450,788 voters, which is 90 per cent of the census estimate. This was the number in the register during the elections. Not all registered voters were issued with cards or had their photographs in the register. The National Voters' Register had 340,130 missing photographs, 3.3 per cent of registered voters.³³ Besides voters without photos, there was a mismatch of names, photos and gender.

Two sets of complaints arose from the exercise. Official candidates of the ruling party complained that some people had registered in areas where they did not reside.³⁴ Opposition parties complained that many of their supporters who registered towards the end of the registration exercise were not in the voters' register, or had their particulars mismatched and/or their photograph missing. A frequent complaint by opposition leaders in Kampala District was that parish tribunals treated their supporters unfairly when they turned up to complain of anomalies surrounding their registration. When such complaints were forwarded to the EC, the chairman blamed it on unprofessional conduct by the staff:

I can give you an example where somebody was reported dead, yet on the ground, we found that the person was alive. Then you ask yourself whatever happened to the ethical values of officers who were entrusted with this work. That is the system we have in place; the tribunal has a number of officers, we can't disband it unless there is a criminal element. What do I do? My hands are tied. (Badru Kiggundu, cited in the *Daily Monitor*, 5 February 2006)

Problems with the voters' register have been recurrent in Uganda. The efforts to build a better register improved the situation compared to the 2001 elections, but serious problems remained. When it became clear that many voters would not be issued with cards in time, the EC announced that a person could vote without a voters' card as long as they were in the register and could be identified by local residents. This caused confusion and some problems with multiple voting, particularly in urban areas where residents do not know one another.

Another set of problems were caused by the late gazetting of new polling stations to which voters were moved after registration. The EC was concerned that in some places the polling stations would be too congested for the voting to end in time, and as a result, 700 new polling stations were created on the eve of elections. A 122-page election supplement in the main newspapers showing the location of the 2480 newly created and recently relocated polling stations was intended to inform the voters of the new polling stations.³⁵ However, the new polling stations became a point of contention with spokespeople of the opposition who alleged that they could have been intended to give unfair advantage to the ruling party.³⁶

Despite the EC's effort at transparency, the shifting of polling stations may have denied thousands of people their right to vote, as voters who came to the place where they had registered would be told that their particulars were not there, and had to go, often several miles, to queue up at

³² The August/September 2005 reorganisation of polling stations had resulted into merging, relocation, renaming and splitting of polling stations. Registers had to be allocated to new stations and voters needed to confirm this.

³³ Ms. Wadri, District Registrar/Returning Officer, Kamuli District.

³⁴ Francis Babu (Kampala Central NRM candidate) raised this complaint regarding Arua Park, Nakasero Market and Baganda Bus Park areas of Kampala Central.

³⁵ The supplement was published with financial assistance from the international donor group.

³⁶ As the UPC spokesman Joseph Ochieno put it; "The EC is not communicating well with us ... this happened in 1996 when they introduced polling stations a few days to the elections". (*Daily Monitor* 16 January 2006). The Election Director of FDC, Major Rubaramira Ruranga was equally concerned.

a new station in hope of finding their names on that list. Many never did. To hold a voter's card was not enough to allow one to vote, the particulars had to be in the register. In total, 6.88 million voters (65.8 per cent of those registered) cast their votes in the fiercely contested presidential election, while 3.5 million of the registered voters (34 per cent) did not vote.³⁷ International and domestic observers cited the "significant number of names [that] were missing from the register"³⁸ among the most serious problems affecting the fairness of the elections. When Kizza Besigye petitioned the Supreme Court to nullify the presidential election, one of the grounds was that the EC disenfranchised many people whose particulars were missing on the register.

The nomination and registration of candidates

From October 2005, the parties held conferences to elect new office bearers and candidates.

- The FDC's delegates' conference on 28 October returned Kizza Besigye as the undisputed party leader and presidential candidate, two days after his return from exile in South Africa;
- The NRM-O delegates' conference, on 13–19 November, overwhelmingly endorsed Museveni as party chairman and presidential candidate;
- The DP delegates' conference, on 26 November, came out in favour of Ssebaana Kizito as the party president and presidential candidate; while
- The UPC's delegates' conference, on the 28 November endorsed Ms Miria Obote as their presidential candidate and president of the party.

The parties' primary elections for parliamentary and local government candidates were hotly contested, particularly in the NRM. Many of the losers complained that the exercise was not free and fair and vowed to contest in the 2006 general elections as independent candidates. According to the NRM constitution, the loser in a party primary joins hands with the winner to campaign for the party candidate, and there are sanctions against members who stand as independents after losing in primaries or support candidates floated by a rival party. President Museveni indicated that those who lost but remained committed to the party by not standing would be rewarded and many were offered positions in the campaign task forces at different levels.³⁹ However, many were defiant and opted to stand as independents and many succeeded in being elected. In total, 37 independent MPs were elected, a majority of whom previously of the NRM. The NRM have subsequently negotiated deals with at least 17 of them.

Nomination dates for presidential candidates were 14–15 December 2005, while parliamentary candidates were nominated on 12–13 January. The law requires that nominees must be Ugandan citizens of good standing;⁴⁰ must document academic qualifications (Advanced Level certificate or equivalent); and must resign from public positions prior to nomination.⁴¹ Presidential nominees must present sworn nomination papers signed by 100 supporters in each of at least two-thirds of the districts, and pay the UGX 8 million nomination fee.⁴²

Six candidates were found to meet the requirements and were nominated by the EC: Yoweri Kaguta Museveni, (NRM), Dr. Kizza Besigye (FDC), Miria Kalule Obote (UPC), John Ssebaana

³⁷ See *Sunday Monitor*, 26 February 2006.

³⁸ Commonwealth Observer Team, Interim statement, 24 February 2006.

³⁹ *Daily Monitor* 19 December 2005.

⁴⁰ Candidates must be of sound mind and not declared bankrupt or convicted of serious crimes or election related offences (Constitution, Section 80). Presidential nominees must be over 35 years of age and Ugandan citizens by birth (Constitution, Section 102).

⁴¹ For parliamentarians resignation must be 90 days prior to nomination. Traditional leaders cannot stand for elected office. (Const. S 102; Presidential Elections Act, S. 4).

⁴² Parliamentary nominees need 10 signatures from their district and a 10 currency point/ 200 000 Schillings fee.

Kizito (DP), Dr. Abed Bwanika (Independent) and Al Hajji Nasser Ntege Sebagala (Independent) The latter withdrew to (successfully) contest for the Kampala Mayorship, first urging his supporters to vote for the DP, but later throwing his weight behind the FDC. Candidates who failed to meet the nomination requirements included independents Vicks Kingo;⁴³ Mr. Shafiq Mwanje;⁴⁴ Mwambazi James; and Sseminda Ben Israel; Hood Ssempebwa (of Liberal Democratic Transparency); Masaba (Uganda People's Party); Mr. Watentena James (National Economics Party); Mr. Anselm Mwinyi (Society for Peace and Development Party); and Mr. Emmanuel Tumusiime (Forum for Integrity in Leadership).

The registration of candidates put the EC's independence to an "acid test". On the face of it, the matter was a technical one: whether a candidate had to be physically present to be nominated. But the political interests and implications were clear.

The Besigye Nomination Saga:

On 7 December 2005 the Attorney-General/Minister of Justice, Dr. Kiddu Makubuya, wrote to advise the EC that it could not proceed to nominate Kizza Besigye who was in detention on treason charges. The Attorney General argued that while Besigye should be presumed innocent until proved guilty, he "was not at the same level of innocence" as other presidential candidates. To nominate a person charged with high treason would create a dangerous precedent and give Uganda a bad image abroad.

Personal interviews with EC officials suggest that the EC was under pressure from State House officials and that President Museveni had met with the EC Chairman and asked him not to accept Besigye's nomination. The sources suggested that the AG was acting on the advice of the President to issue the controversial advice – which, interestingly, contradicted the advice given to the EC on the matter by the Deputy AG, Adolf Mwesige, who found no legal basis for rejecting Besigye's in absentia nomination.⁴⁵

The media carried stories of political pressure and rifts amongst the EC commissioners over the issue. (*Weekly Observer* 15 December 2005). Some commissioners reportedly threatened to resign if the chair insisted on carrying out directives of government by denying Besigye his fundamental human rights under the law.

Addressing a press conference on 12 December, the EC Chairman announced that "it is the considered view of the Commission that Besigye can be nominated in absentia".⁴⁶

The fact that the EC acted against executive pressure and nominated Besigye while in detention, signified the institution's ability and willingness to apply its mandate as an autonomous institution. The action vindicated the EC from claims of bias, and was widely applauded. Even Museveni's advisor, John Nagenda, praised the decision by the EC, finding that the EC action had removed

⁴³ Kingo argued that the nomination criteria violated his human rights, since it was not possible to acquire 100 signatures from each of at least 47 districts (2/3 of all districts of Uganda) within two weeks within his resources.

⁴⁴ Mwanje was blind and his supporters argued that he should thus be spared the trouble of collecting the many signatures, but the EC Chairman declined, arguing that the law can not be bent.

⁴⁵ On this basis Mwesige had ordered Besigye's nomination pictures to be taken and papers signed while in prison (*Sunday Monitor*, 12 February 2006).

⁴⁶ EC Chairman Dr. Badru Kiggundu argued that an earlier communication to the EC by the Deputy Attorney General had stated that the EC was free to nominate Besigye (in detention) since the law provided that a person is innocent until proved guilty and in that context, Besigye could be nominated.

“what seemed the unending acts of shooting ourselves repeatedly in the foot”.⁴⁷ Judging from these comments, some members of the government were increasingly embarrassed by the repeated attempts to apply illegal sanctions against the key opposition leader by encroaching on the independence of the EC. With the EC re-asserting its autonomy, it created some credibility for itself as well as for the government.

But the story did not end there. Initially acknowledging the EC's independence and authority over the issue, the Attorney-General later joined a petition disputing the nomination,⁴⁸ arguing that not only was the EC wrong in law, the Commission was also legally obliged to follow his advice. The case was dismissed by the Constitutional Court, who found in favour of the Electoral Commission, upholding Besigye's nomination and declaring that the Electoral Commission as an independent institution was not obliged to follow the advice of the Attorney-General.⁴⁹

Several legal challenges arose over the nomination of presidential and parliamentary candidates, most of them disputing the candidates' academic credentials. Like other election related complaints arising in the pre-election period, these were decided by the Electoral Commission's complaints handling mechanism, except where they raised constitutional issues or serious criminal matters.⁵⁰ A challenge against Besigye's nomination alleged that he had fraudulently used another person's school-leaving certificate.⁵¹ First Lady Janet Museveni's academic credentials were also challenged.⁵² In both cases the petition was dismissed by the EC. A high-profile MP who lost his nomination was Lubaga South MP, Ken Lukyamuzi, who was barred from reelection for failure to declare his wealth.⁵³

The campaign period

On 16 December, the day after the closure of the nominations, the presidential campaign commenced. The parliamentary campaign started on 14 January and both the presidential and parliamentary campaigns were scheduled to end on the 21 February 2006, two days before the elections.

The EC issued campaign guidelines for the presidential elections (on 1 December), for local government council elections (16 December) and for the parliamentary elections (4 January). The

⁴⁷ He also characterised the nomination saga as “a storm in a cup of tea” (*New Vision*, 17 December 2005).

⁴⁸ The claim – filed by two men who were alleged to be soldiers linked to State House – held that Section 103 (2) (a) of the Constitution provides that a person should be nominated when he/she is physically present, and that the EC thus broke the law in nominating Besigye. (*Kabagambe Asol, Farajabduallah and The Attorney General Versus The Electoral Commission and Dr. Kizza Besigye*. Constitutional Petition No.1 of 2006).

⁴⁹ According to the Constitutional Court the EC shall “in the performance of its functions, not be subject to the direction or control of any person or authority”. (*Kabagambe Asol, Farajabduallah and The Attorney General Versus The Electoral Commission and Dr. Kizza Besigye*. Constitutional Petition No.1 of 2006). The decision was appealed to the Supreme Court (*The Monitor* 29 March 2006).

⁵⁰ Resolution of complaints arising in course of the pre-polling stages of the election process had previously been a problem, due to the lack of a complaints management system. To avoid a backlog of complaints, the EC set up Complaints Offices in every district to receive, analyse and determine the legal basis of each complaint, take record, and work hand in hand with district and party leaderships in District Election Liaison Committees, to arbitrate between conflicting parties. District Election Liaison Committees comprised the EC returning officer and complaints officer, the district police commander (DPC), the chairperson of the District Election Security Committee, and representatives of political parties and independent candidates. The EC also forwarded complaints to appropriate authorities, like the police and the Electoral Commission for quick handling, including on the incitement of violence and forgeries. (Interview with the complaints officer of Luwero district).

⁵¹ Moses Kizige (MP), alleged that Besigye had used one Warren Kiiza's Primary Leaving Examination results to join secondary school. The EC dismissed the complaint (*New Vision*, 6 February 2006).

⁵² *New Vision* 21 February 2006.

⁵³ *New Vision* 3 February 2006; 8 February 2006.

presidential guidelines stated that no candidate could hold a public meeting except in accordance with a programme of meetings submitted by the candidate to the electoral commission and a national presidential campaign programme was launched on the EC webpage in December 2005. For security reasons parties and candidates were restricted to conduct their campaigns between 7 a.m. and 6 p.m.

The main political parties, DP, NRM, UPC and FDC, as well as the independent presidential candidate, Abed Bwanika, developed manifestos. These were available in limited numbers in print form, some were posted on party websites, and the national newspapers presented the main issues emerging from the manifestos. Some of the parties and candidates used the internet extensively and marketed their candidates through websites. Apart from the DP, all the main parties had websites with information on manifestos, speeches and upcoming rallies. Text messages on mobile phones also became a popular campaign strategy for mobilising people to attend campaign rallies in urban areas.⁵⁴

Official messages of the candidates and parties

- The key theme for the NRM and Museveni's presidential campaign was "prosperity for all". The 160-page manifesto stated that the NRM held a key to the nation's future, stability and development, and presented a vision of a peaceful, united, democratic, harmonious, industrialised, transformed and prosperous Uganda, within a strong federated East Africa.
- Besigye and the FDC centred their campaign on the slogan of "One people, one Uganda" and emphasised the promotion of a clear separation of power between the executive, legislature and judiciary. FDC's manifesto pledged that if elected, they would amend the constitution to reinstitute the two-term limit to the presidency.
- Miria Kalule Obote and the UPC, emphasised democracy, re-establishing security, law and order and restoring economic prosperity for all through management of human and natural resources, development of infrastructure, agriculture, fisheries and animal husbandry.
- The DP and John Ssebaana Kizito's main message was "from poverty to prosperity". They also promised to restore the presidential term limit; repeal of all provisions for a Movement system, rejuvenate the economy, restructure government to meet core government functions, and provide health care for rural and urban poor.
- *Abed Bwanika's* also focussed on getting Uganda out of poverty, centring on development issues, emphasising the potential for development in agriculture, tourism, and as an international work station.

The opposition parties' manifestos focussed on the failures of the present regime and the issues of accountability and integrity. They attacked Museveni for clinging to power, for failing to fight corruption and for failing to end the war in northern Uganda. While all the manifestos featured ambitious statements about what the parties intended to do when in office, issues regarding the moral integrity of the candidates overshadowed policy issues in the public campaigns and meetings, particularly in the last month of the campaign period. As the campaigns gathered momentum, it became evident that the old political parties (DP, UPC) had insignificant impact on the political race

⁵⁴ *The East African*, 20–26 February 2006.

for the Presidential and Parliamentary elections. The real issue was the struggle between the FDC and NRM candidates.

The campaign playing field – role of the media, violence and campaign funding

On 14 February 2006 Human Rights Watch released a report concluding that the Uganda 2006 elections would not be free and fair because of the unlevel playing field.⁵⁵ Due to serious biases in media coverage and campaign funding, the report found that the Uganda elections were in effect a multiparty contest in a single party state. The incumbent party's unhindered access to government funds, its use of government assets and the fact that it received six times more TV coverage than the opposition, were the main elements pointed to in the report. The report also cited incidents of harassment of independent journalists, some of whom were arrested on charges of sedition and incitement to violence.

The HRW's conclusions were in part based on a report by Uganda Journalists Safety Committee, which formed part of the DEMGroup election monitoring programme. Their report on Media Coverage of the 2006 elections, launched in January 2006 covered both the print and electronic media.⁵⁶ It found that while leading daily newspapers, both the state owned and private, gave close to equal coverage of the opposition and the incumbent, the Uganda Broadcasting Corporation's TV coverage was highly imbalanced, with 88.5 per cent of the prime news time devoted to the NRM and its presidential candidate. The UBC radio coverage was also skewed in favour of the incumbent with 61 per cent of the news coverage being devoted to NRM, while private radio stations showed an approximately equal coverage of the opposition and the incumbent. But it should be noted that the nature of the media coverage also differed. This is linked to another factor that skewed the playing field, namely the continuous court cases against one candidate: the FDC presidential candidate Kizza Besigye.

Generally, four presidential candidates were able to conduct their campaigns without hindrances, while Besigye spend the first weeks of the campaign period in jail, and, later was forced to divide his time between court hearings and campaigns. This affected his ability to campaign effectively throughout the country – and consistently portrayed him in a negative light in the news media; as an HIV-positive rapist and adulterer, as a traitor and terrorist, and as a forger of school certificates. While Besigye was still on remand in Luzira Prison, the FDC nevertheless drew large support especially when campaigning in urban centres and his release on 2 January provided a boost to FDC's campaign.

Interviews with party officials, voters and EC representatives in the districts of Hoima, Masaka, Ntungamo and Soroti in the days leading up to the 23 February elections, in general suggests that in most areas the campaign was peaceful, in the sense that all presidential and parliamentary candidates were able to campaign freely and that there were few incidences of violence. This was attributed to the coordination of campaigning programmes agreed to in the party liaison meetings. Nevertheless, there were instances of violence reported between NRM and FDC supporters throughout Uganda in the weeks leading up to the elections. The military presence was noticeable, and cases of intimidation were frequently reported in the press. In this context, the EC did little to enforce the rules of the game. Examples include:

⁵⁵ Human Rights Watch: "In hope and Fear: Uganda's Presidential and Parliamentary Polls".

<http://hrw.org/backgrounder/africa/uganda0206/>

⁵⁶ UJSC/DEMgroup (2006) "Report on the Uganda 2006 Elections Media Coverage"

<http://www.osservatorio.it/download/Uganda%20Election%20Coverage.pdf> The report measured print and electronic for candidates, political parties, electoral commission, police, UPDF, paramilitary and the executive. The qualitative analysis assessed whether the media portrayal was positive or negative to the promotion of candidates and parties. The media monitoring project was sponsored by the Election Support Unit and Partners for democracy.

- The week before the elections, Lt Ramathan Magala shot at a crowd of FDC supporters at Bulange, killing three and injuring several. The police said they lacked evidence to prosecute.
- Col. Bugingo, head of the Military Police slapped Maj. Ruranga (head of election management in FDC) at the FDC offices at Najjanankumbi. He was allegedly warned, but reinstated to his position by President Museveni before the elections.
- Unidentified armed people were reportedly following Besigye at every public rally until the press exposed them.
- A military convoy rammed into a group of Besigye supporters at Mukono town as Besigye addressed them a few days before the elections. Many were critically injured.
- Fox Odoi, President Museveni's senior legal aide, was depicted in the press, pointing a gun at opposition party supporters in Tororo on election day. He continued in his job at State House and the witnesses retracted their testimony.

No state officials came out to condemn these reported cases of state implicated violence and the EC had no institutional means of handling such malpractices. Nor did they do anything to stem or counter the pronounced militarisation of the political environment in the election period. Military personnel was highly visible in the streets and at rallies, and high ranking military officers including Gen. Aronda Nyakairima, Gen. Tinyefunza and Gen. Salim Salleh campaigned for Museveni, contrary to the law forbidding the military from engaging in active partisan politics. The EC chairperson talked of the excellent working relationship with the security agencies, and a working committee was in place for this purpose, but a problem remained when perpetrators of election violence were state officials. The police desk dealing with cases of election malpractices reported that 192 cases were committed by the NRM, 120 by FDC and about 10 by DP officials/supporters.

The EC also did little to control other malpractices, such as abusive language, or the banned night rallies. President Museveni abused his challengers with impunity, including repeatedly calling Besigye a traitor with close links to Kony's rebels, damaging insults that constitute election offences. And almost all the presidential candidates (but mainly Museveni and Besigye) repeatedly addressed rallies way beyond the stipulated time. Occasionally, Besigye was stopped by the police (e.g. in Bushenyi), but there is no single reported incident when the police stopped Museveni from campaigning.

Intimidation through the use of the military and the deaths of participants in rallies are serious. And the EC's failure to enforce the rules generally and against the incumbent in particular, is a notable weakness. Nevertheless, preliminary evidence and observations suggests that the level of overt violence and intimidation in the 2006 election campaign was lower than in the 2001 elections, with the exception of the North where people continue to live under a state of emergency.

Election complaints and complaints handling: vote buying and government funds

The Electoral Commission received a large number of complaints during the campaign period, many of which were solved at the district level through committee meetings (referred to either as District Liaison Committees or Peace Liaison Committees). As discussed above, substantial number of complaints concerned candidates' academic qualifications. Others related to issues of double registration and others yet to the use of public resources. Interviews conducted with EC officers at the district level, suggest that approximately one-third of the complaints lodged concerned candidates' use of government funds for campaigning.

Section 27 (1) of the Presidential Elections Act prohibits all candidates from using public resources for the purpose of campaigning, but exempts the incumbent regarding the use of resources

ordinarily attached to his or her office. The act requires that the resources in question are laid before Parliament, and on 2 January the entitlements of the President were presented to the EC suggesting a policy of transparency in the use of public resources. However, the statement did not provide a detailed account of government uses of public funds and therefore had limited effect. The Coalition for Election Finance Monitoring (CEFIM, comprising the Anti-Corruption Coalition of Uganda and Transparency International) gave a public statement on 14 February 2006, expressing concern about the unfettered use of public resources by or on behalf of the incumbent presidential candidate.

A window on campaigns in Ntungamo District Ruhaama County

Hon. Ruzindana was the incumbent MP for Ruhaama County. He is also the Deputy Secretary General of the FDC party. Mrs. Janet Museveni, the First Lady, campaigned on the NRM ticket. Ruzindana was campaigning "for change" from Movement to FDC. He was propagating the values of his new party under the banner of "a clean government." In personal communications with the research team, he reported that his financial resources for campaigns could not match those of Janet Museveni (22 February 2006). Ruzindana claimed that the First Lady had campaigned with a convoy of soldiers and all the trappings of the First Lady, and that her campaign rally was like an official state function. She was accompanied on her campaigns by state security agents and the Presidential Guard Brigade (PGB). Although Hon. Ruzindana alleged that these state forces were causing mayhem by intimidating his supporters we did not find evidence to support this claim. However, many Ntungamo residents interviewed agreed that the First Lady's campaigns were characterised by lavish parties and gift-giving. She had a well financed campaign, and conversations with voters outside the polling stations and in the trading centres revealed that money, mattresses and clothes had been given to her agents. Her campaign slogan was "Okubiba embibo yentuura" which literally means "planting a permanent seed".

According to section 68 (1) of the Parliamentary elections act it is an offence to influence another person to vote or refrain from voting through the provision of money or gifts. Nevertheless, instances of candidates and parties offering gifts and food at centres of worship and other social functions were repeatedly reported in the Ugandan press and by civil society organisations monitoring the elections. It is clear that the NRM candidates had more financial and material resources than the opposition parties and candidates. Our observations of the 2006 elections suggest that NRM took advantage of the Local Council (LC) structure to recruit support and to finance the elections.

It is not clear where the parties and candidates obtained the substantial funding that went into the campaigns. The electoral law requires that parties solicit funds from sources that are not hostile to the state of Uganda, but when the NRM – whose presidential and parliamentary candidates were much better financed than those of the other parties combined – was put to task by the press for not declaring its funding as required by the Political Parties and Organisations Act, they refused to do so. Secretary-General, Amama Mbabazi, just responded that some of their financiers did not want their names to be disclosed, and their sources of funding were never declared. The issue became more contentious as the other parties began to complain that the NRM had bribed the voters by giving their supporters at every village council (LC1) in the country a minimum of UGX 100,000 to share out.⁵⁷

⁵⁷ Museveni gave out money to "rigging" women groups in Kampala at Lugogo Stadium.

A window on campaigning in Ntungamo: The use of NRM volunteers:

In Ntungamo District, NRM's campaigns were supported by volunteer groups known as "Nyekundiire" which means "Volunteer group" or "Voluntary Spirit". One of the volunteers revealed that the funding for their activities came from Kampala-based business people who financed the mobilisation teams. Interviews with volunteers suggest that NRM had approximately 2000 volunteers in Ntungamo. They were well financed and networked. Each LC 1 village had a committee of five "Nyekundiire" volunteers. This committee would convene meetings in the villages and provide the residents with lunch, soda and 'some logistics'. Informal conversations with residents at various trading centres revealed that villagers were offered app. Shs 1000 by the 'Nyekundiire' committee members. Each LC1 (village) received a minimum of Shs 100,000/= that was distributed to the local supporters. The local supporters, on receiving the financial gifts from the NRM campaigners, were advised to vote in "chain" – vote NRM Presidential candidate, parliamentary candidate and NRM woman district representative in that order.

Although the electoral law makes it an offence to influence voters using financial or material incentives, the EC never sought to enforce financial accountability by acting on the widespread use of money to influence voters, or other financial malpractices.

The same is true with regard to the involvement of public servants. A public servant who wishes to engage in partisan politics is required to resign from his or her job. This provision was consistently violated by public servants who campaigned for the NRM candidates. District Resident Commissioners (RDCs) and District Security Officers (DSOs) were actively involved in campaigning for President Museveni. Public officers from quasi-governmental organisations like the Uganda Revenue Authority (URA) took leave to go to the villages to campaign for Museveni, perhaps spurred by Museveni's pronouncements that in his next government, only people who supported the NRM would get government jobs.⁵⁸

What is discussed here is the use of government resources in contravention of the regulations, practices that falls within the mandate of the EC to sanction. In addition Museveni and the NRM, like incumbents elsewhere, could rely on their control of state resources to make popular policy announcement as part of their campaign strategy. Museveni ordered local governments to stop collection of revenue from market vendors; he ordered urban authorities to stop collection of property tax from house owners who live in their houses; and he ordered the Uganda Forestry Authority not to evict encroachers on the forests (in Mayunge) – populist orders that potentially gave Museveni an advantage over his opponents.

Voting and announcement of results

Election materials had been transported to the respective districts on 22 February 2006 for further distribution during the night and early hours of election day to the various polling stations. The ballot boxes for the presidential and parliamentary ballot papers were transparent, whereas the one for the woman MP was not. Before voting could start the presiding officers demonstrated that the ballot boxes were empty. Many polling stations opened late – from about 7:30 a.m. until 10 a.m. – owing to the late arrival of election materials or failure by election officials to turn up on time. It is very unlikely that this delay significantly reduced the turn-out rate. In most cases the lost time was made up for during the day so that all those who wished to vote were allowed to do so. In some

⁵⁸ However one public servant, a driver with Soroti district administration who flashed a V-sign of FDC was summarily interdicted for being partisan (*Daily Monitor* 29 January 2006).

polling stations this meant that the voters who were still in the queue at the stipulated closing time at 5 p.m. had to be cleared before polling could end. With few exceptions, the election officials did a commendable job in difficult circumstances. Many had served in similar capacities at previous elections and had applied anew. After screening and selection based on merit and experience they underwent several training sessions. They received modest payment for the job (polling assistants received UGX 20,000), and had to bring their own food. Some ate little or nothing during the long hours of polling day, which might have affected their concentration and alertness, particularly during the counting process in the late hours of the day.

The polling process was generally peaceful, smooth and orderly. The lay-out of the polling stations generally followed the design suggested by the EC. Most voters seemed to know how to vote although a number of them were insecure about how to go about it, probably because voter education was inadequate. In many parts of the country voting was interrupted by rainfall. At some polling stations people initially defied the rain and remained in the queue as an expression of determination but when the downpours became too heavy they succumbed and sought refuge indoors or under trees. Voting resumed once the rain had stopped. Similar to the late opening of polling stations, the interruption due to rain appears not to have denied any voter the right to vote. Apart from minor logistical problems in some locations, the main problem was the failure by a number of voters to find their names on the voters' register, despite carrying voter registration cards. In an extreme case, Kabonero polling station in Masaka district, 150 (27 per cent) of the 553 registered voters were turned away. As noted earlier, the problem seemed largely caused by the relocation or splitting of polling stations and consequent transfer of voters' names, causing many to walk to and queue at several polling stations before (sometimes) finding their names and being allowed to vote. The persistence on the part of voters testified to the high level of commitment to exercise their right. However, there is no way of knowing how many gave up in the process of wandering from one station to the next and whether there was a systematic bias in favour of any particular party with regard to the turned-away voters.

At most polling stations agents of the two main contesting parties – the NRM and the FDC – were present, while the UPC and the DP had problems mustering the necessary number of agents to cover the constituencies where they fielded candidates. The NRM agents appeared to be better organised than those of the other parties and even brought food and drinks to their agents during the day. No party agents were observed in assisting voters to cast their ballots. Those in need of assistance were helped either by relatives and friends or by election officials. DEMGroup monitors were present in nearly every polling station. International observers from the EU, the Commonwealth, East African Law Society and the US Embassy, were seen in some locations.

Security was in the hands of the police and the measures taken seemed adequate. Elections constables at polling stations were drawn from the regular police force, the local administrative police and the prison service. A few polling stations had no election constables for parts of polling day, but this was not a general problem. In some areas where army barracks were located close to polling stations – e.g. at Kyamugashe Hill, Ntungamo District and Soroti Municipality, Soroti District – this might possibly have had an intimidating effect, psychologically speaking. In Hoima, cars with heavily armed police were observed patrolling the town at night. Similarly, in Soroti town two armoured cars with mounted machine guns manned by so-called Black Mamba were seen moving about the town during daytime. The legal framework does allow the government to deploy army and paramilitary forces as a security precaution if deemed necessary. It is not clear to what extent this display of power had an intimidating effect. In Soroti town, for instance, people defied the security forced by showing the symbol of FDC which was the dominant party in that district. Overall, we witnessed few incidents of violence or overt intimidation. Likewise, no case of obstruction of voters was observed.

Allegations of irregularities and election offences were made in some locations but upon further investigation several were found baseless. Among the more common irregularities was the display of campaign posters close to polling stations. A particularly egregious example was in Ntungamo town where a large banner with the First Lady's portrait was hanging only ten yards

from a polling station, and her posters were visible throughout the district. In Ntungamo, it was also noted that the ink provided for marking the voters' fingers was not indelible; it could easily be washed away (this was also the case elsewhere). In Masaka District there were allegations of intimidation and bribery, especially by NRM agents, as well as the buying of voter cards. The presiding officer at Bwami polling station in Lwengo Parish, Masaka District confirmed that voters had told him that money, soap and sugar were distributed. In Soroti town the Town Clerk moved from one polling station to another and directed the polling clerks as if he were an official of the Electoral Commission. In Kamuli attempts at voter bribing, intimidation and incitement of violence resulted in the arrest of 17 persons.

In Kumi District a motor cyclist (registration no. UBD 299L) was mobilising voters for the NRM, allegedly offering UGX 2,000 to each voter. He was also reported to be ferrying people to polling stations. At Lubiri Nursery polling station, Soroti District a group of some 200 IDPs living in a camp and intending to go and vote in Tubur where they had registered, were intercepted and their truck (registration no. UAE 841F) impounded. They were allegedly told to get off the truck which was driven off by the DPC himself and taken to the police. No one could explain authoritatively why they were denied travelling to their voting destination.

Counting and tallying

Counting took place at the polling stations. Where polling was completed by 5 p.m. counting followed immediately while at other stations the queue of voters had to be cleared. Presidential ballots were counted first, then parliamentary, and finally the woman MP of the district. Generally, the counting process was transparent and efficient. The presiding officers would show each ballot paper to the party agents, observers, polling assistants and spectators and announce the candidate whose name had been ticked off. Once the ballots had been sorted by candidate, each batch was counted and the results announced. Sometimes the spectators would count in unison with the presiding officer.

In some places the number of invalidated ballot papers was very high. Confusion regarding the criteria for rejecting ballot papers led to an uneven practice, with some stations accepting all ballots where the voter's candidate choice was not in dispute, while in other stations, all irregularities in the marking led to rejection. This practice was not objected to, however, by the party agents. It is reasonable to assume that the erroneous or equivocal marking of ballot papers was due to poor voter education, especially for the illiterate and for young voters without previous experience. We have no basis for judging whether the rejection of ballot papers was biased against any particular party or candidate.

Where counting started late or at stations where the number of votes cast was high, the counting proceeded after dark under torches or other forms of artificial lamplight. After the counting process was completed and the relevant forms signed by the election officials and the party agents the documents and the ballot boxes with the ballots papers bundled inside them were transported to the tally centres to preclude any interference. In some cases there were logistical problems but generally the security of the transfer of the ballot boxes and papers and the signed documents was satisfactory. In many places voters and agents escorted these materials all the way to the tally centres. The tallying was slow and in some districts went on until late the next day, with EC officials and tally clerks working through the night to meet the constitutional deadline of announcing presidential results within 48 hours of the closing of the polling.

The EC did not receive results from all polling stations in time and the opposition complained that the tally sheets were not physically relayed to the National Tally Centre. The opposition also claimed that some polling stations had inflated registers, which could help polling officials fix excess numbers of votes. Demands that the EC should report results for each polling station as soon

as possible were supported by international observers,⁵⁹ but this was only done three months after the elections. And as of late June 2006 several constituency results are still not clarified.

The tallying and declaration of results fuelled opposition parties' suspicion of the EC's impartiality. It started when the Commission announced two directives: The first concerned the order of counting and tallying of votes. Both at polling stations and at the district level, votes for parliamentary candidates were to be counted first, and the votes for presidential candidates last. The reaction of the opposition was that there is no logic in tallying the less important votes for candidates for Member of Parliament and leave the more important one for presidential ballots to be counted deep in the night – which posed particular problems in Uganda where electricity is intermittent, and it could be dark. Seeing the reactions, the EC changed the order of counting and tallying.

The other directive stated that representatives of parties and candidates would not be allowed in the computer tally room. This turned out to be very controversial. The EC Chairman was stark on the position that only EC officials had the mandate to tally the ballots. Augustine Ruzindana (Deputy Secretary General of FDC) stated that elections in Uganda usually are rigged at two levels: at the polling stations and during the tallying exercise and if the EC did not allow representatives of political parties/candidates in the tally centre, the EC officials could easily manipulate any figure of votes in favour of a winning candidate.⁶⁰ Civil society organisations as well as the Uganda Human Rights Commission also voiced concern, arguing that there was need for the EC not only to be fair, but to be seen to be fair to all parties, and to be open and transparent in all its activities. This argument won the day and the EC allowed representatives of all political parties/candidates to witness the tallying exercise.

The EC directive also warned FM radio stations against announcing unofficial results. This further dented the trust in its ability to act fairly and impartially.⁶¹ Signifying a free press, most stations defied the directive, announcing continuously whatever partial results they received from their reporters. Transmissions of the arguably most important radio station, *Radio FM*, were, however, blocked during large parts of the counting period, along with *The Monitor* webpage.

Post-election Conflict Resolution

The presidential election petition

When the Electoral Commission on 25 February 2006 declared Museveni the winner of the presidential election with 59 per cent of the vote against Besigye's 37 per cent – which meant that there would not be a second round – Besigye declared his intention to challenge the election in the Supreme Court. Within the 10 day deadline he lodged a petition, asking the court to declare the election invalid on a number of grounds:⁶²

- The Electoral Commission failed to validly declare the results;
- The conduct of the election contravened sections of the Constitution, the Electoral Commission Act and the Presidential Elections Act;

⁵⁹ HRW (2006) "Uganda: Election Irregularities Require Judicial Probe", March 3, 2006, at <http://hrw.org/english/docs/2006/03/01/uganda12745.htm>

⁶⁰ Several opinions were written in the press expressing a view that the current EC wanted to rig elections by apportioning itself too much power, as was the case in the 1980 elections, when Paul Muwanga – the then Chairman of the Military Commission decreed that only he, and no other person would announce the results; which resulted in massive rigging of that election.

⁶¹ See for example, *The Daily Monitor*, 10 February 2006 p.3.

⁶² *Rtd. Col. Kizza Besigye v The Electoral Commission and Yoveri Kaguta Museveni*, Presidential Election Petition No. 001 of 2006, lodged on the 7 March.

- Section 59(6) (a) of the Presidential Elections Act – requiring a petitioner to prove *substantial effect* for an election to be overturned – is contrary to the Constitution.
- The electoral process was characterised by acts of intimidation, lack of freedom and transparency, unfairness and violence, and numerous offences and illegal practices, including disenfranchisement of voters by deleting their names from the register; multiple voting and vote stuffing.
- President Museveni personally committed several offences in the course of the campaigning. He made malicious derisive statements; used defamatory or insulting words; and knowingly or recklessly made false statements.
- Museveni committed acts of bribery of the electorate by his agents with his knowledge and consent or approval, just before or during the elections

In accordance with the law, judgment was handed down on 6 April 2006, 30 days from the filing of the petition. The Supreme Court upheld the *quantitative proviso* that petitioners had to prove that irregularities substantially affected the results to provide a basis for overturning an election; The court also found that the Electoral Commission had failed to comply with provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act in the conduct of the 2006 Presidential Elections, in disenfranchising voters by deleting their names from the voters register, denying them the right to vote; and in the counting and tallying of the results. It also accepted that the principle of free and fair elections was compromised by bribery, intimidation or violence in some areas of the country; that the principles of equal suffrage, transparency of the vote, and secrecy of the ballot were undermined by multiple voting, and vote stuffing.

Nevertheless, a majority of four of the seven judges dismissed the petition. They found that “it was not proved to the satisfaction of the Court, that the failure to comply with the provisions and principles ... affected the results of the presidential election in a substantial manner”. Like in 2001, the full court voiced strong criticism of the Electoral Commission, but a narrow majority stopped just short of overturning the elections. The court emphasised their “concern for the continued involvement of the security forces in the conduct of elections” and the massive disenfranchisement of voters by deleting their names from the voters register; apparent partisanship by electoral officials; and the inadequacy of voter education”.

Parliamentary election petitions

Following the announcement of the winners of the parliamentary elections, several of the losing candidates filed petitions in the Magistrates’ courts alleging that they were victims of irregularities. Unlike in the pre-election period, where the EC handled the bulk of complaints, the post-election petitions go to the Magistrates’ Court and on appeal to the High Court or to the Constitutional Court. The Parliamentary Elections Act of 2005 provides that a petitioner who wants to petition the Magistrates’ courts do so within thirty days after the EC has gazetted the results of a parliamentary election. Petitions seeking for a recount can be lodged immediately after announcement of the winner.

There are currently 45 parliamentary election petitions, some of which are shown in the table below. The deadline for petitions are 30 days after the gazetting of the final results, and since these results for the parliamentary elections have, at the time of writing (June 2006) not yet been declared, petitions may still being lodged.

Election Petitions

- *D. Sakwa & A. Rutaroh v The EC, Bataringaya, Kamanda & 43 Others* (Constitutional Court, petition challenging the election of 44 ministers for not resigning prior to nomination)
- *Jude Mbabali v Edward Kiwanuka Sekandi* (Bokoto Central).
- *Betty Nambooze v Rev. Peter Bakaluba* (Mukono North)
- *Edward Wensonga Kamana v Fred Bukeni Gyabi* (Bubulo North)
- *Edward Francis Babu v Elias Lukwago* (Kampala Central) - DISMISSED
- *Abdu Kantuntu v Ali Kirunda Kivenjija* (Bugweri County)
- *John Baptist Kakooza v Anthony Yiga* (Kalungu West).
- *Kenneth Kakande v Fred Ruhind* (Nakawa Division)
- *Micheal Bayiga v Anthony Mukasa* (Buikwe South)
- *Musa Sewakambo v Haji Iddi Lubyayi Kisiki* (Bukomasimbi)
- *John Cossy Odomel v The Electoral Commission and Hon. Louis Opange* (Palisa County)
- *Ofwono Apollo v Electoral Commission and Sanjay Tanna* (Tororo Municipality)
- *Lule Umar Mazinga v Returning Officer of Masaka District, Electoral Commission and Serunjogi James Mukiibi*, (Kalungu East)

The petitions fall in different categories. Some challenge the nomination process and the candidates' qualifications, and are thus similar to the petitions arising in the pre-election period. Other petitions allege electoral offences in the campaign period or irregularities during voting, counting or consolidation of results. To exemplify the nature of the petition and the range of concerns some of the petitions are outlined below.

D. Sakwa & A. Rutaroh v The EC, Bataringaya, Kamanda & 43 Others⁶³

Two representatives of the opposition petitioned the Constitutional Court arguing that the Electoral Commission contravened the Constitution by nominating 44 ministers and army MPs as candidates for the 2006 parliamentary elections, as Article 80(4) of the Constitution requires civil servants to resign their seats 90 days before their nomination. The respondents argued that this is not a reasonable interpretation of the constitution and that they were not required to resign their respective offices before nomination, hence their nomination, declaration and gazetting was not contrary to the Constitution. The Constitutional Court commenced hearings on 22 May 2006.⁶⁴

Jude Mbabali v Edward Kiwanuka Ssekandi. One of the defeated candidates in Bokoto Central constituency alleges that the election from the beginning to the end was characterised by intimidation of voters, lack of freedom and transparency, and commission of numerous electoral offences, and that his voters were disenfranchised and denied the right to vote. He further argues that the electoral commission failed to control the use and distribution of ballot papers resulting into multiple voting and stuffing of ballot boxes. On this basis he asks the court to order for a re-election, or to announce him the winner. The petition is pending hearing.

Edward Francis Babu v the Electoral Commission and Elias Lukwago (Miscellaneous cause/Election Application no. 003/2006). The petitioner, the sitting MP Capt. Francis Babu, sought to have the votes cast recounted in Kampala Central Constituency, arguing that he was rigged out of victory through unlawful invalidation of 929 votes, a majority of which were validly cast in favour of the applicant. As a consequence Erias Lukwago (DP) was illegitimately declared the winning candidate. Justice Margaret Mafibi of the High Court dismissed the application with costs for lack of evidence. The case was appealed (Election Petition No. 10 of 2006) and again the petitioner contends that the election was not conducted in compliance with the provisions and principles laid out in the electoral laws.

During the 2006 electoral process in Uganda, the courts were in many ways at the epicentre of politics. The courts provided an important political arena in which a number of forces are at play, fighting through the courts, but also fighting over the soul of the judiciary, challenging the judges integrity. The opposition used the law and the courts to fight the government over political space and the courts did show some willingness to ensure compliance with the constitution and norms and standards regulating the political arena and took some bold decisions against government and ruling party interests. The growth – albeit uneven – of independence and assertiveness in parts of the judiciary in recent years, has encouraged the opposition to use the legal arena. But the resort to legal strategies should also be seen against the restricted space for opposition in other arenas, most notably in parliamentary politics. Thus, even when court cases were not eventually won they provided a public arena for the opposition to present arguments and mobilise support. Another issue is what this does to the courts themselves. Throughout the electoral process there was an increasing politicisation of the judiciary in Uganda with allegations of bias and corruption from all sides, and

⁶³ The representatives whose nomination is challenged in this petition are, besides Gilbert Bukenya; Khiddu Makubuya, Hope Mwesigye, Gen. Aronda Nyakayirima, Daudi Migereko, Adolf Mwesigye, Nathan Igeme Nabeta, Ricahard Nduhura, Tarsis Kabwegyere, Kahinda Otafiire, Sebunya Kibirige and Kamanda Bataringaya. Mr. Sam Kuteesa, Syda Bumba, Janet Mukwaya, Dr. James Nsaba Buturo and Jim Muhwezi, Mary Mugenyi, Chrispus Kiyonga, John Nasasira, Ruth Nankabirwa, Namirembe Bitamazire, Florence Naiga, Maria Mutagambwa, Beatrice Wabudeya, Beatrice Magoola Zirabamuzaale, Nyombi Thembo and Wrikhe Gafabusa.

⁶⁴ Interestingly, immediately after the 90 day deadline, the Attorney General wrote a memo to the government explaining the problem and advising that legislation be tabled immediately to deal with the problem by explicitly exempting the ministers from the requirement. (*Daily Monitor* 1 March 2006) Such legislation never materialised, however.

attempts from the government to undermine the independence and jurisdiction of the judiciary through appointments, display of army personnel on court premises, and use of the court martial to try civilians.

Concluding remarks

This report has shown that the perspective on an election depends on how the electoral process is conceived. Focusing primarily on polling and tallying of results, gives a different understanding than when we consider the broader process, where the parameters and structures are set that underpin and restrain the electoral process.

The polling exercise on 23 February 2006 in Uganda was generally peaceful, orderly and efficient. Security was adequate and few incidents of intimidation were reported. The main problem witnessed was the turning away of voters who were not listed in the voters' register. Generally, the election officials did a commendable job and agents of the two major contesting parties were present at nearly all polling stations. The initial counting process was reasonably transparent and results were announced at the polling stations. Tallying was slow, however, and the late verification and announcement of results is a serious concern. Still, the official figures tally reasonably well with those of independent observers. Overall, the process on and around polling day can be said to have been free in the sense that few voters were denied their right to vote, were intimidated or unduly influenced to vote in a specific manner.

Also, we find that the EC took a number of steps to improve on previous performance, and made some progress to that end. Unlike the 2001 elections, where the EC was widely seen to be siding with the incumbent president, the new EC portrayed some degree of transparency and willingness to accommodate various shades of interests. This is reflected in the steps it took to improve election administration:

- Establishing a computerised photographic register of voters, intended to reduce multiple voting;
- Barring voting in the military barracks;
- Decreeing that people should not attend rallies while carrying arms;
- Preventing civil servants from (legally) engaging in active partisan politics;
- Establishing inter-party/candidates committees at national and district levels to resolve contentious issues;
- Establishing complaints desks at both national and district levels;
- Accrediting both national and international observers to oversee the elections;
- Introducing transparent ballot boxes, intended to reduce ballot stuffing;
- Establishment of Codes of Conduct for security personnel and police, and for political parties.

That the EC put in place these measures indicated a commitment to free and fair elections. So did the publication of a 122-page election supplement in the main newspapers showing the location of the 2480 newly created polling stations.⁶⁵

But this is only a very small part of the story.

Overall, the electoral processes suggested that the Uganda EC remains bound by a restricted mandate, inadequate legal provisions, and unclear political circumstances. With regard to the administration of the elections, the 2006 elections showed important areas where the EC failed to carry out its electoral mandate in an impartial manner and thus fuelled continued doubts about its

⁶⁵ The supplement was published with financial assistance from Partners for Democracy donors.

impartiality and capacity. The failure to enforce campaign regulations, and to limit the use of state resources is one; the handling of the tallying is another.

Broadening the perspective further to take in more of the electoral cycle, we see that the slow and ambiguous transition and very late finalisation of the rules of the game for the elections hampered the opposition parties and added to their internal problems caused by weak party structures. Similarly, the lifting of the presidential term limit and the lack of effective separation between state structures and resources and those of the NRM, provided Museveni and the NRM with seemingly limitless campaign resources.⁶⁶

It is also important to look beyond the narrow political scene. We need to consider the extensive use of the justice system to hamper the opposition, and the willingness to compromise judicial independence and integrity to suit political goals. And we need to consider the limitations that were placed on the independent media, and the military presence in the political arena. In this perspective the picture changes markedly, and we observe an electoral exercise that took place on an unlevel playing field. The performance of the opposition in this context appears surprisingly strong, particularly Besigye's presidential bid. That the FDC chose to concentrate all efforts on the main prize – the presidency – may, however, have turned out to be its Achilles heel. They paid a high price for the relative neglect of the parliamentary elections, returning with only 37 seats in the 8th Parliament and without some of their best and most experienced parliamentarians.

⁶⁶“Did the opposition really expect to win 2006 polls?” The monitor, 4 May 2005 at <http://www.monitor.co.ug/oped/oped05042.php>

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SUMMARY

This report analyses the 2006 Ugandan presidential and parliamentary election in terms of the broader process starting with the processes of setting the rule for political contestation, through the registration of voters and parties, the nomination of parties and candidates, the campaign, the voting, counting and tallying and finally, the handling of election complaints. The report examines four central institutions charged with ensuring an impartial and fair electoral process: the institutions comprising the electoral channel, the party system, parliament, and the judiciary. These four institutions are interdependent but also partly autonomous from each other. Understanding how they operate and interact is necessary in order to grasp the degree of democratic institutionalisation. The quality and impartiality of the electoral administration are key to whether an election is seen as a legitimate process for delegation of authority from citizens to representatives. In new democracies the organisation of the electoral process is often characterised by ambiguous rules and problems associated with enforcement of the rules. The political party has become a most significant actor in electoral processes and democratic governance. Parties also serve to link citizens with parliament, which represents the citizens in setting the rules of the electoral game, influencing policy decisions and acting as an institutional check on executive power. The judiciary is the ultimate interpreter of the constitutional and legal rules. The report shows how problems and irregularities at various stages of the election cycle tilted the playing field in favour of the incumbent and compromised the integrity of the 2006 elections.

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