



EISA ELECTION OBSERVATION MISSION TO THE 2016 GENERAL ELECTIONS IN THE REPUBLIC OF UGANDA

Preliminary Statement

20 February 2016

‘Based on its direct observation of key processes and consultations with Ugandan electoral stakeholders at national and sub-national levels up until 19 February 2016; the EISA EOM concludes that the elections were largely peaceful but with shortcomings. These shortcomings were inconsistent with the requirements stipulated in the legal framework for elections in Uganda and continental and international principles and obligations for democratic elections; thus undermining essential aspects of electoral integrity.’

1. Introduction

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Election Observation Mission to the 2016 general elections in Uganda. The Mission is in Uganda at the invitation of the Ministry of Foreign Affairs. The Mission is comprised of 42 observers from 20 countries and is led by His Excellency Rupiah Banda, former President of Zambia, with Denis Kadima, EISA’s Executive Director as the Deputy Mission Leader.

Following the conduct of a pre-election assessment mission in August 2015, EISA deployed 12 medium term observers (MTOs) who arrived in the country on 18 January 2016 and were deployed on 22 January 2016. During their deployment the MTOs visited 28 districts¹ to observe key pre-election activities. The MTOs were joined by 30 short term observers (STOs) who arrived in the country on 12 February 2016 and were deployed to 13 other districts² to observe election day and district aggregation procedures. EISA MTOs will remain in the country until 29 February 2016.

EISA’s assessment of the electoral process is based on the Ugandan legal framework for elections and the principles and obligations set out in the African Charter on Democracy,

¹ Iganga, Mayunge, Kitgum, Amuru, Lira, Kole, Kanungu, Bukedea, Bududa, Soroti, Manafwa, Mubende and Mityana. Ntungamo, Rukungiri, Kamuli, Nebbi, Koboko, Kileleshwa, Sironko, Busia Tororo, Arua, Gulu, Jinja, Kampala, Kabale, Mbale.

² These districts include Kampala, Soroti, Fort Portal, Wakiso, Kitgum, Mukono, Masaka, Luwero, Bulambuli, Mitooma, Mbarara, Kiruhura, Kasese, and Kapchorwa

Elections and Governance, the African Union Declaration of the Principles Governing Democratic Elections in Africa, the Declaration of Principles for International Observation of Elections, and its respective Code of Conduct, and the Principles for Election Management, Monitoring and Observation (PEMMO).

This statement presents EISA's preliminary findings, recommendations and conclusions on the 2016 electoral process in Uganda. Cognisant of the fact that the national and district aggregation of results is ongoing, this statement reflects the Mission's observations up to 19 February 2016. A final report covering the entire process will be issued by EISA within three months of the declaration of the results.

2. Preliminary Findings

2.1 Political Environment

The 2016 elections were the third elections since Uganda returned to multiparty politics in 2005. The outcomes of elections held in 2006 and 2011 were contested and rejected by the opposition, alleging the manipulation of the process and its lack of integrity and credibility. The general elections were conducted within a context characterised by increased protests and demands for reforms. Noteworthy as well is the emergence of a new opposition force which is a faction of the ruling National Resistance Movement (NRM). The elections took place against a backdrop of incidents of violence and verbal intimidation that increased towards the election day.

The demand for reforms after the 2011 elections led to the emergence of '*The Free and Fair Election Alliance*' which was initiated by civil society groups. This civil society movement culminated in the *Citizens Compact for Free and Fair Elections* where over 3,000 community leaders and groups made proposals for electoral and institutional reform.

Out of the *Free and Fair Election Alliance* there also emerged a coalition of opposition parties called *The Democratic Alliance (TDA)* which initially set out to sponsor a single opposition candidate in the 2016 presidential elections. Although the alliance failed to field a consensus candidate, its emergence was indicative of a more organised and unified opposition. Within the ruling NRM, unresolved succession issues led to the exit of Amama Mbabazi, the NRM Secretary General and Prime Minister of the Republic from the party to join the TDA platform. The emergence of the former Prime Minister as a presidential candidate introduced a new level of political competition in the 2016 electoral process.

The 2016 presidential elections are considered the most competitive elections since 2006. They were contested by eight candidates, of which three were considered the strongest. The incumbent, Yoweri Museveni contested for a fifth term, alongside fourth-time aspirant, Dr. Kizza Besigye, and Mr. Amama Mbabazi, the former Prime Minister. The EISA EOM also noted the

fractures within the ruling party as many of its senior members who lost in the party primaries choose to stand as independents in open defiance of the party's rules and procedures. These factors meant that at both Presidential and Parliamentary levels, the stakes were high, and competition was strong, thus making for tense campaigning, polling and results announcement periods.

2.2 Constitutional and Legal Framework

The constitutional and legal framework for elections in Uganda is comprehensive and is based on the Constitution of 1995 (as amended in 2005), and the following pieces of legislation:

- The Presidential Elections Act (2005) as amended
- The Parliamentary Elections Act as amended
- The Electoral Commission Act of 1997, as amended
- The Political Parties and Organisations Act of 2005, as amended
- Public Order Management Act (1997) as amended
- The Local Government Act as amended
- Access to Information Act (No 6/2005)

The constitution of Uganda recognises that all power belongs to the people who through voting also convey the State with the authority to govern. This authority comes from the expression of the will and consent of the people through regular, free and fair elections of their representatives or through referenda.³ The right to vote is guaranteed in Article 59 for persons who are 18 years and above and registered for that purpose. The Constitution guarantees fundamental freedoms and civil and political rights including freedom from discrimination, freedom of speech and of expression, which encompasses free press and other media.

Furthermore, in spite of the guarantees of civil and political rights in the constitution, the EISA Mission noted and received complaints that the Public Order Management Act (POMA) has been selectively enforced to prevent assembling and protests by civil society and political actors. This was specifically noted in the run up to the elections when consultation rallies by opposition figures were either not permitted or violently broken by the Police.

2.3 Electoral Dispute Mechanisms

Article 61 of the constitution empowers the Electoral Commission (EC) to hear and determine complaints arising from the electoral process. The EC's decisions are subject to appeal at the High Court. Presidential election disputes can be commenced in and resolved by the Supreme Court only. Disputes arising from parliamentary elections can be filed at the High Court with the right of Appeal. The mission noted however that resolving electoral complaints through the

³See, Article 1 (4) of the Constitution

normal channels may be delayed due to backlogs in the courts. The EISA EOM also noted that key opposition candidate in the 2016 presidential election stated his mistrust of the judiciary and his intent to address challenges through other means.

2.4 Electoral System

The electoral system in Uganda is governed by the Constitution and other relevant laws. The president is elected through a two-round system, while members of parliament are elected through a simple majoritarian system. The Mission noted as good practice the affirmative action system that provides reserved seats in Parliament for vulnerable and disadvantaged groups such as women, youth and persons with disabilities (PWD). The EISA EOM however noted with concern that the provision of reserved seats for members of the Uganda Peoples Defence Force (UPDF) in Parliament entrenches the involvement of the military in politics.

2.5 Political Parties

The EISA EOM noted with satisfaction that from the no-party movement system that existed before 2005, there are now 29 parties registered in Uganda and that 28 of these contested in the 2016 polls and that the election gave voters a wide range of options in the different elections that were held. There was also a high number of independent candidates in the elections.

2.6 Nomination of Candidates

The EISA EOM considered the legal requirements to qualify for nomination as presidential and parliamentary candidates are sufficient and non-restrictive.⁴ The Mission however observed that presidential and parliamentary election nomination fees were increased just two months before the start of the 2016 electoral process. The increase in fees coming as late as it did not give all prospective candidates the time to marshal enough funding for their nomination fees.

The nomination processes also revealed internal problems in a number of parties as some candidates who lost the primaries contested as independents. This suggests the need to build internal democracy and discipline within political parties.

2.7. Electoral Management

The Electoral Commission (EC) is established by Article 60 of the constitution and operates within the framework of the Constitution and the Electoral Commission Act of 1997. The commissioners are appointed by the President, with the approval by the Parliament. The EISA EOM found that the mode of appointment of the EC has been on the agenda for electoral reform

⁴ To qualify for nomination as a presidential candidate, a person must be a citizen of Uganda of between 35-75 years of age, be a registered voter and show support of at least 100 registered voters from at least 2/3 (or 75) of Uganda's 112 districts. For a member of parliament, a person must be a citizen of Uganda and a registered voter. He or she must have completed a minimum formal education of Advanced Level standard or its equivalent

since the 2006 elections. Stakeholders consulted by the EISA EOM expressed their lack of trust in the Commission because it is appointed by the President.

The Mission noted with satisfaction that the EC developed an elections roadmap 36 months before the polls and released voters' roll to presidential candidates free of charge and to the voters on its website, a full two months before the polls. The EC also made efforts to distribute voter location slips (VLS) aimed at assisting voters to locate their polling stations. The Mission however noted that the exercise was conducted rather late in the election process, with limited information to voters and insufficient resources for parish supervisors who had to distribute the slips. This minimised the effectiveness of these efforts.

Article 62 of the constitution and section 13 of the Electoral Commission Act provide for the independence of the EC in its operations. The EISA Mission noted that key decisions on important elements of the electoral process such as the delimitation of additional districts were not taken by the EC which is inconsistent with the law.

2.8. Voter Registration

In fulfilment of its duty to prepare and maintain a voters' roll, the EC extracted the 2016 voters' roll using data that was collected by the Ministry of Internal Affairs during the National Security Information System [National ID] project. Further to this, the EC reviewed and updated the roll initially from 7 to 30 April which was extended due to public demand to 4 May. The updated roll was displayed from 22 July to 11 August 2015 when names recommended for deletion from the national voter register were displayed. While the EISA EOM considers the extraction of the voter register from the national civic registry as a cost effective good practice, it also noted the concerns raised by stakeholders about insufficient information provided to citizens regarding the connection between registering for the national I.D and the voter register. As a result of the lack of clarity on the link between these registration processes, political parties felt disadvantaged, as they did not engage in effective voter mobilisation during the national ID registration process.

The EISA EOM viewed the introduction of the Biometric Voter Verification System (BVVS) as a fraud prevention and identity verification mechanism as a positive measure. It however noted that the late introduction of the system, with limited time to test and pilot them contributed to the uncertainty and suspicions in the days before the elections. For instance, there were speculations that the machines were vote-rigging devices that could be used to track the voter's choice. The EISA EOM is of the view that in future, introduction of electoral technology should be done with enough time to test and pilot such in by-elections and also gain the trust of stakeholders. Despite the late introduction of the BVVS, the Mission noted with satisfaction that it worked satisfactorily on election day.

2.9 Campaign Finance

The EISA Mission noted provisions in the Ugandan law for the financing of political parties that are represented in the Parliament. The law also provides for mandatory disclosure by political parties through the submission of annual audited accounts to the EC. The EISA EOM however noted that the regulatory framework for party and campaign finance does not provide for the following important regulatory aspects: campaign spending limits, mandatory disclosure of sources of funding and contribution limits to campaigns. These gaps in the framework have contributed to the undue influence of money in Ugandan politics.

2.10. Electoral Campaign

The 2016 elections were very competitive and campaigning at all levels was vibrant, colourful and animated. It is the mission's observation that candidates were given enough time to share their manifestoes with the electorate.

The 2016 elections were conducted without an agreed and enforceable code of conduct for political parties, which left the campaigns as an unregulated process. The Mission identified the initiative taken by the EC to develop a campaigning schedule developed for all political parties as a good practice. The EOM however observed that the schedule was not always respected by all candidates and there were clashes between supporters of parties in some places.

The EISA EOM also noted the following violations of the campaign regulations:

- Some candidates defied the directive to stop campaigning after 18:00hrs yet, no sanctions were applied
- Incidents of hate speech against other candidates were recorded
- As campaigns progressed candidates and senior party officials and leaders at national level made very intimidating statements with regard to the election and these statements created panic, alarm and despondency in the public.⁵
- Although the campaigns were relatively peaceful, incidents of violence, with serious injuries to candidates and supporters, blemished the campaigns.⁶

2.11. The Role of the Media

The media environment in Uganda is vibrant and coverage of the elections was comprehensive. Although the EISA EOM did not conduct a systematic monitoring of the media, it was observed however, that coverage by the state-owned print media, particularly the public broadcaster which is obliged by law to give equitable coverage to all candidates, tended to give greater

⁵ This violation was noted in the campaigns of the three major parties

⁶ For instance clashes between supporters of the FDC and NRM at Karume Bridge in Lalogi Sub-County in January and another clash between FDC and NRM supported in Terego area of Arua district were reported to EISA MTOs.

advantage the ruling party at the expense of the other parties and candidates. However most private media outlets made attempts to cover each candidate equitably.

The mission observed that different stakeholders used social media to conduct their activities. For instance many candidates used Twitter, Facebook and WhatsApp as platforms to reach voters. The EC also used these platforms to disseminate voter education and voter information messages. Of concern to the Mission however was the circulation of messages which could have misinformed voters and created confusion. The EISA EOM encourages Ugandan citizens to use these platforms responsibly to avoid fanning the flames of potential conflict.

2.12. Participation of Women

The mission found that numerically there is a high level of female participation in Ugandan politics. At 52%, women make up more than half the voting age population in Uganda. Thanks to its commendable affirmative action measures Uganda is ranked the 24th in the world with 35% female representation in its parliament⁷ The Speaker of the Parliament is a woman and the Secretary General of the ruling party is also a woman. It is however important to note the following for improvement:

- Out of 8 presidential candidates, there was only one woman
- The majority of women in Parliament have come through affirmative action. In the 2016 elections only 5.5% of candidates in the direct elections for President, Member of Parliament and District or City chairperson were women who ventured to compete directly against their male counterparts.
- The EOM noted from its consultations that these shortcomings were attributed to entrenched gender stereotypes and it is also partly due to traditional and customary stereotypes and practices as well as political parties' inadequate commitment to gender parity.

2.13. The Role of the Security forces.

An election is a competition and at times can become chaotic and violent. Therefore the security forces have a role to play in maintaining law and order in the electoral process. By the same token however the participation of security forces should not influence the electoral process or create fear.

The mission noted with concern the level of public mistrust of the security forces as they were accused of showing favour to the NRM, to the disadvantage of other parties. Senior members of the army and police also made partisan statements against the opposition during the election period. This impacted negatively on public confidence in their impartiality and conflict resolution capacity. To show their distrust of the security agencies, Dr. Besigye on the one hand, launched

⁷ <http://ipu.org/wmn-e/classif.htm>

a 'defiance' campaign while Mr. Mbabazi on the other recruited 'vote protection taskforces'. These groups mobilised by the three major presidential candidates contributed to the tensions that characterised the pre-election period.

The lack of clarity about the role of the crime preventers⁸ in the electoral process contributed to fear and apprehension ahead of the elections. This was regrettable, particularly given the perception of some members of the public who saw the crime preventers as a militia group established to favour the incumbent over his opponents.

2.14. Civil Society

Ugandan civil society groups participated in the election with vigour and with commitment. Through monitoring and observation, civic education, voter mobilisation, research and lobbying, hundreds of organisations played a key watchdog and advocacy role in the electoral process and for this they should be commended. The Mission did note however that groups lacked financial resources that would have enabled them to carry out all their desired activities more effectively. For example the mission learnt that due to funding constraints, only 10 of the 66 groups accredited by the Electoral Commission to undertake voter education were able to do so. This situation should be improved and increase in funding civil society groups will go a long way to improving their participation in elections.

The EISA EOM commends the initiative taken by the Inter-Religious Council of Uganda to organise two presidential debates that provided a platform for all presidential candidates to engage the public on their different programmes and manifestoes.

2.15. Civic and Voter Education

The Electoral commission is mandated by Section 61 of the constitution to formulate and implement civic education. For the 2016 elections, voter education carried out through the media, accredited CSOs and three private firms. However the mission observed that throughout the entire process voter education was insufficient and poorly coordinated. Insufficient or late information marred public participation in voter registration, in the demonstrations of the BVVS and collection of voter location slips. Access to information is an important aspect of an electoral process that could impact on the level and quality of voter participation.

Electoral Commission officials themselves indicated that they were underfunded and depended on goodwill of radio stations, for example, to broadcast vote education messages. The mission found however that the EC did take measures to correct this as the election campaigns proceeded, by using text messages and WhatsApp messages with information for the voters.

⁸ The crime preventers initiative was established as a community policing and neighbourhood watch to contribute to crime prevention through intelligence gathering and liaison with the police.

2.16. Polling Day Observations

EISA teams observed election day procedures including opening, voting, closing and counting in a total of 228 polling stations in the 20 districts where they were deployed on election day. The EOM regards the decision to shut down important social media platforms on election day by the Ugandan authorities as ill-advised because these platforms had contributed positively to the process during the pre-election period. The EISA EOM also regrettably noted the detention and eventual release of Dr. Besigye and some of his party members on election day and the day after.

Opening the Poll

The atmosphere outside the polling stations was peaceful and the stations were accessible to all voters including those with disability. Of concern however was that, due to the late arrival of polling materials and polling officials as well as poor preparation by the polling officials, all the polling stations where EISA observers were deployed, voting started at least 15 minutes late and at 32% of the stations visited, the voting commenced over an hour late. The mission noted with satisfaction that the voting hours in some stations were extended to accommodate voters who may have been disadvantaged by the late start of the voting. However the decision to extend the polls were made late and was not always communicated effectively.

At 15% of the polling stations observed campaign activities and materials such as campaign posters were visible. There was a visible security presence at 93% of the polling stations and in most cases the security presence was described as discreet.

Voting

The voting process went smoothly in most polling stations. However at some polling stations the atmosphere became agitated due to the late start to the voting. At 7 of the 51 polling stations where EISA observers witnessed persons being denied access to the polling process, these persons were turned away because they were not eligible or their eligibility was challenged. At 32% of the polling stations visited by EISA EOM observers, voters requiring assistance did not receive it. Despite the late start, once the voting commenced, it proceeded satisfactorily.

Closing and Counting

EISA observers observed closing at 19 polling stations. Voting ended late due to the extended voting time as well as to accommodate those who were still in the queue at 4pm. At seven of the stations where EISA teams observed the closing, citizen observers were not allowed to observe the closing.

EISA teams observed the counting of votes in 18 stations across the country. Voters were present at the count in 17 of the stations. The EOM considers this as a good sign of citizen participation. In few of the polling stations, the lighting was poor and could not ensure a smooth

counting process. Although results were announced at 94% of the stations, there were only posted outside at 56% of the stations visited.

2.17. Tallying and Announcement of Results

EISA teams observed the aggregation process at 12 District Tally Centres. Most tallying centres opened later than expected due to the late closing of voting. As a result observers found that at 20% of the stations visits, the atmosphere was not peaceful as people who wanted to hear the results became agitated when results were not announced. Further that in one of the tally centres, the process stopped as people were becoming impatient. In addition to the police presence at all the stations, the military was also present at the 88% of the tally centres. Additionally 20% of the centres were also guarded by private security firms. At four of the centres observers reported cases where some results were invalidated due to discrepancies.

3. Recommendations

Based on its findings and observations, the EOM offers the following preliminary recommendations:

The EC should:

- Prioritise and better coordinate civic and voter education initiatives.
- Improve on election day planning and operations to avoid delays and logistical lapses that negatively impacted on election day proceedings.

The legal framework should be amended to give consideration to the following issues:

- Give effect to the legal framework by guaranteeing guarantee the right of citizens to public assembly and holding security personnel accountable for excessive use of force on peaceful gatherings.
- Removal of reserved seats for UPDF in the parliament to ensure that the defence forces are not involved in partisan politics and focus on their primary role which is national security in any democracy.
- Provision for mandatory disclosure of sources of campaign funding and campaign contribution ceilings.
- Stronger provisions to guard against the use of inflammatory and intimidating language during campaigns.
- Strengthening of the regulatory powers of the EC to hold political parties accountable for infringement of campaign guidelines such as contravention of the campaign schedule and the use of inflammatory language.

Election dispute resolution:

- Consideration should be given to the creation of an Electoral Court that operates at the level of the High Court during the election period to specifically to address election-related petitions.

The international community and donors:

- Donor agencies should consider a cycle-based approach to electoral support programmes to enable CSOs to engage the electoral process in a comprehensive manner through advocacy, civic education and election monitoring and observation.

Conclusion

Based on its direct observation of key processes and consultations with Ugandan electoral stakeholders at national and sub-national levels up until 19 February 2016 whilst the national tally process was on-going; the EISA EOM notes with satisfaction the following: the largely peaceful conduct of the Ugandan electorate; the opportunity for issue-based election campaigns through the convening of presidential debates; and the experience of the biometric voter verification system which exceeded the performance of such systems in other African countries.

The EISA EOM however noted with concern that the culture of political intolerance as well as limitations placed on the freedom of movement and assembly undermined the openness of the electoral process. On Election Day, the Mission observed several challenges including widespread delays in the opening of polling stations largely related to the late delivery of polling materials. These delays necessitated extensions of voting hours in two districts which was not consistently communicated to the polling staff, thus denying some voters the opportunity to cast their ballot. An open, democratic society embraces access to information; and as a result, the shutdown of social media platforms around election day fails to embrace this ideal.

The EISA EOM therefore concludes that the observed shortcomings were inconsistent with the requirements of the legal framework for elections in Uganda and international and continental principles and obligations for democratic elections; thus undermining essential aspects of electoral integrity.

The EOM commends Ugandans for their patience and commitment during the process despite the challenges experienced, and encourages Ugandans to carry on in the same spirit as they await the results of the elections. The EOM calls on candidates and parties to seek address disputes to the appropriate channels in the coming days and refrain from unconstitutional means of seeking redress. The mission also encourages the security forces to refrain from the excessive use of force in their engagement with citizens during this period of heightened tensions and expectations.