



UGANDA

**PRESIDENTIAL AND
PARLIAMENTARY ELECTIONS**

23 February 2006

**EUROPEAN UNION
ELECTION OBSERVATION MISSION**

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I. EXECUTIVE SUMMARY

The 23 February 2006 presidential and parliamentary elections were generally transparent, relatively peaceful, and were held in an atmosphere in which freedoms of expression, assembly and association were more widely respected than hitherto. They demonstrated improvements in comparison to previous elections in a number of areas. The elections were the first in 26 years to be carried out under a multi-party system, and were therefore an important milestone in the development of Ugandan democracy. Once again, the Ugandan people demonstrated strong commitment to determining their political future by peaceful, democratic means, by participating in large number and expressing confidence in freely making their own choice between continuity and change.

Overall, however, the elections fell short of full compliance with international principles for genuine democratic elections, in particular because a level playing field was not in place. Despite the adoption of a multi-party system, the structures of the Movement system and its officially sanctioned organs remained intact, active and funded by the state throughout the election period, with the effect that the President and his party enjoyed substantial advantages over their opponents, which went further than the usual advantages of incumbency and the existing legal presidential privileges. Further, the President and his party the National Resistance Movement (NRM) utilised state resources in support of their campaign, including use of government cars, personnel and advertising, and received overwhelming and positive coverage on state television and radio.

In addition, in a judgment on a petition brought by Dr. Besigye challenging the result of the presidential election, and seeking to nullify the election, the Supreme Court noted a number of serious irregularities in the process. In a very close decision of four votes to three, it ruled that, while not affecting the results of the presidential election in a substantial manner, there was non-compliance with electoral laws through the disenfranchisement of voters and in counting and tallying of results and that the principle of free and fair elections was compromised by bribery and intimidation or violence in some areas of the country, and the principles of equal suffrage, transparency of the vote, and secrecy of the ballot were undermined by multiple voting, and ballot box stuffing in some areas. The Supreme Court also expressed concern about the continued involvement of the security forces in the conduct of elections and the apparent partisan and partial conduct of some election officials.

Whilst the legislative framework can provide for the conduct of democratic elections, it contains a number of shortcomings, including a lack of adequate provisions for display and correction of voter lists, the handling of complaints and appeals, unreasonable candidate requirements and lack of provisions for absentee voting. Moreover, much of the relevant legislation was adopted very late. In addition, there was concern, particularly among the opposition, about the abolition of the two-term presidential limit.

Unlike its predecessors, the current Electoral Commission managed to maintain significant levels of public confidence, and organised the elections in a more effective and transparent manner, introducing a number of technical improvements to enhance the integrity of the process. However, notable shortcomings were observed, including extensive problems in validating the voter registration, resulting in the disenfranchisement of voters on election day, deficient training of polling staff, and problems with the delivery of election materials in some areas. Despite its efforts to demonstrate independence from the Executive, it did not retain the full confidence of all political parties, even after establishing inter-party electoral

liaison committees and showing flexibility and a high degree of even handedness in dealing with complaints and concerns from political parties.

The campaign took place in a generally calm and positive atmosphere. Careful co-ordination between the Electoral Commission and the political parties sought to reduce the potential for violence. However, tension built up during the last two weeks before election day after acts of violence during rallies left some party supporters dead or injured and property destroyed. The pre-election and campaign periods were also dominated by controversial accusations and court cases brought by the state against the leading opposition candidate, Dr. Besigye, which significantly limited the time he had to campaign and the extent to which he could travel around the country. A significant percentage of media coverage devoted to Dr. Besigye concentrated on the various legal cases before the courts instead of on his campaign agenda.

The media monitored by the EU EOM provided a variety of information and debate about the elections in general as well as the main candidates. Commercial radio stations and newspapers in particular contributed to both the range and diversity of coverage of the candidates, providing far wider coverage than UBC, the state owned television and radio organisation. UBC Television's coverage was highly biased in favour of the incumbent President. UBC Radio's coverage provided a greater amount of airtime to opposition candidates than its television counterpart, but the incumbent remained the candidate granted the largest percentage of access. In contrast, the commercial radio and television stations monitored by the EU EOM, provided far greater balance between the two main candidates.

The statutory bodies established to regulate the media sector, the Broadcasting Council and Press Council, as well as the Electoral Commission, were largely redundant in regulating the media during the campaign period. In cases that should have been dealt with by these bodies, the police circumvented the regulatory framework to take direct action, including on four reported occasions to prevent commercial broadcasters from airing election related content. The lack of clear guidelines for media coverage as well as an arbitrary interpretation of the legal provisions relating to the regulation of the media during election periods by the authorities meant that the structures for regulating the media were undermined by the authorities to the detriment of the independence of the media.

The transition from the no-party Movement system to a multi-party system should have been complemented by widespread and comprehensive civic education. However, there was a significant lack of civic and voter education, despite efforts by the Electoral Commission in the weeks prior to the elections to address this situation. This was primarily due to the fact that the Electoral Commission and other institutions mandated to conduct civic and voter education were not provided with sufficient resources.

On election day, voting procedures were generally well followed by polling station officials and the secrecy of the vote was generally well maintained. Party and candidate agents were present in virtually all polling stations visited by EU observers, and domestic observers were present in over 85 per cent of polling stations visited. Notwithstanding the generally positive findings, EU observers also witnessed a few cases of electoral offences and illegal practices, including intimidation of voters and received a few reports of attempts at ballot box stuffing. Further, they noted a number of technical shortcomings, including ballot boxes that were not sealed and a lack of checking for ink on voters' fingers. Counting procedures were generally well followed in polling stations observed, although in over half of counts observed

reconciliation did not take place at the start of the process and in close to half the polling station counts observed, the results were not immediately publicly posted.

The tallying and announcement of the presidential results was carried out in a generally transparent manner, and generally in accordance with the legal provisions and the Electoral Commission programme. At the District level, the tallying of parliamentary results took place in full view of the candidate and party agents and observers. While the results of the presidential election were announced within the legally stipulated 48 hours, regrettably the Electoral Commission was only able to publish the parliamentary results a month after election day.

Civil society organisations played an important role in the electoral process, especially in relation to election observation, conducting comprehensive, long-term observation of the process and deploying observers to all polling stations throughout the country on election day. These organisations are a key element in the democratic future of Uganda. The EU EOM maintained close contact with these organisations, especially the Democratic Group Democracy and Elections Monitoring Group (DEMGroup), whose activities, in particular, played an important role in encouraging the peaceful atmosphere both during the pre-election period and after the announcement of results.

Uganda has a strong representation of women in political life, including through District Women's Representatives who were directly elected for the first time under a women-reserved system. Almost 30 per cent of the newly elected parliament will be women, the highest representation in the history of Uganda. Women were also well represented in civil society organisations and the election administration. At these elections, for the first time, a woman ran for President.

Around 500 complaints were received by the Electoral Commission prior to election day, mainly relating to administration of the process, nomination of candidates and election violence. A further 77 were received on or after election day, many of which related to applications for recount or annulment of polls, which should have been lodged with the courts. In addition to the lack of adequate procedures in the election legislation, which created confusion and inconsistencies in application, and a lack of redress in cases of non-compliance with decisions of the Electoral Commission, the Electoral Commission seldom met to discuss complaints, and many decisions were taken without being reviewed in formal session of the Commissioners, or being responded to officially.

Despite commendable efforts made by the election administration to reach the most remote places, the profound socio-economic differences between the north and the rest of the country, may negatively impact the process of sustained democratisation of the region. The existence of around 1.4 million displaced people living in camps, many of which are out of reach of many candidates during the electoral campaign, and the ongoing conflict, make it extremely difficult to anticipate a sustained democratic process in this region.

The EU EOM notes the willingness of the EU to assist the authorities, political parties, and civil society in the Republic of Uganda in continuing to improve its electoral process, and encourages the people of Uganda to continue to work towards the conduct of elections in full compliance with the law and international principles for genuine democratic elections.

II. INTRODUCTION

The first multi-party presidential and parliamentary elections in Uganda for 26 years were held on 23 February 2006. Following an invitation from the Electoral Commission, the European Union (EU) established an Election Observation Mission (EU EOM) to observe the electoral process. The Chief Observer was Mr. Max van den Berg (the Netherlands), Member of the European Parliament (MEP).

The EU EOM was deployed on 27 January 2006. Based in the capital, Kampala, the Mission consisted of a 10-member Core Team, 8 Long Term Observers (LTOs) and 186 Short Term Observers (STOs) from 23 EU Member States and Norway, including local observers from EU Member State delegations. Over the election day period, it was joined by a delegation from the European Parliament led by Mr. Johan van Hecke MEP (Belgium). The EU EOM issued a statement of preliminary findings and conclusions on 24 February 2006.¹ Upon release of the final official results and the ruling by the Supreme Court rejecting a petition presented by the runner-up candidate in the presidential election challenging its results, the Mission closed on 10 April 2006.

The mandate of the EU EOM was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections.² The purpose of the EU EOM was to provide support for the development of the country's democratic institutions and procedures, and to assist in the objective of holding elections to a high standard. Additional objectives of the election observation were to enhance public confidence in the electoral process, strengthen respect for human rights and serve as a deterrent to fraud and conflict. The EU EOM operated in accordance with the "Declaration of Principles for International Election Observation", adopted by credible international bodies involved in election observation in October 2005 at the United Nations in New York.

The EU EOM wishes to express its appreciation for the cooperation, coordination and assistance received during the course of its work from the following: the Electoral Commission; the Government of Uganda, especially the Ministries of Foreign Affairs and Internal Affairs; the High Court of Justice; the Police; the European Commission delegation and local representatives of EU Member States; civil society organisations; the International Organization for Migration (IOM); the Democracy Monitoring Group (DEMGroup) and other international and domestic observer representatives. The mission is especially grateful to the people of Uganda for the hospitality and warmth offered to all observers.

III. POLITICAL BACKGROUND

A. *POLITICAL CONTEXT*

The 2006 presidential and parliamentary elections were the first multi-party elections to be held in Uganda since 1980 and the third elections since the National Resistance Movement (NRM), or "Movement", came to power in 1986.

1 See <http://www.eucomuganda.org>

2 In particular those contained in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights.

Since independence, Uganda has not experienced a peaceful and constitutional change of power.³ After 20 years of NRM government the 2006 elections provided the opportunity for a wide range of democratic institutions to be tested. They also provided the potential to test whether the country could see a legitimate change of government by democratic and peaceful means. For most Ugandans it was the first time they voted in a multi-party system, and for most Members of Parliament it will be the first time they will legislate alongside colleagues with officially recognised and different partisan agendas.

The Movement System was conceived, and laid out in the 1995 Constitution, as broad-based, inclusive and non-partisan. The Movement Act of 1997 formalised that every Ugandan by virtue of birth is a member of the Movement. Political parties could exist, but their activity was limited. They could not nominate candidates for elections, open party branches outside the capital or hold party conferences. President Museveni explained and justified the system on the basis of the historical experiences of the country, claiming that political parties in Uganda had proved to be divisive, ethnically based and sectarian and, therefore, carry significant responsibility for the turmoil of the 20 year period prior to the NRM system. The old political parties have consistently rejected this reasoning, arguing for a return to multi-party elections, and often challenging legislation and government decisions in the courts.

The 2001 elections were marred by numerous cases of intimidation, violence, electoral irregularities, and the active involvement of the military in the election process, all of which was denounced by a Parliamentary committee and recognised by the Supreme Court, whose ruling came short of nullifying the process.⁴ Further, the 2001 elections showed that the Movement had become openly partisan and was no longer fully inclusive, since it favored some candidates over others. The now open political divide further fuelled the simmering debate over a return to a multi-party political system and the controversial question of whether the two-term limit for the presidency should be maintained. Internal and external pressure for a return to a multi-party political system increased and the government finally accepted the recommendation of a Constitutional Review Commission for the establishment a multi-party system.

This acceptance paved the way for the referendum held on 28 July 2005, in which 92 per cent of the voters (out of a participation of 42 per cent) favoured changing the system. In August parliament passed an amendment to the Constitution lifting the presidential term limits. At the local level, however, political activity was only permitted on 21 November 2005 with the enactment of the new Political Parties and Organisations Act (PPOA). The delay in the enactment of the 2005 PPOA, following the Constitutional amendments made in September 2005, together with the decision to advance the election date from March to February, severely limited the capacity and ability of the political parties to organise countrywide. It also gave a very significant undue advantage to the Movement, which had not been subject to such limitations, and in the meantime used its structures and organs to

3 The changes occurred as result of coup d'états (in 1966, when Prime Minister Milton Obote toppled President Edward Muteesa II and, in 1971, when the army chief commander, Idi Amin, overthrew president Obote) or military interventions (in 1979 the Tanzanian Army and the Ugandan National Liberation Front/Army joined forces against Idi Amin, and, in 1986 the National Resistance Army (NRA) brought about the downfall of the second Obote administration).

4 The 1996 and 2001 elections took place under the so-called Movement Political System, in which candidates contested the Presidency, the seats for Parliament and the Local Councils in their personal capacity (also called in Uganda the "individual merit system").

organise and position itself for the elections with President Museveni as the logical candidate.⁵

Opponents of the Movement system, whose organs remained intact until after the 2006 elections, together with representatives of civil society raised serious concern about the fairness of the transition as well as the short period of time in which political parties have been able to organise, and questioned whether the playing field could be level after almost 20 years of the Movement system.

The leading opposition candidate, Dr. Besigye, returned from self-imposed exile in South Africa in late October 2005 and was nominated as the FDC presidential candidate. On 14 November, he was arrested by police on charges of treason, rape, terrorism and illegal possession of weapons (*see* Legal section). The subsequent street riots and the police response, plus the appearance of the so-called “Black Mambas”, a para-military group that in December 2005 surrounded the High Court while it heard and approved arguments by the defence for the defendants to be released on bail, caused serious concerns about the potential for a turbulent electoral environment.

Later, Dr. Besigye’s case was, in parallel, taken to the Court Martial on rather dubious grounds. Nonetheless, in a reassuring sign of independence, the Electoral Commission accepted the nomination of Dr. Besigye as a presidential candidate on the grounds that he was innocent while not convicted in the courts, rejecting the arguments of the Attorney General who advised that Dr. Besigye be barred from the contest. Dr. Besigye was released on bail on 2 January 2006 and was able to start campaigning. However, this was after the electoral campaign had started, which together with the following frequent court appearances left him seriously disadvantaged in comparison to the other candidates.

According to political observers, President Museveni seemed afraid of Dr. Besigye’s candidacy despite his relatively positive track record in terms of economic growth and political stability. Dr. Besigye’s arrest and the charges brought against him should be seen, according to the same political experts, as a reflection of President Museveni’s worries. President Museveni was the target of a string of criticism from opposition forces regarding his ability to end the ongoing war against the LRA in the northern region of the country. However, based on conversations with political observers and experts, it seems widely accepted that the fighting in the north coupled with the recent intervention in the Democratic Republic of Congo by Ugandan of the armed forces served President Museveni as a way to maintain the military as a constant and dominating feature of public life. This might explain a possible lack of political will to end the war in the north. Nevertheless, the war and its effects, especially on the more than 1.5 million people living in camps established for internally displaced people (IDP), became an important campaign and security issue.

The EU EOM arrived in the country against this background, and at a time when the electoral campaign was well underway, in a rather quiet and orderly manner if compared to the violence observed during the pre-election period in 2001. Despite the tense situation in the country during the final days of campaigning, as consequence of violence during political

5 In fact, in 2003, before the NRM registered as a political organisation, the Constitutional Court (in a petition challenging the 2002 PPOA) concluded that the Movement, as set up by the 1997 Movement Act, had become a political organisation aiming to retain political power (Constitutional Court Ruling 2003, p. 4, 5). Labelled as NRM-O (Organisation) at first, it later referred to itself as NRM, the name under which it is registered, thereby disguising the difference between the NRM as political organisation and the NRM as a political system with its own organs.

rallies and demonstrations in several towns and villages that left several people dead, election day was generally peaceful and orderly.

President Museveni won almost 60 per cent of the votes, against more than 37 per cent given to Dr. Besigye, with the three other candidates splitting the remaining 3.5 per cent of votes cast. President Museveni's party, the NRM, also won a two-thirds majority of seats in Parliament. President Museveni's votes were enough to be declared President by the Electoral Commission, an act that the runner-up rejected alleging that the electoral process and the elections had been rigged and were unfair on a number of grounds, and petitioned the Supreme Court to nullify the elections. In its preliminary statement issued after the election, the EU EOM considered election day as transparent and competitive, but denounced the lack of a level playing field for the political contestants.

The presence of the Mission was important for the electoral process judging by the public statements in its favour coming from the electoral authorities and other governmental and non-governmental institutions.

B. THE POLITICAL PARTIES

As a result of the late opening of the "operating space" for the political parties, only the NRM, among 13 political parties nominating candidates for the parliamentary elections, was able to nominate a candidate in all 215 directly contested constituencies and all 69 Districts for women seats, signaling how well entrenched the Movement is throughout the country and the extent to which it enjoyed competitive advantage over other contesting parties. The main opposition party, the FDC, did not submit candidates for all constituencies and Districts, while the two traditional parties that existed prior to 1986, the Democratic Party (DP) and the Uganda People's Congress (UPC), only fielded candidates in about a third of the directly contested constituencies and a fifth of the Districts for seats reserved for women (see Table 1).

Table 1: Candidates for Parliament and Women Districts Seats (direct elections)

Party/Region Seats P/W	Central (59/15)		West (57/18)	North (37/12)	East (62/24)	Total (215/69)
NRM	59	15	57/18	37/12	62/24	215/69
FDC	22	5	42/10	25/6	48/15	137/36
DP	47	9	6/0	6/1	9/2	68/12
UPC	7	0	4/0	27/5	37/7	75/12
Independents	72	7	60/9	49/13	110/29	291/58
Others	12	2	3/1	0/0	5/0	20/3
Total	219	38	172/38	144/37	271/77	806/190

The UPC and DP fielded most of their candidates in the north and central regions, respectively, where they originate from, but even in these areas they were not able to contest every seat. The FDC had a fairly even spread of candidates throughout the regions. A considerable number of leading members of the FDC did not contest the elections, suggesting that the party had not had time to develop a strategy for the parliamentary elections and concentrated its efforts mainly on the presidential election. By far the highest number of candidates were independents, suggesting that political parties have not had enough time to develop roots within society and that the country, through the last two elections, has developed a tradition of contest on the basis of individual capacity.

C. THE PRESIDENTIAL CANDIDATES

Five candidates contested the presidency, one less than in 2001. The incumbent Yoweri Museveni (NRM); Dr. Kizza Besigye (FDC), his closest challenger and runner-up in the 2001 elections; Miria Obote (UPC), widow of former President Milton Obote; John Ssebaana Kizito (DP), Mayor of Kampala; and Abed Bwanika (independent), veterinary doctor, and Christian pastor.

The two main candidates had a military background: President Museveni was the commander of the National Resistance Army (NRA) during the guerrilla war against Milton Obote's regime. He retired from the military as General before the Movement registered as a political organisation in 2004 as the 2002 and 2005 PPOA stipulates that members of the army cannot be founding members of political parties. Dr. Besigye also participated in the guerrilla war against Obote, and after 1986 served in different capacities within the government (Minister of State, National Political Commissar, Chief of Logistics and Engineering) until he left the army with the rank of Colonel and decided to run for president in 2001. President Museveni and Dr. Besigye had close ties in the past, particularly during the bush war when Dr. Besigye was President Museveni's personal physician.

IV. LEGAL ISSUES

A. CONSTITUTIONAL AND LEGAL FRAMEWORK

The legislative framework for the conduct of elections, which includes the Presidential Elections Act (2005), the Parliamentary Elections Act (2005), the Political Parties and Organisations Act (2005), the Electoral Commission Act (1997), as well as regulations and guidelines issued by the Electoral Commission, can provide the basis for the conduct of democratic elections. However, the delay in holding the referendum on the political system until July 2005 and the consequent amendment to the Constitution reduced the amount of time available for political parties to establish themselves in the public domain and for the Electoral Commission to prepare for the elections.

The 1995 Constitution, amended in September 2005, outlines the structure of the state. It foresees a directly elected president as head of the executive, a parliament, local governments, an independent judiciary, an Electoral Commission and other bodies. The constitutional changes establishing the multi-party system also provided for the lifting of presidential term limits, which allowed President Museveni to stand for a third term. While the amended Constitution allows for multi-party competition, it also provided for the Movement organs established under the 1997 Movement Act to remain operational during the first multi-party elections. The Movement Act states that all assets and property of organs under the Movement shall be deemed to be assets of the state. However, the Parliamentary and Presidential Elections Acts specifically prohibit the use of state resources for the purpose of campaigning. There is therefore a contradiction in the continuing state funding and active involvement of the Movement organs, staffed by key NRM cadres, when the electoral laws prohibit the use of state resources apart from those pursuant to Article 27 of the Presidential Elections Act (See section Campaign Finance and Expenditures).

The Constitution provides for the adoption of the Movement political system, multi-party political system or any other democratic and representative political system. It prohibits Parliament from enacting legislation establishing a one-party state. The change of the

political system should be conducted through a referendum or by resolution of Parliament.⁶ The Constitution guarantees the right to form political parties and organisations.

The principles of political rights and freedoms are also contained in declarations, conventions and other instruments adopted by the United Nations, the African Union and the Commonwealth to which Uganda is a party. Among these are the International Covenant on Civil and Political Rights (ICCPR), the African Union Declaration on the Principles Governing Democratic Elections in Africa and the African Charter on Human and Peoples Rights. The right of citizens to establish and be a member of a political party and the right of political parties to freely organise and participate in public life cannot be understood without the right of political parties to participate in elections. In addition, the principle of “individual merit as a basis for election to political offices”, established in the Movement political system, can still be exercised within the multi-party system since the Constitution allows independent candidates to stand for election.

Further, on 16 January 2003, the Constitutional Court ruled that the Movement Political Organisation set up by the 1997 Movement Act no longer operated as a Movement Political System as defined by the Constitution,⁷ since the Movement Political Organisation is a political organisation or political party within the definition given in the Political Parties and Organisations Act of 2002,⁸ despite a disclaimer contained in one of its sections.⁹

The positive aspects of the legal framework include provisions for female participation from local council to parliamentary level, using a system of quotas, and a number of provisions aimed at promoting transparency such as the display of the voter register and candidates’ lists, publication of the list of polling stations and access of polling agents and candidates to polling station and tallying centres. In addition, the PPOA provides a basis to enhance transparency and accountability in relation to the financing of political parties.

However, the legislation contains a number of shortcomings to be addressed, which had an adverse effect on the conduct of the 23 February 2006 elections:

(i) *The Right to Elect and Be Elected*

The Constitution and the electoral laws include restrictions for candidacy to be a Member of Parliament or President. The laws require that candidates should have a minimum formal

6 Article 69 (1) of the Constitution states: “The people of Uganda shall have the right to choose and adopt a political system of their choice through free and fair elections or referenda. (2) The political systems referred to in clause (1) of this Article shall include - (a) the movement political system; (b) the multi-party political system; and (c) any other democratic and representative political system”.

7 Article 70 (1) of the Constitution states: “The movement political, system is broad based, inclusive and non-partisan and shall conform, to the following principles (a) participatory democracy; (b) democracy, accountability and transparency; (c) accessibility to all positions of leadership by all citizens; (d) individual merit as a basis for election to political offices (2) Parliament may (a) create organs under the movement political system and define their roles; and (b) prescribe from time to time, any other democratic principle of the movement political system, as it may consider necessary”.

8 Political Parties and Organisations Act S 2(1) “political party” means a political organisation the object of which includes the sponsoring of, or offering a platform to, candidates for election to a political office and participation in the governance of Uganda at any level. “Political organisation” means any free association or organisation of persons, the objects of which include the influencing of the political process or sponsoring a political agenda, whether or not it also seeks to sponsor or offer a platform to a candidate for election in Uganda at any level.

9 Political Parties and Organisations Act S2 (2): The definition of political organisation in subsection (1) shall not include the following: (a) the Movement system referred to in Article 70 of the Constitution, and the organs under the Movement Political System.

education of advanced level.¹⁰ This provision violates the fundamental right of equal opportunity to stand as a candidate as contained in Article 25 of the ICCPR, ratified by Uganda in 1995.¹¹ Further, the Parliamentary Elections Act establishes that public servants intending to stand for Parliament should resign from office 90 days before their nomination. As a result, in some instances political parties faced difficulties in finding suitable people who met the education requirement, while some of those who qualified were not ready to lose their jobs in the case they were not elected.

The Constitution and the Parliamentary Elections Act establish that the Parliament should be composed of 215 members directly elected to represent constituencies, one woman representative for every one of the 69 Districts, elected through universal suffrage, and 25 representatives of special interest groups such as the army, youth, workers and disabled people elected by their electoral colleagues. These special measures to ensure the election of women and the disabled, which represent a large percentage of the Ugandan population,¹² aimed to promote their representation in public life and are justified in the Ugandan context due to historical and socio-economical circumstances. The specific conditions of women and disabled people have been recognised in different international instruments.¹³ Although women are directly elected in the Districts, the collegiate system by which representatives of the disabled people are elected violates the principle of universal suffrage and should be changed. The election and quotas for the army, workers and youth by electoral colleges also violates the principle of an equal right to vote and to stand as a candidate, equal representation and universal suffrage. In addition, the participation of army members as MPs in Parliament constitutes a conflict of interest.

The Presidential Elections Act allows for Ugandans who are both resident and non-resident in the country to vote in the presidential election. Uganda ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in 1995, committing to facilitate the exercise of the rights of citizens to participate in public affairs in their state of origin. However, no arrangements have yet been put in place to provide Ugandans living abroad with the possibility to vote.

The Constitution (Article 59) also states that every citizen of 18 years and above has the right to vote, and that the state shall take all necessary steps to ensure that all citizens that qualify to vote are registered and can exercise their right to vote. Universal and equal suffrage does not only mean the absence of formal legal barriers to elect and to being elected, it also means active and effective political enfranchisement of the whole of society. The Presidential and Parliamentary Elections Acts allow for enactment of special provision for voting in institutions and restricted areas (e.g. hospitals, sanatoriums, nursing homes) However, no mechanism has been put in place by the Electoral Commission to provide active and effective enfranchisement of those voters. The inconsistency between the Constitution and the Electoral Commission Act¹⁴ should be clarified to enable all citizens

10 According to UNICEF statistics, only 14 per cent of males and 15 per cent of females attended secondary schools between 1996 and 2004.

11 Article 25 of the ICCPR says "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 21[1] and without unreasonable restrictions: (1) To take part in the conduct of public affairs, directly or through freely chosen representatives; (2) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (3) To have access, on general terms of equality, to public service in his country".

12 According to the 2002 census, there are 844,841 disabled people in Uganda.

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

14 Sec. 19.b. of the ECA- Any person who is 18 years of age or above shall apply to register as a voter.

who have reached 18 years of age to be able, not only to register, but also to vote. Although the Constitution establishes the age for eligible voters at 18, the Act does not provide for registration of individuals who reach the age of 18 between the closure of the registration period and election day.

(ii) *Political Parties and Candidates*

In October 2005, Parliament passed the PPOA, which includes regulations regarding the registration of political parties. The Act establishes a reasonable procedure for the registration of political parties. Once registered, political parties should comply with certain financing rules and other rules related to their internal organisation including provisions aimed to achieve gender equity in the executive committees. The registered political parties must declare their assets and liabilities and submit an audited report to the Electoral Commission one year after their registration. All these documents are available to the public upon the payment of a fee. The political parties and organisations registered under the previous Political Parties and Organisations Act, from 2002, had the same obligation to provide an annual financial report to the Registrar General.

The NRM was the only organisation under the legal obligation to submit a financial statement since it was registered in 2003. However, this has not yet been provided, either to the Registrar General or to the Electoral Commission. The law also requires the Minister of Internal Affairs, in consultation with the Electoral Commission, to present a code of conduct for political parties and organisations to Parliament. Although the draft Political Parties and Organisations (Code of Conduct) Regulations bill was submitted to Parliament in December 2005, it has not been adopted and the Minister failed to provide a revised version for consideration by Parliament before its dissolution.

The Parliamentary and Presidential Elections Acts and the Penal Code Act prohibit the use of malicious, false, abusive, insulting or derogatory statements while campaigning. The relevant provisions create vague offences that do not provide adequate guidelines as to how people could comply with the law and contribute to confusion by not specifying what type of statements are prohibited. The practical application of these provisions tends to lead to restrictions to their lawful exercise of freedom of expression. Consequently, there were several cases of candidates charged, and in some instances arrested, for their comments during the campaign period.¹⁵ In March 2006, the East Africa Media Institute petitioned the Constitutional Court challenging the constitutionality of some sections of the Penal Code Act related to seditious offences, promoting sectarianism and libel that contravened the Constitution's guarantees of protection of freedom of expression, movement, religion, assembly and association.

A directive of the Electoral Commission prohibits the conduct of rallies after 6 pm. Although the directive aims to prevent electoral violence, some political parties complained about difficulties in gathering the employed public during the allowed campaign time period. Moreover, some opposition political parties pointed out that when President Museveni and NRM parliamentary candidates contravened this provision, no measures were taken by the

¹⁵ An FDC Parliamentary candidate was charged with defamation for her comments on a local radio station in Rukungiri District. The FDC leader's wife, Winnie Byanyima, who was campaigning for the FDC, and the party treasurer, Jack Sabiiti, were charged on January 24, 2006, with giving false information and criminal libel after they wrote privately to Chief Justice, Benjamin Odoki, asking him to investigate allegations of bribery of High Court judges by Leo Kyanda, the Chief of Military Intelligence. A UPC supporter was arrested and taken to court in Mbale District charged with defamation after he made a complaint against a NRM Minister for allegedly stuffing ballots in his area of residence.

authorities.¹⁶ In addition, the general consensus among the political parties was that the time allocated for the campaign was too short (*see* Election Campaign).

(iii) Campaign Finance and Expenditures

The Presidential Elections Act allows the incumbent President to use the facilities attached to the office of the President during the campaign. The law provides that the Minister of Public Service should submit to Parliament a statement of government facilities attached to and utilised by the President. The statement presented to Parliament includes “the usual transport facilities provided to the President, the usual security detail facilities, the usual personal staff and their facilities, the usual information and communication facilities attached to the President”. This provision presented a considerable disadvantage to the opposition candidates during the election campaign.¹⁷

The Electoral Commission issued Guidelines for Presidential and Parliamentary Campaigns. While the presidential guidelines require candidates to submit to the Electoral Commission the financial reports of their campaign within 30 days after the elections, there is no requirement for the parliamentary candidates to do the same. There is no provision in the presidential guidelines stating that this financial report should be made public.¹⁸

The Presidential and Parliamentary Elections Acts prohibit the holding of any public campaign meeting except in accordance with a programme of meetings submitted by candidates to the Electoral Commission for the purpose of coordinating the different campaigns. However, the law does not specify the period for the submission of the programme or the criteria for the Electoral Commission in deciding which political party has precedence for gaining permission to hold a political rally. The draft code of conduct for political parties and organisations prescribes a reasonable period of time of at least 72 hours for the submission of the program to the Returning Officers. However, the 10 kilometre distance between the different gatherings is excessive and should be reconsidered.

(iv) Rule of Law and Independence of the Judiciary

It was outside the electoral framework where legal activity really has been concentrated. The arrest, detention and ensuing cases against Dr. Besigye - treason and rape in the High Court, and terrorism and illegal possession of fire-arms in a General Court Martial - created uncertainty about whether he could contest the elections. The Electoral Commission determined that he could be nominated, a decision that was effectively endorsed by the Constitutional Court. The interference by the authorities in the judicial process has been a matter of controversy during the trials, and statements made by a high ranking army officer in the press raised questions about the pressures placed on the independence of the proceedings. Further, there have been instances where the authorities have acted in direct contravention of orders and decisions made by the Judiciary. The General Court Martial disregarded the decision of the Constitutional Court and continued to pursue charges against

16 The FDC chairman in Mbale claimed that the NRM was allowed to hold rallies after 6 pm without police interference.

17 The Coalition on Election Finance Monitoring (CEFIM), a coalition of Transparency International and the Anti-Corruption Coalition Uganda (ACCU), condemned the blatant misuse of public resources by or on behalf of the incumbent presidential candidate. The CEFIM claimed unfettered use of public resources undermined the integrity of the electoral process and threatened the spirit of free and fair elections.

18 None of the presidential candidates submitted a financial report of their campaign expenses within 30 days after the elections.

22 other suspects of treason while they were appearing for the same charges in the High Court. As a result of this interference, two trial judges withdrew from the treason case. Overall, however, despite these pressures, the Judiciary has been widely viewed to have acted impartially and professionally throughout the cases.

Following his return from four years of exile in October 2005, Dr. Besigye was arrested a month before the nomination of presidential candidates, scheduled for 14-15 December 2005. He was charged with 22 others¹⁹ with treason and misprision of treason allegedly committed during his years in exile. He was further charged with rape, allegedly committed in 1997. All these charges were tried by the High Court. During the bail application on 16 November 2005, the heavily armed "Black Mambas Urban Hit Squad",²⁰ besieged the High Court premises to re-arrest the accused if they were released on bail. This was widely condemned by the Judiciary, civil society, general public and international community.²¹ The next day, all 22 accused persons were sent before the General Court Martial to face charges of terrorism.

On 31 January, the Constitutional Court ruled on a petition by the Uganda Law Society challenging the constitutionality of the trial of Dr. Besigye and the 22 co-accused, deciding that it was unconstitutional to subject the accused to criminal proceedings in two courts on charges based on the same facts (treason in the High Court and terrorism in the General Court Martial) and that, therefore, the General Court Martial proceedings against Dr. Besigye and his co-defendants were unconstitutional. The Constitutional Court also ruled that the continued detention of Dr. Besigye due to charges he was facing under the General Court Martial, after having been granted bail by the High Court, was unlawful and that the invasion of the High Court's premises by the Black Mambas was also illegal. In reaction to the Constitutional Court ruling, General David Tinnyefuza, coordinator of security services and senior presidential adviser, accused the judiciary of siding with terrorists.²²

On 3 February 2006, Judge Katutsi announced that he would step down from hearing the treason case in the High Court, citing external pressure that had had grave effects on his health. He became the second Judge to withdraw from the hearing of the treason case after Judge Lugayizi withdrew from the same case on 18 November 2005, citing military interference. The case was assigned to Judge Kagaba who adjourned the case to 15 March 2006 due to the long election period for the presidential and parliamentary elections.

On 14 February 2006, the trial of the 22 People's Redemption Army (PDA) suspects resumed in the General Court Martial, despite the constitutional ruling declaring the case illegal. Dr. Besigye was not summoned by the General Court Martial and, therefore, was not present. The lawyers for Dr. Besigye and the 22 others defied the Court order and did not appear before the General Court Martial. However, during the hearing of the 22 suspects

19 A group allegedly belonging to the People's Redemption Army (PRA), a rebel group said to be linked to the FDC.

20 The government later stated that they are part of a new special army unit to fight terrorism; the Joint Anti-Terrorist Team (JATT). It comprises personnel from the army, police and security organisations.

21 The principal judge, James Ogoola, described it as a "naked rape, defilement and desecration of our temple of justice. Not since the abduction of Chief Justice Ben Kiwanuka from the premises of Court during the diabolical days of Idi Amin has the High Court been subjected to such horrendous onslaught as witnessed last Wednesday". *The Monitor*, 19 November 2005. The Uganda Law Society issued a statement strongly denouncing this "heinous and repugnant assault on the Judiciary".

22 Gen. Tinerfuza, in an interview broadcast on KFM on 1 February 2006 said that "the army respects the ruling of the Courts but the judges have no power to order the army, and the army would not accept to be ordered by the judges". He went on to accuse the judges of not giving the state a chance to prove its cases, blaming them for not helping the state fight terrorism. The General made further attacks on the Judiciary in the mass media to the effect that the Judges had no right to dispense justice on matters of national security.

held on 1 March, the Chairman of the General Court Martial, General Elly Tumwiine, ordered that Dr. Besigye should appear before the Court on March 15, despite the ruling of the Constitutional Court since the charges against Dr. Besigye had not been withdrawn. The defence lawyers re-stated that they would not appear in the military Court since they did not recognise its jurisdiction. On 7 March, President Museveni, who is also Commander-in-Chief of the UPDF²³ told representatives of the Partners for Democracy and Governance, including representatives of EU Member States and the United States embassies, that Dr. Besigye and the 22 co-defendants would not be tried for terrorism and illegal possession of firearms in the General Court Martial. However, he maintained that the GCM would continue holding Dr. Besigye's co-defendants in jail as a precautionary measure.

In an attempt to challenge Dr. Besigye's candidature, a petition was also lodged before the Constitutional Court challenging his nomination *in absentia*. The Attorney General, together with the petitioners, stated that by nominating Dr. Besigye while he was in Luzira prison, the Electoral Commission had disregarded the Attorney General's advice not to do so, thus contravening Article 119(3) of the Constitution.²⁴ The Electoral Commission, however, argued that it is an independent body and is not subject to the authority of the Attorney General. The Electoral Commission lawyers added that the act of nominating Dr. Besigye *in absentia* did not contravene Article 103(2) (a)²⁵ as alleged by the petitioners and that the Presidential Elections Act does not provide for physical presence of candidates during nomination. On 17 February, the Constitutional Court dismissed the petition. In addition, on 4 February 2006, a Movement MP for Bugabula County lodged a petition with the Electoral Commission challenging Dr. Besigye's academic qualifications to be a candidate alleging that he had used a Primary Leaving Examination Certificate belonging to Stanley Kizza. The Electoral Commission forwarded the matter to the Police for investigation. However, during an FDC press conference, Stanley Kizza stated that he did not hold a Primary Leaving Examination certificate and, therefore, Dr. Besigye could not have used his certificate. By election day, the Police had not found evidence on the matter for Dr. Besigye to be disqualified.

On 7 March, the High Court acquitted Dr. Besigye of the rape charges.²⁶ As a result of these cases, Dr. Besigye had to attend 27 hearings in different courts, limiting the time he had to campaign, as well as the extent to which he could travel around the country. A large percentage of coverage of Dr. Besigye in the media also focused on these court cases.

B. RECOUNT AND ANNULMENT

The Parliamentary Elections Act establishes the basis on which a recount must be ordered. Mandatory recounts are ordered when the two candidates with the highest percentage of the vote receive the same number of votes, or where the number of votes separating the candidate receiving the highest number of votes and any other candidate is less than 50.

23 Art. 98 (1) of the 1995 Constitution of Uganda.

24 Art 119(3) of the Constitution states that the Attorney General shall be the principal legal advisor of the Government.

25 Art 103(2)(a) of the Constitution states that " A person shall not be a candidate in a presidential election unless...that person submits to the Electoral Commission on or before the day appointed as nomination day in relation to the election, a document which is signed by that person nominating him or her as a candidate".

26 In his judgment, Judge Katutsi described the investigations carried out by the Director of Public Prosecution as "crude and amateurish" adding "the evidence before this court is inadequate even to prove a debt impotent to deprive of a civil right, ridiculous for convicting of the pettiest offence, scandalous if brought forward to support a charge of any grave character, monstrous if to ruin the honours of a man who offered himself as a candidate for the highest of this country".

However, the law does not establish particular grounds upon which a petition for a recount may be based. Once the Electoral Commission has declared the results of an election, it cannot order a recount. In the case of the parliamentary elections, all subsequent claims have to be lodged with the Chief Magistrate Courts within seven days after the declaration of results.²⁷ Before ordering a recount, the Chief Magistrate takes into consideration whether the irregularity in question had a substantial effect on the final results of the election. The Chief Magistrate sets the time to recount the votes, within four days after receipt of the application.

In the case of presidential elections, a recount can only be ordered by the Supreme Court after the submission of an election petition challenging the election of the President. The Electoral Commission Act does not specify on which grounds the nullification of an election would be justified. However, the Electoral Commission supports its authority to annul an election result in a particular polling station by invoking Article 50 of the Electoral Commission Act, which gives the Electoral Commission the power to act accordingly in the course of an election by reason of any mistake, miscalculation, emergency or unusual or unforeseen circumstances. The Electoral Commission takes a decision about annulment of results based on reports received by Returning Officers.

V. ELECTION ADMINISTRATION

The Electoral Commission took office in 2002 at a time when public confidence in the election administration was low, following the controversial 2001 elections, the Supreme Court ruling on a petition challenging its results, and the sacking of six of the seven members following a series of reports of corruption from the Inspector General of Government (IGC), Uganda's anti-corruption agency.²⁸ The new Electoral Commission, six of whom were appointed by the President in 2002, have had to absorb not only the lessons of the past, but also meet the challenges of the new multi-party system, and holding multiple elections over an extremely short period of time. While the Commission made significant efforts to improve its organisational capacity and enhance its standing with the public, it did not retain the full confidence of all political parties. Moreover, the conclusions of the Supreme Court in responding to the petition from Dr. Besigye indicate that further significant improvements will be required at the next elections.

A. STRUCTURE OF ELECTION ADMINISTRATION

The Electoral Commission is a seven member election management body appointed by the President, with the approval of the Parliament, for a seven-year term. The opposition, as well as some sections of civil society, has consistently opposed this system of appointment, claiming that the Commissioners are too closely tied to the appointing authority. Indeed the Electoral Commission, in its recommendations to the Constitutional Review Commission, called for greater security of tenure for its members.

27 Section 55 (1) of the Parliamentary Elections Act empowers a complainant to petition the Chief Magistrate for a recount within seven days after the declaration of results. Only the Supreme Court can order a recount of the presidential election.

28 The Supreme Court ruling on a petition filed by the defeated leading opposition candidate, Dr. Besigye, recognised that "the principle of free and fair elections was compromised" and that "there was evidence that in a significant number of polling stations there was cheating". However, on a three-to-two vote, it found that the irregularities did not affect to a substantial degree the results of the elections.

The Commission is assisted in the performance of its functions by a Secretariat. Unlike most other staff members, the Secretary to the Electoral Commission is formally vetted by Parliament. This position is perceived to be of critical importance to the independence of the Commission and many opposition parties have been critical of the appointment of the current incumbent who not only served as an MP from Sembabule district in the sixth Parliament but was, for a short while, an official in the Movement Secretariat.

Of the senior staff and Commissioners, only two had held their current posts during the 2001 elections. The Electoral Commission sits at the apex of a three level election administration structure. Below it are 69 Returning Officers, that it appoints, who are supported by their respective assistants and responsible for the implementation of the Electoral Commission's functions at the District level. Each Returning Officer is responsible for one District and as many parliamentary constituencies as are contained within the District boundaries. At the basis of the pyramid, were a total of 19,774 polling stations, administered by the same number of Presiding Officers, who are assisted by polling staff.

B. FINANCING OF ELECTION ADMINISTRATION

Financially, while the Constitution requires Parliament to provide the Electoral Commission with adequate funds to perform its functions effectively (Article 66 of the Constitution of Uganda), in reality its funding is controlled by the Ministry of Finance. The Electoral Commission originally requested a budget of US\$ 74 billion to organise the whole series of elections (presidential, Parliamentary, local councils, municipal and sub-county elections). After negotiations, the Ministry of Finance agreed to provide US\$ 64 billion. In addition, the Commission received a further US\$ 5 billion from the donor community in direct and indirect support. This reduction in the amount allocated to the Electoral Commission may have had a negative impact in the performance of a number of its functions, particularly voter education. Further, the timely release of funds proved to be a problem. If the Electoral Commission is to truly enjoy the independence granted to it under the Constitution, then the mechanism for providing it with funding, along with the release of funds, needs to be strengthened.

C. ELECTORAL COMMISSION

Article 8 of the Electoral Commission Act establishes that every decision of the Electoral Commission shall, as far as possible, be adopted by consensus. Only if consensus fails, decisions may be adopted by majority. At least five Commissioners must be present at a meeting to make a decision. While this ensured collective responsibility and reduced the possibility of polarising the Commission, it also meant that the Commission spent many hours in very lengthy meetings attempting to reach an agreed position. By reaching consensual positions, despite the different personal sensibilities among its members, the Electoral Commission projected a unified image to the stakeholders. However, its meetings remained closed and its minutes were not circulated or published.

According to Article 62 of the Constitution, the Electoral Commission shall be independent and not subject to the control of any authority. The Electoral Commission demonstrated independence from the Executive on a key issue by ignoring the negative advice of the Attorney General and registering Dr. Besigye as a candidate in the presidential election.

However, the presidential appointment of the Commissioners, with the approval of a Parliament elected under the Movement "no-party" system, continued to overshadow the

independence of the Electoral Commission in the perception of opposition parties and candidates, as well as a number of civil society groups. To address this problem, the Commission undertook a series of confidence-building measures aimed at restoring the public confidence in the institution, already seriously damaged by the legacy of previous elections in Uganda. This effort was based on three main lines of action:

- (i) The Electoral Commission established an inter-party electoral liaison committee at the national level, involving representatives of the presidential candidates and political parties, which met twice a week and managed to peacefully resolve a significant number of election related disputes. It also played a positive role in co-ordinating the campaign programmes of candidates and parties. The EU EOM was granted access to the committee meetings. This forum was generally replicated, in various formats, at the District level. The Commission showed flexibility, appeared to treat the parties fairly and responded to concerns they raised, for example to provide them with access to tally centres and computer rooms at national and District levels and change the order in which the results of the different elections were counted, giving priority to the presidential over the parliamentary elections. The Electoral Commission also held meetings with domestic observation groups, in which problems arising during the process were discussed and suggestions made to address them. The DEMGroup, the main domestic observation group in Uganda, generally considered these contacts fruitful and constructive.
- (ii) The Electoral Commission made an effort to keep the public informed about election preparation developments, although sometimes the information came later than desirable. The Electoral Commission held weekly press conferences and Commissioners regularly appeared in the media to provide information about its activities. An informative website was developed, which although not always sufficiently updated, provided clarification on a number of controversial matters and access to the main laws and guidelines governing the elections. The Electoral Commission website also included online access to the voter register allowing the voters to check their particulars.
- (iii) The Electoral Commission introduced a number of new confidence building measures in the design of polling materials, including transparent ballot boxes, serialised declaration of results forms and security seals for declaration of results forms. However, the implementation of a number of these new measures was deficient, both before and on election day. For example, EU observers recorded that the security seals were not used on many of the new transparent ballot boxes and witnessed irregularities in the declaration of results forms in a number of locations.

Overall, the elections were administered more transparently than in the past, deadlines in election legislation were met and a number of technical improvements to improve the process were introduced, as described above. However, the content of Dr. Besigye's petition challenging the presidential election results, in which the Electoral Commission was the first petitioned, clearly shows that, although the positive measures described above aimed to enhance public confidence in the institution, the Electoral Commission did not retain full confidence of all political parties.

Moreover, while election materials were distributed throughout the country in advance of election day, in some cases essential materials were not present on time or in sufficient numbers (for example ballot box seals). In addition, a matter of concern for the Mission was

the lack of adequate training of polling staff, which led to shortcomings on election day, including a lack of checking for ink on voters' fingers and the improper use of security seals for the envelopes containing the declaration of results forms. The design of the results forms and the lack of satisfactory explanatory material on how to use them, led to mistakes by the Presiding Officers in filling them out, and allegations, by political party agents, of manipulation of the results. These problems could have been easily avoided with clearer, more self-explanatory designs for the forms together with better training of polling officials.

The Electoral Commission Act (Article 50) gives wide discretionary powers to the Electoral Commission regarding the conduct of the electoral process allowing in case of any mistakes, miscalculation, emergency or unusual or unforeseen circumstances to increase the numbers of election officials or polling stations or to adapt any of the provisions of the Act of any electoral law to such as the Commission considers necessary to meet the demands of the situation. This provision was used by the Electoral Commission to justify the annulment of the results in 29 polling stations on the advice of Returning Officers, where allegations were received and verified that manipulation of the election and illegal practices had taken place.

D. RETURNING OFFICERS AND POLLING STATION OFFICIALS

The Returning Officer for each district is appointed by the Electoral Commission and is responsible legally for the conduct of the poll. The Electoral Commission Act does not establish any standard criteria for the appointment of Returning Officers and in the past the Electoral Commission had appointed the Chief Administrative Officer (CAO) of the district council to this position. Although the Electoral Commission had hoped to appoint its own District Registration Officers as Returning Officers the majority of Returning Officers were, once again, the Chief Administrative Officer for the District Council. This practice was widely criticised by the Opposition, which claimed that many of these officers were too close to the incumbent party. Indeed recent changes to the Local Government Act provides for the CAO to be appointed by central rather than local government.

The Electoral Commission Act also does not establish criteria for the appointment of Presiding Officers.²⁹ Together with their assistants, they were appointed by the Returning Officers after a process of selection aimed both to guarantee political neutrality of the polling staff and technical capacity. The selection process, however, was carried out in a variety of different ways by Returning Officers. This lack of a uniform procedure fuelled accusations by all political parties, especially those of the opposition, challenging the neutrality of the selection process. Most opposition political parties claimed that appointments of election officials at both District and polling station levels was not conducted in a transparent manner and that their performance favoured the incumbent authorities³⁰ which undermined confidence in the independence of the election administration.

29 While meeting with the Returning Officers, the EU EOM observed that they had different approaches to the display of polling staff lists for public scrutiny. Some Returning Officers displayed the lists and met the candidates to discuss objections involving the appointment of the polling staff. Others displayed the list but did not inform the candidates about the display, and there were some cases in which the Returning Officers did not even display the lists.

30 EU EOM observers in Sembabule District reported that the Minister and NRM Parliamentary candidate tried to influence the appointment of polling station staff members by proposing 100 NRM supporters. Since the Returning Officer refused to comply with the request, the Minister allegedly influenced the dismissal of the Returning Officer, and a Returning Officer known as a supporter of the above mentioned Minister was appointed.

VI. VOTER EDUCATION

Despite the efforts of the Electoral Commission during the last few weeks of the campaign, many commentators and politicians were very critical of the lack of civic and voter education for these elections. This lack was cited as a reason for the doubling of the number of invalid ballot papers since the 2001 polls. Indeed a public opinion poll commissioned by the International Republican Institute (IRI) revealed that that almost half of the respondents were unable to name the date of the election.³¹ More worryingly the poll revealed that most respondents could not differentiate between the Movement as a system of government and the Party or state sponsored organs. After more than two decades in which the multi-party system in general had been constantly portrayed as divisive and sectarian, the electorate needed a comprehensive voter education programme to enable it to fully appreciate the elements, implications and significance of the new political system.

The bodies tasked with civic and voter education were the Ugandan Human Rights Commission (civic education) and the Electoral Commission (voter education). Both institutions lacked the required funds from government to conduct comprehensive programmes. The former were supported, alongside a number of civil society partners, by donors to mount a National Civic Education Programme. However, this programme, did not start until November, only a few months prior to polling day. While some commendable late efforts were made by the Electoral Commission, primarily through the electronic and print media, to attempt to address the lack of voter education, these came too late and could not be a substitute for a longer-term approach to the problem.

The absence of a comprehensive voter education programme was already clear during the voter list display exercise, which was aggravated by the necessity to create new polling stations. Large numbers of voters were not aware that they should vote in the newly created polling stations, and went on election day to those where they had voted in past elections. In many cases, voters simply did not know in which polling station they were supposed to vote. Further, the Electoral Commission failed to inform the 150,000 people whose names had been deleted from the voter lists in December on the new polling locations. In many cases, these citizens went to vote only to find out that their names had been deleted a month before by the local parish tribunal.

The lack of voter education was also clearly demonstrated in the number of invalid votes, which for the presidential election reached 4.08 per cent, almost double the amount as the 2001 elections. The invalidation of votes was mainly due to voters who used a fingerprint to mark the ballot paper leaving involuntary marks on the paper and voters using a mark other than a tick in the box of the candidate of his or her choice, which together with a fingerprint are the only authorised marks allowed according to Articles 31 and 50 of the Presidential Elections Act. This problem could have been minimised with better voter education.

VII. VOTER REGISTRATION

The voter register of 2001 was the subject of significant dispute. The key allegation was that it was inflated with substantial numbers of dead, duplicate and possibly “ghost voters”. Moreover, the size of the register (11.6 million) appeared to be improbably high for a population of 26 million inhabitants, the majority of whom are under 18 years old. The

31 The IRI commissioned poll was based on a random sample of 1,500 respondents countrywide conducted by Wilsken Agency in January 2006.

register was subsequently discarded, and a new photographic voter register was introduced. It was hoped that the adoption of the photographic register would reduce the incidence of “ghost” and multiple voters. By the time of the 2005 Referendum only 8,524,012 people had registered. Estimates of the voting age population taken from the Uganda Bureau of Statistics for the Commission indicated that 11,825,412 could be eligible to register in 2005. By polling day, following an extensive update in October and cleaning of the register in December, it contained 10,450,788 voters, representing some 88.3% of the estimated population of voting age. The substantial increase in the proportion of the voting age population was considered as a factor to indicate that the register was more up to date than that used in 2001.

Despite the efforts of the Electoral Commission to improve the register, the accuracy was challenged by political parties and candidates both before and after the elections. While some inaccuracies and shortcomings were identified before election day, notably incorrect voter data, and some 350,000 voters without photos, these problems appeared mainly to be due to technical and organisational shortcomings that occurred during registration, rather than an intention to disenfranchise voters.

The same can be said about the attempt to provide every voter with a voter card. While for the 2005 referendum, no voters had a card, over 8.2 million cards were distributed for the 2006 elections. Unfortunately, the remaining 2.3 million, most of who were registered in October 2005, did not receive their cards. This led to some confusion among the electorate, some of whom were erroneously led to believe that they must have a card to vote. Indeed, some FDC politicians claimed that many of “their” supporters would be disenfranchised because they had registered after Dr. Besigye arrived in the country from exile in South Africa on 26 October (four days prior to the end of the registration update period) and had not received voter cards.

Such allegations were denied by the Electoral Commission which stated that the reasons for the interruption of the production and distribution of voter cards were the lack of time and human resources to keep processing and producing more cards while the elections were approaching and other activities were a priority. At the same time that it rejected the allegations, the Electoral Commission tried to explain through the media that not being in the possession of a voter card, not having a photo in the register, or even having a wrong photo, would not prevent any voter, whose personal data was in the register and who could be identified by any accepted means (e.g. witnesses), from exercising his/her right to vote. However, the message was publicised too late and was not sufficiently clear and as widely disseminated as it would have been if an adequate and timely voter education programme had been implemented.

Notwithstanding concerns over the issuance of voter ID cards, on polling day a more significant problem came to light – the alleged disenfranchisement of voters during the display and correction of the voters register in late December 2005 and early January 2006. The deadline for applications to register for the 2006 elections was 30 October 2005. The data collected up to that date by the District Registrars was used by the Electoral Commission in the preparation of a provisional, national voter register with a total of 10.6 million voters. While the Electoral Commission Act does not specify when the display of the voter rolls should be conducted, it does specify the duration and location (21 days in every parish or ward) for the display during which any objections or complaints shall be filed.

The display took place between 27 December 2005 and 17 January 2006. If a Returning Officer received an objection to an entry in the list, then he/she had to establish a five member tribunal to hear the case. The Electoral Commission Act provides for the Returning Officer to appoint a Parish Tribunal comprising of three members of the village executive committee (local council 1), at least one of whom shall be a woman and at least one and elder and chief, to determine objections received during the display period. The procedures for hearing these cases, including appeals, is not spelt out in the law or in any guidelines established by the Commission. According to DEMGroup, many tribunals were established during the display period, but its reports are silent on the procedures followed.

At the conclusion of display, the tribunals forwarded their proposed deletions to the Returning Officers. The tribunal recommendations were then forwarded to the Electoral Commission, which has the power to review. According to the Electoral Commission, over 150,000 names were deleted from the final voter register, some as a result of cleaning the duplicate entries from the list, many on the recommendations of the Parish Tribunal without the affected person being able to contest the decision. It was only on election day that the deletions from the provisional display list were apparent on the final voter register. On 23 February, many of those allegedly removed from the lists by tribunals appeared at their polling stations to vote.

Unsurprisingly, the registration display system was sharply criticised by the FDC, which alleged that, given their composition, most parish tribunals were clearly dominated by members connected to the Movement and, in many instances, misused their authority to the detriment of the opposition. The Electoral Commission, in its defence, replied that it was not capable, financially or organisationally, of reviewing the recommendations of the parish tribunals and then displaying those deletions prior to election day. The Supreme Court in its summary judgment was critical of this argument. Indeed Article 59 of the Constitution protects citizens suffrage rights requiring the State to “take all necessary steps” to ensure they enjoy their rights. Article 61 specifies that it is the duty of the Electoral Commission to “compile, maintain, revise and update” the register and to organise elections in accordance with the Constitution. Further, Article 42 provides citizens with the right of access to information held by the state and Articles 42 and 44 provide citizens with the right to just and fair treatment in administrative decisions and to a fair hearing. It would seem that Article 25 of the Electoral Commission Act does not provide for such rights to be protected and that the Electoral Commission may have failed in its duty to “take all necessary steps” to protect citizens suffrage rights.

VIII. CANDIDATE REGISTRATION

According to the Presidential and Parliamentary Elections Acts, the Electoral Commission should set two days for the nomination of candidates, a period during which the candidates must provide the necessary documentation. The Electoral Commission established 14 and 15 December 2005 for the presidential nomination, and 12 and 13 January 2006 for the parliamentary nomination. Candidates had sufficient time to prepare the required documentation for nominations.

To be eligible to run for parliament, a citizen of Uganda must be a registered voter and have completed a minimum formal education of advanced level. As for the eligibility for presidential nomination, in addition to the requirements of running for parliament, the person must be a citizen by birth and not less than 35 years and not more than 75 years of age. The

legal requirement for candidates to have a higher education level is contrary to international principles on non-discrimination (*see* Legal Framework). In addition, a parliamentary candidate who is engaged in public service must resign from those positions at least 90 days before the nomination. This provision limited the number of potential contestants. Candidates must also submit a reasonable number of signatures and place a non-refundable fee of Ush 200.000 (around US\$111) for the parliamentary candidates, and Ush8.000.000 (US\$4.445) for the presidential candidates.

Prior to nominations, the Electoral Commission received advice from the Attorney General to refuse Dr Besigye's nomination on grounds that he was "less innocent" than others and unable to attend nominations in person as he was, at that time incarcerated in Luzira prison on various charges of rape, treason and terrorism before both the High Court and General Court Martial. On Monday 12 December the Electoral Commission robustly and rigorously rejected the advice of the Attorney General and pledged to receive Besigye's nomination papers in absentia and treat them fairly. Their decision was further upheld by the Constitutional Court in February. The Commission's decision on the Besigye nomination was widely welcomed and positively received by all stakeholders and provided reassurance that the Commission could act independently.

The most common reasons for rejections of parliamentary candidate nominations were failure to meet the academic requirements, and insufficient support signatures from registered voters. In the case of parliamentary nominations, only 15 complaints were filed with the Electoral Commission. This low number could be explained by the practice of the main political parties to screen their candidates before formally presenting them to the Electoral Commission. Although the EC received a vast number of complaints challenging the nomination of candidates, only 20 nominations were decertified. The main reason for de-certification was forgery of academic papers and failure to submit resignations in the case of public servants. Despite the legal shortcomings described above and the absence of the EU EOM during the nomination period, the nomination process appears to have been administered to a satisfactory level.

IX. ELECTION CAMPAIGN

A. CAMPAIGN ENVIRONMENT AND CONDITIONS

The electoral campaign started in an atmosphere of general distrust among the stakeholders and the public. This was a direct consequence of the fact that the county had experienced a number of problematic elections since independence. The elections of 2001, in particular, fuelled this atmosphere of suspicion.³²

At first, sectors of the media and the public viewed actions of the government and Electoral Commission, such as counting the votes for president last, limiting access to tallying centres or changing the candidates' security personnel a couple of days prior to election day as attempts at fraud or manipulation. However, signs of independence on the part of the Electoral Commission, as well as the judiciary, through decisions that were clearly not in the interest of the government (including accepting the candidacy of Dr. Besigye, allowing full access of parties and observers to tallying centres, and challenging the military court on the

32 *See* Political Background; or visit <http://www.cmi.no/pdf/?file=/uganda/docUganda-Election-Violence-Report.pdf>

Dr. Besigye treason case) gradually helped to diffuse, to a significant extent, the general distrust and build public trust in the functioning of key institutions and the electoral process in general.

The pre-election and campaign periods were also dominated by controversial accusations made by the state against Dr. Besigye and the ensuing cases in the High Court and General Court Martial. Of particular concern was the attempt by the armed forces to infringe on the independence of the judiciary by insisting on trying Dr. Besigye and 22 other civilians in a Court Martial. The High Court and, then, the Constitutional Court ruled that the defendant could not be tried twice for the same charges and therefore that the Court Martial had no legal grounds (*see* Legal Framework).

Particularly during the period when Dr. Besigye was in prison and, to a lesser extent, after his release on 2 January 2006, the political climate became highly polarised, and fears grew of possible violent confrontations before and/or after the elections. With the experience of 20 years of turmoil prior to 1986, stability is considered by the Ugandan people to be very important. Contradictory and unclear statements by President Museveni, senior military officers and Dr. Besigye on accepting electoral defeat³³ revived public memories of the years of civil war, spreading anxiety and fear. Such statements were not conducive to a campaign climate in which political contestants could be viewed as legitimate political opponents.

The presidential electoral campaign started on 16 December 2005 and ended on 21 February 2006, to allow a one-day cooling down period before the elections on 23 February. The Presidential Election Act 2005 stipulates that there should be at least one campaign day for each of the 69 Districts in the country, therefore the 68 days for campaigning was one day short of this requirement. Due to his arrest, Dr. Besigye's campaign was cut by 18 days. In addition, he had to appear 27 times in court limiting even further his capacity to campaign. President Museveni covered all Districts and Dr. Besigye managed to campaign in around 60 Districts. Under these circumstances, Dr. Besigye was strongly disadvantaged, which is further evidence of the absence of a level playing field.

Other candidates were generally able to campaign intensively and freely without interference. Freedoms of expression, assembly and association were largely respected. Campaigning was conducted in a variety of forms, including through rallies, door-to-door visits, and display of posters, as well as through loudspeakers mounted on cars. Careful coordination between the Electoral Commission and the political parties tried to ensure that candidates and parties were not campaigning in the same area on the same day, thereby reducing the potential for violence. However, since some parliamentary candidates did not submit their campaign schedules to the Electoral Commission, rallies of different candidates took place in the same location and invariably led to tension and frictions between their supporters. Election campaigns were supposed to end daily at 6 pm, but often continued past

33 In early January 2006, Museveni said that he would be ready to hand over power to whoever wins the election. Only a few days later, at a rally in Kasese, he warned that "you don't just tell the freedom fighter to go like you are chasing a chicken thief from the house" (*The Daily Monitor*, 6 January 2006) *East African* online edition 21 February 2006). With remarks like "All past governments collapsed because they failed to control the army", and "I will not go that easily" (*ibid*), Museveni nurtured public fear of a return to the years of civil strife. On a separate occasion he described members of the Movement who have turned to the opposition as "poisonous mushrooms". Upon his arrival from South Africa, Dr Besigye stated that if the elections were not fair, the Constitution would allow for armed resistance. Senior military officers warned they might not accept a defeat of the President, although later indicated that they would accept the results.

that time. This regulation was not strictly enforced by the police, and was more vigorously enforced when involving candidates of the opposition than of the NRM.³⁴

B. USE OF STATE RESOURCES AND CAMPAIGN FINANCE

The 2005 Presidential Act defines and limits the use of state resources. However, the incumbent President is given a clear advantage over all other candidates as it allows him/her to use the facilities during the campaign period that are attached to his office (*see* Legal Framework, sub-section iii). In addition, the list of these resources presented to Parliament on 2 January 2006 was vague and not specific enough to be able to be checked.³⁵ For this reason it was rejected by the Parliament.

In contrast, the 2005 Parliamentary Act clearly restricts the use of state resources, during the campaign period, for incumbent Ministers and employees of government companies, who are only allowed to use them for the discharge of official duties (Section 25). Ministers are required to submit a list of resources usually attached to their office. None of the incumbent Ministers, however, complied with the requirement, and the Electoral Commission did not enforce the provision. There have been cases when Ministers in fact used, for example, government vehicles. For example, the Vice President was reported by the press to be using a government vehicle with a fake number plate.

However, a much more structural and systematic form of use of state resources was also noted. Despite the adoption of a multi-party system, the Movement structures remained intact, active and funded by the state throughout the election period. The President and his party utilised state resources, particularly through the old Movement structures, in support of their campaign, including use of government cars, personnel and advertising, and received overwhelming and positive coverage on State television. The NRM as a political organisation, and the NRM as a political system with its organs, shared many of their senior staff. In many Districts (for example, Kyenjojo, Bundibugyo, Kamwenge, and Kabarole in the Western Region, and all Buganda Districts) they operated from the same premises.

This situation occurred because the Movement organs which had provided the organisational structure for the Movement political system were allowed by law to continue operating until the holding of the elections. The use of these structures for the electoral campaign constitutes a misuse of state resources, as the Movement Act of 1997 stipulates that all assets of the NRM are state assets.³⁶ While the NRM effectively was able to use these resources, quoting the privileges of the presidency, there was no legal provision for the allocation of public funds to political parties, which put the competing political parties into a clear disadvantaged position to the NRM. Thus, the Movement, the President and the NRM candidates enjoyed substantial advantages over their opponents which went further than the normal advantages of incumbency. Despite the lack of clear legal provisions for party funding from the public purse all candidates did receive some financial support from the

34 As reported by the Federation for Human Rights Initiative (FHRI), one of the domestic observer groups: While in Makindye West (Kampala) the NRM campaign, and in Kawempe North a FDC/independent campaign, were allowed to continue, a FDC rally in Soroti was broken up by the police after 6 pm (*see* FHRI 2nd statement, 22 February 2006, p.4).

35 The list presented to parliament on 2 January 2006 stated: "The usual transport facilities provided to the president, the usual security detail facilities provided to the President, the usual personal staff and their facilities attached to the President, the usual information and communication facilities attached to the President". *Statement to Parliament* by Second Deputy Prime Minister and Minister of Public Service, Henry Muganwa Kajura.

36 *See* Movement Act, Act No. 7, 1997: Section 35.

state to run their campaigns, however this clearly failed to create balance in the resources available to the parties. The US\$ 20,000,000 (around US\$11,100) contribution from the Electoral Commission was, in practice, immediately reduced to the equivalent of US\$7,600 as the candidates had to pay a registration fee of 8,000,000 USh (or US\$4,400).

C. CAMPAIGN ISSUES

There were no major ideological differences among the parties, and all subscribed to the continued liberalisation of the economy and emphasised the need to fight corruption. The issues in the presidential campaign centered on poverty eradication, the fight against corruption and national security, with particular emphasis on the conflict in the northern region. President Museveni concentrated on his achievements of the last 20 years, focusing on education, immunisation and prosperity for all. The opposition, meanwhile, pledged to improve health care, infrastructure, the economy and to peacefully end the war in the north.

The campaign for the parliamentary elections started after the nomination of candidates on 16 January 2006 lasting 39 days, until 21 February and was dominated by local issues. The presidential and parliamentary campaigns were not so strongly intertwined; some party candidates campaigned in areas where their presidential candidate was considered rather unpopular and preferred to take their distance. Regarding the 20 year conflict in the north, involving the UPDF and the guerrilla movement, the Lord's Resistance Army (LRA), President Museveni and Dr. Besigye tried to capitalise on their military experience and portrayed themselves as the only ones who would be able to control the army and end the conflict.

X. SECURITY

More than 20 years of conflict between the government of Uganda and the LRA in the northern region of the country has caused the displacement of more than 1.4 million Ugandans. The displacement resulted from a deliberate LRA strategy of attacking civilians to undermine confidence in the government and kidnapping children to serve as soldiers, porters and sex slaves for the LRA commanders. The fighting between the LRA and the UPDF still ravages the area.

The situation in the northern region (which was in phase III out of V of the UN classification), was, therefore, of extreme concern for the Mission, which took all precautions to enhance the security of its members. EU observers were accompanied by UPDF military escorts when moving within certain areas in the northern region (as well as in the eastern part of the country as consequence of the actions and threats of the Karamojong (pastoral nomads). However, the intensity of LRA activities in the run up to and on election day were relatively low and did not seem to affect the electoral process. During February, four people were killed and 20 civilians abducted, an extremely low number compared to the average of 30 killings per month and 25 abductions during the last six months of 2005.

While the situation in the country during the campaign period, as well as on election day and during the post-election period was relatively peaceful, a number of violent incidents did occur and the situation became tense during the three weeks prior to election day. In two incidents security forces were involved in partisan politics, in contravention of the Code of Conduct for Security Personnel which required neutrality during the election period. The first took place on 1 February in the central Iganga District, where gun wielding Local

Defence Unit personnel, wearing yellow NRM T-shirts clashed with FDC supporters. The second incident occurred on 15 February at Bulange Mengo (Kampala), when three FDC supporters were shot and killed when a soldier opened fire at a crowd waiting for Dr. Besigye. In another incident, several people were injured, two of them critically, when armored UPDF trucks drove into an FDC crowd in the central town area of Mukono.

Tension also heightened after an independent female candidate for Parliament, Clara Vuni, died in a car accident in Lewa Village, in the northern region District of Adjumani, which allegedly was provoked by her opponent. Vuni's supporters went to the streets and burned the opponent's house and several others. On the same day, a combat vehicle (Mamba), part of President Museveni's security escort, was hit by gunmen as the motorcade approached the Kagole trading centre on its way to Morolinga State Lodge in the eastern region District of Moroto. Preliminary investigations indicated that the attack was carried out by Karamojong cattle-rustlers. The Mission also received reports about clashes between rival political groups in several areas of the country as well as disturbances of public order by political party supporters in Kampala, Kasese, Ntugamo, Lira, Iganga, Busia, Mbarara, Masaka, Jinja and Mityana, where police had to intervene and were sometimes forced to use teargas and fire shots in the air to control the crowds. Widespread rumours about intentional power cuts and closing down of the cellular network on election day also contributed to an atmosphere of increased tension.

Up until these incidents, the campaign had largely been free of violence and intimidation, despite predictions of a repeat of the 2001 electoral process. Moreover, unlike the elections in 2001, these incidents, unacceptable as they are for a democratic campaign environment, did not appear to be the result of deliberate and planned attempts to harass and intimidate the opposition. Generally, the UPDF and police appear to have respected the Code of Conduct for Security Personnel.

The post-election period was also relatively calm, except for clashes between FDC supporters and police in Kampala. NRM supporters' houses were burnt in Masaka, and police used teargas to disperse a DP crowd in Mukono and other minor clashes involving parties' supporters in Lira, Gulu and Sembabule. Concern rose about the situation in the western Kibale District where three people, due to election related tribal clashes, were killed, five others injured and 20 houses were set ablaze. By the end of March 2006 the security situation in the entire country had stabilised and only isolated, minor incidents were reported.

A. THE ARMED FORCES AND THE POLICE

The UPDF is composed of five infantry divisions, of which three are deployed in the northern region, plus one air and an artillery division. It has around 60,000 men, including the 7,000-member Presidential Guard Brigade. The armed forces are supported by the paramilitary Local Defence Units (LDUs). The police have a force of around 14,000 officers, which is supplemented by a further 6,000 local administration police.

While concerns were raised prior to polling day that there might be insufficient civilian security personnel to cover all the polling stations, EU observers noted that the military were, with a few exceptions, largely absent on election day. Overall, there was a substantial reduction in the presence and interference of the armed forces in the election process in comparison with the 2001 elections.

XI. MEDIA

The growth of regional commercial radio stations across the country has created a lively and dynamic media system; albeit one that suffers from financial difficulties and at times political pressures. Despite this growth of radio, the relationship between the state and sections of the media remains one of potential conflict and tension. During the election campaign period this was largely represented in a number of incidents involving the police, visiting radio stations to request that they refrained from airing certain content, without adequate respect for the regulatory process. The potential for conflict has been heightened with the recent establishment of the Media Centre as a statutory body by the Government, to centralise media relations between the Government and media. Uncertainty in the media sector about the Media Centre's mandate and its direct approach to managing media relations for the Presidential Office raise concerns that the structures established to regulate the media are being eroded, particularly when combined with an evident lack of resources for the recognised regulatory authorities.

A. LEGISLATIVE FRAMEWORK

The regulatory framework for governing the nature of media coverage of elections is set out in a number of laws. Pursuant to the Electoral Commission Act, the Electoral Commission has a duty to regulate all aspects of the elections, including coverage in the media. Article 24 (1) of the Presidential Act states that each candidate shall be treated equally by the state owned media in order for the candidates to present their manifestos. Similarly, parliamentary candidates should not be denied "reasonable access" to the state media as specified in Article 22 (1) of the Parliamentary Elections Act. According to the laws, candidates may also use private media for their campaigning. More general provisions are established in the Electronic Media Act and the Press and Journalist Act relating to balance, and fairness, as well as taste and decency issues.

B. MEDIA MONITORING RESULTS

The media monitored by the EU EOM provided a variety of information and debate about the elections in general, as well as about the main candidates.³⁷ This was reflected in a range of news coverage focusing on the main presidential candidates, which was complemented with talk shows and discussion programmes broadcast on state and commercial radio and television.

However, in certain critical areas there were evident failings, most notably in the election coverage of the state broadcaster UBC TV and to a lesser extent UBC Radio. President Museveni received 79.7 per cent of overall election related coverage on UBC TV, while Dr. Besigye received 11.5 per cent. The remaining three presidential candidates received less than 9 per cent of coverage. UBC Radio's coverage provided a greater amount of airtime to opposition candidates than its television counterpart, but President Museveni remained the candidate granted the largest percentage of access, with 55 per cent of coverage on the station. The limited resources of the broadcaster restricted its national coverage. This combined with the lack of skilled human resources, absence of production capacity in the

³⁷ Commercial radio and television stations CBS, KFM, Radio 1 and WBS and state owned UBC Radio and UBC TV were monitored daily between 18:00-00:00 hours from 1.2.2006-21.2.2006. All editions of the privately owned print media the Daily Monitor and the Weekly Observer and the partially state owned New Vision were monitored throughout the sample period.

news department and a reliance on programming supplied by the parties and candidates. Coupled with the wide access granted to the Presidential Press Unit, this resulted in coverage of the presidential elections that was highly imbalanced in terms of access to UBC TV in favour of the incumbent.

Commercial broadcasters provided a far greater range of coverage of the elections than the state-owned media and this was represented in far wider coverage of the main opposition candidates. WBS Television granted an almost equal balance between President Museveni and Dr. Besigye, with the minor candidates receiving between 5-7 per cent share of coverage. CBS Radio's coverage tended to favour Dr. Besigye (41 per cent) with the incumbent receiving 26 per cent and the DP candidate, Ssebaana receiving 20 per cent. Radio 1 also allocated the greatest amount of airtime to Dr. Besigye, who received 52 per cent of coverage with President Museveni receiving 41 per cent. In contrast, KFM granted the incumbent the greatest percentage of airtime (50 per cent), though a large percentage of this coverage was critical in tone. Dr. Besigye received 42 per cent share of the coverage on KFM.

Newspapers also focused on the two main presidential candidates, granting the incumbent between 43 per cent (The Weekly Observer) and 53.1 per cent (New Vision), against the Daily Monitor's allocation of 45 per cent. In contrast, Dr. Besigye received 35 per cent of coverage in the Daily Monitor, 30 per cent in News Vision and 28 per cent in the Weekly Observer. The remaining three contestants received, on average, 21 per cent of coverage across the three newspapers monitored by the EU EOM.

The percentage of coverage granted to Dr. Besigye, however, needs to be understood within the context that a significant percentage of this coverage related to the court cases in which he was a defendant during the campaign period. This amounted to 21.6 per cent of election related coverage of the candidate on all media monitored by the EU EOM. The tone of editorial coverage was largely positive or neutral overall across media and the only radio station to critically engage with candidates was KFM.

Coverage of parliamentary candidates only represented 20 per cent of overall election related coverage as the campaign was dominated by the presidential elections. Sixty six per cent of UBC's television and radio coverage of election related content was allocated to the NRM and its candidates, with the FDC receiving 9.5 per cent. Independent candidates received an 11 per cent share of election related coverage with the other parties receiving the remaining share of 13.5 per cent. As in the coverage of the presidential election commercial radio stations provided a greater range of access to candidates and parties. The NRM received 44 per cent of election related coverage, FDC 26 per cent and DP 24 per cent. The remaining parties received a combined total of 6 per cent of coverage. Newspapers also allocated the largest percentage of news coverage to the NRM (57 per cent), with FDC receiving 15 per cent and the remaining candidates less than 6 per cent each.

Although the quality of the coverage of the elections in the mass media was extensive, particularly on commercial radio and in newspapers, the financial situation of the media houses makes them vulnerable to a number of practices, which whilst within the law, work to the detriment of the media's independence. The payment of expenses by the NRM to journalists who covered the campaign trail of President Museveni was widespread and the role of the Presidential Press Unit in supplying coverage of the incumbent president to UBC TV a major source of inequality between the candidates. The lack of resources enjoyed by the contesting parties meant that access was unequal in terms of production capacity with the

opposition parties unable to produce significant audiovisual content for broadcast. There was also a blurring of the boundaries between media coverage of administrative duties and campaigning and a clear use of resources of the Presidential Office for campaigning purposes. Whilst this remained within the parameters of the electoral law pursuant to Section 27 (2) of the Presidential Elections Act, it clearly provided imbalance in coverage of candidates and an unfair advantage to the incumbent in terms of media access. Furthermore, the rhetoric of the NRM campaign advertisements in the days immediately prior to election day clearly associated the main opposition candidate with negative events such as violence and civil unrest in clear violation of Article 24 (5) (b,c,d et seq.) of the Presidential Act.

C. REGULATORY ISSUES

The two statutory bodies established to regulate the media sector, the Broadcasting Council and Press Council, were largely redundant in the regulation of the media during the campaign period as no complaints were either submitted or referred to the councils during the deployment of the EU EOM. Where there were cases that included issues that should have been dealt with by the above regulatory bodies, the police appeared to circumvent the established legal framework to take direct action, without consideration of the established regulatory processes. In this respect, during the campaign period the police were instructed on four reported occasions to prevent commercial broadcasters airing election related content. This included the attempted confiscation of a tape from WBS Television of an FDC campaign documentary by the police. This was followed by police interference with Radio Pacis in Arua that was requested to stop broadcasting a paid-for talk show purchased by candidates, without any apparent reason, as it was within the time limits set for campaign coverage by the silence period.

Two other cases of interference by the authorities related to the publication of unofficial results of the election and election day coverage itself. Radio Veritas in Soroti was ordered to stop broadcasting coverage of election day because it was airing unverifiable information alleging election violations collected from listener telephone calls. KFM Radio's frequency was also allegedly jammed by the security forces over the weekend directly following the elections. The authorities also allegedly blocked its sister company, the Monitor's website. The radio station was releasing unofficial results supplied by the DEMGroup observers, something it admits it had technical difficulties with compiling. After a visit by the Chairman of the Broadcasting Council to the radio station, KFM agreed to announce a disclaimer, and approached the Minister of Interior to rectify the interference with transmission, by which time they were unable to release the unofficial results they were receiving. According to KFM, the Minister cooperated openly and the services were resumed without interference by the authorities 24 hours after the incident. It nevertheless represents a serious indication that the security forces were responsible for over modulation of its frequency without any due legal process.

These incidents suggest action was taken by the authorities without apparent consideration of a complaints process that would have referred the case to the Broadcasting Council or the Electoral Commission. They appear, in part at least, to have been caused by the fact that there are no clear regulations or rules pertaining to a range of issues relating to coverage of elections, including the publication of unofficial results, coupled with the sensitive nature of the elections and the arbitrary nature of the approach of the authorities to certain media outlets. Likewise, the campaign silence period was disregarded by all media monitored by the EU EOM due to unclear provisions in the law and the lack of any regulations issued by the Electoral Commission or regulatory institutions. Despite the problems of the publication

of unofficial results, the media's coverage of election day and the days immediately following the elections was normal.

A few months before the elections, the government created a Media Centre, in addition to the Media Council, on a rather questionable basis. While the Media Council is a statutory body, provided for under the law, the legal basis of the Media Centre is not clear. It was created in the context of implementation of the new government policy on the flow of government information, which was put in place in September 2005 and established by a Statutory Instrument by President Museveni in exercise of his authority under Articles 99 and 171 of the Constitution. The Media Centre is under the political supervision of the Minister of State for Information and Broadcasting and acts as a censor to what is supposed to be "fair reporting". On this basis, a number of journalists, foreign as well as Ugandan, were prohibited from working in Uganda.

XII. WOMEN'S PARTICIPATION

Women constitute more than half of the population of the country (51.2 per cent). They have relatively strong representation in public life, including in the cabinet (four out of 21 Ministers) and judiciary. At the 2006 elections, Miria Obote, the first woman to head a political party, also became the first woman to run for President. Women were also represented in considerable numbers in the election administration (two out of seven Commissioners). On election day, women were present as members of staff in almost 87 per cent of the polling stations visited by EU observers.

Women also play a strong role in civil society organisations. There are several women's organisations — the National Association of Women Organisations (NAWO), the Women of Uganda Network (WOUGNET), the Federation of Women Lawyers-Uganda (FIDA-U), and the Uganda Women Network (UWONET). Women are also represented at leadership levels in other civil society organisations.

The electoral system provides for mandatory female participation through a system of quotas. Under the system, also known as women-reserved seats, a woman is directly elected in each district. Due to the increase in the number of districts from 56 to 69 since 2001, the number of women in the new parliament rose by 13. Five seats for the representatives of the special interest groups are also reserved for women.

The need for the quota system was demonstrated by the fact that only 26 women were nominated by their parties, or ran as independents, to contest the "open" constituency seats, considerably less than in 2001, when more than 40 women contested these seats. Women's organisations in general complain that women are now more confined to the District seats that are reserved for women and they, therefore, cannot develop the same political position as MPs representing full constituencies.

In terms of regional distribution of elected women, the most populous central region had nine, followed by seven in the north, six in the west and two in the east. The distribution by political parties showed the NRM with most female candidates, both in total numbers (9) and in terms of percentage of their candidates (4.1 per cent), followed by the DP (3 candidates, 4.4 per cent), the UPC (3 candidates, 4 per cent), FDC (3 candidates; 2.2 cent), independents (6 candidates, 2.1 per cent) and other parties (2 candidates, 10 per cent).

In addition to the 69 district women representatives, 13 of the 26 female candidates were elected (NRM 9, FDC 2, Conservative Party 1 and independents 1), and special interest groups will send at least six women to parliament (UPDF 2, Workers 2, Disabled 1 and Youth at least 1).³⁸ Therefore, with a total of at least 88 women MPs (representing 28.47 per cent of its membership), the newly elected Parliament will have the highest representation of women in the history of Uganda, and a notably high percentage of female members if compared to the international average of 15.2 per cent. There is therefore considerable potential to increase female participation in the political affairs of the country.

XIII. CIVIL SOCIETY AND OBSERVERS

Civil Society is undergoing a process of transition, with an increasing number of organisations assuming the role of public watchdog. A number of civil society organisations played an important role in the electoral process, especially in relation to election observation, contributing to the development of public trust in the election process. Civil society organisations were also involved in the conduct of civic education, mainly by providing information material to political parties. Groups focusing on encouraging women's participation in the election process were active throughout much of the country.

The most significant role in observation was played by the DEMGroup, which conducted a comprehensive, long-term observation of the entire process, and deployed observers to all polling stations on election day. DEMGroup is a consortium of three NGOs, the Uganda Joint Christian Council (UJCC) as the leading actor, Action for Development (ACFODE) and the Uganda Journalists Safety Committee (UJSC), and has considerable experience from the 2001 elections, the 2002 local elections and the referendum of 2005. Another consortium, the Coalition for Election Finance Monitoring (CEFI), brought together Transparency International (TI) Uganda and the Anti-Corruption Coalition Uganda (ACUU), to analyse party and candidate finances and collect information about forms of vote buying in the Districts through a network of NGOs.

The Electoral Commission Act established that the Electoral Commission may accredit any individual group or institution to act as election observers. The Electoral Commission issued guidelines for observers for the 2006 General Elections, which included the rights and responsibilities of the observers during the whole election process. The EU EOM was the largest international observer group. Other international observers included the Commonwealth, the African Union, the East African Community, representatives of electoral commissions of other African countries and staff of diplomatic missions in Kampala. Observers were able to freely move around the country and had broad and free access to information, both before and on election day, although sometimes government bureaucracy delayed the release of information, as in the case of information on the number of complaints and electoral offences received by the police.

38 The Election of the Youth Representatives has not yet taken place.

XIV. ELECTION DAY

A. OVERVIEW

Voting and counting on 23 February 2006 proceeded smoothly, orderly and peacefully, with no major security incidents reported. Voters turned out in large numbers (almost 70 per cent of registered voters), in a calm and disciplined manner, despite inclement weather conditions in parts of the country, and expressed confidence in freely making their own choice between continuity and change.

B. BASIS OF EU EOM OBSERVATION

On polling day, EU observers followed the voting process in 943 of the 19,786 polling stations in the country (almost 5 per cent), selected according to the electoral population density and taking into account areas identified as requiring particular attention. In total, 186 observers in 93 teams, including a delegation from the European Parliament and observers from local EU Member State delegations, were deployed throughout the country, including to the most remote areas.

C. VOTING PROCEDURES

EU observers evaluated the voting process in the polling stations visited as transparent and generally well organised, with voters able to freely express their will. Security was adequately and discreetly maintained.

However, around a third of polling stations visited by EU EOM observers opened late. In some cases essential materials were not present on time, in others polling station officials arrived late. Polling procedures were generally well followed by polling station officials, who conducted the process in a serious and dedicated manner. The secrecy of the vote was largely respected. Ugandans generally voted in the open, using the bottom of small containers to mark the ballots instead of a booth.

EU EOM observers noted a number of technical shortcomings, including ballot boxes that were not sealed or ineffectively sealed and a lack of checking for ink on voters' fingers, which is a safeguard against multiple voting. Long lines formed outside many polling stations, frequently due to the long time taken to check identity and conformity with the electoral register. Incidents of intimidation and disruption of the process were observed in a very small number of polling stations.

The most serious irregularity involved a considerable number of voters who were in possession of voter cards but did not find their names in the assigned polling station's voter registers and were not allowed to vote. EU EOM observers reported such cases in several Districts, including Kampala, Luwero, Kalangala, Mukono and Jinja (*see* Voter Registration).

D. COUNTING PROCEDURES

Counting procedures were also generally well followed, although in over half of polling stations at which EU observers were present, reconciliation of the number of voters marked as having voted, against the number of ballot papers found in the ballot box did not take

place at the start of the process. Results were posted for public inspection at the end of the process but only in around half of polling stations observed.

E. OBSERVATION OF VOTING BY CANDIDATES AND OBSERVERS

The presence of party and candidate agents in polling stations is of crucial importance for the transparency of the election process. EU EOM observers reported the presence of party and candidate agents in more than 97 per cent of the polling stations visited, and domestic observers in over 85 per cent of polling stations visited, which represents a very high figure. These figures are of great importance because candidate and party representatives and domestic observers contribute significantly to the transparency of the election process.

F. SECURITY

With exception of some tense parts in the country, mainly in the south-western region (Bushenyi, Mbarara, Kabala and Ntungamo) and in the eastern part of the country (Tororo, Iganga, Busia, Jinja and Mbale), the situation, in and around the polling stations, was generally peaceful and voters had sufficient freedom of movement. One serious incident, however, occurred in the eastern Tororo District when the presidential legal assistant, Mr. Fox Odoi, allegedly drew a gun and terrorised voters. Police officers were present in the majority of the polling stations visited by EU EOM observers during opening, polling, and closing and counting. Although the armed forces should not be involved in the election process, the presence of army or militia was however observed in around five per cent of the polling stations visited.

G. PROBLEMS ON ELECTION DAY

EU observers observed or received reports of intimidation in almost four per cent of polling stations visited, and observed disruption of the process in more than seven per cent of the polling stations observed. Military personnel, who should not be involved in the process unless requested by the police, were nonetheless present in a few of the non-military polling stations observed. Although there was practically no campaign activity in or near the polling stations (0.95 per cent), the requirement for maintaining the polling stations clear of campaign material in the area 100 meters around it was not observed in almost 15 per cent of the polling stations visited. Such a requirement is invariably difficult to fulfil since the materials were generally posters pasted to buildings during the campaign period. Lack of materials or lack of use of materials (such as seals on the ballot boxes) was also a problem around the country. A few attempts at ballot box stuffing were also reported to EU EOM observers although these incidents could not be confirmed.

H. RECOUNT AND ANNULMENT

By 3 March, only five cases seeking recount of votes had been filed with the Chief Magistrate Courts in Lira and Kampala Districts. The large percentage of invalid ballots was the main reason offered for those requests. However, no particular problems have been reported or complaints made directly to the EU EOM involving requests for a recount or annulment of votes.

The Electoral Commission nullified the presidential and parliamentary results in 29 polling stations in several districts of the country on grounds that included more ballots being cast

than registered voters, candidate names missing from ballot papers and cases of interference in the voting process by armed men. At the writing of this report, the Electoral Commission was in the process of verifying whether the results from these polling stations will alter the election results to an extent that would justify the need for a re-poll.

XV. RESULTS

Two days after election day, according to the time limits established by law, the Electoral Commission declared Yoweri Kaguta Museveni elected for a third term as President under the current Constitution, with 98.98 per cent of polling stations counted (*see* Table 2) and 59.28 per cent of the votes. His main opponent, Dr. Besigye, obtained 37.36 per cent of the votes, while the other three candidates received less than 4% altogether (*see* Table 3). In the parliamentary elections, the NRM will hold a comfortable majority of two-thirds in parliament, having gained 211 of the 309 seats.

Table 2: Polling Stations

Number of total PS and of PS counted by time of announcement of Presidential Election Result	
Total No. of Polling Stations	19,786
Total No. of Polling Stations Received	19,585
Total of Polling Stations %	98.98%

Table 3: Official Results of the Presidential Election
 (Source: Electoral Commission)

PRESIDENTIAL CANDIDATE	Valid Votes received	% of Total of Valid Votes
ABED BWANIKA	65,345	0.95%
KIZZA BESIGYE	2,570,603	37.36%
MIRIA OBOTE KALULE	56,674	0.83%
JOHN SSEBAANA KIZITO	108,951	1.58%
YOWERI KAGUTA MUSEVENI	4,078,911	59.28%
Valid Votes	6,880,484	
Invalid votes	292,757	4.08%
Total votes	7,173,241	68.64%
Total of Registered Voters	10,450,788	

Three days after the Electoral Commission's announcement, the DEMGroup published the results of a Parallel Voting Tabulation (PVT) showing compatibility with the provisional results announced by the Electoral Commission, thus helping to build public confidence in the election results.

The incumbent President won the majority of votes in three of the four regions in the country, and Dr. Besigye the majority of votes in the northern region, as in 2001, and, for the first time, in the Teso sub-region of the eastern region, which geographically can be seen as an extension of the north. In the last two years, these regions, where around 1.4 million displaced people live in camps, have been affected by the LRA conflict and by the insurgency of the Karimojong.

While the areas won by Dr. Besigye are less densely populated and comprise 23.9 per cent of the electorate, the regions won by President Museveni account for 76.1 of the registered voters. In a more detailed breakdown, President Museveni won the majority of votes in 40 of the 69 Districts, most of which are in the western and in central regions, while Dr. Besigye won in the other 29 Districts. The opposition strongholds remained the large municipalities, and the main cities of the country. Of the 14 municipalities (three each in the north, the west and central and five in the East), Dr. Besigye won in nine, including all in the north, while five sided with President Museveni, mainly in the west.

The voter turnout of 68.64 per cent was close to that of the 2001 election (69.7 per cent). The turnout varied across the four regions with the densely populated west peaking at 71.2 per cent, and the northern region showing the lowest participation with 63 per cent. However, the 8.2 per cent difference between the regions was less pronounced than in 2001 when it stood at 13.7 per cent. The gap in turnout between the regions narrowed essentially because the west recorded a lower turnout in 2006. This was the result of a considerable drop in the turnout (almost 10 per cent) in the sub-region of Kigezi, which was one of the sub-regions in the 2001 elections where many incidents of ballot box stuffing were reported.

In the new Parliament, the NRM will command a comfortable two-thirds majority (at least 210 out of the 309 seats), and opposition parties will enter Parliament officially for the first time since 1980.³⁹ Out of the 309 seats contested (215 single-member constituencies, 69 District women seats and 25 special interest groups seats), the NRM won 200 (141 constituency seats, 49 women district seats, all five seats for the disabled and all five seats for the workers). In addition, the 10 army representatives will support the NRM, increasing the NRM parliamentary bloc to at least 211 seats, five more than needed for a two-thirds majority. The FDC gained 37 seats (29 constituency seats and 8 women district seats), while the older parties obtained 19, nine for the UPC, eight for the DP and one each for the Conservative Party and for the Justice Economic Revitalization, Education, Technology, Moral Integrity and African Unity (JEEMA) party. The third biggest group in parliament will be the independents, with 34 MPs.⁴⁰ The regional pattern essentially followed that of the presidential election.

A. TALLYING AND PUBLICATION OF PRELIMINARY RESULTS

The tallying and announcement of the preliminary results were carried out in a transparent manner, and generally in accordance with legal provisions and the Electoral Commission schedule which required the announcement 48 hours after election day. At the District level, the tallying of the results took place in full view of candidate and party agents and domestic and international observers. Once the exercise was completed, the Returning Officers publicly announced the presidential results before transmitting them to the National Tally Centre, in Kampala, and declared the winners of the parliamentary contest. In most Districts visited by EU EOM observers, detailed print-outs of the results per polling station were accessible for inspection. No discrepancies were found between the results recorded by EU observers in polling stations where counting had been observed and those published by the Returning Officers at the District Level.

³⁹ The election for the women district seat for Adjumani and the election of the five Youth MPs (special interest group) had not taken place by time of writing of this report. The women election in Adjumani had been postponed because of the death of one candidate (see Campaign). The results published by the Electoral Commission for the parliamentary elections are short of one constituency and shows the winners for 214 and not 215 constituencies.

⁴⁰ One seat remained vacant.

At the national level, candidate and party agents, as well as domestic and international observers, followed activity at the National Tally Center in Nambole Stadium. The agents received copies, signed by the polling staff and political party and candidate agents present, of the constituency results transmitted by fax from the Districts. When reporting was done by telephone, they had access in real time to the transmission through a parallel telephone set. Before the announcement of the provisional final results, the Electoral Commission, through periodical press conferences, provided the public with five partial updates of the incoming results. This transparent, gradual publication of the results over the 48 hour period left no surprises when the final provisional results were announced and the winner of the presidential election was declared by the Chairman of the Electoral Commission in the afternoon of 25 February. Two presidential candidates, Abed Bwanika and Ssebana Kizito, conceded defeat. A third, Miria Obote, conceded but rejected the process as flawed. Dr Besigye, however, rejected the results and stated his intention to challenge in the courts.

A detailed national, electronic version of the results per polling station was being prepared by the Electoral Commission at the time of writing this report. Regrettably, the burden of work on its personnel, who were involved in the local elections which followed the presidential and parliamentary elections delayed the production, presentation and publication of the detailed final provisional results on the Electoral Commission's website.

B. POST-ELECTION RE-POLLING AND POSTPONED VOTING

The parliamentary election in the Oyam South Constituency, Apac District, where the NRM candidate was missing from the ballot paper on 23 February, was held on 10 March was observed by the EU EOM. Despite delay on the delivery of election materials, the election proceeded orderly and peaceful.

The Electoral Commission decided to postpone the District woman parliamentary election in Adjumani, in the northern region, until mid April, after a delay due to the death of one of the candidates in a car crash, in which her main opponent was also involved. The Electoral Commission was waiting for the local political atmosphere to calm down before announcing the details of the new arrangements for voting in this area⁴¹.

XVI. COMPLAINTS AND APPEALS

Election offences are detailed in the Presidential and Parliamentary Elections Acts. These Acts classify the offences in categories such as defacement of posters, intimidation and bribery and specify the appropriate punishment for each violation. The Electoral Commission Act (ECA) establishes the power of the Electoral Commission to hear and determine written complaints alleging any irregularity on any aspect of the electoral process and to decide on appeals against decisions made by lower level election officials.⁴² Appeals against decisions made by the Electoral Commission are filed in the High Court. Any person aggrieved by the decision of the High Court may appeal to the Court of Appeal and, subsequently, to the Supreme Court.

41 Although a final decision had not yet been adopted at the time of writing, it was extremely unlikely that presidential re-polling would take place in eight polling stations in various constituencies, where results were annulled *ex officio* by the Returning Officers after consultation with the Electoral Commission, since the results in these polling stations would not affect the final results in the respective constituencies.

42 The ECA also describes offences related to the buying or selling of voter cards and the registration of voters.

The Electoral Commission created a legal unit which keeps a record of complaints lodged directly with it, as well as with Returning Officers at the District level. The legal unit reviews the complaints and proposes corrective remedial actions to be taken. Since there is no specific procedure laid down in the law, the legal unit uses common law and the principles of natural justice as enshrined in the Constitution for handling the complaints.

In a positive development, a National Election Liaison Committee was established, chaired by a member of the Electoral Commission and including representatives of candidates. This body met twice a week and had wide acceptance among political parties, providing, among other things, an open forum for exchanging information regarding complaints and was used to resolve many disputes and grievances of the political parties. This forum was replicated in some regions of the country.

A number of problems were noted in relation to complaints and appeals. First, the election legislation does not establish adequate procedures for initiation and adjudication of complaints. In practice, complaints were submitted to a variety of institutions including the Electoral Commission, Returning Officers, the police and the different courts at district and national level. The system also created confusion over the number of complaints received and inconsistencies over their proceedings. Many complaints were submitted orally, leaving room for a number of the lodging of frivolous and fictitious claims, which are often time and resource consuming.

Although, the Electoral Commission Act requires the Electoral Commission to decide on complaints and decisions should be taken by at least two-thirds of the Commissioners, the Electoral Commission seldom met on complaints and many decisions were taken without being reviewed in a formal session of the Commissioners. The Mission was informed that, after receiving a proposal from the legal unit, Commissioners often replied to complainants without giving an official response. Indeed, at the Electoral Commission press conference on 1 February, the Deputy Chair, Sister Magoba, conceded that the volume of complaints were such that there was insufficient time and resources to deal with all of them. Further, Magoba made clear that the demands on the time of Commissioners to deal with other matters meant that it was often impossible to secure a quorum to sit and deliberate on complaints.

Since the law does not empower the Electoral Commission with the authority to impose civil penalties or other administrative actions in cases of non compliance, some complaints received had no effective redress.⁴³ The lack of deadlines for lodging and deciding complaints also led to significant problems. For example, a considerable number of complaints against the nomination of candidates were received a few days before election day, resulting in their de-certification. This left them without the opportunity to appeal against the decision in the High Court. In addition, quite a number of complaints were not resolved prior to election day due to a lack of resources of the Electoral Commission and the accumulation of tasks while organising five elections in the space of one month.

A lack of guidance on how to investigate and resolve complaints at the district level also created some inconsistencies. EU EOM observers reported that while some Returning Officers took pro-active actions to resolve complaints, other Returning Officers forwarded

43 For example, the political parties which failed to comply with the regulation on campaign hours enjoyed total impunity as they were not liable to any disciplinary sanction. Similar situation occurred in relation to the misuse of state resources by the incumbent party.

all the complaints they received to the Electoral Commission in Kampala, without maintaining adequate records.

The Electoral Commission and Returning Officers referred cases of a criminal nature to an Electoral Offences Squads (EOS), established by the Criminal Investigation Department of the Police, at district and national levels.⁴⁴ However, most complaints received by the EOS came directly from the Police, political parties and citizens. Upon receipt of cases, the EOS conducts investigations and consults with the Director of Public Prosecutions (DPP) before sending cases it considers appropriate to the courts. Some members of the judiciary informed the Mission that they considered the legal obligation to refer cases to the DPP to constitute a major bottleneck.⁴⁵ Members of the judiciary also reported that interest in many complaints filed before election day, ceased following the elections, resulting in the suspension of court proceedings due to the withdrawal of the case by complainants.

A. COMPLAINTS AND APPEALS PRIOR TO ELECTION DAY

The Electoral Commission received approximately 500 complaints prior to election day. Of these, the main issues related to administration of the electoral process, nomination of candidates and electoral violence. Regarding the nomination of candidates, most complaints related to failure to meet the required educational qualification or to resign from public office. In total, 20 candidates were disqualified, and by 22 February, six complaints on nominations were still pending. A total of 460 complaints were received and under investigation by the EOS prior to election day, the majority of which related to the destruction of posters, threats of violence, intimidation, and assault. Of these, 114 were handed over to the DPP.

A small number of election related complaints were heard by magistrate courts, the majority involving the defacement of posters.⁴⁶ As of 10 February, the High Court ruled on only four election related cases and heard another 22, of which four were petitions challenging the refusal of nomination by the Electoral Commission.

B. COMPLAINTS ON AND AFTER ELECTION DAY

A total of 77 complaints were lodged with the Electoral Commission by the first week of March. Of these, 28 were applications for recount or annulment of polls which should have been lodged with the Courts.⁴⁷ The Electoral Commission also received 18 complaints against the nomination of candidates, seeking the disqualification of elected MPs. Other complaints related to issues such as the illegal use of party colours and symbols and appeals against the actions, or inaction, of lower level election officials. At the time of writing the Electoral Commission had not addressed many of these complaints.

44 The Criminal Investigation Department of the Police has created an Electoral Offences Squad Unit which investigates the complaints received by the electoral administration and the police, and refers them to the office of the Director of Public Prosecutions.

45 For example, on 4 March seven men were still under arrest awaiting trial for tearing down posters in Rukungiri District before election day.

46 In the Buganda Road Chief Magistrate's Court all the five election related cases filled before the election day concerned the defacement of posters.

47 The Electoral Commission can not order for a recount after the declaration of results. In the case of the Parliamentary elections, all subsequent claims have to be lodged with the Chief Magistrate Courts. Section 55 (1) of the Parliamentary Elections Act empowers a complainant to petition the Chief Magistrate for a recount within seven days after the declaration of results.

The 69 Returning Officers received a very low number of complaints, most of which were submitted orally. The majority of these related to allegations of partisan polling staff, missing names in the voter register, intimidation and bribery of voters, party agents being chased away from polling stations, lack of seals on ballot boxes and invalidation of voters. Complaints which implied criminal liability (e.g. intimidation and bribery) were reported to the police for investigation.

The relatively small number of complaints lodged with the Electoral Commission on and after election day might be explained by the fact that the Electoral Commission has not been vested with the powers to issue administrative sanctions and, consequently, many of the complaints will remain unresolved. In addition, the Presidential and Parliamentary Elections Acts establish that any candidate has the right to submit to the Electoral Commission a statement in writing containing any complaint about the conduct of the election or any election officer, and any suggestion with respect to any such changes or improvements in the law or administrative arrangements. Some political parties, however, interpret the submission of such statements as an initiative exclusively with the purpose of publication of a post-election report. According to them, this would be the only outcome of submitting complaints to the Electoral Commission after election day.⁴⁸

XVII. PETITION CHALLENGING THE RESULTS

The runner-up candidate, Dr. Besigye, petitioned the Supreme Court on 7 March challenging the result of the presidential election and seeking an order to annul the election of President Museveni. He cited the Electoral Commission as first respondent and President Museveni as second respondent. The Constitution and the Presidential Elections Act state that petitions must be filed within 10 days of the announcement of results and the Supreme Court should hear and declare its findings not later than thirty days from the date the petition is filed (6 April).⁴⁹

On 6 April, the Supreme Court delivered its judgment and ruled, by four votes to three, that the Electoral Commission had not complied with the electoral laws, but that this non-compliance did not affect the election results in a substantial manner. The Supreme Court found that the principle of free and fair elections was compromised by acts of bribery, intimidation and violence in some areas of the country. It also concluded that the principles of equal suffrage, transparency of the vote and secrecy of the ballot were both undermined by multiple voting and ballot box stuffing in some polling stations. In addition the court

48 In a meeting with the EU EOM after the elections, the UPC stated that they will not submit any complaints to the EC, since the EC does not have any power to address them. The NRM submitted a report to the EC with all the complaints they received from their agents during election day only for the purpose of writing the mentioned post-election report.

49 Dr. Besigye alleged that the presidential election process was characterised by acts of intimidation, lack of freedom and transparency, unfairness and violence and of numerous offences and illegal practices, contrary to the Constitution, the Presidential Election Act and the Electoral Commission Act. The petitioner specifically complained about disenfranchisement of voters through deletion of their names, multiple voting and ballot stuffing, failure to cancel results at polling stations where gross malpractices took place, failure to declare results in accordance to the law and failure to take measures to ensure free and fair elections. He further stated that President Museveni, personally or through his agents, committed several illegal practices by using malicious, derisive, derogatory, abusive and sectarian language and making defamatory statements against him and other opposition politicians. He also accused Museveni of committing acts of bribery through his agents. Dr Besigye contended that these malpractices altered the results to such extent to justify the nullification of the presidential result. In reply to the petition, the EC and President Museveni denied all allegations made against them. The EC stated that Museveni was validly elected in accordance with the provisions of the Presidential Elections Act and the Constitution. The EC contended that if there was any non-compliance, this did not affect the election results in a substantial manner.

found that the Electoral Commission had disenfranchised many voters by removing their names from the voter register without adequate recourse to appeal after the display of the register and that it had failed to follow the procedures in the counting and tallying of the final results. Regarding the allegations as to illegal practices by President Museveni, the Court found, by a vote of five to two, that insufficient evidence was presented to prove any of the alleged offences.

The Supreme Court expressed concern about the continued involvement of security forces in the elections, the large scale disenfranchisement of voters, apparent partisan and partial conduct by some electoral officials and apparent inadequacy of voter education. The Supreme Court also expressed concern at the Electoral Commission's failure to provide to the Court, and therefore the petitioner, the reports of the Returning Officers, despite it being mandatory for Returning Officers to submit these to the Electoral Commission. This could have had an impact on the evidence the petitioner would have used to prove his allegations on discrepancies between the tallying sheets and the declaration forms.

During the proceedings, the Electoral Commission was counselled, among others, by the Attorney General⁵⁰ and lawyers used by President Museveni. The involvement of the Attorney General, who is the legal adviser to the government, and lawyers used by President Museveni in defending the allegations against the Electoral Commission, could seriously undermine the public's perception regarding the independence of the Electoral Commission.

The EU EOM considers that the time⁵¹ that the petitioner had to collect evidence from all over the country to prove that the offences committed were of such a magnitude as to substantially affect the final result was too short, since the legal burden to sustain the nullification was on the petitioner. Moreover, the law requires that all evidence must be produced through affidavits, which required mobilisation of lawyers throughout the country to take witness testimony. The petitioner claimed that most of his witnesses, especially upcountry, withdrew because of intimidation and harassment. In this context, it is noteworthy that Ugandan law does not envisage a special mechanism for the protection of witnesses. The limited time available could have limited the ability of the court to thoroughly examine the issues raised.

During the proceedings the lawyers argued, and failed to agree on, what amounts to a malicious, derisive, derogatory, and abusive statement as an illegal act. This illustrates a lack of clarity in defining such offences. If the petitioner had proved any of the offences alleged, it would have led to the annulment of the elections without the need to prove that the offence affected the results in a substantial manner.

Finally the Supreme Court requested Parliament to review Article 59 (6) (a) of the Presidential Elections Act which states: "The election of a candidate as President shall only be annulled on any of the following grounds if proved to the satisfaction of the court – (a) non-compliance with the provisions of this Act, if the court is satisfied that the election was not conducted with the principles laid down in those provisions and that the non compliance affected the result of the election in a substantial manner."

50 Article 119 of the Constitution provides that the Attorney General is appointed by the President and has among his main functions to give legal advice to the Government and to represent the Government in courts or any other legal proceedings.

51 The Presidential Elections Act (sec.59 (2) states that a petition challenging the presidential election shall be lodged within 10 days after the announcement of the preliminary election results.

A. PARLIAMENTARY ELECTIONS

The Parliamentary Elections Act establishes that a petition challenging the parliamentary elections shall be filed in the High Court within 30 days after the day on which the final results of the election are published by the Electoral Commission in the Gazette. The High Court then has a maximum of six months to decide on the petitions.

In a meeting with the EU EOM, the Principal Judge in the High Court expressed concern about the impact that a large number of petitions related to the parliamentary elections (estimated to be around 100) will have on the judiciary, especially as the law requires the High Court to prioritise election petitions and put on hold any other cases before it. This obviously has significant impact on the administration of, and access to, justice. Legal associations, judges, representatives from civil society and the Courts are considering the possibility of introducing alternative dispute resolution mechanisms to ease the burden that such electoral petitions place on the Courts.

At the time of writing, 45 petitions had been lodged with the High Court, 19 in Kampala, 12 in Mbale, 6 in Masaka and the remainder in other parts of the country. The petitions by law should be heard within six months after they have been lodged in court. In addition, two prominent opposition supporters had lodged a case in the Constitutional Court.

XVIII. RECOMMENDATIONS

With the objective of assisting in the improvement and strengthening of the electoral process and related areas, the following recommendations are offered for consideration by the Ugandan electoral and governmental officials, political parties and civil society organisations:

Strengthen the Independence of the Electoral Commission

1. The law should be amended to introduce an open, transparent and publicly accountable system for the nomination, selection and appointment of the Commissioners and all the electoral management officials, free from any political interference.
2. The new system should be supported by a broad political consensus achieved through an inclusive and transparent process in order to ensure public confidence in the election process.
3. The security of tenure of the Commissioners should be strengthened and responsibilities of the electoral officials should be clearly indicated in the law.
4. The instances where the special discretionary powers given to the Electoral Commission can be exercised should be clearly indicated by the law.

Adhere to International Conventions and Political Party Rights

5. Consideration should be given to amending the Constitution in order to fully adhere to the principles of political rights and freedoms contained in the declarations, conventions and other instruments adopted by the United Nations, the Organisation of African Unity/African Union, the Commonwealth and the United Nations, to which Uganda is a signatory. The rights of political parties to participate in public life should not only be

guaranteed as a right *de jure*, but also as a right *de facto*. The Constitution should provide those who are part of political parties not only to freely organise and operate as political parties and organisations, but also to stand for election regardless of the political system adopted.

Remove Guaranteed Seats for the Army, Youth and Workers

6. Consideration should be given to amending the Constitution and the Parliamentary Elections Acts to remove the seats guaranteed to the representatives of the army, youth and workers. The representatives of disabled people should be elected through universal and equal suffrage. Positive action toward vulnerable groups such as the youth and workers are needed, including effectively removing obstacles to full participation and measures to promote the effective exercise of election-related rights. This can be achieved without conflicting with international principles.
7. Special arrangements should be introduced to ensure the voting rights of all disabled and institutionalised people (including those in hospital and nursing homes, sanatoria patients, soldiers, security personnel and prisoners not stripped of their civil rights).

End Unreasonable and Discriminatory Requirements for Candidacy

8. Persons who are eligible to stand for elections should not be excluded by unreasonable or discriminatory requirements such as level of education. In addition, measures to avoid conflict of interest should not unduly limit the right to stand for election. The Constitution and the laws should ensure equal opportunities for all Ugandans to stand for office without unreasonable restrictions.

Consider reinstating the two-term limit

9. Consideration could be given to reinstating, for future presidential elections, the two term limit as originally foreseen in the 1995 Constitution. Nevertheless, this must be a choice that is made by the newly elected parliamentarians, civil society and the Ugandan people, and not by outsiders. During conversations held with several political parties, political experts, domestic and international observers, and citizens in general, the Mission identified the existence of a strong concern regarding the prospects of change in power in the future if the current situation of privileges and use of state structures and resources remain unchanged.

Consider the Intention of the Voter in the Ballot

10. Consideration should be given to amending both Presidential (articles 31.5.b.i and 50.1.i) and Parliamentary (30.5.b.1 and 49.1.b.i) Elections Acts. Such amendment could have a positive impact in future elections by reducing the number of votes considered as invalid.

Improve the Training of Polling Staff

11. A more defined control system to select polling officials should be developed for future elections to strengthen public confidence in the Electoral Commission and the electoral process. The Electoral Commission may wish to look again at training and supporting the District Registrars to be Returning Officers.

12. The training of polling staff, especially regarding polling procedures, should be improved in future elections. An earlier and more exhaustive training of polling station officers and polling agents could help minimise a number of irregularities observed at polling stations on election day as in the majority of cases, these irregularities were due to poor understanding of electoral regulations by the polling officials.
13. The results form could be redesigned to be clearer and more user-friendly.

Ugandans Abroad Should Also Vote

14. Although the right to vote is given to all Ugandans resident or non-resident in the country, “if feasible”, according to the law, there has been no voting outside Uganda. Consideration could be given to introducing provisions to allow Ugandans temporarily living abroad to vote in presidential and parliamentary elections, by post or in consulates.

Improvements in the Voter Registration Process

15. The law should be amended to enable all citizens who reach 18 years of age by election day to vote, or a suitable alternative qualifying date, instead of limiting registration to those Ugandans who have already reached 18 years of age at the time of registration.
16. The law should clearly specify the period for voter registration and verification, and give sufficient time for these processes.
17. The voter register, including changes made after it has been displayed, should be displayed again and any changes should be communicated to voters, in order to avoid inaccuracies or allegations of intentional removal of voters.
18. Legal provisions should be introduced to ensure rigour (supported by specific documentation) and transparency in making changes to the voter register. In case of duplicate registration, the later registration should be the one that is valid.
19. Persons affected by mistakes and wrong changes in the register should have the opportunity to appeal well in advance of the elections.
20. The assignment of polling stations should be carried out before the display period of the provisional voter register. All polling stations for a general election should be published in the gazette one month before updating is carried out.
21. The composition and roles of the tribunals should be reviewed, the procedures for hearing objections should be clearly defined and those citizens whose entries are subject to removal should be informed of the decision of the Commission before election day and allowed the right to a fair hearing.

Enforcement of Financing Regulations and Code of Conduct for Political Parties

22. The financing regulations established by the Political Parties and Organisations Act should be fully enforced.
23. An agreement on an adequate code of conduct for political parties and organisations is highly recommended. The code of conduct should include commitments on non-

violence, prevention of intimidation, fair and equal conditions for campaigning which include a commitment not to use public resources and appropriate behaviour by polling agents. The code of conduct should include sanctions in case of non-compliance with the code.

24. The requirement to submit a financial report on campaign income and expenditures should be enforced as well as consideration of establishing ceilings for campaign expenditures of the parties and candidates. To these ends the Parliamentary Election Act should be amended to include adequate provisions to ensure transparency and a level playing field in the finances of the parties.
25. The use by the incumbent Presidential candidate of “ordinarily attached official facilities”, other than those related to his personal security, should be restricted to the execution of his official duties only. Further, consideration should be given to the legislation that more strictly limits the role of government, its ministries and public officials in an election period.
26. All political parties have a role to play in the democratic process and should observe respect for each other as legal democratic players and avoid blaming each other for reasons of being either on the side of the government or the opposition. Democratic governments naturally reflect the local cultures and traditions of voters, and this form of government is the single best way to account not only for the needs and wishes of large groups of people, but also for those holding minority viewpoints.

Improve the Electoral Campaign Structure

27. The law should specify the time of submission of the campaign schedule and the criteria for getting the permission for a campaign event, giving precedence to the political party who submitted its schedule first.
28. The Electoral Commission should consider extending campaign hours, now limited from 7am to 6pm, in order to give the general public better opportunities to attending political rallies.

Provide further Civic and Voter Education

29. A comprehensive, long-term and interlinked civic and voter education programme should be implemented in advance of the next elections to familiarise the electorate with the meaning, significance and implications of the new multi-party political system. Further voter education activities should focus on informing the public about registration and voting procedures. Sufficient support should be provided to the institutions and organisations involved in this task.

Enhance Procedures for Complaints and Appeals

30. Effective and timely procedures should be specified by law regarding the complaints and appeals process. These should include:
 - All election related complaints should be lodged with the Electoral Commission or Returning Officers at the District level. The Electoral Commission, or lower level of election officials, should refer complaints to the Director of Public Prosecution if a criminal act might have been committed concerning the electoral process;

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- Voters, parties and other organisations should be able to defend their electoral rights by submitting a complaint or appeal to a clearly identified competent body. The Electoral Commission Act should be amended to specifically indicate where a complaint must be lodged in the first instance and in what circumstances a complaint may be submitted directly to the Electoral Commission. Clear information should be provided to the public about the process and how to make a complaint or appeal effectively.
 - A time period should be established for complaints and appeals to be lodged and disposed of. However, adequate time must be allowed for the gathering of information on which the decision will be based.
 - The right to vote and the right to be elected are human rights, requiring effective remedies for their violation. Special attention should be given to establishing adequate mechanisms for appeals against decisions related to inaccuracies in the voter register, the refusal of nomination and the de-certification of candidates during and after an election.
 - Consideration should be given to establishing a tribunal to investigate and resolve complaints subject to the approval of the Electoral Commission. One or more members of the Electoral Commission should be part of this body and other members should be selected from amongst people with appropriate expertise.
 - The law should be implemented to ensure that Electoral Commission decisions on complaints are taken as a collegial body. The Electoral Commission should regulate the procedures for decision making, adopting and publishing its decisions.
 - Civil penalties and administrative actions should be introduced for those who have not complied with the law.
 - Efforts should be made to ensure that the complaints and appeals system is transparent and publicly accountable. A centralised record of all complaints and appeals, and their outcomes should be developed and maintained. Reports should be regularly produced and made public.
 - Although the grounds on which the Electoral Commission relies to nullify election results appear reasonable, the Electoral Commission Act should be amended to clearly provide the Electoral Commission with the power to annul election results and establish clear grounds on which the Electoral Commission should base its decision.
31. The Supreme Court's request that Article 59 (6) (a) of the Presidential Elections Act be reviewed should be promptly heard by the new parliament. Such a review should look into the amount of time available for petitioners to gather evidence and the time available for the court to hear it.

Ensure the Independence of the Judiciary

32. Consideration should be given to instituting safeguards to ensure that the authorities do not interfere in the judicial process. Interference with the judiciary independence has a negative impact on public confidence during an election process. The failure to protect the independence of the judiciary could also seriously affect the conduct of genuine democratic elections.⁵²

52 "Genuine democratic elections, like other human rights and democracy more broadly, can not be achieved without the protection of the rule of law". Statement of Endorsement of the *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*.

33. Consideration should be given to establishing special protective measures for the presidential candidates to allow them to freely exercise their campaign rights, i.e. by suspending legal proceedings during the campaign period under certain conditions established by law.

Develop an adequate system of access to the state media

34. An adequate system of equal access to the state owned media needs to be developed to replace the existing one that failed to provide equality between the candidates. Where parties and candidates produce their own programmes for airing, a system of independent screening should be developed, in order to ensure that the content of the programmes comply with all aspects of the relevant laws.
35. The statutory Broadcasting Council and Media Council's position should be clarified in respect of election periods and they should receive the necessary resources and guarantees of independence to enable them to function according to the standards established in the law.
36. The Presidential Press Unit should be suspended during the official campaign period and the production facilities the unit enjoys should be made available to candidates from all significant parties standing for election on an equal basis.

Ensure clear guidelines for electoral coverage and processing of complaints

37. Regulations pertaining to content issues as well as procedures for processing complaints need to be developed with a clear set of parameters and mandate for the regulatory agencies. In this respect, the law should provide clear guidelines for the media's coverage of issues ranging from access to the media for candidates, opinion polls, reporting of results and the rules for the moratorium in a comprehensive review of this area of the law.
38. Where a candidate owns a share in a media company a system for ensuring editorial autonomy should be established and guarantees of independence and open access developed from mechanisms such as blind trusts.
39. The use of provisions concerning defamation should be re-considered in order to remove undue restrictions on the freedom of expression.

Guarantee Domestic Observation by Law

40. The right of domestic observers to observe the whole election process should be guaranteed by law. It is also recommended that the law be amended to establish a procedure for approval or rejection of an application for accreditation.

Review Legal Deadlines

41. Adequate balance should be found in the timely administration of justice by maximising the momentum of the elections and the right of the petitioner to gather sufficient evidence. Since the inauguration of the President happens around two-and-half months after the election, the time allotted to the petitioner to prepare his/her case could be extended.

42. Courts should be provided with sufficient resources and time to handle election petitions. The independence of the Electoral Commission could be strengthened by adequate allocation of funds to enable the Electoral Commission to represent itself in the Courts of Law.

Create the conditions for a sustained democratic process

43. Despite the recent efforts of the government to address the situation and its commitment to bring the northern region to a peaceful and equal position vis-à-vis the rest of the country, only intense cooperation between local society, the relevant political forces and the national authorities, alongside strong regional cooperation, can create a climate of engagement to guarantee a sustained democratic process in that region and, consequently, in Uganda. The EU EOM considers it imperative that the newly elected authorities take this challenge as their highest priority, and that in cooperation with all concerned national and international actors create the conditions for a broad engagement towards a sustained democratic process.