CMI CHR. MICHELSEN INSTITUTE
Makerere University
The Legal and Institutional Context of the 2006 Elections in Uganda
RESEARCH REPORT

Lessons from the referendum for the 2006 elections

The role of parliament, courts, the political parties and the Electoral Commission

Research Report
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The team of researchers from CMI (Chr. Michelsen Institute, Norway) and Makerere University observed the July 28 2005 referendum as part of the ongoing research collaboration: *"The Institutional and Legal Context of the 2006 Elections in Uganda"* funded by the Norwegian Embassy. This report is based on observations of the referendum carried out by Emmanuel Kasimbazi, Julius Kiiza, Sabiti Makara, George Okiror, Arne Tostensen, Clare Atoo, Alexander Kibandama, Rwengabo Sebastiano and Robert Tabaro, in the districts of Kampala Central, Wakiso, Mpigi, Mukono and Kayunga, Junja Town, Mabara and Ntungamo. The report is edited by Sabiti Makara, George Okiror and Lise Rakner. In addition to field observations, the report is based on key informant interviews with stakeholders in parliament, the political parties, the courts and the electoral commission as well as news reports.

1: The 2005 referendum

On 28th July 2005, Uganda held a referendum for the purpose of changing the political system. The referendum question posed to the Ugandan voters was: ***"****Do you agree to open up the political space to allow those willing to join other political parties/organizations to do so to compete for political power*?" The options presented the voters were "Yes" and "No", with a "Tree" symbolising "Yes" and a "House" symbolising "No".

The "Yes" vote emerged victorious in all the 56 districts of the country. After the exercise, the "yes" side was declared the winner with 92.5% of the votes. The "no" side received 7.5% of the vote. However, the voter turn out was low with 47% of the registered voters (8.5 million) voting. In Kampala it was observed that only 16 % of the registered voters participated in the referendum exercise.

The low voter turn out may, in part, be attributed to the boycott campaign of the opposition political parties. But poor voter education, heavy rain in the morning at the polling day in some areas, and general confusion as to the purpose of the referendum exercise also attributed to the low voter turnout.

The confusion is related to the fact that Museveni as the Head of State and leader of NRM-O was campaigning for a 'yes' vote. For nearly two decades President Museveni has been extolling the virtues of the Movement system and castigated the political parties for being divisive. The Movement was projected as the guarantor of peace and stability and the development of Uganda. During the referendum campaign, the President did not adequately explain his change of mind. Instead, he continued to criticise the political parties. Thus, voters were faced with a situation where the executive, and parts of the NRM together with the opposition parties, campaigned for a return to multiparty politics, whereas other parts of the NRM system campaigned against an opening of political space for political parties.

In this report we present our observations of the 28 July referendum. We focus on the role of the parliament, the courts, the political parties and the electoral commission and the ability of these institutions to restrain executive power in the referendum process. Our analysis of the debates prior to the referendum, the referendum campaign and the actual polling suggests that the executive arm of government was able to exert its influence throughout the referendum exercise. The inability of parliament, political parties, courts, and the electoral management body (Electoral Commission of Uganda) to restrain executive power in the referendum process poses a number of challenges concerning the prospects of a free and fair electoral process in March 2006.

1.1 The referendum in the constitutional amendment process

Why did the incumbent regime press for a referendum despite concerns from parliament, the opposition parties, civil society and donors arguing that a referendum

was an unnecessary and costly procedure to decide the issue of a return to multiparty politics in a context where both the opposition and the government supported the change? Various theories have emerged. The opposition parties argued that the referendum provided a means for the incumbent to distribute patronage money and thus, begin the election campaigning for the March 2006 elections. Some interpreted the referendum as a 'house cleaning exercise' through which the NRM-O would rid itself of the undesirable elements that have become a liability to the party. This was noted by President Museveni during a press conference in July 2005. Others have seen it as a back door, keeping open the possibility of a "no" vote in case the attempt to lift the limit on the presidential term, should fail. It was also speculated that the referendum could give legitimacy to the incumbent regime no matter the outcome of the vote.

Regardless of the motives behind the Ugandan government's decision to conduct a referendum, we stress that the referendum exercise must be regarded as part of the ongoing constitutional amendment process leading up to the 2006 elections. The constitutional amendment process started in 2004 with the government White Paper presenting its views on the recommendations of the Constitutional Review commission. Thereafter, the Constitutional Amendment Bill 2005 was presented, which was termed an "omnibus bill" due to the large number and various forms of amendments in the same bill. Interventions from MPs, civil society, and a court challenge, led the government to withdraw the bill from Parliament and reintroduced it as two separate bills, namely Constitutional Amendment Bill No. 2 and No. 3, 2005. The Constitutional Amendment Bill No. 2 mainly consisted of articles dealing with regional governments while the Constitutional Amendment Bill No. 3 included the transitional provisions. However, Cabinet decided that the question of reintroduction of multiparty politics should be put to a popular referendum. In April a resolution to hold a referendum for change of the political system was tabled in Parliament. The referendum bill was passed in May 2005.

1.2 The political justification for the referendum

The heated debates in parliament, the courts and public media about the July referendum may in part be explained by the fact that a number of different articles of the 1995 Constitution address this issue. Under the 1995 Constitution, article 69 provides for the political systems in Uganda, namely, the Movement political system and the multiparty political system. The same article provides that the people of Uganda 'shall have the right to choose and adopt a political system of their choice through free and fair elections and referenda." Similarly, article 1 (4) provides that the people shall express their will and consent as to how they should be governed.

The 1995 constitution of Uganda provides three other ways through which a change of the political system can be done:

1) Article 74 (1) (c) of the Constitution allows the change of political system through a petition to the Electoral Commission by at least one-tenth of registered voters from each of at least two-thirds of constituencies.
2) Article 74 (2) provides that a political system can be changed by a petition from district councils supported by two-thirds of at least 28 district councils.

The same petition must be supported by at least 196 MPs, which is two-thirds of voting MPs.

3) A resolution by MPs whereby at least two- thirds of all MPs so decide on a petition to parliament made and supported by at least two- thirds majority of the total membership of at least two –thirds of all district councils.

In addition to articles 69 and 74 referred to above, in the 2000 referendum, article 271 was applied, stating that: "Notwithstanding the provisions of article 69 of this Constitution, the first presidential, parliamentary, local government and other public elections after the promulgation of this Constitution shall be held under the movement political system" (271.1). This article, however, is by most authorities regarded as 'transitional'. Thus, according to the 1995 constitution, a change from the Movement system to a multiparty system did not necessitate a referendum as either of the above mentioned forms of amendment was possible.

1.3 The position of the international donor community

In the context of Uganda's political transition the international donor community has, as a matter of principle, all along favoured a multi-party system that would allow for meaningful political contestation between parties with clearly distinguishable profiles and programmers. This notwithstanding, during the 'Movement' era Uganda has enjoyed a good relationship to the international donor community, displayed by constant high levels of development assistance since the early 1990 owing to its comparatively good development performance.

However, the donor community has been concerned that the emerging opposition under the Movement umbrella was being stifled. There was clearly a need for the opposition to be afforded better conditions under which it could thrive and serve a useful function in a democratic system of governance. Since 2004, some donors have made cuts in their aid to Uganda on account of concern over the political transition, especially the *kisanja* issue, i.e. lifting the presidential two-term limit as prescribed by the constitution.

While strongly supporting the return to multiparty politics, the donor community did not find a referendum the most sensible method of changing the political system. It was widely thought that a costly exercise such as a referendum would be wasteful, given the country's meagre resources. The donors rather preferred the cheaper option that the constitution allows, through the local councils and Parliament. As a result, once Parliament had made the decision that a referendum would be held on the political system, the donor community appeared ambivalent. On the one hand, it would like to see a 'yes' majority to a multi-party system. On the other hand, a number of donor agencies expressed that they did not like to be seen to lend legitimacy to a referendum exercise widely perceived to be wasteful and part of a larger political game of the NRM government. Consequently, the international observation efforts were kept at a low level.

For some time the donors had been supporting activities towards the consolidation of democratic governance in Uganda through the Donor Democracy and Governance Group (DDGG), now renamed Partners for Democracy and Governance (PDG). The

Election Support Unit of PDG organised referendum observers, drawn largely from the ranks of the resident diplomatic community in Kampala. Some 135 international observers were deployed in selected districts, in an impossible effort to cover altogether 17,265 polling stations countrywide. Standardised voting and counting forms were submitted to the Election Support Unit for processing.

1.4 Comparing the 2000 and 2005 referendums

The July 2005 referendum is the third in Uganda's political history. The first referendum was held in 1964 over the disputed so-called "lost counties"[1]. The second referendum was held in 2000 over the issue of change of political system.[2] For a number of reasons the July 28, 2005 referendum deviated from the two previous referenda:

First, compared to the referendum held in 2000 over the same issue, the 2005 referendum was less contentious as both the opposition groups and the government shared the view that a return to multiparty politics was desirable. On February 28, 2003 President Museveni announced meetings of the Movement National Executive Committee (NEC) and the National Conference to discuss the return of multiparty politics. The Movement National Executive Committee (NEC) meeting held in March 2003 and the following National Conference agreed in principle that the country should open up to multiparty politics. Thus, unlike in the 2000 referendum, the government and key ruling Movement officials declared their support and campaigned for the return of multiparty politics.

Second, the 2005 referendum was part of a larger process of amending the constitution changing the political system and electoral laws, and should not been seen as an isolated event. In particular, the recently concluded referendum should be seen in relation to the ruling Movement's "third term" proposal for constitutional amendment to remove the presidential term limits, an issue which infused all political processes taking place in the country.

Third, unlike the 2000 referendum, the recent one was preceded by the registration of the National Resistance Movement (NRM) as a political party, the National Resistance Movement - Organisation (NRM- O).[3]

As in the 2000 referendum, however, opposition parties declared their boycott of the 2005 referendum. The opposition parties presented two arguments for their boycott: Firstly, a referendum was not necessary on the right of the people to associate. Secondly, since the constitution provides for other means of amending the

[1] The so-called "lost counties" are: Bugangaizi and Buyaga and control over these territories were disputed between the kingdoms of Buganda and Bunyoro during the British colonial rule in Uganda. A plebiscite was held in 1964 to decide whether to stay in Buganda or return to Bunyoro.

[2] In the 2000 referendum on the issue of change of the political system 91% voted to retain the Movement system. That time, unlike in 2005 referendum, the government officials campaigned for the retention of the Movement system. Bratton, Michael, and Gina Lambright. 2001. "Uganda's referendum 2000: The silent boycott. *African Affairs* 100:429-452.

[3] The National Resistance Movement (NRM) the longer name for the ruling Movement was registered as a political party under the Political Parties and Organizations Act.

constitution to change the political system, it was not necessary to hold a referendum at a cost of 22 billion Uganda Shillings (or US$11 million) in an impoverished country like Uganda.

2: The role of parliament, courts, the political parties and the Electoral Commission in the 2005 referendum

Our research project, *'The Institutional and Legal Context of the 2006 Elections in Uganda'* focuses on the institutions aimed at securing democratic accountability. We emphasise the institutions in place to guard against executive dominance and analyse to what extent these institutions are able to exercise their functions. Elections and succession 'test' the strength and legitimacy of political institutions to check against executive dominance. It is important to acknowledge that electoral processes essentially begin long before the actual polling takes place and that the analysis of electoral processes, therefore, requires a long time horizon. Thus, we observed the July 2005 referendum process as an event in the constitutional amendment process leading up to the March 2006 elections. Our emphasis was the conduct of the parliament, the courts, the political parties and the Uganda Electoral Commission in the referendum and the effectiveness of these institutions in checking against executive dominance.

2. 1: The role of Parliament in the 2005 Referendum

The Minister of State for Justice and Constitutional Affairs, Adolf Mwesige, on April 13th 2005 tabled a notice for a resolution of Parliament to hold a referendum to change the political system. The Minister of Parliamentary Affairs, Ms Hope Mwesigye, seconded the motion. However, even before the House debated the motion, opposition parliamentarians voiced their resistance.

When the motion was put to vote in Parliament on 21st April 2005, the government lost the motion seeking to change the political system by a referendum. For the motion to succeed, more than half of the total number of MPs had to vote in its favour. However, the ruling party failed to raise the necessary 147 MPs.[4] Only 142 MPs supported the motion while 17 MPs opposed it and one abstained.

Members of Parliament who opposed to the motion said a referendum was not necessary to change the political system since the 1995 the Constitution provided for a cheaper way. They argued that more than 30 billion shillings in taxpayer's money would be saved if the district councils and Parliament were let to decide on the issue of return to multiparty rule rather than holding a referendum. In the words of Honourable Kazoora "the shillings 30 billion to be spent on the referendum could be put to better use by purchasing anti-retroviral drugs for Ugandans carrying HIV"

[4] According to the Constitution article 74 .1. 'A referendum shall be held for the purpose of changing the political system if a) requested by a resolution supported by *more than half of all members of Parliament.*

(*Daily Monitor* 22 April 2005). MPs also argued that both parties and the Movement were already operating in a pluralistic environment. The major parties had already registered and were mobilising for support (*Daily Monitor* 29 April 2005).

Movement MPs supporting the motion, argued that because the movement political system was ushered in by a referendum, the same method was required to change to multipartism (*Daily Monitor* 22 April 2005). According to the Minister for Economic Monitoring, Mr. Omwony Ogaba, "Uganda's past turbulent politics was characterised by usurping and ignoring the rights of the people (…) let the people participate." (Hansard of 4 May 2005).

According to Jacob Oulanyah, the Chairman of the Legal and Parliamentary Affairs Committee, "the implication of losing the motion was that there would be no referendum unless a substantive motion is brought to Parliament (*Daily Monitor 22 April 2005).* Under the Rules of Procedure of Parliament, a matter where Parliament has taken a decision cannot be re-introduced unless the decision is first rescinded. The Daily Monitor of 26 April 2005 reported that Government had directed the State Minister for Justice and Constitutional Affairs, Adolf Mwesige to draft a fresh proposal to rescind Parliament's decision to reject the referendum. According to the Minister, under Article 53 (3) of Parliamentary Rules of Procedure, Parliament is entitled to review its position on any matter.

However, Ben Wacha, the Chairman of the Parliamentary Standing Committee on Rules argued that, "it would look awkward for the government to come back with the same motion to Parliament in the same session especially considering that there is a cheaper option. He added that Parliament's voice once made should be respected" *(Hansard of 21 April 2005).* Similarly, Honorable Aggrey Awori (MP Samia Bugwe North) argued that it would reflect badly on the reputation of the Speaker if the Government returns the same referendum motion to Parliament. He added that Government would have expressed the highest level of ridicule to Parliament *(Hansard of 21 April 2005).*

Nevertheless, on the insistence of the Chief Executive, the matter was returned to Parliament and the referendum was chosen as the method for deciding on the political system. The Presidents remarks, as quoted in the Daily Monitor, are illustrative in this regard:

> "If Parliament does not pass the referendum (motion), I will use another 'Kasonseleke' (trick) to bring it here (to the people). I will not accept to make mistakes. It is you to decide on the issue of the referendum not Parliament alone. I cannot allow to be trapped because if anything goes wrong in future you will blame me. Those who do not know Uganda's issues think it is Parliament to decide on the referendum but I do not agree with them. The power is not with Parliament, not the President, not the Chairman, but with the people" (*The Daily Monitor*, Thursday April 28, 2005).

On 27 April 2005 the notice for rescinding the decision was brought to Parliament. The State Minister for Justice and Constitutional Affairs, Adolf Mwesige gave notice that he would move a motion under Rule 53 (3) of the Parliamentary rules of procedure "for the reconsideration of the conclusion of Parliament on the question put

by the Speaker on the motion for a resolution of Parliament to request the holding of a referendum for the change of political system under Article 74 (i) (a) of the Constitution." The motion was opposed on technical grounds.

The Minister had moved that "in accordance with rule 53(3) of Parliamentary rules of procedures, the decision taken on 21st April 2005 be rescinded and that in accordance with Article 74 of the Constitution, Parliament resolves that the Electoral Commission holds a referendum for change of political system". Opposition MPs held that it was wrong to rescind the decision and reconsider the motion in the same parliamentary session.

The State Minister for Gender, Sam Bitangaro then introduced another motion which stated, "the conclusion reached by this House on 21st April 2005 in regard to the motion under Article 74(i) (a) of the Constitution seeking a resolution to request for a referendum for the purpose of changing the political system be rescinded to allow this House to reconsider the said motion during the current session of Parliament". When put to vote, 194 MPs supported it, 37 opposed it and 2 abstained.

The Minister then moved the motion on 28 April 2005, under Article 74 (i) of the Constitution, which says a referendum, shall be held for the purpose of changing the political system. He also quoted Article 1(4) of the Constitution, which gives people the right to express their will through referenda on how they shall be governed. Article 69 of the Constitution says the people have the right to choose their political system through free and fair elections or referenda.

After a heated debate, Parliament on May 3, 2005 overturned its earlier decision to oppose the referendum motion on the country's political system. When put to vote, 189 MPs supported the motion, 24 opposed it and none abstained. This vote paved way for reconsideration of the motion seeking to request the Electoral Commission to hold a referendum on the political system of Uganda.

The potential of Parliament to restrain executive power: Lessons from the referendum

The tabling of the motion for Parliament's reconsideration of the conclusion reached in the first referendum vote (21 April 2005) clearly illustrates that a vote of Parliament may be overturned by executive powers. In particular, the high number of Movement MPs in the House has empowered the executive to influence decisions made in Parliament.

In the period leading up to the 2006 elections, Parliament will be expected to debate motions on the regulation of the multiparty campaign, and funding for the electoral process. How the parliamentary opposition mobilise support and to what extent NRM MPs are pressured, should be closely monitored. In particular, it will be important to ensure that the rules of procedure in the house are adhered to and that unconstitutional mechanisms for arriving at decisions, such as bribing of MPs, are stopped.

Concerning the statement by the Attorney General on the 28th July Referendum results, that the Movement System will be in place until 12 March 2006, the MPs need to debate the implications of this on multiparty activities.

2.2: The role of the courts in the 2005 Referendum

The basic laws governing the referendum were the Constitution of the Republic of Uganda, The Referendum and Other Provisions Act 2005[5] and The Electoral Commission Act 1997 as amended.

Article 60 of the 1995 Constitution establishes the Electoral Commission and it is mandated to organise, coordinate and supervise the referendum and elections in the country. Its vision therefore is to promote peace full continuity of governance through an impeccable electoral process. The Constitution in Article 74 (1) provides for the holding of a referendum if requested by a resolution of more than half the members of Parliament. On May 3rd 2005, Parliament passed a resolution directing the EC to organise a referendum to enable Ugandans to decide whether they wanted to retain or change the movement system of governance.[6] On 5th may, the electoral commission received a certificate of the clerk to Parliament under section 15(1) of the referendum and other Provisions Act No.1 of 2005 in respect of the resolution by parliament under Article 74(1) (a) of the Constitution of Uganda for the purpose of changing the Political system.[7] On May 10 2005, the EC held its first meeting with all stakeholders in the process and issued the Referendum Guidelines.

However, an interesting legal case emerged, *Okello Okello John Livingstone & 6 Others V Attorney General & Electoral Commission*.[8] The petitioners claimed that the holding of the referendum was unconstitutional based on the fact that the Movement system is a guised political party and therefore an "illegal fiction" and, as a result, there is no basis for the referendum to change from a non existent system to another. They claimed that the Constitutional court in *Paul Kawanga Ssemwogerere and Five others Vs Attorney General*[9] declared the Movement and its organs a Political Party.

The decision to hold a referendum was challenged in the Constitutional Court on the basis that article 69 (1), (2), (a) of the 1995 Constitution, which provides for the holding of the referendum or an election to choose and adopt the Movement Political system, was in conflict with other elements of the Constitution. Furthermore, it was argued that article 73 (1) of the Constitution, which purports to unjustifiably curtail

[5] Under this Act, The Referendum and Other Provisions Act, (Form of Certificate to be issued by the Clerk to Parliamentary under section15 (1) of the Referendum and Other Provisions Act, 2005) Regulations, Statutory Instrument No.33 of 2005 was made.

[6] The Parliamentary resolution was couched in the following words "That in accordance with article 74(1)(a) and article 61(1)(a) of the Constitution, Parliament requests the Electoral Commission to hold a referendum for the purpose of enabling the people of Uganda to decide on the change of the political system."

[7] Electoral Commission Press Realise: General Information on the 2005 Referendum.

[8] Constitutional Petition No.4 Of 2005

[9] In Petition No.5 of 2002

the fundamental rights and freedoms of Ugandans under Article 29 (1) (e) when the so-called Movement Political system is adopted, is unconstitutional. The petitioners further attacked Article 74 (1), claiming that it purports to subject inherent fundamental rights and freedoms to a vote and as a result offends the Constitution. In their petition therefore, they wanted the court to stop the Attorney General and the Electoral Commission from organising the referendum.

The court dismissed the application stating that despite the repugnancy of holding a referendum on human rights and freedoms, the one party system was now so entrenched that it must be changed through a referendum. The court stated that there were cheaper methods of changing the prevailing political system, but that this decision was within the discretion conferred on Parliament by the Constitution and it was therefore not for the court to tell Parliament how to exercise its discretion in the matter. Further, as the Electoral Commission was only implementing a constitutional requirement and the impugned sections of the Referendum and other Provisions Act, 2005, their operations did not in any way infringe any provision of the Constitution.

In making this decision, the court however, warned on the general nature of the provisions that had entrenched the referendum on political systems in the Constitution. The court hoped that through the Constitutional review process, this issue would be resolved once and for all. Justice Amos Twinomujuni stated;

> "As a Ugandan, I know that the political systems articles caused a lot of controversy in the Constituent Assembly where the Constitution was made. Many members of the Assembly even walked out of the Assembly in protest because of them. Many members of the Assembly refused to sign the Constitution because of them. Since then, many constitutional battles have been fought in this court because of them. In my view, for as long as these articles remain in our Constitution in their present form, battles will continue to be fought in this court. This could eventually ruin or distort the whole spirit of the Constitution. In my view, the Constitution should be interpreted in such a way that the human rights articles prevail over the political systems articles. However, since the process of amending the Constitution is on-going in Parliament, this matter should be attended to otherwise it could be a time bomb waiting to explode, our Constitution with it.

In dismissing their petition, the Constitutional Court with a three-two majority held that the referendum was a constitutional means that enable Ugandans to determine their political destiny. The court further warned the petitioner on using offensive language in their petitions, saying that there was no need to describe the Movement system as "a *legal fiction*" or "*a legal fraud*" and that such language clearly indicated their political undertones.

Following the dismissal of the petition against the referendum and the application to halt the referendum, the appeal was lodged with the Supreme Court; however, due to a lack of quorum following the retirement of Justice C.M. Kato,[10] the appeal could not

[10] Article 130 of the Constitution states that " The Supreme Court shall consist of the Chief Justice and such number of Justices of the Supreme Court not being less than six, as Parliament may by law prescribe. Article 131 (1) states that the Supreme Court shall be duly constituted at any sitting if it consists of an uneven number not being less that five members of the Court.

be heard, bringing the case to a premature end. This may be interpreted as a denial of justice, although due to circumstances beyond the control of the justices of the Supreme Court. A new permanent appointment could have been made, or an acting judge appointed and it was politically significant that the seat was not filled, leaving the Supreme Court dysfunctional.

In the aftermath of the case, the lawyers representing the opposition attacked the Deputy Chief Justice Laetitia Mukasa Kikonyogo over what they called "unconstitutional directive" accusing her of illegally stopping Justices Amos Twinomujuni and Mpagi Bahigeine from writing their dissenting rulings. The lawyers alleged that Justice Kikonyogo's directive was communicated in a 15th July 2005 internal memo in which she wrote "*the purpose of this memo is to inform you that there will be only one ruling in the above mentioned petition. Any Justice who has a contrary view, as the usual practice in our courts, may refrain from signing*". Mr. Joseph Murangira, the court of appeal registrar, who read out the ruling on the judges' behalf, announced that dissenting rulings are not supposed to be written.

The Lawyers said that their clients were concerned about the Deputy Chief Justice's directive, as it amounted to unconstitutional control and directive to two justices of the Constitutional Court not to write their reasons for dissenting to the majority ruling of the court. Effectively, it was held, the two justices were denied their constitutional right to dispense justice, contravening article 128(1) of the constitution, providing for the independence of the judiciary.

This case seems to mark a new trend in the Constitutional Court, with split decisions in politically significant cases, and majority decisions in favour of the government.[11] Restrictions on minority opinions are thus particularly consequential. [12]

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[11] Other recent cases in which there has been a split in the Constitutional Court, includes the case of *Brigadier Henry Tumukunde V a G & the Electoral Commission*. (Constitutional Petition No. 6 of 2005)

[12] Other cases that have emerged out of the referendum:

Amanda Magambo v Electoral Commission **(**Miscellaneous Cause No 413 of 2005**).** The petitioner claimed that in breach of the Referendum and other Provisions Act and the Regulations there under, the EC had unilaterally rejected the yellow bus as a symbol of the movement side to be used during the canvassing on the Referendum question.

Kaitoson Mugabe & 11 Others Vs Attorney General & Electoral Commission (Constitutional Petition No 11 of 2005). The petitioners are challenging the constitutionality of the referendum arguing that section 12(1) (2) & (3) of the Referendum and Other Provisions Act that allowed any person or group of persons to form a referendum committee or a similar structure for purposes of canvassing and voting and generally to organise at national and local levels during the 2005 referendum was inconsistent with Article 69 of the Constitution and the enabling legislations. The petitioners also challenged the constitutionality of the framed question which was intended to effectuate the movement's Resolution of 31st March 2003 that "political space be opened to allow those who feel conscripted into the Movement Political System to freely organise and operate as Political Parties and organise in accordance with the law" which was inconsistent with Articles 69 and 74 (1) of the Constitution. The petitioners also allege that the EC and the movement government diverted the resources meant for the referendum on political systems to another purpose of holding a plebiscite on whether or not the movement should rid itself of weevils, hypocrites and people wishing to join other organisations or parties which materially breached Articles 61 and 74(1) of the Constitution. In conclusion, they argue that no constitutional procedure has been taken to enable the transition to multi party politics.

Uhuru Francis & 3 Others Vs The Attorney General, The National Conference of the Movement and the Electoral Commission (Constitutional Petition No 8 of 2005) challenges the constitutionality of the referendum question and allege that it was intended to confuse the public.

The potential of courts to restrain executive power: Lessons from the referendum

The legal system's handling of the constitutional challenge to the referendum shows that while the courts have become a significant arena for individuals and groups challenging the constitutionality of government actions, there are important weaknesses and lessons for the election process.

The first weakness regards the ability of the executive to influence the composition of the courts. Directly and indirectly, the President may influence both who will make it to the bench, and when new appointments are to be made – or not made. The significance of the latter became clear as failure to appoint a replacement to the vacant post of retired Justice C.M Kato, prevented the hearing of the appeal in the referendum case, thus effectively blocking the Supreme Court from holding the executive to account. Given the importance of the Supreme Court in election petitions, it is important to get rules in place that will prevent such situations from occurring.

The three-two split in the Constitutional Court on the constitutionality of the referendum indicates that margins are narrow and that the courts are vulnerable for pro-government political appointments. Actual pro-government appointments hamper the potential of courts to restrain executive power, while perceptions of "court packing" are likely to hurt the trust in the courts across the political spectrum. A review of the appointment process and the composition and role of the Judicial Service Commission could be helpful in this regard.

Given the split decisions we have seen in several politically contested cases, it is particularly important to keep open the space for internal dissent within the judiciary and avenues for bringing dissenting opinions out in the public domain.

Of immediate concern to the upcoming elections, the transition from the movement system to a multiparty system is not complete until the minister makes an instrument for ensuring a smooth transition to a multiparty system, i.e. section 18 (4) of the Referendum and Other Provisions Act, 2005. From a legal perspective, until this process is completed, the movement political system remains in existence.

2.3: The Role of political parties in the 2005 referendum

The Movement/government officials were faced with several challenges in the July referendum debate. The Movement which calls itself a "system" had already registered as a political organisation (party) under the name of National Resistance Movement Organisation (NRM-O) under the same leadership of Museveni as Chairman of both Movement and NRM. Thus, the registration of NRM as a political party created a fix within the Movement itself. The question that was constantly raised was "supposing the voters voted to retain the Movement system, what would be the fate of the registered NRM (party) and other parties?" This could have been the compelling reason for the government's support for the 'yes' vote.

The opposition parties were equally faced with a number of challenges. The Group of six (G6) more established political parties including: Conservative Party(CP),

Democratic Party (DP), Uganda Peoples' Congress (UPC), Free Movement, Justice Forum (JEEMA) and Forum for Democratic Change (FDC) boycotted the referendum. They stated among other reasons for their boycott that freedom of association is an inherent human right enshrined in Articles 20 and 29 (1) (e) of the Constitution and cannot be subjected to a vote.

Thus, the participation of the opposition parties in the referendum was limited to their scathing criticism of the whole exercise. This was mainly in urban areas where they used the public media to express their opposition to the process as a façade for the government to gain more ground for its newly registered party – the NRM- O. Our observation of the period before the July 28 referendum indicate that NRM cadres used the period of the preparation for the referendum to distribute their party cards. This tended to confuse the ordinary voters, some of whom thought that to vote one would need the NRM card to be admitted to vote at the polling station. We observed voters in rural areas turning up with these cards at the polling stations, thinking that they were a requirement for one to vote. The polling officials advised them that this was not one of the requirements for one to be accepted as a voter. Capitalising on the issuance of NRM cards during the referendum period, the opposition argued that if they joined the government in canvassing for the "yes" vote, which was the only alternative available to them, they would legitimise the activities of the NRM-O. More broadly, the opposition groups argued that it was the Movement government, which had closed the political space, and so it had the responsibility of opening it. On its part, the government officials attacked the intransigence of the opposition groups towards the referendum as misdirected, as they could have missed the opportunity to convince the voters to see the sense of what they wanted. Not all groups, however, were opposed to the referendum, for example some sections of the FDC insisted that, although they were not going to actively campaign in the referendum, they would not declare a boycott.

As the referendum campaigns heated up, FDC accused President Museveni of swaying local Councillors (LCs) to garner support in the referendum and his re-election in next year's general elections. It was also reported that Movement directors, Residential District Commissioners (RDC's), MPs, and LC 5 Chairpersons got campaign funds for the referendum. According to Cabinet minute 257(CT 2005) dated July 7, the cabinet approved the plan for the campaign for the "yes" vote and facilitation of government officials. Cabinet also directed Chief Administrative Officers to pay Shs. 1.25m to RDCs, district chair persons, district council speakers and also give them assistance to prepare for rallies. Each RDC was given 500,000shs, each district chairperson Shs. 150,000, and each district council speaker Shs. 100,000. Shs. 500,000 was provided to each one for the organization of rallies. Cabinet also directed the secretary to the Movement Secretariat to release to each district Shs. 1 million for facilitating the district Movement conferences (*Sunday Vision* 24th July 2005).

The current status of the movement vis-à-vis the opposition

According to the National Political Commissar (NPC) Dr. Crispus Kiyonga, the Movement political system continues to exist until the general elections next year.
Clarifying on the question about the continued appropriation of funds for Movement and its organs when parliament was considering the governments budget estimates for

the financial year 2005/2006, Kiyonga said the Movement system is here up to the end of the five year period.

Responding to the Bugabula South MP (Salamu Musumba's) contention that the Movement ceased to exist on July 29th when the Electoral Commission announced results of the July 28th referendum on political systems, the NPC said that the winding up of the Movement and the organs had to be done in an orderly manner. He said the Movement secretariat for example had staff working on contract and the National Conference and the National Executive Committee could not be wound up with out ceremony. (*Daily Monitor* 24th 2005). Premier Prof. Apolo Nsibambi echoed the same message when he said that the country is still under the Movement system but registered political parties should be allowed to campaign at the grass roots *(New Vision* 24th August 2005).

The potential of the opposition to restrain executive power: Lessons from the referendum

The role of the opposition parties was limited in the 2005 referendum due to their boycott and the fact that both the incumbent party (NRM-O) and the opposition agreed on the basic principle of returning to multiparty politics. Considering the expected level of competition and conflict in the upcoming elections, the referendum therefore does not offer explicit lessons.

Nevertheless, the issue of funding of the referendum campaign offered some instructive insights. Funding for the multi party side exceeded that of the Movement. The multiparty side following a directive from the treasurer of Ministry of Finance, Planning and Economic Development instructing all permanent secretaries and accounting officers to facilitate RDCS, district council chairpersons and district council speakers with funds to campaign for the multiparty side. Thus, the parts of government/NRM that campaign for the yes-side had advantages in terms of canvassing due to availability of government funds.

In the period leading up to the 2006 election, the issue of campaign funding and advantages of incumbency is likely to create controversy. The role of local councillors (LC1) and their position vis-à-vis the incumbent party in the upcoming election campaign, should be followed closely. With the passing of the Political Party and Organisations Act on the 19 October 2005 by Parliament, it will not be possible for political parties to attain funds needed to finance their activities from government.

The position of government and the Attorney General that the Movement System will be in place until 12 March 2006 may have serious implications for the nature of the playing field between the various parties in the 2006 elections. Unless a legal instrument for ensuring a smooth transition from the movement system to the multi party system in terms of section 18(4) of the Referendum and Other Provisions Act, 2005 is enacted, the NRM will continue to draw on state funds to the detriment of a free and fair multiparty competition.

2.4: The Conduct of the Electoral Commission in the 2005 Referendum

The EC is mandated under Article 61 (b) of the Constitution to organise, conduct and supervise elections and referenda in accordance with the Constitution. In the district, the EC appoints a returning officer to oversee the organisation, conduct and supervision of the elections. Each district also has a district registrar and an assistant who are responsible for registration exercises in the district and other duties provided for under the Electoral Commission Act. On polling day the EC appoints presiding officers to manage the polling stations. The presiding officers are assisted by polling assistants and election-day constables to ensure that everything runs smoothly at the polling station.

Preparation for the 2005 referendum were guided by articles 68, 73 and article 259 of the Constitution and the Referendum and other Provisions Act (2005); the Referendum Regulations (2005) and the Electoral Commission Act 1997. According to the law, the administrative tasks of EC to ensure that a free and fair referendum is held include voter registration, civic education, printing and distribution of ballot papers, conducting voting and counting processes at polling stations, tallying and announcement of final results.

Updating the voters' register

This exercise took place during the period March – April 2005. During the update it was established by the Electoral Commission that the current number of registered voters is 8,524,224. The update also helped 680,611 new voters to register. However, the register displayed many shortcomings: We observed no photographs for some voters, absence from the register by some voters; and misplacement of some voters to stations where they never registered.

Display of the Voter – roll

This process was carried out by the Electoral Commission countrywide between May 24 and June 13, 2005, following the parliamentary resolution on May 5, 2005 authorising the Electoral Commission to conduct the referendum. This was in tandem with the constitutional provision (article 74) that the resolution of Parliament for the referendum should take place before the end of the fourth year of parliament.[13]

Voter Education

Voter education is a key responsibility of the Electoral Commission. In the past elections, the EC had carried out voter education together with several civil society organisations. For the preparations for the July 2005 referendum, the Electoral Commission reported that it used the following media for purposes of voter education:

[13] The 2000 Referendum took place exactly at the end of the fourth Parliamentary Session, that is on 29th June 2000.

- Advertisements on 45 radio stations
- Advertisements and programmers on five television stations
- Electronic bill boards to pass messages to the urban dwellers and the displaced people's camps in the North.

In addition, the Electoral Commission accredited 48 civil society organisations (CSOs) to carry out voter education. The Electoral Commission reported that of these, only 18 were able to carry out any form of voter education. The CSOs reported that they were constrained by insufficient government funding linked to the fact that EC was granted only shs.22 billion instead of shs.34 billion requested. The funding of CSOs by the EC for purposes of voter education also followed unclear criteria[14]. NGOs did not succeed in securing independent funding. CSOs also complained about the inadequate time available for voter education. The CSOs ability to attract funding from the donor community was restrained by the fact that most donors refrained from funding the referendum, arguing that it was a "waste of money" as the result was "predictable". Thus, while EC was supposed to supervise the activities of the CSOs civic education activities, this was not effectively done because it had not funded them.[15] The fact that the instructional materials to be used in voter education were produced very late added to the low quality of voter education before the referendum.[16]

As a result of inadequate preparations for voter education, the EC decided to sponsor local council (LCI) Chairpersons at the local level to carryout voter education (or what EC termed as "mobilisation"). Each Chairperson of LCI received Shs.10,000 per month for the months of May, June and July. It is estimated that there are 45,000 LCI zones in the whole country; hence this cost the EC Shs.1.45 billion.[17] Somewhat surprisingly, considering that the EC had claimed that there was no funding available to support CSOs to do voter education; the commission was able to fund the LCs. This decision led to criticism of EC with opposition members alleging that EC colluded with the government to "bribe" LCs to support and mobilise the people along the side taken by the government in the referendum. EC responded to this criticism by arguing that LCs are not government officials but elected servants of the people. However, the question why the EC preferred to finance the "mobilisation of voters" by LCs instead of voter education by CSOs remained unanswered.

Forming Sides, Guidelines, Funding and Canvassing

Section 3 (2) of the Referendum and Other Provisions Act No.1 2005 provides that "where a referendum is to be held under this section, the Electoral Commission shall in consultation with the sides of in the referendum frame the question to be used in the

[14] For example, one CSO known as *Uganda Project Implementation and Management Centre* (UPIMAC) based at Kiira Road, Kamookya, in Kampala received funding from EC of more than Shs.500 million to carry out voter education whereas many other similar CSOs were not considered for funding

[15] Interview with Mrs. N. Tindyebwa, Electoral Commission official, department of Voter Education and Training.

[16] We observed large quantities of voter education materials lying in offices of the EC four days before the referendum.

[17] Interview with Mr. Okello Jabweli (EC Public Relations Officer) on 26 July 2005.

referendum". In line with this provision, the Commission asked the proposed sides of the referendum to come up with possible questions.[18]

In May 2005 the Electoral Commission summoned groups wishing to form sides in the referendum at UMA Grounds – Lugogo, Kampala for briefing. Each group wishing to form a side was required to elect a National Committee that would lead its side.[19] Each side was required to submit minutes of their meeting and the names of office bearers. Two sides were formed: The 'Yes" side – known as the National Multi party Referendum Committee (NMRC) was chaired by a former Democratic Party (DP) Secretary General, Mr. Robert Kitariko and included National Resistance Movement (NRM) promoters: Ofwono-Opondo of NRM Secretariat, Hon. Mary Okurut and Hon Fred Ruhindi, and others.[20] On the other side, (the "No" side) the Movement National Referendum Committee (MNRC) was chaired by Mr. Bernard Mufutimukiza.

Under the guidelines issued by the EC, the two sides were required to present their Referendum Committees by May 18, 2005. That deadline was further extended to May 23, 2005. The EC guidelines stipulated that, each committee should have a national character, have a registered office, be regionally represented, and each committee was to present a written program of action to the EC.

On satisfaction by EC that both referendum committees had followed its guidelines, the EC approved funding to each committee. Each of these two official referendum committees was funded to the tune of Shs. 396 million out of the EC's government funding of Shs. 22 billion. The funding was to cover renting of office space, furniture, administrative costs, travel costs, per diem and other incidental costs. However, the referendum committees complained that the EC funding was grossly inadequate for them to effectively canvass for support throughout the country. Both sides complained to the EC over the issue of funding. Mr. Mfitimukiza of the MNRC (No-side) argued that his committee had made a budget of Shs.1.2 billion which it presented to EC, having reduced it from Shs. 4.5 billion. When EC announced it was giving each side Shs.396 million, this came as a great surprise. The representative of MNRC complained that they could hardly do much with the approved amount apart from setting up an office and meeting administrative expenses, adding that both time and money were inadequate for purposes of having a meaningful referendum exercise.[21] On the part of the multiparty side ('Yes' side), a similar complaint was

[18] Four questions were submitted to the commission for consideration. The movement side represented by Ms. Amanda Magambo submitted only one question and this read "*Should Ugandans today change from the Movement Political system to Multiparty Political system?"* The opposition presented three possible questions and these included:

1. *"Should we change to Multiparty Political system, or retain Movement Political system?"*
2. *"Do you support a change from Movement Political system to multiparty system?"*
3. *"Do you agree to change the Political system so as to allow the people choose Political Parties of their choice to compete for power?"*

On further consultations the Commission reached a final question on June 8th 2005 and which read;
"Do you agree to open up political space to allow those who wish to join different organizations and parties to do so to compete for political power?"

[19] "Forming sides" was the official term used by the Electoral Commission during the referendum.

[20] Ofwono Opondo is Director for Information at the Movement Secretariat and Spokesperson of the newly formed NRM party. The other two are members of Parliament subscribing to the Movement/and the NRM.

[21] Interview Bernard Mfitimukiza, July 16, 2005.

raised, including petitioning the EC for supplementary funding. The MNRC (No side) however, had a view that the 'Yes' side was being aided by the government through government officials like the Resident District Commissioners (DRCs) because that side was toeing the official government line. Considering that cabinet ministers, movement MPs and the executive all campaigned on the side of the 'Yes' side, they had a clear advantage over the "No" side.

On the part of the "No" side, the Senior Presidential Advisor in Charge of Political Affairs, Major Kakooza – Mutale campaigned on the "No" side, (retention of the Movement). Major Mutale had the resources to deploy convoys of vehicles, personnel and the famous "yellow bus" – the official symbol of the Movement. In other words, Major Mutale boosted the "No" side with all trappings of power to the extent that donors, civil society groups and political parties got worried that he carried the 'official' version of the President in the referendum. It was not until the donors complained openly over his campaign activities and questioned the source of his power and resources that President Museveni re-assigned him as Director for Special Duties in the Office of the President, which took him away from direct involvement in the referendum campaign process.

The Referendum Campaign

The overwhelming support to the return to multiparty politics in the July 28 referendum should be attributed to the resolve and determination of the top government officials, including the President, Ministers, MPs, RDCs and local officials to campaign for the "yes" vote.[22] The President made several tours around the country, visiting every district, meeting all district officials and Movement leaders in bid to convince them to endorse a 'yes' vote in the referendum. Ministers, MPs and RDCs were officially funded by both central and district government to canvass for a 'yes' vote. All LC1 Chairpersons (about 45,000 in the whole country) were given funds for "facilitation for mobilisation" by the Electoral Commission. This "facilitation" cost the Commission about Shs.1.4 billion. Although these chairpersons may belong to varying political persuasions, Shs.30,000/- for each chairperson at the village level was perceived as "eating from the national cake", despite the fact that the money came from the Electoral Commission. This was the dominant perception held by both the LC Chairpersons and the voters in all the areas visited by the research/observation teams. In fact, LCII Chairpersons complained that despite their hard work at mobilizing their people to vote the 'tree', the government had "forgotten them"[23].

The 'no' side (seeking to retain the Movement System) was not elaborate in its campaigns. In our interviews with voters in Mukono, Kayunga, Mpigi, Mbarara, Ntungamo and Jinja, we were told that only the "yes" side's agents had been seen campaigning. This was also helped by the "mobilisation" done by most LC1 Chairpersons. In areas where LC1 Chairpersons were not pro-government, the "no" side was not available to canvass vigorously for the "no" vote. Indeed on July 29,

[22] The Permanent Secretary/Secretary to the Treasury, Mr. Chris Kassami issued a circular directing all central and district government Accounting Officers to release funds to facilitate Ministers and RDCs for this purpose.

[23] Interviews with several Local Council Official in Jinja, Mukono, Kayunga, Kampala, Mpigi, Ntungamo and Mbarara districts.

2005 when the EC was receiving observers' comments, the Secretary of the "no" side, Mr. Mohammad Nsereko said that he had crossed to the "yes" side during campaigns. He said his defection to the "yes" side weakened the "no" side. Perhaps, this could have contributed to the absence of agents of the "no" side as we observed at most polling stations on polling day. The failure of the "no" to campaign vigorously partly explains why the "yes" side overwhelmingly led by 92.5% while the "no" side managed to secure 7.5% of all the valid votes cast.

Thus, the visibility of the two sides varied considerably at the various polling stations. Nevertheless, the campaign process became a peaceful exercise due to greater involvement of Police rather than the military personnel. Campaigns adhered to EC set deadline.

Observations on polling day

The referendum question did not provide the voters with clear options for choosing between "*Movement"* and "*Political parties*". As a result, voters interviewed on polling day argued that the symbols designated to represent the two sides had limited meaning and did not represent logical alternatives. Voters indicated that the symbols converged into "one choice", that of supporting the incumbent government. They argued that to vote a "tree symbol" meaning "Yes" meant supporting President Museveni and the government's position. President Museveni had urged voters to vote "yes" because to him, the referendum was not about "Movement" or "parties", it was about "the Movement cleansing itself" by getting rid of "dissenters", "saboteurs," "anarchists," and "traitors". Voters supporting Museveni's argument interpreted the referendum question in this perspective, what Museveni termed locally as "mubaleke bagende" or "let traitors go."

Some of Museveni's supporters saw the other symbol, that of the "house" as representing "doom". Since the house was closed, to choose this would be spell doom like the "Kanungu tragedy" of March 2000 where several hundred followers of a Christian Cult in Uganda were burnt to ashes in their church by their leaders. This painted the choice of the "house" symbol with darkness.

Those who chose to vote for the "house" argued that they were "true Movementists" who did not want the return of political parties. They blamed Museveni and his supporters for betraying the "Movement cause". This line was favoured by the controversial Major Kakooza-Mutale's campaign team, mobilising people by arguing that the return of multipartyism meant the return to chaos and UPC. Others who voted for the "house" argued that Museveni and his government had turned against the Movement supporters' wishes. For Museveni who had castigated multipartyism as "devilish" and "chaotic" for nineteen years, to turn around and support the return of parties, to them signalled a lack of honesty by the leaders of the Movement. Voters holding this view said that Movement supporters voting for the 'tree' had lost a sense of deciding for themselves, and that instead, "Museveni was deciding for them". Our interaction with voters confirmed this view. Most of the interviewees giving their reason to vote the "tree" said that they voted according to what President Museveni told them.

Generally, our observation suggests that polling officials were well trained. All the four polling officials were present at all stations we observed. Similarly, the delivery of election materials was done in time. However, in the polling stations observed, we found no agents of the 'NO' side. Facilitation to polling officials on polling day was poor; polling officials met their own costs of lunch and breakfast even when they were supposed to stay full-time at the polling stations. The EC announced results of the referendum on Saturday July 29, 2005 within 48 hours stipulated by law.

The potential of the Electoral Commission restraining executive power: Lessons from the referendum debate

Funding for the Electoral Commission: The Electoral Commission submitted a budget of Shs. 34 billion to the Ministry of Finance. This budget was reduced to 22 billion. Whether the distributed sum was adequate for the referendum exercise became a subject of debate between civil society, the EC and the government. It was argued that funding for civil society to conduct voter education suffered as a result of inadequate funds. The 2005/06 budget allocates Shs. 30 billion to the presidential, parliamentary and local council elections[24]. It is important that the funds are spent and distributed in a transparent manner to allow stakeholders from the opposition and civil society insight to the actual distribution of EC funds.

Voter education: Partly due to lack of adequate funds but also lack of time for proper planning, voter education was not adequate. Some voters, particularly in the rural areas, were ignorant about the referendum exercise. Our general observation on the issue of voter education is that the EC was unable to adequately execute its constitutional mandate. Most voters interviewed during the voting exercise said they did not understand why the referendum had been held. It is important that voter education for the 2006 elections start as soon as possible and that adequate funding is provided. The relationship between EC, CSOs, opposition parties and LCs must be carefully analysed. Voter education should begin early and EC should be facilitated to carry out intensive and continuous education. CSOs accredited by EC should be provided with adequate funding to carry out voter education.

Autonomy of the Electoral Commission: The reason for holding the referendum was not properly communicated to Ugandans. The President consistently informed the public through the print and electronic media that the referendum was being held to "get rid" of people who had failed to live within the movement principles. The EC did not come out to rectify such mis-information. Partly for this reason, the EC was perceived as bias towards the Executive arm of government.

[24] The total budget is Shs. 44 billion, of which 14 billion is EC administrative costs. In addition to the Shs. 30 billion provided the EC from the Ministry of Finance, an additional shs. 5 billion is contributed from the Partners for Democracy and Governance (PDG) donor group (Source: Simon Osborn, advisor to the PDG, October 23, 2005).

3: Conclusion

The 28 July 2005 referendum may claim credence as the most peaceful electoral exercise Uganda has experienced in its recent political history. This may be attributed to the fact that the referendum was neither contentious nor controversial as both the government and the opposition groups agreed that the issue of opening up political space was timely and necessary. Further, unlike in the previous post – 1986 elections, there was no notable direct involvement of the military in the whole electoral process. On the eve of the referendum, the Inspector General of Police assured that the Police would be fully in charge of security during the referendum. During our observation, we found that central government and local administrations police were in charge, of all polling stations; and indeed no major incidents of breach of peace were reported in any part of the country. This is an important political indicator, contrary to the previously held views by the government that the Police had no capacity to guarantee peace during elections, hence, the extensive involvement of the military in the past elections.

However, the most critical issue of the referendum exercise was the fact that the reason for holding the referendum was not properly communicated to the voters. The President consistently informed the public through the print and electronic media that the referendum was being held to "get rid" of people who had failed to live within the movement principles. Neither the EC, nor parliament or the political parties were able to rectify the mis-information. The fact that Movement leaders who had consistently spoken against multipartyism changed their stand in a short time created confusion within the population. Contrary messages and activities by the President and some of his close advisors like Major Roland Kakooza Mutale who asked people to vote for the Movement also complicated the decisions which Ugandans had to make with regard to the political system of their choice.

Thus, the generally peaceful atmosphere could also be attributed to voters' indifference towards the referendum and the lack of serious campaign by the sides in the referendum. For most of the 'Yes" voters as well as 'No' voters at the grassroots, the question was whether the vote was affecting President Museveni's incumbency or not. Many voters in the areas covered by the research/observation teams, who were interviewed, asked a common question: "If President Museveni is still in the Chair, what is the problem? What are we voting for?" Others in these areas said they were voting the "tree" because "Museveni told them."

3.1 The referendum and the constitutional amendment process

Against the initial vote of parliament, and the views of the opposition parties, civil society and the international donor community, the NRM government conucted a referendum to decide on the issue of a return to multiparty politics. Other, and more controversial, issues of the constitutional amendment process were left for a decision in the parliament. On September 26, 2005, the President assented to the constitutional (Amendment) Bill, 2005, as passed by Parliament. Article 105 (2) lifts the limit on Presidential terms of office, which means that President Museveni is eligible for re-election in the 2006 Presidential elections. The Amendment Bill also stipulates

- that civil servants and local government officials wishing to contest for Parliamentary elections resign three months before election nominations
- that Presidential, Parliamentary elections and Local Council five (L.C.5) elections be held on the same day
- that Kampala city and its boundaries to be established (demarcated) by Parliament
- that persons convicted of crimes within seven years before an election are ineligible to stand for Presidential (and Parliamentary) elections
- that MP's expelled by their parties loose their seats (hence calling for by-elections)
- the creation of office of the leader of the opposition in Parliament
- the constitutionalisation of office of the prime minister and Deputy Attorney-General

However, a number of uncertainties about the rules of the electoral contests remain. The status of special representation and affirmative action seats is an issue still not resolved. Furthermore, while the Parliament passed Political Parties and Other Organisations Bill 2005 on October 19, the status of the Movement system vis-à-vis the political parties remain uncertain. The Attorney General has declared that the Movement system will remain until after the 2006 elections. This interpretation of the constitutional amendment process will clearly affect the playing field between the contending parties. The referendum exercise showed that the executive arm of government was able to exert its influence on the exercise. As a result of the observed inability of parliament, political parties, courts, and the electoral management body (Electoral Commission of Uganda) to restrain executive power in the referendum process, a number of challenges concerning the prospects of a free and fair electoral process in March 2006 remain.