

## Administering Uganda's 2006 Multiparty Elections: The Role of the Electoral Commission

Sabiti Makara  
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## Introduction

Elections are central to the democratisation process and serve as instruments for delegating authority from citizens to representatives. For this authority to be effectively delegated, the electoral process must be perceived to be fair by the voters, parties, candidates, and civil society (Elklit & Reynolds 2002). The legitimacy of the electoral process hinges on the perception among voters and candidates that the process has been conducted in a way that does not, in advance, ensure a certain outcome (Przeworski 1991). To ensure legitimacy, the electoral process should therefore be regulated by constitutional rules and special legislation as well as by cultural norms developed to govern the behaviour of the actors. Key factors in achieving this are the quality of the electoral process, the capacity of the administrative unit mandated to administer the elections, and this unit's autonomy from political forces. In this paper we focus on the role of the Uganda Electoral Commission (EC) in administering the 2006 presidential and parliamentary elections in Uganda from the period immediately after the polling in the previous election through the post-election process.<sup>1</sup>

The 2006 elections were the first multi-party elections in Uganda since 1980. In a context of volatile structures, complex and shifting political processes, we find that nuanced assessments of electoral administration necessitate a combination of analytical perspectives. We combine three analytical perspectives. We refer to established international standards and assess the role of the EC following the key phases of the election cycle, the pre-election, election and post-election stages of the 2006 elections. Second, we compare the conduct of the 2006 elections to the administration of the 2001 elections. Third, we base our assessment of the administration of the 2006 elections on the perceptions of stakeholders collected through personal observations and key informant interviews with candidates from various parties, party administrators, representatives of the EC, representatives of civil society, and the international donor community in the period February 2004 to May 2006.

We find that the current EC in a number of ways improved election management in Uganda. A reduction in overt acts of violence from the 2001 elections was secured through improved communication between the commission and security agencies. The establishment of mechanisms to handle complaints through the national complaints desks and national inter-party liaison offices, which were brought down to the district level, facilitated communication between various stakeholders and reduced conflict. The creation of a computerised voter registry, a marked increase in the number of polling stations and transparent voting procedures suggest that across central elements of the election cycle, electoral administration improved from previous elections. The EC decision to nominate Forum for Democratic Change's (FDC) presidential candidate, Dr. Kizza Besigye, against the explicit advice of the Attorney General suggested to the stakeholders that the EC was able and at times willing to assert its independence and autonomy.

However, the administration of the 2006 elections also witnessed considerable shortcomings and irregularities. Considering the fact that these were the first multi-party elections in Uganda since 1980 and the historical tensions associated with multi-party politics, the process of voter education was inadequate. The campaign process further indicated that the EC was unable to check against incumbency advantages and breaches of electoral rules and regulations. Underlining the observed breaches from national and international election standards, the Supreme Court ruling (6 April, 2006) on the Besigye vs Museveni case that sought to nullify the presidential election results concluded that inadequate electoral administration undermined the principles of equal suffrage,

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<sup>1</sup> The parliamentary, presidential and regional elections for women representatives were held on 23 February 2006. Local government elections (LC V) were held on 2 March 2006 and LC III elections were held on 11 March 2006.



transparency of the vote, and secrecy of the ballot. The fact that a year after the elections and after the inauguration of the 8<sup>th</sup> Parliament the EC had failed to publish the parliamentary election results underscored the seriousness of the challenge of administering elections in Uganda. The EC is required by law to gazette the election outcome. However, the results by polling stations have not been released. As a result, candidates have petitioned courts to get parliamentary and Local Council (LC) elections overturned while the official results by polling station have not been made available.

The analysis proceeds as follows: In the next section our framework for analysing the 2006 elections is presented. Providing a comparative background, section three summarises the main features of electoral governance in the 2001 elections. Section four analyses the administration of the 2006 elections through six phases of the electoral cycle: The role of the EC in establishing the electoral rules for the 2006 multi-party contests, the registration of voters, voter education, the nomination of candidates and parties, the campaign process, and the voting and tallying of the votes. A concluding section summarises the main findings.

## Assessing elections in transitional democracies: Distinguishing capacity from intent

Analysing electoral processes in new and transitional democracies raises a number of questions: Should electoral processes be judged against ideal norms and standards of an electoral process? What norms should be applied? And, when breaches of ideal standards of free and fair electoral processes are observed, are the deficiencies indications of limited capacity or are the observed deviations intentional, suggesting the unwillingness of incumbents to allow for a free and open electoral contest? Based in the literature on electoral governance, three analytical perspectives can be identified: i) a focus on international norms and standards; ii) comparisons of the quality of elections from one election to the next iii) judgements of the quality of elections on stakeholder perceptions.

First, national and international election observer missions as well academic assessments of electoral processes increasingly judge electoral administration according to international norms and standards that have developed in inter-governmental and multi-lateral forums over the past two decades. These standards include, in addition to fair conduct of the balloting and counting, opportunities for political parties to compete; equitable access to media; impartial electoral administration; fair rules; a political environment free of intimidation; and just resolution of election-related grievances (Bjornlund 2004). When electoral processes meet these standards, they are referred to as free and fair. However, political actors, civil society, local and international monitors and donors have often failed to acknowledge that electoral processes begin long before elections actually take place. Underscoring the time dimension of an electoral process, scholars increasingly argue that the electoral cycle begins immediately after the polling in the previous election (Elklit 1999, Elklit & Reynolds 2002). Thus, from an emphasis on election-day events, increasingly international norms have developed that recognise elections as long term processes that involve a number of steps. These steps range from the pre-election stages of rules setting and registration to elections and post-election settlement of conflicts as evidenced in the election cycle presented in chapter one.

While emerging international norms and standards recognise the long term nature of electoral processes, the free and fair standards of elections suggest a dichotomy where elections either pass or fail the test of legitimacy. However, increasingly scholars have emphasised that elections are political processes that should be judged in a broader context of stakeholders and political cleavages in society (Burnell, 2002; Carothers, 2002; Elklit & Reynolds, 2002). As a result, electoral

administration should rather be analysed along a continuum (Bjornlund 2004). In practice, it is difficult to distinguish the breaches from ideal norms and standards that are related to capacity and the intentional failures to accord to established principles of a free and fair election (Carothers 2002, Burnell 2002).

In order to contextualise elections and to enable a distinction between capacity and intent, a second trend has emerged within studies of electoral governance, whereby the quality of electoral administration is compared over time (Bratton & Posner 1999, Rakner & Svåsand 2005, 2005b Tollenare 2005). As the 2006 elections in Uganda were the first multi-party elections since 1980, comparisons to former electoral practices are only partially relevant. Nevertheless, the 2001 elections were also administered by an independent electoral commission as established by the 1995 constitution. The 2001 presidential elections were contested by more than one candidate and were also highly competitive. Comparing the EC's administration of the 2006 elections to the 2001 electoral experience, therefore, provides a benchmark against which to establish whether the administrative performance improved.

A focus on national and international norms and the comparison of electoral governance over time emphasises the quality of electoral processes. While the quality of electoral administration can be expected to affect both the electoral outcome and the perceived legitimacy of the elections, scholars have recently emphasised that elections should be assessed according to how the process is perceived by stakeholders (Hartlyn *et al.* 2003).

A third qualitative measurement of electoral processes can therefore be distinguished; one that focuses on stakeholders' perceptions. Key informant interviews with stakeholders from the opposition, the incumbent, electoral management, and civil society provide important insights as to how elections are perceived and thus the legitimacy of the exercise. But judgements about political processes will be subjective, and particularly in uncertain and weakly institutionalised regimes, stakeholder perceptions are influenced by limited trust in the impartiality of administration. We find that stakeholder perceptions add valuable insights that complement the two perspectives presented above when these perceptions are collected at various intervals throughout the electoral cycle and when the analysis is based on a wide selection of stakeholders.

As a result, our analysis of the administration of the 2006 electoral process in Uganda assesses the electoral process over an 18 month period in order to include the central elements of the pre-election, election and post-election period. We collected material from various government agencies, the EC, national and international NGOs, aid agencies and national newspapers. In addition, we carried out key informant interviews with stakeholders from the opposition parties, the NRM government, the EC, civil society and the international donor community during a period of 18 months. Before presenting these empirical findings, we provide a brief discussion of the 2001 elections as a comparative reference point.

## Reflections on the 2001 presidential and parliamentary elections

The 2001 elections were among the most controversial and contested elections in Uganda's political history. Rivalling with the 1980 multi-party elections, these elections were violent, poorly managed and the outcomes were questioned by the opposition (Bwengye 1985, Barya 2006). Unlike the 1980 elections, the 2001 elections were held under the movement system, where the state and the ruling National Resistance Movement (NRM) operated in a fused manner. As elections were held under the principle of individual merit, where candidates stood as individuals rather than members of

political parties, the management of elections was originally perceived to be similar to the 1996 elections. However, in 2001 a candidate from within the NRM, Dr. Kizza Besigye opted to challenge Museveni. After an electoral process marked by numerous incidents of violence and the deployment of security forces, Museveni was declared winner with 69 per cent of the vote. Analyses of the 2001 elections suggest that the EC's handling of the issues of voter registration, voter education, the processing of election results and budget control was weak and biased towards the NRM and the incumbent president. This in turn affected the legitimacy of the electoral process (NemGroup 2001, Petersen 2001a, 2001b, Makara *et al.* 2003).

Besigye later challenged the outcome of the 2001 elections in court. The Supreme Court ruling on the 2001 presidential elections questioned the ability of the EC to administer elections in a competent and impartial manner (Tumwine-Mukubwa 2004). According to the court ruling, the failure of the EC to create an updated voters' register violated the principles of freedom of vote, fairness and transparency. The judgement also concurred with the petitioner that multiple voting occurred at several polling stations and that there was evidence of pre-ticked ballot papers and extensive harassment of the petitioner's supporters.

On the whole, Justice Arthur Oder, one of the trial judges observed: "I find that EC did a very poor job of carrying out its responsibility under Section 18 of the Act. The standard of incompetence was high" (Parliamentary Select Committee Report 2002). While all judges concurred that there were extensive election malpractices, three of the five argued that these malpractices were not substantial to cause annulment of the election outcome. Although the petitioner lost the case, it revealed that the state of election management in Uganda had not significantly improved since 1980. The report of the parliamentary select committee on election violence (2002) accused senior NRM politicians of interfering in the 2001 electoral process. The EC was further accused of mismanagement of public funds and for being involved in business contrary to the leadership code (EUI 2002). In response to the charges of electoral mismanagement by the Inspector General of Government (IGG), President Museveni in July 2002 dismissed the EC's chairman and five of the six commissioners. A new commission was appointed in November 2002.

## Administering the 2006 presidential and parliamentary elections

The new commission appointed by the president in 2002 inherited a tainted image left by its predecessors. The general public as well as political stakeholders perceived the EC as an incompetent and non-transparent organisation. The lack of confidence in the ability of the EC to work as an independent institution became central to debates about opening political space for multi-party contest.<sup>2</sup> Stakeholders from the various political parties and civil society related their lack of trust in the autonomy and impartiality of the EC to two main factors. First, the poor conduct of the former EC in the 2001 elections. Second, the EC was regarded as a "movement commission." By the time of the 2006 elections, constitutionally, the movement system of government had been replaced by a multi-party system. But this constitutional change was not reflected in the composition of the EC. The EC chairman and government representatives argued that the composition of EC should not be regarded as a problem of legitimacy as the EC commissioners were selected on a non-partisan basis.<sup>3</sup> Nevertheless, the lack of representativeness was a recurrent feature in the pre-election debates between the EC and political stakeholders. The new EC also faced the challenge of ensuring a conducive environment for elections as violence had been rampant

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<sup>2</sup> Personal interviews with members of the Democratic Party (DP) and UPC (Uganda Peoples Congress) 4 February, 2005. The Chairman of the Electoral Commission, Badru Kiggundu, also emphasised that the EC had an immense duty to "clean" this image by cooperating with government, the police and other stakeholders in order to ensure that the elections are properly secured (Interview 8 February 2005, Kampala).

<sup>3</sup> Personal interview, Chairman of the EC, Dr Badru Kiggundu, Kampala, 8 February, 2005.

in the 2001 elections. In addition, the EC inherited operational challenges as the former commission had failed to produce a reliable, computerised voters' register.

According to the Electoral Commission Act 1997 (chapter five of the constitution of Uganda), the EC has the authority and independence as the organisation responsible for conducting and managing elections in Uganda. In terms of its appointment and constitution, the EC comprises seven persons appointed by the president and approved by parliament for seven-year terms. The EC chairperson and commissioners are formally vetted by parliament, assisted by a secretariat and staff members that are appointed by the Public Service Commission. The EC is tasked to oversee the electoral process through the processes of voter registration, the nomination of candidates and parties, the campaign process, and finally the voting and tallying of ballots. The EC is also responsible for promoting public awareness through voter education. Electoral administration in Uganda is carried out at three principal administrative levels. Below the EC, returning officers in each of the districts (69 at the time of the 2006 elections) are appointed to implement the EC's functions at the district level. Polling stations (19,744 in the 2006 elections) are administered by a presiding officer assisted by polling staff.

### *The role of the EC in the setting of the 2006 transitional legislative framework*

According to the constitution of Uganda, the EC is mandated to make subsidiary legislations and election regulations and guidelines. Whenever relevant laws were tabled in parliament, the EC's legal department gave its submission to parliament. Thereafter, the EC would issue guidelines and regulations in accordance with the relevant laws passed by parliament. The EC argued for an adoption of a model similar to the one of the Ghana electoral commission, where the commission has legislative powers to act on breaches to the electoral code of conduct.<sup>4</sup> However, attempts to convince the government to allow the EC full legislative powers over electoral laws were not successful. As a result, the legal framework provided the EC with limited means to act upon cases of violation of electoral laws.

The late passage of the election legislation negatively affected the administration of the 2006 presidential and parliamentary elections. The president assented to most electoral laws in November and December 2005 for implementation in the period between December 2005 and March 2006. The Referendum and other Provisions Act was passed in May 2005 and the referendum was conducted on 28 July, 2005. The Political Parties and Organisations Act and the Presidential Elections Act were assented to on 16 November, 2005. Campaign guidelines were issued on 1 December, 2005 and the campaigns started on 19 December, 2005. The Local Government (amendment) Act was assented to on 4 December, 2005 to be utilised in the February 2006 elections. The time constraints resulting from the late legislation constrained the establishment of the EC's operational structures at all levels. Before nominations, the EC sought to develop codes of conduct for security and for political parties and organisations. In consultations with all the political parties registered, the EC finally reached a conclusion on the code of conduct in November 2005. The code was to be presented to the attorney general and subsequently to parliament for approval. However, parliament failed to pass the law. As a result, inter-party liaison committees at national, district and sub-county levels were formed on the basis of the draft code of conduct. At district level, the district complaints desk and systems officers acted as secretaries to the district election liaison committees.

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<sup>4</sup> Ibid.

### *Voter registration*

The voters' register is a centrepiece of election management. In 2000 the EC undertook to make a photograph-bearing voters' register in preparation for the 2001 elections. This could not be finalised and voters were allowed to vote without cards and photographs on the register. The register, the basis on which more than 11 million people voted, was criticised as inflated with multiple registrations, ghost voters, the underage and non-citizens, opening for possibilities of vote rigging (DEMGROUP 2005). As a result, the voter register of 2001 was set aside and a fresh voters' register was created before the 2005 referendum and 2006 presidential and parliamentary elections. In March and April 2005, the EC carried out a voters' register update exercise where 680,611 new voters were registered, bringing the number of registered voters to 8.52 million. The EC displayed the voters' register between 24 May and 13 June, 2005. By the time of the 28 July, 2005 referendum, 8.54 million voters were registered, 47 per cent of whom reportedly turned up to vote (Makara *et al.* 2005).

After the referendum, the EC initiated a new registration exercise. In the 30 days from 29 September to 28 October, 2005, it carried out what was termed "update of the photograph-bearing voters' register and issuance of photograph-bearing voters' cards." The voter registration process was scheduled to close on 28 October, 2005 but with the return of the FDC leader Kizza Besigye from exile in South Africa, many voters, especially urban residents, wanted last-minute registration. Public demands led to an extra two days of registration and by the end of this exercise more than two million new voters had registered, bringing the total to 10.6 million. The EC chairman complained about Ugandans who waited to register until the last minute, and declined further extension by referring to the lack of funds and the fixed timetable for the elections. Opposition leaders complained that their prospective voters were not given sufficient time to register and blamed the EC for being hesitant towards extensions only because the last-minute voters were likely to be supporters of the opposition parties.

The cleaning of the voters register also turned out to be controversial. The register was displayed between 22 December, 2005 and 11 January, 2006 and voters were urged to confirm their polling stations, verify their particulars, report cases of missing photographs, and pick their voter cards. They were also asked to report cases of the dead, non-citizens, the underage (below 18 years), those who migrated or transferred to other parishes and ghost voters. According the EC, the register had 10,606,402 voters at the start of the display exercise. After deletions recommended by parish tribunals, the number decreased to 10,450,788.

Two sets of complaints arose from the exercise. Official candidates of the ruling party complained that some people had registered in areas where they did not reside. Opposition parties complained that many of their supporters who registered towards the end of the registration exercise were not on the voter register, or had their particulars mismatched and/or their photographs missing. Another weakness of the registration process was that it was carried out by parish tribunals. As the parish chief is part of the movement structure, this person would often be a supporter of the NRM-Organisation (NRM-O). This point was raised by some in the opposition and included in Besigye's petition against the outcome of the presidential elections. Besigye claimed that opposition supporters constituted a majority of those deleted from the register (*Sunday Monitor* 26 February, 2006). The EC argued, however, that it was not capable, financially or organisationally, to review the work of the parish tribunals. When such complaints were forwarded to the EC, the chairman blamed it on unprofessional conduct by the staff:

"I can give you an example where somebody was reported dead, yet on the ground, we found that the person was alive. Then you ask yourself whatever happened to the ethical values of officers who were entrusted with this work...That is the system we have in place; the tribunal has a number

of officers, we can't disband it unless there is a criminal element. What do I do? My hands are tied". (*Daily Monitor* 5 February, 2006).

When it became clear that many voters would not be issued with cards in time, the EC announced that a person could vote without a card as long as one was on the register and could be identified by local residents. This decision implied that the EC was being flexible. But as the decision was taken late in the process, many voters and polling officials had not comprehended it. Another set of problems was caused by the late gazetting of new polling stations to which voters were moved after registration. The EC was concerned that in some places the polling stations would be too congested for the voting to end in time. As a result, 700 new polling stations were created on the eve of elections. A 122-page election supplement in the main newspapers financed by the international donor community showing the location of the in total 2,480 polling stations was intended to inform the voters. Indicating a lack of trust in the electoral system, the new polling stations became a point of contention with opposition spokespeople alleging that they could have been intended to give unfair advantage to the ruling party (*Daily Monitor* 12 December 2005).

The final voter registration of 2006 showed that of the 10,450,788 registered voters, 6,880,484 (65.9 per cent) had cast their ballots in the February 23, 2006 presidential and parliamentary elections. Thus, despite the EC's effort to enhance transparency and effectiveness of the voter registration process, the 2006 registration exercise may have denied thousands of people their right to vote. Voters were often told that their particulars were missing at the station where they had registered and had to queue up at other stations in hopes of finding their names. Many never did. Carrying a voter's card was not enough to be allowed to vote. The voter's particulars had to be in the register. The poor and insufficient registration process was cited in Besigye presidential election petition. The courts found that the EC had failed to comply with the provisions in the Electoral Commission Act in part through a poor registration process. The main opposition party, the FDC, blamed the poor registration process on the partiality of the EC and the parish tribunals. Both domestic and international observers remarked that the significant number of names missing from the register affected the fairness of the elections, but they appeared to regard this as a problem of capacity rather than intent on the part of the EC (EU 2006, Petersen 2006, DEMGroup 2006).

### *Voter education*

Due to experiences with previous elections, the older generation tended to associate multi-party politics with violence and conflict. Added to the insecurity and uncertainty, the 2006 elections were also the first tripartite elections in Uganda; for the first time, presidential, parliamentary and women representative elections were held at the same time. Against this background, adequate voter education was essential both before the 2005 referendum and the 2006 elections. Nevertheless, due to the delayed legislative process and late funding, voter education only began two months before the elections and at the local levels it started a week before polling day. The late and inadequate voter education may in part explain the relatively high number of 300,000 invalid votes (four per cent of all the votes cast). The voter turnout of 65.8 per cent – which means that 3.5 million registered voters did not cast their votes – may in part be explained by limited voter education.

Prior to the 2005 referendum, the EC employed elected local council (LC) officials to conduct voter and civic education. However, this was criticised by most stakeholders because the LC officials were perceived to be part of the movement apparatus (Makara *et al.* 2005). The main bulk of the funding for voter education was obtained from the election support unit financed by the donors participating in the programme for democracy and good governance. Local NGOs also contributed to voter education but argued that the funding received was insufficient for comprehensive voter

education programmes.<sup>5</sup> The national civic education programme by the Uganda Human Rights Commission only started in November 2005, a few months before the elections. The International Republican Institute (IRI) conducted a survey that concluded that by the end of January 2006, 47 per cent of Ugandan voters were not aware that the elections were to take place on 23 February, 2006. Even then, only 33 per cent were aware that presidential and parliamentary elections would take place concurrently (*New Vision* 10 February 2006).

The EC made commendable but late efforts to correct the situation through the electronic and print media. The EC printed voter education materials, made radio announcements and held meetings with local leaders, political party representatives and the press, who would then be requested to pass on the information to the public. Generally, these came too late and could not substitute for a longer-term approach. Concurring with the view of civil society, EC representatives held that inadequate funding was the main challenge to voter education. The EC commissioners suggested in interviews that the withdrawal of donor funding linked to political developments outside the control of the EC affected voter education. According to the commissioners, some funding for voter education arrived after the elections, and lack of predictability of donor funding hampered the process.<sup>6</sup>

### *Nomination of candidates*

From October 2005, the parties held conferences to elect new office bearers and candidates. Nomination dates for presidential candidates were 14-15 December, 2005 while parliamentary candidates were nominated on 12-13 January, 2006. According to the laws of Uganda, nominees had to be Ugandan citizens of good standing, with academic qualifications of Advanced Level or its equivalent), and had to resign from public positions prior to nomination.<sup>7</sup> Presidential nominees had to present sworn nomination papers signed by 100 supporters in each of at least two-thirds of the districts. They also had to pay a nomination fee of eight million shillings.<sup>8</sup>

### Nomination of presidential candidates

Presidential candidates were nominated 14-15 December, 2005 at Mandela National Stadium in Namboole. To prevent disruption of the exercise, convoys escorting candidates towards the nomination venue were not allowed. Only 20 people were allowed to enter with each candidate, and they had to have the invitation cards issued by the EC. Only two vehicles bearing stickers issued by the EC were allowed to carry the nomination entourage (*Daily Monitor* 10 December 2005, *New Vision* 9 December 2005). Six candidates were nominated: Yoweri Kaguta Museveni (NRM), Dr. Kizza Besigye (FDC), Miria Kalule Obote (UPC), John Ssebaana Kizito (DP), Al Hajji Nasser Ntege Sebaggala (Independent, and later withdrew), and Dr. Abed Bwanika (Independent).

The registration of presidential candidates put the EC's independence to a test. Initially, the matter was presented as a technical question: whether a candidate had to be physically present to be nominated. But the political interests and implications were clear. The AG, in his official advice to the EC, argued that Dr. Besigye had refused to renounce rebellion and was in prison on a serious crime of treason. His nomination would be "tainted with illegalities" and should not proceed. On 7

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<sup>5</sup> Personal interview, Byamukama, Director of Education, Uganda Human Rights Commission, 17 February, 2006.

<sup>6</sup> Personal interviews, Chairman of the EC, Dr Kiggundu, 26 May, 2006 and Vice Chairperson of the EC, Sr. Margaret Magoba, 29 May, 2006.

<sup>7</sup> Under the law, parliamentarians have to resign 90 days prior to nomination. Traditional leaders cannot stand for elected office. (Const. S 102; Presidential Elections Act, S. 4).

<sup>8</sup> Parliamentary nominees needed 10 signatures from their district and had to pay a 10 currency point fee (or Shs 200,000/=).

December, 2005 the AG wrote the EC, stating that: "Irrespective of the fact that Besigye was not yet proven guilty, his nomination would pause legal complications to the Commission, if after nomination, he is convicted of treason." The six-page letter from the AG was copied to the minister of internal affairs, the director of public prosecutions, and the director of prisons. The AG clarified, four days later, that his position on not nominating Besigye was not final (*Daily Monitor* 12 December 2005). He maintained that it was not his decision but that of the EC to nominate or not nominate Dr. Besigye. The EC's legal department thereafter determined that Dr. Besigye was nominable, thus ignoring the AG's position (*Daily Monitor* 12 December 2005).

Information gathered through key informant interviews with EC commissioners suggests that the EC was under pressure from State House officials and that President Museveni had met the EC chairman and asked him *not* to nominate Dr. Besigye. Interestingly, while the 12 December 2005 statement seemed an independent stand of the EC against the government's position expressed by the AG, President Museveni disowned the AG saying: "Regarding criminality, you cannot be disqualified if you have not been convicted" (*Daily Monitor* 14 December 2005). Consequently, Dr. Besigye was nominated on 14 December 2005.

### Nomination of parliamentary candidates

Parliamentary candidates were nominated on 12-13 January, 2006. The EC applied the legal requirements for nominations as spelt out in the laws. Failure to comply with these requirements led to disqualifications of some aspirants. Parliamentary nominations were handled at the district level by returning officers. Where the candidates nominated did not meet the requirements stipulated in the law, petitions seeking their disqualification were filed in the High Court. Several challenges arose over the nomination of parliamentary candidates, most of them disputing the candidates' academic credentials. Like other election-related complaints arising in the pre-election period, these were decided by the EC's complaints handling mechanism, except where they raised constitutional issues or serious criminal matters. The academic credentials of the first lady, Janet Museveni, were also challenged, but the EC dismissed the petition (*New Vision* 10 February 2006).

In summary, the EC's ability to assert itself against executive pressure and nominate Besigye while in detention increased its credibility with other stakeholders in the electoral process. Nevertheless, it cannot be argued that the various contending parties had equal opportunities in the process of nominating their candidates. Apart from NRM, the other parties were delayed in the operation until the July 2005 referendum that ushered in the multi-party political dispensation. Until the passing of the Political Parties and Organisations Act (2005), following the July 2005 referendum, political parties were not allowed to open branches or operate outside Kampala whereas NRM could utilise the movement structures established at every level from parish to the district (in most cases also doubling as LC structures). As a result, no opposition party was able to nominate parliamentary candidates in all constituencies.

### *Campaigning in the 2006 elections*

After the closure of the nominations, the campaigns commenced on 16 December, 2005 and were scheduled to end on 21 February, 2006. The parliamentary campaigns started on 14 January, 2006 and were also scheduled to end on 21 February, 2006. The EC issued campaign guidelines for the presidential elections on 1 December, 2005. Guidelines for local government council elections were released on 16 December, 2005 and for the parliamentary elections on 4 January, 2006. The guidelines stated that no candidate could hold a public meeting except in accordance with a programme of meetings submitted by the candidate to the EC. A "final national presidential campaign programme" was launched on the EC website in December 2005. The guidelines also guaranteed the security of the candidates. The EC issued a directive that all parties and candidates



should conduct their campaigns between 7 am and 6 pm for security reasons. However, generally, this directive was violated by all candidates, and according to election observers and newspaper reports, the NRM's Yoweri Museveni was the most frequent offender (DEMGROUP 2006b).

The election campaigns started in an atmosphere of distrust among stakeholders and the public. Generally, four presidential candidates were able to conduct their campaigns without any hindrances. However, the FDC's candidate (Besigye) was forced to divide his time between court hearings and campaigns. The pre-election and campaign periods were dominated by Besigye's appearances in the High Court and in the General Court Martial on criminal charges brought against him by the state. The period when Besigye was in prison and to a lesser extent after his release on 2 January, 1996 was characterised by a polarised political climate. Besigye's release provided a boost to FDC's campaign and the party drew large support especially in urban centres. The rallies were in some cases prevented from taking place broken up by the police.

Uganda Journalists Safety Committee (UJSC), as part of the DEMGROUP election monitoring programme, launched a report on state media coverage of the 2006 elections in January 2006 (UJSC 2006). The report covered print and electronic media, both state-owned and private. The analysis indicated that the leading daily newspapers, both the state-owned and the private ones, gave more or less equal coverage to the opposition and to the incumbent. However, the state-owned Uganda Broadcasting Corporation's (UBC) TV coverage was imbalanced with 88.5 per cent of the prime news time devoted to the NRM and its presidential candidate. UBC Radio's news coverage was also skewed in favour of the incumbent with 61 per cent. The analysis of private radio stations showed an approximately equal coverage of the opposition and the incumbent. The EC did little to address the imbalances in media coverage in the state media (Human Rights Watch, 2006). Similarly, the EC did not address the issue of unequal access to campaign resources between the incumbent and the opposition.

Section 27 (1) of the Presidential Elections Act prohibits all candidates from using public resources for the purpose of campaigning. But the act exempts the incumbent regarding the use of those resources ordinarily attached to his office. The act requires the minister of public service to lay before parliament the resources in question. On 2 January, 2006, the entitlements of the president were presented to the EC, suggesting a policy of transparency in the use of public resources. However, the statement did not provide a detailed account of government uses of public funds. Thus, although the NRM presidential candidate as well as the party's parliamentary candidates was better financed than those of other parties, their source of funding was never declared (*Daily Monitor* 4 May 2006).

According to section 68 (1) of the Parliamentary Elections Act, it is an offence to influence another person to vote or refrain from voting through the provision of money or gifts. However, instances of candidates and parties offering gifts and food at centres of worship and other social functions were reported in the Ugandan press and by the civil society organisations monitoring the elections. The Coalition for Election Finance Monitoring found that, generally, the NRM candidates had more financial and material resources than did the opposition parties and candidates (CEFIM 2006). This finding is supported by observations in Ntungamo district where the NRM's campaigns were supported by volunteer groups known as *Nyekundiire*. One of the volunteers revealed that the funding for their activities came from Kampala-based business people who financed the mobilisation teams. Interviews with volunteers suggested that the NRM had approximately 2000 volunteers in Ntungamo district. Each LC 1 village had a committee of five *Nyekundiire* volunteers and the committees convened meetings in the villages and provided the residents with lunch, soft drinks and "some logistics." Informal conversations with residents at various trading centres revealed that villagers were offered approximately Shs 1,000 by the *Nyekundiire* committee members. Each LC1 (village) received a minimum of Shs 100,000 that was distributed to the local

supporters. The local supporters, on receiving the financial gifts from the NRM campaigners, were advised to vote in “chain” – that is, to vote the NRM candidates for president, parliament, and district woman representative (Makara and Rakner 2006).

Although public servants who wished to engage in partisan politics were required by law to resign their jobs in government, District Resident Commissioners (RDCs) and District Security Officers (DSOs) were observed to be involved in campaigning for President Museveni. The Uganda press revealed that several public officers especially from the quasi-governmental organisations like the Uganda Revenue Authority (URA) took leave to go to the villages to campaign for Museveni. Suggesting a bias in the practices, a driver with Soroti district administration who flashed a V-sign of FDC was interdicted for being partisan (*Daily Monitor* 29 January 2006).

In summary, the campaign process was characterised by instances of violence and intimidation between NRM and FDC supporters throughout Uganda and reported in the Uganda press. The marked presence of security forces and harassment of the main opposition candidate also affected the campaign process. While the intimidation through the use of the military and the deaths of participants in rallies were serious incidences, the level of overt violence and intimidation was reported to be lower in the 2006 campaigns than it was in the 2001 elections. In terms of campaign finances, the 2006 campaign process displayed an imbalance between the incumbent and the opposition. The EC had limited institutional means of handling such cases of election malpractices. The official campaign period of two months was short. It gave the NRM an advantage having been in power for 20 years, while the opposition parties had only been free to mobilise support since after the 2005 referendum.

### *The voting, counting and tallying of votes*

On election day 23 February 2006, the voters cast their votes for president, directly elected MPs and women district representatives.<sup>9</sup> The polling stations were gazetted by the EC, and in most cases voting took place in open air. Polling officials arranged stations outside schools or public buildings and the polling stations were supposed to be open from 7 am until 5 pm. No polling stations were located inside army barracks, hospitals or prisons. At each polling station there were presiding officers, three assistants and an election constable. In addition, two agents for each candidate or party were allowed to be present. Polling observers from the DEMGROUP were also present at most polling stations. The EC initially had announced that the order of counting and tallying votes cast at any polling stations was to begin with those for parliamentary candidates and end with those of the presidential candidates. The EC also announced that representatives of parties and candidates would not be allowed in the computer tally room. The opposition reacted strongly to the suggested procedures, arguing that tallying of presidential votes should precede counting of the parliamentary ballots. Further, it was argued that unless the EC allowed representatives of political parties/candidates in the tally centre, figures could be manipulated. Indicating the consultative nature of the process, the arguments raised by the opposition through the multi-party liaison committee meetings were adhered to. The counting procedure was reversed and presidential ballots were counted first. The EC allowed the representatives of all political parties/candidates to witness the tallying exercise.

The polling process was generally peaceful and orderly. Overall, the layout of the polling stations followed the design suggested by the EC. Most voters seemed to know how to vote. Apart from minor logistical problems in some locations, the main problem was the failure by a number of

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<sup>9</sup> Our report on election day events is based on Demgroup's election report (based on local observers as well as international election observer reports), and our own election observations in five districts of Uganda, (Hoima, Masaka, Ntungamo, Mbarara and Soroti).

voters to find their names on the voter register, despite the fact that they carried voter registration cards. An extreme case was that of Kabonero polling station in Masaka district where 150 (27 per cent) of the 553 registered voters were turned away (Gloppen *et al.* 2006b). At most polling stations agents of the two main contesting parties – the NRM and the FDC – were present. Most of the smaller parties and the independent candidates did not have agents at most polling stations. General security was in the hands of the police and the measures taken seemed adequate. Election constables at polling stations were drawn from the regular police force, the local administrative police and the prison service. Although a few polling stations had no election constables for parts of the polling day, this was not reported as a general problem. In some areas where army barracks were located close to polling stations, such as at Kyamugashe Hill in Ntungamo district and in Soroti municipality, this might possibly have had an intimidating effect. In Hoima, cars with heavily armed police were observed patrolling the town at night. Similarly, in Soroti town two armoured cars with mounted machine guns manned by so-called Black Mamba were seen moving about the town during daytime (Okiror *et al.* 2006).

Counting took place at the polling stations. Where polling was completed by 5 pm, counting followed immediately while at other stations the queue of voters had to be cleared first. The sequence of counting was usually presidential ballots first, then parliamentary and finally the woman MP of the district. Generally, the counting process was transparent and efficient. The transparent process aimed at ensuring that votes were counted in the open and witnessed by agents and observers also meant that most of the counting took place in darkness. As already noted, in some places the number of invalidated ballot papers was very high. The criteria for rejecting ballot papers appeared to be applied very stringently. According to our observations, this practice was not objected to by the party agents. It is therefore reasonable to assume that the erroneous marking of ballot papers was due to poor voter education, especially for illiterate citizens and young voters without previous experience (EU 2006, Pedersen 2006, Gloppen *et al.* 2006a, DEMGROUP 2006).

After the counting process was completed and the relevant forms signed by the election officials and the party agents, the documents were transported to the district tally centres. In some cases there were logistical problems but by and large the security of the transfer of the ballot boxes and papers and the signed documents was observed to be satisfactory (Pedersen 2006). The tallying was slow and in some districts went on until late the next day. At the districts, results were tallied based on the declaration of results (DR) forms. The results for the presidential elections were not announced at the districts but were sent to Kampala on a continuous basis. Returning officers announced the results of parliamentary elections. Tallying was carried out at the district level. Results were fed into the central computer system by polling station from the DR forms signed and submitted by presiding officers at the polling stations. The national tally centre used tally results submitted from the districts, mainly by fax. The percentages and total scores of each party/candidate were automatically calculated by the computer. Any results printed out would be relayed to the press and the election monitors and observers. These were the results announced by FM radio stations, which kept on sending their reporters to tally centres to collect information. As a result, at the district level, tallying appeared transparent.

However, in order to meet the constitutionally mandated deadline of announcing presidential results within 48 hours of the closing of polls, the EC announced the presidential election results *before* receiving the results from all polling stations. The opposition complained that the actual tally sheets were not physically relayed to the national tally centre. Furthermore, there were claims by the opposition that some polling stations had inflated registers, which could help polling officials fix excess numbers of votes. Two days after election day, in compliance with the time limits established by law, the EC declared Museveni president-elect based on the results from 98.98 per cent of the polling stations that had reported. Three days after the EC announcement, the DEMGROUP published the results of their observations and parallel voting tabulation which

showed compatibility with the results announced by the EC, helping to build confidence in the election results.

In summary, the actual voting and initial tallying of the election results proceeded within the stipulated legal requirements. However, due to their immediate reporting, local and international monitoring reports have failed to address the precarious situation with regard to the parliamentary election results. The EC is required by law to gazette the election outcome (that is, who won and who lost). Nevertheless, a year after the elections – and after the inauguration of the 8<sup>th</sup> parliament – the EC had not yet presented the parliamentary election results by polling station. The failure to produce the results as legally required is a serious administrative weakness on the part of the EC and one that calls its administrative capacity into question.

## Conclusion

Our analysis of the 2006 transitional elections in Uganda has been based on three analytical perspectives on election monitoring. First, according to recent international standards that emphasise the long-term and political nature of election processes, we have analysed the 2006 administration of the presidential and parliamentary elections in terms of the broader process, starting with the setting of the rules for political contestation, through the registration of voters, voter education, the nomination of candidates, the campaign, and finally the voting, counting and tallying of results. Our findings show that focusing primarily on polling and tallying of results provides a different understanding than when the broader political process is taken into consideration. The polling exercise on 23 February, 2006 was generally peaceful, orderly and efficient. The election officials did a commendable job and agents of the two major contesting parties were present at nearly all polling stations. The initial counting process was transparent and results were announced at the polling stations. Tallying was slow, however, and the late verification and announcement of results is a serious concern. But, when broadening the perspective to consider the wider electoral cycle, we find that the slow and ambiguous transition and very late finalisation of the rules of the game for the elections hampered the opposition parties. The lack of effective separation between state structures and resources and those of the NRM as a party provided Museveni and the NRM with significant advantages in terms of campaign resources and much broader campaign coverage, particularly in the electronic media. Thus, the EC failed to implement the constitutionally agreed principles of a free and fair election with regard to enforcement of campaign regulations, control of the use of state resources, and the tallying of votes.

In order to enable a distinction between capacity to implement free and fair elections in a new and weakly institutionalised political system and willingness to administer elections in an impartial manner, we compared the role of the EC in the 2006 elections with the administration of the 2001 elections. Our analysis shows that the EC took a number of steps to improve on previous performance. Unlike the 2001 elections where the EC was widely seen to be siding with the incumbent president, the new EC portrayed a degree of transparency and willingness to accommodate various stakeholder interests. This is reflected in the steps it took to improve election administration through the establishing of a computerised photographic register of voters that was intended to reduce multiple voting. Further, various measures were put in place to reduce conflict and enhance the security of voters and stakeholders, such as barring voting in military barracks and prohibiting the bearing of arms at campaign rallies other than by law enforcement agents. The establishment of inter-party liaison committees and complaints desks at national and district levels also helped resolve contentious issues. The codes of conduct for security personnel, police, and political parties indicated an improvement in electoral governance and a commitment by the EC to free and fair elections, as did the significant increase in the number of polling stations.

Adding stakeholders' perceptions of the conduct of the 2006 elections to our analysis further suggests that electoral administration improved from that of 2001. According to the EC commissioners, the main improvement was the fact that the EC acted as a united commission by avoiding internal factions. The EC's consultations with political parties, the media, donors and the general public during the 2006 election exercise included a wide range of stakeholders in crucial decisions involving the code of conduct for political parties and campaign guidelines. Reflecting both the subjectivity of the stakeholder perceptions, and the fact that perceptions are based on the information available at a given time, perceptions of the independence and effectiveness of the EC shifted markedly through various stages of the election cycle. The 2006 electoral process started with stakeholders expressing a low level of trust in the ability of the EC to conduct impartial elections based within the framework of national and international norms and standards of a free and fair electoral contest. As the process evolved, the EC gained credibility with the majority of the stakeholders: political parties, government and civil society. The changing perceptions related to the EC's improved communications with stakeholders, willingness to alter procedures on the basis of opposition demands, and proven will to assert its independence vis-à-vis the executive in some important cases (such as the nomination of Dr. Besigye). In the post-election period, the perception of EC's administration of the 2006 electoral process was increasingly seen in a more negative light. The commission's inability to produce the results of the parliamentary elections per polling station 12 months after the voting suggested an alarming administrative problem that the EC was unable to address.

Finally, we have argued that at a number of steps in the election cycle, electoral governance in Uganda improved in the 2006 elections. However, we have also seen that electoral governance was far from adequate when judged against national and internationally agreed principles of a free and impartial multi-party electoral contest. Despite its efforts to increase its professionalism and independence, the EC remains bound by a restricted mandate, inadequate legal provisions, and unclear political circumstances. As a result, issues such as the extensive use of the justice system to hamper the opposition and the willingness to compromise judicial independence and integrity to suit political goals were not addressed by the main institution in charge of administering the elections. Similarly, issues such as the limitations that were placed on the independent media and the military presence in the political arena were outside the scope of electoral governance as perceived by the EC.

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## SUMMARY

On 23 February, 2006, Ugandan voters could for the first time since 1980 choose a party of their choice rather than select individual candidates within the Nation Resistance Movement (NRM) system. This paper focuses on the role of the Uganda Electoral Commission in administering the 2006 presidential and parliamentary elections. Following international established standards for election monitoring, we assess the administration of the elections through the pre-election, election and post-election stages of the 2006 elections. We also compare the conduct of the 2006 elections to the 2001 elections. Finally, based on observations and key informant interviews, we analyse the perceptions of stakeholders in the electoral process. We find that the current Uganda Electoral Commission improved election management compared to previous elections, but also experienced considerable shortcomings linked to inadequate voter education, significant incumbency advantages and breaches of electoral rules and regulations.

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