



UGANDA

FINAL REPORT

General Elections 18 February 2011

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EUROPEAN UNION ELECTION OBSERVATION MISSION

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I. EXECUTIVE SUMMARY

European Union Election Observation Mission

Elections for the President of Uganda, 238 Members of Parliament in regular constituencies and 112 women Members of Parliament in the district constituencies reserved for women took place on 18 February 2011. Following an invitation from the Government of the Republic of Uganda and the Electoral Commission of Uganda, the European Union (EU) established an Election Observation Mission (EOM) to observe these elections. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international standards for democratic elections. The Chief Observer of the EU EOM was Edward Scicluna (Malta), Member of the European Parliament. The EU EOM consisted of seven core team members, 34 long-term observers and 68 short-term observers selected from the 27 EU Member States as well as Norway. The EU EOM was present in all 112 election districts of Uganda and was joined over the Election Day period by a four member delegation from the European Parliament.

Overall conclusion

The 2011 Ugandan general elections showed some improvements over the previous elections held in 2006. However, the electoral process was marred by avoidable administrative and logistical failures which led to an unacceptable number of Ugandan citizens being disenfranchised. Furthermore, the power of incumbency was exercised to such an extent as to compromise severely the level playing field between the competing candidates and political parties. Notwithstanding a number of incidents of violence and intimidation, especially on Election Day, the electoral campaign and polling day were generally conducted in a peaceful manner. Restraint in campaign rhetoric contributed to this improved campaign environment. With genuine political commitment by all stakeholders, further progress towards a fully pluralistic and multi-party democracy can be achieved.

Legal framework

Uganda's legal framework offers a workable and detailed foundation for the conduct of democratic elections, generally in accordance with the nation's international, regional and constitutional commitments and obligations. Remaining legislative shortcomings call for amendments to level the playing field; to deter illegal practices; to enhance public confidence in the Electoral Commission's independence; and to guarantee universal, direct and equal suffrage for all seats of Parliament.

Electoral System

Equality of the vote is not respected by current constituency delimitation, neither in the normal constituencies where there is a ratio of 30:1 between the constituencies with the greatest and smallest number of registered voters, nor in the districts from which women MPs are elected, where this rises to 56:1. Indirect Special Interest Group elections constitute a breach of equality of vote, particularly since in all but one case there is no clear justification for giving particular advantages to the groups concerned. While positive discrimination for Persons With Disabilities may be justified, in the case of workers and youth these measures are unnecessary, while those for the armed forces are particularly problematic since military MPs are not accountable to a constituency but rather to the Commander-in-Chief. In practice, the various processes for SIG elections are mired in poor practices, exacerbated by the inherent lack of transparency of elections held away from the public. Given the specific groups granted special representation and the current framework for their election, Special Interest Group elections fail to meet the criteria for justifiable measures to ensure equitable participation and instead constitute a serious weakness in the Ugandan electoral framework.

Election Administration

The Electoral Commission devised its Election Roadmap several years in advance of the elections and generally abided by its timetable. However preparations eventually succumbed to the excessive pressure of administering presidential and direct parliamentary elections, while also administering several stages of nationwide polling for Special Interest Group youth elections and simultaneously preparing for imminent local elections. The Electoral Commission did not enjoy widespread trust. This was partly due to the appointments system according to which the Presidency appoints Commissioners, with the approval of Parliament. Mistrust was also based on the fact that the Electoral Commission, almost unchanged since the 2006 elections, had been severely criticised by the Supreme Court for its handling of those elections. The Electoral Commission sought to communicate regularly with the public and other stakeholders but neither press statements nor the sporadic publication of general guidelines could compensate for the lack of documented procedural detail. There were exceptions to this trend, but not enough to instill widespread confidence in the electoral administration. Exceptions included the timely publication of complete lists of constituencies and polling stations, as well as enabling political party agents to observe the printing of ballots and to attend the packing and distribution of sensitive materials.

Voter registration

The National Voter Register was vehemently criticised by opposition parties and the Electoral Commission's decision not to issue voter cards to some four million newly registered voters compounded suspicions that the register was not accurate, inclusive and reliable, and that there were inadequate safeguards against fraud. Despite the Electoral Commission providing political parties with the register, the National Voter Register came to symbolise the lack of trust by many in the administration of the elections.

Candidate nomination

As in 2006, appeals disputing the academic qualifications of candidates flooded the courts. The requirement excludes the majority of Ugandan citizens from passive suffrage, and necessitates the Electoral Commission and the National Council for Higher Education to exercise discretion in recognising or rejecting equivalency of qualifications. The academic prerequisite has led to the falsification of diplomas, and has further exacerbated the personalisation of campaigns, distracting the attention of voters from substantive policy issues. Further, the requirement has saddled a number of candidates with the cost of defending themselves against frivolous challenges. On another issue, the Supreme Court upheld the right of 70 MPs to stand for the elections, even though they had violated the Constitution by switching party affiliation during their tenure in the previous parliament, without vacating their seats. The Constitution is ambiguous as to whether an MP would have to vacate a seat if expelled by their party. Were this the case, security of elected tenure, and with it the ability of voters to directly hold MPs to account, would be undermined.

Campaign period

The almost four month long official campaign period was conducted in an atmosphere in which the freedoms of assembly and association were generally respected. Presidential candidates campaigned intensively and were mostly able to move freely throughout the country. The campaign schedule adopted by the Electoral Commission and its adherence by presidential candidates was a major factor contributing to the relative calm and peacefulness of the campaign. However, the increase in campaign spending and "monetisation" of the election were major concerns. The distribution of money and gifts by candidates, especially from the ruling party, a practice inconsistent with democratic principles, was widely observed by EU EOM observers deployed across Uganda. It was evident that the National Resistance Movement's dominance and resources were much greater than those of the opposition. In addition it was difficult to draw a line between the government and the ruling party at the local level: despite the bar against partisanship of civil

servants, Resident District Commissioners (RDCs) and agents of various security services were omnipresent, occasionally taking a pro-active role in the electoral process.

Media

The state-owned broadcaster, the Uganda Broadcasting Corporation (UBC), failed to comply with its legal obligations to treat each presidential and parliamentary candidate equally. The UBC television channel gave the incumbent president and the ruling National Resistance Movement party substantially more coverage than their nearest rivals. The government's dominance of state-owned radio, the only broadcasting network covering almost all areas of the country, was not balanced by private radio stations established outside the capital, which generally provided opposition candidates with very limited access. Recent threats against the freedom of the press, coupled with limited critical reporting of the incumbents' record in office, give rise to concern about the media's ability to exercise fully their fundamental right and freedom to report.

The role of the security forces

While the Ugandan People's Defence Forces exercised more restraint in the use of force than in 2006, the Uganda Police Force has not yet embraced its constitutional role as an impartial enforcer against breaches of electoral law. Lack of police impartiality frustrates citizens' expectations of compliance with the legal framework. As in 2006, and in violation of constitutional due process guarantees, special forces such as the Rapid Response Unit arbitrarily arrested and detained electoral stakeholders in ungazetted "safe houses."

Polling and counting

Election Day unfolded peacefully for the most part, but poor application of basic procedures revealed inadequate training of polling station staff and implied insufficient safeguards against fraud. Disturbingly high numbers of citizens found that they were not registered where they expected, leading to confusion and avoidable instances of disenfranchisement.

Tabulation and publication of results

Tallying of results was assisted by the new Electronic Results Transmission and Dissemination System, according to which clerks at District Tally Centres entered results data and scanned Declaration of Results Forms before transmitting these to the National Tally Centre. Although the system enabled swift transmission of results once entered, party agents and observers had difficulty viewing the data entry process in one third of cases and the process often took several days, in some cases amid tensions and apparent irregularities. The Electoral Commission declared Presidential results within the Constitutional timeframe of 48 hours after the close of polling and shortly afterwards results were published by polling station on the Electoral Commission website, in line with standards for transparent elections. However national publication of Parliamentary results by the Electoral Commission was slow and remained incomplete more than two weeks after the close of polling. The polling station traceability offered for presidential results was unfortunately not replicated for parliamentary results.

Women in elections

The level of political participation by women was high. Constitutional provisions for affirmative action provide for one woman representative in parliament per district and the Local Government Acts provide for one third of seats to be reserved to women on each local council. However, women represented only 3.6 per cent of the total number of candidates running for the regular constituency seats. One of the main reasons for this was that, across the political spectrum, political parties do not provide equal opportunities for women to be represented in leadership positions.

Civil society observation

Civil society showed itself to be vibrant and committed to supporting the democratic process. The work carried out by civil society groups such as the Citizens' Coalition for Electoral Democracy in Uganda was key to voter education. In addition the Electoral Commission accredited 39 domestic observation missions. Of these, the Democracy Monitoring Group and Citizens Election Watch in particular carried out long-term observation and provided a regular platform to improve citizens' awareness of the process.

Dispute resolution

Electoral disputes arose from the commission of electoral malpractices. While defacement of campaign materials was prosecuted, the use of state resources, bribery, and even ballot stuffing went largely unpunished. Returning Officers and Chief Magistrates accordingly ordered recounts, which, for lack of regulation, were tampered with. High Courts will be presented with tainted evidence, which is bound to trigger costly by-elections. The under resourced High Court Circuits expect up to 50 parliamentary election petitions, which 24 judges will attempt to adjudicate within the six month statutory period, including appeals. Candidates whose elections were annulled on grounds of their malpractice, may be allowed to stand again, and could win in re-runs.

Recommendations

In advance of future elections, the election framework would require reform to be fully in line with Uganda's international, regional and constitutional commitments and obligations. As a contribution to this process, a set of detailed recommendations is included at the end of this report. Key recommendations include the following:

- The problem of lack of trust in the Electoral Commission could be addressed by improving the transparency and credibility of the system for appointing Commissioners, alongside the provision of security of tenure. Greater consensus could be achieved by including opposition and civil society voices in the appointment process, as well as the Presidency and Parliamentary majority.
- The criteria for nomination and precise terms of reference for Electoral Commissioners and all other electoral officials should be set out in law.
- All Members of Parliament, including any quota seats for disadvantaged groups should be elected by direct and universal suffrage. Consideration should be given to amending the Constitution and the Parliamentary Elections Act with a view to reviewing the Special Interest Groups provided for. The current quotas for youth, workers and the military do not meet criteria of acceptable positive discrimination for disadvantaged groups since the groups concerned do not require particular assistance and in the case of the armed forces, special seats raise serious concerns of independence, accountability and conflict of interest. In addition, the implementation of Special Interest Group elections runs contrary to democratic standards in a number of respects. Seats currently reserved for persons with disabilities should, if maintained, be elected by universal suffrage.
- Another measure that would increase public trust in the electoral process is the creation of a new National Voter Register, with registration continuously updated through District Registrars and a clearer system for transferring registration locations. Public display periods both before and after cleansing should be adequately communicated to the public in both urban and rural areas, and the final assignment of polling stations should be completed at least one month before polling day, at which point it should be communicated by a variety

of means, including outreach programmes. Voters should be identified by an identity card system or some similar voting document.

- Conditions for freedom of speech and equitable access to the media would be improved by the reform of the regulatory authorities, the Media Council and the Broadcasting Council, to guarantee their independence and insulate them from government control. An independent regulatory authority with statutory powers to deal adequately with complaints during election period would create a basis for a more level playing field for media coverage and help to improve voters' access to information.
- Legislation is required to curb the use of state and government resources during an election period for the advantage of the incumbent. For example, the use of "ordinarily attached official facilities" by the incumbent presidential candidate, other than those related to his personal security, should be restricted to the execution of his official duties only.
- Once the 2012 census figures are published, the Electoral Commission will require adequate resources to fulfil its constitutional obligation to demarcate electoral boundaries, so that their sizes are as equal as possible to the population quota, taking into special account densely populated areas.
- Parliament needs also to revise the statutory equation of women seats with administrative districts or cities, in order to enable the Electoral Commission to demarcate women-only district constituencies which respect the equality of the vote.
- Parliament should establish an ad hoc committee to review practice and law in Uganda and across the East African Community and propose a bill that would effectively regulate campaign spending.
- Introducing campaign spending caps on individual parliamentary candidates, to be monitored and enforced by the Electoral Commission and the courts, would reduce the monetisation of politics.

The EU EOM urges the authorities, political parties and civil society of Uganda to swiftly start to take these and other required steps detailed in the recommendations section of this report in order to ensure that the conduct of future elections can be held in accordance with Uganda's international, regional and constitutional commitments and obligations.

II. INTRODUCTION

Elections for the President of Uganda, 238 Members of Parliament in regular constituencies and 112 women Members of Parliament in the district constituencies reserved for women took place on 18 February 2011. Following an invitation from the Government of the Republic of Uganda and the Electoral Commission of Uganda, the European Union (EU) established an Election Observation Mission (EOM) to observe these elections. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international standards for democratic elections. The Chief Observer of the EU EOM was Edward Scicluna (Malta), Member of the European Parliament. The EU EOM adhered to the Declaration of Principles for International Election Observation, commemorated at the United Nations in October 2005.

The EU EOM was deployed on 15 January 2011. Its headquarters were located in Kampala and the mission undertook observation in all 112 election districts of Uganda. The EU EOM consisted of 7 core team experts, 34 long-term observers and 68 short-term observers selected from 27 EU Member States as well as Norway. The EU EOM was joined by a four member delegation from the European Parliament, led by Joachim Zeller (Germany), Member of the European Parliament. The EU EOM issued its statement of preliminary findings and conclusions on 20 February 2011. The EU EOM closed its operations on 10 March 2011.

III. POLITICAL BACKGROUND

A. Political Context

Uganda has a presidential system of governance with the President elected to act as Head of State and of Government and Commander in Chief of the Armed Forces. The Constitution empowers the President to make executive appointments, subject only to simple majority confirmation by Parliament. The President can thus appoint the Prime Minister, the Attorney General, the Public Service Commission, Cabinet, the Governor and the Board of the Central Bank, the Auditor General, the Education Service Commission, the Inspector General of Police, the Commissioner of Prisons, the Inspector General of Government and the Land Commission without the need for consultation. Nomination procedures for Ugandan civil servants and judges involve three layers: the Public Service Commission or the Judicial Service Commission screen and propose qualified candidates, the President nominates and the Parliamentary Appointments Committee confirms the appointments. While judges are proposed by the Judicial Service Commission, and the executive staff of the Electoral Commission is pre-selected by the Public Service Commission, Electoral Commissioners themselves are handpicked by the President without consultation. Furthermore, qualification criteria for Electoral Commissioners are vague and subjective, whereas other independent commissioners, such as the chairman of the Uganda Human Rights Commission or the Director of Public Prosecutions, must hold qualifications equivalent to those of a High Court judge in order to be eligible for Presidential appointment.

Since independence in 1962 the country has held a number of general elections under varying political conditions. The 2011 elections were the sixth such elections. The first multi-party elections of 2006, as stated by the EU EOM, “fell short of full compliance with international principles for genuine democratic elections, in particular because a level playing field was not in place”. The election results were not accepted by the Forum for Democratic Change (FDC) presidential candidate, Dr. Kizza Besigye, who subsequently appealed against the validity of the elections. The Supreme Court found that a wide variety of serious irregularities had occurred, including disenfranchisement of voters, counting and tallying irregularities, bribery, intimidation or violence, multiple voting, ballot box stuffing, the continued intrusion of the security forces in the elections and apparent partisan conduct of some election officials. The 2011 general elections provided an opportunity to consolidate the multi-party system and further develop the electoral and wider democratic process. However, most recommendations contained in the 2006 EU EOM Final Report have not been addressed by the Electoral Commission or by Government agencies.

The National Resistance Movement (NRM) and its leader, President Yoweri Museveni, have been in power for 24 years. The ruling NRM has enjoyed a two-thirds majority in Parliament and has dominated the political scene at all levels of government. Despite the introduction of the multi-party system five years ago, the dividing line between NRM and the state is barely discernible. All major

opposition parties participated in the 2011 elections and the number of candidates in both races increased compared to 2006. The 2011 pre-electoral environment in northern Uganda was very different from that of 2006 because of the cessation of hostilities between the Government and the Lord's Resistance Army (LRA).

B. Key Political Actors

The political arena in Uganda is dominated by the NRM, which has been in power since 1986. The NRM is the political party successor of the original National Resistance Army and between 1995 and 2005 it was the sole political entity legally permitted to field candidates in elections.¹

The return of multi-party politics in 2005 marked a fresh start. In the 2006 elections, the race was mainly between ruling NRM and the FDC. Four smaller parties, the DP, UPC, Conservative Party (CP) and Justice Forum (JEEMA) were able only to secure a few seats in Parliament. By 2011, six years after the opening up of political space, some 38 political parties had been registered in Uganda, although most of these were not particularly visible or electorally significant.

President Yoweri Kaguta Museveni is the NRM's chairman and was the party's presidential candidate. The party claims to have over nine million members, with the west and south west of the country considered to be the NRM's areas of strongest support. From August to October 2010 the NRM held primary elections to select its parliamentary and local council candidates. A number of NRM members strongly criticised the conduct of these primary elections, challenging the reliability of the voter register as well reporting instances of violence, intimidation and electoral fraud including ballot stuffing. A significant number of ministers and sitting MPs were de-selected and the results of some contests were challenged in court. Some of the deselected candidates stood as independent parliamentary candidates in the 2011 elections.

The main opposition challenge to the NRM came from the Inter-Party Coalition (IPC). The IPC is a coalition of four parties comprising the FDC, the CP, JEEMA and the Social Democratic Party (SDP). The older parties, first the DP and later the UPC, decided not to participate in the IPC following controversies over personalities and the strength of the parties. The FDC, with 39 MPs in the outgoing parliament, was by far the strongest opposition party and in 2006, it received its strongest support in the north of the country, around Kampala and in pockets of the east and west of the country. The CP and JEEMA were each represented in the outgoing parliament by just one MP.

The figurehead of the IPC coalition is the FDC party president, retired colonel Dr. Kizza Besigye, who served in Yoweri Museveni's NRA/NRM, before withdrawing from the movement in 2000 and running for president in the 2001 and 2006 presidential elections. The IPC fielded candidates in more than 80 per cent of parliamentary constituencies in 2011 and supported a candidate of another party or an independent in many of the remaining constituencies.

The DP was formed by Buganda Catholics and Buganda (central Uganda) is a main stronghold of the party. It was the main rival to the UPC in the 1962 and 1980 elections but it did not perform well in the 2006 elections, winning just 10 of the 311 parliamentary seats, while its presidential candidate gained 1.6 per cent of the vote. In July 2010, in protest at the party's decision not to join the IPC, a number of DP politicians and supporters formed a political mobilisation group called Suubi which

¹ Other candidates could stand as 'non-partisans'.

closely cooperated with the IPC. Several parliamentary candidates running for DP-Suubi were directly supported by IPC.

The DP is led by Norbert Mao, who was its presidential candidate. In 2010 the party split over the position of Secretary General and over whether the February congress which elected Norbert Mao was conducted according to the party's rules. The split resulted in a rival faction, supporting Lubega Walter Samuel as an independent presidential candidate, being formed.

For its part, the UPC was the first party to head government in Uganda when its founder Milton Obote became the Prime Minister after independence in 1962. The party held power again between 1980 and 1985, and Obote led the party until his death in 2005. His widow, Miria Obote, then became party leader and was the UPC presidential candidate for the 2006 presidential election. The party is a much weaker political force than in the past but it retains some support, particularly in parts of Northern Uganda. The party won nine seats in the 2006 parliamentary elections, while Ms. Obote gained 0.8 per cent of the vote.

The UPC candidate for president in 2011 was Dr. Olara Otunnu, a former UN Special Representative for Children in Armed Conflict. The UPC ceased cooperation with the IPC as Dr. Otunnu initially insisted that the opposition should boycott the 2011 elections on the grounds that the government had refused to disband the Electoral Commission, which the UPC considered to favour the NRM. The Uganda Federal Alliance (UFA) is a recent arrival on the political scene. It fielded the only female candidate in the presidential race, Betty Olive Namisango Kanya.

The other political parties which nominated presidential candidates were the People's Progressive Party (PPP) and People's Development Party (PDP). The PPP is lead by Bidandi Ssali, a former NRM cabinet minister and the party's presidential candidate. The PDP is lead by Bwanika Abed who also participated in the 2006 presidential election. A former member of the DP, Lubega Walter Samuel, was the only independent candidate running for president.

IV. LEGAL FRAMEWORK

A. Uganda's Obligations under International and Regional Standards

Uganda has ratified the African Charter for Human and Peoples' Rights, the Treaty of the East African Community, the International Covenant for Civil and Political Rights, the Convention for the Elimination of Discrimination against Women, the International Convention against all Form of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities. Uganda has thus formally committed itself to adhere to all international and regional instruments relevant to international standards for elections². Uganda hosted the Kampala Convention for the Protection of Internally Displaced People, which enshrines the right to vote while displaced.

B. National Legal Framework

Uganda is a unitary constitutional republic, based on the rule of law and the separation of powers. The Constitution vests Parliament with exclusive legislative power that can override a presidential veto by a two-thirds majority. Uganda's legal framework offers a workable and detailed foundation for the conduct of democratic elections, generally in accordance with the nation's international,

² The exception being the African Declaration on Democracy, Elections, and Good Governance.

regional and constitutional commitments and obligations. Remaining legislative shortcomings call for amendments to level the playing field; to deter illegal practices; to enhance public confidence in the Electoral Commission's independence; and to guarantee universal, direct and equal suffrage for all seats of Parliament.

Five Acts of Parliament contain the core of Uganda's legal framework for elections: the Constitution of 1995, as amended in 2005, the Presidential and Parliamentary Elections Acts of 2005, as amended in 2010, the Electoral Commission Act of 1997, as amended in 2005 and 2010, and the Political Parties and Organisations Act of 2005, as amended in 2010. The EU EOM recognises Parliament's efforts to continually improve Uganda's legal framework for elections, although the June 2010 amendments were made late in the process considering the Electoral Commission's two-year plan. Regrettably, the incumbent majority blocked passage of the Code of Conduct for Political Parties, an instrument that could help reconcile the polarized post-electoral environment and consolidate Uganda's nascent multi-party system.

C. *The Judiciary*

Uganda follows the common law legal system. The Constitution vests the higher judiciary with formal independence, which is assured in practice through a merit and qualification-based pre-selection process, as well as through life tenure. Prior to confirmation by the President, judges of the higher courts are screened by the independent Judicial Service Commission, and then vetted by the Parliamentary Appointments Committee. Events surrounding the 2006 presidential elections culminated in a stand-off between the government and the courts that has fortified the judiciary's autonomy, and stoked the judiciary's suspicion of executive overreach.³ The higher courts deliver the main check on government, balancing the weak separation of the executive and legislature. The ruling party's super-majority stifles parliamentary scrutiny by rushing legislation, which attracts constitutional challenges that in turn burden and politicise the under-resourced courts. The higher courts' decisions frequently cite international law and precedent, including persuasive, but not binding, jurisprudence of the European Court of Human Rights. The general public largely perceives the higher judiciary as independent and impartial.

D. *The Electoral System*

The presidential election system considers the national territory to constitute a single constituency. According to the Constitution, to be elected, a presidential candidate requires more than 50 per cent of the valid votes cast.⁴ Where no candidate obtains this percentage, a second election shall be held between the two strongest candidates, within thirty days of the declaration of the results of the first round. The President is elected for a term of five years. A draft bill to lift the presidential age limit of 75 was circulated in Parliament in 2009, and a current bill proposes to extend the presidential term from five to seven years, which would require a referendum.⁵

Parliamentary elections concern three broad categories of representatives, each with their own

³ The government had prosecuted opposition leader Dr Kizza Besigye and 21 others for treason, illegal possession of firearms, and murder, spreading the charges over different jurisdictions, including a General Court Martial. When the High Court ordered Dr. Besigye's release on bail, special forces invaded the High Court using trained dogs to intimidate members of the judiciary, re-arresting the opposition leaders in the heat of the election campaign season. The Supreme Court allowed a reference to the East African Court of Justice in Arusha, which, while not yet vested with human rights jurisdiction by the member states, held that the principle of the rule of law, enshrined in the East African Treaty, had been violated: *Reference 1, 2007 James Katabazi v Secretary General of the EAC and the AG of Uganda*.

⁴ Article 103(4) of the Constitution.

⁵ Article 260 and 105(1) of the Constitution.

constituencies. These are: 238 MPs directly elected to represent each electoral constituency; 112 women MPs directly elected to represent each administrative district; and 25 MPs elected by four different kinds of electoral colleges, in accordance with the systems devised for each of the Special Interest Groups (SIG), namely youth, workers and persons with disabilities, each of whom elect five MPs, and the Ugandan People's Defence Force, which elects 10 MPs. The newly-elected parliament is thus composed of 375 MPs.

The Constitution provides for the election of representatives of the military, youth, workers and Persons With Disabilities in such numbers as are determined by Parliament. In addition, the Constitution states that these representatives will be elected in a manner determined by Parliament - currently this is by electoral colleges formed of members of the respective SIGs.⁶ The Parliamentary Elections Act of 2005 specifies that each SIG shall be allocated five seats in parliament, with the exception of the military, which is granted 10 seats.

Positive discrimination can be an acceptable approach to promote equitable participation but it must be justified by its necessity and effectiveness, as well as balanced against any deviation from standards for democratic elections, not least those of universal suffrage and equality of the vote. Given the specific groups granted special representation and the current procedural framework for their election, SIG elections fail to meet these criteria and constitute a weakness in the Ugandan electoral framework.

E. Constituency Delimitation

Geographic constituencies directly elect MPs by simple majority. The 238 regular constituency members are elected county-wide, and the 112 women-members district-wide. The Constitution requires that each administrative unit must contain at least one electoral unit, or constituency. Since the last general elections, Parliament has created 46 new administrative units, resulting in an increase of 23 constituencies.

Figures provided for the number of voters registered in each constituency show that equality of the vote is not respected. While the average number of voters per constituency is 58,630, numbers for individual constituencies range from 7,318 voters (in Moroto, North-East) to 228,440 in Kampala, a ratio of 30:1. Equality of the vote is disregarded to an even greater extent in the districts from which women's reserved seats are elected. In districts, the average number of voters is 124,590 but the numbers of registered voters range from 21,039 in Amudat (again, in Moroto) to 1.18 million in Kampala, a ratio of 56:1.

The Electoral Commission is constitutionally mandated to demarcate constituencies,⁷ and in doing so, to ensure that each county has at least one Member of Parliament.⁸ The Constitution also provides for equality of the vote in its stipulation that, as far as possible, the number of inhabitants in each constituency should be as equal as possible to the population quota.⁹ Thus, although the Electoral Commission's delimitation of constituencies is largely dependent on Parliament's determination of administrative districts, it still has a duty to ensure equality of the vote and can do

⁶ Article 78(1)(c) and 78(4) of the Constitution. Parliament's right to determine electoral procedure also applies to the election of district women MPs, and in this case Parliament has opted for universal suffrage.

⁷ Article 61(c) of the Constitution

⁸ Article 63(2) of the Constitution

⁹ Article 63(3) of the Constitution. The population quota is the number obtained by dividing the number of inhabitants of Uganda by the number of constituencies into which Uganda is to be divided.

so by initiating the creation of further constituencies. This duty arises with the upcoming 2012 census.¹⁰

In 2003, the Constitutional Review Commission alternatively recommended the merging of scarcely populated counties, which would require a constitutional amendment. By law, final appeals to the Electoral Commission's boundary delimitation decisions would need to be made to an ad hoc tribunal to be convened by the Chief Justice. Final decisions could be subject to constitutional challenges.

The current legal framework does not sufficiently reflect the fact that in practice administrative districts also function as electoral constituencies since 112 women MPs are elected on that basis. In that respect, the same considerations should apply.

F. Electoral Offences

The prosecution of illegal practices requires the consent of the Director of Public Prosecution (DPP), and must commence within three months of the commission of the offence.¹¹ While Uganda is now divided into 112 districts, the DPP has only 86 regional offices at his disposal. Regional State Attorneys gave EU EOM observers conflicting information about the expediency of DPP authorization. Official department policy requires processing within 48 hours. The DPP informed the mission on 2 March that no consent requests were pending¹², and that 22 offenders had been convicted since December 2010. As of that date, 185 cases of defacement of posters were under investigation or prosecution, an offence that was inconsistently penalised by either simple caution or by up to three-month prison sentences. Forty-nine cases of assault were pending, compared with one single case of the use of state resources. One charge of bribery led to imprisonment, while another remained under investigation¹³. None of the 34 EU EOM Long Term Observers (LTOs) recorded arrests of party agents of the NRM, whereas they noted arrests of opposition agents. Such scarce and selective apprehension and prosecution perpetuates the cavalier attitude towards electoral malpractices, especially those of bribery and the use of state resources, which were widely observed by both the 2006 and 2011 EU EOMs. Several cases of violent offences recorded by EU EOM observers did not feature on the prosecutor's case log. The pervasive culture of impunity that has tarnished several Ugandan elections will burden the public purse with the exorbitant cost of re-runs, both in terms of financial resources and credibility.

V. ELECTION ADMINISTRATION

A. Structure and Composition of the Election Administration

The Ugandan Electoral Commission, as established in the Constitution and in the Electoral Commission Act 1997, is mandated to organise and supervise all elections and referenda. This includes determining constituency delimitations, managing voter registration and determining, publishing and declaring election results, as well as hearing complaints. The Constitution provides for the independence of the Electoral Commission, stating that it will, 'in the performance of its functions, not be subject to the direction or control of any person or authority.' However, the

¹⁰ Article 63(5) of the Constitution

¹¹ Sections 80, 81 of the Presidential Elections Act 2005

¹² Regional prosecutors need to see the DPP's consent to open a case against electoral offenders.

¹³ The EU EOM reported an apparent attempt of entrapment by the police to incriminate an impartial Returning Officer.

Electoral Commission did not enjoy widespread confidence, with opposition parties in particular consistently expressing profound mistrust. This mistrust occasionally clouded otherwise acceptable administration but in other respects it was founded on precedent, not least Supreme Court rulings in 2006 which severely criticised the Electoral Commission's handling of that year's general elections, as well as reports of poor organisation during the Mukono North by-election in May 2010.

Perceptions of the Electoral Commission's independence are hindered at the outset by the appointments system, according to which Commissioners are appointed by the President and approved by Parliament.¹⁴ In the prevailing context this has not allowed for consultation with political parties or civil society members who are not aligned with the government. In addition, qualification criteria for Electoral Commissioners are vague and subjective, in contrast to requirements for other independent commissioners such as the chairman of the Uganda Human Rights Commission or the Director of Public Prosecutions, who must hold qualifications equivalent to those of a High Court judge in order to be eligible for Presidential appointment.

The current seven-member Commission was appointed in 2009, with only one change to the composition of the Electoral Commission which oversaw the 2006 elections. When the Electoral Commission appoints its Secretary, it is legally required to do so in consultation with the Public Services Commission (PSC), but when the PSC advised against the appointment of a particular individual, the Electoral Commission proceeded regardless, on the advice of the Attorney General. This made the requirement for consultation redundant.¹⁵

The Electoral Commission appoints Returning Officers (ROs) for each administrative district, who are responsible for one district election and as many constituency elections as are contained within the district boundaries. In a positive development since the 2006 elections, ROs have become permanent staff members who work as District Registrars outside of the election period. This and the decision to cease to rely on local government employees for election administration at the local level constitute a clear effort to support the Electoral Commission's independence and effectiveness. The tasks of ROs include determining the number and location of polling stations within their district, as well as appointing polling station staff. Over the course of their work in the field, EU EOM observers concluded that, for the most part, ROs were professional and generally impartial, albeit also overwhelmed with work and subject to significant pressure from local political groups. Nonetheless, in a minority of cases, ROs appeared to favour the incumbency.

ROs in turn appoint supervisors for each sub-county and parish. Supervisors' roles are logistically necessary and it is appropriate that they replace previous reliance on local government officials. However, their position is not set out in law or regulation and as a result neither their recruitment nor their activities are subject to scrutiny. This is inconsistent with their involvement in key elements of the process, not least in their management of the distribution of sensitive materials and the collection of results from polling stations.

The election administration is completed with the recruitment of staff for each of Uganda's 23,968 polling stations. No public regulation lists criteria for eligible polling staff but following an amendment to the Election Acts, ROs are required to publicly display lists of polling staff

¹⁴ While judges are proposed by the Judicial Service Commission, and the executive staff of the Electoral Commission is pre-selected by the Public Service Commission, the President's appointment of Electoral Commissioners is not subject to consultation.

¹⁵ Dan Mugarura Vs Attorney General, Constitutional Petition No 23 of 2009.

nominations 10 days before polling.¹⁶ In most districts observed this was not carried out in time, making it more difficult to deal with subsequent complaints.¹⁷

B. Administration of the Elections

The Electoral Commission devised its election roadmap several years in advance of the elections and until shortly before polling day it had generally abided by its timetable. Among other advantages, this approach helped ensure that the Electoral Commission secured adequate funding for the electoral cycle.

Nonetheless, the Electoral Commission eventually succumbed to the considerable pressure of having to prepare presidential and direct parliamentary elections, while at the same time also administering several stages of nationwide polling for SIG youth elections and simultaneously preparing for imminent local elections.¹⁸ Youth elections took a particular toll, delaying recruitment of polling station staff and thereafter the completion of training until just two days before the general elections. In a number of areas observed, the two days' training planned for polling station staff was reduced to one day, and given the limited flexibility at that late stage, it is also likely that some polling staff did not attend any training. EU EOM observers assessed training for polling staff often ineffective, in that while adequate in terms of content there was a lack of teaching materials and that not all attendees could hear the trainer. Earlier stages of briefing and training – for ROs and trainers of trainers – took place several weeks before Election Day and were considered to be of high quality.

The distribution of sensitive materials from Kampala only began on 14 February, and events on Election Day indicate that this was too late. EU EOM observations of the early stages of materials distribution found reasonable levels of organisation and adequate levels of security for the most part.

While the Electoral Commission sought to communicate regularly to the public and other stakeholders, it did not take a sufficiently pro-active and consistent approach to transparency, releasing information to stakeholders in an irregular and incomplete fashion. Part of this approach appeared to be based on an insufficient recognition that instilling trust is an essential element of the administration's task. Another reason was that neither brief press statements nor even the sporadic publication of general guidelines could compensate for the lack of documented procedural detail. There were exceptions to this trend, but not enough to instill widespread confidence. Exceptions included the timely publication of complete lists of constituencies and polling stations, as well as the provision of the National Voter Register (NVR) to political parties.

In line with the June 2010 amendment to the Presidential and Parliamentary Electoral Laws, political representatives were for the first time able to observe the printing of ballots (in the UK), as well as to attend packing and distribution of sensitive materials. However, timetables for the distribution of

¹⁶ Previously this display was required only one week before polling.

¹⁷ The delay was partly due to recruitment delays, in turn attributed to a few days' delay for the first youth elections.

¹⁸ Polling dates for local government elections were set for 23 February 2011 (Local Government V), 2 March 2011 (Municipality Local Governments), 7 March 2011 (LC 3), and 14 March 2011 (District/ City Chairperson and Councillors). Local government Youth elections ran at all these levels between 9 February and 4 March 2011. Preparatory stages for the local elections included: nomination of candidates (27 October – 2 November for Local Government III, 4 - 9 November 2010 for Local Government V and Municipalities); Harmonization of campaign programmes (3 to 11 November); and campaign periods beginning on 12 November and ending between 21 February and 5 March for the various levels of local government.

materials were not always provided, rendering some party agents' rights to attend somewhat theoretical.

The number of polling stations increased from 19,786 in 2006 to 23,968, partly due to the higher number of registered voters and partly in a bid to reduce the number of voters per polling station to fewer than 700. While this measure should have ensured that citizens had to travel shorter distances to cast their vote, this was often not the case and poor communication resulted in many people not being aware of the new polling stations.

C. Civic Education and Voter Information

The Electoral Commission's mandate includes the promotion and regulation of information to citizens regarding the purpose and procedures of voting, and to this end it may accredit any non-partisan organisation to carry out voter education or pay another entity to do so.¹⁹ The Electoral Commission availed itself of both these options, and contracted private companies to carry out voter information for each stage of the electoral process, from voter registration and display to nominations and the run-up to polling. Reportedly a wide range of media were used, from leaflets to plays and events in market places. However the programme's reach and impact were extremely limited. Few activities were noted outside urban areas and most materials were in English, with insufficient use of the many languages spoken in Uganda.

By contrast, some of the 71 organisations accredited by the Electoral Commission to carry out voter education were particularly active and visible, notably the Citizens' Coalition for Electoral Democracy in Uganda (CCEDU), a consortium of civil society groups. The CCEDU implemented a range of activities, from the 'Honour Your Vote' programme encouraging free choice on the basis of issues, to the Citizen's Manifesto, a collection of topics raised as priorities for citizens.

In addition to broad civic education and general sensitisation, the Electoral Commission is bound to communicate information on where people are registered to vote. The Electoral Commission's overall failure in this respect resulted in the disenfranchisement of an excessive number of citizens and also compounded suspicions about the voter register and the trustworthiness of the election administration. Although it was possible to check registration and voting location on the Electoral Commission website and also through a low-cost text message service, these services were adequate only for some sections of the population. A more comprehensive, timely and accessible range of information was sorely lacking for citizens with little education or limited resources.

VI. VOTER REGISTRATION

A. The Right to Vote

Article 59 of the Constitution enshrines universal suffrage for all citizens of Uganda of eighteen years of age or above. Article 59 further imposes a duty on all eligible citizens to register to vote, and on the State to take all necessary steps to ensure the exercise of the right to vote. Parliament is required to make laws to provide for the facilitation of citizens with disabilities to register and vote.

¹⁹ Article 12 (g), (i) (l) and (m), Electoral Commission Act.

B. Voter Registration Procedures

The final National Voter Register (NVR) for the 2011 elections listed 13,954,129 voters, an increase of 33 per cent since 2006, when some 10.5 million voters were registered. The updated register included photographs for the vast majority of entries, with an uncertain number missing, apparently for technical reasons.²⁰ On 17 November 2010, the Electoral Commission issued electronic copies of the NVR to political parties with presidential candidates and on 31 January 2011 it provided printed copies including photographs.

A general update of the NVR took place from 3 May to 18 June 2010, when new registrants were given a receipt of their registration. From 11 to 31 August revised lists were put on public display, during which time challenges could be filed with parish tribunals. The period between 3 and 13 September was allocated for displaying and confirming the proposed deletions, additions and corrections. Thereafter, the Electoral Commission undertook computerised identification of duplicate entries. As a result of these different approaches, one million entries were expunged.

No provision was made to enable the registration of citizens who turned 18 during the seven months between the closure of the NVR and Election Day. In addition, the Electoral Commission did not seek to register citizens resident in institutions, nor those in prison as a result of sentencing or on remand. In this respect, several groups of citizen were effectively disenfranchised, despite the fact that the law does not impose any restriction on the right to vote and despite the legal onus on the State to ensure registration of all eligible citizens.

The NVR was vehemently criticised by opposition parties. One factor of opposition mistrust of the NVR arose from the former's profound suspicion of the Electoral Commission itself. As such, the NVR came to symbolise the need for substantive and pro-active trust-building in key elements of the electoral process.

In addition, several specific aspects of the registration process, the resulting NVR and the administration of registration data were subject to criticism. In terms of the registration process itself, it was reported that while citizens presented themselves in large numbers thanks to a mobilisation drive by the Electoral Commission and civil society organisations, some citizens were turned away as fingerprint recording equipment did not always function. The sharing of equipment between several registration centres resulted in changes of location and registration hours which were not always communicated to citizens. As a result, the Democracy Monitoring Group's (DEMG) report on the registration process concluded that although the Electoral Commission registered more people than it had hoped to reach²¹, it remained likely that other eligible voters were unable to register. DEMG also lamented the absence of fully formed parish tribunals in some 40 per cent of the registration centres observed, raising concerns about the identity of registered voters which were to persist throughout the electoral process.²² Lastly, it was frequently asserted that the display exercise had only enabled citizens to check their own entries, rather than scrutinize the register for incorrect entries. EU EOM observers found that there was inadequate provision of voter registration facilities for migratory populations.

²⁰ The Electoral Commission confirmed after the election that there were 273,877 entries which lacked photographs. This constitutes a slight reduction of the proportion of entries with missing photographs compared with 2006, when some 350,000 of the 10.5 million entries did not have photographs.

²¹ The Electoral Commission had aimed to register 3.8 million citizens and in fact, prior to cleansing of the register, it had registered 4.7 million people.

²² Parish tribunals were intended to confirm or refute the identity of registering citizens. The tribunals were due to be composed of two elders and three further members appointed in consultation with locally represented political parties.

It was frequently alleged by opposition parties that the resulting NVR was bloated with multiple entries, foreigners and other 'ghost voters.' Documentation submitted by the FDC and UPC in the case of Bossa vs. Attorney General sought to prove as much, by comparing the Uganda Bureau of Statistics' projected population figures for 2010 – based on the last census in 2002 – with the number of registered voters in each district. It found that in some eight districts – mostly in the Central Region – there were more registered voters than the total projected population. In a further 32 districts, the number of voters exceeded 60 per cent of the projected population, unrealistic given the proportion of under-18 year-olds in the population. The strength of this claim rested upon the reliability of the population projection.

The Electoral Commission's decision not to issue voter cards to some four million newly registered voters compounded suspicions that the NVR was not accurate, inclusive and reliable and that there were inadequate safeguards against fraud. In the absence of any documentation, confirmation of a voter's identity on polling day was dependent on the agreement of polling staff, with possible consultation of party agents or local people. While such approaches may have value in isolated cases of doubt, it was not an adequately secure or objective method to rely on systematically.

On Election Day, a disturbingly high number of people found that they were not on the register at the polling station where they presented themselves. The most likely reason for this development is linked to the re-organisation of polling stations and inadequate information provided to voters. This led to an unacceptable number of Uganda citizens being disenfranchised.

VII. REGISTRATION OF CANDIDATES AND POLITICAL PARTIES

A. Candidate Nomination

The Constitution requires parliamentary candidates to be citizens of Uganda, to be registered to vote, and to hold an Advanced Level educational qualification or its equivalent. Further, the Constitution disqualifies from standing persons of unsound mind, electoral officers, traditional or cultural leaders, those declared bankrupt without discharge, those convicted to a prison sentence of nine months or longer, those convicted of a crime of dishonesty or moral turpitude, and those convicted by a competent court of an electoral offence within the last seven years. Presidential candidates must be between 35 and 75 years old, Ugandan by birth, and qualified to stand for Parliament. The Electoral Commission is tasked with registering candidates, and its decisions are appealable to the High Court. The framework lacks a cut-off period for nomination challenges, which opens the door to belated court actions that upset the electoral timeline when ballots are already printed. Financial deposits and endorsement signatures are kept within limits implied by best international practice.

As in 2006, appeals disputing the academic qualifications of candidates flooded the courts. The requirement excludes the majority of Ugandan citizens from running for election, and necessitates the Electoral Commission and the National Council for Higher Education (NCHE) to exercise discretion in recognizing or rejecting equivalency. The academic prerequisite led to the falsification of diplomas, and exacerbated the personalization of campaigns, distracting voters' attention from substantive policy issues. The requirement also saddled a number of candidates with the cost of defending themselves against frivolous challenges.

In a pre-election nomination challenge, the Supreme Court upheld the right of 70 MPs to stand for the elections, even though they had violated the Constitution by switching party affiliation without vacating their seats in the previous parliament.²³ The Constitution remains silent about whether an MP would have to vacate a seat if expelled by their party. Were this the case, security of elected tenure, and with it the ability of voters to directly hold MPs to account, would be undermined. Further, it would defeat the main advantage of the first-past-the-post over the proportional list electoral system, the latter rendering MPs primarily accountable to the nominating party.

B. The Political Parties and Organisations Act 2005 (PPOA)

The 2005 Political Parties and Organisations Act regulates the financing and functioning of the multi-party system. To counteract national divisions, the Act imposes three-year imprisonment on any activity of parties based on region, ethnicity, religion or other forms of discrimination. Members of the military, the police and the public service, as well as traditional leaders and employees of state owned companies are barred from political party participation, a provision that could affect a substantial portion of the NRM's nine million members. The PPOA tasks the Electoral Commission with registering and annually auditing political parties, a power that highlights the importance of broad confidence in the Electoral Commission's impartiality. The Act mandates the Minister of Justice to issue a Code of Conduct for Political Parties, considered a best international practice, and to call a National Consultative Forum. The Constitution also requires that "Parliament shall by law prescribe a code of conduct for political organisations and political parties and provide for the establishment of a national consultative forum for political parties and organisations". The adoption of both measures has so far been blocked by the ruling party and, as such, Parliament is failing in its constitutional, and the Minister in his legal, obligations.

VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

A. Overview of the Election Campaign

The presidential election campaign began on 18 October 2010 and the parliamentary election campaigns on 16 December 2010, providing ample time for the eight registered presidential candidates to conduct campaign activities throughout all 112 districts of Uganda. For parliamentary elections, the 238 regular constituency parliamentary seats and 112 district constituency seats reserved for women were contested by more than 1,730 candidates and EU EOM observers reported a more competitive landscape compared with the elections in 2006. Altogether 15 political parties fielded almost one thousand candidates²⁴, although only the NRM and the IPC/FDC were able to contest elections in almost all constituencies.²⁵ Although the NRM continued to dominate the political scene, in several constituencies the major challenge to the NRM candidates came from candidates who had lost in the NRM primaries and decided to contest the elections as independents²⁶. The NRM claimed to have more than 9 million members, many of these joining the party during the NRM party primaries.

²³ Article 83 (g), (h) of the Constitution, *George Owor v William Okecho*, 2010

²⁴ In addition more than 700 independent candidates contested 350 directly elected parliamentary seats.

²⁵ Out of 350 constituencies: the NRM fielded 347 candidates (99%), IPC 297 candidates (85%), UPC 131 candidates (37%) and DP 103 candidates (29%).

²⁶ More than 40 NRM MPs who lost in the party's primaries ran as independent candidates for the parliamentary elections. Many of these MPs were former ministers and senior NRM members.

The campaign was conducted in an atmosphere in which the freedoms of assembly and association were generally respected. Presidential candidates campaigned intensively and were mostly able to move freely throughout the country. Although a few isolated violent incidents took place during the course of the campaign,²⁷ these did not have a serious negative impact on the campaign environment. Presidential candidates' adherence to the EC's campaign schedule significantly contributed to the relative calm and peacefulness of the campaign.

Presidential candidates' activities dominated the electoral campaign, attracting the participation of large numbers of supporters, while parliamentary candidates' campaign strategies focused on smaller scale activities such as door-to-door campaigning and neighbourhood meetings. Throughout the campaign period, there were widespread concerns among various election stakeholders related to the possibility of election violence around Election Day. Some political parties and independent candidates were allegedly creating vigilante groups²⁸ in the run-up to Election Day, consisting of young political party activists and mobilizers whose role "was to protect the party's vote".²⁹ It was feared that such groups could become involved in intimidation of voters and in violent activities during Election Day. At a General Stakeholder Briefing, the Electoral Commission Chairman addressed reports that some political parties had organized militia groups, and warned illegal vigilante and militia brigades and their leaders not to interfere with the election process³⁰.

During the election campaign the police recruited and trained new officers.³¹ The police also trained continued training special police constables and community groups known as "Crime Preventers" (CPs) across the country. Although the Inspector General of Police (IGP), Maj. Gen. Kale Kayihura, cited several reasons³² for increasing police presence over the election period, the measure was not widely trusted. The process of recruitment and training lacked transparency³³ and was viewed by most interlocutors as an attempt to intimidate opposition supporters and increase support for the ruling party among younger elements of the population.³⁴ CPs were recruited by NRM-dominated local council structures and there were reports from EU EOM observers of CPs being observed campaigning at rallies of the ruling party³⁵. In addition, the IGP was widely criticised by the

²⁷ On 19 January, FDC and NRM supporters clashed over bribery accusations when the Besigye team was campaigning in Alebtong district.

²⁸ The incumbent NRM youth MP Mr. Joseph Muyomba (running as an independent) informed EU EOM observers that he was organizing a brigade of youth vigilantes to prevent distribution of money and gifts by other political candidates in Bukoto Mid-west district.

²⁹ The opposition political parties argued that there was a need "to protect their vote" by people who would not be intimidated by ruling party structures and would stay in the area close to the polling station to await the announcement of PS results.

³⁰ On 19 January 2011, the Commission warned illegal vigilante and militia brigades and their leaders not to interfere with the election process. Brigades and their leadership who were warned by the EC are Kikankane, Blue Cobra, Red Brigade, Black Mamba, Bamboo Youth Brigade, Kibooko Squad, 3K Brigade, Mwoyo Gwagwanga, and Black Brigade.

³¹ The Inspector General of Police stated that the police had started recruitment of 25,000 officers on a temporary and permanent basis ahead of the forthcoming elections. The recruitment of 18,000 Special Police Constables (SPCs) was aimed at assisting with the policing of communities during the 2011 elections.

³² Among these were the need to ensure a safe and secure environment during the elections, protection of election officials, threats related to terrorism, and the possibility of disorder created by various vigilante groups associated with political parties and individual politicians.

³³ The training concentrated on military drills with little or no training on human rights, elections and crime prevention.

³⁴ These concerns were in part related to previous elections when a number of security agents were involved in election violence and partly to the Ugandan Police Force's (UPF) current inability to inform the wider public about policing of the upcoming elections.

³⁵ At President Museveni's rally in Ssembabule, EU EOM observers reported that, security was upheld by crime preventers wearing NRM colours. Observers interviewed the unarmed young men surrounding the venue and they stated that they had undergone the crime preventers training.

opposition for overstepping his mandate, being partial and for releasing anti-opposition comments³⁶.

As Election Day approached, the campaign environment became more tense, not least when police arrested and detained several NGO activists as well as opposition politicians and political party activists.³⁷ Opposition political parties accused the police of partisan behaviour in the conduct of their duties. The main opposition party, FDC, continually reiterated its intention to “protect its vote” on Election Day, stating that it would not address its complaints through the courts in case of election fraud.

Several activists of the Citizens’ Coalition for Electoral Democracy in Uganda (CCEDU) were arrested by police while distributing a leaflet asking voters not to vote for “any MP or leader involved in corruption” and demanding that all MPs return US\$ 20 million deposited into their bank accounts.³⁸ This money was paid to all MPs shortly after Parliament approved the Supplementary Budget,³⁹ ostensibly to facilitate MPs’ monitoring of government programmes in their constituencies. The payment was widely criticized by civil society and opposition representatives. Fewer than 20 MPs, mostly from opposition parties, returned the money. The distribution of the leaflets was part of a nationwide anti-corruption awareness campaign.

Three Democratic Party (DP) activists were imprisoned on charges of terrorism. The DP accused the government of targeting the party’s finances as one of those arrested, Ms. Annet Namwanga, was responsible for arranging financial resources from abroad. The police accused her of raising funds to overthrow the government. She was arrested and detained incommunicado for 16 days. After DP lawyers secured her release, the police brought new charges of terrorism against her and she was re-arrested.

In general the campaign was seen as more issue-based compared to previous elections. Among the topics continually raised by opposition candidates were the need to improve health care and education, creation of jobs and fighting corruption as well as the need to remove the Electoral Commission. The ruling party slogan, “Unity and Stability”, was targeted at large numbers of Ugandans as citizens retained a significant concern about maintaining order and peace. During the campaign period, Parliament passed the Traditional and Cultural Leaders Bill, mainly targeting opposition from the Buganda kingdom and this had a significant impact on campaigning in the Buganda area.

Throughout the campaign, opposition parties re-iterated their demand that the Electoral Commission issue voter cards to almost four million newly registered voters and seriously questioned the accuracy of the voter register. Following the High Court’s decision to dismiss an IPC petition which aimed to compel the Electoral Commission to issue voter cards, four presidential

³⁶ For example, the IGP Kale Kayihura participated at the initial launch of the NRM party manifesto at the beginning of the official campaign.

³⁷ An FDC party agent was arrested for putting up posters at the time President Museveni’s rally was taking place in the agent’s town. Seven Democratic Party (DP) supporters (but no NRM supporters) were arrested in Masaka town after a clash between NRM and DP at the rally of a DP candidate for Parliament. The DP woman councillor in Rubaga South, Aisha Nakalabya, was arrested and charged with “incitement to violence” after a clash between DP and NRM supporters. She was released after 24 hours and none of the NRM activists involved was arrested.

³⁸ Eleven activists were detained by police in Kampala; in Lira the Executive Director was taken into custody for having read over Rhino FM radio the statement by leaders of civil society in Uganda entitled “Abuse of Taxpayer Money and Wastage of Public funds by the Government of Uganda”.

³⁹ Unlike previous fiscal years a Supplementary budget of US\$ 602 billion was approved in January during the election period.

candidates submitted an open letter to the Electoral Commission expressing major concerns and asking for an “emergency summit with other stakeholders to address this crisis in order to have free and fair 2011 elections”⁴⁰.

The UPC and FDC filed a joint petition⁴¹ at the Constitutional Court stating that “the elections beginning on 18 February will not be free and fair but shall be characterized by violence”. The UPC-organized petition, known as the Blue Book and signed by 1.6 million Ugandans, called for free and fair elections and in particular for the establishment of a new, independent Electoral Commission and a new, clean and verifiable NVR.

B. Campaign Finances and the Use of State Resources

Inadequate and insufficiently implemented campaign finance regulations contributed to the uneven playing field for presidential and parliamentary candidates. The incumbency’s use of state resources involved the use of financial and operational advantages and also extended to reliance on public figures for campaign purposes, blurring the distinction between the State and the NRM

Of significant concern, the Presidential Elections Act actually endorses the incumbent’s use of state resources, in allowing the President to continue using government facilities which are normally utilised by, or attached to, his office.⁴² Further, presidential candidates can delay disclosure of accounts until thirty days after the elections, and delinquency does not invalidate the election per se. During the election campaign Parliament approved a supplementary budget of 602 billion Ugandan Shillings (USh), of which 85 billion was assigned to the presidency⁴³.

In addition, significant misuse of public resources by the incumbent president as well as several NRM parliamentary candidates⁴⁴ was reported by EU EOM observers. One example of the misuse of state resources observed by EU EOM observers took place on the occasion of the 25th anniversary of the end of the “Bush War,” when President Museveni personally attended an army celebration parade in Masaka district and awarded honorary medals to war veterans. Although it was an official event, the celebration was marked heavily by NRM campaign messages and a third of the participants displayed the party’s symbols.

It was also widely reported that that most NRM candidates used government projects such as the National Agricultural Advisory Services (NAADS) and the Northern Uganda Social Action Fund (NUSAF) as tools to press voters to adhere to the NRM should they wish to benefit from such projects.

⁴⁰ The key concerns mentioned were: issue of voter identification cards, absence of a clean National Voter Register, extremely inadequate voter education, open corruption and the bribery of the electorate. The open letter was submitted by Amb. Olara Otunnu (UPC), Abed Bwanika (PDP), Bidandi Ssali (PPP) and Samuel Lubega (Independent).

⁴¹ The UPC/FDC petition questioned several important issues such as: why the total number of registered voters appeared to be higher than the projected number of eligible citizens of Uganda; why the National Voter Register included 50,000 voters without photographs; the order of the presidential candidates on the ballot, which did not conform to the proper alphabetical order and favoured Yoweri Museveni; the guidelines on polling station arrangements which did not allow party agents and candidate representatives to crosscheck the identification of voters; the massive deployment of armed security personnel throughout the country allegedly to intimidate voters, and the use by the NRM and the incumbent of public funds for campaign purposes.

⁴² As stated by the Minister for Public Service: the President may continue to use State House and state lodges, his usual transport facilities, his usual personal staff and their facilities, and his usual information and communication facilities as well as other unspecified usual facilities. The President announced at the beginning of January the introduction of a special fleet of vehicles (45 vans and 45 trucks) to support his campaign around the country.

⁴³ State House and the President’s Office.

⁴⁴ Speaker of the Parliament, Edward Ssekandi (MP candidate Bukoto Central), was using an official vehicle for campaign purposes. During his rallies distribution of money was observed and inappropriate behaviour of police.

The law inexplicably exempts parliamentary candidates from campaign finance disclosure. The PPOA requires that the Electoral Commission make party accounts accessible to the public. Five parties failed to disclose accounts during the electoral period, and the Electoral Commission prepared an application to the High Court to deregister them. Opposition parties reported they were reluctant to reveal their donors, in order to protect them from government reprisals. The Act's lack of regulation on the use of government resources certainly contributed to the persistent fusion of the state and the ruling party during the campaign. The 2010 amendment to the PPOA introduces public funding of day-to-day operations of political parties according to the number of seats they hold in Parliament. For election campaigns, the PPOA prescribes public party funding on an equal basis. The EU EOM welcomes Parliament's adoption of this provision, but notes that the bulk of funding flowed directly to candidates, whose campaign finance remains unregulated. While the PPOA sets a ceiling on private party donations, it lacks a cap on spending, a loophole that helped enable the monetisation of the 2011 campaigns. Uganda's Access to Information Act meets modern international standards and could be tested in the courts to compel public access to individual candidate campaign finance data.

The increase in campaign spending⁴⁵ and "monetisation" of the election was a major concern of the election. It was evident that NRM resources were much greater than those of the opposition⁴⁶ and while the PPOA provides for the public funding of political parties, making all registered political parties eligible for equal funding for elections, the government did not allocate any public funds to political parties, exacerbating the disparity between parties' resources.

The power of incumbency and state resources were used to such an extent as to compromise severely the level playing field between the competing candidates and political parties. Widespread allegations of vote buying and bribery of voters, especially by NRM representatives, were reported by all EU EOM observers deployed across Uganda. In many cases it was difficult to distinguish between bribing voters⁴⁷ and "facilitating" party supporters⁴⁸.

Generally it was difficult to draw a line between government and the ruling party at local level. The local council elections at the village/cell (LC1) and parish/ward level (LC2) were last held in 2001, and almost all local leaders were elected during the movement system and are members of, or associated with, the NRM.⁴⁹ Resident District Commissioners (RDCs), who are directly appointed by the president, have significant powers and were often actively involved in the incumbent's

⁴⁵ Significant increases of campaign expenditures were widely reported to EU EOM observers and by journalists across the country. According to the managing editor of the Independent magazine, Andrew Mwenda, "the incumbent president (NRM) spent more than 350 million USD on the campaign using largely the public purse supplemented by private contributions". There are no limits on the amount of campaign spending prescribed by law.

⁴⁶ Each NRM parliamentary candidate received a minimum of US\$ 20 million, the same amount as that provided to presidential candidates from public sources.

⁴⁷ Supporters admitted to receiving money for participation at the rally of an independent candidate in Kabale District (US\$ 10,000); in Butaleja district, an independent candidate promised to handover to the community a tent and 30 plates prior to the election; in Erute South, at an NRM candidate's rally, each of the parishes received US\$ 150,000 in a brown envelope for mobility and rent for a bus to attend the campaign.

⁴⁸ EU EOM observers in Mbale directly observed two RM rallies where money was given to supporters (notes of US\$ 1,000 together with a specimen ballot paper with a tick marked for the incumbent president). In Kapchorwa observers witnessed the delivery of two combine harvesters valued at US\$ 1 billion during the rally of the NRM MP candidate. In Masaka the NM summoned meetings of the NRM Entrepreneurs League at regional level where every district was represented by five entrepreneurs, each receiving US\$ 50,000 for mobilization of the voters in their district. The EU observers in Masindi area reported the collective "defection" of around 2,000 FDC members to NRM. The celebration for those "defected" FDC members was organized by NRM supporters and with the support of tribal cultural leaders.

⁴⁹ There were only elections of Local Councils at the district (LC5), county (LC4) and sub-county level (LC3) in 2006.

campaign.⁵⁰ Despite the bar against partisanship of civil servants, RDCs and agents of the internal security services were omnipresent, occasionally taking a pro-active role in the electoral process.

The creation of new administrative districts was also cited by opposition as a means of buying votes for the incumbency⁵¹ and on several occasions President Museveni publicly declared the creation of several new districts at his campaign rallies.

Lastly, the Code of Conduct for political parties was not implemented due to a lack of political will by the ruling NRM. The Code was not adopted by parliament and the National Consultative Forum was not operational as the NRM did not nominate its representative.

IX. MEDIA AND THE ELECTIONS

A. Media Environment

The number of independent media has constantly increased in Uganda since the government loosened controls on news outlets in 1993. Radio is the key medium and is considered the most important source of news information for the public. About 160 privately owned radio stations are established throughout the country. However, the concentration of private media ownership is a concern as the overwhelming majority of the radio stations are owned by politicians and businessmen linked to the ruling NRM party⁵². This had an impact on the election campaign, with many opposition candidates complaining of extremely limited access to up-country-based radio stations.

The state-owned broadcaster, Uganda Broadcasting Corporation (UBC), operates radio and television services. UBC Radio is the only broadcast network covering almost all areas of the country thanks to repeaters and sister channels broadcasting in a variety of vernacular languages. During the election campaign, UBC Radio and UBC Television remained subservient to the interests of the government and the ruling party. There is a growing privately owned television sector which includes six terrestrial channels, but only two of them, NTV Uganda and WBS, are really significant in terms of news programming. The print media is also diverse with five daily newspapers and several weekly and monthly magazines. The two newspapers with the greatest circulation are the Daily Monitor and the partially state-owned New Vision. Although serving a small urban elite, they effectively had a bigger impact on the electorate since many radio and television stations broadcast their own news bulletins based on news items from the papers.

Uganda has constitutional provisions relating to free media in line with its regional and international commitments, but primary legislation, most notably the 1995 Press and Media Law, sometimes unduly restricts the freedom of the press. Some types of libel are still considered criminal offences and punishable by a prison sentence, while the Penal Code contains provisions on sedition and the promotion of sectarianism, both of which are applied selectively. The Ugandan government has

⁵⁰ In Butambala the RDC was one of the main speakers at the NRM rally in Kibibi town. In Lira district EU EOM observers received reports of the RDC and DPC openly campaigning in favour of the NRM.

⁵¹ Since the 2006 elections the government created 43 new districts. In 31 newly created districts the elections were held for the first time in 2011.

⁵² Findings of a book published by the Eastern Africa Media Council showed that, as of 2008, 75 per cent of registered FM stations were owned by politicians, and 75 per cent of these were members of the ruling party.

regularly used its national laws to muzzle public criticism by bringing charges against journalists⁵³. Other tactics to stifle critical reporting included threats, harassment, bureaucratic interference and, on occasion, physical violence. The media based outside Kampala, where legal protection and international scrutiny are lacking, are the most vulnerable. During the election campaign period this was revealed by a number of incidents, including radio stations which were taken off air shortly after an opposition candidate had started speaking to listeners, as was the case at Bunyoro's Kibaale-Kagadi Community radio, KDR. Cases of direct interference by the police were also reported. On 7 February, the owners of Radio Rhino and Voice of Lango, two Lira district-based radio stations, were summoned for interrogation by the District Police Commander for having hosted programmes with civil society activists seeking to expose allegations of government corruption. A week before, the premises of a Nakaseke district-based radio station were surrounded by police to prevent the airing of a talk-show hosting an opposition parliamentary candidate.

The room for manoeuvre of the Kampala-based media varied depending on the language used by the media and the audience it addressed. English language media, which targets mainly the urban elite, enjoyed substantial freedom of expression, while vernacular language media were subject to significant governmental pressure. This was demonstrated in September 2009, when the Ugandan government suspended, without any legal process, three radio stations broadcasting in Luganda, the language of the Baganda people, the largest of Uganda's ethnic groups, for allegedly inciting citizens to protest after violent clashes broke out in Kampala between supporters of the King of Buganda and government security forces. The pressure was maintained during the election period. On 4 January, the Broadcasting Council, one of the two official media regulatory bodies, blocked several Luganda-speaking radio stations from live broadcasting of the Ttabamiruka, an annual conference organized by the Buganda Kingdom to review and discuss the cultural, economic and developmental issues of the kingdom.

The clampdown on FM radio stations, coupled with new stricter legal proposals through the Press and Journalist (Amendment) Bill 2010, created an atmosphere of intimidation⁵⁴. Forty or so significant incidents affecting the media's freedom were reported during the campaign period. These included the wounding of 10 journalists covering events on Election Day⁵⁵. Six other journalists sustained severe injuries following assault by NRM militants, while covering alleged ballot-stuffing in the cancelled Kampala mayoral elections on 23 February. These incidents give rise to concern about the ability of the media to exercise fully their fundamental right and freedom to report during the election period.

⁵³ 40 criminal charges have been raised against journalists and talk show panelists since the previous political campaigns in 2006, according to 2010 Human Right Watch's report, *A Media Minefield: Increased Threats to Freedom of Expression in Uganda*.

⁵⁴ Uganda is ranked 96th in the Paris-based NGO Reporters Without Borders Press Freedom Index (2010), a fall of 10 places from 2009. US-based NGO Freedom House's annual survey of media freedom (2009), notes that "in the last five years Uganda has experienced one of the most dramatic declines in press freedom comparatively, with its global ranking declining from 98th place to 109th place worldwide". Kampala-based Human Rights Network for Journalists index report (2010) indicates that "the media in Uganda is consistently under attack" and is "concerned about the declining safety and security environment for journalists in Uganda, and the growing overall threat to freedom of expression in the country"

⁵⁵ Cases reported by the Uganda Journalists Association (UJA) and the Human Rights Network for Journalists (HRNJ-Uganda) which both noted an increasing number of cases of journalists' harassment in the last week of the campaign. On 9 February soldiers belonging to the Army's Special Forces Group (SFG) allegedly assaulted a Daily Monitor journalist in Sembabule District as he attempted to take pictures of them stopping Lwemiyaga County MP Theodore Sekikubo from erecting a campaign poster. On 10 February, a Masaka-based NTV correspondent was detained by the SFG for filming a scuffle involving Rwemiyaga area Member of Parliament, Theodore Ssekikubo, ahead of President Museveni's campaign rally.

B. Legal Framework for the Media and Elections

Pursuant to the Electoral Commission Act, the Electoral Commission has a duty to regulate all aspects of the elections, including coverage in the media. This includes responsibility to ensure respect for specific legal obligations applying to the state-owned media regarding the election campaign. Article 67 of the Constitution states that “all presidential candidates shall be given equal time and space on the state-owned media to present their programmes to the people”. Similarly, parliamentary candidates should not be denied “reasonable access” to the state media as specified in Article 22 (1) of the Parliamentary Elections Act. According to the laws, candidates may also use private media for their campaigning. Following complaints by several parliamentary candidates claiming to have been denied access to rural radio stations, the two official media regulatory bodies, the Media Council and the Broadcasting Council⁵⁶, issued a joint statement on 17 November. The statement reminded proprietors of private broadcasting outlets that airwaves are held in public trust, and that they should therefore not deny any candidate the opportunity to express themselves through this public resource.

Despite these provisions, the media generally operate under few legal obligations and there is an inadequate regulatory system to ensure that the media respect the provisions that do exist. The Complaints Liaison Committee, the conciliation body established under the aegis of the Electoral Commission together with media regulatory bodies, had no legal powers to compel media to provide fair coverage and advised candidates and political parties who felt they were being denied access to take their case to court. The Committee also failed in its attempts at conciliation when two presidential candidates, Kizza Besigye (IPC/FDC) and Olive Beti Kamywa (UFA), complained about unequal coverage on UBC. The Committee severely weakened its remaining credibility when it only began distributing the “Code of Conduct of the Media” on 10 February, just six days before the end of the campaign period. In general, opposition parties and ostensibly independent media did not trust the Committee, which they considered subservient to the interests of the ruling party. Its independence was questioned, in particular as it involved in its process the Media Centre, a statutory body established in 2006 by the government to manage media relations for the President’s Office.

C. Monitoring of Media Coverage of the Elections

There were high levels of media coverage of candidates and parties standing for election, as well as election preparations, throughout the monitoring period⁵⁷. However, some key media failed to provide equitable coverage for candidates and parties, generally to the disadvantage of the opposition. UBC in particular failed to fulfil its constitutional obligation as a state-owned broadcaster, showing a substantial bias towards the incumbent president and the ruling NRM party. UBC Radio allocated three times the amount of airtime to President Museveni and the NRM compared with that allocated to Dr. Besigye and the main opposition parties combined. UBC Radio also used an increasingly negative tone towards the opposition parties as Election Day approached⁵⁸.

⁵⁶ The Media Council was established by the Press and Journalist Statute 1995 as the body to regulate the practice of journalism. The Broadcasting Council was created by the Electronic Media Statute (1996) and mandated with the function of issuing licenses and regulating radio and television.

⁵⁷ Commercial radio and television stations CBS, Simba FM, WBS and NTV and state-owned UBC Radio and UBC TV were monitored daily between 06.00 and 09.00 and between 17.00 and 00.00 from 23 January until 16 February. All editions of the privately owned Daily Monitor and the partially state-owned New Vision were monitored throughout the period.

⁵⁸ 14 per cent, 16 per cent, 38 per cent and 40 per cent of negative coverage for the Forum For Democratic Change (FDC), Democratic Party (DP), Uganda People’s Congress (UPC), and Justice Forum (JEEMA) respectively

UBC Television followed a similar pattern. Coverage of President Museveni and the NRM amounted to nearly fourteen hours, compared with just 56 minutes devoted to the President's main challenger, Dr. Besigye, and the IPC. UBC Television was also embroiled in a row with the IPC for failing to air Dr. Besigye's paid advertisements. Costing 19.8 million Ugandan shillings, these advertisements were scheduled to run for one month from 4 December 2010 to 4 January 2011 but only a small fraction of them was aired. Two top managers at UBC Television, including the chief news editor, were dismissed a few days after Election Day. No reason was given for their dismissal, but the chief news editor gave an interview to the Daily Monitor in which he suggested he was used as a scapegoat while just following "*instructions slapping a ban on stories about opposition candidates to be played on the air*".

The commercial television station NTV provided coverage that was more balanced between the incumbents and the opposition, with news generally delivered in a neutral tone. WBS, the main commercial competitor of NTV, showed a significant bias towards Kizza Besigye in the final week of the campaign, having previously provided balanced coverage. There was a high number of paid advertisements on NTV and WBS, largely placed by the NRM and the IPC/FDC. There was clear labelling distinguishing these programmes from news programming, as well as consistency in applying taste and decency standards. Election output from private radio stations broadcasting in Luganda followed a different pattern. Simba FM showed a significant bias in favour of the incumbent president and the ruling party, while the popular Kingdom of Buganda-owned CBS dedicated the least amount of airtime to the elections of all the broadcasting media monitored by the EU EOM. This extreme caution could be the result of CBS being one of three radio stations suspended from broadcasting by the government in September 2009. The station, which remained off air until October 2010, was verbally authorized to resume broadcasting, while the information ministry retained its license.

The Daily Monitor, Uganda's largest circulation newspaper, provided reasonably critical coverage of the candidates and their platforms. Yoweri Museveni received more space than Kizza Besigye (25,561cm² against 20,598cm²), but coverage of the incumbent president was more critical than that of his main rival (19 per cent negative tone for President Museveni, 8 per cent for Dr. Besigye). The partially state-owned New Vision did not demonstrate the same willingness to provide Ugandan citizens with the variety of information they needed to make an informed decision on Election Day. The second largest Ugandan newspaper in terms of circulation, the New Vision continually published front page photographs of candidate Museveni almost to the exclusion of the seven other presidential candidates. On 26 January it also published a 32-page supplement on the NRM's 25th anniversary which provided a detailed and uncritical description of the economic progress and infrastructure built under the leadership of President Museveni. Even if this supplement is not factored into the process, the incumbent President enjoyed much greater media coverage than his main challenger (42,201 cm² against 12,841cm² for Dr. Besigye). The overall conclusion is the same for the coverage of the parliamentary elections campaign, for which the NRM received up to five times more column space than the main opposition political parties.

In addition to its monitoring of Kampala-based media, the EU EOM measured the political parties' perception of the election campaign coverage by private radio stations outside the capital through a *Media Access Report* submitted to 126 local political party leaders in the 17 areas of deployment of the EU EOM Long Term Observers (LTOs). Of the 73 district leaders of opposition political parties polled, 49 (70 per cent) said they had no or extremely limited access to local media and believed that local media covered their activities in a biased manner, for example, by ridiculing or slandering them. The satisfaction index was, however, very high among the 35 district leaders of the NRM.

Thirty-one (89 per cent) said they had normal access to local media and received fair coverage of their campaign activities.

The EU EOM perception index is consistent with the results of the Uganda consortium of independent media organisations, Memonet⁵⁹ which monitored nine FM stations, including seven up-country broadcasters, during the election campaign⁶⁰. Their results tend to confirm that the government's dominance of state-owned radio was not balanced by private radio stations established outside the capital, which generally provided opposition candidates with very limited access, exacerbating the uneven playing field in favour of the incumbent president and the ruling NRM party. Overall, FM radio coverage of the presidential candidates was slanted in favour of the incumbent at 50.7 per cent against 16.4 per cent for Dr. Besigye. There were consistent reports that a number of radio station owners refused or were reluctant to cover the activities of opposition parties for fear of retaliation by members of the NRM and local authorities⁶¹. These reports also reveal that some editors-in-chief asked their journalists to avoid critical reports of NRM candidates and that many journalists submitted themselves to self-censorship for fear of harassment or loss of employment.

X. HUMAN RIGHTS AND PARTICIPATION OF WOMEN IN THE ELECTORAL PROCESS

A. *The Uganda Human Rights Commission*

The Constitution enshrines the formal independence of the Uganda Human Rights Commission (UHRC) and vests it with broad powers, such as ordering the release of a detainee and awarding civil compensation. The Constitution requires that its chairperson be qualified as a High Court judge. During the pre-election period, the UHRC undertook a series of human rights seminars that brought together the security forces, electoral administrators and civil society. The EU EOM commends the UHRC for dispatching 107 election observers to 67 of Uganda's districts. In its preliminary statement, the Commission confirmed select findings of the EU EOM, namely the early and late opening of polling stations and the insufficient training of polling staff. UHRC observers detected discrepancies between the final electronic voter register used to locate polling stations by SMS, and the hardcopy lists given to candidates and political parties.

The UHRC participated in the drive to inform citizens of the voter registration process and later received complaints from voters claiming their names had erroneously been erased from the NVR. The Commission's mandate also entitles it to observe the registration process. As such, the UHRC is well-placed to contribute to the transparency and accuracy of the voter register. The EU EOM further encourages the UHRC to continue to rigorously investigate and remedy human rights violations against individual electoral actors, including voters, civil society advocates, candidates, their agents and journalists.

B. *Human Rights*

Although Uganda's Constitution formally guarantees all fundamental rights needed to meet international electoral standards, its legislature has enacted laws that unreasonably curb freedoms

⁵⁹ Memonet is composed of the Print, Radio and Television Observatory (Prato LLC), the Human Rights Network for Journalists-Uganda (HRNJ-U) and the Uganda Court Reporters Association (UCRA).

⁶⁰ UBC Radio and CBS FM in Central; Unity FM and Radio Lira in the North; Open Gate FM and Rock Mambo FM in the East; and Spice FM in the West, and Radio West and Vision FM in the South West of Uganda.

⁶¹ Weekly reports of EU EOM Long Term Observers (LTOs)

of speech, assembly and association.⁶² As of the departure of the EU EOM from Uganda on 10 March, an opposition fundraiser remained in detention on terrorism charges, which echo prosecutions that surrounded the 2006 elections.⁶³ In its most recent annual report, the Uganda Human Rights Commission highlighted *habeas corpus* violations by the Ugandan police force Rapid Response Unit, the Chieftaincy of Military Intelligence and the Joint Anti-Terrorism Task Force⁶⁴. The UHRC has received complaints of torture allegedly committed by the police, UPDF, prison and Internal Security Organisation (ISO) officials perpetrated in non-gazetted safe houses.⁶⁵ Facing parliamentary questions, the Minister for Security offered assurances that all safe houses were now gazetted.⁶⁶ The opposition fundraiser mentioned above had been arbitrarily detained in a non-gazetted location in Kololo for 13 days, where, according to her lawyers, she was tortured.⁶⁷

C. Participation of Women

The level of political participation by women is relatively high⁶⁸ due to constitutional provisions for affirmative action. The Constitution provides for one woman representative in parliament per district and the Local Government Acts provide for one third of seats on each local council to be reserved for women. Under this system, a woman is directly elected in each of the 112 districts of Uganda. Furthermore, out of 25 seats allocated for SIGs at least five must be held by women⁶⁹.

As in 2006, there was one female candidate running for presidential office⁷⁰. Compared with the parliamentary elections in 2006, there has been a significant increase in the number of districts and the number of reserved seats for women therefore also increased from 69 to 112. Opposition parties did not field women candidates in a significant number of women district constituencies, and in four of the 112 districts NRM candidates were returned unopposed. The reason given by opposition parties was the lack of women candidates and lack of party financing to support their candidates.

The major opposition bloc IPC only fielded women candidates in 84 out of 112 district constituencies. The fact that women constituencies represent a whole district and on average contain two or three regular constituencies represents an extra burden for women candidates to campaign, particularly as in practice they had more difficulties raising funds and had to conduct their

⁶² Specific sections of: the Police Act 1994, the Penal Code 2007, the Public Order Management Bill 2010, the Cultural Leaders Bill 2011, the NGO Registration (Amendment) Act 2006

⁶³ Government makes extensive use of the post 9/11 Anti-Terrorism Act of 2002, which provides for a mandatory death penalty for the unlawful possession of explosives.

⁶⁴ Article 23 (4)(b) of the Constitution guarantees the right to be brought in front of a judge within 48 hours of arrest.

⁶⁵ UHRC Annual Report 2009, page 67

⁶⁶ The New Vision, 21/05/09

⁶⁷ The charges read: Jingo Bamutanga Jerry, Namwanga Annet, Mubanguzi Edson Katarikawe, Sula Sebirumbi alias Kanyanya, Iddi Shaban, Ali Waako, Hajji Nyanzi Yusuf Abas Mubiru, Lawrence Kiwanuka Nsereko and others still at large, between the year 2005 and January 2011 in diverse places in Uganda, Kenya, and Tanzania aided or abetted or rendered support to Issa Doka Laaka, by acquiring grenades, motorcycles, vehicles, providing money and intelligence information to the said Issa Doka Laaka, knowing or having reason to believe that the support would be applied or used to for, or in connection with the preparation or commission or instigation of acts of terrorism. The High Court has scheduled the opposition fundraiser's hearing for 25 March. She was detained on 18 January, and she was not formally charged and arraigned until 1 February.

⁶⁸ According to a DEMGroup study Uganda ranks 23rd out of 188 countries in the world for the percentage of women members of Parliament.

⁶⁹ 117 seats allocated for women MPs represent 33% of all parliamentary seats (375).

⁷⁰ Betty Olive Kamywa, former member of the FDC, was nominated by the newly funded Uganda Federal Alliance (UFA) party.

campaign activities in a more challenging environment.⁷¹ Overall, observers reported that women candidates' campaigns had to abide by a stricter enforcement of election law, such as not being allowed to campaign after 6 pm in areas where male candidates ignored that particular rule.

There was a slight increase⁷² in the number of women contesting the non-affirmative action seats but women still represented only 3.6 per cent of the total number of candidates⁷³ running for the regular constituency seats. One of the main reasons for this was that, across the political spectrum, political parties do not provide equal opportunities for women to take up leadership positions. Women's activists continue to complain that since the creation of reserved seats, women are effectively confined to the district seats and therefore cannot develop the same political position as MPs representing regular constituencies. Generally women candidates were low-key parliamentary contestants compared to their male counterparts. Very few women were able to campaign individually and instead participated at the campaign activities of male party members running for the non-affirmative seats in the constituency or constituencies in their district.

A quarter of POs and party agents were women and on Election Day just under half of polling assistants were women. Observers reported that women ROs around the country were considered professional and impartial. A common reason for there not being more women holding positions within the electoral administration was the fact that they tend to be less well educated than men and therefore they fail to comply with the legal requirements for these positions.

XI. PARTICIPATION OF CIVIL SOCIETY AND DOMESTIC ELECTION OBSERVATION

Civil society showed itself to be vibrant and committed to supporting the democratic process. The work carried out by civil society groups such as CCEDU was key to voter education and in addition the Electoral Commission accredited 39 domestic observation missions⁷⁴, of which several issued statements after polling day.

Two domestic observation missions were long-term and sizeable. DEMGroup, a consortium of four civil society organizations,⁷⁵ deployed 22 regional coordinators in May 2010, followed in September by observers for each constituency. DEMGroup observed and issued a number of reports on key elements of the electoral process, including voter registration, women's participation and the role of money in political campaigning. On Election Day, DEMGroup deployed about 5250 observers to polling stations across Uganda. DemGroup observers were present in 25 per cent of polling stations observed by the EU EOM.

The other principal domestic observation group, Citizens Elections Watch IT (CEW-IT), also deployed long-term observers with around 5,000 observers in 22 districts in an arc running from the west to the north and north east.⁷⁶ CEW-IT observers were present in 19 per cent of polling stations

⁷¹ Women candidates complained about difficulties in raising funds, travel and conducting their campaign activities outside the constituencies they reside in.

⁷² In the 2006 elections 28 women contested 215 constituency seats compared with 46 women contesting 238 constituency seats in the 2011 elections.

⁷³ There were 46 women out of 1270 candidates.

⁷⁴ There is no statutory right to observe elections in Uganda

⁷⁵ The members of DEMGroup are the Uganda Joint Christian Council (UJCC), Action for Development (ACFODE), Transparency International Uganda (TIU), and the Centre for Democratic Governance (CDG).

⁷⁶ CEW-IT members are the Rwenzori Consortium for Civic Competence (RWECO), working in the Rwenzori region; the Public Affairs Centre (PAC), working in the Teso region; CEFORD, working in the West Nile region; and ACORD, working in Gulu.

attended by the EU EOM. Although CEW-IT did carry out classic election observation, its main strength was its participation in the management of two web-based platforms, www.uchaguzi.co.ug and www.ugandawatch2011.org, both of which enabled observers and members of the public to post observations, including by mobile phone text messages. These platforms did not seek to provide comprehensive assessments of the electoral process but rather mobilized citizen engagement.

The Human Rights Network (HURINET) and the Uganda Human Rights Commission each deployed some 100 observers, and both organizations issued statements on the electoral process. For its part, the Inter-Religious Council of Uganda created a 'National Task Force for Peace and Conflict Transformation', a body designed to mediate conflict during and after the election period, as well as deploying some 220 observers.

Accreditation criteria and procedures are mentioned only perfunctorily in the electoral acts. Concern was raised when, following accreditation of organisations, the Electoral Commission required individual domestic election observers to present themselves to ROs in their district, to confirm their identity, followed by security screening carried out by the police. This requirement constituted an unexpected cost and administrative hurdle for domestic observation missions and in some cases had still not been resolved by Election Day. The security procedure appeared inconsistent with the approach to party representatives, who did not need to register with the Electoral Commission at all, despite having access to the same locations and processes. DEMGroup denounced the ISO, stating that ISO personnel had questioned DEMGroup observers on their political affiliations and in other cases had demanded payment before issuing accreditations. In the event, no domestic observation mission reported that accreditation procedures had significantly hampered their ability to deploy the intended numbers of observers.

XII. SPECIAL INTEREST GROUP ELECTIONS

By their nature, indirect elections tend to have a lesser degree of scrutiny and transparency and EU EOM observation of the implementation of SIG elections confirmed this tendency. Indeed, the almost complete absence of statute or binding regulation and adherence to acceptable practices served to emphasise the need for all MPs to be elected by direct and universal suffrage, including any quota seats. In practice, Uganda's SIG elections are characterised by poor adherence to procedure and extremely low levels of competition. Seats reserved for the military raise further conflicts of interest related to the separation of powers, since army MPs remain on active duty, and are thus not accountable to constituents, but exclusively to the President in his role as Commander-in-Chief.

The Constitution requires that Parliament review the status of Special Interest Group Seats in Parliament a year prior to each election. Since last September, a petition remains pending before the Constitutional Court against Parliament's failure to make laws regulating the election of SIGs⁷⁷. Only weeks before the election, it was reported that government laid statutory instruments before Parliament that delegated this constitutional duty to trade unions, the National Union of Disabled People in Uganda (NUDIPU) and the National Youth Council (NYC). Those bodies require membership in order to exercise the right to vote. An NGO for people with disabilities (PWDs) challenged the constitutionality of Parliament's delegation to a non-statutory body, as well as the hardship imposed

⁷⁷ *Kasozi Robinson v AG, 2010*

on the PWD electoral college to travel to Kampala for the final round of voting.⁷⁸ A draft bill proposes that the National Council of People with Disabilities (NCPD) take over the electoral college from the NUDIPU but this would not resolve the current problems with the system, namely the failure to respect universal suffrage and a lack of direct constituent accountability.

A. Youth Elections

Of all the Special Interest Group elections, those for youth are ostensibly the most transparent and certainly they were the only SIG elections for which it was possible for the EU EOM to observe several stages. These observations revealed an election process which was far from meeting international standards for democratic elections.

The election of five youth MPs begins with the election of a nine-person Youth Committee in each of Uganda's 57,364 villages, after which successful candidates go on to the election of nine-member committees at parish, sub-county and district levels. The process culminates in all four Regional Youth Committees each electing one youth Member of Parliament and the National Youth Council electing one woman youth MP.⁷⁹

At its first and most inclusive stage, all citizens aged between 18 and 30 years qualify to vote and to stand as candidates. Candidates may run independently or for political parties. An initial voter register is extracted from the NVR and youths who have not registered for the direct elections may register separately for the youth elections. This first stage of the youth elections was held nationwide on 31 January – four days later than planned and widely cited as the cause of delays in preparations for the general elections. EU EOM observations in the field found a pattern of extremely low turn-out (most often estimated at around 10 per cent), poor voter information and a high rate of unopposed candidates. In such cases, it was generally the NRM candidate who stood unopposed, or sometimes an independent candidate. Voting processes were characterised by lack of regulation: ad hoc polling staff, poorly-produced or insufficient ballot papers, inconsistent application of measures such as checking voters' names on the register, poor respect of secrecy of the vote, reports of under-age and over-age voting, an unclear complaints process and lack of oversight from ROs.

Turn-out increased in the following stages of the youth elections, which can be explained by the fact that electoral colleges were composed of successful candidates from previous stages. However, the trend for poor procedures and a high rate of unopposed candidacies continued, alongside opposition complaints of unequal access to information, particularly with regard to the short timeframe for nominating candidates. In Kampala, the DP filed several complaints, in one case because the PO aimed to stand for election, and in another two because DP candidate nominations were not registered.

On 9 March, the four Regional Youth Committees gathered in four locations to each elect one youth Member of Parliament. Regional Youth Committees are each composed of the nine-member District Youth Committees – collectively the Regional Youth Committees therefore have 1008 members. In each region there were five candidates for the position, and in all but one region the successful candidate represented the NRM. Only in the Central region was the NRM candidate narrowly beaten, by an independent candidate. Northern region youth elections were reportedly marred by

⁷⁸ Legal Action for PWDs in Uganda v AG, EC and NUDIPU, 2010

⁷⁹ Regional Youth Committees are each composed of the nine-member District Youth Committees – collectively the Regional Youth Committees therefore have 1008 members. The National Youth Council is composed of 3 members of each District Youth Council – the Woman Youth MP is thus elected by a college composed of 336 people.

violence.

On 13 March, the National Youth Conference constituted the electoral college to elect one woman youth MP. The college was composed of three members from each district youth committee, alongside delegates from the Uganda National Student Association – 340 people in total.

Two candidates ran – one for the NRM and one as an independent – and the NRM candidate was elected. Incidents during the course of the election included ongoing campaigning by the NRM, through carrying flags and other material, as well as singing and dancing with a hired band. In addition, unrest which broke out during counting and tallying resulted in the police dispersing the crowd outside the voting hall with tear gas.

B. Workers' Elections

There are two electoral colleges for the election of worker MPs, respectively composed of members of Uganda's two main trade unions. The 730 representatives of the Central Organisation of Free Trade Unions (COFTU) are members of the Executive Committees of its 23 trade unions, while the 226-strong representation for National Organisation of Trade Unions (NOTU) is made up of 11 delegates from each of its 20 trade unions, alongside NOTU's own secretariat.

On 14 February the workers' electoral colleges gathered in Kampala, under the auspices of the Electoral Commission. EU EOM observers present noted the absence of a clear procedure for candidate nomination, alongside the fact that considerably more time was spent discussing allowances than campaign programmes. EU EOM observers also noted that in contrast to other SIG elections, secrecy of the vote was respected.

COFTU representatives elected one Member of Parliament, who was unopposed. NOTU members elected three Members of Parliament from among seven candidates. The two electoral colleges then jointly elected a woman worker MP. As a result of these elections, one independent and four NRM MPs were elected to Parliament.

A challenge against the electoral college procedure for the five workers' seats has been pending before the Constitutional Court since 10 November 2010.⁸⁰

C. Election of Persons with Disabilities

The electoral college for PWDs is composed of 448 people - four for each district. This college is ostensibly the culmination of village, parish and sub-county elections but in the case of persons with disabilities these are administered by member organisations of National Union of Disabled People of Uganda (NUDIPU) and the Electoral Commission is not involved until it receives the list of members of the final electoral college.

On 15 February, the electoral college for PWDs elected five MPs from among seven candidates – five for the NRM and two independent candidates. All successful candidates represented the NRM and all bar one were incumbents. The one newcomer was herself a senior member of NUDIPU and responsible for submitting the names of the electoral college to the Electoral Commission.

⁸⁰ Moses Mauko and Catherine Aneno v AG, 2010

D. UPDF Elections

The UPDF's electoral college is constituted by the Defence Forces Council, which is the army's governing and appointments body. The Council is chaired by the President of Uganda, or in his absence by the Vice-President, or the Minister of Defence, or any other person appointed by the President.⁸¹ While it was once also the Defence Forces Council which proposed a list of up to 30 candidates, it is now in practice the Commander-in-Chief (and President of Uganda) who submits nominations. This list remains a secret and the preserve of the President until the time of election, when he reads his proposed nominees at the council meeting – nominees' qualifications are then verified in the UPDF database. To be nominated, one must be a serving soldier, a Ugandan citizen and hold a minimum academic qualification of advanced level certificate or its equivalent. This is in addition to the standard requirements for qualification to parliament.

On 9 March, the National Defence Council convened at the Land Forces headquarters in Bombo and the Electoral Commission Chairman constituted the body as an electoral college.⁸² President Museveni nominated 22 candidates, of whom 19 were men competing for eight seats and three women competing for two seats.

Voting was carried out by roll call, in the presence of the President. Of the 267 votes cast, 260 were valid and 10 MPs were elected, of whom six were incumbents. UPDF MPs are purported to be non-partisan and do not represent any political party. In practice army representatives sit on the NRM side in parliament and tend to vote in favour of the ruling NRM. The 10 SIG seats reserved for the army have given rise to a constitutional petition. In breach of the separation of powers, military MPs remain in active service⁸³, and thus subject to the chain-of-command, which is headed by the President as commander-in-chief⁸⁴. Military MPs are accountable to the President, rather than to constituents. On appeal against the Constitutional Court, the Supreme Court has awarded military MPs freedom of speech inside Parliament, but not in public. Chief-of-Staff, Major-General Joshua Masaba, argued that the army required *listening posts* in Parliament, which might have a chilling effect on debate. The army's argument prompted the Supreme Court to question the democratic "desirability" of military MPs⁸⁵.

XIII. ELECTION DAY

The EU EOM observed a total of 593 polling stations in all regions of Uganda, with an approximately equal coverage of urban and rural areas. The EU EOM also observed in 50 District Tally Centres.

⁸¹ According to Article 14 of the UPDF Act 2005, the Defence Forces Council is composed of members of the High Command; persons who were senior army officers on 26 January 1986, listed in the second schedule to the Act; all directors of services established under the Act, and commanding officers of brigades and battalions and officers commanding equivalent units of the Defence Forces.

⁸² A number of Council members were absent and rather than 342 members, the electoral college was composed only of 267 members. Absent officers were serving the Amisom in Somalia, others are in Congo, while others (Military Police Commanders) were on patrol in Kampala, the election having fallen on the same day the opposition IPC called for protests in the city.

⁸³ Article 208(2) of the Constitution states that the UPDF are subordinate to the civilian authority.

⁸⁴ The annual Parliamentary Scorecard ranks Military MPs at the very bottom in terms of committee attendance and the tabling of parliamentary questions and private members' bills.

⁸⁵ Brigadier Henry Tumekunde v AG and EC, 2008

Beyond the concern raised by specific procedural errors during the course of opening, voting and counting, it is regrettable that for the most part the process was flawed for the same reasons as in 2006, largely due to insufficient training for polling station staff and inadequate information for citizens, most significantly in connection to where they were registered to vote.

A. Opening and Polling

There were protracted delays in the opening of 80 per cent of polling stations observed, largely due to materials not having been delivered in time, with some cases of insufficient polling staff. These delays affected urban and rural polling stations alike, raising concerns about how polling day would unfold.

Despite significant organisational difficulties, opening procedures were largely peaceful where observed. Opening procedures were not consistently respected. While the requirement to display empty ballot boxes was fulfilled in almost all observed cases, in 35 per cent of cases observed POs did not complete the receipt of materials part of the Official Record Book, which would have included a record of the number of ballots received. EU EOM observers rated opening procedures as good or very good in two thirds of cases observed, and poor or very poor in one third of cases.

Voting procedures were assessed as poor or very poor in 30 per cent of cases. Problems with the delivery of materials had an impact throughout polling day, with 12 per cent of polling stations observed recording a lack of some essential materials, most often seals for ballot boxes and forms which polling staff were required to complete - these were missing in 5 per cent of all stations observed. Of significant concern, in more than half of polling stations observed during the day, the number of ballots received had not been recorded and in nearly one-third of cases ballot boxes were not properly sealed. In some 13 per cent of cases, voters' names were not marked in the register to show that they had voted.

Party agents were present in all cases observed, with the NRM and FDC always present and the DP and UPC present in around one-third of polling stations observed. NRM agents were present in the greatest numbers, averaging more than four per polling station.⁸⁶ In line with the legal requirement granting them such access, party agents could easily view and follow the voter register in 91 per cent of cases observed. This was primarily due to the fact that they had their own copies of the voter list rather than overseeing the list held by the PO.

The voting basins were not effective for ensuring secrecy of the vote, especially where ballots were at least as long as the basins' diameter.

Polling staff only instructed voters on the two valid methods of marking ballots in 30 per cent of cases, which is unfortunate given the law's restrictive interpretation of a valid ballot.⁸⁷

Of significant concern was the high rate of people finding that they were not on the register at the polling station where they presented themselves. This was observed in nearly 60 per cent of stations visited by the EU EOM. In all cases it would have been helpful to post a copy of the voter list at each polling station to ensure people did not have to queue before finding themselves turned away, in addition to more effective voter information prior to election day. In a small number of cases (2 per cent), people were observed being allowed to vote despite not being on the voter register, while others were denied the right to vote despite being on the register - this was also observed in 2 per

⁸⁶ The law allows for two agents per candidate, which in this instance meant six agents per party at each polling station.

⁸⁷ Only a tick or thumbprint were legally acceptable marks for a valid ballot.

cent of cases. In 5 per cent of polling stations observed, voters found that someone had already voted in their name, and in all such cases the PO dealt with this according to procedures, namely completing a form attesting to the second arrival's identity and allowing them to vote. EU EOM observers were granted access to all required documentation in the vast majority of cases.

B. Closing and Counting

EU EOM observers assessed the closing and counting procedures to be poor or very poor in over a third of cases. In about a quarter of cases, people queuing at 17.00 were not allowed to vote, despite this being provided-for by law.

In more than half of cases observed, the number of votes cast was not determined by counting the marks in the voter register, and in just under half of cases there was no adequate reconciliation of all used and unused ballots. In just over a quarter of polling stations observed, the number of ballots cast did not equal the number of people who had voted.

The definition of a valid vote was determined in a consistent manner, but in over a third of polling stations observed, ballots with clear voter intention were considered invalid due to the use of marks other than a tick or thumbprint. This requirement gives insufficient priority to voter intention and the rate of ballots considered invalid indicates that there was insufficient education of voters.⁸⁸

In nearly one fifth of polling stations observed, the PO did not complete the Accountability of Ballots Form for each election and also in about one fifth of cases observed, Declaration of Results Forms had been signed by party agents before they were completed. In the vast majority of cases, results forms were not physically posted at the polling station as required by law.

C. Tallying

After completion of counting at polling stations, results forms were delivered to District Tally Centres (DTCs), either by polling station POs or by sub-county supervisors. Although party agents accompanied the transport of results in only one-quarter of cases, EU EOM observers were able to accompany the transportation in the majority of cases, indicating that it was largely logistical difficulties that had restricted party agents' access. In about two-thirds of cases, results were delivered with a security escort and in the same proportion of cases EU EOM observers assessed transport of results to have been transparent and secure.

At DTCs, ROs oversaw the tallying of presidential election results as well as for the parliamentary elections for one district woman's seat and for as many constituencies as were contained within the given district. Tallying was carried out through a new Electronic Results Transmission and Dissemination System (ETRDS), according to which data was double-entered for each election and Declaration of Results Forms were scanned. Both results and scanned forms were transmitted electronically to the National Tally Centre (NTC).

Although the ETRDS enabled swift transmission of results once entered, party agents and observers had difficulty viewing the data entry process in one third of cases and the process took several days in many cases. In 40 per cent of cases, EU EOM observers assessed the process at DTCs to be poor or very poor, and good or very good in 60 per cent of cases.

⁸⁸ See below, XIV.A, "Declaration and announcement of results".

The NTC in Kampala was open to duly accredited observers, party agents and members of the press, and facilitated access to results for the presidential election as they arrived through the ETRDS.

In line with standards for transparent elections, the Electoral Commission ensured that the ETRDS system displayed individual polling station results, enabling NTC visitors to cross-check polling station result forms. On election night, only presidential results were available for checking at the NTC.

During the course of polling and in the following days, there were numerous reports of vote rigging, mainly by means of ballot stuffing but also through changing results at polling stations or DTCs. Although it is highly unusual to witness such fraud directly, EU EOM observers noted several instances in which such actions clearly did take place. EU EOM observers noted developments consistent with ballot-stuffing in Kampala, where Hoima Flats polling station was opened before 7am, where opposition party agents were chased away after refusing to sign blank results forms, and where by 8.30am ballot boxes were half full. On observing counting in the same polling station, the EU EOM noted stacks of ballots folded together and also that the number of ballots cast for presidential and parliamentary elections were different. There was no reconciliation of ballots used and votes cast. Observers confirmed that the PO at this polling station was the parish's NRM youth leader.

Other instances of irregularities which gave every indication of being deliberate included a number of delays and disputes at DTCs. EU EOM observers noted such instances at the Wakiso DTC (14 unconvincingly missing polling station results, where parliamentary results until that point showed a win for the DP incumbent), as well as in Nakaseke District, where Finance Minister Ms. Bbumba won her seat as MP in a constituency where at least 10 polling station results were annulled as they had more ballots cast than registered voters. Six polling stations registered 100 per cent votes for Ms Bbumba and another 23 registered more than 95 per cent of votes for her.

In Luwero and Bulisa (both in Masindi), EU EOM observers noted chaos at DTCs, and reported on claims that results were being changed. In Jinja, EU EOM observers documented the change of results between polling station results forms and those recorded at the DTC.

In addition, EU EOM observers noted two cases where ROs feared for their lives after declaring results in Kiriandongo and Sironko. The latter instance was resolved by the personal attendance of Electoral Commission Chairman Kiggundu and Commissioner Ongaria.

Analysis of presidential election polling station results revealed that some 518 polling stations (predominantly in the west and east of the country) registered 100 per cent turn-out, with another 984 registering 90 per cent turn-out. Although such instances tend to raise questions about the possibility of ballot-stuffing, there has been no proof to substantiate this.

XIV. RESULTS

A. Declaration and Announcement of Results

The Electoral Commission declared presidential results within the constitutional timeframe of 48 hours after the close of polling and shortly afterwards results were published, polling station by polling station, on the Electoral Commission website.

An analysis of polling station results for the presidential election revealed that 4 per cent of ballots cast were invalid – the same rate as in the previous presidential elections. However, 1643 polling

stations recorded more than 10 per cent invalid ballots and of these, 709 polling stations had more than 15 per cent of invalid ballots. Of these, 365 polling stations recorded more than 20 per cent invalid ballots, and 70 had more than 30 per cent invalid ballots.

The declaration of parliamentary results falls to ROs and in most of the cases observed this did occur at the close of district tallying. However, the Electoral Commission did not publish any parliamentary results until 23 February, five days after the close of polling. Regrettably, these results were for only 161 of 350 directly elected parliamentary seats (106 normal constituency seats and 55 women district seats). On 25 February, these results were updated to 311 parliamentary seats, of which 211 were normal constituency and 100 women district seats. But some of these results (over 30) were removed a few days later, such that by 4 March, after another update, the Electoral Commission website listed just 304 parliamentary results (216 for normal constituency MPs and 88 for women district MPs). The Electoral Commission stated only that results entered at DTCs were being checked and it is regrettable that two weeks after polling day there was no complete publication of parliamentary results. The polling station traceability offered for presidential results was unfortunately not replicated for parliamentary elections.

B. Political Overview of the Election Results

The incumbent president Yoweri Kaguta Museveni was re-elected for a fourth term, receiving 68.38 per cent of the votes. The leader of the major opposition party, FDC and candidate for the IPC, Kizza Besigye, obtained 26.01 per cent, while the other six candidates received less than six per cent together. The turnout for the presidential election was 59.28 per cent, significantly lower than previous elections⁸⁹.

PRESIDENTIAL CANDIDATE	VALID VOTES RECEIVED	% OF TOTAL OF VALID VOTES
YOWERI MUSEVENI (NRM)	5,428,369	68.38%
KIZZA BESIGYE (IPC/FDC)	2,064,963	26.01%
NORBERT MAO (DP)	147,917	1.86%
OLARA OTUNNU (UPC)	125,059	1.58%
BETI KAMYA (UFA)	52,782	0.66%
ABED BWANIKA (PDP)	51,708	0.65%
BIDANDI SSALI (PPP)	34,688	0.44%
SAM LUBEGA (independent)	32,726	0.41%
Valid votes	7,938,212	
Invalid votes	334,548	4.04%
Total votes	8,272,760	Turnout 59.28%
Total of registered voters	13,954,129	

⁸⁹ The voter turnout was 68.4% in 2006 presidential election.

The parliamentary elections delivered a majority of at least two-thirds to the ruling NRM, which won 279 seats. Independent MPs, most of them former NRM members, became the second largest group in parliament, with 37 seats. The major opposition party FDC won 34 seats, followed by the DP and UPC with 11 and 9 seats respectively. As in the previous parliament there will be representatives of six political parties, as the Conservative Party and JEEMA party secured one seat each.

The IPC presidential candidate, Kizza Besigye, leader of the DP, Norbert Mao, leader of the UPC, Olara Otunnu, and independent presidential candidate Samuel Lubega rejected the results, claiming rigging of the elections prior to Election Day as well as on Election Day itself. Despite rejection of the results, none of the presidential candidates appealed against the results to the Supreme Court.

XV. DISPUTE RESOLUTION, COMPLAINTS AND PETITIONS

On 11 February, a week before the polls, the Constitutional Court dismissed a belated application for an order to postpone the elections and to address alleged shortcomings in the electoral process, such as deficiencies of the voter register, favouring of the incumbent on the design of the presidential ballot, and recruitment of crime preventers without legal basis. The court's final ruling is pending, and can no longer provide a timely remedy against the alleged defects⁹⁰.

A. Complaints

The Constitution mandates the Electoral Commission to hear and determine electoral complaints arising before and during polling⁹¹. The Electoral Commission, with the help of the donor community, designed an exemplary, decentralized system to receive, track and resolve complaints. The system envisioned a central database, networked with district complaints desks. The database was to assign unique numbers to each complaint, and to categorise them locally for ad hoc resolution, mediation, civil sanction or criminal prosecution. Aggrieved parties were to lodge complaints, and to track their status online. The system could have operated over the results transmission network.

Having jettisoned the system, the Electoral Commission at national level registered 242 formal complaints during the nomination and pre-election periods. Of those, 34 cases disputed candidates' academic qualifications, while 44 alleged that an aspirant had not resigned from public office as required by law. The Electoral Commission invited the EU EOM to observe weekly public complaints hearings. Lacking judicial qualifications while sitting as a tribunal, Commissioners were vexed by complex questions of evidence and procedure, so that the panel was often overruled on appeal by the NCHE and the High Court. In an effort to partially implement the abandoned decentralized system, ROs were instructed to convene district level complaints tribunals. Along with party representatives, the Electoral Commission and the police, the tribunals ultimately included intelligence agents rather than representatives of civil society as originally planned. Only seven such tribunals were created among the 112 districts.

EU EOM observers found that very few formal complaints were submitted at polling station level on Election Day. POs were instructed to document complaints in the incident section of the polling station record book, and to attach narratives. Neither complaints forms nor carbon copies attached thereto were provided to aggrieved voters or party agents. As of the EU EOM's departure on 10 March, the Electoral Commission had yet to receive and analyze the polling station record books,

⁹⁰ *Joseph Bossa v AG and EC, 2011.*

⁹¹ Article 61 of the Constitution.

and no polling complaints statistics were available. The insufficient recording of polling, counting, and tabulation level complaints deprives the High Courts of reliable evidence.

The Election Acts establish three jurisdictions empowered to order a recount: the RO must, upon written request by a voter or candidate, conduct a recount in the presence of a senior police officer, if two winning candidates have received the same number of votes, or if the discrepancy amounts to fewer than fifty votes⁹². Once results are declared, a Chief Magistrate can order a recount within seven days of declaration of results⁹³. The Chief Magistrate has absolute discretion in determining the place, time, modality, and observation of the recount, which led to several instances of unsupervised or chaotic recounting exercises⁹⁴. One recount, at Rubaga North (Kampala Central), culminated in the disciplining of the competent Chief Magistrate⁹⁵. EU EOM teams observed tampering at the recount, and the tainting of evidence may necessitate a rerun of elections thus affected. Lastly, the High Court is empowered to grant a recount as a remedy on an election petition.

B. Elections Petitions Contesting Results

Appeals to presidential election results are dealt with by the Supreme Court, which requires a quorum of all seven justices to decide on the merits of such a petition. The court was narrowly split in its rulings on petitions filed in 2001 and 2006 in upholding the results announced by the Electoral Commission, yet it was unanimous in its vehement criticism of the overall performance of the Electoral Commission. The court had recommended amending an ambiguous section of the Presidential Elections Act governing the grounds for annulment, but Parliament has so far failed to address the issue. The presidential runner-up, who had contested the results of the two previous elections, decided not to seek judicial recourse in 2011, and the statutory deadline expired on 2 March without a petition reaching the court.

Appeals contesting parliamentary elections results lie to the High Court Circuits, which are spread across Uganda, facilitating aggrieved candidates' access to justice. Petitions must be filed within thirty days of publication of the results in the Gazette, which occurred on 3 March. Decisions of the High Court can be appealed to the Court of Appeal, which can no longer be appealed to the Supreme Court. The Principal Judge of the High Court assigned 24 judges and 26 registrars to adjudicate the expected increase in caseload from the greater number of constituencies.

The 2011 EU EOM favourably reviewed the 40 parliamentary petitions the High Court decided in 2006, of which over 90 percent were adjudicated within the statutory timeframe of six months. At the close of the EUEOM in Uganda, no cases had been filed in relation to the 2011 elections.

The Attorney General routinely co-defends litigation against the Electoral Commission, which further links the constitutionally independent Electoral Commission to the incumbent government. Lastly, the courts will again face the paradox of having to allow a candidate to stand in a rerun, even though the initial election was nullified on the grounds that the same candidate was found, to the satisfaction of the court, to have committed an illegal electoral practice.

⁹² Section 54, Parliamentary Elections Act, 2005

⁹³ Section 55, Parliamentary Elections Act, 2005

⁹⁴ Reported in Nakifuma; Buikwe South; Bukomansimbi; Bukonzo East; Omoro; Mityana South.

⁹⁵ Observed in Rubaga North.

XVI. RECOMMENDATIONS

The following recommendations are offered for consideration and action by the Ugandan authorities, political parties, civil society and the international community with a view to improving the framework and management of future elections in Uganda:

Critical issues to address

Election administration

As previously recommended, the problem of lack of trust in the Electoral Commission could be addressed by creating a legal basis for the transparent appointment of Commissioners.. One option to consider would be to establish a joint panel of the Civil Service Commission and the Judicial Service Commission, which would draw up a list of qualified candidates, as is done with judges. Greater consensus could also be achieved by including opposition and civil society voices in the appointment process, rather than only the Presidency and Parliamentary majority. Electoral Commissioners should also enjoy security of tenure. The criteria for nomination and precise terms of reference for EC Commissioners and all other electoral officials should be set out in law.

Election system

All Members of Parliament should be elected by direct and universal suffrage, including any quota seats for disadvantaged groups. Consideration should be given to amending the Constitution and the Parliamentary Elections Act with a view to reviewing the Special Interest Groups provided for. The current quotas for youth, workers and the military do not meet criteria of acceptable positive discrimination for disadvantaged groups since the groups concerned do not require particular assistance and in the case of the armed forces, special seats raise serious concerns of independence, accountability and conflict of interest. In addition, the implementation of Special Interest Group elections runs contrary to democratic standards in a number of respects. Seats currently reserved for persons with disabilities should, if maintained, be elected by universal suffrage.

Voter registration

Another measure that would increase public trust in the electoral process is the creation of a new National Voter Register. Public display periods both before and after cleansing which are adequately communicated to the public in both urban and rural areas, and completion of the final assignment of polling stations at least one month before polling day, should, if communicated to the electorate, also enhance their confidence in future electoral processes. The use of an identity card system or voting document would assist greatly in the polling process.

Media

Conditions for freedom of speech and equitable access to the media would be improved by the creation of an independent regulatory authority, which could be achieved by merging the Media Council and the Broadcasting Council. The authority's operational budget should be determined by Parliament and allocated from the state budget. The setting out of criteria for nomination to the authority in law would also enhance the credibility of its work. An independent regulatory authority with statutory powers to deal adequately with complaints during election period would create a basis for a more level playing field for media coverage and help to improve voters' access to information. A media monitoring system managed by the authority would also help ensure that Uganda's legal provisions with regard to free access to the media are respected.

Use of state resources

Legislation is required to curb the use of state and government resources during an election period for the advantage of the incumbent. For example, the use of “ordinarily attached official facilities” by the incumbent presidential candidate, other than those related to his personal security, should be restricted to the execution of his official duties only. Further, consideration should be given to legislation that more strictly limits the role of government, its ministries and public officials in an election period.

Constituency delimitation

Once the 2012 census figures are published, the Electoral Commission will require adequate resources to fulfil its constitutional obligation to demarcate electoral boundaries, so that their sizes are as equal as possible to the population quota, taking into special account densely populated areas.

Parliament needs also to revise the statutory equation of women seats with administrative districts or cities, in order to enable the Electoral Commission to demarcate women-only district constituencies which respect the equality of the vote.

Campaign financing

Parliament could establish an ad hoc committee to review practice and law in Uganda and across the East African Community and propose a bill that would effectively regulate campaign spending.

Introducing campaign spending caps on individual parliamentary candidates, to be monitored and enforced by the Electoral Commission and the courts, may also be considered and may serve to reduce the monetisation of politics.

Funding of political parties

The implementation of public funding of political parties may help address the recent trend in monetisation of the political process, as would the full enforcement of the financing regulations established by the PPOA.

Electoral regulations

The overall electoral process would benefit from clear and detailed procedural regulations for every stage, including voter registration, equal treatment of candidates on the ballot paper, and all elements of polling, counting and tallying. The publication of these significantly before the beginning of each stage in question (and ideally not later than the publication of the two-year electoral roadmap) would also serve to enhance the confidence of all stakeholders in the process. Such regulations can be issued by the Electoral Commission, relying on its independence as provided for in Article 62 of the Constitution.

Civic education and voter information

A comprehensive and effective programme would ensure that all citizens are informed of all necessary elements of the electoral process, from registration to the precise modalities and location for voting. Unless significant changes are made to the tendering and monitoring process, it is recommended that this crucial task not be contracted out to private companies.

Electoral offences

Banning candidates, who the High Court has found implicated in malpractices, from standing in subsequent elections would effectively deter electoral offences. Disqualification is an administrative, and not a criminal sanction, so the civil standard of proof would apply. A deadline for nomination disputes would also shield the electoral process from belated litigation.

Code of Conduct

An agreement on an adequate code of conduct for political parties and organisations is strongly recommended, and is a requirement both of Uganda's constitution and electoral legal framework. Including in the code of conduct commitments on non-violence, prevention of intimidation, fair and equal conditions for campaigning and appropriate behaviour by polling agents, as well as appropriate sanctions in case of non-compliance with the code, would represent a significant step forward and help ensure that the generally peaceful election of 2011 becomes the standard rather than the exception.

Desirable areas for improvement

Media

Ugandan law already sets out obligations for the Ugandan Broadcasting Corporation (UBC) to act as a public service broadcaster during the election, or any other, period. Improvements could be made by establishing precise definitions of key concepts, such as equal access for presidential candidates and political party broadcasts. A clear monitoring mechanism would also help guarantee that impartiality and balance in news programming is maintained throughout the election period.

Discrepancies have been observed between Ugandan laws (such as the Press and Journalist Act, the Electronic Media Act, and the Penal Code) and the country's constitution and its regional and international commitments regarding freedom of expression. A comprehensive review of these by government and Parliament could identify amendments to legislation which would end these anomalies.

Timing of elections

Local elections in 2011 risked creating an untenable and unwarranted degree of pressure on the election administration as it prepared for general elections at around the same time. Consideration could be given to holding local elections in the middle of the presidential and parliamentary terms.

Recruitment and training of polling station staff

Recruitment and training of polling station staff should be carried out earlier in the process, and criteria for their selection should be established in law or regulation, would provide a more solid and credible basis for electoral administration. In addition, Uganda is unusual in barring civil servants from acting as polling station staff and this eliminates a large number of well-qualified individuals from assisting the process on Election Day.

Campaigning hours

An extension of campaign hours by the Electoral Commission would facilitate greater public participation at campaign meetings and events. Any regulations on campaign hours should be rigorously and consistently enforced.

Voter registration

An amendment to the law to enable the registration of those who turn 18 before Election Day but after the close of the register would ensure full enfranchisement of the electorate. This could be further supported by programmes, initiated by the Electoral Commission, to ensure the registration of all those eligible to vote, including those in institutions such as hospitals, or those held in prison, whether on remand or following conviction.

Secrecy of the vote

The proliferation of candidates as Uganda's multi-party system becomes entrenched renders the use of washing basins in open-air polling stations ineffective as a means of ensuring secrecy of vote. Facilities provided in other countries, including regionally, are more effective in this regard and merit timely consideration.

Priority to voter intention

Uganda's elections are marked by an unusually high level of invalid ballots, which is at least in part attributable to the legal definition of a valid vote being limited to two particular marks. Greater priority to "clear voter intention" would help address this and ensure that those who have made the effort to vote have their votes counted.

Right to stand for election

Removing the Advanced-Level educational requirement would open the universal right to stand for office to all Ugandans, the majority of whom are presently excluded from elected office, in contravention of Uganda's international commitments.

Domestic election observation

Legal guarantees regarding the rights of domestic observers to observe the whole electoral process, including district and national tabulation as well as recounts, would further enhance Uganda's democratic development and citizens' confidence in the electoral process. Domestic observers would also be assisted by the establishment of clear and objective criteria and application procedures for the accreditation of domestic observation missions.

Encouragement and support to political parties to ensure party agents properly exercise their rights and respect their responsibilities in the electoral process would also serve to ensure improved administration and greater confidence by parties and the electorate in the process.

Parliamentary recounts

Granting the High Court sole competence to order and conduct parliamentary recounts would guarantee procedural integrity and adequate protection of evidence.

Results collection and tallying

Reliable and secure means of transport for those designated to bring results forms and materials to District Tally Centres would provide additional guarantees against possible malpractice. The projection of data entry computer screens would also ensure that all present at such centres can observe the entire process and further enhance transparency.