

Chapter 3

THE ELECTORAL FRAMEWORK AND ELECTION ADMINISTRATION

Background

Uganda is a republic with separation of powers and a multi-party parliamentary system. Executive power is vested in the President, who is the Head of State and Head of Government, as well as the Commander-in-Chief. The President appoints the Vice-President and the Prime Minister.

The President is elected for a five-year term and following amendments to the Constitution in 2005 there are no limits on how many terms a President can serve. Members of Parliament are also elected for a five-year term.

The President is elected on the basis of a majority system, requiring over 50% of the valid votes cast in order to be elected. If no candidate secures such a majority then the two leading candidates contest a second round. For the purpose of the presidential election the country is a single national constituency.

Parliament comprises 375 members, of these 350 are directly elected on a first past the post system. There are 238 single-member constituencies and 112 District-based seats reserved for women.

In addition, 25 members are elected from electoral colleges representing Special Interest Groups. These comprise five seats for youth, five for workers, five for persons with disabilities, and 10 for the Uganda People's Defence Force.

International and Regional Commitments and National Legislation

Uganda has signed all core treaties relating to international and regional standards for elections. These include:

- United Nations Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- African Charter on Human and Peoples' Rights

National legislation provides the basic conditions for competitive democratic elections. The key legal instruments for the conduct of these elections are:

- The Constitution of Uganda 1995 (as amended)
- Presidential Elections Act 2005 (as amended)
- Parliamentary Elections Act 2005 (as amended)
- Electoral Commission Act 1997 (as amended)

- Political Parties and Organisations Act 2005 (as amended)
- Electronic Media Act
- Press and Journalist Act

In addition, the EC issued a Media Code of Conduct. Parliament did not enact a Code of Conduct for Political Parties, although it is provided for in the Political Parties and Organisations Act.

The Electoral Commission

The Constitution provides for the establishment of an Electoral Commission (EC) and stipulates it shall consist of a Chair, Deputy Chair plus five other Members. Members of the EC shall be "persons of high moral character, proven integrity and who possess considerable experience and demonstrated competence in the conduct of public affairs".

The EC is appointed by the President with the approval of Parliament. Members of the EC can hold office for a period of seven years and their appointment may be renewed for one additional term. The current EC was re-appointed in 2009.. Members can be removed by the President if they are unable to fulfil their duties or for acts of misconduct or incompetence.

The Constitution states that the EC shall be independent and "in the performance of its functions, not be subject to the direction or control of any person or authority".

The key responsibilities of the EC are to:

- Organise, conduct and supervise elections
- Demarcate constituencies
- Compile, maintain, revise and update the Voter Register
- Hear and determine election complaints
- Conduct voter education campaigns
- Ascertain and declare results

The EC appoints a Secretary and a Secretariat to perform operational aspects of the process,, including functions such as IT and logistics. In addition, the EC establishes a national structure in order to administer the poll, with offices and officers at the District (Returning Officers), Sub-County, Parish and Polling Station levels. Returning Officers are appointed by the EC and are to be persons of "high moral character and proven integrity".

The EC issued a Road Map, setting out all timelines over three years for the preparation and conduct of the 2011 elections, including Presidential, Parliamentary, Special Interest Group and Local Elections.

Voter Eligibility and Voter Registration

To be eligible as a voter a person must be a citizen of Uganda, at least 18 years of age and registered to vote.

Following criticisms of the register used for the 2006 election (see below), the EC undertook a new voter registration drive and utilised IT to identify double entries and other anomalies.

The major update of the register took place in May and June of 2010 and new registrants were given a receipt for their registration. Throughout August the revised lists were displayed publicly; at this time challenges could be made to specially created Parish Tribunals. At the completion of this process the list contained some 15 million names. Following this the EC began identifying duplicate and erroneous entries and about one million names were deleted.

The final number of registered voters for these elections was 13,954,129¹³. This is an increase of some 30% compared to 2006 when 10.5 million persons were on the register.

In November 2010 the EC gave electronic copies of the register to presidential candidates and on 31 January 2011 it provided printed copies including photographs. The register was also placed on the EC's website.

The law provides for the issuance of voter cards, though they are not a requirement for voting. The EC decided not to issue voter cards to newly registered persons as it claimed it did not have the resources or time to do so, particularly as the Government was developing National Identity Cards. Thus the only requirement for voting in the 2011 elections was that voters had to be on the register, highlighting the importance of the accuracy of the Voter Register. Issues relating to the process and outcome of the voter registration process are discussed below.

Candidate Eligibility and Nomination

Article 4 of the Presidential Elections Act stipulates that to be eligible as a presidential candidate a person must be a citizen of Uganda by birth, a registered voter, and not less than 35 years of age and not more than 75. In addition, there is a requirement for a minimum formal education of A-level or equivalent.

Candidates can be party sponsored or independent and need to submit signatures of not less than 100 voters from each of at least two-thirds of Districts (c. 7,500 signatures) and a fee of 400 "currency points"¹⁴ (8 million Uganda Shillings / approx. £2,300).

For the 2011 elections there were eight presidential candidates.

To be eligible as a parliamentary candidate a person must be a citizen of Uganda and a registered voter and, as for the presidential candidates, must have a minimum formal education of A-level or equivalent.

Candidates can be nominated by political parties or can stand as independents and must submit signatures of not less than 10 registered voters of their constituency.

Public servants standing as candidates in the elections must resign from office prior to nomination.

For the 2011 elections there were 1,270 candidates registered for the single-member constituency elections and 443 for the District-level reserved seats for women.

¹³ EC Website

¹⁴ A currency point is equal to USh 20,000

Complaints and Appeals

The EC can hear and determine complaints. It established a National Complaints Desk in 2010 to process complaints. In addition, the EC announced that 400 local complaints tribunals, comprising a representative of the police, EC and contesting parties would be established, though there are reports that very few of these were actually established. Complaints could also be lodged at the polling station during the vote and count.

Decisions of the EC can be challenged in the High Court as can challenges to parliamentary results. Challenges to presidential results go to the Supreme Court

The EC received over 200 formal complaints. Of these, many related to disputes over candidates academic qualifications and allegations that aspirants had not resigned from public office as required by law.

Key Issues

1. Appointment of the Electoral Commission

There has been criticism, notably by opposition parties, that the EC lacks independence. They cite the fact that its members are appointed by the President, a decision which only requires the approval of the NRM dominated Parliament. Further, the EC's tenure of office is also a concern in that members can be re-appointed after the 1st term or removed from office at any time¹⁵ by the President, who may be a contestant in the election.

This process for appointing the EC was also criticised in the 2006 Commonwealth Observer Group report, which called for the EC's independence to be protected and enhanced in all respects. This remains an imperative if the EC is to enjoy the confidence of all stakeholders.

2. Electoral Preparations

The EC published its Road Map three years prior to the 2011 elections and generally adhered to it. However, the body faced the challenge of conducting a major update of the voter register and multiple elections.

Despite the challenges faced by the EC, its own Road Map had clearly identified the necessary steps required, yet it is clear that it failed to put in place adequate preparations for the 2011 elections. The poor state of readiness on the day of election, which resulted in widespread delayed opening in almost all areas, and the lack of consistent application of procedures by poll staff and even a lack of awareness of the formal requirements, highlights the EC's shortcomings in training for and organisation of the elections.

3. Voter Registration and Voter Cards

The voter register was sharply criticised during the 2006 elections, with claims that it was bloated, contained duplicate entries and was generally not reliable. In order to try to address some of these shortcomings the EC unilaterally deleted more than 100,000 names. But it did this without informing those concerned and was severely criticised for this by the

¹⁵ The Constitution provides that the President can remove a member of the EC in the event of their inability to perform the functions of office, misbehaviour, misconduct, incompetence.

2006 Commonwealth Observer Group and censured by the Supreme Court. Further, the EC only distributed Voter Cards to 6.7 million out of the 10.5 million citizens on the 2006 register. Hence, for these elections the EC decided that people could vote without a Voter Card if their name was on the register.

Given the experience of 2006, the issue of the voter register became sensitive for these elections. The EC made a significant effort to provide a period of new registration, as well as a process of public verification and cleaning of the list. In addition, the register included a digital photo of most voters. However, major uncertainties and concerns over the accuracy of the register remain.

A local NGO, DemGroup, conducted an audit of the final voter register and concluded that the overall quality of the register was an improvement, with 95% of people listed being proven to exist¹⁶. DemGroup's analysis showed that the largest increase of new registrants was in Kampala and that the requisite voter information was present in virtually all cases. However, it found that the limit of 800 voters per polling station was exceeded in 17.7% of cases. In addition, despite the improvements DemGroup found various anomalies, which feed mistrust among opposition parties. For instance, they estimated over four thousand duplicate entries, more than 5,000 voters over 110 years of age, and registration levels in some areas in excess of the estimated eligible population.

As in 2006, the EC made a decision not to require people to have a Voter Card for voting. This was because Voter Cards were not produced for the four million newly-registered persons. Despite the importance of such cards in helping to prove the identity of voters it was believed to be a waste of money and resources to produce Voter Cards as the authorities would soon produce National ID Cards; but these were not produced for the election. As a consequence, mirroring the 2006 scenario, there were no ID requirements for voters beyond the name and, in most cases, photos on the register. As in 2006, this became a major point of contention.

The EC's administrative task was further complicated by the creation of 43 new Districts since the 2006 elections, more than ten of which were created by the President during the election period. In addition, new polling stations were created by the EC to take account of the increase in the number of voters¹⁷ and many voters were moved to alternate polling locations as part of the restructuring. Concerns were raised before the election that some voters would not know the location of their polling station. On Election Day these concerns were shown to be valid across the country, leading to frustration and even disenfranchisement for some voters.

4. State Resources and Campaign Expenditure

The current law relating to the use of state resources enables extensive use of state resources by an incumbent President. Article 27.1 of the Presidential Elections Act states: "a person shall not use Government resources for the purpose of campaigning for any candidate, party or organisation in the election." However, Article 27.2 states: "Notwithstanding subsection (1) , a candidate who holds the office of President, may

¹⁶ There is disagreement over the total number of Ugandan citizens due to a lack of reliable data, which complicates the process of identifying the target number of eligible voters.

¹⁷ For the 2006 elections there were 19,786 polling stations, whereas for the 2011 elections there were 23,968.

continue to use Government facilities during the campaign, but shall only use those Government facilities which are ordinarily attached to and utilised by the holder of that office”.

Further, as is discussed in Chapter Four on Election Campaign and Media, the laws on this matter also enabled other uses of state authority which gave unfair advantage to the incumbent President and the ruling party. These included the creation of new Districts in the run-up to the election¹⁸, the fact that the President appoints Resident District Commissioners (who play a crucial role in elections in the Districts and who were alleged to be active in the ruling party’s campaign in some instances), and direct payments of 20 million Uganda Shillings (approx. £5,800) to each member of parliament during the campaign for the official purpose of “monitoring government projects” (some opposition MPs returned the money). There were also allegations that the supplementary budget of 600 billion Uganda Shillings, which was passed during the campaign, may have been utilised for campaign purposes¹⁹.

There is no legal limit on campaign expenditure and the law is limited on the issue of declarations on campaign financing and expenditure²⁰, facilitating the excessive use of money during the campaign. Presidential candidates are to disclose accounts after the elections, but it is not clear how rigorous this process is, noticeably in light of the cash-based nature of the campaign. Parliamentary candidates have no such disclosure requirement.

Overall there is a lack of clear regulation in the areas of state resources and campaign financing and expenditure, resulting in a lack of transparency and accountability. It was observed during these elections that in addition to the issue of mis-use of state resources there is a ‘commercialisation of politics’ in Uganda, with numerous reports of candidates giving vast amounts of financial inducements and/or gifts to voters.

5. Electoral Constituencies

The EC is tasked with establishing electoral constituencies and Article 63.3 of the Constitution provides that as far as possible the number of inhabitants in each constituency should be equal to the population quota. However, based on available figures it appears that equal suffrage is not being respected and there are quite large disparities between constituencies. For instance, while the national average of voters per constituency is just over 58,000, totals range from some 7,000 in Moroto in the north east, to over 228,000 in Kampala.

¹⁸ The creation of new Districts is significant because it creates jobs, provides funding for the area and thereby can act as a form of patronage on behalf of the incumbent.

¹⁹ Critics point to the fact that the 20 million Uganda Shillings payment to MPs was made at the time the parliament was debating the 600 billion Uganda Shillings supplementary budget.

²⁰ Under the Political Parties and Organisations Act parties are required to maintain accounts, showing sources of funds.

6. Candidate Requirements

The law provides that both presidential and parliamentary candidates must have, and be able to prove academic qualifications to at least 'A' level or its equivalent²¹. This is one area where a number of complaints were lodged on the basis of alleged false documentation.

Recommendations

- The EC needs to be independent and must enjoy the confidence of all stakeholders. To help achieve this, the appointment mechanism of EC members needs to be changed, ensuring a more inclusive, broad-based process and the dismissal process needs to protect members from any vested interest.
- There needs to be a renewed effort to ensure an accurate Voters' Register and better information to voters on their place of poll and polling procedures.
- There needs to be a reliable ID document for voting, to help mitigate against personation.
- There needs to be more stringent and explicit regulations limiting the use of state resources for campaign purposes, thereby helping to create a more level playing field for the elections
- A requirement for candidates to provide detailed accounts of funding and expenditure for the campaign will help to create a higher level of transparency and accountability and will also help to address the current mis-use of money on the political campaign.
- The EC should fulfil its duty to review election constituencies and this should be done to ensure equal suffrage is provided for in accordance with Article 63.3 of the Constitution.

²¹ Article 25 of the ICCPR provides for the right "To have equal access, on general terms of equality, to public service in his country".