

ELECTORAL POLITICS AND ELECTORAL LAW REFORMS IN UGANDA



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1. Introduction

Uganda has had five general elections since independence in 1962¹ with two of them under the current multiparty political dispensation made possible following the results of the 2005 referendum. The introduction of multiparty democracy and the gradual reopening of political space have ensured that elections - regular, free and fair are now the legitimate and main acceptable form of political change of government. Each of the previous election has been a learning experience, revealing areas that require strengthening in Uganda's electoral system². Electoral reforms have since become an integral part of Uganda's democratic development undertaken to improve the country's electoral process by promoting the electoral rights of citizens and operationalizing the key principles such as impartiality, inclusiveness, transparency, integrity and accuracy. Continuous reflection, reform and adaptation of the legal framework governing electoral processes that are based on experiences, reviews and assessments are necessary in every democracy.

To explore the debate on Uganda's electoral politics and electoral law reforms, the paper inter alia presents a series of policy issues underpinning the need for and the kind of reforms but going to depths to examine institutional responsibility and accountability for electoral reforms in the country. To fully comprehend the objectivity and impact of the country's electoral reform processes, the paper questions the context, sequencing, and commencement of electoral reforms since the country went multiparty. Each thematic policy issue herein is followed with a set of policy questions to focus and guide the deliberations on the issue.

1 December 1980 National Assembly Elections; 1996 General Elections; 2001 General Elections; 2006 General Elections; 2011 General Elections

2 Towards Reforming Uganda's Electoral Commission; critical areas and reform options, CEDU working paper series, 2013



Facts

- a) Uganda has had five general elections since independence with two of them under the current multiparty political dispensation
- b) The results of two elections under the current multiparty system have been contested.
- c) Various stakeholders from the Judiciary, Electoral Commission, Citizens, Political Parties, and Civil Society among others have critically analysed the gaps in the previous elections and made wide-ranging electoral reform proposals to both the Executive and Parliament.
- d) Amendments to the Presidential, Parliamentary and Electoral Commission legislations were concluded in June 2010 with just 7 months to the 2011 general elections.
- e) With less than a year to the elections, the Executive has not yet tabled proposed amendments to the country's Electoral Laws
- f) The EC suggests a 12-month period for the Commission to appreciate and put in place the necessary infrastructures essential for implementing any proposed electoral reform



A polling officer displays a ballot during counting of votes at a polling station in the 2011 elections.

Free and fair elections are the hallmark of a well-functioning democracy, and the foundation of a legitimate and stable government. To that end, the right to vote is by far the foundation of any democratic society because it strengthens people's participation in their governance as well as enhances accountability³. Elections must be transparent, periodic, and genuine, so as to ensure that the will of the people is the basis of a government's authority. Electoral freedom is the ability of the people to freely express their will, determine their political status and choose their representatives without coercive pressure. The specific rights that electoral freedom encompasses include the right of equal access to direct or indirect political participation; the right to non-discrimination; and the freedoms of expression, assembly, association, and access to media. Furthermore, states are required to ensure that elections proceed smoothly and produce fair outcomes by passing clear laws regarding electoral management and election dispute mechanisms as well as establish independent electoral management bodies.

In order to produce credible, transparent and legitimate election results that can be regarded as acceptable by all contending political forces as free and fair, the electoral laws and processes must be clear, precise and provide a level playing field for all involved; it must accord the voting population the unhindered and uncorrupted opportunity to cast their vote. Good and effective legislation is not only the foundation of every functioning state based on the rule of law but also facilitative of free and fair elections. Good election practices can reduce cases of political violence and instability while flawed elections on the other hand can be a recipe for instability and conflicts.

³ See Schumpeter, J. (1942). *Capitalism, socialization and democracy*. London: Allen and Unwin

2. Background

There have been two elections organised under the current multiparty dispensation based on a Presidential system, where winner takes it all. The elections in 2006 and 2011 produced contested results ranging from the credibility of the Electoral Commission, to the integrity of the voter register, voter bribery, influence and intimidation of voters from security forces during elections as well as vote rigging and related mal practices. The EU Election Observer report for the 2011 elections noted, *inter alia*, the following,

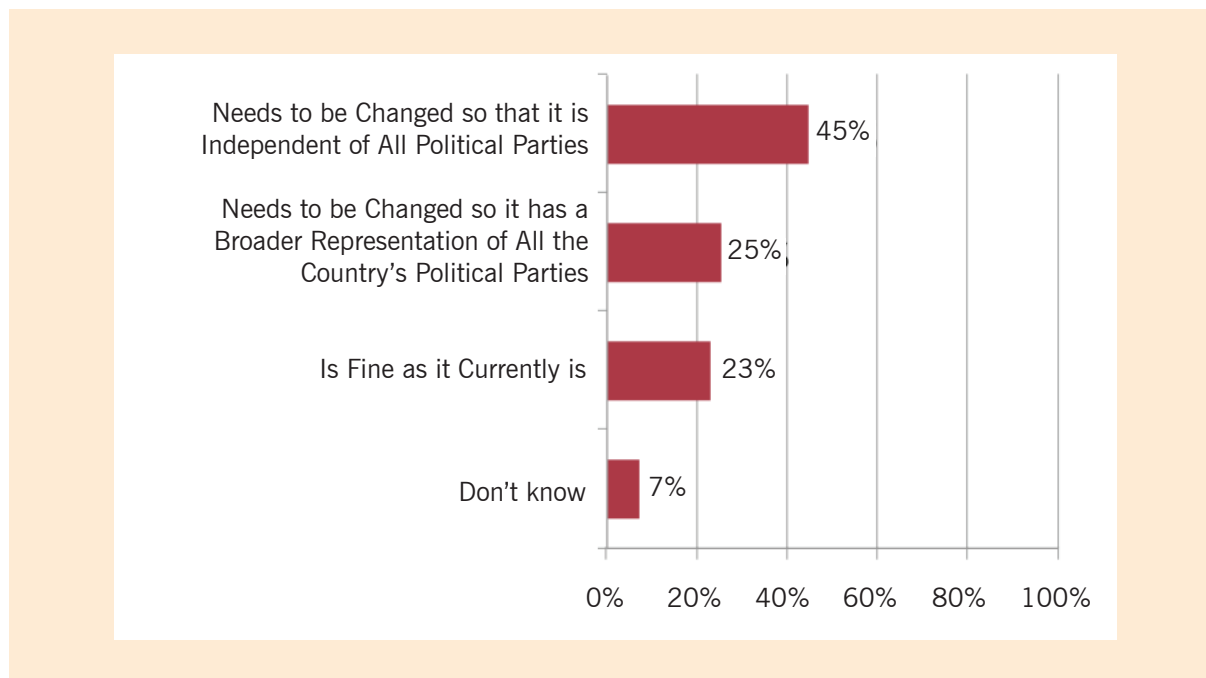
- a) The electoral process was marred by avoidable administrative and logistical failures, which led to an unacceptable number of Ugandan citizens being disenfranchised.
- b) The power of incumbency was exercised to such an extent as to compromise severely the level playing field between the competing candidates and political parties
- c) 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 criticized by the Supreme Court for its handling of those elections.
- d) 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.



A polling officer receives ballot papers for use as voters look on.

These recommendations were echoed by other election observer reports such as the Citizen's Coalition for Electoral Democracy in Uganda (CCEDU). They represented the atmosphere under which the 2011 elections and previous elections were held. Results of a recent poll by the International Republican Institute indicated a general consensus on the need for reforms from the respondents.

Figure 1 below gives the responses by the respondents when asked their opinions about the composition of the Electoral Commission



Source: IRI Public Opinion Survey of Ugandans, 2015

In reference to the above, 70 percent of respondents' opinion is that the Electoral Commission needs to be changed by either standing independently of all political parties or has a broader representation of all political parties. This poll outcome is consistent with the EU Election Observer report for the 2011 elections, the Election Petition No 1 of 2006 ruling, and the Compact on free and fair elections 2015 among others.

At every conclusion of an electoral cycle both in 2006 and 2011, the conduct and indeed electoral outcome has generated broad based consensus for reforms that are essential for free, fair and transparent subsequent elections. A myriad of stakeholders including the Judiciary, Electoral Commission, Political Parties, Civil society and indeed citizens have at different occasions formulated and presented the needed reforms. The need to have an election management body that fits into the aspirations of a multi-party political dispensation, addresses the concerns of all the political actors, meets the competence requirements, reflects the concerns of the Courts of Judicature as expressed in their various decisions and whose composition is arrived at through a transparent and participatory manner has grown as the country approaches the next elections.



An woman casts her ballot in the 2011 elections at a polling station.

2.1 Who is Responsible and Accountable for Electoral Reforms

An analysis of electoral reform processes over the last 15 years reveals that the process is marred by late presentations of proposed legislations to Parliament, non-inclusive debates and commencement of legislations just couple of months to the elections. This is clearly evidenced by the electoral reforms ahead of the 2006 and 2011 elections that were characterized by last minute/ late non-exhaustive amendments passed without wider consultations and in the end , ignoring the views of many political players.

The table 1 below presents selected legislations, indicating the tabling, discussions and approval

Legislation	Tabled in Parliament by the Executive	Endorsed by the President and commences	Next Elections due
Parliamentary Elections Bill 2005	27 th September 2005	16 th November 2005	23 rd February 2006
Political Parties and Organisations Bill 2005	20 th September 2005	16 th November 2005	23 rd February 2006
Presidential Elections Bill 2005	27 th September 2005	21 November 2005	23 rd February 2006
Constitutional Amendments 8 of 2005		21 st October 2005	23 rd February 2006
Presidential Election Amendment Act 2010	15 th December 2009	25 th June 2010	18 th February 2011
Electoral Commission Amendment Act 2010	15 th December 2009	25 th June 2010	18 th February 2011
Parliamentary Elections Amendment Act 2010		25 th June 2010	18 th February 2011

Referring to the above table, the trend shows that election related legislations are brought to Parliament late by the Executive, expeditiously discussed and approved with their commencements just months to the elections. The EU Election Observer report 2011 noted that ‘ election related amendments ahead of the 2011 elections were late, a process which conflicted with the Electoral Commission’s two year plan. Amendments to the Presidential, Parliamentary and Electoral Commission legislations were concluded in June 2010 with just 7 months to the general elections. These late amendments inhibited other than facilitated free and fair elections as they stampeded the Electoral Commission and other political actors; and gave little time for implementation and financing.

With the 2011 elections in perspective, various stakeholders from the Judiciary, Electoral Commission, Citizens, Political Parties, and Civil Society among others have critically analyzed the gaps in the previous elections and made wide-ranging and practical electoral reform proposals to both the Executive and Parliament. The EC suggests a 12-month period for the Commission to appreciate and put in place the necessary infrastructures for ensuring that the new laws and amendments are fully implemented (EC Report, 2011).

Table 2 below shows some of the institutions that have presented electoral law reform proposals to the Executive and Parliament

Institution	Proposed reforms
Judiciary	In its landmark ruling for petition No 1 ⁴ of 2006 and various by-elections since then. The laws should be amended to enable the EC act independent of any political influence
Citizens Coalition for Electoral Democracy	Presented reforms to the Legal and Parliamentary Affairs Committee of Parliament in February 2014. Reform proposals including the need to re-constitute the EC and institute a meritocratic appointment mechanism for EC Commissioners were presented
Political Parties (IPOD)	All political parties represented in Parliament under the IPOD framework agreed on a total of 43 reforms and presented them to Parliamentary Speaker in March 2015
Electoral Commission	The EC report 2011 indicates a series of proposals necessary to have a credible, free and fair electoral process.
National Consultative Forum	Electoral Reforms presented to the Speaker of Parliament and to the Minister for Justice and Constitutional Affairs in March 2015
EU Election Observer Mission 2011	EU Election Observer Report of 2011 released just after the elections indicates that improving transparency and credibility of the system for constituting the EC as well as securing their tenure is critical for building public confidence in the electoral body.

1 Election Petition No 1 of 2006 – Rtd. Col. Dr. Kizza Besigye v Electoral Commission, Yoweri Kaguta Museveni

This month the Election Commission released its roadmap to the 2016 general elections (see table below). This announcement comes at a time when the Executive is yet to present to Parliament, proposed amendments intended to reform the country's electoral laws and ensure public confidence in the Electoral commission as well as address key aspects related to the integrity of the electoral process. The presentation of the revised roadmap by the EC without the much anticipated reforms raises fundamental questions about the political willingness of the Executive to institute legal reforms necessary for free, fair and transparent elections. While as the EC must be seen to undertake its due mandate, the general consensus is that without the reforms, the 2016 elections will not be completely free and fair.



Eng. Dr. Badru Kiggundu - Chairman of the Electoral Commission. He has been in charge of the previous two elections.

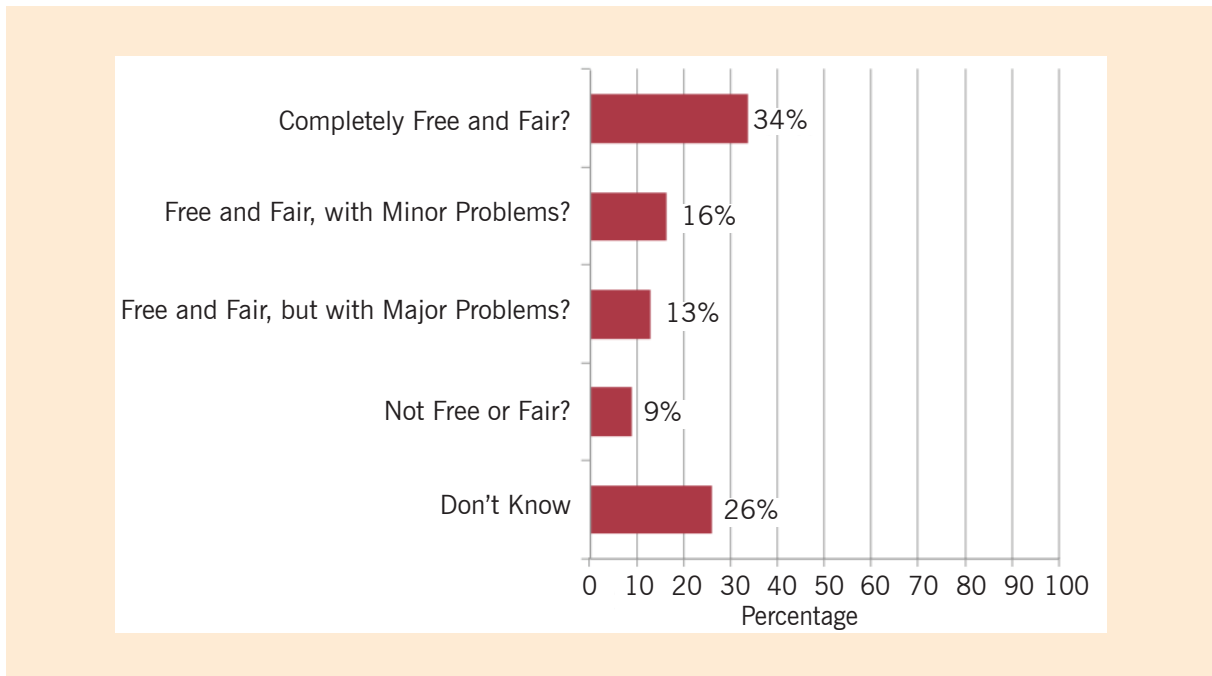
Table 3 below shows the Electoral Commission Roadmap to the 2016 general elections

No	Activity	Period
1	General update of the National Register in each parish	April 7 – 30, 2015
2	Cut-off of update of the National Register: Compilation of youth, PEDs and older persons register: Professional bodies and workers' register	April 30, 2015
3	Display of the National register at respective polling stations	June 2 – 22, 2015
4	Nomination of candidates for village youth, PWDs and older persons' elections	June 5 – 16, 2015
5	Nomination of candidates for Presidential elections	October 5 – 6, 2015
6	Nomination of candidates for Parliamentary elections	November 9 – 10, 2015
7	Nomination of candidates for Local Government Council Elections	October 19 – 23, 2015
8	Campaigns for general elections	October 12, 2015 – February 15, 2016
9	Polling period for general elections	February 12, 2016 – March 12, 2016

Source: Electoral Commission 2015

Results of a recent poll by the International Republican Institute (2015) shows a general feeling from majority respondents that the 2016 elections will have challenges of credibility and fairness:

Figure 1 below shows opinions of the respondents when asked about their expectations of the upcoming 2016 general elections;



Source: IRI Public Opinion Survey of Ugandans, 2015

Only 34 percent of the respondents contend that the upcoming 2016 elections will be completely free and fair while 29 percent agree that the elections will have minor and major challenges. 9 percent of the respondents' view is that the elections will not be free and fair with a significant 26 registering an I 'don't know' response. In the previous elections, the lack of fundamental reforms let alone late presentation to Parliament has impacted on the public confidence in the process. With the release of the Election Roadmap to the 2016 general elections by the EC amidst a cloud of uncertainty regarding the much anticipated electoral reforms, it's pertinent to raise a host of questions of who is responsible and accountable for electoral reforms in Uganda. To help strengthen the above, the following specific questions are relevant;

Policy Questions

- a) There is compelling evidence from the two previous elections on not only the need for reforms but the kind of reforms the country requires. Why is it taking long for the Executive to present to Parliament the reforms?
- b) Is there need for a Constitutional provision requiring timelines for enactment of election-related reforms ahead of an election?
- c) Is there political will from the Executive to institute fundamental electoral reforms necessary for ensuring a credible, free and fair electoral process?

- d) In the aftermath of failure by the Executive to present to Parliament timely and fundamental electoral reforms, will it be justified to proceed with an election that is likely to be flawed?
- e) Is the Election Commission justified to present a new roadmap to the 2016 elections without the much anticipated electoral reforms?
- f) Is the idea of postponing the 2016 elections justified to give way for exhaustive discussions about which kind of reforms are essential for Uganda
- g) Despite wide-ranging concerns and public contestation of the outcome of the 2011 elections, the Forum for Democratic Change did not go to the Courts of Law. Is this a vote of no confidence in the Judiciary or an aspect of electoral injustice?

