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A CSO POSITION PAPER ON CONSTITUTIONAL AND ELECTORAL REFORMS TO ENHANCE UGANDA'S ELECTORAL DEMOCRACY

J U N E 2 0 2 3

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ACRONYMS

ACDEG	African Charter on Democracy, Elections and Governance
CSOs	Civil Society Organisations
DRFs	Declaration of Results Forms
EC	Electoral Commission
EU	European Union
EOM	Election Observation Mission
FORWODE	Forum for Women in Democracy
ICCPR	International Covenant on Civil and Political Rights
MOJCA	Ministry of Justice and Constitutional Affairs
MP	Member of Parliament
NIRA	National Identification Registration Authority
NRM	National Resistance Movement
PEA	Presidential Elections Act
PR	Proportional Representation
PWDs	Persons with Disability
SCENE	Strengthening Citizens' Engagement in Elections
UBC	Uganda Broadcasting Corporation
UCC	Uganda Communication Commission
UNNGOF	Uganda National NGO Forum
UPDF	Uganda People's Defense Forces
USAID	United States Agency for International Development
VAWE	Violence against Women in Elections

INTRODUCTION AND BACKGROUND: CORE CONCERNS FOR CONSTITUTIONAL REFORMS IN UGANDA

In 1995, Ugandans adopted a new constitution which set out the norms and rules for a new social contract rooted in the promise of a new political, economic, and social governance dispensation. The Constitution declared that the people of Uganda were the sovereign authority and that, the power and authority of government is derived from the people. Article 1 of the constitution proclaims that “all power belongs to the people who shall exercise it in accordance with the constitution”. Accordingly, all power and authority exercised by any person or agency of the state or government is derived from the people. Credible, regular, free, and fair elections are the primary mechanism through which the sovereignty of the citizen is exercised. Through universal adult suffrage, citizens vest that power and authority in elected individuals and institutions mandated to run their affairs.

After almost two and half decades under the current constitutional framework (1995-2021), the promise of a new political, economic, and social governance dispensation has been considerably frustrated by distortions in our electoral process. Elections are increasingly characterized by generalized violence, unregulated use of money and deployment of state resources by incumbent political actors. Instead of becoming a dignifying exercise and true expression of citizens' sovereignty, Uganda's elections are conducted as a deadly contest between contending political elites. In all this contestation,

citizens, either directly or indirectly acquiesce in the subversion of the process or simply look on as helpless spectators.

Over the past few years, there have been numerous attempts by the government, opposition political groups, civil society organizations, religious leaders, development partners and many others to strengthen the credibility of Uganda's electoral process. However, none of these efforts have materialized into meaningful reform. Each effort has consistently been diverted or subverted, thereby creating more distortions in the electoral process. It is, therefore, important for the country to re-examine the process of conducting elections and recommit to creating an environment that makes elections a meaningful expression of citizen sovereignty and citizens' dignity.

The promulgation of a new Constitution in 1995 set Uganda on a path to democracy built on four major pillars: the vesting of sovereign power and authority in the citizens; the setting of minimum standards for conducting elections; the codification or domestication of international norms governing elections; and the establishment of institutional mechanisms for accountability. A plethora of electoral laws have been enacted to operationalize most of these principles and norms. However, the evidence of the last two decades shows that the country is drifting towards an electoral stalemate that borders on democratic authoritarianism. Electoral rules are routinely ignored and elections are marred with irregularities that make the whole process lack credibility.

It is therefore tenable to argue that there is a consensus across the board that Uganda's electoral process is broken and that there is

a need to enact comprehensive constitutional, legal and political reforms if the country is to progress in its democratic trajectory. As argued in the CSO Position Paper on Constitutional Reforms,¹ four structural factors ought to be addressed before any reforms can be meaningful. These are (a) rebuilding citizenship and the culture of constitutionalism; (b) economic franchising of the citizenry; (c) securing the independence and credibility of elections governing institutions; and (d) Shifting ownership of elections from the Electoral Commission to the Citizens.

Indeed, over the years, numerous reports and electoral reform proposals have been developed by a wide range of stakeholders, including government, civil society, religious groups, political parties, development partners, and many others. This paper builds on these efforts and consolidates proposals emerging from a series of citizen and stakeholder consultations. These proposals provide a starting point for determining a potential consensus on where reforms are necessary.

¹ Restoring Citizen Sovereignty: Towards Elections Integrity & Electoral Justice In Uganda

PROCESS OF DEVELOPING THE MATRIX

A variety of methods were employed in the compilation of this matrix. As indicated earlier, it builds on past efforts by various stakeholders, and as such relied on an extensive review of previous electoral reform efforts and proposals for Civil Society Organizations (CSOs), academia, political parties and Private Member's Bill on Constitutional Reforms, recommendations of the Electoral Commission of Uganda and International and Domestic election observers in various election cycles in Uganda. The paper draws upon valuable resources, including the handbook developed by the European Union for Election Observers, which provides crucial insights and guidelines. Additionally, it references the recommendations put forth by the Supreme Court of Uganda regarding electoral and constitutional reforms throughout different election cycles.

Finally, the matrix also majorly relies on inputs from extensive consultations conducted between 2020 and 2023 by the Uganda National NGO Forum (UNNGOF), Forum for Women in Democracy (FOWODE), and their regional-based CSO Partners² under the auspices of the Strengthening Citizens' Engagement in Elections (SCENE). These consultations directly involved 100,000 in

² These partners include: Community Development & Child Welfare Initiative (CODI), Kapchorwa Civil Society Organizations' Alliance (KACSOA), Kick Corruption out of Uganda (KICK-U), Kabarole NGOs & CBOs Association (KANCA) First African Bicycle Information Organization (FABIO), Lango Civil Society Network (LCSONET), Public Affairs Centre of Uganda (PAC), West Nile Civil Society Network (WECISNET), Riamiriam Civil Society Network, Western Ankole Civil Society Forum (WACSOF)

community meetings and 2,000,000 Ugandans through various media platforms in 13 sub-regions³ of Uganda.

The views collected throughout these consultations were validated at district and regional stakeholder conversations convened in 46 districts across the country. These stakeholder meetings were attended by, District Chairpersons, Resident District Commissions, District Councillors and Speakers, media practitioners, cultural and religious leaders, academics, youth and representatives of civil society organizations. A diverse range of perspectives and experiences have therefore been considered in the development of these proposals.

³ Acholi, Ankole, Busoga, Buganda, Bukedi, Bunyoro, Karamoja, Kigezi, Lango, Sebei, Teso, Tooro, West Nile

MATRIX OF PROPOSED CONSTITUTIONAL AND ELECTORAL REFORMS

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
<p>1. A peaceful transfer of power (Political transition)</p>	<p>1.1. Tenure of office of the Presidency (Term limits for the Office of the Presidency)</p>	<p>Term limits are an important instrument of democratization because they promote political party alternation¹, which in turn fosters democratization¹.</p> <p>Term limits check presidential authority. Because of term limits²;</p> <ul style="list-style-type: none"> o Leaders feel more pressure to deliver results and leave office with a positive legacy. o Individuals, no matter how powerful and popular, cannot become indispensable. o Political transitions are normal, regular, predictable events, so rival parties have little incentive to upset the system through coups or other means. o The need to change leadership encourages a rising generation of political leaders, fresh ideas and possible policy changes. 	<p>Reinstate and entrench Article 105 of the Constitution of Uganda.</p> <p>(1) A person elected President under this Constitution shall, subject to clause (3) of this article, hold office for a term of five years.</p> <p>(2) A person shall not be elected under this Constitution to hold office as President for more than two terms as prescribed by this article.</p> <p>(3) The office of President shall become vacant—</p> <p>(a) on the expiration of the period specified in this article; or</p> <p>(b) if the incumbent dies or resigns or ceases to hold office under Article 107 of this Constitution.</p> <p>(4) Article 105 (2) shall only be amended through a</p>

¹ Gideon Maltz (2007, volume 18, Issue 1): Journal of democracy: The case for term limits

² Kuczynski (2016) Term limits on President are a good thing. Here's why.

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p>1.2. Excessive powers of the Presidency</p>	<p>Term limits promote the healthy competition needed to strengthen democratic institutions and the democratic process.</p> <p>Term limits are a safeguard to protect democratic principles and prevent the emergence of authoritarian regimes. It helps to maintain a healthy balance of power and prevents the risk of leaders becoming entrenched and unaccountable.</p> <p>Incumbents are less able to use the State's power to manipulate elections when there are limits to the tenure of the office of the presidency. Further, security officers are more likely to pay allegiance to the institution that they serve rather than the individual when there are term limits as seen in the case of transitions in Kenya, Zambia, and Ghana among others.</p>	<p>referendum of all Ugandans eligible to vote.</p> <p>Amend the Constitution to limit the powers of the presidency. Establish a mechanism where appointees of the President to the Judiciary, Ministers and members of the</p>

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
		<p>like members of the Electoral Commission, Judicial officers and other executive powers have the potential to erode the credibility of the electoral process.</p> <p>Excessive presidential powers have the potential to erode the overriding principle of separation of powers in governance. For example, the President may influence the judicial branch, particularly in the appointment of judges. If a president uses this power to appoint loyalists or manipulate the judiciary, it can undermine the independence and impartiality of the Courts, eroding the rule of law and the proper functioning of the justice system.</p> <p>Reducing the powers of the presidency with checks and balances is necessary to maintain a healthy balance of power and provide mechanisms for accountability and transparency. Incumbents are less able to use the State's power to manipulate elections when there are limits to the tenure of the office of the presidency. Further,</p>	<p>Electoral Commission are vetted through a public process with the powers of the President to sign off the appointees.</p> <p>Other appointees in agencies and institutions that manage, organize and administer elections should be subjected to public vetting. E.g. Electoral Commission, Uganda Communications Commission (UCC), and National Identification and Registration Authority (NIRA)</p>

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p>1.3. Role of the Military in Elections</p>	<p>security officers are more likely to pay allegiance to the institution that they serve rather than the individual when there are term limits as seen in the case of transitions in Kenya, Zambia, and Ghana among others.</p> <p>The military has increasingly taken a central role in elections in Uganda. Elections have increasingly become violent while the military and other security forces have become more visible and active protagonists in electoral contests at all levels³.</p> <p>Over the years, UPDF officers and in some cases, Uganda Police Force officers acting both individually and in their official capacity have become increasingly conspicuous in manipulating and influencing elections and their outcomes. In 2016, the European Union Election Observation Mission (EU-EOM) reported that opposition parties and civil society perceived the conduct of police throughout the electoral process to be partisan and discriminatory. The EU</p>	<p>The law should be amended to provide for punitive punishments for security personnel who engage in partisan politics, perpetuating violence and committing irregularities for different candidates during elections.</p>

³ NGO Forum (2023): Issue paper 1: Restoring Citizen Sovereignty: Towards Election Integrity and Electoral Justice in Uganda.

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
<p>2. Commercialization of elections</p>	<p>2.1. Commercialization of politics and elections undermines democracy and contributes to electoral-related malpractices and violence during the electoral process.</p>	<p>EOM received reports of continued intimidation and harassment of opposition parties by security officials, including intelligence services, as well as arrests of supporters and voters from more than 20 districts.⁴</p> <p>The absence of legislation for disclosure of campaign income and expenditure by political parties and candidates participating in the election makes accountability difficult and promotes the negative influence of money in electoral competition and the possibility of Money Laundering. Commercialization enables the use of sophisticated tactics to manipulate or influence voters.</p> <p>When the election process becomes highly commercialized, with a perception of undue influence from moneyed interests, it can erode public trust in the integrity and fairness of elections.</p>	<p>Article 72 (5) of the Constitution of Uganda provides for the power of Parliament to make laws to regulate the financing of elections by individuals seeking political office.</p> <p>Parliament should enact a specific law to regulate campaign financing and spending. This will improve the quality of democracy by among others levelling the playing field for all candidates and enhancing the integrity of electoral outcomes.</p> <p>The principles to guide the law should include Transparency, accountability, disclosure and providing incentives to citizens to</p>

⁴ Ibid 6

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p>2.2. Regulate giving of donations during election periods⁵</p> <p>2.3. Regulate campaign financing to ensure equal levelled campaign field</p>	<p>Section 64 of the Presidential Elections Act deals with bribery. Section 64(7) forbids candidates or their agents from carrying out fundraising or giving out donations during the period of campaigns. Under Section 64(8) it is an offence to violate Section 64(7). However, the Supreme Court noted that under Section 64(9) a candidate may solicit funds to organize for elections during the campaign period. Furthermore, a President may in the ordinary course of his or her duties give donations even during the campaign period.</p> <p>The Supreme Court has noted that allowing the incumbent president to make and give donations during elections gives an unfair advantage. In order to create a level playing field for all candidates in the election, an incumbent president who is a candidate should not be allowed to make donations during elections</p>	<p>contribute funds to candidates like tax waivers.</p> <p>This section in the law should be amended to prohibit the giving of donations by all candidates including the President if he or she is a candidate, in order to create a level playing field for all.</p> <p>(1) Section 64 (9) of the PEA, is repealed.</p> <p>Insert the following</p> <p>(1) A candidate or person who makes a payment, contracts for payment or gives any other consideration of any kind for the purpose of promoting or procuring the election of a candidate at any election—</p> <p>(a) on account of the conveyance of voters to or from the poll, whether for the hiring of vehicles, vessels of any kind whatsoever, or for public transport fares, or otherwise; or</p>

⁵ Ibid 8

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p>2.4. Unequal use of State-owned media⁶</p>	<p>Lack of sanctions against State organs and officers who violate their constitutional duty in regard to State-owned media during elections. Both the Constitution in Article 67(3) and the Presidential Elections Act in Section 24 (1) provide that all Presidential candidates shall be given equal time and space on State-owned media to present their programs to the people. The Supreme Court found that UBC had failed to comply with these provisions. The Supreme Court recommended that the electoral law should be amended to provide for</p>	<p>(b) to or with a voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address bill or notice, commits an offence and is liable, on conviction, to a fine not exceeding 2,500 currency points or to imprisonment for a term not exceeding three years or to both.</p> <p>The Constitution and Presidential Elections Act be amended to strengthen access to state-owned media through sanctions against the media house and its officers for violation. The amendment should read as follows:</p> <p>Any State media that contravenes Article 67(3) of the Constitution and Section 24 (1) of the Presidential Elections Act commits an offence and will pay a fine of 5000 currency points or imprisonment of two years for</p>

⁶ Ibid 8

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
<p>3. Independence of the Legislature</p>	<p>3.1. Representation of the UPDF in the Parliament of Uganda</p>	<p>sanctions against any State organ or officer who violates this Constitutional duty.</p> <p>Article 208(2) of the Constitution of Uganda provides that the UPDF shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority. Previous trends in Parliament especially on controversial bills like the removal of term limits in 2005 have proven that it is difficult for the UPDF to be non-partisan during such debates. In a multiparty system of governance, there are two sides in Parliament, i.e. the ruling party and the opposition.</p>	<p>persons in charge of the State-owned media house or both</p> <p>Amend the Constitution to remove UPDF representation from Parliament to enable them to adhere to Article 208(2) of the Constitution.</p> <p>Article 78 (1) (c) of the Constitution is repealed</p>
	<p>3.2. Reduce the size of Parliament and prohibit gerrymandering</p>	<p>Prior to the 2016 elections, 52 new Parliamentary constituencies were demarcated. The population ratio was effectively neglected, resulting in profound population discrepancies between electoral constituencies⁷. It is unfair for one Member of Parliament representing half a million people to have the same resources as those</p>	<p>Ensure that electoral districts (Constituencies) are drawn and demarcated fairly and impartially which promotes greater representation and fairness in elections. Review the boundary delimitation provisions to ensure equality of the vote. A reasonable, legally binding maximum deviation</p>

⁷ EU Election Observation report on presidential, parliamentary and local council elections in Uganda, 2016

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p>3.3. Adoption of gender parity in the Constitution of Uganda.</p>	<p>representing 35,000 people⁸. This violates the principle of equality of the vote, provided for by the International Covenant for Civil and Political Rights (ICCPR). In the case of Eddie Kwizera Vs Electoral Commission and Attorney General (Constitutional Petition No.2 of 2019) (2021) the Petitioner challenged the election of six MPs to represent the newly created six municipalities. The Constitutional Court made it clear that the creation of constituencies must comply with Article 63 of the Constitution. They can only be created after a national census and the principle of population quota laws must be complied with.</p>	<p>from the national average number of voters per constituency be established, and new boundary delimitation conducted accordingly.</p> <p>Subject to the Constitution matters to be addressed in the delimitation of electoral boundaries are— Ensuring that the number of inhabitants in each constituency and sub-county/ward is as nearly as possible, equal to the population quota as provided for by Article 63 (3) of the Constitution Each MP should represent a minimum of 150,000 voters. Constituencies with less than 150,000 should be merged.</p> <p>Amend Article 78 (1) as follows: Parliament shall consist of—</p>

⁸ For example in the 2020/21 General Elections for the position of Woman Member of Parliament, Kampala District, which is a stronghold of the opposition had 505,199 voters (Five Hundred five thousand one hundred ninety nine) while other districts which were created on account of gerrymandering like Kibaale had only 42,763 (Forty two thousand seven hundred sixty three) voters, Luuka had 61,906(Sixty one thousand nine hundred six thousand) and Napak had 35,301 (Thirty Five Thousand three hundred one thousand) voters⁸.

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
		<p>women a district so that each district is represented in Parliament by one woman and one man in line with Article 29 (3) of the ACDEG 9. This provision if adopted needs to be implemented after the term of the 12th Parliament of Uganda. Parliament would have 292 MPs directly elected MPs and 5 representatives of People with Disabilities. In total, elected MPs will be 297.</p>	<p>(a) one male and one female member directly elected to represent constituencies; (b) The constituency for purposes of election shall be a district;</p>
	<p>3.4. Ministers who double as MPs regardless of the principle of separation of powers</p>	<p>The Ministers who double as MPs have collective responsibility for the decisions and resolutions passed by Cabinet. It's therefore futile for citizens to expect their MPs who double as Ministers to support their positions on key issues including electoral reforms if these positions are contrary to cabinet positions.</p>	<p>Amend Article 111 of the Constitution to include a provision that prohibits Members of Parliament from being appointed by the President as Ministers. This will promote the principle of separation of powers to enhance checks and balances within the organs of government.</p>
<p>4. Citizens' control of the electoral process</p>	<p>4.1. Independence of the Electoral Commission</p>	<p>Independence and impartiality by the Electoral Commission are critical for holding free and fair elections. The financial and administrative resources contribute to enabling the EC to be independent and impartial.</p>	<p>Amend the Constitution to provide for the appointment and recruitment procedure of Commissioners to the Electoral Commission to strengthen Article 60 (8).</p>

⁹ Ibid 5

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
		<p>Article 60 (8) of the Constitution provides for the security of tenure of Commissioners but does not provide for the procedure for removal of the commissioner. The President can therefore remove a Commissioner by assigning incompetence as a reason. Commissioners are therefore vulnerable to presidential control notwithstanding the independence provided in Article 62.</p> <p>Voting by citizens is a sovereign act. The role of the EC is to ensure that this sovereign act of the citizen is honoured. That's why citizens must be involved in who gets on to the EC management.</p> <p>Over the years, the EC has suffered from limited stakeholder and public confidence. This is partly attributed to their mode of appointment and some of the actions of its Commissioners and staff. In the Presidential election petition of Besigye Vs Yoweri Museveni and Electoral Commission petition No. 1 of 2006, the Supreme Court stated</p>	<p>The selection of Commissioners and the Electoral Commission staff needs to follow a process of open application, public hearings and scrutiny conducted by the Judicial Service Commission.</p> <p>The successful applicants need to be formally vetted by Parliament and upon approval, be submitted to the President for issuance of instruments of appointment.</p> <p>No Commissioner to the Commission needs to be beholden to any political affiliation.</p> <p>A Commissioner should serve for a guaranteed seven years term, renewable once.</p> <p>A Commissioner may only be removed from office in exceptional circumstances for gross misconduct or incompetence. Prior to the removal of a Commissioner from office, an investigation shall be carried out and concluded by an</p>

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
		<p>that ...” We are constrained to comment on a number of matters which have given us concern...the apparent partisan and partial conduct by some electoral officials.”</p>	<p>independent tribunal. If the Commissioner is found guilty of misconduct according to the Laws of Uganda governing Public officers of Government of Uganda he/she shall be removed from office.</p> <p>Amend Section 30, 34, of the Electoral Commission Act to provide for a consultative and vetting process in the appointment of returning officers and Presiding officers.</p> <p>A returning officer or presiding officer shall be appointed from the persons who reside in that electoral district.</p> <p>The vetting of a returning or presiding officer shall be through a public hearing at which persons shall give their views on the suitability of the proposed appointment.</p>

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p>4.2. Decentralization of election management</p>	<p>The current structure of elections management vests the ownership and control of the exercise into the Electoral Commission. The Electoral Commission controls the entire process through a network of agents spread across the country. In effect, the Electoral Commission owns the elections exercise and controls the entire electoral process and its outcomes. The Commission compiles the voters register, publishes it based on its calendar, counts the votes and announces the winners. This is a structural obstacle that makes citizens and voters alien or simply mere participants in the process and can compromise required standards. Indeed, even in cases of electoral malpractices, it is the national electoral commission that is sued, often by the candidates and not the voters.¹⁰</p> <p>Decentralizing the management and administration of elections will ensure citizen ownership and control at the</p>	<p>Amend Article 61 of the Constitution on the functions of the Electoral Commission. The amendment should seek to change the entire arrangement of vesting the function to organize and supervise elections in the Electoral Commission at the national level and create regionally based Electoral Commissions.</p> <p>Insert a new Article 62A to provide for the establishment of Regional Electoral Commissions and their functions. Regional Electoral Commissions should take responsibility and be held accountable for the conduct of elections in the respective regions.</p> <p>The role of the National Electoral Commission needs to be revised to establish standards for the management of elections, verification of regional voters' registers, verification of candidates and certification of final election</p>

¹⁰ Ibid 6

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
5. Violence in elections	5.1. Violence against Women in Elections (VAWE)	lower level and guarantee accountability to the local population. Essentially, the management of elections needs to be decentralized to the regions in order to streamline the powers of the Electoral Commission and the advantage of incumbency in the appointment of commissioners.	results in the case of presidential elections.
		VAWE prevents women from exercising and realizing their political rights, both in public and private spaces. It is driven by gender-specific motivations and discrimination, especially as women challenge traditional roles and engage in politics. The most obvious motivation behind the violence is to discourage women from pursuing a political career or prevent their independent political participation. The practice of VAWE is driven by gender-specific motivations and discrimination ¹¹ .	Parliament needs to amend the electoral laws in regard to violence in elections and create specific sections within the laws to address violence against women in elections. The provisions should address the specific forms of violence women face during elections that differ from the general actions of violence against other citizens in elections e.g. sexual violence vs. women in elections, psychological violence, physical violence.

¹¹UN programming guide: Preventing violence against women in elections; retrieved on June 4 2023 on https://www.unfpa.org/sites/default/files/publications/VAWE-Prog_Guide_Summary-WEB.pdf

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
		<p>VAWE may discourage women from joining politics. Violence at polling stations and against electoral staff may also discourage women from engaging in these vital areas of electoral administration, which in turn may further reduce women's turnout and ease with the election process. Violence at the community and family level results in coercing women's political choices and violating civil liberties.</p> <p>VAWE may prevent women from contesting as candidates or winning competitive races for political office discourage women from voting or punish them for being active in the electoral process. The acts of violence can be psychological, physical and sexual, and include the loss of livelihood, intimidation, physical or sexual assault, residential displacement and murder¹². Acts of violence against women become acts of electoral violence when they negatively impact women's</p>	<p>The law needs to explicitly provide measures on protection against VAWE. In addition, the EC should adopt regulations to prevent VAWE in the electoral process and, Political parties should adopt codes to address VAWE</p> <p>Resources need to be allocated by Parliament to provide information on forms of VAWE, how it manifests, detection and gender-sensitivity training to the police, adjudicators, judges, lawyers, CSOs etc. who may handle reported cases of VAWE</p>

¹² Ibid 1

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	<p data-bbox="182 1011 258 1203">participation in an electoral process and the realization of women's political rights.</p> <p data-bbox="264 1011 340 1203">5.2. Freedom to Associate and Assemble</p>	<p data-bbox="182 584 258 1011">Lack of conformity of the Police (Amendment) Act 2006 and police operating procedures in ensuring public order with the Article 29 of the Constitution on freedoms to associate and assemble.</p> <p data-bbox="264 584 790 1011">With each preceding election, the freedoms to associate and assemble are abused by security officers and Resident District Commissioners to the detriment of registered opposition political party candidates. Further, the Public Order Management Act continues to be abused by the security officers even when Courts in Uganda have ruled against its use to abuse the rights of especially opposition candidates</p>	<p data-bbox="182 193 426 584">The Police (Amendment) Act (2006) needs to be amended and brought into full conformity with the Bill of Rights under Chapter 4 of the Constitution of the Republic of Uganda</p> <p data-bbox="432 193 594 584">Police operating procedures in ensuring public order in the context of campaigns and throughout the electoral process should be transparent and made public.</p> <p data-bbox="600 193 676 584">Repeal the Public Order Management Act, No.9 of 2013.</p>
<p data-bbox="801 1203 964 1393">6. Handling of election disputes by the Courts of law</p>	<p data-bbox="801 1011 941 1203">6.1. Limited timeframe for filing and determining</p>	<p data-bbox="801 584 902 1011">The time for filing and determining Presidential election petitions in Article 104(2) and (3) of the Constitution and Section 59(2) and (3) is inadequate.</p> <p data-bbox="908 584 986 1011">The 30 days currently provided for in the Constitution and the Presidential</p>	<p data-bbox="801 193 846 584">Amend Article 104 (2) to read as follows:</p> <p data-bbox="852 193 964 584">Article 104 is amended in sub-article (2) by replacing the word "ten" with the word "thirty"</p>

BROAD ISSUE	ISSUE	WHY IS IT IMPORTANT?	PROPOSALS FOR REFORM
	election petitions ¹³	Election Act needs to be amended to 60 days to give the parties and the Court sufficient time to prepare, present, hear and determine the petition, while at the same time being mindful of the time within which the new President must be sworn in.	<p>Amend Article 104 (3) to read as follows:</p> <p>Article 104 is amended in sub-Article (3) by replacing the word "thirty" with the words "sixty"</p> <p>Amend Section 59 (3) to increase the time within which to file a Presidential Elections Petition from thirty days to sixty days</p>
	6.2. Nature of evidence ¹⁴	The use of affidavits only in Presidential election petitions has drawbacks because the veracity of affidavit evidence cannot be tested through examination by Courts or cross-examination by the other party.	The rules on the provision of evidence in the Supreme Court need to be amended to provide for the use of oral evidence in addition to affidavit evidence with leave of Court
	6.3. The time for holding fresh presidential elections ¹⁵	Article 104(7) of the Constitution of Uganda provides that where a Presidential election is annulled, a fresh election must be held within 20 days. The Supreme Court found this to be unrealistic given the concerns that had come to light in the course of hearing three petitions that the Court	<p>Amend the Article 104 (7)</p> <p>Where a new Presidential election under Article 104 (7) shall be held within sixty days after the date set for the previous presidential election.</p>

¹³ Supreme Court civil application No.5 of 2019 arising out of Presidential Election Petition No.1 of 2016

¹⁴ Ibid 8

¹⁵ Ibid 8

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		<p>had dealt with to date. In all these petitions, the Electoral Commission is wanting in some areas. Importation of election materials has sometimes been a problem and securing funds has often been a challenge. Therefore, to require the EC to hold free and fair elections within the current timeframe after a nullified Presidential election would be unrealistic.</p>	
	<p>6.4. Adjudication of election disputes</p>	<p>Section 59 of the Presidential Elections Act makes it almost impossible for the Courts to annul an election regardless of the evidence brought before the Court. Provisions in the law that require subjective evaluation by judges, on whether particular violations and electoral malpractices were 'substantial' and in 'a manner' that would alter the results of an election, entail the exercise of subjective rather than legal judgment.</p>	<p>Specific provisions should be included in Section 59 of the Presidential Elections Act to guide the judges on what 'substantial' would entail to annul an election.</p>
<p>7. Administration of elections</p>	<p>7.1. Late creation of administrative units</p>	<p>The creation of new cities, counties, and other administrative units long after the electoral roadmap has commenced adversely affects the Commission's planning, operations and budget. For the General Elections held</p>	<p>No administrative unit for purposes of elections shall be created two years prior to an election</p>

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		<p>in the FY 2020/2021, the new cities, counties and other administrative units were created shortly before the nomination date which affected the re-organisation of polling stations, a process which had long been concluded.</p>	
	<p>7.2. The use of technology¹⁶</p>	<p>While the introduction and use of technology is encouraged in electoral processes to create more transparency and accountability in an election, there is no law to regulate its usage.</p>	<p>Parliament needs to enact a specific law to regulate the usage of technology in the conduct and management of elections.</p>
	<p>7.3. Inclusiveness of the Voter Register (VR)</p>	<p>The voter registration system should promote inclusiveness and accuracy. In FY 2015/16 general elections, the final VR contained more than 15 million voters. Establishing the cut-off date of 11 May 2015 for inclusion in the voter register disenfranchised approximately half a million¹⁷ potential voters who turned 18 after this date.</p>	<p>Amend Article 59(3) of the Constitution of Uganda to read as follows: (3) The State shall take all necessary steps to ensure that all citizens who turn 18 years by the date of the election register to vote and exercise their right to vote.</p>
	<p>7.4. The safety and integrity of the Declaration of Results Forms (DRF)</p>	<p>The safety and integrity of the DRF are not ensured at the polling stations and during their transmission to tally centres at various levels. Counting of votes and transmission to tally centres usually ends at night. With limited</p>	<p>Amend the law relating to the safety and integrity of the Declaration of Results form and provide for more punitive sanctions for contravention of the law</p>

¹⁶ Ibid 8

¹⁷ Ibid 6

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		<p>lighting and limited secure transportation and systems for the transmission of results, complaints in several election petitions including tampering with results have centred around this process.</p> <p>Amend Section 54 of the Presidential Elections Act 2010 to allow the returning officer in each district to declare the results of the presidential election in the district. The National Electoral Commission can then collate the declared results from each district and announce the winner of the presidential election based on the announcements made by returning officers in each district. This will increase confidence in the election results and allow agents of political parties to verify the results at the district level.</p>	<p>A person who— (j) makes a false statement or furnishes false particulars in any statement which is required under the Elections Act knowing the statement or particulars to be false or without reasonable grounds for believing the same to be true; or otherwise unlawfully influencing the process or outcome of the election or aids, abets counsels or procures the commission of or attempts to commit any such offence; commits an offence and is liable, on conviction, to a fine not exceeding 1,250 currency points or to imprisonment for a term not exceeding five years or to both.</p> <p>Amend Sections 51 and 52 to prescribe offences and penalties for tampering with election materials, and falsifying DRF against presiding and returning officers.</p> <p>Delivery of election results shall only be made to the collection centre based at the Constituency by</p>

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	<p>7.5. Lack of transparency in the tallying process</p>	<p>Shortcomings preclude observers and party agents from ascertaining the veracity of the results. The printed sub-county results, broken down to polling station level, are not handed out or publicized. The Electronic Result and Transmission System used to transmit the collated results from districts to the EC, did not contain key anti-fraud measures. In several districts, the electronic transfer did not take place. The results were brought to the EC by the district returning officer in person. The final tallying for these districts could not be observed, further undermining the integrity of the process¹⁸. The EC also did not publish the scanned copies of the DRFs online although they were readily available in electronic format, thus further reducing voters' access to information of public interest and in contravention of the principles outlined in the ICCPR¹⁹.</p>	<p>the Presiding officer of each polling station.</p> <p>The results at the polling station shall be the primary document used to tally Presidential, Parliamentary and Local Council results.</p> <p>The tallying process with results from each polling station shall be broadcast on all national media to increase transparency in the tallying process.</p> <p>The EC shall put in place electronic display systems for the public at every tallying centre</p> <p>The electronic transmission of copies of Presidential election results be availed to political parties and candidates. This process will not do away with availing all political parties and candidates hard copies of the tally sheets of the Presidential election</p>

¹⁸ Ibid 6

¹⁹ Ibid 6

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	<p>7.6. Provide more and review the mode of displaying the voters' register</p>	<p>To increase voter participation and ensure that voters are given ample time within which to scrutinize the register and raise any objection, allow the display of the register electronically</p>	<p>within seven days following the presidential election.</p> <p>Amend Section 25 of the Electoral Commission Act to give more time within which a voter's roll may be displayed for public scrutiny from twenty-one days to thirty days. Further, amend the law to provide for the display of the voters' roll electronically</p>
	<p>7.7. Data protection of biometric information</p>	<p>Protect the privacy of registered voters</p>	<p>The biometric information of a person registered as a voter shall be held confidential by the Commission and shall not be made available to any other person or authority except on the orders of the Court.</p> <p>Amend Section 21 of the Electoral Commission Act to provide for keeping the biometric information collected to be kept in confidential and not to be disclosed. Provide for offences and penalties for unlawful disclosure to protect the privacy of registered voters.</p>
	<p>7.8. Voting by persons not</p>	<p>To increase voter participation and allow citizens in the diaspora to exercise their right to vote.</p>	<p>Amend Section 19 of the Electoral Commission Act to provide for the</p>

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	<p>residing in Uganda</p>	<p>Allowing citizens residing abroad to participate in elections fosters a stronger sense of accountability and encourages politicians to consider the needs and concerns of citizens, both at home and abroad. Robust participation from citizens, regardless of their geographic location, is essential for the functioning of a healthy democracy.</p>	<p>registration of Ugandan citizens in the diaspora.</p> <p>The law needs to provide for the qualification and registration of Ugandan citizens residing abroad who qualify to vote.</p> <p>The Electoral Commission needs to maintain a register of Ugandans registered to vote abroad.</p> <p>Registration needs to be conducted by the Ugandan Embassies, Consulates and other foreign service establishments.</p> <p>The law needs to provide for the manner and procedure in which citizens in the diaspora will exercise their right to vote e.g. through online voting</p>
	<p>7.9. Voting by citizens who are eligible to vote but have to work on polling day</p>	<p>Police officers and officials of the Electoral Commission miss out on the opportunity to exercise their democratic right to vote because they have to work on polling day.</p>	<p>The law should provide for early voting for the Electoral Commission staff and police officers and service men and women in the armed forces deployed at the time or who have to work on polling day and</p>

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	<p>7.10. Offences relating to the registration of voters</p>	<p>Create offences and penalties relating to registering a person who is not qualified, registering more than once either at the same registration centre or at different registration centres; giving a voters registration form to another person when that person is not a registration officer; registering as a voter in the name of another person; inducing a person not to register; carrying out registration of voters</p>	<p>may not be posted to their polling stations on the day of voting.</p> <p>Registration offences</p> <p>A person who</p> <p>(a) registers as a voter when he or she does not qualify to be registered;</p> <p>(b) registers as a voter more than once either at the same registration centre or at different registration centres;</p> <p>(c) registers as a voter in the name of another person;</p> <p>(d) gives a voters registration form to another person when that person is not a registration officer;</p> <p>(e) disrupts proceedings at a registration centre or in any way interferes with the work of an official connected with the registration of voters;</p> <p>(f) offers anything of actual or potential value to a person to induce that person not to register as a voter;</p> <p>(g) carries out registration of voters at a place other than a place</p>

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			<p>designated as a registration centre by the Commission;</p> <p>(h) tampers with any registration equipment;</p> <p>(i) alters captured registration data without authority;</p> <p>(j) transfers biometric information to another device without authorisation;</p> <p>(k) intentionally brings an electronic device that interferes with the performance of the equipment to a registration centre or any data centre of the Commission</p> <p>Commits an offence and is liable on conviction to six months imprisonment or a fine of 100 currency points or both</p>

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	<p>7.1.1. Right of prisoners on remand and civil debtors to vote</p>	<p>Protection of the right to vote based on the presumption of innocence for prisoners who have not been convicted by the Courts of law in Uganda</p>	<p>Amend section 39 of the Presidential Elections Act to provide for the following:</p> <p>A person who is confined in a penal institution located in an electoral area is resident in that electoral area.</p> <p>A person confined in a prison as a suspect or as a civil debtor shall have a right to vote.</p>
<p>8. Internal democracy in political parties</p>	<p>8.1. Lack of oversight over political parties</p>	<p>The lack of oversight over political parties in regard to how they exercise internal democracy affects the general election. Undemocratic practices that are exercised in political parties spill over into the general election because of a lack of checks.</p>	<p>The Electoral Commission needs to closely monitor all political parties for compliance with constitutional and electoral laws relating to internal democracy in those entities. This includes adherence to the requirements of holding regular delegates conferences and candidate selection.</p>
<p>9. The political system of governance</p>	<p>9.1. Remove the reference to the movement political system from the constitution</p>	<p>Uganda is governed under a multiparty political system government. However, the Constitution still makes references to the movement political system as one of the systems of government under which Uganda may be governed.</p>	<p>Article 69 of the Constitution should be amended by repealing subsection 2(a)</p>

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	<p>9.2. Proportional representation (PR)²⁰</p>	<p>Reference to the movement political system should be repealed.</p> <p>Uganda should consider adopting the PR system to reduce wastage of votes²¹ and the marginalization of women and youth candidates on party lists</p> <p>PR potentially offers greater and more-representative choices for voters and may encourage turn-out and reduce apathy. PR rarely produces an absolute majority for one party, however, it could be argued that PR ensures greater continuity of government and requires greater consensus in policy-making.</p>	<p>Amend the Constitution of the Republic of Uganda to adopt proportional representation as the electoral system.</p>

²⁰ Proportional representation is an electoral system in which the distribution of seats corresponds closely with the proportion of the total votes cast for each party. For example, if a party gained 40% of the total votes, a perfectly proportional system would allow them to gain 40% of the seats.

²¹ Under PR fewer votes are 'wasted' as more people's preferences are taken into account

CONCLUSION

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There can be no doubt that creating the necessary conditions for credible, free and fair elections will require deliberate non-partisan effort to deconstruct the current state architecture to liberate the institutions of the state, strengthen systems of checks and balances, and establish mechanisms to enable the citizens to exercise their sovereignty and express their will and consent on who shall govern them and how they should be governed through regular, free and fair elections.

Certainty and transparency in an electoral process are strengthened when the legal framework is established well ahead of an election date being announced. Late changes in legislation, or delays in adopting regulations on key issues, can undermine an electoral process. It also constrains the Commission's ability to effectively implement the roadmap. Any election-related law reform shall be undertaken within two years of the establishment of the new Parliament. We, therefore, appeal to the Ministry of Justice and Constitutional Affairs and the Parliament of Uganda to consider enacting these reforms earlier in this term of office.



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