



RESTORING CITIZEN SOVEREIGNTY:

Towards Elections
Integrity & Electoral
Justice In Uganda



A POSITION PAPER ON ELECTORAL REFORMS

March 2023

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List of **ACRONYMS**

AU	African Union
CMI	Chieftaincy of Military Intelligence
EC	Electoral Commission
FOWODE	Forum for Women in Democracy
GDP	Gross Domestic Product
GLISS	Great Lakes Institute for Strategic Studies
ICCPR	International Covenant on Civil and Political Rights
NRM	National Resistance Movement
NUP	National Unity Platform
SCENE	Strengthening Citizen Engagement in Elections
SFC	Special Forces Command
UNNGOF	Uganda National NGO Forum
UPDF	Uganda Peoples' Defence Forces
UPF	Uganda Police Force
UPM	Uganda Patriotic Movement
USAID	United States Agency for International Development

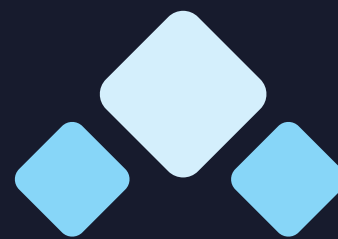
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1. INTRODUCTION



Credible, free, and fair elections are generally considered the most acceptable mechanism through which citizens express their sovereignty and free will to determine those who seek to rule over them. The exercise of all power – political, legislative, judicial, military, or bureaucratic – is rooted in the fundamental principle that such power is derived from the citizens. Through regular, fair, and free elections, citizens determine who should exercise the mandate to govern them. They can choose to terminate or renew such mandate or transfer such mandate to newly elected leaders altogether. The declaration in Article 1 of the 1995 Constitution of Uganda and the requirement for credible, regular, free, and fair elections is rooted in this fundamental principle. Indeed, over the years, the criteria for adjudging an election as credible, free, and fair have been redefined and refined in a variety of international legal instruments as well as constitutional practice at the national level.

However, there are countless situations and countries where those who are vested with the power to legislate, organize, and conduct such elections may end up hijacking the elections. In Uganda, numerous structural conditions have shifted the balance of power in favour of those who control state resources and the means of violence. This paper recognizes that establishing conditions for credible, free, and fair elections must be negotiated with those who may have succeeded in appropriating state resources and controlling the means of violence. This is achievable when citizens are organized and empowered to negotiate structural and electoral reforms that re-establish the balance of power between themselves and those who rule over them.

The preparation of this paper was motivated by the need to consolidate information regarding attempts at electoral reforms in Uganda since the promulgation of the 1995 constitution. It, therefore, builds on the tremendous amount of work undertaken by a wide range of stakeholders to advocate for a progressive electoral reform agenda aimed at improving Uganda's governance system. Consequently, the paper serves at least three interrelated purposes. First, it seeks to map more than two decades of Uganda's journey in reforming the electoral process. Second, it analyzes why these reforms have not yielded the desired progress. Third, it proposes the optimum reforms needed to ensure dignified, free and fair elections in Uganda.

In this paper, the term “electoral reforms” is broadly used to refer to any kind of reforms – political, constitutional, economic, social, etc., - whose intended objective is to create appropriate conditions in which citizens freely perform their constitutional obligations, exercise their rights in a dignifying, free and fair environment, participate in development and governance processes and live a life of prosperity and dignity.

The paper is organized into six parts. Part 1 includes this introduction, the methodology used in preparing this paper, and its background. Part 2 draws on existing literature to present a summary of the minimum standards for credible, free and fair elections. It argues that the approach that sees elections as a one-day event focusing on the voting day is reductionist and obscures the very purpose of an election, which is the expression of citizen sovereignty and free will. Part 3 examines the context of elections in Uganda by probing the political, economic, social, and geopolitical environment in which citizens are expected to exercise their sovereign power through the right to vote. In part 4, the paper reviews the lessons of the last two decades while part 5 presents concrete proposals of what reforms are necessary to build an electoral system that delivers credible and dignifying, genuine, free and fair elections.

1.1. How this paper was prepared

A variety of methods were employed in the compilation of this paper. The study relied on an extensive review of the academic and institutional literature. Academic literature on governance, democracy and the rule of law provided the basis for identifying the fundamental principles against which a credible, free and fair election may be measured. While there is a tendency of practitioners viewing democracy as a “foreign abstract” concept, the literature shows a high degree of convergence between these principles and shared values of humanity or Ubuntu in Africa speak. The second set of literature which provided an important basis for the paper is the wide range of reports and proposals on elections in Uganda. 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. These proposals provide a starting point for determining a potential consensus on where reforms are necessary.

The study also relied on consultations with a wide range of stakeholders to capture perspectives from different shades of opinions. These consultations were conducted both via electronic conferencing and physical meetings with key informants.

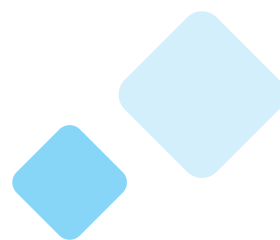
Throughout the study, a total of five (5) electronic conferences and several physical meetings were convened, allowing interactions with civil society leaders, academia, leaders of political parties, and religious leaders, among other groups. The process of preparing this paper also benefitted from a series of working sessions with multiple stakeholder groups. At least 3 retreats involving leaders of civil society organizations and academia from across Uganda were organized. These retreats helped shape the scope of the inquiry about Uganda's electoral landscape and contributed to refining the analysis and proposals presented in the paper.


1.2. Background

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 within the ruling National Resistance Movement (NRM) group on the one hand, and between the NRM group of politicians (often supported by state institutions) and other political formations on the other. In all this contestation, citizens, either directly or indirectly acquiesce in the subversion of the process or simply look on as helpless spectators.

Over this period, 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.





2. THE NORMATIVE FRAMEWORK FOR CREDIBLE, FREE, & FAIR ELECTIONS

Are there universally accepted minimum standards for conducting elections upon which one can affirmatively judge an election to be credible, free, and fair? Are elections so context specific that the standards for adjudging a credible, free and fair election can vary from one country to another or one region to another? How do the political, economic, social and security conditions in a country impact the credibility of elections? This section of the paper examines Uganda's current constitutional order and analyze the variety of global and regional legal instruments to discern the emerging consensus that addresses these and other related questions regarding the conduct of elections. The conclusion from the analysis is that Uganda's Constitution, as well the relevant regional and international legal instruments ratified by Uganda, present a set of normative standards to confer a credible, free and fair elections verdict that are universally recognized. An election that goes below the threshold of such a standard should be considered to have lost the credibility, free and fair test.

2.1. Global elections standards setting instruments.

Elections have increasingly become one of the most highly contested events globally. It is therefore not surprising that Uganda is no exception.¹ This contestation is often displayed in increasing physical violence by security personnel and allied militia and quasi-militia groups linked to political parties and candidates, accusations of elections rigging, rejection of election outcomes, internet shutdowns² and in some cases war.³ Contestation of elections has also raised fundamental questions as to whether elections are a “Western” value and hence not suitable for advancing democracy in African countries. African politicians, scholars and practitioners increasingly argue that there should be a rethink of the practice of democracy and elections to build “something” that takes into account the unique context of African countries.

However, the current discourse on elections shows that there is a wide range of normative principles that have emerged overtime to constitute a set of universally accepted minimum standards that can be used to determine whether an election should be considered credible, free and fair. Rooted in the International Covenant on Civil and Political Rights (ICCPR) (1966) and a host of other international and regional instruments, these norms are generally accepted by states as being fundamental to the validity and credibility of any electoral process as well as the outcome of any such process.

For its part, Article 25 of the ICCPR provides thus:

Every citizen shall have a right and the opportunity, without any of the distinctions mentioned in the article and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.
- (b) To vote and to be voted at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
- (c) To have access, on general terms of equality, to public service in the country.

At the heart of the ICCPR is the fundamental right of every citizen to participate in the public affairs of their countries either directly or through freely chosen representatives. In modern societies, the principle of “freely chosen representatives” implies some form of election to enable citizens to choose those representatives. Of particular significance is the principle of “genuine periodic elections which shall be by universal and adult suffrage” held by secret ballot. These principles as enunciated under the Covenant are designed to achieve the widest participation of all eligible citizens without discrimination.

Since the adoption of the Covenant more than half a century ago, these principles have become the fundamental building blocks for legislation and practice regarding the conduct of elections around the world. The basic norms governing elections have evolved over the years through a host of other international and regional instruments. Consequently, the normative character of nearly all key components of the electoral process can be ascertained from all major international and regional human rights treaties that many African countries have signed and ratified.

2.2. Domestication of global elections norms in Africa

Building on the foundation of the ICCPR, the African Union (AU) has made considerable progress in the domestication of some of the norms governing standards of conducting quality elections on the continent. A review of the instruments adopted by AU member states suggests — from a purely normative perspective — that there is an emerging consensus as to the basic principles, standards and rules that an election ought to conform to for such an election to be considered credible, free and fair.

First and foremost, the objects clause of the Constitutive Act of the African Union⁴ clearly stipulates the commitment of African countries to adhere to the Charter of the United Nations and the ICCPR; promote peace, security, and stability on the continent; and promote democratic principles and institutions, popular participation and good governance. The Act also commits the member states of the African Union to “promote and protect human and peoples’ rights in accordance with the African Union Charter on Human and Peoples’ Rights and other relevant human rights instruments.”

At the time of the adoption of the Constitutive Act of the African Union in 2000, African countries were faced with a crisis of “unconstitutional change” of governments, especially through military coups. In the preamble to the Act, the parties state that they seek “to entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies. In addition, one of the core principles of the AU under article 4 is the condemnation and rejection of unconstitutional changes of governments.

It is evident from the variety of instruments adopted since then that these countries realize that embedding the principle of credible, free and fair elections was an essential response option to addressing the problem of unconstitutional change of governments on the continent. For example, in 2002, the AU adopted a declaration on the principles governing democratic elections in Africa (Box 1) setting out a set of principles that underpin democratic elections.

Box 1: African Union principles governing democratic elections

II. PRINCIPLES OF DEMOCRATIC ELECTIONS

1. Democratic elections are the basis of the authority of any representative government.
2. Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability, and development.
3. The holding of democratic elections is an important dimension in conflict prevention, management, and resolution.
4. Democratic elections should be conducted:
 - a) freely and fairly.
 - b) under democratic constitutions and in compliance with supportive legal instruments.
 - c) under a system of separation of powers that ensures, the independence of the judiciary.
 - d) at regular intervals, as provided for in National Constitutions.
 - e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

See African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002.

In 2007, the Declaration was upgraded into a legally binding instrument – the African Charter on Democracy, Elections and Governance. The Charter was adopted at the Eighth Ordinary Session of the Assembly of the African Union in Addis Ababa in January 2007. The objectives and principles of the Charter are reproduced verbatim in Box 2 and Box 3 respectively because of their relevance to the discussion on the normative standards for credible, free and fair elections.

Box 2: Article 2: The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights.
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the constitution and constitutional order in the political arrangements of the State Parties.
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments.
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development.
5. Promote and protect the independence of the judiciary.
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance.
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration.
8. Promote State Parties' sustainable development and human security.
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003.
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.
11. Promote gender balance and equality in the governance and development processes.
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

African Charter on Democracy, Elections and Governance, 30 January 2007, Addis Ababa

Box 3: Article 3: Principles

State Parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles.
2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law.
3. Promotion of a system of government that is representative.
4. Holding of regular, transparent, free, and fair elections.
5. Separation of powers.

African Charter on Democracy, Elections and Governance, 30 January 2007, Addis Ababa

The continuing codification of the principles and norms governing the conduct of elections both internationally and in Africa clearly suggests that democracy based on credible, free and fair elections does not represent a “clash of cultures”. On the contrary, the consistency manifested in these international and regional instruments represents an emerging consensus that there is a general a set of norms and standards on the conduct of elections that are universally accepted and shared across states and governments that are members of the African Union and the international community.

2.3. Minimum normative standards for credible, free and fair elections

The foregoing analysis of the global and regional policy instruments codifies a set of normative standards and criteria against which an election can be adjudged as being credible, free, and fair. While the literature on elections contains an ever-expanding “shopping basket” of standards and rules on elections, it is only those standards where there is evidence of state practice and *opinio juris* that are presented. The evidence of state practice and *opinio juris* is based on the fact that these standards and criteria have been widely domesticated in national constitutions and other legal instruments. Effectively, African states have demonstrated a consistent pattern of state practice that points to the universal acceptability of these standards and criteria as minimum requirements for the conduct of credible, free and fair elections.

i) Periodic or regular elections

The requirement for periodic or regular elections is perhaps the easiest of all the standards that define credible, free and fair elections. This standard simply requires that elections be held periodically or regularly as the most legitimate mechanism for renewing or changing government. There is generally no universally accepted conduct on the periodicity of elections. Consequently, how often elections are held is left to be determined by every state, often provided under the national constitution. The underlying principle is that once the period for holding regular elections has been set, it should be followed without manipulative or opportunistic changes.

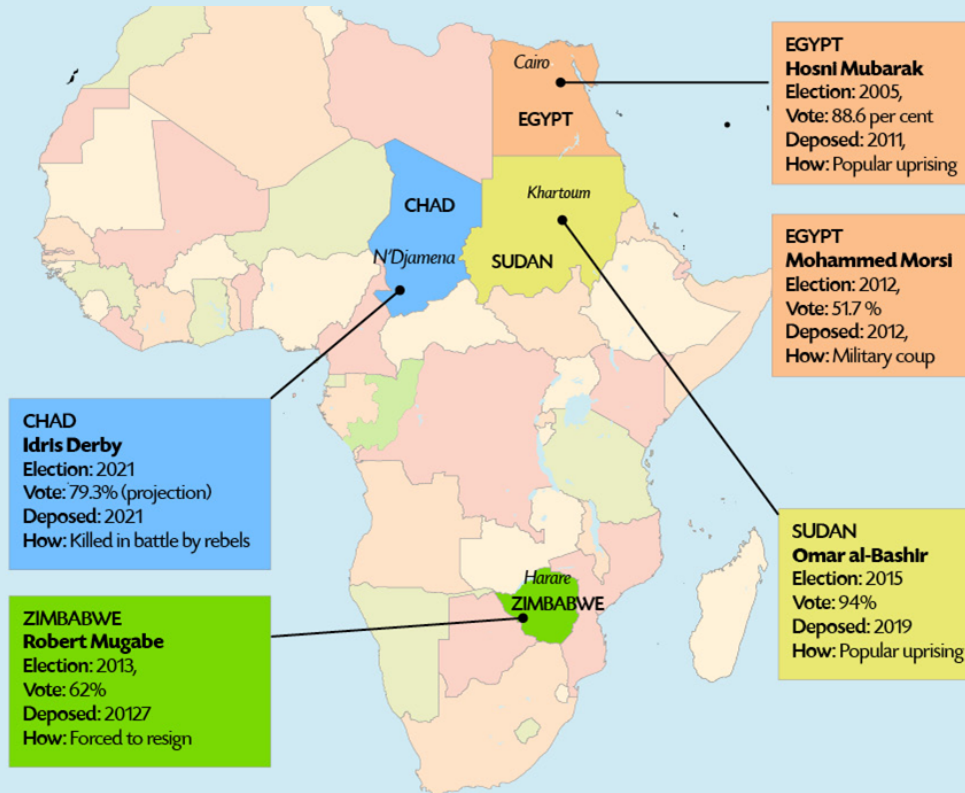
The conduct of regular or periodic elections is so important to the extent that it is the foundation upon which other criteria can be tested. The conduct of periodic elections can test the credibility or independence of election governing bodies, or ability of a country to conduct violence-free elections, or whether fundamental rights such as the rights to freedom of speech, assembly or association are generally adhered to.

**Table 1:
EAC countries and periods for the conduct of elections**

S/No.	Country	Legal Provision	What it says
1.	Uganda	Section (2)(2) Presidential Elections Act, 2005 as Amended by Act 11 of 2020.	The election of the President shall, subject to Article 61 of the Constitution, be held during the first thirty days of the last one hundred and twenty-two days before the expiration of the term of the President.
2.	Kenya	Article 136 (2) (a) and (b) of the Kenyan Constitution 2010.	An election of the President shall be held on: (a) the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; or (b). in the circumstances contemplated in Article 146
3.	Rwanda	Article 100 (1) of Rwanda's Constitution of 2003 with amendments through 2015.	Elections for the President of the Republic are held at least thirty (30) days and not more than sixty (60) days before the end of the term of the incumbent President.
4.	Burundi	Burundi's Constitution of 2018	The election of the President of the Republic takes place at least one month and at most three months before the expiration of the sitting President of the Republic's mandate.

Figure 1:

African Countries where presidents lost power shortly after elections



ii) Protection of the right to vote or universal suffrage

Most national constitutions provide that, citizens are the sovereign authority from which governments derive their authority. Citizen sovereignty can only be exercised through the power of voting. Consequently, there is a general recognition that the right to vote by every eligible adult citizen is a fundamental norm that every election should meet for such election to pass the credibility, fair and free test. It is therefore imperative that any electoral system must ensure that allowable restrictions on the right to vote such as lower or upper age requirement, residency requirement, and other limitations based on physical disability, imprisonment, literacy, educational requirements, etc should to the extent possible be minimized.

This universal suffrage norm requires the relevant authorities to take effective measures to ensure that all eligible citizens are able to exercise their right to vote by enabling a smooth voter registration and voter education process. In this regard, any practices such as denying an eligible citizen the right to register to vote and lack of access to registration centres and or all forms of vote manipulation undermine the credibility, free and fair test of an election.

Table 2:
Provisions of selected African national constitutions on the right to vote.

S/No.	Country	Constitution & Article	Provision on universal adult suffrage.
1.	Ghana	Article 42 of the 1992 Constitution of Ghana as amended.	Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.
2.	Zambia	Article 46 of the Constitution of Zambia as amended in 2016	A citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote in an election by secret ballot.
3.	Nigeria	Article 77 (2) of the Constitution of the Federal Republic of Nigeria 1999	Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.
4.	The Gambia	Article 39 (1) of the Constitution of the second Republic of the Gambia.	Every citizen of The Gambia being eighteen years or older and of sound mind shall have the right to vote for the purpose of elections of a President and members of the National Assembly and shall be entitled to be registered as a voter in a National Assembly constituency for that purpose.

iii) Right to stand for elective office is guaranteed

Another important universal norm reflected in most global instruments and national constitutions is the right of every eligible citizen to contest for elective office. This right guarantees the possibility that several candidates will offer themselves to compete for available offices hence giving voters a variety of choices during an election. Where there are restrictions on the right to stand for elective offices such as age, gender, academic qualifications, etc., such restrictions must be justifiable on objective and reasonable criteria. Restrictions that amount to unreasonable discrimination including marital status particularly for women and youth, including conditions governing the nomination of candidates like exorbitant nomination fees for all candidates regardless of the varying social and economic context dictated by gender may be considered as undermining the integrity and fairness of the electoral process.

iv) Credible and verifiable voters register

At the heart of any electoral process is the important issue of credible and verifiable voters' register. The voters' register is generally accepted as the basic instrument upon which any right to vote ought to be premised. A national voters' register is credible if it is prepared in a transparent manner and the system of voter registration does not impose undue restrictions that inhibit the registration of anybody eligible by the relevant law of the country to register to vote. Eligibility requirements for registration, accessibility to registration facilities, the ability of any eligible voter to register with no impediments and the production of an accurate, reliable and updated voters' register are some of the elements necessary for a successful voter registration exercise and voters' register. A voters' register is verifiable if it is accessible to every interested citizen and there are clear procedures for remedying any defects in the register.

v) Secret ballot

The secrecy of voting also known as the secret ballot is considered one of the important pillars upon which a credible, free and fair election rests. The secrecy of the ballot allows citizens to make their choices independently in an environment that is devoid of fear, bribery, intimidation and the possibility of victimization and retribution in the post-election period. The right to the secrecy of the ballot also implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted. In exceptional cases such as aided voting, persons who need assistance such as disabled persons or those who may be illiterate should be enabled to choose persons of their choice to facilitate their voting.

vi) Citizens' control of the electoral process

A credible electoral process can only be built upon the commitment to give more control over the electoral process to the citizens. This implies that election governing bodies and electoral laws should to the extent possible devolve the power to conduct and manage elections to the lowest unit of elections administration possible. Such devolution should include, at a minimum, several essential elements. First, the process of voter registration should be conducted by local elections officials. Secondly, voting day security should be the responsibility of local security personnel to ensure accountability of such personnel. Thirdly, vote counting and declaration conducted at a polling station should be conclusive evidence of votes cast for any candidate.

The vesting of the primary mandate into local elections administration institutions to conduct elections helps achieve two important safeguards. First, it bridges the accountability gap between citizens and the local elections management body. Since the citizens know who is responsible for conducting their elections and ensuring that their votes are counted, they can hold such people accountable. Such subsidiarity removes a faceless player that everybody knows as the national elections body, which "runs away" immediately after vote counting. Secondly, and perhaps more important, the national elections body becomes a standards enforcement and accountability institution to oversee and ensure compliance with the set standards for conducting elections.

vii) Transparent election results declaration and transmission procedures

At the heart of any election exercise is the principle of transparency in the declaration and transmission of election results. Any failure to ensure that the declaration of results and their transmission is transparent undermines the credibility of the entire elections exercise and undermines the confidence of citizens in the election process. As stated by Justice Otieno Odek, if the public or any candidate has no confidence in the integrity of the election results, disputes are bound to arise.

viii) Right to freedom of peaceful assembly

Generally, the right to freedom of assembly is a fundamental right that protects the right of individuals and groups of citizens to meet and engage in peaceful civic, political, economic and other activities. The right to peaceful assembly provides the opportunity for all citizens to participate in their nation's electoral process and other forms of civic activities. This right generally covers all forms of association such as political parties' conventions and rallies, religious congregations, economic protests, political demonstrations, or any other assemblies of citizens. Unjustified restrictions on the right to freedom of assembly undermine the capacity of citizens to mobilize and organize their participation in civic activities, including elections.

ix) Right to Freedom of Association

The right to freedom of association protects the right of citizens to form and join associations to pursue common goals whether political, economic social or civic engagement. The right to freedom of association covers the right of individual citizens to interact, mobilize and organize among themselves to collectively express, promote, pursue and defend common and shared interests.

x) Right to freedom of speech and expression

The right to freedom of speech and expression entails the freedom to hold opinions and to receive and impart information and ideas without interference by government authorities. The right implies that citizens can express their views and opinions freely through word of mouth, writing, pictures, music, movies, or any other media. The right to freedom of speech and expression is a fundamental right that enables every citizen to develop civic competence and strengthens their capacity to participate meaningfully in decision-making, including elections.

xi) Equality of access to media

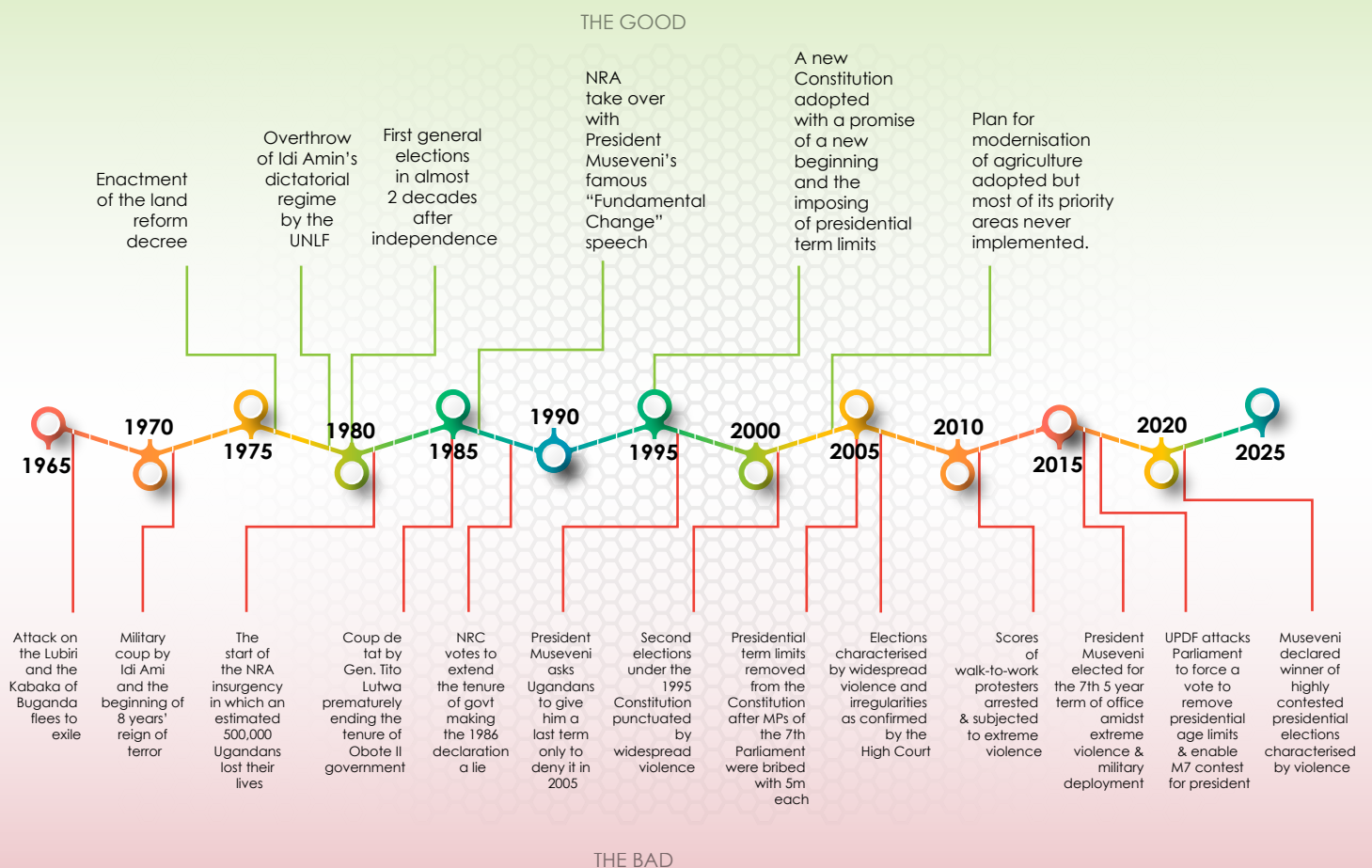
The current international and African normative instruments are unanimous on the right of equal access to the media, including publicly owned media or state media, as a fundamental prerequisite for creating conditions for credible, free and fair elections. Equality of access to media includes apportioning public funds to candidates provided for under the law and enforcement of access. Legislation of enforcement of access to media ensures that the intent and letter of the law are applied⁷.

xii) Independent elections governing bodies.

Credible, free and fair elections are only possible where there are independent institutions that exercise mandates to guarantee the quality of elections. In many countries, the primary function of organizing and conducting elections is vested in an electoral commission. Other institutions such as the legislature, the judiciary and the police play a complementary role to ensure that the elections are organized in a credible manner and the conduct of the exercise gives dignity to the citizens. Current practice suggests that the independence of an elections commission can be enhanced by: i) transparent recruitment and public vetting of commissioners and senior commission staff, ii) ensuring the security of tenure of commission personnel and iii) incorporating “arms-length” decision-making mechanisms between the commission and the incumbent government.

3. UGANDA'S HISTORY OF ELECTION MANOEUVRES & CRISES

Figure 2: Ugandan Governance Timeline 1962 – Present



The history of elections in Uganda can be divided into at least three phases. The first phase covers the colonial period covering the period 1894 to the time of independence in 1962. The second phase covers the period from 1962 to 1995 following the adoption of the 1995 Constitution. The third phase covers the period from 1995 to the present.

3.1. From Colonialism to Independence

Uganda has gone through a turbulent political history characterized by political crises,⁸ military coups,⁹ conflict and election-related violence. Most accounts of this history are unanimous on the impact of colonial legacy on Uganda's politics, economics, society and elections. First, the colonial authorities used religion to overcome local resistance by nation-states such as Buganda, Bunyoro, Ankole and similar nationalities that were emerging and consolidating as organized formations at the time. In particular, the contests between catholic and Anglican Christians that resulted in the 1879-1880 inter-religious wars left a bitter taste between the two religious groups and continue to define Uganda's politics to the present.

Secondly, all colonial agents from Sir Samuel Baker to Emin Pasha and Captain Fredrick Lugard used Nubian mercenary soldiers to establish the colonial enterprise in Uganda. The Nubian soldiers became the seed that germinated into the Uganda Rifles established in 1895 by The Uganda Rifles Ordinance. Section 58 of the Uganda Rifles ordinance (1895) empowered the Uganda Rifles to take action against any local group(s) in the Protectorate which engaged in active opposition to the colonial administration. British Special Commissioner Sir Harry Johnstone writing about this group said this: "themselves ex-slaves, they had all the cruelty and unscrupulousness of the Arab slave-traders whose names, principles and religion they had inherited."¹⁰

Thirdly, the messy transition from colonial rule to independence created conditions for instability that reverberate in Uganda's contemporary political and elections discourse. The very first election to be conducted in the country was held between October 20-24, 1958 to elect 10 African representatives to the Legislative Council (LEGICO). These elections were boycotted by Buganda as it demanded for indirect elections.

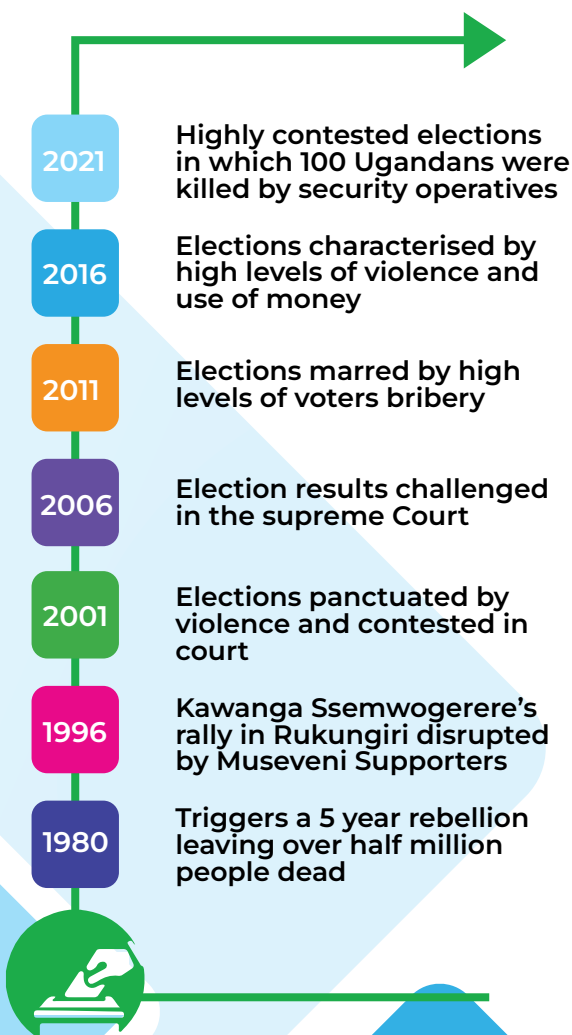
Subsequent elections were held in March 1961 and April 1962. The disagreements over the results of the 1961 elections resulted in a delay of the independence declaration to permit a second general election. In the final negotiations for independence, Buganda Kingdom acquired the right to elect its national representatives indirectly through its local assembly, the Lukiiko. The Buganda Kingdom aligned Kabaka Yekka (KY) won sixty-five of sixty-eight seats in the Lukiiko and its members were elected to occupy all the Buganda seats in the National Assembly. In the absence of a party with a clear

national mandate, an unlikely coalition between Uganda People’s Congress (UPC) and Kabaka Yekka was crafted and formed the first post-independence government in October 1962 with Apollo Milton Obote as President.

3.2. From Independence to the promulgation of the 1995 Constitution

The immediate post-colonial period was characterized by rapidly developing events including; a) the referendum on lost counties in 1964, b) the storming of Kabaka Mutesa palace at Mengo in 1966, c) the abolition of kingdom governments and d) the declaration of a “Republic” then President Obote to postponement elections that were scheduled to take place in 1967. In 1967, a new Constitution stripped the kingdoms and monarchical institutions of their powers. A centralized parliamentary system of government was introduced, which abolished all federal elements and Milton Obote became both Head of State and Government. In 1969, political parties were banned after an assassination attempt on President Obote. A state of emergency was declared.

Figure 3: Uganda’s Elections Since Independence to Date



Similarly, elections scheduled for 1971 were cancelled by Idi Amin when he took power through a military coup d'état. The overthrow of Idi Amin's regime on April 11, 1979, resulted in a series of short-lived unelected governments until the elections conducted in 1980. Paul Muwanga, then Chairman of the Military Commission, hijacked the election exercise and declared Apollo Milton Oboto president for a 5-year term to last until the end of 1985. The 1980 elections were heavily contested and triggered a 5-year insurgency by one of the losers of the elections (Yoweri Museveni) in which more than half a million Uganda are estimated to have perished. The elections expected in 1985 did not materialize as the military overthrew Obote's government and installed Gen. Tito Okello as President.

In January 1986, Mr. Museveni's National Resistance Army (NRA) and its political wing, the National Resistance Movement (NRM), overthrew the short-lived government of Gen. Tito Okello Lutwa. Mr. Museveni promised "not a mere change of guards, but a fundamental change" in the running of the country. According to the 10 Point Programme, NRM sought to establish democracy built on three pillars: parliamentary democracy, popular democracy and a decent level of living for every Ugandan. Accordingly, a new democratic dispensation needed to "ensure an elected parliament, elected at regular intervals and such elections must be free of corruption and manipulation of the population." By 1988, the NRM regime had established a commission to lead the writing of a new constitution.

A new constitution committing to establish the sovereignty of the citizens to be exercised through credible, regular, free and fair elections was promulgated in October 1995. However, 27 years after the promulgation of the 1995 constitution, the minimum consensus arrived at has been turned upside down through multiple amendments. Incumbent President Museveni and political opposition politicians alike all sound helpless as they complain about election rigging. Elections have increasingly become violent while the military and other security forces have increasingly become more visible as active protagonists in electoral contests at all levels. The nation's electoral commission appears incapable of guaranteeing credible elections. The country has been gerrymandered into 353 constituencies and calls for reform to restore the integrity of the electoral process have grown louder and louder every election cycle. The violence and the fraud that characterized the pre- and post-independence period have become signature indicators of Uganda's contemporary election exercises.

4. POWER DOES NOT BELONG TO THE PEOPLE: RESTORING CITIZEN SOVEREIGNTY

The foregoing pre-colonial and post-independence accounts show that at any point in Uganda's history, the exercise of all forms of power – political, economic, military, financial, etc., was vested in different entities that citizens didn't have control over. The colonial authorities exercised all power and used the colonial army to enforce compliance. Milton Obote used his control of the military to try to subjugate Buganda resulting into what is popularly known as the Mengo crisis. Until he was overthrown in 1979, Idi Amin used the military to rule over the country and unleash an unprecedented eight-year reign of terror on the population. The Uganda National Liberation Front (UNLF) reached a group consensus in Moshi and tried to use it to establish the post-Amin government. Similarly, Yoweri Museveni mobilized a fighting force that captured the country in 1986.

Theoretically, the National Resistance Movement articulated a commitment to “restore” power to the citizens. The process to formulate and promulgate a new constitution (1989-1995) was therefore an attempt to change the course of this history by establishing a new constitutional order where Ugandan citizens are the sovereign authority. The Constitution, therefore, declares that “all power belongs to the people who shall exercise their sovereignty in accordance with this constitution (Box 4). Article 1(4) provides that “The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.”

Box 4: Power belongs to the people

1. Sovereignty of the people.

(1) All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.

(2) Without limiting the effect of clause (1) of this article, all authority in the State emanates from the people of Uganda; and the people shall be governed through their will and consent.

(3) All power and authority of Government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to be governed in accordance with this Constitution.

(4) The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.

Source: Constitution of Uganda, 1995 (As amended)

Under article 3 of the constitution (Box 5), the ultimate obligation to defend the constitution is vested in the citizens. In effect, any alternative mechanisms through which power had previously been obtained are effectively banned. Under article 3(4), it is both a right and a duty of all citizens of Uganda “to defend this constitution and, in particular, to resist any person or group of persons seeking to overthrow the established constitutional order

Box 5: The duty of citizens to defend the constitution

3. Defense of the Constitution.

(1) It is prohibited for any person or group of persons to take or retain control of the Government of Uganda, except in accordance with the provisions of this Constitution.

(2) Any person who, singly or in concert with others, by any violent or other unlawful means, suspends, overthrows, abrogates or amends this Constitution or any part of it or attempts to do any such act, commits the offence of treason and shall be punished according to law.

(3) This Constitution shall not lose its force and effect even where its observance is interrupted by a government established by the force of arms; and in any case, as soon as the people recover their liberty, its observance shall be reestablished and all persons who have taken part in any rebellion or other activity which resulted in the interruption of the observance shall be tried in accordance with this Constitution and other laws consistent with it.

(4) All citizens of Uganda shall have the right and duty at all times—

1. (a) to defend this Constitution and, in particular, to resist any person or group of persons seeking to overthrow the established constitutional order; and
2. (b) to do all in their power to restore this Constitution after it has been suspended, overthrown, abrogated, or amended contrary to its provisions.

(5) Any person or group of persons who, as required by clause (4) of this article, resists the suspension, overthrow, abrogation, or amendment of this Constitution commits no offence.

(6) Where a person referred to in clause (5) of this article is punished for any act done under that clause, the punishment shall, on the restoration of this Constitution, be considered void from the time it was imposed, and that person shall be taken to be absolved from all liabilities arising out of the punishment.

Source: Constitution of Uganda 1995 (As amended)

The implication of article 3 is that the responsibility of ensuring that elections are a true expression of the free will of Ugandans is vested in every citizen. Consequently, any derogation from this responsibility by failing to defend the credibility of the electoral process, actively participating in subverting an election through violence, manipulation, rigging or by any other means by 'any person or group of persons' is in itself an attempt to overthrow the established constitutional order. In that regard, any actions by citizens to ensure that appropriate standards are in place to ensure credible and free elections are a legitimate civic responsibility.

Indeed, the history of crisis, military coups and conflict in Uganda and many other countries is rooted in the failure to ensure credible, free and fair elections as the mechanism for the acquisition and transfer of political power. When the electoral process is undermined and subverted through all forms of manipulation and malpractices, it ceases to be a legitimate mechanism for citizens' expression of their free will. In most cases, elections that do not meet "reasonable" credibility thresholds become heavily contested hence undermining the outcomes of the elections and the

legitimacy of government.¹¹ Illegitimate governments often invest in manipulating and subverting the electoral process hence making elections, not an expression of a people's free will but a cause for conflict.

Table 3:
Summary of principles of free and fair elections as reflected in the Uganda Constitution 1995 (As amended)

S/No.	Principle.	Constitutional article.	Provision.
1.	Periodic or regular elections.	Article 1 (4)	The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.
		Article 61 (a)	The Electoral Commission shall organise regular, free and fair elections are held
		Article 67 (1)	The Electoral Commission shall ensure that elections are held at times fixed and notified in advance to the public.
2.	Protection of the right to vote/adult suffrage.	Article 59 (1)	Every citizen of Uganda of eighteen years of age or above has a right to vote.
		Article 59 (3)	The State shall take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.
		Article 59 (4)	Parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote.
3.	Rights to stand for elective positions is guaranteed.	Article 1 (1)	All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.

S/No.	Principle.	Constitutional article.	Provision.
4.	Credible and verifiable voter register.	Article 61 (e)	The electoral commission shall compile, maintain, revise, and update the voters register
		Article 59 (3)	The State shall take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.
5.	Secret ballot.	Article 68 (1)	At a public election or referendum, voting shall, subject to the provisions of this Constitution, be by secret ballot using one ballot box at each polling station for all candidates in an election and for all sides in a referendum.
6.	Citizens control of electoral process.	National Objectives and Directive Principles of State Policy II (i)	The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.
		Article 1 (1)	All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.
7.	Transparent election results transmission & declaration procedures	Article 68 (2)	Immediately after the close of the poll, the presiding officer shall proceed to count at the polling station, the ballot papers of that station and record the votes cast in favour of each candidate or question
		Article 68 (3)	A candidate is entitled to be present in person or through his or her representatives or polling agents at the polling station throughout the period of voting, counting of the votes and ascertaining of the results of the poll.
		Article 68 (4)	The presiding officer, the candidates, or their representatives and in the case of a referendum, the sides contesting or their agents, if any, shall sign and retain a copy of a declaration.

S/No.	Principle.	Constitutional article.	Provision.
8.	Right to assembly	Article 29 (1) (d)	Every person shall have the right to freedom of assembly.
9.	Right to Freedom of Association	Article 29 (1) (e)	Every person shall have the right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.
10.	Right to Free Speech	Article 29 (1) (a)	Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.
11.	Equality of access to media	Article 67 (2)	No candidate in an election shall be denied reasonable access and use of State-owned communication media.
		Article 67 (3)	All presidential candidates shall be given equal time and space on the State-owned media to present their programmes to the people.
12.	Independent Elections Governing Bodies	Article 62	Subject to the provisions of this Constitution, the commission shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority.
		Article 66 (2)	The commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance on matters relating to its finances.

As shown in the table above, it is important to note that Uganda's laws meet most of the basic legal requirements for an enabling legal framework for conducting credible, free and fair elections. In effect, Uganda's elections problem is not a legal problem that can be fixed through the reform of electoral laws. On the contrary, the current electoral malaise is a political, economic, and social problem rooted in state capture, poverty and associated economic vulnerability. Consequently, there are at least 6 structural conditions that militate against the possibility of a credible, free and fair election in Uganda. If these conditions are not addressed, no amount of reform of electoral laws perse can lead to improvements in the conduct of elections in the country.

4.1. State capture and the credibility of elections

At a general level, conducting elections often has inherent pitfalls when contestants for elective offices try all sorts of manipulation to gain an advantage over their competitors. In such a situation, it is the state institutions like the national elections governing body, the police and other law enforcement agencies, elections tribunals and other state agencies that step in to arbitrate in such contests. Consequently, conducting credible, free and fair elections presupposes that these state institutions act as "neutral" arbiters in the high-stakes game of electoral competition. Besides, it is envisaged that the government in power has the discipline to ensure the probity of institutions of state in their legitimate role to protect the sovereignty of citizens and their right to freely choose their representatives.

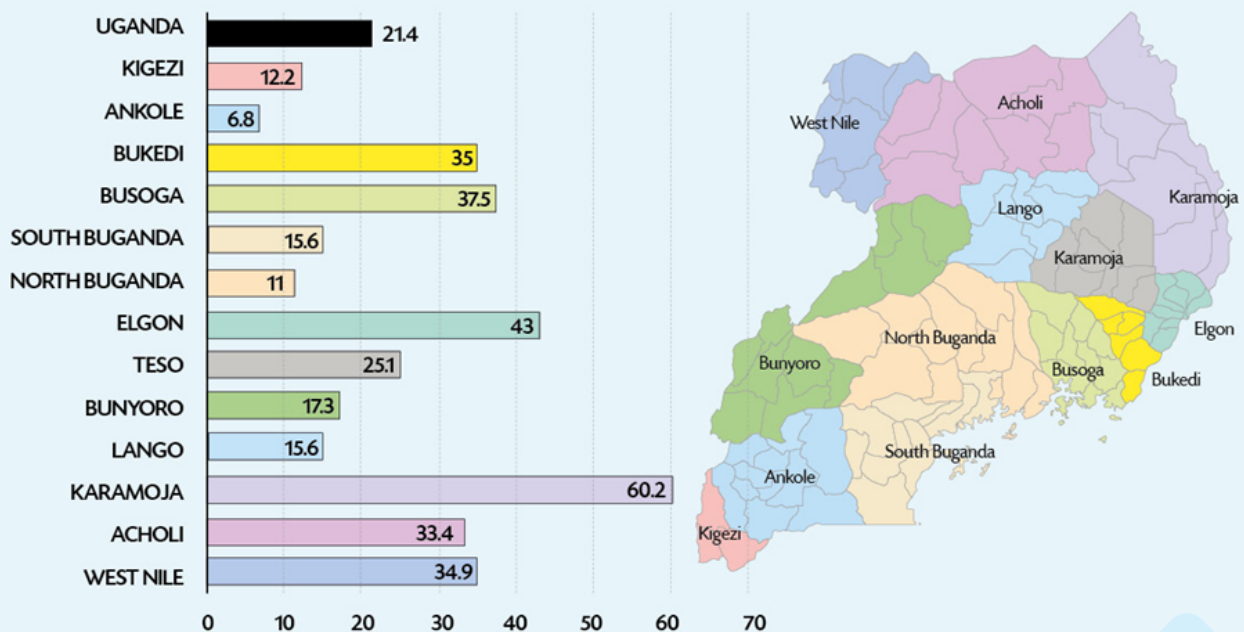
However, since the 1995 constitution was promulgated, there has emerged a shadowy regime that has captured Uganda's state institutions and uses them to secure an advantage over all other competitors in the electoral process. This shadowy regime operates through the National Resistance Movement (party) having been effectively fused with the state. In effect, in any elections, the NRM deploys state institutions and resources to secure an advantage against other competitors. From Ntugamo to Kiruhura to Hoima or Wakiso and Soroti, the institutions of state including the Uganda Police Force, the Uganda Peoples' Defense Forces, District Intelligence Officers (DISOs) and Gombolola Intelligence Officers (GISOs) and other state functionaries work as election agents of the NRM enabling the manipulation and rigging of the entire electoral process.

4.2. Uganda's economic geography and implication for elections

Uganda's economy has evolved in many ways over the last 6 decades since its independence in 1962. Political instability throughout the 1960s and 1970s and armed insurrections during the 1980s and 1990s made any meaningful economic transformation programmes impossible. The restoration of some degree of security and stability mainly over the last two decades has enabled considerable economic progress nationally and in selected regions of the country. Generally, Uganda is among the countries with the fastest-growing economies in Africa. Real GDP growth is estimated to have averaged 6.7% annually during the period 1990–2015. However, while the services and industry sector have expanded to 41.94% and 27.9% (FY2021/22) respectively, an estimated more than 70 percent of Uganda's labor force remain trapped in low productivity and low output agriculture.

Recent data shows that Uganda's economic growth slowed since 2010, with the growth rate dropping from 5.7% in 2015 to 4.4% in 2017, revenue collections dropped by 4% in FY 2016/17 and public debt increased from 33.3% of GDP in 2015 to 40% in 2017 and now 50.3% of GDP. The country still relies on foreign donor support to finance long-term drivers of growth, such as agriculture, health, and education while external borrowing has been the largest source of financing for large-scale infrastructure projects.

Figure 3 : Distribution of Poverty in Uganda Across Regions



However, the economic landscape that has emerged over this period and the future trajectory of the economy has significant implications for the conduct of credible, free and fair elections. The benefits of economic growth are increasingly concentrated in the hands of the few. While Gross Domestic Product (GDP) is estimated to reach USD42.60 billion by end of 2023, it is estimated that the richest 10% of the population enjoy 35.7 percent of national income; while the poorest 10 percent claim a meagre 2.5 percent and the poorest 20 percent have only 5.8 percent.

Secondly, the economic growth impact of reducing poverty has slowed down considerably or has reversed at worst. Available data shows that Uganda's poverty levels declined from 56.0% in 1993 to 19.7% in 2013 based on the national poverty line of \$0.88-\$1.04 a day. However, poverty levels started rising¹² thereafter reaching 24.1% in 2016. A gloomier picture emerges when Uganda's poverty levels are considered based on the international poverty line of \$1.90 per day. According to this measure, in 2016, an estimated 41.7 percent of Uganda's population lived in conditions of perceptual vulnerability with the ever-looming possibility of falling into poverty in the event of any economic shock such as a health emergency.

More importantly, while the national data on extreme poverty has declined since 1993, regional data shows that this trend has not occurred across the different regions of the country. The eastern region has recorded an increase in poverty from 24.3% in 2000 to 35.7% in 2017. Similarly, poverty in the central region increased from 10.7% in 2000 to 12.7% in 2017. Any efforts to establish an enabling environment for credible, free and fair elections must therefore confront the reality of a population that is increasingly becoming poorer and hence vulnerable to manipulation. Investments that increase income opportunities for the voting population, and expand enterprise and job opportunities for young people may as well be considered investments in creating a better environment for elections rather than purely economic investments.

4.3. Uganda's population geography and implications for elections

Uganda's population is currently estimated at 46.6 million people. Of these, 20.9 million (44.96) are categorized as young people. The working-age population is estimated at 24.9 million people representing approximately 53.4% of the total population. Like most African countries, Uganda has a young population. The last national population census conducted in 2014 found that 78 percent of Uganda's total population was under the age of 35 while about 20.6 percent of the population was aged between 15 and 24 years. As of 2021, an estimated 45.55 percent of Uganda's population was aged 0 to 14 years while 52.44 percent were aged 15 to 64 years. The urban population is estimated at 11.8 million people (25.7%) living mainly in the capital city Kampala and other major cities, municipalities and a network of unplanned townships scattered across the country.

Uganda's changing demographics will increasingly impact any future elections in the country. On average, at least some 3,800 Ugandans become 18 years of age every day and hence are eligible voters. According to Uganda's Electoral Commission (EC), the number of registered voters for the 2021 elections was 17,658,527 with 67 percent being young people aged between 18-35 years. According to the World Bank, while about 700,000 young people reach working age every year in the country, on average, only 75,000 jobs are created annually. The cumulative frustration and potential disillusionment due to tough economic conditions, perceptions of a system built on "technical-know-who" and favoritism are likely to have significant implications for the electoral process in the country. On the one hand, such frustration can be mobilized and channeled towards higher voter turn-up. On the other hand, frustrated and vulnerable young voters are amenable to intense manipulation to get involved in vote buying and in extreme cases, get involved in violence.

4.4. Uganda's security forces and elections dilemma

The conduct of credible, free and fair elections is challenged by an ever-evolving and complex dilemma regarding security during political campaigns, on the days of voting and in the aftermath of the elections. This dilemma manifests in a variety of ways.

First, at the heart of this dilemma is the role of the Uganda People's Defense Forces (UPDF), the successor to the National Resistance Army rebel group that captured state power in 1986. Generally, the UPDF has become increasingly professionalized. Over the last decade, it has retired or lost some of its historical high command members. A comprehensive legal framework has been put in place to govern its command and control, recruitment, and discipline, among other things.

However, its historical connection with the ruling National Resistance Movement (NRM) and its leader who is also incumbent president Yoweri Museveni has not changed. 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 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. The preferential treatment of NRM supporters by the IGP following the Ntungamo clashes was quoted as the most prominent act of bias¹⁵.

Secondly, over the years, there has been an apparent policy posture to fuse the command and operational functions of Uganda's security forces. While it is not clear when this policy was adopted, it can be traced way back to the commencement of counter-terrorism operations. Under this arrangement, UPDF officers have increasingly taken control of the command of the Uganda Police Force and consequently directly taken charge of elections through command-and-control operations. The difficulty to draw operational boundaries between the Uganda Peoples' Defense Forces and the Uganda Police Force makes it increasingly difficult to hold either of the forces accountable for election-related violence and other malfeasances that are now commonplace.

Thirdly, increased election violence has led to the emergence of a variety of election-related militia and para-military groups aligned with individual politicians, political parties, and official state security organs. The oldest of these groups is the infamous Kalangala Action Plan that caused mayhem during the 2001 elections campaigning in favour of Mr. Museveni and candidates aligned with him. Since then, similar groups emerged. The most notorious ones include Kiboko Squad, Boda Boda 2010, Solida, Nyekundire, and crime preventers. Full-scale mobilization of a new militia group called “MK army” that supports renegade UPDF officer and son to incumbent president Museveni is currently ongoing and may redefine the future of elections violence in Uganda.

Security and intelligence personnel are routinely deployed to disrupt legitimate political and civic activities by both opposition political parties and civic organizations. Fear of the security forces has increased considerably in the light of repeated use of violence against regime opponents and media reports about abductions, forced disappearances and extrajudicial killings carried out by elements within the security forces. The more radical elements within the force are increasingly gaining an upper hand and openly speaking out against any challenge to Mr. Museveni’s candidacy for the presidency or even manipulating election results in his favour.

“The candidates are allowed to go to the areas where they are designated. It beats our understanding as the commission as to why the candidates are being blocked by security forces from accessing the venues. As the commission, we have taken this issue very seriously, pointing out the criticality of campaigns by the candidates within the roadmap, provided the candidates are obeying the law. We have written to the Inspector General of Police to seek an explanation,”

Justice Simon Byabakama, the EC chairperson

In some cases, the military seems to have edged out the Electoral Commission from managing the electoral process to the extent that they determine whether a presidential candidate should appear on a radio talk show or campaign in a particular area. This has left civil society groups and other stakeholders raising questions about who indeed has control over the electoral process. In 2021 there were cases where the opposition candidates were blocked by security forces from accessing the venues in

areas they were designated to be in by the electoral commission. In response, the electoral commission simply wrote to the IGP to seek an explanation which was never given. During the by elections in Kayunga, Soroti and Serere, there were observable cases of the security agents ordering the electoral commission officials to take some actions or face arrest. Consequently, Mr. Museveni's candidacy and the contestation that comes with it make a credible, free and fair election almost untenable.

4.5. Uganda's geo-political positioning and implications for elections

Uganda's incumbent president Yoweri Museveni and the Ugandan military currently occupy an enviable geopolitical position as the Great Lakes Region's stabilizing forces. Uganda Peoples' Defense Forces have official and unofficial military operations across the region from Somalia to South Sudan, Central Africa Republic, Equatorial Guinea, Congo Brazzaville, Democratic Republic of Congo and Mali. Mr. Museveni has positioned himself and Uganda as the guarantor of regional peace and stability and protectors of this network of unpopular autocratic rulers that only conduct elections to legitimize their hold on to power. The most prominent of these rulers is Equatorial Guinea's Teodoro Obiang Nguema Mbasogo who is Africa's longest-serving president and was in November 2022 "re-elected" president with 96% of the vote.

The bilateral regime protection treaties between President Museveni and the regions rulers are shrouded in secrecy and not open to any scrutiny by oversight institutions such as parliament or other independent state agencies. Yet, the UDPF provides all the coup-proofing operations for these rulers especially Obiang Nguema, Silver Kiir and Denis Sassou Nguesso. In the absence of proper oversight and accountability mechanisms, one cannot rule out any proposition that these rulers pay some form of compensation, including cash payments for UDPF operations that could find their way into the elections exercise. Besides, Museveni's presumed stabilizing influence in the region buys him some patience with Western democracies that would ordinarily demand better conduct of elections.

Finally, there's a new cold war emerging between the United States and its Western Allies on one hand, and Russia and China on the other, with never-seen-before intensity. The Great Lakes sub-region is increasingly becoming the epicenter for geopolitical competition over minerals resources, and control over agricultural resources and markets. While the old cold war was framed by the west as a contest between democracy and economic freedom, the new cold war is being framed by Russia and China as a context between family values and the erosion of moral values

framed around the pro-and anti-LGBTQ debate. In this values-based called war, Russia and China are not only winning the public debate and sympathies among Africa's elites and clergy but it is also taking the battle deep into the Western conservative constituencies. For the Ugandan public, the fundamental issues of economic and financial freedom, peaceful transition of power beyond Museveni's 40 years rule, and increasing political and electoral violence are all being relegated to the peripheral as the population is sacked into the geopolitical cultural power game.

4.6. The political economy of refugees and implications for elections in Uganda

Since independence, successive Ugandan regimes have maintained an open refugee policy. The only recorded exception is the Obote II government that implemented an anti-Rwadan refugees' campaign in the 1980s largely informed by the perceived collaboration between the anti-government NRA rebels and Rwandan refugees. Generally, Uganda is recognized for its generosity as the largest refugee-hosting country in Africa. Many of the refugee populations come from Rwanda, South Sudan, the Democratic Republic of Congo, Burundi and Somalia.

In addition, Uganda has increasingly become a destination of choice for what in many other countries would generally be referred to as economic immigrants or economic refugees. A combination of liberal investment policies, an unregulated land access and ownership regime, poor enforcement of immigration laws and corruption in the work permits system has created an attractive environment for non-Ugandans looking for business opportunities or running away from hostile economic conditions at home. In particular, the Indian community has historic roots in Uganda with business interests going far back to the construction of the Uganda Railway in 1896. Consequently, the growing influence of Indian, Pakistan, Turkish, Somalis, Chinese and Kenyan communities cannot be underestimated.

Uganda's refugee policy has major implications for free and fair elections. First, there are no transparent controls on the participation of refugees in Uganda's elections. By implication, an incumbent regime which has control over the voter registration process can take advantage of the presence of refugees to stuff the Voters Register with refugee voters to create an advantage for itself. Secondly, a core element of Uganda's refugee policy is to allow refugees to establish and assimilate among the local communities. Consequently, refugee settlement policies can be an important tool for changing the ethnic geography of communities and hence reshaping existing electoral advantages. Finally, economic immigrants of Indian and Chinese origins are increasingly flexing their muscles in financing elections which in effect can affect the balance of power among competing political groups and candidates.

5. ESTABLISHING CONDITIONS FOR CREDIBLE, FREE AND FAIR ELECTIONS

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 has 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 or changed where they are considered inconvenient. Election-related violence has been increasing with every election cycle. Most importantly, there is no evidence of any emergence of a constitutional culture where leaders, citizens and institutions respect the constitution as the basis of an enduring social contract.

It is therefore important to recognize that Uganda's current electoral stalemate is more a complex mix of political and economic problems than a legal question which cannot easily be fixed by enacting new legislation. It is perpetrated by a breakdown in trust between government and citizens and an increasingly disengaged citizenry. In fact, the manipulation and rigging of elections in Uganda has become so elusive to the extent that, sometimes, even incumbent President Museveni sounds vulnerable and helpless complaining about how his votes are stolen by opposition politicians.

It is therefore tenable to argue that there is a consensus across the board that Uganda's electoral process is broken. And there can be no doubt that creating the necessary conditions for credible, free and fair elections therefore 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. There are four structural factors that ought to be addressed before any electoral reforms can be meaningful. These are: rebuilding citizenship and the culture of constitutionalism; economic franchising of the citizenry; securing the independence and credibility of elections governing institutions; and Shifting ownership of elections from the Electoral Commission to the Citizens.

5.1. Rebuilding citizenship and a culture of constitutionalism

A strong democracy and an embedded constitutional culture can only be constructed on the foundation of strong citizenship that is civically conscious and competent. A civically conscious and competent citizenry is built through continuous civic education, collective civic actions and organizing around shared interests. The transition from democratic authoritarianism to popular democracy is marked by a situation where citizens increasingly become frontline defenders of popular democracy and constitutionalism. Consequently, Uganda needs to consider and agree on a set of actions that diminishes the pervasive fear while rebuilding and restoring the spirit of citizenship and civic competence.

5.2. Economic franchising of the citizenry

The mission of building an enduring popular democracy and constitutional culture can only be achieved when citizens engage in productive economic activities and secure their financial freedom. Economically empowered citizens can resist the temptations of voter bribery, elite- conspiracy for gerrymandering, or inducements that characterize every form of election in the country. Economic enfranchisement of citizens requires investments by the government, development partners and businesspeople that go beyond the narrow objective of increasing productivity and output to include the objectives of economic civic education, and economic-driven citizen organizing.

5.3. Securing the independence and credibility of elections governing institutions

Uganda's election history has demonstrated that no amount of legislation can ensure credible, free and fair elections in the absence of independent and credible state institutions that are committed to protecting and honouring the franchise of citizens. During the 1980 elections, the then Military Commission overthrew the electoral commission and took over control of announcing election results. As observed earlier, in the last 20 decades, the security agencies ranging from the Uganda Peoples' Defense Forces and its allied Chieftaincy of Military Intelligence (CMI), the Special Forces Command (SFC), the Uganda Police Force, the International Security Organization, have increasingly taken charge of the electoral process¹⁴.

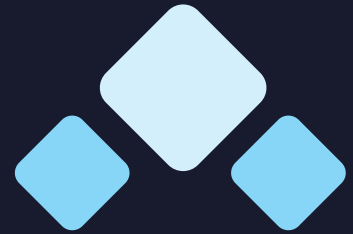
In a normal election situation, the Electoral Commission is mandated under the constitution to be the primary election governing body in Uganda. However, the Commission has increasingly lost credibility and legitimacy as it has stood by and played a spectator role as its mandate was usurped by other actors with self-interests. For example, besides the security agencies taking an upper hand in the organizing of elections, the EC surrendered its power to demarcate constituencies to the executive and parliament who now exercise the mandate to create new administrative units. The EC is therefore a helpless spectator as the executive and parliament have engineered the most extensive gerrymandering ever witnessed in Uganda's constitutional history¹⁵.

5.4. Shifting Ownership of Elections from the Electoral Commission to the Citizens

The current structure of elections vests the ownership and control of the exercise into the Electoral Commission. The Electoral Commission control 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. Indeed, even in cases of electoral malpractices, it is the national electoral commission that is sued, often by the candidates and not the voters

There is a need to change this entire arrangement and create regionally based electoral commissions that take responsibility and are held accountable for the conduct of elections in the respective regions. Essentially, the management of elections should be decentralized to the regions in order to reduce the power of the Electoral Commission and the advantage of incumbency in the appointment of commissioners. The role of the Electoral Commission should be pulled back to establishing standards for the management of elections, verification of regional voters' registers, verification of candidates and certification of final election results in the case of presidential elections.

6. CONCLUSION



A credible, free and fair elections process is the only mechanism through which citizens exercise their sovereignty and chose leaders who rule over them. An election that meets such criteria creates conditions for national unity, civic mobilization and organization, and a sense of citizenship and civic responsibility. While there are generally no “perfect” elections, the ultimate objective of any society and elections governing bodies ought to be to ensure that they work towards organizing an election that meets such criteria and gives dignity to citizens who chose to participate in the exercise. Existing global, regional and national legal instruments are unanimous on the set of principles that define such an election.

Uganda’s history since the advent of colonialism at the end of the 1870s is characterized by oppression and subjugation of the citizens. The colonial state became the “devil” that controlled every aspect of public life through a set of colonial legislation, an armed mercenary force, and the Imperial British East African Company (IBEAC) as its face. In addition, besides the establishment of a colonial mercenary force – the Uganda Rifles – the colonial authorities perpetuated religious conflicts, and inter-kingdom fighting, and orchestrated a colonial economic architecture that perpetuated marginalization and exclusion as a means of control over the citizenry. Since independence, the “devil” in the form of a post-colonial state continues to deploy state resources including security forces, public funds, and public institutions to subvert the electoral process and undermine the credibility of the electoral exercise.

Finally, it is important to recognize that years of reform starting with the promulgation of the 1995 Constitution have not changed the conditions for elections in the country. This paper outlines several structural conditions that make a credible, free, and fair election in Uganda impossible. Any efforts at electoral reforms therefore ought to take a broader approach to reform and a commitment to address these structural conditions. Any electoral reforms that take the narrow approach of simply changing the rules as contained in the current election legislation are bound to produce more of the same at best or deepen the current levels of disenfranchisement of citizens and total take-over of the elections by the new sheriffs. Meaningful reform that addresses both structural conditions and the necessary legal rules will only be possible when the citizens are organized to create a balance of power that makes a bargain with the devil an unavoidable pathway to the future in which win-win outcomes for the sheriff and the citizens are possible.

End Notes:

1. For example, every election since 1962 has been contested by contending political groups. This contestation reached new levels of escalation resulting into the death of over 50 citizens in movie style shootings by Ugandan uniformed and plain clothes security personnel on November 17, 2020.
2. See <https://glissafrika.org/map/cpdr/cybermap>
3. In 1980, Uganda's incumbent president Yoweri Museveni gave the reason of a rigged election and started an armed rebellion lasting 5 years and resulting in the death of an estimated more than half a million Ugandans.
4. Lome, 2000
5. The Electoral Knowledge Network (ACE) (3rd edition, 2012) accessible on <https://aceproject.org/ace-en/topics/ei/default>
6. See Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights, 6th Ordinary Session, Niamey, Niger, 8-22 May, 2017.
7. Ibid 11
8. The events of 1966 involving the attack of Kabaka Mutesa's Palace at Mengo have been widely documented by many historians and scholars of Uganda's pre and post-colonial history.
9. Uganda had military coups or violent change of governments in 1971, 1979, and 1985.
10. See H.H. Johnston, The Uganda Protectorate, Vol II, (London: Hutchinson & Co. 1902), pp. 237-8.
11. For detailed discussions on the tests for compliance with electoral laws in Uganda, see the following cases: Col. Dr. Besigye Kiiza v Museveni Yoweri Kaguta and the Electoral Commission [2001] Presidential Electoral Petition No.1 UGSC 3 (PEP No.1 2001); Rtd. Col.Kizza Besigye v the Electoral Commission and Yoweri Kaguta Museveni [2006] Presidential Electoral Petition No.1 UGSC 2 (PEP No.1 2006); Amama Mbabazi v Museveni & Ors. (2016) Presidential Electoral Petition No.1 UGSC3 (PEP No.1 2016).
12. https://gcap.global/wp-content/uploads/2018/07/oxfam_in_uganda_inequality_report_compressed.pdf (accessed on November 26, 2022)
13. EUEOM final report on the 2016 Presidential election in Uganda..Page 5
14. In some recent elections such as the Kayunga LCV Chairman by-elections and the Soroti Municipality by-elections, the Electoral Commission and the Uganda Police agents act more as enablers of cheating the elections than protecting the franchise of the citizens.
15. For a detailed tracking of creating of new constituencies since 1995, see Godber Tumushabe, et al., (2021). The Uganda Elections Atlas: A Guide to Elections Data, 1st Edition. Great Lakes Elections Data Series, No. 1, 2021.



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