European Union Election Follow-up Mission (EU EFM)
to Uganda

FOLLOW-UP MISSION REPORT

April 2018



European Union Election Follow-up Mission (EU EFM) to Uganda, 26 February – 17 March 2018

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EU Election Follow-up Mission to Uganda

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EXECUTIVE SUMMARY

The EU Election Observation Mission (EOM), deployed to observe the February 2016 Presidential and Parliamentary Elections, identified a number of significant shortcomings in the electoral process. The EU EOM issued a critical preliminary statement following the election day.

Subsequent to the elections of 2016, the EU EOM published a Final Report which contained a detailed analysis of the electoral process and offered a set of recommendations for the consideration of the authorities and of other stakeholders in Uganda. The recommendations, thirty in all, of which eleven were identified as priority recommendations, were derived from the domestic law of Uganda, as well as from the regional and international legal obligations of the State. The EU EOM priority recommendations targeted a number of significant shortcomings in the electoral process which included: a lack of transparency and independence of the Electoral Commission; a lack of transparency during the tallying and announcement of results; the abuse of state resources and personnel for campaign purposes; inequalities in access to the public media; an absence of genuine and effective access to remedies for electoral disputes; and the excessive use of force by law enforcement bodies.

The Supreme Court of Uganda, in August 2016, issued a ruling which included a set of ten directives to the Attorney General, in cooperation with the Executive and the Parliament, to achieve electoral reform. These recommendations were grounded in the Constitution and the existing laws of Uganda, as interpreted by the judges. Fulfilment of their recommendations was deemed necessary to address shortcomings in the conduct of elections which the judges had identified in their assessment of the election petition. While the petition itself was unsuccessful, weaknesses in the electoral process were identified.

The EU Election Follow-up Mission (EFM) found that the recommendations of the EU EOM have been disseminated across several institutions of State, particularly in anticipation of the presence of the EFM in the country. The EFM encountered interlocutors who were familiar with the content of the recommendations. While there has been virtually no progress on implementation of the recommendations to date, awareness of proposals, and the grounds thereof, is a crucial first step in the achievement of the recommendations. Similarly, there is widespread awareness of the directives of the Supreme Court, with public knowledge of the output of the Supreme Court being pervasive.

Since the 2016 general elections, the ruling National Resistance Movement (NRM) has continued to dominate the political scene, in an environment in which it is difficult to differentiate the state from the ruling party. Opposition political parties are marginalised, and lack both financial resources and a solid grassroots presence. The political environment has been further worsened by the political pressure and intimidation which were evident during the process of constitutional amendment at the end of the last year. The age limit removal bill was deeply divisive among both MPs and the public. The process of parliamentary discussion

of the bill was notable for an unprecedented presence of security forces within the house, as well as acrimony between supporting and opposing MPs.

In December 2017, the Parliament passed legislation to amend the Constitution, with a particular focus on the provision which sets out the qualifications for the office of the President. The pre-existing requirement had been that candidates had to be not less than thirty-five years and not more than seventy-five years of age. This provision has been removed from the Constitution. The Constitution (Amendment) Act, 2017 also amended Article 77 of the Constitution, dealing with the Parliament, extending the term of office of the Parliament from five to seven years. While this is an alteration of the law, it cannot be characterised as a measure of reform.

The new law also reintroduced a limit of two terms in office for the office of president, but this will apply prospectively only, permitting potential additional two terms for the incumbent. The term of office of the parliament, and of local councils, was extended from five to seven years, a change which applies to the benefit of the present parliament. The law has also changed the time periods for the filing of election petitions, which can be viewed as a positive, if relatively minor, electoral reform.

Five cases, one taken by the Ugandan Law Society, the others by opposition politicians and individuals, were accepted by the Constitutional Court and consolidated for expeditious hearing in April 2018. These cases sought the annulment of the age-limit legislation, asserting that it was unconstitutional. The grounds claimed were based both on alleged violations of parliamentary procedure and on alleged violations of the spirit and substance of the constitution.

Following the amendment of the Constitution in December 2017, the principal focus of political parties shifted to the development of their strategy towards the possible referendum (to be conducted in 2018) on the prolongation of the presidential term of office. A cabinet sub-committee had been formed to manage the holding of such a referendum to increase the presidential term in office from five to seven years. This followed a recommendation from parliament that the term should be changed to match the new term of the parliament, in order to harmonise the two sets of elections as had previously been the case, where both had concurrent five year terms. A referendum is required for amendment of the presidential term.

The Referendum Act requires the Electoral Commission to conduct the referendum. The administrative, legal and logistical preparations for the referendum may take several months to complete, with a referendum date likely perhaps sometime from September 2018 onwards. The time-frame for both the conduct of the referendum and the determination of the petitions on the constitutionality of the Constitution (Amendment) Act, 2017, remains uncertain.

MISSION INFORMATION

EU Election Follow-up Missions (EFMs) are a visible demonstration of the EU's continuing support, during the inter-election period, for the holding of genuine democratic elections. The EU deployed an Election Follow-up Mission to Uganda, from 26 February to March 17, 2018, to assess the usefulness and impact of the EU EOM 2016 final report and to assess the degree to which electoral problems identified by the EU EOM have been addressed and whether EU recommendations have received consideration since the EU EOM Chief Observer Return Visit.

The EU EFM, led by Member of European Parliament, Mr. Eduard Kukan, former Chief Observer of the EU EOM deployed for 2016 elections, met a wide range of Ugandan and international stakeholders, including His Excellency President Museveni, members of the Government of Uganda, political parties and representatives of civil society.

This was the first EU Election Follow-Up Mission deployed in Uganda. The EU has observed general elections in Uganda in 2006, 2011 and in 2016. The subsequent election observation missions were deployed despite almost no recommendations having been implemented during the course of two previous electoral cycles. By sending the EFM, the EU is further developing its longer-term approach and offering and providing support throughout the electoral cycle.

CONTEXT

Election-related Developments

The EU EOM, deployed to observe the February 2016 Presidential and Parliamentary Elections, identified a number of significant shortcomings in the electoral process which included: a lack of transparency and independence of the Electoral Commission (EC); a lack of transparency during the tallying and announcement of results; an abuse of state resources and public personnel for campaign purposes; inequalities in access to the public media; an absence of genuine and effective access to remedies for electoral disputes; and the excessive use of force by law enforcement bodies which violated fundamental freedoms of movement, expression and assembly.

Subsequent to the elections of 2016, the EU EOM published a Final Report which contained a detailed analysis of the electoral process and offered a set of recommendations for the consideration of authorities and other stakeholders in Uganda. The recommendations, thirty in all, of which eleven were priority recommendations, were derived from the domestic law of Uganda, as well as from the regional and international legal obligations of the State. The aim of the recommendations was to enhance the legitimacy and credibility of future electoral processes, while also promoting improved compliance with domestic law and international standards. Ugandan civil society observer groups, as well as other regional and international observers, also offered recommendations for the consideration of the Ugandan authorities.

The result of the 2016 presidential election was challenged by Amama Mbabazi. The petition was dismissed by the Supreme Court. The Court did, however, make several findings which were negative towards the Electoral Commission and its conduct of the elections. The Supreme Court, while dismissing the case, issued in August 2016 an extensive set of "recommendations" to the Attorney General (AG), requiring electoral reform, in collaboration with the Parliament and the executive. There are some areas of overlap within the two sets of recommendations, namely those of the EU EOM 2016 and the Supreme Court of Uganda. The similarities are in relation to the findings of inequality of access to the public media; on the involvement of public servants in campaigning; and, to a small extent, in relation to the time-limit for the filing of petitions. The AG was required to report to the Supreme Court on progress on the recommendations for reform by 26 August 2018.

In November 2016 new members were appointed to the Electoral Commission (EC). Opposition parties and civil society stakeholders requested a change in the method of appointment of EC commissioners in order to establish a truly independent electoral commission. No steps have, however, been taken towards electoral reform.

Political context

Since the 2016 general elections, the ruling NRM has continued to dominate the political scene, in an environment in which it is difficult to differentiate the state from the ruling party. Opposition political parties are marginalised, and lack both financial resources and a solid grassroots presence. They face restrictions, principally imposed by the police, in the organisation of political meetings, mainly through the application of the Public Order Management Act (POMA). They are not able to translate public support gained in elections (mainly the Forum for Democratic Change (FDC) 36%) into real political influence.

Under these circumstances cross party-political dialogue remains rare, either inside or outside the parliament. Post-election initiatives and expectations of a wider public for a "national dialogue" initially between NRM and FDC leaders, followed by the broader civil society, have not been met. The former opposition FDC presidential candidate, Dr Kizza Besigye was arrested several times, his movement was restricted and he was prevented from participating freely in political activities.

New provisions of the NGO Act 2016 enabled government to increase its oversight of NGOs. Many NGO have reported feeling intimidated and under pressure. Their political space has been shrinking and civil society organisations are facing obstacles in their work.

The political environment has been further worsened by the political pressure and intimidation which were evident during the process of constitutional amendment at the end of 2017. The age limit removal bill was deeply divisive among both MPs and the public. The process of parliamentary discussion of the bill was surrounded by violence and intimidation of opposition MPs and their supporters. The parliamentary chamber was intruded upon by the special forces, followed by arrests of numerous protestors and opposition MPs. The police cracked down on smaller demonstrations across the country opposing the change to the age limit. Several civil society organisations took a public stance against the bill and criticised the lack of inclusiveness of the process chosen to amend the Constitution.

The offices of NGOs reaching out to the public against the parliamentary motion were raided by police, with staff arrested and materials confiscated. Journalists covering the NGO campaign were also detained, as well as opposition politicians, even though not in the forefront of actions. Live parliamentary broadcasts were suspended. The EU issued a local statement on 21 September 2017 calling for the respect of fundamental freedoms, in particular the freedom of expression.

Institutional context

Electoral reform was a matter of public debate in the period of deployment of the EFM, due principally to the passage of a Constitutional Amendment Bill by Parliament in December 2017. This brief piece of legislation amended several provisions of the Constitution of 1995. The most important change, politically, was the removal of an upper age limit of 75 years for the office of president, allowing President Museveni to seek re-election. The removal of the age limit for the office of president is, from the perspective of international law, not legally objectionable. Rather, international law may be interpreted as casting age limits in the light of potentially ageist restrictions on the right to stand for election1.

[1] ICCPR General Comment No. 25: Article 25 – age restrictions on the right to stand for election must be justified on objective and reasonable criteria

The new law also reintroduced a limit of two terms in office for the office of president, which will apply prospectively only. The term of office of the parliament, and of local councils, was extended from five to seven years, a change which applies to the benefit of the present parliament. The law has also changed the time periods for the filing of election petitions, which can be viewed as a positive, if relatively minor, electoral reform.

The ruling National Resistance Movement (NRM) commands a majority in the current parliament. The Constitutional Amendment Bill was supported by both NRM and independent MPs, although 20 NRM and 40 opposition MPs voted against it. The unprecedented intervention of the police and security agencies into the parliamentary session further weakened the Parliament as an institution. The opposition was weakened by further fragmentation as the two-main opposition parties, the Forum for Democratic Change (FDC) and the Democratic Party (DP), faced internal division and splinter groups. Following the amendment of the Constitution the main focus of the opposition was to legally challenge the amendment and discuss the strategy towards the possible referendum on prolongation of the presidential term.

A cabinet sub-committee was formed to manage the holding of a referendum to increase the presidential term in office from five to seven years. This followed a recommendation from parliament that the term should be changed to match the new term of the parliament, in order to harmonise the two sets of elections as was the prevailing position, where both had concurrent five year terms. There are different rules in the constitution for changes to the different terms. While the parliamentary term could be changed by a vote in the parliament, a referendum is required for amendment of the presidential term.

EU actions on EOM follow-up

Several electoral assistance projects and interventions have been supported by the EU and by EU Member States in the period since the elections of 2016. Much of the support was channelled through the Democratic Governance Facility, which was funded variously by the EU, Austria, Denmark, Ireland, the Netherlands, Sweden, the UK and Norway. Projects funded were principally carried out by NGOs, including Citizens' Coalition for Electoral Democracy in Uganda (CEEDU) (under the Foundation for Human Rights Initiative), working on election monitoring; the Centre for Basic Research and the National Consultative Forum, both disseminating information; the Uganda Women's Situation Room and the Netherlands Institute for Multiparty Democracy, to promote dialogue between political parties. Support was also made available for consultancy work in the sphere of voter education. In addition, DFID Uganda funded supported several projects which promoted greater accountability of elected representatives.

Some of these projects which have been funded by the EU Delegation and EU Member States have supported, directly and indirectly, several interventions related to the electoral cycle, including electoral reform. Some of these have included work to build the capacity of NGOs, particularly on advocacy regarding changes to the legal regulation of NGOs and civil society space, work which indirectly contributes to their capacity to advocate electoral reform. Other interventions focussed on building the capacity of elected local leaders and on inducting newly elected Members of Parliament into undertaking their roles, all of which has the possibility to foster enhanced accountability of elected representatives and, indirectly, electoral reform based on the demand for such on the part of the electorate. This was complemented by support for civic education, which contributes to similar outcomes.

The single project which addressed most directly the recommendations of the EU EOM 2016 was the support given to the Citizens' Coalition for Electoral Democracy in Uganda, under the auspices of the Foundation for Human Rights Initiative. The activities took place during 2016 and 2017 and included the monitoring of by-elections, continuing to maintain a public debate on electoral reform, and, critically, engagement with the Electoral Commission on the conduct of local elections. The interventions of CCEDU have contributed to increased public knowledge of electoral processes, have kept alive a debate on electoral reform and have enhanced engagement between civil society and the Electoral Commission, all an important foundation for implementation of recommendations when feasible.

IMPLEMENTATION STATUS OF EOM RECOMMENDATIONS

As of the date of writing, none of the 30 recommendations, including the 11 priority recommendations, has been implemented by the Ugandan authorities. There is no draft law or any piece of legislation currently before parliament which addresses a single one of the recommendations of the EU EOM 2016. In general, there is a lack of political will on the part of the governing party, the NRM, to address the electoral process other than through measures designed to entrench their own electoral power. This is also a reluctance on the part of government to allow public discussion on electoral reform. (see attachment)

Frustration and resignation were the principal sentiments encountered by the EFM on the part of all interlocutors, except members of the ruling party and state institutions, concerning electoral reform. Civil society actors and opposition politicians were virtually unanimous in their disappointment at the lack of progress on implementation of the recommendations of the EU EOM 2016 and of the recommendations of the Supreme Court of Uganda. There was general acknowledgement of the validity and value of both sets of recommendations, as being essential to promote democracy, good governance and meaningful rule of law in Uganda. However feelings of futility were widely expressed, as there was no belief that progress on promotion and implementation of any of the reforms was imminent. Instead some interlocutors expressed anxiety that, in the longer term, social unrest and violence may be fomented if reforms remain unimplemented.

Official representatives of the Republic of Uganda, and representatives of public institutions such as the Electoral Commission, expressed views to the EFM that the recommendations of the EU EOM 2016 were misguided, irrelevant and unnecessary. The only concession made on the part of such interlocutors was that there is a need for enhanced voter education in future, and that the single recommendation in this area was valid.

Legal framework

International Legal Obligations

Uganda is a State Party to almost all of the principal universal legal instruments which relate to human rights and the conduct of elections. The pertinent instruments which it has ratified include the International Covenant on Civil and Political Rights (state party since 1995); the Convention on the Elimination of All Forms of Discrimination against Women (since 1985); the Convention on the Elimination of All Forms of Racial Discrimination (since 1980); the International Covenant on Economic, Social and Cultural Rights (since 1987); the Convention on the Rights of the Child (since 1990); the Convention on the Rights of Persons with Disabilities (since 2008); and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (since 1995). Uganda ratified the UN Convention

against Corruption in 2004. Uganda has not ratified ILO Convention 169, the Indigenous and Tribal Peoples Convention.

Uganda has also acceded to several relevant regional human rights treaties, including the African Charter on Human and Peoples' Rights (ratified in 1986); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2010); and the African Union Convention on Preventing and Combating Corruption (2004). While Uganda signed the African Charter on Democracy, Elections and Governance in 2008, it has yet to ratify this instrument. This stands in contrast to the position of the neighbouring state of Rwanda which ratified this instrument in 20102. The Treaty for the Establishment of the East African Community, to which Uganda is a party, serves to reinforce the commitments in the African Charter on Human and Peoples' Rights.

The Constitution of the Republic of Uganda does not provide for the automatic incorporation of international and regional treaties into domestic law but requires instead incorporation by means of legislation enacted by parliament to confer the status of binding law which can be relied upon within the state. The EU EOM 2016, in the final report, clearly documented a catalogue of restrictions on the fundamental rights to information, freedom of speech, freedom of assembly and freedom of association. The report3 cited the interpretation of the Public Order and Management Act as a particularly salient example of the application of domestic law to restrict human rights. Modalities of interpretation by the police posed difficulties for the conduct of public meetings and campaign events. Reports of the Uganda Human Rights Commission were cited in evidence of intimidation and other violations of the human rights of opposition politicians by both military and the police during the campaign period.

The EU EOM final report described the fact that, in the run-up to the elections, large scale recruitment, training and deployment of "crime preventers" took place, an informal auxiliary security force which operated outside the constraints of the standard legal framework, lacking robust operational procedures4. They worked subject to the direction of the Ugandan Police Force. The EU EOM reported that both opposition parties and civil society perceived the conduct of the police and the "crime preventers" to be partisan and discriminatory throughout the electoral process, displaying partiality towards government NRM supporters.

The recommendations for the reform of the electoral process offered by the EU EOM 2016 were formulated in direct response to the findings of failings in the respect, protection and fulfilment of human rights observed during the electoral process. The recommendations were based entirely within the framework of the international legal obligations which have been undertaken by Uganda. No action has been taken to reform any of the laws or practices which were the subject of these recommendations, and which are obligations of Uganda under international and regional law. Since the publication of the final report and recommendations in 2016, there have been external reviews of the compliance of Uganda with international commitments under the framework of several UN treaty bodies. The issue of electoral reform arose, to varying degrees, during these appraisals, adding weight to pre-existing recommendations published in the EU EOM final report on the elections of 2016.

Most significant has been the Universal Periodic Review (UPR) of the human rights compliance of Uganda, conducted by the UN Human Rights Council in November 2016. In

[2] Like Uganda, Kenya and the Democratic Republic of Congo both signed this African Charter on Democracy, Elections and Governance in 2008; South Sudan and Tanzania have yet to sign this instrument.
[3] EU EOM Uganda Presidential, Parliamentary and Local Council Elections Final Report 2016, page 8
[4] Ibid, page 16

the State Report submitted by Uganda, the Government acknowledged that there had been many recommendations on electoral reform made after the 2016 elections, emanating from many sources. The Government committed itself to consider favourably those recommendations "which, in their opinion, would advance our democratic process." They also committed themselves to addressing, in a timely manner, the recommendations of the Supreme Court of Uganda, while also undertaking to improve the legal framework to regulate campaign finance.5

The Report of the Working Group on the UPR listed several recommendations related to electoral reform which were supported by Uganda. These included recommendations that Uganda would enact electoral reforms to address problems noted by multiple observers during the February 2016 elections, and another that they would carry out the electoral reforms proposed by the Supreme Court. Uganda also supported calls to ensure the independence of the Electoral Commission, ensure transparency in its operations, and prevent the misuse of state resources for campaign purposes. These undertakings, and their acceptance by Uganda, add weight to the recommendations of the EU EOM.

THE CONSTITUTION AMENDMENT ACT, 2017

The Constitution of the Republic of Uganda may be amended in two ways. Several provisions of the document are entrenched and may be amended only subsequent to a referendum. Other provisions may be altered by the Parliament, subject to compliance with certain procedures and the securing of a two-thirds majority vote of all members of Parliament. The Constitution (Amendment) Act, 2017, introduced amendments to several provisions of the Constitution, some of which have altered elements of the electoral framework, including some elements of minor reform. None of the amendments addressed any of the specific recommendations made by the EU EOM 2016. There was no formal requirement of a referendum to alter the pertinent constitutional provisions.

The principal amendment effected by the recent legislation was a change to Article 102 of the Constitution, which sets out the qualifications for the office of the President. The pre-existing requirement had been that candidates had to be not less than thirty-five years and not more than seventy-five years of age. This provision has been removed from the Constitution. While alteration to the age limit has not been proposed as a measure of electoral reform by any EU EOM, or by the Supreme Court, it can be acknowledged that, in General Comment 25 on Article 25 ICCPR, paragraph 4, that there is a requirement that limitations on the exercise of political rights, such as the right to be an electoral candidate, should be based on objective and reasonable criteria. Specific mention is made of requirements of a minimum age for election to particular offices which might be higher than the voting age. There is no specific comment, however, on upper age limits. There is, therefore, a tenuous dimension of electoral reform to the removal of age limits for presidential office.

The Constitution (Amendment) Act, 2017 also amended Article 77 of the Constitution, dealing with the Parliament, extending the term of office of the Parliament from five to seven years. While this is an alteration of the law, it cannot be characterised as a measure of reform.

The new legislation has also imposed, or, more correctly, re-imposed a limit of two-terms of tenure for the office of the President. Article 105, which had been silent on the number of

[5] The Speaker of the outgoing Parliament Ms. Rebecca Kadaga assured the CO during the EU EOM return visit that the report and recommendations would be examined by the Committee on Legal and Parliamentary Affairs and that pressure would be put on the government to implement electoral reform.

terms which an incumbent could serve, has been amended by the insertion of a provision that a person shall not hold office as President for more than two terms. When the Constitution of the Republic of Uganda was first promulgated in 1995 it included a similar two-term restriction. The Constitution (Amendment) Act, 2005, removed that limit on the tenure of the office of the President.

Article 104 of the Constitution, which is the provision which sets out the rules governing the submission of a legal challenge to a presidential election result, was also amended6. The existing requirement that a petition challenging a presidential election be filed within ten days has been subject to extension to 15 days. The time for the delivery of a decision by the Supreme Court has been extended from thirty to forty-five days; while, in the case of the annulment of an election, the period for holding a fresh election has been extended from twenty to sixty days. While the Supreme Court recommended an extension to such time-frames, the alterations were made in concert with the change to the presidential age limit and so did not become the subject of parliamentary debate.

The changes to the rules of procedure for election petitions, and for the conduct of fresh elections, represent relatively minor improvements to the electoral legal framework. While the procedural rules are now slightly better than before, this will not change the overall operation, or indeed assessment, of the electoral process. None of the recommendations of the EU EOM 2016 has been met by these reforms. The AG informed the EU EFM that he intends to report to the Supreme Court on these reforms as his measure of compliance with their ruling, and he does not anticipate any further reform before August 2018.

Several petitions had, at the time the EU EFM was present in Uganda, been filed with the Constitutional Court challenging the constitutionality of the Constitution (Amendment) Act, 2017. The petitions were based on asserted violations of the rules of parliamentary procedure, as well as on putative breaches of the spirit of constitutionalism. Five of these cases were accepted by the Constitutional Court and consolidated for expeditious hearing in April 2018. It is possible, and perhaps probable, that the determination of the Constitutional Court may be subject to appeal to the Supreme Court. This renders it difficult to predict when the matter will be finally determined.

It was announced in late February 2018 that a cabinet sub-committee had been formed to manage the holding of a referendum to increase the presidential term of office from five to seven years. This follows a recommendation from parliament that the term should be changed to match the new term of the parliament, in order to harmonise the two sets of elections as is the case at present, where both have concurrent five-year terms. There are different rules in the constitution for changes to the different terms. While the parliamentary term could be changed by a vote in the parliament, a referendum is required for amendment of the presidential term.

The last referendum conducted in Uganda was held in 2005 when a decision was taken to revert to multi-party democracy. The Referendum Act requires the Electoral Commission to conduct the referendum. The administrative, legal and logistical preparations for the referendum may take several months to complete, with a referendum date likely perhaps sometime from September 2018 onwards. The time-frame for both the conduct of the referendum and the determination of the petitions on the constitutionality of the Constitution (Amendment) Act, 2017, remains uncertain.

[6] This did not address the specifics of any of the EU EOM recommendations as the EU EOM had recommended changes to the complaints and appeals procedures in advance of the election, rather than having made any specific recommendation regarding post-election petitions.

Electoral Reform

In addition to the recommendations of the EU EOM 2016, many other proposals for reform have been offered to the pertinent authorities in Uganda related to the conduct of the 2016 elections. These proposals have emanated from domestic, regional and international observer groups. Of greatest importance, however, is the ruling of the Supreme Court in the case of the election petition filed by Amama Mbabazi in 20167, which challenged the results of the presidential election. While the case was unsuccessful and was dismissed by the Supreme Court, the Court did, however, make several findings which represented negative assessments of the Electoral Commission and their conduct of the elections were. In relation to the late delivery of materials, in particular, the Court found that "the Commission did not comply with its duty under Section 28 of the Parliamentary Elections Commission Act in the affected areas. We accordingly held that the failure to deliver polling materials to polling stations within such close proximity to the Commission was evidence of incompetence and gross inefficiency by the electoral body." Negative findings were also made in relation to access to the public media, but, overall, the Court found that there was insufficient evidence to annul the election.

Despite dismissing the case, the Supreme Court issued an extensive set of "recommendations" to the Attorney General, requiring that electoral reform be undertaken, in collaboration with the Parliament and the Executive. The AG was required to report to the Supreme Court on progress on the implementation of the recommendations for reform by 26 August 2018. While it is clear that these recommendations and requirements do not bear any legal compulsion, they are, nonetheless, of significant moral weight. The doctrine of the separation of powers, firmly entrenched in the Ugandan legal order, means that the Supreme Court does not and cannot have any role in the legislative process.

The ten recommendations of the Supreme Court have been more widely disseminated than those of the EU EOM. There are some areas of overlap with the two sets of recommendations. The similarities are in relation to the findings of inequality of access to the public media; on the involvement of public servants in campaigning; and, to a small extent, in relation to the time-limit for the filing of petitions. While not contained within one of their recommendations, the Supreme Court also made some negative findings in relation to the conduct of the tallying process which is echoed within one of the recommendations of the EU EOM.

Discussions on electoral reform initiated by the EFM, whether dealing with the recommendations of the EU EOM or the recommendations of the Supreme Court, have all been deflected to the wider matter of constitutional reform, as, beyond the specific perspective of electoral reform, the matter of constitutional reform has become a matter of major political debate in Uganda since the elections of 2016. The question of electoral reform has been thus significantly reframed within the last two years and subsumed into a broader context.

There have been repeated public undertakings on the part of the executive, during the past two years, that a Constitutional Review Commission would be established, an instrument which would be used to address the matter of reform in a holistic manner, reviewing all aspects of the constitution through a process of nation-wide consultation. Despite such public utterances, no substantive steps have been taken, at the time of writing, to bring such a body into being.

[7] Presidential Election Petition No. 1 of 2016 Amama Mbabazi v Yoweri Kaguta Museveni, Electoral Commission & A.G. 26 August 2016

Engagements by the EFM with institutions of State in Uganda have all been characterised by the uniform articulation of a position that electoral reform will only be comprehensively addressed in the context of constitutional review. This indicates that progress on electoral reform is unlikely in the short term and before the next election cycle. This is particularly so as a constitutional review process, once initiated, is expected to require several years to be completed.

The Uganda Law Reform Commission conducted a nation-wide consultation in recent years during which views of the public and of interested parties were solicited on proposals for constitutional reform. The output of this exercise was the creation of an internal database of potential areas for discussion in the context of the creation of a Constitutional Review Commission. The Attorney General informed the EFM that all subsequent proposals for constitutional reform, including those relating to electoral reform emanating from the Supreme Court, have been added to that database. Apart from the Constitution (Amendment) Act, 2017, no action on recommendations has been taken to date, other than that of mere compilation.

CONCLUSIONS

It would be important that Ugandan authorities take positive steps, without delay, in order to improve the electoral process to ensure inclusive, transparent and credible polls, which enjoy the confidence of both the public and of stakeholders. The current question is not as to whether reform is necessary, but rather as to how and when reform will be achieved.

ONGOING AND PLANNED DONOR SUPPORT TO ELECTORAL REFORM AND FUTURE ELECTION PROCESSES

Donor support continues principally through the work of the Democratic Governance Facility. At the time of the deployment of the EFM, support had diminished in comparison to that provided during 2016 and 2017. Support is mainly channelled to NGOs, while some limited support is provided on the institutional side to the Ministry of Gender, Labour and Social Development, and to the Uganda Police Force.

EFM PROPOSALS TO STRENGTHEN FUTURE ELECTORAL PROCESSES

There is at present a widespread consensus among political actors and the people of Uganda that there is a need for electoral reform, which is flowing from a variety of sources. The current question is not as to whether reform is necessary, but rather as to how and when reform will be achieved. It appears that renewal of the social contract with the people of Uganda, through electoral reform, is an essential prerequisite to ensuring continued engagement by citizens with future electoral processes.

Uganda needs to go beyond the narrow management of elections and seek to improve the broader democratic context in which the elections are conducted, eg, through addressing the application of the fundamental freedoms necessary for the holding of genuine elections.

The President and members of cabinet have repeatedly undertaken to establish a Constitutional Review Commission and have indicated that a list of members and their terms of reference have been prepared. While there is a demand from civil society for the

establishment of a Constitutional Review Commission (CRC), there is little expectation at present that it will materialise. For example, the Citizens' Coalition for Electoral Democracy in Uganda (CCEDU) published an open letter to the President on 19 February, widely reported in the media, calling for the establishment of a CRC. They believe that it is the only possible avenue to achieve electoral reform; that anything less than constitutional reform will be meaningless. The CCEDU believes that public opinion will help to overcome the absence of political will in this domain.

The Inter-Religious Council of Uganda (members of which representing vast majority of Ugandans) is promoting the convening of a National Dialogue on matters ranging from the economy to the constitution and will be meeting the President this coming week to solicit his patronage in the matter. They are also calling for the establishment of a CRC. They argue that electoral reform cannot be undertaken alone as elections are part of a broader constitutional context. The IRCU representatives already met the President twice last year and called for a CRC. They have rejected the recent constitutional amendment and are calling for public consultation on constitutional reform instead.

Recommendations issued by the previous EU EOM remain valid, including the priority recommendations. It is also important to focus on recommendations the implementation of which does not require legislative change, mainly:

- Steps to be taken to clearly differentiate the state from the ruling party in an electoral context
- Un-biased conduct of the institutions of state during the campaign period, to prevent the use of state resources in favour of the ruling party
- Police and security forces should take measures to demonstrate neutrality in their work
- Develop a comprehensive and effective mechanism granting equal and equitable coverage of presidential and parliamentary candidates in the media
- The EC should develop new procedures for a transparent tallying process and for the timely publication of polling stations results on the EC webpage.

Despite Uganda's explicit commitment to implement electoral reform, no progress has been registered to date. Ugandan authorities have also expressed their intention to establish a Constitutional Review Commission, although without full clarity on the scope of or the timeframe for the potential review process.

The Ugandan government should support the implementation of the EU EOM recommendations. This task can only be achieved if there would be political will on the side of the government to start a "national dialogue" and pursue implementation of a set of key electoral recommendations. It is important to widen the outreach to civil society, religious leaders and the media.

It is important to offer support to participants involved in any future credible constitutional review process as, according to most interlocutors, comprehensive electoral reform would only be viable through this mechanism. It would be desirable to address the issue of ratification of the African Charter on Democracy, Elections and Governance.

It is important to support Civic and Voter education projects throughout the election cycle. Both the CSOs and the Electoral Commission have a significant role in the implementation of these projects. A voter and civic education campaign should be conducted prior to and during the voter registration period and throughout the length of the campaign period. The EFM suggests supporting activities of the CSOs involved in the monitoring of the election process

including monitoring of voter registration, monitoring of media and of campaign finance. These projects need to be well developed prior to the election year.

The new Electoral Commission was formed in 2016. The EC should improve its conduct of the election process and administer elections in an efficient and credible way and it is crucial that the EC improve both its transparency and its communications with political players prior to and during the election process.

Annex –
Matrix implementation status of EU EOM recommendations

EU EOM RECOMMENDATIONS IMPLEMENTATION STATUS

Country: Uganda

Date of assessment: March 2018

Status of implementation – colours green (implemented), blue (no longer relevant), yellow (partially implemented), red (no implementation),

RECOMMENDATION	YEAR	STATUS	RESPONSIBLE INSTITUTION	COMMENTS
LEGAL FRAMEWORK				
The Electoral Commission be granted sole regulatory power to further regulate essential parts of the electoral process, such as voter registration, polling, tallying and complaints and appeals prior and during the elections.	2018		Parliament	In discussion with the EFM, the Electoral Commission (EC) indicated that it did not accept the validity of this recommendation and does not require any additional regulatory powers. The current legal arrangement, with powers vested in the Minister, is acceptable to them, so there is no intention to promote compliance with this recommendation. The Electoral Commission did, however, indicate that the recommendations have been taken account of in a post-election review but, as many require legal change, they are beyond the mandate of the EC.
The boundary delimitation provisions be reviewed to ensure equality of the vote. A reasonable, legally binding maximum deviation from the national average number of voters per constituency be established and a new boundary delimitation conducted accordingly.	2018		Parliament	The Electoral Commission, as well as several other official representatives of Ugandan institutions, indicated opposition to this recommendation. They indicated that geographical conditions, as well as density of population and communication difficulties, are of greater importance to them than any equality of the vote. There will not be any proposals emanating from government in this regard.

The offences related to observing without accreditation and failure to submit an observation report not later than six month after the declaration of results be removed. Further consideration should be given to revise the accreditation system of domestic observers by removing the overly restrictive requirement of security vetting by the District Security Committee prior to accreditation.	2018		Parliament, Election Commission	Electoral reform was not a priority in the domestic political agenda. Interlocutors report no political will to conduct a meaningful electoral reform. Interlocutors from civil society, however, supported this recommendation but have been politically powerless and unable to pursue implementation.
The educational requirement for parliamentary candidates to have 'advance level degree be removed.	2018		Parliament	This recommendation was refuted by the Attorney General, as he said that there is consensus that high levels of education are a prerequisite to articulation of the level of English needed for parliamentary office. The actual qualification required for candidature is not regulated by law but by the Uganda National Exams Board, but no reform has been considered.
The provision requiring parliamentary candidates to resign from public offices not later than 90 days before nomination be amended.	2018		Parliament	Interlocutors representing the Republic of Uganda did not accept the validity of this recommendation, and do not intend to undertake any action to implement it. The Attorney General said that it is necessary to prevent bias in the civil service.
The Public Order Management Act (POMA) provisions granting the Police the right to disperse meetings be repealed in order to align the act with the Constitutional Court decision of	2018		Parliament	This recommendation was greeted by strong endorsements by opposition politicians and by civil society, who believe, and adduced evidence to the EFM, of the use of POMA to inhibit their political activities. The Human Rights

2008 declaring unconstitutional a similar provision in the police act. Consideration be given to clarify POMA provisions so that instead of a special authorization for public meetings, the provision is unequivocally clear that only a notification to the police is required.				Commission of Uganda also expressed reservations about the operation of POMA. By contrast, there was no official governmental acceptance of this recommendation, with the Ministry of Internal Affairs insisting that there is nothing wrong with POMA.
ELECTORAL ADMINISTRATION				
Establish an inclusive and transparent selection, appointment and removal mechanism for the EC commissioners and key executives at the central, regional and district level. The EC's integrity be further strengthened by engaging civil society in the selection process and subjecting proposed candidates to public scrutiny.	2018		Parliament	New Chair and Vice-Chair and other EC members were appointed after elections in 2016. The new chairperson is a judge, which is the first time that this is the case. The recommendation of the EU EOM has not, however, been implemented in that the members of the EC were appointed as they had been heretofore, which is principally through selection and proposal by the President and endorsement by the Parliament. There is no civil society participation in this process. So the situation remains as it did before the recommendation and still requires reform, for which political appetite is lacking. Further, the EC is adamant that it is already independent, protected by its constitutional positional as such.
Clear and detailed provisions for collection and tallying of results be established well before elections and systematically implemented at all stages of the process. The integrity of results be further strengthened by	2018		Parliament, Election Commission	The Electoral Commission rejected the validity of this recommendation and insisted that there is already great integrity in the process of tallying and publication of results. Their view was that the system is already extremely transparent, and that the presence of candidate agents supported

subjecting the tallying of results at all levels to systematic checks and by publishing on-line the full results broken down to polling station level in due time.				this further.
The inclusiveness and transparency of the EC be increased by holding regular open meetings with stakeholders at national and district level and publishing the minutes of these meetings.	2018		Election Commission	Mention was made by the Electoral Commission and other official interlocutors of the operation of the National Consultative Forum and of the Inter Party Organisation for Dialogue as evidence of the futility of this recommendation. However, the recommendation still stands, and there has not been any reform undertaken to comply with it.
The EC be legally required to issue preliminary results and final results and publishing, including online, disaggregated data per polling station at the time of each announcement of results. To further foster the acceptance of the results, consideration should be given to publishing the scanned copies of the Result Declaration Forms online in a due time and after each announcement of the results.	2018		Election Commission	Electoral reform was not a priority in the domestic political agenda. Interlocutors report no political will to conduct a meaningful electoral reform.
VOTER REGISTRATION				
The legal framework be amended to allow all citizens who reach 18 years of age by the day of election to vote.	2018		Parliament	The Chairperson of the EC indicated that a cut-off date for voter registration was essential in order to facilitate a verification and display period. There is no proposal for reform foreseen in response to this recommendation.
The ECA be harmonised with the new	2018		Parliament	Electoral reform was not a priority in the

system for compiling the voter register, including deleting provisions related to issuance of the voters' card and the relative offence of buying or selling cards.				domestic political agenda. Interlocutors report no political will to conduct a meaningful electoral reform.
VOTER EDUCATION				
The EC develop and implement a comprehensive and timely voter information and civic education programme through both field activities and a media campaign, blanketing all key elements of the electoral process.	2018		Election Commission, Government	This recommendation was heartily endorsed by all interlocutors, including the Electoral Commission, other official representatives of the State, as well as by representatives of the opposition and civil society. It was entirely non-controversial, with general agreement that much more could be done in this sphere. The EC is ready to prepare and conduct civic and voter education programmes prior to future elections.
POLITICAL PARTIES AND CAMPAIGN ENVIRONMENT				
Steps be taken to clearly differentiate the state from the ruling party in an electoral context. An effective sanctioning mechanism against the misuse of state resources, including administrative and security apparatus, during the election period be established and implemented with active involvement of the EC in the process. The role of the government during the election period be strictly limited to caretaker functions.	2018		Parliament Government Election Commission	This recommendation is one which found echoes in the guidelines of the Supreme Court. There was widespread endorsement of the recommendation too by opposition politicians and by civil society. The recommendation is accurate but there is an absence of political will to conduct any reform in this sphere.

The voters and electoral contestants be provided with conditions that enable them to participate in public affairs freely without being subject to pressure or intimidation: (a) Any instances and allegations of pressure or intimidation be thoroughly investigated and, if appropriate, be subject to prosecution by the relevant authorities; (b) The measures to ensure police accountability be implemented; (c) Policing of the elections should be done strictly within the legal framework by law enforcement agencies without employing any illegal security structures.	2018		Government Police	While there has been some limited human rights training of the police conducted in recent years, this recommendation continues to be valid. This was strongly attested to in the course of the UN Human Rights Council Universal Periodic Review of Uganda, which was conducted since the publication of the EU EOM 2016 final report. Interlocutors on the part of the opposition and of civil society all endorsed the validity of this recommendation. There has not, however , been any action taken within Uganda to fulfil the recommendation.
The law providing for the Code of Conduct for political parties to be amended. All stakeholders, in particular the EC and the political parties, be encouraged to implement the Code of Conduct. The EC to independently monitor and ensure compliance with the Code of Conduct.	2018		Parliament Political parties, Election Commission	While no action has been taken in this regard, it is conceivable that, with the appropriate political will, the Inter Party Dialogue for Democracy could advance this agenda. But it remains aspirational at present, as there has not been any specific action which promotes fulfilment of this recommendation.
The EC be empowered to address non-compliance with campaign regulations more effectively, as stipulated in the law. A monitoring system be established with information on breaches and sanctions of violations made public in real time, including in	2018		Election Commission	The Electoral Commission refuted the validity of this recommendation, asserting that they already possess adequate powers to undertake their duties.

regard to misuse of state resources.				
CAMPAIGN FINANCE				
The EC implement the law by collecting financial reports and lists of donors, verifying them, sharing them with the public, and acting in cases of violations in order to improve integrity and transparency of elections.	2018		Election Commission	Civil society interlocutors were vociferous in their support for reform of campaign finance, and of the general validity of all recommendations in this area. However, despite some activism by civil society and the intention to introduce a private member's bill to Parliament in this matter, there was absolutely no expectation that legal change could be achieved given the voting strength of the government in the house, a majority which would oppose reform of campaign finance. Any private member's bill would be purely for advocacy purposes rather than to effect any change in the law.
Both campaign financial reports and yearly financial reports, including the list of donors, be available to public by law and in practice in order to improve transparency. It is good practice to have them published on the Internet.	2018		Election Commission	Civil society interlocutors were vociferous in their support for reform of campaign finance, and of the general validity of all recommendations in this area. However, despite some activism by civil society and the intention to introduce a private member's bill to Parliament in this matter, there was absolutely no expectation that legal change could be achieved given the voting strength of the government in the house, a majority which would oppose reform of campaign finance. Any private member's bill would be purely for advocacy purposes rather than to effect any change in the law.
A state subsidy be introduced for both	2018		Parliament	. Civil society interlocutors were vociferous in

presidential and parliamentary candidates to ensure a level playing field. Equal state subsidies could be paid as reimbursement for candidates who obtain a certain threshold, i.e. a percentage of votes cast in parliamentary and presidential elections, in order to refund serious candidates with adequate support. All state subsidies, as well as other donations be subjected to genuine scrutiny conducted by the EC and relevant information be shared with the public in a comprehensive manner**.**				their support for reform of campaign finance, and of the general validity of all recommendations in this area. However, despite some activism by civil society and the intention to introduce a private member's bill to Parliament in this matter, there was absolutely no expectation that legal change could be achieved given the voting strength of the government in the house, a majority which would oppose reform of campaign finance. Any private member's bill would be purely for advocacy purposes rather than to effect any change in the law.
Transactions to and from political parties and candidates above certain threshold be only done by bank transfer, in order to prevent corruption.	2018		Parliament	Civil society interlocutors were vociferous in their support for reform of campaign finance, and of the general validity of all recommendations in this area. However, despite some activism by civil society and the intention to introduce a private member's bill to Parliament in this matter, there was absolutely no expectation that legal change could be achieved given the voting strength of the government in the house.
ELECTION DIPUTE RESOLUTION SYSTEM				
The detailed complaints procedures with reasonable time limits for adjudication be enacted, indicating in which instances and at what level	2018		Parliament, Election Commission	The context of this recommendation, which is explained in the EU EOM 2016 final report, relates to the treatment of complaints and appeals prior to election

the complaint should be submitted.				day. There has been a minor measure of reform, in the Constitutional Amendment Act 2017 on the rules governing post-election petitions, but that does not have any connection with the specific substance of this recommendation. This recommendation should be addressed in the broader context of electoral reform, for which there is no political will at present.
The EC should publicise full information on the complaints submitted and decisions taken in a timely manner and including online.	2018		Election Commission	The Electoral Commission expressed sentiments that the substance of this recommendation was unworkable, due to the level of activity undertaken by the Electoral Commission during the election period. They indicated that publication of such information would only be feasible after the election.
The detailed procedures for EC referral of electoral offences to the department of Public Prosecution for sanctioning be included in the legal framework.	2018		Parliament	The Electoral Commission, while not commenting on the specifics of this recommendation, indicated that there is no deficiency in their legal powers which inhibits their operations.
WOMEN'S PARTICIPATION AND SPECIAL GROUPS ISSUES				
The granted seats for the representatives of the army, youth and workers be abolished, since these groups do not suffer discrimination or require specific assistance. The reserved seats for PWD be elected by universal	2018		Parliament	Electoral reform was not a priority in the domestic political agenda. Interlocutors report no political will to conduct a meaningful electoral reform.

suffrage and not though a collegiate system.				
The women-reserved seats be aligned with administrative division of districts and municipalities to guarantee equality of votes.	2018		Parliament	Electoral reform was not a priority in the domestic political agenda. Interlocutors report no political will to conduct a meaningful electoral reform.
MEDIA				
A comprehensive and effective implementation mechanism granting equal and equitable coverage of the presidential and parliamentary candidates in media be developed and secured in the primary legislation. A mutually beneficial cooperation between the EC and the Uganda Communication Commission be established to undertake timely, resolute and transparent measures as soon as media's noncompliance with legal and regulatory provisions is established.	2018		Parliament Election Commission, Uganda Communication Commission (UCC)	The Supreme Court of Uganda strongly echoed the findings and recommendations of the EU EOM 2016 in the sphere of shortcomings in access to the media. There was a broad acknowledgement by interlocutors, except on the part of state officials, that there was no fairness or equity of access, supporting the validity of all recommendations in the sphere of the media. There has not however been any reform of this sector since the publication of the final report, and nor is there any political will to undertake such reform at present.
Essential safeguards for the public service broadcaster's editorial independence and financial autonomy be established and secured in legal framework to enable the state media to plan and conduct a comprehensive and inclusive election coverage aimed to	2018		Parliament	The Supreme Court of Uganda strongly echoed the findings and recommendations of the EU EOM 2016 in the sphere of shortcomings in access to the media. There was a broad acknowledgement by interlocutors, except on the part of state officials, that there was no fairness or equity of access, supporting the validity of

foster the electorate's ability to make an informed choice on the election day.				all recommendations in the sphere of the media. There has not however been any reform of this sector since the publication of the final report, and nor is there any political will to undertake such reform at present
The independence of the Uganda Communication Commission be established and its mandate, as well as decision-making process, be made transparent, including on licencing policy and procedures applied for aggrieved parties seeking for effective remedy.	2018		Parliament UCC	The Supreme Court of Uganda strongly echoed the findings and recommendations of the EU EOM 2016 in the sphere of shortcomings in access to the media. There was a broad acknowledgement by interlocutors, except on the part of state officials, that there was no fairness or equity of access, supporting the validity of all recommendations in the sphere of the media. There has not however been any reform of this sector since the publication of the final report, and nor is there any political will to undertake such reform at present
The legal framework for media, the content regulations in particular, to be synthesised and amended to provide for a full respect for Uganda's international commitments on the freedom of expression. The revision of the Minimal Broadcasting Standards, the Computers Misuse Act, the legally binding Professional Code of Ethics for Journalists and Editors,	2018		Parliament	The Supreme Court of Uganda strongly echoed the findings and recommendations of the EU EOM 2016 in the sphere of shortcomings in access to the media. There was a broad acknowledgement by interlocutors, except on the part of state officials, that there was no fairness or equity of access, supporting the validity of all recommendations in the sphere of the media. There has not however been any reform of this sector since the publication

as well as the decriminalisation of defamation are of primary concern.				of the final report, and nor is there any political will to undertake such reform at present