

DELIVERING SAFE AND CREDIBLE ELECTIONS AMIDST COVID-19 IN UGANDA

Analysis of the Implications of the Revised Electoral Roadmap for Electoral Integrity in Uganda

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Abbreviations and Acronyms

BBC	British Broadcasting Corporation
EMB	Election Management Body
CEC	Central Executive Committee
COVID	Coronavirus Disease
EC	Electoral Commission
EU	European Union
FDC	Forum for Democratic Change
NIMD	Netherlands Institute for Multiparty Democracy
NRM	National Resistance Movement
NVR	National Voters Register
PPI	Public Policy Institute
SIG	Special Interest Group
SOPs	Standard Operating Procedures

1. Introduction

On 22 June 2020, Uganda had 774 cumulative confirmed positive cases of COVID-19, with 143 cases in admission, 631 recoveries and no COVID-19-related death. With relatively fewer COVID-19 cases compared to other African countries, Uganda is scheduled to hold its fourth multiparty general elections in January and February 2021. Although the Electoral Commission (EC) launched its 2021 election roadmap as early as 2018, the implementation of preparatory activities were hampered by the outbreak of COVID-19 and the measures put in place to combat its spread. In line with government directives, the measures expressively limited human-to-human interactions and imposed serious restrictions on public gatherings and free movement of people. COVID-19, therefore, disrupted the conduct of elections for the Special Interest Group (SIG) Committees among other planned electoral activities. The disruptions further inconvenienced various stakeholders in the electoral process, undermining the activities of political parties and organisations to strengthen their grass-roots structures and organize internal party primaries. This paper, therefore, analyses the extent and implications of the disruptions for the delivery of free, fair, and credible elections, while underscoring the principle of public safety in the wake of COVID-19. The paper also illuminates the constitutional and human rights issues critical to election delivery in the wake of the pandemic and explores the pros and cons for conducting elections in the context of a novel and evolving COVID-19.

2. COVID-19 Disruptions of Electoral Activities

It is undeniable that the 2020/21 electoral activities in Uganda were been significantly disrupted by the COVID-19 pandemic and the measures put in place to combat its spread. However, Uganda was no exception, as over 50 elections worldwide that had been planned for 2020 were either cancelled or postponed. On the African continent, over 10 countries¹ postponed, almost indefinitely, local government, municipal and local council elections owing to COVID-19. However, there were few exemptions where general elections, leading to the election of presidents and legislative members, went ahead as scheduled, including in Mali, Guinea, Burundi, Benin and Malawi. There are important takeaways from these elections, such as in Mali, in which only 36 per cent of the registered voters took part, and culminated in contestations of results² in the Constitutional Court. Others, such as the referendum in Guinea, were characterized by mass protests and boycotts. Furthermore, logistical nightmares and the absence of international election observers undermined the credibility of most of these elections.

In March 2020, when the government issued lockdown directives, the Uganda Electoral Commission (UEC) was completing the public display of the national voters' register in preparation for the election of SIG Committees from village through to national level. This was to be followed by other preparatory activities for the elections of Local Government Councils, Members of Parliament (MPs) and the President. Several subsequent electoral activities, which were originally scheduled between March and May 2020, were affected by government guidelines. These included the display of tribunal recommendations for the deletion or inclusion on the National Voters Register (NVR); and gazetting and publishing candidates' nomination dates and venues, among others. Relatedly, identification processes for internal political party candidates were also affected. At the time of announcing the lockdown guidelines, major political parties, including the Forum for Democratic Change (FDC) and the National Resistance Movement (NRM) were planning to hold their delegates conferences, party primary elections and candidate training.

As a result of the postponement, the UEC lost three months of critical roadmap activities. In addition, individuals who were aspiring to contest as independent candidates at various levels and for President of Uganda, in particular, had just started the nationwide consultations as provided for in the law. The net effect of these interruptions, especially for political parties, was that internal party democratic processes and citizens' mobilisation efforts were significantly disrupted. Whereas the UEC did pronounce itself on

1 Some of the African countries that have cancelled, or postponed elections include Botswana, Chad, Ethiopia, Gabon, Gambia, Ghana, Kenya, Libya, Nigeria, Zambia, and Zimbabwe

2 Opposition challenger in Mali contested the results in the Constitutional Court, citing irregularities and disfranchisement of voters.

the revised electoral roadmap, there remained several unsettled contestations about the nature and substance of elections in a novel and evolving pandemic situation. The reduced time available for key political players, such as political parties, to conduct activities also implied the existence of significant challenges with the processes of identifying candidates and reaching out to voters. Some parties were forced to abandon their internal processes, which fueled internal party discontent and significantly thwarted recent gains in the country's democratic trajectory. At a townhall meeting organised by PPI and NIMD to discuss the preliminary analysis, the NRM Secretary General, Rt. Hon. Justine Lumumba, indicated that the NRM CEC was considering altogether abandoning adult suffrage to identify candidates in favour of electoral colleges. It is on record that in 2009, the NRM had abolished the use of electoral colleges, considering the method unreliable and easy to manipulate and resulting in several party members contesting as independents on claims that they were rigged out during the primaries. The implementation of the revised electoral roadmap by the EC heralded several democratic hiccups as significant processes were omitted from the electoral calendar, with serious implications for the country's nascent democracy.

3. Delivering Elections amidst COVID-19

On 16 June 2020, the UEC launched the revised election roadmap and proposed standard operating procedures (SOPs) ahead of the 2020/21 general elections. According to the UEC, the administrative changes announced were designed with a view to integrating amendments that promote health and safety measures to control the spread of Covid-19. The revised roadmap highlighted the dates for the commencement of various key electoral activities, namely nominations, campaigns, and polling for various elective positions. The roadmap also highlighted the period for conducting elections for SIG Committees from village to national levels.

During the announcement, the UEC Chairperson underscored the fact that the commission, in consultation with public health officials, conducted a risk analysis which informed the necessity to institute mitigation measures for public safety during and after the electoral period. Accordingly, the measures announced provided a balance between the preservation of public health and citizens' constitutional right to elect leaders of their choice. Some of the guidelines included providing nomination forms on the commission's website that can be printed by those with access to the internet. Hard copies would be made available for those with no access to the internet. The commission would also allow not more than one person to escort the candidate to the nomination venue.

One other significant alteration to the electoral activities was the banning of mass rallies to solicit political support. The UEC stipulated that all political campaigns could be conducted mainly through mainstream and social media. Furthermore, for polling day, the commission considered and adopted SOPs to facilitate safe participation by all stakeholders. These measures included (i) practicing social distancing; (ii) wearing face masks in public; and (iii) regular washing of hands.

3.1. Implications of the Revised Roadmap

While the release of the revised roadmap by the UEC was a proactive and welcome step, public and stakeholder discourses on these guidelines revealed that they were neither designed with parliamentary oversight nor broader stakeholder consultations. This omission thus raised several significant questions: for example, would these changes and guidelines amount to illegality if challenged in the courts of law? Could the guidelines guarantee a free and fair electoral process as required by the constitution? And could the guidelines guarantee citizens' participation and conform to minimum democratic values and benchmarks?

On the outset, it is imperative to underscore that the UEC may not have flaunted any provisions of the law in the design and issuance of the guidelines. The key challenge, however, related to the fairness, credibility and inclusivity of the process adopted by the UEC. As such, these questions remained legitimate and ought to be answered. In this section, we explore some of the sentiments and implications surrounding the revised UEC guidelines. The exploration is carried out broadly without the burden of concentrating on specific activities stipulated in the revised roadmap. This is due to the fact that such an endeavor would

not add analytical value to the debate in the public domain; but also, the harm inherent in the intrinsic value of activities set out in the roadmap in themselves is limited. The key challenge revolves around the timelines, fairness and inclusivity of the processes adopted and their implications for citizens' participation.

a) Infringement of expressive and associational freedoms

The net effect of the measures instituted to combat the spread of COVID-19 was that they broadly infringed on both the expressive and associational rights of the citizens, which are key tenets of democratic governance. The measures effectively locked political actors out of the political arena. As such, lockdown measures put in place, including the night curfew, affected the visibility of political players and their access to the citizenry. Consequently, the limited campaign time proposed by the UEC placed political players and, indeed, citizens in a disadvantaged position.

b) Limited access to media for political activities

Uganda has a diverse and dynamic media sector. There are over 300 licensed radio stations and 39 operational television stations, including seven pay stations with 1.4 million subscribers. Radio remains a widely accessed medium, with 79 per cent of households owning at least one radio set. There are 26.6 million mobile telephone subscribers, of whom 65 per cent (16.9 million) are smart phone owners, thus contributing to 37 per cent internet penetration in the country. This media landscape partly informed the UEC's guidelines on the use of mainstream and social media as an alternative medium to reach voters. Unfortunately, the media landscape is distorted and presents serious challenges related to ownership and access. In the recent past, various opposition candidates have been denied an opportunity to access media houses across the country. This situation is worse for state-owned media houses and/or media houses owned by NRM political party sympathizers. The EU Election Observation Mission report on the Uganda 2016 elections stated that "the President and his party had access to funding and means, including public media, which were not equally available to his competitors." There are thus financial and structural impediments to accessing media platforms, especially for opposition political players. The unequal access to media houses which characterizes the election season reinforces the view that a limited campaign period through media is likely to inadvertently affect the freeness and fairness of the electoral process.

c) Limited access to campaign political messaging through the media

In 2015, a BBC World Service nationally representative survey found that "only 87 per cent of the adult population in Uganda had a working radio while 74 per cent had mobile phones in their household." Only a third had a working television and only 13 per cent of the adult population had access to the internet within their household. The National Information Technology Survey 2017/18 report also indicated that "only half (52.1 per cent) of urban respondents watch television compared to only a third (33.9 per cent) of the rural population." Furthermore, the Uganda National Household Survey 2016/17 found great variation in television ownership across regions, with Kampala having the most households (42 per cent) while only 3 per cent of households owned a television individually in Kigezi and 2 per cent in the Teso, Bukedi and Acholi regions. This situation is worse for West Nile, which reported "1 per cent and almost 0 per cent in Karamoja regions." What this means is that limiting campaigns to digital platforms would greatly affect citizens' participation in electoral processes.

d) Limited access of candidates to citizens to canvass votes

One of the key facets of a credible electoral process is that candidates should have the opportunity to access the citizenry and present their electability agenda. Unfortunately, with limited campaign time available to candidates, coupled with the unequal and irregular access to media, most candidates will not have the opportunity to engage a significant portion of the citizenry. This would hamper the quality of the citizens' choices and put some candidates at a disadvantage. In the light of these constraints, many citizens have even gone as far as suggesting that the general elections be postponed – owing to the disruption caused by the coronavirus pandemic. However, postponing elections in Uganda would have serious legal implications. In spite of the legal debate surrounding this discussion, proponents of postponing the elections argue that this would provide an opportunity for a series of actions that might be beneficial to Uganda's democratic maturity, including reflections on political and electoral reforms. Opponents, who are in favour of having the elections held under the revised roadmap, are convinced that adherence to the SOPs would allow the delivery of safe and credible elections.

4. What Does It Mean to Proceed with Elections under COVID-19?

Despite the above limitations, conducting elections on schedule would cushion the country from a possible constitutional crisis. The term of office for the President and Parliament is entrenched in the constitution. In the absence of elections, Parliament would need to pass emergency legislation to guarantee the continuity of government. If elections were conducted, in spite of the crisis, this would be instructive for the legitimacy of government and for providing an opportunity for citizens to exercise their constitutional mandate of electing their leaders.

In addition, some observers have argued that the UEC proposals could mark a turning point in Uganda's elections, especially in the light of the nature of the country's politics. For example, it is believed that the use of media could bring about political competition based on development ideas rather than *wolokoso* (mere rhetoric), which manifests itself through large crowds or based on who has more money to bribe voters with soap and alcohol. Former coordinator of the Citizen Coalition for Electoral Democracy in Uganda (CCEDU), Crispin Kaheru, argues that media campaigns may present Ugandans with an opportunity to embark on a new electoral culture that is devoid of violence, which often characterizes elections in Uganda.

Contrary to the previous argument, some believe that an online and media-only campaign cuts out the overwhelming advantage of incumbency and the monopoly of state resources enjoyed by the incumbents. The new arrangement allows even the low-budget candidates to transmit their messages to the populace without the disadvantages associated with low budgets. However, while this argument may have some merit, it assumes equal access to media, which is not the case in Uganda.

5. Options to Delivering a Safe Election amidst COVID-19?

At least five countries on the African continent have successfully held general elections under COVID-19. Despite logistical limitations and contestations of results, which is a common feature across the continent, the delivery of elections in these countries has manifested the resilience of their electoral systems to deliver despite the novel and evolving COVID-19. Uganda's Electoral Commission has a constitutional mandate to deliver elections in a timely manner and the release of the revised roadmap was intended to ensure that the country is not thrown into a constitutional crisis because of COVID-19.

However, it is also imperative to note that the outcome of an election is as credible as the process itself. While it is the mandate of the UEC to develop the roadmap, it is also desirable that the commission carries

out wider stakeholder consultations in the course of developing its roadmap, and any other revision for that matter. While this has been the case in the past, it appears that this time around the commission did not involve stakeholders like political parties, civil society, and potential candidates in revising its roadmap to respond to the threat of COVID-19. It is, therefore, not surprising that some stakeholders dismissed the roadmap, just hours after its launch. This is because the change in the rules of the game, including the nature and substance of the campaigns, affects political actors significantly. During a town hall and virtual meeting to discuss the implications of the revised roadmap hosted by PPI and NIMD, the Chairperson of the UEC gave assurances that the commission would re-engage public health officials as well as key players, such as political parties, to forge a way forward that incorporates their suggestions on how electoral activities can be continued without exposing the public to COVID-19. Some of the proposals from the political parties included:

- a) Postponement of the general elections to enable the country to overcome the threat of COVID-19 and the threat it poses to the delivery of free, fair, and credible elections. This proposal would require the declaration of an emergency by the government and parliamentary legislation to give legitimacy to the government to continue to operate. Other political players have called on Parliament to process a constitutional amendment introducing a 'transitional government', which would cater for a situation of no elections at a time when they are constitutionally supposed to take place. At the moment, the UEC, unfortunately, must continue to operate to deliver the elections as per current legal confines until the law is otherwise amended.
- b) Government announced a partial lifting of the lockdown and allowed several economic activities to resume, including public transport and downtown businesses that are characterised by mass gatherings. Several stakeholders argued during the town hall and virtual meeting that some of the ongoing economic activities signal that the threat of COVID-19 is not as serious as portrayed by public officials and that regulated political gatherings should be allowed to enable political players to engage with citizens and solicit political support., The stakeholders tasked the government to ensure that, in the event of serious evidence of the threat of COVID-19 to public health, such political gatherings adhere to established SOPs. Proponents of this option further argued that locking political players out of the political arena, as envisaged by the revised roadmap would greatly affect citizens' participation in the 2021 electoral processes and undermine the credibility of the elections.

Finally, it is important to recognize that COVID-19 and the measures adopted to mitigate its impact on public health have presented significant challenges for Election Management Bodies (EMBs) across the world. EMBs in Africa are disproportionately challenged to deliver elections during times of crises, such as that presented by COVID-19. The measures adopted to mitigate the impact of COVID-19, such as lockdowns, quarantines, and social distancing, are inconsistent with the traditional electoral activities that still characterize elections in Uganda. Delivering elections amidst a crisis like COVID-19, therefore, requires the UEC to proactively engage key stakeholders to build a consensus on how the elections can be delivered amidst the threat at hand to achieve a credible electoral outcome.



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