Uganda

Preparing for the Polls

Improving Accountability for Electoral Violence in Uganda

HUMAN RIGHTS WATCH

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I. Summary

At some point between February 12 and March 13, 2011, Ugandans will go to the polls to vote for president and members of Parliament. The 2011 elections are crucial for the promotion and protection of the human rights of all Ugandans. Uganda's democracy is fragile; the upcoming elections will be only the second multiparty elections in Uganda's history, and the country has not had a peaceful, constitutional transfer of power since independence in 1962. Previous national elections in 2001 and 2006 were marred by politically motivated violence, intimidation, and bribery of voters, virtually none of which were either investigated or prosecuted, a failure that reinforces a culture of impunity. In the run-up to the 2006 elections, some opposition party members faced trumped-up charges by government prosecutors, which fueled suspicion that, when criminal prosecution of election-related activity did take place, it was politicized and partisan.

For Uganda's elections to be conducted freely and fairly, the country's laws need to be enforced equally for all parties during the campaign. Perpetrators of politically motivated violence and electoral offenses, such as bribery and intimidation of voters, should be held to account for their actions. Police and prosecutors should investigate electoral malpractice and violent crimes in an independent and impartial manner and ensure respect for the rule of law.

Without these safeguards, the integrity of the electoral process will be undermined. Uganda's government should treat seriously those incidents that can ultimately deny voters their rights to expression and association. The lack of accountability for election-related violations can sow the seeds of civil unrest if political opposition is quashed.

In past elections, courts in Uganda have heard electoral petitions by aggrieved candidates seeking to invalidate results because of electoral malpractice. During the course of these trials, judges have ruled that candidates, supporters, and government forces committed violent crimes, voter intimidation, and bribery. In some instances, election results were set aside, but there was very rarely subsequent criminal prosecution for the criminal acts. This is a gap in governmental responsibility that needs to be remedied.

Uganda's Parliament is soon to consider changes in legislation that could potentially improve the conduct of the elections and ensure that they are held in accordance with international standards. Uganda's electoral laws should be amended to provide more time

for the prosecution of electoral crimes, such as bribery and intimidation of voters. Uganda currently allows only three months to prosecute these crimes after the alleged act has been committed. This time period is significantly shorter than the statute of limitations in several other African countries for similar violations and denies voters their right to an effective remedy for violations of their rights.

Additional reforms should be undertaken. In particular, the mandate and powers of the Electoral Commission Complaints desk should be clarified in law so that its work does not neglect, obstruct, or cover-up criminal activity, particularly when perpetrated by government officials.

Finally, the government should prevent the military from campaigning or from supervising the electoral process, particularly on election day, as its presence can intimidate independent and opposition party members and supporters.

Uganda's international donors, particularly those that fund the elections, should urge the government to ensure that, in the period leading up to the vote, during the vote itself, and afterward, the basic rights of Ugandans are protected and that all serious political malfeasance, regardless of perpetrator, is duly investigated and prosecuted. Human Rights Watch sets forth these recommendations with the goals of promoting transparency and accountability in Uganda, ensuring a fair and credible electoral process, and preventing the violence and illegal practices that have marred previous elections.

II. Methodology

Human Rights Watch has conducted research during and after elections in Uganda for over a decade. This report is based on past investigations completed during the 2001 and 2006 election period, as well as new research carried out in September and October 2009.

Human Rights Watch researchers interviewed over 40 individuals with substantive knowledge of elections in Uganda, including representatives of the political parties, members of parliament, commissioners and staff of the Electoral Commission, civil society, lawyers, judges, police, prosecutors, and members of the diplomatic community. Some individuals asked not to be cited by name because of fear of reprisals for their commentary on the electoral process in Uganda.

Human Rights Watch also interviewed legal staff of national electoral commissions in other countries in the region to gain and understanding of regional norms for some issues. For details regarding various incidents of criminal acts and electoral offenses carried out during elections, we reviewed court rulings of electoral petitions from the 2001 and 2006 elections and sought out information from police and prosecutors on their investigations into these cases.

This report does not constitute a comprehensive analysis of all the possible electoral law reforms that could potentially enhance human rights protections, nor does it seek to catalog all instances of politically motivated violence from previous elections. Various organizations and political parties have proposed numerous reforms that are under discussion by the Cabinet, the Ministry of Justice, and Parliament.

III. Recommendations

To the Ugandan Government

- Amend the current statute of limitations on the prosecution of electoral offenses from three months to at least one year or more.
- Amend laws, as needed, to clarify the jurisdiction and administrative powers of the Electoral Complaints Desk.
- Respect and impartially enforce all electoral and criminal laws, particularly the Presidential Elections Act and the Parliamentary Elections Act of 2005, during the campaign.
- Ensure sufficient police or other mandated personnel are available to provide adequate security at campaign events and on polling day, and that mandated personnel are appropriate for that purpose.
- Ensure the army remains neutral and takes no part in campaigning or supervising the electoral process.
- Call on candidates, party members, and supporters to act in accordance with the law at all times—both during campaigning and on election day.
- Publicly and promptly condemn violence, bribery of voters, intimidation or electoral offenses committed by candidates, party members, and supporters and call for non-partisan accountability.
- Investigate and hold accountable members of the police or military found to have used unnecessary lethal force during the September 2009 Kampala riots.

To all Political Parties

- Call on candidates, party members, and supporters to act in accordance with the law at all times—both during campaigning and on election day.
- Publicly and promptly condemn violence, intimidation, or other electoral offenses by candidates, party members, and supporters.
- Report all cases of violence, intimidation, or other electoral offenses to police and the Electoral Commission as appropriate.

To the Electoral Commission

- Promptly, impartially, and thoroughly investigate election-related offenses. Promptly refer all potential criminal matters over to police and follow-up on investigations.
- Regularly call on all parties to respect electoral and criminal laws throughout the campaign period.

To Donor Governments, Specifically Members of the Partners in Democracy Group (PDG)

- Urge the Ugandan government to amend laws, such as the statute of limitations on electoral offenses, so as to facilitate prosecutions of perpetrators of electoral malpractices.
- Urge the Ugandan government to investigate and prosecute serious electoral offenses and politically motivated crimes during the campaign period and on polling day.
- Impress upon the Ugandan government the importance of ensuring free and fair campaigns and elections—particularly free of bribery and intimidation of voters—at all levels of government.

IV. Background

Past Elections in Uganda

Uganda President Yoweri Museveni and the ruling National Resistance Movement (NRM) came to power in 1986 and instituted the "Movement" system, which denied other political parties the ability to operate for almost 20 years.[1] In 2005, under pressure internally and from the World Bank, the government announced a referendum to allow multiparty democracy. With the support of the NRM, the referendum passed. However, opposition groups had boycotted the referendum because the ruling party at the same time pushed through an amendment to the constitution lifting the two-term limit on the tenure of the president.[2] In 2006 Uganda held its first multiparty elections, with the incumbent Museveni—then in office for 20 years—as the NRM presidential candidate.

Local and international observers have frequently noted that recent elections in Uganda have included considerable violence and electoral manipulation, including murder, bribery, threats, intimidation, and vote rigging.[3] Civil society groups have expressed deep concerns about the role of uniformed and plainclothes armed security and paramilitary forces, patrolling polling stations and creating an atmosphere of intimidation.[4] Bribery was "rampant during the campaign and also on polling day," according to DEMGroup, a consortium of Ugandan civil society organizations monitoring the 2006 elections.[5] Human Rights Watch and others have documented violence and politically motivated prosecutions

[1] For more on the Movement system, see Human Rights Watch, Hostile to Democracy: The Movement System and Political Repression in Uganda, (New York: Human Rights Watch 1999), http://www.hrw.org/legacy/reports/1999/uganda/.

[2] Human Rights Watch, Uganda - In Hope and Fear: Uganda's Presidential and Parliamentary Polls, no. 1, February 2006, http://www.hrw.org/en/reports/2006/02/14/hope-and-fear, p. 6.

[3] European Union Election Observation Mission, "Presidential and Parliamentary Elections," February 23, 2006, http://ec.europa.eu/external_relations/human_rights/election_observation/uganda/final_report_en.pdf (accessed October 25, 2009); Chr. Michelson Institute (CMI), Uganda's 2006 Presidential and Parliamentary Elections, (Norway: CMI, 2006); Democracy Monitoring Group, "Final Report on the 2006 Presidential and Parliamentary General Elections in the Republic of Uganda," June 2006 (on file with Human Rights Watch), Foundation for Human Rights Initiative, "Electoral Reforms in Uganda 2008," July-December 2008, Norwegian Resource Bank for Democracy and Human Rights (NORDEM), "Uganda: Presidential, Parliamentary and Local Council Elections 2006," (Norway: NORDEM, 2006); Commonwealth Observer Group, "Uganda Presidential and Parliamentary Elections," February 23, 2006, http://www.thecommonwealth.org/document/34293/35144/149671/uganda.htm (accessed October 25, 2009); Advocates Coalition for Development and Environment (ACODE), "Deepening Democracy in Uganda: Legislative and Administrative Reforms Ahead of 2011 Elections," no. 19, 2007, http://www.acode-u.org/documents/Legislative.pdf (accessed October 25, 2009). Non-governmental Organization Monitoring Group, "Monitoring the Conduct of Free and Fair Elections in Uganda: Challenges and Experiences of the NEMGroup from 2001," January 2003 (on file with Human Rights Watch).

[4] ACODE, "Deepening Democracy in Uganda: Legislative and Administrative Reforms Ahead of 2011 Elections," no. 19, 2007, http://www.acode-u.org/documents/Legislative.pdf (accessed October 25, 2009).

[5] Democracy Monitoring Group, "Final Report on the 2006 Presidential and Parliamentary General Elections in the Republic of Uganda," June 2006 (on file with Human Rights Watch).

of opposition candidates and the selective application of sedition, libel, and incitement to violence laws to quell opposition candidates and members of the media.[6]

Elections in both 2001 and 2006, especially those involving prominent candidates, ended in controversy and discord over the integrity of the electoral process and the independence of the National Electoral Commission, which brought the parties to court. In 2006 the main opposition presidential candidate, Dr. Kizza Besigye of the Forum for Democratic Change (FDC), challenged the results of the elections in the Supreme Court by filing an electoral petition. The court found that the elections were riddled with intimidation, violence, voter disenfranchisement, and other irregularities, including inaccuracies in counting and tallying votes.[7] Despite these findings, the justices voted 4-3 to uphold the results on the basis that the electoral malpractice did not "substantially affect" the outcome of the election, confirming Museveni's re-election.[8] Only one of the crimes alleged was investigated and prosecuted under criminal law.

Since the 2006 elections there have been various demands for electoral reform to address perceived problems with the electoral process. Civil society groups, opposition political parties, and some foreign diplomats have issued comments and numerous detailed proposals for amending electoral laws to address problems such as the voter register, the independence of the electoral commission, the timing for filing petitions, and other important issues.[9] President Museveni has said that he does not believe electoral reforms are necessary.[10]

Despite Museveni's sentiments, the Ministry of Justice has prepared a draft set of legislative reforms, including constitutional amendments, which, at the time of writing, were pending

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[6] Human Rights Watch, Uganda - In Hope and Fear: Uganda's Presidential and Parliamentary Polls, no. 1, February 2006, http://www.hrw.org/en/reports/2006/02/14/hope-and-fear.

[7] Dr. Kizza Besigye v. Yoweri Museveni and Electoral Commission, Supreme Court Petition No. 1 of 2006.

[8] The case and decision were very similar to another filed previously by Besigye against Museveni during the prior elections in 2001. Dr. Kizza Besigye v. Yoweri Museveni and Electoral Commission, Supreme Court Petition No. 1 of 2001.

[9] Inter-Party Cooperation (Conservative Party, Forum for Democratic Change, Justice Forum, and Uganda People's Congress), "Summary of the Necessary Electoral Reforms in Uganda," April 20, 2009 (on file with Human Rights Watch); Inter-Party Cooperation, Private Members' Bills, September 2009 (on file with Human Rights Watch); People's Progressive Party, "Proposals to improve the electoral system in Uganda," August 2007 (on file with Human Rights Watch); The Citizens Coalition on Electoral Democracy in Uganda, "Briefing Paper on Proposed Electoral Reforms Ahead of the 2011 Elections," August 2009 (on file with Human Rights Watch); Walter Wafula and Dorothy Nakaweesi, "EU Backs Electoral Reforms," The Daily Monitor, July 7, 2009, http://allafrica.com/stories/200907070003.html (accessed October 23, 2009).

[10] Anthony Bugembe, "Electoral Laws Won't Change – Museveni," The New Vision, June 21, 2009, http://allafrica.com/stories/200906220090.html (accessed October 25, 2009). Museveni did say that the voter register should be computerized.

with the cabinet.[11] In the wake of the 2006 elections, the Electoral Commission pointed to the late passage of electoral laws as a key obstacle for their work.[12] Government officials have confirmed that legislation that will affect the 2011 elections will be passed by February 2010 to give both the parties and the Electoral Commission ample time for implementation.

Recent Unaddressed Political Violence

The 2011 elections come at a time of heightened political tension over longstanding issues of governance and ethnic identity in Uganda. In September 2009 political discord between the government and the Buganda cultural institution sparked off riots that left at least 27 people dead over a two-day period in Kampala.[13] Baganda youth began rioting when police blocked a delegation representing the Buganda kingdom from visiting Kayunga district. Police also refused to guarantee the security of the cultural king of Buganda, known as the *kabaka*, who was planning to visit Kayunga for National Youth Day two days later.[14] The visit was opposed by leaders of the Banyala ethnic group in Kayunga, who allegedly reject the *kabaka's* authority.[15]

The *kabaka's* supporters took to the streets to protest the police action. Some protesters resorted to violence in some areas of Kampala, burning at least five cars, one passenger bus, and one delivery truck, blocking some main roads with burning tires and debris, looting shops, and throwing rocks at police and members of the armed forces. A factory and a police station were burned down. Human Rights Watch documented numerous instances of the unnecessary use of lethal force by military police during the two-day period.[16] Military police, allegedly looking for rioters, shot through doors and into residences and businesses, killing some people and seriously injuring others. Thirty people alleged to have destroyed property were charged with terrorism. At the time of writing, no one in the military or the police had

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[11] Human Rights Watch interview with Hon. Fred Ruhindi, Deputy Attorney General, Kampala, October 6, 2009.

[12] Electoral Commission, "Report on the 2005-2006 General Elections," August 2006, http://www.ec.or.ug/docs/REPORT%20ON%20THE%202005-2006.pdf (accessed October 25, 2009), sec. 9.1.

[13] "Investigate Use of Lethal Force during Riots," Human Rights Watch news release, October 1, 2009. http://www.hrw.org/en/news/2009/10/01/uganda-troops-killed-unarmed-people-riot-period.

[14] Al-mahdi Ssenkabirwa, Musa Ismail Ladu, and Robert Mwanje "Kabaka Condemns Creation of Chiefdoms," The Daily Monitor, August 25, 2009.

[15] President Museveni had recently voiced support for the Banyala king and the restoration of the Banyala cultural institution, which had been part of the Buganda kingdom previously. This move was thought by some to be evidence of Museveni's election strategy of "divide and rule" – recognizing multiple ethnic leaders to reduce the power and influence of some of the more prominent cultural leaders, such as the kabaka. See Charles Jjuko, "President Museveni backs Banyala Chief," The New Vision, December 14, 2008,

[16] "Investigate Use of Lethal Force during Riots," Human Rights Watch news release, October 1, 2009. http://www.hrw.org/en/news/2009/10/01/uganda-troops-killed-unarmed-people-riot-period.

been held to account for any of the killings during the riots, although a parliamentary investigation into the riots is underway. Victims' families continue to voice demands for justice.[17]

The role of cultural royalty such as the *kabaka* in Uganda has been the source of debate historically and remains controversial. President Milton Obote outlawed all cultural leaders in 1966. Museveni permitted them to return in 1995, allegedly for the purpose of winning political support from the four historical Ugandan kingdoms.[18] The 1995 constitution bars these "cultural leaders" from politics, but they continue to wield influence over their communities, particularly during elections.[19]

The Baganda people are the largest ethnic group in Uganda and a key constituency in the upcoming 2011 elections. Since independence, some Baganda political leaders have argued that the Buganda kingdom should be a federal state within Uganda. There has been long-term controversy over whether President Museveni agreed to a Buganda federal state in exchange for Baganda support during the war that brought him to power.[20] In past elections, the Baganda have generally supported Museveni, but recent events would indicate that this pattern might be shifting. According to the *Daily Monitor* newspaper, "Unless checked, this stand-off could have genuine repercussions on voting patterns in the 2011 polls, or even on national stability."[21]

[17] Human Rights Watch interviews, Kampala, November 9 and 14, 2009.

[18] The four historical kingdoms are Buganda, Bunyoro, Busoga, and Tooro.

[19] Constitution of Uganda, 1995, art. 246.

[20] "I drafted Museveni and Lule Agreement," The Independent, October 6, 2009. "Buganda monarchists … accuse the National Resistance Army rebel leader Museveni of riding on Buganda's back to get to power but later abandoning its interests."

[21] Allen Ssekamatte, "Kayunga Fiasco: How It Could Impact on 2011 polls," The Daily Monitor, September 12, 2009.

V. Legal and Institutional Framework during Elections

The principle of free and fair elections is enshrined in Uganda's constitution.[22] In addition, Uganda has signed and ratified international and regional treaties including the International Covenant on Civil and Political Rights (ICCPR)[23] and the African Charter on Human and Peoples' Rights,[24] which contain broad provisions on the right to democratic elections.

Furthermore, Uganda has agreed to and endorsed the African Union's (AU) Principles Governing Democratic Elections in Africa which set out various principles of democratic elections and the responsibilities of AU states. Under the Principles, states commit to creating the necessary electoral institutions, safeguarding civil liberties during electoral processes, and taking all necessary measures to prevent electoral fraud and other illegal election practices.[25]

Illegal practices and electoral offenses, defined in Uganda's Presidential Elections Act, the Parliamentary Elections Act, and the Electoral Commissions Act, are criminal acts punishable by fines and imprisonment.[26] While some offenses defined in these acts are relatively minor, such as defacing posters, some involve violent acts, such as the offense of "undue influence," defined as making use or threatening to make use of force or violence in order to compel a person to vote or not vote a certain way.[27] Other crimes defined as "electoral offenses" include bribery and obstruction of voters. These are punishable by up to two years in prison and a fine.[28]

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[22] Constitution of Uganda, 1996 art. 1, "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."

[23] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 25. Uganda acceded to the ICCPR on June 21, 2005.

[24] African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 13. Uganda ratified the African Charter in 1986.

[25] Uganda is a member of the African Union, the successor to the Organization of African Unity (OAU), which adopted the Declaration on Principles Governing Democratic Elections in Africa at its 38th Ordinary Session held in Durban, South Africa in 2002. Accessed at http://www.pogar.org/publications/other/elections/declaration-africa-02.pdf

[26] Presidential Elections Act of 2005, parts IX and X; Parliamentary Elections Act of 2005, parts XI and XII; Electoral Commissions Act, secs. 28 and 29. The two offenses defined in the Electoral Commissions Act are buying and selling voter cards and wrongdoing in relation to voter registration. These two offenses do not require the consent of the director of public prosecutions to be brought against an individual.

[27] Parliamentary Elections Act, sec. 80.

[28] Parliamentary Elections Act, sec. 72. The definitions of offenses under the two Elections Acts are nearly identical.

For crimes under the Elections Act to be prosecuted, the director of public prosecutions must give prior consent.[29] In all cases, prosecutions must begin within three months of the alleged offense or "within one month after a court finds, on trial of a petition, that an offense may have been committed."[30] Criminal acts defined in the penal code that take place during an election can be prosecuted under this code.[31] Unlike the limit for electoral offenses, there is no statute of limitations for criminal acts to be prosecuted in Uganda, but such acts are rarely prosecuted after the completion of elections.

Under the constitution, the Electoral Commission is tasked with ensuring free and fair elections, and "to hear and determine election complaints arising before and during polling."[32] In 2006 international donors provided support for the establishment of the first national and district-level complaints desk run by the Electoral Commission. The mandate of the desk and the definition of an "electoral complaint" are not defined in law. In 2006 the complaints desk received at least 2,031 complaints nationwide.[33] Many of those complaints alleged criminal activity, while others involved disputes over campaigning, such as scheduling of campaign events.[34] (See later section.)

According to current laws, all criminal and electoral offenses must be forwarded to police for investigation and enforcement because the electoral commission staff have no powers to carry out arrests. The relationship between the complaints officers and the police is thus vitally important to guaranteeing the right to an effective remedy for election-related crimes and to establishing a solid basis for their prosecution.

Courts have frequently been called upon by candidates to determine the integrity of the electoral process and potentially set aside election results via rulings on electoral petitions. In 2006 the High Court received the presidential petition, 41 parliamentary petitions, and 27 petitions for district chairmen.[35] Electoral petitions have become an integral and highly publicized aspect of elections in Uganda.

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[29] Presidential Elections Act, sec. 80; Parliamentary Elections Act, sec. 87.

[30] Presidential Elections Act, sec. 81; Parliamentary Elections Act, sec. 88.

[31] Penal Code Act of 1950.

[32] Constitution of Uganda, 1995, art. 61.

[33] Uganda Electoral Commission, "Complaints Report: Details of Complaints Recorded by the National and District Complaints Desk," Kampala (on file with Human Rights Watch).

[34] Ibid.

By law, the courts have an important role to play in flagging criminal wrongdoing stemming from elections. In a trial on an electoral petition, if the High Court finds that criminal acts took place, the judge must submit a report to the public prosecutor recommending action, but this has not regularly taken place.[36] Rather, crimes committed during elections are treated as flaws to the electoral process that can be remedied by re-doing the election without punishing the offenders. This has encouraged repeated bouts of criminal activity by candidates and supporters that have gone unaddressed by state institutions tasked with upholding the rule of law.

[36] Presidential Elections Act, sec. 59(9); Parliamentary Elections Act sec. 63(8). According to Director of Public Prosecutions Richard Buteera, he could recall two occasions when the high court had submitted such reports, but he was unsure of the follow-up action on those cases.

VI. Lack of Accountability for Electoral Offenses and Criminal Violence

Impunity for past electoral violence is a major barrier to a free and fair election in Uganda in 2011. Perpetrators from all sides of the political spectrum have very rarely faced justice for crimes committed in past elections. Those responsible for earlier offenses, as well as those contemplating crimes, will feel unconstrained in future elections barring new measures and increased enforcement.

Uganda has made efforts to address grievances about the election process. Election experts have noted that during the 2006 elections, the judiciary made extraordinary efforts to handle elections petitions promptly.[37] This was an important step to address electoral fairness and demonstrated that determining electoral results was considered a priority by the government and by international donors who provided the financial support.[38] However, there was significantly less focus on prosecution of criminal acts committed during elections, which resulted in perpetrators being let off the hook, able to run again, and serve in government, despite the serious accusations against them.

In several instances from both 2001 and 2006, when ruling on an electoral petition, the High Court found a candidate or supporters to have committed electoral offenses or politically motivated violence and the election was subsequently set aside, but the crime was not prosecuted, and the perpetrator was allowed to return to government.

Alleged Criminal Acts by Government Forces and Ruling Party Candidates

The security forces are likely to be "the single largest threat" to the elections process, according to a prominent Ugandan human rights organization.[39] In previous campaigns and elections, local government authorities who are NRM members, as well as security forces, including military, paramilitary troops, and unidentified armed personnel, were the main

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[37] African Peer Review Mechanism, Country Review Report No. 7, Uganda, January 2009, p. 87. Under the constitution, the Supreme Court must resolve presidential election petitions within 30 days of their filing. Constitution of Uganda, 1995, art. 104(3). Under the Parliamentary Act, the High Court must resolve parliamentary election petitions within six months of their filing. Parliamentary Elections Act, sec. 63(9).

[38] Donors put in additional money to address the funding needs of the judicially to address the numerous electoral petitions. Human Rights Watch interview with Simon Osborn, Component Manager, Deepening Democracy Programme, DANIDA, October 26, 2009.

[39] Foundation for Human Rights Initiative, "Electoral Reforms in Uganda 2008," July-December 2008, p. 85.

perpetrators of violence.[40] State investigation and prosecution of these incidents has been uneven.[41]

The only conviction for a serious violent crime during the 2006 election in Uganda was the 2009 prosecution of Lt. Ramadan Magara, a special police constable. Magara was convicted of two counts of manslaughter and sentence to 14 years for killing opposition party supporters on February 15, 2006.[42]

In 2006, Lt. Col. Dick Bugingo, head of military police, slapped Maj. Rubaramira Ruranga, head of election management for the FDC. Lt. Colonel Bugingo was eventually convicted of public assault, replaced in his position, and allegedly "severely reprimanded" by the chief of defence forces, but shortly thereafter reinstated to his former position as commander of military police in 2006.[43] In 2007 Museveni promoted him to a full colonel and retired him.[44]

Fox Odoi, Museveni's former senior legal aide, pointed a gun at FDC supporters in Tororo on election day in 2006. In the Supreme Court ruling on the presidential election petition, Justice Odoki wrote that, "It is clear that Fox Odoi participated in [an] incident which amounted to intimidation."[45] Fox Odoi was taken to court, but eventually the police claimed they had a lack of sufficient evidence to proceed. Although a journalist took photographs of Odoi pointing a gun at three men lying on the ground, the three men later submitted

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[40] Chr. Michelsen Institute, Uganda's 2006 Presidential and Parliamentary Elections, (Norway: CMI, 2006). The local non-governmental organization, NEMGroup also notes other instances of violence, including killings during the 2001 elections in Mbale. See Non-governmental Organization Monitoring Group, "Monitoring the Conduct of Free and Fair Elections in Uganda: Challenges and Experiences of the NEMGroup from 2001," January 2003 (on file with Human Rights Watch).

[41] According to police records from the 2001 elections, published by the Electoral Commission, 8 people were convicted of electoral offenses, including 2 for "impersonation," 2 for forgery, 3 for illegal possession of elections materials, and 1 for procuring a person to vote. Electoral Commission, "Report to Parliament on the 2001 Elections" (on file with Human Rights Watch).

[42] Anne Mugisa and Edward Anyoli, "Uganda: Magara Jailed for 14 Years," The New Vision, June 24, 2009, http://allafrica.com/stories/200906250003.html (accessed October 25, 2009). Alfred Nyongesa and Lydia Mukisa, "Anger as Magara gets 14 years in Jail for Killing FDC Supporters," The Daily Monitor, June 29, 2009, http://allafrica.com/stories/200906241040.html (accessed October 25, 2009). Human rights activists and opposition leaders criticized the 14-year sentence as too lenient, given the gravity of the crimes. Foundation for Human Rights Initiative, "Electoral Reforms in Uganda 2008," July-December 2008; Anne Mugisa and Edward Anyoli, "Uganda: Magara Jailed for 14 Years," The New Vision, June 24, 2009, http://allafrica.com/stories/200906250003.html (accessed October 25, 2009).

[43] Tabu F. Butagira, "I Will Bounce Back, Says Retired Col. Bugingo," The Daily Monitor, October 3, 2007, http://allafrica.com/stories/200710021160.html (accessed October 25, 2009).

[44] Risdel Kasasira, "Gen. Museveni Retires Bugingo from the Army," The Daily Monitor, September 30, 2007, http://allafrica.com/stories/200710010679.html (accessed October 25, 2009).

[45] Rtd. Col. Dr. Kizza Begiye vs. President Yoweri Museveni and the Electoral Commission, Presidential Election Petition No. 1 of 2006. Ruling of Justice Odoki.

affidavits to the court denying that Odoi had pointed a gun at them.[46] Fox Odoi was not removed from his position, but has since taken up another post. According to *The Daily Monitor* newspaper, a fourth person at whom Odoi pointed a gun said that he had been offered money by Odoi to drop charges.[47]

High court rulings on parliamentary election petitions include reference to criminal acts, in some cases by the candidates themselves. For example, in 2006 the High Court set aside the election results in the contest for the parliamentary seat for Bugweri county, Iganga district, between Abdu Katuntu from the Forum for Democratic Change (FDC) and Ali Kirunda Kivejinja from the NRM. Justice Musoke-Kibuuka ruled that the court had reached the conclusion that:

> [T]here was widespread intimidation, violence and torture of [Katuntu's] supporters and agents. An election does not constitute a war of guns and sticks. It is a civic activity.... The totality of the evidence on record supports the conclusion that [Kivejinja] ran his election campaign as if it was a war. He did so to the extent of even establishing or allowing the establishment of a detention room in his home for those he wanted to force into supporting him.[48]

The judge ordered the election to be set aside, and subsequently the challenger, Abdu Katuntu, won the parliamentary seat. No one was ever prosecuted, however, for the wrongdoing during the campaign, and although Kivejinja lost his parliamentary seat, he was appointed minister of internal affairs by President Museveni in January 2009. Kivejinja also retains the role of third deputy prime minister. This appointment is particularly troubling in that the ministry of internal affairs controls the operations of the Uganda Police Force, who are charged with providing security during the 2011 elections.[49]

Other current ministers have run election campaigns marred by serious violence in which the individuals implicated were never investigated let alone prosecuted. In the 2001 contest

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[46] Lominda Afedraru and Lydia Mukisa, "Court Clears Odoi of Assault Charges," The Daily Monitor, July 3, 2006, http://allafrica.com/stories/200607030889.html (accessed October 25, 2009); Simon Kasyate, "Uganda: 3 Men Deny Odoi Tortured Them," The Daily Monitor, March 28, 2006, http://allafrica.com/stories/200603280837.html (accessed October 25, 2009).

[47] Simon Kasyate, "Uganda: 3 Men Deny Odoi Tortured Them," The Daily Monitor, March 28, 2006, http://allafrica.com/stories/200603280837.html (accessed October 25, 2009).

[48] Abdu Katuntu v. Ali Kirunda Kivejinia and The Electoral Commission, Electoral Petition no. 7 of 2006, High Court of Uganda.

[49] The Police Act of 1994, sec. 8.

(under the Movement system) for the parliamentary seat from Kinkizi West, James Garuga Musiniguzi filed an electoral petition disputing that Amama Mbabazi, the former minister of defense, had won the election. Musinguzi offered evidence of violence and intimidation of his supporters by Mbabazi's backers and staff. For instance, Mbabazi's campaign manager, James Kamwesigwa, allegedly shot John Bosco Twinomuhwezi, a Musinguzi supporter, in the eye, seriously injuring him.[50] Judge Egonda-Ntende ruled that the campaign manager, who was also an officer of the Internal Security Organization (ISO), was not in lawful possession of the firearm and was in fact not allowed by law to serve as a campaign manager because of his position in the ISO.[51]

Uganda's High Court set aside the election results. However, with respect to prosecutions, it noted that "in spite of numerous reports to police of cases of assaults, beatings and shootings of [Musinguzi's] agents, by supporters and agents of [Mbabazi], including the shooting of Twinomuhwezi ... no action was taken against those responsible to bring them to justice, lending an air of impunity to those engaged in unleashing violence to [Musinguzi's] supporters and agents."[52] Mbabazi is currently minister of security and secretary general of the ruling party.

Some victims of physical violence and property loss stemming from the 2001 Kinkizi West elections sought relief through the Uganda Human Rights Commission and through civil suits seeking compensation. Twinomuhwezi, who lost his eye as a result of the shooting, sued Mbabazi's campaign manager and the attorney general. The case has been pending in Mbabara High Court since 2001.[53] At least three other civil cases stemming from the Kinkizi West elections have been filed in the Kampala High Court but none have been resolved at the time of writing.[54]

When asked about why a number of cabinet-level ministers had been involved in serious allegations of criminal violence during elections, President Museveni's senior legal advisor, Joy Kabatsi, told Human Rights Watch that "top leaders, like state ministers or cabinet

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[50] James Garuga Musinguzi v. Amama Mbabazi and The Electoral Commission, Electoral Petition no. 5 of 2001, The High Court of Uganda.

[51] The Internal Service Organization is the primary intelligence organization for domestic issues in Uganda. James Garuga Musinguzi v. Amama Mbabazi and The Electoral Commission, Electoral Petition no. 5 of 2001, The High Court of Uganda, p. 82.

[52] James Garuga Musinguzi v. Amama Mbabazi and The Electoral Commission, Electoral Petition no. 5 of 2001, The High Court of Uganda, p. 77. In the case of Twinomuhwezi, Mbabazi's campaign manager does not dispute that he shot Twinomuhwezi; rather in the petition he appears to claim self defense, a defense questioned by the high court in the electoral petition ruling.

[53] Human Rights Watch interview with Richard Mwebembezi, lawyer for Twinomuhwezi, Kampala, October 22, 2009.

[54] Human Rights Watch interview with lawyer, Kampala, October 22, 2009.

ministers, should be chosen for their integrity in leadership. It's important for our future generations to have leaders who are accountable and who are not corrupt."[55]

Impunity for Electoral Offenses Committed by Candidates

High court rulings have found numerous instances of serious electoral offenses committed by candidates or by supporters with the approval and consent of the candidate. For example, both Kivejinja and Mbabazi were found by the High Court to have violated the Parliamentary Elections Act. The judge ruled that Mbabazi personally committed the electoral offense of bribery and of allowing his entourage to carry firearms within one kilometer of the polling station.[56] Kivejinja was found to have committed both an illegal practice and electoral offenses, including "interference with electioneering activities," undue influence, and the illegal use of government resources. All of these are punishable by prison terms and fines under the Parliamentary Electoral Act. Despite inquiries, Human Rights Watch could find no evidence that police or the Directorate of Public Prosecutions has ever seriously investigated these offenses.

[55] Human Rights Watch interview with Joy Kabatsi, Senior Legal Advisor to State House, October 29, 2009.

[56] *James Garuga Musinguzi v. Amama Mbabazi and The Electoral Commission*, Electoral Petition no. 5 of 2001, The High Court of Uganda.

VII. Political and Practical Obstacles to Prosecution

Lawyers, judges, government officials, and police interviewed by Human Rights Watch provided numerous reasons for why serious electoral offenses and criminal acts committed in connection with elections are rarely prosecuted in Uganda.

Some said that the judiciary and the legal community are extremely focused on the resolution of electoral petitions in the post-election period, which diminishes attention to criminal prosecutions and creates limited political will to begin investigations into criminal acts and electoral offenses.[57] Others noted that there is not a focus on holding candidates personally to account for wrongdoing, despite the findings of the courts in electoral petitions. According to one academic, "electoral petitions are ultimately more concerned with the political survival of the politicians than integrity of the electoral process."[58] One current government official told Human Rights Watch that there is an unspoken effort to "balance things" and that judges would set aside election results as a form of punishment but then say, "Let's not worry about the criminal matter and let it go."[59]

Electoral Commission staff and police also said that, in some instances, witnesses and aggrieved parties were harder to track down once elections had been ultimately decided.[60] In 2006 members of the judiciary reported that interest in many complaints filed before election day ceased following the elections, resulting in the suspension of court proceedings due to the withdrawal of the case by complainants.[61]

Lawyers who have filed electoral petitions on behalf of candidates often pointed to the provisions of the Electoral Acts as a barrier to accountability. Because bringing charges under the Electoral Acts requires the sanction of the director of public prosecutions (DPP), who is appointed by the president and approved by parliament, several lawyers said that there would be tremendous reluctance by the DPP to bring charges against anyone very high

[58] Human Rights Watch interview with Sabastiano Rwengabo, Makerere University, Department of Social Science, October 26, 2009.

[58] Human Rights Watch interview with Sabastiano Rwengabo, Makerere University, Department of Social Science, October 26, 2009.

[59] Human Rights Watch interview with government official, October 29, 2009.

[60] Human Rights Watch interview with staff of the Electoral Commission, October 14, 2009, and Police Commissioner Lemmy Twinomugisha, October 20, 2009.

[61] European Union Election Observation Mission, "Presidential and Parliamentary Elections," February 23, 2006, http://ec.europa.eu/external_relations/human_rights/election_observation/uganda/final_report_en.pdf (accessed October 25, 2009), p. 38.

ranking within the ruling party.[62] This was often cited as the main reason why individuals such as Kivejinja and Mbabazi, powerful people from the NRM, have not faced prosecution, despite High Court determinations of wrongdoing during campaigns.[63]

Apparently Politically Motivated Prosecutions during Elections

Human Rights Watch research shows that during the 2006 elections, the government selectively applied laws of sedition, libel, and incitement to violence to harass opposition candidates and disrupt their campaigning.[64] Police and the director of public prosecutions put significant financial and human resources into bringing those charges. Opposition parliamentarians and senior party members faced multiple apparently politically motivated criminal charges.

FDC member Winnie Byanyima and FDC party treasurer Jack Sabiiti were charged on January 24, 2006, with giving false information and criminal libel after they wrote privately to Chief Justice Benjamin Odoki asking him to investigate allegations of bribery of high court judges by Col. Leo Kyanda, then chief of military intelligence. The day the two were brought to the police, President Museveni wrote in *The New Vision* newspaper to say that the letter included a "glaring falsehood, which [is], no doubt, aimed at arousing disaffection and ill will against the person of the President and the democratically elected Movement government.[65]

FDC members of parliament, Ronald Reagan Okumu and Michael Ocula, were charged with murder and later acquitted.[66] On January 9, 2006, the High Court hearing the murder case against these elected officials harshly reprimanded the prosecution, holding, "The evidence

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[62] Human Rights Watch interviews, Kampala, October 15, 16, and 21, 2009.

[63] It should be noted that the standard of evidence in an electoral petition and a criminal case are not the same in Uganda. A petition must be weighed on the probabilities, to the satisfaction of the court. A criminal case must be found beyond a reasonable doubt. This difference notwithstanding, a High Court determination of electoral offenses in an electoral petition should, at a minimum, raise concerns by the institutions constitutionally mandated to investigate crimes – the police and the public prosecutor – and potentially lead serious investigations and some prosecutions.

[64] Human Rights Watch, *Uganda - In Hope and Fear: Uganda's Presidential and Parliamentary Polls*, no. 1, February 2006, http://www.hrw.org/en/reports/2006/02/14/hope-and-fear.

[65] President Museveni, "How can FDC say I bribed judges?" *New Vision*, January 17, 2006.

[66] Solomon Muyita and Lydia Mukisa, "MPs Acquitted of Murder, Besigye Demands Probe," *The Daily Monitor*, January 10, 2005. Other leading opposition parliamentary candidates such as Justice Forum candidate Hussein Kyanjo and Forum for Democratic Change's Betty Kamya were brought "under inquiry" for allegedly inciting violence according to police records. Neither were ultimately charged. In 2008, after winning a seat in parliament, Hussein Kyanjo was charged with sedition. That charge is still pending.

tendered by the prosecution shows clearly that it is a crude and amateur attempt at creative work."[67]

By the end of 2005, presidential contender Besigye was facing three separate prosecutions for treason, terrorism (at one point charged before both the civilian and military court at the same time), and rape.

When acquitting Besigye of rape charges, Judge Katutsi wrote that "the evidence before this court is … monstrous if to ruin the honour of a man who offered himself as a candidate for the highest office of this country."[68] The court focuses much of the ruling on the poor police work, stating that the way "investigations were conducted and carried out is that it was 'crude and amateurish' and betrays the intentions behind this case."[69]

Besigye attempted to bring a private criminal prosecution against the head of the Criminal Investigations Department who allegedly investigated the case for falsification of a register, conspiracy to defeat justice and abduction, but, as is allowed by law, the case was taken over by the public prosecutor, who dropped the charges.[70]

The 2005 criminal charge of treason, for alleged involvement in rebel activity, against Besigye has not been resolved. He is still required to report to police and his passport is still held by the courts as a condition of his bail.[71] If those charges are serious enough to warrant prosecution, the relevant government authorities should address the matter. If that charge remains unresolved and only comes to the fore once campaigning is underway, this will reinforce the notion that this prosecution is politically motivated and only used to destabilize the opposition during elections.

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[67] Solomon Muyita and Lydia Mukisa, "MPs acquitted of murder, Besigye demands probe," *Daily Monitor*, January 10, 2005.

[68] *Col (Rtd) Dr. Kiiza Besigye v. Uganda*, High Court Criminal Session No. 149/2005, High Court, http://allafrica.com/stories/200603080446.html (accessed October 25, 2009).

[69] Ibid.

[70] Human Rights Watch interview with Dr. Kizza Besigye, October 22, 2009. See also Andrew Bagala, "After Magara, What Next?" *The Daily Monitor*, June 28, 2009, http://allafrica.com/stories/200906291014.html (accessed October 25, 2009). Under Uganda's Magistrates Courts Act of 1971, sec. 43, when criminal proceedings have been filed by a person other than a public prosecutor or a police officer, the director of public prosecutions (DPP) may take over and continue the case at any stage or discontinue proceedings. This avenue for accountability has been tried but Human Rights Watch could not find evidence that it had led to a conviction in Uganda's recent history. A delegation of the International Bar Association was told by legal experts in Uganda that it is "common for the DPP to take over private prosecutions in politically sensitive cases; these cases would then reportedly be quashed." See International Bar Association, "Judicial Independence Undermined: A Report on Uganda," September 2007, http://www.judicature.go.ug/Uganda/doc/pdf/3a_Judicial_independence_undermined.pdf (accessed October 25, 2009).

[71] Human Rights Watch interview with Dr. Kizza Besigye, October 22, 2009.

While the objective of these cases may have been to divert attention, resources, and time of the opposition from the campaign, the cases also represent a significant drain of time and resources on the police, public prosecutors, and judges. Given limited resources, these cases may have contributed to a lack of accountability for other, more well-founded, prosecutions.

Lack of Clear Mechanism for Incident Tracking

During the 2006 elections, for the first time, the Electoral Commission had a complaints desk with an officer in each district to receive and record complaints, but there were no laws promulgated to structure their duties and mandate. The Electoral Commission and the complaints desk officers lack any legal power to sanction individuals who commit electoral offenses but they often received complaints from victims.

Unpublished reports documenting the work of the complaints desk indicates that officers were very busy fielding a variety of concerns from the community, but the exact parameters and courses of action remains unclear. Generally, it appears that complaints officers took one of three courses of action when presented with a complaint: either they would arbitrate resolutions through referral to District Election Liaison Committees,[72] refer the matter to Electoral Commission headquarters, or refer electoral offenses to police and then possibly serve as witnesses if subsequent criminal cases proceeded. Clear records of action and the ultimate results of electoral complaints from 2006 are not available. It is unclear what factors were involved in selecting one of the three paths.

District Election Liaison Committees serve as an informal dispute resolution mechanism, and Ugandan law does not contain provisions for their existence. The resolution of certain crimes through arbitration can lead to disparate results and potentially obstruct bringing perpetrators of offenses to account. For example, two parties standing before the District Election Liaison Committee in Adjumani, each accusing the other of bribery, agreed to "put aside" the issue, effectively absolving either party of any guilt through a mutual admission of wrongdoing.[73] In contrast, if the case had been referred to police, both parties could have been prosecuted. In other instances documented by the Complaints desk, a complaint

[72] See generally, Sebastiano Rwengabo, "The Unknown Arbiter: The Uganda Electoral Commission and the Handling of Electoral Complaints During the 2006 Elections," in *Electoral Democracy in Uganda* (Kampala: Fountain Publishers, 2008). District Election Liaison Committees are composed of the Electoral Commission's Returning Officer, Complaints Officer, District Police Commander, chairperson of the District Election Security Committee, and representatives of political parties and independent candidates. CMI, Uganda's 2006 Presidential and Parliamentary Elections, 2006.

[73] Sebastiano Rwengabo, "The Unknown Arbiter: The Uganda Electoral Commission and the Handling of Electoral Complaints During the 2006 Elections," in Electoral Democracy in Uganda (Kampala: Fountain Publishers, 2008), p. 129.

defined as "protest against intimidation" was addressed by a local peace committee and not referred to police for further investigation.[74]

According to the Chairman of the Electoral Commission, Dr. Badru Kiggundu, accountability during elections is a serious challenge. He said that bribery and intimidation are the most frequent problems affecting the outcome of the elections, but that he has limited powers to prevent offenses from taking place or holding candidates to account.[75]

Dr. Kiggundu cited one example in which his agents caught a candidate in 2006 doling out half-kilo bags of sugar to voters at 2 a.m. "We called the police and the police took him in until 4 a.m. until he signed an admission, and registered a bond. The following day he was back at the polling station, and he continued to participate."[76]

Given the significant backlog of cases awaiting adjudication in the Ugandan judicial system, electoral offenses that are unlikely to affect the outcome of the election may be more appropriate for arbitration or mediation than criminal prosecution. Offenses such as defacing a poster, for example, are minor enough to be addressed via arbitration and paying a fine, rather than a full-fledged criminal prosecution. Consideration should be given to de-criminalizing some electoral offenses, and the circumstances in which complaints are referred for criminal prosecution or arbitration should be made clear. Serious crimes, especially those by candidates, such as bribing or intimidating voters should be taken directly to police who should actively pursue the matter in a non-partisan way.

The Electoral Commission does not track cases of electoral offenses or politically motivated crimes after they refer them to the police for investigation. The Electoral Commission's official report to parliament from the 2006 elections, for example, does not indicate how many of the registered complaints led to reports to police. According to Chairman Kiggundu, he cannot tell what transpires after the Commission hands cases over to police.[77] The Commission currently lacks the capacity to track where the case goes or if it leads to a prosecution.

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[74] Uganda Electoral Commission, "Complaints Report: Details of Complaints Recorded by the National and District Complaints Desk," Kampala (on file with Human Rights Watch).

[75] Human Rights Watch interview with Dr. Badru Kiggundu, Chairman, Uganda Electoral Commission, Kampala, October 15, 2009.

[76] Ibid.

[77] Ibid.

Some basic statistics on electoral offenses, arrests, and convictions, which were recorded in the Electoral Commission's 2001 report to parliament, were noticeably absent from the Electoral Commission's 2006 report.[78] This is noteworthy in that 2006 was the first year there was both a formal complaints desk and a specific squad in the police to investigate electoral offenses.[79]

Some experts pointed out it is still not clear if individuals seeking a remedy as victims of criminal wrongdoing, such as intimidation, during an election are required to report their problem to both the complaints desk and police or only one institution.[80] The police themselves can initiate investigations without notifying the Electoral Commission. According to police records from January 30, 2006—several weeks before polling day—the ruling NRM had 135 complaints made against it, the Forum for Democratic Change (FDC) 65 complaints, the Democratic Party (DP) 8, and there were 70 general cases.[81] Despite repeated attempts, Human Rights Watch was unable to secure from police exactly how many cases were referred to the Public Prosecutor, much less how many led to convictions in 2006.

The director of the public prosecutor (DPP) also does not keep clear records for prosecutions and convictions of electoral offenses or criminal violence associated with elections. The DPP's office could point to two cases from 2006 where two individuals were convicted of defacing posters.[82] Human Rights Watch could not find any indication that anyone, other than Lt. Ramadan Magara, was convicted for a violent act stemming from the 2006 elections.

Better tracking of investigations by all parties—the Electoral Commission, Police, and the Office of the Director of Public Prosecutor—would encourage accountability, increase the nonpartisan enforcement of laws, and prevent cases from falling through the cracks during the heightened tension of elections. It would also increase the chance that accountability during the campaign period would serve as a deterrent to other would-be perpetrators on polling day. Legislators should develop clear parameters when electoral offenses may be

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[78] Electoral Commission, "Report on the 2001 General Elections," 2001, pp. 24-25 (noting 474 electoral offenses, 205 arrests, and 13 convictions); Electoral Commission, "Report on the 2005-2006 General Elections," August 2006, http://www.ec.or.ug/docs/REPORT%20ON%20THE%202005-2006.pdf (accessed October 25, 2009),

[79] The police now have a department for "electoral and political offences" which will be mandated to investigate crimes during the campaign.

[80] Human Rights Watch interview with Ugandan election expert, October 22, 2009.

[81] Criminal Investigations Department, "Summary of Election Offenses Reported and Being Handled by Electoral Offenses Squad Country Wide," January 30, 2006 (on file with Human Rights Watch).

[82] Human Rights Watch interview with Jane Okwo, Public Relations Officer for the Directorate for Public Prosecutions, November 3, 2009. There is some indication that charges against various individuals was sanctioned but the DPP's office could not be certain how many prosecutions or convictions had taken place, country-wide, stemming from the 2006 elections.

arbitrated through District Election Liaison Committees instead of being brought to the attention of the police as required by law.

Short Statute of Limitations on Electoral Offenses

There is no statute of limitations in Ugandan law on criminal acts defined in the penal code. However, under the Presidential and Parliamentary Elections Act, prosecution of electoral offenses—acts that include serious threats to electoral integrity such as bribery and intimidation of voters—must occur within either three months of the alleged act or one month following a judicial finding of an offense through the trial of an electoral petition.[83] The short time period curtails the right to an effective remedy for the violation of their rights, as protected under international law,[84] and potentially damages efforts by the state to combat impunity. The police commissioner and the public prosecutor told Human Rights Watch that the three-month limit is a serious impediment to the prosecution of electoral offenses.[85]

Although there are no international legal standards on statutes of limitations (time limits for bringing a prosecution) for electoral offenses,[86] the statutes of other African countries' laws provide some comparative examples of time limits for prosecuting electoral offenses. In comparison with South Africa, Malawi, Tanzania, Kenya, and Zambia, Uganda's statute of limitations on electoral offenses is the shortest by a significant margin. Human Rights Watch is not aware of any African country with a shorter statute of limitations for electoral offenses.

In South Africa,[87] Malawi,[88] Tanzania,[89] and Kenya,[90] electoral offenses are defined in the countries' election laws, and the national criminal procedure codes apply to their criminal

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[83] Parliamentary Elections Act, Sec. 88; Presidential Elections Act, Sec. 81. The text of the sections in both acts is identical: "Proceedings against a person in respect of any offense under this Act shall be commenced within three months after the offense which is alleged to have been committed or within one month after a court finds, on trial of a petition, that an offense may have been committed."

[84] ICCPR, art. 2(3).

[85] Human Rights Watch interview Police Commissioner Lemmy Twinomugisha, October 21, 2009 and Director of Public Prosecutions, Richard Buteera, October 28, 2009.

[86] See, e.g. Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights, "Resolving Election Disputes," 2000, p. 25. The UN Center for Human Rights sets out general recommendations that prosecutions, procedures, and penalties with respect to electoral offenses respect international standards for human rights in the administration of justice and that civil and criminal liability apply to acts of "misfeasance, nonfeasance and malfeasance by election officials." Center for Human Rights, *Human Rights and Elections, A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 1994, paras. 118-119.

[87] South Africa Electoral Act 73 of 1998, secs. 87-118; Human Rights Watch telephone interview with South African Electoral Commission legal department, October 20, 2009.

[88] Malawi Parliamentary and Presidential Elections Act 1993, sec. 115.

prosecution. The South African criminal procedure act sets the time limit to commence criminal proceedings generally at 20 years after the alleged act.[91] Malawi,[92] Tanzania,[93] and Kenya[94] have no statutes of limitation stipulating the time within which proceedings must begin for crimes generally or for electoral offenses specifically, meaning that criminal prosecution of electoral offenses can be brought at any time after the commission of the alleged act.

Zambia, which does create a specific provision on a statute of limitations on electoral offenses in its election law, states that criminal charges with relation to an electoral offense must be filed within one year from the date of commission of the alleged act.[95]

The statute of limitation in Ugandan law may have been written with the idea of expediency in relation to the electoral process in mind. However, electoral offenses should be treated as a matter separate from civil disputes concerning elections results or vote tallying, for which expediency is of appropriately heightened concern.

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[89] Tanzania Elections Act of 1985, secs. 88-107.

[90] Kenya Election Offenses Act of 1958.

[91] South Africa Criminal Procedure Act, No. 51 of 1977, Sec. 18.

[92] In Malawi, electoral offenses are prosecuted as criminal matters and must be dealt with by the director of public officials. There is no stipulated timeframe within which prosecution must begin. Human Rights Watch telephone interview with Malawi Electoral Commission legal department, October 20, 2009.

[93] Human Rights Watch telephone interview with Tanzania Electoral Commission legal department, October 20, 2009. "Any magistrate may at any time arrest or issue a warrant directing the arrest of any person whom he reasonably believes has committed an offense within the local limits of his jurisdiction." Tanzania Criminal Procedure Act, sec. 17.

[94] Human Rights Watch telephone interview with Kenya Electoral Commission legal department, October 21, 2009.

[95] Zambia Electoral Act 12 of 2005, sec. 129(5). The one year limit in Zambia is the same limit set in the United Kingdom, but under a recent UK amendment, the court may grant an extension of one year, if it is satisfied that there are exceptional circumstances justifying the grant of the application, and that there has been no undue delay in the investigation of the offense. See UK Electoral Administration Act 2006, sec. 70.

VIII. Role of Uganda's Foreign Partners in Supporting Accountability

The international community should play a strong role in holding the Ugandan government to commitments it has made to good governance, multiparty democracy, and respect for human rights. All governments should hold Uganda to its international legal obligations, including under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, to ensure the right of its people to participate freely in choosing their government.[96]

Elections in Uganda are heavily supported by the international donor community and the support will significantly increase for the 2011 elections. For the 2006 elections, Uganda received 5.3 million Euros (then, US$6.3 million) from the election basket fund, managed by the Danish development agency, DANIDA.[97] For 2011, the total package from the Deepening Democracy Program, managed by DANIDA's good governance program, totals at least US$19 million.[98] This includes support to various stakeholders in the elections, including the Electoral Commission, political parties, election observers, and civil society groups.

The United States, via USAID, currently has a budget of approximately US$4.5 million in democracy and governance programming per year in Uganda. These programs work with political parties, civil society, parliament, as well as local government, providing technical assistance and training. A small portion of this budget is dedicated specifically to activities related to the 2011 election process.[99]

A number of foreign diplomats in Uganda told Human Rights Watch that they expected the 2011 elections to suffer from bribery, intimidation and some vote rigging, but seemed unwilling to press their own governments to use assistance to address these problems.[100] Electoral turmoil, as the 2007 election violence in Kenya, Uganda's neighbor, demonstrated,

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[96] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Uganda on June 21, 2005. The African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Uganda in 1986.

[97] Human Rights Watch interview with Simon Osborn, Election Technical Adviser, Kampala, January 25, 2006.

[98] Human Rights Watch interview with Simon Osborn, Component Manager, Deepening Democracy Programme, DANIDA, October 26, 2009.

[99] Response to public request for information from USAID, October 29, 2009.

[100] Human Rights Watch interviews with diplomats, September 22 and October 13, 14 and 22, 2009.

as well as the Ugandan government's violent response to the September 2009 riots, shows the urgent need to address electoral problems, particularly the persistence of impunity.[101]

[101] See Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance*, vol. 20, no. 1(A), March 2008, http://www.hrw.org/node/62314, p. 68.

IX. Acknowledgements

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Preparing for the Polls

Improving Accountability for Electoral Violence in Uganda

In early 2011 Ugandans will go to the polls to vote for president and members of parliament. The 2011 elections are crucial for the promotion and protection of the human rights of all Ugandans. Uganda's democracy is fragile; the upcoming elections will be only the second multiparty elections in Uganda's history, and the country has not had a peaceful, constitutional transfer of power since independence in 1962.

National elections in 2006 and 2001 were marred by politically motivated violence, intimidation, and bribery of voters, virtually none of which were either investigated or prosecuted, a failure that reinforces a culture of impunity. Lack of accountability for election-related violations undermines democracy and threatens human rights. Preparing for the Polls: Improving Accountability for Electoral Violence in Uganda documents various incidents of election-related violence from previous elections where perpetrators were never held to account as well as apparently politically motivated prosecutions of members of the opposition.

Uganda's Parliament is considering changes in legislation that could improve the conduct of the elections and ensure that they are held in accordance with international standards. Human Rights Watch calls on Parliament to ensure legislative changes increase the possibility of justice for election-related violence. The government should investigate and prosecute incidents that can ultimately deny voters their rights to free expression and association and to freely elect their representatives. Human Rights Watch also calls on the government to enforce all election and criminal laws equally in relation to all parties.

International donors, particularly those that fund Uganda's elections, should urge the government to protect the civil and political rights of Ugandans in the period leading up to the vote, during the vote itself, and in its aftermath.

Ugandan police face supporters of opposition presidential candidate Kizza Besigye on February 25, 2006 after dispersing them with live rounds and teargas outside his Forum for Democratic Change headquarters in western Kampala.