



# **AVOIDING ELECTION VIOLENCE: WHAT ARE THE PROSPECTS FOR UGANDA**

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## **A Lecture in Memory of Benedicto Kiwanuka**

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### **Introduction**

We are gathered here in memory of a great person. We remember Benedicto Kiwanuka not so much for his personal achievements although they are very significant. He led the Democratic Party to election victory twice under very challenging circumstances. He was the first Prime Minister of Uganda, and, Ugandan Chief Justice. We remember him more for his values. He stood for the equality of humans and the equal participation of all in public affairs. He fought for democracy, peace and stability. He so much treasured these values that his stand was misinterpreted as a rejection of his roots as a Muganda. The leadership in Buganda whose entrenched interests were threatened by democracy conjured up an image of a disloyal and ungrateful Muganda to be fought at all costs.

Faced with the reality of popular support for Kiwanuka in defence of democracy, the leadership resorted to rigging and manipulating electoral violence during the 1961/1962 elections. Despite the strength of numbers, Kiwanuka could not countenance the possibility of inciting resistance to the terror unleashed upon supporters of his cause. It is therefore a befitting occasion for a dialogue on how to not to development the dialogue?

### **The Importance of Peace and Stability**

The States in the Eastern African region, Uganda included have had lofty plans for economic growth. The plans are currently driven by ideals of regional integration to create a big single market first under the East African Community and, subsequently through a merger with the COMESA and SADC markets. In Uganda, the leadership has toyed with a number of economic initiatives, whose impact is a matter for debate. What needs to be noted is that however noble, plans for economic growth do not lead to development, unless peace and stability prevails. It is conditions of stability that ensure the rights and freedoms to enable equitable access to political and economic opportunities. Democracy, the base upon which rights and freedoms are anchored is central to development.

Uganda has gone through various shades of instability since independence. In 1966, democracy was the sacrificial lamb to cleanse the alleged sins of tribalism and disunity.<sup>1</sup> Chaos, anarchy, degradation and disunity has been the result since then. Periods of massive loss of lives still sound in the mind – hence the concern over electoral processes. An election is an occasion where grievances can coalesce and trigger violence. Is it a well-founded concern?

## **The Reality of Election Violence**

What is election violence? There seems to be consensus among observers that violence is not restricted to beatings, killings and displacements. It includes threats, perpetuation of terror, and denial of services. Any acts of coercion, intimidation, or physical harm aimed at affecting the electoral process constitutes electoral violence. Violence could be psychological, as when in 1996, the people were crudely warned as to the possibility of returning to “bad days of the Obote error.” The objective of the violence could be to delay, disrupt, or derail the process. It could also be to affect the results. The main trigger of electoral violence is failure to play by the rules. But in reality, violence already simmers in the ambers of existing social conflict.

It is recorded that in Africa 19 to 25% of all electoral processes have experienced mid to high level violence.<sup>2</sup> Another study notes that in the last four decades, 80% of elections in Sub-Saharan Africa have suffered from some form of violence, bribery, intimidation or inequitable government interference.<sup>3</sup> Turning to our region, Burundi recently underwent pre-election violence in which lives were lost. The post-election situation is not encouraging. The explanation for the violence in Burundi is beyond a feud over violation of the presidential term limit rule. Grievances over economic stagnation and inequitable access to resources are at the fore, rather than the acclaimed Hutu-Tutsi antagonism. It is in fact the intra Hutu rivalry developed among the combatant groups of ex rebels that was an ethnic factor.<sup>4</sup>

The near collapse of the Kenya State in the aftermath of the 2007 election might have taught lasting lessons. But due to the fact that the underlying causes remain to be addressed, Kenya is still vulnerable. The underlying causes were not only ethnic grievances due to marginalisation. The dominant ethnic group of the Kikuyu had resisted the demand for devolution of powers under a new constitution, which the minority groups perceived to be a solution to uneven growth.<sup>5</sup> Ethnic antagonism

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<sup>1</sup> Ali A. Mazrui, “Constitutional Change and Cultural Engineering Africa’s search for New Directions” in Oloka Onyango ed, in *Constitutional In Africa* (2001 Fountain Publishers ) pp 18 and 36.

<sup>2</sup> Dorina Bekoe, “Trends in Electoral Violence in Sub-Saharan Africa (2010) 13 PEACE BRIEF, United Nations Institute for Peace.

<sup>3</sup> Bishop S and Hoeffler A, “ Free and Fair Elections – A New Data Base (2014) CSAE Working Paper 4.

<sup>4</sup> Andrea Colombo et al, “From Rebellion to Electoral Violence – Evidence from Burundi. [www.oliviadaoust.com/JMP.ODAOUST-From-Rebellion-To-Electoral-Violence](http://www.oliviadaoust.com/JMP.ODAOUST-From-Rebellion-To-Electoral-Violence).

<sup>5</sup> Deacon and Gutierrez, “Triggers And Characteristics of the 2007 Kenya Electoral Violence (2013) 40(4) World Development pp 701-744. See also

was fuelled by inter-ethnic land disputes.<sup>6</sup> The situation is not assisted by the fact that so far, at each election breeds new ethno-based alliances which can be easily exploited to trigger violence.

Rwanda also remains vulnerable and could relapse into violent ethnic antagonism were the strong hand of the current regime to relax grip. This explains why the majority would rather suffer an extra term for, or even perpetual eligibility of President Kagame to stand for office if that is the best way to avoid chaos. Tanzania could be the only State that might go through a violent free election. But there is an emerging risk factor; the one-party syndrome is waning and the CCM regime faces a threat of winning with small margins, or even losing. Moreover, the Zanzibar question cannot be shelved forever. In the past, it has been in Zanzibar that election violence has led to loss of lives. Zanzibar nationalism had sought accommodation in the federalism that is proposed by the draft constitution, which, CCM is not prepared to accept - hence a grievance that could trigger violence.

Uganda is not a stranger to election violence. In the 1961/1962 was mostly in Buganda. After 1962, the next elections were held in 1980. These were held under conditions of insecurity after the anti-Amin war. By all standards the 1980 election cannot be described as free or fair. Some candidates were forcefully barred from nomination. In many constituencies, candidate's agents were prevented from guarding the vote. The tallying and declaration of results was interfered with by the government. The subsequent elections of 1996 to 2011 have all left question marks. The 2001 and 2006 presidential elections were reviewed by the Supreme Court which found that their organisation did not comply with the law in many have taken place in many constituencies.

### **Some Risk Factors of Electoral Violence as they Apply to Uganda**

In his judgement of *Election Petition 1 of 2006, Col (Rtd) Dr. Besigye* Chief Justice Odoki, elaborated on the meaning of free and fair elections in the following words:

*" To ensure that elections are free and fair, there should be sufficient time given for all stages of the elections, nominations, campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for election, and citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officials. There must be a levelling of the ground so that incumbents or Government Ministers and officials do not have an unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence or anything intended to subvert the will of the people. The election procedures should guarantee the secrecy of the ballot, the accuracy of counting, and the announcement of results in a timely manner. Election law and guidelines for those participating in elections should be made and published in good time.*

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<sup>6</sup>Takashi Yamano et al, "Haki Yetu (It's Our Right): Determinants of Post-Election Violence in Kenya (2010) GRIPS Discussion Paper 1-20, A paper for the National Graduate Institute for Policy Studies, Tokyo, Japan. Sourced at [www.grips.ac.jp/r.centre/wp-Content/uploads/10-20pdf](http://www.grips.ac.jp/r.centre/wp-Content/uploads/10-20pdf).

*Fairness and transparency must be adhered to in all stages of the electoral process. Those who commit electoral offences should be subjected to severe sanctions..”*

There has been a lot of agitation over reforms of the elections laws. Opposition parties and civil society have done commendable work of consultation towards a comprehensive citizen’s compact on electoral reforms. But as far as the cardinal decree of the obligation to have regular free and fair elections being central to the right to participate, the legal frame work is not lacking. At international level, it is the *Universal Declaration of Rights 1948* and the *International Covenant on Civil and Political Rights*<sup>7</sup> imposing on the States such obligations. At the continental level, there exist a number of Instruments such as the *African Charter on Human and Peoples Rights* which calls for free and fair elections.<sup>8</sup> Regionally, we have the *Treaty For the Establishment of the East African Community*. One of the fundamental principles under the Treaty is “good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights...”.<sup>9</sup> The right to vote is guaranteed by the constitution of Uganda<sup>10</sup> which also requires the holding of regular, free and fair elections.<sup>11</sup> The basic election laws are fairly adequate.<sup>12</sup> As far as Uganda is concerned, the risk factors for election violence derive from failure to adhere to the pre-conditions for free and fair elections as elaborated by Chief Justice Odoki. What are the signs?

## **1. Electoral Environment**

Is sufficient time being allotted to all stages of the election? Already, the declared dates of nomination of candidates have been moved forward. The result could be less time for campaigns. Candidates should be guaranteed their full rights to stand, which includes free consultation, and soliciting for votes, the right to unhindered movement, campaigns plus reasonable access to the print and electronic media. These rights are already threatened despite the laws guarantying them. It is well known that an aspiring presidential candidate was prevented from consulting towards a decision to stand for election.<sup>13</sup> Laws such as the *Public Order and Management Act* stand in constant terrorom over serious challengers. Intimidation of voters was cited in the 2001 and 2006 elections. It is beginning to rear its head in the form of training terrorist gangs. It has also been used in a more subtle form of the President warning voters not to keep on making the same mistakes of voting opposition candidates, or else suffer the consequences. The media is substantially

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<sup>7</sup> Unrural Declaral

<sup>8</sup> Banjul Charter 1981, Art.13(4)

<sup>9</sup> Article 6(d)

<sup>10</sup>Article 59 (1)

<sup>11</sup>Article 61 (1) (a)

<sup>12</sup> The Electoral Commission Act.

The Presidential Act

The Parliamentary Elections Act.

<sup>13</sup> The news headlines beared I will stop Mbabazi

under the control of the government, the grantor of licenses and other benefits of survival.

## **2. Management of Elections**

The independence and capacity of the Electoral Commission to manage free and fair elections has been brought under challenge in the past.<sup>14</sup> The public has lost confidence in the impartiality of the Commission. To make it attractive the government has clothed it with a new jacket of "Independent." The Commission is not assisting in shading the image. For example, in the past it has complained of late enactment of electoral laws which hampered its work. Now it is mute. It remains silent when Government usurps its role of demarcating constituencies<sup>15</sup> and within hardly six months of an election. It has now realigned part of the election calendar in response to the ruling party's lack of preparedness. Let it not be forgotten that the Commission was ready to accept the government/police's interpretation of consultation as exclusive of outside public gatherings. All this has perpetuated the perception of a partial Commission and creates a risk factor for rejection of the results and for violence.

## **3. Equality of Treatment**

In the presidential contest, the power of incumbency is wantonly displayed. The President, a declared candidate is traversing the country with an implicit message that he is the inevitable choice. All the services that any government must provide are paraded as the type of goodies that will continue to flow only if the incumbent is chosen for further terms in office. Of course the expected retort is that the President is merely performing his duties, perhaps with a pronounced intensity for the season. Despite the free reign for the President which accords he a head start, the police continues to harass the other candidates out of their freedom to meet supporters. The law demarcating a fixed duration for "official" campaigns is in effect a way ensuring that the ground is not level.

## **4. Transparency**

Justice Odoki referred to transparency as one of the elements of a free and fair election. The alteration of the election calendar was not done in transparent manner. The key stakeholders were not consulted, and, the changes were not rationalised. The amendments to the election laws were rushed through Parliament with very suspect intentions. It is not surprising that speculation is rife over the intention of incumbent office holders to raise nomination fees so as to minimize competition. What explanation is given for shifting goalposts for presidential candidates that had already paid the nomination fee? New constituencies arising out of the recent creation of districts are still shrouded in mystery. The voters register was updated, but it is still unclear whether the national identity card will be accepted for voting. This lack of transparency poses a risk of rejection of the results.

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<sup>14</sup> The Supreme Court in both Presidential petitions condemned the Electoral Commission for having failed in its duties of satisfactorily managing a presidential election.

<sup>15</sup> Under Article 63 of the Constitution

## **5. The Security Forces in Elections**

It cannot be denied that the police have ably demonstrated its partiality in the entire process so far. Even before the election season, its readiness to pounce at anything resembling an opposition gathering or any assembly suspected to have a political message was evident. Well knowing that it has no role in prohibiting peaceful assemblies, the police all the same have rendered politicians almost impotent in consulting their supporters. The police's peace role is in jeopardy and will remain suspect through the election period. It is needless to say that if the police or any other security force (as they have done before ) come out armed for combat under the guise of keeping the peace, the credibility of the results will be at risk. This is because of the public perception about the armed forces. If they are out in combat mode, one had better keep indoors, or else, take courage to go and vote "wisely."

One opinion is that since the UPDF is specially represented in parliament, soldiers should not participate in the general election. The opinion is a reaction to allegations of undue influence of voters at polling centres sited at or near army barracks. It would be unfair and unconstitutional to deny UPDF personnel a vote. In the interest of transparency, soldiers should move out of the barracks in civilian attire and vote at the nearest polling stations.

### **What Needs to be Done**

In short, we should all stick to the rules for a free and fair election. Short of that, violence is not a remote possibility. The non-vote factors that could trigger violence are abundant. Poverty, the perception of uneven dispersal of resources, the ever rising cost of living, unemployment, deprivation amidst plenty in urban settings, apparent apathy to people's plight by leaders who keep bettering only their lot, historical grievances over devolution of powers, plus land grabbing, to name a few. Unfortunately, it is now too late to address these grievances. They will not ignite the fire if there is hope of a committed leadership being returned by free and fair elections.

It is difficult to make prescriptions to address violence that has occurred. It is perhaps easier to suggest what should be avoided. Sharing of power is not a solution. It did not work in Kenya post or in Zimbabwe. Basically, sharing the loot simply legitimises the thief. If it is recognised that the State is at risk of collapse, then the best option is to sit down in a national convention and map out a new future.

But to minimize the incidence, a suggestion or two can be made well knowing that similar efforts have so far not borne fruit. One is constant dialogue amongst the players. It is well known that the inter-party forum has not worked, but it is worth the thought. The other is intensive sensitization programmes. The government should refrain from interfering with facilitators such as civil society. Thirdly, There should be credible and effective established dispute resolution mechanisms at all conflict centers e.g. at party level, at polling level and at Electoral Commission level.

## What About Peaceful Judicial Resolution

Courts are the normal avenues for resolving election disputes. Indeed the courts in Uganda have handled election disputes in a commendable manner. There is however need for improvement with respect to the speed at which election petitions are disposed of. For judicial resolution to be effective, people must have confidence in the court system. In Kenya the losers in the 2007 election flatly rejected the Electoral Commission's advice to take court action. Five new judges had been appointed a few days to the election sending signals as to the partiality of election panels.

As far as presidential election petitions are concerned, the current debate is whether it is worth resorting to court. Candidate Besigye understandably declined to have a third round in court when he was declared the looser in 2011. He can hardly be blamed. In his petition of 2006, the court set an almost insurmountable standard of proving that something went wrong. Under the *Presidential Election Act*<sup>16</sup> an election may be annulled if the ground for the annulment "is proved to the satisfaction of the court." Referring to the section, the late Justice Mulenga concluded that the standard of proof is that which leaves no reasonable doubt in the court's mind, because a court is not satisfied that a matter is proved if it retains a reasonable doubt.

High as it is, proof beyond a reasonable doubt becomes even more onerous when the complainant has to prove that the irregularities he has proved to have occurred "affected the results in a substantial manner." According to the majority of the judges that presided over the petition, "substantial manner" must translate into numbers of votes, because, the petitioner must show that the winning candidate wrongly secured a substantial number of votes, and, the unsuccessful candidate wrongfully lost a substantial number of votes. But this calculus loses validity if what is proved is substantial disenfranchisement or intimidation.<sup>17</sup> Time should soon come when the court re-examines its stand so that the substantial effect is determined in the context of volume of transgressions rather than mere numbers of votes.

## Conclusion

The signals so far are that the current electoral is susceptible to challenge as not free and fair. There is however still room for all players to stick to the established rules. If this is not done, disputes that can lead to violence can arise during or after the election. There is an abundance of non-vote factors that can trigger or escalate violence.

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<sup>16</sup> S. 59 (6)

<sup>17</sup> See particularly the judgments of Mulenga and Karokora in Supreme Court Election Petition 1 of 2006 Col.(Rtd) Besigye Kizza v. Museveni and Another.