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Uganda: Raids, arrests stifling political opposition leader's ability to legally challenge election results

Restrictions by the Ugandan government on freedoms of expression, association, peaceful assembly and movement targeting political opposition party, the Forum for Democratic Change (FDC), are stifling the party's ability to legally challenge results from the country's recent general elections.

Uganda held presidential and parliamentary elections on 18 February 2016. Under Uganda's Presidential Elections Act, candidates wishing to challenge the results have 10 days to prepare and file an electoral petition with the Supreme Court. In a tense post-electoral environment, the Ugandan government and security forces must ensure total respect for civil and political rights, including the rights to freedom of expression, association, and peaceful assembly, and to the right to participate in political affairs.

On 20 February, Uganda's Electoral Commission declared that incumbent President Yoweri Museveni of the National Resistance Movement (NRM) had won the elections, with 60.75% of the vote. Retired Colonel Dr. Kizza Besigye, presidential candidate for the FDC, who was under house arrest at the time, secured 35.37% of the vote while Independent candidate, former prime minister, Amama Mbabazi, polled 1.43%. Amama Mbabazi publicly stated that he considered the elections to be flawed.

Arbitrary detention and violations of the right to freedom of expression, association and movement of Dr. Kizza Besigye

In a televised press conference from his home on 21 February, Besigye rejected the outcome of the presidential elections stating that he reserved the right to petition the Supreme Court. He added that "we [the FDC] therefore need, and are entitled to assemble evidence that can make us decide to petition or otherwise". Besigye also announced that he intended to visit the Electoral Commission offices the following morning, and called on his supporters to walk with him. The police, in response, issued a statement to the effect that any attempt to walk with his supporters to the Electoral Commission would be unlawful because Besigye had not notified them of his intentions under the Public Order Management Act (POMA), and that any procession would violate the rights of children returning to school.

The following morning, shortly after 9am, Besigye was arrested by Field Force officers from the Ugandan police, as he attempted to leave his home, where he had been detained without charge since 19 February. At the time of his arrest, around 40 people, mainly Ugandan and international journalists were peacefully gathered outside his home. Amnesty International's researcher was there at the time and saw a police officer pepper spray Issac Kasamani, a photojournalist, in his eyes without any evident provocation. Besigye was taken to Naggalama police station, where he was detained for several hours, before being returned to his home by police.

Besigye, like all Ugandans, has the right to freedom of movement, and to freedom of peaceful assembly. In addition to Uganda's regional and international human rights obligations which are binding, Article 29(1)(d) of Uganda's Constitution guarantees the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition. Article 29(2)(a) guarantees Ugandans the right to move freely throughout Uganda.

The POMA, which is subject to a Constitutional Court challenge lodged in December 2013, is inconsistent and incompatible with the right to freedom of assembly guaranteed under Uganda's Constitution; Article 21 of the International Covenant on Civil and Political Rights (ICCPR), and Article 11 of the African Charter on Human and Peoples' Rights (African Charter). Uganda is bound by these human rights instruments which among other obligations, require the police to facilitate freedom of

peaceful assembly.

Restrictions on Besigye's freedom of movement continue. He was arrested again attempting to leave his home on 23, 24 and 25 February. On 23 and 24 February, he was detained at Naggalama police station, and on 25 February at Kira Road police station, before being returned home in the evening to spend the night under house arrest. Besigye's house arrest since 19 February has no legal basis under Ugandan law, amounts to arbitrary detention, and violates rights to freedom of expression, association, and movement.

In an official statement released online on 24 February, the Ugandan police clarified its position regarding Besigye's arrest. They explained that Besigye was held under "preventive arrest" after calling for his supporters to accompany him to the Electoral Commission. In that statement, the police accuse Besigye of "utterances and activities that amount to incitement to violence and defiance of the law".

The declarations made by Besigye that Amnesty International has reviewed do not reflect an incitement to violence.

On 21 February, Besigye stated to the media:

I will be going to the Electoral Commission tomorrow, in the morning. By 9am, I want to be at the Electoral Commission to demand a copy of what they have published as results, and since some of our documents were confiscated, I will also be demanding copies of what they have [...], that we contest. And so, all our people should know these steps that we are taking. I invite all our leaders and people who take interest in this process to come with me to the Electoral Commission tomorrow and to all the other places we intend to visit, in an attempt to assemble what we require to establish the basis for our further actions. [...] This [Uganda] is our country. We must have rights in our country. We must be treated with dignity in our country. And if the regime continues to restrict, to detain me in my home, illegal as it is, I call upon all of you, citizens, to protest this.

In a separate written statement released by Besigye via Twitter on 21 February entitled "My Message to the Youth of Uganda: Claim Your Country! Claim Your Future!", he urged his supporters to join him to walk to the Electoral Commission, stating that "we will walk peacefully".

The right to freedom of expression is protected under Article 29 of Uganda's Constitution, Article 19 of the ICCPR and Article 9 of the African Charter.

The Ugandan police also claim in the 24 February statement that Besigye is not under house arrest, that he has "unlimited access to his lawyers, family, and party officials", and that he is not being hindered from preparing for an FDC legal challenge of the presidential election results. His lawyer, Ernest Kalibbala, told Amnesty International that Besigye's legal team has faced arbitrary demands that have complicated access to their client at home, and that his inability to visit their offices is affecting their ability to represent him given the nature of his case.

Amnesty International documented in its December 2015 report, *"We Come in and Disperse Them": Violations of the Right to Freedom of Assembly by the Ugandan Police*, that under section 24 (1) of the Police Act 1994, powers of "preventive arrest" can only be invoked, under Ugandan domestic law, in extremely narrowly prescribed circumstances where a police officer has reasonable cause to believe it is necessary to prevent a person from causing physical injury to himself or herself or to any other person; from suffering physical injury; from causing loss or damage to property; from committing an offence against public decency in a public place; from causing unlawful obstruction on a highway; or from inflicting harm or undue suffering to a child or other vulnerable person. Besigye has not been brought before a court, as required under international legal standards. The United Nations Human Rights Committee has commented that where preventive detention is used for reasons of public security, "it must not be arbitrary, and must be based on grounds and procedures established by law, information of the reasons must be given, and court control of the detention must be available as well as compensation in the case of a breach".

In the six days since the presidential election results were announced, impermissible restrictions on Besigye's freedom of movement, and his freedom to engage with staff members, supporters, and volunteers from the FDC, have inhibited their ability to prepare an electoral petition.

Arbitrary raids on FDC headquarters and other arrests

Raids on the FDC headquarters and the harassment and arrests of other FDC leaders have also hampered the ability of the party to meet and gather evidence to challenge election results in court.

On 19 February, as voting continued across Kampala due to delays the previous day, Field Force police officers, accompanied by military police units, stormed the FDC's compound at Najjanankumbi in Kampala. At around 1pm, Amnesty International's researcher witnessed military police units briefly blocking access along Entebbe Road to the FDC offices. Eight witnesses that Amnesty International spoke to separately at the scene, mainly local residents and drivers, described how the police fired tear gas canisters at crowds gathering outside the compound shortly before 1pm. A low-flying helicopter circled over the FDC compound. Witnesses interviewed by Amnesty International said that Field Force officers were firing at crowds gathered outside the FDC compound. Television footage of the incident confirmed the eye witness accounts. Amnesty International has been unable to independently verify whether these were rubber bullets or live ammunition.

Police entered the FDC compound and began removing people. Several senior FDC members, including Besigye, were arrested. Besigye was transported to Naggalama police station before being returned home under house arrest.

The police's use of force was excessive and unlawful. Some protesters assembled outside the FDC compound threw projectiles, including stones, at police officers. However, based on Amnesty International's direct observation of the scene, along with multiple independent witness accounts from individuals both inside and outside the FDC compound, this occurred in response to the police's use of excessive force, including tear gas.

According to a statement later released by Retired Major General Mugisha Muntu, the FDC party president, "party leaders of the Forum for Democratic Change (FDC) were holding a meeting at the Party Headquarters in preparation for a press conference." There is no lawful basis for disrupting a private meeting of a political party, including under the POMA. Specifically, section 4(2)(e) of the POMA stipulates that it does not apply to a "meeting of the organs of a political party".

On 22 February, police forced entry again to the FDC headquarters. Five people, including Harold Kaija, the FDC's Deputy Secretary General, were arrested. Amnesty International interviewed four of those arrested. They said that they were driven in a private vehicle to Katwe police station, where they were detained for around five hours. All five of them had their phones, and one iPad confiscated. According to their police bond forms, seen by Amnesty International, all were charged with "inciting violence", and are required to report to the police on 29 February. They were able to collect their phones from Katwe police station late in the afternoon of 23 February. Those interviewed have expressed concern that contacts and information may have been accessed from their phones.

The government's sustained targeting of an aggrieved presidential candidate, and political opposition party officials during the time specifically allocated to allow aggrieved candidates to challenge election results not only inhibits their ability to engage with a legal process, but also exacerbates tensions around the election period. As the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has stated, it is in the interests of the state that disagreements and differences be peacefully and publicly expressed, to avoid recourse to other means of dissent, including violence.

Background on the 2016 elections

Uganda's elections took place amidst a four day, government-ordered social media shutdown. From the early hours of 18 February to 21 February, the Uganda Communications Commission (UCC) directed Uganda's main communications providers to block access to social media platforms. According to the Executive Director of the UCC, this was for "national security" reasons, which have not been defined. This constituted a violation of Ugandans' fundamental rights to freedom of expression, and to seek and receive information. The European Union (EU) Election Observation Mission noted in its interim report that the blockade "unreasonably constrained freedom of expression and access to information".

National and international election observation missions have been critical of the human rights context in which Uganda's 2016 elections took place. In its interim statement, the Commonwealth Observer Group found that "practical restrictions on basic freedoms of assembly and movement affected the fairness of the campaign". They noted "government controls, pressure from party officials, proprietorial influence, intimidation and, in some cases, acts of violence" against journalists.