

ELECTORAL NEUTRALITY AND THE INCUMBENCY PARADOX: Executive Power, Appointment Authority, and the Subversion of Political Rights in Uganda

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Abstract

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Electoral neutrality is frequently treated as an administrative or procedural concern, reducible to polling-day conduct and the technical competence of electoral management bodies. This paper rejects that narrow framing and instead conceptualizes electoral neutrality as a structural and constitutional question grounded in power, institutional design, and human rights. Using Uganda as a case study, and engaging constitutional provisions, electoral legislation, international and regional human rights treaties, and Supreme Court jurisprudence, the paper argues that where an incumbent executive remains in office throughout the electoral cycle while retaining decisive appointment authority over electoral institutions and security forces, neutrality becomes largely illusory. Executive dominance constitutionalizes incumbency advantage and normalizes elections that are formally lawful yet substantively compromised. The paper concludes that without a redistribution of executive power and a reconfiguration of appointment regimes, electoral processes may satisfy procedural legality while violating the deeper human rights norms of political equality, participation, and democratic self-determination.

1. Introduction

Elections are often imagined as discrete events, temporally confined to polling day and legally assessed through compliance with electoral procedures. This conception dominates public discourse, electoral reform debates, and judicial reasoning across many African states. Yet elections are not isolated moments; they are extended political processes shaped by constitutional design, institutional power relations, and the broader political economy long before ballots are cast.

From a human rights perspective, elections are not merely mechanisms for leadership selection. They are instruments through which citizens exercise the right to political participation, equal suffrage, and collective self-government. Where electoral

frameworks systematically privilege incumbency, the right to vote risks being reduced to a ritual rather than a meaningful exercise of democratic agency.

This paper advances a central claim: electoral neutrality cannot exist where the incumbent executive simultaneously contests elections and retains unchecked control over the institutional architecture governing political competition. Appointment authority over electoral management bodies, control of security forces, and dominance of state resources transform elections from competitive democratic processes into managed exercises in legitimation. The resulting harm is structural, not incidental, and implicates core human rights guarantees.

2. Colonial Legacies and the Centralization of Executive Power

Postcolonial electoral systems in Africa remain deeply shaped by colonial administrative legacies. Colonial governance prioritized executive command, indirect rule, and administrative efficiency over political accountability and popular participation. At independence, many states inherited powerful executive institutions without corresponding mechanisms of horizontal restraint. Electoral institutions were introduced into this framework largely as administrative tools rather than as autonomous guarantors of political competition. The result has been constitutional orders that combine democratic form with authoritarian substance: elections exist, but within structures predisposed toward executive dominance.

Uganda exemplifies this pattern. Despite constitutional commitments to multiparty democracy and regular elections, the presidency has remained highly centralized across successive electoral cycles. Constitutional amendments removing presidential term limits in 2005 and age limits in 2017 reshaped electoral competition in favor of executive continuity. Elections in 2001, 2016, and 2021 further revealed the structural imbalance, with state resources, security agencies, and administrative authorities routinely mobilized to secure incumbent advantage. While elections are regularly held, they function within a constitutional architecture that preserves executive supremacy rather than meaningfully constraining it.

3. Electoral Neutrality, Power, and Institutional Independence

Conventional electoral theory often treats institutional independence as a formal legal attribute, an electoral commission is “independent” if the constitution or statute so declares. This formalist understanding dominates judicial reasoning, reform discourse, and donor evaluations, yet it obscures the practical dynamics of power. Formal independence, mere textual recognition is insufficient when key operational levers, including appointment authority, tenure security, budgetary control, and administrative oversight, remain under the influence of political actors with a vested interest in electoral outcomes. In Uganda, *Articles 60 and 61* of the Constitution establish the Electoral Commission as an independent body, but commissioners are appointed by the President

with parliamentary approval in a legislature dominated by the ruling party. Commissioners' renewable terms and dependence on executive-controlled budgets create structural incentives for deference, undermining substantive independence despite formal guarantees. Comparative international experience confirms this pattern: In Kenya, the Supreme Court's annulment of the 2017 presidential election in *Raila Odinga & 2 Ors v Independent Electoral and Boundaries Commission & Another* highlighted the necessity of structural independence, showing that legal declarations alone cannot secure electoral integrity without insulation from executive influence. The Venice Commission and the African Commission on Human and Peoples' Rights emphasize that functional autonomy, protected tenure, independent budgeting, and operational discretion is essential to electoral credibility, not merely constitutional text.

Electoral neutrality is further compromised when commissions operate within hierarchies of political power. In Uganda, the Electoral Commission administers elections while the state controls the security apparatus, public service, and state media, enabling selective enforcement and coercion. Across elections in 2001, 2006, 2016, 2021 and recently concluded 2026 elections, opposition campaigns faced surveillance, harassment, and restrictions enforced through security agencies, while state resources were mobilized in favor of the incumbent. In South Africa, by contrast, the Electoral Commission's functional autonomy including secure commissioner tenure, protected budgets, and multiparty input in appointments has enabled credible elections even under dominant-party governance. Substantive electoral independence therefore requires structural insulation from incumbency power, extending beyond constitutional language to operational, financial, and institutional safeguards that prevent partisan capture and ensure genuinely level electoral conditions.

4. Incumbency Advantage as Constitutional Design

In Uganda, incumbency advantage is neither accidental nor merely empirical, it is constitutionally embedded. The *1995 Constitution* vests extensive executive authority in the President, who retains control of the state throughout the electoral period. Under *Articles 99 and 108*, the President functions as both Head of State and Government, exercising authority over the public service, while *Article 208* places the Uganda Peoples' Defence Forces (UPDF) under presidential command. No constitutional provision requires the temporary suspension, delegation, or neutralization of these powers during elections, meaning the incumbent retains control of security agencies, administrative structures, and state resources at the very moment when electoral competition is most intense.

Electoral legislation reinforces this structural imbalance. The *Presidential Elections Act* and the *Electoral Commission Act* regulate campaign conduct but do not constrain executive use of state power during elections. For example, *Section 15* of the Presidential Elections Act prohibits misuse of state property, but in practice these restrictions are rarely enforced. State media, formally public, functions in practice as executive-aligned, and deployment of security forces under broad public order laws remains at the President's discretion. Opposition candidates, therefore, contest not merely an individual

rival but the institutional power of the state itself. The absence of mechanisms to separate incumbency from candidacy ensures elections operate within a constitutional order where inequality is designed rather than incidental, undermining the substantive exercise of political rights guaranteed under *Article 25 ICCPR* and *Article 13 ACHPR*.

5. Appointment Authority and Electoral Management Bodies

Article 60 of the Constitution establishes the Electoral Commission as an independent body, while *Article 61* vests appointment authority in the President with parliamentary approval. In a legislature dominated by the ruling party, parliamentary endorsement functions as a procedural formality rather than a substantive check on executive influence. Dependence is deepened by renewable terms of office, which create incentives for commissioners to defer to the executive to secure reappointment. Operational budgets and staffing are also subject to executive oversight, embedding dependence beyond formal appointment. The resulting Commission is formally independent yet structurally subordinate, illustrating a broader postcolonial pattern in which electoral institutions are embedded within, rather than insulated from, executive power. Comparative experience demonstrates the consequences of centralized appointment authority: countries with dispersed appointment mechanisms or multi-party panels, such as South Africa and Ghana, enjoy greater credibility and reduced electoral conflict, while systems dominated by executive appointments face recurrent disputes and legitimacy crises.

6. Security Forces, Coercion, and Electoral Conditions

Executive control over security forces has been central to the erosion of electoral neutrality. *Article 208* of the Constitution places the UPDF under presidential command, while police and other security agencies operate under executive direction. Decisions affecting campaigning, assembly, and public order are therefore outside the independent authority of the Electoral Commission, enabling coercive shaping of the electoral environment.

Historical and recent elections illustrate this pattern. In 2001 and 2006, opposition candidates reported intimidation, restrictions on rallies, and harassment of supporters in stronghold areas like Kasese and Wakiso. In 2016, the UPDF and police enforced curfews, restricted gatherings, and surveilled opposition campaigns, while state intelligence monitored activists. In 2021 and 2026, military and police deployments to opposition strongholds coincided with widespread arrests, detentions, and house arrest of Bobi Wine. Across these cycles, elections were formally civilian processes, yet the conditions were heavily shaped and often constrained by executive control over coercive power, rendering the playing field structurally uneven and undermining the rights to assembly (*Article 29(1) Uganda Constitution*) and political participation (*Article 25 ICCPR*; *Article 13 ACHPR*).

7. Judicial Interpretation and the Normalization of Structural Bias

Uganda's Supreme Court has consistently acknowledged serious electoral irregularities while declining to address their structural and institutional causes. Article 104 of the Constitution grants the Court jurisdiction to determine presidential election petitions, while the Presidential Elections Act sets out detailed standards governing campaigns, voting, tallying, and declaration of results. In practice, however, judicial review has been narrowly confined. In *Kizza Besigye v Yoweri Kaguta Museveni* (Presidential Election Petition No. 1 of 2001), the Court found widespread intimidation, multiple voting, disenfranchisement, and misuse of state resources, yet upheld the election on the ground that these violations did not substantially affect the final result.

This approach was reaffirmed in *Kizza Besigye v Yoweri Kaguta Museveni* (Presidential Election Petition No. 1 of 2006), where the Court again confirmed extensive non-compliance with electoral laws, including the involvement of security agencies in the electoral process, illegal detention of opposition supporters, and unequal media access. Although a minority of the Court found that the cumulative effect of these violations fatally compromised the election, the majority maintained that annulment required proof of a decisive numerical impact on the vote. The same reasoning resurfaced in *Amama Mbabazi v Yoweri Kaguta Museveni* (Presidential Election Petition No. 1 of 2016), despite findings of late delivery of voting materials, failures in biometric verification, and unlawful interference by security forces. Across these cases, statutory breaches were acknowledged but rendered legally inconsequential through the "substantial effect" doctrine.

This jurisprudence reflects a quantitative and outcome-oriented conception of democracy that marginalizes structural injustice. By interpreting the Presidential Elections Act and Article 104 through the lens of vote tallies rather than constitutional principles of fairness and equality, the Court has insulated systemic bias from effective judicial remedy. Executive dominance over security forces, administrative structures, and electoral institutions is treated as background context rather than a constitutional defect. The result is a body of electoral jurisprudence that normalizes inequality as a permissible feature of the electoral process and weakens the substantive protection of political rights guaranteed under the Constitution.

The Supreme Court's reliance on the "substantial effect" test reflects a doctrinal error in the interpretation of Uganda's constitutional and electoral law. Neither Article 104 of the Constitution nor the Presidential Elections Act requires proof that electoral irregularities altered the final vote count; both instead emphasize compliance with procedures designed to secure free and fair elections. By prioritizing numerical outcomes over legality and institutional integrity, the Court reduces elections to arithmetic exercises and marginalizes structural violations such as intimidation, abuse of state resources, and unequal media access. This approach imposes an unrealistic evidentiary burden on petitioners and renders systemic non-compliance effectively immune from judicial remedy, thereby weakening the substantive protection of constitutional political rights.

8. Security Forces, Coercion, and Electoral Conditions

The executive's control over Uganda's security forces has been a persistent factor undermining electoral neutrality. Under Article 208 of the Constitution, the Uganda Peoples' Defence Forces (UPDF) are under the command of the President, while police and other security agencies operate under executive direction. Decisions that directly affect campaigning, public assembly, and maintenance of public order thus fall outside the independent authority of the Electoral Commission. This structural arrangement allows the executive to shape the conditions of electoral competition through coercive means, limiting opposition activity and constraining citizens' ability to exercise political rights freely.

Historical and recent elections illustrate this pattern. In the 2001 and 2006 elections, opposition candidates reported intimidation by security personnel, restrictions on rallies, and harassment of supporters, particularly in strong opposition areas such as Kasese and Wakiso. During the 2016 elections, the UPDF and police were deployed to enforce curfews, restrict gatherings, and monitor opposition campaigns, while state intelligence services surveilled candidates and activists. In 2021, the deployment of military and police units to opposition strongholds coincided with widespread arrests and detentions of opposition figures, including the house arrest of Bobi Wine. Across these cycles, elections were formally civilian processes under the Electoral Commission, yet the conditions in which they were conducted were profoundly shaped and often constrained by the executive's control over coercive power, rendering the playing field structurally uneven.

9. Conclusion

Electoral neutrality collapses where executive incumbency, appointment authority, and coercive power converge. Uganda's constitutional framework illustrates how elections can remain procedurally lawful yet substantively unjust.

Meaningful electoral reform must therefore be understood as a human rights and constitutional struggle over power, not an administrative exercise. Without restructuring executive authority and insulating electoral institutions from incumbency control, elections risk becoming rituals of legitimacy rather than expressions of democratic self-determination.

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