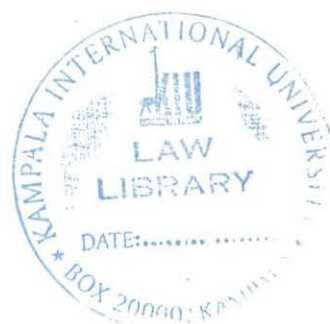


7/7/11

**AN ANALYSIS OF THE EFFICACY OF ELECTORAL
PROCESS IN UGANDA**

**BY
ASIIMWE ABRAHAM LINCON**

LLB/15991/71/DU



**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
BACHELORS DEGREE OF LAWS OF KAMPALA
INTERNATIONAL UNIVERSITY**

JULY, 2011

DECLARATION

I Asiimwe Abraham Lincon declare that this paper “ An analysis of the efficacy of electoral process in Uganda is my entire effort and has not been submitted to this university or any other university or institution of higher learning before for any form of award.

Student name:

ASIIMWE ABRAHAM LINCON

LLB/15991//71/DU

Signature.....

Date: 5th/07/2011

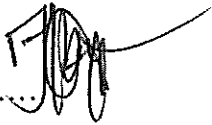
APPROVAL

This piece of work "An analysis of the efficacy of electoral process in Uganda" has been supervised by me and is ready for submission.

Supervisor:

MR. LUBEGA FAROUQ

Signature... ..



Date7/7/11.....

DEDICATION

This work is dedicated to my parents: Mr. & Mrs. LUOIS
KABURAHOOONA

This work is also dedicated to all my family members; brothers, sisters'
cousins, uncles and aunties and all those who wish me a better future
Finally may it go out to all those who cherish free and fair elections.

ACKNOWLEDGEMENT

I thank God the almighty for enabling me to complete my studies successfully in spite of the hard times I had to go through. My special appreciation goes to my parents Mr. & Mrs. Luoia KabuRahoona for the great financial support through out my entire life at school.

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I also appreciate the work done by my supervisor Mr. Lubega Farouq

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
TABLE OF CONTENTS	v
LIST OF ACRONYMS	viii
LIST OF STATUTES	ix
LIST OF CASES	ix
LIST OF ARTICLES	x
ABSTRACT	xi
CHAPTER ONE.....	1
GENERAL INTRODUCTION.....	1
1.10 Introduction	1
Background to the study	1
1.2 Statement of the problem	4
1.3 Hypothesis.....	5
1.4 Purpose of study	5
1.5 The objectives of this dissertation include the following	5
1.6 Scope of Study	6
1.7 Research questions.	6
1.8 Limitation of the study	6
CHAPTER TWO	8
LITERATURE REVIEW.....	8
2.0 Introduction	8
2.1 Theoretical Review	8

CHAPTER THREE.....	23
RESEARCH METHODOLOGY.....	23
3.0 Introduction.....	23
3.1 Study area.....	24
3.2 Sample size and selection.....	24
3.3 Survey Population.....	25
3.4 Methods of collecting data.....	25
3.4.1 Interview method.....	25
3.4.2 Library research was also conducted where the researcher will visit some of the libraries in such for information libraries like KIU library, Makerere Library and LDC library.....	26
3.4.3 The internet was also visited where the researcher will check on some of the websites which could be having related information to my purpose of research for example the Electoral Commission Website.....	26
3.5 Data analysis.....	26
3.6 Ethical consideration.....	26
 CHAPTER FOUR.....	 28
PRESENTATION OF FIELD RESEARCH AND DATA ANALYSIS	28
4.0 Introduction.....	28
4.1 Registration of voters.....	28
4.2 Nomination and Registration of Candidates.....	29
4.3 The Presidential Election Campaign Periods.....	31
4.4 The 2001 Election Petition.....	32
4.5 The Presidential Election Petition 2006	36
4.6 CHALLENGES OF ELECTION ADMINISTRATION IN A MULTIPARTY ELECTORAL PROCESS IN UGANDA.....	39
4.6.1 The Voter Register.....	39
4.6.2 Funding of election.....	39
4.6.3 Polling day	39

4.6.4 Voter education.	39
4.6.5 Relations between political parties and the electoral commission.	40
4.7 Role played by the electoral commission in the electoral process	40
4.8 Causes of Election Malpractices in Uganda.	44
4.9 Lessons that can be learnt from the Electoral process in South Africa.	46
CHAPTER FIVE.....	48
CONCLUSION, RECOMMENDATIONS AND SUMMARY OF FINDINGS	48
5.1 Summary of the Findings.....	48
5.2 Conclusion	49
5.3 Recommendations	49
BIBLIOGRAPHY.....	56
APPENDICES	59
Appendix: INTERVIEW GUIDE	59

LIST OF ACRONYMS

- | | |
|----------|--------------------------------------|
| 1. K.Y | Kabaka Yekka |
| 2. LEGCO | Legislative Council |
| 3. UPC | Uganda People's Congress |
| 4. IEC | Interim Electoral Commission |
| 5. CA | Constituency Assembly |
| 6. DMG | Democracy Monitoring Group |
| 7. OAU | Organization of African Unity |
| 8. UPM | Uganda Patriotic Movement |
| 9. PPOA | Political Party and Organization Act |
| 10. EC | Electoral Commission |
| 11. PPU | Presidential Protection Unit |
| 12. FDC | Forum for Democratic Change |

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Constitution of the republic of Uganda 1995
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The Daily Monitor Newspaper January 7th page 16 2011.
Daily Monitor Newspaper 9th December 2005, page 20.
Sunday Monitor 12th February page 10 2006
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The Daily Monitor Monday August 1 2005 page 21
Uganda times (government Newspaper) 1980
The Daily Monitor Newspaper 7th April 2006 p.25 Godfrey Olukya and
Max Delay Associated Press February 19th 2011.
Daily Monitor Newspaper Monday August 1, 2006
New Vision Monday 21, February 2011 page 17
New Vision 5th March 2001.

ABSTRACT

This study "Analysis of the efficacy of the electoral process in Uganda" was carried out in Uganda with the aim of ascertaining the effectiveness of the electoral process, analyzing the challenges of election administration in a multiparty electoral process especially focusing more on presidential elections. To also discuss the role of electoral commission in the electoral process.

To successfully analyze this qualitative method of data collection was adopted the study relied on literature from various scholars on this topic and related areas.

The research findings indicated that elections per se are not an indication of democracy and better electoral process but only one part of it. From the period of 2001 up to date the legal and institutional framework is still underdeveloped though there is a journey and process of democratization in Uganda.

The study concluded that for an effective electoral process a combination of factors have to be put in place for example voter education, respect for the will of the people and independent electoral commission among others

CHAPTER ONE

GENERAL INTRODUCTION

1.10 Introduction

Background to the study

In the period following Uganda's independence attained in 1962, the political, social and economic dynamics started to manifest themselves as citizens developed interest in the country's democracy. However prior to the independence, elections were not much valued. This was due to the fact that the colonial government was the one handling the affairs of the country.

But the year 1958 marked the milestone in the history and the development of electoral process and election management in Uganda. A constitutional conference was convened and structures formed to organize and conduct various elections leading to the independence in 1962. Several elections were conducted, the first being the limited African/Uganda Franchise and Representation to the legislative council (LEGCO) of 1958.

In 1962¹ the colonial government organized elections and DP got the majority in Parliament. However UPC and Kabaka Yekka (KY) merged to become UPC-KY, become the majority and formed the government headed by the first Prime Minister Apollo Milton Obote. In 1964 there was the first referendum held in the history of Uganda which culminated into the two countries Buyaga and Bugangaizi voting to return to Bunyoro Kingdom.

¹ Karugire Samwiri Roots of the stability in Uganda Paton (2nd edition) Foutain Publishers Kampala 1996

During Amin's Regime from 1971 to 1979 there were no electoral activities until the 1980 elections 25th June where the chairman of the military commission, H.E Paul Muwanga (RIP) established the electoral commission to organize and conduct general elections which were eventually conducted on 10th-11th December 1980. These elections were rigged by Apollo Milton Obote who then headed UPC Uganda People's Congress which resulted into the bush war in Luweero by Museveni from 1981-1986².

From there followed the constituency assembly C.A where the commission was established by the constituent assembly statute No.6 of 1993 to organize and conduct constituent assembly elections. These elections were conducted in March 1994; this followed the promulgation of the 1995 constitution. An interim electoral commission (IEC) was established by interim (provisional electoral commission statute No. 3 of 1996 and parliamentary (interim provisions statute) No.4 of 1996 for purposes of organizing and conducting the 1996 general elections³.

In 2001 the President sought for his second term but the elections were full of violence, intimidation and mass rigging of the opponent and in 2005 the country went through a referendum to decide whether to return to multiparty democracy which indeed people accepted the democracy monitoring group (DEM) blamed the electoral commission for allegedly messing up the referendum exercise. Rev. Athanasum Maraka National observer with DEM a democracy advocacy group castigated EC for being responsible for the poor turnouts as there was little sensitization on the exercise and as a result most people especially in rural areas virtually had no idea as to why they were being called to participate in a

² Ibid

³ George W. Kanyeihamba Constitutional and Political History of Uganda from 1894 to present, 2nd edition 2010 pg.201-208

referendum.⁴ The 2006 elections were also full of violence, intimidation, voter bribery, rigging and arresting of the opposition leaders.

This paper seeks to deal with the question of how effective has been the electoral process in Uganda. The paper also critically analyses the challenges facing the electoral commission in conducting elections in Uganda. And also makes recommendations aimed at solving the challenges identified.

A well developed electoral system includes not only agencies for shaping the electoral process. It includes as well a group of people who possess by reason of education experience and expertise in the operation of the system for greater than that of the ordinary citizens. The electoral system in Uganda is young and faces challenging factors to develop new and improved approaches to the conducting of elections that will respond to the developing needs and aspiration of the Ugandans today.

As the world races in the 21st century, it's clear that the dominant force in the politics is the elections. The electoral process is characterized by the emergency of a global communication industry. The growth of international pressure on the change of dictatorial governments and the influence of development and realization that geographical constraints are shrinking and that the world is becoming a one united thing. So called (global village)

In Uganda there is a widening gap between the rich and the poor. This is accompanied by growing inequity in the society with concentration of wealth in just a few hands, increasing poverty, debt, and ever-falling

⁴ The Daily Monitor Monday August 1st 2005 page 20

standards of living are a major concern.⁵ This has made it easy for people to be bribed during elections because they are poor.

What are the expectations of the country and the people from electoral process in the coming years, given the electoral commission and its role in conducting free and fair elections?

How does one assess the social, political economic and what can be done to maximize the goals, what ought to be the supervisory and control mechanism to ensure accountability on the part of those elected into power. In order to be able to address these questions one must have an awareness of the challenges involved and changes taking place in the contemporary times. These relate to the un met needs of different sections of society, delay and cost in accessing justice, impact of elections on equality and human rights, But in periods of transition stakeholders must assist communities, political parties, intellectuals interested groups and governments keeping in mind the requirement of equity justice and fairness.⁶

1.2 Statement of the problem

Uganda, like many African countries, is still grappling with a big task of establishing a stable and democratic political and constitutional order through electoral process. This research intends to explore the challenges faced as Uganda transforms to a democratic order through well established electoral process.

This research was mostly centered on the presidential elections of 2001, 2006 and 2011 elections respectively. The problem faced through these

⁵ Ibid

⁶George W. Kanyeihamba Constitutional and Political History of Uganda from 1894 to present 2nd edition 2010

three elections look to be almost the same though there have been some differences noted as per many election observers reports.

But some of the individuals have always been reluctant to subject themselves fully and fairly to the electoral process and where attempt has been made it has fallen short of the legal demands. Intimidation fraud manipulation and violence have continued to dominate the outcome.

1.3 Hypothesis

The failures of electoral commission in the electoral process has not been due to its incompetence but has been contributed to by many other factors that include.

- a) The influence of money in vote rigging has affected the electoral commission in executing its roles.
- b) Illiteracy among some peoples, there is still a population of people who do not know how to read and write and this has increased number of invalid votes during elections.
- c) Insufficient funds capable of causing the commission to prepare free and fair election among others.

The population has not been fully been sensitized on how to vote in this electoral process.

1.4 Purpose of study

This study is to contribute to the available literature a detailed analysis of the awareness of electoral laws in Uganda through civic education and right of voters.

1.5 The objectives of this dissertation include the following

- a) To examine the role played by the electoral commission in the electoral process.

- b) Challenges of election administration in a multiparty electoral process in Uganda.
- c) To find out the cause of election malpractices in Uganda.,
- d) To find and give recommendations as to the reform of electoral laws.
- e) To make a comparative analysis between the electoral process in Uganda and South African electoral process.

1.6 Scope of Study

I will try within the limits of space in this dissertation to provide a critical updated analysis of the efficacy of electoral process and challenges for the future democracy in Uganda. Because of the time limit my research would cover the electoral process from the period of 2000 up to the period of 2011.

1.7 Research questions.

1. What is the role played by electoral commission in the electoral process?
2. What are the causes of election malpractices in Uganda?
3. What are the challenges faced in election administration in a multiparty electoral process in Uganda?
4. What are the recommendations as to the reform of electoral laws?
5. What lessons can be learnt from the electoral process of South Africa?

1.8 Limitation of the study,

The following are the limitations that were encountered during the study.

Due to the sensitivity of the research topic, some information was considered confidential and therefore it might not be disclosed to the researcher.

Financial constraints are another problem that was faced while gathering information. For example visiting different libraries

Appointments will be made to the people to be interviewed on certain matters and they may fail to fulfill them due to may be heavy schedules. Hence taking time to get information from them.

Other people were not be willing just to give you information.

Solutions to the limitation may include convincing people that the information will not be disclosed any person, that it is only for research purposes.

Soliciting for more funds to make sure that the research is finished in a required time.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

So much that been written about electoral process and election and conferences have been held on the subject a number of times, therefore the research will thus essentially give due treatment to what has already been written on this subject. This means that this dissertation will somewhere assess and review the existing literature.

2.1 Theoretical Review

The desire to change governments in Africa and Uganda in particular has elicited and ignited debates and conferences on the subject of electoral process. This has not only raised controversial issues but has revealed a wealth of information concerning the question of electoral process. In 1994 Uganda went through a constituent assembly election through where a new constitution would be drafted. But through that electoral process there were some shortcomings as observed below. This was a clear beginning of the efficacy of an electoral process in Uganda.

The major shortcoming in the election campaign for the constituent assembly was the use of colossal sums of money by candidates dictated by demands from the voters who expected to gain financially from the election. The candidates were prepared to spend large sums of money in order to invest for the next round of parliamentary elections, Judith Geist,⁷ decried this worrying practice when she stated, "The voters took a type of mercenary rationality not unknown to previous Uganda elections

⁷ Geist Judith 1994 political significance of constituent assembly elections in Hansen H.B and in Twaddle (eds) from chaos to order. The politics of constitution making in Uganda Kampala fountain publishers pg.97

while alarming to many, this is a rational calculus than the response to strictly sectarian appeals that plagued past elections. It came with its own problems, persons elected because of the depth of their pockets may not be equipped to discuss and decide constitutional issue.”

The election was held in 1994, local and international observer groups were invited by the government to monitor electoral process to ensure that it's free and fair. The international observer came from countries and organizations. The over all assessment by the observers was that despite some administrative weakness like failure to adequately display registers the electoral process was free and fair and the results reflected the democratic choice of the people of Uganda. The elections represented an important step towards democracy.

One of the handicaps against democracy and the freedom to vote for anyone capable is monetization of elections. There must be a law against lavish spending by candidates and their supporters as if this country is available only to governable by the rich people only⁸.

The OAU report⁹ by then made the following conclusion about the process:

All international observers were of the opinion that even though there was some inadequacies and minor violations of the electoral laws, the elections were administratively well conducted and that the conduct of the elections was in an open and fair manner.

This is remarkably so considering the back grounds of the 1980s reportedly rigged elections. There was no evidence of deliberate and systematic attempt to influence the outcome or alter the results of the

⁸ The East African Newspaper pg.20-26 2003

⁹ The OAU Report on the election ns (constituent assembly) in Uganda 1994

elections. This calm atmosphere that prevailed on polling day the extraordinary good behavior of all concerned encouraged people to vote and was a factor that underpinned the high turn out. Generally the elections can be considered as a reflection of the political choice and aspiration of the people of Uganda. The high sense of participation shown by Ugandans is highly commendable.

Nelson Kasfir¹⁰ has also observed that:

The constituent assembly election could lay claim to being the most free and fair for Uganda through nationwide elections since independence. But the elections also posed a challenge by adding a transitional stage in the struggle for power and the return to democracy that will be concluded with the elections, to a new parliament. Under the rules set by the constitution produced by the constituent assembly.

At stake are the questions whether the national resistance movement (NRM) will be the dominant political force in the years to come and if it is so whether it will radically restructure Ugandan politics as it had promised when it had emerged triumphant in 1988 from its five year guerilla campaign to overthrow the government Kasfir 148.

The greatest initial challenge that faced implementation of the new constitution was the organization of the presidential, parliamentary and local government elections to return the country to democracy rule after long period disenfranchisement. It must be observed that government to manage this transitional process. Elections are an indispensable prerequisite to democracy. The constitution vests all power in the hands of

¹⁰ Kasfir Nelson 1994; Uganda politics and the constituent assembly elections of March 1994 in from chaos to order, the politics of constitutional making in Uganda fountain publishers pg.148



the people who must be governed through organs created by the constitution only with their consent.

As Judith Geist¹¹ observes

An election addresses the issue of periodic reaffirmation of or alteration in presentation of the public in the institutions of policy making and governance. Elections confer legitimacy on governments by providing a chance for the citizenry to alter the composition of the government. They can also provide channels for citizen input on policy issues directly through referenda, or in the extreme case to alter the nature of the government itself through constitutional exercises.

As Katz¹² writes that elections are the defining institution of modern democracy. That during a brief period of election campaign voters are the masters and are seen to be so. To examine the electoral process is therefore to analyze the central device which has made representative democracy a feasible proposition for large countries

The most obvious function of elections is to provide a competition for office and a means of holding the winners accountable. In addition an election campaign permits a dialogue between voters and candidates and so between society and state, competitive elections also endow the new office holders with authority contributing thereby to the effectiveness with which duties can be performed.

This dissertation seeks to discover whether the voters vote ideas or personalities and whether they are bribed into voting.

¹¹ Geist, Judith 1994 political significance of the constituent assembly elections' in Hansen H.B and in Twaddle (eds) from chaos to order. The politics of constitutional making in Uganda, Kampala fountain publishers pg. 90

¹² Rod Hague and Martin Harrop Quoted in Political science, comparative introduction 4th edition pg 145

Political challenges facing new democracies of the third wave like Uganda reflecting an authoritarian legacy liberal idea often remain weak. As Luckham and White¹³ point out that the development of democracy requires more than just competitive election. It also requires the enforcement of legal restraint on state power, protection of civil rights, the establishment of relatively uncorrupt and effective bureaucracies and the imposition of democratic control over potentially authoritarian forces such as the military and security services through a well established electoral process.¹⁴

Nothing seems to mark out a new democracy as clearly also the introduction of free, fair and competitive elections and the first election following the withdrawal of the dictators is typically a high turnout affair making the launch of a new regime. The significance of such founding election lies less in the result than in their capacity to legitimize the new order. This dissertation will have to go deep into and realize the cause of this high turn out.

Founding elections are both a referendum on and a celebration of democracy.

Through out Africa, founding elections between 1990-1994 were marked with exceptional high turn outs, convincing victories for the winners.

A founding election is the first election following the transition from authoritarian to democratic rule. In Uganda the founding election was in 1996 which was the first election for president since the overthrow of dictatorial regimes in 1986 by H.E Yoweri Kaguta Museveni.

In contrast second election are normally marked by lower turn out, some disillusionment and in some cases the return of electoral

¹³ Ibid pg. 43

¹⁴ Ibid Pg. 163

multipractices.¹⁵ This happened during the 2001 and 2006 presidential elections in Uganda where the elections were full of violence, election rigging, ballot stuffing, intimidation of voters and the involvement of the Kiboko squad which terrorized voters and to make matters worse the arrest of opposition leaders like Col Besigye.

This dissertation will endeavor to highlight some of the possible causes of this kind of election malpractices.

In many African democracies the quality of elections seems to decline in second and subsequent contest for example the rising of opposition boycotts. As international monitoring agencies have become increasingly critical of post founding elections, in many African countries like Uganda, Kenya, Zimbabwe, Ivory Coast elections continue to be contested suggesting that some New democracies are moving towards semi-democracy rather than established democracy. The existing leaders seem to have recorded their capacity to secure their own re-election.

The prevalence of this outcome suggests even if it does not prove electoral manipulation. As Bratton¹⁶ notes in "a big man" political culture it is unclear whether the re-election of an incumbent constitutes the extension of leaders legitimacy or the resignation of the electorate to his inevitable dominance.

In established democracies leaders have learnt how to loose but in many new democracies cunning rulers have quickly mastered the art of winning¹⁷

This dissertation will analyze why leaders in many new democracies don't accept defeat.

¹⁵ Ibid page 1 63

¹⁶ Ibid

¹⁷ Ibid Pg. 163

Many scholars argue that the electoral system is the defining of democracy. Majority rule is generally considered the single most important part of the electoral system.

The electoral system is as important within a democratic theory as the theory of representation because the electoral system makes representative system work and is the primary way of ensuring some governmental representativeness to the wishes of the people.¹⁸ In large, complex society the vote may be the only way in which the majority of the people ever participate in political decision making.

The electoral process begins with the selection of candidates; the means by which this takes place varies from country to country. In some cases the system is entirely under the control of political parties and the citizens must become active in a party to influence the choice of candidates.

According to Edmond Burke¹⁹ a political party means a body of men united for promoting by joint endeavors the national interest upon some particular principle in which they are all agreed. The fact that the definition only mentions men and does not mention women it discriminates against women because by that time may be women were still discriminated. Therefore this dissertation seeks to bring the definition up to date now that there is gender balance in the electoral process.

In Uganda and like in the United States an election called (primary) is held to reduce the number of candidates for a particular party. In such

¹⁸ Lyman tower sergeant Contemporary political ideologies 9th edition, comparative analysis.

¹⁹ Edmond Burke cited in Harry J. and Bather the British constitution 4th edition 1977 pg. 115

away citizens can influence the final list of candidates by voting e.g. donating money to, or working actively for candidates also influence the outcome.

Apollo Nsibambi²⁰ observed that good governance must be underpinned by a democratic system of government. But democracy cannot thrive unless space is given to the civil society to operate effectively.

Decentralization of the electoral process serves as a root of empowerment and therefore enhances democracy and good governance. If local government and institutions at lower levels as well as the people at the grass roots level are invested not only with responsibilities but also with the legal authority to decide and commit allocated resources in discharging those responsibilities, putting in place systems, Structures and practices of good governance and which answer freedom of opinion, association, press, worship, periodic free and fair election of national and local leaders and accountable administration²¹

It is argued that regularity and fairness in an election is an important barometer for determining respect for human rights. Sempebwa²² examines elections and human rights rules of ensuring fairness, electoral commission and state machinery. Sempebwa's work does not discuss timing of the elections, voters' registration and internationally recognized standards of holding of election, factors that are important indicators of the degree of local ownership and civic power in society. Moreover he only analyses parliamentary elections, leaving out the more revealing presidential elections. Therefore this dissertation will particularly dwell on presidential elections of 2001, 2006 and the recently concluded presidential elections of 2011.

²⁰ Decentralization and civil society in Uganda (the quest for good governance) pg. 9

²¹ Ibid pg. 9

²² E.F Sempebwa. Fairness Elections; Essence and Rules Constitutional Seminar LDC May 21-22, P.13

It is further contended by Cohn D.L.P²³, that the theoretical relevance does not lay in their frequency and direction but rather in their quality. Although both frequency and quality are equally important if an election is to conform both to the international standards of holding an election and more importantly, to the ownership by the people of their electoral process interestingly.

Another typical question that has been the subject of discussion of the outcome of election results especially in Africa. According to Willie Breytenbach²⁴ election outcomes in Africa are not always free and fair and factors other than elections important consolidating democracies. However, he does not discuss those factors he deems necessary in carrying out free and fair elections.

He further says that Africa has produced a number of examples of election results being rejected. Though he does not make recommendations to remedy this, I agree with him on this point bearing in mind that the 1980, 1996 and 2001 election results in Uganda were disputed by main opponents of the eventual winner who was in all cases the incumbent or in control of national affairs.

My research will finally make recommendations which would possibly remedy the above problem.

Kanyehimba²⁵ in his analysis of the 1996 elections argues that the Uganda Presidential Elections 1996 was free and fair but the parliamentary elections had short comings and defects. He dwells on the parliamentary elections but he does not analyze the laws that governed

²³ Cohn D.L and Parsons J. (1973). The Uganda People's Congress Branch, ad constituency elections 1970
Journal of Common Wealth Political Studies Vol. XI No.1

²⁴ Willie Breytenbach (1992); Democratization Sub-Saharan Africa.

²⁵ G.W Kanyehimba (1996): An overview of the 1996 Uganda Presidential and Parliamentary Elections

the conduct of the elections and the surrounding social and economic factors that impacted on the electorate. His conclusion that the presidential elections were free and fair but the elections that have been held in Uganda since 1986 have so far pushed the quality imperative in democratization process. This kind of observation will be discovered whether it is true those elections since 1986 have pushed forward to the quality imperative in democratization process today.

Further still, Tukahebwa²⁶ argues that the biggest question at an election is whether a citizen is free to make a choice and whether that choice is the basis of having legitimate government in power. Though his argument is valid, he does not consider the fact that civil society organizations are still weak with limited sensitization which is a conditional factor for individual electoral decision. But still my research will try to show that fraud and electoral malpractices are still associated with elections in Uganda.

Khiddu-Makubuya²⁷ observes that Uganda is not known for the regularity of elections. He examines the legal provisions relating to elections before the advent of the movement government and points out the flaws there in. he discusses the criteria for a free and fair election considering among others, a fair administrative framework, public enlightenment, free media and fair reportage. Though he examines various elections pointing out the flaws therein, he does not clearly draw out the negative impact they have had on Uganda's development of democratic ideals and practice. This research will examine the negative impacts of these fraud elections to the effective development of democracy in Uganda.

²⁶ G.B Tukahebwa (1997): Presidential and Parliamentary elections in Rukungiri south western Uganda (unpublished)

²⁷ Khiddu-Makubuya (1996): the Law and Practice of Elections in Uganda Prospects for the Future (1996) (unpublished).

G.H.ADDINK²⁸ wrote that in 1991 the EU Council of ministers provided a brief description of contents and importance of good governance in a resolution on human rights, democracy and development. Noted that while sovereign states have freedom to institute their own administrative structures and establish their own constitutional arrangement, equitable development can only effectively and sustainability be achieved if a number of general principles of government are adhered to; sensible economic policies democratic election making adequate governmental transparency and financial accountability... as well as aspect for the rule of law. He stressed that democratic election making exhibited in a free and fair election is a milestone in a constitutionalism democracy.

However; he seems to appreciate that democratic elections are a pinnacle of democracy simply because of the background of his country; Dutch. Mostly European countries over emphasize elections since they are in a different phase of development both in institutional and infrastructure wise. But left out the issue of having an independent electoral commission in an electoral process which would lead to preparing free and fair election. Therefore this dissertation will uphold the independency of electoral commission in circumstances relating to Uganda and show why the electoral commission needs to be independent first in order to be eligible to carry free and fair elections.

G.W Kanyeihamba²⁹ while writing on Obote II government had a title "Obote II no lessons from the past." In view of numerous articles and journals he concluded that the government of Obote II that came as a result of the 1980 elections had violated the human rights of Ugandans in

²⁸ Wrote an article in Uganda Living Law Journal volume 2 number 2 of 2004 titled "Principle of good governance."

²⁹ Kanyeihamba "Constitutional and Political History of Uganda from 1894 to the present, 2002, centenary publishing house ltd."

scale that even was not the case under Iddi Amin Dada. His conclusion was that presidential elections do not translate to democracy.

He continues that Obote's suppression of elections after 1967 escalated the country to a democratic degradation. However, when the military took government in 1971, promising to hold elections in the nearby future, nothing of the sort was ever seen.

It appears from the above that the jurisdiction by Iddi Amin that Obote had failed to hold elections in the post independent Uganda was seen as a failure in the democratization process and the electoral process of Uganda.

This book though in depth and analytical of Uganda's constitutional history, does not cover the post 1995 period. Yet this is the time when the NRM purported to bring a number of reforms in constitutionalism.

Tarsis B. Kabwegyere³⁰ asserted that the democratic elections that were held in 1996, though under the movement system was a great leap into the direction of democracy. For him the challenges that were faced in the 1996 could only be ironed out if people participate fully in the electoral process of their leaders. He praised Yoweri Museveni for holding the first "real" general elections in Uganda since independence.

However, he failed to appreciate the role that constitutionally established institutions are supposed to play in such an election for example the electoral commission and civil society organization. Therefore my dissertation seeks to examine the role played by the electoral commission in the electoral process mostly preparing free and fair elections.

³⁰ Tarsis B. Kabwegyere "people's Choice, People's Power," Challenges of prospects of Democracy in Uganda, 2000, Fountain Publishers.

Mustaha E. El Ssayid³¹ described democratization and electoral process in Arab states as follows;

- a) Rules may allow competitive elections but they determine but they determine who to participate in them.
- b) Rulers retain control of the media and agencies that covers elections.
- c) Rulers have no intention of transferring power to anyone outside the political elite which is carefully defined and has narrow membership,
- d) Maximized democracy allows people to express different points of view without fear of imprisonment. However Mustaha E. El Sayid was looking at democratization and electoral process in Arab state. My research will dwell more in Uganda particularly presidential elections.

Peter Walubiri³² while editing the article by Grace Tumwine 'Mukubwa observed that democratic governance requires a system of government which promotes the existence of checks and balances. That a democratic society is the one which recognizes the centrality of the individual and his ability or right and freedom to make decisions affecting him without much interference from the state and its organs and having the will of the people respected in an election.

He argues that democratic society is one in which the government is based on the consent of an informed citizenry. His contention is that a government in a democratic society must leave the way wide open to favor, discuss, advocate and incite causes however unpopular it might

³¹ Third Waves of Democratization in Arab World

³² Peter Walubiri Ed "Uganda's Constitutionalism at Crossroads" 1998, Uganda Law Watch

be. From this, it can be deducted that freedom of speech and of the media be at the foundation of a democratic society, for without free political discussion no public education so essential.

This dissertation will go in details of what it means to have a free political discussion in a country like Uganda. Do we see the opposition parties having a free political discussion and other stakeholder like civil society organizations?

Mostly during elections campaigns and in this case the recently concluded election.

Museveni³³ wrote a very comprehensive account on Uganda's process and the journey to democratization. He argued that one of the strongest reasons why he took arms was the malpractice in the 1980 elections which he lost to Obote having gained only one sit for his UPM party.

He noted however, that democratic elections cannot be held when the institutions that are supposed to guarantee fairness are under developed. His contention was that from the period of 1986-1996 when the first general election held, his NRM government had been building the capacity of these institutions. He asserts that had he organized election within the fist few years, it would no have reflected the wished of the Ugandan people.

The book however dwells so much on other aspects of governance and the rebellion in Luwero and fails to make a projection for sustainable free and fair elections. It thus falls short of demonstrating how the election has led to democratization based on the parameters of freedom of speech and association which is the pinnacle of a democratic society. The fact that the book was written sometime back. It does not address the

³³ "Sewing the mustard Seed" The Struggle for Freedom and Democracy in Uganda. Macmillan education 1998.

present current trends of elections in Uganda. From the assertion it seems for example at the present like the electoral commission has learnt nothing and forgotten nothing because it has also failed to prepare free and fair elections with this government like the former regimes. This dissertation will try to analyze why this current government has also failed to prepare free and fair elections after 25 years in power.

The international crisis group³⁴ noted that presidential elections in particular expose a highly centralized political patronage system in which the head of the state wields enormous power bringing personalities rather than policies to the fore. That the poor relationship between the branches of the state sees the new legislature ignored or overruled and its effectiveness greatly reduced by the absence of a formal role for political parties. This dissertation will show a small fore sight how the ruling part in Uganda has tried to rig elections to make sure that it has majority parliamentarians and mostly currently through vote recounting.

Odoki Report³⁵ made several recommendations for the new constitution regarding political governance. In stating that Uganda should adopt democratic principles, it recommended that governmental authority should be derived from the people and be exercised in the name of the people. That the government should always arise out of and be a product of a regular free and fair electoral processes, in which people are able to actively participate. Therefore this dissertation will try to discover whether the present government in any way has been a product of free and fair electoral processes in Uganda and if not why?

³⁴ A monitoring group, published its report on African elections "Asia Report, Executive summary and recommendations Report number 171, 24th June, 2009"

³⁵ The report of the Uganda Constitutional Commission 1993 at page 234

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This part of methodology describes the procedure and methods was followed in conducting the study for example qualitative and quantitative methods were employed. It gave details regarding research design, population of the study area, sample size and selection, a description of data collection instruments used data management and ethical consideration.

The researcher adopted a historical out look and made a comparative analysis of the electoral process as it was then and how it is today.

Historical out look requires collecting information from the past. This involved studying, understanding and experiencing past events. Therefore the researcher determined if the data adequately explored the events in which he or she was interested.

Documentary involves the discovery and analysis of records of previous events, interpretation of trends in the attitude or events of the past and generalization from these past events to help guide present or future behavior.

The sources of historical data used included both primary and secondary sources.

Primary source.

This comprised of first hand knowledge for example eye witness reports and original documents. Those who have regularly participated in the electoral process.

Secondary source.

This comprised of second hand information for example description of an event by persons other than eye witnesses. Secondary sources are accounts or records which have been prepared by someone who was not actually present to observe the event for example written books of authors were also be consulted under this through my research.

3.1 Study area.

The study was conducted in Kampala, the political and administrative headquarters of Uganda. Departments to be visited will include the electoral commission, human rights organization offices like FHRI.

3.2 Sample size and selection.

A total of 25 respondents were used in the study participants (voters) who participated in the previous presidential elections and might have probably witnessed some of the violence during the elections.

3.3 Survey Population

The population will include the electoral commission staff if possible, the elite and non elites. In the just concluded 2011 election. As it can be shown in the table below

Number	Category	Sample
1	Public view	15
2	Electoral staff	5
3	Civic educators	5
Total		25

3.4 Methods of collecting data.

More often data is collected in form of words and therefore the first method of data collection was

3.4.1 Interview method.

Interview were administered to the respondents using an interview guide. The interview guide because of my scope of study being limited to presidential elections. The interview guide contained questions about the laws relating to presidential election specifically in Uganda, cause of election malpractices during the 2001, 2006 and 2011 presidential elections and the expectations of the public about the electoral process and democracy in the near future elections.

Since it also requires face to face interaction between the researcher and the subjects. Here the researcher will interview group of people in form of asking oral questions as the researcher notes down relevant matters.

Collected data was examined for completeness, comprehensibility, consistency and reliability. Due to the nature of objectives; the researcher used more than one method of data collection.

3.4.2 Library research was also conducted where the researcher will visit some of the libraries in such for information libraries like KIU library, Makerere Library and LDC library.

3.4.3 The internet was also visited where the researcher will check on some of the websites which could be having related information to my purpose of research for example the Electoral Commission Website.

These revealed useful information and was employed in the gathering of the relevant data which was incorporated in this dissertation.

3.5 Data analysis

In order to fulfill the objectives of the study after employing the above methods of data collection, each method revealed different aspects of empirical reality on the subject matter of the study

3.6 Ethical consideration

For confidentiality purposes names of the study participants were not recorded on interview guides and records from interview were safely kept. Data collected was used for research only. Permission to collect data was

sought from the relevant authority before engaging in data collection and clearance was sought from the university authority and the researchers' supervisor.

CHAPTER FOUR

PRESENTATION OF FIELD RESEARCH AND DATA ANALYSIS

4.0 Introduction

This chapter focuses on presentation and analysis of data related to the efficacy of electoral process in Uganda. Specializing on the presidential elections. This will be done in line with the research objectives.

4.1 Registration of voters.

One of the center pieces of an election management is the voters register. In the year 2000 the electoral commission undertook to make a photograph bearing voters' register in preparation for 2001 general elections. But it seemed like this could not be finished in time and the voters had to vote with neither card nor photographs on the voters register. In March 2005, the electoral commission carried voters register update exercise and new voters were registered. Only 47% of the voters turned up during the 2005 referendum.

After the referendum the electoral commission initiated a new registration exercise. The existing register was set aside because it was deemed unworthy of archival storage and destroyed. From the date of 29th Sept to 28th October 2005 they carried out what was termed as update of the photograph bearing voters' card that kind of effort to build a better voters' register improved the situation compared to that of 2001 elections, but again almost serious problems arose and remained when it became clear that many voters would not be issued with cards in time. The electoral commission had to announce that a person could be eligible to vote even without a voters' register and could be identified by

the residents. This in turn caused multiple voting as there was confusion partially in urban areas where residents do not know one another.³⁶

The same issue was raised in the 2011 just concluded elections because it was believed that the new voters would also be issued with voters cards but it was a surprise when the electoral commission announced that voters with no voter's cards will be accepted to vote. "Quite" No person with no voters'³⁷ cards should be denied to vote." Therefore this kind of problem came from 2001 and kept being passed on up to 2011 and may be the electoral commission should be more serious this time it might be passed on against to 2016 elections.

4.2 Nomination and Registration of Candidates

The 2001 election begun with the entrance of new charismatic leaders like Dr. Rtd Col. Kiiza Besigye. This was Museveni's personal doctor and a member of the armed rebellion in the bush war. It was just a struggle of two former friends who turned against each other until the very few people in the voting National Resistance Movement had dared to compete against their boss.

From 1986 to 2005 Uganda was under the movement (No party) political system. This system applied to the principle of individual merit to those aspiring for political office. Everybody was by law a member of the movement and candidates stood on their own merit and campaigned as such. Therefore the nomination of candidates 2001 was on individual merit.

³⁶ CMI report P.12

³⁷ The Daily Monitor Newspaper January 7th 2011

Six candidates were nominated that is Aggrey Awori, Kiiza Besigye, Francis Bwengye, Karuhanga Chapa, Muhammad Mayanja Kibirige and Yoweri Kaguta Museveni.

In 2005 July there was a referendum in which returned the verdict of multiparty political system. This system was duly adopted. In a multiparty political system nomination of candidates may be made by a political organization or political party sponsoring a candidate or by a candidate standing for election as an independent candidate without being sponsored by a political organization or political party.

To harmonize and regulate political parties and organizations, the PPOA provides for a code of conduct for a national consultative forum for political parties and organizations.

The organization and regulation of political parties or organization is however conducted by the electoral commission.³⁸

The law requires that nominees must be Ugandan citizens of good standing and no declared bankrupt or convicted of serious offences.³⁹

Amongst all the candidates in 2006, Besigye's nomination in 2005 drew a lot of political and legal chaos. In December 2005, the Attorney General Minister of Justice, Dr. Kiddhu Makubuya, wrote to advise the EC that it could not proceed to nominate Kiiza Besigye who was in detention on treason charges. The AG argued that while Besigye should be presumed innocent until proved guilty of Article 28(3) of the constitution states. He was not at the same level of innocence with free men and nominating a person charged with treason would be creating a dangerous precedent and would give Uganda a bad image abroad.⁴⁰

³⁸ Section 19 & 20 P.P.O.A

³⁹ Article 80 of the constitution 1995

⁴⁰ The Daily Monitor 9th December 2005

Personal interviews with EC officials suggested that the EC under immense pressure from state house officials and that president Museveni had met with EC chairman and asked him not to accept Besigye's nomination. That is electoral commission was acting on the advice of the president to issue controversial advise.⁴¹ However the deputy AG Adolf Mwesigye contradicted his boss when he advised the EC that the nomination of Besigye was constitutional even in absentia and thus that is when Besigye's picture was allowed to be taken and papers signed while in prison⁴² the media carried stories of political pressure and rifts amongst the electoral commissioners over the Besigye's issue. Some commissioners reportedly threatened to resign if the chair insisted on carrying out directives of government by denying Besigye his fundamental human rights under the law.⁴³

4.3 The Presidential Election Campaign Periods

The **2001** presidential election was the second presidential election with in the NRM regime. This saw the rise of one of the close friends of President Yoweri Museveni and a personal doctor in that capacity Dr. Rtd. Col. Kiiza Besigye. As the campaigns went on there was a lot of violence in most parts of the country for example Kanungu, Rukungiri. In only after one month of the election, the parliamentary committee was set up to probe into violence and other numerous allegations. The committee found out that the supporters of Kiiza Besigye were being beaten and detained by Col. Mugenyi in Arua and that in Rukungiri there was heavy deployment of Presidential Protection Unit (PPU) under

⁴¹ CMI report P.14

⁴² Sunday Monitor 12th February 2006 page 10

⁴³ Weekly Observer 15th December 2005

the command of Capt. Nduhura who threatened and terrorized the area .and on third March a Besigye support was shot dead.⁴⁴

Six candidates were in this race and this included Aggrey Awori, Kiiza Besigye, Francis Bwenggye, Karuhanga Chapa, Muhammed Kibirige Mayanja and Yoweri Museveni.

When the time for voting reached president Museveni emerged the winner with 69% and his main challenger Kiiza Besigye with 27%. The results were contested In the supreme court of Uganda.

4.4 The 2001 Election Petition.

In this petition the petitioner was Kiiza Besigye **vs.** Museveni⁴⁵ and the electoral commission. This was the first election that a loosing candidate petitioned court where the incumbent was the winner. This petition was given attention by most people in the country as they waited this legal precedent unfolds.

The trial of petition was expedient as the law requires and after nearly a period of one month and 10 days the court declared its judgment.

The court by a majority of 3 to 2 held that the elections could not be annulled since the petitioner had failed to prove that the malpractice and violence affected the results in a substantial manner.⁴⁶

The court however unanimously agreed that the electoral laws were not followed. The court noted that highest intimidation, violence and harassment were in Kanungu and Kamwenge districts.

⁴⁴ The New Vision 5th March 2001

⁴⁵ Presidential election petition No.1 of 2001

⁴⁶ The judgment of Odoki JSC 2001

Therefore it can be concluded that if the elections can be rigged in the presence of court and court also agrees and the results are not annulled then sometimes it becomes meaningless to for an election.

The presidential election campaign of 2006 commenced on 16th December, 2005 and the electoral commission as usually had to release campaign guidelines. The National Resistance Movement NRM had its manifesto centered on peace, unity and development where as the opposition parties were more focusing on the failures of the present regime and issues of accountability and integrity. They attacked the incumbent president for trying to cling on power, for failing to fight corruption which was believed to be rampant in public offices and for failing to end the war in northern Uganda. As it is well known it was in 2005 when the members of parliament were bribed to make sure that the presidential term limits were removed. The president faced a lot of criticism for trying to take back Uganda because the past regimes also never had issues of term limits.

The main political parties were Democratic Party DP, the National Resistance Movement (NRM), Uganda People's Congress Party (UPC) and Forum for Democratic Party (FDC) as well as the independent like Abed Bwanika.

By the time the campaign kicked off in the presidential election of 2006 acts of violence had started in some parts of the country. The Human Rights watch released a report on 14th February 2006, that Uganda's 2006 elections would not be free and fair because of the unlevelled field.⁴⁷ The incumbent party's unhindered access to government funds. Its use of government assets and the fact that it received six times more TV coverage than the opposition were the main elements pointed in this

⁴⁷ Human Rights watch "in hope and fear Uganda's government Newspaper 1980"

report. The report also cited incidents of harassment of foreign journalists some of whom used to be arrested on charges of sedition and incitement of violence. This reminds me of Samwiri R. Karugire's statement that Uganda government Newspaper went flat out to campaign for UPC. It failed its duty to provide impartial coverage of campaign, it went as far as distorting news to advance the cause of UPC and thus failed in its duty to provide the electorate with fair assessment of the issues facing them.⁴⁸ Therefore the issue of incumbents enjoying free coverage more than other candidates just because incumbents can command attention simply by announcing political decision must be eliminated for better campaign period among all other parties.⁴⁹and effective electoral process

The fact that an election campaign is an organized effort to persuade voters to choose one candidate over others competing for the same office. An effective campaign requires sufficient resources to acquire and analyze information about voters' interest to develop a strategy and matching tactics for appealing to these interests to deliver the candidate's message to the voters and to get voters to cast their ballots.

The Human Rights Watch (HRW) conclusions were also in part based on a report by the journalist committee, which formed part of the DEM, group election monitoring programme. Their report on media coverage on 2006 elections launched in January, 2006 covered both the print and electronic media. It found out that while leading daily Newspaper, both the state owned and private, gave close equal coverage of the opposition and the incumbent, the Uganda Broadcasting Corporation's TV coverage

⁴⁸ Uganda times government Newspaper 1980

⁴⁹ Janda, the challenges of democracy 5th edition page 160

was highly unbalanced, with 88.5 of the prime news time devoted to NRM and its presidential candidates.⁵⁰

According to the CMI report the following were the highlights of violence infested on the 2006 presidential campaign.

The week that followed before the elections Lt. Ramadhan Magala shot at a crowd of FDC supporters at Bulange killing three and injuring several. The police said they lacked clear evidence to prosecute.

A military convoy rammed into a group of Besigye supporters at Mukono town as Besigye addressed them a few days before elections many were critically injured.

Fox Odoi president Museveni's senior legal advisor was depicted in the press, pointing a gun at opposition party supporters in Tororo on the Election Day. He continued in his job at the state house and the witnesses retracted their testimonies.

Generally there were many irregularities including the army generals openly campaigning for Museveni which was totally contrary to the laws of Uganda and an effective electoral process.

Finally president Museveni emerged the winner with 59% of the votes whereas his main challenger came out with 37% percent. This means that according to the law 59 percent was enough to avoid a re-run. However Besigye rejected the results alleging numerous forms of rigging. He therefore petitioned court in abide to have the results nullified again.

⁵⁰ UJSC/DEM group "report on the Uganda 2006 election media coverage
<http://www.observatorio.IT/download/Uganda> "

4.5 The Presidential Election Petition 2006

In this petition, the petitioner was RT. COL. KIIZA BESIGYE **VS.** THE ELECTOAL COMMISSION AND YOWERI MUSEVENI.⁵¹ In this petition Besigye asked the court to declare the election invalid on number of grounds namely.

That the electoral commission failed to validly declare the results.

That the conduct of the election contravened sections of the constitution, the electoral commission Act. And the presidential elections Act

That section 59 (b) of the presidential election Act requiring a petitioner to prove substantial effect for an election to be overturned is contrary to the constitution,

The Supreme Court (SC) upheld that quantitative provision that the petitioner had to prove that irregularities substantially affected the results to provide a basis for overturning the results. The court found out that the electoral commission failed to comply with the provisions of the constitution. Presidential election Act and electoral commission Act in the conduct of 2006 presidential elections. It also accepted that principle of free and fair elections were compromised by bribery, intimidation or violence in some parts of the country that the principles of equal suffrage transparency of the voters and secrecy of ballot were undermined by the existence of multiple voting and vote stuffing.

Nevertheless a majority of 4 of the 7 judges dismissed the petition. They found out that it was not proved to the satisfaction of the court that failure to comply with the provisions and principles affected the results of the presidential substantially.

⁵¹ presidential election petition No.1 of 2006

Besigye was not contented with the decision of the judges and criticized court for upholding some thing that favours people who rig election it was from this time that Besigye was quoted saying that it is the last time that court will receive his petition and vote” we shall show our people how to fight.⁵²

Unlike the 2001 and 2006 presidential election, the 2011 presidential elections showed some improvements. As per EU election observer group. However the EU observer group noted that in most polling stations visited, some teams observed general low turn out in first six hours of voting less than 50% of the voters had cast their votes. In some places such as Mbale the team observed a few incidents of violence.

There was high presence of military personnel in fatigue uniforms which may have intimidated and frightened some voters.

They also found that the issue of lack of a level playing field and commercialization of politics remained a problem. But finally noted that it was encouraging that during the election campaign basic freedoms, including freedom of association, freedom of movement and assembly were generally provided for. Parties conducted extremely active national campaigns which attracted large crowds. The campaign was generally peacefully though some localized incidents were reported. The electoral commission coordinated the campaign schedules and thereby contributed to the generally peaceful conduct of the campaign by ensuring party rallies did not overlap.⁵³

On 18th February 2011 when people voted president Museveni came up with the winner with 68% and still his main challenger Rt. Col. Kiiza Besigye was quoted saying ”it is now clear that the will of the people

⁵² The Daily Monitor Newspaper 7th April 6 page 25

⁵³ African Union Observers fault Uganda election AP story at Real Clear politics 2011.

cannot be expressed through the electoral processes.” Besigye said we the people of Uganda will eventually prevail.⁵⁴ In such a way Besigye seemed to have been taking the issue into people hands to decide what was to follow of course he did also not recognize the results though he did not go to court.

One writer meaud Majwala noted that what was a paramount importance during the 2011 elections was country wide civic education on by the electoral commission, civil society organizations and political parties. Atleast this year the media and civil society’s empowered the electorate to make wise and informed decisions, we are now left to interpret what Ugandans voted. That in any particular elections there are always winners and losers but our politicians have deliberately refused to acknowledge the fact. In Uganda like in many African countries every looser is cheated and every winner has rigged the elections.⁵⁵

Juliet Keijagye Kampala Editor wrote that the relevance of international election observers has on several times Ben questioned in Africa, common wealth countries are falling a sunder. Yet they had free and fair elections under the critical eye of the observers. It is prudent to critically analyze the process but even then there are key issues to master.⁵⁶ Meaning that even where some times the elections are rejected by some groups. The observer have already declared them free and fair hence casting doubt in their observation

⁵⁴ Godfrey Olukya and Max Delay February 19, 2011 Associated press

⁵⁵ New vision of Monday 21 february 2011 page 17

⁵⁶ New Vision of Monday 21, February 2011 page 17

4.6 CHALLENGES OF ELECTION ADMINISTRATION IN A MULTIPARTY ELECTORAL PROCESS IN UGANDA

4.6.1 The Voter Register

The back bone of any good election is an accurate voters' register. The challenge therefore is how to compile a voters' register that includes all eligible voters and is acceptable to all stake holders. The register possess unique features that assist in identifying the voters e.g. photograph, voter identification number and thumbprints etc. these introduce technical challenges.

4.6.2 Funding of election.

Elections are very expensive exercises, in a developing country like Uganda there are competing priorities for the limited resource envelope. Adequate funding is of electoral activities is not possible always consequently activities like voter education and remuneration of election officials (registration, display and polling official) funds for physical aspects like offices and vehicles are often underfunded.

4.6.3 Polling day

Polling day itself will present new challenges as to the physical arrangement of polling stations which officials; to man it and how they are recruited and vested with majority of Ugandans becoming card carrying members of political parties. It is difficult if not impossible to find neutral acceptable and qualified personnel. Therefore this kind of problem prejudices the smooth running of electoral process.

4.6.4 Voter education.

Despite efforts by the commission to conduct voter education, the challenge of a largely illiterate voting population. Compounded by lack of adequate funding has greatly reduced the impact of the programme for

example in 2005, the democracy monitoring group (DEM) blamed the electoral commission EC for allegedly messing up the referendum exercise. Rev. Anthanasum Maraka a national observer with (DEM), a democracy, advocacy group castigated EC for being responsible for the poor turn out as there was little sensitization of the exercise to the masses as a result most people in rural areas especially, virtually had no idea as to why they were being called to participate in a referendum.⁵⁷

4.6.5 Relations between political parties and the electoral commission.

The relationship between political parties and the commission in a new multiparty dispensation has been challenging. The parties are suspicious of the commission's intention and indeed capacity to deliver free and fair elections. The commission on the other hand has tried to bring on board the parties in all electoral activities with several dialogue workshops, institutions of a national liaison committee on which all parties taking part in the election are represented and similar committees at the district level to hear and investigate complaints. During polling each participating to a maximum of two agents at each polling station that witness the exercise, endorse the declaration form and are entitled at copy of the declaration form. This would strengthen an electoral process which is presumed to be effective.

4.7 Role played by the electoral commission in the electoral process

Article 60(I) of the constitution of the republic of Uganda 1995 states that there shall be an electoral commission which shall consist of a chairperson, a deputy chairperson and five other members appointed by the president.

The commission has a seven year term which is renewable once.

⁵⁷ The Daily Monitor August 1, 2005 page 21

Article 62 of the constitution guarantees the independence of the commission and other staff of the commission may hire as required.

Article 61 of the constitution and section 12 of the electoral commission Act outlines the functions/duties of the electoral commission.

Firstly the electoral commission is mandated to conduct free and fair election and referendum. It is the mandate of the commission with other stake holders to ensure free and fair election. For the past 10 years from 2001 presidential elections, the electoral commission has always been criticized for failing to organize free and fair election. It was with the exception of 2011 presidential election where the elections were generally peaceful as per election observer reports.

The electoral commission has also to make sure that there are secure conditions for an election. It has to make sure that it has sufficient funds such that conditions are favorable to all competing candidates. Unlike the 2011 presidential elections, the 2001 and 2006 presidential election were full of unfavorable conditions for an election. The Kalangala Action Plan (KAP) under Kakooza Mutale was always noted terrorizing and intimidating supporters of Kiiza Besigye in Kampala and other districts in Gulu. Besigye supporters were blocked by the Uganda Peoples' Defense Force (UPDF) from attending rallies. The criminal investigation department (CID) report to the committee indicated that 742 cases of election violence were reported to police while 408 arrests were made and yet cases in the rural areas were not reported.⁵⁸ Therefore in a good and well established electoral process these kinds of conditions were not secure for an election hence affecting the efficacy of the electoral process

⁵⁸ Parliamentary report on election violence 2002

The commission also has the mandate to ensure that candidates campaign in an orderly manner. In the just concluded presidential election 2011. The campaign was a bit smooth and candidates campaigned without colliding unlike the 2001 and 2006 election where there was a lot of collision by candidate's supporters.

The need to ascertain publish and declare in writing under its seal the results of the election and referenda independently is one of its big roles., most of the electoral commissions in Africa when it gets to counting and declaring results is where they face a challenge especially when the election involves a tight-race between the incumbents. The commission is always afraid of frustrating their incumbents hence sometimes this arises the election violence like in Kenya.⁵⁹ Hence affecting a smooth electoral process and interfering with the will of the people which should be respected.

One of the biggest challenges in our electoral; process is voter education which the electoral commission must undertake to uphold. The fact that in Uganda we still have a population of people who do not know how to read and write. This kind of population needs a lot of vote education because to vote is a right under Article 59 of the constitution people must be informed of why they are being taken into an election, in 2005 referendum. It was alleged by the (DEM) Democracy Monitoring group that the electoral commission messed up with the referendum because there was low turnout for voting due to little sensitization on the exercise and as a result most people in the rural areas especially virtually had no

⁵⁹ Daily Monitor Newspaper 9th May 2008 page 20

idea as to why they were being called into an election referendum. This was quoted.⁶⁰

Unlike the 2005 referendum the 2011 presidential election had a bit of sensitization. One writer Meaud Majwala reported that what was paramount importance during the 2011 elections was countrywide civic education on by the electoral commission and political parties' organization.⁶¹

The electoral commission is also mandated to hear and determine election complaints arising before and during the electoral commission should be independent from any authority as per section 13 of the electoral commission Act. It was to make sure that impartiality prevails all over the process. The current electoral commission has often been accused of being partial, trying always to side with the ruling government yet normally it is supposed to serve all people impartially without favoring one part of the group.

However the electoral commission is committed to fulfilling its mandate as enshrined in the constitution of the republic of Uganda. To this end, the commission put up into place mechanisms that would ensure that it conducts free and fair elections. Examples of these include photograph-bearing register that minimizes impersonation issuance of photograph bearing voters' cards that confirm all duly registered voters and a duplicate analysis system that enables the electoral commission to detect persons who register more than once with a wish to vote many times in the same poll.

The commission is also very cognizant of the fact that a lot of voter education needs to be undertaken to enlighten the population of their

⁶⁰ Daily Monitor Newspaper, Monday August 1 2006

⁶¹ New Vision of Monday 21 February 2011 page 17.

rights and obligation,. In the absence sufficient funds, the electoral commission takes opportunity of any available chance to pass its message across.

The electoral commission believes that in empowering all the stake holders to take interest in all activities of electoral processes, a genuine free and fair poll can be conducted.

The commission reiterates its position to fulfill its constitutional mandate to organize conduct and supervise free and fair elections.

4.8 CAUSES OF ELECTION MALPRACTICES IN UGANDA.

One of the causes of election malpractices is lack of awareness of electoral laws and voter education; most of the people in Uganda who engage in election activities do not actually know the laws that govern them. Even those who know them have failed to follow them. Therefore people must come to understand that as their candidates are busy distributing small necessities like soap, mattresses there is a law which prohibits. That people need to be taught that you don't have to be first given money or other things in order for you to vote. If this can be given a solution then this can enable the country to choose their leaders freely, democratically and fairly.

According to the people I interacted with like Mr. Joseph they revealed to me that in Uganda people are too much greedy for power. And hence run to rigging elections because some of them have what it takes to bribe voters like money. He went on to say that when the president is going to contest again he does not give up his office. This gives him a chance to continue with easy access to the tax payers' money.

He added that the ruling party in Uganda is by far the largest and best resourced party and following many years in power, elements of the state structure are synonymous with the party that it does not meet any difficult when it comes to the issue of distributing vast amounts of money and gifts.

According to the study it was found out that the increase state involvement and security forces is among the causes of election malpractices. For example in the past 2001, 2006 and 2011 presidential elections there was always heavy deployment of soldiers and other security forces near voting stations. With the population which is not used to having soldiers deployed some of the voters were intimidated to the level of not turning up to vote.

Automatically this kind of deployment was always favoring the ruling party. The law requires security forces to be non partisan but their involvement in the just concluded elections showed that some of security forces are partisan. This not in line with a free democratic country under a free electoral process.

For example in 2006 the court expressed grave concerns regarding the involvement of the security forces in elections, intimidation violence and partisan harassment, massive disenfranchisement of voters, partisan conduct of electoral official and lack of voter education.

According to the fact that there is no law that candidates and agents who commit electoral offences should be prosecuted and punished in accordance with laws of the land. This makes the people reluctant to avoid these election malpractices. In any event the presiding judge in an election petition should have concurrent jurisdiction on the same found facts and evidence to disqualify the guilty candidate and anyone else that committed or was a party to electoral offences. The right to recall a

member of parliament or local government councilor should continue to be constitutionally exercised.

In addition the constitution and the electoral laws of Uganda provide for an impartial transparent and fair electoral process.⁶² Yet the implementers and enforcers of the constitution and the laws, their rules and procedures have persistently failed to live up to the expectation and observance of the law.⁶³

According to Ainomugisha a respondent noted that there is need for strengthening institutional frame work of the presidential elections in Uganda. He continues to argue that there is need for free and fair elections which act as the highest level of expression of the general will of the people. They symbolize the right of the people to make and unmake governments as is provided for in the universal declaration of human rights Article 21 of 1948. An election system is important in resolving political conflicts between different groups.

4.9 LESSONS THAT CAN BE LEARNT FROM THE ELECTORAL PROCESS IN SOUTH AFRICA.

The electoral process in South Africa is managed by the independent electoral commission as per the constitution of South Africa. Among the rules of the commission include to conduct supervise free and fair elections. Though the commission is funded by the public, it is an independent body from government.

According to the electoral process in South Africa on the side of presidential election, a president can go for election only 2 times which means that the presidential term limit is only two terms serving 5 year

⁶² Section 41 of the presidential election Act

⁶³ The scratching criticism by the justices of the supreme court in presidential petitions of 2001 and 2006.

per term. Uganda through the parliament should have the term limits restored for better democracy.

The Uganda electoral commission though the law requires it to be independent should virtually be named the independent electoral commission of Uganda, because some people think its independence remains in the laws but not does thing which don't depict its independence.

Uganda must copy the electoral process in South Africa and begin to strongly fund its political parties. The political parties in Uganda are underfunded which sometimes leads to unbalanced competition between other political parties and the ruling party.

Uganda should learn from South African electoral process especially the system of having voter education materials for each election period which would enlighten people more about the elections.

In South Africa there is what they call election Cornic (English) for example the 2009 election conic English.

This is a booklet which explains what an election is, how often they happen why people should vote, what the voters' roll is what people are voting for the voting process, ballot papers and special votes.

These would strengthen the electoral process in Uganda especially on voter education.

There is also the 2004 election pamphlet in South Africa. In this pamphlet explains what the IEC does, who can register as a voter, why and where to register and what you are voting for such election. This documentation is made in different languages to capture diverse languages which mean that all voters are reached with voter education.

Therefore in conclusion Uganda should learn the lessons above and adopt throughout electoral process.

CHAPTER FIVE

CONCLUSION, RECOMMENDATIONS AND SUMMARY OF FINDINGS

5.1 Summary of the Findings

According to the study, the 2001 and 2006 presidential elections were conducted in the legal framework like the constitution of the republic of Uganda 1995, the presidential elections Act, the political and organization Act 2005 and the electoral commission Act 1997

Some of the causes of election malpractices included limited awareness of electoral laws, increased state involvement in the elections and security forces, Lack of voter education and among others.

The ending court petitions and subsequent by-elections and rejections of results for example like the just concluded 2011 presidential elections are a clear sign that if something is not done right about our electoral process, the 2016 presidential elections are likely to be marred with un fair and un democratic practices. The state involvement in the electoral processes is likely to increase if there is no clear demarcation between the state and the ruling party particularly during the periods of elections.

It should be noted that there should be increased voter education. Civic education should be seen as better way of which people should be constantly trained in civic affairs and monitoring made permanent. Registered political parties should periodically conduct voter education programmes.

Acts of violence, inciting language, intimidation, discrimination inducing voters in presidential elections and fraudulent Acts by officers or persons in positions of authority should be prohibited for better electoral process in Uganda. The electoral commission should be empowered adequately to

resolve complaints arising from elections where the investigations can be instituted by the electoral commission

5.2 Conclusion

According to the study the 2001 and 2006 presidential elections were associated with undemocratic practices. For example high intimidation violence, harassment of voters, vote rigging, soldiers and other security agents and organization being brought into the elections in the name of maintaining law and order because police was unable to do so since polling stations outnumbered the police. All inconsistencies called for immediate attention if the electoral process is to be smooth in subsequent election. And ensuring that the will of people is always upheld which is among the characteristics of good electoral process

Unlike the 2001 and 2006 presidential election, the 2011 presidential election showed some improvements from the past elections. This therefore showed some bit of improvement in the electoral process. However institutions like the army and other security agents should not just be deployed because sometimes, this intimidates and frightens some voters though through an electoral process. There are combinations of factors that impact on the outcome of the election. Other than votes themselves for example police, courts and electoral commission are very instrumental on a well established electoral process and democratic development. In good electoral system there has to be a vibrant civil society able to monitor government and private business and provide alternative forms of political participation, free, strong and independent Media. these would make the electoral process

5.3 Recommendations

The study came out with the following recommendations.

In Uganda there is a lot of reforms needed as below.

The electoral commission. The constitution provides in Article 62 that the Electoral Commission shall be independent and not subject to directive or authority from anyone.

The appointment of the commissioners must be divested from the president if we are to have an independent electoral commission. There must be an appointing committee with the approval of parliament. This would try to restore the confidence of all the players in electoral politics. The electoral commission members especially the chairperson and the secretary should never again be persons handpicked by the president. It should be this National consensus committee of eminent persons that should supervise and judge the work of Electoral Commission. This appointment committee must be able to choose from a wide range of individuals, not necessary from one party which is in power.

Political party leaders have always raised reform proposals in this area and their view ought to be accommodated so that the nation has an electoral commission which is truly independent and impartial and is trusted and respected by all sections of the community. Article 12 of the universal declaration of human rights on Democracy is fairly clean. It provides that the key element, in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed. That will cannot be freely expressed if the elections are presided over and conducted by a partisan electoral commission. Persons who are not properly trained or who are easily intimidated to comply with the ruling party should never be employed in this role.

In situations where an opponent successfully challenges the winner in a parliamentary election on grounds that the latter committed electoral offences. When the electoral commission calls for a bye-election in the constituency, the culprit is allowed to compete again for the seat in my view, this is not right. Such an offender should not only be disqualified

from standing in the subsequent bye-election but in any other elections for a period of not less than five-six years as the court may deem necessary.

One of the handicaps against democracy and the freedom to vote for anyone capable is the monetization of election. This was very evident in the just concluded 2011 presidential elections where the Electoral Commission observation mission group noted that there was a significant increase in campaign spending compared to 2006 presidential elections and described it as the “manifestation” of the election. They continued that “the distribution of money and gifts by candidates, a practice inconsistent with democratic principles was widely observed by EU observers.”

Therefore there must be a law against lavish spending by candidates and their supporters as if this country is available and only governable by the rich people only.

The periods in which petitioners and respondents are given to collect evidence in case of election malpractice in support of their respective sides are too short to enable them gather all necessary evidence. The same applies to the time allowed to the courts to decide election petitions. The principle of enquiring into petitions by affidavits should be liberalized so that the courts discretion which is implicit in Article 104 of the constitution is not hampered. Currently the system is restrictive and subject to abuse. In cases of presidential elections such a short time should be extended for purposes of getting clear and enough evidence.

There must be strict enforcement of law. The fact that the greatest obstacle to free and failure elections in Uganda is the failure by

candidates, their agents and electoral officials to comply with the law, what is worse however is that many of those same people deliberately manipulate, break or infringe electoral laws or cheat in the voting process in order to win seats or favor particular candidates for whatever elective post happen to be up for grabs. The saddest episodes are those where the electoral criminals are also rewarded with posts, promotion, bribes and praise.

Uganda has adequate laws on corruption ,on abuse of office, on discipline of security forces, on intimidation, on vote rigging and on vote stuffing but state organs and authorities have failed or unwilling to enforce these laws. It is simply diversionary that every time we fall in the endeavor to enforce the existing laws, we cry out that the also need to be amended or reformed. The truth of the matter is known well where the fault lies but just because many people are afraid to say or later alone come in the open and oppose or fight the failures and deliberate sabotage of our constitutional laws.

In my opinion therefore assemblies-rallies conferences and seminars are desirable and welcome to examine and come up with resolutions about why governments in Africa and Uganda in particular have failed miserably to implement and enforce their good and adequate constitutions and laws enacted or made to protect and sustain free and fair elections to allow democracy, the rule of law, human rights and constitutionalism to work and flourish on the continent.

In this Uganda I am fortified in this belief by all the judicial inquiries and pronouncements that have been held and published from election to election since elections became one of the ways and the most popular for change of government, in every judgment, in every opinion on election petition the unanimous decisions of the courts and impartial reports of

observers give the coordinated choruses of violations, infringement, non-enforcement of and blatant failures to implement and enforce the law.

For the sake of having a safer and cleaner electoral process, the constitution should be amended again to restore the presidential term limits which were removed. The term limits was the best safe guard and guarantor that government had to change democratically without having somebody to cling on power. The presidential term limits were removed in 2006 by the parliament which was largely criticized by many politicians both in Uganda and abroad. This kind of change left the hearts of many Ugandans doubting the future electoral process of Uganda.

The study also found out that there should be a much deeper commitment to the declaration of principles for international election observation and the code of conduct for international election observers, the observer must be given accreditation without hindrance and must be spread to all parts of the country in order to deliver competent reports, they should not only be concentrated on the city hence giving an opportunity for perpetrator in local areas to enjoy their tricks of election rigging.

These local and international observers should be facilitated by all the stake holders and should not be intimidated by any person.

The study also found out that the electoral commission should always be given priority in the budget time because he holds a big task. The funds should be released earlier so as to enable the process of voter registration and verification exercises to be conducted earlier enough. The last registration of voters was criticized because the electoral body was working under a lot of pressure and yet the time was almost out.

Therefore if the electoral commission would be given enough funds and in time then the commission would not have any excuse in reference to funds.

The National (ID) Identification Card system should be adopted so that a reliable data base can keep track of all who have reached majority age. The voters' register remain a work-in-progress while some improvements have been made following cleaning of the list and public verification exercises many anomalies remained. The extent of this varies from area to area but the phenomena are consistent. The absence of voter cards or some other regulated form of ID together with the inaccuracies in the voters' register opened the recently concluded (presidential) electoral process up to abuse and disenfranchisement.

The study conducted also revealed and recommends that for a period of presidential elections the speaker of parliament should be vested with the executive powers. This divestiture of authority from the president would keep the essential requirements of the rule of law, equality of candidates, this way the incumbents use of state resources and privileges to the detriment of other candidates would be checked.

In the just concluded February 2011 presidential and parliamentary elections.

This issue was raised by the EU election observation mission group in their report that the power of incumbency was exercised to such an extent as to compromise severely the level playing field between the competing candidates and political parties.

It would be a good idea for example if the constitution was amended so that the popular vote is not the determinant of the outcome, but an Electoral College system. From the presidential election in 2001 up to the just concluded 2011. Yoweri Kaguta Museveni has been pulling low

votes in urban areas/centers like Kampala and consistently pulling high in rural areas (villages). The rationale is that the people in urban areas are more informed about precarious political development than their rural dwellers that are always easily influenced by individuals with things like money gifts and promises of districts. Therefore a candidate should have at least also command in urban areas for him to be competent to lead Uganda.

Finally the study always seeks redress provided for under the law when there is any election malpractice people should not run on the streets to riot but should go to the courts. With that Uganda's electoral process will actually reflect the will of majority and the minority as well.

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APPENDICES

Appendix: INTERVIEW GUIDE

1. what is the role played by electoral commission in the electoral process?.....

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2. What are the challenges of election administration in a multiparty electoral process in Uganda?

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What are causes of election malpractices in Uganda?

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What are the possible reforms that can be made in the electoral process to ensure free and fair elections?

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What lessons can be learnt from the South African electoral process?

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