

ELECTION OFFENCES AND MULTI PRACTICES IN UGANDA
A CRITICAL ANALYSIS OF THE LAW

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DECLARATION

I, LANGALANGA CHRISLERO here by declare that the content of this dissertation are my original work and has never been presented before for the award of a degree or diploma in any university or institution.

Signed 

Date 28th / 06 / 03

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APPROVAL

This dissertation by Langelanga Chrislero under the title of "*Election offences and Multi Practices in Uganda: A Critical Analysis of the Law*" has been carried out under my supervision and is now ready for submission to Kampala International University for examination with my Approval.

Signed

.....


Miss Basajabalaba Jalia

Date 28.06.2013.....

DEDICATION

This book is dedicated to the family of Mr. Langalanga Peter and Mrs. Achieng Jalia for the financial and moral support they offered to me not forgetting Babirye Rebecca may the almighty God bless you and long live.

ACKNOWLEDGMENT

The act of writing a dissertation is both private and communal undertaking. private because the author sits in the privacy of his room putting together the pieces and bits of information that he gathered and building them into a coherent story that he hope his readers will enjoy . Writing a dissertation is communal because many people give their contribution in various ways that make compilation and completion of the book possible.

While writing a development book such as this one, a writer must read, examine and recreate information that has been compiled by various authors/writers who have tackled the subject from different perspective and different times. He has the duty of putting such diverse views and interview together and making them one story fit for consumption of readers. This is what I have tried to do in writing the finding on the critical analysis of the law in regard to election offences and malt practice in Uganda especially the parliamentary and presidential election in Uganda. My work has been made enormously easier by numerous texts, dissertation, articles that have been written about election in Uganda.

I am grate full for those who offered any kind of support to me right from the conception of the research idea in particular Mr. Sserunjogi Nassa for approving this topic. I am also indebted to my supervisor, Mrs. Basajabalaba Jalia whose guidance I was able to reshape the study objective, research tools that finally I was able to generate bore fellow meaning. I cannot in the same token forget to thank my friends most especially Ebenezer discussion group for the moral and material support in the academic struggle fellow intellectual s ,your ideas by no means gave this piece of work the shape it possesses to date.

Lastly, my Mother Achieng jalia and my Father Langalanga peter, not forgetting Adikini Melissa Langa for the sacrifice they made out of their hand earned incomes to ensure that I access education which opened chances for me to reach university, Dad and mummy.

LIST OF STATUTES

Constitution of the Republic of Uganda, Chapter 1 of the Laws of Uganda

Electoral Commission Act, Chapter 140 of the Laws of Uganda

Parliamentary Elections Act of 2001

Presidential Elections Act of 2005

INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENT AND DECLARATIONS

African Union Declaration on the Principles Governing Elections in Africa
(2002)

African Charter on Democracy, Elections and Good Governance, ACDEG,
2007

International Covenant on Civil and Political Rights

Universal Declaration on Human Rights

United Nations General Assembly Resolution No45/150 of 21 February 1991

LIST OF CASES

Kiiza Besigye Vs. The Electoral Commission of Uganda and Yoweri Kaguta Museveni, Constitution Petition No .1 Of 2001

Paul Rwanyarere and 9 Other Vs. Attorney General Constitution Petition No. 7 Of 2002

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Summary of presidential petition of 2001 Election Result: Julius Kiiza, Sabiti Makara and Lise Rakner: Electoral Democracy in Uganda

CERTIFICATION

I Ms. Basajjabalaba Jalia, do here by conform and certify that I have supervised the student's research. Dated at Kampala this.....Day of2013

SUPERVISOR.....

M/s. Basajjabalaba Jalia

ACRONYMS

DEM GROUP:	Democracy Monitoring Group
DP:	Democratic Party
FDC:	Forum for Democratic Change
ICCPR:	International Convention on Civil and Political Rights
LDC:	Law Development Centre
LEGCO:	Legislative Council
NGOs:	Non Government Organisations
NOCEM:	National Organisation for Civic Education and Monitoring
NRC:	National Resistance Council
NRMO:	National Resistance Movement Organisation
PDP:	Peoples' Development Party
PPP:	People's Progressive Party
UDHR:	Universal Declaration of Human Rights
UFA:	Uganda Federal Alliance
UN:	United Nations
UPC:	Uganda People's Congress

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ABSTRACT

The foundation for election right is found in Article 21 of the Universal Declaration of Human Rights (UDHR). This provision has been reinforced by article 25 of international covenant on civil and political rights .However elections in Uganda have been questionable in spite of the existing laws and institution put in place. The question therefore, that this research aims to look at is does electoral laws in place, institution and electoral processes in existence in Uganda sufficient enough to curb down election offences and multi practice.

This paper is limited to critical analysis of the law in regard to election offenses and multi practices in Uganda showing whether elections in Uganda have been conducted without election fraud and multi practice and the necessary steps that can be taken to eradicate such fraud and multi practices in order to achieve democracy.

The study analyses the legal and institutional frame work which if worked upon can address the problem of election offense and multi practice.

It's concluded with recommendation that can be adopted and revised to curb down election offence and multi practices hence free and fair election

CHAPTER ONE

THE PROBLEM AND ITS SCOPE

1.0 Overview

Regular elections are at the very heart of representative democracy. The word democracy is derived from two Greek words **Demo** and **Kiratia** which means people and rule. They embody the basic principles of popular control and political equality and ultimately. It is on the ability of citizens to dismiss their elected representatives and the political parties or organization for which they stand that the principle of popular control and government is founded and also in other words people have a say on who to govern them and how they can be governed¹.

The inevitable pillars of democracy comprises the concepts and doctrine of human rights, accountability, transparency, fair distribution of resources, a free and fair elections, balances and sustainable development, gender sensitivity in the conduct of governance. An important manifestation of democracy is the exercise of the right to elect representatives. It's a basic national objective that "the state shall be based on democratic principle which empowers and encourages the active participation of all citizens at all levels in their governance".

The sovereignty of the people is recognised by the constitution which states that the people "shall express their will and consent on how shall govern them and how they should be governed through a regular free and fair election of their representative and every adult Ugandan has a right to participate.²

Democracy is widely considered to be a necessary and important tool if a country is to develop politically, socially and economically. This is why Lijphart referred to electoral system as the most fundamental element of representative democracy and the right to participate with political and

¹ Schmitter Pc And; I L Karl 1991.What Democracy Is....And Is Not Journal Democracy 2(3) 75-88.

² Przemorku, Adam, Michael E. Alevereze, Jose Antonio Cheubub &Fernado Lmongi 2000. Democracy And Development; Political Institutions And Material Well Being In The Word.

economic life of one's state is guaranteed in most African constitutions as well as in regional and international human rights instruments.

The United Nations has held that any law which restricts the ordinary enjoyment of civil and political rights which are constitutive of democratic society is incomparable with the conduct of free and fair election (UN 1994). This followed a statement of the secretary general of UN 1991 that "democracy implies far more than the mere act of periodically casting a vote but covers the entire process of participations by citizens in the political life of their country".

The foundation for election right is to be found in UDHR³. This provision has been reinforced by (ICCPR)⁴ which states "that every citizen shall have the right and opportunity (a) to take part in the conduct of public affairs, directly or through freely chosen representatives (b) to vote and be elected at genuine periodic elections". Uganda like many African countries inherited an exploitative predatory state infrastructure set up by colonists.

1.2 Back ground of the study

In the recent past elections has become part and parcel of public life in Uganda. In a country where the state was for about two decades characterized by an ambiguous regime one described as state of chaos as opposed to order a situation as a risen whereby election have become synonymous with the new popular regime currently in power.

In Uganda a culture of election has always been missing if not abused or neglected in the political history of Uganda. It has also suffered civil strife, political instability and authoritarianism resulting in political misrule economic and social hardship.

In 1958 the 1st election representative to the LEGCO were Boycotted, those in 1961 and 1962 followed tribal loyalties those anticipated for 1967 were postponed and those planned for 1967 were pre emptied by Idi Amin's military coup and usurpation of power and yet the 1980 election that

³ Article 21 Of The Universal Declaration Of Human Rights

⁴ Articles 25 of The International Covenant On Civil And Politic Rights

followed the fall of Idi Amin were married by intrigue, intimidation of opponents and illegal outright rigging of election.⁵

By the way since 1966 when the former president Milton (RIP) used the gun to overthrow Muteesa II the Kabaka of Buganda and the 1st president of Uganda, the gun has become a permanent feature in changing political leadership in the country.

In 1971 Amin used the gun to overthrow Obote and declared himself president and he was chased by a combined military force of Uganda exile and Tanzanian people's defence force in 1979

Between 1981 and 1986, the National Resistance Movement /Army Guerrilla used violent means to dislodge the Obote II and Okello Lutwa regime and subsequently came to power in January 1986 where by National Resistance Movement (NRM). Government established a system of electing leaders from village levels to DISTRICT council by the National resistance council of 1986 hence councils from village level to district level were formally called the national resistance council(NRC)⁶

The capture of state power by the national resistance army / movement (NRA/NRM) in 1986. Ushered in the "no party system" or in its ten point programme, point No 1. As "restoration of democracy emphasis however was participatory democracy based on individual merit in election and non partisan politics".

Indeed elections held in 1989, 1996, and 2001 were organized under the concept of "individual merit"⁷ it provided that candidates for all elections were prohibited from seeking sponsorship of a political party, opening branches , displaying party colours or attempting to use the facilities and slogans of a political party⁸.

⁵ Oloka Onyango ,J New Wine Or New Bottles ?Movement Politics And One Partyism In Uganda 'In Mugaju

⁶ Electoral Democracy In Uganda. Juliuskuza Sabit Makara And Hise Rakner.

⁷ Article 267 The Constitution Of The Republic Of Uganda.

⁸ Oloka Onyango. J New Wine Or New Bottles 2 Movement Politics And One Party System Mugaju.,Makara,S.Tukahebwa,G,T And Byarugaba,F.E(Eds)(2003)'Voting Democracy In Uganda: Issues In The Recent Elections ,1996-2001'

In other words the legal framework under NRM has tended to undermine the work and growth of political parties hence this has created room for election offences and multi practices.

1.3 Statement of the research problem.

Despite existing legal framework and institution, governing elections. There has not been a fully realisation of curbing down election offences and multi practice.

1.4 Objectives of study

Among other objectives the research will deep down to;

- i) Examine the reasons why there is increase in election violence, malpractice at all electoral level.
- ii) To find out whether the election related laws are adequate to curb such malpractices.
- iii) To find out the importance of the electoral commission and its jurisdiction in hearing election petitions.

1.5 Hypothesis

The legal and electoral process does not favour a free and democratic Uganda societies and respect for the rule of law in that there is wide spread of election offences and multi practices.

1.6 Scope of the study

This proposal is premised on the fact that the backbone of democracy lies in a good electoral practices that guarantee basic democratic tenets. Electoral practices that conform to the universal declaration on human rights (UDHR).

Civil and political covenant on and the African charter on Human and peoples' rights (African charter). And indeed to national constitution.

Most African countries, Uganda included have maintained electoral practices that their colonial masters have otherwise since abandoned⁹ and which do not represent the causes and aspiration of the people today are research provides an over view of previously held general electoral under the colonial electoral system and concludes that the outcome of these elections provides a good basis for improving future election in Uganda. There is still a great deal that Uganda needs to get rid of and a number of electoral reforms are urgently needed, most especially in regards to electoral institutions and governing laws because votes preferences do not exist in vacuum, instead they exist in an institutional context that is shaped to charge extent by a country's electoral system. The most important institution being the electoral commission; therefore this research is a Ugandan case study of the interaction between the current electro process system its governing laws and the respect of rule of law.

1.8 Significance of the study

Election lies at the heart of a democratic process and which is through the exercise of voting which has to be free and fair. The reflection of the elections that have been held in Uganda does not reflect the will of the people because it's encountered with election offence and malpractices and thereby a need to look critically into the recommendation that have to be made and reflected in this research. Therefore still serve as appoint of reference in future elections.

1.9 Literature review

Election in Africa and the world over have attracted considerable literature because it is a very important component of democracy and they are not indispensable in measuring public support as it is through electoral verdicts that power is given or revoked and in fact elections have always been the most desirable, way of peaceful removing unpopular regimes from power.

⁹ Kanyeihamba G.M (2002) Constitutional Political History Of Uganda From 1894 To The Present Kampala Century Publishing The Present Kampala, Century Publishing House Limited.

Many authors have through their writing made observations about election in free and democratic societies which have provided relevant and valuable information as analysed before.

“That the key element in the exercise of democracy is the holding of free and fair election not affected which election offences and malpractices at regular intervals enabling the people’s will to be expressed. He adds that the will cannot be freely expressed if the elections are presided over and conducted by a partisan electoral commission.¹⁰ Tarsis Banzara Kabwegyere also puts that “Elections in Uganda have become an expression of the people’s choice in their own governance, political success is no longer escalated by religious/ethnic affiliation, these also seek public office at whatever level might rise or fall on the basis of individual merit regardless of their religion, sex and for this remain so election must continue to be free from any malpractice and violence.¹¹”

Likewise Rakner and Lars Send examine the electoral structure and the nature of African parties and party system, using the 2001 election in Zambia as a case study stated that it is impossible to conceive of democracy without elections, but that in Africa however it is possible to have elections without democracy citizens are free to choose their leaders but leaders have found ways to win electoral candidates without opening up political space.¹² The three arms of government that is the executive, legislature and judiciary have provided me with material for the research and not forgetting the responsible citizens of this country who have tried to write about elections. In Uganda, thus coming up with following literature the constitution of the Republic of Uganda 1995 did not only serve as the supreme law of the land in this research but a fundamental reference which provided me with the data on right for vote¹³, the electoral commission¹⁴, functions of the electoral

¹⁰ Constitutional And Political History Of Uganda From 1894 To The Present: Centenary Publishing/Housing Ltd Kampala By Kanyeihamba GW (2010)

People’s Choice, Power, Challenges And Prospects Of Democracy In Uganda By Tarsis Barzara Kabwegyere.

¹¹ Ranker Hand L. Multiparty Election Africa New Democracy ¹¹ People’s Choice, Power, Challenges And Prospects Of Democracy In Uganda By Tarsis Barzara Kabwegyere.

¹² Ranker Hand L. Multiparty Election Africa New Democracy

¹³ Article 59 Of The 1995 Constitution Of The Republic Of Uganda

¹⁴ Article 60 Of The 1995 Constitution Of The Republic Of Uganda

commission¹⁵, the independence of the electoral commission¹⁶, organisation of election¹⁷ and information about multiparty systems¹⁸ thus making it possible for this research.

'Political rights' and provides that every citizen has right to free and regular election for any legislature body established in terms of the constitution¹⁹.

Sempebwa (1992)²⁰ examine elections and human right uses of ensuring fairness electoral commission and state machinery though he doesn't discuss voter registration and other internally recognised standard of holding election.

Liisa Lakso and Michael Cowen looks at electoral process in Africa they argue that the actual form and content of the electoral process is one aspect by which one can gauge the extent to which liberal democracy is realised. There us numerous literature reviews about this topic but the most important agenda remains as to whether the government of Uganda has taken a deliberate move to effect changes to the undesirable electoral processes since the 2001 elections. The agenda remains at the focal point of this research throughout my discussion.²¹

Khiddu Makubuya (1996) also examines the legal provision relating to elections before the advent of government of movement and points out the flows therein. He discusses the criteria for a free and fair election considering among others a fair administrative framework, public enlightenment, free media and fair reportage and also election malpractice. Though he examines various elections he does not clearly draw out the negative influence they have had on Uganda's development of democratic ideas and practice as acceptable norms of work behaviour²²

¹⁵ Article 61 Of The 1995 Constitution Of The Republic Of Uganda

¹⁶ Article 62 Of The 1995 Constitution Of The Republic Of Uganda

¹⁷ Article 67 Of The 1995 Constitution Of The Republic Of Uganda

¹⁸ Article 69 Of The 1995 Constitution Of The Republic Of Uganda

¹⁹ The Law Of Human Rights Vol. 1 By Richard Clayton And Hugh Tomlinson Refers To Section 19 Of The South African Constitution

²⁰ E.F Sempebwa, Fairness On Election: Essence And Rules Constitutional Seminar LDC May 21-22 P.B

²¹ Cowen M AND Laakso Etal; (Eds) (2002) Multi Party Election Africa (2002)

²² Khiddu Makubuya (1996) The A Law And Practice Of Election In Uganda Prospects For The Future 1996

1.10 Methodology

In my research I used both qualitative methods and quantitative methods so as to bring about the best result therein.

In qualitative method I used observation method in regard to what was happening during election as to whether they would curb down election offences and malpractices.

Group discussion was vital in as far as my research is concerned in that (engaged some people in discussion in regard to election offences and malpractices thereby getting their query and opinions.

Relating to the above the role played by the la libraries that I visited for related maternal including Kampala International University library, law development centre, human right commission library and others which were very vital in my research not forgetting scholarly materials like journals, magazines, internet sources and authenticity of the source has also been greatly acknowledged.

1.11 Definitions of key terms

Election: The process of choosing a person or group of person or people for a position especially a political position by voting.

Democracy: It is the power of people to make governments and make their representatives accede to the popular will and to popular demands.

Multi party: This involves several different political parties and in this context these parties include National Resistance Movement organization (NRMO), Forum for Democratic Change (FDC) Democratic Party (DP), Uganda People's Congress (UPC) Peoples Progressive Party (PPP) and federal alliance and other parties recognises in Uganda.

Governance: The actually of governing or controlling a company or organization, the way in which a country is governed or an institution or company's is controlled.

A free and fair election is an election process which respects Human Rights and freedoms of speech and association, freedom to register as an

elector, a party or candidate while fair election it is an elected process with a level playing field including non partisan, administration of elections constitutional protection of electoral laws, balance reporting by the media, equitable access to resources for campaigns, open and transparent counting of votes and others.

Election offences and Multi practices

This involves corruption and illegal practices by the candidates and government officials, involving in violence on the polling day destroying candidates pictures, impersonation of voters, ferrying of voters to polling station by candidates, voting more than once, buying of votes and votes cards, stuffing of ballot boxes by election officials, voting before and beyond the official voting time ,abuse of office by polling station officials and signing the declaration of results forms before close of the polling time, confiscation of declaration forms from polling officials by candidates and agents.

1.12 Synopsis

Synopsis of research mainly entails arrangement of chapters. This research paper is comprised of five chapters of which chapter one includes the following:-

Chapter one dealt with the definition of different words, general introduction of the study, historical background of the study, Statement of the problem, objectives of the study, hypothesis, scope of the study, literature review and methodology.

Chapter two deals with the introduction functions and performance of the electoral commission, voter registration, the display of voters' registers, voters and civic education nomination of candidates, qualification of presidential candidate, nomination procedures, facilitation of presidential candidate nomination of parliamentary candidate, campaigns, the role of the media in the election and the role of observes (Institutional framework).

Chapter three deals with the legal and policy framework which includes introduction, the constitution, the presidential election Act 2005, the

parliamentary elections Act 2005, Electoral commissions Act Cap140, the International Covenants/declarations.

Chapter four deals with the finding made in the research process in relation election so as to eradication election offences and malpractices in order to achieve free and fair election they include: Administrative arrangement of elections, voting in restricted areas country receiving and announcing results, challenging, and the results.

Chapter five is the last chapter. This includes observation, conclusion and recommendations

CHAPTER TWO

THE INSTITUTIONAL AND ELECTORAL PROCESS IN UGANDA

2.0 Introduction

The system of Uganda was inherited from Britain at independence in 1962. The 2001 elections were only the second since the end of the two decade turbulences in 1986 that rocked the country²³. This chapter analyses the electoral system under these elections were concerned. It looks at regulations and institutions put in place for the proper management of elections and the main political players. The discussion would assist in a staining whether the current electoral process conform to the universally accepted democratic norms and standards.

2.1. Institutional frame work

2.1.1 The electoral commission

It's created by the constitution ²⁴ and consists of a deputy chairperson and the president with the approval of parliament. The electoral commission is charged with the organization and conduct of presidential elections, parliamentary election, and local council elections at all levels in the country. A member of the electoral commission is supposed to be people with high moral character proven integrity and in possession of considerable and demonstrated competence in the conduct of public affairs. For elections to be regarded as having legitimacy in democracy they have to be free from any form of multi practice. The electorate must have opportunities to judge between different politicians and their relevant anti partial application of their clarity life.²⁵

The electoral commission has to use its powers well and in this regard the true frame of the election has to be adequately planned so as not to be seen as done haphazardly because it will be though as a favour to the

²³ Kanyeamba G.M Constitutional And Political History Of Uganda From 1894 To Present (2002)

²⁴ Article 60 Of The 1995 Constitution Of Republic Of Uganda.

²⁵ A Study Of Uganda's Democratization Process: Obstacles And Possibilities By James Kabagambe

incumbent. The electorate must be free and able to exercise their inherent constitutional rights to vote for persons or political parties of their choice and therefore for this, it is a prerequisite to have an institution or body elected by the citizen to be independent and impartial. Through the electoral commission has had a number of shortcomings especially logical ones, others been able to conduct elections in some even available and internationally acceptable manner though election offences and multi practice has remain mystery.

2.1.2 Functions and performance of electoral commission.

The function of the electoral commission is stipulated in the constitution of the republic of Uganda 1995 and they are²⁶:

- a) To ensure that regular free and fair elections are held.
- b) To organize supervisor and conduct and referenda in accordance with the constitution.
- c) To demarcate constituencies in accordance with provisions of the constitution.
- d) To ascertain, publish and declare in writing under its seal the results of elections and referendum.
- e) To compile maintain revise and up date the voters register.
- f) To hear and determine election complaints before and during polling.
- g) To formulate and implement voter educational programs relating to elections
- h) To perform such other functions as may be prescribed by parliament by laws.

Besides the above functions the electoral commission has other specific powers which include.

- i. To appoint a polling day for any election subject to any can.

²⁶ Article 61 Of The 1995 Constitution Of Republic Of Uganda

- ii. To design, print, distribute and control the use of ballot papers.
- iii. To create polling divisions and establish and operate polling stations to take measures for ensuring that the entire electoral process is conducted under conditions necessary for the conduct of free and fair election in accordance with the statutes.
- i) To promote, through appropriate means civic education of the citizens of Uganda on the purpose and voting procedures of any election including where practicable the use of sign language.
- ii) To ensure that the candidate campaign is an orderly organised manner to credit any non partisan individuals, group of individuals or an institution or association.
- iii) To carry out voter education subject to guideline determined by the commission and public in the gazetted.
- iv) And to ensure compliance by act election officers and candidates with the provision of the statute. The electoral commission therefore should have sufficient legal backing to freely execute its duties.

The constitution provides for the independence of the electoral commission. It stipulates that the commission shall be independent and shall, in the performance of its functions not be subject to the direction or control of any person or authority.²⁷

However, the members of the commission were appointed by the incumbent president who was himself candidate. Neither did the opposition participate in the appointment of the members of the commission nor were they subjected to any vetting. Therefore the independence of the commission provided for under the constitution may be questionable.

The commission is composed of enhance deputy chairman, secretary and other staff members and the law also requires it to have an office and representative in each member electoral district into which Uganda is divided. Accordingly these electoral officers include retaining officer; the

²⁷ Article 62 Of The Constitution Of The Republic Of Uganda.1995

district registrar in each electoral district which is based on the administrative units. The district election officers having the responsibility of training electoral officers and facilitate vote awareness. It also their duty to ensure the safe storage of election materials including ballot papers both before and after the election and to transmit the election result to the electoral commission headquarters in Kampala.

2.1.3 The judiciary

The judiciary is a creature of the 1995 constitution²⁸ provides that judicial is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with the law and the values, norms and aspiration of the people ²⁹ courts of judicative are created³⁰ there under and consist of:-

- a) The supreme court of Uganda.
- b) The court of appeal of Uganda
- c) The high court of Uganda.
- d) Such subordinate courts as parliament may by can establish, including quads court for marriage divorce, inheritance of property and guardianship prescribed by parliament.

However, election petitions, as prescribed by the electoral commission Act directly to the High Court and the constitution which stipulates that the High court has original United jurisdiction to try any matter as prescribed by the law³¹.

Any complaints submitted in writing alleging any irregularity with any aspect of the electoral process at any stage for satisfactory resolved at lower level of authority shall be claimed and decided by the commission and where

²⁸ Article 126 Of The Constitution Of The Republic Of Uganda.

²⁹ Article 126(1) Of The Constitution Of The Republic Of Uganda 1995.

³⁰ Article 129 Constitution Of Republic Of Uganda 1995

³¹ Article 139 Constitution Of The Republic Of Uganda 1995, Section 14 Of The Judicature Act Cap 13.

irregularity is confirmed, the commission shall take necessary action to correct the irregularity.³²

An appeal shall be made to the high court against a decision of the commission confirming or reflecting the existence of an irregularity³³.

Additionally, the constitution provides that where any question is before the high court for determination³⁴, under of the same constitution, the High court shall proceed to hear and determine the question expectation and may for that purpose suspend any other matter pending before it.³⁵

The independence of the judiciary it's further detailed in the constitution. It provides that exercise of judicial power the court shall be independent and shall not be subject to the control or direction of any person or authority.

More so, no person or authority is to interfere with the courts of judicial office in the exercise of their judicial functions.³⁶

2.2 The electoral process in Uganda

This entitles the pre – elections, election and election phrases of the process.

2.2.1 The pre- election phases

This puts to test the independence and capacity of the electoral institutions, voter registration and compilation of voters register. Eligibility of candidates and the campaign for both presidential and parliamentary candidates are considered here.

2.2.2 Registration of voters

This is a very significant part in the conduct of election, its through the registration of voters that the actual figure of voters is registered. The importance of voters register must be carried out diligently. The voters register to a great extent guards against excessive multi- practice since the

³² Section 15(1) Electoral Commission Act

³³ Section 15(2) Electoral Commission Act.

³⁴ Article 86(1) Constitution Of The Republic Of Uganda 1995

³⁵ Article 140 (1) Constitution Of Uganda 1995

³⁶ Article 128(1) (2) Constitution Of The Republic Of Uganda 1995.

number of votes cast must always tally or fall within the total number of the registered voters.

All Ugandans above the age of 18 have the right to vote and may register as voters³⁷.

The electoral commission is required to continuously update the nation's voters register, the reason being that some registered voters die. Others transfer or re-locate to new electoral areas and more so the under-aged become eligible to vote, it also gives a chance to the unregistered members of the public to come forward and register in parish or where they reside or originate³⁸.

2.2.3 The display of voters registers.

The electoral commission is charged with the display of the voters register which is intended to give the voters a chance to identify errors in the register. It also gives the voters an opportunity to raise objection about those who appear on the voters registers and yet they are not qualified to vote. This enables those in court to transfer from one voting area to another depending on the voter's convenience³⁹.

This display of the national voters register for 2011 election was scheduled to him from 03/05/2010- 4/6/2010. Final voters register had approximately 13,954,124 votes and over 1 million ghost voters had been removed from the register.⁴⁰

The electoral register has been a controversial issue all over Africa. In Ugandan presidential elections 2011, there were allegations of inflation of voters, inclusion of ghost voters, deceased persons ineligible votes were also included on the registers and failure to further effect the days of display of the voters registers.

To avoid election offences and multiple practices then there should be an impartial registration of voters with no restrictions, tricks and omissions so

³⁷ Article Of The 1995 Constitution And Section 19 electoral Commission Act.

³⁸ Nordem Report 2,15

³⁹ Section 19 Electoral Commission's Act 2005

⁴⁰ Nordem Report 1,2

as to make voters register a true reflection of the eligible voters in the country.

The minister of state for constitutional affairs may by statutory instrument appoint date which the registration is to commenced and this has to be gazetted in the government gazette. However, the 2001 election depended on the CA elections register of 1993 which was updated shortly before the presidential election by a tribunal of three L.C members. This process was halted on 30 April 2001⁴¹ and the registers were said to be electoral commission before they were displayed at the districts sub county and polling stations during which period the voter cards could be fetched. Those who did not find their names, or wanted a transfer to another area, filled in forms to be processed by the electoral commission.

However the period was too short to effect the necessary corrections failed satisfactory update the voter register to issue voters cards to announce the total number of polling stations on the or to distribute materials to all polling station hence creating room for election multi practice⁴².

According to electoral commission act provided that display exercise should be of not less than 21 days⁴³ but for presidential election the commission used special powers given under the electoral commissions Act⁴⁴ to decide that the display period should only be 3 days⁴⁵. The elections were held on March and therefore time was inadequate for electoral commission to make correction to they voters roll⁴⁶, like wise the electoral commission a day before parliamentary election pursuant to electoral commission act announced that voters without voters card could

⁴¹ Article 61(E) Of The Constitution Of The Republic Of Uganda.

⁴² Voter Registration And Voters Register In A Multiparty Democracy Presented By Charles Ben Nsimbi Ag .Registration Department, Electoral Commission

⁴³ Section 25 Of The Electoral Commission Act Of 1997 As Amended 2002 For The Display Of A Copy Of The Voters' Roll, There Shall Be Substituted Not Less Than Ten Days".

⁴⁴ At Keystone Women, A Chief And An Elder Constituted The Tribal, Nordem Report 1, 12.

⁴⁵ Section 38 Of The Electoral Commission Act

⁴⁶ From 26-28 February 2001

vote⁴⁷. This created opportunities for fraud election multi practice, which were exploited in a number of polling stations.

2.2.4 Voter and civic education

Voters and civic education is a process whereby the participant in the electoral process are adequately informed of their rights and responsibility as voters. All voters are entitled to vote education and encouragement to participate in the voting which can be done through adequate vote education⁴⁸.

Before the presidential elections the electoral commission formulated a civic education programs for voters⁴⁹.

Voter and civic education plays an important role toward the achievement of curbing donors election offences and multi practice as people will be informed about the charges of their to participate in voting, not to sell their votes avoiding bribery and even encourage secrete voting. The challenge that has a risen even in previous elections is the inadequate civic education, if one considers the just concluded 2011 election civic education that was conducted was not enough because people were not informed on when elections were to be held in that same did not know the days specified for what elections the sensitization was not inadequate through the commission had some programmes put on radios in newspapers and even in the mass media⁵⁰.

In addition a few posters were in circulation illustrating the steps to be taken when at polling station in regard to voting but some voters did not even see them and even some pamphlet that had been printed to educate the people in regard to voting were also accessed by a very few voters.

The commission under took the training of election officials and candidates agent and the promotion of education programs in various local languages

⁴⁷ Section 38 Of The Electoral Commission Act

⁴⁸ Article 61(G)Of 1995 Constitution Of The Republic Of Uganda

⁴⁹ Article 72(1)Of The 1995 Constitution Of The Republic Of Uganda

⁵⁰ Nordem Report 13

but however, this training was not well calculated in regard to time and those who were trained did not have enough time to educate the voters hence going election multi practice and offences⁵¹.

Also to note is the role that was played by number of nongovernmental organization for civic education and monitoring (NOCEM) NEM group which under took the public awareness campaigns to educate citizens on the their civic responsibilities, rights and obligations as electors under the constitution. This was done throughout the country but what should be noted is that it's the electoral commission that credits these nongovernmental organization (NGOs) to conduct civic education⁵².

2.2.5 Nomination of candidate

This is a cardinal part of the electoral process without it, elections cannot take place as there will be no people to elect.

Presidential election takes place after every five years though the term limits has been extended⁵³. The nomination of candidates for 2011 generally election was conducted in accordance with the law⁵⁴.

2.2.6 Qualification of presidential candidate.

The constitution of the republic of Uganda provides that for the qualification one must have to qualify to stand as presidential candidate⁵⁵ a person is not qualified for election as president unless that person.

- a) Citizen of Uganda by birth⁵⁶ and must have completed a minimum formal education of Advanced level or equivalence to that.
- b) Not less than 35 year and not more than 75 years of age
- c) Qualified to be a member of parliament more so one shall not be a candidate in presidential election unless⁵⁷. That person submits to the

⁵¹ African Voice: A Newsletter On Democracy And Governance In Africa:
<http://www.usaid.gov/location/sub-saharan>. 27 February 2011

⁵² Electoral Review Task Team Terms Of Reference <http://www.election.org.zm>

⁵³ Article 105 Of The Constitution Of The Republic Of Uganda 1995 As Repealed

⁵⁴ The Uganda Human Right Commission (UHRC 2011-2012)

⁵⁵ Parliamentary Elections Act 2001 Regulates The Nomination Of Candidates, Required Qualification For Candidates, Campaigning, Voting And Counting Procedures, Announcement Of Results, Illegal Practice And The Process For Handling Complaints.

⁵⁶ Article 80(1) Of The Constitution Of The Republic Of Uganda 1995

electoral commission on or before the nomination day a demand which is signed by that person nominating him or her as a candidate and the nomination is supported by $2\frac{1}{3}$ of all the districts which means that one has to obtain signatures from all the districts that make up Uganda which could be very difficult to the new entrants into the presidential race in that they could feel to raise the required signatures.

2.2.7 Nomination procedures

Procedures for nomination of the president are provided for under the electoral commission act like to facilitate the nomination exercise, the commission prepares guidelines⁵⁸ and check lists of nomination requirements and procedures which are to be followed by each aspiring candidate. A total 8 candidates were nominated for the 2011. Presidential elections though more had picked nomination forms, so others withdrew from the race because various reasons.

Nomination papers are collected from either the district headquarters or from the electoral commission headquarters and the candidate for the papers in triplicate and one copy is put for public inspection after mountain as required by law⁵⁹. The most compensation element in the nomination process is the requirement that aspiring candidate pay a nomination fee of 12 million which is non refundable. This aspect of nomination creates room for multi practice in that the incumbent can still influence the process.

2.2.8 Facilitation of presidential candidates

According to the electoral commission is under obligation to ensure that the relevant organs of the state provides facilitation any the entire campaign period protection of each candidate and even provide adequate security to each candidate and even provide adequate security to each candidate during the campaigns⁶⁰.

⁵⁷ Article 102 Of The Constitution Of The Republic Of Uganda 1995

⁵⁸ Section 25, 38 Of Election Commission Act 1997.

⁵⁹ Article 61 (G) Of The Constitution Of The Republic Of Uganda.

⁶⁰ Sections 20 Electoral Commissions Act Cap 140

The law requires that such facilitation and funds to candidates to be exclusively used for election purposes.

Candidate or their agents to exclusively use for election purposes. Candidate or their agent are barred from obtaining, soliciting or receiving any financial or any others assistance for the purpose of their campaign from any to reign government, institution or body or person if such is demonstrated it creates room for election multi practices and committing election offences with the intention to over through the legally established government of Uganda⁶¹.

2.2.9 Nomination of parliamentary candidates

The Uganda constitution provides that a person is qualified to be a member of parliament if that person is a citizen of Uganda, a registered voter and has completed a minimum formal education of advanced or its equivalent⁶². The constitution stipulates that a person is not qualified to be a member of parliament if that persons of unsound mind is holding or acting in an office the function of which involves a responsibility for or in connected with the candidate of an election if he as traditional or culture leader or has been discharges or sentenced of imprisonment exceeding more months in prison by a competent court with the option of a fine⁶³. Nomination of candidate is made on nomination day by two registered vote appearing in person tendering to the returning office the following a nomination paper in duplicate containing a stamen under with by the person seeking nomination specifically the none age, address and occupation of the person seeking nomination and also the name, have age, address and occupation of the official agent. The nomination is also accompanied by a statement by the official agent stating that he or she has accepted the appointment.

The names and signatures of a number of ten(10) people who are registered voters in the constituency were the person seeks nomination as candidate.

⁶¹ Nordem Report 17

⁶² Article 80 Of The Constitution Of The Republic Of Uganda 1995

⁶³ Article 80 (2) Situation Of The Republic Of Uganda 1995

The person seeking nomination must tender in a statement under oath stating that he or she is 18 years or above and that he or she consents to the nomination.

After the above have been done, the person seeking nomination pays a nomination fee or a bank draft amount made payable to the electoral commission, submission of two coloured passport photos with a straight face which is recent is made to be used on ballot papers and for records.

2.2 Campaigns

This a process where candidates get exposed to votes to seek their mandate. The voters get to know what the candidate have for their in store through their manifestos. The Uganda constitution and electoral laws provide for the manner in which campaigns are to be conducted.

The electoral commission determines the manner and period for which the campaigns are to take place.

the constitution provides that every person has a right to freedom of speech and expression, assembly and a association and form an associations such as political organizations⁶⁴.

Presidential candidates are given one day at least in each district even candidates agents are allowed to campaign on their behalf. Candidates are not allowed to conduct public campaign to meeting except in accordance with the programme of meeting submitted by the candidates to the electoral commission. They received two cars and shillings 15 million shillings to facilitate their respective campaign⁶⁵ and they were free to raise additional funds through law full means ⁶⁶ but the incumbent president used the advantage because he had legal access to government facilities such and security and transport⁶⁷ this gives him an upper hand to influence election

⁶⁴ Article 29 Of The Constitution Of The Republic Of Uganda 1995

⁶⁵ Nordem Report 1

⁶⁶ Section 20 Of The Parliamentary Election Act 2000 Prohibits Candidates From Receiving Assistance From Any Government Or Organization Considered Hostile To The Government

⁶⁷ Section 21 Of The Parliamentary Election Act 2000 Though Require The Minster Responsible To Present Before Parliament Facilities Under And Utilized By President

fraud and multi practise however the opposition candidate Besigye was accused of receiving money from Rwanda a country deemed hostile by the Ugandan government⁶⁸

2.3.1 The role of the media in the election

The media plays a key role during election process by being a channel of formation from the candidate to the population and providing different perspective to the electoral process. The law requires that the state owned media should give equal treatment and decision to all candidates⁶⁹.

In the recent candidate presidential and parliamentary election that were held in February 2011 the media provided a variety of information and debate about the election in general as well as the presidential candidates. This was reflected in a range of news coverage focusing on the presidential candidate which was complimentary with the talk shows and discussions programs broadcast on state and commercial radio and television.

The lack of skilled human resource absence of production capacity in the news department and a reliance on programme supplied by the parties and candidates, coupled in the wide class granted to the presidential press unit, this resulted in coverage of the presidential election that was highly imbalanced in terms of the incumbent commercial broadcast provided for greater range of coverage of elections and this is represented in far as rang coverage of main opposition candidates, news papers also focused on few main candidates⁷⁰.

There is need to build capacity for position media role in the election process in particular such that the media would at all time observe objectivity, impractical and professionalism.

⁶⁸Nordem Report (1)Funding Of Candidate, Nabudere Dewy 'The Uganda Presidential Election ' A Presentation Made At TFM Work Shop 18 September2007

⁶⁹ Article 67(2)Of The Constitution Of The Republic Of Uganda 1995, Section 22 Of Parliamentary Election Act 2010-2011)

⁷⁰The Uganda Human Right Reporter (2011-2012),Lukwago,E 'The Search For An Effective Electoral Administration System In Uganda 'A Paper Presented At A Civic Education Seminar At Makerere University ,17 August 2001

Generally the local media should be communicated for facilitating effective dialogue and generation of awareness to the publication⁷¹.

2.3.2 Role of election observers in election

The electoral commission invited international election observe the presidential and parliamentary election and district women representative election were held on 18/2/2011 accordingly, a total of about 500 international observers and 1,100 local observes were accredited. And accordingly briefly and the observers were to observe relevant aspects of the organization and conduct of the presidential and parliamentary elections scheduled to take place on 18/2/2011 in accordance with the law⁷².

They were to consider the various factors infringing the creditability of the electoral process as whole and to in its own judgement whether the conditions exist for a free expression and if the results of the election would reflect the wishes of the people in relation to election without multi practices and offences⁷³.

In their conclusion the observers believed that the poll count and result process provided for conditions that enabled the call of the people to be expressed and that the results of wishes of those who were able to vote. However, there were some irregularities and significant short comings and there was scope for substantial improvement.⁷⁴

They observed that the environment in which the elections were held had a number of negative features which meant that the candidates were not competing on taxed playing field, the failure to ensure a clear distinction between the national Resistance Movement organization (NRMO) party and the state, the use of public resources to provide an advantage to the many party, the lack of balance in state owned media coverage, the harassment of the opposition presidential candidates, the creation of climate of apprehension amongst the public and opposition as a result of

⁷¹ Election Guide :[Uganda Http://Www.lfe.org/lectguide.htm](http://www.lfe.org/lectguide.htm)

⁷² Fair Election International 'US Election Observation Report 2010'

⁷³ An International Perspective :[Http://Www.fair-election.us](http://www.fair-election.us)

⁷⁴Human Sciences Research Council Electoral Politics In South Africa: Assessing The First Democratic Decade<[Http://Www.hsrcpress.ac.za](http://www.hsrcpress.ac.za)>

use of security forces and alleged use of financial and material inducement. All the above hindered the realisation of election which is free from election offences and multi practices.⁷⁵

2.3.3 Conclusion

As discussed in the chapter there is extensive legislation on electoral process in Uganda from principle legislation which is the constitution to Acts such as the electoral commission Act and presidential election Act, law have been put in place to guide a number of institution frame work like the judiciary and the electoral commission.

Their duties are paramount in the promoting of democratic election in Uganda which is free for election offences and multi practice.

⁷⁵ International Institute For Democracy Assistance 'Code Of Conduct For The Ethical And Professional Administration Of Election' <[Http://Www.Idea.Int](http://www.idea.int)> 28 March 2012

CHAPTER THREE

LEGAL AND POLICY FRAME WORK

3.0 Introduction

In all countries the aspire for democratic forms of government elections play an essential part in creating a healthy political life, the conduct of election if free from election offence and multi practice ensures the respect of human rights⁷⁶. The purpose of election is to provide a means whereby people can select from various candidates that appear the most suitable to lead which can only be achieved if the elections are free from election multi practices. The mention of the word elections among different people, for instance the reaction of the rulers is not the same as that of the ruled because they have different views towards elections, to the ruled, it's a noble change to exercise their rights to be governed according to their choice, for the rulers its normally a time to manipulate a process that will ensure they remain in power⁷⁷.

In this chapter, an analysis of the legal and policy frame work under which the right to vote is exercised, it's also focuses on the electoral laws in domestic setup as well as relevant provisions of international instrument. The establishment and mandate of the electoral commission form part of the discussion in this chapter.

3.1 The constitution

The constitution of Uganda 1995 contains various processes that relate to the conduct of elections in Uganda. It's the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.⁷⁸

The constitution stipulates that all persons are equal before and under the law in all spheres of political economic social and cultural life and many and in any other respect and shall enjoy equal protection of the law. Its against

⁷⁶ Chapter 4 Of The Constitution Of The Republic Of Uganda 1995

⁷⁷ African Human Security Initiative 'African Commitments To Democracy In Theory And In Practice

⁷⁸ Section 12 Presidential Election Act 2005.

discrimination on grounds of political opinion and others therefore if these aspects are observed then election offences and multi practices will be realised because all the participant or candidates' will have equal ground in relation in the electoral process⁷⁹

In regard to the constitution of Uganda it state that the electoral commission shall ensure that regular , free and fair election are held but in the actual sense though election have been held for several time the fact is that the element of free and fairness has not been exercised because of the negatives that associated with these election⁸⁰. More so the constitution is to the effect that all candidate shall be given reasonable access to use of state aimed commission media and that all presidential candidates shall be given equal time and space on the state owned media to present their programmes to the people⁸¹. In reality its practically impossible to realise election without offence and multi practice it has been seen it several times where the opposition candidates are given less time in relation to the incumbent candidate on such media though the constitution calls for equal time allocation . furthermore the constitution is to the effect that electoral commission shall hear and determine election complaints arsing before and during the polling , under this aspect if one feels that the elections were not free and fair or was characterised by election multi practices and offences then he is entitled to petition and produce the relevant evidence to that effect and therefore, the electoral commission will determine and hear the complaints as it would in one way or another lead free and fair election⁸².

The constitution is to the effect that the commission shall be interpreted an shall in performance of its functions not be subject to the an election or control of any person or authority therefore, the election to be free from multi practice the commission should be left to act without interference but because of even its composition and the way its members the appointed it leaves a lot of room for interference from the incumbent government as its

⁷⁹ Article 21 Of The Constitution Of The Republic Of Uganda 1995

⁸⁰ Article 80, (2) Constitution Of The Republic Of Uganda

⁸¹ Article 67constitution Of The Republic Of Uganda 1995, D Nolien Elections And Electoral Systems Fredrick.

⁸² Article1104 Of The Constitution Of Republic Of Uganda1995

appointing force and the appointer has to be favoured by the appointee⁸³.

The constitution (Amendment Act (2005)⁸⁴ puts it that any person is free to stand independent of a political organisation meaning that the ground is open for election without multi practices and also without limiting on where one should be long before contesting therefore leading to a free and fair election.

3.2 The presidential elections Act 2005

Constitution empowered parliament to prescribe by law, the procedures for the elections and assumption of office by the president⁸⁵. Thus the presidential election Act was enacted to provide for election to of the president⁸⁶ put it that the disadvantaged like the blind, illiterate and others voters with disability also participate in the voting through they are helped by someone. Here elections are seen to be free from elections offences and multi practice in that even such people are allowed to exercise their constitutional right of voting and this person (the helper) is not supposed to communicate to another person at any time about information as to the candidate for whom the assisted voter intends to vote or has voted.

Constitution also stresses that the commission shall ensure that the relevant organs of the state during the entire campaign period protection of each candidate and adequate security at all meetings of candidates and that the commission shall after to each candidate as contribution to be used solely for the election, a sum of one thousand currency point and such other facilities as way be approved by parliament, therefore of such is abided by then the election could be without multi practices as long as equal treatment to all candidates is done by the commission in the election period⁸⁷.

⁸³ Article 62 of The Constitution Of Republic Of Uganda 1995

⁸⁴ Article 67 Of The Constitution Of Republic Of Uganda.

⁸⁵ Article 103(A) Of The Constitution Of The Republic Of Uganda.

⁸⁶ Section 7(3) The Presidential Act 2005 Of The Republic Of Uganda.

⁸⁷ The Constitution (Amendment) Article 72 (4)

Presidential act stresses that every polling station shall be located in an open ground or in a large premises of convenient access having an outside door for the admittance of voters and if possible another door through which voters may leave after voting and that it shall be as far as possible be accessible by persons with disability and the aged , polling time shall commence of 7 o'clock with morning and close at 5 O'clock in the afternoon⁸⁸ This is all to control the election from being invented with multi practice and offence because of the open place of voting and the opening and closing hours of voting of elections stuffing.

The presidential act also prohibits, arms and ammunition during any part of polling day or approach within one kilometre of polling station with deadly weapon unless called upon to do so by harmful authority or where he or she is orderly entitled by virtue of his or her office to carry arms⁸⁹. All this is intended to make sure that the elections are without intimidation or even fear of people voting their candidates of choice but to the country, the army and other security organs have on polling days been seen on some polling stations even where their presence is not needed in the election constable are already there: Hence creating an atmosphere for election multi practices⁹⁰.

According to the presidential it also emphasis equal treatment , freedom of expression and access to information of candidates whereby during the campaign period every public officer and public authority and public institution shall give equal treatment to all candidate and their agents, that every candidate shall enjoy complete and unhindered freedom of expression and access to information in the exercise of the right to campaign under this Act. ⁹¹ This is intended to bring about an election which should strictly be observed.

⁸⁸Section 30 Of The Presidential Election Act 2005

⁸⁹Section 43 Of The Presidential Elections Act 2005,Section 42 Parliamentary Election Act2005 Forbids Presence Of Armed Personnel During Elections Unless Called Upon By Election Officer

⁹⁰ The Uganda Human Rights Commission Report January 2001-September 2002,Tabulates ,Election Violence During The Presidential And Parliamentary Election

⁹¹ Presidential Election Act 2005

3.3. The parliamentary election Act 2005

Presidential election act puts it that a person shall not use any symbol or colour which has a tribal, religion affiliation or any other connotation as a basis for that person's candidature for election or in support of that person's campaign, all this is intended to make sure that elections are without hindrance to make sure that elections are without hindrance to people's choice by religion or colour⁹².

More so parliamentary act is the effect that except as authorised under this Act or otherwise candidate shall not use government or public resources for the purpose of campaigning for election more so if the fact that if he or she is holding a political office, he or she shall during the campaign period restrict the use of official facilities, to the execution of his or official duties. Therefore such people will not use their offices and such facilities influence the outcome of elections or even influence the election process by bribing, intimidation and many others⁹³.

Parliamentary election act also provides that where polling station is interrupted by a riot or violence, or any other event a whole there remains in the voters register voters who have not completed the polling process, the presiding officer shall adjourn the polling to the next day or any other time of the same day and immediately inform their returning officers of the fact. This adjournment creates no room for election offence and multiple practices to erupt like vote rigging, stuffing and the denial of other voters their constitutional right of vote⁹⁴.

Parliamentary act also stipulated that in case of mandatory recount and it's to the effect where after the official addition of the votes there is an equality of votes between two or more candidates obtaining the highest number of votes or where the recount under this section results in an equality of votes among two or more candidates a runoff election shall be held involving only the candidate with equal shall be held involving

⁹² The Presidential Election Act 2005

⁹³ Section 25 Of The Parliamentary Election Act 2005.

⁹⁴ Section 45 Of The Parliamentary Elections Act 2005

only the candidate with equal votes. This is intended that if there is any likelihood of election multi practice then it can be established⁹⁵.

If an election candidate feels that the election were not conducted in a free and fair with a lot of election multi practice and can prove to the satisfaction of the court an allegation then they can stand on those grounds to set aside the election. This is manifested in the parliamentary act and such grounds mean that the person other than the one elected in the elections, that there was non-compliance with provision of Act relating to elections that the candidate was at time of his or her election not qualified or was disqualified for election as a member of parliament. If those grounds can be proved then election can be held⁹⁶.

However, Uganda is not known for the regularity of elections and to make multi practice worse, the few elections held in Uganda have been marred by serious imperfections namely bribery, intimidation, rigging, excessive violence, murder vulgar language to mention but a few. This was observed in the case of **RID Col Dr Kiiza Besigye VS electoral commission and YK Museveni**⁹⁷ where court held there was non-compliance with the provision of the constitution and the presidential elections Act as well as the electoral commission Act.

It's important to note that parliament has failed in its legal duty to pass legislation in time that around ensure election without multi practice, intimidation, bribery and vote rigging. Besides the electoral commission should have voters registers that are up dated and even improved on the election in regularities so as to have free election⁹⁸.

3.4 The international covenants Declaration

Democracy elections and human rights are concepts which are linked, interrelated and interdependent, human rights are largely protected where election are held without multipartite, violence, intimidation.

⁹⁵Section 54 Of The Parliament Election Act 2005.

⁹⁶ Section 62 Of The Parliamentary Act 2005.

⁹⁷ Presidential Petition 2006

⁹⁸ Matlosa, K 'Review Of Electoral Systems And Democratization In Africa 'Electoral Task Team Review Roundtable 9-10 September 2002, Electoral Models For South Africa :Reflection S And Option S ,Seminar Report ,May 2003,47

Provision preferring the right to vote in international covenant / declarations include the universal declarations of human rights and the African charter on the rights of people.

Presidential election provides that

1. Everyone has a right to take part in the government of his party, directly or through freely chosen representative.
2. Everyone has a right of equal access to public services of his country.
3. The will of the people shall be the basis of authority of government this shall be expressed in period and genuine election which shall be by universal adult suffrage and shall be held by secret vote or by equivalent free voting procedure⁹⁹.

Also the Universal Declaration on Human Rights provides that every citizen shall have the right and opportunity, without any of the distinction mentioned in Article 2 and without un reasonable restrictions to take part in the conduct of public affairs directly or through freely chosen representative¹⁰⁰.

To vote and to be elected at genuine periods elections which shall be by universal adult suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

To have the access on general terms of quality to public service in this country. Therefore Uganda being a party to the international covenant or civil and political right (ICCPR) it ought to have observed the above provision in time so as to have election without multi practices.

The fact that though elections were held in Uganda, they were not free it involved many case of election offences and multi practice of because of the irregularities that were observed before and during the elections.

⁹⁹ Article 21 Presidential Election Act Cap 142

¹⁰⁰ Article 25 Universal Declaration Of Human Rights (UDHR) 2001.

3.5 Conclusion

In conclusion the legal and policy frame work under which elections in Uganda are conducted leaves a lot to be desired. This is has been party by the ushering of promises and money by the contestants to the electorate. There is also a lot of foul play that the only rational conclusions one can make is that the legal and policy framework has failed to curb down the election offences and malpractices in the current situation of Uganda.

CHAPTER FOUR

RESULTS AND DISCUSSION OF RESEARCH FINDINGS

4.0. Polling

The poll is the climax of the electoral exercise and the winner is determined after the polls. The electoral commission gazettes the polling day so that the voters and candidates adequately prepare themselves for the poll.

4.1 Administrative arrangements

The administrative arrangement for the poll lies in the hands of the returning officer, whose duty is to do all such acts and things as may be effectively conduct the election in the manner provided by the constitution and the relevant provisions of the of the electoral law¹⁰¹, they are supposed to do all that it takes to make sure that the elections are free and fair.

The returning officer's duties fall into three categories, namely; action before the poll to ensure that it can properly take place, administration of the poll itself and administration of the count which involves transmission of results of the election to the electoral commission for declaration.

The provision of a sufficient number of adequately equipped polling stations is the most important pre-poll duty. Voters are then informed of the location of the polling stations through the official gazette or the media.

The administration of the poll itself is assisted by the appointment of presiding officers and polling assistants to serve at each polling station. The function of the presiding officer is ensuring that the election rules are observed and a proper poll by secret ballot is taken. They a required to ensure that the ballot box is empty before polling starts, that proper directions a: available for the voters and that those claiming the right to vote

¹⁰¹ S-28 Parliamentary Elections Act 2005

are entitled to do so¹⁰², all this aimed at making sure that the election process is free and fair.

Also to note is that presiding officers and polling officials are assisted by candidate's agents who are appointed by the candidates to detect electoral malpractices.

Within forty-eight hours before polling day every returning officer is required to furnish each presiding officer in the district with:

- a) A sufficient number of ballot papers to cover the number of voters likely to vote on polling station for which the presiding officer is held responsible.
- b) A statement showing the number of ballot papers supplied with the serial number indicated.
- c) Any other necessary materials for the voters to mark the ballot papers and complete the voting process¹⁰³.

Polling stations as far as possible have to be located in an open ground or where there is no open ground, in large premises of convenient access, having an outside door for the admittance voters¹⁰⁴.

At every polling station voting being in the morning and closes at 5:00 pm, registered voters who are in are entitled to vote though even those without voting cards but whose names appear in the register are also allowed to vote.

Various tables are as follows;

- i) Table 1, This is where the voter's card is checked and the voters name is ticked in the voters register and there was given the ballot, Thereafter folds the ballot paper and insert it in the ballot box.

¹⁰² H.F Rawlings, Op.Cit P. 214

¹⁰³ S. 27 Parliamentary Elections Act 2005

¹⁰⁴ S. 28 Parliamentary Elections Act 2005

ii) The third table is occupied by the independent observer /monitors and candidates agents.

iii) Lastly the voter dip the small left hand finger into indelible ink as mark that he/she has already voted¹⁰⁵

All voters intending to vote form one line commencing backward from a point each at least twenty members away from the table at which each voter is to place the authorized mark of choice on the ballot paper. The ballot box is opened and shown to voters before any ballot paper is inserted in. there after it remains in the open.

This is a requirement of the law which is always manipulated by the polling officials by allowing unregistered voters to vote, for example, in Kawempe and other parts of Kampala, it was reported in the media that unregistered voters voted which number exceeded number of registered voters.

4.2 Voting in Restricted Areas

These are areas in the war torn zones of Northern Uganda where rebel attacks and threats are rampant, the electorate is mostly composed of soldiers. The electoral commission in consultation with the top leadership of the Uganda Peoples Defence Forces (UPDF) makes arrangements for soldiers to vote in these restricted areas. The method used during the Parliamentary elections of 2001 was referred to as tender voting, where a voter's ballot paper was carried to his respective constituency after he/she had voted in a restricted area.

Voting in restricted areas is easier for presidential elections because all candidates are seeking mandate from the entire country, it matters less where votes are cast from. But for parliamentary seats it is unfair, voters have to identify with their constituencies of origin, consequently vote from restricted areas determine the fate of parliamentary elections yet those who cast the vote are not known to the candidates. The army top brass does not furnish the particulars of soldier in restricted areas allegedly for security

¹⁰⁵ S.30 Parliamentary Elections Act 2005

reasons and this is a hindrance to the realization of a free and fair election which in itself could affect the end result of the elections.

Further voting in restricted areas favours the incumbent who is a retired soldier; it's very clear, that most of the votes from these restricted areas where the electorate is composed of soldiers to the incumbent. Although of the Parliamentary Elections Act provides that soldier's restricted areas should vote outside the barracks¹⁰⁶, in the recently concluded elections voting w. done inside the barracks, for example in Nakasongola army barracks. What even transpired inside the barracks is only known to the soldiers¹⁰⁷. The electoral commission has never take steps to ensure that the sick, prisoners, exercise their right to vote though there is no law barring them from participating in the electoral process.

4.3 Corruption and illegal Practices.

Like previous elections held before the 2011 parliamentary and presidential elections were marred with corrupt and illegal practices by the then incumbent candidates. It was observed in the Presidential Election Petition No. 0112006 between **Rtd. Col. Dr. Kizza Besigye Vs Electoral Commission and Y. K. Museveni**. Held by Supreme Court that irregularities were not substantial to change the result, maintaining the incumbent as winner. However, there were numerous reports of illegal practices mainly against Government officials in respect of the following:

- i) Violence on polling day
- ii) Destroying candidates pictures
- iii) Impersonation of voters
- iv) Ferrying of voters to polling stations by candidates.
- v) Voting more than once
- vi) Under age voting

¹⁰⁶ Section 39 Parliamentary Elections Act 2005

¹⁰⁷ DEM Group Report, Op.Cit P.12

- vii) Buying of voters and voters cards
- viii) Stuffing of ballot boxes by election officials
- ix) Voting before and beyond the official time
- x) Abuse of office by polling station officials
- xi) Signing the declaration of results forms before close of the polling
- xii)xii. Confiscation of declaration forms from polling officials by candidates' agents¹⁰⁸

There were also discrepancies in the administration of the elections;

- a) Late delivery and distribution of materials of the elections
- b) Poor security of election materials;
- c) Involvement of security personnel in the administration of elections;
- d) The electoral commission issued misleading and contradictory, directives when allowed voting without voter's cards yet it did not provide the procedure identification of voters¹⁰⁹.

It's not surprising therefore that, the presidential elections results have not been respected by other contending candidates who say that there were a lot of election irregularities and so they cannot recognize the declared winner as so. A lot of petitioners have been filed in the various high court registries citing, some of the corruption and illegal practices discussed above for example the Rubaga North Seat was under the power of court to decide the right winner of the area.

4.4 Counting, Receiving and Announcing Results

Votes cast at a polling station shall be counted at the polling station immediately after the presiding officer declares the polling closed and the votes cast in favour of each candidate shall be counted and recorded

¹⁰⁸ DEM-Group, Op.Cit P. 31

¹⁰⁹ Ibid

separately in accordance with the Act¹¹⁰. This helps the contestants and their supporters to clearly know the performance of their candidates at each polling station because the counting is done in public where there is good view of the whole process. At the commencement of the counting, the presiding officer shall in the presence and full view of all present, open the ballot box and empty its contents onto the polling table and with the assistance of the polling assistants, proceed to count the votes separating the votes polled by each candidate.

For a presidential candidate to be declared winner of the elections, the number of votes cast in his favour must be more than 50 of the valid votes cast at the election¹¹¹ and in case, there are only two candidates and both do not get 50 of the valid votes cast, a fresh election should be held within 30 days.

The electoral commission is also supposed to declare and publish election results within 48 hours from the close of the polling. Such declaration should bear the seal of the commission and is supposed to act as evidence that the person named in the declaration has been the electoral candidate. Therefore, though the Electoral Commission has tried to perform its duties in as far as counting, receiving and announcing results is concerned. it has also betrayed the realization of free and fair elections in that it at times is involved in altering the election results because in some cases, results at polling stations differ from what is announced.

The results as per the 2011 presidential elections

Candidate	Political party	Percentage scored%
Yoweri Kaguta Museveni	NRMO	68.3%
Besigye Kiiza	FDC	26%
Nobert Mao	DP	1.86%
Dr. Olara Otunnu	UPC	1.58%
Betti Kamya	UFA	0.66%
Dr. Abedi Bwanika	PDP	0.85%
Bidandi Ssali	PPP	0.44%
Samuel Walter Lubega	Independent	0.41%

¹¹⁰ S. 47 Parliamentary Elections Act 2005

¹¹¹ S. 57 Presidential Elections Act 2005

4.5. Challenging the Results

The law entitles any aggrieved candidate to petition the court for redress. Petitions challenging the election of the president are lodged in the Supreme Court within ten (10) days after the declaration of the results¹¹².

The Supreme Court is required to hear and determine the petition expeditiously and declare its findings not later than thirty days from the date the petition is filed.¹¹³ After due inquiry into the allegations raised in the petition the Supreme Court may

- a) Dismiss the petition
- b) Declare which candidate was validly elected

Annul the election of a candidate as president can only be annulled if any of the following grounds is proved to the satisfaction of the court:

- i) Non-compliance with the provisions of the Presidential Elections Act, if court is satisfied that non-compliance affected the results in a substantial manner.
- ii) That the candidate was at the time of his or her election not qualified or was disqualified for election as president.
- iii) That an illegal practice or any other offence was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval as seen in the above examples.

Where upon hearing a petition and before coming to a decision, the court is satisfied that a recount is necessary and practical it may order a recount of the votes cast.

¹¹² **Ibid**

¹¹³ **Ibid**

4.6 The Presidential Election Petition 2001.

Rtd. Col. Dr. Kizza Besigye a former comrade in arms and personal doctor of President Yoweri Museveni fought a bruising battle with his former mentor Museveni during the 2001 presidential campaigns leading up to the March 12, 2001 elections¹¹⁴. The electoral commission declared the results of the 2001 Presidential Elections as follows.¹¹⁵

No	Candidate's name	Votes	Percentage%
1.	Yoweri Kaguta Museveni	4,252,654	69.3%
2.	Kizza Besigye	1,713,326	27.8%
3.	Aggrey Siryoyi Aori	100,104	1.4%
4.	Kibirige Mayanja Mohammed	60,278	1.0%
5.	Bwengye Wazarwahi Francis	29,666	0.3%
6	Karuhanga Chapa	8,561	0.1%

The incumbent took a big lead in Uganda's Presidential race but his main opponent rejected the results as grossly ¹¹⁶fraudulent he called the elections a violation of the rights of Ugandans to freely express their will.

He petitioned the supreme court of Uganda as an aggrieved candidate challenging the result of the election, seeking an order that Museveni Yoweri Kaguta declared elected President be annulled and therefore not validly elected. The electoral commission was also joined to the petition as a second respondent.

In the famous Presidential Petition No. 1 I 2006 Rtd. Col. Dr. Kiiza Besigye Vs the Electoral Commission and Y.K. Museveni and there in.

¹¹⁴ [Http://Www/Monitor.Co.Ug](http://Www/Monitor.Co.Ug) (Accessed 26/8/01)

¹¹⁵ [Http://Www.Electionworld.Org](http://Www.Electionworld.Org) (Accessed 28/01)

¹¹⁶ [Http://Www.Afroi.Com/News/2001/Ug006-Highlights/Reaffirm_Htm](http://Www.Afroi.Com/News/2001/Ug006-Highlights/Reaffirm_Htm)

The grounds raised in the petition against the residential candidate elect were that:

- a) Personally or by his agents with his knowledge and consent/ approval committed illegal practices and offences.
- b) Publication of a false statement that the petitioner was a victim of aids.
- c) Offering gifts to voters, appointing partisan senior military officers and partisan sections of the Army to take charge of security during the elections.
- d) Organizing groups under the Presidential protection unit to use violence against those who did not support the incumbent and threatening to cause death to the petitioner¹¹⁷

As against the electoral commission the second respondent the grounds raised in the petition were that;

- i) Failure to efficiently compile, maintain and up-date the national voter's register and the voters roll for each constituency and polling station.
- ii) Failure to display copies of the voters roll for eh parish or ward for the statutory 21 days.
- iii) Failure to publish a list of all polling stations within the prescribed period of 14 days before nomination
- iv) Increasing the number of polling stations on the eve of polling day without sufficient notice to candidates.
- v) Allowing or failing to prevent stuffing of ballot boxes. Multiple voting and under age voting, chasing away the petitioners from counting and tallying centres.

¹¹⁷ Rtd Col. Dr. Kiiza Besigye YK. Museveni And The Electoral Commission Election Petition 1/2001

- vi) Allowing or failing to prevent stuffing of ballot boxes. Multiple voting and under age voting, chasing away the petitioners from counting and tallying centres.
- vii) Allowing or failing to prevent agents of the incumbent to interfere with electioneering activities of the petitioner and his agents.
- viii) Allowing armed people to be present at polling stations.
- ix) Falsification of results and failure to ensure that the election was conducted under conditions of freedom and fairness¹¹⁸

The petitioner contended that non-compliance with the lack affected the results in a substantial manner which was a reflection of the lack of a genuine free and fair election.

The Supreme Court presided over by the Chief Justice and four other Justices of the Supreme Court heard the petition and in their judgment found that:

a). During the Presidential elections the second respondent did not comply with the provisions of the Presidential Elections Act, it failed to publish in the gazette a list of polling stations as required by law.

b) The commission failed to supply the petitioner with an official copy of the voters register for use on polling day.

Court further observed that, in some areas of the country, the principle of free and fair election was compromised and in special polling stations for soldiers, the principle of transparency was not applied. Cheating in a significant number of polling stations was confirmed by the court.

However, their lordships ruled by a majority of three to two that the illegal practices they had confirmed to take place did not affect the result of the election in a substantial manner, in the same way, the Presidential Election Petition No.01/2006 between the same parties decided by majority decision of four to three and accordingly dismissed the petition.

¹¹⁸ Op Cit

The Supreme Court of Uganda is the final court in Uganda; its judgments are not appealable this judgment is very important in the conduct of future elections in Uganda. It showed that the electoral commission failed in the performance of its duties hence did a shoddy job. In certain constituencies, the results of the elections were more than the registered voters a clear indication that there was massive/and irresponsible rigging.¹¹⁹ Worse still is that many voters found their names missing out in the voters registers which seemed deliberate. Furthermore, substantial effect was decided in **Sarah Birete Vs Bernadatte Biggirwa and EC EPA No.13/2003**

Byamugisha JA that the effect must be calculated to really influence the result in a significant manner. That the votes a candidate obtained would have been different in a substantial manner).

4.7. Parliamentary Election Petitions

Parliamentary elections petitions are filed in the High Court which has original jurisdiction over such matters. These petitions may be filed by a candidate who loses an election or a registered voter in the constituency concerned supported by the signatures of not less than five hundred (500) registered voters in the constituency.

On which the result of the election is published by the commission in the Gazette.¹²⁰ Court is mandated to hear and determine the petitions expeditiously and may for that flatter suspend any other matter pending before it. After due inquiry into the allegations, the court may;

- i) Dismiss the petition
- ii) Declare that a candidate other than the candidate declared elected was validly elected; or
- iii) Set aside the election and order a new election.

¹¹⁹ Comment: In Mawokota West Constituency, The Results Were In Excess Of 200 Votes

¹²⁰ Comment: In Mawokota West Constituency, The Results Were In Excess Of 200 Voters

The law also allows a recount of votes;

- a) Where there is equality of votes between two or more candidates obtaining the highest number of votes or
- b) Where the number of votes separating the candidates receiving the highest number of votes and any other candidate is less than fifty¹²¹
- c) Candidates may also make an application to the Chief Magistrate within seven days after the poll.

In the June 2001 parliamentary elections twelve (12) applications for recount were filed in the districts of Tororo, Moroto, Kapchorwa, Kisoro, Mukono, Bushenyi, Wakiso, Luwero, Jinja and Mbarara. Only five (5) of these applications were allowed. However even after recount the winners remained the same.

An alarming number of petitions were received and the legal department put the number at 134,¹²² and the most common grounds of appeal were;

- i) Forged academic papers-like in the election petition between Rashid **Govule Yiga Vs. Ashraf Olega**¹²³
- ii) Exclusion of voters from the register, allowing multiple voting, were some of the grounds on which the petition between **Ngoma — Ngime vs. Winnie Byanyima** ¹²⁴ was filed.
- iii) Interestingly one of the petitions is based on the ground that the elected Member of Parliament is not a Uganda Citizen¹²⁵.

In the just concluded Feb 2011 Parliamentary Elections, a lot of petitioners are also being received by the commission where the losses and other aggrieved voters are petitioning the winners and electoral commission over

¹²¹ S.54 Parliamentary Elections Act 2005

¹²² Interview With The Senior Elections Officer — Legal Department At The Electoral Commission

¹²³ Parliamentary Election Petition No. 1/2001 (Aringa County)

¹²⁴ HCT-05-CV-Epa-0001-20011

¹²⁵ Judgement Of The Supreme Court In Presidential Election Petition No, 1/2001

vote rigging, ballot stuffing, bribery and intimidation that marred the elections.

4.8 Conclusion

This discussion has shown that election results are open to challenge. Whoever loses an election has great difficulty in accepting the result no matter whether there were irregularities or not. The situation is aggravated in Uganda where irregularities dominate the electoral process.

The judgment of the Supreme Court in the 2001 presidential election petition discusses and confirms that the Uganda electoral commission has continuously failed in the execution of its duties despite the fact that it is well facilitated. The process of petitioning is expensive, and uncertain courts interpretation of law is such as to dissuade potential petitioners concerned with administrative irregularities.

Even after confirming that elections were marred by serious irregularities, the Supreme Court ruled that:

The irregularities did not affect the result of the election substantially and dismissed the petition¹²⁶, although the level of substantiality remains a matter of debate as seen in the above mentioned case of Sarah Birete.

The election system right from the start to the state of challenging the results should be both right and transparent in order to gain public confidence in that the public will never have confidence in an election that is not genuine, free and fair.

¹²⁶ Judgement Of The Supreme Court In Presidential Election No. 1/2001

CHAPTER FIVE

OBSERVATIONS, CONCLUSION AND RECOMMENDATIONS

5.0. Observation

This study has demonstrated that without the right to vote being exercise, election fraud shall still remain a big concern .The right to vote is fundamental as legitimizing process in the exercise of state power and authority. The right to vote is so cardinal that its absence would tarnish everything that a good government might attempt to achieve ¹²⁷

It is through the vote that people subject themselves to rule and authority of those in control of the state power.

It equally through the vote that those who exercise authority are empowered¹²⁸. The implementation of the right to vote in Uganda does not conform to the standards required in the international instruments . Ugandan elections have in most cases been a “just to hood wink the voters those in power are there because of their mandate.

1. Uganda has never had genuine, regular Free and fair elections, Violence, intimidation, Impersonation of voters, murder, thief and all sorts of irregularities have continuously dominated all the elections that have been held in Uganda¹²⁹. When Uganda is compared to the other African countries, it becomes worse, for example in the recent concluded Kenya elections instead of a winner taking it, resulted power sharing. In Zimbabwe result took a full month to be declared an influence mainly by the incumbent Presidents thus leaving everything in suspense for someone to believe that there laws governing the voting system in Uganda and Africa a large.

5.1 Conclusion

Uganda's elections have been characterized by fraud, which has made it virtually have genuine regular elections. Voters' attitude has greatly been

¹²⁷ Steyler, Murphy, De Vos, Rwelamira: Free And Fair Elections (Juta) P. 57

¹²⁸ Ibid

¹²⁹ [Http//Www.UgandaElections.Com](http://Www.UgandaElections.Com) (Accessed 619/01).

the rationale and purpose of elections. The voters have as a result developed mistrust and suspicion in the electoral process. Previous elections in Uganda have only been held to hoodwink the voters and the outside world into imagining that Uganda respects implements the right to vote, where as not.

Elections are stage managed, directed and led in such a way as to ensure total victory for the ruling government structure. There has continuously been so much foul play that the only rational conclusion we can make is that Uganda's elections have never conformed to the international standards. There is a lot still that remains to be done if proper implementation of the right to vote is to take root in Uganda. That is Leaders should prepare their retirements before their time of office expires and Parliament should enact strict laws to that effect. This study has laboured to make recommendations and it is our hope that if those concerned with implementation of the right to vote consider our recommendations, confirmed with the international standards of elections. Then free, fair and genuine elections in Uganda will be realized which will be realized which will be a big step towards the democratization process in the country.¹³⁰

5.2 Recommendations

The implementation of the right to vote in Uganda as it stands is unsatisfactory. There is need for reform in a number of areas so as to have a free and fair election as discussed below;

5.2.1 Executive

- i) The principle of individual merit should be discarded because it has proved to be unworkable. The movement has continued to identify candidates. Horn it finances in the elections to the disadvantage of others in the political arena.
- ii) Intimidation. Harassment. Impersonation of voters and all other forms of election malpractices should. Severely be tackled by a

¹³⁰ Mugaju J .And Oloka Onyango ,(Eds)(2000)No Party Democracy In Uganda, Human Right Watch :Hostile To Democracy , The Movement System And Political Repression In Uganda, Kanyeihamba GW(200) Constitutional And Political History Of Uganda.

separate body affiliated the electoral commission so as to let supporters exercise their right to vote freely.

- iii) Government should increase budgetary funding to the electoral commission to enable carry out its mandates effectively. It should also cater for the civic educators so as to allow increased public and voter awareness programmes.
- iv) The funds to the electoral commission should thereby be released in time to enable the commission adequately plan early enough so as to bring about effective results from the expectations the electorate have in it.¹³¹
- v) Government should promote human rights, freedoms of expression, association, assembly as well as the right to be free from intimidation. This should also be felt even during the election days not just assured on paper and in words.

5.2.2 Civic Society

Civic education should be left to independent bodies and organizations like the common wealth observer groups, Religious groups. The incumbency should not be allowed to manipulate the civic education exercise by turning into a forum for de campaigning opposition candidates.

5.2.3 The Electoral Commission

- i) The electoral commission should strengthen and separate civic education from politics. The civic education as of now is directed by the movement supporters against multiparty sympathizers, this instigates prejudice amongst voters.
- ii) Registration of voters is a very important part of the electoral process, thus it should be handled carefully and regularly. Who ever qualifies to vote should not be 'omitted on voters roll. Registers should be availed at polling stations well in advance, updating

¹³¹ Article 60 Of The 1995 Constitution Of The Republic Of Uganda

should be continuous while display should be periodical and in accordance with the electoral laws.

- iii) Campaigns should be given enough time and the time frame within which campaigns are fixed should not be aimed at favouring the incumbent, the level playing field must be exercised.
- iv) Vetting and censorship of defamatory, unethical reporting must be done by the electoral commission.
- v) The law must stipulate clear and precise time tables for elections so that even five years away a person is able to tell the election date with precision. This gives ample time for adequate preparation.
- vi) Voters should be educated about their rights and duties during elections through out the year regardless of whether elections are due or not. The situation of rushing through elections because polls are just around the corner must cease if we are thinking about proper exercise of the right to vote.
- vii) The electoral commission must be allowed and seen to function independently. It should be given powers to punish candidates or their agents where they flout the law. Strengthening and making the electoral commission independent requires the appointment of non-partisan public servants. The commission should not allow itself to be manipulated or influenced by any person or authority. It must exhibit fairness. Voters should have confidence in it and it is upon it to earn this confidence. The commission should handle polling day seriously and ensure that materials arrive in time in order to avoid voter fatigue and disappointment.¹³²
- viii) There is need to reduce the number of polling stations especially in areas where you find a concentration of four or more polling stations at one single location so as to reduce on the administrative costs and confusion created as people move from one polling station to another looking for their names.

- ix) The transportation of polling material should also be improved in that it's during this period that some polling materials get into wrong hands, therefore it should be strictly observed that polling materials lead to their real destination without being tempered with.

5.2.4 Development partners

The media must ensure that voters receive sufficient balanced information to enable them make informal choices and decisions.¹³³

5.2.5 Security Organs

The army should not be allowed meddle with the conduct of elections. The electoral commission should have the guts to challenge and condemn the interference of the army in the conduct of elections. The police should be the sole force involved in elections and its involvement should be looked at as free and fair to all parties in the election process.

5.2.6 Judiciary

The judiciary must be bold enough to entertain election petitions without regard to technicalities. It is not prudent in the researcher's view to dismiss petitions because of the faults of the advocate involved in their preparation. Petitioners should not be discouraged by the judiciary by making it difficult to get redress from court. Election petitions should not stop at the court of appeal, litigants should be granted the right to go up to the highest court of the land that is to say the Supreme Court. The law should thus be amended to allow further appeals in the interests of justice.

5.2.7 The Uganda National Examinations Board

The Uganda national Examinations board should come up with an equivalent advanced level school certificate policy and awarding bodies organized by it in order to guide the electoral commission properly. There should be a committee to vet the educational qualifications well in advance before elections to avoid cases where petitions are filed against members of

¹³³ The Human Right Reporter (2001-2002) Foundation For Human Rights Initiative

parliament challenging their educational qualifications¹³⁴. In other cases candidates are disqualified after complaints are raised to the electoral commission that they were not qualified for nomination as candidates for lack of the minimal academic qualifications ¹³⁵

¹³⁴ Comment: Over Ten Petitions Were Filed Against Members Of Parliament In June 2001 On This Ground.

¹³⁵ Comment: Six Parliamentary Candidates In The June 2001 Race Were Disqualified By The Electoral Commission For Lack Of The Minimum Academic Qualifications. One Member Of Parliament Resigned After He Was Discovered That He Had Forged Qualifications.

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