

**ELECTORAL MALPRACTICES: AN ANALYSIS OF THE
LAW AND PRACTICE IN UGANDA.**

BY

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DECLARATION

I KASOZI IBRAHIM BIRIBAWA, do hereby declare that to the best of my knowledge the work presented in this research is original and has not been presented for any award in any Institution or University. Whereof part of the work has been obtained from the works of other authors and it has been acknowledged.

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APPROVAL

This dissertation has been submitted with my approval as the University Supervisor.

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ABSTRACT

With the rapid growth of democratic processes on the continent, elections have become part and parcel of public life and government has come up with a legal framework governing elections.¹

Among the objectives that resulted into promulgation of the 1995 constitution were the need to base the state on democratic principles which empower and encourage the active participation of all citizens in their own governance. It is therefore the duty of citizen to vote.

However electoral malpractices have turned democracy into more of theoretical concept hence being challenging to realize democracy.

This research provides an over view and analysis of electoral malpractices their causes and impact on Uganda's politics.

¹The constitution of the republic of Uganda, 1995 chapter one and five

CHAPTER ONE

1.0. GENERAL INTRODUCTION

In analyzing this critical subject, electoral malpractices connote to illegal practices as so declared under electoral Laws / Acts in Uganda.

Elections is a cardinal principle of democracy pointing to high inclusive level of political participation in the selection of leaders and policies at least through regular and fair elections such that no major (adult) social group is excluded.²

Elections are provided for under chapter 1 and 5 of the constitution and voting is constitutionally designed to be by secret ballot using one ballot box at each polling station for all candidates in an election and for all sides in referendum³

The electoral commission established under chapter 5 of the constitution as independent commission with its functions including ensuring that regular free and fair election are held has been practically proved to have failed to fulfill its functions.

Electoral malpractices have however characterized the electoral process in Uganda at all levels of leadership.

Uganda has witnessed a series of elections since 1987 to date. And on the basis of bird's eye view of political landscape over the last years, the picture that has unfolded depicts increased electioneerism. However, while the frequency of elections has increased, their quality has remained contestable. The piecemeal founding of popular elections has taken place during the NRM regime. When the NRM captured power through a protracted military struggle, sceptics viewed its ascendancy as any other military venture. These sceptics may have had a point to make. Through legal maneuvers, The NRM has boosted of championing constitutionalism and maintaining its self in power. This notwithstanding, the NRM has used its maneuvers to suppress democratic elections.

² Diamond et al (1989)

³ Chapter one and five of the 1995 constitution of the republic of Uganda,.

Sabit, Geoffrey, and Forater (2003:2) contend that if elections are the life of a democratic regime and lack of them its death, it can be said that a regime transition has been state-managed by the NRM to legitimize its self.

Therefore elections need to be analyzed systematically in order to group the intricacy of the electoral exercises.

1.1. BACKGROUND OF THE STUDY

Historically Ugandans did not participate in their governance from 1900 to 1961 because they were under colonial rule. The first general elections based on universal adult suffrage took place in 1961. With the 1961 and 1962 election, those in charge of Ugandan affairs were supposed to be chosen by and answerable to the people. From the time of independence the peoples' dreams of a peaceful and politically stable continent have shattered. A constitution had been worked out, the result of negotiation among the major political actors of the day. The constitutional arrangements were aimed at working out political formulae for balancing conflicting interest of the political elite of the day. The constitutional formulae entailed a periodically elected parliament, a cabinet drawn from and responsible to parliament. Powers for the major organs of the government were defined. On the first anniversary of independence, the original 1962 constitution was amended to provide for a ceremonial president to replace the governor-general. The kabaka of Buganda was elected first president. In 1966, following a confrontation between the then prime minister Apollo Milton Obote and Sir Edward Mutesa, president of Uganda and kabaka of Buganda, Obote announced that the 1962 constitution was to be suspended and on March 4, 1966 he said he was taking over the executive powers that had been in the hands of Edward Mutesa, whom he had earlier dismissed on February 22, 1966.

Ten days later, on March 14, the Buganda Lukiiko met in a special session and resolved to challenge Obote's suspension of the constitution and the ouster of Mutesa as head of state. On April 15, a new interim constitution was approved by parliament, with six members from Buganda abstaining.⁴ This constitution came to be known as the 'pigeon-hole constitution.'⁵ Obote became president and the post of prime minister was abolished. In 1967 Obote introduced another constitution that was republican in nature. It abolished kingdoms and aspects of

⁴ James Tumusiime and Charles Odooba, *Uganda's presidents: An illustrated Biography* p .99

⁵ Oloka-Onyango, *Constitutionalism in Africa: creating opportunities, facing challenges* pg 265.

federalism and turned Uganda into a unitary state. The president was given excessive powers over appointments and making laws through ordinances and detention without trial. Although the constitution recognized the multi-party system of government, opposition political parties were later banned, effectively transforming Uganda into a single-party state.

While Obote was in Singapore attending a commonwealth conference in early 1971, General Idi Amin staged a coup d'état and became president. He suspended the constitution and political institutions and unleashed a reign of terror and murder. Idi Amin was in 1979 overthrown by a combination of forces from Tanzania and Ugandan exiles there who had formed the Ugandan National Liberation Front (UNLF). After unsuccessful coalition governments by Yusuf Lule and Godfrey Binaisa a general election was organized by the Military Commission under Paulo Muwanga in December 1980. Four parties namely the Uganda People's Congress (UPC), the Democratic Party (DP), the Conservative Party (CP) and the Uganda Patriotic Movement (UPM) contested the elections. The UPC won the elections, but the results were disputed by other parties for being rigged, which led to the struggle in the bush led by Museveni. Earlier on the rigging of these elections was foreseen by Museveni who publicly threatened to go to the bush⁶. In July 1985, Obote was overthrown by his two generals, Tito Lutwa Okello and Bazillio Olara Okello. A peace accord was signed in Nairobi between the Okello Junta and Museveni, but the agreement failed to halt the war or establish an enduring settlement. In January 1986, the National Resistance Army (NRA) of Yoweri Museveni captured power in Kampala.

It should however be admitted that all national elections in Uganda since the NRA now NRM come in to power (including the 1989, 1996, 2001, 2006 and 2011 elections, the Constituent Assembly elections of 1994, and the referenda of 2001 and 2005) have not been free and fair. The elections have suffered from the same chronic diseases of political intimidation and violence from the Government and NRM, unequal access to campaign opportunities and resources and poor performance by the Electoral Commission. The Government also selectively applies sedition laws, libel, and incitement of violence to harass some opposition. Many opposition candidates are regularly summoned to police headquarters and detained illegally.

⁶ Supra note 4

However, the most notable problems were the Besigye trials from 12th November 2005, when he was arrested and charged with treason, terrorism and rape. On 22nd November, the Government banned in advance any public meeting or discussion on Dr. Besigye and on 23rd November banned radio talk shows or debates on the case. Even the High Court in Kampala which was hearing Besigye's bail application was invaded by security men and the Government attempted to send him to a General Court Martial.

Ultimately, Museveni won with 59.26% against Besigye's 37.39%. In addition, the NRM won 212 (or 63.7%) out of 333 seats in Parliament compared to 38 for FDC, 10 for UPC, 9 for DP, 1 for the Conservative Party, and 1 for JEEMA.

Besigye appealed to the Supreme Court for a re-run or recount of the votes. While the Court found the elections to have been marred by intimidation, violence, voter disenfranchisement and other irregularities, it still voted 4-3 to uphold the results on the assumption that the malpractices did not "substantially affect" the outcome of the election.

Khiddu Makubuya (1985)⁷ identified what he called the major means to democracy and these included; electoral laws oriented to the achievement of democratic ends, genuine periodic elections an honest competent and non partisan administration of elections. Khiddu Makubuya is one of the scholars who see the legal frame work as the precondition for democracy. In order for the election to conform to the electoral democracy, the events leading to elections and the election process must operate within the constitutional framework and specific laws pertaining election.

Therefore there must be a democratic society in the first place if elections are to produce democratic results due to the fact that the sovereignty of the people is mostly in name, being largely exercised only when the leaders of the country are being elected.⁸

This research shall provide an assessment of the electoral malpractices in relation to the electoral Laws and such effects of electoral malpractices on democracy/ governance in Uganda.

⁷ Khiddu Makubuya (1985) , The legal frame work for Democracy in Uganda

⁸ The constitution of the republic of Uganda, 1995 chapter one

1.2. STATEMENT OF THE PROBLEM

Elections being the way through which people exercise their rights to vote and choose their leaders are an indispensable pre-requisite to democracy.⁹ The constitution vests all power in the hands of the people who must be governed through organs created by the constitution only with their consent which consent is achieved through voting in an election which is free and fair in conformity to the Universal benchmarks on free and fair elections.¹⁰

However, with little regard to the laws and the principles of democracy, elections have been state managed perpetuating the incumbent president's stay in power, endorsing the continuation of various electoral malpractices and weakening opposition parties through abuse of basic human rights, corruption, intimidation, disenfranchising voters and selectively applying the laws.

This problem is attributed to factors such as disrespect to the available electoral laws, willful neglect to enforce the same laws by the responsible authorities and state intervention with the powers of the legislature and the judiciary.

If the above problem is not resolved, it might prompt the masses to ignore elections and opt to stage coup after coup in order to decide on when, who and how they want to be governed a phenomenon which existed in all African states. In the end Uganda's politic will run into vicious circle of liberation wars leading to underdevelopment, deaths and displacement of millions of people.

1.3. JUSTIFICATION OF THE STUDY

Since all the presidential and parliamentary elections that have been so far held in Uganda from independence have been criticized for being characterized by all sorts of electoral malpractices mainly manipulated by the state in a bid to perpetuate the stay of the incumbent president in power¹¹, it is both imperative and indeed appropriate in time, while Uganda is in preparation of the coming 2016 general election to make an express notice of such state manipulations to all

⁹ Supra note 5 pg 281.

¹⁰ Benchmarks include; adequate equal security, freedom of expression for all voters, non disenfranchisement and discrimination, independent electoral commission and adequate voter education

¹¹ FRANK NABWISO, A paper delivered at the conference on election and democracy in Africa organized by Makerere university and Christian MICHELSON CMI, Norway and held at Nile Resort Hotel, Jinja, Uganda from 29th May to 1st June 2011.

stake holders in the electoral process so as to drive them towards the realization of not only possible but also the required solution to them.

If the stake holders positively respond to this notice, both the electoral laws and electoral processes shall be reformed and eventually the coming elections will suffer no criticism thereby Uganda achieving the fruits of electoral democracy.

1.4. OBJECTIVES OF THE STUDY

1.4.1 General objective

The general objective of the this research is to indicate that democratic governance and sovereignty of the people can only be exercised and achieved through free and fair elections which are in strict conformity to the electoral laws in Uganda.

1.4.2 The Specific objectives of the study shall be;

- ❖ To critically examine the legal frame work with in which free & fair election is safe guarded and evaluate the effectiveness of these laws and decided cases
- ❖ To investigate, ascertain and document the causes of electoral malpractices
- ❖ To identify the impact of electoral malpractices on the politics of Uganda
- ❖ To explore the available strategies open and recommend what government and other stakeholders should to promote free & fair election.

1.5 METHODOLOGY

The research basically applied qualitative research methodology though quantitative methods were applied to a small extent in the data collection process. The research applied a desk top survey of the literature in this field.

Both primary and secondary data was used in the study. Primary data included literature in libraries on electoral practices in Uganda vis-à-vis legislations on the subject. In the same light,

secondary data collected from the internet and materials from libraries was also used so as to have a vivid understanding of this area of research.

1.6. SYNOPSIS

This research is divided in to five chapters;

Chapter one covers the introduction, Back ground of the study, Statement of the problem, Objectives of the study, Methodology, Scope of the study Significance of the study and Literature review.

Chapter two will consider the understanding of elections, the rationale for elections, and background of elections in Uganda giving specific insights on general elections held in Uganda before and after independence clearly analyzing the law and electoral processes during this period up to the promulgation of the 1995 Constitution or the republic of Uganda.

Chapter three will consider legal frame work of elections briefly explaining different laws governing elections in Uganda, specifically sighting some of the provisions against electoral malpractices and highlighting some of featured electoral malpractices from 1996 to date. This will cover the events leading to elections/campaigns, the election process it's self and the aftermath of elections.

Chapter four will handle general analysis of electoral malpractices in regard to key players in fueling electoral malpractices, examining some of the decided cases in regard to electoral malpractices. It will also consider resultant petitions/ court cases pointing out reactions of the electorate and candidates.

Chapter five will cover the conclusion and recommendations.

1.7. SCOPE OF THE STUDY

Although instances prior to Uganda's independence and post independence period have been considered, specific concern is on the period 1995 to the present [June 2015] in specific regard to the presidential and parliamentary elections.

1.8. LITERATURE REVIEW.

Some literature has been done on the subject of election as well as electoral democracy. Some has been concerned with legislations while the other with the electoral process in practice as seen below.

1.8.1 Review on legislation

According to **Sabiti, et al. (2003)**, the promulgation of the new constitution which the NRM administration had promised the electorate was so important as much as it was a vital land mark in the process of democratization and also in the way it affected the subsequent elections.¹² This observation is correct since every constitution is influenced by what has happened in the past. So it was expected to solve the problems of the electorate that had existed before the NRM. The question however is whether it solved the said problems.

Relatively, the 1995 constitution as amended is a vital instrument in Uganda's path to realization of democracy in its full sense in regard to its current problems faced by the electorate and in particular the opposition as this research is going to illustrate. This research is going to further suggest how the constitution should solve the current problems of the electorate under the current NRM regime.

They quite explained various constitutional provisions in regard to elections and concluded that the electoral laws of Uganda and the constitution have some articles and sections which are inimical to good governance and negatively affect the electoral process. They further made a significant conclusion on the delayed passage of the electoral laws that it affected the whole electoral exercise.

Sekaggya (2010) in reference to an Open Society Institute of East and Southern Africa study that measured Uganda's readiness towards the 2011 general elections found that although Uganda's legislative framework was in compliance with international and African standards, many laws were brought in as late as 2010 "making it difficult to ensure that all those who need to be familiar with them, including staff of the EC, could be educated on their content.

¹² Presidential and parliamentary elections of 1996.

Whereas Sabiti et al's conclusion was in relation to the 1996 presidential elections and Sekaggya's conclusion was in relation to the 2011 elections, this research seeks to especially analyse the coming presidential and parliamentary elections (2016) which none has observed to conclude whether the electoral laws will impact or help transform Uganda.

Oloka- Onyango (2001) while analyzing its early days stated that the constitution enjoys a high degree of acceptability and legitimacy but there may be some short comings in the document. He further stated the greatest challenge which faced the implementation of a new constitution was the organization of the presidential and parliamentary elections.

Relatively the 1995 constitution as amended- the supreme law in which presidential and parliamentary elections are derived- is having shortcoming pertaining free and fair elections such as Article 103 (2b) which favors the incumbent president only during the presidential campaigns. This research is going to explain much more on these shortcomings and suggest possible reforms to the constitution

In contrast, **Kanyeyihamba (2010)** is of a view that Uganda has adequate laws on vote rigging and on vote stuffing but state organs and authorities have failed or unwilling to enforce these laws. He points out that greatest obstacle to free and fair election in Uganda is the failure by the candidates, their agents and electoral officials to comply with the law.

G. W. Kanyeyihamba concludes that reforms to electoral laws are only secondary to these problems since electoral cases have not been lost because there are gaps in the law, but because the actors in the electoral processes violate the existing law¹³. Although G. W. Kanyeyihamba's conclusion is substantiated, he disregarded the fact that the constitution is a living instrument which must grow through amendments and interpretation by the courts. The constitution or legal development must be an ongoing exercise to build compromises on issues that divide the electorate in regard to the rapid and high technological development in the world over Uganda inclusive. This research is going to handle great obstacles- which are both external and internal - which call for immediate reforms to the constitution and the electoral laws as a primary remedy to the particular mischief or lacuna therein.

13 Kanyeyihamba G.W, Constitutional and Political History of Uganda, law Africa second edition pages 312-313.

Elections of the western type impose a crushing financial burden on poor countries and encourage the all too familiar forms of corruption in an ethnically and religiously diverse society lacking shared values, or in a society unused to discussing its differences in public and articulating them in neat ideological terms, elections might prove deeply divisive, generate artificial ideological rigidities, release powerful aggressive impulses and channel them into dangerous and unaccustomed directions. Such societies might better off sticking to or involving consensual and less polarized ways of selecting their governments and conducting their affairs what is true of elections is equally true of other liberal democratic institutions and practices. Parekh tried to throw light on what exactly happens in Uganda's practice during elections. However this research is going to specifically handle the effect of commercialization of elections to a free and fair election as well as the role of the donor countries in Uganda's elections. (PAREKH, 1993:171)

1.8.2 Review on the practice

According to **Arblaster (1987:3)**, no British government in the past forty years and more has been elected with even a bare majority of the votes cast. In practice, with an electoral system like Britain's, and with more than two parties dividing the popular vote government is elected by, and so represents, only the single largest minority of those who vote. It may not be much more than forty per cent of the voters, leaving the non-voters and the remaining sixty per cent of those who took part in the election to be governed by an administration which is not of their choosing.

This has also been the trend but with a different dimension in Uganda's elections. However Arblaster does not attribute the conclusion to a particular cause but this research shall specifically explain the causes to this problem.

Sandrine, Sabiti, Jerome and Marie (2014) noted that participations rates were considered rather low (59%) during the 2011 presidential and parliamentary elections. They therefore conclude that participation is a bias that affects the representativeness of the vote and might point to irregularities in voting. This is true as evidenced in the first national referendum held in Uganda on 29th June 2000 to determine whether Ugandans should continue to be governed

under the “Movement System”, under a multi-party system or any other “democratic and representative political system where 90.7% voters agreed to retain the “Movement System” but only 51.1% of the 9.6 million registered voters participated in the vote. This low participation was attributed to non existence of the law to allow political parties to campaign freely during the referendum period, and to regulate the holding of the referendum¹⁴.

Similarly, **Daniel Omara Atubo (2014)** the electorate went ahead on the 27th day of May, 2000 to formally resolve not to participate in both the campaigns and elections due to the irregularities it envisaged in the 2000 Referendum.

On a different dimension, higher participation rates have also figured in Uganda’s elections (2011) in NRM strongholds as evidenced in Kiruhura where a number of polling station results were cancelled at the last moment because the votes cast outnumbered the number of registered voters (**Sandrine, et al. 2014:62**)

The 1980 general elections was a land mark in the history of Uganda. It had been looked forward to as a means of redressing the wrongs of the past, but the way it ended was a major disappointment and, as a result, a major cause for the opposition against the administration that grew from it.
(**Mutibwa 1992: 142**)

Mutibwa came to this conclusion basing on the fact that electoral malpractices extensively characterized these elections. Indeed the rigging started with the demarcation of constituency boundaries, dismissing of returning officers who were not royal to UPC given the fact the Electoral Commission was made of self-confessed UPC supporters, the process was glaringly flawed from the start and the nomination day was afore taste of what eventually happened.

Kabwegyere(2000) while referring to the 1989 elections stated that there were general complaints that voting was in many places based on sectarian grounds some leaders threatening to penalize those who voted against fellow believers.

William Muhumuza, in his article entitled “Money and Power in Uganda’s 1996 Elections”, expounds further on this and states that the presidential and parliamentary elections were

¹⁴ Supra note 11

characterized by an inflated voters' register, massive use of money and other material inducements, intimidation of voters by state agents which included the army and a paramilitary group called Kalangala Action Plan (KAP); in addition to vote rigging, external financial support to Museveni's campaign and manipulation of the entire electoral process.

Kanyeyihamba (2010) has also highlighted on the elections held in March 2001, where Museveni won by a substantial majority, with Kizza Besigye as the only real challenger. Despite a protest against the results, citing massive voter intimidation and rigging, the outcome was confirmed by the Supreme Court of Uganda.¹⁵

The 23rd February 2006 elections were the first presidential, parliamentary and local government election to be held under the multi-party system after the 1980. Secondly it was the first time for the presidential and parliamentary election to be held on the same day in Uganda. These elections saw several irregularities and fraudulent Practices¹⁶ and a Human Rights Watch study carried out a month prior to the 2006 general elections found that political environment in Uganda was mired in fear and intimidation with several electoral laws being applied selectively.

Gloppen, (2006) there were problems and irregularities at various stages of the election cycle that tilted the playing field and compromised the integrity of the 2006 general elections.

Another study on the presidential elections in Uganda found that the electoral commission had several problems in the organization of the 2011 elections that included missing voter's names on the register. From this observation, opposition parties have lambasted all elections organized by the commission as fraudulent, arguing that its composition is not representative of all participating political players, therefore it plays to the whims of the president who selects it (**Makara, 2011**).

¹⁵ Dr. Col. Rtd Kiiza Besigye V Museveni Yoweri and another Electoral petition No 1 of .2001

¹⁶ FRANK NABWISO, A paper delivered at the conference on election and democracy in Africa organized by Makerere university and Christian MICHELSON CMI, Norway and held at Nile Resort Hotel, Jinja, Uganda from 29th May to 1st June 2011

This research is going to go further and comment on the composition of the electoral commission as well as its appointment which are the primary consequences of its failures to effectively organize a free and fair election.

Practically, Elections across the world are a state of intense political and media activity. Election campaigns, strategies and issues get extensive coverage, as electoral strategies become the focus of attention for voters to make electoral choices (Graber, 2010; Ha, 2009).

Lange and Ward (2003) add that in the contemporary world, the idea of elections without the mass media would be unthinkable as broadcast media and newspapers have become the “primary site where an election is actually taken to the electorate (xiii).” Current elections are now regarded as three-way alliance that involves the voter, the contestants and the media, with the media acting as the link between the other two.

Media’s role in elections is undisputed but in many African elections ruling parties are willing to pull all stops to win elections. So, other than providing the electorates with what to think about as the agenda setting theory suggests, government controlled media would prefer directing the thought patterns of the electorates towards the government’s campaign messages or policies (Chaligha, 2002; Waldahl, 2004).

Chomsky N. and Herman E., 1988 rightly explain and state that although the media provides verifiable information about candidates and issues, it is also true that influence of the media in election period comes from the media’s capacity to provide the public with prejudiced information about candidates or specific issues by overly emphasizing or disclosing one aspect of the realities. The rationale for this might be the desire for increased revenue since at times commercial revenue takes precedence over the news media’s ability to report accurate news. This research shall explain how the state has influenced the media to deny the people a free and fair election.

CHAPTER TWO

2.0 HISTORICAL BACKGROUND OF ELECTIONS IN UGANDA

2.1 understanding election and the rational for election.

It has been argued that "elections constitute a mechanism of accountability for the governors of the governed" (Sabiti et al, 2003: 14). They argue that for elections to be considered free and fair, the following conditions should be in place; neutrality of election officials, the electorate must have a general uncertainty as to who may win the election, the electoral law must favor all candidates equally and all candidates and electorate must feel that the ground is leveled.

Additionally an election is the mechanism whereby the choices of political activities are known. These choices should be expressed in ways which protect the rights of the individuals and ensure that each vote cast is counted and reported properly. The electoral process which fails to ensure the fundamental rights of citizens before and after the election is flawed.¹⁷

BART M KATUREEBE justice of the Supreme Court attempted to define a free and fair election in the following words:

To ensure that elections are free and fair there should be sufficient time given for all stages of the elections, nominations campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections, and citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officials. There must be a leveling of the ground so that the incumbents or Government Ministers and officials do not have an unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence, coercion or anything intended to subvert the will of the people. The election procedures should guarantee the secrecy of the ballot, the

¹⁷ , Rtd Col Dr Kiiza Besigye vs Yoweri Kaguta Museveni and Electoral Commission supreme court Presidential Election Petition No 1 of 2001,.

accuracy of counting and the announcement of the results, in a timely manner. Election law and guidelines for those participating in elections should be made and published in good time.

Fairness and transparency must be adhered to in all stages of electoral process. Those who commit electoral offences or otherwise subvert the electoral process should be subjected to severe sanctions. The Electoral Commission must consider and determine election disputes speedily and fairly.”¹⁸

Judith Geist (1994) observed thus;

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

In the context of liberal democracy, voting is the main experience of political participation for most citizens. As earlier on noted, the sovereignty of the people is mostly in name, being largely exercised when the rulers of the country are being elected.

The right of every Ugandan to vote and to register as a voter is provided in Article 59 of the Constitution as follows:

- “(1) every citizen of Uganda of eighteen years of age or above has a right to vote.*
- (2) It is the duty of every citizen of Uganda of eighteen years of age or above to register as a voter for public elections and referenda.*

¹⁸ibid

- (3) *The state shall take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.*
- (4) *Parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote."*

Section 19(1) of the Electoral Commission Act provides that any person who is a citizen of Uganda, and is eighteen years or above shall apply to be registered as a voter in a parish or ward where the person originates from or resides. Elections legitimize the positions of those in possession of power. According to democratic theory, power is legitimate and therefore authoritative when it is derived from the mandate of the people and is based upon their consent.

Elections in Africa have offered greater scope for political change than other modes of supervised transaction. Although some have merely endorsed decisions already made in policy making circles, most elections have a mechanism for some political movement. They differ from other managed transition measures in that they institutionalize means of supervising change and shift part of the responsibility of determining future directions from the top leadership, to the electorate. In no case have they implied to date (1988) a fundamental alteration in the organizing or distribution of power in society(Naomi Chazan 1988:202)

Thus for the people of Uganda who were trampled upon for years, it was necessary to remove dictatorship and introduce mass participation partly through regular free and fair elections as expounded above.

2.2.1 The Colonial Era

Several centuries ago Uganda was structured on kingdoms. The kingdoms of Bunyoro, Buganda, Toro and Ankole cluster, including Karagwe and Mpororo developed in the Great Lakes region. These Kingdoms established sophisticated state structures with the King's Court as the geographical centre of power and, in some cases, such as Buganda and Bunyoro, the very elaborate administrative systems prior to the arrival of the colonialists. That is why different

agreements, notably the 1900 Buganda Agreement, were signed with the rulers of these kingdoms at the beginning of the twentieth century.

The 1870s which marked the beginning of missionary penetration and evangelization in Uganda facilitated the colonialism. The establishment of the Uganda protectorate was accomplished after much armed and passive resistance. The resistance to establishment of colonial rule was a protracted struggle, with Karamoja militarily unoccupied until 1921, long after the imposition of colonial rule in the rest of the country.

Uganda like other African countries did not participate in its affairs. The pre –independence phase was dominated by colonial rule. The British were in charge of the state. As many writers have concluded, colonialism was a negation of fundamental human rights and was, therefore, incompatible with democracy.

With the establishment of the colonial economy which transformed the man/land relationship, the peasants began to suffer and hence became more politically conscious than elsewhere in the country. Thus in the late 1930s and 1940s political actions took place in Buganda including the 1949 Buganda petition which sought among others; opening the rule of democracy to start giving people power to chose their own chiefs and a demand of the number of sixty representatives in the Buganda Lukiiko to be completed by the Baganda. The petition was a challenge to authority, a demand for democracy and people's participation.

In a nutshell from 1900, to 1961, Ugandans did not participate in their governance since by its definition colonialism is a state of foreign occupation. The struggle for independence was basically peaceful and purely political with two main political parties, DP and UPC, which both vied for democratic elections.

The UPC president, Milton Obote, called for fresh general elections ahead of the proposed date of independence in 1962, urging that DP's mandate in office was at best precarious owing to the boycott of the legislative elections of 1961. Only 3.5 percent of all eligible voters in Uganda turned up to vote after reports that they had been intimidated to boycott the elections by the

Mengo leadership.¹⁹The 1961 elections returned DP with a majority and Kiwanuka became Uganda's first chief minister leading the first self government on March 1, 1962.²⁰

On April 25, 1962, a general election to prepare the way for independence that would formally be declared on October 9, 1962 was held. The UPC won 37 parliamentary seats while the DP won 24, with the UPC winning 537,598 of the popular votes to the DP's 472,256. While all the parliamentary candidates were directly elected, Baganda candidates were elected by the *lukiko*.

2.2.2 The Post independence Era (1962-1995)

No elections were held between 1962 and 1980. The 1962-71 was a disaster for democracy wherein Amin took over power through a coup on 25th January 1971 whose leadership lasted up to 1979.

Another election that followed was the 1980 election after 18 years which characterized coups. This was the only pre-Museveni-era elections. Although commonwealth observers said the elections were fair under the circumstances, others claimed that they were a sham. At the centre of the electoral fraud of the 1980 elections was the discredited Kikira Commission, which was announced by the Military Commission as the national electoral commission to supervise these elections with the chairman Kosiya Kikira and the secretary Vicent B. Ssekono.

It should be remembered that Yoweri Museveni was the vice chairman of the commission and according to the member of Muwanga's family speaking in 2008, Muwanga said Museveni had vehemently opposed to the idea of holding a general election.²¹

The chairperson was a diehard member of the Uganda People's Congress Party (UPC) and eventually, the date of the election was moved from the earlier proposed September 30 to December 10, 1980. The Kikira Commission was by and large neither free nor independent. The Commission received direct directives from the ruling Military Commission headed by Paul Muwanga usurped the powers of the EC by decree and took over the responsibility of announcing the results when it became apparent that the Democratic Party (DP), the UPC's main challenger, was on the verge of winning the majority of seats in Parliament and forming a

¹⁹ Supra note 6

²⁰ Ibid

²¹ Ibid

government. The DP's apparent victory was reversed by the Military Commission. As a result, UPC's win was highly contested, leading to the violent civil war that followed in the period 1981-1985.

Therefore,

The outcome of the 1980 elections not only negated the principles of democracy and insultingly overturned the choice of the people but it also ruled out the possibility of political change by peaceful means. Seventeen seats were taken unopposed by the UPC using all manner of intimidation and arrests to stop opponents from registering their nomination. (Kabwegyere:2000)

In contrast, James R Tumusiime and Charles odoobo: (2012) state that the Electoral Commission that oversaw the 1980 general election was chosen and approved by the NCC, not by Paul Muwanga so they note that its conduct of the election cannot be said to have automatically meant it was pro UPC. That Paul Muwanga issued a statement ordering live results not to be announced for reason which had to do with confusion in the counting and tallying of the incoming results on the part of the polling agents, but many observers suggested that he, sensing UPC's defeat, decided to take matters into his own hands. They therefore base on the former minister of State for Defence Peter Otai's writing about this election thus;

"Generally the count began with a joint inspection of each box to determine whether or not it had been tampered with. The first box was then opened and the votes counted and recorded before they were bundled up and placed back inside it. The first box was the securely closed before the second box was opened, and so on. As a ballot paper was not required to be marked with the party of the voter's preference, it was essential that there be no possibility of the various bundles of votes becoming mixed."

Otai added:

‘ late on the afternoon of Thursday, December 11, we were dismayed to learn of a retrospective Proclamation made by the Chairman of the Military Commission (Annex 4). Although this document amended the electoral law in positive ways so as to legitimize the fact that polling hours had been extended and that the count had taken place at polling stations, the remainder of the proclamation had the effect of giving to the Chairman of the Military Commission the sole power to announce results as well as the power to declare the poll in individual constituencies to be invalid. Each returning officer was enjoined to communicate the results only to the Chairman of the Military Commission, and to provide him with a confidential report on ‘various aspects’ of the poll. The proclamation also provided that no decision made by the Chairman of the Military Commission could be challenged in any court of law.’

Despite this different observation, the fact remains that the elections were not fair and thus resulted in to the guerilla war which brought the incumbent president in power.

The current regime of the NRM and its army, the National Resistance Army (NRA) now UPDF went to the bush precisely to wage a guerrilla war in the aftermath of UPC vote rigging. The main reason given in 1981 by Museveni for forming his NRA rebel was that the UPC had connived with the ruling military commission to manipulate the process of the December 1980 elections. When he came to power, Museveni promised what he called a “fundamental change” in the politics of Uganda.²²

The management of elections under the government of the NRM regime has been a mixed bag. First, there was a period when the elections were held without an established E.C. The RC elections would be conducted by the NRM secretariat. These were direct elections where voters queued behind their preferred candidates and the candidates with majority votes declared winner there and then.²³

²² See Olive Kobusingye, *The correct Line?: Uganda Under Museveni* (Milton Keynes House, 2010)

²³ Sandrine, et al(2014) *Elections in the hybrid regime: revisiting the 2011 ugandan polls* pg 114

The NRM regime began by electing Local Councils (L.C). Initially, LC's were directly elected by voters queuing behind their preferred candidates. These elections were criticized and the manner in which they were manipulated by the political elites was queried.²⁴

As a means to make a clean break with this ugly past, the NRM was committed to producing a respected constitution that would be acceptable to the majority of Ugandans as well as serving as a basis for the transfer of power from one group of leaders to another by peaceful means. Therefore, the subsequent elections were the constituent assembly elections in 1994.

The NRC established the Uganda constitutional commission²⁵ whose overall mission was to start the process of developing a new national constitution for Uganda led by Justice Benjamin Odoki as he then was. The electoral commission²⁶ conducted the elections in March 1994, including elections for special interest groups such as the army, persons with disabilities and trade unions.

These elections were however criticized for not being free and fair. Some of government security agents and NRM political cadres in districts used under hand activities to ensure the election of even under-qualified people, whose mission was to go and support only what the NRM government wanted the CA to include or take out of the new constitution.

However, since 1987 RC elections, the democratic credentials of Uganda's electoral process have been refined and enshrined in the 1995 constitution. Universal adult suffrage by secret ballot has in most cases been the normal mode of voting.²⁷

Despite this fundamental change as promised by president Museveni, no election has ever been conducted in strict observance of the law. The NRM Government in a bid to stay in power, has up to date through parliament, failed to put in place an independent electoral commission which has conducted elections being marred by numerous malpractices.

²⁴ Kastir, "The Uganda Election of 1989"; sabihi makara, The Role of Resistance Councils in promoting Democracy in Uganda, (un published Research Reput, Makerere University, 1992).

²⁵ Under its statute No.5 enacted on 21 December 1988

²⁶ Commission for constituent assembly established under the constituent assembly statute No.6 of 1993.

²⁷ Art 68(1) of the constitution of the republic of Uganda

CHAPTER THREE

3.0 THE LEGAL FRAME WORK OF PRESIDENTIAL AND PARLIAMENTARY ELECTIONS IN UGANDA.

3.1 INTRODUCTION

The Universal benchmarks on democracy emphasize that it is a system of governance in which a country conducts free, fair and regular elections which enable governments and leaders to change peacefully; in which the basic fundamental human rights are consistently upheld; and in which efforts are continuously made to use the state's resources for the development of all its citizens. Other important components of a credible democratic system include checks and balances based on the doctrine of separation of power and functions among the executive, judiciary and legislative branches of government; a free, strong and independent media; vibrant Civil Society Organizations (CSOs) and active participation of ordinary folks in governance. These benchmarks are found in numerous books and documents including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Convention on Elimination of all forms of Discrimination against Women (CEDAW), African Charter on Democracy, Elections and Governance (ACDEG) and Inter-Parliamentary Union (IPU) Charter of 1994.

It must be noted on the offset that all the elections which have been held since 1995, were held after Uganda had become a signatory to the 10 universal benchmarks on free and fair elections contained in the inter-parliamentary union (IPU) Charter of 1914.²⁸

3.2 Laws governing elections in Uganda and the Understanding of their operation.

With the ascendancy of the NRM to power in 1986, a frequency of elections has been institutionalized in Uganda and gained strong legal backing. Following the promulgation of the 1995 Constitution, good and workable ways were saved, made or adopted under the authority

²⁸ Supra note 11

and the provisions of the same constitution.²⁹ The constitutional provisions were subsequently fortified by Acts of parliament and other statutes which provide for the conduct of elections right from the president of the country down to the lowest village chairperson. Many of these laws have since been revised and published in a series of volumes known as the Laws of Uganda, 2000. There is a separate volume known as the electoral Laws of Uganda under the title "*compendium of electoral laws as 15 February 2006*". The latter volume contains the Constitution, the Electoral Commission Act, Political Parties and Organizations Act, Presidential Elections Act, Parliamentary Elections Act, Local Government Act, National Women's Council Act, National Youth Council Act, and the Referendum and other Provisions Act. It also contains subsidiary legislation preserved so far made and published under the constitution and various electoral laws.³⁰

The constitution is the supreme law of Uganda upon which all other laws derive their validity in conformity with it where any law that contradicts it becomes null and void to the extent of its inconsistency. The presidential elections Act provides for elections to the office of President, qualifications and disqualifications for candidates, the manner of establishing equivalent qualifications, the nomination, campaigning, polling procedure, counting tallying and declaration of results of a presidential election and the procedure for challenging the results and for other related matters. The Electoral Commission Act makes miscellaneous provisions relating to the functions of the Electoral Commission and provides for other related matters. The Parliamentary Elections Act makes provisions for parliamentary elections and related matters in accordance with article 76 of the constitution; it provides for qualification and disqualification for election, the nomination, campaigning, polling, counting of votes, tallying and declaration of election results. It also provides for petitions for challenging election results, election offences, parliamentary constituencies and tenure of office of members of parliament. The Political Parties and Organizations Act makes provisions for regulating the financing and functioning of political parties and organizations, their formation, registration, membership and organization

²⁹ Oloka Onyango, J Dr "Constitutional Change and Political Transition in Contemporary Uganda: A social Legal Analysis: British Department of International Development (DFID), March, 2004."

³⁰ See Compendium of electoral laws, as at 15 February 2006, Republic of Uganda. Government Printer.

under Articles 71, 72 and 73 of the constitution; the prescription of the establishment of a national consultative forum for political parties and organizations.³¹

3.3 Highlight of the provisions relating to Electoral malpractices in Laws governing Presidential and parliamentary Elections in Uganda.

Electoral malpractices are defined as the manipulation of electoral process and outcomes so as to substitute personal or partisan benefit for the public interest.³² Electoral fraud or rigging is illegal interference with the process of an election. Acts of fraud affect vote counts to bring about an election result, whether by increasing the vote share of the favored candidate, depressing the vote share of the rival candidates, or both.

The following are some of the legal provisions relating to electoral malpractices from the above said constitution and Acts of parliament;

Article 104(9) of the Uganda constitution empowers parliament to make laws and rules of procedure for the election and assumption of office of the president and the grounds for upholding or annulment of such an election.

- ✓ sec. 64 of PEA and Sec 68 Parliamentary Elections Act talk about bribery.
- ✓ Sec. 69 of PEA and Sec 73 of Parliamentary Elections Act are against false statement concerning character of the candidates.
- ✓ Sec. 66 of PEA and Sec 70 of Parliamentary Elections Act are against Publication of false statements as to illness, death or withdrawal of candidate.
- ✓ Procuring prohibited persons to vote sec. 65 of PEA.
- ✓ Sec. 67 of PEA obstruction of voters.

³¹ See the preamble to the Titles to the Acts of parliament as mentioned.

³² Sarah Birch (2011) Electoral malpractice. Print publication date 2011. published to oxford scholarship online: May 2012

- ✓ Sec. 68 of the PEA penalty for such offences sec 64(5) (6) or sec 65, 66 or 67 is a fine not exceeding forty eight currency points [960,000/=] or imprisonment not exceeding two years or both.
- ✓ Sec. 71 PEA failure by presiding officers to furnish election returns.
- ✓ Sec. 72 and 73 of the PEA on offences relating to voting.
- ✓ Sec 25 of the PEA³³ and Sec 27 Parliamentary Election Act on the prohibition of use of government resources.
- ✓ Art 67 (2) and (3) on reasonable access and use of state owned communication media.

Section 5 of the PEA against Foregoing a certificate purporting to be issued by the National council for Higher Education and foregoing academic certificate for purpose of nomination³⁴, with penalties under s.13 and s.10 (14) of the same Act.³⁵

- ✓ Sec 25 Non-Sectarian Campaign.³⁶

3.4 Highlight of some of the Featured Electoral Malpractices and violent cases in Uganda from 1996-present.

Most electoral malpractices are born at the inception of nomination of candidates, accelerated during the campaigns and worst is on the voting days. However there are measures regulating the conduct of these elections known as guidelines put in place by the electoral commission on various levels of on elections such as the nomination and campaign guidelines for presidential and parliamentary elections.³⁷

Despite the legal provisions and guidelines intended to achieve a free and fair election, electoral malpractices have remained a chronic disease in the politics of Uganda.

³³ Campaign guidelines for parliamentary candidates (18th December, 2010-16th February, 2011)

³⁴ Guidelines for nomination of presidential candidates. 26th August, 2011.

³⁵ The Parliamentary Elections 2011 guidelines for nomination of candidates 26th of August 2010 also provides related offences.

³⁶ Campaign Guidelines for presidential elections 2011 October 25, 2010

³⁷ See nomination guidelines dated 26th August, 2010. And campaign guidelines dated 25 October 2010.

The use of financial and material resources to persuade specific actors in the 2011 elections in general. For example, an international election observer mission described the trend as the “disturbing” nature of the “commercialization of politics through the distribution of vast amounts of money and gifts”³⁸ or the monetization of the elections. Afrobarometer polls confirmed this tendency, showing that 56% of Ugandans stated that political parties or candidates often or always buy votes during elections; while a large number of voters (15% in December, rising to 17% in February) stated that they had been offered bribes in cash or in kind.³⁹ In the same vein, a report of the UBOS of February 2011 shows how the productions of meat, beer, sodas and water for consumption went up through this election.⁴⁰ Field research found that these financial offers came mostly from NRM.

The Daily Monitor reports how, between July and October 2010 alone, Museveni spent USD 2.15 million (US\$ 5 billion) on cash and pledges.⁴¹ Whereas the deputy presidential spokesman defended this practice by arguing that the president is a “Fountain of Honour”, entitled to donate at any cost, at anytime, anywhere, the Anti-Corruption Coalition Uganda considers such pledges to be a misuse of public funds.⁴²

The 2011 election witnessed presence of army or security representatives on the NRM’s side during the campaign for instance; top security officials attended the launch of Museveni’s manifesto contrary to the law.⁴³

The 2006 presidential elections also ended in the courts of law that ruled that the EC had failed in several aspects of its constitutional responsibilities.⁴⁴ The 2006 elections suffered from chronic diseases of political intimidation and violence. However, the most notable

³⁸ Report of Commonwealth Observer Group, Uganda Presidential and Parliamentary Elections- 18 February 2011, 9.

³⁹ The Focus Group Discussions of Democracy Monitoring Group claim this is more widespread than these results suggest. Report on Money in Politics. Pervasive Vote Buying in Uganda Elections.

⁴⁰ Rukiya Makuna and Joan Akello, “Post-Election Economic Woes,” The Independent, 18 March 2011.

⁴¹ John Njoroge, “Opposition Cries Foul as Museveni gives Shs 741m in cash Donations,” Daily Monitor, 7 January 2011.

⁴² Ibid

⁴³ Sheila Naturinda, “EC asks security chiefs to explain presence at NRM manifesto launch,” Daily monitor, 10, December 2010.

⁴⁴ Case of Rubaga North constituency where Singh katongole (NRM) tussled with Moses Kasibante (DP)

problems were the Besigye trials from 12th November 2005, when he was arrested and charged with treason, terrorism and rape. On 22nd November, the Government banned in advance any public meeting or discussion on Dr. Besigye and on 23rd November banned radio talk shows or debates on the case. Even the High Court in Kampala which was hearing Besigye's bail application was invaded by security men and the Government attempted to send him to a General Court Martial. Ultimately, Museveni won with 59.26% against Besigye's 37.39%. In addition, the NRM won 212 (or 63.7%) out of 333 seats in Parliament compared to 38 for FDC, 10 for UPC, 9 for DP, 1 for the Conservative Party, and 1 for JEEMA.

On Saturday 3rd March 2001, witnesses alleged that, after candidate Col.Dr.Kizza Besigye addressed a rally in Rukungiri Town, PPU commanded by Capt. Ndahura led soldiers in assaulting and beating up supporters of Dr. Besigye who were returning from the rally. In the ensuing shooting by the army, one person BARONDA JOHNSON, aged 47 was shot and died on spot. Nine other people were seriously injured and were hospitalized. They complained that although perpetrators are known and reported to the police up to now no one has been apprehended for these crimes.

It is also alleged that one Friday 2nd March, 2001, soldiers of PPU had previously beaten Col. Dr. Besigye's supporters and shot several bullets in the air to stop them from planting banana plants to welcome him.

In Gulu, Oloka John 57 years, Chwa county, former coordinator of the Besigye Task Force testified that Lt. David Kitale arrested him and locked him up for three days in the barracks without food and water and later handed him over to the district police commander. He stayed in the cell for 10 days, before he was released on a police bond, he was not prosecuted. He referred the matter to his lawyers Omara Atubo & Co. Advocates who are handling the matter.

In Arua witnesses testified that during the 2001 presidential elections, supporters of Kizza Besigye were subjected to torture and harassment and it climaxed the day results were announced in which it was rumoured that Kizza Besigye was going to contest the results

and his supporters took to the streets. The army reacted by use of armed personnel carriers [The Mamba]

According to testimony given to Human Rights Watch, on 12th January at around 8p.m in Natete, a suburb of Kampala, a member of the Besigye campaign task force and his driver were allegedly abducted. When driving in Natete, two cars blocked their way, and four men in plain-clothes, armed with two handguns attacked them. They were told that they should tell Besigye's friend to stop funding and supporting the Besigye campaign. Their campaign materials [copies of posters and manifestos] were burnt. They were blindfolded and taken to Mityana forest about sixty miles from Kampala where they were dumped in the forest with their hands tied and left. Early in the morning one of them managed to loosen the rope and seek help.

Again in Mbale District, Mohammed Kasubi a supporter of Besigye was seen putting up posters of his candidate and later seen returning to Nakaloke. The next morning he was found undressed and unconscious. He died later in Mbale Hospital.

In Entebbe at the international airport, Major Rwaboni, who was the National youth chairman on Besigye's campaign team and also Member of Parliament for the youth for western region, was arrested in dramatic circumstances. Press review reveals that, he was manhandled and bundled onto a pick up and thus prevented from boarding an aircraft to Adjumani he was accompanying his candidate, Dr. Kizza Besigye to address a campaign rally. Dr. Besigye allegedly continued to Adjumani without Hon. Rwaboni. Major Rwaboni was subsequently detained at CMI for several days and later fled the country.

In the press review, opposition candidates blamed the government for the ever-increasing cases of violence. Some senior army officers, among whom, was Major Kakooza Mutale, were noted for terrorizing and intimidating opposition supporters in Jinja, Mbale and Mbarara. Major Kakooza Mutale, who is President Museveni's senior political Advisor and who headed Kalangala Action Plan, a para-military group canvassing for votes for the incumbent, was known to move with a group of soldiers and would cane any person who did not support Museveni. The president, who was informed of the harassment, reportedly said he would speak to him but apparently, nothing seems to have been done.

In Mukono, Jinja Road specifically, on 4th February 2001 at a campaign rally for presidential candidate Dr. Kizza Besigye, one RA90354 Eriam Alex recklessly drove motor vehicle No.UAA 009Q into a crowd of people, 4 people died and 17 sustained injuries. There is no evidence that he has ever been charged for that crime.

From the foregoing, Odoki CJ observes that:

“...the highest concentration, violence and harassment took place in Rukungiri, Kanungu and Kamwenge. The intimidation interfered with the petitioner’s campaigns in those districts. In Rukungiri and Kanungu it was perpetuated mainly by PPU. In Kamwenge it was done by UPDF soldiers. The intimidation of agents and supporters extended to closing branch offices and tearing posters, dispensing consultative meetings and rallies, abduction, arrest and ensuing injury or death to agents and supporters.”⁴⁵

Sardine et al (2014) concluded that the management of the 2001 elections was far from being free and fair as electoral procedures were not followed and state-orchestrated violence took centre stage which prompted parliament to set up a committee to investigate the causes of violence and it found more than 2000 cases of election violence mainly committed by government security agencies.⁴⁶

In Rukungiri in the presidential elections 1996, Dr. Ssemwogerere’s supporters were harassed and denied fuel.⁴⁷

⁴⁵ Dr. Col. Rtd Kiiza Besigye V Museveni Yoweri and another Electoral petition No 1 of .2001

⁴⁶ see parliament of the Republic of Uganda, Report of the select committee on Election Violence During the 2001 Elections, 2002

⁴⁷ See Sabit, et al.(2003) for the details of these violent police cases.

CHAPTER FOUR

4.1 key Players in Fueling Electoral Malpractice.

The major players in the electoral process in Uganda include the Parliament, the Electoral Commission, the Donor Community, the ruling and Opposition parties, the Media, the Uganda Human Rights Commission (UHRC), the Uganda Law Society (ULS), Religious and Civil Society Organizations, and the voters themselves. However not all these have been perpetuating electoral malpractices. In my findings I have discovered that the following are the key Players in Fueling Electoral Malpractice.

The army and other security organs.

The Parliamentary Select Committee on Election Violence focused on the role of the security forces in elections and in its report to parliament, it observed that there was noticeable deployment of soldiers, LDUs, DISOs, GISOs and other security organs in uniform at some polling stations giving them a lee way to direct, harass, obstruct and intimidate voters. It was observed that this deployment of soldiers and other security organs was mostly in constituencies where state sponsored/ connected candidates were facing stiff competition from the so-called opposition candidates. This was evident in cases like using some candidates' vehicles for transport, some were bodyguards for such candidates and candidates' agents, they moved with some candidates' agents and campaigned actively for certain candidates.

The parliamentary committee heard that the armed forces such as UPDF Intelligence organs CMI PPU, the Kalangala Action Plan under the leadership of Major Rowland Kakooza Mutale and other security organs committed illegal acts⁴⁸ in order to favour particular candidates including but not limited to Unlawful arrest of people, Maliciously beating up people, threatening voters by use of arms, Malicious utterances, Forcing voters to cast votes for certain candidates against their choices and Scaring away voters on voting day by use of arms.

There was a proposition that soldiers and other security organs were brought into the elections to maintain law and order but this proposition does not hold water because of a number of reasons. First and foremost, there is no lacuna in the law as to what institution is to maintain law and

⁴⁸ Contrary to Section 43 of the Parliamentary elections Act 2000

order during the election process. It is clear that parliament envisaged that it is the police which should maintain law and order at all polling stations during the election process.⁴⁹

It was observed by Oder JSC in Col. [RTD] Dr. Kizza Besigye V Yoweri Kaguta Museveni that;

“Article 209[a], [c] and [d] does not in my view permit internal maintenance of peace, security law and order by the UPDF. In the instant case, my considered opinion, with respect, is that the UPDF had no business in the electoral process and should only have been deployed if there were emergency situations or cases of National disasters at the same time, which there were not. There is no evidence that such situations existed when the UPDF was deployed.”

The media

State- owned media are legally and constitutionally required to give equal coverage to all presidential candidates⁵⁰ and “reasonable access” to all candidates in the parliamentary election (Parliamentary Election Act). Nevertheless, the public media (Uganda Broadcasting Corporation) and the ones mainly owned by the government give a very strong advantage to NRM candidates. UBC TV, for example, devoted 14 times more airtime to President Museveni than to Kizza Besigye.⁵¹ The private media are not required legally to allocate equal time or space to candidates but usually journalists believe their media coverage should be balanced. This principle is nevertheless tempered by several realities. First, there is a high degree of commercialization of airwaves, which prevents small parties and financially restricted candidates from accessing the airwaves. A one hour talk show can cost up to US\$ 1million (US\$400).

Covering the campaign creates many inequalities between media houses. During elections, politicians have clear expectations in terms of media coverage. The NRM with the New Vision, from which the state officials expect loyalty and preferential treatment, which the paper is ready

⁴⁹ Sabiti et al, (2003: 294)

⁵⁰ Art.67 of the 1995 constitution of the republic of Uganda

⁵¹ European Union Election Observation Mission, Uganda, General Elections Preliminary statement, 13

to provide.⁵² The Vision journalists explain that it is only more right to give more space to the incumbent, saying that “when Museveni makes an electoral pledge it can almost be considered as a policy announcement,” it has greater political weight than the promises other candidates might make and thus deserves more attention. The distribution of space on the pages of Newspaper, whether photos are in colour or in black and white and whether photos are used became critical issues. Rally pictures are particularly contentious because President Museveni is said to care about them a greater deal.⁵³

There were several incidents in which journalists from private and state-owned media alike were threatened, assaulted and beaten by groups attached to candidates, members of the police, the Presidential Guard brigade or the Special Forces Group, politicians themselves and RDCs.⁵⁴ On many occasions cameras were damaged deliberately. In the week preceding the 2011 elections, several radio station owners and journalists were questioned or detained by RDCs, district police commanders or the army, in places like in Lira, Sembabule and Masaka.⁵⁵ Kibale Kagadi Community Radio, KDR, in Bunyoro, was taken off air when an opposition candidate started talking.⁵⁶ These serious attacks are becoming open and happen in a climate of impunity. According to HRNJ-Uganda, “several journalists reported the cases to police and to courts of law but none of these have been investigated to any “logical conclusion” or even led to any arrests”⁵⁷

The relaying of results directly from correspondents based at polling stations has been done in several occasions in Africa and is often considered as an important safeguard against fraud.⁵⁸ However, when Monitor tried to publish independent results in 2006, its website was closed and

⁵² Interview with William Pike, former managing director and chief editor of the New Vision Printing and publishing Company, at the time of writing chief executive officer of Capital FM, Kampala, 6 September 2008.

⁵³ Interview with W. Pike, Kampala, 6 September 2008.

⁵⁴ PRESS Reform Index Report 2011 Uganda: Shrinking and Sinking. Seen in particular p. 18-22 and for the list of journalist attacked, and p.25-34. Interviews with journalists.

⁵⁵ EU Election Observation Mission, Preliminary Statement, 14

⁵⁶ EUOM, Final Report : General Elections, 18 February 2011, 27

⁵⁷ HRNJ-Uganda, Press Freedom Index Report 2011

⁵⁸ See, for example, regarding Zimbabwe, Hayes Mabweazara, “Between the Newsroom and the Pub: The Mobile Phone in the Dynamics of Everyday Mainstream Journalism practice in Zimbabwe,” *Journalism* 12 (August 2011): 699.

the signal of its sister radio station KFM was jammed by the authorities.⁵⁹ Thus a news editor from a radio station in Kampala explained that what they can do is to relay the results but not to declare them. 'We can emphasize the fact that they are provisional. We won't relay the IPC results. We will relay the results that the polling assistant [official of the EC] is telling to the radio. We will only give information that is already declared official'.⁶⁰

International donors.

International aid donors have been a consistent, substantial and sometimes crucial source of support for government since the 1980s. Without exception however, donors have nonetheless ultimately upheld the status quo-that is, NRM rule- in their final responses to electoral process and controversies. They have at times, worked to undermine domestic Ugandan groups seeking to reject the legitimacy of the results.⁶¹ The EU for example, discouraged Museveni's main opponent in 1996, Paul Ssemwogerere, from contesting the results of the election, arguing that 'losers should not contest results'. Following the 2001 election, the UK's DFID persuaded a local election monitoring group (NEM group) to "tone down" a critical post-election statement they planned on releasing.⁶² As a 2010 UK government report on electoral assistance notes, however, donors "necessarily engage with imperfect electoral process, as this is precisely where their support is needed."⁶³

Uganda's donors placed more emphasis on international and domestic election observation in the lead up to 2011 than they had for any previous poll under the Museveni government. Better staffed than the mission sent in 2006 and containing both long-term and short-term European and Ugandan observers, the 2011 EUEOM produced a substantive report on the polls, released in May 2011, which will serve as the basis for the future donor-Ugandan dialogue on

⁵⁹ "Newspaper's Web Site and Radio Blocked During Election Vote Count," CPJ Committee to protect journalists, 24 February 2006, <http://cpj.org/2006/02/news-papers-website-and-radio-blocked-during-elect.php>

⁶⁰ Interview with radio news editor, Kampala, 16 February 2011.

⁶¹ Hauser, "Ugandan Relations," 631

⁶² Interview with Simon Osborn, component manager, Deepening Democracy Programme (2008-2011), Kampala, 9 February 2010.

⁶³ Foreign and Commonwealth Office (FCO), *How to Note: On Electoral Assistance: Summary Version*. (London: FCO, 2010), 4

democratization issues. However, while not declaring election to have been free and fair, the report did not however question its overall credibility. Instead it noted that there had been “some improvements over the [2006] election” but that “the power of incumbency was exercised to such an extent as to compromise severely the level playing field”.⁶⁴

The ambiguity of this conclusion was seized upon by many donors who were reluctant to commit either way to formally recognizing Museveni’s reelection. This is extremely important, since Western refusal to recognize the results of flawed elections elsewhere in Africa led to power-sharing arrangements being forced upon Mwai Kibaki of Kenya and Robert Mugabe of Zimbabwe in 2008.⁶⁵ In Uganda’s case, donors were clearly ambivalent about the legitimacy of Museveni’s reelection (the UK high commissioner described the poll as “far from fair in a 20 February missive to London”) but nonetheless held back from formally casting doubt on the results themselves.⁶⁶ While hypocritical, this behavior was at least in the interests of maintaining stability in Uganda (a rejection of the results by donors would have emboldened opposition leaders already intent on protesting).

The Electoral commission.

The E.C’s hand in electoral malpractices is the fountain of all since it is the institution responsible for conducting elections. However, the case of Rubaga North Constituency in Kampala can be sighted as an example of the E.C’s role in fueling electoral malpractices. Sing Katongole (NRM) tussled with Moses Kasibante (DP) for parliamentary seat and the EC went ahead with recounting of ballots that gave Katongole victory even when the court had issued an order for no-recount. This way, the EC was accused of being biased towards Katongole the NRM candidate.⁶⁷

The EC has been held liable for anomalies in the electoral process and as a result, most of the petitions join the EC as a party to the cases. In **Joy Kabatsi Kafura v Anifa Kawoya Bangirana and Electoral Commission**, the supreme court held the EC liable for non

⁶⁴ EUEOM, Final Report, 5

⁶⁵ Gitau Gikonyo, “Why Recognition Concept is Important,” Daily Nation, 26 January 2008;

Catherine Philp, “Bow to Me Before Talks, Robert Mugabe tells Morgan Tsvangirai,” Times, 5 July 2008.

⁶⁶ FOI BHC (20/02/11).

⁶⁷ Sandrine et al page 130

compliance with law and its statutory duties. As a result, the court annulled the election of the first respondent and the seat was declared vacant.

4.2 Examination of some of the decided cases in regard to the interpretation of the provision against the electoral malpractices.

The case of **RTD Col. Dr. Kizza Besigye V Museveni Yoweri and another Electoral petition No.1 of 2006** can be analyzed as hereunder;

The Supreme Court gave its findings on the issues in the following ways-;

The first issue was whether there was non-compliance with the provisions of the constitution, Presidential Elections Act and the Electoral Commission Act.

By unanimous decision, the court answered the issue **in the affirmative**. The second issue was whether the said election was not conducted in accordance with principles laid down in the constitution, Presidential Elections Act and the Electoral Commission Act. By unanimous decision, the court answered the issue **in the affirmative**. The third issue was whether if either issue 1 and 2 or both are answered **in the affirmative**, such non-compliance with the said laws and principles affected the results of the election in a substantial manner. **By a majority decision of four to three, the issue was answered in the negative.**

It should however be understood that the overriding constitutional dogma in Uganda is that the rule of law, constitutionalism and the constitution of the Republic of Uganda are the Alpha and Omega of everything that is orderly, legitimate, legal and descent. Anything else that pretends to be higher in this land must be shot down at once by the Supreme Court using the most powerful legal missiles at its disposal. The constitution of Uganda is a binding contract between the people of Uganda and their successive governments. The Supreme Court is the last sanctuary for all the people in Uganda who are challenging any violations of the constitution or breach of any law. The petition had to be considered and resolved with the people's Constitution guiding the court.

The decision of the Supreme Court of South Africa in the case of **speaker of the National Assembly V De Luke**, emphatically declared that the constitution is the ultimate source of all lawful authority in the country. No parliament however bona fide or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the constitution. Any citizen affected by any decree, order or action of any official or body, which is not properly authorized by the constitution is entitled to protection of the law.⁶⁸

In the case Of **Mukasa Anthony Harris V Dr. Bayga Michael Philip Lulume** where money was given to registered voters, the Supreme Court held that it is not reasonable to imagine that money could have been given out for anything else other than to persuade the voters and that there was evidence that money was released by the appellant for bribery.⁶⁹

In the above said related case of **RTD Col. Dr Kizza Besigye V Museveni Yoweri Kaguta and another**, although there was evidence of bribery, the same court by a majority decision of five to two found that no illegal practice or any other offence was proved to the satisfaction of court to have been committed in connection with election, by the 2nd respondent, personally or by his agent with his knowledge and consent or approval.

In the above two cases, bribery was proved but as decided by court, the election in the former case was annulled yet in the later case it was upheld. This in my view is attributed to states interference with the independence of the judiciary.⁷⁰ An illegal practice remains illegal unless the law provides otherwise. So it should be interpreted equally against those who contravene it.

4.3 How the general public has reacted to the practice, legal framework and judicial decisions against electoral malpractices

Local contestations of the vote during and after elections constitute yet to assess the impact of possible fraud on the quality of the election results produced, highlighting distortions during the vote itself, and the vote count. For the voters, discontent can result in non-participation; for the

⁶⁸ (1999) 4 SA 863. (SCA)

⁶⁹ Election petition No. 18 of 2007.

⁷⁰ Article 128(1) of the 1995 constitution of the republic of Uganda

candidates, discontent has been expressed through electoral petitions. It is worth noting that within the framework of election petitions, authors of fraud do not face criminal charges and can vie for elections again.

Accounts of possible fraud are found in petitions filed against election results. About 100 petitions were heard by courts, concerning both local and parliamentary elections.⁷¹ Out of 56 election petitions, 42 were rapidly dismissed or withdrawn. One actually led to an arbitration in favour of the rival candidate, an opposition MP, Moses Kasibante in Rubaga North, without new polls; the other 13 led to the nullification of the elections. Some candidates decided to file appeals against these decisions. In the end, six MPs retained their seats following this procedure, all of them in eastern Uganda (in Kagoma, Bukooli Island, Kibuku and Bubulo West, where the NRM candidates were reinstated, as well as in West Budama South and Ngora, where the independent and FDC candidates, respectively, kept their seats), and six by-elections were held, leading to four changes (Jinja East in Eastern, Bukoto South, Butambala in Central and Bushenyi-Ishaka Municipality in Southern Uganda, all shifted to the opposition), and two reelections (Entebbe Municipality and Busiro North, in Central Uganda, where a DP and an NRM candidate were chosen respectively).⁷²

In the 2006 presidential elections, Besigye petitioned to the Supreme Court for a re-run or recount of the votes. While the court found the elections to have been marred by intimidation, violence, voter disenfranchisement and other irregularities, it still voted 4-3 to uphold the results on the assumption that the malpractices did not “substantially affect” the outcome of the election. Besigye vowed that he would never go to court again to seek redress in electoral matters.⁷³

The people have then resorted to demonstrations and an example is that of the April 2011 “W2W” demonstrations in which nine people were killed. According to the Human Rights watch 2013 world report on Uganda, the government has failed to investigate the killings

⁷¹ Antony Wesaka, “Judiciary Begins Hearing of Over 100 Election Petitions,” *Daily Monitor*, 16 May 2011, 6.

⁷² Sandrine Sabiti, Jerome and Marie, *Elections in the hybrid regime revisiting the 2011 Ugandan polls* pg 78

⁷³ *Ibid*- (Loss of confidence in the judiciary)

associated with this event.⁷⁴ The police and army used excessive violence against the protestors which was condemned by the US secretary Johnie carson.⁷⁵

Since the country has never seen any of its presidents handing over power peacefully to his successor, many Ugandans have had to believe that no government can change without the active intervention of the army.

This belief is justified when they recall the forceful abrogation of the 1962 Constitution by Milton Obote's I Government; the bloody overthrow of the said Obote I Government in a military coup organized by General Idi Amin in January 1971; the removal of Amin's regime in April 1979 by Tanzanian troops with the assistance of the armed Ugandan exiles; the palace coup against President Y.K. Lule in Entebbe State House in June 1979; the Military Commission's removal of President G.L. Binaisa from power in May 1980; the return to power of Obote in December 1980 through what were generally regarded as fraudulent parliamentary elections backed by Tanzanian and Ugandan soldiers; the capture of power by the Tito Lutwa junta in July 1985 and the seizure of power by the National Resistance Army (NRA) in January 1986. Thus when Besigye was interviewed on his option after losing the 2011 elections, he said he had not ruled out war as an option.⁷⁶

On a positive move however the people have insisted on electoral reforms. This struggle for electoral reforms started way back in 2008 up to date. The 2011 elections were preceded by some notable efforts to pressurize for significant electoral reforms from the IPC which initially consisted of 5 opposition parties⁷⁷. The IPC was given some technical and financial support from the Swedish Alliance⁷⁸ which assistance was coordinated by a Swedish NGO called Christian Democratic International Centre (KIC) which signed a formal Memorandum of Understanding (MoU) with a Ugandan NGO called Change Initiative Limited (CIL) which became the Secretariat to the IPC. The MoU was signed on 2nd May 2008 at Entebbe, after the

⁷⁴ Human Rights watch. (2013) world Report 2013 (Uganda)

⁷⁵ Gerald Bareeb, "Uganda Government is turning un civil, says US," Daily monitor, 30 April 2011.

⁷⁶ Tabu Butagira, "Besigye: I cant rule out war," Daily monitor, 28 February 2011.

⁷⁷ the Conservative Party-CP, Democratic Party-DP, Forum for Democratic Change - FDC, Justice Forum-JEEMA and Uganda Peoples Congress-UPC

⁷⁸ of four opposition parties (the Moderate Party, Liberal People's Party, Centre Party and Christian Democrats) which had joined hands in September 2006, to defeat the then ruling party (Social Democratic Party) which had been in power for over 70 years

IPC had established its Steering Committee (consisting of two representatives from each party and its Summit, consisting of the 5 Party Presidents and 5 Secretary Generals.⁷⁹

⁷⁹ From inter-party cooperation Archives

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

CONCLUSION

It has been observed that obstacles to a free and fair elections in Uganda include the failure by candidates, their agents and electoral officials to comply with the law, it is worse however that many of those same people deliberately manipulate, break or infringe electoral laws or cheat in the voting process in order to win seats or favor particular candidates for whatever elective post happens to be up for grabs. The saddest episode is those where these electoral criminals are also rewarded with posts, promotions, bribes and praise.⁸⁰

This is iniquitous and such an offender should not only be disqualified from standing in the subsequent bye-election but in any other elections for a period of not less than five or six years as the court may deem necessary.

RECOMMENDATIONS

As the observers in previous elections pointed out the aspect of the late passing of the necessary electoral legislation in time, this is a matter that the government and Parliament must address putting in to consideration that the same is ongoing in Uganda. Therefore all the necessary legislation must be put in place in good time to enable the Electoral Commission to organize a truly free and fair election. When the electoral laws are passed late and with little or no time to correct anomalies and contradictions in them, the Electoral Commission will be left with no time to attend to all the issues and problems that arise since it will be trying to beat the constitutional deadline of holding the elections.

There should be a law that candidates and agents who commit electoral offences should be prosecuted and punished in accordance with laws of the land and in any event, the presiding judge in an election petition should have concurrent jurisdiction on the same found facts and evidence, to disqualify the guilty candidate and anyone else who committed or was a party to electoral offences.⁸¹

⁸⁰ Examination of the Uganda cabinets since 2001 reveal this phenomenon

⁸¹ See comparable Laws of the UK and India

The relevant organs of the State must address the matter of civic voter education which has always been not effectively carried out due to lack of funds. They should ensure that it does not happen again at future elections. There is evidence that some of the problems and malpractices that had occurred at some polling stations were due to a lack of voter education. In some instances returning officers had to suspend the exercise while they gave voter education to the voters and election officials before the exercise reportedly proceeded smoothly. There was evidence of this in Ntungamo District.

The Government must address the question of the involvement of the military or any armed groups in elections. No one denies the responsibility of government to provide security for the country where the situation warrants it, even during the election period. The Police Force should be adequately trained and equipped to handle elections. It may only be supplemented by other security forces where the situation clearly warrants it. But where there is no clear cause for it, the army should be kept away from election counters.

The other aspect is that of the use of the Public media. Article 67(3) of the Constitution provides as follows: *“All Presidential Candidates shall be given equal time and space on the state-owned media to present their programmes to the people.”*

This is a constitutional command to the state organ concerned. It is not a matter for the Electoral Commission to negotiate on. The people in charge of the state-owned media have the duty to ensure compliance. Perhaps in future, the law should provide for the Government Attorney General to be made a party to the petition so that such complaints if pleaded by a petitioner can be answered and be fully inquired into by the court. The judiciary should stand to protect the constitution irrespective of the pressure from the state.

In his findings in the 2006 petition, G. W. Kanyeyihamba then a Justice of the Supreme Court opined that the Supreme Court should be pleased to revisit its majority opinions given in both the 2001 and 2006 presidential Election petitions (that the malpractices did not “substantially affect” the outcome of the elections) in compliance with Article 132(4) of the Constitution which provides that:

“The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right to do so.”

Another concern is the appointment and status of members of the Electoral Commission. The Electoral Commission and the way its members are selected need a radical surgery. Political party leaders have raised reform proposals in this area and their views ought to be accommodated so that the nation has an electoral commission which is truly independent and impartial and is trusted and respected by all sections of the community.⁸² Article 12 of the Universal Declaration on Human Rights on Democracy provides that the key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed. This cannot be freely expressed if the elections are presided over and conducted by a partisan electoral commission. Persons who are not properly trained or who are easily intimidated to comply with the ruling party should never be employed in this role.

In the republic of Tanzania, the chairperson of the Electoral Commission must be a judge of the High court or of the Court of Appeal. In Namibia, members of the Electoral Commission must be approved by the parliament and the chairperson must be a judge or former judge of the Supreme Court, or the High Court. In Mozambique, the Electoral Commission is truly democratic national and its impartiality transparent. The commission consists of twenty one members whose professional and personal qualities afford guarantees of balance, objectivity and independence in relation to all political parties participating in an election.⁸³

Another area of concern is the preference given in almost all aspects of public life to the party of the incumbent administration. There is need to reform the rules and regulations governing this aspect of electoral law to ensure parity, fairness and level ground for all political party candidates in an election.⁸⁴

One of the handicaps against democracy and the freedom to vote for anyone capable is the monetization of elections. There must be a law against lavish spending by candidates and their supporters as if this country is available and only to governable by the rich people only.⁸⁵

There should be a law that candidates and agents who commit electoral offences should be prosecuted and punished in accordance with laws of the land and in any event, the presiding

⁸² Compiled in monograph.

⁸³ G. W. Kanyeyihamba, Constitutional and Political History in Uganda at page 308

⁸⁴ Sec 27 of the parliamentary elections Act 2005, Sec 27 of the presidential elections Act 2005 and sec 8 of the presidential elections(Amendment) Act,2010

⁸⁵ The East African Newspaper, 20-26 October 2003.

judge in an election petition should have concurrent jurisdiction on the same found facts and evidence, to disqualify the guilty candidate and anyone else who committed or was a party to electoral offences.⁸⁶

Parliament must take a fresh look at the Constitutional provisions regarding the challenging of election results. There appears to be constraints of time in respect of filing and hearing the Petition. Reasonable time is need to enable the parties file their pleadings and for the court to have reasonable time to inquire into all the matters alleged. Also, the provision that where the Presidential Election is nullified by Court, a fresh election must be held within twenty days should be examined. It may well be that at the time the framers of the constitution made this provision, there was an assumption that all the fundamental processes would have been put in place, for example the relevant laws were in place in time, funds were provided in time, voter education was done, the electoral register had been properly prepared and was not open to challenge. Where all these were inadequate and a subject of challenge, it may be too much optimism to expect that the Electoral Commission would then organize a truly fair and free election within 20 days of the nullification of an election. A situation where a subsequent election ends up being the same or worse than the one challenged should be avoided. Parliament should therefore consider a longer period, realistic enough for the Electoral Commission to address what had gone wrong and make adequate preparations for a free and fair election superior to the one nullified. Perhaps an expansion on the principle contained in article 104(7) should be studied.

Finally, every organ of the state must play their part in the organization of elections. It is wrong to conceive of elections as being solely the responsibility of the Electoral Commission. Article 66(1) of the Constitution for example states "Parliament shall ensure that adequate resources and facilities are provided to the Commission to enable it performs its functions effectively." Article 66(2) makes the commission one of the self accounting institutions that deals with Ministry of Finance directly on matters of its finances. The Constitution provides for Presidential Elections every five years. So it is a well known obligation that there has to be elections. Yet all the observers point out that money to organize election was/is given to the

⁸⁶ See comparable Laws of the UK and India

Commission very late. Therefore, Parliament must pass the budget in time and government must provide funds necessary to organize elections that are truly free and fair.

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