

**ELECTORAL LAWS AND FUTURE DEMOCRACY IN UGANDA, CASE STUDY OF  
PRESIDENTIAL AND PARLIAMENTARY ELECTIONS 2006 AND 2011**

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### DECLARATION

**IKANZIRA FREDRICK**, declare that this is my original work and has never been presented to any other university or institution for award of any academic qualification.

Signed.....

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DATE.....13/06/2015.....

### APPROVAL

This is to certify that this Research report entitled electoral laws and future democracy of Uganda, case study of Presidential and parliamentary elections 2006 and 2011 has been carried under my supervision and guidance and therefore approve it for submission

NAME: MR. OGWAL SAM

(SUPERVISOR)

Signature..... 

Date..... 13/6/2015

### **DEDICATION**

This Research report is dedicated to my beloved parents Mr. MUJUNI FREDRICK and Mrs. MUJUNI PATRICIA, MUJUNI BEATRICE for their continuous financial and moral support. Also to my beloved Brother DR TUMUSIIME DENIS. Sisters; ALLEN, EVAS and to all my Friends most especially Herbert, Nelson, Stuart, Friday, Davis.

Grateful thanks goes to my supervisor MR OGWAL SAM for his wisdom, advice, commitment, suggestions and professional guidance rendered that enabled me complete this work.

Thanks very much, may God bless you abundantly.

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## LIST OF ABBREVIATIONS

AC.....	Appeal Cases
All ER.....	All England Law Reports
C A.....	Court of Appeal
CA.....	Constituent Assembly
CJ.....	Chief Justice
Cap.....	Chapter
Col.....	Colonel
CSOs.....	Civil Society Organizations
DP.....	Democratic Party
Dr.....	Doctor
EA.....	East Africa Law Reports
EC.....	Electoral Commission
ECA.....	Electoral Commission Act
FDC.....	forum for democratic change
FDC.....	Forum for Democratic Change
HC.....	High Court
Hon.....	Honorable
J.....	Judge
LC.....	Local council
NRM.....	national resistance movement
UPC.....	Uganda people's congress
UPDF.....	Uganda people's defence forces



## ABSTRACT

The 2006 and 2011 Presidential and Parliamentary elections were marred with disenfranchisement, vote rigging violence and bribery. The outcome precipitated corn battles for both presidential and parliamentary elections. This study was conducted to assess the electoral laws and the future of democracy in Uganda. This included, analyzing the legal, policy, institutional and electoral laws of 2006 and 2011. The findings of the study indicate that the 2006 and 2011 elections had several irregularities in the conduct of the polls. These included deployment of soldiers on polling stations, intimidation of supporters, and manipulation of voters' registers, which denied a number of people from voting.

The study recommends that several reforms be undertaken: They include; - Overhaul of the composition of the Electoral Commission, denying election offenders to participate or re-run in bye-elections, following their conviction. The study also emphasized a need to enhance freedom of the media, and proper vetting of presidential and parliamentary candidates. Security forces should not be permitted to participate in election processes, Universal suffrage, checks and balances between judicial and legislative branches. The civil society organizations should be vibrant watchdogs over electoral processes.

## CHAPTER ONE

### INTRODUCTION

#### 1.0 Introduction

This chapter explains the background to the study, problem statement, objectives of the study, research questions, scope of the study, and justification of the study.

#### 1.1 Background

Since independence, up to the post-independence era, Uganda has been characterized by dictatorial regimes, civil war, coups and the general disregard for democracy and rule of law. Generally, elections in Uganda have never generated much public confidence and all previous elections that is 2006 whereby the following had participated for the presidential election and came up with the following votes: Abed Bwanika, independent 658,74, John Ssebana Kizito, Democratic Party 109,583, Kizza Besigye, 2,592,954 Forum for Democratic Change, Miria Obote, Uganda People's Congress 570,71, Yoweri Museveni 4,109,449. And in 2011 the following participated for the presidential seat and got the following results, Museveni won with 68.38 percent of the votes and his main opponent Kizza Besigye got 26.01 percent. Norbert Mao came in third position having polled 147,708 votes. The other candidates' vote count was: Olara Otunnu of the Uganda People's Congress received 125,059 votes; Betty Olive Kamywa of the Uganda Federal alliance got 52,782 votes; Abed Bwanika of the People's Development Party received 51,708 votes; Jaberu Bidandi Ssali of the People's Progressive Party got 34,688 votes and independent candidate Samuel Walter Lubega got 32,726 votes. The 2006 and 2011 Ugandan elections were named with incidents of intimidation, torture, arbitrary arrests, murder, and massive irregularities in the electoral laws were also reported. (DEMGROUP)<sup>2</sup> The 1995 constitution was enacted making a return to a civilian government. **Article 69 (1)** of the constitution, the people of Uganda have a right to choose a political system of their choice through free and fair elections or referendum. **Article 74 (2)** by a resolution supported by two thirds of parliament upon a petition supported by not less than two thirds of the total membership each of at least half the district councils in Uganda.

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1 Elk its. J (1999) "Electoral Institutional change and democratization: "you can lead a horse to water but you cannot make it drink" Democratization. Vol. 6(4) pp.20-25.

2Democracy monitoring group (DEMGROUP) (2006 and 2011). Preliminary reports on the recent Presidential and Parliamentary polls. <http://allafrica.com/stories/200603010485.html>

In 2000, the first referendum to determine the political system was held and in July 2005, Ugandans voted in a second referendum to determine whether to return to multiparty politics after 25 years or to retain the movement system which was already 21 years old. Majority of Ugandans voted for a change to the multiparty politics.

Dispensation setting the stage for holding of the first multiparty elections in Uganda in the last 25 years. After the July 2005 referendum elections, the political party's organization Act was assented to by the president on November 2005 and came into operation on the 21 November 2005.

In 2006 and 2011, Uganda held presidential and parliamentary elections. On 23<sup>rd</sup> and 18<sup>th</sup> February 2006 and 2011 respectively, voters in Uganda went to the polling stations to decide who would lead the country for the subsequent 5 years. The 2006 and 2011 Presidential and Parliamentary elections were seen by Ugandan voters and the international community as the first multiparty elections since 1980. The elections marked the end of 20 years of "Non Party Democracy." The 2006 and 2011 were the first tri-party elections with voters electing the President, Parliamentary representatives and special Women's representatives on the same day. This research focuses on the 2006 and 2011 elections. It analyses the 2006 and 2011 Presidential and Parliamentary elections in broader terms involving the setting of laws for political contestation.

## **1.2 Problem Statement**

The 2006 and 2011 Presidential and Parliamentary were marred with voter disenfranchisement, vote rigging violence and bribery. The outcome precipitated court battles for both presidential and parliamentary elections. While the EC has put in place mechanisms to resolve disputes during elections, Courts have also been criticized for not explaining fully the contradictions and significance of their judgments relating to electoral petitions, such as the recent presidential petition, where they have cited the phrase, 'failure to substantively affect the outcome' of an election. And yet at the same time ruling that the elections were not free and fair and were not held in accordance with the law governing elections.

Currently the information available about electoral laws and the future of democracy in Uganda is insufficient: Therefore this study is aimed at assessing the electoral laws and the future of democracy in Uganda.

## **1.3 purpose of the study**

The purpose of the study was to examine the application of electoral laws and the future democracy in Uganda.

#### **1.4 specific Objectives**

1. To critically examine the legal framework, Laws relating to presidential and parliamentary elections and future democracy in Uganda.
2. To establish causes of unfair and undemocratic practices during the presidential and parliamentary elections of 2006 and 2011.
3. To find out the public expectations about electoral democracy in 2016 elections.

#### **1.4 Scope of Study**

##### **Time scope**

The study focused on a period of 3months that is to say; March - June in description and analysis of variables under the study which are electoral laws and future democracy in Uganda.

##### **Geographical scope**

The study was centered on particular cases of the 2006 and 2011 Presidential and Parliamentary elections in Uganda.

#### **1.5 Research Questions**

The study was guided by the following research questions:

1. What legal framework, Laws are related to presidential and parliamentary elections and future democracy in Uganda?
2. What were the causes of unfair and undemocratic practices during the presidential and parliamentary elections of 2006 and 2011?
3. What is the public expectation about electoral democracy in 2016 elections?

## CHAPTER TWO

### THE LEGAL FRAMEWORK, LEGISLATION REVIEW RELATING TO PRESIDENTIAL AND PRELIAMENTARY ELECTIONS IN UGANDA

#### 2.0 Introduction

This chapter investigates the extent to which the legal framework influences the future democracy in Uganda. It examines the relevant provisions of the Constitution and other laws earlier stated i.e. the Presidential Elections Act, 2005 and the Electoral Commission Act (in so far as they are relevant to the study). Analysis is based on both the legal regimes institutional set up and procedural aspects of elections laws. Reference is made to the Supreme Court's findings and reasons thereto, in the 2006 presidential election petitions. Shortly below are their respective general overviews. The chapter concludes by demonstrating the impact of the findings made on the future democracy of the people.

#### 2.1 The Constitution of Republic of Uganda, 1995

The constitution of Republic of Uganda (1995) stipulates laws for the establishment of government and confers on the electorate the right to choose a political system of their choice through regular, free and fair elections or referenda. The constitution highlights three constitutionally permissible political systems from which to choose: - The movement political System, the multi-party political system and any other democratic and representative political system.

The 1995 Constitution puts clear the institutions that are mandated to handle elections. **Article 60** stipulates that there shall be an Electoral Commission, which consists of a chairperson, a deputy chairperson and five other members appointed by the President with the approval of Parliament. The Constitution also clearly states the composition of the electoral commission, the type of the people to head, the tenure of office commissioners as demonstrated by (article 61).

**Article 62** highlights the Independence of the Electoral Commission. It states that, Subject to the provisions of this Constitution, the commission shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

Presidential elections are mandated by **Article 103, of the Constitution**. "The Elections of the President." It contains qualifications of voters, processes and procedures that should be followed, to be nominated and the tenure of office and thus "Subject to the provisions of this

Constitution, Parliament shall by law, prescribe the procedure for the election and assumption of office by the President”.

**Article 104** is about challenging a presidential election by the aggrieved parties. It also stipulates that petitions relating to presidential elections are supposed to be handled by Supreme Court. Towards 2006 and 2011, the parliament had not put in place enabling laws to facilitate the smooth running of elections. Some laws were passed hurriedly. Others like the code of conduct for elections were never enacted due to time constraint. Article 81 of the constitution however talks about the Election of members of Parliament. It puts it clear when members of parliament should be elected, their tenure of office, conduct, and allegiance

### **2.1.1. Analysis of the Constitutional Provisions**

The Constitution espouses several principles on electoral democracy in various Articles. In discussing these principles, the study juxtaposes them together with those enshrined in the Commission Act because according to its long title, the Act is intended. To make miscellaneous provisions relating to the functions of the Electoral Commission (EC) under the Constitution and to provide for other related matters. Apparently, the Act is meant to supplement the constitutional provisions and it is vital for its substantive law which impinges Upon the ECs competence to organize regular free and fair presidential elections.

#### **2.1.1.2 The Right to Vote**

Article 59 concerns the right to vote, available to every Ugandan citizen of 18 years or above. All those entitled to vote are duty bound to register as voters. The state and parliament are tasked to take all necessary steps to ensure that every one qualified to vote registers and exercises their voting rights including, making laws providing for disabled citizens to register and vote.

In the 2006 petition, Odoki, CJ said that, the right to vote is fundamental in promoting the right of a citizen to participate in governance and determine the destiny of his country.<sup>4</sup>

In the same petition, Tsekooko, JSC said that, „Clearly the right to vote is constitutional and the state is commanded by the Constitution to ensure that all citizens qualified to vote register and exercise their right to vote. Article 59 is implemented by Section 19 of the Commission Act, on registration of voters. Under this section, no person is qualified to vote at an election if that person is not registered as a voter. The section contains additional registration requirements i.e. a person should apply to be registered as a voter in a parish or ward where he or she originates from or resides. Nevertheless, a voter has a right to vote in the parish or ward where he or she is registered.

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<sup>4</sup> Election Petition No. 1 of 2006, 22, at 18

It appears that mere registration though, is not enough. There must be evidence of it. Ironically, in the 2006 election, Section 19 was used to defeat the every purpose of the right to vote. Odoki, CJ found that, quite a number of voters were disenfranchised or denied the right to vote through removal of their names from the register during the exercise of cleaning or up-dating the voters register, without satisfactory evidence to establish how and why so many names were removed.<sup>5</sup> Karokora, JSC emphatically stated that, The Constitution does not empower Parliament to make a law deregistering a citizen who has registered as a voter. The Constitution does not provide for the Electoral Commission to remove citizens who registered pursuant to provisions of Article 59(1) (2) as possible voters from the voters registers. ... If the citizen who registered as a voter in a particular locality wishes to transfer from that locality for a purpose of not voting, the Electoral Commission should facilitate him/her to do so and let him or her exercise his/her right to vote. The business of tribunals established under s.25 of the Electoral Commission, having powers to remove a citizen's name from the voters register without even giving him right to be heard on the matter, offends the Rules of Natural Justice of "Audi alteram Partem." Clearly, the tribunals.

Constitutional rights of casting their votes without hearing them whether or not they resided in those villages.<sup>8</sup> Mulenga, JSC found that about 153,000 names in all were removed from the register.<sup>9</sup> Kanyeihamba, JSC noted that, Voting is not compulsory in this country. This is a good reason why those who have taken the trouble to be registered as voters should be given every encouragement and assistance to vote. the State or its agents, instead of assisting and ensuring that all citizens qualified and registered to vote did so, actually prevented many of them from exercising their constitutional right to determine who governs them."<sup>60</sup> Probably for avoidance of doubt, Katureebe, JSC emphasized that Even if one voter was unlawfully removed it would amount to disenfranchising that voter and would be non-compliant with the Constitution and the law.<sup>10</sup> Apparently, Section 19 is highly susceptible to abuse. Tsekooko, JSC pointed out that, On the face of it, it appears to me that S.19 of the Electoral Commission Act curtailed the citizen's right by stipulating that they can only vote where they reside. For it seems to me that voting where one resides is really a matter of convenience. It cannot be used to disenfranchise a potential voter once he has registered or applied for registration in a particular area of Uganda

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<sup>5</sup> Election Petition No. 1 of 2006, *supra*note 22, at 17-18.

<sup>8</sup> *Ibid.*, at 373.

<sup>9</sup> *Ibid.*, at 402.

<sup>10</sup> *Ibid.* at 441.

. Disenfranchising citizens without affording them opportunity to be heard on the matter appears to me to be contrary both to the letter and the spirit of Article 59 of the Constitution.<sup>11</sup> The directory requirement that a person may be registered from where he or she either resides has, in previous elections, been used to tactfully facilitate vote rigging which violates the principles of equality, fairness and transparency of the electoral process.

I respectfully agree with the logical analysis of Karokora, JSC that, any registered voter[s] in any place would be free to work in any place and as citizens, it would be their duty to come and vote at the place where they had registered.<sup>12</sup> (emphasis in original). During the 2011 elections, the European Union Election Observation Mission (EU EOM)<sup>13</sup> also found that, the electoral process was marred by avoidable administrative and logistical failures which led to an unacceptable number of Ugandan citizens being disenfranchised.

Article 59 is also the basis of Section 25 of the Commission Act concerning display of copies of the voter's rolls and objections thereto. In the 2006 petition, Karokora, JSC demonstrated the nexus between the two. He said that the removal of voters from the voter's registers without giving them the opportunity to be heard on their removal offended the spirit of Article 59(3).<sup>14</sup> Katureebe, JSC believed that unlawfulness or illegality lies in the manner in which names are removed, not in the act itself. He said that, in my view, it is the manner of deletion of voters that constitutes a non-compliance in this respect. The law in section 25 of the Electoral Commission Act does provide for deletion from the register of people who have moved from one polling station to another, those who have died, or those found not to be eligible to vote. So deletion of a name by itself does not amount to non-compliance with the law.

### **2.3 The Presidential Elections Act, 2000**

The Act provides for elections to the office of president; to repeal and replace the president; qualifications and disqualifications for candidates and the manner of establishing equivalent qualifications, the nomination, campaigning, polling procedure, counting and tallying and declaration of results of a presidential election and the procedure for challenging the results; and for other related matters. The Act was assented on 16th November 2005 its implementation commenced on 21st November 2005.

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<sup>11</sup> Ibid. at 155.

<sup>12</sup> Ibid. at 275

<sup>13</sup> European Union Election Observation Mission.

<sup>14</sup> Election Petition No. 1 of 2006, *supra* note 22, at 288..



The Constitution of 1995 Expose and resolve the inconsistencies between the Presidential Elections' Act and the Constitution with the aim of improving the legal framework under which the petition would be heard. While the constitution provides for a petition challenging the validity of an election; one that is not conducted according to the law and/or is not free and fair; the Presidential Elections Act requires that the petitioner proves whether the illegalities and malpractice had a 'substantial effect' on the election results

#### **2.4 The parliamentary elections act, 2001.**

This Act has a provision for parliamentary elections and related matters in accordance with **Article 76 of the Constitution**; to repeal and replace the Parliamentary Elections (Interim Provisions) Statute, 1996 and to provide for other related matters. The parliamentary Elections Act, 2005 provides that at least two out of the ten representatives of the UPDF shall be female, at least one of the five representatives of PWDs shall be female; and at least one out of the five representatives of the workers shall be a female.

#### **2.5 The Political Parties and Organizations Act, 2005**

Article 7 1(2) and (3) of the Constitution of the Republic of Uganda (1995) enjoins parliament to prescribe by law, a code of conduct for political parties! Organizations and provides for the establishment of a national consultative forum. The law mandates the Electoral commission to register and regulate the activities of political party's organizations. In that regard, the commission handled several activities, concerning political parties, including:-Resolving complaints lodged by political parties and other stakeholders, about various electoral activities and malpractices during elections. The act mandates the electoral commission to draft a code of conduct for political parties/organizations vetting of list of polling officials, and monitoring the receiving and tallying of election results.

#### **2.6 The Electoral Commission Act 1997.**

The Electoral Commission is also required under section 12 (d) of Electoral Commission Act 1997, (as amended), to establish and operate polling stations. This is also a constitutional requirement. Article 63 (1) of the Constitution, states that Uganda shall be divided into as many constituencies for the purpose of election of members of parliament as parliament may prescribe and each constituency shall be represented by one member of parliament. Consequently, parliament prescribed 214 constituencies for purposes of election of directly elected members into the seventh parliament.

## **2.7 Causes of unfair and undemocratic practices during the presidential and parliamentary elections of 2006 and 2011**

Unfair and undemocratic practices in Uganda are always facilitated by lack of financial resources to fund all the necessary preparation activities in time. For example:- Despite pressures from politicians that Electoral Commission extends the voter registration exercise that ended on October 30, 2005, in preparation for 2006 elections the commission maintained that this was not possible, because a postponement would require more funds and constrain the short time available. More than two (2) million additional voters were registered and the numbers of registered voters were reported to be 10,500,000. This implied that 90.4% of the estimated adult population, as per the Uganda Bureau of Statistics figures, had been registered. Opposition FDC commented upon this estimate with skepticism

The Electoral Commission required a minimum of 49 days to prepare the register for display. Since, L.C., Presidential and parliamentary elections had to be held within 30 days between February 12 and March 12, 2006 “It is only if the March 12, 2006 deadline is extended that the EC can consider an extension of any nature” (EC chairman). This too poses financial and other constraints<sup>15</sup>

Ogalo (2005) observes that, unfair and undemocratic practices in the Presidential and parliamentary elections were perpetuated by lack of transparency in the Electoral Commission. He further argues that the Electoral Commission has in many instances sided with the ruling government during elections and some of its activities are done in secrecy. For example the Electoral Commission does not openly declare its financial status and what some cases leads to its financial inability. This situation in turn makes it beg from one of the competing parties for funds especially the ruling government/party thus influencing the electoral process<sup>16</sup>.

Election unfair and undemocratic practices in Uganda have also been caused by lack of consistency in the laws<sup>17</sup>

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<sup>15</sup> monitor. Wednesday, November 2, 2006

<sup>16</sup> Daily Monitor. Tuesday, November 8, 2005.

<sup>17</sup> Daily Monitor. Saturday, November 5, 2005

It's noted that in 2005, the extension of display of voter registers and registration exercise not only required constitutional amendment but also financial and other logistical adjustments. According to the Electoral Commission, the two days extension would cost close to Shs. 60 million, while a two-week extension would require Shs 380 million, which the finance Ministry indicated was not available. As a result an extension was technically not possible leaving a Constitutional Amendment as the only viable option".

In a related experience, nominations of candidates for Sub County, town council and municipal council elections formerly scheduled for November 22—24, 2005, were postponed pending the coming into force of Local Government, (Amendments) Act, 2005. The constitutional Amendments Act (No, 2) of 2005 also establishes a Regional Tier system which would require organizing more elections at regional level. However, such inconsistency has always been associated with malpractices. For example, in the 2001 election initial results indicated of total of 11 million people had voted, a possibility of multiple voting and registration since the photo bearing register was not in place.

Makara et al; (2005), also argue that unfair and undemocratic practices are caused by increased government intervention and the involvement of the armed forces. It should be noted that in 2005, President Yoweri Museveni the leader of the then ruling party ordered internal Affairs Ministry to form a crack unit in the police force to handle violence during the 2006 elections. The election squad was to work alongside police.

Makara et al (2005) also noted that Uganda had many Special Forces and needed no more. It was also noted that the "election violence was a result of systematic campaign by state functionaries to intimidate and harass individuals and groups opposed to the ruling party

## **2.8 Public expectations about electoral democracy in 2016 elections**

There is need to promote conditions that are conducive for peaceful, free and fair Elections in multiparty setting, including tolerance, free political campaigning and debate, coexistence, and professional conduct of political parties. There is a need, for compliance with electoral laws and following the code of conduct. The code itself seeks public commitment and appeals to parties and candidates to liaise with EC and other parties to ensure proper coordination of their activities. It spells out the power relationship between political parties, and EC, between parties and the media and reveals a National, District, sub county Liaison and Peace Forum and their compositions.

According to Okiror et al; (2006, if the electoral institutions are not further strengthened, the 2016 elections are likely to be characterized by violence. For example there is a need to make use of the Liaison and peace forum which shall serve as a vehicle for consultation and cooperation between EC, political parties and candidates and shall have power to determine complaints, promote harmony among parties and candidates, and report to a higher liaison and peace forum on matters that it determines. Any party aggrieved by the decision of the liaison and peace forum shall reserve the right to appeal to the higher one.

The code of conduct deserves to be guarded and followed well. Prohibited forms of conduct during elections include:- violence-inciting language; intimidation; defamatory allegations; discrimination and hooliganism; inducing voters; carrying fire arms/weapons unlawfully; preventing candidates/parties access to voters for canvassing purposes; and fraudulent acts by officers or persons in positions of authority. It also empowers EC to resolve complaints arising from the code where investigations can be instituted by EC, punishments inflicted and recommendation be made by EC to the High Court that certain persons or parties be punished. Any disgruntled party with EC's decision can appeal to the High Court.

Muyita (2006), argued that the ending court petitions and subsequent by-elections are a clear sign that if something is not done right about our electoral processes, the 2016 elections are likely to be marred with unfair and undemocratic practices. The state involvement in the electoral process as advised is likely to increase if there is no clear demarcation between state and the ruling party, particularly during elections.

It should also be noted that increased voter education is a prerequisite if the 2016 elections are to be free and fair. Civic education should be seen as better than "election education", which stress on candidates and symbols. The idea rises, that people should be constantly trained in civic affairs, and monitoring made permanent. Voter education has always been inadequate, and it is required that the national media allocates time and space for registered political parties and organizations to periodically conduct voter education programmes.

The new law to allow registration of people who are expected to attain voting age by polling date even if they are not 18 years old by the close of registration. Currently the Electoral Commission Act does not provide for provisional registration of a person who would have attained the voting age by polling day. This is likely to be a source of controversy in the 2011 elections.

Many other matters, scholars and individual people, have shown concern to the issue of electoral laws and democracy in Uganda. Julius Kizza, Sabiti Makara and Rakner, pointed out that "Only a handful of Africa's political systems that have organized Multiparty elections

since 1990's have developed into institutional or consolidated democracies, that is systems of governance where democratic institutions and laws have become "the only game in town." Makara et al; (2005) argues that there is a need for strengthening institutional framework of the Presidential and Parliamentary elections in Uganda. Benjamin J.Odoki mentions the need of a free and fair elections as the highest level of expression' of the general will of the people. They symbolize the right of the people to make and unmake governments as is provided in the Articles 21 of the Universal Declaration of the Human Rights 1948; an election system is important in resolving political conflicts between different groups.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.0 Introduction**

This section describes the procedures and methods that were to be followed in conducting the study. It gives details regarding research design, population of the study area, sample size and selection, a description of data collection instruments used, data management, ethical considerations and limitations.

#### **3.1 Study Design**

The study was a cross sectional study using descriptive approach. This involved the use of both qualitative and quantitative methods of data collection. The combination of two methods increased the quality of research because results from each method reinforce each other for consistency. Qualitative techniques helped the researcher to come up with conclusions on variables that could not be measured, while quantitative techniques helped in establishing values attached to numerical variables.

#### **3.2 Study area**

The study was conducted in Kampala District, the political and administrative headquarters of Uganda. Areas and departments visited include: Electoral commission, the parliament, ministry of internal affairs, Ministry of justice and a few selected civil society organizations working on democracy, human rights and good governance.

#### **3.3 Population**

The study population included, Members of parliament, electoral commission staff, selected former parliamentary and presidential election candidates, selected Party presidents, and civil society organizations leaders, leaders dealing with voter education and monitoring.

#### **3.4 Sample size and selection**

A total 52 respondents were used in the study. These included; 10 parliamentarians, 2 former presidential candidates, 25 EC staff, 5 political party leaders, and 10 leaders of civil society organizations.

### **3.5 Instruments data collection**

#### **(a) Interviews**

The researcher only used interviews. Interviews were administered to the respondents using an interview guide. The interview guide contained questions about the Laws relating to presidential and parliamentary elections in Uganda, causes of unfair and undemocratic practices during the 2006 and 2011 presidential and parliamentary elections, and public expectations about electoral democracy in 2016 elections. This was used hand in hand with recording, using pen and papers.

### **3.6 Data Management**

The recorded information was sorted, and analyzed accordingly for completeness and internal consistency. It was then categorized, summarized and conclusions were made.

### **3.7 Ethical Considerations**

Permission to do the study was sought from respective authorities such as clerk to parliament. The researcher obtained an introductory letter from Kampala International University. The researcher first sought consent to conduct the study. Strict confidentiality was observed. Names of study participants were not recorded on interview guides. Records from interviews were safely kept.

### **3.8 Limitation of the Study**

The following were the limitation met during the study.

It was also taxing to get information from policy makers, they would make appointments and do not fulfill them because of heavy schedules. It took time to get information from them.

It was also hard to get information due to the sensitivity of the topic, some information was regarded confidential and therefore difficult to get.

## CHAPTER FOUR

### PRESENTATION AND DISCUSSION OF FINDINGS

#### 4.0 Introduction

This chapter presents and discusses findings obtained by the study. The findings are presented under five sub-sections. These include:- the post 2006 parliamentary and presidential election petitions, the Laws relating to presidential and parliamentary elections in Uganda, causes of unfair and undemocratic practices during the 2006 and 2011 presidential and parliamentary elections, as well as public expectations about electoral democracy in 2016 elections.

#### 4.1 The post 2006 parliamentary and presidential election petitions

##### (a) The 2001 Presidential Election Petition

The 2001 presidential election petition (hereinafter, the 2001 petition) was instituted in the Supreme Court of Uganda by Col.(Rtd) Dr. Besigye Kizza against Museveni Yoweri Kaguta and the Electoral commission.<sup>45</sup> The Court, constituted by B. J. Odoki CJ, A.H.O. Oder (RIP), J. W. N. Tsekooko, A. N. Karokora and J. N. Mulenga JJSC, summarized its findings on 21 April 2001, as follows the Petitioner, Col. (Rtd) Dr. Besigye Kizza petitioned the Supreme Court of Uganda under the Presidential Elections Act 2000, as an aggrieved candidate, challenging the result of the Presidential election held on 12th March 2001 and seeking an order that Museveni Yoweri Kaguta, declared elected as President, was not validly elected, and that the said election be annulled. He cited the said Museveni Yoweri Kaguta as 1<sup>st</sup> Respondent and the Electoral Commission as the 2<sup>nd</sup> Respondent. The Petitioner and the 1<sup>st</sup> Respondent, who is the incumbent President of the Republic of Uganda, were among the six candidates who contested the said Presidential Election. On 14th March, 2001 within forty-eight hours from close of 44 .Col. (Rtd) Dr. Besigye Kizza Vs Museveni Yoweri Kaguta & Electoral Commission,<sup>18</sup>

Under Article 104(1) of the Constitution, the Supreme Court of Uganda is vested with original unlimited jurisdiction over presidential election petitions. Hence, in the 2006 petition,<sup>19</sup>, Kanyeihamba, JSC stated that, „I will begin my findings on this petition with a reminder that this Court is the last sanctuary for all people within Uganda who are challenging any violations of the Constitution or breach of any law.

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<sup>18</sup> Election Petition No. 1 of 2001

<sup>19</sup> Supra note 23, at 391



The 2ndRespondent declared that the 1st Respondent, having obtained 69.3% of the valid votes cast in his favor was duly elected President. According to the declared results, the Petitioner was runner-up with 27.8% of the valid votes cast in his favor. The petition was lodged in the Registry of this Court on 23rdMarch, 2001, that is within ten days after the declaration of results. The hearing commenced on 27<sup>th</sup>March, 2001, and ended on 13thApril, 2001. Judgment was reserved to be given on notice. By virtue of article 104 of the Constitution and section 58 of the Presidential Elections Act, the petition must be inquired into and determined expeditiously and the Court must declare its findings not later than thirty days from the date the petition is filed. This Court was therefore bound to deliver its judgment by 22<sup>nd</sup> April, 2001.

In the petition, the Petitioner makes very many complaints against the two respondents and their agents and/or servants, for acts and omissions which he contends amounted to non-compliance with provisions of the Presidential Elections Act, 2000, and the Electoral Commission Act, 1997, as well as to illegal practice and offences under the Acts. Among the major complaints he makes against the 2ndRespondent are failing to efficiently compile, maintain and up-date the national voters' register, and voters' roll for each constituency and for each polling station; failing to display copies of the voters' roll for each parish or ward for the prescribed period of not less than 21 days, failing to publish a list of all polling stations within the prescribed period of 14 days before nomination; increasing the numbers of polling stations on the eve of polling day without sufficient notice to candidates; allowing or failing to prevent stuffing of ballot boxes, multiple voting and under-age voting; chasing away the Petitioner's polling agents or failing to ensure that they are not chased away from polling stations, and counting and tallying centers; allowing or failing to prevent agents of the 1st Respondent to interfere with electioneering activities of the Petitioner and his agents; allowing armed people to be present at polling stations, falsification of results, and failing to ensure that the election was conducted under conditions of freedom and fairness.

The Petitioner's case against the 1st Respondent is that he personally or by his agents with his knowledge and consent or approval, committed illegal practices and offences. These include publication of a false statement that the Petitioner was a victim of AIDS; offering gifts to voters; appointing partisan senior military officers and partisan sections of the Army to take charge of security during the elections; organizing groups under the Presidential Protection Unit and Major Kakooza Mutale with his Kalangala Action Plan, to use violence against those not supporting the 1stRespondent; and threatening to cause death to the Petitioner.

In their respective answers to the petition, the 1st Respondent and the 2nd Respondent denied the allegations made in the petition against them. At the commencement of the hearing, the Court, in consultation with learned Counsel who appeared for the parties, framed the following five issues for determination:

1. Whether during the 2001 election of the President, there was noncompliance with provisions of the Presidential Elections Act 2000.
2. Whether the said election was not conducted in accordance with the principles laid down in the provisions of the said Act.
3. Whether, if the first and second issues are answered in the affirmative, such non-compliance with the provisions and principles of the said Act, affected the result of the election in a substantial manner.
4. Whether an illegal practice, or any other offence under the said Act, was committed, in connection with the said election, by the 1st Respondent personally, or with his knowledge and consent or approval.
5. What reliefs are available to the parties? The decision of the Court is constituted in the findings on the framed issues.

We find:

1. That during the Presidential Election 2001, the 2nd Respondent did not comply with provisions of the Presidential Elections Act-
  - (a) in s.28, as it did not publish in the Gazette 14 days prior to nomination of candidates, a complete list of polling stations that were used in the election; and
  - (b) in s.32(5), as it failed to supply to the Petitioner an official copy of voters' register for use by his agents on polling day.
2. That the said election was conducted partially in accordance with the principles laid down in the said Act, but that-
  - (a) In some areas of the country, the principle of free and fair election was compromised;
  - (b) In the special polling stations for soldiers, the principle of transparency was not applied, and
  - (c) There was evidence that in a significant number of polling stations there was cheating.
3. By majority of three to two, that it was not proved to the satisfaction of the Court that the failure to comply with the provisions of, and principles laid down in, the said Act, as found in the first and second issues, affected the result of the election in a substantial manner.
4. By majority of three to two, that no illegal practice, or other offence under the said Act, was proved to the satisfaction of the Court, to have been committed in connection with the

said election, by the 1st Respondent personally, or with his knowledge and consent or approval.

5. In the result, by majority decision it is ordered that the petition be and it is hereby dismissed.

In giving reasons for his judgment dismissing the petition, Odoki, CJ expressed the view that, the petition symbolized the restoration of democracy, constitutionalism and the rule of law in Uganda. It demonstrated the fundamental democratic values contained in the 1995 Constitution, which includes the sovereignty of the people, the right of the people to choose their leaders through regular free and fair elections and the peaceful resolution of disputes.

The outcome of the petition would have far reaching consequences on the peace, stability, unity and development of Uganda.<sup>20</sup> It should be noted that this petition was decided under the repealed Act, The Presidential Elections Act<sup>21</sup> The scope of this study is however, limited to the current law i.e. The Presidential Elections Act, 2005 (hereinafter, the 2005 Act) and the amendments thereto under Act 14 of 2010. For that matter, I shall not embark on a study of the former law. Consequently, the findings and decisions of the Court in this election petition will be resorted to in so far as they are relevant to the 2005 Act. Inevitably therefore some adjustments have to be made in some quotations (just like elsewhere in the text) especially, on the law and these, on the law and these will be symbolized by the use of square brackets

#### **4.2 The 2006 Presidential Election Petition**

The 2006 presidential election petition (hereinafter, the 2006 petition) was instituted in the Supreme Court of Uganda by Rtd. Col. Dr. Kizza Besigye against the Electoral Commission and Yoweri Kaguta Museveni. Unlike its predecessor, this petition was litigated under the 2005 Act. The Court was constituted by Odoki CJ, Oder, Tsekooko, Karokora, Mulenga, Kanyeihamba and Katureebe, JSC. In so far as is relevant, the following is an extract of the background of the petition and summary judgment of the court, delivered on 6 April 2006, from the reasons for the findings and decision of Odoki, CJ, the 23 February 2006 Presidential Election, was held under a multiparty political dispensation following the change of political system by a national referendum, from a movement political system under which the country had been governed since 1986 when the National Resistance Government assumed power following a bush war. This was the third Presidential election held under the 1995 Constitution.

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<sup>20</sup> Ibid, at 747 Cap. 142, Laws of Uganda, 2000

<sup>21</sup> The Presidential Elections Act Laws of Uganda 2000

The Constitution was amended in 2005 to remove Presidential terms limits from two terms to indefinite eligibility.

The Presidential election was held on the same day as the Parliamentary elections unlike in the previous Presidential elections. During the elections five candidates were nominated as Presidential candidates, four representing political parties or organizations and one as independent. The petitioner stood as candidate for Forum for Democratic Change (FDC). The 2nd Respondent stood for the National Resistance Movement (NRM), Mrs Miria Kalule Obote stood as candidate for the Uganda People's Congress (UPC), while John Ssebaana Kizito was for the Democratic Party (DP), and Abed Bwanika stood as an independent candidate.

In December 2005, five presidential candidates, qualified to contest in the elections. The registered presidential candidates in 2006 included: - Abed Bwanika, independent John Ssebaana Kizito, Democratic Party, Kizza Besigye, Forum for Democratic Change, Miria Obote, Uganda People's Congress and Yoweri Museveni for National Resistance Movement. Official figures of the election results released on February 25, 2006 showed Museveni with a 59% win of the vote, giving him a third term as President, while main rival Kizza Besigye had 37%. Opposition supporters in Kampala staged some protests but were dispersed by riot police with tear gas.

**Table 1. Summary of the 23rd February 2006 Ugandan presidential election results**

No	Candidate	Nominating party	Votes	Percentage
1	Yoweri Museveni	National resistance Movement	4,109,449	59.26
2	Kizza Besigye	Forum Democratic Change	2,592,954	37.39
3	John Ssebaana Kizito	Democratic Party	109,583	1.58
4	Abed Bwanika	Independent	65,874	0.95
5	Miria Obote	Uganda People's Congress	57,071	0.82
<b>Total</b>			<b>6,934,931</b>	<b>100.00</b>

**Table 2. Summary of the 23rd February 2006 Ugandan presidential election results from all districts in Uganda.**

District	Registered Voters	Abed Bwanika	Besigye Kiiza	Obote Kalule Miria	Sebana Joseph Kizito	Yoweri Kaguta Museveni
ADJUMANI	49447	779	19919	165	648	11277
AMOLATAR	33020	304	16462	440	460	7112
AMURIA	65691	1063	33602	594	709	7260 (16
APAC	240639	3335	115840	11019	3272	25625
ARUA	281954	4435	103133	2158	3941	67436
BUGIRI	177525	1091	39632	771	1026	74457
BUKWO	23925	114	1286	36	90	15866
BUNDIBUGYO	89035	1102	10691	363	1169	44735
BUSHENYI	308013	1082	51051	299	1212	176909
BUSIA	111091	896	28817	872	885	44020
BUTELEJA	69822	608	17176	919	459	29026
GULU	215953	2406	104910	1423	1793	16827
HOIMA	133384	663	14697	312	545	76952
IBANDA	87951	198	6734	55	281	56726
IGANGA	286740	1021	52459	729	1075	124025
ISINGIRO	142507	322	14745	103	433	95040
JINJA	163681	526	43834	487	453	54259
KAABONG	41861	526	1807	494	1001	20302
KABALE	214840	547	34244	152	395	114919
KABAROLE	153042	438	14961	202	988	87154
KABERAMAIDO	60437	711	34612	536	630	8351
KALANGALA	24200	118	5555	28	539	7246
KALIRO	59288	227	4121	87	285	40076
KAMPALA	764283	3045	245004	1425	11993	170688
KAMULI	207242	846	251878	431	1016	112236
KAMWENGE	127799	365	8909	97	632	83436
KANUNGU	96091	344	16109	61	359	53600
KAPCHORWA	61891	265	9296	80	112	33144
KASESE	210826	1507	70936		1598	60301
KATAKWI	45494	894	16845	435	963	12940
KAYUNGA	126005	477	24044	395	1030	55152
KIBAALE	180770	591	10577	453	1027	116059

KIBOGA	115852	358	11168	111	861	59478
KIRUHURA	104992	178	6282	100	168	84046
KISORO	99391	326	5175	164	669	72896
KITGUM	115010	1588	54293	1020	1478	13562
KOBOKO	48973	1041	16858	192	663	10343
KOTIDO	56559	362	2694	273	788	268442
KUMI	158510	2268	75440	1083	1598	30398
KYENJOJO	150354	523	7152	300	940	99291
LIRA	247272	3133	121568	11516	2982	11986
LUWEERO	148042	683	28253	241	2394	61439
MANAFA	163807	693	26935	470	609	84688
MASAKA	317684	1155	78553	197	7856	126561
MASINDI	195112	1417	29555	945	1403	85447
MAYUGE	128811	652	26183	623	642	47824

The Supreme Court on Thursday April 6, 2006 however dismissed Col. (Rtd) Dr. Kizza Besigye's petition challenging the outcome of the February 23, 2006 Presidential elections. The Presidential Elections Petition of 2006 was actually lodged against the judgment of many FDC members who felt that it was a futile exercise considering the Supreme Court ruling in the 2001 Petition that left a serious loss of confidence in the petition process.

However, that notwithstanding the leadership of FDC was convinced that petitioning was important for the following reasons: - to expose and resolve the inconsistencies between the Presidential Elections' Act and the Constitution with the aim of improving the legal framework under which the petition would be heard. While the constitution provides for a petition challenging the validity of an election; one that is not conducted according to the law and order is not free and fair; the Presidential Elections Act requires that the petitioner proves that the illegalities and malpractice had a substantial effect in the election results.

The petition was also aimed at providing the Supreme Court Judges with an opportunity to show that the Iad reflected on the 2001 Presidential Election Petition that was generally regarded as having to show the FDC's commitment to a peaceful and lawful political path.

The petition was also aimed at assembling evidence from all over the country, not just to show that offences were committed but that such offences were a magnitude that would substantially affect the final results.

#### **(b) Parliamentary petition**

After the parliamentary elections, numerous petitions arose predominantly. The high court received 41 parliamentary petitions. The petitions fell into two categories, these include; -

those challenging candidate's qualification and nomination and those alleging electoral offences and irregularities in the elections. All however highlighted electoral offences and irregularities in the campaign, during voting, counting or consolidation of results.

The petitions sought to dissatisfy candidates requesting for new elections to be held and in some cases requesting for monetary compensation. The irregularities and malpractices highlighted included ballot stuffing, bribery, intimidation of voters and violence.

Parliamentary election petition present a mixed picture. The threshold for overturning elections on grounds of malpractice remains very high, yet it should be noted that at least in some cases the High court has heightened the bar against electoral malpractice by using plain statutory interpretation rather than the precedent of the Supreme Court set in the presidential election petitions.

As of November 2006, 6 petitions against NRM parliamentary had succeeded. Some may be overturned on appeal. But it is, significant and it signals important role for the judiciary in electoral politics in Uganda. It is notable that unlike the 2001 and 2006 presidential petitions, where the Supreme Court seemingly did a lot to avoid ruling against the incumbent President there seem to be less hesitation to rule in favor of the members of parliament

**In Babu Edward vs. EC and Elias Lukwago**<sup>22</sup> Kampala Central constituency, the application was brought under section 55 of the parliamentary election Act seeking a recount of the votes cast in Kampala central. Edward Babu claimed to have been rigged out of victory by the unlawful invalidation of 92 votes by polling staff, 50% of which were validly cast in his favor. Consequently, Elias Lukwago was illegitimately declared winner. It was held that the application was disallowed for lack of evidence (lacking sources, and no evidence of complaint raised during the counting, no affidavits sworn in support of the application and corroborated evidence.

The decision was appealed. The new petition included as ground, the failure of the EC to carry out effective civic education, resulting in more invalid votes than the winning margin, the EC's failure to take steps to secure the integrity of the voter registration process; and refusal to let his agents view the tallying process. He asked court to order the seat vacant and a new election to be held. The application was however dismissed.

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<sup>22</sup> election petitions 10/06

### **4.3 Legal framework, Laws related to presidential and parliamentary elections in Uganda**

The legal frame work within which the 2005/2006 general elections were conducted, consisted of the Constitution of Republic of Uganda, 1995, the Presidential Elections Act, 2000, the parliamentary elections act, 200, the Political Parties and Organizations Act, 2005, and the Electoral Commission Act, 1997. However the biggest number of respondents could not identify the laws and legal framework governing presidential and parliamentary elections. The constitution of Republic of Uganda (1995) stipulates a process for the establishment of government and confers on the electorate the right to choose a political system of their choice through regular, free and fair elections or referenda. Article 60 stipulates that there shall be an Electoral Commission, which consists of a chairperson, a deputy chairperson and five other members appointed by the President with the approval of Parliament. This body is charged with holding organizing monitoring and holding elections.

Presidential elections are mandated by article 103, of the constitution. The Elections of the President.” It contains qualifications of voters, processes and procedures that should be followed, to be nominated and the tenure of office and thus “Subject to the provisions of this Constitution, Parliament shall by law, prescribe the procedure for the election and assumption of office by a President”. Article 104 is about challenging a presidential election by the aggrieved parties. It also stipulates that petitions relating to presidential elections are supposed to be handled by Supreme Court.

The presidential Act, 2000 also provides for elections to the office of president; to repeal and replace the president; qualifications and disqualifications for candidates and the manner of establishing equivalent qualifications, the nomination, campaigning, polling procedure, counting and tallying and declaration of results of a presidential election and the procedure for challenging the results; and for other related matters.

The 2006 elections were also mandated by the parliamentary elections act, 2001. This act has a provision for parliamentary elections and related matters in accordance with article 76 of the Constitution; to repeal and replace the Parliamentary Elections (Interim Provisions)

The Political Parties and Organizations Act, 2005 also mandates the Electoral commission to register and regulate the activities of political parties/ organizations. In that regard, the commission handled several activities, concerning political parties, including:-Resolving complaints lodged by political parties and other stakeholders, about various electoral activities and malpractices during elections.



The 2006 presidential and parliamentary elections are also mandated by the Electoral Commission Act, 1997. The electoral commission is also required under section 12 (d) of electoral commission act 1997, (as amended), to establish and operate polling stations in line with Article, 63 (1) of the constitution, which states that Uganda shall be divided into as many constituencies for the purpose of election of members of parliament as parliament may prescribe and each constituency shall be represented by one member of parliament.

#### **4.4 Causes of unfair and undemocratic practices during the presidential and parliamentary elections of 2006 and 2011.**

##### **(a) Inconsistence of the law**

According to the study, there were a number of causes of undemocratic practices during the presidential and parliamentary elections. Response obtained indicates that the malpractices ranged from state involvement, weakness of the electoral commission, inconsistence of law as well as limited awareness of the electorate.

According to Hon. Lukyamuzi, of Conservative Party (CP), the Constitution and legal framework were not only grossly unfair to the petitioner but favored perpetrators of electoral malpractices.

“The petition has only ten days to prepare and lodge the petition compared with the parliamentary Elections where the petitioner has 30 days within which to lodge a petition) “said Lukyamuzi

The law is inconsistent in that it requires that all evidence must be adduced through sworn affidavits, hence the petitioner must have many legal teams spread throughout the country to prepare the affidavits. This requires a petitioner to mobilize a very large outlay of logistical and financial resources, in a very short time; a serious hindrance to the petitioner, considering that it comes immediately after the presidential elections.

According to the study it was found out that the Presidential Elections’ Act was always grossly tilted in favor of the electoral offenders. This created a significant impact on the final on the final judgment. This is because it was associated with intimidation and harassment of petitioners’ lawyers and witnesses, especially upcountry, orchestrated and concerted media campaign by the state, ridiculing the petition, with the view of prejudicing the judicial process. Until the Supreme Court ordered them to stop, at the prompting of FDC lawyers. This is also evidenced by the ruling of the Supreme Court in which the following was highlighted:-

“There was noncompliance of the provisions of the Constitution, PEA, and the election’s Act, in the conduct of the 2006 and 2011

Presidential elections and “There was non-compliance with the principles laid down in the constitution, the PEA and the Electoral Commission Act; and that specifically, the principle of free and fair elections was compromised”.

According to the existing Presidential Elections Act, the Supreme Court can only order for fresh elections where judges are convinced that the irregularities are substantial enough to affect the final results. Although in the 2006 presidential elections, the Supreme Court established that there were irregularities, it did not cancel the election of President Yoweri Museveni as Besigye had wanted.

The Supreme Court ruled that the irregularities were not substantial enough to warrant a nullification of the election. In his petition, Besigye argued that Section 59(6) of the Presidential Elections Act 2005 is inconsistent with and contravenes the Constitution. The section stipulates that the court can only cancel the election results where the irregularities are “substantial” Parliament did not define what it meant by substantial violation of electoral principles or substantial contravention of the law,” Besigye argued.

“By enacting that provision, parliament gave a blanket approval to the Electoral Commission, candidates, their agents and voters to transgress the law with impunity, as well as making the court a party to condoning illegalities brought to its attention.”

Evidence from the study indicates that Besigye contested for the presidency twice in 2006 and 2011 and challenged the results over irregularities, but in vain. In the 2006 elections, the court, by a four judges against three majority decision, ruled that the irregularities were not substantial to affect the results. It is argued that the existing law makes it difficult for the Supreme Court to reach a just decision.

#### **(b) Limited awareness.**

For example, according to Mr. Ssegululigamba, it is argued that the first time the public saw a ballot paper (for the July 28 Referendum) was when the President showed it in a press conference, a task that should have been performed by the Commission. He further noted that timely release of funds, passing of electoral laws. Directly affect the functioning of the electoral Commission creating many loopholes for election malpractices.

Miss Perry also argued that, election malpractices are because of lack of awareness in the electorate.

“Enough information should be released to the public that the EC is actually independent, for majority of the people do not know that the Electoral Commission is an independent Constitutional body”.

#### **(c) Limited finance staff and logistics**

According to the study, it was found out that the electoral commission lacked sufficient staff resources to handle election activities a factor that culminates into unfair practices. For example, one Mukundane a staff of electoral commission noted for example:-

“In our view it was pragmatic and expedient to mobilize voters during the referendum, which was playing in the hands of the government. The same LCs which were being used to mobilize people to register, were encouraging movement members to come and register in big numbers

It was also noted that when NRM mobilizes were issuing cards of NRM-O during the referendum they mobilized people to come up and register with EC as voters. In the 2006 presidential elections, this created conflict of interest, thus election malpractices.

#### **(d) Multiple polling on the same day**

The study found out that the 2006 and 2011 general election which were the first elections under multi-party system, involved a number of complexities namely:- Organization and conduct, multiple polling on the same day; conduct of presidential parliamentary and local government elections within a statutory period of 30 days, conduct of elections under a multi-party dispensation which emphasizes group competition instead of individual merit and where some people could not easily distinguish between registering as member of a political party and registering as a voter. In the same elections, for the first time, district women representatives to parliament were elected through universal adult suffrage, by secret ballot. Initially, the winners were determined by first past-the-post methods (simple majority). It was costly and hard to carry out those elections thus unfair and undemocratic practices.

#### **(e) Increased state involvement and security forces.**

According to the study it was found out that irregularities in the conduct of the polls included the deployment of soldiers near voting stations, allegedly to intimidate its supporters which made many people not to vote. According to Jemera Rone, the East Africa coordinator for Human Rights Watch;

There were serious irregularities in the Ugandan elections, to ensure that the voices of Ugandans are heard, judicial review is both appropriate and necessary.”

Mr. Kamonya noted that the leader of the opposition party Forum for Democratic Change, Kizza Besigye was arrested on November 14, 2005 on allegations of treason, concealment of treason, and rape. The treason case included his alleged links to the rebel groups, Lord's Resistance Army and People's Redemption Army, and the rape charge referred to an incident

in November 1997 allegedly involving the daughter of a friend. The arrest led to demonstrations and riots in Kampala and towns around the country. Pro-Besigye protesters believed the charges were fabricated to stop Besigye from challenging Museveni.

The EU observers also noted problems with the campaign despite improvements overall. In their preliminary report, the observers said there was no “leveled playing field”, pointing to Dr Besigye’s arrest on charges of treason and rape last year. They also said state-media was biased towards Mr. Museveni and his National Resistance Movement.

Another problem faced during the 2006 and 2011 elections was violence, for example; Police shot dead at least one rioter on the second day of protests over the arrest of opposition leader Kizza Besigye. As police fired bullets and tear gas, charges of rape and treason were read out to Dr Besigye in the High Court. The protesters believed the charges are designed to stop him challenging the president in elections.

The Court also expressed grave concerns regarding the involvement of the security forces in elections, intimidation, violence and partisan harassment; massive disenfranchisement of voters; partisan conduct of electoral officials and lack of voter education. The Forum for Democratic Change president, Col. Dr. Kizza Besigye, also noted that he has filed a petition in the Constitutional Court seeking to scrap some sections of the Presidential Elections Act. Besigye wants the results of the presidential elections cancelled whenever the Court establishes that there were irregularities and malpractice.

#### **4.5 Public expectation about electoral democracy in 2016 elections.**

The study found out number public expectations about electoral democracy in 2016 parliamentary and presidential elections. The judgment was however based on the current prevailing political conditions.

The study found out that the current conditions are riot conducive for peaceful, free and fair elections in multiparty setting, including tolerance, free political campaigning and debate, coexistence, and professional conduct of political parties. There is currently no compliance with electoral laws and the code of conduct is not properly followed. Response from the study however indicates that if the electoral institutions are not further strengthened, the 2016 elections are likely to be characterized by violence. According to Mr. Kilyowa there is a need to make use of the Liaison and peace forum which shall serve as a vehicle for consultation and cooperation between EC, political parties and candidates, and shall have power to determine complaints, promote harmony among parties and candidates, and report to a higher liaison and peace forum on matters that it determines. The findings were in line with the works of Okiror et al; (2006).

The study noted that given the current political competition a number of regularities are expected in 2016 elections if the electoral commission is not strengthened. . these include:- violence-inciting language intimidation; defamatory allegations; discrimination and hooliganism; inducing voters carrying fire arms/weapons unlawfully; preventing candidates/parties access to voters for canvassing purposes; and fraudulent acts by officers or persons in positions of authority.

It should also be noted that increased voter education is a prerequisite if the 2016 elections are to be free and fair. Civic education should be seen as better than “election education”, which stress on candidates and symbols. Many other matters, scholars and individual people, have shown concern to the issue of electoral processes and democracy in Uganda. Julius Kizza, Sabiti Makara and Rakner, pointed out that “Only a handful of Africa’s political systems that have organized Multiparty elections since 1990’s have developed into institutional or consolidated democracies, that is systems of governance where democratic institutions and rules have become “the only game in town.”

Following the creation of new districts, new sub counties/town councils and considering the results of the 2014 population and housing census, the commission undertook demarcations of boundaries of electoral areas during the months of June and July, 2014. At the end of the demarcations exercise, there was a total number of 15,721 electoral areas for all categories of local governments compared to 13,731 for the 2011 general elections. The new demarcations have caused confusion because they have been done hurriedly.

Table 3 lists the comparative number of electoral areas during the 2006/2007 and 2011/2012 general elections, respectively.

N0.	Category of Electoral areas	Number of electoral areas in 2005/2006	Number of electoral areas in 2010/2011
1	President	1	1
2	Parliamentary directly elected	215	235
3	Parliamentary district women representatives	69	89
4	District chair persons	69	89
5	District directly elected councilors	998	998
6	Direct women councilors	653	673
7	Municipality/city division mayors.	18	118
8	municipality/city/division directly elected councilors	267	467
9	Municipality/city division women councilors	172	191
10	Sub county/town/municipal division chairperson	970	990
11	Sub county/town municipal division directly elected councilors	5,590	6,590
12	Sub county/town/municipal division women councillors	4,976	46976
TOTAL		4,976	6.976

**Note. Table 3 above excludes administrative units**

It was noted from the study that the current increase in the number of districts may affect the 2016 elections. Respondents argued that the creation of new districts is not only being used as a campaign strategy for the ruling party against other parties but will also create a lot of financial constraints on management and running of the 2016 elections thus culminating into election malpractices.

The study also noted that, the 2016 parliamentary and presidential elections are likely to be marred with malpractices given the current inconsistencies in the law. According to Ms Nakigozi, the ground is not yet leveled to achieve fair and democratic elections in 2016. She noted that even within the ruling party itself different sections had emerged challenging the constitution for becoming open on the presidential term limits a factor that limits democracy even within the party itself.

The opposition parties have put in place some demands which it hopes should be fulfilled if they are to democratically participate in 2016 elections. These include; - a purely independent electoral commission and amendment of the constitution to re instate the presidential term limits. It is feared if the demands are not met the 2016 presidential and parliamentary elections are likely to be associated with malpractices.

According to Okiror et al; (2006), if the electoral institutions are not further strengthened, the 2016 elections are likely to be characterized by violence. For example there is a need to make use of the Liaison and peace forum which shall serve as a vehicle for consultation and cooperation between EC, political parties and candidates, and shall have power to determine complaints, promote harmony among parties and candidates, and report to a higher liaison and peace forum on matters that it determines. Any party aggrieved by the decision of the liaison and peace forum shall reserve the right to appeal to the higher one.

## **CHAPTER FIVE**

### **RECOMMADATIONS, SUMMARY AND CONCUSION**

#### **5.0 Introduction**

This chapter presents a summary recommendations and conclusion of the study. Due to the election multipartite of 2006, the following are the recommendations proposed-

#### **5.1 Summary**

According to the study, the legal frame work within which the 2005)2006 and 2011 general elections were conducted, consisted of the Constitution of Republic of Uganda, 1995,the Presidential Elections Act, 2000, the parliamentary elections act, 200, the Political Parties and Organizations Act, 2005, and the Electoral Commission Act, 1997.Causes of unfair undemocratic practices included:- Inconsistence of the law, limited awareness among the electorate, limited finance staff and logistics, multiple polling on the same day, increased state involvement and security forces.

As argued by Muyita (2006), the ending court petitions and subsequent by-elections are a clear sign that if something is not done right about our electoral processes; the 2016 elections are likely to be marred with unfair and undemocratic practices. The state involvement in the electoral process as advised is likely to increase if there is no clear demarcation between the state and the ruling party, particularly during elections.

It should also be noted that increased voter education is a prerequisite if the 2016 elections are to be free and fair. Civic education should be seen as better than “election education”, which stress on candidates and symbols. The idea rises, that people should be constantly trained in civic affairs, and monitoring made permanent. Voter education has always been inadequate, and it is required that the national media allocates time and space for registered political parties and organizations to periodically conduct voter education programmes.

The new law to allow registration of people who are expected to attain voting age by polling date even if they are not 18 years old by the close of registration. Currently the Electoral Commission Act does not provide for provisional registration of a person who would have attained the voting age by polling day. This is likely to be a source of controversy in the 2016 elections.

In preparation for the 2016 parliamentary and presidential elections, the commission released road map to 2016 election. It must be borne in mind that in Uganda, registration as a voter is voluntary. And yielded 723852 new voters raising the national voter population to 8950489, before display.



Pre general elections update; this activity has been scheduled to run for 30 days from April, to May, 2015. However, due to public demand, the exercise was extended for 2 weeks and ended May 2015. during the update exercise, “mobile registration teams” were deployed in densely populated areas especially in Kampala city electoral district as well as in various districts and public institutions in order to register as many as illegible voters as possible. A registration center was also set up at both district offices and commission headquarters to cater for those who were unable to go to their appropriate registration centers.

These measures greatly improved the coverage and publicity of the exercise. At the end of the exercise, an additional number of 6080178 new voters had been registered. This brought the total number of registered voters before display to 700604402, which was 91% of the projected eligible voting population based on the 2014 population census. From the results of the update exercises above, it is evident that eligible voters only turn up in large numbers prior to electoral events as opposed to continuous voter registration. This creates a planning problem in effecting a successful continuous registration exercise.

The prohibited forms of conduct during elections include:-violence-inciting language; intimidation; defamatory allegations; discrimination and hooliganism; inducing voters; carrying fire arms/weapons unlawfully; preventing candidates/parties access to voters for canvassing purposes; and fraudulent acts by officers or persons in positions of authority. It also empowers EC to resolve complaints arising from the code where investigations can be instituted by EC. Punishments inflicted and recommendation he made by EC to the High Court that certain persons or parties be punished. Any disgruntled party with EC’s decision can appeal to the High Court.

## **5.2 Recommendations**

The study came out with a number of recommendations to the government, Electoral Commission, opposition parties, media and electorate. These include; one of the most important reforms that should be done by the government is to overhaul the composition of the Electoral Commission (EC). In a politically divided and volatile Uganda, a partisan party or its leader should determine the idea that the structure, modus operandi, and the membership of EC, whatever other roles that leader plays, cannot be justified any more in modern Africa, least of all in Uganda. Therefore, the composition and members of EC and the determination of its independent mandate must be determined by a neutral committee of members of national integrity composed after frank public discussions and consensus among all political activists and civil society. The EC members especially the Chairperson and

Secretary should never again be persons handpicked by the ruling party alone. It should be this national consensus committee of eminent persons that should supervise and judge the work of EC with minimal, if any, resort to the courts of law. A code of code of Conduct for Electoral Commissioners and staff returning officers, candidates and polling agents, and election observers should be developed.

The electoral commission should disqualify contestants who plead guilty to election unfair and undemocratic practices. Those who are judged to have participated in or deliberately broken the electoral laws by court should in the same judgment be disqualified from standing for election again, depending on the gravity of the electoral offence. Such offenders should never be permitted to stand in the repeated election or bye-election, following their conviction. Moreover, again convict the idea that to be disqualified such culprits must first of a criminal offence borders on the absurd and smacks of political opportunism. This should encompass electoral reform involving amendment of the law with a view to barring of persons implicated in electoral malpractices leading to nullification of such election from contesting in subsequent bye-election.

The electoral commission should ensure transparency especially the proper vetting and determination of the real qualifications of candidates for the various electoral positions in Uganda to eliminate forever and effectively, candidates who are not qualified and to disqualify forever those who forge, manufacture or borrow educational qualification papers.

The current constitutional and legal requirements that votes must be counted immediately after the voting time limits has expired and ballot boxes collected must be retained, properly supervised and sanctified at all times. The government's intentions announced recently by the Attorney General that a law is to be made delaying the declaration of the presidential election results is inherently evil and should be rejected by the population at once. In this regard, Article 104 of the Constitution must not only be interpreted properly and adhered to but the idea of judicial determination in a presidential electoral petition by affidavits alone is inherently unfair. In any event, the periods in which a petitioner is to gather and collect evidence from the whole constituency or country, as the case may be, or in which the courts are to deliver their findings and recommendations such as in the case of presidential elections, are too short and should be liberally extended. Governance been the filing and determination of the petition should he similarly reviewed and resolved.

The government should stick to the rule of law by restraining active participation of security forces which are inherently partisan in the electoral processes especially in voting and counting of votes should be strictly prohibited by law. It is suggested that these proposals be

publicly debated and resolved by this nation long before the next general election. There should be a much deeper commitment to 'The Declaration of Principles for International Election Observation' and the 'Code of Conduct for International Election Observers'. It can only be a joint endeavor to ensure the successful ownership of these documents. The task goes beyond ensuring that election observation should be undertaken with the highest standards of professionalism and integrity, it should also be about seeing international standards being adopted."

The Uganda Human Rights Commission should monitor elections (the right to participation) with a view to naming and shaming perpetrators of electoral related human rights violations, and recommending other appropriate actions.

The Inspectorate of Government should monitor elections with a view to naming and shaming perpetrators of bribery and abuse of office and prosecuting culprits

The study also recommends that aggrieved parties should always seek redress provided for under the law.

Parliament should amend the under-mentioned constitutional and legal provisions:

Article 60 of the Constitution, to remove uncensored presidential power of appointing the EC in a manner similar to Ghana and South Africa, by providing for participation of all relevant stakeholders like civil society and political parties having parliamentary representation.

Article 105 (2) of the Constitution, to restore term limits because without them, there is personalization of power and all its related problems and inadequacies Article 104(2) and (3) of the Constitution, as Odoki, CJ said in the 2006 petition, „The period within which the petition should be determined should be increased to at least sixty days to give the parties and the Court sufficient time to prepare, present, hear and determine the petition. Section 59(7) of the 2005 Act, to make presidential election petitions quasi-criminal in nature i.e..a criminal trial within a civil trial at the standard of proof set by the Supreme Court in the two Petitions. The Court should be mandated to convict and mete sentences against errant candidates. This will promote candidates' decency and enhance the integrity of the electoral process

The Electoral Commission should do everything within its power and means to salvage its image by appearing really independent and impartial staff members should be given regular and thorough ordinary and ethical training to help them appreciate the true essence of elections.

Political parties should seriously mobilize, organize and rally citizens for and around national development issues, instead of relegating themselves to the status of mere electoral vehicles.

This is in addition to enhanced local and foreign fundraising activities to accumulate enough financial resources necessary to finance their programmes and activities.

### **5.3 Conclusion**

I conclude that the manner of electoral laws in Uganda as practiced in the country's elections in 2006 and 2011, have not upheld the democracy of the people, as enshrined in legal framework such as the Constitution. All elections have been a total sham and not reflective of the wishes of the Ugandan electorate. Any allegations of democracy are more mythical than they are real consequently the electoral laws in totality is illegitimate.

This is for the following reasons

#### **5.3.1 Weak and Partisan Electoral Commission**

The Constitution and its enabling laws especially, the 2005 Act and the Commission Act, do not provide the mechanism to make the Electoral Commission sufficiently independent, like in Ghana and South Africa, in order for it to play its role as the overall guardian of electoral and political sovereignty, through holding free and fair elections. The main problem is the lack of political will to fully empower the electoral body. If President Museveni and his government wanted, he would make the EC independent enough to effectively execute its constitutional and legal mandate but this cannot happen because the status quo favors him to consolidate political power.

#### **5.3.2. Personalized Rule**

The personalized rule of President Museveni, who has overwhelming power with capacity to undermine laws, systems and suppress people just like comrade Napoleon in George Orwell's *Animal Farm*—is also a problem. This personalized rule method explains the two critically prominent election evils namely, commercialization/monetization of elections through bribery and militarization of politics, combination of which undermines the sovereignty of the people in a sense that they transform the citizens' democratic right to choose their government into a cheap commodity and an easily expendable sovereign electorate. Consequently, the phrase free and Fair elections like its counterpart, democracy is an expression him and his cronies<sup>23</sup>

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23 Muhumuza William, *supranote* 109, at 169.

Frequently throw about, just for legitimacy purposes for it is not practiced. It is not unusual to see that after every election, opportunistic and manipulative claims of free and fair elections are made however un free and unfair the election has been!

According to the study, the 2006 and 2011 parliamentary and presidential election were associated with unfair and undemocratic election practices, which call for immediate attention and intervention in preparation for the 2016 elections. Democratic transition in Uganda should be grounded in a credible system of representation, with well-functioning political parties/organizations and interest associations, an electoral system that guarantees regular free and fair elections as well as universal suffrage, a system of checks and balances based on separation of powers, with independent judicial and legislative branches, a vibrant civil society, able to monitor government and private business and to provide alternative forms of political participation, free, strong and independent media, including alternative people's media, and Effective civilian control over the military and other security forces

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## APPENDIX I

### INTERVIEW GUIDE

I **KANZIRA FREDRICK**, a fourth year student of Law from Kampala International University (KIU) and am conducting a study titled “Electoral processes and the future of democracy in Uganda: A case of 2006 presidential and parliamentary election petitions. You have been selected as a resourceful person in the study. This research is purely academic; the answers provided will not be used against you whatsoever and will be regarded confidential. Do you participate in elections?

YES/NO

Did you participate in the 2006 presidential and parliamentary elections in Uganda?

Were elections of 2006 free and fair?

Give reasons for your answer.

Do you know the laws related to elections of parliamentarians and the president; NO, Yes, If yes mention them.

According to you, do you think that these laws are comprehensive enough to ensure free and fair elections Yes, NO.? If no give reasons for your answer. Unfair and undemocratic practices in Uganda’s elections? Yes. No. If yes the forms of elections unfair and undemocratic practices especially during the presidential and parliamentary elections 2006

How did these unfair and undemocratic practices affect the outcome of elections?

What do you think are the causes of unfair and undemocratic practices in Uganda’s elections?

What institutions are mandated to control unfair and undemocratic practices during elections in Uganda?

Have the above-mentioned institutions performed according to people’s expectations? Yes No, if no give reasons for your answers

Has the public been active in exercising their voting rights? Explain how

Basing on your experience; do you think the 2011 presidential and parliamentary elections will be fair?

Give reasons for your answer.

What do you expect to happen in 2016 elections, do you expect electoral democracy?

What measures do you think can be put in place to achieve electro democracy in 2011 presidential and parliamentary elections?



## APPENDIX II: BUDGET

Item	Quantity	Unit cost	Total Cost
Transport costs	-	-	50,000/=
Binding	6 copies	8,000	48,000/=
Printing			30,000/=
Typing			10,000/=
Pens	10	200	2,000/=
Paper	1 reams	17000	17000/=
Internet Fees			50,000/=
<b>Total Cost</b>			<b>207,000/=</b>