

THE APPOINTMENT AND COMPOSITION OF THE ELECTORAL
COMMISSION VIS -A- VIS ITS INDEPENDENCE. AN
EXAMINATION OF THE EXISTING LEGAL
FRAMEWORK


BY
OCEN GABRIEL
LLB/41762/133/DU

A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN
PARTIAL FOR THE REQUIREMENT OF THE FULFILLMENT
FOR THE AWARD OF A BACHELORS DEGREE IN
LAW AT KAMPALA INTERNATIONAL
UNIVERSITY

JUNE 2017

APPROVAL

This is to satisfy that this research report is done under my supervision and it is now ready for submission to the school of law in Kampala international University with my approval.

Signature  Date 11-09-17

MR. KASIM BALARABE

SUPERVISOR

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
TABLE OF CONTENTS.....	iii
ACKNOWLEDGEMENT	v
DEDICATION	vi
 CHAPTER ONE	 1
INTRODUCTION AND LITERATURE REVIEW.....	1
1.0 Overview.....	1
1.1 Historical Background of the Elections and Electoral Commission.....	2
1.1.1 Constitutional Conference	3
1.1.2 1961 Elections.....	3
1.1.3 1962 Elections.....	4
1.1.4 Commission for 1964 Referendum on the Lost Counties.....	4
1.1.5 Commission for General Elections 1980	4
1.1.6 The Uganda Constitutional Commission (UCC)	5
1.1.7 Commission for Constituent Assembly (CCA)	5
1.1.8 The Interim Electoral Commission (IEC).....	5
1.1.9 The Electoral Commission (EC) 1997-todate.....	6
1.1.10 Electoral Commission 2002-2017.....	7
1.2 Statement of the Problem.....	8
1.3 Methodology	8
1.4 Justification of the Study.	8
1.5 Literature Review.....	9
1.6 Scope of the Study.	11
 CHAPTER TWO	 12
CURRENT LEGAL FRAMEWORK OF THE ELECTORAL COMMISSION.....	12
2.0 Introduction.....	12
2.1 THE CONSTITUTION OF UGANDA	13
2.2 The Electoral Commission Act.....	16
2.3 Presidential Elections Act	17
2.4 Political Parties and Organization Act.....	19
2.5 Regional Legal Framework.....	22
2.6 International Legal Framework concerning Elections.....	24
2.7 Appointment of Electoral Commission Commissioners.....	25
2.8 Composition of the Electoral Commission	26
 CHARTER THREE.....	 27
INDEPENDENCE OF THE ELECTORAL COMMISSION	27
3.0 Notion of Independence And Impartiality.	27
3.1 Financial Status of the Electoral Commission.	28

3.2 The Relationship between the Electoral Commission and the Executive.....	30
3.3 Critique of the Independence of the Electoral Commission.	30
CHARTER FOUR	35
CHALLENGES FACED THE ELECTORAL COMMISSION	35
4.0 Introduction.....	35
4.1 Legal Challenges.....	35
4.2 Non Legal Challenges.....	36
4.2.1 The Voter Register	36
4.2.2 Inadequate funding of the Election.	37
4.2.3 Voter Education	37
4.2.4 Difficulty in acquiring Financial Statements of Political Parties by the EC.....	38
4.2.4 Corrupt Electoral Commission officials.	40
4.2.5 Voting Time Delays.....	41
4.2.6 Electoral Offences.....	41
CHAPTER FIVE	Error! Bookmark not defined.
RECOMMENDATION AND CONCLUSION	47
5.0 Observations	47
5.1 Recommendations.....	48

ACKNOWLEDGEMENT

I would like to extend my sincere thanks to God almighty who has kept and sustained me throughout my stay at the University. Heartfelt appreciation goes to my late father Mr. Nyanga Joseph Omondo who assisted me during the time of my research. My friends Pius & Himbaza Colines, all my brothers and sisters and all my friends for the support, advice and encouragement.

My appreciation goes to my supervisor Mr. Kasim for the tireless effort and time he devoted to me and his invaluable input. Without his guidance I would not have been able to produce such work. Thank you so much for your advice, guidance and encouragement during my research.

My heartfelt gratitude goes to my family and friends for always believing in me and to all those not mentioned, I am indebted to the fine oriented services that you rendered to me throughout the research time.

DEDICATION

I dedicate this piece of work to my late father Mr. Nyanga Joseph whose love to educate me did not stop.

I refer and will always refer to my role models, my brothers and sister who supported me spiritually, morally, academically and financially.

I cannot fail to mention my who put me in his daily prayers and all my friends who have given me courage throughout my studies.

LIST OF ABBREVIATIONS

EC's	Electoral Commission's
LEGCO	Legislative Council
DP	Democratic Party
UPC	Uganda People's Congress
KY	Kabaka Yeka
UCC	Uganda Constitutional Commission
NRC	National Resistance Council
CCA	Commission for Constituency Assembly
IEC	Interim Electoral Commission
IEC	Interim Electoral Commission
EC	Electoral Commission
NRM	National Resistance Movement
ICT	Information Communication Technology
PPOA	Political Parties and Organizations Act, No.18 of 2005
FDC	Forum for Democratic Change
PPP	Peoples Progressive Party
UFA	Uganda Federal Alliance
PDP	Peoples Development Party
MTEF	Medium Term Expenditure Framework
VLS	Voter Location Slip
BVVS	Biometric Voter Verification System
DPSC	District Peace and Security Committees
EU EOM	European Union Election Observer Mission

NGOs	Non Government Organizations
DEM	Democracy Monitoring Group
CSOs, Civil Society Organizations	
ID	Identification Card

CHAPTER ONE

INTRODUCTION AND LITERATURE REVIEW

1.0 Overview

Owing to the election petitions that have been filed in courts of law after every General Elections this country Uganda has had in the recent years, there is need to critically examine the legal framework of the Uganda Electoral Commission concerning its appointment and composition vis-a- vis its independence.

Various opinion platforms in this country have expressed people's skepticism over the Electoral Commission.

Since 2014, civil society groups have advocated for pivotal changes in the electoral process, proposing legal amendments in 2015, compiled under the 'Uganda Citizens Compact on Free and Fair Elections'¹ aimed at increasing respect for fundamental rights and freedoms. However, this initiative was given no consideration by the authorities, and key proposals to increase transparency in the appointment of the Electoral Commission's (EC's) members, restore presidential term limits, and improve parties' financial accountability, were disregarded. As a consequence, the opposition's and civil society's lack of trust in the impartiality of key stakeholders, including the EC and the police, became a salient feature of the electoral environment.

Towards 2016 General Elections the Inter Religious Council of Uganda that is comprised of Religious leaders of the Dominant religious groups in Uganda expressed the need for an impartial Electoral Commission that respects the will of the people.

Similarly the National Inter-Political Parties Coalition, a coalition that is comprised of the Political Parties that participate in the General Elections in 2015 before the General elections of 2016 called for an independent and impartial Electoral Commission that is not under the control of any individual.

¹ Citizens Compact on Free and Fair Elections 2014

The widely held views among the public and stakeholders with regard to the questionable independence and credibility of the Electoral Commission presents undesirable ramifications including continued disengagement of voters from electoral processes, search for undemocratic alternatives; and potential for rejection of election results by losers with prospect of violence. All these point to the crucial need to remedy the enlarging the trust deficit between the electorate and electoral processes in Uganda. It is critical that Uganda learns from experiences elsewhere in Africa and aligns itself to the best electoral practices on the continent.

In regard to appointment of the Electoral Commission commissioners, the custom before 1962 was that they were appointed by Her Majesty's Government and after 1962 the same powers were transferred to the person of the President. This is ironic because the person of the president is also a participant in an election organized by his appointee.

On the above note, there have always been contradictions and disagreements after a general Election in Uganda. This is due to the fact that the official organizer of the Election has already an interest at stake since his appointer is a candidate in the election. The impartiality of the Electoral Commission is highly questioned in that much as the President competes against his opponents for the Presidential Position the members of Electoral Commission alternatively know that should the opponent of the Appointing Authority win the Election both the Appointing Authority and them (The EC commissioners) will lose their official position. This is due to fact the victor of the General Election will also appoint new commissioners.

It is on the above irony that I have undertaken to perform this research.

1.1 Historical Background of the Elections and Electoral Commission

Uganda before colonialism was divided into various kingdoms, chiefdoms and communal societies. Buganda was governed by king so was Ankole, Busoga and Toro. In all these kingdoms and Chiefdoms power is hereditary by virtue of lineage. There is no culture of democracy visa vis voting.

The British during the years of colonialism appointed the Governors of the Protectorate through Her Majesty's Government.

In the period following Uganda's independence attained in 1962, political, social and economic dynamics started to manifest themselves as citizens developed interest in the country's democracy.

However, prior to independence, elections were not much valued. This was due to the fact that the colonial government was the one handling the affairs of the country.

1.1.1 Constitutional Conference

The year 1958 marked a milestone in the history and the development of election management in Uganda. A Constitutional Conference was convened and structures formed to organize and conduct various elections leading to independence in 1962.

The first Electoral Commission comprised eminent local elders and traditional leaders. Under this Commission, several elections were conducted, the first one being the Limited African/Uganda Franchise and Representation to the Legislative Council (LEGCO) ².

1.1.2 1961 Elections

Following the recommendation in the Wild Committee Report, the Colonial Government organized direct elections in Uganda in 1961. Two political parties, namely, the Democratic Party (DP) and the Uganda People's Congress (UPC) contested in the election, leading to the formation of the first ever internal self-government, headed by the Chief Minister, H.E. Benedict Kiwanuka (DP).

In March 1961, the Colonial Government organized direct elections, in which two political parties, namely, the Democratic Party (DP) and the Uganda People's Congress (UPC) contested. Buganda Kingdom boycotted the elections, and insisted on its demand to have its representatives elected by the Lukiiko, its local legislative assembly. DP won the elections with 43 seats, while UPC got 37 seats; hence DP formed the first ever internal self-government, headed by the Chief Minister, Benedict Kiwanuka.

² 1958.

1.1.3 1962 Elections

The 1961 elections were considered unrepresentative because of the boycott by Buganda; hence the Colonial Government organized fresh elections in 1962. Buganda Kingdom was granted its request to hold indirect elections and its Lukiiko [local assembly] nominated 21 representatives to the National Assembly, who represented the Kabaka Yekka Party.

On 25th April 1962, the Colonial Government organized the National Assembly Elections, in which DP won 24 seats, while UPC won 37 seats. UPC made an alliance with KY Party who had 21 representatives, and formed a UPC-KY government, headed by UPC's Milton Obote as the first Prime Minister of Independent Uganda.

1.1.4 Commission for 1964 Referendum on the Lost Counties

One of the first issues faced by the new government, was to handle the contentious issue of Lost Counties, by then under Buganda, but claimed by Bunyoro Kingdom. These issues necessitated the holding of a referendum, and this was set for the year 1964.

It became the first referendum to be held in the history of Uganda, and it culminated into the two counties, Buyaga and Bugangaizi voting to return to Bunyoro Kingdom.

In the 1970s Idi Amin was president of Uganda³ and during this period, there were no electoral activities in the country. Although he had captured power as the country prepared for elections, and had promised to hand over power to civilian rule, he never honored his promise until he was overthrown by a combined force of Tanzanian army and Ugandan exiles in April 1979.

1.1.5 Commission for General Elections 1980

After the 1964 Referendum on the Lost Counties, Uganda went without any national election for 18 years⁴. Following the overthrow of the Idi Amin regime in 1979, the new government organized indirect elections in December, 1980.

³ 1971 till 1979

⁴ 1964-1980

On 25th June 1980, the Chairman of the Military Commission, Paulo Muwanga (RIP), established the Electoral Commission to organize and conduct general elections, which were eventually conducted on 10th - 11th December 1980.

The Commission for the 1980 General Elections comprised of K.M.S Kikira as chairperson, and three other members, namely, Egweu S, Kera A. Bilali A and M. Matovu. Mr. Vincent Sekkono was the Secretary to this commission, while Magemeso Namungalu was the information officer.

1.1.6 The Uganda Constitutional Commission (UCC)

After 1980, there were no direct national elections in Uganda for almost 14 years. On December 21, 1988, The National Resistance Council (NRC) enacted Statute No.5 of 1988, which established the Uganda Constitutional Commission to start the process of developing a new Constitution for Uganda.

Members of the commission

Hon. Justice Benjamin J. Odoki (chairperson), Prof. Dan M. Mudoola (vice-chairperson), S. Kidembo, Medi Kaggwa, Haji Aziz Kasujja, J. Kateera, Lt. Col. (now Gen.) Kale Kayihura, Dr. Khidu Makubuya, Mrs. Mary Maitum, Miria Matembe, Charles H. Obwangor, Prof. Phares Mukasa Mutibwa, Okot A.O, Prof. Otim A, C. Rwaheru, Lt. Col. Sserwanga Lwanga, Prof. Frederick Ssempebwa, Jotham Tumwesigye, G.P Ufoyuru, Maj. Gen. Mugisha Muntu, Eric Adriko and G. L Byekwaso. The Rev. Dr. John Mary Waligo served as the Secretary to the Commission.

1.1.7 Commission for Constituent Assembly (CCA)

The Commission for Constituency Assembly (CCA) was established by the Constituent Assembly (CA) Statute No. 6 of 1993, to organize and conduct Constituent Assembly elections.

The CCA comprised of Mr. Steven Bethuel Akabway (chairperson), Vincent F. Musoke-Kibuka (Dep. Commissioner) and Gladys M.K. Nduru (Dep. Commissioner). This Commission organized and conducted the CA elections in March 1994.

1.1.8 The Interim Electoral Commission (IEC)

Following promulgation of the Constitution in October 1995, an Interim Electoral Commission (IEC) was established by the Interim (Provisional) Electoral Commission Statute 3 of 1996 and

Parliamentary (Interim Provisions Statute) No. 4 of 1996, for purposes of organizing and conducting the General Elections⁵.

The IEC comprised of Steven Bethuel Akabway (Chairperson), Mrs. Flora Nkurukenda (Deputy Chairperson), and five other commissioners, namely; Charles Owor, Margaret Sekajja, Philip Idro, Syda Bbumba and Aziz Kasujja. The IEC organised and conducted the first ever-direct Presidential and Parliamentary elections in 1996.

1.1.9 The Electoral Commission (EC) 1997-todate

In May 1997, Parliament enacted the Electoral Commission Act⁶ which established a permanent Electoral Commission. The Law provides that the President with the approval of Parliament appoints the Commission, who hold office on full time basis for a period of seven years. Their appointment may be renewed for only one more term.

The first permanent Electoral Commission comprised of Hajji Aziz Kasujja (chairperson), Flora Nkurukenda (deputy chairperson), and five other members, namely; Ted Wamusi, Mary I.D.E. Maitum, Robert Kitariko, Nassanga H. Miiro and Charles Owiny.

In August 2000, Sr. Margaret Magoba was appointed to the Commission, to replace Maitum, who had been appointed as a judge of the High Court. Andrew Muwonge served as Secretary to this Commission.

It was during this time that a new staff structure was put in place, with the Secretary as the head of the management.

Below the office of the Secretary were two directorates: the Directorate of Elections, and the Directorate of Finance & Administration.

The structure initially had seven departments:

- Election Management
- Voter Registration

⁵ 1996.

⁶ EC Act 1997

- Data Processing
- Administration
- Legal and Public Relations
- Finance
- Civic Education and Training (later re-named Voter Education Department).

In 2002, two more departments were established, namely;

- Planning & Research
- Human Resource Management.

The Commission established district offices with permanent staff (District Registrars) to handle continuous voter registration and other election related activities at the district level.

1.1.10 Electoral Commission 2002-2017

On November 18, 2002, President Yoweri Kaguta Museveni appointed a new Commission, which comprised of Eng. Dr. Badru M. Kiggundu (chairperson), Sr. Margaret Magoba (deputy chairperson) and five other members, namely; Tom W. Buruku, Stephen D. Ongaria, Dr. Jenny B. Okello and Joseph N. Biribonwa. Sam Rwakoojo is the Secretary to the Commission. The seventh member, Amb. Dr. Tomasi Sisye Kiryapawo, was sworn in February 20th 2006.

Electoral Commission 2017

In 2017, the contract of the previous commissioners headed by Badru Kiggundu expired and a new commission was appointed by the President.

The current Commission is headed by Justice Simon Mugenyi Byabakama as the Chairperson of the Commission, Hajjat Aisha Lubega as Deputy Chairperson of the Commission, Peter Emorut as a member of the Commission, Justine Ahabwe Mugabi as a member of the Commission, Stephen Tashobya, Mustapha Ssebagala Kigozi and Nathaline Etomaru as a member to the Commission.

1.2 Statement of the Problem.

The Election Petition of 2006 at the Supreme Court between Rt. Col. Kizza Besigye against the Electoral Commission and President Yoweri Kaguta Museveni injured the popularity and public confidence in the Electoral Commission of Uganda. In the above case, the Supreme Court on second issue whether the Election was conducted in accordance with the principles laid down in the Constitution, Presidential Elections Act and Election Commission Act held in negative.

Although the same court on the third issue whether the said non compliance with the said laws and principles affected the results of the Election held in Negative of a majority vote of 4 to 3.

Recently during the 2016 General Elections media and Election Commission reports showed that voting around Kampala in opposition areas started at 2pm contrary to 8.00am as required by law, raised public concerns over the partiality of the Electoral Commission.

In a nutshell, the problem this research sets out to examine the weakness and ineffectiveness of the Legal framework of Article 60 of Constitution of Uganda 1995 in regard to the appointment, composition vis a vis independence of the Electoral Commission.

1.3 Methodology

For the most part, this research will involve a critical analysis of the statutory and case law on the subject as well as public opinion. The Law in issue includes the Constitution of Uganda 1995, Electoral Commission Act, Political Parties Act etc.

Data collection shall be based on library research from available literature, knowledgeable authors, Electoral Commission working papers, journals and news reports.

Informal interviews shall be conducted with knowledgeable officers at Electoral Commission, Leaders of Political Parties and informed citizens.

Internet use to a limited context, Electoral Commission website to derive updated views on the institutional framework with respect on the Electoral Commission.

1.4 Justification of the Study.

The credibility and independence of the Uganda Electoral Commission has been questioned by Ugandan public and courts of law. The Supreme Court of Uganda in 2011 after the General

Elections in a case before it on an issue whether the Electoral Commission complied with the Provisions of the Presidential Elections Act and the Constitution in conducting the election held in negative⁷. This decision not only expressed the incompetency of the electoral Commission in carrying out its work but also the independence of the Electoral commission.

Similarly in 2006, the Court found out there was non compliance with the provisions of the constitution, the Presidential elections Act and the Electoral Commission Act in the Conduct of the 2006 Elections by the Electoral commission.⁸

There was also public outcry on the appointment of new Electoral Commission commissioners by the President in 2017. The public called for reforms on appointment powers of the President on the commissioners.

1.5 Literature Review

Elections have been held in world since the 17th century and human society needs a competent and impartial body to conduct these elections. Various people have ventured their understanding on this subject and will be witnessed below.

Judith Geist⁹ observes that an election addresses the issue of periodic reaffirmation of or alteration in presentation of the public in the institution of policy making and governance. Elections confer legitimacy on governments by providing a chance for the citizenry to alter the composition of the government. They can also provide channels for citizen input on policy issues directly through referenda or in the extreme case to alter the nature of the government itself through constitutional exercises.

As Katz(Rod Hague and Martin Harrop Quoted in Political Science, comparative introduction 4th edition pg 145) writes that elections are the defining institution of modern democracy. That during a brief period of election campaign voters are the masters and are seen to be so. To examine the electoral process is therefore to analyse the central device which has made representative democracy a feasible preposition for large countries.

⁷ Col . Dr. Kizza Besigye V Electoral Commission, Yoweri Kaguta Museveni (Electoral petition no.1 2011)

⁸ Col . Dr. Kizza Besigye V Electoral Commission, Yoweri Kaguta Museveni (Electoral petition no.1 2006)

⁹ Geist Judith 1994 Political significance of the constituent Assembly elections' in Hansen H.B and in Twaddle. The Politics of Constitutional making in Uganda, Kampala Fountain Publishers pg,90

Apollo Nsibambi (Decentralization and Civil Society in Uganda pg 9) observed that good governance must underpinned by a democratic system of government. But democracy cannot thrive unless space is given to the Civil Society to operate effectively.

Peter Walubiri(Uganda's Constitutionalism at Crossroads, 1998, Uganda Law Watch)observed that democratic governance requires a system of government which promotes the existence of checks and balances. That a democratic society is the one which recognizes the centrality of the individual and his ability or right and freedom to make decisions affecting him without much interference from the state and its organs and having the will of the people respected in an election.

Yoweri Kaguta Museveni ¹⁰wrote a very comprehensive account on Uganda's process and the journey to democratization. He argued that that one of the strongest reasons why he took arms was the malpractice in the 1980 elections which he lost to Obote having gained only one seat for his UPM party.

He however noted that democratic elections cannot be held when the institutions that are supposed to guarantee fairness are under developed. His contention was that from the period of 1986-1996 when the first general election held, his NRM government had been building the capacity of these institutions. He asserts that had he organized the election within the first few years, it wouldn't have reflected the wishes of the Ugandan people then. The book however dwells so much on other aspects of governance rebellion in Luwero and fails to make a projection for sustainable free and fair elections.

Tarsis B. Kabwegyere¹¹ asserted that the democratic elections that were held in 1996 though under the movement system was a great leap into the direction of democracy. For him the challenges that were faced in the 1996 elections could only be ironed out if people participate fully in the electoral process of their leaders. He praised Yoweri Museveni for holding the first "real" general elections in Uganda since independence.

¹⁰ Sowing the mustard Seed, Macmillan Publishers 1998

¹¹ Tarsis B. Kabwegyere "peoples Choice, Peoples's Power" Challenges of Prospects of Democracy in Uganda, 2000, Fountain Publishers.

However he failed the role that constitutionally established institutions are supposed to play in such an election for example the electoral Commission and civil Society organization. Therefore my dissertation seeks to examine the independence of the electoral Commission due the current legal framework.

Kiddu Makubuya¹² examines the legal provisions relating to elections before the advent of the movement government in Uganda and points the flows therein. He discusses the criteria for a free and fair election considering among others, a fair administrative as various elections, he does not clearly draw out the negative influence they have had on Uganda's development of democratic ideas and practice as acceptable norms for civic behavior.

Professor Kanyeihamba G.W¹³ asserts that the key element of the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed. He further states that their will cannot be freely expressed if the elections are presided over and conducted by a partisan electoral commission.

This hints on the need to have an independent electoral commission to organize free and fair elections.

1.6 Scope of the Study.

This Research shall focus on the Electoral Commission of Uganda, their appointment and composition as provided by Ugandan Statute Law. Various statutes affiliated to Electoral commission will also be analyzed.

The research will also examine the legal frame of other electoral commissions on the African continent to come up with appropriate recommendations for an impartial independent Electoral Commission

¹² Kiddu Makubuya "The Law and Practice of elections in Uganda prospects for the future" (1996) (unpublished)

¹³ Constitutional and Political History of Uganda, 2002, Centenary Publishing House Ltd

CHAPTER TWO

CURRENT LEGAL FRAMEWORK OF THE ELECTORAL COMMISSION

2.0 Introduction

Uganda's Constitution guarantees fundamentals rights and freedoms, including freedom of expression, assembly, association, and participation in elections.

The following national laws provide the legal and regulatory framework for the conduct of elections:

- The Constitution of Uganda 1995 (as amended)
- Presidential Elections Act 2005 (as amended)
- Parliamentary Elections Act 2005 (as amended)
- Electoral Commission Act 1997 (as amended)
- Political parties and Organizations Act 2005 (as amended)
- Electronic Media Act
- Press and Journalist Act

In addition, Uganda has signed, ratified or agreed to some significant regional and International instruments and commitments relevant to the conduct of elections.

These include:

- United Nations Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- African Charter on Human and Peoples Rights
- Commonwealth Charter

2.1 THE CONSTITUTION OF UGANDA

Following the promulgation of the 1995 Constitution, good and workable laws were saved, made or adopted under the authority and the provisions of the same constitution. 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 containing all the Electoral Laws of Uganda under the title “COMPENDIUM OF ELECTORAL LAWS AS AT 15 FEB 2006.” The later volume contains the Constitution, Electoral Commission Act, Political Parties and Organizations Act, Presidential Elections Act, Act, Local Government Act and the Referendum and Other Provisions Act.

The 1995 Constitution was enacted on 8th October 1995 after a successful military struggle led by the National Liberation Movement against the Obote Government. Prior to this constitution Uganda was faced with a couple of various political challenges and witnessed different forms of government including Dictatorship in the Iddi Amin government. The adoption of a new constitution in 1995 promised a new beginning for Uganda. After more than three decades of political decades of political instability the new constitution of 1995 sought to establish the critical foundations for a new political dispensation rooted in the principle of democracy, separation of powers, respect for fundamental human rights and freedoms and the rule of law.

This is reflected in our constitution with the statement

”WE THE PEOPLE OF UGANDA:

RECALLING our history which has been characterized by political and constitutional instability;

RECOGNISING our struggles against the forces of tyranny, oppression and exploitation;

COMMITTED to building a better future by establishing a socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress;

EXERCISING our sovereign and inalienable right to determine the form of governance for our country, and having fully participated in the Constitution-making process;

NOTING that a Constituent Assembly was established to represent us and to debate the Draft Constitution prepared by the Uganda Constitutional Commission and to adopt and enact a Constitution for Uganda:

DO HEREBY, in and through this Constituent Assembly solemnly adopt, enact and give to ourselves and our posterity, this Constitution of the Republic of Uganda, this 22nd day of September, in the year 1995.

For God and My Country.”¹⁴

The national electoral process is premised on Directive II of the National Objectives and Directive Principles of State Policy, which enumerates the democratic principles that all legal and policy formulation processes must conform to. They are as follows:

- i) The State shall be based on democratic principles, which empower and encourage the active participation of all citizens at all levels in their own governance.
- ii) All the people of Uganda shall have access to leadership position at all levels, subject to the Constitution.
- iii) The State shall be guided by the principle of decentralization and devolution of governmental functions and powers to the people at appropriate levels, where they can best manage and direct their own affairs.
- iv) The composition of Government shall be broadly representative of national character and social diversity of the country.
- v) All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organizations and practice.
- vi) Civic organizations shall retain their autonomy in pursuit of their declared objectives.

¹⁴ The Preamble Constitution of Uganda 1995

The right to vote is accorded to every Ugandan citizen of eighteen years and above under Article 59 (1) of the Constitution. While citizens in this age bracket have a duty to register as voters for public elections and referenda, the state is equally required to take all necessary steps to ensure that they register and exercise their right to vote.

The 1995 Constitution of Uganda states that all power belongs to the people who shall exercise their sovereignty in accordance with this Constitution. Clause 4 of same article states that the people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.¹⁵

The question to be asked is what amounts to power. Power is refers to political control of a country or area.¹⁶ The nexus between power and expression of the will and consent of the people on who shall govern them lies on the ballot of a free and fair election.

This election must be organized by an impartial and independent Electoral Commission.

Article 60 of the Electoral Commission establishes the authority of the Electoral Commission, its appointment and composition and the functions of the authority include the following as stated under Article 61:

- (a) To ensure that regular, free and fair elections are held;
- (b) To organize, conduct and supervise elections and referenda in accordance with this Constitution;
- (c) To demarcate constituencies in accordance with the provisions of this Constitution;
- (d) To ascertain, publish and declare in writing under its seal the results of the elections and referenda;
- (e) To compile, maintain, revise and update the voters register;
- (f) To hear and determine election complaints arising before and during polling;

¹⁵ Article 1 Constitution of 1995.

¹⁶ Oxford Student Learners' Dictionary

(g) To formulate and implement civic educational programmes relating to elections;

(h) To perform such other functions as may be prescribed by Parliament by law.

In regard to organizing Elections the Uganda Electoral Commission has lived up to its mandate of organizing elections in Uganda every 5 years with the 1st being held in 2011 with vigorous Presidential Elections between President Yoweri Kaguta Museveni, Paul Semogerere and Mohammed Mayanja.

The Uganda Electoral Commission has also fared well in respect to organizing referenda in the country. The Electoral Commission organized constitutional referenda in 2005 where Ugandans voted to restore a multi-party political system, lifting the 19 year restriction on the activities of political parties. The 2005 General election was the 1st multiparty election in 25 years in Uganda as a result of the Referendum of 2005, Museveni won 50% of the Presidential Election vote and his party the National Resistance movement won the majority of parliamentary seats.

2.2 The Electoral Commission Act.

This is an act to make provisions in relation to the function of the Electoral Commission under the Constitution and to provide for related matters. The act commenced on 2nd May 1997.

The Act provides that the Electoral Commission shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and may subject to the provisions of the constitution do enjoy or suffer anything that may be done, enjoyed or suffered by a body corporate.¹⁷

The Act further provides for other functions of the Electoral commission that may include the following:

To take measures for ensuring that the entire electoral process is conducted under the conditions of freedom and fairness.

¹⁷ Section 2 Electoral Commission Act

To accredit any partisan individual, group of individuals or institution or association to carry out voter education subject to guidelines determined by the commission and published in the gazette.

The electoral Commission Act also provides for the appointment of other staff to the commission such as the Secretary to Electoral commission who is appointed by the Commission in consultation with Public Service Commission.¹⁸

Returning officers and their assistants are also appointed by the Electoral Commission for every district to conduct elections and manage other Electoral activities at district level.¹⁹

The Electoral Commission Act also empowers the Ministers in charge of the Elections to pass regulations to regulate the electoral process in Uganda.²⁰

2.3 Presidential Elections Act

This is an Act to provide for the elections to the office of the President. The Act was enacted in 2000 but has since undergone various amendments. The Act regulates the nomination of candidates, campaign time, voting time and conduct of Presidential candidates.

The Act prohibits use of government resources for the purpose of campaigning for an election.²¹ However this is a challenge where the candidate is a sitting president. Case in point is the 2011 and 2016 general Elections where Candidate Yoweri Kaguta Museveni who was also the current President was campaigning with state resources such as official vehicles, state public address systems and funding. The act further provides that a candidate who holds the office of President may continue to use government facilities which are attached to and utilized by the holder of that office. This raises a question of what amounts to facilities attached to the office of the President and what is not. There is no clear answer nor have the courts of law addressed this ambiguity given the fact the President as the Commander has privilege of accessing all state facilities.

¹⁸Section 5 Electoral Commission Act

¹⁹ Section 30 and 31 Electoral Commission Act

²⁰ Section 51 Electoral Commission Act

²¹ Section 20 Presidential Elections Act

The Act also provides for Rights of presidential Candidates to include all Presidential candidates entitled to equal treatment by state owned media to present their programmes to the people.²² In Uganda we have one state owned media known as Uganda Broadcasting Corporation which is directly under the control of the Ministry of Presidency and Ministry of ICT. The result of this is that all the adverts of this channel are in favor of the current President because the management of the National media channel is appointed basing on their political affiliation. The national media displays programs such “Fruits of the Liberation Struggle” which are all campaigns platforms for the current President who led the liberation struggle against the oppressive regimes of Obote and Tito Okello regime.

The Act in regard to voting time the Act provides that voting time shall commence at 7 o’clock in the morning and close at 5 o’clock in the afternoon.²³

However the Election Commission has violated the above provision by commencing elections late in some areas. This was witnessed in just concluded elections of 2016, where in areas such as Makindye in Kampala and Namwongo, Election observers and the NBS and NTV media stations stated that elections materials reached as late as 12 noon and some parts started voting at 2 pm.

The Presidential Elections Act was amended in 2010. The Amendments mainly touched on the administration of Elections. For instance, the time limit of Twelve months for which one is supposed to consult in preparation for his or her nomination as a presidential candidate was removed, a provision that provides for the declaration of a candidate unopposed where other candidates in the race withdraw from the election was inserted; the amendments prohibited candidates from using government resources for campaign purposes and prescribed a penalty; the amendments also prohibited the creation of special polling stations for the army and other security personnel; members of the Internal Security Organization and External Security Organization were barred from being appointed as election constables; the requirement of seven days within which the returning officer is expected to compile and submit a report to the commission was repealed; fundraising, donations

²² Section 22 (1) Presidential Elections Act

²³ Section 28 (2) Presidential Elections Act

and similar activities by candidates, their agents and political parties were banned during campaign periods. A new inclusion was the requirement that a candidate's nomination papers be endorsed and sealed by the party or organization that is sponsoring him or her; and a provision for a period of two weeks before the polling day within which the commission is supposed to have transmitted the voters register containing photographs of the voters to be used on the polling day to political party and organizations was made.

Although these changes were a step in the step in the right direction, they remained limited and the major impending issues still remain.

2.4 Political Parties and Organization Act.

This is an Act to make provision for regulating the Financing and Functioning of the Political Parties and organization in Uganda.

From 1986 to 2005, Uganda was under the Movement (No Party) political system. This system applied the principle of individual merit to those aspiring for political office. Every Ugandan was by law a member of the Movement and candidates stood on their own merit and campaigned as such. A referendum on change of political system was held in July 2005. It returned a verdict of multi party political system. This system was duly adopted. In a multiparty political system nomination of candidates may be made by a political organization or political party sponsoring a candidate or by a candidate standing for election as an independent candidate without being sponsored by a political organization or political party.

The Political Parties and Organizations Act, No.18 of 2005 (PPOA) was passed against the background of a successful transition from the movement to the multiparty political system.

To harmonize and regulate Political Parties and organizations, the PPOA provides for a Code of Conduct for political Parties and Organizations and a National Consultative Forum for Political Parties and Organizations in sections 19 and 20 of the Act, respectively.

The registration and regulation of political parties or organization is conducted by the Electoral Commission. In the 2011 general elections, there were 38 registered political parties but only 15 participated in the general elections. Seven of them presented presidential candidates namely:-

1. National Resistance Movement (NRM). This is the majority party.
2. The Forum for Democratic Change (FDC). This is the main opposition party and the opposition leader in Parliament is from this party. This office is established under the Constitution.
3. Democratic Party (DP).
4. Peoples Progressive Party (PPP).
5. Uganda Federal Alliance (UFA).
6. Peoples Development Party (PDP).
7. Uganda Peoples' Congress (UPC).

The eighth candidate stood as an independent candidate.

Both the prescription of the Code of Conduct and the establishment of the National Consultative Forum under the PPOA have met with some success; the Code of Conduct is in advanced stages of being passed into law. The National Consultative Forum has largely been functioning as a National Electoral Liaison Committee.

The Electoral Commission is tasked with the role of registering Political Parties in Uganda.²⁴

A political party is defined under the Act as a political organization the objects of which include the influencing of the political process or sponsoring a political agenda, whether or not it also

²⁴ Section 2 Political Parties and Organization Act.

seeks to sponsor or offer a platform to a candidate for election to a political office or to participate in the governance of Uganda at any level.

A political organization on the other hand is defined by the Act as any free association or organization of persons the objects of which include the influencing of the political process or sponsoring a political agenda, whether or not it also seeks to sponsor or offer a platform to a candidate for election to a political office or to participate in the governance of Uganda at any level.

The Political Parties Act prohibits the following people from participating in a political party or political organization activities; members of the Uganda Peoples Defense Forces, The Uganda Police Force, the Uganda Prisons Service or public officer or a traditional or cultural leader.²⁵

The practicability of exempted persons in political organization activities is almost impossible because in the constitutional history of Uganda, cultural leaders were at the fore front of political activities. In Buganda, the Kabaka of Buganda kingdom founded Kakaka Yekka political party which was among the political organizations involved in the struggle for independence. With such history, today cultural leaders have found it so difficult to have a clear distinction between cultural activities and politics. This has created tension between the government and cultural institutions, for instance the 2017 military invasion of Rwenzururu Kingdom in Kasese.

The Act grants the Electoral Commission with authority to apply to the High Court for an order winding up a political party for an order for non compliance with the Act.²⁶

The challenge with the above provision is that de-registering of political parties may be politically oriented. This is due to the fact the current regime may want to do away with other competition in the political arena.

The Act also establishes a National Consultative Forum for political parties and political organization.²⁷ The National Consultative Forum is composed of the following:

²⁵ Section 16 Political Parties and Organization Act.

²⁶ Section 21 Political Parties and Organization Act

²⁷ Section 20 Political Parties and Organization Act

- One representative from every political party or organization
- The chairperson of the Electoral Commission or his or her representative
- The Attorney General or his representative as an ex-official member.
- The secretary to the Electoral Commission who shall be the secretary.

The functions of the Commission shall include; liaising with the Electoral Commission on matters pertaining to political parties and organizations, communicating the complaints and grievances of political parties and organizations to the Electoral Commission, representing political parties and organizations in any case where the parties and organizations have to give a common position, the resolution of disputes between political parties, making recommendations to the Minister on any matter under the Act.

2.5 Regional Legal Framework.

East African Community Treaty

At the East African level, it is critical to point out that the Treaty Establishing the East African Community, as amended, lists good governance, which includes the principles of democracy and rule of law, as one of the fundamental principles that shall govern the achievement of the objectives of the community by the partner states.²⁸

African Union Charter

The Constitutive Act of the African Union 2002 lists as one of its major objectives the promotion of democratic principles and institutions, popular participation and good governance. The objectives also include the promotion of sustainable development at the economic, social and cultural levels. The African Charter on Human and Peoples' Rights also espouses different rights, some of which are linked to electoral process. For example, Article 8 provides for freedom of conscience, which can be extended to cover the right of an individual to follow a freely chosen political ideology. Article 9 covers an individual's right to receive information and to also express and disseminate his opinions within the law. In relation to elections, it follows that individuals have the right to hold, receive and disseminate information

²⁸ Article 6 (d) East African Community Treaty

on different political views to various audiences. Article 10 provides for the right to free association, which extended to the electoral process means that persons have a right to subscribe to different political parties.

The Declaration of Principles on Freedom of Expression in Africa 2002 that was adopted by the African Commission as a reaffirmation of Article 9 of the African Charter on Human and Peoples' Rights, clearly states that freedom of expression and information is a fundamental and inalienable human right that is an indispensable component of democracy. Under Article VI, the declaration calls on state and government controlled broadcasters to operate on among other principles, that of politically balanced reporting. This is in line with the national legal requirements for media houses to have a balanced coverage of all political candidates.

The most important regional legal instrument on electoral democracy is the African Charter on Democracy, Elections and Governance, which has been signed and ratified by only 10 States. 28 States including Uganda have signed but not ratified the treaty. The Charter calls on parties to implement this Charter in accordance, which include among others, respect for human rights and democratic principles, promotion of a system of government that is representative, holding of regular, transparent, free and fair elections et cetera.²⁹

Under Article 4, state parties undertake to commit themselves to the promotion of democracy, the principle of the rule of law and human rights and also recognize popular participation through universal suffrage as the inalienable right of the people. State parties further undertake to regularly hold transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa.³⁰ In this regard, the state parties undertake to establish and strengthen independent and impartial national electoral bodies responsible for the management of elections; establish and strengthen national mechanisms that redress election-related disputes in a timely manner; ensure fair and equitable access by contesting parties and candidates to state controlled media during elections and also ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall

²⁹ Article 3 of the African Charter on Elections, Democracy and Governance.

³⁰ Article 17 of the African Charter on Elections, Democracy and Governance.

include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels. Political pluralism is also recognized as vital in the Charter—therefore, under Article 3 of the Charter, states undertake to strengthen political pluralism and recognize the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

2.6 International Legal Framework concerning Elections

These Democratic principles are provided for in international laws.

The Universal Declaration of Human Rights provides that the will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.³¹ Article 19 on the other hand provides for the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Windhoek Declaration on Promoting an Independent and Pluralistic African Press adopted by the General Assembly of UNESCO in 1991 provides for the establishment, maintenance and fostering of an independent pluralistic and free press is essential to the development and maintenance of democracy in a nation.³²

Specifically with regard to elections, the International Covenant on Civil and Political Rights accords every citizen the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors and to have access, on general terms of equality, to public service in his country.³³

Suffice to note that the Inter-parliamentary council declaration on criteria for free and fair elections clearly states in Article 1 that in any state the authority of the government can only

³¹ Article 21(3) Universal Declaration of Human Rights

³² Article 9 Windhoek Declaration on Promoting an Independent and Pluralistic African Press

³³ Article 25 International Covenant on Civil and Political Rights.

derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage. Article 4 of this Declaration calls on States to take the necessary legislative steps and other measures, in accordance with their constitutional processes to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international laws.

2.7 Appointment of Electoral Commission Commissioners.

The Constitution of Uganda states that the members of the Electoral Commission shall be appointed by the President with the approval of Parliament.³⁴

The constitution further states that the members of the Commission shall be persons of high moral character, proven integrity and who possess considerable experience and demonstrated competence in the conduct of public affairs.³⁵

The challenge with the above provision is that experience and competence in the in the conduct of public affairs may refer to an individual professional skills but not in relation administration of a public body. Is it possible then for an accountant who has not been involved in any money scam but never served in any leadership role to be appointed as a Commissioner in the Electoral Commission. The probability that he or shall perform his or her tasks efficiently lies in doubt.

If the appointment of a member of the commission is being renewed, the renewal should be done at least three months before the expiry of the first term.³⁶

It is essential to the effectiveness of an electoral commission that qualified candidates obtain office. Many times and in most countries, the public is unaware of the qualifications of the Commissioners appointed, because the commissioners-designation process often is not conducted in public view. In Uganda specifically, there are benchmarks/pointers to the credentials that a Commissioner should hold but there are no specific qualifications in regard to citizenship, age, field of expertise, educational and professional credentials. The public will have greater confidence in the election process if they know that Commissioners were screened by

³⁴ Article 60(1) Constitution of Uganda 1995

³⁵ Article 60(2) Constitution of Uganda 1995

³⁶ Article 60(4) Constitution of Uganda 1995

independent screening panels and found to possess the qualities necessary for effective management of election affairs. More so, elections have become highly specialized and have since drawn a lot of public interest than never before. Having specific qualifications helps to erase any perceptions of bias in the appointment process, but also eases the work of the recruitment/appointments body in respect to definite qualifications required of a commissioner.

The constitution³⁷ further provides that a person holding office shall relinquish his or her position in that office on appointment as a member of that commission in the following offices:

- 1) A member of Parliament
- 2) A member of a local government council
- 3) A member of the executive of a political party of political organization
- 4) A public officer

2.8 Composition of the Electoral Commission

The Electoral Commission shall consist of a chairperson, a deputy Chairperson and five other members.

The members of the commission shall hold office for a period of seven years and their appointment may be renewed for one more term only.³⁸

The Electoral Commission Act also provides for the appointment of the Secretary to the Commission and Returning officers who are appointed by the Commission.³⁹

The Constitution provides for the appointment of staff of the Commission that shall be made by the commission acting in consultation with the Public Service Commission.⁴⁰

³⁷ Article 60(5) Constitution of Uganda

³⁸ Article 60 (3) Constitution of Uganda

³⁹ Section 5& 31 Electoral Commission Act

⁴⁰ Article 65 Constitution of Uganda

CHARTER THREE

INDEPENDENCE OF THE ELECTORAL COMMISSION

3.0 Notion of Independence And Impartiality.

The term independent refers not subject to the control or influence of another.⁴¹

Impartial on the other hand is defined as something unbiased and disinterested.

The electoral Commission of every State should be independent and impartial for the electoral process to serve its purpose in respecting the will of the people in casting their vote.

The African Union Charter states that state parties are supposed to guarantee the independence of the courts and the establishment and improvements of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms.⁴²

The Electoral commission is therefore an institution to conduct elections which provides people with the platform to exercise their right to vote.

The Constitution of Uganda states that subject to the provisions of the Constitution, the Commission shall be independent and shall in the performance of its functions and shall not be subject to the direction or control of any person or authority.⁴³

However from the appointment of the members of the Commission by the President,⁴⁴ the impartiality of those members is questioned. Every human being pays loyalty to his master, the appointment members of the Commission who under certain circumstances pay loyalty to the President since he is the one who appointed them to that office.

⁴¹ Osborne's Law Dictionary

⁴² Article 26 AU Charter

⁴³ Article 62 Constitution of Uganda 1995

⁴⁴ Article 60(1) Constitution of Uganda 1995

The independence and impartiality of the Electoral Commission towards the sitting President always seen with bias. For example during the 2016 General Election campaigns , NBS Television reported the sitting President campaigning beyond 7pm which is illegal time for campaigning and the Electoral took no steps to address the issue despite concerns from other candidates.

The Electoral Commission Act also provides that the Minister in charge of Elections and Referenda may in consultation with the Electoral Commission pass regulations for elections.⁴⁵ A minister is a member of the Executive of the President and is likely to pass regulations which serve the interests of the President.

3.1 Financial Status of the Electoral Commission.

The Electoral Commission is self accounting and its administrative expenses are charged on the Consolidated fund.⁴⁶

The law guarantees adequate resources and facilities to enable it to perform its functions.⁴⁷ This in essence means that the budget of the EC should not be subject to cuts or reductions by the Ministry of Finance.

Although article 66 of the Constitution grants a self-accounting status to the Electoral Commission of Uganda, its budget is subject to Parliamentary review and approval.

While Government has prioritized the financing of elections and generally provided adequate resources, the Medium Term Expenditure Framework (MTEF) under which the EC is funded has not made the funding process any better; it provides for quarterly disbursements of funds and sets specific (conservative) expenditure ceilings.

⁴⁵ Section 51 Electoral Commission Act

⁴⁶ Article 60 Constitution of Uganda 1995

⁴⁷ Article 66(1) Constitution of Uganda

The present legislative arrangement offers limited protection to the EC as a priority institution and its budget against possible cuts. The MTEF on the other hand, has been less successful at ensuring that budget allocations translate reliably into actual expenditures due to the late disbursements of funds.

Within the current framework, Parliament can revise the administrative expenses of the Commission including salaries, allowances, pensions and other emoluments of members of the Commission. Such a funding model has for a long time raised credibility-threatening perceptions that the Commission's activities are being controlled by the legislature.

In other jurisdictions the Electoral Commission's funds are protected against any possible undue modifications by the legislature or even the executive. In Ghana for instance, the legislature has no power to alter or reject any part of the Electoral Commission's proposed budget. Its funding is a separate line item in the national budget, released directly to the Commission by the Treasury. In Nigeria and the Seychelles some parts of the Electoral Commission's budget cannot be altered by the executive or the legislature.

Article 66 of the Constitution of Uganda must therefore be reviewed with a view of entrenching a clause that protects parts of the Commission's budget against any possible revisions by Parliament. Drastic budgetary revisions by Parliament have previously affected the Commission's ability to properly deliver on its Constitutional mandate. For the period 2013/14 for example, the Electoral Commission of Uganda had proposed a wage bill of UgShs.65,436,000,000. However only UgShs. 7,362,000,000 was passed by Parliament¹⁷. Costs to general elections, voter education, and voter registration should be considered for placement under a protected category. The nature of work of the EC (elections) makes it prudent to exempt the Commission from the MTEF funding plan (quarterly basis with restrictive budgetary ceilings).

The Commission must be afforded an adequate opportunity to report and defend its budget estimates directly before Parliament or its relevant committees without necessarily having to report through the Ministry of Justice and Constitutional Affairs as is the current practice. It is

for Parliament, and not the Executive arm of Government, to ensure sufficient funding to enable the Commission to carry out its constitutional mandate.

It is an earnest belief that the new model will further promote the independence of action by the Commission vis-à-vis other organs of government such as the executive.

3.2 The Relationship between the Electoral Commission and the Executive.

The Executive is the arm of government headed by the President. It consists of the Cabinet and various Ministries of government.

The President who is the head of government holds the appointing power of the members of the Electoral Commission with approval of the Parliament. The role of Parliament is therefore more of vetting the members appointed by the President. This therefore places the President with the magic hand to determine who the members of the EC shall be.

The appointment of other officers and employees of the Electoral Commission is made by the Commission acting in consultation with Public Service Commission. The Public Service Commission is part of the Executive under the Ministry of Public Service and creates influence of the Executive on the Electoral Commission.⁴⁸

The Executive is also responsible for providing security during elections and referenda. The Uganda Police and other state security agencies are under the control of the Executive. This has led to Police brutality on opposition supporters during Election periods.

3.3 Critique of the Independence of the Electoral Commission.

There seems to be wide agreement on the need to have an election management body that fits into the modus operandi or aspirations of a multi-party political dispensation.

The manner of appointment prescribed in the 1995 Constitution gives the President the power to appoint the commission and the President too reserves the power to fire it without recourse to any other body.

⁴⁸ Article 65 Constitution of Uganda 1995

This has been widely cited as a reason for the Electoral commission's —weakness in presiding over electoral processes especially when it comes to bringing to book electoral offenders aligned with the ruling party the NRM. The Commission has often given ammunition to critics of its independence by interpreting its constitutional mandate in a narrow manner leaving out the broader issues of ensuring a fair process by enforcing equal access to state media, regulating campaign finances, and prosecution of electoral offenders.

And because the current EC was introduced through the efforts of one single party, there is a vast perception as well as evidence to show that the body's autonomy and impartiality are questionable.

Due to such widespread perception, the body has over time enjoyed declining confidence and trust from sections of the electorate, and members of political parties from across the political divide.

The Afro barometer⁴⁹ noted that trust in the Electoral Commission is low across partisan and demographic divides.

Perceptions of the Electoral Commission's independence are not assisted by the several court ruling in which the EC's capacity to administer elections has been challenged on the basis of inability to act independent of influence or control. In the Dr. Kizza Besigye vs President Museveni case of 2006, court ruled that the EC did not comply with the provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act, in the conduct of the 2006 Presidential Elections.

And because of this non-compliance to the set electoral laws, there was disenfranchisement of voters; the principle of free and fair elections was compromised by bribery and intimidation; and the principles of equal suffrage, transparency of the vote, and secrecy of the ballot were undermined by multiple voting and vote stuffing.

⁴⁹ Round 5 Uganda Survey Results 2012

As at December 1st 2013, out of the fifteen by-elections conducted and organized since 2011 to date, ten have been occasioned by administrative irregularities involving or occasioned by the Electoral Commission, while five have been caused by deaths of the office holders.

In addition, a number of politicians are beginning to make statements to the effect that it is not possible to have fair elections under the present electoral architecture. For example the former president of the Forum for Democratic Change (FDC) Dr. Kizza Besigye is quoted to have stated that contesting for the Presidency under the current Electoral Commission would be a ritual without any political significance.⁵⁰ All this points to a serious need to address some of these issues if Uganda is to have a semblance of peaceful elections.

Recently the doubt over the independence of the Electoral Commission has also continued after the recently concluded 2016 Elections.

The European Mission observer team headed by Olusegun Obasanjo stated the EC makes its decisions by consensus if possible and otherwise by a majority vote. Due to the appointment system, the EC does not reflect the complete political spectrum, and does not enjoy widespread confidence.

The EC chairperson's derogatory statements regarding the opposition presidential candidates. The chairperson of the Commission expressed regret that he had nominated an opposition presidential candidate, made public remarks on a candidate's family member, and on another occasion described him as not "exactly being a fountain of honor". These were a supplementary example of the commission's lack of impartiality.

The EC issued its Strategic Plan 2013-2017 three years ahead of the 2016 elections. The plan included steps meant to strengthen its capacity to deliver a credible electoral process. The most important targets were a new biometric voter register, the consolidation of all guidelines and procedures, as well as timely and comprehensive civic and voter education. The objective of having a comprehensive voter information program was not met, nor was consolidation of procedures and guidelines. Those failures cast further doubt on the EC's efficiency, and proved the commission's inability to compensate for its lack of foundational legitimacy with functional

⁵⁰*The Daily Monitor* newspaper, November 12th 2013

proficiency. When deciding on the petition by opposition candidate Kizza Besigye in 2006, the Supreme Court fell short of annulling the elections, but criticised the Electoral Commission sharply for improper management and incidences of fraud.⁵¹

The EC planned some new safeguards to enhance the integrity of the process, such as the introduction of a biometric voter verification system (BVVS), a voter location slip (VLS) that contained the polling station's location and discarded the Voter Card, used in previous elections. Neither the BVVS nor the VLS was field-tested, so a profound, informative communication reaching out to all key stakeholders, the EC staff at district level and below, political parties, civil society and the most importantly voters, was of paramount importance to acquire acceptance of those new features across the board. However, the BVVS was presented to stakeholders only in January 2016 and distribution of VLSs took place some two weeks before the election day.

Additionally, the late introduction of those new elements was not embedded in a comprehensive communication program. As a consequence, the lack of factual information fuelled fierce speculation in media and beyond, creating an atmosphere of mistrust among all stakeholders.

Throughout the electoral period, the EC lacked transparency and did not address existing uncertainties in a timely manner; neither regarding its accountability to the greater public nor in communicating with electoral stakeholders. For example, the minutes from the EC's meetings where pivotal decisions were taken were never made public and the EC's financial standing and autonomy cannot be independently verified, since neither its budget nor its procurement documentation is disclosed to the public. Moreover, the EC's website was down for several weeks in December and January, and information of public interest was not uploaded on the website in a timely and comprehensive manner. Another deviation from the principle of transparency was the EC's selective approach towards various stages of the electoral process that could be directly observed. An example was the uploading of the voter register onto the BVVS devices, which was conducted without inviting observers or party representatives.

⁵¹ See Supreme Court of Uganda, <http://old.ulii.org/ug/judgment/constitutional-law-election-petitions/2007/24>)

The EC's failure to convene the Inter-Party Liaison Committee also negatively affected consensus building and resolution of disputes among stakeholders. The District Peace and Security Committees (DPSC) that were set up in most districts observed by the EU EOM, yielded little difference. Only in a few districts like in Abim Amudat, Mbarara Moroto, and Bushenyi were DPSCs meeting regularly and used as a platform to resolve disputes between stakeholders.⁵²

⁵² EU Report on Uganda Elections 2016

CHARTER FOUR

CHALLENGES FACED THE ELECTORAL COMMISSION

4.0 Introduction

Uganda Electoral Commission in its carrying out its mandate faces various challenges that have been identified in reports by the Electoral Commission, which is tasked with managing the national electoral process, election observer mission reports and reports by different NGOs that carry out regular monitoring and activism on electoral reforms.

4.1 Legal Challenges

In regard to the appointment of EC Commissioners, the Constitution of Uganda⁵³ does not state the required time for a person to have attained in order to be appointed a member. The reasonable experience leaves doubt on what time is sufficient for an individual to qualify for appointment.

The Regulatory Powers given to the Minister in charge of elections under the Electoral Commission Act⁵⁴ also poses a challenge to control powers of Electoral process by the members of the Commission who should act independently and under the control of anybody.

Such authority has led to various people other than the Electoral Commission to issue guidelines to elections in Uganda. Case in point, the Inspector General of Police during 2016 General Elections issued electoral guidelines to Secretary Generals of Political parties on how to conduct their activities during Electoral Period.⁵⁵

⁵³ Article 60 (2) constitution of Uganda

⁵⁴ Section 65 Electoral Commission Act

⁵⁵ UHRC Report 2016 pg 139

4.2 Non Legal Challenges

4.2.1 The Voter Register

The backbone of every good election is an accurate voters' register. The challenge therefore is how to compile a voters' register that includes all eligible voters and is acceptable to all state holders. The register possesses unique features that assist in identifying the voters for example photographs, voter identification number and thumb prints etc.

As in 2011, concerns about the integrity of the Register were at the forefront of preparations for these elections. In past elections the accuracy and integrity of the register was criticized by stakeholders and observers. For these elections, the accuracy of the Register remained of concern.

The 2016 Voters Register stood at 15,277,198, which according to the Commission represented approximately 99 per cent of eligible voters. However, for many stakeholders, the process of compiling the new register and the retiring of previous registers, resulted in the disfranchisement of young people who turned 18 years of age after the close of the registration exercise in June 2015 and before Election Day - as well as others who were simply not aware of the process.

A limited sensitization and awareness campaign education around the registration exercise compounded perceptions around the accuracy and integrity of the Register.

This point was highlighted by the case of a former presidential candidate, who had discovered long after the display of the Register that because he had failed to reregister, he was no longer on the Register.

In addition, following an audit by civil society, the numbers of total voters at a number of polling stations across the country were shown to not tally with the disaggregated male and female voter numbers. In some instances, voter totals were found to be different by small amounts, in others, the difference was found to be as much as 488 voters, where the total should have been 901 voters. The Commission corrected the discrepancies immediately following verification of the numbers.

For many, all of these issues together are significant enough to raise questions on the accuracy of the Commission's figures. Maintaining and improving the accuracy of the register remains an on-going process.

The EC decision to retire the previous voter register without amendment of the legal framework, which remained unchanged from the previous exercise, provided a basis for legal challenges. Most notably, former member of the parliament and presidential candidate from DP, Norbert Mao filed a case in the Constitutional Court against the refusal of the EC to nominate him as a candidate on the grounds that he was no longer registered.

The new register for the 2016 General Elections therefore raised various complaints of people missing on the voters' registers yet they had been registered to vote and possessed national identity cards whose data base was to act as the voters identity cards.

4.2.2 Inadequate funding of the Election.

Elections are very expensive exercises, in a developing country like Uganda, there are competing priorities for the limited resource envelop. Adequate funding of electoral process is not always possible. Consequently activities like voter education and remuneration of election officials who carry on tasks like registration, display of voter's registers have all faced delays and affected the election.

4.2.3 Voter Education

Despite efforts by the Electoral Commission and various civil societies to conduct voter education, the challenge of a largely illiterate voter population has affected the electoral process in Uganda.

For example in 2005, the Democracy Monitoring Group (DEM) blamed the Electoral Commission for allegedly messing up the referendum exercise. Rev. Anthanasum Maraka a national observer with DEM blamed the EC for being responsible for the poor turnout in the

referendum as there was little sensitization of the exercise to the masses. Most rural people had idea as to why they were being called to participate in a referendum.⁵⁶

At the After of the 2016, Elections the European Union Report observed that Electoral Commission fell short on it role of voter education prior to the Elections. The EC failed to conduct comprehensive voter outreach covering all stages of the process and explaining the innovations aimed at fortifying its integrity of the process. It fell short of both its constitutional mandate to carry out voter information as well as with Uganda's international obligations. The EC contracted four commercial companies to conduct field activities at the district, county and sub-county level. However, the EU EOM observers rarely came across civic educators contracted by the EC. More often, the sub-county and parish supervisors were the ones who disseminated information to voters on their own initiative, either in small meetings or using local radio stations. To offset the lack of the voter information provided by the EC and its contractors, a wide range of CSOs, religious leaders and local media took the initiative and created their own voter information campaigns covering the key issues of the electoral process, such as the peaceful conduct of elections, voters' rights and women, youth and vulnerable groups' participation. However, those spots lacked factual and practical information that could only be conveyed by the EC. One of the few positive EC information campaign's steps was the decision to send some four million voter information SMSs and opening a toll-free number where voters could find out his or her polling station's location. On a special website of the EC, voters could check their voting location by entering the national ID number, yet EU EOM observers reported that upcountry, there was very little knowledge about these options.⁵⁷

4.2.4 Difficulty in acquiring Financial Statements of Political Parties by the EC

Political parties are obliged to submit their audited financial reports to the EC on an annual basis, and parliamentary campaign finance is part of yearly reports in case elections were held in a

⁵⁶ The Daily Monitor August 1,2005 page 21

⁵⁷ EU 2016 Report on Ugandan Elections

given year. Financing for 2016 parliamentary election will therefore be included in the 2016 yearly report, which should be submitted to the EC by June 2017.⁵⁸

Despite legal requirements, parties submit reports only rarely. When they do, these reports are inaccurate in every respect. All interlocutors confirmed that most of their donations are not included in the reports.

Fundraising and campaigns in parliamentary elections are done at the constituency level by individual candidates, but none of the parties trained their local branches or candidates on bookkeeping or established a system of reporting to the parties' headquarters. Parliamentary candidates and local party officials of NRM and FDC confirmed that they do not keep records of their transactions. Parties will therefore not be able to produce reliable nationwide financial reports because of the lack of accurate data from the constituencies.

Presidential candidates are obliged to submit a report "disclosing all assistance obtained by the candidate from any source"⁵⁹ to the EC within 30 days of the election. When asked by the EU EOM to share the 2011 election reports, the EC first refused to share them and later informed the EU EOM that the 2011 reports were never submitted, but then again said that they were submitted.

Three weeks after the 2016 election and less than two weeks before the deadline, the EC was unable to answer whether candidates will need to submit their reports or not, claiming that state funding of presidential campaigns was abolished in 2015 and contestants are no longer spending public money.

According to the EC, the law could be interpreted such that candidates should only be accountable to their donors, and not to the government or to the public.

The EC was unable to answer whether and how it reviews the reports, whether it has them or not, whether it ever found any false reporting, and whether it ever issued any decision after reviewing

⁵⁸ Section 12(4) of the Political Parties and Organization Act.

⁵⁹ Section 22 (7)(B)Presidential Elections Act

the reports. The EC is supposed to publicly disclose financial reports, which is in accordance with well-established international best practices, though this is not followed.

Financing and reporting of independent parliamentary candidates is not regulated. Also, there is no requirement for candidates or parties to open dedicated campaign bank accounts, no requirement for disclosure of loans, and no legal provision prohibiting or limiting cash donations.

Electoral legislation provides for sanctions in case of violations of campaign finance rules, but they are low and not enforced.

Legislation also foresees deregistration of parties that do not submit financial statements.

Individuals can be sanctioned with the same fines, but they also face prison sentences up to five years. However, laws are not enforced and no parties were sanctioned in recent years. None of the interlocutors recalls an individual ever being sanctioned for a campaign finance violation.

The lack of information available for public scrutiny, the absence of regulations on independent candidates' financing, the lack of timely reporting after the parliamentary election, and the lack of requirement for all transactions to be done through a designated bank account, all limit transparency and accountability and are not in line with Article 7(3) of the UN Convention Against Corruption.

4.2.4 Corrupt Electoral Commission officials.

The credibility of the Electoral Commission has also been affected by some its staff who receive financial consideration from some candidates who wish to in the election. The officials after receiving bribes then allow various malpractices to be conducted in an election under their watch.

The High Court of Uganda in the case of Nabukenya Vs Nakate & Electoral Commission acknowledged that the Electoral Commission officials at the polling station had been bribed to allow multiple voting by Nakate's supporters as well as to allow the local council chairperson 1 to vote on behalf of those absent.

4.2.5 Voting Time Delays

The law provides that voting shall commence at 7 O'clock in the morning up to 5 pm in the evening⁶⁰. However the Electoral Commission still falls short of the above provision. During the 2016 General Elections, there were reports of voting time delays caused by a couple of reasons such late arrival of election materials, late arrival of polling officials.

Polling stations were not prepared the required two days in advance. In many observed cases, they were not even prepared the evening before. There was no signage to indicate the existence of a polling station. Much of the preparation of the polling area appeared to take place the morning of Election Day. In some cases, voters and party agents were present at polling stations long before polling officials, who had apparently had to travel to district centers to pick up the election materials. In Kampala, however, waiting voters often became agitated as the hours passed by with no ballot papers or other key materials delivered. The army was visible, both in convoys and on foot patrol, as the day progressed.

In Jinja , voters turned out early in large numbers but at the polling station observed, voting did not start until three hours after the scheduled opening time. The secrecy of the ballot was not sufficiently provided for. Standard procedures were not always consistently applied at some of the polling stations observed. At the closing, there was inadequate lighting. However, this did not appear to disrupt the process although it may have contributed to slowing it down.⁶¹

4.2.6 Electoral Offences

The EC by law does not enjoy a referral power to submit cases for prosecution and reportedly the effective sanctioning of relevant offences is very low. The legal framework presents a long list of 49 election offences, scattered throughout different legal instruments. Numerous offences are related to the campaign period and election day. The prosecution of those offences requires the consent of the Director of Public Prosecution. The prosecution must commence within three months of the commission of the offence. The sanctioning of these offences ranges from monetary fines to up to 10 years imprisonment.

⁶⁰ Section 30 Parliamentary Elections Act

⁶¹ Common Wealth, Uganda Election Report 2016

Some offences, such as defacing posters and disrupting candidates' meetings, should be downgraded to electoral violations and simply sanctioned with a warning or commensurate fine. A specific source of concern is the offence for observers acting without accreditation and not submitting a report within six months of the declaration of results that, though not implemented, could potentially be punished with imprisonment of up to six months and/or a fine of 300,000UGX.⁶²

Voter Bribery.

During the campaigns of the 2016 General Elections there were instances of voter bribery. The candidates contesting who issue out money in return for a political vote. Other items used in the bribery included salt, sugar, clothes and hoes.

Prior to the Elections in 2016, the opposition raised concern about distribution of hand held hoes to people in rural areas during campaign time by the president. Much as the incumbent President stated that he was fulfilling a Presidential pledge, this was viewed as an act to persuade the voters to vote for him in forthcoming elections.

The courts of Law have held in various cases that there are cases of voter bribery and consequently nullified the election especially for parliamentary Elections.

In the case of **Nabukenya Vs Nakate** and Another, the High Court held that the 1st respondent had committed various acts of bribery and the results for Luwero Parliamentary woman seat were annulled. The 1st respondent had issued shs. 100,000 to voters at Vumba Village.

Although voter bribery is prohibited by the PEA and PPEA, it is widespread in districts with greater poverty. Voters expect to receive money, food, refreshments, or other goods at campaign events.

While both giving and receiving bribes is illegal, distribution of food, refreshments and T-shirts does not constitute bribery. In the first months of the campaign, cash at campaign events was distributed, usually in the form of reimbursement for participants' transportation or other costs. It

⁶² Section 16,28,29 Electoral Commission Act

was also done through intermediaries. A party representative or a donor would, for example, leave the money at the gas station for voters to have free fuel. Wealthy supporters of the ruling party also showed support by giving large sums of cash to local religious or community leaders at campaign events. According to NRM representatives, this should be considered a donation in-kind rather than a bribe, as this is donors' way of showing support, helping the local community and enabling voters to attend campaign events. During the campaign's final stage, however, the ruling party's representatives started distributing cash throughout the country without camouflaging it as a reimbursement.

Two weeks before the election of 2016, the EU Election Observer Mission observed that NRM parliamentary candidates and mobilisers gathered in Kampala receiving so-called "facilitation" cash. According to the EU Election Observer Mission interlocutors from the NRM, each of the parliamentary candidates received 20 million UGX, local elections candidates received 15 million UGX each, and mobilisers received various amounts.⁶³

In the following days, the EU Election Observer Mission observed cash being distributed to voters in locations across the country. In some rural areas, voters received as little as 500 or 1,000 UG shillings each. Authorities do not take necessary steps to investigate numerous well-documented distributions of cash and goods to voters.⁶⁴

In a study, published by Anti-Corruption Coalition Uganda, more than a quarter of parliamentarians stated that it is 'understandable,' although wrong, to offer money to voters in return for their votes, and some even said it is 'not wrong at all.'

⁶³ Media published copies of "NRM National Campaign Taskforce Payment Vouchers" with amounts as high as 25 million UGX for "Daily allowance for the day". UGo News. NRM Mobilizer Gets Astronomical Ushs25m Daily Allowance <http://news.ugo.co.ug/nrm-mobilizer-gets-astronomical-ushs25m-daily-allowance/> (9 February 2016)

⁶⁴ EU 2016 Uganda Election Report

Ballot stuffing

This is an act of inserting pre ticked ballot papers in favour of a certain candidate in election ballot boxes. The Human rights Watch once again reported incidents of ballot stuffing and multiple voting in Uganda.⁶⁵

NBS Television on 19th Feb 2016 broadcasted scenes of ballot stuffing in Kasese District where the area Member of Parliament Winnie Kizza with her supporters had turned rowdy after a vehicle belonging to Electoral Commission had been got with stuffed ballot boxes.

Electoral Violence and Intimidation

Every candidate in an election raises crowds and with these crowds violence erupts due to conflict of popularity and public facilities such as campaign grounds. Rival camps usually clash by beating one another and throwing stones at each other. This as witnessed recently in 2016 Election campaigns in Ntungamo District when the supporters of the NRM presidential Candidate attacked Amama Mbabazi's campaign procession but they beaten with sticks by Amama's security as reported in the media.⁶⁶

The 19th Uganda Human Rights Commission Report stated that UHRC continued to receive reports of clashes between supporters of rival candidates in which several people were reported to have been injured and in some cases arrested. Cases in point were reported in Mitooma when on 21st January, 2016 a yellow vehicle bearing posters of incumbent President Museveni and Rtd. Major General Kahinda Otafiire caused an accident allegedly in a fracas in which supporters of other candidates attacked it and chaos ensued. There were also reports of clashes by supporters of rival parliamentary candidates in Ibanda North, during which property of one of the candidates was reportedly destroyed, leading to some arrests by police. In Rwampara, there were reports of an independent MP candidate who attempted to open an office in a stronghold of his rival and was assaulted and his vehicle damaged.⁶⁷

⁶⁵ www.hrw.org/news/2006/03/01/uganda-election-irregularities

⁶⁶ The Daily Monitor 12th December 2014 pg 2

⁶⁷ UHRC Annual Report 2016 pg 140

The period before elections saw the emergence of some militia groups affiliated to individuals or parties which the sponsors attempted to justify. UHRC noted with concern the emergence of such groups under the pretext of guarding their sponsors' votes; and particularly their potential to turn into instruments of hooliganism and public disorder. The claims about their necessity ranged from the need to mobilise votes for the preferred candidates; to countering threats of attack and harassment from national security agents and other groups; and protecting the votes.

According to the HURINET (U) report: *Security agencies and the electoral process in Uganda: A preliminary report for the 2015/2016 General Elections*: "The continued existence of militia/vigilante groups was a threat to the peacefulness of 2016 elections..." The concerns raised over such militia were that they always emerged during elections and the police had not done enough to investigate them; and that there seemed to be no one concerned about the effect these groups were likely to have on the electoral process and its legitimacy. HURINET identified a number of these groups as NRM High Command, B13, TJ Solida, NRM 24/7 Youth Group, the Unemployed Youth, Kalangala Action Plan, The Red Belts, The Poor Youth, Forty-Five and Funguwa Barabara, Buikwe North NRM Brigade, Youth No Sleep and 44U.

Another controversial group over which the EC and the Uganda Police Force raised a red flag, was the Power 10 (P10) which the FDC political party launched in November 2015 in Rukungiri when their presidential candidate unveiled it as a network that would be used to bring supporters together to fight for their power. The P10 was a grouping of 10 people per village, which the party said would mobilise support for its candidate and protect votes on Election Day. UHRC continued to urge political leaders to urgently disband the militias belonging to their political organisations as these were illegal groups exposing the country to hooliganism and lawlessness. Political leaders were asked to instead mobilize the youth to apply their energies into more useful activities such as income generating ventures.⁶⁸

⁶⁸ HURINET (U) report: *Security agencies and the electoral process in Uganda: A preliminary report for the 2015/2016 General Elections*

Electoral Process interference by State Security Agencies

During Electoral Process in Uganda, the Uganda Police and military personnel should act under the instructions of the electoral Commission but during the 2016 General Elections, we witnessed instances of Electoral process guidelines being passed by the Uganda Police Force.

The perception of some sections of the public was that the Police had hijacked the role of the EC by its constant presence during EC periodic press briefings and the fact that the IGP in some instances took on roles that would have otherwise been for the EC during election management. Cases in point were the letters the IGP wrote to Secretary Generals of political parties among others.

Following the 2001 Presidential Elections,, the New York Times described the election as flawed because it was marred by violence, intimidation and extensive cheating.⁶⁹

In the run-up to this election, Human Rights Watch, one of the leading international human rights organizations, conducted an assessment, which revealed that the electoral campaign period was marred by reported cases of violence and arbitrary arrests by army soldiers, military intelligence officers, the police, the Presidential Protection Unit and local defense units trained and armed by the government. The report also raised concerns pertaining to the harassment of journalists and news editors and the inequality in media access by the different presidential candidates. Additionally, the electoral process was characterized by irregularities in the registration of voters, concerns over the tendering process for the ballot papers and failure by the Electoral Commission to act on these issues. The report also criticized the “movement” or “no party” system of government, in which individual candidates would run for elections based on their personal merit and not political party affiliation. Today, one can argue that only one of these challenges has to a large extent been erased, namely the issue concerning the “no party” system as a 2005 referendum introduced the multi-party political system. The rest of the highlighted challenges remain pronounced in Uganda’s electoral process.⁷⁰

⁶⁹ York Times, Flawed Election in Uganda, 16/03/2001, Found at <http://www.nytimes.com/2001/03/16/opinion/flawed-election-in-uganda.html>

⁷⁰ Human Rights Watch Uganda Election 2011 pre Report

CHAPTER FIVE

RECOMMENDATION AND CONCLUSION

5.0 Observations

Uganda has had six general elections since independence in 1962. Each of the elections has been a learning experience, revealing areas that require strengthening in Uganda's electoral system. Budgeting and funding of election activities; voter and civic education; party registration and financing; electoral disputes resolution; electoral boundary demarcation; and election management body institutional strengthening have consistently come out as key areas that call for review in light of the electoral dynamics, not just in Uganda but in many other democratic nations.

While improving the integrity of elections requires reforms in many areas, the Electoral Commission, as the cornerstone of the electoral process, requires specific and priority attention. There is a growing consensus on the urgent need to reconstitute the Electoral Commission, secure its independence and provide it with increased powers in such a manner that shall address the trust deficit Ugandans have towards the electoral process.

The widely held views among the public and stakeholders with regard to the questionable independence and credibility of the Electoral Commission presents undesirable ramifications including continued disengagement of voters from electoral processes, search for undemocratic alternatives; and potential for rejection of election results by losers with prospect of violence. All these point to the crucial need to remedy the enlarging the trust deficit between the electorate and electoral processes in Uganda. It is critical that Uganda learns from experiences elsewhere in Africa and aligns itself to the best practices on the continent.

I have observed that all the Elections organized by the current Legal framework of the Electoral Commission have been challenged in courts of Law especially the Presidential Elections and the

Courts of Law especially the Supreme Court has stated that the Elections were not conducted in accordance with the electoral laws.⁷¹

5.1 Recommendations.

In regard to appointment of Electoral Commission members, a clear set of standards should be set up to guide the appointment process of the members of the Electoral Commission. Currently the appointment process lacks sufficient stakeholder participation since the task is only carried out by the President and parliament.

I shall briefly highlight the appointment qualifications and process in other countries and draw a final recommendation to our Legal framework.

In South Africa the Independent Electoral Commission is composed of five members, one of whom must be a judge. A member must not have a high party political profile. Members are appointed by the President on the recommendation

of the National Assembly, following nominations by the National Assembly Interparty Committee, which examines a list of at least eight nominations submitted by a panel consisting of the President of the Constitutional Court and representatives of the Human Rights Commission, the Commission on Gender Equality and the Public Prosecutor. The complexity of this appointment process, to a certain extent, ensures that credible candidates that inspire confidence in the electoral process are selected.

In the Tanzania, The proposed draft Constitution for Tanzania (2013) is poised to re-examine the state of the Union between Tanganyika and Zanzibar. The people of Tanzania are optimistic that the process is bound to resolve the fifty year strains in respect to the relationship between Tanganyika and Zanzibar. Tanzanians are optimistic that this process will strengthen the confederacy union between mainland and Zanzibar. Firstly and most importantly, this process is bound to permanently draw clear parameters and allay the longstanding historical grumblings between the sovereign mainland and sovereign Zanzibar.

⁷¹Col . Dr. Kizza Besigye V Electoral Commission, Yoweri Kaguta Museveni (Electoral petition no.1 2006)

Secondly, Tanzania has undertaken extensive review of its electoral system. Tanzania has for many decades operated an electoral structure that was constructed under a single party system. The President has always held the power to appoint the Chairperson, the Vice-Chairperson and five other commissioners (a total of 7 commissioners) to the Commission; in accordance with article 74 of the 1977 Constitution of the United Republic of Tanzania. Although the criterion made it incumbent upon the President to appoint judges of the High Court or the Court of Appeal of Tanzania, there weren't any stringent checks and balances to guarantee non-subjectivity in the appointment process. The new Constitution on the other hand proposes comprehensive and holistic electoral reforms as opposed to the piecemeal reviews that the Tanzanian government has undertaken over the last years.

Within the context of the new draft Constitution, a Tanzanian citizen who aspires to become member of the electoral body (both Commissioners and senior technical staff) will be required to file their applications to the Appointing Committee which will be chaired by the Chief Justice.

The Committee made up of six (6) members including: the Speaker of the Union Parliament, speakers from the Tanzania Mainland Parliament and the Zanzibar Parliament as well as the Chair of the Human Rights Commission will scrutinize applications, interview candidates, select names of qualifying candidates and forward the names to the President for appointment. The appointments of candidates will be dependent on their being successfully vetted by Parliament.

The electoral laws are also being amended to secure sustainable funding for the National Election Commission (NEC) to resolve the funding issues that the Commission has previously faced. It is a wide belief that because the funding of the Commission has previously relied on the will of the government, such a financing mechanism could easily interfere with both the Commission's capacity to dispense of its duties in a timely manner but also render it susceptible to bureaucratic manipulation. The proposed framework has also reviewed the Election Expenses Act with a view of constricting the use of money in clandestine ways to influence voters during elections.

The draft constitution has revisited the concept of representation in view of gender considerations. The special seats for women in Parliament are to be abolished. Each electoral

district will have to vote for both a male and female representative. This in essence will make Tanzania one of the first African countries to adopt the 50-50 representation of women in Parliament.

Finally, the new framework also provides for the use of the biometric electoral system. Attendant laws have been proposed to guarantee a smooth transition from a manual voting system to digital voting. Tanzania's NEC is optimistic that the new system will guarantee voting security and boost confidence in the accuracy of the election results.

Electoral reforms in Tanzania reflect a total overhaul in the electoral system that was majorly a construct of the 1977 one-party system Constitution from which Tanzania has now moved away. The reforms mirror Tanzania's commitment to construct a democratic system based on present-day good political practices.

In Kenya the reform of the Kenyan electoral system was a prominent feature of the 2010 Kenyan Constitution. This was prompted by the 2007/8 electoral backlash that revealed the urgent need to redeem the independence, credibility and capacity of the Kenyan electoral management body to manage and deliver; credible, free and fair elections that will earn the confidence of the electorate. Electoral reforms in the 2010 Kenyan constitution responded to the lack of any substantial electoral law to govern polls as well as the previously inexistent legal framework for the appointment of electoral commissioners, which had given lee way to Presidents to personally appoint the electoral management body commissioners. The reforms were undertaken in a highly politically divisive environment in which electoral discourse was founded along ethnic lines.

The new constitutional framework reviewed the appointment process of the Commissioners and entrenched a competitive, merit-based open recruitment procedure for all commissioners of the Independent Elections and Boundaries Commission (IEBC). The recruitment process is handled by a highly specialized selection panel which invites applications from qualified individuals (clear qualifications outlined), conducts public interviews, shortlists three names for the post of Chairperson of the Commission and thirteen for the Commissioners which it recommends to the President. The President selects a chairperson and eight Commissioners from the list. The nine Commissioners are thereafter presented to Parliament for subsequent vetting and approval.

Beyond the competitive appointment process, the Constitution guarantees tenure for the Commissioners and the Commission is not subject to direction or control from any other government or non-government organ.

In reference to the above Electoral Processes and my personal observations, I would make the following recommendations to the Ugandan Legal Framework of the Electoral Commission.

The Following conditions must be included under the Constitution in order for one to be appointed a member of the Electoral Commission⁷²:

- Persons who have held political party positions or are closely associated with the appointing authority and incumbent political structures should not be eligible for appointment to the commission.
- Every Commissioner appointed must have a minimum academic qualification of a degree,
- At least a 10 year track record in management of public affairs and also be a person of high repute and integrity

The Public Service Commission should also be involved in the appointment process by conducting a public call for application, the initial interviews with members of the commission and a public hearing on the short-listed candidates. Public Service Commission should select three individuals for chairperson and 10 others for members of the Commission.

The names of all the successful candidates should be forwarded to the President, who must appoint and forward a list to Parliament for approval.

Recommendations In relation to the Powers of the Commission

Provisions granting the EC power to manage and regulate aspects of elections such as security, candidates/political parties' coverage in the media, conduct, use of money/resources in campaigns need to be reviewed with a view of strengthening them. As they are now, the provisions are implied, generic and could be interpreted to be of an auxiliary nature.

⁷² Article 60 Constitution of Uganda 1995

The Constitution that mandates the EC to ensure that regular, free and fair elections are held⁷³.

However, this article remains too inexplicit and silent on the powers which the EC should invoke to fulfill this function and thus guarantee free and fair elections.

The same could be construed from the Electoral Commission Act, cap 140, that grants powers to the Commission to regulate critical electoral processes such as candidates' campaign activities. Because the powers of the EC are not of a specific nature, there have been various unwarranted instances where the Commission has abdicated its powers over issues that are critical to ensure that regular, free and fair elections are held⁴. Despite its broad constitutional authority, the EC has entirely deferred to the Media and Broadcasting Councils (in respect to the regulation of media during elections) and the Uganda Police Force (in regard to election security matters).

Because the EC has narrowly interpreted its mandate to the organization of elections, which is specified in law, while refraining from taking action on the electoral environment as mentioned as one of its functions in the Constitution, it is important that the EC should be granted more specific legal powers in the following areas which touch directly on the electoral environment:

1 Control/monitoring of campaign spending;

2 Regulation of media during campaigns;

3 Management of electoral security;

4 Enforcement of the political parties and organization's code of conduct; and

5 Resolution of electoral disputes.

The manner in which the listed areas are managed could have a bearing on whether an election is conceded as free and fair.

The Kenyan IEBC Act, 2011 is on the other hand more explicit and provides express authority to the Commission. For example the Act, inter alia, gives IEBC powers to order the arrest and

⁷³ Article 61 Constitution of Uganda 1995

BIBLIOGRAPHY

Citizens Compact on Free and Fair Elections 2014

Geist Judith 1994 Political significance of the constituent Assembly elections' in Hansen H.B and in Twaddle. The Politics of Constitutional making in Uganda, Kampala Fountain Publishers
Sowing the mustard Seed, Macmillan Publishers 1998

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

Kiddu Makubuya "The Law and Practice of elections in Uganda prospects for the future" (1996) (unpublished)

Constitutional and Political History of Uganda, 2002, Centenary Publishing House Ltd by Professor Kanyeihamba G.W

Cases Used

Col . Dr. Kizza Besigye V Electoral Commission, Yoweri Kaguta Museveni (Electoral petition no.1 2011)

Col . Dr. Kizza Besigye V Electoral Commission, Yoweri Kaguta Museveni (Electoral petition no.1 2006)

Reports Used

Electoral Reforms in Uganda by Konrad Adenauer Stiftung.
CCEDU booklet.

Uganda Human Rights Commission Report on 2016 Elections.
Common Wealth Report On Ugandan Elections 2016