

**EFFECTIVENESS OF THE CURRENT ELECTORAL PROCESS SYSTEM IN
PROMOTING DEMOCRACY IN UGANDA**

BY

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DECLARATION

I, Nankunda Rosemary, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation.

Signed this^{30th} day Of September 2013

Signature

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APPROVAL

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DEDICATION

This work is dedicated to my family for their constant love and support, especially my Dad, mother, brother, sisters and relatives.

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First and foremost, I thank the Almighty God for having brought me this far.

My greatest appreciation goes to Mr. Mundaane Robert For his valuable, incisive and guided supervision with which this study was made possible and interesting. To my lecturers, the entire staff of Faculty of Law especially Mr. Ssewaya and Kyaze and all my classmates especially Dinah, Hadijjah, Catherine, Frank, and the rest. Finally, I should mention my parents for without them I would probably have never found myself at this point. They have always provided me with unconditional love and support since I was young. And they have always been willing to make sacrifices so that I could achieve my goals. I am enormously thankful for this. I am at least as proud of them as they are of me.

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human People's Rights
APRM	African Peer Review Mechanism
AU	African Union
CA	Constituent Assembly
CMI	Christian Michelsen Institute
CRC	Constitutional Review Commission
DPGI	Democracy and Political Governance Initiative
DWR	District Women Representatives
EC	Electoral Commission
ERTC	Electoral Reform Task Team
FDD	Forum for Democracy and Development
FPTP	First-Past-The-Post
HRW	Human Rights Watch
HSIC	Heads of State and Government Implementation Committee
ICCPR	International Covenant on Civil and Political Rights
LC	Local Council
MAP	Millennium Partnership for the African Recovery Programme
MMD	Movement for Multiparty Democracy
NAI	New African Initiative
NCC	National Citizens Coalition
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
NORDEM	Norwegian Institute of Human Rights
NOTU	National Organization of Trade Unions

NRA	National Resistance Army
NRM	National Resistance Movement
NRM-O	National Resistance Movement Organization
NUDIPU	National Union of Disabled People of Uganda
OAU	Organization of African Unity
PEA 2000	Presidential Elections Act
PEA	2001 Parliamentary Elections Act
PPOA	Political Parties and Organizations Act
SIGR	Special interests Groups Representatives
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNHCHR	United Nations High Commission for Human Rights
UNIP	United National Independence Party
UPDF	Uganda Peoples Defence Force
UPIMAC	Uganda Project Implementation
ZNBC	Zambia National Broad Casting Corporation

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ABSTRACT

Democracy means people and rule, in other words people have a say in who to govern them and how they can be governed.

Democracy is widely considered to be necessary and important tool. If a country is to develop, politically, socially and economically, and the right to participate in the political and economic life of ones state is guaranteed in most African Constitutions as well as in regional. Thus the value democracy lies in the hands of the people and heir ability to fully and freely participate in the political life of their countries as well as Uganda.

The analysis of the Uganda democratization process has been progressed and hindered by different factors and this includes ethnical conflicts outside interference weak institutions and weak laws. This is the reason why it is important to engage in the process of developing and refining the electoral process, and also understanding what is needed in order to have “a free and fair” election towards consolidating democracy.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The word democracy is derived from two Greek words DEMO and KRATIA which means people and rule¹. These two words joined together literally means people rule. In order words, people have a say in who to govern them and how they can be governed. The inevitable pillars of democracy comprise the concepts and doctrines of human rights, accountability, transparency, fair distribution of resources and free and fair elections, balance and sustainable development and gender sensitivity in the conduct of governance². Democracy is widely considered to be a necessary and important tool if a country is to develop politically, socially and economically. This is why Lijphart³ referred to “the electoral system as the most fundamental element of representative democracy. The right to participate in the political and economic life of one’s state is guaranteed in most African constitutions as well as in regional and international human rights instruments. The foundation for ‘election rights’ is to be found in **article 21 of the Universal Declaration of Human Rights (UDHR)**. This provision has been reinforced by article 25 of the International Covenant on Civil and Political Rights (ICCPR), which states that: Every citizen shall have the right and opportunity.....(a) to take part in the conduct of public affairs, directly or through freely chosen representatives, (b) to vote and to be elected at genuine periodic elections. Uganda like many African countries inherited an exploitative predatory state infrastructure set up by the colonialists. Uganda’s aspiration for democratic governance has been dogged by its post-colonial history. Forty seven years since the

¹ Schmitter pc and TL Karl 1991. what Democracy is..... And is not. Journal of Democracy 2(3) 75-88

² Przeworski, Adam, Michael E. Alvarez, Jos’e Antonio Cheibub & Fernando Limongi. 2000. Democracy and Development: Political Institutions And Material Well – Being in the World, 1950-1990. New York: Cambridge University Press.

³ Lijphart (1998,

country gained independence from the British colonial masters, Ugandans have suffered civil strife, political instability and authoritarianism, resulting in political misrule, economic and social hardships. While the country's immediate post independence regime was a vibrant multiparty system, it soon collapsed into a one-party state under Apollo Milton Obote from 1967. This was followed by Idi Amin's military coup in 1971.

Amin's nine years of brutal dictatorship (1971-79) was sustained by military governors in almost all state positions. The order of the day was suppression of free political expression, brutal murder of suspected opponents and instilling fear amongst the population. The expulsion of Asian business people in 1972, led to economic collapse and international isolation of the regime. Amin's regime was forced out of power in 1979 by combined armed force of Uganda exiles with the backing of the Tanzania Peoples Defence Forces. The overthrow of Idi Amin however was a beginning of unstable Regimes. Between April 1979 and December 1980, three governments had come and gone.

The 1980 controversial elections, organized on the multiparty basis, failed to produce a clear winner, sparking off another wave of instability and civil strife. Between 1981 and 1986, the country suffered a guerilla war fought by a National Resistance Army (NRA), spearheaded by Yoweri Museveni. The guerilla war party failed Obote's second Uganda People's Congress (UPC) government efforts to return the country to normalcy.

The capture of state power by the National Resistance Army / Movement (NRA/NRM) in 1986 ushered in the 'no party system' or Movement regime, which claimed in its Ten Point Programme, point No1 as "**restoration of democracy**". Emphasis however, was "participatory democracy" based on "individual merit" in elections and "non-parties politics". In line with those principles, the NRM government suspended activities of political parties. Indeed, elections held in 1989,

1996 and 2001 under the Movement system were organized under the concept of “individual merit”. The 1995 Constitution (Article 269) provided that candidates for all elections were prohibited from seeking sponsorship of a political party, opening branches, displaying party colours, or in any way, attempting to use the facilities and slogans of a political party⁴. In other words, the legal framework under the NRM has tended to undermine the work and growth of political parties. The NRM on its part used the suspension of activities of parties to entrench itself politically. Moreover, the Constitution required that the change of the political system had to go through a referendum. Referenda on political systems took place in 2000 and 2005. The one of 2000 re-affirmed the Movement system while the one of the 2005 changed the system to multipartyism.

The following research therefore is based on the realization that the pursuit of electoral democracy requires that election management be undertaken by competent, independent and autonomous electoral bodies, because elections are an integral part of the democratization process. Africa requires committed leadership borne out of free, fair, open and democratic electoral processes that guarantee fairness, inclusiveness and accountability of the elected to the electorate.

1.2 STATEMENT OF THE RESEARCH PROBLEM

Democracy has remained elusive in Uganda in spite of elections being conducted at regular intervals. The question is: Does electioneering necessarily produce democratic governance? Or does it create conditions and norms necessary for institutionalization of democratic rule? In particular, does the existence of multiparty politics translate into democratic governance? The real problem is to develop a good electoral system and practices. Secondly, there is a need to safeguard a good electoral system from manipulation by selfish leaders and that conforms to universally accept democratic norms and standards. Despite a remarkable turnaround after a decade of dictatorship

⁴ Oloka-Onyango, J ‘New Wine or New Bottles? Movement Politics and One-partyism in Uganda’ in Magaju, j. and Oloka-Onyango, J. (eds) (2000) ‘No-Party Democracy in Uganda: Myths and Realities; 41

and several years of misrule, and despite precious gains in the democratization process, Uganda can not take pride in any meaningful peaceful transfer of power from one president to another.

1.3 RELEVANCE OF THE STUDY

This research is premised on the fact that backbone of democracy lies in good Electoral practices that guarantee basic democratic tenets. Electoral practices that conform to the Universal Declaration on Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the African Charter on Human and People's Rights (African Charter); and indeed to national constitutions. A competitive election is a defining characteristic of democracy and as **Adebayo Adedeji**⁵ observes: "Africa's persistent failure to decolonize its political economy by confronting the past and making necessary changes has continued to impede its much-needed socio-economic and political transformation". Most African countries, Uganda included, have maintained electoral practices that their colonial masters have otherwise since abandoned⁶ and which do not represent the wishes and aspirations of the people today. This research provides an overview of previously held General elections under the colonial electoral system and concludes that the outcome of these elections provide a good basis for improving future elections in Uganda. There is still a great deal that Uganda needs to get rid of and a number of electoral reforms are urgently needed, most especially in regards to electoral institutions and the governing laws because voter preferences do not exist in a vacuum, instead, they exist in an institutional context that is shaped to a large extent by a country's electoral system, the most important institution being the Electoral Commission. Worldwide there exist various electoral practices to which Uganda may look Up to. Practices that would

⁵ Adedeji, A, 'From the Lagos Plan of Action to the New Partnership for Africa's Development and from the Final Act of the Lagos Plan to the Constitutive Act: Wither Africa?' in Anyang' Nyong'o, P et al (eds) (2002) NEPAD, A New Path? Nairobi: Heinrick Boll Foundation.

⁶ Kanyeihamba, G.W (2002) *Constitutional and Political History of Uganda from 1894 to the Present* Kampala: Centenary Publishing House Limited.

reassure and sustain democracy. This research therefore is a Ugandan case study of the interaction between the current electro process system, its governing laws and democracy and respect for the rule of law.

1.4 RESEARCH QUESTIONS

The main research questions of this paper are;

1. How is the current electro process system in Uganda set up?
2. How independent is the Electoral Commission of Uganda?
3. To what extent have elections been free and fair?
4. What reforms are needed to enhance the effectiveness of the Electoral Commission?

1.5 HYPOTHESIS

The legal framework does not favor a free and democratic Ugandan society and respect for the rule of law.

1.6 LIMITATIONS OF THE STUDY

The study is limited to electoral practices in Uganda, depicting the need for reforms as a core foundation for what democracy entails. The study is further restricted to electoral processes in 2001 and 2006 General elections and what is it that the government has done to improve the electoral processes. The study revolves around political pluralism as a right, the right to register as a voter and the right to vote. The study is tailored to show that meaningful participation and representation can only be achieved where there is popularly guaranteed participation.

1.7 LITERATURE REVIEW

Elections in Africa and the world over have attracted considerable literature. For instance, Lise Rakner and Lars Svasand⁷ examine the electoral structures and the nature of African parties and party systems, using the 2001 elections in Zambia as a

⁷ Rakner, L and Svasand, L 'Multiparty elections in africa's new democracies' CMI Reports 2002

case study. They state that it is impossible to conceive of democracy without elections, but that in Africa however, it is possible to have elections without democracy. Citizens are free to choose their leaders but leaders have found ways to win electoral mandates without opening up political space. Khabele Matlosa⁸ also looks at electoral systems in Africa. He points out that the value of democracy is either enhanced or reduced depending on the nature of the electoral system. The value of democracy lies in the hands of the people and their ability to fully and freely participate in the political life of their countries. Sabati Makara⁹ also looks at elections, their legal and institutional framework in Uganda between 1996 and the 2001 elections. He observes that NRM has placed itself in the organs of the state with the intent to hoodwink Ugandans that it is working towards constitutionalism and democratization. He opines that the NRM has found it expedient to use Resistance Councils, (Renamed Local Councils) as state institutions, which at the same time are recognized as movement organs. According to the movement system any political contestation has to be done under the movement. This to many is a semblance of the political party and it therefore disadvantages others who by law are precluded from going about political organization.

The Norwegian institute of Human Rights and the Christian Michelsen institute examined the 2001 elections in Uganda, paying much attention to the pre-elections, election and post election periods, and made recommendations. Michael Cowen and Liisa Laakso¹⁰ look at electoral process in Africa. They urge that the actual form and content of the electoral process is one aspect by which one can gauge the extent to which Liberal democracy is realized. There are numerous literature review about this topic but the most important agenda remains as to whether the government of Uganda has taken a deliberate move to affect changes to the undesirable electoral process

⁸ Matlosa, K 'Review of Electoral Systems and Democratization in Africa' in Electoral Task Team Review Roundtable 9-10 September 2002, 'Electoral Models for South Africa: Reflections and Options; Seminar Report, May 2003, 47.

⁹ Makara, S. Tukahebwa, G.B and Byarugaba, F.E (eds) (2003) 'Voting democracy in Uganda: Issues in Recent Elections, 1996-2001;

¹⁰ Cowen M. and Laakaso L. et al (eds) (2002). 'Multi-Party Election in Africa; (2002)

since the 2001 election. This agenda remains at the focal point of this research throughout my discussion.

1.8 METHODOLOGY

The study will employ a non-empirical method of research. Therefore, the study will use scholarly materials such as books, journals, articles, magazines, law reports and legal instruments. The study has also largely employed internet sources and the authenticity of the sources has also been noted and greatly acknowledged.

1.9 OVERVIEW OF THE CHAPTERS

The study will be divided in five chapters. Chapter one provides background to the study, identifies the problems to be tackled with, summarizes the relevant literature and introduces the relevance, hypothesis and methodology of the study. Chapter two Analyses the legal and electoral frame work in Uganda. Chapter three examines the independence of the Electoral Commission of Uganda. Chapter four gives General overview of elections in Uganda and chapter five provides critical appraisal, conclusion and recommendations.

CHAPTER TWO

The Legal and electoral framework Uganda

2.1 Introduction

The electoral system of Uganda was inherited from Britain at independence in 1962. The 2001 elections were only the second since the end of the two-decade turbulences in 1986 that rocked the country¹¹. This chapter analyses the electoral system under which these elections were conducted. It looks at the existing law, regulations and institutions put in place for the proper management of elections and the main political prayers. The discussion would assist in ascertaining whether the current electoral process confirm the universally accepted the democratic norms and standards.

2.2 The legal framework

The laws governing elections in Uganda include the **1995 Constitution**, the **Presidential Elections Act of 2000 (PEA 2000)**, the **Parliamentary Elections Act of 2001 (PEA 2001)**, the **Electoral Commission Act** and various regulations made there under. Electoral Institution relevant to this discussion include the **Electoral Commission (EC)** and the **Judiciary**.

2.3 The Constitution making Process

The constitution making process had a direct bearing on the 2001 elections. In 1993, Uganda established a Constituency Assembly (CA)¹², through election to the CA was a heated issue for the purpose of reviewing submissions made to the Uganda Constitutional Review Commission (CRC). However, the election of members of the CA raised discontentment. Anyhow, following to the deliberations of the CA, “Ugandans” conceived the 1995 constitution.

¹¹ Kanyeihamba, G. W ‘Constitutional and Political History of Uganda from 1894 to the Present’ (2002),

¹² Kanyeihamba, G. W ‘Constitutional and Political History of Uganda from 1894 to the Present’ (2002),

2.4 The Movement Political System

Pursuant to **Article 69** of the constitution¹³, a referendum was held in 2000 for the purposes of choosing a political system. Political parties were however unable to canvas sufficient support for a multi party political system. Unlike supporters for the Movement Political System (the Movement), other political parties went to the referendum polls empty handed. Uganda who participated in the polls overwhelmingly voted for the Movement under which the 2000 elections were conducted¹⁴. The Constitutional Court nullified the Referendum Act, but the Supreme Court in the case of **Attorney General v. Paul Kawanga Ssemogere and Zachary Olum**¹⁵, while acknowledging the irregularities upheld the referendum law.

Until the promulgation of the 1995 constitution, the National Resistance Movement (NRM) was not properly defined as a political system. Its meaning remained the preserve of its leadership.

Article 70 of the 1995 Constitution now defines the movement thus:

The Movement political system is broad based, inclusive and non-partisan and shall conform to the following:

“to participatory democracy, accountability and transparency, accessibility to all positions of leadership by all citizens and individual merit shall be the basis for election to political offices”.

Hitherto, the NRM had established organizational structures known as Resistance Councils (renamed the Local Councils (LCs))¹⁶. The LCs were inherited by the Movement and today one can hardly draw a line between NRM organs and the Movement Organs.

¹³ The 1995 Constitution of the Republic of Uganda

¹⁴ Obong-Oula, Q. ‘Referendum 2000 on Political Systems in Uganda: Evidence of False Promise’ in Makara

¹⁵ Constitutional Appeal No.3 of 2000

¹⁶ Oloka-Onyango, J. ‘New Wine or New Bottles? Movement Politics and One-partyism in Uganda’ in Mugaju, J and Oloka-Onyango, J. (eds) (200) ‘No-Party Democracy in Uganda: Myths and Realities’

The NRM, which helped to dismantle the dictatorial Chieftainships that exploited the Peasantry since colonial rule¹⁷, had no political organization of its own but could be home to all elections. It is clear that while participatory politics was effective for Local Communities, the further way it got from the village boundaries, the less inclusive it became.

During Parliamentary elections, irrespective of the provisions of Article 269 of the 1995 Constitution, Museveni urged people to vote into Parliament people who would support his Manifesto and the Movement¹⁸ and advised Movement candidates not to compete against each other.

Nabudere has since observed that Kiiza Besigye put the Movement system to test by challenging its democratic pretensions¹⁹. The election was equally a test on the constitutional viability of the system. Today the NRM has transformed itself into **NRM Organization** as opposed to becoming a political party²⁰.

2.5 The Electoral Commission

Article 60 (1) the commission established the EC as an autonomous institution²¹. It is a Seven-member commission appointed by the President who may remove commissioners from office on grounds inter alia, of misbehavior or misconduct and incompetence²².

Article 61 of the Constitution tabulates the functions of the EC²³. Among these are to demarcate constituencies, maintain the voters register on a rolling basis, gather,

¹⁷ Mamdaani, M 'The Politics of Democratic Reform in Contemporary Uganda', (1995) 2 East African Journal of Peace and Human Rights.

¹⁸ Barya, J 'The Significance of the 2001 Parliamentary Elections and the Role of Parliament' A Presentation made at The free Movement (TFM) workshop on "Presidential and Parliamentary Elections 2001" Makerere

¹⁹ Nabudere, D.W 'The Uganda Presidential Elections 2001; a presentation made at the TFM workshop.

²⁰ NRM-O is officially registered as an organization with the Registrar of Companies

²¹ Article 62 1995 Constitution of the Republic of Uganda and section 13 of Electoral Commission Act

²² Article 60 (8) of 1995 Constitution of the Republic of Uganda.

²³ Others are listed under sections 11, 12 &18 of the Electoral Commission Act

collect and announce the election results. The EC is equally responsible for appointing and programming the time and manner of campaigns for candidates and the publication of this information in the Gazette. It is mandatory to forward a copy to each returning officer²⁴.

The EC is Code of Conduct²⁵. The EC has to ensure that the entire electoral process is conducted under conditions of freedom and fairness²⁶.

The government funds EC²⁷. 129 However, the EC may with the prior approval of the minister responsible for finance, receive grants and donations in and outside Uganda.

2.6 Phases of Elections: Presidential and Parliamentary Elections

Here we look at the pre-election, election and election phases of the process.

2.6.1 The pre-election phase

The pre-election phase is decisive and puts to test the independence and capacity of electoral institutions. Voter registration and copulation of voters' registers, eligibility of candidates and the campaigns for both presidential and parliamentary candidates are considered here.

2.6.2 Voter Registration Exercise

All Ugandan above the age of 18 have the right to vote and may register as voters²⁸. The 2001 elections depended on the CA elections register of 1993, which was update shortly before the presidential elections by a tribunal of three LC members²⁹. This process was halted on 30th April 2001³⁰.

²⁴ Section 18 of Electoral Commission Act of 1997 of the Republic of Uganda

²⁵ Section 15 of Electoral Commission Act of 1997 of the Republic of Uganda

²⁶ Section 12 (1) of Electoral Commission Act of 1997 of the Republic of Uganda

²⁷ Section 9(3) of Electoral Commission Act of 1997 of the Republic of Uganda

²⁸ Article 59 of the 1995 Constitution of the Republic of Uganda and Section 19(1) of Electoral Commission Act

²⁹ At least one woman, a chief and an elder Constituted the tribunal

³⁰ Nordem Report I, 12

Thereafter, the registers were sent to the EAC before they were displayed at the District, Sub-County and polling stations during the which period the voter cards could be fetched. Those who did not find their names, or wanted a transfer to another area, filled in forms to be processed by the EC. However the period was too short to effect the necessary collections and the EC failed to satisfactorily update voter registers, to issue voters' cards, to announce the total number of polling stations on time or to distribute polling materials to all polling stations³¹.

The display exercise should, according to section 25 the Electoral Commission Act, 1997 be of not less than 21 days. But for Presidential elections the EC used the special powers given to it in section 38 of the Electoral Commission Act to decide that the display period should only be 3 days³². Elections were held on 12th March and therefore, time was inadequate for EC to make collections to voter's roll. Likewise, the EC a day before Parliamentary elections pursuant to section 38 announced that voters without voters' cards could vote. For both Presidential and Parliamentary elections the EC did not take stock of collected and uncollected cards. This created opportunities for fraud, which were exploited in a number of polling places.

2.6.3 Voter and civic education

The EC has the responsibility to educate the electorate on electoral process.³³ Before the Presidential elections, the EC formulated civic education programme for voters, which had little effect.³⁴ For Parliamentary elections, the EC delegated this responsibility to NGOs under the Uganda project implementation and Management Center (UPIMAC).

Formal responsibility for the programme remained with the EC while practical implementation was left with UPIMAC. All district teams were equipped with a pick-

³¹ Nordem Report 2, 15

³² From 26-28 of February

³³ Article 61(g) of 1995 Constitution of the Republic of Uganda

³⁴ Nordem Report, 17

up vehicle and public announcement system plus materials. The overall result was that voter education was better conducted for Parliamentary elections than for the Presidential elections.

2.7 Election campaigns: Presidential and Parliamentary

Article 29 of the 1995 Constitution guarantees the right of every person to freedom of speech and expression, assembly and association, and to form and join association such as political organizations. These rights however are constrained by Article 269, which prohibits rights of political association. The rights parties freedoms have become academic.

The right to form political parties and other political organization³⁵ is not meaningful if political parties are restricted to having headquarters only. These issues affected the campaign in both elections.

2.7.1 Presidential Campaign

The Presidential Elections Act of 2000 (PEA 2000) regulates Presidential elections. There were a total of six presidential candidates.³⁶ To qualify for election as President one has to be Uganda of not less than 25 years of age and not more than 75 and qualified to be elected as a Member of Parliament³⁷. According to article 80(1) of the 1995 Constitution, a Ugandan citizen who is a registered voter and has completed a minimum former education of Advanced Level or its equivalent, qualifies for election to Parliament.

All candidates received two cars and a sum of 15 million shillings (approx.US\$8.800) to facilitate their respective campaigns³⁸. Candidates were free to raise additional funds “through lawful means”³⁹. Towards the end of campaign period however

³⁵ Article 72(1) of 1995 Constitution of the Republic of Uganda

³⁶ Even though the contest was between Yoweri Kaguta Museveni and Kiiza Besigye

³⁷ Article 102 of 1995 Constitution of the Republic of Uganda

³⁸ Nordem Report 1

³⁹ Section 20 of PEA 2000 prohibits from receiving assistance from any government or organization considered hostile to the government of Uganda

Museven's task force accused Besigye of receiving money from Rwanda, a country deemed hostile by the Ugandan government⁴⁰. Museven had an advantage because he had legal access to government facilities such as transport and security⁴¹. He also had access to resources from the movement as its chairman, while the other candidates were not allowed to solicit support from political parties. Even Besigye from "inside" the movement could not access Movement resources to any considerable degree.

All candidates by law have equal access to state owned media⁴². However, Ugandan television represented the most blatant imbalance, giving Museven more coverage with a positive slant, while Besigye got considerably less⁴³. Besides, Dani Nabudere⁴⁴ has stated that though the candidates had 70 days within which to campaign in all districts, Museven had already campaigned under the guise of state duties using government resources. Museven also used state officials in LCs which are over two million across the country as he is election agents. He had thus canvassed like votes to him self even before elections.

Generally, intimidation and violence marred parts of the campaign, some of which were conducted by government agents. For example, a student at Makerere University believed to be Kiiza Besigye supporter was murdered, and another eight people died when a UPDF soldier rammed into them at Kazinga⁴⁵. The incumbent also threatened not to handle over power if he lost and worked as an inducement to vote him for him for fear of wasting votes by the electorate. This is typical of his response to honourable Omara Atubo in 2002. when Atubo suggested that Uganda risks going the "Madagascar way" if the will of the people is not respected. President Museven retorted:

⁴⁰Nordem Report (1): Funding of candidates

⁴¹Section 21 of PEA 2000 though requires the Minister responsible to present before Parliament facilities under and utilized by the President

⁴²Article 67 (2) of the 1995 Constitution of the Republic of Uganda and Section 22 of PEA 2000

⁴³ Nordem Report (2) 18.

⁴⁴ Nabudere, D.W 'The Uganda Presidential Elections 2001; a presentation made at the TFM workshop, 2

⁴⁵ As above.

“Do not be tempted, we cannot have a situation like Madagascar, we would break you. We are people in suits by but in uniforms by night. We fought a liberation war”⁴⁶

2.7.2 Parliamentary campaign for the directly elected Representatives

The seventh Parliament of Uganda elected in 2001 has a total number of 305 members⁴⁷.

It must be observed at the outset that Presidential Elections affected Parliamentary elections. The Movement being based on individual merit as observed by Barya cannot implement the 305 manifestos of each MP. The Presidents manifesto was an incisive factor in the campaign especially by “Movement candidates”⁴⁸.

The Parliamentary Elections Act of 2001 (PEA 2001) governs Parliamentary elections⁴⁹. Like the Presidential Campaign, the media was open to all candidates, but disproportionate space and time was given to the President and known Movement candidate. The radio was an important vehicle for the campaigns to many candidates throughout the country, the lack of a system of allocating time to different candidates certainly favoured those with resources.

2.7.3 Campaign for Special Interest Groups Representatives (CSIGR)

The campaign for the CSIGR was reported to be less visible than their number and importance implied. The campaigns were conducted at respective Electoral Colleges after candidates had been nominated. Reports are to the effect that both the campaign and elections were marred with malpractices⁵⁰. In fact the selection of persons to the Electoral Collages presented a great challenge to the system, which the movement.

⁴⁶ The Daily Monitor, 15/3/2002

⁴⁷ These include 214 directly elected constituency representatives, and representative of interest groups who include: 56 District Women Representatives, 10 from the Army, five for the workers, five for the youth, five the disabled and 10 ex-official members with no right to vote.

⁴⁸ [http:// www. Parliament.go.ug](http://www.Parliament.go.ug) 1st June 1999

⁴⁹ PEA 2001 regulates the nominations of candidates, required qualifications for candidates, campaigning, voting and counting procedures, announcement of results, illegal practices and process for handling complaints

⁵⁰ Nordem Report 2 08/2001: [www:jus.uio.no](http://www.jus.uio.no).

2.8 The Election Phase (2001 General Elections)

This phase is divided into three. The presidential elections, directly elected Representative and the elections of representatives of the CSIGR.

2.8.1 The presidential Elections

As observed earlier, the contest was mainly between President Yoweri Museveni and Kiiza Besigye. Despite the repeated statements that candidates were to be elected on individual merit as opposed to partisan lines, the National Executive Committee of the Movement endorsed Museveni as the sole Movement Candidate⁵¹. This shows how partisan the Movement was. The elections took place on 12th March 2001 after two postponements⁵². The delay, however, allowed the EC to put the few more provisions in place. Violence continued throughout the campaign period to the polling day⁵³. Army personnel were deployed at the polling stations⁵⁴.

Presidential elections however took off without enabling laws in place⁵⁵. Elias Lukwago states that the law, which was later enacted notwithstanding its late legislation, made a provision that technically disqualified Alhajji Nasser Ntege Ssebagala⁵⁶. Equally, regulations for the determinations of qualifications were only passed on 3rd January 2001, when nominations were slated for 8 and 9 February 2001. Candidates with who obtained their qualifications out side Uganda could not access theirs. The rules providing for the conduct of election petitions were also enacted on 6th March 2001, a few days before polling day⁵⁷.

⁵¹ Makara, S and Tukahebwa, G.B ' An over view of Presidential elections'' in Mugaju, J and Olaka-Onyango, J.

⁵² Initially 6 March was set as the election date, then it was moved to 7 March yet again to 12 March

⁵³ Makala and Tukahebwa Reports that at 17 people died during the Presidential elections alone

⁵⁴ Section 42 of PEA 2000 forbids presence of armed personnel during elections unless called upon by election officer

⁵⁵ Lukwago, E 'The search for an effective electoral administration system in Uganda' A paper presented at a civic education seminar at Makerere University, 17th August 2001

⁵⁶ ' A ' level qualifications is determined by Uganda National Examination Board

⁵⁷ Section 58 (11) of PEA 2000 empowers the Chief Justice to make such rules

Despite a voter registration process that proved to be rather inconclusive, the late legislation of enabling electoral law and vice elections took place. Museveni emerged winner by 69.3 percent while Besigye got 27.8 percent.

2.8.2 The Parliamentary Elections

The elections of the directly elected MPs took place on 26th June 2001 while those for the CSIGR were conducted earlier on the same month⁵⁸. Like the Presidential elections, the enabling law for Parliamentary elections was enacted late⁵⁹.

2.8.2.1 Directly Elected Representatives.

The 214 directly elected Mps were elected amidst a competition characterized by violence and intimidation of candidates and their supporters up to the polling day⁶⁰. The ill preparation of the EC during the pre-election phase affected the conduct of these elections. As was the case with the presidential election, the government employed deployed military personnel to conduct elections. The President openly supported those who has ties with the Movement.

2.8.2.2 Election of Special Interest Groups Representatives

The election of CSIGR is provided for by **Article 78(1) (b) (c) of the 1995 Constitution** and by the Regulations made pursuant to PEA 2001. These include 53 District Women Representatives, five Youth Representatives, five Workers Representatives, 10 Representatives of the Army and five Representatives of persons with disabilities.

⁵⁸ Elections for Youth Representatives, Workers' Representatives, Representatives for people with disabilities, District Women Representatives and Army Representative took on 15, 18, 21 and 22 June 2001 respectively.

⁵⁹ The PEA 2001 and was enacted on 18 May 2001 and the parliamentary Elections (Special Interest Groups) Regulations 2001 S.I No. 31 of 2001 for the election of representatives for special interest groups were enacted on 26 May 2001.

⁶⁰ The Uganda Human Rights Commission Report January 2001-September 2002 tabulates election violence during the Presidential and Parliamentary elections.

2.8.2.3 Election of District Women Representative (DWRs)

166 candidates were nominated for elections of the DWRs for the 53 districts. The nominations were conducted dismally, disadvantaging the non-movement candidates. Elections were conducted at an Electoral College consisting of Women Committees from LC 1 to LC 3. The compilation of the voter register for the Electoral College was left to the Parish Chief who was assisted by LC Chairpersons. It was observed that anti-Movementists were deleted from the hand written voters' roll⁶¹.

2.8.2.4 Election of Army Representatives

A total of 31 candidates were nominated after the Commander-in-Chief, President Museveni, had reduced the list from 40⁶². The elections took place on 22nd June 2001 in Bombo Barracks, a highly guarded barracks. The NRA Statute governs the compositions of the Electoral College.

2.8.2.5 Election of Regional Youth Representative

In addition to PEA 2001 and Regulations made under this Act, this election is governed by Guidelines for the Regional Meetings for the Youth Elections issued by the EC on 29th May 2001. The elections took place in the respective regions between 13 and 15 June. The Electoral Colleges were drawn from Youth Councils set up in 1993. It was made possible by virtue of a Statutory Instrument that deemed the Youth Councils to be in existence since they had lapsed in November 2000⁶³. However, no fresh elections were conducted but the Electoral College was elected from old Youth Councils Royal to the Movement. The elections took off with many irregularities in the Electoral Colleges.

⁶¹ Nordem Report (2) 08/2001: www.jus.uio.no

⁶² Regulation covering election of Army Representatives only states that UPDF Council shall elect them in such procedure as shall be determined by the Council

⁶³ National Youth Council (Amendment of Schedule) Instrument No.27 of 2001

The voters' registers, identification of delegates, and the campaign process was reportedly marred with rampant malpractices⁶⁴. The delegates to the Electoral Colleges lacked formal identification papers and the EC depended on word of District Youth Chairpersons.

This was equally the case for election of Woman Youth Representative⁶⁵.

2.8.2.6 Election of the Workers Representatives

The Annual Delegates Conference of the National Organization of Trade Unions (NOTU) nominates candidates in accordance with its constitution. The Annual Conference took place on 17 June and a total of eight candidates were nominated. The elections took place on 18 June. It was reported to be peaceful, though union leaders handpicked some delegates to the Annual Conference⁶⁶.

2.8.2.7 Election for Representatives of Persons with Disabilities

These are elected from structures affiliated to the National Union of Disabled People of Uganda (NUDIPU). An Electoral College consisted of four persons from associations affiliated to NUDIPU. Delegates from each district represented categories of the blind, physically handicapped and the hearing impaired. The governing law is the same as with the other groups. 182 The elections took place in Mukono District on 21 June 2001. Of all the elections for SIGR, it is reported these were better organized⁶⁷.

2.9 The Post-election Phase

This is the aftermath phase and takes into account what the Government of Uganda has done to improve on the electoral process especially in the light of the 2006 elections.

⁶⁴ Nordem Report (2) 13/ 2006 [http:// www.jus:uio.no](http://www.jus:uio.no)

⁶⁵ Electoral College delegates for the election of Woman Youth representative are from the existing Youth structures plus 18 students elected by the Uganda National Students Associated

⁶⁶ Nordem Report (2)

⁶⁷ Nordem Report (2)

Numerous reports in the aftermath of the elections revealed inflated voter registers, widespread voter buying, the stuffing of ballot boxes with pre-marked ballot papers, double voting, missing voters' lists, and the names of eligible voters missing from the register including widespread violence⁶⁸. As predicted by Charles Onyango-Obbo, the 2001 elections were far nastier than the presidential race of 1996. The presidential election, it was acknowledged, was the most violent in Uganda's political history.

Onyango-Obbo further reported that the elections, according to all the contenders, beginning with President Yoweri Museveni, down to Chaapa Karuhanga were rigged⁶⁹ and that whatever the results, they could have been rejected. Thus one of the losing candidates, Kiiza Besigye petitioned against the election results in the case of **Kiiza Besigye v. The Electoral Commission of Uganda and Yoweri Kaguta Museveni**⁷⁰. Section 57 of PEA 2000 provides that an aggrieved party may petition the Supreme Court within 10 days challenging a presidential election. Supreme Court must determine the petition not later than 30 days from date filling. The Court may nullify the Presidential election results on the grounds set out in section 60 of PEA 2000⁷¹.

Despite the legal challenge, President Museveni could not be unseated. The Chief Justice Benjamin Odoki, accepted complaints against the EC and concluded that the EC did not comply with the provisions of the law but held the malpractices alleged against the Second

Respondent, Yoweri Kaguta Museveni, were not proved to have been committed with his knowledge or consent. The failure by the EC according to the Court did not substantially affect the election results. The Court dismissed the Petition. In the court of public opinion, however, the Petitioner had won the case.

⁶⁸ As above

⁶⁹ Uganda Elections Are Like Going For Kwanjula After 15 years 'The Monitor, March 21, 2001

⁷⁰ Petition No. 1 of 2001

⁷¹ The grounds include non-compliance with the Act, non-qualification of candidate or committing any offence under the Act

As for Parliamentary elections, there were a number of election petitions too. Any Petition for the annulment of results or re-runs must be filed within 30 days of the results. A number of petitions filed were equally dismissed⁷².

2.10 Electoral reforms

The government has made strides towards remedying the electoral flaws. A Parliamentary Select Committee was constituted to look into the 2001 election violence. Some members of this Committee could have been the perpetrators of the violence. An independent commission therefore could have done better.

Long after the elections, the President exercised his powers under **Article 60(8) of the 1995 Constitution** on 31 July 2002 and retired the Chair of the Electoral Commission and five commissioners for incompetence. He appointed new members on 5 November 2002.

Equally, the Political Parties and Organizations Act (PPOA) No. 18 of 2002 was passed to govern political parties and organizations⁷³. This Act has changed little, otherwise it has bolstered the provisions of Articles 72, 73 and 269 of the Constitution that hamper the enjoyment of the right to form or join political parties, and the freedoms of assembly and association. The Act was also challenged in the Constitutional Court⁷⁴. Section 18 and 19 were declared unconstitutional because they restrict activities of political parties. To date political parties still face difficulties to register. The nullification of the PPOA provisions however would only be meaningful when the Constitutional provisions are nullified.

⁷² Amnesty International Annual Report on Uganda www.amnesty.org/en/library/.../2002/en

⁷³ The Uganda Human Rights Commission (UHRC Report 2001-2002) has observed that this law defies International law to which Uganda is a party.

⁷⁴ Paul Ssemogerere and 5 others v. Attorney General, Constitutional Petition No. 5 of 2000 and James Rwanyarare and 9 others v. Attorney General Constitutional Petition No. 7 of 2002

Earlier a CRC headed by Fredrick Ssempermbwa was constituted in February 2001 in the heat of Presidential elections to examine constitutional provisions relating to sovereignty, political systems, democracy and good governance. The CRC made its recommendations and submitted to the government⁷⁵, but the Government White Paper reveals that very little concerning electoral institutions and the electoral process has been accepted.

For example, the government has retained the requirement for minimum “A” level qualification for Parliamentary and Presidential candidates. The government equally rejected the need for electoral laws to be passed at least six months before polling. The recommendation by the CRC would have worked to provide certainty to all political players and eliminate the possibility of manipulating electoral laws at the eleventh hour⁷⁶.

The government has rejected recommendations for Parliament to amend the law for change of political system, and preferred a referendum. The provisions of Article 74 of the 1995 Constitution are untenable. It however will take the willingness of those in power to effect these changes. Again, despite the 1995 Constitution having settled the issue of presidential term, by restricting it to two five-year terms, the government suggested that Parliament would have to decide and not a referendum. This was a setback especially given the fact that Parliament is dominated by Movement MPs.

An analysis of unfolding events point to the fact that President Museveni is not ready to allow multiparty politics in Uganda. In March 2002, while addressing MPs he referred to Zimbabwe’s elections and said:

⁷⁵The CRC Report was submitted on 10 December 2003.

⁷⁶ Oloka-Onyango, J ‘The White Paper and Political Transition in Uganda: Assessing the Implications’ Report to the Donor Democracy Group (DDGG) under the project Review and Assessment of the GoU White Paper on the Report of the Commission of Inquiry on the Constitutional Review and Uganda’s Political Transition; 25 October 2004

“Do not play around with freedom fighters. You can see Zimbabwe’s Robert Mugabe. Freedom fighters already have entandikwa (a foundation). Liberation armies are not like these mercenary ones, which earn salaries. We fought and we can still fight. Even if Morgan Tsavangirai had won, do you think ZANU would have accepted if Mugabe had lost? Oh, no. you are playing with fire. It is not possible and it is not necessary. Let everybody use the peaceful channel. I am not against liberalizing politics but I do not accept your line that we bring multiparty whether the peasants want it or not”⁷⁷.

The events that characterized the 2001 Presidential and Parliamentary elections and the aftermath require particular attention. It calls for political will to democratize which as seen in the above discussion is lacking. The electoral institutions are not independent and suffer undue influence from the Executive. The purportedly will to amend the law has been done half-heartedly because the government is unwilling to accommodate the wishes of the people. A lot more therefore has to be done.

⁷⁷ ‘Movement shall not handover power easily’ The Monitor 15 March 2002.

CHAPTER THREE

INDEPENDENCE OF THE ELECTORAL COMMISSION OF UGANDA

3.1. Introduction

The impartiality of electoral institutions is an essential aspect of free and fair electoral Processes. Electoral Commissions and the Judiciary must be Independent. **Article 62** of Uganda's 1995 Constitution states that the EC shall be independent subject to the Constitution's provisions, and 'shall not be subjected to the direction or control of any person or authority' in the performance of its functions. **Article 26 of the African Charter** urges states parties to guarantee the independence of the courts and the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter.

3.2. Appointment of commissioners

The commissioners are nominated and appointed by the President, with the approval of Parliament. Article 60(1) of the Constitution establishes the EC as an autonomous institution⁷⁸.

The law requires that Electoral Commission members must have 'high moral character, proven integrity and must possess considerable experience and demonstrated competence in the conduct of public affairs; therefore, the President may remove commissioners from office on grounds inter alia, of misbehavior or misconduct and incompetence as envisaged by Article 60(8) of 1995 Constitution.

Article 61 of the Constitution tabulates the functions of the EC⁷⁹. Among these are to demarcate constituencies, maintain the voters register on a rolling basis, gather, collate and announce the election results. The EC is equally responsible for appointing and programming the time and manner of campaign for candidates and the

⁷⁸ Article 62 of the 1995 Constitution of the Republic of Uganda and Section 13 of Electoral Commission Act

⁷⁹ Others are listed under Section 11, 12 and 18 of the Electoral Commission Act

publication of this information in the Gazette. It is mandatory to forward a copy to each returning officer⁸⁰.

The EC is also mandated to attend to electoral complaints by ensuring strict adherence to the Electoral Code of Conduct⁸¹. The EC has to ensure that the entire electoral process is conducted under conditions of freedom and fairness⁸².

The president appoints all the judges on recommendation of the judicial service commissions but ratified by Parliament⁸³. The Presidents also make appointments to the Judicial Service Commissions. Therefore only compliant members are appointed. The requirement of Parliament to approval is thus merely cosmetic. As observed by Muna Ndulo⁸⁴, many African parliaments have practically been converted into tools for legislating at the respective executives' pleasure and convenience.

3.3. Term of Office of commissioners

Each Commissioner's term lasts seven years and is only renewable once. Electoral Commissioners do not enjoy security of tenure as judges do, and are also subject to term limits, so even without a formal process to remove them, they could simply not be reappointed. The provisions on dismissal of commissioners are provided for under article 60(8) of the Constitution which states that a member of the commission may be removed from the office by the President only for inability to perform the functions of his/her office arising out of physical or mental incapacity; misbehavior or misconduct; or incompetence.

3.4. Financial autonomy

⁸⁰ Section 18 of Electoral Commission Act of 1997 of Republic of Uganda

⁸¹ Section 15 of Electoral Commission Act of 1997 of Republic of Uganda

⁸² Section 12(1) of Electoral Commission Act of 1997 of Republic of Uganda

⁸³ Article 142 of the 1995 Constitution of the Republic of Uganda

⁸⁴ Ndulo, M 'Presidentialism in Southern Africa States and Constitutional Restraint on Presidential Power;.

The EC is self-accounting, and its administrative expenses are charged on a Consolidate Fund⁸⁵. The law guarantees adequate resources and facilities to enable it to perform its functions⁸⁶. This essence means that it should not be subjected to cuts or reductions by the Ministry of Finance.

⁸⁵ Uganda Constitution (1995), Article 60

⁸⁶ Uganda Constitution (1995), Article 66(1)

CHAPTER FOUR

General overview of elections in Uganda

Introduction

Despite the regular elections since the 1990s, the quality and out comings of these elections has remained a subject of debate. Democracy has remained elusive in Uganda in spite of elections being conducted at regular intervals. This chapter therefore seeks to examine how free and fair elections have been conducted since 1962 and particularly in 2001 and 2006 General elections.

The electoral system

The first national election in Uganda was the **Uganda National Assembly elections of 1962**. An alliance between the **Uganda People's Congress (UPC) and Kabaka Yekka (KY)** won the majority of parliamentary seats, and formed Uganda's post-independence government with Obote as executive Prime Minister⁸⁷.

A period of dictatorship and political strife, including the tenures of Idi Amin, Yusuf Lule and Godfrey Binaisa, meant no elections were held until the presidential election of December 1980.

Obote was pronounced the winner a mid bitter dispute and allegations of electoral fraud. Yoweri Museveni, one of the presidential aspirants, declared an armed rebellion, and waged a guerrilla war (Ugandan Bush War) against the government of Obote. Museveni's National Resistance Arm (NRA) took power in 1986 from the government of Gen. Tito Okello Lutwa who had six months earlier toppled Obote's UPC government in July 27th 1985 bloodless military coup, making him President. On January 26th 1986 the NRM entered Kampala and were seen as liberators⁸⁸. Yoweri Museveni became president and invited all representatives of other parties and political groups to be a part of new national united government. Many accepted the

⁸⁷ Kanyeihemba, G.W (200) Constitutional and Political History of Uganda from 1894 to the Present

⁸⁸ Deepening Democracy Through Multipartyism : The Bumpy road to Uganda's 2011 Elections By: Sabiiti Makara

invitation including leaders of the UPC, DP and several minority groups. As a few months after overtaking power he banned all party politics activity even if they were allowed to exist. The reason for his no party democracy politics was that “Uganda’s past political problems were mainly due to the ravages caused by divisive sectarian politics”⁸⁹.

Museveni posits the movement or no party system of government as an alternative to a multiparty system, and the necessary antidote to the perceived poisonous sectarianism of the political parties in Uganda. Instead of political parties which were viewed as divisive, Museveni introduced the idea of a no party system, one supposedly all-inclusive movement in which individual candidates would run for elections based on their personal merit. A pyramid of five levels of councils, from the village to the national level, is designed to ensure grassroots participation at all levels of society. In theory every Uganda was a member of the Movement and could stand for any public office, from the cabinet, but couldn’t do so under the banner of the political parties⁹⁰.

The non-party system did not prohibit political parties. But prevented them from fielding candidates directly in elections. The so-called “Movement” system, Museveni said claimed the loyalty of every Uganda, would be a cornerstone in politics for nearly twenty years.

Although dominated by the NRM/A, the coalition government included members of different parties. However, the coalition grew narrower over time: All these groups eventually withdrew from coalition, citing the government’s complicity in human rights violations, official corruption, continuing instability in northern and eastern Uganda⁹¹, the creation of tribal animosities, and communist and Libyan infiltration of Uganda. During the government members claiming they were Obote supporters⁹².

⁸⁹Human rights Watch: Hostile to democracy, the movement system and political repression in Uganda. 1999:37

⁹⁰ Mugaju, J. and Oloka-Onyango, J. (eds) (2000) No-Party Democracy in Uganda: Myths and Realities

⁹¹Human rights Watch: Hostile to democracy, the movement system and political repression in Uganda 1999:37

⁹² Sabiti Makara, Deepening Democracy Through Multipartyism: The Bumpy road to Uganda’s 2011 elections.

In February 1989 the country held its first elections since 1980. The elections were unfair and indirect. The NRM used its power and position and took a clear majority of the seats that were at stake. After the elections, a proposition to extend the government's mandate period for five years from January 1990 was approved⁷¹. In April 1991 a large military offensive was launched in northern Uganda to wipe out the remaining guerrilla forces. Three months later about 1,500 rebels were killed 1,000 arrested. International observers accused the army for assault during operations. In the middle of 1990s guerrilla activity increased mainly by the Lord Resistance Army (LRA). In 1993 the king of Buganda, Ronald Mutebi was reinstated by Museveni although got back their traditional Kingdoms⁹³

In March of 1994 an election was held by the Constituent Assembly with a new constitution in October 1995. The NRM had the overall majority in the Assembly. The ban on party political activity was drafted into the new constitution despite criticism from the opposition. Uganda held presidential elections in May 1996. The main candidate was Yoweri Museveni and the Democratic Party's Leader Paul Ssemwogerere, who earlier had sat in Museveni's government. Despite the ban against party activity the candidates were permitted to run their campaigns but Ssemwogerere's rallies were often forbidden while Museveni had full support from the army, police, and the government owned media at his disposal⁹⁴. Museveni won with a landslide 75.5% of the vote from a turnout of 72.6% of eligible voters. Although international and domestic observers described the vote as valid, the losing candidates rejected the result. Museveni was sworn in as president for the second time on the 12th of May 1996. The main weapon in Museveni's campaign was the restoration of security and economic normality in much of the country.

⁹³ Kabwegyere, TB (2000) *People's Choice, People's Power: Challenges and Prospects of Democracy in Uganda*

⁹⁴ Oloka-Onyango, J 'New Wine or New Bottles? Movement Politics and Onepartyism in Uganda' in Mugaju, J. and Oloka-Onyango, J.(eds) (2000) *No-party Democracy in Uganda: Myths and Realities*

4.2.1. 2001 presidential elections.

The 2001 presidential elections were held in March, the final six candidates that became eligible were: Kizza Besigye, Aggrey Awori, Kibirige Mayanja, Chaapa Karuhanga, Francis Bwengye and Yoweri Kaguta Museveni had competition for the first time since his presidency. The candidates that became the most obvious threat from the start to Museveni's presidency was Dr. Kizza Besigye, a former friend and personal doctor during their days in the bush before Museveni first came to power. The race was made all the more exciting because of the formerly close relations between the two men. Dr. Besigye was once Mr. Museveni's personal

Physician in the bush war that saw him come to power in 1986, and his wife was a former intimate friend of the president⁹⁵. He was also a historical member of the NRM, and was probably Museveni's first serious political contender from "inside" the Movement. Besigye accused Museveni on several accounts, among these were having compromised the Movement ideals, issues such as corruption, nepotism, lack of tolerance and the never ending wars in-and outside Uganda.

Besigye seemed to get most of his support from groups, who were opposed to Museveni's rule.

The election campaign was not regarded fair by international observers due to a few of the following circumstances.

When it came to campaigning all the candidates were given two vehicles, police protection and approximately 8.800 USD to campaign for, although about half of it was to be returned back as a registration fee. However they were forbidden to receive any donations from any organization or country that had bad relations with Uganda. On the other hand the president had legal advantage and therefore access to such government facilities as transport, personal security, the presidential press unit, government offices, and state personnel fully to his disposal. The president also has

⁹⁵ <http://news.bbc.co.uk/1/hi/world/africa/1222078.stm>, Feb 2013

access to resources from the Movement as its chairman, while the other candidates were not allowed to solicit support from political parties. Even candidates Besigye from “the inside” of the movement could not access movement resources to a mentionable degree⁹⁶.

Serious incidents of intimidation and violence were reported during the campaign against the other candidates and their supporters, much of the violence reportedly came from the police, army and Special Forces who supported the president. There was an expression of fear during the pre-election period, people were afraid to express their opinion and reveal whom they supported possibly in fear of reprisals from the NRM supporters. The presence of the army proved to be a “double edged sword” while it helped to create peace during the elections it was also seen by some as an intimidation tool. When it came to media coverage the two main daily news papers, The New Vision that is pro Government and The Monitor that is Independent agree that they could report rather free during this election than earlier elections before. The state owned electronic media had a legal obligation to give airtime to candidates, all candidates used this opportunity for exposure. Other than that, the media in general presented an image of a two candidate presidential race. The four candidates apart from

Besigye and Museveni received together about 10% of the coverage in the three dailies, and even less in TV and radio, state or privately owned. The state owned media gave a lot of coverage to both of the two main contenders, but the tone of the coverage was overwhelmingly positive towards the president, while stories about Besigye were more often negative⁹⁷. The Uganda TV represented the most imbalanced; it gave the president by the observers. The Presidents’ Press Unit gave Museveni many advantages. The unit could deliver ready-to-air video recordings from

⁹⁶ <http://www.humanirights.uio.no/forskning/publ/wp/wp-2001-08.html>, March 2013

⁹⁷ Nordem report 13/2006 <http://www.jus.uio.no>

e.g. rallies, while other candidates were asked to pay for transport and expenses for camera crews.

They do not guarantee coverage in return.

The 2001 official results of the presidential elections gave the incumbent President Museveni majorities win of nearly 70% of the total votes; the closest runner up Kizza Besigye received almost 28%. The voter turnout was 7,389,691, an estimated 70% of the total registered voters.

The polling day was described as calm by observers although they criticized the Electoral Commission. It failed to update and display voter registers as required by the law. They also failed to issue voter cards of a satisfactory quality and in time, and had to decide that voters did not require them on polling day. They also failed to publish a full list of polling stations in time.

All these factors contributed to confusion and created opportunities for fraud. These were clearly exploited at some places, particularly by supporters of the president⁹⁸.

Shortly after the elections Presidential candidate Kizza Besigye appealed the results to the Supreme Court claiming fraud and rigging. All the five Supreme Court judges agreed that there was fraud however the court dismissed the petition by a three to two votes and accepted the election results. However, two of the five justices concluded that there were such illegalities in the elections that the results should be thrown out. Even the three judges who voted that the illegalities did not affect the result of the election in a substantial manner agreed that there were illegalities and that there was evidence that in a significant number of Polling Stations here was cheating and that in some areas of the country, the principle of free and fair election was compromised 100. In June 2001, two months after the court rejected Besigye's petition he was detained and accused of treason by the government, three months later he managed to

⁹⁸ The Human Rights Reporter (2001-2002) Foundation for Human Rights Initiative

escape to the USA claiming his life was in danger. H stayed overseas until returning back to Uganda for the 2006 elections.

In the **2005 constitutional referendum**, Ugandans voted to restore a multi-party political system, lifting the 19-year restriction of the activities of political parties.

4.2.2 2006 Multi-party elections

The Uganda general election of 2006 was the first multiparty election in 25 years. Museveni won 59% of the presidential vote, and his party, the **National Resistance Movement**, won the majority of parliamentary seats. The 2005 referendum led the way to the multi-party elections, but according to Human Rights Watch⁹⁹, the playing field was not fair in this election either.

Before the upcoming elections it was not sure if Museveni would respect the will of the people if he were to be defeated. He hinted during campaign rally, that a vote against him might not be respected, saying: “You don’t just tell him freedom fighter to go like you are chasing a chicken thief out of the house¹⁰⁰”. There were four presidential candidates from four political parties and one independent candidate. Museveni decided to run for a third term in office through his NRM party. Like the previous 2001 elections, the 2006 elections contained resembled incidents. It was between two candidates from the 2001 election, the incumbent president Museveni and Forum of Democratic Change (FDC) opposition leader Kizza Besigye. Intimidation and harassment also marked the elections by the government towards the opposition; they were especially directed to Besigye since he was seen as the most obvious threat¹⁰¹.

⁹⁹ The Uganda Human Rights Commission (UHRC Report 2001-2002)

¹⁰⁰ “Museveni is here to say” The Monitor, March 2005

¹⁰¹ Nordem report 13/2006 <http://www.jus:uio.no>

In October 2005 Besigye returned from exile to run for the upcoming elections. Besigye's return was in his words "made more precipitate" by the fact he had to register as a voter before the voter registration deadline in order to be a candidate for the 2006 elections¹⁰². Approximately two weeks to his return Besigye was arrested in November and was accused of treason, concealment of treason and rape. The treason case included his alleged links to the various rebel groups, Lord's Resistance Army (LRA) and People's Redemption Army (PRA), and the rape charge referred to an alleged incident in November 1997 that involved the daughter of his friend who at the time was his maid.

The government also tried to prevent Besigye from receiving the FDC presidential nomination. In respect of Besigye's prospective presidential candidacy, the Attorney General wrote to the Electoral Commission on December 7 that Besigye's candidacy was "tainted with illegalities".

Nonetheless, the Electoral Commission cleared Besigye for nomination on December 12, and two days later he was nominated by the FDC as its presidential candidates.

The arrest led to demonstrations and riots in Kampala and towns around the country. In Kampala the riots was the worst urban violence the city had ever witnessed since the end of the civil war in 1986.

The protesters believe that the motive behind the charges were designed as a way to stop Besigye from challenging the president in 2006 elections. His arrest embarked criticism from the international community and even the local media. The Ugandan authorities banned all public rallies, demonstrations, assemblies or seminars related to the trial of the arrested opposition Forum for Democratic Change leader Kizza Besigye and even banned all the country's media from debating on his trial¹⁰³. During his trial, the police used tear gas against his supporters who were outside the court. He was denied bail and subsequently dragged before a military tribunal on separate

¹⁰² <http://en.wikipedia.org/wiki/Kizza> - Besigye April, 10th 2013

¹⁰³ Kiiza J., Makara S & Rakner L (eds) Electoral Democracy in Uganda Kampala

charges. Black-clad men armed with machine guns, members of a military intelligence unit called the Black Mambas Urban Hit Squad surrounded Uganda's High Court building, just to show the judge who was boss¹⁰⁴.

The government further introduced new restrictions on foreign journalists and threatened to ban the Monitor, Uganda's independent newspaper. Just like the previous elections, the NRM received the most coverage since a majority of its member owned several media sources. On January 2 2006 the High Court ordered his (Besigye) immediate release and later that month the Constitutional court decided that he could not be tried for terrorism accusations. After the elections which took place on the 25th of February, Besigye was cleared by the court from the allegedly rape charges on the 7th of March 2006. Judge John Bosco Katutsi stated: "The State has dismally failed to prove its case against the accused. "Testimony given in court indicated that President Museveni had personally instructed the police to investigate the case. Besigye always claimed that the accusations against him were politically motivated and used as a way too stop him from campaigning. During this period while Besigye was imprisoned the President used this time to campaign, after his release Besigye only had a few weeks to campaign before the elections. Before the elections Besigye was not the only one intimidated by the government, the Electoral Commission's police squad was alleged investigating cases of the same character in twenty-two (of sixty nine) districts. It should also be noted that the opposition supporters also caused a few problems though not nearly as the government ruling party.

Positive remarks from the 2006 general elections

The 2006 general elections were better organized than the one in 2001. Among these were the judicial independence demonstrated by the Ugandan High Court in the Besigye case which was widely applauded in the media and in diplomatic circles for

¹⁰⁴ James Kabagambe, A study of Uganda's democratization process: obstacles and possibilities.

its independence in the midst of many controversial trials. It allowed Dr. Besigye to be nominated, and freed him on bail to campaign¹⁰⁵. It came to the conclusion that the General Court Martial (GCM) could not hear and did not have any jurisdiction over terrorism cases against civilians, and that Besigye and his co-defendants could not face trial in the Court Martial and the High Court simultaneously. The court said that the attempt by the army to try Besigye and twenty-two others in the Court-Martial was both “illegal and unconstitutional”.

Another positive remark was the Electoral Commission’s impartial role leading up to the elections. In Uganda the head of state has the exclusive authority to choose and appoint the electoral commissioners.

The record of the previous Ugandan Electoral Commission and its subordinate bodies was not good during the 2001 presidential election. A Supreme Court opinion found that “there was evidence of cheating in a significant number of polling stations,” and that election officials were complicit¹⁰⁶. Since then it had been transformed by the government and foreign aid to become more independent. Its test for independence came when it decided to allow Besigye to be nominated as presidential candidate when the government wanted stop his nomination. The negative aspect was that the EC had a little amount of time to prepare for the elections due to the parliament’s delay to pass the necessary laws needed for it to operate. It began its preparations in late November 2005 and had just about three months before Election Day. The conclusion from the 2006 presidential elections was that they were unfair due to the mentioned circumstances above but was also seen as a step forward from previous elections due to the part that it was multi-party election and less violent than before. But the prosecution and intimidation towards the opposition overshadowed the election results.

¹⁰⁵ Daily Monitor 12th March 2001

¹⁰⁶ <http://hrw.org/backgrounders/africa/uganda0206/uganda0206.pdf> Feb 20th 2013

Summary of the 23 February 2006 Ugandan presidential election results

Candidates – nominating parties	Votes	%
<u>Yoweri Museveni – National Resistance Movement</u>	4,109,449	59.26
<u>Kizza Besigye – Forum for Democratic Change</u>	2,592,954	37.39
<u>John Ssebaana Kizito – Democratic Party</u>	109,583	1.58
<u>Abed Bwanika – Independent</u>	65,874	0.95
<u>Miria Obote – Uganda People’s Congress</u>	57,071	0.82
Total	6,934,931	100.00

Summary of the 23 February 2006 National Assembly of Uganda Election results

Parties	Votes	%	Constituency	District Woman	Indirect Seats	Total seats
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			Seats	reps.		
<u>National Resistance Movement</u>			142	49	14	205
<u>Forum for Democratic Change</u>			27	10	-	37
<u>Uganda People's Congress</u>			9	-	-	9
<u>Democratic Party</u>			8	-	-	8
<u>Conservative Party</u>			1	-	-	1
<u>Justice Forum</u>			1	-	-	1
<u>Independents</u>			26	10	1	37
<u>Vacant</u>			1	-	-	1
<u>Uganda People's Defence Force Representatives</u>						10
Ex-officio members						10
Total (turnouts 72%)			215	69	15	319
Source: <u>Inter-Parliamentary Union</u>						

4.2.2.3 Multipartyism and Democracy

Uganda went multiparty after the holding of a referendum on the return to multiparty politics in 2005. Multipartyism is always viewed as a key indicator of democracy in any society. Therefore, democracy needs strong and sustainable political parties with the capacity to represent citizens and provide policy choices that demonstrate their ability to govern for the public good. Parties can help to articulate group aims, nature political leadership, develop and promote policy alternatives, and present voters with coherent electoral alternatives¹⁰⁷. Party cohesiveness in legislatures contributes to efficient government, and politicians within the same party tend to be more responsible to one another than they otherwise would be, because of the shared electoral fate of those voted in on the strength of a shared party label¹⁰⁸. In short, parties ensure that voters have significant electoral choices, and they help ensure that choices made in elections will translate into decisions in the public realm.

It is also important that there are fair electoral laws and institutions that can ensure free and fair elections. In Uganda, parties have been revived amidst existence of an intransigent Electoral Commission (EC) which has been accused by the opposition groups as skewed in favor of the NRM. Such a view is given credence by the Supreme Court¹⁰⁹ in the aftermath of the 2001 and 2006 elections when it ruled on both occasions that the Electoral Commission failed to administer free and fair elections. In May 2009, opposition parties presented a list of political and electoral reforms that they believed would strengthen democratic governance. However, president Museveni categorically stated he would not affect any reforms. In August 2009, President Museveni re-appointed the same Electoral Commission team presided

¹⁰⁷ The functioning of a Multiparty system in local government, "challenges of transition from the movement system in Uganda" by Elijah D. Mushemaza

¹⁰⁸ Voter registration and voters' registers in a multi-party democracy Presented

¹⁰⁹ Kizza Besigye Vs Yoweri Museveni and Electro Commission

over by Badru Kigundu amidst protests by opposition supporters. On his part, the Secretary General of the NRM, Mr. Mbabazi praised the re-appointed EC saying that in the past it had done an “excellent job”. On the other side, the president of FDC Dr. Kiiza Besigye has countered by saying that the current EC has no legitimacy to preside over any election in the country¹¹⁰. He has asserted that every election the EC has presided over has been marred with rigging, violence and other irregularities. Amidst the reluctance of the government to correct the errors pointed out by courts of law, and going ahead to appoint a discredited EC, it means that the parties will face a very difficult task of preparing for the next elections in 2011. the NRM government has also sent a wrong message to the voters and to the world to the extent that even if the EC was to perform to its best; there will always be an accusation that they were not impartial and credible. The Electoral Commission in the two past elections failed to carry out an effective voter education, resulting in several voters failing to exercise their democratic voting rights. On its part, the NRM conducts compulsory ideological politicization courses for civil servants, civic leaders, and ordinary citizens at Kyankwanzi Institute of Political Education. Though the aim is to spread the NRM ideology, the school is funded by public money. Political parties have complained about it to no avail.

Institutional bottlenecks to Democracy

Free and fair elections are dependent on the will and support of government institutions, most notably, the police who ensure security throughout the election period, the ministry of justice and constitutional affairs and the ministry of Finance. However, such institutions and many others have done little to ensure free and fair elections and in many instances they have acted as hindrances to democracy.

¹¹⁰ New Vision Wednesday, August 26, 2009

Parties have not been free to campaign freely in the whole country. Their rallies are constantly dispersed by police as “illegal gatherings”. The NRM particularly has used the state apparatus to frustrate the activities of the opposition political parties¹¹¹.

Police in Uganda has gained notoriety of dispersing opposition party assemblies on the pretext that they have not secured police permission to assemble. State institutions continue to show a lot of bias against opposition parties that have withstood harassment and violence unleashed on their leaders and supporters by the state. For example, in the run up to the 2006 elections, Besigye the leader of FDC, the main opposition party was charged of the offences of treason and rape, in both the civil and the military courts. His nomination as a candidate was delayed by the legal fiat besides losing time for campaign due to the requirements for him to appear in the two courts. Since 2006, the police have intensified a campaign of harassment targeting assemblies organized by the opposition parties. However, opposition activists have challenged this in court of law, where the judges have ruled that the right to assemble is god-given not given by the state¹¹². On the other hand, while opposition parties have been resilient, they still suffer from several institutional bottlenecks.

The police and other security agencies have been staffed by mainly personnel, who seem not to perceive themselves as servants of the state but as agents of the ruling party and its leadership. It is a clear fact that since 2000, the government has appointed the Inspector General of Police from within the top ranks of the army. Thus in dealing with the opposition parties, they sometimes exceed their official limits. A good example is when the paramilitary group called the “**Black Mambas**” blocked Besigye from being released on bail granted by a court, in the midst of the 2006 presidential election campaigns. Again, it happened when another paramilitary group allied to the Uganda police known as **Kiboko Squad** dispersed demonstrators during the Mabira protests, with brutal force. Both the army (UPDF) and the police are

¹¹¹ POLITICAL PARTIES AND THE FREEDOM TO HOLD PUBLIC RALLIES IN UGANDA by dr. Yasin Olum, Senior Lecturer Department of Political Science and Public Administration (Makerere University)

¹¹² Makara 2009. *ibid*

decidedly pro-NRM. The Army Commander has said that the UPDF will not allow bad people to take over from NRM¹¹³.

The police in Uganda have earned the image of a repressive force. Using the colonial law of regulating assemblies, the police have been vigorously involved in violation of freedom of association and assembly. Opposition rallies have routinely been blocked and demonstrations violently dispersed. The increasingly common excuse for prohibiting lawful assemblies is that they disrupt business in the city centre of Kampala. This justification can not withstand considering that pro-NRM assemblies are never dispersed. The police dispersed a Democratic Party rally at Mpigi on January 26th, 2007, when there was no business to disrupt, since it was a public holiday. Disruptions involve interference by police in otherwise peaceful assemblies, indiscriminately using tear gas, water cannons, batons and even live bullets on unarmed civilians. Police powers have always been exercised whenever opposition parties stage rallies. For example, on November 18, 2006, police used tear gas to disperse Forum for Democratic Change (FDC) party leader Dr. Kiiza Besigye and his supporters, who had gathered at the Constitutional Square in Kampala where FDC was supposed to launch its party cards¹¹⁴. Much more recently, there was the controversial arrest of Hon. Nabilah Naggayi the women MP for Kampala District and member of the opposition FDC on a routine tour of her constituency. On June 10th, 2008 the legislator was educating vendors in Owino Market on how to use a suggestion box as a mean to get their views reach her so that she could articulate them in Parliament. The Police violently arrested her for holding an “illegal assembly”.¹¹⁵

Election management among political parties

The law under which parties operate is the Political Parties and the organization Act (PPOA) 2005. the Act requires every group wishing to operate as a political party to

¹¹³ The Monitor September 1, 2005

¹¹⁴ Sunday Vision, November 19, 2006

¹¹⁵ The New Vision, June 19, 2008

register with the Electoral Commission. Registration requires political groups to fulfil simple conditions to register. These include the need for a political group to have a constitution, a formal organization, an application to register signed by 50 registered voters, supporters from two thirds of the districts of Uganda, a list of party officials, party programme and a party symbol. The PPOA requires parties to be internally democratic. The law also provides that the state funds political parties. Parties are supposed to disclose their sources of finances and submit their financial accounts to the Electoral Commission within six months of registration. The disclosure provisions have been flouted by most of the parties, including the ruling NRM. In the aftermath of the 2006 elections, the NRM officials argued that they would not disclose their sponsors because they are supposed to remain synonymous, so did the other parties. This is partly due to the entrenched poor culture of lack of transparency in most public organizations in the country. Political parties at the national level lack both institutional mechanism and internal democracy to inspire the lower branches which are expected to be the actors in local governments. In particular, they lack or have weak secretariats, their offices at the district and Sub-countries are non functional, the organs of the political parties rarely hold meetings; and parties lack financial resources to run party activities¹¹⁶.

The 2005 referendum to allow multi-party elections and the parliament to uplift presidential term limits may have affected the out come of the 2006 presidential elections. Political competition in these two elections has been marked by violence, accusations of rigged elections, intimidation and so on. The transition process between these two elections has also brought positive changes that have been absent in Uganda for many decades.

4.41 Internal Democracy in Political Parties

¹¹⁶ The functioning of A Multiparty System. *ibid*

Within the major political parties themselves, a culture of internal democracy has been growing. Since 2006, FDC, NRM, DP, UPC, have successfully held delegates conferences. They have successfully elected their top party office bearers. FDC is noted for holding a very successful delegates conference to elect its top leadership. There was healthy competition for the party presidency. Nevertheless, there are internal wrangles that have threatened internal coherence of parties. In FDC, the former envoy for presidential affairs, Betty Kamya resigned her post claiming she was barred from standing as a party chairperson to replace the late Dr. Badru Kigundu. Kamya argued that the position of party chairperson should be reserved for her ethnic group – the Baganda. Although she went ahead to found her own party; the Federal Alliance, she did not resign from FDC party. This is in addition to her refusal to turn up for her party platform. Ms. Kamya has today registered her new party. In the Democratic Party, squabbles have threatened its internal unity. The party today is divided between three groups – the old members loyal to the party president Nibert Mao and another group led by Kampala Central MP Elias Lukwago. These squabbles between Buganda-based DP leaders are increasingly making it difficult for Mr. Nibert Mao, the Northern-based Gulu District Chairman (now DP President) to realize his dream of revamping DP as a key player on Uganda's political scene.

In UPC, conflicts have been rife over accusations that party president Miria Obote (wife to late president Obote) has been manipulating the members in order to bring her son, Akena (Lira Municipality MP) into the limelight for leadership succession. This has caused some party faithful to abandon the party. However, the recent election of seasoned diplomat Mr. Olara Otunu as party President will hopefully take UPC to another level.

Recommendations for effective functioning of the multi party System in Uganda

4.5.1 Government should Contribute Finances to Political Parties

Political parties in Uganda are still young and lack the financial resources to build capacity. Since political parties are vehicles for accessing political power, they should benefit from state funding so that those in opposition build strong and credible alternative governments in waiting. The ruling party too needs funding to be reminded that they owe their loyalty to the nation

4.5.2 Sensitization about the Operations of Multiparty System is urgently needed

Most of the population of Uganda particularly those living in the areas; multiparty system is still viewed negatively. Similarly, a number of leaders appear not to appreciate the ground rules for a viable multiparty system. For multiparty system to work well in Uganda, political parties and organizations should cooperate with each other in mutual trust and in good faith to foster cordial relations and amicable consultations on national issues. It is also important that an institutionalized framework for inter-party consultations be operationalized to ensure that opposition parties do not oppose for the sake of it, but offer constructive criticism to promote the common good.

The Uganda Local Government Association should workout a partnership with civil society organizations and other government institutions such as Uganda Human Rights Commission and Electoral Commission to undertake sensitization about the functioning of a multi-party system. Without a population that is aware of their duties, rights and obligations, democracy at local level will not be consolidated.

4.5.3 Develop a Code of Conduct for Parties

The code of conduct for political parties and organizations should be urgently put in place and vigorously enforced to promote harmony and ensure that the activities of political Parties and organizations do not endanger the common good. Since all

organs of the state derive their authority from the people and use it in the service of the people, a legal framework for consultations between the heads of the three organs of the government should be provided for to enable them to consult on major issues of public concern and the protection and promotion of the common good.

4.5.4 Security Forces should be sensitized about the New Dispensation of Multiparty Politics

The new political dispensation requires stability. The security sector should be strengthened and trained in human rights observance and the functioning of multiparty system. Uganda needs to strengthen civil-military relations so that Uganda Peoples Defense Force (UPDF) does not get involved in partisan politics while at the same time remains committed to defend the common good. Similarly other security organs the Police, intelligence agencies should be sensitized to appreciate why they should be non-partisan in a multiparty dispensation.

4.5.5 Local Government Act should reviewed to harmonize it with the operation Multiparty System

There are provisions in the laws which are inconsistent with the constitution and multi-party system. There is an urgent need to review the Local Government Act to facilitate the functioning of the multiparty system in Local governments. The provisions on corruption should leave no doubt in the minds of public Officers that loot would confiscate and the proceeds returns to the public purse (Treasury).

Conclusions

This chapter has examined the operations of elections in Uganda with a view to point out areas of concern and for improvement. It has looked at the nature of the state in Uganda and its reluctance to promote and deepen multiparty democracy, even after opening political space in 2005. state institutions, especially its coercive arm are

skewed to the wishes of the ruling party and sometimes act as if they are an extension of the ruling party. The analysis of the chapter has come to the conclusion that Uganda's democratization process has been progressed and hindered by different factors. This study has come to find out that the difficulties of Uganda's efforts to democratize is mainly due to strong one-man leadership or leaders who pay lip-service attention to constitutional government and who do not embrace popular participation, constant military and ethnical conflicts, outside interferences, weak institutions and weak laws.

CHAPTER FIVE

Critical appraisal, conclusions and recommendations

5.1 Critical appraisal

According to James and Hadland electoral systems *inter alia* must ensure Fairness, inclusiveness and accountability.¹¹⁷ Uganda's road to achieve electoral democracy is still bumpy and far from meeting the internationally accepted electoral standards. From 1980 when Uganda held its first General elections to the recently held 2006 General elections all these elections have virtually been highly contested by Ugandan's who have expressed dissatisfaction at the conduct of the elections and therefore contested the outcome.

5.2 Conclusions

The fundamental benefit from a successful and "free and fair" election reflects an election in which all the major players compete equally and accept the outcome of the process. Thus the successful conduct of elections themselves depend on a series of other conditions which form the body of the democratic process, and whose realization is to a large extent the essence of the transition from authoritarian to democratic consolidation¹¹⁸. Moreover the conduct of equality elections and the required framework for such election is one of several critical preconditions that need to be in place before democracy can be seen to be in place. This is the reason why it is important to engage in the process of developing and refining the electoral process, and also understanding what is needed in order to have a "free and fair" election towards consolidation democracy.

¹¹⁷ James, W and Hadland, A 'Shared Aspirations: The imperative of Accountability in South Africa's Electoral System'

¹¹⁸ Kaufmann Daniel and Pritchett Lant (1998) "Civil Liberties, Democracy, and the Performance of Government Projects", in Finance and Development

5.3 Recommendations

5.3.1 Regaining Voters' Confidence in the Electoral Processes

An Electoral reform refers to any change in an electoral system which increases efficiency in the general management of an election, and enables the voter to vote for a candidate of his/her own choice without fear or intimidation from anyone¹¹⁹. Put differently, "Electoral Reforms" is used as abroad term that covers, among other things, improving the responsiveness of electoral processes to public desires and expectations. Electoral change can only be referred to as reform if its primary goal is to improve electoral processes, for example, through increasing impartiality, inclusiveness, transparency, integrity and accuracy. Electoral reforms constitute one of the cornerstones of democracy in every country and should therefore be a permanent feature of any democracy. This is the foremost universal reason why it is important to constantly reform electoral laws. The second reason is that it is in man's nature to continuously pursue fundamental and other human rights and freedoms, including the right to choose leaders without coercion or fear.

5.3.1.1 Election Management

One of the most essential elements in free and fair elections is an impartial election administrator. An impartial election administrator or commission oversees the outcome and helps guarantee the legitimacy of an election. Without an unbiased election commission, or some equivalent body, no law or number of laws can secure a fair and free election. Therefore, the appointment of Electoral Commissioners should be done by an independent body and not the president in consultation with the Opposition, and further ratified by Parliament. Each Commissioner should undergo a rigorous vetting process to ensure that they are individuals of high moral integrity. Commissioners' tenure of office must be secure and they should only be removed

¹¹⁹ IPC Proposals for Electoral Reforms in Uganda Chapters 1 and 2 by Forum For Democratic Change on Sunday, July 5, 2009

from office after probes by a duly constituted impartial. Commissioners must be competently qualified personnel in the electoral processes. The Electoral Commissions must be properly funded and be given the leeway to fundraise. They must conduct elections without interference.

5.3.1.2 Voter Registration

The use of a publicly verifiable, complete and accurate list of voters is vital to the legitimate administration of elections. Such a registry prevents both fraud and discrimination by limiting the pool of voters to those **entitled** to vote. Most preferably, Uganda should introduce a computerized system like the Electronic Voter Registration adopted in Kenya. The EVR system has inbuilt features that can instantly capture irregularities such as multiple registration and impersonation of voters at the time of registration¹²⁰, unlike in the manual system where such irregularities can only be detected at while processing the data. An EVR system also captures the biometrics of a person by scanning the eye pupil, the finger print and the person's facial portrait. Such features are important in authenticating voters during polling. EVR system has been successfully used in many countries as it greatly enhances accuracy of the data and therefore credibility of the voter's register.

5.3.1.3 Balloting, Monitoring and Results.

For an election to be free and fair, balloting must be made available to voters at accessible, well-staffed, secure polling venues located around the country. Voting must be secret and ballot boxes should be secure. When polling closes, votes must be counted in a transparent manner that inspires trust in all participating parties¹²¹. A common and useful check against errors, misconduct and fraudulent behavior involves the participation of party representatives in monitoring the transfer of ballot boxes. All votes should be counted, tabulated and consolidated in the presence of

¹²⁰ "IEC introduces electronic voter registration system in Kenya", Daily Nation 2 February, 2010

¹²¹ Electoral Reforms in Uganda 2008 REPORT

representatives of political parties, candidates and election observers, and the entire process by which a winner is determined should remain fully and completely open to public scrutiny. Monitors in some countries further ensure the validity of their elections by recording results at selected voting sites and comparing them with official results, a process known as parallel voting tabulation.

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