

**THE TASTE OF FREE AND FAIR ELECTIONS IN
MULTIPARTY DEMOCRACY.**

**A CASE STUDY OF KAMPALA DISTRICT FOCUSING ON THE 2011
PRESIDENTIAL AND PARLIAMENTARY ELECTIONS**

BY

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DEDICATION

With much pleasure, I extend my sincere gratitude to my family members especially my Auntie Anna Miraze who guided me when I was working on this research and my sisters and brothers who also encouraged me when doing this research.

DECLARATION

I Twijukye Kenneth Kilwa, do here by declare that the work submitted in this research paper is a result of my own effort, an original work that has never been and is not currently being submitted in any other university or institution of higher learning.

Dated at Kampala this^{30th}.....day of^{MAY}.....2011


Signed.....

TWIJUKYE KENNETH KILWA

CERTIFICATION

I Nabiryo Lydia do here by conform and certify that I have supervised the student's research.

Dated at Kampala this^{30th}.....day of^{May}.....2011

SUPERVISOR /LECTURER^{}.....

MS NABIRYO LYDIA

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ABSTRACT

This paper discusses the taste of free and fair elections in multiparty democracy in Uganda showing whether the elections in Uganda have been free and fair and the necessary steps that can be taken to achieve free and fair elections in multiparty democracy.

The study analyses the legal and institutional frame work which if worked upon can lead to free and fair elections in multiparty democracy.

It is concluded with recommendations that can be adopted and revised to bring about the realization of free and fair elections in multiparty democracy in Uganda.

ABBREVIATION OF KEY TERMS

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

LIST OF STATUTES REFERRED TO

THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995 – AMENDED 2005

THE ELECTORAL COMMISSION ACT 2005

THE PRESIDENTIAL ELECTIONS ACT 2005

THE PARLIAMENTARY ELECTIONS ACT 2005

LIST OF CASES REFERRED

Rtd. Col. Dr. Kiiza Besigye Vs Electoral Commission and Y.K Museven. Presidential Election
Petition No. 1/2006

Sara Birete Vs Bernardatte Biggirwa and Electoral Commission . Election Petition No. 13/2003

Rashid Govule Yiga Vs Ashraf Olega, Election petition No. 1/2001

LIST OF INTERNATIONAL AGREEMENTS AND DOCUMENTS

AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS (ACHPR)

CIVIL AND POLITICAL RIGHTS COMMENTARY (CPRC)

INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS (ICCPR)

UNIVERSAL DECLARATION ON HUMAN RIGHTS (UDHR)

CHAPTER ONE

1.0. Definitions

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

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

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

Governance: The Activity of governing or controlling a company or organisation, the way in which a country is governed or an institution or company is controlled.

A Free Election: An electoral process which respects human rights and freedoms including freedom of speech, association, freedom to register as an elector, a party or candidate.

Fair Election: It is an electoral process with a level playing field including Non Partisan, Administration of elections, constitutional protection of electoral laws, balanced reporting by the media, equitable access to resources for campaigns, open and transparent counting of votes and others.

1.1. General Introduction

Introduction

Free, fair and regular elections are at the very heart of representative democracy. They embody the basic principles of popular control and political equality. Ultimately, it is on the ability of citizens to dismiss their elected representatives, and the political parties or organization for which they stand that the principle of popular control and government is founded.

An important manifestation of democracy is the exercise of the rights to elect representatives. It's a basic national objective that the "state shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their governance". The sovereignty of the people is recognized by the constitution which states that the people "shall express their will and consent on who shall govern them and how they should be governed through regular, free and fair elections of their representatives.¹ Every adult Ugandan has a right to participate in elections.

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

Under **Article 21** of the **Universal Declaration of Human Rights (UDHR) (1948)** although not necessarily a legal instrument, it is only morally binding on states that have proclaimed it, it

¹ The report of the commission of inquiry (constitutional review) findings and recommendations. 2

provides that the will of the people shall be the basis of the authority of the government. This will be expressed in periodic and genuine elections which shall be held by secret vote or by equivalent free voting procedure².

Putting in consideration also **Article 25** of the International Convention on Civil and Political Rights (ICCPR) 1996 which states that, “Every citizen shall have the right and the opportunity without any of the distinctions mentioned in Article 2 and without unreasonable restrictions to take part in the conduct of public affairs directly or through freely chosen representatives”³.

To vote and to be elected at genuine periodic elections, shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electorate and also to have access on general terms of equality to public service in his country.

However, it makes no sense, when I close my left eye on the declaration on criteria for free and fair election which was adopted by the international parliamentary council in Paris on the 26th March 1994 commonly known as the “1994 Paris declaration” though in my opinion, it is a repetition of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Right (ICCPR) because they all establish that the authority to govern shall be based on the will of the people as expressed in periodic and genuine elections.

In short all the electoral related laws be it international frame work or domestic, appreciate the principle relating to periodic free and fair elections and the rights of every one to take part in the government of his/her country directly or indirectly through chosen representatives.

² Universal declaration of human rights (1948)

³ International covenants on civil and political rights (1966)

1.2. Historical background of the study

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

In Uganda, a culture of elections had always been missing if not abused or neglected, in the political history of Uganda.

In 1958 the 1st elections to elect representatives to the LEGCO were Boycotted, those in 1961 and 1962 followed tribal loyalties, those anticipated for 1967 were postponed and those planned for 1971 were pre-empted by Idi Amin's military coup and usurpation of power and yet the 1980 elections that followed the fall of Idi Amin were marred by intrigue, intimidation of opponents and illegal outright rigging.

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

In 1971, Amin used the gun in a coup to overthrow Obote and declare himself president and he was also chased by a combined military force of Ugandan exiles and Tanzania people's defense forces in 1979. Between 1981 and 1986 The National Resistance Movement /army guerilla used violent means to dislodge the Obote II and Okello Lutwa regimes and subsequently came to power in January 1986.

In 1986 the National Resistance Movement (NRM) government established a system of electing leaders from village levels to district councils by the National Resistance Council statute of 1986 hence councils from village level to district level were formally called the National Resistance Council (NRC).

Each district had representatives at the national level, which sat as parliament, and therefore this led to formulation of the constituency Assembly statute of 1993 and its subsequent amendment no. 19 of 1994. The constituency Assembly was charged with making of laws and rules, which subsequently were used during all previous elections.

1.3. Statement of the Problem

Despite existing legal frame work for promotion of free and fair elections, there has not been fully realization of free and fair elections.

1.4. Objectives of the study

Among other objectives, the research will deep down to;

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

- iv. To measure the extent to which government departments especially defense have been involved in the election malpractices.
- v. To find out the importance and contribution of law enforcement organs such as the police, polling constables in the organization of free and fair elections.
- vi. To find out the impact of the malpractices on voters.
- vii. To suggest possible recommendations that could be used to address the undesirable acts of malpractice and other offences committed in the electoral process.

1.5. Hypothesis

The organization of free and fair elections in Uganda has largely been affected by the government-influence on the electorate and electoral laws which leads to rigging, unfair election results and the subsequent election petitions until when the researcher goes deep and proves it in this dissertation.

Election malpractices have developed due to negligence of electoral commission in the updating of the national voters register, which has led to multiple registration of the same people which leads to people voting more than once and also the inclusion of the under-aged, the “dead” on the voter’s register.

1.6. Scope of the Study

The scope of the study is Kampala district due to its effective participation in electoral malpractice and dramatic violences, it covers presidential and parliamentary elections in the stated area held in 2011.

1.7. Synopsis

Synopsis of research mainly entails arrangement of chapters; this research paper is comprised of five chapters of which chapter one includes the following;

Introduction of the study, the definition of different words, historical background of the study, objective of the study, hypothesis, scope of the study, literature review and methodology.

Chapter two deals with the introduction, functions and performance of the electoral commission, voter registration, the display of voters registers, voter and civic education, nomination of candidates, qualification of presidential candidate, nomination procedures, facilitation of presidential candidate, nomination of parliamentary candidates, campaigns, the role of the Media in the election and the role of election observers.

Chapter three includes the introduction, The Constitution, the Presidential Elections Act 2005, the Parliamentary Elections Act 2005 and the international covenants.

Chapter four deals with the findings made in the research process in relation to elections so as to bring about a free and fair election, they include Administrative arrangements of elections, voting in restricted areas, counting receiving and announcing results, Challenging the results and conclusion.

Chapter five is the last chapter thus it includes observations, conclusion and recommendations

1.8. Significance of the study

Elections lie at the heart of a democratic process and which is through the exercise of voting which has to be free and fair. The reflection of the elections that have been held in Uganda does not reflect the will of the people and thereby a need to look critically into the recommendations that have to be made and reflected in this research. Therefore it will serve as a point of reference in future elections.

1.9. Literature review

Free and fair elections are an important component of democracy and they are indispensable in measuring public support as it is through electoral verdicts that power is given or revoked and in fact elections have always been the most desirable, way of peacefully removing unpopular regimes from power.

Many writers have through their writings made observations about elections in a free and democratic society which have provided relevant and valuable information as analysed below;

Constitutional and political history of Ugandan from 1894 to the present, Centenary Publishing/House Ltd Kampala by Kanyeihamba, G.W (2010) puts it that **“the key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people’s will to be expressed”**. He adds that the will cannot be freely expressed if the elections are presided over and conducted by a partisan electoral commission.

People's choice, people's power, challenges and prospects of democracy in Uganda by

Tarsis Bazana Kabwegyere puts it that "... Elections in Uganda have become an expression of the people's choice in their own governance, political success is no longer dictated by religious/ethnic affiliation, those who seek public office at whatever level must rise or fall on the basis of individual merit regardless of their religion, sex, etc and for this to remain so, elections must continue to be free and fair".

The three arms of the government that is the executive, legislature and judiciary have provided me with material for the research and not forgetting the responsible citizens of this country who have tried to write about elections. In Uganda, thus coming up with the following literature The Constitution of the Republic of Uganda 1995 did not only serve as the supreme law of the land in this research but a fundamental reference which provided me with the data on right to vote under Article 59, the electoral commission under article 60, functions of the electoral commission under Article 61, The independence of the commission under article 62, organization of elections under Article 67 and information about multiparty systems under article 69 thus making it possible for this research.

The law on Human Rights Vol. I, by Richard Clayton and Hugh Tomlinson refers to **section 19** of the South African Constitution headed "political Rights" and provides that every citizen has a right to free, fair and regular elections for any legislative body established in terms of the constitution.

It is argued that regularity and fairness in an election is an important barometer for determining respect for human rights. Sempebwa (1992)⁴ examines elections and human rights rules of ensuring fairness electoral commission and state machinery, though he doesn't discuss voter registration and other internally recognized standards of holding elections.

Its further contended by Cohn D.L.P (1973)⁵, that the theoretical relevance of elections does not in their frequency and direction but rather their quality. Although both frequency and quality are equally important if an election is to conform both to international standards of holding an election and more importantly to the ownership by the people of their electoral process where quality reflects their fairness that is experienced during the elections.

Khiddu Makubuya (1996)⁶ examines the legal provisions relating to elections before the advent of the movement government and points out the flows therein. He discusses the criteria for a free and fair election considering among others, a fair administrative framework, public enlightenment, free media and fair reportage. Though he examines various elections, he does not clearly draw out the negative influence they have had on Uganda's development of democratic ideas and practice as acceptable norms for civic behaviour.

⁴ E.F. Sempebwa: Fairness on elections: Essence and Rules constitutional seminar LDC. May 21-22 P.13

⁵ Cohn D.L. and Parsons J. (1978). The Uganda People's Congress Branch and constituency elections 1970. Journal of common wealth political studies Vol. XI. No.1

⁶ Khiddu Makubuya (1996) The law and practice of elections in Uganda prospects for the future 1996.

1.10. Methodology

In my research, I used both qualitative methods and quantitative methods so as to bring about the best results therein. In qualitative method, I used observation method in regard to what was happening during elections as to whether they would bring about free and fair elections.

Also group discussions were vital in as far as my research is concerned in that I engaged some people in discussions in regard to free and fair elections thereby getting their views and opinions.

Related to the above was the role played by the law libraries that I visited for related material including the Kampala International University Library, Law Development Center Library, Human Rights Commissions Library and others which were very vital in my research.

CHAPTER TWO: THE INSTITUTIONAL FRAMEWORK

2.0. Introduction

The electoral commission was set up as an institution to organize and conduct elections at all levels in the country. It is created under Article 60 of the 1995 constitution of the Republic of Uganda. The commission is charged with the organisation and conduct of presidential elections, parliamentary elections, local council elections at all levels in the country. Members of the electoral commission are supposed to be people with high moral character, proven integrity and in possession of considerable and demonstrated competence in the conduct of public affairs⁷.

For elections to be regarded as having legitimacy in democracy, they have to be free and fair, the electorate must have opportunities to judge between different politicians and their relevant anti-partial application to their daily life. The electoral commission has to use its powers well and in this regard, the time frame of the elections has to be adequately planned so as not to be seen as done haphazardly because it will be thought as a favour to the incumbent. The electorate must be free and fair to exercise their inherent constitutional rights to vote for persons or political parties of their choice and therefore for this reason, it is a prerequisite to have an institution or body created by the citizens to be independent and impartial. Though the electoral commission has had a number of shortcomings especially logical ones, it has been able to conduct elections in a somehow credible and internationally acceptable, manner though not free and fair.

⁷ Article 60 of the Constitution of the Republic of Uganda 1995

2.1. Functions and performance of the electoral commission

The functions of the Electoral commission are stipulated under Article 61 of the constitution of the Republic of Uganda 1995 and they are;

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

Besides the above functions, the electoral commission has other specific powers, which includes;

- i) to appoint a polling day for any election subject to any law
- ii) to design, print, distribute and control the use of ballot papers,
- iii) to create polling divisions and establish and operate polling stations to take measures for ensuring that the entire electoral process is conducted under conditions necessary for the conduct of a free and fair election in accordance with the statute;
- iv) to promote, through appropriate means civic education of the citizens of Uganda on the purpose and voting procedures of any election, including where practicable the use of sign language;
- v) to ensure that the candidates campaign is in an orderly and organized manner; to accredit any non partisan individuals, group of individuals or an institution or association,

- vi) to carry out voter education subject to guidelines determined by the commission and published in the gazette;
- vii) and to ensure compliance by all election officers and candidates with the provisions of the statute. The electoral commission therefore should have sufficient legal backing to freely execute its duties.

Article 62 of the constitution provides for the independence of the electoral commission, it stipulates that the commission shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority. However the members of the commission were appointed by the incumbent president who was himself a candidate, Neither did the opposition participate in the appointment of the members of the commission, nor were they subjected to any vetting. To the extent that they were selected through a system set in place by the incumbent president who himself is a candidate. Therefore the independence of the commission provided for in Article 62 may be questionable.

The commission is composed of chairman, deputy chairman, secretary and other staff members and the law also requires it to have an office and representative in each electoral district into which Uganda is divided. Accordingly, these electoral offices include returning officer, the district registrar in each electoral district which is based on the administrative units. The district election officers have the responsibility of training electoral officers and facilitate voter awareness. Its also their duty to ensure the safe storage of election materials including ballot papers both before and after the elections and to transmit the election results to the electoral commission headquarters in Kampala.

2.2. Registration of voters

This is a very significant part in the electoral process, it is through the registration of voters that the actual figure of voters is registered. The importance of the voters register must be carried out diligently.

The voters' register to a great extent guards against excessive malpractice since the number of votes cast in a free and fair election must always tally or fall within the total number of the registered voters. Voter registration also encouraged registered, then he or she will have a feeling that it is his or her responsibility to cast the vote.

As a qualification every Ugandan citizen to be registered as a voter should be 18 years and above. It's the duty of eligible citizens to register as voters, though this aspect is not applicable to the case of prisoners.

The electoral commission is required to continuously update the Nations Voters register⁸ reason being that some registered voters die. Others transfer or relocate to New Electoral areas and more so the under aged become eligible to vote, it also gives a chance to the unregistered members of the public to come forward and register in the parish or word where they reside or originate⁹.

⁸ (S.19 Electoral Commission's Act 2005)

⁹ (S.19 Electoral Commission's Act 2005)

2.3. The Display of Voters Registers

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

The display of the national voters register for 2011 elections was scheduled to run from 03/05/2010 – 4/6/2010. A Final voter's register had 13,954,129 voters and over 1 million ghost voters had been removed from the register.

Electoral register has been a contested issue all over Africa. In Ugandan presidential elections 2011, there were allegations of inflation of voters, inclusion of ghost voters, deceased persons, ineligible voters were also included on the registers and failure to further extend the days of display of the voters registers. If elections are to be free and fair, then there should be an impartial registration of voters with no restrictions, tricks and omissions so as to make the voters register a true reflection of the eligible voters in the country.

The Minister of State for Constitutional Affairs may by statutory instrument appoint a date on which the registration is to commence and end and this has to be gazetted in the government gazette. As a treaty stated above, the electoral commission has to appoint a registrar for each district and he is not supposed to be subjected to the control or direction of any body or authority except the electoral commission.

2.4. Voter and civic education

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

Voter and civic education plays an important role towards the achievement of a free and fair election as people will be informed about the dangers of their failure to participate in voting, not to sell their votes avoiding bribery and even encourage secret voting. The challenge that has arisen even in the previous elections is the inadequate civic education, if one considers the just concluded 2011 elections, the civic education that was conducted was not enough because people were not informed or educated on when elections were to be held in that some didn't know the days specified for what elections, the sensitization was not adequate though the electoral commission had some programmes put on radios, in newspapers and even in the print media.

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

The commission undertook the training of election officials and candidates' agents and the promotion of education programmes in various local languages, but however, this training was lately timed and those who were trained did not have enough time to educate the voters.

Also to note is the role that was played by a number of non governmental organisations (NGOs) like National Organisations for Civic Education and Monitoring (NOCEM), NEM Group which undertook the public awareness campaigns to educate citizens on their civic responsibilities, rights and obligations as electors under the constitution; this was done through holding seminars, and training work shops throughout the country but what should be noted is that it is the electoral commission that accredits these Non Governmental Organisations (NGOs) to conduct civic education.

2.5. Nomination of Candidates

This is a cardinal part of the electoral process for without it, elections can not take place, as there will be no people to elect from, presidential elections take place after every five years though there is a likelihood of extending the term limits.

The nomination of candidates for the 2011 general elections was conducted in accordance with the law.

2.6. Qualification of a Presidential Candidate

The Constitution of the Republic of Uganda provides for the qualifications one must have to qualify to stand as a presidential candidate¹⁰. A person is not qualified for election as president unless that person is;

- a) A citizen of Uganda by birth
- b) Not less than 35 years and not more than 75 years of age.

¹⁰ (Article 102 of the Constitution of the Republic of Uganda 1995).

- c) Qualified to be a member of parliament

More so, one shall not be a candidate in a presidential election unless

- a) That person submits to the electoral commission on or before the nomination day a document which is signed by that person nominating him or her as a candidate; and
- b) The nomination is supported by two thirds of all the districts. Which means that one has to obtain signatures from all the districts that make up Uganda which could be very difficult for the new entrants into the presidential race in that they could fail to raise the required signatures.

2.7. Nomination procedures

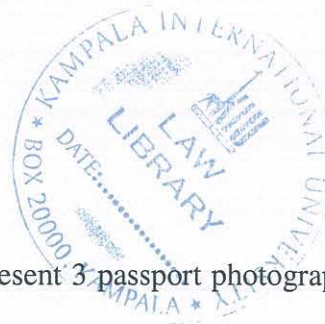
Procedures for nomination of the president are laid in the S.9¹¹ To facilitate the nomination exercise, the commission prepares guidelines and check lists of nomination requirements and procedures, which are to be followed by each aspiring candidate. A total of 8 candidates were nominated for the 2011 presidential elections though more had picked nomination forms, so others withdrew from the race because of various reasons.

Nomination papers are collected from either the district headquarters or from the electoral commission headquarters and the candidate fills the papers in triplicates and one copy is put for public inspection after nomination as required by the law.¹²

The most controversial element in the nomination process is the requirement that aspiring presidential candidate pay a nomination fee of 12 million which fee is non refundable, payable in

¹¹ The Presidential Elections Act 2005

¹² S. 12 – Presidential Elections Act 2005



cash / bank draft to the electoral commission, they also have to present 3 passport photographs. The aspect of the nomination does not reflect free and fair elections in that many would be aspirants are denied a chance of participating because they fail to raise that money.

2.8. Facilitation of presidential candidates

According to S.20, the commission is under obligation to ensure that the relevant organs of state provide facilitation during the entire campaign period, protection of each candidate and even provide adequate security to each candidate during the campaigns. The law requires the commission to offer such facilitation and funds to candidates to be exclusively used for election purposes. Candidates or their agents are barred from obtaining, soliciting or receiving any financial or any other assistance for the purpose of their campaign from any foreign government, institution or body or person if such has demonstrated an intention to overthrow the legally established government of Uganda or to endanger the security of Uganda.

2.9. Nomination of parliamentary candidates

The Uganda Constitution Article 80, provides that a person is qualified to be a member of parliament if that person is a citizen of Uganda, is a registered voter and has completed a minimum formal education of advanced level or its equivalent. Article 80(2)¹³, stipulates that a person is not qualified to be a member of parliament if that person is of unsound mind, is holding or acting in an office, the function of which involves a responsibility for or in connection with the conduct of an election, if he is a traditional or cultural leader, or has been discharged or is

¹³ The Constitution of the Republic of Uganda 1995

under a sentence of death or sentence of imprisonment exceeding more months imposed by a competent court without the option of a fine.

Nomination of candidates is made on nomination day by two registered voters appearing in person tendering to the returning officer the following;

A nomination paper in duplicate containing a statement under oath by the person seeking nomination specifying the name, age, address and occupation of the person seeking nomination and the name, address of the official agent. The nomination is also accompanied by a statement by the official agent stating that he or she has accepted the appointment.

The names and signatures of a minimum of ten (10) persons who are registered voters in the constituency where the person seeks nomination as a candidate.

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

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

2.9.1. Campaigns

Campaigns are always a forum for candidates to get exposed to the electorate to seek their mandate. The voters get to know what the candidates have for them in store through their manifestos. The Uganda constitution and electoral laws provide for the manner in which campaigns are to be conducted. The electoral commission determines the manner and period for which the campaigns are to take place.

Presidential candidates are given one day at least in each district, even candidate agents are allowed to campaign on their behalf. Candidates are not allowed to conduct public campaign meetings except in accordance with the programme of meetings submitted by the candidates to the electoral commission.

2.9.2 The role of the media in the election

The Media plays a key role during election process by being a channel of information from the candidates to the population and providing different perspectives to the electoral process. The law requires that the state owned media should give equal treatment and access to all candidates.

In the recent concluded presidential and parliamentary elections that were held in Feb 2011 the media provided a variety of information and debate about the elections in general as well as the Presidential candidates, this was reflected in a range of news coverage focusing on the presidential candidates, which was complimented with talk shows and discussion programs broad cast on state and commercial radio and television.

The lack of skilled human resources, absence of production capacity in the news department and a reliance on programming supplied by the parties and candidates, coupled with the wide access granted to the presidential press unit, this resulted in coverage of the presidential elections that was highly imbalanced in terms of the incumbent Commercial broadcasters provided for greater range of coverage of elections and this is represented in far wider coverage of the main opposition candidates, newspapers also focused on two main candidates.

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

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

2.9.3. Role of election observers in elections

The electoral commission invited international election observers mission to come and observe the presidential and parliamentary election and district women representatives. Elections were held on 18/2/2011 accordingly, a total of about 500 international observers and 1,100 local observers were accredited. And accordingly briefed and the observers were to observe relevant aspects of the organization and conduct of the presidential and parliamentary elections scheduled to take place on 18/2/2011 in accordance with the laws of Uganda. They were to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgment whether the conditions exist for a free expression of will by the elections and if the results of the elections would reflect the wishes of the people in relation to a free and fair election.

In their conclusion, the observers believed that the poll, count and results process provided for conditions that enabled the will of the people to be expressed and that the results of the elections reflected the wishes of those who were able to vote. However there were some serious irregularities and significant shortcomings and there was scope for substantial improvement.

They observed that the environment in which the elections were held had a number of negative features which meant that the candidates were not competing on a level playing field: the failure to ensure a clear distinction between the National Resistance Movement Organisation (NRMO) party and the state, the use of public resources to provide an advantage to the ruling party, the lack of balance in state owned media coverage, the harassment of the opposition presidential candidates, the creation of climate of apprehension amongst the public and opposition party supporters as a result of the use of the security forces, and the alleged use of financial and material inducements. All the above hindered the realization of a free and fair election.

CHAPTER THREE

LEGAL AND POLICY FRAMEWORK

3.0. Introduction

“In all countries that aspire for democratic forms of government, elections play an essential part in creating a healthy political life, the conduct of elections if free and fair ensures the respect for human rights¹⁴”.

The purpose of election is to provide a means whereby people can select from various candidates that appear the most suitable to lead which can only be achieved if the elections are free and fair. The mention of the word elections produces different reactions among different people for instance the reaction of the rulers is not the same as that of the ruled because they have different views towards elections, to the ruled, it's a noble charge to exercise their rights to be governed according to their choice, for the rulers its normally a time to manipulate a process that will ensure they remain in power.

In this chapter, an analysis of the legal and policy framework under which the right to vote is exercised. It also focuses on the electoral laws in domestic set up as well as relevant provisions of international instrument. The establishment, composition and mandate of the electoral commission form part of the discussion in this chapter.

¹⁴ D. Nohlen, elections and electoral systems: Friedrich E.

3.1. The Constitution

The constitution of Uganda 1995 contains various provisions that relate to the conduct of elections in Uganda, it's the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.¹⁵

Article 21¹⁶, stipulates that all people are equal before and under the law in all spheres of political, economic, social and cultural life and in any other respect and shall enjoy equal protection of the law, its against discrimination on grounds of political opinion and others, therefore if these aspects are observed, then free and fair elections will be realized because all the participants or candidates will have equal ground in relation to the electoral process.

Article 61¹⁷, states that the electoral commission shall ensure that regular, free and fair elections are held but in the actual sense though elections have been held for several times, the fact is that the element of free and fairness has not been exercised because of the negativities that are associated with these elections.

More so is Article 67¹⁸ which is to the effect that all candidates shall be given reasonable access to use of state owned commission media and that all presidential candidates shall be given equal time and space on the state owned media to present their programmes to the people. In reality it is practically impossible to realize this aspect in that we have seen it several times where the

¹⁵ Article 2(1) of the constitution of the Rep of Uganda 1995

¹⁶ Article 21 of the constitution of the Rep of Uganda 1995

¹⁷ Article 60 of the constitution of the Rep of Uganda 1995

¹⁸ Article 67 of the constitution of the Rep of Uganda 1995

opposition candidates are given less time in relation to the incumbent candidate on such media though the constitution calls for equal time allocation.

Also Article 61(1) (f)¹⁹ is to the effect that free and fair elections shall be held whereby the electoral commission shall hear and determine election complaints arising before and during the polling, under this aspect, if one feels that the elections were not free and fair, then he is entitled to petition and produce the relevant evidence to that effect and thereafter, the electoral commission will determine and hear the complaints as it could in one way or another lead to free and fair elections.

Article 62²⁰ is to the effect that the commission shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority, therefore if a free and fair election is to be held, the commission should be left to act without interference but because of even its composition and the way its members are appointed, it leaves a lot of room for interference from the incumbent government as it is the appointing force and so the appointer has to be favoured by the appointee.

The Constitution (Amendment) Act (2005)²¹ puts it that any person is free to stand for an election as a candidate, independent of a political organisation meaning that the ground is open for a free and fair elections without limiting on where one should belong before contesting therefore leading to a free and fair election.

¹⁹ The 1995 Constitution of the Republic of Uganda

²⁰ The 1995 Constitution of the Republic of Uganda

²¹ The Constitution (Amendment) Article 72(4)

3.2. The Presidential Elections Act 2005

Article 103(9)²² empowers parliament to prescribe by law the procedures for the elections and assumptions of office by the president. Thus the Presidential Elections Act was enacted to provide for elections to the office of the president.

Section 7(3)²³ puts it that the disadvantaged like the blind, illiterate and other voters with disability also participate in the voting though they are helped by some one, here elections are seen as free and fair in that even such people are allowed to exercise their constitutional right of voting and this person (the helper) is not supposed to communicate to another person at any time about information as to the candidate for whom the assisted voter intends to vote or has voted.

Section 22²⁴, stresses that the commission shall ensure that the relevant organs of the state provide during the entire campaign period protection of each candidate and adequate security at all meetings of candidates, and that the commission shall offer to each candidate as contribution to be used solely for the election, a sum of one thousand currency points and such other facilities as may be approved by parliament, therefore if such is abided by, then the elections could be free and fair as long as equal treatment to all candidates is done by the commission in the election period.

Section 30²⁵ portrays an element of free and fair elections in that it stresses that every polling station shall be located in an open ground or in a large premises of convenient access having an

²² The Constitution (Amendment) Article 72(4)

²³ The Presidential Elections Act 2005

²⁴ The Presidential Elections Act 2005

²⁵ The Presidential Elections Act 2005

outside door for the admittance of voters and if possible another door through which voters may leave after voting and that it shall as far as possible be accessible by persons with disabilities and the aged, that polling time shall commence at 7 o'clock in the morning and close at 5 o'clock in the afternoon, all this is aimed at making sure that the elections are free and fair, to avoid ballot stuffing and rigging of elections.

Section 43²⁶ prohibits arms and ammunitions during any part of polling day or approach within one kilometer of a polling station with deadly weapons unless called upon to do so by lawful authority or where he or she is ordinarily entitled by virtue of his or her office to carry arms. All this is intended to make sure that the elections are free and fair without intimidation or even fear of people voting their candidate of choice but to the contrary, the army and other security organs have on polling days been seen on some polling stations even where their presence is not needed in that election constables are already there.

Section 23²⁷ also emphasizes equal treatment, freedom of expression and access to information of candidates whereby during the campaign period, every public officer and public authority and public institution shall give equal treatment to all candidates and their agents, that every candidate shall enjoy complete and unhindered freedom of expression and access to information in the exercise of the right to campaign under this Act, all this is intended to bring about a free and fair election which should strictly be observed.

²⁶ The Presidential Elections Act 2005

²⁷ The Presidential Elections Act 2005

3.3. The Parliamentary Elections Act 2005

The Parliamentary Elections Act under Section 23, puts it that a person shall not use any symbol or colour which has a tribal, religious affiliation or any other sectarian connotation as a basis for that person's candidature for election or in support of that persons campaign, all this is intended to make sure that elections are free and fair without such hindrance to people's choice by religion or colour.

More so, Section 25²⁸, is to the effect that except as authorized under this Act, or otherwise authorized by law, no candidate shall use government or public resources for the purpose of campaigning for election, more so is the fact that, if he or she is holding a political office, he or she shall during the campaign period, restrict the use of official facilities...to the execution of his or her official duties, all this is intended to make sure that free and fair elections are held whereby such people will not use their offices and such facilities to influence the outcome of elections or even the influence the election process.

Under Section 45²⁹, it is provided that where polling at a polling station is interrupted by a riot or violence, or any other event while there remains, in the voters register, voters who have not completed the polling process, the presiding officer shall adjourn the polling to the next day or any other time of the same day and shall immediately inform the returning officer of the fact, this will bring about a free and fair election in that if such happens, then it could be unfair to do otherwise when some other voters have not voted there by leading to unfair election process therefore the adjournment would be free and fair.

²⁸ The parliamentary elections Act 2005

²⁹ The parliamentary elections Act 2005

Section 54³⁰ stipulates cases of mandatory recount and it is to the effect that where, after the official addition of the votes, there is an equality of votes between two or more candidates obtaining the highest number of votes or where the recount under this section results in an equality of votes among two or more candidates, a run off election shall be held involving only the candidates with equal votes...this is intended to make the whole system free and fair in that it could be hard to choose a winner if not through a run off election, therefore a necessity to have a run off election for a free and fair election outcome.

If an election candidate feels that the elections were not free and fair and can prove to the satisfaction of court his allegations, then he can stand on those grounds to set aside the election this is manifested in section 61³¹ and such grounds include that the person other than the one elected won the elections, that there was non compliance with the provisions of the Act relating to elections, or that the candidate was at the time of his or her election not qualified or was disqualified for elections as a member of parliament, if such instances can be proved, then a free and fair election has to be held because the above grounds are against a free and fair election.

However, Uganda is not known for the regularity of elections and to make matters worse, the few elections held in Uganda have been marred by serious imperfections namely bribery, intimidation rigging, excessive violence, murder, vulgar language to mention but a few. This was observed in the case of **RTD Col. DR. Kiiza Besigye Vs Electoral Commission and Y.K**

³⁰ The parliamentary elections Act 2005

³¹ The parliamentary elections Act 2005

Museveni³², where the court noted that there was non compliance with the provision of the constitution and the Presidential Elections Act as well as the Electoral Commission Act.

It is important to note that parliament has failed in its legal duty to pass legislations in time that would ensure free and fair elections. Besides the electoral commission should have voters registers that are updated and even improve on other election irregularities so as to have a free and fair election.

3.4. The International Covenants / Declarations

Democracy, elections and human rights are concepts which are linked, intertwined and interdependent, human rights are largely protected where free and fair elections are held. Provisions pertaining to the right to vote in international covenants / declarations include the Universal Declarations of Human Rights and the African charter on human and people's rights.

Article 21³³ provides that;-

- i) Every one has a right to take part in the government of his party, directly or through freely chosen representatives.
- ii) Every one has a right of equal access to public services of his country.
- iii) The will of the people shall be the basis of authority of government, this shall be expressed in periodic and genuine elections which shall be by universal adult suffrage and shall be held by secret vote or by equivalent free voting procedures.

³² Presidential election petition No. 1/2006

³³ Universal Declaration of Human Rights (UDHR) 2001

Also Article 25³⁴ provides that “Every citizen shall have the right and opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions” to take part in the conduct of public affairs, directly or through freely chosen representatives.

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

To have the access on general terms of equality to public services in his country. Therefore Uganda being a state party to the international covenant on civil and political rights (ICCPR) it ought to have observed the above provisions in time so as to have a free and fair elections. The fact is that though elections were held in Uganda, they were not free and fair because of the irregularities that were observed before and during the elections.

In conclusion therefore, the legal and policy framework under which elections in Uganda are conducted leaves a lot to be desired. This has been partly by the ushering in of promises and money by the contestants to the electorate. There is a lot of foul play that the only rational conclusions one can make is that the legal and policy framework in Uganda is not geared towards the conduct of genuine, free and fair elections.

³⁴ International covenant on civil and political rights (ICCPR) 2000

CHAPTER FOUR:

THE POLLING AND COUNTING OF VOTES, THE LAW AND PRACTICE

4.0. Polling

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

4.1 Administrative arrangements

The administrative arrangement for the poll lies in the hands of the returning officer, whose duty is to do all such acts and things as may be necessary to effectively conduct the election in the manner provided by the constitution and the relevant provisions of the electoral law³⁵, they are supposed to do all that it takes to make sure that the elections are free and fair.

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

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

³⁵ S-28 Parliamentary elections act 2005

The administration of the poll itself is assisted by the appointment of presiding officers and polling assistants to serve at each polling station. The function of the presiding officer is to ensure that the election rules are observed and a proper poll by secret ballot is taken. They are required to ensure that the ballot box is empty before polling starts, that proper directions are available for the voters and that those claiming the right to vote are entitled to do so³⁶, all this aimed at making sure that the election process is free and fair.

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

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

- a) A sufficient number of ballot papers to cover the number of voters likely to vote on a polling station for which the presiding officer is held responsible.
- b) A statement showing the number of ballot papers supplied with the serial numbers indicated.
- c) Any other necessary materials for the voters to mark the ballot papers and complete the voting process³⁷

Polling stations as far as possible have to be located in an open ground or where there is no open ground, in large premises of convenient access, having an outside door for the admittance of voters³⁸

³⁶ H.F Rawlings, op.cit P. 214

³⁷ S. 27 Parliamentary Elections Act 2005

³⁸ S. 28 Parliamentary Elections Act 2005

At every polling station, voting time commences at 7:00am in the morning and closes at 5:00 pm, registered voters who are in possession of a voter's card are entitled to vote though even those without voting cards but whose names appear in the registers are also allowed to vote.

Various tables are normally put in place at the polling station as follows;

- i. Table 1- This is where voter identification is done, the voter's card is checked and the voters name is ticked in the voters register and there after is given the ballot, Thereafter folds the ballot paper and inserts it in the ballot box.
- ii. The third table is occupied by the independent observers/monitors and candidates agents.
- iii. Lastly the voter dips the small left hand finger into indelible ink as mark that he/she has already voted³⁹

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

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

³⁹ S.30 Parliamentary elections Act 2005

4.2 Voting in Restricted Areas

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

Voting in restricted areas is easier for presidential elections because all candidates are seeking mandate from the entire country, it matters less where votes are cast from. But for parliamentary seats it is unfair, voters have to identify with their constituencies of origin. consequently votes from restricted areas determine the fate of parliamentary elections yet those who cast the votes are not known to the candidates. The army top brass does not furnish the particulars of soldiers in restricted areas allegedly for security reasons and this is a hindrance to the realization of a free and fair election which in itself could affect the end result of the elections.

Further voting in restricted areas favours the incumbent who is a retired soldier, it's very clear that most of the votes from these restricted areas where the electorate is composed of soldiers go to the incumbent. Although s.39 of the Parliamentary Elections Act provides that soldiers in restricted areas should vote outside the barracks, in the recently concluded elections voting was done inside the barracks, for example in Nakasongola army barracks. What even transpired inside the barracks is only known to the soldiers⁴⁰. The electoral commission has never taken

⁴⁰ DEM Group Report, op.cit p.12

steps to ensure that the sick, prisoners, exercise their right to vote though there is no law barring them from participating in the electoral process.

4.3 Corruption and illegal Practices.

Like previous elections held before the 2011 parliamentary and presidential elections were marred with corrupt and illegal practices by the then incumbent candidates. It was observed in **the Presidential Election Petition No. 01/2006 between Rtd. Col. Dr. Kizza Besigye Vs Electoral Commission and Y. K. Museveni.** Held by Supreme Court that irregularities were not substantial to change the result, maintaining the incumbent as winner. However, there were numerous reports of illegal practices mainly against Government officials in respect of the following:

- i. Violence on polling day
- ii. Destroying candidates pictures
- iii. Impersonation of voters
- iv. Ferrying of voters to polling stations by candidates.
- v. Voting more than once
- vi. Under age voting
- vii. Buying of voters and voters cards
- viii. Stuffing of ballot boxes by election officials
- ix. Voting before and beyond the official time
- x. Abuse of office by polling station officials
- xi. Signing the declaration of results forms before close of the polling

xii. Confiscation of declaration forms from polling officials by candidates' agents'⁴¹.

There were also discrepancies in the administration of the elections;

- a) Late delivery and distribution of materials of the elections;
- b) Poor security of election materials;
- c) Involvement of security personnel in the administration of elections;
- d) The electoral commission issued misleading and contradictory, directives when it allowed voting without voter's cards yet it did not provide the procedure for identification of voters⁴².

Its not surprising therefore that, the presidential elections results have not been respected by the other contending candidates who say that there were a lot of election irregularities and so they do not recognize the declared winner as so.

A lot of petitioners have been filed in the various high court registries citing, some of the corrupt and illegal practices discussed above for example the Rubaga North Seat is still under the powers of court to decide the right winner of the area.

4.4 Counting, Receiving and Announcing Results

Votes cast at a polling station shall be counted at the polling station immediately after the presiding officer declares the polling closed and the votes cast in favour of each candidate shall be counted and recorded separately in accordance with the Act⁴³. This helps the contestants and their supporters to clearly know the performance of their candidates at each polling station

⁴¹ DEM-Group, op.cit P. 31

⁴² Ibid

⁴³ S. 47 Parliamentary Elections Act 2005

because the counting is done in public where there is good view of the whole process. At the commencement of the counting, the presiding officer shall in the presence and full view of all present, open the ballot box and empty its contents onto the polling table and with the assistance of the polling assistants, proceed to count the votes separating the votes polled by each candidate.

For a presidential candidate to be declared winner of the elections, the number of votes cast in his favour must be more than 50% of the valid votes cast at the election⁴⁴ and in case, there are only two candidates and both do not get 50% of the valid votes cast, a fresh election should be held within 30 days.

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

⁴⁴ S. 57 Presidential Elections Act 2005

The results as per the 2011 presidential elections

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

4.5. Challenging the Results

The law entitles any aggrieved candidate to petition the court for redress. Petitions challenging the election of the president are lodged in the Supreme Court with in ten (10) days after the declaration of the results⁴⁵.

The Supreme Court is required to hear and determine the petition expeditiously and declare its findings not later than thirty days from the date the petition is filed.⁴⁶ After due inquiry into the allegations raised in the petition the Supreme Court may

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

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

⁴⁵ S. 57 Presidential Elections Act 2005

⁴⁶ *ibid*

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

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

4.6 The Presidential Election Petition 2001.

Rtd. Col. Dr. Kizza Besigye, a former comrade in arms and personal doctor of President Yoweri Museveni fought a bruising battle with his former mentor Museveni during the 2001 presidential campaigns leading up to the March 12, 2001 elections⁴⁷. The electoral commission declared the results of the 2001 Presidential Elections as follows⁴⁸.

	Candidate's name	Votes	Percentage
1.	Yoweri Kaguta Museveni	4,252,654	69.3%
2.	Kizza Besigye	1,713,326	27.8%
3.	Aggrey Siryoyi Awori	100,104	1.4%
4.	Kibirige Mayanja Mohammed	60,278	1.0%
5.	Bwengye Wazarwahi Francis	29,666	0.3%
6.	Karuhanga Chapa	8,561	0.1%

⁴⁷ <http://www.monitor.co.ug>(accessed26/8/01)

⁴⁸ <http://www.electionworld.org>(accessed 28/01)

The incumbent took a big lead in Uganda's Presidential race but his main opponent rejected the results as grossly fraudulent⁴⁹ he called the elections a violation of the rights of Ugandans to freely express their will.

He petitioned the supreme court of Uganda as an aggrieved candidate challenging the result of the election, seeking an order that Museveni Yoweri Kaguta declared elected President be annulled and therefore not validly elected. The electoral commission was also joined to the petition as a second respondent. In the **famous Presidential Petition No. 1 / 2006 Rtd. Col. Dr. Kiiza Besigye Vs The Electoral Commission and Y.K. Museveni** and there in.

The grounds raised in the petition against the presidential candidate elect were that;

- a) Personally or by his agents with his knowledge and consent/approval committed illegal practices and offences.
- b) Publication of a false statement that the petitioner was a victim of aids.
- c) Offering gifts to voters, appointing partisan senior military officers and partisan sections of the Army to take charge of security during the elections.
- d) Organizing groups under the Presidential protection unit to use violence against those who did not support the incumbent and threatening to cause death to the petitioner⁵⁰.

⁴⁹ <http://www.afrol.com/news> 2001/ug006-highlights reaffirm.htm

⁵⁰ Rtd Col. Dr. Kiiza Besigye Y.K. Museveni and the Electoral Commission Election Petition 1/2001

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

- i. Failure to efficiently compile, maintain and up-date the national voter's register and the voters roll for each constituency and polling station.
- ii. Failure to display copies of the voters roll for each parish or ward for the statutory 21 days.
- iii. Failure to publish a list of all polling stations within the prescribed period of 14 days before nomination
- iv. Increasing the number of polling stations on the eve of polling day without sufficient notice to candidates.
- v. Allowing or failing to prevent stuffing of ballot boxes, multiple voting and under age voting, chasing away the petitioners from counting and tallying centres.
- vi. Allowing or failing to prevent stuffing of ballot boxes, multiple voting and under age voting, chasing away the petitioners from counting and tallying centres.
- vii. Allowing or failing to prevent agents of the incumbent to interfere with electioneering activities of the petitioner and his agents.
- viii. Allowing armed people to be present at polling stations.
- ix. Falsification of results and failure to ensure that the election was conducted under conditions of freedom and fairness⁵¹

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

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

⁵¹ Op.cit

- a) During the Presidential elections the second respondent did not comply with the provisions of the Presidential Elections Act, it failed to publish in the gazette a list of polling stations as required by law.
- b) The commission failed to supply the petitioner with an official copy of the voters register for use on polling day.

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

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

The Supreme Court of Uganda is the final court in Uganda; its judgments are not appealable. This judgment is very important in the conduct of future elections in Uganda. It showed that the electoral commission failed in the performance of its duties hence did a shoddy job. In certain constituencies, the results of the elections were more than the registered voters a clear indication that there was massive/and irresponsible rigging.⁵² Worse still is that many voters found their names missing out in the voters registers which seemed deliberate. Furthermore, substantial effect was decided in *Sarah Birete Vs Bernadatte Biggirwa and EC EPA No.13/2003* by

⁵² Comment: In Mawokota West Constituency, the results were in excess of 200 votes

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

4.7. Parliamentary Election Petitions

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

On which the result of the election is published by the commission in the Gazette.⁵³ Court is mandated to hear and determine the petitions expeditiously and may for that flatter suspend any other matter pending before it. After due inquiry into the allegations, the court may;

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

The law also allows a recount of votes;

- a) Where there is equality of votes between two or more candidates obtaining the highest number of votes or
- b) Where the number of votes separating the candidates receiving the highest number of votes and any other candidate is less than fifty⁵⁴

⁵³ Comment: In Mawokota West Constituency, the results were in excess of 200 voters

⁵⁴ S.54 Parliamentary Elections Act 2005

- c) Candidates may also make an application to the Chief Magistrate within seven days after the poll.

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

An alarming number of petitions was received and the legal department put the number at 134⁵⁵, and the most common grounds of appeal were;

- i. Forged academic papers-like in the election petition between *Rashid Govule Yiga Vs. Ashraf Olega*⁵⁶
- ii. Exclusion of voters from the register, allowing multiple voting, were some of the grounds on which the petition between Ngoma –Ngime Vs. Winnie Byanyima⁵⁷ was filed.
- iii. Interestingly one of the petitions is based on the ground that the elected Member of Parliament is not a Uganda Citizen⁵⁸.

In the just concluded Feb 2011 Parliamentary Elections, a lot of petitioners are also being received by the commission where the losses and other aggrieved voters are petitioning the winners and electoral commission over vote rigging, ballot stuffing, bribery and intimidation that marred the elections.

⁵⁵ Interview with the Senior Elections Officer – Legal Department at the Electoral Commission

⁵⁶ Parliamentary Election Petition No. 1/2001 (Aringa County)

⁵⁷ HCT-05-CV-EpA-0001-20011

⁵⁸ Judgement of the Supreme court in Presidential Election Petition No. 1/2001

4.8 Conclusion

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

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

Even after confirming that elections were marred by serious irregularities, the supreme court ruled that;

The irregularities did not affect the result of the election substantially and dismissed the petition⁵⁹, although the level of substantiality remains a matter of debate as seen in the above mentioned case of Sarah Birete.

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

⁵⁹ Judgement of the Supreme Court in Presidential Election No. 1/2001

CHAPTER FIVE

OBSERVATIONS, CONCLUSION AND RECOMMENDATIONS

5.0. Observation

This study has demonstrated that no free and fair elections is possible without the right to vote being exercised. The right to vote is fundamental as legitimizing process in the exercise of state power and authority. The right to vote is so cardinal that its absence would tarnish everything that a good government might attempt to achieve⁶⁰. It is through the vote that people subject themselves to the rule and authority of those in control of state power. It is equally through the vote that those who exercise authority are empowered⁶¹. The implementation of the right to vote in Uganda does not conform to the standards required in the international instruments. Ugandan elections have in most cases been a “shame” just to hoodwink the voters that those in power are there because of their mandate.

Uganda has never had genuine, regular, free and fair elections, Violence, intimidation, impersonation of voters, murder, thuggery, and all sorts of irregularities have continuously dominated all the elections that have been held in Uganda⁶². When Uganda is compared to the other African countries, it becomes worse, for example in the recent concluded Kenya elections instead of a winner taking it, resulted power sharing. In Zimbabwe result took a full month to be declared an influence mainly by the incumbent Presidents thus leaving everything in suspense for someone to believe that there laws governing the voting system in Uganda and Africa at large.

⁶⁰ Steyler, Murphy, De Vos, Rwelamira: Free and Fair Elections (Juta) P. 57

⁶¹ *ibid*

⁶² <http://www.Uganda elections.com>(accessed 6/9/01).

5.1 Conclusion

Uganda's elections have been characterized by fraud, which has made it virtually impossible to have genuine, free, fair and regular elections. Voters' attitude has greatly been affected towards the rationale and purpose of elections. The voters have as a result developed an attitude of mistrust and suspicion in the electoral process. Previous elections in Uganda have only been held to hoodwink the voters and the outside world into imagining that Uganda respects and implements the right to vote, where as not.

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

5.2 Recommendations

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

Executive

- i. The principle of individual merit should be discarded because it has proved to be unworkable. The movement has continued to identify candidates, whom it finances in the elections to the disadvantage of others in the political arena.
- ii. Intimidation, harassment, impersonation of voters and all other forms of election malpractices should, severely be tackled by a separate body affiliated the electoral commission so as to let supporters exercise their right to vote freely.
- iii. Government should increase budgetary funding to the electoral commission to enable it carry out its mandates effectively. It should also cater for the civic educators so as to allow increased public and voter awareness programmes.
- iv. The funds to the electoral commission should thereby be released in time to enable the commission adequately plan early enough so as to bring about effective results from the expectations the electorate have in it.

- v. Government should promote human rights, freedoms of expression, association, assembly as well as the right to be free from intimidation. This should also be felt even during the election days not just assured on paper and in words.

Civic Society

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

The Electoral Commission

- i. The electoral commission should strengthen and separate civic education from politics. The civic education as of now is directed by the movement supporters against multiparty sympathizers, this instigates prejudice amongst voters.
- ii. Registration of voters is a very important part of the electoral process, thus it should be handled carefully and regularly. Who ever qualifies to vote should not be 'omitted on voters roll. Registers should be availed at polling stations well in advance, updating should be continuous while display should be periodical and in accordance with the electoral laws.
- iii. Campaigns should be given enough time and the time frame within which campaigns are fixed should not be aimed at favoring the incumbent, the level playing field must be exercised.

- iv. Vetting and censorship of defamatory, unethical reporting must be done by the electoral commission.
- v. The law must stipulate clear and precise time tables for elections so that even five years away a person is able to tell the election date with precision. This gives ample time for adequate preparation.
- vi. Voters should be educated about their rights and duties during elections through out the year regardless of whether elections are due or not. The situation of rushing through elections because polls are just around the corner must cease if we are thinking about proper exercise of the right to vote.
- vii. The electoral commission must be allowed and seen to function independently. It should be given powers to punish candidates or their agents where they flout the law. Strengthening and making the electoral commission independent requires the appointment of non-partisan public servants. The commission should not allow itself to be manipulated or influenced by any person or authority. It must exhibit fairness. Voters should have confidence in it and it is upon it to earn this confidence. The commission should handle polling day seriously and ensure that materials arrive in time in order to avoid voter fatigue and disappointment.
- viii. There is need to reduce the number of polling stations especially in areas where you find a concentration of four or more polling stations at one single location so as to reduce on the administrative costs and confusion created as people move from one polling station to another looking for their names.
- ix. The transportation of polling material should also be improved in that its during this period that some polling materials get into wrong hands, therefore it should be strictly observed that polling materials lead to their real destination without being tempered with.

Development partners

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

Security Organs

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

Judiciary

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

The Uganda National Examinations Board

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

REFERENCES

Kanyehamba G. W (2010). *Constitutional and Political History of Uganda from 1894 to the present*. Centenary Publishing House Limited Kampala

Martin .E. Amin, (2005). *Social Science Research, Conception Methodology & Analysis*.

Olive M. Mugenda and Abel .G. Mugenda, (Revised 2005). *Research methods, Quantitative and Qualitative Approaches*.

Richard Clayton & Hugh Tomilson , (2000). *The law of Human Rights, Vol I,*

Rod Hague & Shaun Bresh, (1998). *Comparative governments and politics*, 4th edition.

Statutory Law, *The Compendium of Electoral Laws 2005*.

Tarsis Bazana Kabwegyere (2000). *People's power, people's Choice Challenges and Respect of Democracy in Uganda*.

Articles:

“Election Bribes, Violence Must End”. The Daily Monitor 5th August 2010 page 5.

“Only Voters to Decide President”. The Daily Monitor 3rd September 2008 page 8.

International Documents and Agreements:

African Charter on Human and People's Rights

Civil and Political Rights Commentary.

International Conventional on Civil and Political Rights

Universal Declaration Human Rights

