The Road to 2016: Citizens’ Perception on Uganda’s 2016 Election

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Contents

TABLE OF CONTENTS 2

INTRODUCTION 5

PURPOSE OF THIS PAPER 5

LOCATING ELECTIONS IN A HISTORICAL CONTEXT 7

ELECTIONS FOR DEMOCRACY 8

The Broad Context of Democracy 9

Democratization and Development 12

“Choice less Democracy” and Electoral Outcomes 14

Democratization and Social Progress 15

THE RE-BIRTH OF MULTIPARTY ELECTIONS IN UGANDA 17

MANAGEMENT OF ELECTIONS: FOCUS ON THE ELECTORAL COMMISSION 19

THE QUEST FOR CONSTITUTIONAL AND ELECTORAL REFORMS IN THE CURRENT PERIOD 20

WHAT DID THE 2011 ELECTION RESULTS SIGNIFY FOR THE GOVERNANCE OF THE COUNTRY? 21

THE CITIZEN AND THE ELECTORAL PROCESSES IN UGANDA 23

Ethnic based politics: 24

Patrimonialism and commercialization of politics in Uganda: 24

Weakening institutional accountabilities: 25

Civil war, Electoral violence and Election outcomes 26

Rampant poverty, excessive inequality and lack of income opportunities: 28
Role of an independent Judiciary

Key factors affecting the citizen’s right to vote:
- Impartiality and competence of the election management body: 30
- Freedom of press, freedom of assembly and debate for all the political contenders: 30
- Financing of elections/ campaigns 31
- Cultural Institutions 31
- Districtisation 32
- Resettlement of People from the Internally Displaced People Camps 32
- Role of donors in Uganda’s electoral democracy 33
- Security Issues in the electoral process 33

LITERATURE REVIEW

INTRODUCTION

THE INTERNATIONAL AND REGIONAL LEGAL REGIMES ON ELECTIONS

An Assessment of Uganda’s International Obligations on elections 3

Regional standards: Africa and East Africa 4

Applicability and enforcement of international law within Uganda: a brief 8

A TRAJECTORY OF THE NATIONAL LAWS ON ELECTIONS: KEY ISSUES

Laws and Elections in Uganda’s history; independence to 1985: key features 10
- Pre-independence 10
- Post-independence until 1986 12

Legal issues on laws and elections during the NRM era 14

The road to elections: politics of incumbency, law reform and implementation 26
- The Constitutional (amendment) Act 2015 27
- The Public Order Management Act (POMA) 27
- The Political Parties and Organizations Act, 2005 28
- Which Voters’ register for 2016? 30

KEY INSTITUTIONS IN ELECTIONS AND PLAYERS

The Electoral Commission 31
- Membership, appointment and independence of the EC 31
- Organize regular free and fair elections and publication of results 32
- Demarcation of constituencies 32
- Education programs relating to elections 34
Maintenance, revision and updating of voter’s register
Determine complaints arising from polls

Courts of Law and elections petitions
  Presidential election(s) petitions and the role of the Supreme Court
  Suggestions for law reform
  Parliamentary election(s) petitions and the role of the High Court
  Removal from Parliament

Police and Elections

The Military and Security Agencies

EVALUATING THE PAST, PROJECTING INTO THE FUTURE IN CONCLUSION

SELECT BIBLIOGRAPHY
LITERATURE REVIEW
By Prof. Sabiti Makara

Introduction

In Uganda, elections as a key driver of democracy are mainly a matter of post-colonial period. Colonial administration ran the country on the basis of imperial orders – emphasizing observance of law and order. Popular legitimacy and people’s participation were not the main benchmarks of colonial rule. While the colonial masters minded little about popular democracy, it is notable that three elections were held in Uganda before independence (1958, 1961, 1962). This contrasts sharply with the glaring absence of elections in the first two decades of independence. From this context, a high frequency of elections has become ubiquitous during the post – 1986 period (1989, 1994, 1996, 2001, 2006, 2011 and the planned 2016). While elections have become regular in this period, scholars and civil society have questioned their quality – in terms of their freeness and fairness.1 Elections are a hallmark of democracy, but only when they are well conducted, stakeholders consulted, fair laws agreeable to all are put in place, but the institutional framework for managing elections remains tenuous.

Purpose of this Paper

The purpose of this paper is to analyse Uganda’s socio-political context, reflecting on its democratization process, specifically focusing on the role of elections in the country’s democratization processes. We critically look at selected institutions aiming to understand the outcomes of elections and their effect on the democratization processes. The key question underpinning this paper is: have elections deepened democracy in Uganda? What are the factors propelling or undermining consolidation of democracy in the country? What is the explanation for the various outcomes of elections in Uganda? We pose these questions in view of the fact that despite frequent holding of polls in the

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last three decades, deepening or consolidation of democracy remains a far-fetched dream in Uganda. Yet, consolidation of democracy is desirable for peace, development, political stability, equality, freedoms and human rights, hence accountable and democratic governance. Consolidation of democracy implies that democratic norms have been institutionalized including regular, free and fair elections, and the majority of the people have an internalized view that the only means of changing government and holding leaders to account politically to the citizens is through democratic elections. It is a matter of great concern because in Uganda’s post-colonial era, there has never been a single opportunity for citizen of Uganda to witness a head of state peacefully hand over to another. At the same time, elections in Uganda have never passed the test of being free and fair. This demonstrates Uganda’s key challenge for democracy and good governance.

The early post-1986 period is underpinned by the promise by the National Resistance Movement (NRM) in point no.1 of the Ten Point Programme to restore democracy in Uganda. This period is characterized by two types of elections. The first set of elections was held under the Movement System (No-party System). Early elections held under the Movement System were direct with voters of Electoral College queuing behind their preferred candidates. The 1989 NRC elections saw many of the original National Resistance Council (NRC) members continue in office without facing an election. During that election, restrictions were placed on people who were former members of Obote's or Amin's intelligence agencies from becoming candidates. Nomination required completion of two simple forms and the support of five qualified electors. There was no registration of voters. No campaigning was allowed, and candidates could not publicly identify themselves with a political party. The rules limited candidates' campaigns to a brief introductory speech at the time of the elections.

Later, secret ballot elections were introduced for the Constituent Assembly elections in 1994. The 2001 general elections were highly contested and the results were disputed. The referendum on political systems in 2005 was held for the voters to decide if

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2. When the NRM was fighting the bush war to oust Obote’s regime in the 1980s, it came up with the Ten-Point Programme. These were promises to Ugandans, of which the first promise was restoration of democracy.
6. These were the first elections under the Movement where a candidate (Kizza Besigye) emerged from the ranks of ruling group to challenge President Museveni for the position of President. They were also
they wanted to adopt a multiparty system or retain the no-party system\(^7\). Hence, the second type of elections in the post-1986 era was the multiparty elections of 2006\(^8\), and the ones of 2011.\(^9\) During the Movement era, candidates for public elections were not allowed by law to identify with any particular political party, party colour or to be sponsored by a given political party. Candidates were required to campaign together at venues agreed with the election management body. The NRM Secretariat was initially responsible for organizing the elections. A candidate who violated these rules committed an offence under the then existing electoral law. However, since 2005, following the amendment of the Constitution and holding of the referendum on political systems, parliament adopted a multiparty system of elections and governance. So far, two elections have been held under this system. The 2016 elections will be the third.

### Locating Elections in a historical context

Uganda’s political history is a chequered one. Post-colonial African regimes came to power with a promise of democratizing their societies. However, for Uganda on a large part, the post-colonial regimes have been authoritarian. Democratic and constitutional rule has eluded the country. At the time of attaining independence, there was uneasy relationship between Buganda kingdom and the wider Uganda nation\(^10\). Buganda boycotted the 1961 general elections that were won by Democratic Party (DP) forming the first self-government preparing for independence. In the pre-independence elections of 1962 Buganda decided to elect its MPs under Kabaka Yekka (King Only) through the Lukiiko (Buganda Parliament).\(^11\) While the Democratic Party (DP) had won the 1962 elections, Kabaka Yekka decided to join Uganda People’s Congress (UPC) to form a coalition government that led the country after independence. Whereas the second post-independence elections were supposed to be held in 1967, they were postponed by government after the 1966 crisis.\(^12\) In 1969 the UPC government decided to adopt a one-

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\(^11\) Grace Ibingira (ibid).

party system and to embrace the „Move to the left” (adoption of socialist tendencies) under which new proposals for elections had been made.\textsuperscript{13} Elections scheduled for May 1971 were cancelled by General Idi Amin when he took power through a military coup d'état at the beginning of that year.

The Military Commission, part of the Uganda National Liberation Front (UNLF), an interim government formed when the Tanzanian army overthrew Amin's military regime in 1979, organized the first national elections (18 years) since independence. These elections were held in December 1980 under conditions that favored the UPC, which was still led by Obote in exile. Widespread local opinion regarded these elections as neither free nor fair, despite acceptance of the results by a Commonwealth Observer Group, which monitored them.\textsuperscript{14} These observers said that the elections were fair considering the prevailing circumstances. UPC was declared the winner, but most Ugandans believed it actually lost the elections to the DP. This opinion is based on the fact that the Chair of the Military Commission, Paul Muwanga, took over the work of the Electoral Commission to announce, and alter the results. Thus, before the NRM came to power, only one set of national elections, had been held since independence, and its results had been widely disputed. As a consequence of the flawed elections, Yoweri Museveni (who had been Vice Chair of the Military Commission) and leader of Uganda Patriotic Movement (UPM) led a group of young men to the jungles to fight the newly installed UPC government. A successful rebellion led Museveni to power in 1986. This added to the number of governments that took power by force of arms rather than through elections in Uganda.

\textbf{Elections for democracy}

In this section we seek to grapple with the question of elections and democracy. Democracy is not easy to conceptualise. However, in democratic theory, elections are intended to ensure popular representation and accountability through free contestation between contending parties.\textsuperscript{15} Elections presume a situation where rulers have no intention to hold power or to rule without legitimacy conferred by the ruled. It is a situation where power is derived from the people - the governed.

\textsuperscript{15} Robert Dahl (1971) Polyarchy: Participation and Opposition, Yale University Press.
The Broad Context of Democracy

Broadly speaking, democracy is as old as mankind. What has varied over time are its manifestations and conceptions of democracy. The foundations of democracy are traced in Europe where liberal democracy reached its climax in the 19th century with the consolidation of bourgeois power in production, science and the efficiency. During the formative stages of liberal democracy in Europe, the workers suffered a resounding defeat at the hands of their respective national bourgeoisie and the military. Given this background, it appears anachronistic to talk of liberal democracy as if it were a natural starting point or the nearest thing to attain in Africa. Africa has had its share of colonialism, imperialism, wars, conflicts, authoritarian rulers and economic deprivation of its peoples. Uganda, a young nation of only half a century of post-colonial existence has had a bitter taste of all these social, economic and political misfortunes. This broad analysis is intended to trace the path of democratic development and ways of scaling up and forging a way forward.

The end of the 1980s witnessed the end of the cold war between the West and East. This was a stepping stone for democratization the world-over. In a philosophical outline to the triumph of liberal democracy over Leninism, Fukuyama writes that the evolution of man was not infinite. According to Fukuyama both Hegel and Marx wrote that when man achieves his desired society – that will be the “end of history.” For Marx, that end was the desire to attain a stateless society while for Hegel it was a liberal society. The end (for both Marx and Hegel) was a situation where lordship and bondage would be replaced by universal and equal recognition of man’s equal rights. This struggle is informed by politics because it is the origin of tyranny, imperialism and the desire for people to dominate others. In Africa, as elsewhere, it is the social conditions that determine the kind of democracy the people aspire for. Ordinary people fight when their livelihoods are threatened – they fight to guarantee the necessary conditions for their social reproduction.

The struggle for political rights is a struggle for social and economic rights too. At the end of the cold war, Fukuyama theorised that it was the typical citizen of liberal democracy who was the “last man” because liberalism produced “men without chests” or “self-pride” but men who had a careful calculation to satisfy their wants and without

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desire to be greater than others. In our view, this thesis is subject to critical questioning because liberalism is not the end of thinking. It is a way of thinking.

In contrast to Fukuyama’s optimism about liberal democracy, Fareed Zakaria points out that though liberty and freedom go together, they may exist in varying degrees. This is because in some societies, curtailment of people’s liberties may be popular and may even have the support of the majority of voters. Majoritarian tyranny may manifest to an extent that the ordinary people – who have differing views have no space to express them. For that kind of situation, there will be democratic trappings and formalities without freedoms or liberties, hence “illiberal democracy”.18 To this extent, use of coercive power is not perceived as unpopular in some countries especially where dominant parties command too large a following. Besides, in some countries with good economic performance, this is sometimes plagued with excessive inequalities and political corruption that the ordinary people are marginalized. This undermines democracy.

Zakaria’s views on “illiberal democracy” rhyme with President Obama’s concerns about democracy in authoritarian states when he asserts: “Governments that respect the will of their own people, that govern by consent and not coercion are more prosperous, stable and more successful than those that do not. No person wants to live in a society where the rule of law gives way to the rule of brutality and bribery.19

Equally, taking the argument from Huntington’s “third wave” thesis, O'Donnell20 observes that while a good number of countries have democratized, some have slid into authoritarianism even if they still hold periodic elections. Some of these authoritarian regimes have semblances with the old democracies but lack the essential key attributes. These he termed as „incomplete” or „pseudo-democracies” - those that have failed to be consolidated. In the emerging democracies the problem is not just lack of institutionalisation; it is the conflict between formalised politics and informal practices of politics. The latter is characterised by extensive patronage and clientelism. Democratic consolidation only occurs when elections and their surrounding freedoms are institutionalized, and likely to endure. That means there is no alternative to gaining power by any other means other than through the democratic processes. This is the context in which Larry Diamond outlines the process of transition from minimalist

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19 The Monitor June 30, 2010 p.5
conception of democracy to consolidation. Democracy may be accurately defined as a system for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote. This is taken from Robert Dahl’s *polyarchy* (in Greek: poly= many, and arkhe=rule), which requires extensive competition, participation and substantial levels of freedom (of press, speech, assembly and others) and pluralism that enable people to form and express their political preferences in a meaningful way. This translates in what Larry Diamond terms as *electoral democracy*.\(^{21}\) This is an acknowledgement of the need for minimal levels of civil freedom in order for competition and participation to be meaningful. But this may be diluted by what Terry Karl has termed as the “fallacy of electoralism,”\(^{22}\) a term borrowed by Diamond to mean privileging electoral contestation over the other dimensions of democracy and ignoring the degree to which multi-party elections, even if genuinely competitive may effectively deny significant sections of the population the opportunity to contest for power or advance and defend their interests, or may leave significant areas of decision-making power beyond the reach or control of elected officials. Such a situation produces “pseudo-democracies”.\(^{23}\) Pseudo – democracies refer to a concept developed by Larry Diamond as “third class regimes”, those that are less than even minimally democratic, but still distinct from purely authoritarian regimes. Such regimes have legal political parties and some other constitutional features but lack a sufficiently fair arena of contestation to allow the ruling party to be turned out of power. Variants of pseudo-democracies: are “semi-democracies”\(^{24}\) which allow some electoral democracy and some political competition and civil liberties, but they also include “hegemonic party” systems - which use extensive coercion, patronage, media control and other tools to reduce opposition parties to decidedly “second class” status. They may also be characterized by highly personalized and poorly institutionalized party systems – which impose their undemocratic dominance. Such regimes are commonly present in Africa and Latin America. Huntington\(^{25}\) observes that as state parties get increasingly entrenched, they tend to loathe the opposition and trivialize its role in democratic governance. This is true for many African regimes, including Uganda. In Uganda, the opposition parties and leaders are not perceived by power holders as stake-holders in nation building but as enemies of the state.

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**Democratization and Development**

To talk of democracy without development would be a waste of time. These two concepts are hard to separate in any meaningful debate. Underdeveloped societies are more likely to be less democratic than the more developed ones. When the majority of the people are trapped in abject poverty-without food, shelter and other basic needs of life, they become prone to excessive elite manipulation. This undermines democratic practices. Some scholars have examined the link between industrialization, agriculture and democracy. As we noted earlier, modern democracies emerged (in Europe and America) amidst the process of industrialization, and the destruction of peasantry and feudal forces. Industrialization and democratization were transformations without precedent. Democracy subverted the hereditary principle of rule, while industry transformed what had been essentially rural societies.\(^{26}\) Museveni for some time, carried the argument that multiparty democracy was not feasible in peasant societies because such societies lacked principled social divisions of labour.\(^{27}\) Varshney however points out that although industrialization was good for democracy, not all industrialization produced democratic societies.\(^{28}\) He explains that it is possible to have democracy alongside the process of industrialization, and even in peasant dominated societies such as India. Varshney reveals that in India, the move from peasant to commercial agriculture, connected to industrialization helped the emergence of new classes/class struggles leading to democratization. He notes that India is an exception because democracy has grown there despite the predominance of the peasant economy. However, India unlike many developing countries has had a Green Revolution, which boosted food production eliminating hunger and starvation that were prevalent in the 1950s and 1960s. This has enabled the ordinary people to participate effectively in the economy and politics. Multipartyism emerged in the late 1980s in many sub-Saharan African countries, often under international pressure, and sometimes under the „people movements.” African countries are undoubtedly more democratic today than in the 1980s. However, elections and multipartyism – the perceived hallmarks of democracy for democracy-promotion agencies have not always produced the expected impulse towards the consolidation of democratization and related transformation of power relationships.

However, over two decades after the third wave of democratization began, the assessments of democratization, determined at first by a measured, but real optimism

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\(^{28}\) Varshney (1998) ibid.
about the prospects of democratic entrenchment, progressively turned into analyses of ongoing but also deceptive democratic achievements. Recent works on democratization are more and more cautious about the capacity of genuine power sharing, highlight democratic shortcomings or even reversals to autocratic regimes and question the ability of donors to influence political and economic situations in a right way. Lindberg posits that the repetition of elections could be a building block in consolidating democratic values. Insisting on the time-factor, he argues that “the more successive elections, the more democratic a nation becomes”.

According to this author, elections would engage a virtuous cycle by facilitating the idea of competitive politics, engaging citizens in public debates, taking part in increasing the quest for public accountability and scrutiny of public policies. But most scholars are more sceptical about the genuine value of elections in the democratization process, for example, in Uganda. They highlight the ambiguous nature of contemporary regimes that developed in the “grey zones of democratization”. A new category of “democracy with adjectives” has emerged. These hybrid regimes, like the Ugandan one, whether we call them “pseudo-democracy”, semi-democratic, semi-authoritarian, electoral or competitive authoritarianism, are neither democratic nor classically authoritarian, but combine both elements. This lexical

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profusion reflects the complex and ambiguous nature of contemporary regimes in which concomitant contradictory trends merge. While several African countries revisited their one-party or military rule constitutions, embraced multipartyism, routinized pluralistic elections, and allowed some political freedoms, electoral systems remain subject to partisan manipulations. Incumbent presidents are rarely ousted through ballot boxes, presidentialism and neopatrimonial governance remain strong, while the political opposition remains weak.37 Hybrid regimes are made of paradoxes and tensions between adopting democratic reforms to legitimize their rule both internally and externally and restricting them to “manageable” ones, opening the political scene and allowing competition but ensuring, through more subtle forms of political control, the survival of the regime.

“Choice less Democracy” and Electoral Outcomes

Democracy as it is practiced in democratic societies only works as democracy in a climate of criticism and rigorous debates, against the tendency towards dogmatism and ideological closure. Debates in a free atmosphere help in shaping people’s opinions on who to vote. Theoreticians of democracy suggest that democracy consists of institutionalized uncertainty of electoral outcomes. This uncertainty is elusive in some African countries. According to Thandika-Mukandawire,38 the main problem of democracy is that “African leaders choose who votes.” Mukandawire posits that after independence, most African leaders chose that the electorate should not have the option of choosing leaders any more or further political preferences. The fashion became that of life presidents – as a pre-emptive measure for any alternative choice. In the 1980s, rulers like Hastings Banda of Malawi explained to the voters that there was no point of going to the polls any more. Other African leaders of the kind today pronounce their win before the actual polls which discourages the voters from either going to vote or to vote the opposition. Mukandawire asserts that choice less democracy produces a condition whereby leaders choose who votes and whom to vote by for example, purchasing votes, declaring they will stand at every election, denying citizenship to their prospective competitors, and determining who goes on the voters-roll and who does not. This is done by ruthless changes of the constitution; weakening the legislatures; election management

bodies and courts of law; and de-registering critical civil society organizations. This is not just a point of historical reference because most African leaders still restrict the opposition campaigns by refusing permits to hold rallies, hence deciding that only the government/ruling party side is heard. In addition, even when the opposition defies all the roadblocks, the ruling party elite simply rig the electoral outcomes.

**Democratization and Social Progress**

Despite the façade of democracy, Sen\(^39\) just like Huntington\(^40\) acknowledges that the most pre-eminent development of the 20\(^{th}\) century was the rise of democracy. He says “when people look back at what happened in this century (the last century) they will find it difficult not to accord primacy to the emergence of democracy as the pre-eminently acceptable form of governance.”\(^41\) Thus, although democracy has been around for two millennia since the Greeks developed the idea of „demos“ – it remained limited. Throughout the nineteenth century, theorists found it quite natural to discuss whether one country or another was “fit for democracy”. This thinking changed only in the twentieth century, with recognition that the question itself was wrong, that a country does not have to be deemed fit for democracy; rather it has to become fit through democracy.\(^42\) The end of the last century and opening of the 21\(^{st}\) century have been phenomenal for democracy. There was tremendous growth of democracies, most of which espoused multipartyism. According to Adedeji\(^43\) democracy is the right of the people to choose their own government through an institutionalised multiparty system and periodic secret ballots. To him, democracy is so important that it remains the only coherent political aspiration of mankind. Adedeji argues that man is born with his inherent rights. Any political system or regime worth its name must promote human rights, protect freedom and ensure justice. These are at the centre of people’s struggles and changes in courses of history. According to Adedeji the argument that poor societies may not sustain democracy is only partially true. Evidence is abundant that democracy can be a facilitator of social development, including economic development. Adedeji\(^44\) stresses that the fundamental starting point in human development involves elements such as – human security,
freedom from fear, hunger, slavery and ability to achieve full human dignity. Adedeji concludes thus: just as a “command economy” is unsustainable, so too is a command democracy nothing but a sham; a pretense and a deceit.

Much of the debate about democracy in Africa has centred on procedural and substantive democracy. Constitutionalism and procedural democracy are necessary but not sufficient conditions for people to realize the benefits of democracy itself. It may be argued that there is a strong link between democracy and economic development. According to this perspective, if democracy fails to translate into economic benefits for the greater masses, it will be perceived “just as a game aimed at elite circulation around who controls state power”. Locally in Uganda, it will not be strange to hear people say “do I eat democracy?” meaning that democratic practices must have tangible material benefits to the individual citizens. This blends well with the maximalist conception of democracy which advocates for extension of the concept to socio-economic sphere of people’s lives, well beyond regular elections. Altogether UNDP Human Development Report (2002) sets out six conditions necessary for democracy to take place: (a) clear system of representation with well-functioning political parties and interest associations (b) an electoral system that guarantees free and fair elections based on universal suffrage; (c) system of checks and balances based on the separation of powers with independent judicial and legislative branches, (d) a vibrant civil society to monitor government and private sectors; (e) free and independent media; and (f) effective civilian control over the military and other security forces. These are the key elements of a liberal democracy. While some people have argued that liberal democracy is not sufficient for the poor countries of Africa, there is need for deepening democracy and furthering the idea of a developmental state.

The implementation of the African Charter on Democracy, Elections and Governance obliges the African states to adhere to the universal values of democracy and respect for human rights, uphold the rule of law, ensure regular, free and fair elections, prohibit and reject unconstitutional change of government, promote and protect the independence of the judiciary, promote and consolidate good governance, promote sustainable development and human security, fight against corruption, foster citizen participation in public affairs, ensure gender balance in governance, enhance regional cooperation in Africa, and promote best practices in the management of

45ibid p.25
47Matlosa p.57
elections for purposes of political stability and good governance.\textsuperscript{49} Ironically, while several African states have committed themselves to the provisions of the Charter by holding regular elections most of them have continued to violate human rights, harass opposition parties and to impose their rule on the people. To this extent even the so called “new breed of leaders”\textsuperscript{50} have since either become similar or worse than the „old” leaders they sought to replace.

The Re-birth of Multiparty Elections in Uganda

The first multiparty elections in years (under the NRM regime) were held in 2006, while the ones of 2011 were the second multiparty elections and the third will be held in 2016. The question is: what do these elections say about the country’s democratization continuum? The key assumption in democratization literature is that in most states undergoing democratic transitions, the “second multiparty elections” represent a step toward consolidation of democracy.\textsuperscript{51} Holding a third multiparty would ideally lead to consolidation of democracy. It should lead to institutionalization of the norms of democratic rule. However, this may not be generalized for every country. There are unique exceptions such as Uganda, which owing to history, national and leadership character, economy, ideology, domestic and external factors that did not enter the full democratization wave of the 1990s. These factors may facilitate or impinge on the nature and process of democratization in a specific country. Besides, the process depends on the goals of the key actors. It is sometimes argued that Africa has its own ways of understanding democracy. Such arguments pose a challenge to students of African politics. The first is the nature of African politics in the period of transition – or the third wave. The second is the “reverse wave” and the third, is the entrenchment of authoritarian oligarchy. Across Africa, these three factors have produced political scenarios that have both popular and empirical implications. While the third wave came with several African countries revisiting their one-party or military rule constitutions, and embracing multipartyism\textsuperscript{52} some countries remained somewhere between democracies

\textsuperscript{49} African Union Commission, \textit{African Charter on Democracy, Elections and Governance} Addis Ababa.
\textsuperscript{52} Michael Bratton and Nicolas van de Walle 1997 (ibid).
and authoritarian polities termed as *hybrid regimes*—a classic case of Uganda. A hybrid regime has both elements of a modern and traditional polity but thrives on patrimonial relations. One of those modern things a hybrid regime attempts to do is to organize elections, sometimes to legitimize the regime or manoeuvre; and sometimes to attract aid from the donors; but rarely does the regime mind the quality of the elections.

In Uganda, there was a deliberate campaign by President Museveni between 1986 and 2005 against political parties as sectarian and unsuitable for Africa, and Uganda in particular. Previously, the Movement leadership used Museveni’s arguments against multi-partyism branding political parties as responsible for all the social ills experienced by the country during the post-colonial period. The same blame was used to suppress some civil and human rights of the people, including suspension of activities of political parties. Scholars and activists challenged the Movement to show if it was not a *de facto* one-party state. While some leaders of the Movement were comfortable with the no-party system, critics challenged its basic claims that it was non-partisan, non-sectarian, all-embracing, and its individual merit principle of elections was superior to party-based politics. State funding and management of elections by the Movement Secretariat brought the Movement system closer to a single party organization than anything else. Yet, the constitution to date prohibits creation of a one-party state in Uganda. Evidence was gathered by research on the 2006 elections to the effect that the NRM manipulated state finances, bent the rules in its favour, manipulated the electoral process, marginalized the opposition and used violence to intimidate the voters.

Opening up to multi-partyism had its context. A study by Makara, Svsand and Rakner dwelt on the process of how the NRM transformed itself into a political party. While the Kiyonga committee in 2002 recommended continuation of the Movement system, the NRM national executive committee in 2003 strategically recommended a return to multiparty politics. In 2005, a referendum on political systems was held. Ironically, Museveni and the Movement cadres campaigned for return of multi-partyism. The return of a multiparty system was sandwiched with the proposal for removal from the

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constitution of term limits on the tenure of president in office. This meant that Museveni could stand as many times as he wished.

A critical look at the 2001, 2006 and 2011 presidential and parliamentary elections in Uganda suggests that there was relatively little improvement in the quality of electoral governance. The issue of level playing field for all parties remained tilted in favour of the ruling party and its president. Electoral reforms were not implemented, incumbency advantages remained overextended, vote buying was openly done, state apparatus was used in favour of the ruling party, and the security apparatus was over-deployed and intimidated the voters. On its part, the Electoral Commission failed the test on a number of issues, once again.

Management of Elections: focus on the Electoral Commission

In 2011 the report of EU Election Observer Mission noted that the elections were held under similar conditions like those of 2006 because the government refused to implement the electoral reforms necessary to smoothen the level-playing field for all the stakeholders. It also noted that state media failed in its statutory obligation to give equal space to all nominated candidates, preferring to give disproportionally more coverage to the incumbent president and other candidates of the ruling party. It noted further that campaign financing was in favour of the incumbent president and the ruling party. Not only was the incumbent president free to use facilities attached to his office, parliament passed supplementary funding of UGX 602 billion in the last month of the campaign, the bulk of which was allocated to State House and the President’s office (implicitly for campaign purposes). The EU EOM also criticized the manner in which the Electoral Commission is appointed by the president without any consultation with civil society and opposition parties. The EC itself is faulted for failing to live to its expectation it in terms of procedures, voter registration, failing to issue voter cards, transmission and tallying of results. A critical issue also raised by the EU EOM was the demarcation of constituencies to ensure effective representation. Administrative units created by government towards elections turned out to be constituencies determined by government rather than the EC. The EC is faulted for failing to control of the conduct of civil servants especially

57 The Government in 2010 created new districts raising them from 69 to 112. These became new constituencies for women representatives. In addition 8 new municipalities were created as new constituencies. It is the responsibility of EC under article 61(c) of the constitution to demarcate constituencies. At the moment government has proposed 64 new constituencies for 2016 elections.
Resident District Administrators (RDCs) interfering with the campaigns of opposition candidates.

In a recent study by Sekaggya critically analyses the EC. The EC under Article 61 is mandated to manage elections, oversee political parties, ensure equal access to public media, voter education, demarcate constituencies, oversee party financing, hear and determine complaints and related activities. Sekaggya further points out that the EC of Uganda “is perceived negatively and does not enjoy great trust amongst stakeholders, including opposition parties and civil society organisations”. The trust deficit is due to its composition, the manner of its appointment and the way it executes its mandate in conducting elections. Similarly, Makara has pointed out, “The EC still has a difficult task of proving that it is an entity independent of government. In that context, the constraints imposed on it by the manner of its appointment and operation appears to reduce its capacity to act sufficiently as a fair player in relation to all stakeholders”. In this connection, civil society organisations and opposition political parties have called for reforms, including the reform of the EC. Recently government presented a Bill to parliament that ignored most reforms, and only changed the name of EC to “Independent Electoral Commission”. The Bill has now been passed into law but this does not help the cause for furthering space for all political players or creating a desirable atmosphere for free and fair elections in the country. Instead, government actions appear to trivialize the concerted efforts of civil society and opposition parties pressing for realistic reforms needed for free and fair elections.

The Quest for Constitutional and Electoral Reforms in the Current Period

Since 2006 when Besigye petitioned the Courts of Law over the conduct of elections that year, and the subsequent ruling of the Supreme Court, which though did not nullify Museveni’s election; arguing that the grounds were not “substantial” to do so, still the judges made several recommendations for improvement of election management. Civil society then came up with reforms, among them: the need to re-constitute the EC,

removal of security forces from electoral processes, removal of army representatives from parliament, removal of polling stations from army barracks, one seven-year term for EC Commissioners, election based proportional representation, and reinstatement of two-term limit for president. These reforms were considered by the legal committee but not debated by Parliament. More recent, civil society came up with a comprehensive package of reforms – Uganda Citizens’ Compact on Free and Fair Elections (Kampala, 24-26, November 2014). The compact covers key issues covering appointment of a new and independent EC, integrity of voting process, role of security forces, campaign process, issues of political patronage, separation of state from ruling party, demarcation of electoral areas, interest groups, freedom to organize, the voting process, tallying the ballots, appointment of election officials, independent judiciary, internal democracy of political parties and many others. These views and recommendations were presented for consideration by the legal and parliamentary committee of parliament. Other major CSOs also presented views, most of them similar to those contained in the Compact, key amongst these CSOs was Kituo cha Katiba. Instead, the government came up with a flimsy amendment simply renaming the Electoral Commission as the “Independent Electoral Commission.” Not only was this a spit in the face of civil society’s efforts to improve governance of elections, it was a sign that government was not interested in improving the space for furthering democratization. In pursuit of its objective of dominating political space, the government introduced Bills to increase nomination fees for nomination of parliamentary and presidential aspirants, which took only one week to pass in parliament and one day for the president to assent.

What did the 2011 election results signify for the governance of the country?

On 18 February 2011, President Museveni was re-elected for a fourth term with 68.4% of the votes. A few months before the elections, there was wide speculation that after 25 years in power, the ageing regime’s popularity was going down. Past electoral results had shown a downward trend for the incumbent president who scored 76 percent in 1996, 69 percent in 2001 and 59 percent in 2006, and a concomitant slow but rising support for opposition candidates. Combined with an international context marked by the removal of long-standing presidents in Tunisia and Egypt in January and February 2011, the campaign was anticipated as the toughest Museveni has experienced so far. The context

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62 Presidential Elections Bills 2015, and Parliamentary Elections Bill 2015. These were passed by Parliament on 30 September 2015. On 1 October, they were assented to by the President.
of this election was not at all, negative. For the first time since 1986, peace had been restored on the whole territory of Uganda. The Lord’s Resistance Army (LRA) which had been fighting the government for the last 25 years left Uganda in 2006 to redeploy in Central Africa. The end of insurgency represented a real opportunity for the NRM to capture former opposition strongholds in Northern Uganda and to a lesser extent in Teso, which had been affected also by the LRA at the beginning of the 2000’s. Recent oil discoveries in Bunyoro in Western Uganda and in Northern Uganda also raised high expectations about Uganda’s future economic development. But the Central region of Buganda, one of the traditional strongholds of the NRM, had become an epicenter of contestation since the 2009 riots and the burning of Kasubi heritage site (tombs of kings of Buganda). FDC had secured two strongholds in Northern Uganda and Teso in the 2006 elections. The renewal of the Democratic Party (DP) and Uganda People’s Congress (UPC) leadership was challenging to the NRM with the election of a vocal and young lawyer and MP for Gulu, Norbert Mao and of a former UN Undersecretary just back from exile, Olara-Otunnu respectively. Moreover, internecine dissent within the ruling party itself and the emergence of candidates challenging the results of the party primaries by contesting as independents also seemed to weaken the NRM. The August 2010 NRM primaries appeared to rock the boat. Evidently, the contestation for position of Secretary General between the big wigs of the party revealed a lot of intrigue within the party. Further, the constituency level competition created unprecedented hostilities amongst the members and the contestants. The management of the primaries left a lot to be desired. As a result, most of the disgruntled contestants stood as independents. Museveni would at times fail to give direct support to the official candidate, preferring to advise the electorate to support either of the candidates.

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63 Opposition had always got a fair share of the votes in the North on account of government’s failure to end the war and to deliver services. The end of conflict brought new issues on board- on the one hand, accusations of land grabbing by politically connected elites, and on the other the question which party was more positioned to take the people out of poverty the others.

64 In the case of Buganda region, there was a complex situation that appeared not to favour NRM. Apart from the riots and the burning of Kasubi, there was government failure to return ebyaffe (things that belong to Buganda kingdom). Besides, it was believed that the Kabaka had lent tacit support to the opposition parties especially FDC and DP. UPC tried to reconcile with the Buganda establishment without much success.

65 The candidates for Secretary General of NRM were Amama Mbabazi (Minister for Security), Kahinda Otafiire (Minister for Local Government) and Gilbert Bukenya (Vice President).

66 It was reported that in various constituencies, fake ballot papers had been printed by the candidates themselves. In other constituencies, there were insufficient ballot papers, so the election officials used ordinary papers as “ballot papers”. Yet in some constituencies, the exercise involved blood-letting, such as Rwemiyaga in Sembabule district. Ms. F. Magomu head of the NRM Electoral Commission was fired in the middle of the electoral exercise.
In the run-up to the elections, Museveni employed several manoeuvres such as the extensive monetization of the campaign, the reshuffle in the military headquarters, the reform of the police and the recruitment of militias by the NRM. A report by the Inspector General of Police that opposition parties had also recruited militias locally known as *kanyamas* (*muscle men*) fuelled fears that the elections would lead to massive vote rigging and to a Kenya-like scenario of electoral or post-electoral violence.

In as far as the 2011 elections results went, Museveni rebounded with 68 percent. Significant pockets of violence remained. Compared to past elections, the level of state inspired violence was lower. But during the post-election protests, Besigye the main opposition leader and his colleagues were tear-gassed. The role of money in elections was heightened, with several supplementary requests in billions of Shillings made by government to parliament for approval. This appeared to have tilted the ground in favour of the ruling party. Later, the Governor of Bank of Uganda revealed he had funded elections. The ruling National Resistance Movement won a wide majority of 250 seats out of 375 in the Parliament (165 of the 237 directly elected seats and 85 of the 112 seats reserved for women). The overwhelming majority of the ruling party members in parliament could mean that the NRM is popular. However, this has diluted the quality of debate in the House. Most of the key decisions are made in the NRM party caucus chaired by Museveni (party chairman); hence the debate in the House is largely to put a stamp on the decisions of the caucus of the ruling party. There is a strong view that the influence of the executive on the legislative arm of the state is overbearing.

**The Citizen and the Electoral Processes in Uganda**

The crux of this undertaking is to place the citizen at the centre of Uganda’s democratic process. Article 1 of the Constitution of Uganda proclaims that “power belongs to the people.” If this claim is to be meaningful, then the citizen should determine how he/she wants to be governed. Studies (many cited in this text) have shown that the citizen has increasingly been marginalized in the electoral and other governance processes. Apart from the failure by the state to implement the recent CSOs’ constitutional and electoral reform proposals, there are societal and institutional issues that marginalize, and affect the processes and outcomes of elections in Uganda. We examine these issues here-below.

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67 The FDC won 23 directly elected seats and 11 of the seats reserved for women. The DP and the UPC took 12 and 10 seats respectively. The CP and the JEEMA won one seat each. 42 independent candidates were also elected, most of whom are close to the NRM.
Ethnic based politics:

Whenever any African regime begins to hatch ideas of retaining power indefinitely, its social base narrows to a loyal ethnic group, usually of the dominant ruling elites. As Ake\textsuperscript{68} notes “Ethnicity is not a fossilized determination but a living presence produced and driven by material and historical forces.” This is so because as ethnicity is politicised, politics is ethnicised.\textsuperscript{69} In Uganda, there are views to the effect that as Museveni’s regime developed its intentions to cling to power, it narrowed down more to his ethnic group than any other group.\textsuperscript{70} Such ethnic tendencies only intensify the already uneasy ethnic tensions between the Southern Bantu and the Northern Nilotics, whereby the latter strongly believe that Museveni’s regime has marginalized them on ethnic basis.\textsuperscript{71} But also, among the Bantu groups of the South, the Baganda strongly feel that Museveni’s own ethnic group, have benefited from the spoils of state power for the past almost 30 years, diminishing their historical economic and social influence/dominance. Such sentiments create tensions, especially as Museveni’s regime seeks to stay in power much longer. During the Kasubi riots of 2009, Baganda rioters openly expressed such sentiments.

Patrimonialism and commercialization of politics in Uganda:

The politics of Uganda is narrowly defined in terms of „eating”, that is, getting a government job or business connection is literally considered a big privilege not a right. It is deemed that the recipient of such a privilege returns political support to his/her patrons. This undermines free competitive politics. It is common for some people to say that „the opposition has nothing to offer”.\textsuperscript{72} By this, they mean or refer to material objects not policies. At one time President Museveni advised aspirants for parliamentary seats to „go to Parliament and sleep but when you wake up, make sure you vote the Movement”. Once a seat in Parliament is perceived not as a representative role but a job, this tends towards the end to effective representation.\textsuperscript{73} Many high level corruption scandals are

\textsuperscript{69} Claude Ake(ibid) p.4.
\textsuperscript{71}Mwenda (ibid).
\textsuperscript{72} President Museveni frequently tells his audiences that areas that those who do not vote NRM will not benefit from government programmes. See Kritof Titeca (2014) “Commercialisation of Uganda’s 2011 Elections in the urban informal economy” in Sandrine Perrot et al (ibid.).
part of this perception. Principled politics is shunned, instead of earning praise. This explains the attitude of those in power toward principled politics. There is now a dominant adage that goes thus; „You are either with us or you are out“. This has increased rent-seeking behavior amongst politicians and their supporters alike.74 Politics has become not a service but a business. In the end, these tendencies create regimes of people who see life outside the state as loss of business or personal aggrandisement. In Uganda these tendencies have entrenched cronyism, grand corruption, cliqueism and unquestioning loyalty to the ruling group. Questioning the behaviour of the executive is tantamount to one”s political demise.75 In Uganda, it is the Chairman of the ruling party who controls election campaign funds, who controls the process of party primaries and the final process of who is elected on the ticket of his party.76 The sources of such finances cannot be easily established. In Uganda, it is common to suspect that top government officials may be using their offices to secure public finances for purposes of financing the candidates of their party.77 In the end, corruption and patronage have become twin brothers, or politically embedded.

**Weakening institutional accountabilities:**

This has mainly manifested in the management of local government reform. The reform which was ushered in 1990s was intended to strengthen local institutions of governance.78 The reform appears to have turned into a haven of local political patronage (pork-barrel politics). In the 1990s, there was an implicit assumption that horizontal accountabilities would be encouraged, enhanced and practiced; would result in empowerment of citizens to demand accountability. However, studies have shown that the objectives of the local government reforms have been thwarted by political expedience and patronage.79 Instead of Local Government serving as platforms for public debate, checking use of public

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75 Example, four NRM MPs who questioned certain Ministers over questionable deals were suspended from the ruling party. See related argument by Roger Tangri and Andrew Mwenda (2001), “Corruption and Cronyism in Uganda’s privatization in the 1990s” in *African Affairs* Vol. 100.

76 Refer to Mukandawire’s “choiceless democracy” discussed earlier in this paper.


power and resources, sharing responsibilities between the people and government, they have been turned into a reward system for political support. Local Government have turned into places for abundant corruption and employment of children of local political notables. These practices have undermined the noble objectives upon which the policy of decentralisation was founded.\textsuperscript{80} This has been worsened by the intentions of government to tighten control over civil society.\textsuperscript{81}

The original goal of the decentralization policy was to allow some freedom of choice at the lower level, increase participation, and improve service delivery. However, the government’s practice of creating several unviable local administrative units, mostly depending on the centre for financing has undermined horizontal accountability mainly because local politicians have to account to the centre instead of downward accountability to the people. By implication, this also means loss of local autonomy. Besides, this could be a calculation intended to shut down the opportunities for opposition politicians to “penetrate” the countryside. This is made much more difficult by the fact that the government pays salaries of most of the political leaders at the Local Government level, for instance, all the Chairpersons and Speakers of the Districts, as well as the Chairperson of all sub-counties and village chairpersons. It appears natural to expect salaried local politicians have to support the regime in power.\textsuperscript{82}

\textbf{Civil war, Electoral violence and Election outcomes}

The perception by the masses of the 2007 Kenya-like scenario continues to haunt Uganda. Many citizens are constantly reminded by Resident District Commissioners (RDCs) that supporting opposition leaders could bring war to Uganda. Some observers believe that Uganda is prone to civil violence for two reasons: first, from a historical point of view, the rigging of the 1980 elections led to a five-year civil war led by Museveni against Obote’s UPC. Museveni’s NRA waged war in 1981 claiming the elections had been rigged in favour of UPC. Secondly, ever since NRM took power in 1986, the whole of Northern and Eastern Uganda had for more than 20 years been in a state of civil war due to a rebellion against the NRM government. Kony’s war deprived the people in Northern and Eastern Uganda of normal livelihood, marginalizing them

\textsuperscript{80} On the foundation of decentralization, see Sorensen Villadsen and Francis Lubanga (1996) Democratic Decentralisation in Uganda, Kampala: Fountain Publishers.

\textsuperscript{81} At the time of writing this paper a Bill (NGO Bill 2015) was before Parliament for amendment, with provisions to give government more control over internal operations of NGOs.

socially, economically and politically. Due to a situation of civil war, in the 2006 multiparty elections, people in these areas largely voted for opposition candidates. However, at the end of insurgency and introduction of new government programmes, there was a change of voting patterns in these areas in favour of NRM in 2011.\textsuperscript{83} However, violence manifested in other forms. There was extensive post-election violence termed as Walk to Work (W2W) which escalated in the aftermath of the 2011 elections.\textsuperscript{84} To this new form of violence, the police responded with a heavy hand.

A culture of election-related violence has increasingly become commonplace in Uganda. In the 1996 general elections, the NRM used the public media to display the remains of the victims of Luwero triangle war, igniting sad memories, and blaming their demise on UPC government. This was intended to portray the opposition as „killers” who should not be voted to power. In 2001 elections, there was extensive election-related violence precipitated by the notorious Kalangala Plan- a paramilitary outfit whose work in electoral process was to use violence against the opposition. In the aftermath of that election, a select committee of parliament on election violence was instituted by parliament. Its extensive report pointed at the main actors as Kalangala Action Plan and the Presidential Guard Brigade (PGB).\textsuperscript{85} Moreover, in 2005 an officer attached to the reserve force of the army invaded Besigye’s campaign rally at Bulange, the seat of Buganda kingdom, shot and killed two people and injured several others.

In 2006 and 2011 elections there was the clandestine but ubiquitous violence by the Kiboko Squad and other militia allied to several candidates.\textsuperscript{86} Kiboko Squad in particular, wielded sticks they used to beat up the supporters of opposition candidates. Ironically, in the case of Kampala, these unconstitutional forces swung into action from the direction of the central police station and sometimes operated in the presence of police officers. In some cases, opposition politicians also created certain militia groups. The collision of these illegal, diverse and unruly forces created fear in the population. In the preparation for 2016 elections, these rustic forces are emerging again. Moreover, the police has trained thousands of “crime preventers”.\textsuperscript{87} It remains to be seen how these forces will affect the electoral process in the 2016 elections.

There is a security complex in Ugandan politics. The army in parliament sits and votes with ruling party. In the past, the army was accused of ballot stuffing in the barracks, though under the revised law they vote outside the barracks with other voters. The role of the army in orchestrating election-related violence has reduced, though they were involved in shootings in Budadiri West in the run-up to 2011 elections. The police have been militarized. Senior police officers are required to undertake political and military training. Besides, the head of the police force has been drawn from the army since 2001. A political sensitization unit was created in the police force to ensure they follow the “correct line” of the ruling party. To their credit, in the 2011 elections, the police increased security of the ballot by ensuring the presence a police officer at every polling station.

Interestingly however, the leadership of security forces, including the army in 2006 and 2011 showed their political preference contrary to the law.  

**Rampant poverty, excessive inequality and lack of income opportunities:**

People who are economically deprived feel they have nothing to lose to violence and destructive practices. In the Kenyan situation, the widespread violence was facilitated by thousands of unemployed youth. This coupled with wide gaps in the distribution of national resources led to a precarious situation that was prone to civil violence. This is a situation that is not different in Uganda, where more than half of the population are youth (17 years and below). Most of the young graduates are not gainfully employed. This is not helped by regional disparities, for example in the north where about 60% of the people live below poverty line (one US dollar a day) compared with the South averaging about 27%. These trends divide the nation between “haves” and the “have-nots”. This trend is worrying especially due to the perception in the North, that lower poverty levels in the south are a result of “Southerners” accessing most of the gainful positions in the state, including the army, police, civil service and political appointments; locking the “Northerners” out. Poverty in Uganda is widespread because even 1 US dollar as an indicator of measuring poverty is ridiculous. It does not even buy a bar of soap. Poverty has become endemic amongst the majority of Ugandans. This is attributed to

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landlessness, lack of gainful employment, high cost of living, and in recent times high cost of food, fuels and other commodities. This is likely to have serious political implications. “Walk to Work” in the aftermath of the 2011 elections signified disillusionment in the population. This partly explained the spontaneous support to “Walk to Work” protests in the post-election period in 2011.

**Role of an independent Judiciary**

An independent judicial system is a critical factor in promoting democracy in any country. According to experts on this subject, the judiciary plays such a role in two ways: by ensuring that parties stick to the rules and by resolving election disputes. In this way, the courts help in ensuring fair play, hence the more even playing field for all the contestants. In the run-up to the 2006 elections, a leading opposition person (FDC President) Dr. Kiiza Besigye’s campaign was interrupted many times by his repeated detentions in Luzira Prison and court appearances for politically motivated treason and rape charges. Although observers of the 2006 elections noted that compared to the ones of 2001, these were less violent acts, and it was reasonably well organized, this judicial harassment reached its apex in November 2005 with the siege of the High Court by the so-called Black Mamba a para-military unit that attempted to interfere with a Court decision to grant bail to 14 of Besigye’s co-accused facing treason.

The results of the 2006 elections were contested by the opposition groups in the courts of law. The courts agreed with the petitioners that there were excesses of election violence aided by state agents, government officials had abused their official positions and resources to gain electoral advantage, opposition groups had been unfairly treated and the electoral laws favoured the ruling party. Despite these serious flaws, the judges fell short of declaring Museveni’s election a nullity. Citing this ruling, opposition parties refused to go to court in 2011 saying they anticipated a similar judgement. In the run-up to 2016, it is not clear if the courts are more ready than before to efficaciously deal with these cases. One good example is the recent ruling of the Supreme Court declaring the

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90Besigye was cleared of rape charges in March 2006, and of treason in October 2010.


92While the judges noted these electoral anomalies, they fell short of declaring either election null and void. They concluded that the anomalies were not substantial enough to invalidate the electoral outcomes.
elections of representatives of the youth, workers and the army in parliament as unconstitutional. It remains to be seen how effective the courts will be in political cases.

**Key factors affecting the citizen’s right to vote:**

*Impartiality and competence of the election management body:*

Appointment of EC remains a controversial issue. No consensus has been built between stakeholders and government on this issue. In the past, some political actors threatened to boycott the elections because of this. EC has little control over demarcation of the constituencies for example, creation of new districts, counties and municipalities. EC appears not to be in control of the whole process of demarcating electoral areas based on a specific formula. Instead, it is mainly government which at its will and convenience decides which areas become constituencies. This may give leverage to government to gerrymander. Though EC made various attempts to clean register of voters, in the past, the exercise was flawed because of technical incompetence, lack of photos of some voters in the register, failure to issue voters’ card, voters missing on the voters register, technical failure of the electronic communication on the voting day. Currently, EC is trying to use data captured by the citizens’ identification project. Many people have doubted this arrangement, arguing that EC had no control over such data, and its reliability could be questionable.

*Freedom of press, freedom of assembly and debate for all the political contenders:*

The findings of the study show that there were cases where journalists were not free to report what they gathered. In the aftermath of the 2009 riots, five radio stations were closed by government. In their struggle to get reopened, certain codes of reporting were imposed. The official media was tilted toward covering candidate Yoweri Museveni. Other candidates were rarely covered on the front page, for example, Uganda Broadcasting Corporation (UBC), New Vision and its sister papers. Some rural FM radio stations denied opposition candidates access to their airwaves. The private media tried to balance but business considerations in covering certain candidates were at play. Most private media cancelled talk-shows of opposition candidates on “orders from above.”\(^9\)

\(^9\)Such “orders” came either from owners of private media or locally based security officials.
was widely observed that some assemblies of opposition rallies were dispersed by police. Abusive language amongst the candidates was common.

**Financing of elections/ campaigns**

Financing of the 2011 elections will be remembered as the most expensive elections ever held. At institutional level, the EC and other state agencies used over UGX 200 billion, three times the previous elections. This is partly attributed to increase in electoral areas as a result rapid expansion of local governments. At the level of campaign funds, MPs were facilitated with UGX20 millions to “oversee government programs” during the campaign period. In the election year new notes were printed to work along the old ones. Supplementary funding approved by parliament to government was in excess of UGX 1 trillion. Government programs, mainly NAADS and “Prosperity for All” were vigorously financed. Because this coincided with the campaigns, the recipients perceived it as “NRM money”. There were many networks in markets, bodaboda (motorbike cyclists), witchdoctors, street workers, etc created for distribution of money. There was a specific fund for LC 1 Chairpersons. There was a specific fund for each village.

**Cultural Institutions**

Among the key cultural institutions, Buganda has remained the epicentre of political contestations. Buganda was disadvantaged because of the 2009 riots and the burning of Kasubi heritage site (tombs of kings of Buganda). Strained relations between the Kabaka (king of Buganda) and President Museveni were not normalized despite the meetings between the two. Museveni believed that Mengo was supporting the opposition. The key area of contestation was land. As this was not resolved in those meetings a new land amendment Act was put in place. Land remains a key issue in Buganda, Bunyoro oil area and Acholi region. Despite its importance it does not feature prominently in the manifestos of political parties. A new Traditional and Cultural Leaders Act was made during the campaign period of 2011 elections. The latter specifically spelt out that the traditional leaders shall not engage in partisan politics or speak on politically controversial issues. Nonetheless, some Buganda-leaning leaders openly joined the opposition ranks under their *Suubi group*. Their mission was to protect Buganda’s interests. In the 2011 election campaign, NRM improvised a campaign strategy of undercutting Mengo-leaning leaders and opposition by picking on seasoned political actors in the Buganda region. These were well facilitated by NRM, allocating a minimum
of UGX20 million to each sub-county for campaign. This was in addition to the “Prosperity for all funds” which was given out to groups at the same time. In Buganda region, money was used more than intimidation. In most other regions the strategy was to curve out new districts. In addition, the government has created numerous small chiefdoms at its behest. In some of them like in Bundibugyo and the Banyala in Kayunga district, the “cultural” leaders are former soldiers of Uganda Defence Forces. And while Buganda does not recognize the Ssebanyala, the government recognizes him. Recently the Ssebanyala publically announced support for President Museveni’s candidature. Some cultural leaders look to Museveni to sort out their transport, security and subsistence needs. Recently Museveni returned land titles to Buganda kingdom but not to others. It remains to be seen what this could mean for the next election.

**Districtisation**

It has become a common practice for government to create new local governments in the eve of an impending election. In 2010 government nearly doubled the number of districts from 65 to 112. 8 new municipalities were created. These are electoral areas for district woman MP to ordinary MP respectively. The calculation is to return more pro-NRM MPs to parliament. However, what needs to be noted is that the demand for new districts was so popular that opposition parties did not oppose it directly. For the NRM, the creation of districts was a “give-and-take issue” in terms of votes. The scheme worked successfully for NRM to undercut the support of opposition parties in certain areas in 2011. In August 2015, the government was back to the same game, creating 19 new municipalities and 42 new districts. This will swell the House to more than 400 MPs, raising concern about the cost and quality of Parliament.

**Resettlement of People from the Internally Displaced People Camps**

In northern region, the key issue for the election in 2011 was resettlement of the people after a prolonged civil conflict. Because of this conflict, most of northern Uganda used not to vote NRM. The people in this region, especially Acholi considered themselves “outsiders” in the mainstream NRM politics. During the civil conflict, there was a situation of resignation, despair, abject poverty and constant fear of death. The end of conflict brought new issues on board. There are, accusations of land grabbing by politically connected elites. There was a question of which party was more positioned to take the people out of poverty than others. Acholi region in 2011 produced two
presidential candidates. However, the ruling party through programmes of rehabilitation of people returning from camps was able to make significant political gains. At the next election, it is not known how this region will vote.

**Role of donors in Uganda’s electoral democracy**

Donors have played an important role in development and democracy in Uganda. However, donors underestimate the influence they have on the democratization process in Uganda. Some donors have a deliberate policy of no intervention in the political processes of the country. Some are caught up in the ambivalent web of whether to engage or not to engage the host state. Some of the donors are characterized as “security-minded donors” while others perceive themselves as “non-aligned.” The role of most donors in fostering democratization in Uganda has somehow been not only ambivalent. Most of them consider democracy a secondary priority, ranking behind economic and security concerns. Even when the donors have made contributions towards training of political actors and civil society, and directly to EC, they still do not exercise significant political clout. However, donors have variously attempted to create a level-playing ground by financially supporting political parties and the EC. Support by UK for community policing was extensively criticised in the face of the brutal police actions toward the protesters both during the 2009 Kasubi riots and the post-2011 elections “walk to work” protests. In all, the donors in Uganda play “safe” in their Uganda democracy policies.

**Security Issues in the electoral process**

The law requires all security organs to act impartially in all partisan activities. There is also need for a professional police to protect people at all times, and during elections. Though the UPDF defines itself as a non-political army on the one hand, on the other, it perceives itself as having a political role historically linked to the NRM. This has led the army to get involved with elections in various ways; attending NRM manifesto launch, some officers campaigning for NRM, working closely with police in enforcing law and order. However, on the part of the police, it has failed to control illegal militia forces that

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95 Jonathan Fisher (ibid). p.269.
96 The Democratic Governance Facility (DGF) has been giving support to state, political parties, and civil society organisations.
terrorized opposition supporters with impunity. It has now created “crime preventers.” The role of this extra-legal force in 2016 elections needs to be watched keenly.
Literature Review

THE ROAD TO 2016: CITIZENS’ PERCEPTION ON UGANDA’S 2016 ELECTIONS

AGAIN AND AGAIN: ELECTIONS IN UGANDA AND THE POSSIBILITIES OF PERFECTING THE PRACTICES IN REPEITIVE TRENDS

A REVIEW OF THE LITERATURE

By
Rose Nakayi

For
HURIPEC/KCK
Introduction

Elections are not a new phenomenon in Uganda. They have been conducted at various points in Uganda’s history; pre-independence and post-independence. Examples include the Legislative Council elections that were conducted in the 1950s and the pre-independence elections of March 1961 which were challenged thereby leading to another general election in 1962. In the latter part of the post-independence (1986 to date) elections have been regular. The first post-independence election in Uganda was conducted in October 1963, following which Sir Edward Muteesa II became the first President of independent Uganda. The others include the 1980, 1996, 2001, 2006 and the February 2011 general elections. Of the six elections that have taken place since post-independence, four have been during the regime of the National Resistance Movement (NRM), with those of 2006 and 2011 organised on multiparty basis. Scholars have pointed out that key democracy is not tested on the basis of the number of elections and their outcomes, but the actual feel of democratization and the levels of good governance in the everyday activities of government.

Regular free and fair elections serve a number of purposes that include checking the potential excesses by the top level officers of government, and an opportunity for open debates on pertinent political and social issues on which people hold divergent views. It is also argued that through elections, political controversies may be settled peacefully. The foregoing may only result from processes that are handled properly. The standard for determining how “properly” lies in the internationally set and

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101 Ibid.
recognized principles, and those at national level with a suitably established legal framework. The Kenyan post 2008 elections experience is evidence that a failure to heed to principles can lead to unfavorable outcomes that undermine democratization processes. The same goes for the 2009 autumn elections in Afghanistan and Guinea-Bissau.

Uganda’s checkered history of elections is not much different in terms of propensity of violence and political and social friction to result from electoral activities. There are strands of evidence of the same in a number of elections that have taken place in Uganda during the NRM era. It is not foolhardy to project the same during the forthcoming 2016 elections, considering some of the events leading up to the elections.

The pertinent question therefore becomes, how equipped/appropriate is the legal and institutional framework to address the contentious legal, social, political and other problematic aspects that may arise in the election processes? Is law the magic bullet that can cure all elections related anomalies in Uganda?

That aside, Uganda’s governance structure is a wide one, with elections at various levels. This paper reviews the legal (normative and institutional) framework on elections; parliamentary and presidential, in Uganda and related literature. It discusses the norms and institutions, identifies the actors and how they relate among themselves and with the state. It goes ahead to tease out how these relationships play out within the contested political spaces of Uganda; pre, during and post-election and Uganda’s
performance on elections if tested against set local and international standards on democratic elections.

Among the arguments advanced is that electoral law making is a political process which, coupled with the protracted incumbency factor in successive elections in Uganda, might leave the outcomes and processes of election in the same place - *Again and Again*. The actors might not change even where the script and circumstances change. This makes the context complex. It is therefore not a monolithic verity that law is the solution, more so since it is made by relatively the same actors. This paper further advances a thesis that other non-legal (social, economic, political (local and geopolitical) factors are pertinent in explaining what happens at various stages of the electoral process; pre, during and post, and the outcomes. The paper is further intended to offer background to a study on citizen’s perception to the forthcoming 2016 elections. It is divided into four sections; section I deals with the international and regional legal /human rights regimes of elections, section II gives a trajectory of the national laws on elections, section III delves into the key institutions and players; and lastly section IV gives an evaluation of the past to project into the future, and also contains the conclusion.

The International and Regional Legal Regimes on Elections

An Assessment of Uganda’s International Obligations on elections

A number of international instruments that Uganda has ratified are standard setting on various aspects of elections that include: rights bearers, obligations of state, conduct of election, and equal participation by all including women, persons with disability, etc.

The International Covenant on Civil and Political Rights (ICCPR)\(^{111}\) provides for every citizen’s right to take part in public affairs directly or through a validly chosen representatives.\(^{112}\) This right extends to the possibility of all citizens to vote, or stand and be voted for elective positions in elections that are periodic.\(^{113}\) It should be noted that this is a right for all citizens. The International Covenant on the Elimination of all Forms of

\(^{112}\) ICCPR, Op. cit, note 7, Article 25 (a).
\(^{113}\) ICCPR, Op. cit, note 7, Article 25 (b).
Racial Discrimination Against Women (CEDAW),\textsuperscript{114} calls upon state parties to actively take steps to ensure that women are not discriminated against in participation in political and public life of their countries.

Under the ICCPR Article 2 (1), a ratifying state party makes an undertaking to “…respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The application of this provision in the context of elections reduces its applicability to “every citizen” and not all in the jurisdiction of the country.\textsuperscript{115} The above provision to some extent denotes abhorrence to discrimination. Although discrimination is not defined, its meaning can be deduced from a reading of General Comment No. 18\textsuperscript{116} as differentiated treatment of persons that are situated in similar circumstances. The state obligation to ensure rights and non-discrimination may at times require taking affirmative action in favor of those groups that are marginalized, as stipulated in General Comment No. 18.\textsuperscript{117}

In addition to the above, the ICCPR provides for “… universal and equal suffrage…..by secret ballot…”\textsuperscript{118} The secret ballot promotes privacy in which case one’s vote will be secret, but is not necessarily a guarantee of accuracy of the final outcome, robustness and ease of universal verifiability of the votes.\textsuperscript{119} In as much as secrecy may protect the voter from revenge of a losing party one may not have voted, it is not a guarantee of accuracy in outcome.

**Regional standards: Africa and East Africa**

A number of regional and sub-regional documents/instruments contain principles on democracy in general and elections, that are either binding or persuasive to Uganda.

\begin{footnotesize}
\begin{enumerate}
\item[114]\textsuperscript{114} Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19. See Article 5 (v). Uganda ratified the CEDAW on July 22, 1985, here in after referred to as “CEDAW”.
\item[115] ICCPR, Op. cit, note 7, Article 25 (1).
\item[117] Ibid, Paragraph 10.
\item[118] ICCPR, Op. cit, note 7, article 25(b), and the Universal Declaration of Human Rights, herein after referred to as “UDHR” Article, 21 (3).
\end{enumerate}
\end{footnotesize}
Foundational concepts of the principles touching elections in the region are found in the Constitutive Act of the African Union. The far reaching objectives of the African Union (AU) as stated in Article 3 include to: “… (g) Promote democratic principles and institutions, popular participation and good governance; …” Having this among the objectives gives the AU leverage to set a strategy, through legislation and otherwise, aimed at achieving the above objective among others in its member states that include Uganda.

The African Charter on Democracy, Elections and Governance (ACDEG), 2007, is among the above initiatives. Uganda signed the ACDEG on 16th December, 2008, but had not yet ratified it at the time writing. It is an established principle in treaty law/international human rights law that a charter/instrument will only bind a state that ratified it. “A state that only signs such an instrument, is not only expressing a desire to study it and establish if it can or not ratify it. It is however expected such a state should not engage in any activities that are contrary to the instrument.” By corollary, having signed the ACDEG, Uganda has a moral obligation to abide by it. At the same time, since ratification comes after signature, there is still hope that Uganda may ratify it in the future and become legally bound by the ACDEG.

The preamble to the ACDEG espouses important preliminary matters such as the cause effect relationship between unconstitutional change of government and insecurity in Africa. As if to support the “again and again” thesis of this paper, the ACDEG seeks to inculcate a culture of regular/periodic free and fair elections, “conducted by competent, independent and impartial national electoral bodies.” Under Article 17 of the ACDEG, the state parties echo their commitment to conduct democratic elections in accordance with the Declaration on the Principles Governing Democratic Elections in Africa, by among others: (i) setting up credible institutions to manage elections, (ii) putting in place mechanisms for handling disputes arising from elections in a just and fair manner, (iii)

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121 See, List of member states to the CAAU, in the CAAU, Ibid., at 20.


123 This is according the state ratification status available at http://www.achpr.org/instruments/charter-democracy/ratification/, accessed October 20 2015.


125 Ibid.


 alloing for equitable access to the media by all participating parties, etc. 129 The above Declaration further stipulates electoral rights and obligations; important among them, the right to freely participate in government by voting. 130

Usually, with the exception of the UDHR, Declarations do not have binding force. However, principles in Declarations such as those under the ACDEG may acquire elevated status if a state that ratified the Declaration uses them as guides within its national context.

Further, the far reaching objectives of the ACDEG are set out to include; promoting, democracy, human rights principles, rule of law, constitutionalism, judicial independence, citizen participation, and best practices in election management for good governance. 131 In order to achieve the objectives, state parties to the ACDEG came to a consensus about the principles that states should follow in applying/implementing the ACDEG. These are set out in Article 3 and include:

1. Respect for human right and democratic principles; […] 3. Promotion of a system of government that is representative; 4. Holding of regular, transparent, free and fair elections; […] 7. Effective participation of citizens in democratic and development processes and in governance of public affairs; […] 10. Condemnation and total rejection of unconstitutional changes of government; 11. Strengthening political pluralism and recognizing the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given status under national law.

From all the above, the ACDEG shows that there is a high level of connectedness among electoral democracy, human rights, peace and security. It somehow bestows rights and in some cases nuances existing rights of a person in the field of electoral democracy and also sets obligations for states. State parties are to implement the ACDEG through making laws and policies that are sensitive to the principles, and also take other measures of a legislative, administrative and executive nature. 132

In addition to the above regional initiatives, Uganda is a party to the African Charter on Human and Peoples’ Rights (ACHPR). 133 In Article 13 (1), it provides for every citizen’s right “…to participate freely in the government of his country, either directly or through chosen representatives in accordance with the provisions of the law.” This is a good

129 ACDEG Op. cit., note 26, Article 17 (1)-(3).
131 For details see, ACDEG, Op. cit., note 26 Article 2 (1) - (13).
132 ACDEG, Op. cit., note 26, Article 44 (a) - (d).
provision although it proceeds on a presumption that law will always be a saintly tool that can promote every citizen’s rights. This is oblivious of the possibility for law to be used as a tool of exclusion and violation of rights to participate in affairs of government.\textsuperscript{134} Arguments aside, as a party, Uganda has a duty to implement the provisions of the Charter in good faith; in accordance with the international law principle of \textit{puncta sunt servanda}\textsuperscript{135} with an aim of achieving the spirit of the ACHPR.

Mention should be made that among the subject specific concerns of the regional instruments is the participation of women. Discrimination against women is abhorred, and women are entitled to recognition and to all rights irrespective of their marital status.\textsuperscript{136} In an effort to achieve the foregoing, the Maputo Protocol enjoins state parties under Article 9 to make positive strides; through affirmative action, legislative measures to promote women participation in elections without discrimination, and to also provide a leveled playing field with men. In line with the foregoing, the Constitution of Uganda provides for affirmative action of marginalized groups such as women.\textsuperscript{137} Statistical information indicates that affirmative action is the conduit through which majority women access electoral positions, since the playing field for the open constituency representative positions is not leveled, making it hard for them to compete with men.\textsuperscript{138}

There are a total of 133 female MPs in Uganda’s 9\textsuperscript{th} Parliament (34.3%); This places Uganda 17\textsuperscript{th} in the world. One third of local government councils seats are also reserved for women. Women have thus reached a critical mass in the Ugandan Parliament. Given the lack of movement in the 9\textsuperscript{th} Parliament of Uganda on critical women’s bills, there is a sense that the increased descriptive representation of women legislators has not consistently led to a significant improvement in substantive representation. While a number of pro-women legislative acts were passed by the 8\textsuperscript{th} Parliament (including the Equal Opportunity Commission Act of 2006; the Prohibition of Female Genital Mutilation Act of 2009, the Prevention of Trafficking in Persons in 2009, the

\textsuperscript{134} Selective application of the Public Order Management Act is an example where this has happened. See, J.J. Barya, \textit{Politico-Cultural Pluralism, and Public Order Management in Uganda Today} in Mawazo Journal, Vol.11 No.1 Jan.2012.


\textsuperscript{137} See, Article 32 (and 33).

Domestic Violence Act of 2010), this trend did not continue in the 9th Parliament whereby the Marriage & Divorce Act was “shelved.\textsuperscript{139}

This shows that despite the efforts at promoting women in political spaces such as Parliament, more needs to be done.

Coming down to the East African Region, the Treaty establishing the East African Community provides for the election of members to the East African Legislative Assembly (EALA), the legislative organ of the Community established under Article 49(1) of the Treaty. According to Article 50(1) of the Treaty, members of EALA are elected by the National Assembly of each Partner State, not from among its members. The qualifications of persons to be elected by each Partner State as EALA members are listed under Article 50(2) of the Treaty. The elected member must be a citizen of the electing Partner State with qualifications for membership of the National Assembly of that Partner State under its Constitution; must not be a minister in the Partner State, or an officer in the service of the Community; and must have proven experience or interest in consolidating and furthering the aims and the objectives of the Community. The term of office is five years and it is renewable only once.

Existence of a relatively robust international and regional framework on elections to which Uganda subscribes is not a guarantee of democracy, free and fair outcomes from elections. The findings of the Africa Peer Review Mechanism (APRM) indicated a number of problematic aspects that include; electoral corruption that inhibits democracy, struggles to entrench multiparty democracy, institutional weaknesses, delays in handling election petitions by courts of law, voter buying etc.\textsuperscript{140} This shows that adherence to these international and regional standards is work, that is in relatively slow progress.

**Applicability and enforcement of international law within Uganda: a brief**

Uganda”s ratification of international instruments may not be a guarantee that Ugandans will take benefit from them.

\textsuperscript{139} Ibid.

The dualist theory of international law\textsuperscript{141} to which Uganda subscribes considers international law and national law as separate streams; international law is not automatically and directly enforceable within the domestic jurisdiction of Uganda. That does not mean that such dualist countries do not apply international law; they do and may be more than monist countries.\textsuperscript{142} Arguments about the state’s obligations to reduce its international obligations into consumable products and enforceable norms within the municipal laws and institutions have been underscored by Onoria.\textsuperscript{143} Indeed, Uganda’s Constitution of 1995 envisions international law as forming a part of the corpus juris of Uganda that has to be complied with.\textsuperscript{144}

International human rights instruments and other regional documents are a source of rights to the Ugandans, and some have been brought down and embedded into the Bill of Rights of the 1995 Constitution. The thorny issue revolves around their enforceability within domestic courts. Article 50 of the Constitution gives “a competent court” jurisdiction to entertain cases in which there are allegations of violations of rights “guaranteed under this constitution.” This would precisely imply that no action can be brought to the competent court if not arising from a specifically stated right in the Constitution. The same Constitution Article 45 offers clarification by stipulating:

The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this chapter shall not be regarded as excluding others not specifically mentioned.

The application of international law as a source of rights within Uganda has gone through a checkered history; with a trajectory of various points ranging from rejection,\textsuperscript{145} to close/total acceptance.\textsuperscript{146} It is an important guide in the interpretation of matters relating to human rights, within Uganda.\textsuperscript{147}


\textsuperscript{143} H. Onoria, \textit{Application of International Law in Domestic Courts: perspectives from Practice}, (paper presented the Roundtable on Application of International Law in Regional and Domestic Courts : Opportunities and Challenges, 29 July 2010, Munyonyo Commonwealth Resort, Kampala, at 1.

\textsuperscript{144} See, Article 52 (i) (h).

\textsuperscript{145} See, \textit{Paul Ssemwogerere & 5 others v. Attorney General}, Constitutional Petition No 5 of 2002, where court was dismissive of international human rights instruments cited by the petitioners.


A Trajectory of The National Laws on Elections: Key Issues

Some scholars have referred to pre-1986 regimes in Uganda as dictatorships, in comparison to the NRM regime.\textsuperscript{148} Although commendable, the post NRM regime has been described as just a relatively new version of “softened” authoritarianism compared to earlier ones.\textsuperscript{149} A look at the laws on elections over a period of time is invaluable in painting a clear picture on how the NRM regime has fared in this arena, in relative comparison to its predecessors.

Laws and Elections in Uganda’s history; independence to 1985: key features

Imperialism and indirect rule are among the key features shaping debates and outcomes on governance in pre-independence Uganda.\textsuperscript{150} The earlier part of the post-independence era is characterized by tumultuous struggles for power and civil war, which shaped the lop-sided patterns of governance and democratization process of the time. This section highlights some of the key features of this period.

\textit{Pre-independence}

Uganda was under British colonial rule. Laws were therefore made to promote the British agenda of indirect rule, and there seems to be preference for appointments rather than elections to fill key positions.

The politics of exclusion is incarnate in this period, perpetrated against the locals that seemed insignificant.\textsuperscript{151} The 1920 Order in Council of both Legislative and Executive Council was set up to run affairs in the country. The Executive Council was composed of the Governor (chair), chief secretary, treasurer, attorney general and chief medical

\begin{footnotesize}
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\item For details see, Mamdani Mahmood (1996), Citizen and Subject: Contemporary Africa And The Legacy Of Late Colonialism, Princeton University Press.
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The Legislative Council was purely foreign with no African representatives. Its composition was two European non-officials, one person (non official) from the Indian community; the majority was 4 Executive Council members who were Europeans. The Indian community agitated for having an increased/equal representation of the non-official members that is equivalent to that of the Europeans. The Indians were considered significant entrepreneurs and indispensable partners, which was their bargaining chip with the British. For Africans such as the Kabaka and the Baganda, the thought that the LEGCO would denigrate their status and glory, made them resist it, as noted by Morris and Reed.

Besides that, the African Native Authority Ordinance of 1919 provided for the powers and duties of African chiefs in the colonial indirect system of administration. Under that law, chiefs were appointed at the village, sub-county and county levels with powers to collect taxes, preside over native courts, and maintain law and order. They were accountable to the District Commissioner (executive head of the district) who was also the principal representative of the central government.

Later, the African Local Government Ordinance and District Council Proclamations and Regulations of 1949 provided for the district as a local government running with the District Councils in a relatively independent style. Members of the district councils were elected and not appointed and were to some extent subject to the power and direction of the central/colonial government. The existence of kingdoms at the time within Uganda meant that issues of governance were not exclusively determined within the above described structures.

The politics of alliances and privileging of groups considered significant in political, economic or social terms through law is not something that disappeared with history, but is of contemporary significance in Uganda. An example is Buganda’s leverage in the determination of significant national issues of governance.

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153 Ibid.
154 Ibid, at 25
155 Ibid, at 24-25
Post-independence until 1986

Elections denote citizenship, and citizenship denotes state sovereignty; power of the state to make decisions and control actors within its borders and give them protection and security.\(^{158}\) Uganda’s independence in 1962 meant that the duty bearer for the citizen’s claims to rights in the realm of governance was the new Uganda and not the British colonial government. It was not necessarily a guarantee of better regimes in terms of ensuring human rights. The recent compendium of conflicts in Uganda points to this period as one characterized with successive armed strife, struggles for power, and taking time away from building democratic structures/institutions.\(^{159}\) These struggles further indicate a lack of clarity on who should take leadership on matters of governance, thus leaving them in abeyance.

The absence of an entrenched culture of rule of law created a situation where everything goes.\(^{160}\) Among the key features of this period is the removal of the president, Sir Edward Fredrick Mutesa II, an attack on his palace and subsequent exile in England.\(^{161}\) “Constitutionalism” was born with the passing of the 1966 constitution, and almost died in the same constitution considering that it was passed in mere circumstances of coercion - the National Assembly did not debate it since they found it in their pigeon halls. Concrete evidence that the “sham” constitutionalism or semblance of the same was on the wane, is in the abrogation of the independence Constitution in 1966 and its replacement with that of 1967. The 1967 Constitution centralized powers and abolished kingdoms some of which had played a central role in governance of the country.

Scholars have classified this period as one that is greatly more about militarism than constitutionalism.\(^{162}\) Oloka- Onyago and Busingye have argued that the military might did not spare Judicial institutions;\(^{163}\) evidence from cases such as *Uganda v. Commissioner of Prisons, Exparte Matovu*\(^ {164}\) show that courts lost their oversight role and instead bowed to the whims of those who had military might. In this case, applying

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\(^{163}\) Ibid, 4-5.

\(^{164}\) [1966] EA 514, and also see Onyango, Ibid.
the Kelsen theory in which “might” is “right” the court found that the events leading up to 1966 Constitution were a legitimate and validly replaced the old order.\(^{165}\) This introduced a culture that later became entrenched through which unconstitutional changes of power would be legitimized by law, by passing legal notices—\(^{166}\) all in disparagement of people’s rights to participate in public affairs of their country.

It is no surprise that Obote was overthrown by Idi Amin through a military coup, setting up a military regime between 1971-1979, where he got rid of districts and established regional/provincial administrations led by handpicked high-ranking military officers as governors.\(^{167}\) The status quo remained during Obote’s regime after he took over from Amin in 1980, for the five year period.-The post 1979 period was one to which the phrase “enough is enough” is applicable; even if it meant the coming together of opposition parties against a common enemy, the individual party-interest would be sacrificed for the common agenda. Significant among these efforts was the formation of the Uganda National Liberation Front (UNLF)\(^{168}\) that toppled Amin in (April) 1979 with the help of Tanzania.\(^{169}\) Successive and short regimes followed with presidents in this order: Yusuf Lule (April 13 –June 20 1979), Godfrey Binaisa and Paulo Muwanga.

Another landmark of this period, is the 1980 multiparty elections in which contestation was along political party tickets as follows: Uganda Peoples” Congress (Milton Obote), Democratic Party (Paul Kawanga Ssemwogerere), Uganda Patriotic Movement (Yoweri Kaguta Museveni).\(^{170}\) It is reported that this election was underscored by considerable malpractices that included rigging, ultimately in favor of Obote.\(^{171}\) This resulted into dissatisfaction leading to a rebellion against Obote that saw the NRA take over power in 1986.\(^{172}\)

This was a period of dwindling efforts at consolidation of democracy. The many divisions among people along religious and tribal lines were inhibitions to the citizen’s formation of a strong voice (in unison) against dictatorial regimes of the time. Such inhibitions were supplemented by ethicized identities that seeped through to the political


\(^{168}\) Composed of Kikosi Maalum (led by Oyite Ojok), Front for National Salvation (FRONASA) (led by Museveni) and others that supported Obote. See RLP Op. Cit., note 63, at 84.

\(^{169}\) See, Southall, Aidan, Social Disorganization in Uganda: Before, during and after Amin. The Journal of Modern African Studies Vol. 18, No. 4 1980,pp 627-656


\(^{171}\) Ibid.

parties, in which case DP was seen as synonymous to Buganda and UPC, the north.\textsuperscript{173} Kasozi has shown the connectedness of this and social strife in the country.\textsuperscript{174} Determination of important issues of governance by implication became more a vote for personal(and my groups”) benefit than for the nation at large; making a win from an election a pass to entitlement and exclusion of others. Some of these are recurrent to-date.

**Legal issues on laws and elections during the NRM era**

**The set (legal) standards, actors and relationships**

The legal norms and standards on conduct of elections in Uganda are set out in the constitution and other laws key among which are: The Electoral Commission Act Cap 140, The Presidential Elections Act (PEA), 2005 and the Parliamentary Elections Act, 2005. This part of the paper highlights the standards and key actors and where applicable relationships.\textsuperscript{175}

**Periodic elections**

Elections in Uganda are by law supposed to be regular and periodic. The Constitution Article 61 (2) and Presidential Elections Act (PEA), Section 2 (2) stipulate that elections must be organized “…during the first thirty days of the last ninety days before the expiration of the term of the president.” In short, elections have to be completed two months prior to the end of the incumbent’s term in office. Elections may also be held in special circumstances such as those stipulated in Article 104(6) and section 2 (3) (a)-(d) PEA. Under Section 2 (3) (a) of PEA, after annulment of a presidential election, and from Article 107 of the Constitution and Section 2 (3) (b) on death or resignation of a sitting president. In all the above instances, the election has to take place within six months following such death, resignation or removal from office.\textsuperscript{176}

According to the Constitution Article 61, elections are supposed to be organized by the Electoral Commission (EC), which also has to ensure their regularity and free and fair outcome. In terms of the nature of both the presidential and parliamentary elections, the law stipulates that they have to be by universal adult suffrage; using one secret ballot on

\textsuperscript{173} See, Ibid., at 12; Also see Kasozi, Op. cit., note 71.
\textsuperscript{175} The Electoral Commission as a main actor will in detail be handled in a stand-alone subsection later
\textsuperscript{176} See, the PEA, 2005, Section 2(3) (c) and Article 107 of the Constitution of Uganda 1995.
which details of all candidates at each polling station must appear.\textsuperscript{177} Although election of women members of parliament (MPs) is by universal adult suffrage and secret ballot, it is conducted on a different day from that parliamentarians that directly represent constituencies are elected. Separate ballot boxes are used, from those used to elect direct MPs.\textsuperscript{178} Modification to the above requirement is allowed under the law.\textsuperscript{179}

\textit{The population/voters}

Since all adult Ugandans (of sound mind) form the voting population, they are key players in Uganda’s electoral processes, just like the candidates in presidential and parliamentary elections. Indeed, the Constitution Article 17 (1) (g) stipulates a civic duty for qualified citizens to register for elections and by corollary participate in the processes. The citizens must be helped to fulfill this duty through processes that equip them with the civic competences, such as civic education, such that they can make appropriate choices. In addition, when they register, they should not be deregistered unfairly or have their polling stations changed without the necessary prior information. The case of \textit{Rtd. Col. Dr. Kizza Besigye v. Electoral Commission and Yoweri Kaguta Museveni}\textsuperscript{180} found that the acts of deleting voters from the register without their knowledge, placing others at new polling stations not following fair and transparent means that may have included information to them on time, amounted to disenfranchisement of the voters contrary to the constitution and other laws of Uganda.\textsuperscript{181}

\textit{Qualification for Presidential and parliamentary elections}

Qualifications for the highest office of president are set out in the PEA. According to Section 4 (1) (a) - (e), one must be a Ugandan citizenship by birth, between 35 to 75 years old, and qualified to be a member of parliament. The last mentioned means that in addition to Uganda citizenship, one should fulfill the other requirements for election as an MP; must be a registered voter and also hold a minimum education of advanced level or in the alternative, an equivalent qualification.\textsuperscript{182} Under Section 4 (7) of PEA, presidential candidates in a normal/regular election are obligated to “establish their qualifications with the Electoral Commission” two months prior to nomination day, and two weeks

\textsuperscript{177} See, the PEA, 2005, Section 2(1).
\textsuperscript{178} See, the Parliamentary Elections Act, Section 8 (4) (i)- (v)
\textsuperscript{179} Ibid, Section 8 (4) (v).
\textsuperscript{180} Presidential Election Petition No.1 of 2006 (unreported).
\textsuperscript{181} Chief Justice Benjamin Odoki’s Judgment, at 152-153.
\textsuperscript{182} PEA, 2005 Section 4 (3) (a)-(c).
prior to nomination in any other election. This is intended to prove that they indeed have the qualification from Uganda, or the equivalent. The mandate to verify documents and issue certification for successful verification is bestowed upon the National Council for Higher education (NCHE), under Section 4 (8)-(12) of the PEA. A person disgruntled by the decision of the NCHE has a right to appeal to the High Court under Section 4 (13) of PEA. Section 4(14) grants the Chief Justice mandate to make rules regulating such appeals.

Further Section 4 (4) (a) (g) of PEA sets out a list of persons that do not qualify to stand for both the office of president and MP. These include those of unsound mind, holders of office connected to elections, traditional or cultural leaders, those declared bankrupt, on death row or serving a term of imprisonment of more than nine months, those convicted of dishonesty or crimes involving moral turpitude within seven years immediately before a given cycle of elections.

Under a multiparty dispensation, any person who wishes to stand for the office of the president must resign, if they are employed in a local government, an entity in which the government is the controlling authority.\textsuperscript{183} Public servants too have to relinquish their offices if they are to offer themselves for political office.\textsuperscript{184}

**Campaign requirements and restrictions**

*Consultations for presidential candidates*

The laws discussed in this section set campaign requirements and restrictions, that are intended to make the campaign process transparent and fair to all players. More so since the mode of conduct of campaigns has implications for elections; whether they would be free and fair.

The PEA Section 3 allows for pre-campaign activities such as consultations. These have however been controversial in the 2015/16 elections cycle. Section 3(1) allows persons that aspire to be nominated for president to carry out consultations in preparation for nomination within twelve months before nomination date. Under Section 3 (2), the candidate is allowed to: “(a) carry out nation-wide consultations; (b) prepare his or her manifesto and other campaign materials; (c) raise funds for his or her campaign….(d) convene meetings of national delegates.” In addition, the candidate has to introduce

\textsuperscript{183} PEA 2005, Section 4 (6).

\textsuperscript{184} Constitution of Uganda, Article 257 (y), PEA 2005, Section 4 (21).
himself or herself to the EC, the Local Council and Police in the area where they go to consult.\textsuperscript{185} This provision is ambiguous about the form the consultations should take. The gap has been exploited by presidential aspirants such as John Patrick Amama Mbabazi to conduct open air consultations with hundreds of people, something that has been labelled as campaigning contrary to the rules.\textsuperscript{186} Attempts by Mbabazi to consult in places such as Mbale were thwarted by Police, on grounds that they were in contravention of the law.\textsuperscript{187} In an attempt to clear the ambiguity of interpretation arising in Section 3 of the PEA, 2005, the EC issued a press release to offer guidance.\textsuperscript{188} According to the Guide, consultations under Section 3 are not intended to be campaigns, but activities that are “preparatory in nature”; aimed at introducing the aspirant to the people in preparation for nominations.

These consultations, however, should be distinguished from distribution of campaign materials, campaign, holding rallies and mass meetings and canvassing/soliciting for votes envisaged under Section 21 and 24 of Part V of the Presidential Elections Act.

While conducting consultations, aspirants are supposed to abide by the national laws, and regulations/ codes put in place by their parties. Although the Guide by the EC attempts to clarify the situation, it does not clear the ambiguity in the law on regarding consultations by aspirants. The law remains silent on whether consultations have to be carried out in a room or an open place, the procedure at the consultation, and the kind of material that may be distributed or used at the consultation.

\textit{Manner and conduct of campaigns}

Both the Presidential and Parliamentary Election Acts provide for the manner in which campaigns are to be conducted.\textsuperscript{189} For presidential campaigns, the Act mandates the EC to set aside a period for the holding of campaigns by the candidates ensuring that each candidate is given at least one day of campaigning in each of the districts in the country.\textsuperscript{190} This provision has been amended to repeal the words “giving at least one day

\begin{itemize}
\item \textsuperscript{185} PEA 2005, Section 3 (3)
\item \textsuperscript{186} NTV, \textit{Mbabazi takes consultations to Kapchorwa}, available at \url{http://www.ntv.co.ug/news/politics/08/sep/2015/mbabazi-takes-consultations-kapchorwa-8558/#sthash.oClp1i8.dpbb}, accessed October 25, 2015.
\item \textsuperscript{189} Parliamentary Elections Act, 2005, Part V and the PEA 2005, Part V
\item \textsuperscript{190} Section 21(1).
\end{itemize}
in each district.”\textsuperscript{191} This to some extent aligns the law with the reality, considering that the number of districts in Uganda is currently over one hundred.

Additionally, each presidential and parliamentary candidate is free to hold a public meeting anywhere in Uganda for purposes of their campaign.\textsuperscript{192} This right is however caveated in two respects. First, the meeting must be in accordance with the law in force in Uganda\textsuperscript{193} for purposes of, and must be in tandem with, the program submitted by the candidate to the EC.\textsuperscript{194} This is in keeping with the Commission”s obligation to provide adequate security to each candidate during their legally convened meetings.\textsuperscript{195}

Under the PEA, presidential candidates were until recently entitled to financial facilitation and any other form of facilitation as approved by parliament, and were allowed to fund raise from elsewhere for their campaigns.\textsuperscript{196} Monies from the government were supposed to be accounted for within 30 days after the elections.\textsuperscript{197} The most recent amendment to the PEA has repealed Sections 22 (2) and (7) (a) on financial facilitation and accountability for the finances.\textsuperscript{198} Presidential candidates are no longer entitled to funds from the government.

Besides the above, the law guarantees: equal treatment, freedom of expression and access to information;\textsuperscript{199} non-sectarian campaigns,\textsuperscript{200} non-interference with the election activities of other candidates,\textsuperscript{201} and non-use by a candidate of government resources.\textsuperscript{202} These provisions are meant to ensure that the campaign environment is friendly and also to mitigate any outbursts.\textsuperscript{203} However, the laws seem to be inadequate in some respects.

\textsuperscript{191} See, the Presidential Elections (Amendment) Act 2015, Section 2 amending Section 21.
\textsuperscript{192} Section 21 (2).
\textsuperscript{193} This perhaps envisaging the Public Order Management Act.
\textsuperscript{194} Presidential Elections Act, 2005 Section 21 (6), Parliamentary Elections Act,2005 Section 20 (2). The mischief that was intended to be cured by this rule may be the need to control clashing of candidates and their supporters if they happen to be at the same place at the same time. This has in most cases been a cause of conflict.
\textsuperscript{195} Section 22.
\textsuperscript{196} See, Section 22 (2) and Section 22(3).
\textsuperscript{197} Section 22(7).
\textsuperscript{198} See the Presidential Elections (Amendment Act), 2005, Section 3.
\textsuperscript{199} Section 23.
\textsuperscript{200} Section 25.
\textsuperscript{201} Section 26.
\textsuperscript{202} Section 27. The 2010 amendment to this Act substituted subsection 1 of this section by inserting a new one which reads:

“(1) Except as authorized under this Act or authorized by law, a person shall not use Government resources for the purpose of campaigning for any candidate, party or organization in an election.”

The implication of that provision is that a person authorized by law can use government resources while contesting for a position as long as there is a law to that effect.
\textsuperscript{203} The parliamentary candidates” specific provisions are found in the Parliamentary Elections Act, 2005, Section 21-25.
For example, the Commonwealth Observer Group on the 2011 elections has pointed out in respect to use of state resources:

Overall there is a lack of clear regulation in the areas of state resources and campaign financing and expenditure, resulting in a lack of transparency and accountability.\(^\text{204}\)

The current law relating to the use of state resources enables extensive use of state resources by an incumbent President Article 27.1 of the Presidential Elections Act states: “a person shall not use Government resources for the purpose of campaigning for any candidate, party or organization in the election.” However, Article 27.2 states: “Notwithstanding subsection (1), a candidate who holds the office of President, may continue to use Government facilities during the campaign, but shall only use those Government facilities which are ordinarily attached to and utilized by the holder of that office”.\(^\text{205}\)

**The EU Mission also observed that:**

the power of incumbency was exercised to such an extent as to compromise severely the level playing field between the competing candidates and the political parties.\(^\text{206}\)

It was also pointed out that the police force is yet to appreciate its role as an impartial actor when it comes to election periods.\(^\text{207}\) This factor is added to the highly militarized nature of the force, leads the logical conclusion of an unfriendly election environment from which a democratic process cannot, in the strictest sense of the word, be seen to take course.

The media is an important player in the campaign process. Human Rights Watch has in previous elections noted harassment and torture of journalists and civil society by the


\(^{205}\) Ibid, at 14.


\(^{207}\) Ibid, at 8.
Police; “Police officials and presidential appointees need to obey the law and ensure that there is an opportunity to debate government policy and educate voters.”

In addition to the above, the law regulates the conduct of presidential hopefuls by stipulating offences which they should avoid committing. Penalties in case of defiance are laid out in chapters IX and X of the Act. Some of these offences may be committed during the campaign period, or at the time of elections. These include: bribing of voters, vote stuffing and rigging, forgery and uttering of false academic documents, false declarations, procuring prohibited persons to vote, etc. For these to be a basis on which an election can be invalidated, they must be linked to the individual candidates, and this poses a big challenge to litigants. In *Kizza Besigye v. Electoral Commission and Y.K. Museveni*, a number of electoral offences were committed and proved in court. The court nonetheless found that the non-compliance with the law was not substantial enough to affect the final result of the election. In their Lordships’ view, the petitioner failed to link the offensive acts to the second respondent or to any of his agents who did so either with his knowledge and/or authorization.

So it is clear that in addition to having to prove the substantial value of the malpractices, one has a burden to attach the said acts to the individual candidate and or his/her authorized agents, in order to have a judgment which can nullify the election. This is usually difficult to prove especially in light of the likelihood of candidates-elect and their alleged agents to fraudulently disassociate themselves.

The case of *Kiiza Besigye v. Yoweri K. Museveni S.C.PEA. No. 01 of 2001*, Oder J. (RIP) set down the ingredients of bribery and emphasized that a bribe to a voter must be proved to have been intended to influence the voting or nonvoting of the voter. In short, the bribe should be intended to influence the voter in his/her choice of candidate.

Decided cases have already determined that the standard of proof in election offences; allegations of bribery must be proved on a balance of probabilities that the person or the

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209 Election Petition 01 of 2006.

210 As required by Section 59(6) (a) of The PEA.
persons allegedly bribed were registered voters.\textsuperscript{211} The burden is on the person making the allegations.\textsuperscript{212}

Indeed very few petitions have succeeded on this ground. One such case in which election offences were proved against the respondent is, \textit{Paul Mwiru v. Hon. Igeme Nathan Nabeta and 2 Ors},\textsuperscript{213} in which ground 3 on appeal was that the 1\textsuperscript{st} respondent personally or through his agents, with his consent, knowledge or approval, committed numerous electoral offences and illegal practices, which affected the final results in a substantial manner. In a rather rare pronouncement, Justice Byamugisha declared; “The 1\textsuperscript{st} respondent personally committed an illegal act of bribery. His election as a MP for Jinja East Constituency would be annulled. I would order for fresh election.”\textsuperscript{214}

\textit{Use of government resources}

It is prohibited for candidates to use government resources for purposes of campaigning in an election.\textsuperscript{215} The case of \textit{Aggrey Awori Siryoyi v. Mugeni Steven Wasike and the Electoral Commission}\textsuperscript{216} clearly articulates this position. In this case, contrary the provisions of both the Constitution and the Parliamentary Elections Act, the respondent had not resigned his office as a public servant prior to his nomination as candidate for the Samia- Bugwe North Constituency. Court held that the respondent had not been legally nominated and so the election was set aside.

The mischief that was intended to be cured by the rule on resignation of a candidate from the government”s service was stated by Justice Katutsi, as; the need to level the ground so that public officers could not gain an unfair advantage over their opponents who are not in the public office, by using government facilities.

The law further requires that all relevant information regarding a candidate”s facilitation in the election process must be shared with the Commission, failure of which constitutes an offence for which judgment for a fine and/or imprisonment may be issued against the culprit.\textsuperscript{217}

\textsuperscript{211} For example \textit{Harris Mukasa v. Dr Lulume Bayiga}- Election Petition Appeal No.18/07(SC) Bakaluba Peter Mukasa v. Nambooze Betty Bakireke-Election Petition Appeal No.4/09(SC), and \textit{Fred Badda v. Prof. Muyanda Mutebi} –EPA No.21/07(SC).
\textsuperscript{212} Ibid.
\textsuperscript{213} Election Petition Appeal No. 00 of 2011.
\textsuperscript{214} See, the decision, at 32.
\textsuperscript{215} The Parliamentary Elections Act 2005, Section25; The Presidential Elections Act Section 27.
\textsuperscript{216} Election Petition 0005 of 2006.
\textsuperscript{217} Presidential Elections Act, 2005, Sections 22 (6)-(9).
Polling day players: returning officers, polling assistants, elections observers etc.

Among the key actors that play diverse roles on the polling day are returning officers, assistant returning officers, polling assistants, and elections observers.

Returning officers

The EC has the mandate to appoint persons of high moral character and proven integrity as returning officers for each electoral district.218 The appointing authority can remove returning officers from office by notice in the Gazette, on a number of grounds including: when the agent is no longer ordinarily resident in that district for which s/he was returning officer, illness, physical or mental incapability, ceases to hold a public office in case s/he was appointed by virtue of holding such public office, etc.219

The Electoral Commission Act does not stipulate the functions of the returning officer in detail,220 but forbids dishonesty and corruption in the carrying out of their duties.221 Engagement in corruption is a criminal offence that is punishable under the Act.222

Assistant returning officers

Returning officers are assisted by assistant returning officers. These are appointed in writing by returning officers, with approval of the EC, to assist the returning officers.223 Although the EC has to give approval to the appointment, the law gives the returning officers a lot of power in the determination of who should hold the position of assistant returning officer. The returning officer can remove the assistant from office with approval of the EC.224 At the same time, death of a returning officer renders an assistant returning officer a temporary officer, only holding office until the successor of the returning officer appoints a new assistant.225

This provision to some extent over attaches the office of the assistant returning officer to the returning officer, to an extent of personalizing it. Why wouldn’t the existing assistant

218 The Electoral Commission Act, 1997, Section 30 (1).
219 Ibid, Section 30 (3).
220 Although Section 33 gives them power to establish polling stations bearing in mind the need for convenience in terms of access to voters.
221 Ibid, Section 30 (5).
222 Ibid, Section 30(6).
223 Ibid, Section 31.
224 Ibid, Section 31.
225 Ibid, Section 32.
remain in office and work with the new returning officer after the demise of a returning officer that appointed the assistant? This creates a situation where the assistant owes allegiance to his or her appointing authority, increasing possibilities of collusion to promote electoral malpractice without check.

More powers to appoint officers are bestowed upon the returning officer under Section 34 of the Electoral Commission Act. These include one presiding officer and a maximum of three polling assistants for each polling station; not more than four counting officers for each constituency. The power to appoint also comes with powers to disappoint. The power to appoint also comes with powers to disappoint. The power to appoint also comes with powers to disappoint. The power to appoint also comes with powers to disappoint.

**Election observers**

Besides the above central players, on polling day are elections observers. Under Section 16 of the Electoral Commission Act, they are supposed to be accredited by the EC, which also issues them with guidelines to follow in conducting their observation. Observers can be individuals, groups, or institutions. Accredited observers commit an offence if they contravene the guidelines or observe without accreditation. It should be noted that observation of elections without accreditation is an offence, which on conviction, makes one liable to imprisonment for six months or a fine of a maximum of fifteen currency points or both. At the end of it all, the observer(s) must issue a report to the EC within a period of six months after the results have been declared.

It remains a valid question whether there are any systems at the EC through which these reports are scrutinized to pick lessons to inform better organized subsequent elections.

Elections observations are among the key roles envisaged by regional bodies such as the African Union, pursuant to the OAU Declaration on the Principles Governing Democratic Elections in Africa, at the invitation of the state holding an election. Election observation in this context extends to pre-election, elections and the post elections phase. Within the auspices of the AU, elections observation has to be carried out following set guidelines. Among the issues to observe include the level at which constitutional and

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226 Electoral Commission Act, Section 34 (1).
227 Ibid, Section 34 (1).
228 Ibid, Section 16 (3) & (4).
229 Ibid, Section 16 (6). Under the first Schedule to the Act, a currency point is UGX- 20000/= (Twenty thousand Uganda shillings).
230 Ibid, Section 16 (5).
232 Ibid.
legal frameworks guarantee human rights, independence of the EC, role of security forces in elections, access to the media by all players, situations of political violence, freedoms of expression and assembly etc.\textsuperscript{233} The observers have a duty to make a report and recommendations for reform, based on cogent information obtained in the observation processes.\textsuperscript{234}

**Vote counting, tallying, and declaration of results: processes and actors**

Results that are declared must have gone through a long process of scrutiny and counting as laid out in Part VII of the PEA and Part IX of the Parliamentary Elections Act. The presiding officers have a duty to prepare results declaration forms that are in a prescribed form; leave one in a report book, retain one to display at polling station, seal one in an envelope from the EC and deliver it to the presiding officer, give a copy to each candidate’’s agent, and deposit one in the ballot box.\textsuperscript{235} The form has to be signed by the presiding officer and the candidates or their agents.\textsuperscript{236}

In addition to the results declaration form, it is mandatory by law to keep all material used in the polling activities clearly bundled together by category: ballot papers received, invalid ballots, spoilt ballots, unused ballots, and voters’’ rolls used at the polling station.\textsuperscript{237} Keeping such records is important especially in cases where the results are challenged by one or more of the contestants.

All sealed boxes of the results from various polling centers are delivered by the presiding officers to the returning officer. Other materials delivered include signed declaration of results forms and a report book filled and signed by the presiding officers and the polling assistants.\textsuperscript{238} Returning officers have a duty to ensure safe custody of the ballot boxes, and check to ensure that the seal is still intact.\textsuperscript{239}

The returning officers use the results on the forms received from all polling stations to tally the results of each candidate, in the presence of the candidate and or their agents.\textsuperscript{240} Where tallying necessitates opening the ballot box to get the declaration of results form

\begin{footnotesize}
\begin{enumerate}
\item 233 Ibid, at 8-10.
\item 234 Ibid, at 12 and 14.
\item 235 PEA, Section 51, Parliamentary Election Act, Section 50.
\item 236 PEA , Section 51 (4).
\item 237 Ibid, Section 51 (3), Parliamentary Election Act, Section 51 (2).
\item 238 Ibid, Section 52 (2) and Parliamentary Elections Act, Section 50 (3)
\item 239 Ibid, Section 53, Parliamentary Elections Act, Section 52
\item 240 Ibid, Section 54.
\end{enumerate}
\end{footnotesize}
deposited in it, the opening has to be done in the presence of a police officer not below the rank of Inspector of Police and the candidates or their agents.\textsuperscript{241} The box has to be immediately resealed afterwards.\textsuperscript{242} The presence of the candidate(s) or their representative is to ensure that no extra ballots are fraudulently added in the box after it is opened. However in Besigye’s case of 2006, court was dismayed that the EC failed to avail reports of the returning officers on ground that they were not available.\textsuperscript{243} This indicates a gap between the legal requirements and what happens in practice. One may also not rule out the possibility that there were errors in the records that would be detected if it was produced in court. In that case, a conscious choice to deny the existence of the records is a better move to avoid more embarrassing circumstances that would arise from exposing the errors on the records.

Besides above issues, it is not unusual that counting/tallying is interrupted by violence during party primaries or national elections.\textsuperscript{244} Violence is not only physical but may take various forms such as intimidation, bribery and government interference in electoral processes, and 80\% of elections in Sub-sharan Africa have experienced it.\textsuperscript{245} Where this happens, at the level of the poll counting, the presiding officer has to inform the returning officer and if it happens at tallying before the returning officer, s/he has to inform the EC.\textsuperscript{246} The counting or tallying in such cases is postponed to a later time or the next day.\textsuperscript{247} There is no requirement that the candidates or their agents should be informed. In such cases of postponement of counting, the candidates or their agents have a right to keep watch over the ballot boxes which are supposed to be in safe custody.\textsuperscript{248} However since there is no legal obligation to inform the candidates about postponement, they might not be in position to prepare to guard the boxes. This loophole may be exploited to rig the vote.

Having voted and counted all records from the returning officers are transmitted to the EC. These include a declaration of votes obtained by all candidates.\textsuperscript{249} The EC is under

\begin{itemize}
\item 241 Ibid, Section 54 (4).
\item 242 Ibid, Section 54 (5).
\item 243 See, the Decision at 152-153.
\item 245 Bishop S. and Hoffler A, Free and Fair elections- A New Debate, CSAE WORKING PAPER No.4, 2014.
\item 246 Ibid, Section 55(1).
\item 247 Ibid.
\item 248 Ibid, Section 55(3).
\item 249 Ibid, Section 56 (1) and (2).
\end{itemize}
duty to declare results in a presidential election within forty eight hours from close of polling, by publishing them in the Gazette and national media.\textsuperscript{250}

In case no candidate gets fifty percent of the total votes cast, a rerun has to be organized as a contest between the top two candidates and voting held within the next thirty days.\textsuperscript{251} The new president assumes office within twenty four hours after the expiration of the former president’s term or within twenty four hours after being declared president.\textsuperscript{252}

**The road to elections: politics of incumbency, law reform and implementation**

In the earlier part of 2015, various players such as civil society, political parties and members of the public participated in giving and collecting views and debates on what Ugandans needed in terms of reforms prior to the elections. This resulted into the Uganda Citizens’ Compact on Free and Fair Elections.\textsuperscript{253} Among the citizens’ demands that would guide the direction of law reform were the: creation of a new and independent EC, developing a new clean voters’ register, barring security forces and militia’s involvement in elections, demarcation of electoral boundaries, respect for freedoms of assembly, and repeal of the POMA.\textsuperscript{254}

Legislative reforms and other events on the trajectory leading up to the 2016 elections indicate that the power of incumbency came to bear to defeat the demands of the citizens. This was a disappointment of civil society and some development partners such as the European Union.\textsuperscript{255} The foregoing triggered the government’s defensive mechanism.\textsuperscript{256} This is a sign that the government did not fully appreciate the suggestions. Despite the demands in the Citizen’s Compact on Free and Fair Elections, the following has

\begin{footnotes}
\item[250] Ibid, Section 57(1).
\item[251] Ibid, Section 57 (4) and (5).
\item[252] Ibid, Section 58.
\item[254] Ibid.
\end{footnotes}
happened reflecting a trumping effect of the power of the incumbent government on civil demands for change:

**The Constitutional (amendment) Act 2015**

This Act suggested amendments to Article 60 of the Constitution on the EC. The cosmetic nature of the suggested amendment is glaring since it only recommends change of the name of the EC to the “independent Electoral Commission”, ignoring the suggestions in the Citizen’s Compact on composition, appointment of members of the EC among others.\(^{257}\) The suggested new name was rejected by parliament.

The Act adds nuance to the power of the president in the management of affairs of the EC. It introduces a new clause 8 to Article 60 of the Constitution which gives the president power to appoint members of a tribunal to handle matters relating to removal of the members of the EC. In addition, the president can remove a member of the Commission if the tribunal he appoints recommends so.\(^{258}\) The incumbent’s involvement in the affairs of the EC can as a result of undue influence, affect its independence.

**The Public Order Management Act (POMA)**

International human rights instruments and the Constitution of Uganda provide for freedoms of association and assembly.\(^{259}\) These rights have been overly restricted for the opposition during the electoral period. Scholars such as Barya have argued that Uganda’s public order management regime is couched in populist and neo-patrimonial agendas of the state. Further that the POMA and its method of enforcement to a great extent violates Uganda’s commitment to international human rights standards, and national constitutional and legal regimes.\(^{260}\) That notwithstanding, the POMA is till on Uganda’s statute books, and has been applied against presidential aspirants contending with the incumbent, denying them a chance to address members of the public in preparation for their candidature for the 2016 election.\(^{261}\)

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\(^{257}\) See the Uganda Citizens’ Compact, Op. cit., note 157 Section 1 at 5.  
\(^{258}\) See Constitutional (Amendment) Bill/Act Section 1  
The Political Parties and Organizations Act, 2005

The Act was passed to deal with the details about regulation of political parties in Uganda, in terms of registration, membership, and financing of such parties. The right to form or be members of a political party is among the rubric of rights recognized in Article 29 (1) (e) of the Constitution of Uganda on freedom of association. Freedom of association can be enjoyed through forming political parties and these must conform to the principles laid down in the Constitution of Uganda Article 71, and 72. These include the need for parties to conform to democratic principles, have a national character, and a membership not to be based on ethnicity, religion, sex etc. In addition to the above, in accordance with Article 72 (3), political parties must abide by rules set out in the Political Parties and Organizations Act of 2005. Under this Act, every citizen has a right to join or form a political party. Political parties have to be open to all persons, and membership should not be restricted to persons of a particular sex, tribe, etc. They must have a national character and not lead to divisions across religious or trial lines. For a political party to operate in Uganda, it must be registered by the EC, whereupon it shares details about its constitution, addresses, etc. A political party must submit full names and addresses of “at least fifty members of the political party or organization from each of at least two thirds of the districts of each of the traditional geographical regions of Uganda...”. One wonders whether this provision has stood the test of time, considering that Uganda’s districts are at the moment over one hundred-about one hundred and twelve.

In addition to the above, this law maintains a role for the EC, to continue checking and regulating the affairs of a political party after it is duly formed. A political party has to declare its assets and liabilities to the EC and to file a copy of its audited accounts to the EC annually, within six months from the end of its financial year. This law prohibits non Ugandans from holding office in political parties. Neither can they make contributions directly or indirectly to the political parties in excess of twenty thousand currency points in any given year. The limitations to the funding of political parties are intended to bar foreign infiltration of political parties. It may also be intended to ensure that political parties do not engage in activities that are not in line with their official

262 See the Political Parties and Organizations Act 2005.
263 Ibid, Section 3 (1) and (2).
264 Ibid, Section 5 (1).
265 Ibid, Section 7 (1) (a) and (b).
266 Ibid, Section 7 (1) (b).
267 Ibid, Section 9.
268 Ibid, Section 12 (3) & (4).
269 Ibid, Section 13 and 14(1).
functions. That does not however remove the fact that political parties need funds for their activities, and yet operate within an environment of resource constraint.

The financial needs of political parties are to some extent catered for under the 2010 amendment to the Political Parties and Organizations Act.\textsuperscript{270} Under the new Section 14A, government uses public resources to make a contribution towards elections (equally across political parties) and daily activities of political parties represented in parliament.\textsuperscript{271} For the day today running of their activities, the funds given are determined by “the numerical strength of each of the political party or organization in parliament”.\textsuperscript{272} Finances advanced to the parties have to be audited by the auditor general.\textsuperscript{273} Only a few political parties such as the Democratic Party (DP), Forum for Democratic Change (FDC), UPC and JEEMA that are represented in parliament benefit from this financing. Those benefiting are at a certain level of financial stability compared to those that do not. The fact that political parties which are not represented in parliament are not facilitated means that they are left at the periphery, which may undermine their competitiveness. The right to associate through political parties may therefore remain illusory for small or young parties. This is within the context of assertions that on account of incumbency, the NRM party has unlimited access to public resources for its party activities.\textsuperscript{274}

The Political Parties and Organizations Act 2005 bars officers of the Uganda Peoples Defence Force (UPDF), of the Uganda Police Force, prison service or public officers from participating in party politics.\textsuperscript{275} There is however a thin line between government institutions and the NRM government. Evidence points to security agencies being more inclined towards serving the ruling party rather than the country’s interests.\textsuperscript{276} The conduct of some officers clearly indicates that they are members of the NRM. For example, some have resigned their positions to engage in active politics under the NRM party,\textsuperscript{277} an indication that they were most likely NRM cadres before their retirement.

\textsuperscript{270} See the Political Parties and Organizations (Amendment) Act, 2010.
\textsuperscript{271} Ibid, Section 14 A (a).
\textsuperscript{272} Ibid, Section 14 A(c).
\textsuperscript{273} Ibid, Section 14 (d).
\textsuperscript{275} See, Political parties and Organizations Act, 2005, Section 16.
\textsuperscript{276} Ivan Okuda, “I will stop Mbabazi again, says Kayihura”, Daily Monitor July 18, 2015.
\textsuperscript{277} For example former spokesperson of Police Ms. Judith Nabakoba is vying for the Mityana Woman Member of Parliament on an NRM ticket. See, Reporter, “Nabakoba wins Mityana woman MP race,” The Insider, October 27, 2015.
Which Voters’ register for 2016?

Under Part III of the Electoral Commission Act, the EC has the mandate to change various aspects of the voters’ register. Section 8 provides; “The Commission shall compile, maintain and update, on a continuing basis, a national voters register ….. shall include the names of all persons entitled to vote in any national and local government election.” The use of “shall” means that it is a mandatory role of the EC that should not be delegated.

The above does not mean that the EC should compel people to register, but rather to encourage all those that are qualified to do so by giving them sufficient information. The constitution makes it everyone’s duty to register, as long as they are of age.\footnote{Constitution of the Republic of Uganda 1995, Article 59 (2).} Furthermore, the constitution recognizes the need for citizens with disabilities to be facilitated to register.\footnote{Ibid, Article 95(4).} In the circumstances, removal of people from the register by the EC is a violation of peoples’ right to vote, since it results in disenfranchisement.

Among the issues that have been in contention during the 2016 elections cycle, is the register that will be used. Uganda went through a national identity card registration process conducted by the Ministry of Internal Affairs. The Registration of Persons Act, 2015 Section 65 (2) reads: "65. Use of information in the register- (1)………… (2) The Electoral Commission may use the information contained in the register to compile, maintain, revise and update the voters register." On the basis of this, the EC has used the data captured during this process to compile the voters’ register that will be used in the 2016 elections. This is amidst dissatisfaction from the public that the register might have been manipulated by security agencies, which may disenfranchise some Ugandans that are eligible to vote.\footnote{Henry Sekanjako and Mary Karugaba, “MPs Divided over use of national ID data for voter’s register,” \textit{The New Vision}, February 26, 2015; David Lumu, “How ID cards will determine 2016 polls,” \textit{The New Vision}, available at \url{http://www.newvision.co.ug/mobile/Detail.aspx?NewsID=655410&CatID=381}, acceded December 10, 2015.}

Key Institutions in Elections and Players

There are a number of institutions that play a vital role in Uganda’s elections, as seen below:
The Electoral Commission

The performance of electoral bodies or institutions mandated to administer elections is an important factor in determining outcomes of elections, especially whether they would be free and fair. The central institution in Uganda’s case is the Electoral Commission (EC). Its establishment and role are stipulated in the Constitution of Uganda 1995 and the Electoral Commission Act, 1997. Some of these roles have been alluded to earlier in this paper, and below is a discussion of the others.

Membership, appointment and independence of the EC

The EC consists of a total of seven members, of whom one is the chairperson and the other a deputy chairperson. They are appointed by the president, on the basis of high moral and proven integrity and experience in the conduct of public affairs. After their appointment, the list is sent to parliament for approval. The commissioners serve a term of seven years, renewable only once. The Constitution further stipulates that the EC should be an independent body in all it does, and should not “be subject to the direction or control of any person or authority”.

There are logical arguments that the EC is not independent. The involvement of parliament in the process of vetting the commissioners is not so important here, since it is done after the presidential appointments. Having appointments prior to parliamentary approval in a context where the NRM has a substantial majority in Parliament creates a situation of compromise where parliament is not likely to contradict the president. In effect, the independence of the EC is compromised due to the high likelihood of “working for” the incumbent who appointed them to office.

To correct the above, the Citizen’s Compact on Free and Fair elections proposed a reduced involvement of the president and establishment of an independent EC. The citizens suggested open application processes, followed by public hearings and assessment by the Judicial Services Commission, then by vetting by parliament and finally presidential appointment. In these processes, the president would only come in to

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282 See, Articles 60-68.
283 Constitution of Uganda 1995, Article 60 (1).
284 Ibid.
285 Ibid, Article 60 (3).
issue official appointment and not make the appointment himself.\textsuperscript{287} It was also suggested that the commissioners should serve a single term of 7 years that is not renewable.\textsuperscript{288} Although important in ensuring independence, serving a single term may have negative implications. Experience is normally garnered from length of service, and it is presumed to get better after the first term which is basically a learning term. A non-renewable term would mean that commissioners would stop at learning and would be unable to use the skills got from the first term to effectively serve the people.

Although some of the citizens proposals were good, they were not adopted by parliament.

\textbf{Organize regular free and fair elections and publication of results}

This is among the stipulated functions of the EC under Article 60(1) (a) of the Constitution. Presidential, general parliamentary and local council elections are supposed to be conducted in the first thirty days of the last quarter prior to the expiry of the term of the president.\textsuperscript{289} The Constitution does not envisage a situation where organization of elections is a mere tick box exercise that is done to just fulfill an obligation. The EC has to ensure that elections are free and fair. Free and fair elections are an outcome of processes that allow for free and equal participation of all players in them. The EC therefore has to ensure transparency in the processes as set out among others under Article 67 of the Constitution. This involves allowing all candidates access to, and equal time on state-owned media, and monitoring application of laws on use of public resources and institutions for elections.\textsuperscript{290} Free and fairness of elections is not only deduced in the results but also in the processes leading up to the results. It is also a duty of the EC to declare the results of elections after all votes have been counted.\textsuperscript{291}

\textbf{Demarcation of constituencies}

The EC is mandated under Article 61 (1) (c); “to demarcate constituencies in accordance with the provisions of this constitution”. This should be read with Article 63 (1) –

\textsuperscript{289} Constitution of Uganda 1995, Article 61 (2).
\textsuperscript{290} Ibid, Article 67 (4).
\textsuperscript{291} See above sections on polling officers.
Subject to clauses (2) and (3) of this article, Uganda shall be divided into as many constituencies for the purpose of elections of members of Parliament as Parliament may prescribe; and each constituency shall be represented by one member of Parliament.

Clause (3) of Article 63 provides that the number of people in a constituency has to be as close as possible to the population quota.

The above provisions imply that establishment of constituencies should not be done either exclusively by the EC or Parliament. Parliament has to determine and prescribe the number of constituencies needed following the provisions of the constitution, and the actual demarcation is done by the EC, ensuring that each county is represented by a member of parliament.292

The number of constituencies is not cast in stone. New ones may be created depending on changes in population quota. The EC is given mandate to make the adjustments under Article 63(5). This is subjected to the role of parliament stipulated in Article 63(1) and has to be done within 12 months after the release of results from the census.

The absence of a clear provision indicating which of the two institutions between the EC and Parliament has to kick start the process of demarcating constituencies leaves this provision redundant, with the EC arguing that it is not the one to recommend demarcation or creation of new constituencies. At the same time, months after the census, what is available are provisional results.293 This could be an undisclosed justification for the delay to demarcate constituencies since there are no final authentic figures from the census yet.

That notwithstanding, there were suggestions in parliament to create 36 new constituencies, in districts such as Wakiso, Rakai, Kamuli, Koboko, Gomba, Kalangala, Sembabule, Bukomansimbi, Kibaale, Kabale, Arua and Kasese.294 The creation of new constituencies has a number of financial and political implications. The current 112 districts which are divided into 236 constituencies are not running to perfection, and therefore to some commentators, creating more defeats economic sense.295 Yet, for the ruling NRM government, this was a viable option to create political space for its members that are competing among selves in some of the existing constituencies, and

ultimately, a means of getting more clout in parliament if they win the new constituencies.\footnote{\textit{Ibid.}}

**Education programs relating to elections**

The EC”s functions under Article 61(1) (g) also include passing on information through educational programmes on elections to the population. It is the duty of the EC to approve any information that is passed on to the public if it relates to elections. Through such educational programs, the population is expected to appreciate their civil duty of participating in elections.

**Maintenance, revision and updating of voter’s register**

This role is stipulated in Article 61 (1) (e) of the Constitution. The EC should provide safe custody of the register, and always ensure that it is up to date by removing persons that have died, and adding those that have attained the voting age of 18. This role has to be executed in accordance with Part III of the EC Act. The Act creates an office of assistant registrar and update officers in each constituency.\footnote{Electoral Commission Act, Section 22 (1).} It also provides for the office of the Registrar, whose duties include keeping custody of the district register under the EC”s supervision.\footnote{Ibid, Section 23.} The law gives the general public a right to inspect the register without a fee.\footnote{Ibid. Section 24.} This is intended to create a transparent system which allows the public to check the register to ensure that those persons that are not eligible to vote or those that are deceased are removed.

**Determine complaints arising from polls**

Article 61 (1) (f) gives the EC powers to “determine complaints arising before and during polling” Persons dissatisfied by the decision of the EC (Tribunal), appeal to the High Court pursuant to Article 64 (1) of the Constitution. Such appeals have to be filed within a period of thirty days from the date of the decision.\footnote{Electoral Commission Act, Section 45 (1).} The High Court that receives such a case has a duty to hear it in an expeditious manner and to give it priority over all other
matters.\textsuperscript{301} Rules of appeals to the High Court are applied with modifications,\textsuperscript{302} and the resulting decision is considered final. No option to appeal higher in the hierarchy of courts of judicature exists.\textsuperscript{303}

**Courts of Law and elections petitions**

The High Court and Supreme Court are arbiters in disputes resulting from elections in Uganda. Election petitions are neither civil proceeding where the rules of such proceedings are fully applied nor are they considered criminal proceedings. They are a unique kind of case- \textit{sui generis} and handled in a unique manner.\textsuperscript{304} This has been stipulated in the Presidential and Parliamentary Elections Acts of 2005. In handling elections petitions, Ugandan courts have engendered jurisprudence as seen below, some of which puts the courts in a precarious situation in which they do not stand out as independent from the government.

**Presidential election(s) petitions and the role of the Supreme Court**

These are provided for under Part VIII of the Presidential Elections Act. Such petitions can be brought by someone challenging the validity of the person declared president; that s/he was not validly elected.\textsuperscript{305} The petitions are lodged in the Supreme Court within ten days after the results are declared. Petitions have to be in accordance with a format prescribed by the Chief Justice.\textsuperscript{306} The Supreme Court has to hear and determine the petition “expeditiously” within thirty days from the date of filing.\textsuperscript{307}

The Supreme Court must make due inquiry into all allegations in the petition before making any orders in the case. The orders include: dismissal of the petition, declaration that a candidate was validly elected or annulment of the election.\textsuperscript{308} The case of \textit{Col. Dr. Kizza Besigye v. Museveni Yoweri Kaguta and Electoral Commission, Election Petition No. 1 of 2001} was a challenge to the election of Museveni as president. The petition alleged that the EC did not validly declare the outcome of the elections by announcing

\textsuperscript{301} Ibid, Section 45 (2).
\textsuperscript{302} Ibid, Section 45 (3).
\textsuperscript{303} Ibid, Section 46.
\textsuperscript{304} See, \textit{Aregbesola v. Oyinlola}, Judgement delivered on November 26, 2010 in the Court of Appeal in Nigeria by Justice Clara Bata Ogunbiyi \textit{et. al.}
\textsuperscript{305} Constitution of Uganda 1995, Article 104; Presidential Elections Act 2005, Section 59 (1).
\textsuperscript{306} Ibid, Section 59 (2).
\textsuperscript{307} Ibid, Section 59 (2).
\textsuperscript{308} Ibid, Section 59 (5).
Museveni winner. This, it alleged, was in contravention of Article 103(4) of the Constitution and Section 57 of the PEA. In that regard, it was contended that Museveni was not the duly elected president of Uganda.

On burden of proof, it was the court’s contention that it lies on the petitioner to satisfy court that what s/he is stating in the petition is true. To the court, the burden in such cases is a unique one, in the sense that it goes beyond proof on a balance of probabilities, but at the same time does not reach the apex of beyond reasonable doubt. In *Rtd Col. Dr. Kizza Besigye v. Electoral Commission and Yoweri Kaguta Museveni*, Odoki, C.J adds nuance to the burden of proof, citing Lord Denning in some English cases. He observed that reference to Section 59(6) that requires the burden of proof to be to the “satisfaction of court” means that court must be satisfied. To him, satisfaction in such matters that affect the whole country should only arise where there is *no reasonable doubt* in the minds of court that the grounds in the petition are cogent. Technically put, the petitioner has a very high threshold of proof, which is almost proof to leave no doubt or beyond reasonable doubt. However considering the short time (10 days) within which a petition has to be prepared and filed with all affidavits, proof to the satisfaction of court becomes a daunting task.

The law stipulates the grounds that must be proved for an election to be annulled. These include: a failure to comply to the principles set out in provisions of the Presidential Elections Act, 2015 in a case where “…non compliance affected the results of the election in a substantial manner;” that the offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval.” In Besigye’s presidential petition of 2006, a number of offences including violence, intimidation, voter disenfranchisement and involvement of the army in elections were found. However court decided not to base on them to annul the election of President Museveni on grounds that the offences did not affect the elections in a substantial manner, and also the lack of a unanimous view that the NRM officials that directly committed the offences did so on Museveni’s consent and approval.

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309 Presidential Election Petition No. 01 of 2006 (here in after referred to as “Besigye’s presidential petition of 2006”)
312 PEA Section 59 (6) (a).
313 Ibid, Section 59 (6) (b).
314 See Ibid, Section 24 (5) for the prohibited acts that are offences.
315 Ibid, Tsekooko J.’s ruling finds a level of agency between the actors and the second respondent.
Suggestions for law reform

Among the important outcomes from Besigye’s presidential petition of 2006 were suggestions for law reform that would improve the electoral process in Uganda. It was suggested that Article 104 of the Constitution and Section 59 of the PEA should be reviewed. These require among others, for petitions to be filed within 10 days and hearing concluded within 30 days (also in line with Presidential (Election Petitions) Rules, Rules 5(1) and 12 (1). Odoki C.J. suggested an adjustment of the time within which a case is heard to sixty days, “to give the parties and the court sufficient time to prepare, present, hear and determine the petition.”

It was further recommended that Section 24 (5) setting out the rights of the candidates and specifying what they should not do, such as giving false information, making malicious statements, using derogatory or insulting language, etc., and Section 59 (6) (a) on the requirement that breach of the law must affect the election in a substantial manner should be reviewed. Although he does not categorically give the direction of the review, Odoki C.J, suggests the rationale for the review as to improve electoral democracy in Uganda.

In addition to the above, Odoki C.J recommended review of the Presidential Elections (Election Petitions) Rules 2001 under which evidence in presidential petitions is presented by affidavits. He suggests a new system that requires calling witnesses to give their evidence on oath to allow court to assess the veracity of their statements through cross examination.

The government shunned the court’s recommendations. Perhaps to government, the loss that might result from not heeding to them does not outweigh the benefits that arise from a skewed electoral process. While there have been law reform processes post 2006, these have concentrated on matters considered important for government but not the recommendations of the court. The provisions that were recommended for review have not been included in these reform processed. It should be noted that although the court found the restrictive timing of handling elections petition disadvantageous, some people hold a different view. The APRM 2007 highlighted some best practices from Uganda following the 2006 elections, to include the Supreme Court expeditiously handling of elections petitions in 2 months. This can be attributed to the restrictive timelines set out

317 See the Presidential Elections (Amendment) Act 2015 and the Constitutional (Amendment) Act 2015.
in the law as seen above. To the APRM, there is some value in the time lines in Uganda’s laws.

**Parliamentary election(s) petitions and the role of the High Court**

**Recount of votes after declaration of winner**

The law provides for mandatory recount of votes in cases where two or more obtaining the highest votes have equal votes, and where the difference between the votes of the highest scoring candidates is less than fifty.\(^{319}\) The recounting process is triggered by a letter of request written by a candidate, an agent or a registered voter in the constituency in which the voting took place.\(^{320}\) If the results from the recount are equal votes, a runoff election is organized to take place within thirty days from the recount date.\(^{321}\)

Besides the mandatory recount, any candidate may apply to the Chief Magistrate Court for a recount within seven days after declaration of the winner by the returning officer.\(^{322}\) The law does not stipulate the grounds for this recount, but it can be deduced from the provision that any candidate that doubts the accuracy of the results upon which a winner of an election is declared. Recounts through application to the Chief Magistrate have to be conducted within four days after the application is made, and have to take place in accordance with the directions of the Chief Magistrate.\(^{323}\) The applicant for a recount is under duty to deposit security for costs to the tune of thirty currency points.\(^{324}\)

**Election Petitions: notification, filing and hearing**

The law requires that a copy of the petition in a parliamentary election “shall” be served on the respondent within seven days of its filing.\(^{325}\) The case of *Sitenda Sebalu v. Sam K. Njuba, Election Petition Appeal No. 26 of 2007* was about a petition against the respondent as duly elected MP for Kyadondo East Constituency in the elections held on February 23, 2006. The respondent was not served with the notice of the petition within the time stipulated under the above Section 26 of the Parliamentary Elections Act. Among the

\(^{319}\) Parliamentary Elections Act, 2005, Section 55 (1) (a) and (b).
\(^{320}\) Ibid, Section 54 (1) (b).
\(^{321}\) Ibid, Section 54 (2).
\(^{322}\) Ibid, Section 55(1).
\(^{323}\) Ibid, Section 55 (2).
\(^{324}\) Ibid, Section 55 (3).
\(^{325}\) Ibid, Section 62.
issues for determination was whether court had jurisdiction to extend time within which to serve Notice of Presentation of the Petition under S.62 of PEA. Counsels for both the appellant and respondent made submissions on whether the use of “shall” in Section 62 is mandatory or can be directory and if a failure to give notice renders the petition a nullity. The court extended time and gave justification; “the legislature could not have intended, as counsel for the 2nd respondent submits, the rigid application of section 62, thereby excluding any court discretion over the provision…” Further,

The decision was rather based on our finding that on proper construction of the provision in section 62, it would not be correct to say that the legislature intended non-compliance with the provision, however slight or without blame, to render the petition a nullity. It cannot be over emphasized that while the court must rely on the language used in a statute to give it proper interpretation, the primary target and purpose is to discern the intention of the legislature in enacting the provision. 326

In addition to the above, the court emphasizes the need for fair trial in cases that have high value for the public interest; cases such as this:

that the purpose and intention of the legislature, was to ensure, in the public interest, that disputes concerning election of people”’s representatives are resolved without undue delay. In our view, however, that was not the only purpose and intention of the legislature. It cannot be gainsaid that the purpose and intention of the legislature in setting up an elaborate system for judicial inquiry into alleged electoral malpractices, and for setting aside election results found from such inquiry to be flawed on defined grounds, was to ensure, equally in the public interest, that such allegations are subjected to fair trial and determined on merit. 327

In addition to the above, Section 60 of the Parliamentary Elections Act stipulates that election petitions shall be filed in the High Court by the candidate that loses an election or a registered voter in a constituency. 328 If filed by a voter, it must be supported by at least five hundred voters registered in the constituency. 329 It is further provides that a petition shall be filed within 30 days after the day the results are published in the gazette. 330 According to the Parliamentary Elections (Election Petitions) Rules, Rule 5 (3), the petitioner “shall” pay UGX 150000 (Uganda shillings one hundred and fifty thousand) at the time of presenting the petition. According to Rule 5 (4) the petition shall

326 See p. 9 of the decision.  
327 See p. 11 of the decision.  
328 Parliamentary Elections Act, 2005, Section 60 (1) and (2).  
329 Ibid, Section 60 (2) (b).  
330 Ibid, Section 60 (3).
not be accepted if sub rule (3) is not complied with. Although the Act and the rules seem to be presented in absolute or mandatory terms, the court has been reluctant to interpret them in such a way, that the outcome from the court’s decision eludes justice. In the case of *Kamba Saleh Moses v. Namuyangu Jennifer, Election Petition Appeal No.0027 of 2011*, the court handled issues relating to the above. The appellant alleged that the petition of the respondent in the High Court was filed out time, since it was filed on the 30th day of the allowed time for filing (6th April 2011), and fees paid on 7th April 2011). Court discussed a number of authorities that emphasize the value of fairness in making decisions, and finally decided in the terms below:

In these circumstances, however, court would treat that late payment of the court fees not as an illegality but an irregularity a technicality that would not be accorded undue regard in endeavors of the court to administer substantive justice over the matter. Court, therefore, invokes the provisions of Article 126 2(e) of the Constitution. See also this Courts Election Petition Application No. 20 of 2007, Electoral Commission v. Namboze Betty Bakireke and Lawrence Muwanga and Stephen Kyeyune Supreme Court Civil Appeal No. 12 of 2001. Consequently we find that the payment of the court fees on the 7th April 2011 did not render the petition presented to court on the 6th April 2011 time barred.331

The above decisions are an indication that courts have engaged a balancing test between the good of any applicants before them and the good of the wider public. They have for that matter, in a number of cases as seen above, upheld the wider purpose that has to be achieved in election petitions namely, fairness for the general public, over and above individual interests of the parties, and against over emphasis on technical rules of procedure.

If the petition is accepted, it is supposed to be heard in open court with a certain level of urgency. The court has to suspend any other matters pending before it in order to determine the petition.332 Unlike with presidential petitions, witnesses in parliamentary petitions can be called and examined in court as is the case in civil proceedings.333 Depending on what court finds; say whether there was bribery, voting more than once, impersonation or that the candidate was not qualified,334 court may make orders that

331 See p. 19 of the decision.
332 See, Parliamentary Elections Act, 2005, Section 63 (1) and (2).
333 Ibid, Section 64.
334 Ibid, Section 63 (3).
include; dismissal of the petition, a declaration that the candidate declared winner was not the winner and set aside the election, and ordering a new election or a recount.

Among the many cases before court challenging persons declared as winners of elections are those based on a ground that the supposed winners lacked the requisite academic qualifications to contest for the positions. In *Lule Umar Mawiya v. Sempijja Vincent Bamulangaki and the Electoral Commission, Election Petition No.0016 of 2011*, the first respondent was announced winner of an election conducted on the February 18, 2011. The appellant in this case alleged a falsified academic ordinary level certificate by r the first respondent among others. This was mainly based on an earlier case on similar grounds against the respondent, in an earlier circle of elections (*Dr Shannon Kakungulu vs V.P. Ssempijja Election Petition No. 1 of 2002*), that had been withdrawn and an apology to the first respondent given. Although the respondent succeeded on this ground, it is important to note that this case shows the difficulty involved in verifying academic qualifications that were issued in earlier years in Uganda, during the time of the East African Education Council (E.A.E.C). It also shows that in the absence of a highly technical or computerised system of academic record keeping in Uganda National Examinations Board (UNEB) over the years, it is a daunting and time consuming act to prove or verify academic certificates by UNEB for the EC. This is also a ground that can be easily falsified to discredit a candidate, or attempt to unseat him/her from a genuinely won seat in parliament for personal reasons.

**Removal from Parliament**

The Constitution of Uganda Article 83(1) (a) - (h) provides for circumstances under which an MP can be removed from office. They include: resignation, dissolution of parliament, absenteeism for fifteen sittings without written permission from the Speaker. Among the grounds that have been contentious in recent times is (e) - “If that person is found guilty by the appropriate tribunal of violation of the Leadership Code of Conduct and the punishment imposed is or includes the vacation of the office of a Member of Parliament.” *John Ken Lukyamuzi v. The Attorney General and the Electoral Commission, Constitutional Petition No. 19 of 2006* is a case in point. The petitioner was removed from the 7th parliament where he represented Lubaga South Constituency. This was on the recommendation of the Inspector General of Government having found the petitioner in breach of the Leadership Code of S.4 (8). In addition, he was barred from

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335 Ibid, Section 63 (4).
336 Ibid, Section 63 (5).
contesting for the seat in the 8th parliament. Among the questions court addressed was the lawfulness of his removal by the IGG in light of Articles 2, 3(4) & 83 (l) (e) of the Constitution. The petitioner alleged that his removal by the IGG without being found guilty by a tribunal under 83(1) (e) was contrary to the principles of natural justice. His petition was dismissed on the ground that the above provision gives the mandate to find guilty under the Leadership Code to the IGG. It meant that there was therefore no breach--since the IGG is the tribunal.

Removal from parliament can also be on the ground of leaving a political party under which one was elected to join another or become independent, or where an independent MP joins a political party. The amalgamated Constitutional Petition No.16 of 2013 is instructive in this regard. The respondents got into Parliament on the NRM party ticket. While there, they voluntarily left the party after internal disagreements within the party. The cases are about assertions that leaving the party meant that they lost their seats in parliament and should vacate. The Attorney General called upon the Speaker to declare their seats vacant, which she rejected and instead improvised seats for them away from the NRM area in parliament. The Constitutional Court went at length to compare authorities in other jurisdictions such as Malawi, India and South Africa. The Court considered Uganda’s constitutional history and the rationale for the inclusion of that provision as among other reasons, to promote multiparty democracy. The court emphasized the need to strike a balance in the protection of the rights of the MPs, rights of voters, and the NRM political party. Although it was clear that removal of these MPs denied their constituencies representation in the House, the Constitutional court went ahead to sanction legality of their removal. This prompted an appeal to the Supreme Court, which gave them rights to return to the House, and emphasized separation of the roles of parliament and the executive. It also held that the Speaker was right not to have heed to the letter from the Attorney General. Also that “…leave…the party” does not necessarily mean leave parliament.

**Police and Elections**

The functions of the Uganda Police are stipulated under the Police Act Cap. 303, Section 4 to include: protection of life and property and other rights, maintaining security, ensuring public safety and public order, and enforcing laws. These functions have to be

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337 Constitution of Uganda 1995, Article 83 (1) (g) & h.
338 It is a petition that merged various cases that involve Hon. Theodore Sekikuubo, Hon. Wilfred Nuwagaba, Hon. Muhamed Nsereko and Hon. Barnabas Tinkasimire.
339 Also see the Police (Amendment) Act, 2006.
executed at all times, including during election time equally for all Ugandans. The Police has however been accused of being partisan in their policing activities pre, during and after elections.\(^{340}\) Brutality against opposition politicians and persons is cited evidence of this.\(^ {341}\) This has been recurrent, and has led to violations of freedoms of expression and assembly. The case of *Muwanga Kivumbi v. Attorney General* (Constitutional Petition No. 9/2005) is about the illegal application of the Police Act (Section 32) in a manner that inhibits the freedoms of assembly and expression, and therefore its constitutionality. Indeed, the court found the application of the impugned section unconstitutional.

Again and again, law making in Uganda concerning political rights can be intended to “control or restrict” individual rights, with the police as a good partner to achieve this goal. The POMA is an indirect repeat of what was declared unconstitutional in the *Muwanga Kivumbi* case above. The police use it as a tool to control the opposition during elections. Their partisan performance undermines free and fair electoral outcomes.\(^ {342}\)

There is evidence that they have been at the forefront of enforcing the POMA, and usually arbitrarily against opposition politicians.\(^ {343}\)

The fact that the Inspector General of Police (IGP) is a member of the military also vitiates the Force’s independence. Indeed, the citizens wanted a transfer of police command or their role in securing elections to the EC and not the police structures.\(^ {344}\) No change has been effected on this.

**The Military and Security Agencies**

Scholars such as Brett have studied political processes in Uganda since independence.\(^ {345}\) Brett observes that political processes in Uganda have been characterized more with “bullets rather than ballots”.\(^ {346}\) In addition, Sekaggya cites three military coups d’etat


\(^{342}\) Ibid.


\(^{346}\) Ibid.
and two military interventions into the affairs of the state in Uganda’s history. Among other political strategies that Uganda has witnessed over time, to Mazrui partly contributed to what he calls “military ethnocracy in Uganda’s history. The above situation is recurrent in Uganda’s political context, where the military and security agencies have been active participants in politics, thereby entrenching the incumbent’s stay in power. This reduces space for the other actors.

The military has in some instances been used to move around places during elections times to intimidate voters, and have unjustifiably fired gun shots at times, scaring voters into making their voting decisions in a conformist way.

An EU Report disclosed that the presence of military MPs in parliament is problematic, since they are accountable to the incumbent (commander in chief) and not a constituency. Technically, considering their status, it was reported that:

the military do not meet criteria of acceptable positive discrimination for disadvantaged groups since the groups concerned do not require particular assistance and in the case of the armed forces, special seats raise serious concerns of independence, accountability and conflict of interest.

Previous reports have also shown that although the police is mandated to guard polling stations, there has been evidence of process militarization by the involvement of the military, to the disadvantage of opposition players. The military presence and participation as agents of the incumbent were common in the 2011 elections as seen above, and it remains a likelihood during the 2016 elections.

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351 Ibid, at 8

Evaluating the Past, Projecting into the Future in Conclusion

Uganda is a party to various international standard setting human rights instruments as discussed in this paper. The findings however confirm what scholars have opined to the effect that ratification is an expression of a desire to be bound, but not a guarantee that a state shall avail the rights, or that ratification shall result into positive action for human rights.\(^{353}\) Compliance to human rights norms is less in countries that are repressive or undemocratic than in those considered to be at a higher level of democratization.\(^{354}\) It is therefore not surprising that the levels of compliance to international human rights for Uganda are still wanting in the area of electoral democracy.

The paper has shown that historically, Uganda has been grappling with issues of entrenching multi-party politics in situations where individual interests and strategic positioning at times over shadows the party interests and dynamics. For example one would wonder whether there can be an NRM without a Museveni, FDC without a Besigye. Individual strength verses party strength is a big issue.

In addition to the relationships between individuals and their parties is a concern about relationship among the players. These including institutions such as the EC, polling officers, political parties, candidates, the police, etc. A big percentage of this paper has shown that these relationships have not always been geared towards pursuing what is good for the country but individuals / party and institutional desires and economic wellbeing of the persons involved. It is therefore not surprising that those connected to the incumbent will fight to keep him in power again and again.

Law making processes are among the central tools through which agendas of entrenching the incumbent’s power have been embedded. Despite the many suggestions to change the composition of the EC by law, for example, this has not been done. The changes suggested in the Besigye election petition of 2011 by the justices of the Supreme Court have also remained on paper. This is evidence of maintaining the status quo, instead of promoting space for free and fair elections.

There is a tendency to look at pre-NRM and post NRM eras as two separate (each homogenous) periods in terms of Uganda’s elections. That is not true. The post NRM period should be broken-down into standalone elections cycles in order to appreciate the


issues. This review of the legal and related literature shows that in elections organized under the NRM, some issues such as voter disenfranchisement, violence, military involvement, suppression of opposition freedoms of expression and assembly have been recurrent. Some of these were reported in respect to elections in the pre-NRM era, thereby creating continuity and strength in the trajectory instead of introducing a break between past and present. Technically, it is again and again; a reinstatement of the status quo, similar violations, most times same players, same script, reducing space for participation in free and fair elections. Majority actions and legislative frameworks follow suit to ensure the repeat. This is with the exception of the judiciary especially in election petitions, which has contributed to progressive jurisprudence as discussed here.

Despite the above situations, the majority of Ugandans have not fully understood the ills that result from the recurrence of the above mentioned shortfalls in Uganda’s elections. Indeed, the reasons may vary. For some, it is because they are beneficiaries of protracted incumbency since they are clients that benefit from the master. For others, it seems normal more so since looking at the same thing again and again makes the eyes get used to it and it becomes normal. Others fear a repeat of conflict experienced in the past, yet others believe Museveni is invincible, and do not see the bother to vote against him. He will win anyway. For the last group, Amama Mbabazi’s coming up to challenge the invincible, heightens fears for 2016 elections.

All in all, all trends show that the 2016 elections will only be a repeat of what Ugandans have experienced during the previous electoral cycles, or perhaps even worse with the many brigades of desperate crime preventers all over the country.

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