

**THE LINK BETWEEN GOOD GOVERNANCE AND ELECTION MANAGEMENT IN
UGANDA: A CASE STUDY OF THE ELECTORAL COMMISSION OF UGANDA**



UNIVERSITY OF NAIROBI

MALINZI LUCEY KWESIGA

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DECLARATION

I, **MALINZI LUCEY KWESIGA**, declare that this is my original work. It has not been presented to any institution of higher learning for the award of a diploma, degree or post-graduate qualifications. All works and sources quoted have been acknowledged through referencing and citation.

Malinzi Lucey Kwesiga

Signature.....

Date.....

Supervisor's Approval

This Research Project has been submitted for examination with my approval as the University supervisor.

Signature.....

Date.....

Dr. Nkatha Kabira

DEDICATION

I dedicate this work to my Father, Baaba Malinzi John Frank; a soft yet sharp illumination with excellent ideals on how to live a worthy life as a gentleman in this age and time.

From him, I have learnt how to listen, argue calmly yet assertively persuading and above all to win fairly. It has always worked in this profession except that I am often mistaken for being weak, timid and non-aggressive with life choices.

I further dedicate this work to my lovely wife; the ever beautiful Lady Zalimbike Brendah (*you who has and is the tender Rock to me, have been there in the face of my failures and I have hidden you from the radiance of my triumphs*), to Mr. Lucius William Malinzi (*the face of my father, a brilliance you have picked from him*) and to Ms. Lucrecia Nyamahunge Malinzi (*the face of my mother, a zeal you picked from her*) my Children to whom I owe a lot, other than love but have delivered naught.

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International Covenant on Civil and Political Rights, 1976

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women
in Africa, 2005 (The Maputo Protocol)

LIST OF ABBREVIATIONS

CCEDU Citizens' Coalition for Electoral Democracy in Uganda

DGF Democratic Governance Facility

DP Democratic Party

EC Electoral Commission

EU European Union

FDC Forum for Democratic Change

MP Member of Parliament

NDP National Development Plan

NGO Non-Governmental Organization

NRM National Resistance Movement

UHRC Uganda Human Rights Commission

UN United Nations

ABSTRACT

This study examines the link between Good Governance and Election Management in Uganda. It uses the example of the Electoral Commission of Uganda to demonstrate that there is a link between good governance principles, values and culture, and Election Management. The study argues that although the Constitution of Uganda establishes an Electoral Commission with an independent mandate to manage free, fair, transparent and credible elections in Uganda nevertheless the realization of free, fair, credible and transparent elections in Uganda remains elusive because the Electoral Commission of Uganda has failed to incorporate good governance values and principles of Accountability, Transparency, Rule of Law, Responsiveness, Public Participation, Effectiveness and Efficiency and Consensus in election management in Uganda.

The study illustrates that the legal and institutional structure of the Electoral Commission of Uganda is not ideally placed to manage and administer a free, fair, transparent and credible election in Uganda. The study relies on the Theory of Institutions or the New institutions theory and the Critical Legal Theory to demonstrate the reason why the Electoral Commission should incorporate good governance to enable it to deliver free, fair, transparent and credible elections in Uganda. The study relies on a mixed research methodological approach and employs historical, doctrinal and case study research methods. The study concludes and recommends that the Electoral Commission of Uganda needs to adopt good governance in the management of elections and its institutional structures and further pursue law reforms to achieve such ideals so that free, fair transparent elections is not a dream but an exercise that can be realized in Uganda.

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CHAPTER ONE

GENERAL INTRODUCTION

“The people of Africa – the people of Uganda – are entitled to a democratic government.

It is not a favor from any government: it is the right of the people of Africa to have a democratic government.”

*Yoweri Kaguta Museveni*¹

1.0. Introduction

In Uganda, a debate has been intense concerning the management of elections.² The Electoral Commission of Uganda that is charged with the management and administration of elections in Uganda has particularly come under immense scrutiny³. Stakeholders and citizen alike have come to have great concern about how the Electoral Commission of Uganda is composed and organized, as well as, the manner in which it carries out its mandate every after each election cycle.⁴

The productivity of the Electoral Commission of Uganda has unfortunately to a large extent been influenced by politics of interest other than being influenced by constitutional values of democracy and the dictates of law otherwise known as rule of law where governance and particularly good governance as it out to be is imperative⁵. Hence the result is evidenced with pockets of violence and political unease have been reported

¹ Quoted in: Museveni 2000 Interview with high-level NRM-party officials, January 2016 and a retrieve from swearing-in address, January 29, 1986

² Makulilo Alexander B and Eugene Ntaganda, (2016), *Election Management Bodies in East Africa*. African Minds p. 29

³ Ibid note 2

⁴ Sarah Pacutho, “Citizens Speak out on 2016 General Elections, Raise key concerns” (2016) <<http://www.ngoforum.or.ug/2016/05/26/citizens-speak-out-on-2016-elections-raise-key-concerns-for-2021>> accessed 02 November 2019

⁵ Adejumobi S. (2015), *Democratic Renewal in Africa: Trends and Lessons Learned*. In: Adejumobi S. (eds) *Democratic Renewal in Africa*. Palgrave Macmillan, New York

before, during and after every general election since 2005 in various parts of Uganda.⁶ In Kenya and Rwanda wherein Election Management Bodies have been considerably reformed in operating law and structure as a result of violent disputes in the aftermath of elections; enormous challenges continue to be faced in the operational and logistical conduct and management of elections in those countries.⁷ The result is that electoral disputes continue to persist in Uganda and electoral reforms are not being genuinely considered.

Whereas constitutional amendments, as well as changes in laws in Uganda, have been aimed at making the Electoral Commission of Uganda independent, thus more inclined towards the delivery of free, fair and credible elections; various issues continue to hamper their ability to ensure that Ugandans are not disenfranchised. The shortcomings of managing such an election have had adverse effects on democracy.

This study uses the example of the Electoral Commission (EC) of Uganda in an efforts to evaluate the extent to which the Electoral Commission of Uganda can deliver elections that are free, fair, transparent and credible. The significance of elections in fostering direct citizen participation in Uganda cannot be underestimated. The management of elections in Uganda has continuously generated impassioned and emotional debate. The Electoral Commission of Uganda is charged with the management and conduct of the elections and its performance has come under intense scrutiny⁸ in the past years.

Stakeholders and citizen alike have come to have great concern about how the Electoral Commission of Uganda is composed and organized⁹, as well as, how they carry out their

⁶ Ibid (n 4)

⁷ Ibid (n 4) 3

⁸ <<https://www.theguardian.com/global-development/2016/feb/22/ugandan-elections-polls-fraud-yoweri-museveni>> accessed 29 November 2019

⁹ The Uganda National NGO Forum, (24-26 November 2014), Citizens Compact on Free and Fair Elections, Adopted at the National Consultation on Free and Fair Elections, Kampala,

mandates and the resultant effects of their prescribed (or otherwise) operations. Within the next two years, it is expected that Uganda will go for another General Election in 2021 and that will mark another election cycle for Ugandans.

Whereas the Electoral Commission of Uganda is constitutionally charged with the management of the elections to ensure that the values of democracy are achieved, its agitation and interest to engage good governance values in law reform are still in the early developmental stages.¹⁰ Although constitutional amendments as well as changes in laws in Uganda are aimed at making the Electoral Commission of Uganda more independent, thus more inclined towards the delivery of elections that are free, fair and credible; the intended goals are yet to be achieved.¹¹

Besides constitutionally enshrined guarantees of independence, it is imperative to appreciate that other issues impact and affect the exercise of impartiality (or otherwise) by the Electoral Commission of Uganda. Many of these issues have a political angle to them.¹² Civil society has actively frolicked a significant part in conveying and revealing the circumstances that underlay the management of elections in Uganda.¹³

1.1. Background to the problem

With the emerging advocacy for good governance and its ideals or what it should represent in Africa, it is very hard for any government not to concern itself with the way it relates to its citizens and the way it runs and operates the government of its people. In this regard, the tools of management of society are very important especially the laws it

<http://ngoforum.or.ug/wp-content/uploads/downloads/2015/01/Citizens-Compact-on-free-and-fair-elections-2-1.pdf>> accessed 04 November 2019

¹⁰ Charles. N. Bwana, (2009) Voting Patterns in Uganda's Elections: Could it be the end of National Resistance Movements (NRM) domination in Uganda's Politics? Part.1 Democracy in Uganda, p. 41

¹¹ Ibid (n 9) 43

¹² Ibid (n 9) 44

¹³ Ibid (n 9) 44

imposes in regulation or management of the people and so the institutions that it establishes in effecting a particular mandate given to it by the people.

The Research study reports specific findings to examine, evaluate and establish why the Electoral Commission of Uganda has failed to incorporate good governance principles, values and culture in the election management in Uganda and how such failure can be avoided in Uganda. Emphasis is placed on the Legislative and Institutional framework of Election Management in Uganda.

1.2. Statement of the problem

Although the Constitution of Uganda provides for the establishment of an Electoral Commission that is constitutionally Independent in its mandate and the existing election laws provide legislative and institutional framework to manage elections nevertheless the realization of free, fair, credible and transparent elections in Uganda remains elusive because for the last 40 years, elections in Uganda have been characterized with electoral viciousness in most areas of Uganda; the deployment as well as use of the military structure to suppress the voice and views of Ugandans on the management, conduct and, results of the elections.¹⁴

This study demonstrates that there is a relationship between good governance and management of elections in Uganda and seeks to illustrate that the adoption of good governance principles, values, and culture in the Legislative and Institutional set up of the Electoral Commission of Uganda can help Ugandans in realizing free, fair, transparent and credible elections.

¹⁴ Golooba Mutebi, Frederick and Sam Hickey “The master of institutional multiplicity? The shifting politics of regime survival, state-building, and democratization in Museveni’s Uganda.” (2016) *Journal of Eastern African Studies* 10

1.3. Research Questions

This study seeks to address the following research questions:

1. What is the history of Election Management in Uganda?
2. What is the Legislative and Institutional framework of Election Management in Uganda?
3. What is the Organizational and Management structure of the Electoral Commission of Uganda in Election Management in Uganda?
4. What findings, recommendations, and conclusions can be drawn from the study?

1.4 Research Objectives

This study has five main objectives:

1. To examine the historical foundations of Election Management in Uganda.
2. To identify and examine the Legislative and Institutional framework of Election Management in Uganda.
3. To examine the Organizational and Management structure of the Electoral Commission of Uganda and the reasons it has failed to manage free, fair, transparent and credible.
4. To discuss the findings, suggest recommendations and make conclusions drawn from the study.

1.5 Research Hypothesis

This study hypothesizes that:

1. The history of Election Management in Uganda has contributed to the poor Legislative and Institutional framework establishing the Electoral Commission of Uganda and the way it manages Elections in Uganda.

2. The Legislative and Institutional framework of Election Management in Uganda is lacking in incorporation of good governance principles, values and culture to facilitate free, fair, transparent and credible elections in Uganda.
3. The Organizational structure of the Electoral Commission of Uganda in its current form and operating status can not be in a position to oversee or manage elections that can be said to be free, fair, transparent and credible in Uganda.
4. The Electoral Commission of Uganda is not legislatively and institutionally structured or organized on good governance principles, values, culture, and foundations to deliver free, fair, credible and transparent elections in Uganda.

1.6 Justification of the study

The study is justified on grounds that:

The study will mostly contribute to knowledge in the area of Good Governance and Election Management in Uganda and in Africa at large since the ills that haunt and trouble Uganda every after each election cycle are much spread in some African countries.

Uganda is a constitutionally democratic country that recognizes constitutional principles particularly in the governance of its human and economic resources which is largely done through elections of its leaders at both the national and local levels every after 5 years. It has over twenty (20) political parties that are registered and an assortment of or manifold of laws that govern electoral processes and related matters. The Electoral Commission of Uganda is constitutionally charged with the independent mandate of the organization, conduct and the supervision of the elections.

Despite the above stated prevailing circumstances, the Electoral Commission of Uganda has time and again demonstrated failure and manifested exceptional inadequacy concerning the delivery and administration of free, fair, transparent and credible elections in Uganda since its inception in 1997; carrying on the vices and ills of previous election management entities after Independence.

This study shall assist stakeholders in election management in Uganda such as the Ugandan voters, the political parties, the donor community, the civil society and researchers or scholars in Good Governance and Election Management to understand and appreciate what needs to be done in order to ensure that there are legislative and institutional frameworks anchored in good governance foundations to manage and administer elections that are seen to be free, fair, transparent and credible in the eyes of all Election stakeholders in Uganda.

1.7 Literature Review

Several scholars and researchers have written on the themes of Governance, Good Governance, Management, and Elections generally and independently. Others have written on Democratic Governance and some on Election Management Bodies (EMBs). Many others have researched how the conduct of elections affect the other variables in governance such as development; peace, justice, rule of law, democracy and investor confidence particularly in respect to Uganda.

However, none of the accessible literature has examined the Link between Good Governance and Election Management in Uganda with a dedicated attention on the Institution of the Electoral Commission (EC) of Uganda as an election management body. This study is specifically dedicated to the nexus that good governance has on the

delivery of free, fair, transparent and credible elections if good governance values, principles and systems are incorporated in the election management in Uganda with an eagle's eye focus on the Electoral Commission of Uganda as an institution hence a significant general literature gap that this study seeks to reduce through its objectives and questions.

The study draws inspiration from the deficiency in literature in that respect and the deficiency has triggered a broad review of literature which is clustered around two thematic areas.

Part one of the literature deals with what the theme of governance generally is and what is termed good governance in relation to Election Management and the underlying issues that make election management an important aspect in assessing good governance in a particular political space; the competing interests in managing a successful election that can be seen to be free, fair, transparent and credible and elicits academic foundation for the rationalization and validation of Legislative and Institutional reform in the Electoral Commission of Uganda.

The second part deals with literature around the Elections and Institutional Management and the need for election managers not to separate elections from institutional management values because in the way an electoral institution as opposed to it being an organization, it is an institution whose decisions can easily disfranchise a section of stakeholders and have ripple effects on other institutions. These two clusters are discussed under the heads of Good Governance, Election Management and Institutional Management.

1.7.1 The Link between Good Governance and Election Management

Governance is tentatively vague phenomenal yet fashionable axiom and its use in the literature has exploded in recent years. The American Heritage¹⁵ dictionary, governance is likened and compared with government and is defined as the “exercise of authority and control” or “a method or system of government and management” or “the act, process or power of governing”.

*Huther and Shah*¹⁶ defined governance as “a multi-faceted concept encompassing all aspects of the exercise of authority through formal and informal institutions in the management of the resource endowment of a state. The quality of governance is thus determined by the impact of this exercise of power on the quality of life enjoyed by its citizens”.

Kaufmann et al define governance as “the traditions and institutions by which authority in a country is exercised”.¹⁷ The *Mo Ibrahim* Foundation’s Ibrahim Index of African Governance contemplates good governance as the effectiveness of the delivery of key political goods.¹⁸

The establishment of the system of governance or democracy is often found in the Constitution of that country as is the establishment of an Electoral Management Body. In Uganda, the Constitution has established it as a Republican¹⁹ democracy running on a presidential²⁰ system of governance and it further establishes the Electoral Commission of Uganda. The electoral law sets out the processes for genuine, regular elections

¹⁵ <<https://ahdictionary.com/>> accessed 29 November 2019

¹⁶ Huther, Jeff and Anwar Shah, 1998. “Applying a Simple Measure of Good Governance to the Debate on Fiscal Decentralization.” Policy Research Working Paper 1894, World Bank, Washington, D.C.

¹⁷ Kaufmann, Daniel, Aart. Kraay, and M. Mastruzzi, 2004 Governance Matters III: Governance Indicators for 1996 – 2002, the World Bank Economic Review, Vol. 18, No. 2.

¹⁸ <<https://mo.ibrahim.foundation/iiag>> accessed 29 November 2019

¹⁹ Article 5 (1) of the Constitution of Uganda, 1995

²⁰ Article 99

conducted based on equal suffrage and the Electoral Commission of Uganda makes regulations or decrees regularly right up to the day of the election to deal with the fine detail associated with the management and administration of the election.

Election management according to *Agbaje* and *Adejumobi* involves “The interaction of constitutional, legal and institutional rules and organizational practices that determine the basic rules for election procedures and electoral competition; organize campaigns, voter registration, and Election Day tallies, and resolve disputes and certify results”²¹. Besides, election management “is the organization and conduct of elections to elective public (political) office by an electoral body”.²²

*Momah*²³ notes that election as a process transcends activities that are carried out on the day of the election. To her, examination and interpretation of elections should be all-embracing to include legal and constitutional architecture and activities that take place before, during and after the day of the election. In her words, election as a process; involves the participation of the people in the act of electing their leaders and their participation in governance. Elections are not necessarily about the day of election activities, although it forms an important component.

It encompasses activities before, during and after elections. It includes the legal and constitutional framework of elections; the registration of political parties; party campaigns; the activities of security agencies and the government in power. It includes the authenticity and genuineness of the voter’s register. It includes the independence or lack of it of the electoral agencies and organs. It includes the liberation or otherwise of

²¹ Agbaje, A. and Adejumobi, S. (2006) “Do Votes Count? The Travails of Electoral Politics in Nigeria”, *Africa Development*, Vol.xxxi, No.3, pp.25-44, CODESRIA

²² Jinadu, Adele (1997) “Matters Arising: African Elections and the Problem of Electoral Administration”, *African Journal of Political Science*, Vol.2, No.1, pp.1-11.

²³ Momah, Pamela (2016) “*Electoral Commissions and the Conduct of Elections in Nigeria: The Role of INEC*”, in Osita Agbu (ed.) *Elections and Governance in Nigeria’s Fourth Republic*, CODESRIA, Dakar, Senegal, pp.37-52

political processes in the country and the independence of the adjudication bodies in elections²⁴.

From the characterization above according to *Momah*, the election process is a series of actions that produce something or that lead to a particular result or outcome.

Management of elections in developing countries like Uganda with undeveloped structures, institutions and, no structured governance model is a complex and cumbersome process which makes the practice of good governance a very unfamiliar concept on the local politics.

According to *G. Goodwin-Gill*²⁵, the Electoral Management Bodies' aims should be to; ensure that those responsible for the administration of the election are trained and act impartially, ensure that coherent voting procedures are established and made known to the voting public, ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers, as appropriate, encourage parties, candidates and the media to accept and adopt a code of conduct to govern the election campaign and the election period, ensure the integrity of the ballot through appropriate measures to prevent double and multiple voting and fraud, ensure the integrity of the process for counting votes, announce the election results and facilitate any transfer of authority²⁶.

A total of five country reports were commissioned²⁷ by two Civil Society groups known as Open Society Initiative for East Africa (OSIEA) and the Open Society Foundation's

²⁴ Ibid (n 23)

²⁵ International Law and Practice (1994), In Free and Fair Elections, Geneva: Inter-Parliamentary Union, p. 88

²⁶ <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD\(2005\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD(2005)005-e)> 2005 accessed 29 November 2019

²⁷ in June 2012, 2016

Africa Regional Office²⁸ and criticized the way, the Electoral Commission of Uganda manages and administers elections in Uganda.

In a book called “Election Management Bodies in East Africa: A comparative study of the contribution of electoral commissions to the strengthening of democracy,”²⁹ an in-depth analysis, *Alexander B. Makulilo*³⁰ discusses the growth and development of electoral law reforms in East Africa.³¹ It is now apparent that there are certain common aspects concerning the evolving development of the Election Commission of Uganda as far as from the colonial history to the present constitutional reforms that have given birth to the establishment of the present Electoral Commission and how it is constituted legally and institutionally³².

The similarities and variances concerning the establishment and management of the Election Management Bodies in the region, as well as, the common challenges that are faced thereto are not unique to Uganda. It is further important to note that the Electoral Commission of Uganda has particularly appreciated the need for extensive knowledge on how it is effectively managed to ensure that the democratic process achieves its ends³³.

As discussed earlier on, reports from the civil society as an observer group has shown that there are overwhelming political interests which mar the process of the management of elections.³⁴ This conveniently occurs under the background of inadequate legal infrastructure under which the Electoral Commission of Uganda operate. These two

²⁸ Supra (n 27)

²⁹ Alexander B Makulilo , Eugène Ntaganda, Francis Ang’ila Away, Margaret Sekaggya and Patrick Osodo, (2015) *Election Management Bodies in East Africa*, A review by AfriMAP and the Open Society Initiative for Eastern Africa, Open Society Foundations.

³⁰ Ibid (n 29) 23-45

³¹ Ibid (n 29) 34

³² Ibid (n 29) 42

³³ Ibid (n 29) 42

³⁴ Ibid (n 29) 45

factors combined affect the running of the electoral bodies from the manner of its composition to the entire running of electioneering activities such as registration of voters, supervision of the elections and the major political actors, running of civic education, the actual management of the voting process, the announcement of the election results and the resolution of any disputes that may arise.

The significance of the law in the legitimization of power cannot be overstated. A society that purports to be governed by the rule of law (in appreciation of the social contract entered into between the people and governance institutions) has to ensure that the wielding of power is legally recognized. In this regard, the legal framework, institutional framework, and the general political environment before, during, and after general elections have a significant effect on the rights that are enjoyed in the course of the elections.³⁵

Elections are a process and not merely an event. It involves both rules and structures. Lending credence to the aforesaid, *Jinadu*³⁶ explains that by election process it means the rules, procedures and activities relating to among others, the establishment of electoral bodies, the appointment of their members, the registration of voters, the nomination of candidates, balloting, counting of the ballots, the declaration of results, the selection and training of electoral officials, constituency delimitation, voter education and in some cases, registration of political parties and supervision of party nomination in general.³⁷ Elections are central to competitive politics of the modern era especially under the “third wave” of democracy³⁸.

³⁵ United Nations Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 2013 A/68/299, p. 4.

³⁶ Jinadu, Adele (1997) “Matters Arising: African Elections and the Problem of Electoral Administration”, *African Journal of Political Science*, Vol.2, No.1, pp.1-11.

³⁷ *Ibid* (n 36)

³⁸ Jeffrey Haynes, (2012), *Introduction Thirty-five Years of Democratization: The Third and Fourth Waves of Democracy in Perspective*, Routledge Handbook of Democratization, Routledge Taylor and Francis

Thomas Carothers argues that Uganda has had a turbulent history with elections since Independence that led to civil war and numerous government overthrows by the military establishments. This led to many regime changes and creation of many military outfits that claimed that political transition was never transparent and credible to lead Uganda. It has been observed that during transitional period “elections will be not just a foundation stone but a key generator overtime of further democratic reforms.”³⁹

The credibility of election results in Uganda in recent years has been a source of concern and has resulted into a series of political strikes, riots, political and legal agitations that have poised the Electoral Commission of Uganda as being at the center of the problems that Uganda has other than the “*Museveni Problem*”. Indeed, “the problems associated with elections have direct impact on the performance of democratic institutions.”⁴⁰

The candidate of Yoweri Kaguta Museveni and NRM as a party has been winning the majority vote in the presidential and parliamentary elections, but the opposition has over time gained support in both of the last general national election races despite a campaign characterized by fraud and violence to the degree that it was a 3 against 2 decisions in the Supreme Court to uphold the election results.⁴¹

The 2006 experience led to important changes in the electoral strategies of the incumbent regime.⁴² It can now be argued that indeed the level of democracy or

Group, London and New York, pp.1-9 and Huntington, Samuel, (1991), *The Third Wave Democratization in the Twentieth Century*, University of Oklahoma Press, Norman.

³⁹ Carothers, Thomas (2002) “The End of the Transition Paradigm”, *Journal of Democracy*, Vol.13, No.1, pp.5-21

⁴⁰ Wapmuk, Sharkdam (2016) “An Overview of the State Houses of Assembly Elections”, in Osita Agbu(ed) *Elections and Governance in Nigeria’s Fourth Republic*, CODESRIA National Working Group, pp.81-98.

⁴¹ Gloppen, S. , C. Atoo, E. Kasimbazi, A. Kibandama, J. Kiiza, S. Makara, G. Okiror, L. Rakner, S. Rwengabo, L. Svåsand, R. Tabaro, A. Tostensen et al. (2006). “Uganda’s 2006 Presidential and Parliamentary Elections.” CMI Report. Bergen, CMI.

⁴² Golooba-Mutebi, Frederick and Sam Hickey, (2016) “The master of institutional multiplicity? The shifting politics of regime survival, state-building and democratization in Museveni’s Uganda.” *Journal of Eastern African Studies* 10, vol. 4: 601-618

democratic practices in Uganda have improved when compared to the democratic history of Uganda.

This study makes reference to the concept of governance generally and what it means by good governance that is based and anchored on democratic governance values and principles in the election management and shall identify the Indicators of good governance. The study further identifies the African Governance Report briefly on the indicators that were identified by the United Nation's Economic Commission for Africa (ECA) as measure of good governance in Africa. It shall further make reference to the concept of Management in the precinct of Election Management as an attribute of good governance.

The study further appreciates that indeed good governance is an ideal which is very difficult to achieve in its totality however there are certain countries in the world that have tried to incorporate the concept of good governance to realize the benefit in institutions similar to the Electoral Commission of Uganda nevertheless actions must be taken to work towards this ideal with the aim of making it a reality in the management and administration of elections.

This study asserts that historically Uganda has had issues in the overall management of elections or ascending to political leadership leading to violence and sometimes civil unrest and war hence the need to adopt the concepts of good governance and democratic governance in the management and administration of elections in Uganda.

This study therefore argues that the role of Electoral Management Bodies (EMBs) like the Electoral Commission of Uganda as an institution of good governance is and can facilitate the above processes and ensure that elections are free and fair because this is

essential for good governance⁴³ to prosper in any country especially and in particular Uganda since the results that they deliver impact on policy and other important development issues in a country.

Good governance as a concept has not received a consensus definition especially in Africa which is played on concepts of democracy and dictatorship rivalled with the values of rule of law and Human rights⁴⁴. However, a great number of scholars generally agree that it is a normative formulation of fundamental principles that guide governance⁴⁵. As the definition is not settled, different institutions, particularly international Organizations, enumerate indicators of good governance.

In Uganda, the constitution and composition, appointments and composition of the Electoral Commission officers referred to as Commissioners is a highly political decision by the Executive and particularly the President under the Constitution of Uganda and the appointments are taken for a ritual endorsement without the vast interest groups and stakeholders having a protected and solid say in who makes it to the ranks of the Commission.

Having analyzed the important indices and critical factors for good governance, the position of Uganda and its institutions in terms of good or bad governance can be better understood that while good governance, in its political, legislative and social dimensions, underpins sustainable human development, mass participation, poor or bad governance can be observed within the Ugandan context as prevalence of poor service delivery in the Electoral Commission of Uganda, lack of faith in the integrity of the Electoral Commission of Uganda.

⁴³ Supra (n 29)

⁴⁴ James N. Rosenau, (1999)"Toward an Ontology for Global Governance", in Martin Hewson and Thomas Sinclair, eds., *Approaches to Global Governance Theory*, SUNY Press, Albany.

⁴⁵ Kirya Monica, (2011), 'Performing "good Governance": Commissions of Inquiry and the Fight against Corruption in Uganda.' Diss. University of Warwick.

Therefore, to have good governance incorporated in the Election management in Uganda, good governance reforms particularly in the legislative and institutional system and set up of Election management in line with the principles of good governance theory are strongly recommended.

All the principles of good governance must be embraced in all ramifications, ranging from justice, transparency, accountability, responsible leadership, public participation in government, efficiency and effectiveness, freedom and civil liberties, zero corruption tolerance to free, fair and credible elections among others. To have good governance practice in Election management and administration in Uganda, governance must reflect all the principles of good governance theory.⁴⁶

The delineations of good governance can be understood with eight parameters or indicators and they include the parameters of Accountability, Transparency, Equitability and, inclusiveness, the achievement of the objective of consensus, Observance of the rule of law, Fostering participation, Effectiveness, efficiency and Responsiveness.

It should be appreciated that there are also what are usually referred to as World Governance Indicators. Worldwide Governance Indicators (WGIs) are now the most widely used and quoted indicators by the all relevant quarters such as academicians, policy makers, donor countries and agencies, and investors.⁴⁷

These indicators were first developed in 1999 by *Daniel Kaufmann, Aart Kraay* and *Zoido-Lobaton*.⁴⁸ Later *Zoido-Lobaton* was replaced by *Massimo Mastruzzi*. Since then they kept on expanding and also retrospectively adding past years.

⁴⁶ Ibid (n 45)

⁴⁷ Kazi Iqbal and Anwar Shah, (2008), *A Critical Review of Governance Indicators*, Preliminary draft.

⁴⁸ Kaufmann, Daniel, A. Kraay, and Pablo Zoida - Lobaton, (1999), *Aggregating Governance Indicators*, World Bank Policy Research Department Working Paper No. 2195.

available governance indicators into six clusters⁴⁹ of voice and accountability, political stability and absence of violence, Government effectiveness, and regulatory quality, rule of law and Control of corruption.⁵⁰

a. Rule of law

The indicator of rule of law in good governance is very important as it requires fair legal frameworks that are enforced by an impartial regulatory body, for the full protection of stakeholders. The concept of rule of law on its own in realizing good governance is very necessary.⁵¹

b. Transparency

Transparency is another indicator and means that information should be provided in easily understandable forms and media; that it should be freely available and directly accessible to those who will be affected by governance policies and practices, as well as the outcomes resulting therefrom; and that any decisions taken and their enforcement are in compliance with established rules and regulations⁵². This research also argues and takes transparency to involve openness in governance. Accordingly access to accurate, relevant and timely information is important to achieving transparency in an election especially in a full election cycle to the point of declaring elections of a winner.⁵³

c. Responsiveness

⁴⁹ Ibid (n 49)

⁵⁰ Ibid (n 50)

⁵¹ Ibid (n 50) 23

⁵² Islam, Roumeen, 2006. Does More Transparency Go Along with Better Governance. *Economics and Politics*, 18(2):121-167.

⁵³ *Supra* (n 50)

Institutions and governments need to be responsive to the environments they operate in or to their stakeholders. Good governance requires that organizations and their processes are designed to serve the best interests of stakeholders within a reasonable timeframe. Responsiveness is another important indicator in good governance⁵⁴.

d. Consensus

Consensus oriented policy making and decision making is very vital as an independent indicator for good governance. Good governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus of what is in the best interest of the entire stakeholder group and how this can be achieved in a sustainable and prudent manner.⁵⁵

e. Equity and Inclusiveness

The indicator of equity and inclusiveness is very necessary in measuring standards of good governance. The organization that provides the opportunity for its stakeholders to maintain, enhance, or generally improve their well-being provides the most compelling message regarding its reason for existence and value to society.⁵⁶

f. Effectiveness and Efficiency

Effectiveness and Efficiency of institutions is very important as a measure and indicator of good governance. Good governance means that the processes implemented by the organization to produce favorable results meet the needs of

⁵⁴ Supra (n 50)

⁵⁵ Supra (n 50)

⁵⁶ Supra (n 50)

its stakeholders, while making the best use of resources which are generally human, technological, financial, natural and environmental resources at its disposal.⁵⁷

g. Accountability

Accountability is a key tenet of good governance. Who is accountable for what should be documented in policy statements. In general, an organization is accountable to those who will be affected by its decisions or actions as well as the applicable rules of law. To achieve accountability, this research aims to define accountability to include presence of accountability mechanisms such as public involvement and ability of institutions to question the decision of election managers against the structural system and the available law and expectations of the various interest groups and stakeholders.⁵⁸

h. Participation

Participation or Public Participation by both men and women and classes, levels and interest based groups as so defined, either directly or through legitimate representatives, is a key cornerstone of good governance. Participation needs to be informed and organized, including freedom of expression and assiduous concern for the best interests of the organization and society in general⁵⁹.

All these good governance indicators are intuitively and interestingly connected to each other. It is for instance, important to note that when public participation (or any other important indicator) is eliminated from the equation, there would be a reciprocal lack of

⁵⁷ Supra (n 49) 24

⁵⁸ Supra (n 49) 25

⁵⁹ Supra (n 49) 25

responsiveness.⁶⁰ Similarly, when the process of decision-making is not transparent or seen to be so, then inevitably there would be no participation or willingness to engage.⁶¹

It is important to appreciate the fact that the indicators noted above ought to be synthesized within the precincts of good governance. Good governance in this regard is democratic in nature. A number of indicators listed above cannot have applicability in other forms of governance. Communist governance such as in China can, for instance, not be consensus oriented⁶².

It is important to appreciate that development and good governance cannot squarely be based on economic development alone but can squarely be charged on democratic, social and political development.

In the global perspective, these two elements signify a larger totality of elements such as the preservation of human rights (as outlined in various international instruments including the United Nations Declaration of Human Rights [UDHR]), improvement of individual capabilities, equitable wealth distribution, and the creation of an environment that fosters public participation and the growth of the people's potential.

In the present era, efforts towards sustainable development encompasses the empowerment of the people and the respect for human rights, constitutionality, and the rule of law. In any event, economic development and the reduction of poverty and the rates of unemployment is dependent on the mechanisms utilized by the state to bring out the fullest potential of the people.⁶³ This is usually measured on how people and the

⁶⁰ Huther, Jeff and Anwar Shah, 1996. "A Simple Measure of Good Governance." Unpublished paper, Operations Evaluation Department, World Bank, Washington, DC.

⁶¹ Arndt, Christiane and Charles Oman, 2006, *Uses and Abuses of Governance Indicators*, Development Center Studies, OECD.

⁶² Klitgaard, Robert, Johannes Fedderke, and Kamil Akramov. 2005. "Choosing and Using Performance Criteria." In *High Performance Government: Structure, Leadership, Incentives*, eds. Robert Klitgaard and Paul Light. Santa Monica, CA: Rand Corporation.

⁶³ *Ibid* (n 64)

resources they manage are governed and the process of governance and the terms of reference in governance and management are as important as the expected results.

It is at this point that this study argues that governance devoid of these principles is termed as bad governance and nothing more either at national, regional or local level and even at an institutional level like that of an election management body like the Electoral Commission of Uganda.

In this regard, the Constitution of Uganda calls for accountability and transparency, rule of law, inclusiveness and public participation. The Constitution obligates all persons and entities to promote good governance and puts mechanism to ensure the achievement of different elements of good governance. Such provisions include right to information petitions, impeachment and right to recall processes among others.

For purposes of this study, governance is the exercise of public power by government in political, social and economic affairs at all levels of government. Further good governance is understood as governance that adheres to accountability, transparency, responsiveness among others within the broader constitutional context.

The United Nation's Economic Commission for Africa (ECA) conducted survey of experts in 28 countries to measure and monitor 'progress towards good governance in Africa'⁶⁴. The indicators are grouped into six broad categories which are constructed from 23 sub-indices of governance; Political representation, Institutional effectiveness and accountability, Human rights and rule of law, Executive, Economic management and Control of corruption.⁶⁵

⁶⁴ The countries are Benin, Botswana, Burkina Faso, Cameroon, Chad, Egypt, Ethiopia, Gabon, Gambia, Ghana, **Kenya**, Lesotho, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, South Africa, Swaziland, Tanzania, **Uganda**, Zambia and Zimbabwe.

⁶⁵ Ibid (n 66) 3

The African Governance Report (AGR) is a biannual publication, which assesses and monitors progress towards good governance in African countries. It assesses the perception on governance by households and experts at the country level.

The objective of the Africa Governance Report is to provide an assessment⁶⁶ of the status of African governance and provide a basis for tracking of governance developments and analyzing trends on the African continent. It aims to be relevant for the Member States, AU Organs, and other stakeholders. The AGR is intended to provide a foundation for regular and continuous tracking of governance, and to underline and share best practices among Member States.⁶⁷

The report defines “Good governance” to connote the following major components; legitimacy, whereby the government has the consent of the governed; accountability that ensures transparency and answerability for actions; respect for law and protection of human rights; and Competence, which consists of effective policy making, policy implementation and service delivery.⁶⁸ The Report argues that regional and sub-regional initiatives and frameworks for elections, democracy and governance have to be implemented and monitored to improve electoral performance and promote democratic consolidation and stability.⁶⁹

Management means many things to many people. But a simple traditional definition, defines it as the "art of getting things done by others". This definition brings in two elements namely accomplishment of objectives, and direction of group activities towards

⁶⁶ The governance assessment focuses on five key thematic areas of priority, namely: (a) transformative leadership, (b) constitutionalism and the rule of law, (c) peace, security and governance (Silencing the Guns), (d) the nexus of development and governance, and e) the role of the regional economic communities (RECS) in African governance.

⁶⁷ African Governance Report, Promoting African Union Shared values, Prepared by The African Peer Review Mechanism (APRM) In Collaboration with the African Governance Architecture (AGA) January 2019.

⁶⁸ Ibid (n 69)

⁶⁹ Ibid (n 69) 7

the goal. The weaknesses of this definition is that firstly it uses the word "art", whereas management is not merely an art, but it is both art and science. Secondly, the definition does not state the various functions of a manager clearly.

A more elaborate definition given by *George R. Terry*⁷⁰, defines management as a process "consisting of planning, organizing, actuating and controlling, performed to determine and accomplish the objectives by the use of people and resources." Firstly it considers management as a "process" i.e. a systematic way of doing things. Secondly it states four management activities: Planning, organizing, actuating, and controlling. Planning is thinking of an actions in advance. Organizing is coordination of the human and material resources of an organization. Actuating is motivation and direction of subordinates. Controlling means the attempt to ensure no deviation from the norm or plan⁷¹.

This study conceptualizes that electoral management and electoral governance as a set of related but independent concepts involves activities that border on rule making, rule application and rule adjudication. It identifies the provision of procedural certainty to secure the substantive uncertainty of democratic elections as part of the principal task of electoral governance. It argues that electoral management electoral governance while socially, legally and institutionally embedded as one, matter especially on decision making occasion conditions that typically allude to democratization or governance in general⁷².

⁷⁰ George Robert Terry (1909 – 1979) was an American management author, Professor of Business at Ball State University, and 14th president of the Academy of Management. He is noted for his early work on management, and for writing the first book, entitled *Principles of Management*.

⁷¹ Ibid (n 72)

⁷² Haheen Mozaffar and Andreas Schedler, (Jan., 2002), *Electoral Governance and Democratization. Governance*, International Political Science Review, Vol. 23, No. 1, pp. 5-27

1.8 Theoretical Framework

This part of the chapter addresses two significant and also interconnected aspects of the study. The first part references the concepts of good governance and Management in democratic spaces but appreciates that the two concepts are not uniform in their definition and understanding but by far largely related. A clear understanding of these concepts of good governance and management as used in this study is therefore necessary in this study.

The second part addresses the theoretical foundations of good governance and election management in light of the institution of Electoral Commission of Uganda using The New Institutionalism Theory or Institutions Theory and The Critical Legal Theory.

It further elucidates on the principles of the Theory of New Institutionalism or Institutions Theory and the Critical Legal Theory and uses the principles therein to analyze governance and election management and administration in Uganda and particularly in the structures and ranks of the Electoral Commission of Uganda. It analyses New Institutionalism or Institutions and the Critical Legal Theories, enunciating their principles and adopts them as indices to assess Management of elections in Uganda and why the Electoral Commission of Uganda has failed to deliver free, fair in Uganda.

This part in the study evaluates good governance on the said two theories in Uganda and concludes that there is no deep or profound entrenchment of good governance in the Legislative and Institutional system of election management in Uganda and that in actual fact pitiable or debauched governance is the order of the day hence the Electoral Commission's failure to deliver free, fair, transparent and credible elections in Uganda.

The study therefore recommends that good governance based on the evaluation and appreciation of the three theories should be embraced in Uganda through good governance reforms and by adopting the time-tested principles of the theories discussed.

1.8.1 The Theory of New Institutionalism or Theory of Institutions

The study of elections administration and management bodies is also underpinned by the theory of Institutionalism or theory of Institutions. The theory gained prominence in the 1980s following the resurgence of, and the important role that institutions played in social, political and economic reconstruction⁷³.

The proponents of the “New” Institutionalism Theory, *James March* and *Johan Olsen* defined the theory as “connoting a general approach to the study of political institutions, a set of theoretical ideas and hypothesis concerning the relations between institutional characteristics and political agency, performance and change”⁷⁴.

Alistair Cole defines New Institutionalism as focusing on the way in which Institutions embody values and power relationship⁷⁵. The Institutional theory seeks to explain why nations are committed to scientific institutions as well as what forms these take. The central theme is that Organizational or institutional structures are viewed by policy makers, politicians, economics and development partners as signals of progress towards modern institutional development and hence worthy of manipulation especially by stakeholders.

Regardless of the positive or negative consequences of their activities, the introduction and maintenance of certain forms of institutional structure serves to communicate this

⁷³ Bell S, (2006), Institutionalism: Old and New, 40

⁷⁴ James March and Johan Olsen, (2005), Elaborating the “New Institutionalism”” Centre for European Studies working Paper No. 11

⁷⁵ Alistair Cole, (2015), Institutions and Institutionalism

commitment. Institutional theory provides an account of the institutional structure establishment, growth or stagnation and for whose benefit the institutions are maintained.

The Institutional theory is a theory on the deeper and more irrepressible and resilient aspects of social structure. It considers the processes by which structures, including schemes, rules, norms, and routines, become established as authoritative guidelines for social behavior⁷⁶.

Accordingly institutional theory is "a widely accepted theoretical posture that emphasizes rational myths, isomorphism, and legitimacy"⁷⁷. Researchers building on this perspective emphasize that a key insight of institutional theory is imitation: rather than necessarily optimizing their decisions, practices, and structures, organizations look to their peers for cues to appropriate behavior⁷⁸.

According to *Kraft's Public Policy* (2007)⁷⁹, Institutional Theory is "Policy-making that emphasizes the formal and legal aspects of government structures." The theory of institutions by proponents⁸⁰ argues that the policy-making of an institution consists of related incidences whose members must decide on when considering various issues at hand⁸¹.

⁷⁶ Scott, W. Richard, (2004), "Institutional theory." in Encyclopedia of Social Theory, George Ritzer, ed. Thousand Oaks, CA: Sage. Pp. 408-14

⁷⁷ Supra (n 76)

⁷⁸ Marquis, Christopher; Tilcsik, András (2016-10-01). "Institutional Equivalence: How Industry and Community Peers Influence Corporate Philanthropy" (PDF). *Organization Science*

⁷⁹ *Kraft's Public Policy*: Kraft, Michael E & Furlong, Scott R *Public Policy: politics, analysis, and alternatives* (2nd ed).

⁸⁰ Powell, W. W., & DiMaggio, P., (1991), *The New Institutionalism in Organizational Analysis*. Chicago: University of Chicago Press, (Eds.)

⁸¹ Hall Peter A., and Rosemary CR Taylor, (1996), *Political science and the three new institutionalisms.* *Political studies* 44.5: 936.

Members (or the composition thereof) of an institution have preferences and interests to protect which might differ (and often they do) with that of the organization ideally or as expected or idealized from the constitution or the establishing law.⁸²

Any one decision by any sitting or particular member of a commission for instance consists of rational actions given by the actors' environment including the principal appointees, politics, professional conduct, expectations and other predetermined rules. The designer of an institutional structure can predetermine the outcome through the setup rules. The designer can, therefore, increase the payoffs and transactional costs of possible behaviors of the actors.⁸³

Institutional theorists⁸⁴ assert that the institutional environment can strongly influence the development of formal structures in an organization, often more profoundly than market pressures. Innovative structures that improve technical efficiency in early-adopting organizations are legitimized in the environment. Ultimately these innovations and machination reach a level of legitimization where failure to adopt them is seen as "irrational and negligent" (or they become legal mandates or obligations). At this point new and existing organizations will adopt the structural form even if the form doesn't improve efficiency.

Meyer and Rowan argue that often these "institutional myths" are merely accepted ceremoniously in order for the organization to gain or maintain legitimacy in the institutional environment. Organizations adopt the "vocabularies of structure" prevalent in their environment such as specific job titles, procedures, and organizational roles. The adoption and prominent display of these institutionally-acceptable "trappings of

⁸² Calvert Randall L, (1995), The rational choice theory of institutions: Implications for design. Institutional design. Springer, Dordrecht, 63.

⁸³ Ostrom Elinor, (1997) 'A behavioral approach to the rational choice theory of collective action: Presidential address, American Political Science Association,' American political science review 92.1 (1998): 1.

⁸⁴ Meyer & Rowan, DiMaggio & Powell, 1995

legitimacy" help preserve an aura of organizational action based on "good faith". Legitimacy in the institutional environment helps ensure organizational survival.

However, these formal structures of legitimacy can reduce efficiency and hinder the organization's competitive position in their technical environment. To reduce this negative effect, organizations often will decouple their technical core from these legitimizing structures. Organizations will minimize or ceremonialize evaluation and neglect program implementation to maintain external (and internal) confidence in formal structures while reducing their efficiency impact.

DiMaggio and *Powell* conclude that the net effect of institutional pressures is to increase the homogeneity of organizational structures in an institutional environment. Firms will adopt similar structures as a result of three types of pressures. Coercive pressures come from legal mandates or influence from organizations they are dependent upon. Mimetic pressures to copy successful forms arise during high uncertainty. Finally, normative pressures to homogeneity come from the similar attitudes and approaches of professional groups and associations brought into the organization through hiring practices.

In a bid to incorporate the earlier conception of New Institutionalism and to draw a parallel between Old and New Institutionalism, *Vivien Lowndes* defined the theory thus- "The New Institutionalists concern themselves with informal conventions as well as formal rules and structures. They pay attention to the way in which institutions embody values and power relationships, and they study not just the impact of institutions upon behavior, but interactions between individuals and institutions".⁸⁵

⁸⁵ Vivien Lowndes, (2001), Rescuing Aunt Sally: Taking Institutional Theory Seriously in Urban Politics" 38(11) Urban Studies 1953.

The theory of New Institutionalism builds upon and expounds on the Old Institutionalism⁸⁶. The central feature distinguishing Old and New Institutionalism is the focus on formal rules and structures as opposed to informal structures⁸⁷.

In its various elements, the theory of New Institutionalism recognizes sound institutional framework as well as the interdependent nature of institutions. While the theory lends itself to different definition, and has relevant application in social, economic and political sectors, the key elements that underpin New Institutionalism theory include the Normative Institutionalism. Rational Choice theory, Historical Institutionalism and Empirical Institutionalism interestingly have a link with the theory of institutions⁸⁸.

Amos Tversky and *Daniel Kahneman* criticize this theory for over simplification and abstraction.⁸⁹ They opine that in using deductive reasoning to explain the outcome of the practical world issues is an over simplification of human motivation and interaction.

This theory is particularly critical in this work in arguing that the structural foundation and the structural model and design of the institution of the Electoral Commission of Uganda from the appointment, selection of commissioners, composition of the secretariat, termination and financing of the Commission are almost determinative of the actions or behaviors of the leadership and management of the Commission.

The Electoral Commission of Uganda lacks the desired and absolute independence from its appointing authority and the legislative and institutional framework under which the Electoral Commission of Uganda operates cannot guarantee practical independence from

⁸⁶ Stephen Bell, (2006), Institutionalism: Old and New*

⁸⁷ Ibid (n 88)

⁸⁸ James March and Johan Olsen, (2005), Elaborating the “New Institutionalism”” Centre for European Studies working Paper No. 11

⁸⁹ Kahneman D and Tversky A., (1979), Prospect theory: An analysis of Declion under risk’ Vol. 47, No. 2. *Econometrica*, 263.

the executive and or the legislature (Parliament) on the composition and management or control of the Commission.

This structure easily determines the outcome of the elections from an observers view point and history has vindicated such observations over the years in Uganda's electoral cycles. There is, therefore, the need to seal or cover up these loopholes or lacuna in the election law and the institutional framework by having a strong structural foundation of the Electoral Commission independent politically and financially from the appointing authorities or the different interest groups and /or the stakeholders.

The emerging concept of *Path Dependence*⁹⁰ as discussed by *Alistar Cole* argues and amplifies the important role that institutions play in historical institutionalism majorly. Proponents of path dependence theory argue that at formation institutions are cast along a predictive path that determines the progress and trajectory of institutions⁹¹. Institutional policies are path dependent and once launched on that path, they continue along the path until some sufficiently strong political force deflects them from it. Critics of path dependence, opine that this approach cast institutions as static entities that are not transformative to the dynamic nature of societies⁹².

1.8.2 The Critical Legal Theory

Law is not simply politics according to many academics; a perception I could personally propound for, but it relatively it is a remarkably the pliable intermediate of dissertation about authority and for the exercise of power. Law arbitrates, takes over, and alters political and traditional scuffle into legal principles and licit differences, and in doing so,

⁹⁰ Cole, A., & Eymeri-Douzans, J.-M. (2010). Introduction: Administrative reforms and mergers in Europe - research questions and empirical challenges. *International Review of Administrative Sciences*, 76 (3), 395–406.

⁹¹ Ibid (n 92) 399

⁹² See James March and Johan Olsen, „Elaborating the “New Institutionalism”” (2005) Centre for European Studies working Paper No. 11

creates a fresh form of asserting authority or the power of legal awareness and bodies that aspires to become crucial to every single other system.⁹³

Law ranges and is realized through bodies and practices that appeal on law or are contingent on law, and through a professional custom that attributes law as the highest significance, indeed, as fundamental to advancement and civilization itself.⁹⁴ It has been established through legal stand points and legal fraternities that civil endeavors and philosophical differences are altered and exiled but eventually re-emerge in disguise. Legal organizations and legal debates enable the implementation of power (and tussles over power) while lightening and conveying them.

In various dynamics such as economic, social, cultural, political, military or technological, Law is in a position to concurrently channel and enable, confine and increases the diverse systems of power in the social at the same time multiplying its own systems of power, its own professional customs and its own jurisdiction. This complex connection between law and power is law's relative autonomy.

Most scholars⁹⁵ would assert that legal philosophy is an academic endeavor that slightly connects with realisms of law, including the feasibilities of law amendment. It has been visibly tasking to demonstrate a straight connection between the abstract delineation of the nature of law, and a visualization of legitimate administrations which rightfully better mirror their principles even though most legal philosophy is knowledgeable at certain level by moral and political deductions.

This is particularly evident as per academic outlooks which make a stout departure between the form or nature of law and its content: the form of law is the substance of

⁹³ Alan Hunt, "The Theory of Critical Legal Studies," *Oxford Journal of Legal Studies*, Vol. 6, No. 1 (1986)

⁹⁴ *Ibid* (n 95)

⁹⁵ Duncan Kennedy and Karl E. Klare, "A Bibliography of Critical Legal Studies," *Yale Law Journal*, Vol. 94 (1984): 461.

jurisprudential and philosophical discussion, while it is content, more inclined to minor revision, is the substance of ethical examination and political reproach⁹⁶.

The notable scholars and successor of the American realism, the Critical Legal Studies (CLS) movement basically aims at debunking, deconstructing, delegitimizing and trashing the assumed neutrality, determinacy and objectivity of the law through legal formalism and legal reasoning.⁹⁷

Led by *Duncan Kennedy*, they reject the liberal thinking opining that law is a conflict ridden-structure which outwardly conceals the political considerations and powers structures.⁹⁸ The movement has it has come to be appreciated further demystifies the rationality and coherence, and instead, they see the law as contingent, arbitrary and profoundly unjust. In law, they see social and man realities that manifest themselves in legal discourses⁹⁹.

It is argued that in the application of the law, people apply it in the context of their ethical values and ideals. On formalism, the promoters of such school of thought contend that it is ridiculous to believe that decisions follow principles and procedures absent economic and political contexts, social values and goals.¹⁰⁰ As such, they destroy the simple deductive reasoning of laws couched by formalism and advise that law must be seen in larger political actions pragmatically.

⁹⁶ Davies Margaret, *Legal Theory and Law Reform*(Alternative Law Journal, Flinders University 2003)

⁹⁷ Thomson Alan, 'Critical Approaches to Law Who Needs Legal Theory.' Alan Thomson, 'Foreword: Critical Approaches to Law', cited in Grigg-Spall, Ian & Ireland, Paddy (eds.)(1992), *The Critical Lawyers Handbook* (1992).

⁹⁸ Oetken J. Paul, 'Form and substance in critical legal studies.' *The Yale Law Journal* 100.7 (1991): 2209-2228.

⁹⁹ Duncan Kennedy and Karl E. Klare, "A Bibliography of Critical Legal Studies," *Yale Law Journal*, Vol. 94 (1984): 461.

¹⁰⁰ Kennedy Duncan, 'Cost-Reduction Theory as Legitimation.' *The Yale Law Journal* 90.5 (1981): 1275-1283.

Robert Unger, a respected intellectual pioneer of the movement, opines that to dismantle the hierarchical power structure hidden in the law, it must be revolutionized to address the power of hidden structures.¹⁰¹ Now to address the legal inadequacies with formalism and the associated attributes, *Unger* suggests the entrenchment of "certain underlying theoretical approaches". These approaches allow a wide range of issues and logical elements to be considered yet remaining to the guiding synthesis. In his deviationist doctrine¹⁰², *Unger* postulates that everything and anything therein is up for grab. He points out that using this expanded view as he submits, one can take an ideal from an area it has taken root to areas previously excluded.

Further, *Unger* argues and propounds that using this theory, one can transform society through an institutional Programme that contains transformations on social relations, empowered democracy, restraint for government and recognition of new rights. Critical Legal theory has not gone without criticism because *Milovanovic Dragan* said that they lack an interdisciplinary thrust, and the writings are separated from everyday life as some scholars have averred.¹⁰³

This research passionately and heavily borrows a lot from this movement in arguing that the legal framework on Election Management Bodies is seemingly neutral and objective but hides in it power structures, indeterminacies and allows the use of personal whims. As such, the outcomes must be understood in this context. Further, in adopting *Unger's* view, there is a need to set underlying philosophies about Election Management Bodies so that any action is measured against the directive principles.

¹⁰¹Unger R. Mangabeira, 'The Critical Legal Studies Movement,' (1983) 96, no 3 Harvard Law Review 561.

¹⁰²Unger Roberto Mangabeira, 'The Critical Legal Studies Movement', (1983) 96, no. 3 Harvard Law Review 561.

¹⁰³Milovanovic Dragan, 'Review essay: Critical legal studies and the assault on the bastion.' (1988): 161-172.

1.9 Research Methodology

This study utilizes a mixed research methodological approach. Chapter one uses the historical research methodology in Chapter two particularly to examine and appreciate how the history of election management in Uganda has impacted and affected the way the Electoral Commission (EC) operates and the jurisprudence of election Management laws in Uganda and the doctrinal research methodology in Chapter three of the study has been used to evaluate and appreciate the various laws that are employed in election management in Uganda. It further adopt a library, as well as, a desktop-based in chapters four and five of the research project to appreciate accessible literature on the subject of good governance and election management.

The study was conducted from 09/04/ 2019 to 29/10/2019 and it focused on information relating to the Electoral Commission of Uganda. The research being carried out herein is a qualitative one thus it will largely be informed by secondary sources and not primary sources of data. The study provides an analysis of the literature that is currently present particularly with regard to Uganda and the electoral developments that are shaping up as Ugandans gear up for 2021 national General Elections.

1.10 Chapter Breakdown

Chapter One introduces the study and gives its context. It also identifies the problem statement, sets the research objectives, the relevant questions of the inquiry and gives the hypothetical answers to the relevant questions of inquiry. Literature review, the conceptual and theoretical framework of the study as well as the research methodology adopted in the study as well as the chapter breakdown are highlighted in this chapter of the study.

Chapter Two examines the historical, political, social and legal context and the role of election management and administration bodies in Uganda have played in laying the foundation of the current Electoral Commission as constituted. It traces the history of elections and election management and administration in Uganda during the Pre-Independence, Post- Independence and the recent history of election Management during the Yoweri Kaguta Museveni Administration Era period from 1986 to 2019 with a focus on the electoral developments and the politics that shaped the Management and administration of elections in Uganda. It also looks at how such political developments have affected or influenced the various legal and institutional structures of the Electoral Commission of Uganda. This chapter then informs the next chapter on legislative and Institutional framework of election Management and administration in Uganda.

Chapter Three analyzes the legislative and Institutional framework upon which the management and administration of elections in Uganda is premised. It evaluates the laws locally, regionally and internationally to inform the legal mandate upon which the Electoral Commission of Uganda operates.

Chapter Four of the study examines the Electoral Commission of Uganda as a case study, a body constitutionally mandated to independently organise, oversee, manage and administer elections of all levels in Uganda. This chapter specifically analyses the organization or institutional set up of the Electoral Commission from its administration and the way it operates under the Constitution and the Electoral Commission Act, 1997 read together with the amendments that have followed since. This chapter also further examines the preparedness of the Electoral Commission as it embarks on its road map to 2021 Uganda National General Elections as published by the Electoral Commission of Uganda.

Chapter Five revisits the problem statement and examines the lessons that Uganda can learn from Kenya in the management and administration of Elections in Uganda. It then draws conclusion on the issues raised in this research study and suggests recommendations on how good governance values and principles can be harmonized and incorporated in the management and administration of elections in Uganda especially on the much needed reforms in the law and institution of the Electoral Commission of Uganda.

In this chapter of the study, the research has detailed the background of the study and the problem under research. The research has further outlined the objectives, the questions, and the justification of the study as well as the key assumptions in the study. The relevant literature has also been reviewed for the study and gone ahead to give reference to the conceptual and theoretical foundations for evaluation of good governance in election Management and administration in Uganda. Therefore in the ultimate, the study argues that the problem faced by the Electoral Commission of Uganda is not unique as there are solutions and tested values and empirical evidence that such institutions can organise themselves to better serve the various stakeholders without compromising on transparency, accountability and credibility of the managers of the institutions.

CHAPTER TWO

THE HISTORY OF ELECTION MANAGEMENT IN UGANDA

“Democracy means the people support you. If they don’t support you, you don’t win.

That’s all”

Yoweri Kaguta Museveni¹⁰⁴

2.0. Introduction

This chapter examines the history of election management and administration in Uganda from 1920 all through to 2016 when the last general elections were held in Uganda and it follows the politics that has had an impact on how elections are generally managed and administered in Uganda.

This chapter is divided into a series of periods spanning from 1920 all through to 2016 highlighting the electoral developments in management and administration of in the particular series of years.

¹⁰⁴ Quoted in Craig (2016): “A First: Uganda’s Museveni takes part in Presidential Debate”. Voice of America, 13. February 2016. At the Presidential Debate live on Ugandan TV, 13.2.2016

This study examines Uganda's election management history argues that Uganda ought to be in position to reflect on the errors it made in election management to further better the process through good governance and democratic governance values in its institutions of election management and administration. Elections are not a new occurrence in Uganda and they have been conducted since and before Independence at various stages and at various interest levels. Elections have been deployed at numerous levels in Uganda's history both prior and post-independence.

A significant example is the establishment and competitive Legislative Council elections that were carried out in the 1950s during colonialism/protectionism of Uganda and the pre-independence elections of March 1961 whose particulars were contested resulting to a fresh general election in 1962.

In the final phases of the post-independence (1986 to date) voting has been consistent but evidently with concerns flanking to rigging, violence, coercion and organized marginalization of certain targeted groups as numerous observers have reported and post-election breakdown reports are to be appraised.

The first post-independence election in Uganda was carried out in October 1963, following which the Buganda King "*Kabaka*" Sir Edward Muteesa II became the first President of independent Uganda. It was followed by others in 1980, 1996, 2001, 2006 and the February 2011 and recently the February 2016 general elections. The National Resistance Movement (NRM) has been in government during the administration of five out of the seven elections that have taken place since post-independence with those of 2006, 2011 and 2016 organized on multiparty basis¹⁰⁵.

¹⁰⁵ Makara Sabiti, 'Deepening democracy through Multi-partyism: the bumpy road to Uganda's 2011 elections.' *Africa Spectrum* 45.2 (2010): 82.

Viable and significant democracy is not measured by the count of elections conducted and their results but by the real and definite sensation of democratization and the heights of noble governance in day to day undertakings of the Government as most researchers have established.¹⁰⁶

Consistent free and fair elections assists with various objectives such as checks and balances to persons in authority and opens a platform for uncluttered discussions on administrative and community matters on which the public has contrasting assessments.¹⁰⁷ It is also reasoned that through free and fair voting political disputes may be settled with tranquilly¹⁰⁸. The above mentioned goal may only result from procedures that are undertaken appropriately.¹⁰⁹ The standard for determining “appropriately” lies in the globally established and renowned ideologies¹¹⁰.

That aside, Uganda’s governance system indeed is a comprehensive one, with elections at numerous ranks¹¹¹. Uganda’s worrying and perturbing antiquity of elections is not much dissimilar in terms of tendency of violence and political and societal abrasion to result from electoral conducts as other bordering states like Kenya, Burundi and Congo¹¹².

¹⁰⁶Sandrine Perrot, Sabiti Makara, Jerome Lafargue and Marie-Aude Fouere (eds.),(2014), Introduction: Looking Back at the 2011 Multiparty Elections in Uganda in *Elections In A Hybrid Regime: Revisiting The 2011 Ugandan Polls* (Fountain Publisher 2014)

¹⁰⁷United Nations Systems Staff College et al, (2010), *The Role of Elections in Peace Processes: When and How they advance Stability or Exacerbate Conflicts*, <<https://www.zif-berlin.org/en.html>> accessed 29 November 2019.

¹⁰⁸ Ibid (n 109)

¹⁰⁹ Winrich Kühne, ‘The Role of Elections in Emerging Democracies and Post-Conflict Countries: Key Issues, Lessons Learned and Dilemmas, Friedriek Erbert Stiftung, International Policy Analysis’ (2010) 3.

¹¹⁰ ICCPR art 25: (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entered into force on 23 March 1976,) art25 &49 (right to participate in public affairs, to vote and be voted: standards discussed in part I. of this paper.

¹¹¹ Constitution of the Republic of Uganda, 1995(a way of enhancing democratic governance and in order to ensure the return of power to the people, NRA/Ms Ten Point Programme, the new government reinvigorated a system of governance that is comprised of both the central and local government, the latter being comprised of political and administrative units.) cap11

¹¹² Akijul, ‘Towards the Uganda Elections: An analysis of Conflict Risks and Mitigating Mechanisms’ (2011).

There are threads of confirmations of a resemblance in a number of elections carried out in Uganda during the NRM era¹¹³. Bearing in mind that the determining factors leading to the elections such as election law transformations and political improvements have not yet been mitigated by the parliament or gazetted despite having an Election road map to 2021, it is not impulsive to foresee similar occurrence during the upcoming 2021 elections just as it was witnessed in 2016.

The concealed /hushed but relevant enquiry therefore becomes as has always been put by the diverse quarters in the pursuit for free, trustworthy and viable elections in Uganda, how furnished/suitable is the legal and institutional outline of the Nation and that of the Election Supervision Body; The Electoral Commission to address the antagonistic legal, social, political and other challenging features that may arise in the election processes? Is law the a charmed tool that can remedy all elections linked irregularities in Uganda and if so why is the government reluctant in making such amendments year in year out until the subsequent balloting round concludes?

Nonetheless, Uganda's authority organization is an extensive one, with elections at numerous ranks¹¹⁴. This study submission has endeavoured to analyse the legal (normative and organized) background on poll elections in Uganda and connected prose. It supplementary tries to deliberate the standards and organizations, classifies the stakeholders and how they relay amongst themselves and with the national and the election Management body. It then goes further to try and illustrate how these connections work out within the infamous political arenas of Uganda; pre, during and post-election and Uganda's performance on elections if compared and contrasted with the

¹¹³ Kenneth Mpyisi and Victorial Mwirichia: 'Institute for Security Studies, Situation Report, Uganda: Analysis of and Reflection on the 2011 Elections < <https://www.issafrika.org/uploads/5May11Uganda.pdf>> accessed 15 November 2015.

¹¹⁴ Constitution of the Republic of Uganda, 1995(a way of enhancing democratic governance and in order to ensure the return of power to the people, NRA/Ms Ten Point Programme, the new government reinvigorated a system of governance that is comprised of both the central and local government, the latter being comprised of political and administrative units.) cap11

conventional local and international standards on respectable and democratic governance principles of managing of elections.

It is worth noting that one among the various theories propounded is that amendment of electoral regulations is a political process mostly combined with the prolonged tenure dynamic in successive elections in Uganda, might leave the results and methods of election in the same place - Again and Again as it has for the last five consecutive multi-party elections.

It is feasible that there won't be attainment of any significant changes in the upcoming General elections of 2021 if the stakeholders are the same as the last twenty (20) years. This makes the circumstances difficult in a manner. It is therefore justifiable to conclude that proclaiming law as the solution is not entirely true especially if it is passed by the mainly the same players acting within the same capacity of incumbency who has an interest in the result of the election.

This study now progresses a proposition that other non-legal (social, economic, political (local and geopolitical) dynamics are applicable in enlightening what ensues at numerous platforms of the electoral process; pre, during and post, and the outcomes are important and distinguishable if certain values such as the values of good governance and democratic governance are initiated in the election law transformations beginning from the election management organizations to the associations of the different concerned classes of people.

2.1. Categorization of the Historical Record of Election Management in Uganda

2.1.1. The Pre-Independence Period (1894 to 1962)

Before the entry of the colonial order, Uganda as it is now did not exist as a single entity with defined boundaries and a system of governance it was what is now largely called nation states of tribal groupings. The area now so defined and called Uganda was inhabited by traditional societies characterised either as centralized kingdoms or as decentralized chiefdoms¹¹⁵.

In the year 1894¹¹⁶, after several contacts that the first British missionaries had had with the Kingdom of Buganda in particular because of their non-aggressive tone with them unlike other tribes, Uganda was formally declared a British Protectorate¹¹⁷.

In the year 1902, the Imperial British government issued an Order in Council that in effect imported to Uganda laws in force in the United Kingdom¹¹⁸ a practice that had been done earlier in India and other colonized countries in the British Commonwealth.

The Order in Council also gave the representative of the Crown, designated as the Commissioner, the power to make certain ordinances for the administration of justice, revenue collection, and generally for the peace, order, and good government of all persons in Uganda¹¹⁹.

Further in 1920, another Order in Council was promulgated that established a Legislative Council (LEGCO), defining its membership of seven (7) to include the Governor, the Chief Secretary, the Attorney General, the Treasury, the Principal Medical Officer, and

¹¹⁵ Ogwang, C (2000) 'A Brief History of the Electoral Commission in Uganda' in The Electoral Commission Today, 10th Anniversary Edn, EC of Uganda, p. 5.

¹¹⁶ Maxon, Robert M. (ed.), 1994. East Africa, An Introductory History, West Virginia University Press: Morgantown, pp. 262-267

¹¹⁷ M. Wright, Buganda in the Heroic Age, (Oxford UP, 1971)

¹¹⁸ as at 2 August 1902

¹¹⁹ Lwanga-Luwuyiigo, Sanwiri (25 September 1987). The Colonial Roots of Internal Conflict in Uganda (Makerere University) 8. Retrieved 13 June 2017.

two others. The said Order in Council allowed the LEGCO, under the prime stewardship of the Governor, to make ordinances for the governance of the Protectorate¹²⁰.

Later in the years, the basic composition of the LEGCO was expanded to include non-Europeans, beginning with Indians, and in 1945 Africans too joined the Council and in 1958, the first direct elections to the LEGCO were held.

By this time after much political agitations, when pressure for independence was at its peak, it became clear that the Protectorate would be granted independence and allowed to establish self-rule and as was being done for all colonies that were being prepared for independence, a constitutional conference for Uganda was convened in Lancaster in the United Kingdom, at which Uganda's Independence Constitution was born, in time for independence on 9 October 1962¹²¹.

The election, appointment or elevation of certain persons and individuals set Uganda to have its first members of the LEGCO who would now found the legal and structural system to manage and administer Uganda generally¹²².

2.1.2. The Post-Independence Period (1962 to 1985)

Now the independent Uganda faced with an artificially amalgamated nation, having been pieced together from several kingdoms and chiefdoms with different backgrounds and cultures, the 1962 Constitution adopted a federal and semi-federal approach. The then President, who was constituted as the Head of State, was accordingly to be elected by the

¹²⁰ Michael Twaddle, The Bakungu chiefs of Buganda under British colonial rule, 1900–1930. *Journal of African History* (1969): 309-322

¹²¹ *Supra* (n 122) 21

¹²² Michael Twaddle, The Bakungu chiefs of Buganda under British colonial rule, 1900–1930. *Journal of African History* (1969): 309-322

National Assembly from among the rulers of the federal states and the constitutional rulers of the districts.¹²³

Although the Constitution vested executive power in the President¹²⁴, it also limited this power in a number of ways, the most obvious being the creation of the office of Prime Minister. The powers vested in the President to appoint the Prime Minister were largely ceremonial; the President was obliged to appoint as Prime Minister the leader of the political party with the majority membership in the National Assembly¹²⁵ in Kampala.

The Honourable Prime Minister could only be removed by the President after a vote of no confidence in the government was passed by the National Assembly. The Cabinet was to be constituted by the Prime Minister, together with other ministers appointed by the President, but on the advice of the Prime Minister.¹²⁶ That was the process that largely formed what one would refer to as elective politics in Uganda for that period.

The Period from 1966 to 1985 in Uganda's politics and history election calendar stands out because there were many developments that changed the way Uganda was managed and administered in all spheres of life.

It is reported that amidst these political events in Uganda, the army started gaining prominence and having put in an excellent performance in the Congo under the command of Idi Amin against the Katanga rebels, the army's profile had improved tremendously and were seen as placed to be good administrators. Then it soon became clear to the

¹²³ 1962 Constitution, Article 36(1).

¹²⁴ 1962 Constitution, Article 61(1).

¹²⁵ 1962 Constitution, Article 62(3).

¹²⁶ 1962 Constitution, Article 62(10).

political actors that success against their opponents would depend on the relationship they enjoyed with the army and that began a period of abuse of the army institution¹²⁷.

Indeed, when a political dispute emerged between Obote, on the one hand, and the King of Buganda and political actors in the government on the other, Obote acted swiftly by arresting five Cabinet ministers and putting Idi Amin in control of the army. To Obote, the solution for a stable united Uganda was the abolition of kingdoms, including Buganda, and the establishment of a unitary state.

On 22 February 1966, Obote took over the reins of government power, arguing that this move was ‘in the interest of national unity and public security and tranquility’¹²⁸. Two days later, Obote suspended the 1962 Constitution¹²⁹.

On 15 April 1966, Obote introduced into Parliament the 1966 ‘Pigeon Hole Constitution’¹³⁰, which was so described because it was never debated; members of the National Assembly were advised they would find the draft Constitution in their pigeon hole, to be adopted the same day. The 1966 Interim Constitution changed the manner of electing the President, by designating the leader of the majority party in Parliament as the President¹³¹.

On 8 September 1967, the Interim Constitution was replaced by the Republican Constitution, which declared Uganda a Republic. The Constitution declared that ‘[t]he institution of King or Ruler of a Kingdom or Constitutional Head of a District, by

¹²⁷ Christopher Mbazira Associate Professor, School of Law, Makerere University, Coordinator, Public Interest Law Clinic, and Visiting Associate Professor, University of Witwatersrand, South Africa

¹²⁸ Phares Mutibwa, *Uganda since Independence: A Story of Unfulfilled Hopes* (Fountain Publishers Ltd, Kampala, 1992) at 39.

¹²⁹ Pike, John. *Uganda Army History*, last accessed at: www.globalsecurity.org. on 2 November, 2019

¹³⁰ Omara-Otunnu, Amii (1987). *Politics and the Military in Uganda, 1890–1985*. Springer

¹³¹ For changes introduced by the 1966 Constitution, see HF Morris, ‘The Ugandan Constitution, April 1966’ (1966) 10 *Journal of African Law* 112–116.

whatever name called, existing immediately before the commencement of this Constitution under the law then in force, is hereby abolished'.¹³²

On 25 January 1971, Idi Amin took advantage of the absence of Obote, who was on a state visit to Singapore, to stage a coup d'état. Amin immediately dismissed Parliament, suspended the Constitution, and began his rule by decrees passed by the Military Council, which he chaired.

The military assumed all powers, including judicial powers exercised through the military tribunals, which exercised jurisdiction over civilians for such civilian offences as smuggling goods or engaging in political activity. Amin then started his reign of terror, brutally murdering all who opposed him, and hordes of politicians and professionals fled into exile.¹³³

The overthrow of Idi Amin in 1979 by Ugandan exiles, with the support of Tanzania, was expected to restore democracy and constitutional rule. Unfortunately, this was not the case. The problem that immediately surfaced was the presence of many liberation groups that had different ideologies and plans for the country.¹³⁴

The period from 1980 to 1985 was a fast one in the politics of Uganda characterised with civil war in the central part of Uganda especially in Luweero or Bulemezi districts was during this period that a transitional government was formed to organise and return Uganda to democracy after the help of Tanzania and the government that was formed was characterised by political intrigue between the different factions, with the UPC-led faction dominating the political and social scene.

¹³² 1967 Constitution, Article 118(1).

¹³³ See Henry Kyemba, *A State of Blood: The Inside Story of Idi Amin* (Grosset & Danlap, 1977).

¹³⁴ *Ibid* (n 130) 125.

Multi-party elections organized in 1980 turned out to make a mockery of democracy and led to some participants to wage war. The elections were marred by irregularities and malpractices that even the election managers and administrators were at a loss on who really won the 1980 elections¹³⁵.

The Military Commission, which was controlled by the UPC, usurped the powers of the Electoral Commission by then. To reverse what many believed to be a victory for the Democratic Party (DP), the Military Commission hurriedly pushed through a law which prohibited presiding officials from announcing the results. Later, in what were believed to be ‘doctored’ results, the Commission announced that Obote’s UPC had won¹³⁶.

2.1.3. The Yoweri Kaguta Museveni Administration Era (1986- 2019)

The Museveni Regime period that started after the overthrow of government in 1986 to 2016 has had interesting legal and structural developments aimed at enhancing political rights and encouraging democratic values and a sense of governance in Uganda based on certain constitutional thresholds¹³⁷.

In 1986, the National Resistance Movement (NRM) came to power after overthrowing the military regime of General Tito Okello. This group formed the National Resistance Army government and, using the National Resistance Council (NRC), which served as Parliament, enacted Statute No. 5 in 1988 to establish the Uganda Constitution Commission¹³⁸. The commission began the process of writing and developing a new Constitution for Uganda. Justice Benjamin Odoki was its chairman¹³⁹.

¹³⁵ Omara-Otunnu, Amii (1987). *Politics and the Military in Uganda, 1890–1985*. Springer Publishers

¹³⁶ Christopher Mbazira Associate Professor, School of Law, Makerere University, Coordinator, Public Interest Law Clinic, and Visiting Associate Professor, University of Witwatersrand, South Africa

¹³⁷ Museveni, YK (1997) [reprinted 2007] *Sowing the Mustard Seed*, Moran Publishers

¹³⁸ *Supra* (n 139)

¹³⁹ *Supra* (n 139) 122

When the NRM took over government, it declared that its ascendancy to power was not ‘a mere change of guards’, but a ‘fundamental change’. The face of government and the army changed, becoming more friendly and non-repressive. The new government announced that its activities would be guided by the Ten Point Programme, a catalogue of ten guiding principles conceived during the armed struggle, as the basis for reform¹⁴⁰.

The ten points comprised of democracy; security; the consolidation of national security and the elimination of all forms of sectarianism; defending and consolidating national independence; building an independent, integrated, and self-sustaining national economy; the restoration and improvement of social services and the rehabilitation of war-ravaged areas; the elimination of corruption and the misuse of power; redressing errors that had resulted in the dislocation of sections of the population, and improvement of others; co-operation with other African countries in defending the human and democratic rights of brothers in other parts of Africa; and following an economic strategy of a mixed economy¹⁴¹.

Although the NRM government began its governance under the 1967 Constitution, it made a number of changes of constitutional significance. Although the Constitution made provision for such constitutional institutions as Parliament and a Cabinet, in its first days the NRM used its military structures, including the High Command and the Military Council, as the political decision-making bodies.¹⁴²

Also of significance was the regulation of multi-party democracy by the suspension of the activities of political parties and, in its place, the adoption of the ‘Movement’ or ‘No-

¹⁴⁰ Y. Museveni, *Sowing the mustard seed: The struggle for freedom and democracy in Uganda*, Moran Publishers, 1997

¹⁴¹ Kassimir, Ronald, *Reading Museveni: Structure, Agency and Pedagogy in Ugandan Politics*. *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines*, vol. 33, no. 2/3, 1999, pp. 649–673. JSTOR, www.jstor.org/stable/486282.

¹⁴² Dan M Mudola, D M Mudoola, ‘Institutional Building: The Case of the NRM and the Military in Uganda 1986–9’, in H Hansen & M Twadde (eds), *Changing Uganda: The Dilemma of Structural Adjustment and Revolutionary Change* (Eastern African Studies, James Currey Ltd, 1991) 230, 231

party' system.¹⁴³ The NRM argued that political parties were divisive and partly responsible for the country's historical woes.¹⁴⁴ Elections were also suspended and the country had to wait for ten years before holding a presidential election, in what the NRM described as a period of transition. One of the developments marking a milestone in constitutional terms was the 1989 appointment of the Uganda Constitutional Commission (widely referred to by the name of its Chairperson as the 'Odoki Commission').¹⁴⁵

The mandate of the Commission was to traverse all parts of the country and collect people's views on the content of a new constitution to take the country forward. Later, the Report of the Commission was debated by an elected Constitutional Assembly, which in October 1995 adopted the 1995 Constitution, thereby repealing the 1967 Constitution¹⁴⁶.

But before that in 1993, the Government appointed a Commission for the Constituent Assembly (CCA) for the purpose of organizing elections of delegates to the Constituent Assembly (CA), representing all constituencies in Uganda which debated and passed the Draft. In 1994, constituent assembly elections¹⁴⁷ were held and; the delegates debated the draft constitution and finally promulgated a new Constitution for Uganda in October 1995. Article 60 of the new Constitution provided for establishment of a permanent Electoral Commission with a mandate of organizing, conducting and supervising regular elections and referenda.

An Interim Electoral Commission (IEC) was appointed by government to organise the 1996 General Elections. This Commission organized the 1996 Presidential and General

¹⁴³ See Giovanna Carbone, *No-Party Democracy? Ugandan Politics in Comparative Perspective* (Lynne Rienner Publishers, Boulder, 2008)

¹⁴⁴ George Kirya, 'The "No Party" or "Movement": Democracy in Uganda' (1998) 60 *The Review* 79–101.

¹⁴⁵ Odoki, *The Search for a National Consensus: The Making of the 1995 Uganda Constitution*, Fountain Publishers, Kampala, 2005.

¹⁴⁶ See Benjamin Odoki, *Challenges of Constitution Making* paged 263-286 last accessed at <http://constitutionnet.org/sites/default/files/Odoki,%20B.%20Challenges%20of%20Constitution-making%20in%20Uganda.pdf> accessed 2 November, 2019

¹⁴⁷ held in March 1994

Parliamentary elections, which were Uganda's first general election in 16 years. It should not be lost for the record that for the period between January 1986 and July 2005, Uganda had a 'no-party' system of governance also known as the Movement system, which considered individual merit as a basis for election to political office, and not party affiliation and there was no multi-party politics or democracy largely a hallmark of elective politics world over.

Parliament enacted the Electoral Commission Act in May 1997, hence establishing a permanent and independent election management body to organise, conduct and supervise elections and referenda. This marked a significant achievement for the revival of democratic governance in Uganda.

The Election Commission Act 1997 provided for appointment of a Commission comprising seven members, to serve for a seven-year term, which could be renewed only once. In 1999, the Commission adopted a management structure with directorates and technical departments, and also established permanent district offices to handle continuous voter registration and other election related activities at the district level.

On November 17, 2002, a new Commission was appointed. This Commission was responsible for organizing and conducting all the elections, by-elections and a referendum during the seven-year period (2002-2009). In the referendum on change of political system, held on July 28, 2005, Ugandans voted to adopt a multiparty system of governance.

Following results of the July 2005 plebiscite, The Political Parties and Organizations Act 2005, was enacted. It provided, among others, for the registration, regulation and organization of political parties and organizations. The Act entrusted this oversight role to the Electoral Commission.

In February 2006, the Commission successfully organized the first multi-party General Elections in Uganda since 1980. Seven parties sponsored candidates for the Presidential Elections while nine (9) and thirteen (13) parties fielded candidates for Parliamentary and Local Council Elections, respectively.

The 2011 General Elections were the second to be successfully organized by the Electoral Commission, under a multi-party dispensation in Uganda. The smooth conclusion of these elections, in which voters elected leaders from diverse political backgrounds, has been widely described as testimony to the commitment of Ugandans to pursue peaceful and democratic means of determining their leaders.

General elections were yet again held in Uganda on 18 February 2016 to elect the President and the Parliament. President Museveni still emerged winner and the matter ended up in the Supreme Court of Uganda. The Supreme Court ordered and recommended that electoral law reforms be initiated.

2.2. Conclusion

Elections are not a new phenomenon in Uganda. They have been conducted at various points in Uganda's history; pre independence and post-independence.¹⁴⁸ 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 and specifically the Museveni political Era (1986 to date) elections have been regular but short of being free, fair, transparent and credible. The first post-independence election in Uganda was conducted in October 1963,

¹⁴⁸ Staffan I. Lindberg, (2006), *Democracy and Elections in Africa*, John Hopkins University Press, Baltimore Maryland, at 9. Crispy Kaheru, *Elections at the Dawn of independence: What did they mean for subsequent electoral processes? in Uganda @ 50 Years; A Golden Jubilee Commemoration*, David Sseppuuya (Ed), 2011 Supplement, at VIII. Published by the Daily Monitor (Kampala 26 October, 2011)

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 organized on multiparty basis¹⁴⁹.

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.¹⁵⁰ Uganda has held six successful parliamentary elections since independence in 1962. Each of the polls was a learning experience, revealing areas that need strengthening of the electoral system in Uganda.

Elective and civic educational training; Party registration and funding; Settlement of election disputes; Demarcation of the electoral boundaries; budgeting and financing of election activities and the institutional strengthening of the electoral administration body have emerged as key areas which, given the electoral dynamics not only in Uganda but also in many other democratic nations, especially in Africa, are in great need of revision¹⁵¹.

The study argues that the politics of Uganda has not only been fragile but also fledging and led to political and social anarchy and civil unrest not to mention civil wars in turns since independence up until 1985 but even as of the last General election of 2016 never the less there seems to be a lot to be desired considering the stakeholders agitations for

¹⁴⁹ S. Makara, Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections, *Africa Spectrum*, 2/2010. German Institute of Global and Area Studies 81-94 at 82.

¹⁵⁰ Sandrine Perrot, Sabiti Makara, Jerome Lafargue and Marie-Aude Fouere (eds.), (2014), Introduction: Looking Back at the 2011 Multiparty Elections in Uganda in *Elections In A Hybrid Regime: Revisiting The 2011 Ugandan Polls*, Fountain Publishers; Also see Makara, *Ibid*.

¹⁵¹ Sekaggya, M (2010) Uganda: The Management of Elections, Open Society Initiative for Eastern Africa, p. 12; Mbazira, C (2009) Reform Overdue: Making the Case for Electoral Restructuring in Uganda, HURIPPEC Working Paper No. 26, p. 10

law reforms in the election management and administration before the next general election that is to be held in 2021.

This chapter on the history of Election Management in Uganda now leads us in examining the Legislative and Institutional framework that the Electoral Commission is premised on in the next chapter.

CHAPTER THREE

THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK OF ELECTION MANAGEMENT IN UGANDA

“Law does many things: It creates institutions, facilitates transactions, gives incentives for socially beneficial behavior, deters misconduct, and manufactures social realities. But one thing law does especially is legitimate power, both just power and unjust power. Law’s ability to legitimate is the source of the nested opposition between law and justice. Law is never perfectly just— indeed, it is often not very just at all. And yet it is an indispensable condition for justice.”¹⁵²

3.0. Introduction

This chapter addresses the legislative and Institutional framework of election management in Uganda. It briefly looks at the legislative wheels that oil the mandate of the Electoral Commission of Uganda in managing and administering elections in Uganda at different levels in a particular election cycle and how they use the said legal mandate to prepare Ugandans for elections every after 5 years.

It also examines the Institutional framework that the Electoral Commission anchors upon to fully operationalize and how the institutional framework aid or curtails the operations of the Electoral Commission in delivering elections that are free, fair, transparent and credible. It then highlights the gaps in the legislative and the institutional framework to argue that indeed with the legislative and institutional framework as is, the Electoral Commission cannot deliver elections that can be said to be free, fair, transparent and credible to all stakeholders.

¹⁵² Jack M. Balkin, *Critical Legal Theory Today*, in Francis Jay Mootz, ed., *On Philosophy in American Law* (Cambridge University Press 2009).

The chapter on one part examines the legislative framework looking at the local. Regional and international legislative framework upon which the Electoral Commission borrows mandate and rests legal comfort to operate the way it does and on the other part examines the institutional framework upon which the Electoral Commission syncs in its enormous task of managing and administering elections in Uganda.

Uganda's National legislation provides the basic conditions for competitive democratic elections. The key legal instruments for the conduct of these elections are: The Constitution of Uganda 1995 (as amended) Presidential Elections Act 2005 (as amended) Parliamentary Elections Act 2005 (as amended) Electoral Commission Act 1997 (as amended) 11 Political Parties and Organisations Act 2005 (as amended) Electronic Media Act Press and Journalist Act¹⁵³.

Uganda has signed all core treaties relating to international and regional standards for elections. These include; United Nations Declaration of Human Rights International Covenant on Civil and Political Rights Convention on the Elimination of All Forms of Discrimination against Women International Convention on the Elimination of All Forms of Racial Discrimination African Charter on Human and Peoples' Rights.¹⁵⁴

The most significant internationally recognized instruments referred to in this study are the Universal Declaration of Human Rights (UDHR)¹⁵⁵, the International Covenant on Civil and Political Rights (ICCPR)¹⁵⁶, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁵⁷, and the Convention on the Elimination

¹⁵³ Report of the Commonwealth Observer Group, (2011), Uganda Presidential and Parliamentary Elections, Commonwealth Secretariat, p.15

¹⁵⁴ Ibid (n 155) 15.

¹⁵⁵ <<https://www.un.org/en/universal-declaration-human-rights/>> accessed 29 November 2019

¹⁵⁶ < <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/>> accessed 29 November 2019

¹⁵⁷ < <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>> accessed 29 November 2019

of all forms of Discrimination against Women (CEDAW).¹⁵⁸ Uganda is a party to the three treaties; the ICCPR, ICERD and CEDAW.

Regionally, this study looks to the African Charter on Democracy Elections and Governance (ACDEG)¹⁵⁹, which Uganda has signed but not yet ratified, and the 2002 AU Declaration on the Principles Governing Democratic Elections in Africa (AU Declaration).

3.1. Legislative Framework

3.1.2 Local Framework

The Electoral Commission Act, 2005; The Political Parties and Organization's Act, 2005¹⁶⁰; The Presidential Elections Act, 2005¹⁶¹, The Press and Journalist Act, 2000; and The Electronic Media Act. These laws provide the legal framework for the management of presidential elections as well as the conduct of all stakeholders in the Electoral process.

The national electoral process is premised on Directive II of the National Objectives and Directive Principles of State Policy, which enumerates the democratic principles that all legal and policy formulation processes must conform to. Directive II states that the State shall be based on democratic principles, which empower and encourage the active participation of all citizens at all levels in their own governance; all the people of Uganda shall have access to leadership position at all levels, subject to the Constitution, the State shall be guided by the principle of decentralization and devolution of governmental functions and powers to the people at appropriate levels, where they can best manage and direct their own affairs; the composition of Government shall be broadly representative

¹⁵⁸ < <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> > accessed 29 November 2019

¹⁵⁹ < http://archive.ipu.org/idd-E/afr_charter.pdf > accessed 29 November 2019

¹⁶⁰ operationalizing Article 70, 71, 72 and 73 of the Constitution

¹⁶¹ operationalizing Articles 101,102, 103, 104 of the Constitution

of national character and social diversity of the country, all political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organizations and practice., civic organizations shall retain their autonomy in pursuit of their declared objectives.

The right to vote is accorded to every Ugandan citizen of eighteen years and above by the Constitution.¹⁶² While citizens in this age bracket have a duty to register as voters for public elections and referenda, the state is equally required to take all necessary steps to ensure that they register and exercise their right to vote.¹⁶³

The national electoral process is managed by the Electoral Commission established under Article 60 of the Constitution. Members of the Commission are appointed by the President with the approval of Parliament, a process that has been heavily criticized by various stakeholders, who argue that it vests appointing power majorly in the hands of the President and consequently risks undermining the impartiality of the Commission.¹⁶⁴

The process does not appear to safeguard the commissioners from any potential influence from the incumbent authorities, who often have a direct interest in the result of an election. Article 60 (3) further stipulates that the members of the commission shall stay in office for seven years and their appointment may be renewed for only one more term.

The following national or local legislations/ laws provide the local /national legal and regulatory framework for the conduct of elections and we elaborate briefly the intended purpose for each legislation.

¹⁶² Article 59 (1), 1995 Constitution

¹⁶³ Article 59 (3), 1995 Constitution

¹⁶⁴ CCEDU, Towards Reforming Uganda's Electoral Commission; critical areas and reform options, 848

a. The Constitution of Uganda 1995

The 1995 Uganda's Constitution as amended guarantees fundamental rights and freedoms, including freedom of expression, assembly, association, and participation in elections. There are a number of National or local legislations that have been passed in furtherance of these rights and many regional and international legislations have been ratified to associate the Country with the best regional and international best practices.

Elections in Uganda are regulated by a legal framework that is founded upon the constitution¹⁶⁵ and it establishes the Electoral Commission which is independent in its mandate of managing and administering elections in Uganda. The constitution guarantees fundamental freedoms and civil and political rights, including freedom from discrimination, freedom of speech and of expression, which encompasses free press and other media. It also recognizes that all power belongs to the people who, through voting, also bestow upon the elected the authority to govern.¹⁶⁶

According to the constitution, this authority comes from the expression of the will and consent of the people through regular, free and fair elections of their representatives or through referenda.¹⁶⁷ The right to vote is guaranteed in Article 59 for persons who are 18 years and above and registered for that purpose. Constitutional amendments in 2005 introduced multiparty politics and in and 2017 removed presidential term limits and age limits in the constitution

Chapter 7 of the Constitution of Uganda provides for, amongst other things, election of the president, tenure of office of the president and the removal of the president. According to Article 102, to qualify as president a person must be a citizen of Uganda by

¹⁶⁵ Article 61

¹⁶⁶ Chapter 4 of the Constitution

¹⁶⁷ Article 1 (4)

birth; not less than thirty-five years and not more than seventy-five years of age (removed with the amendment popularly called the “age-limit amendment”); Qualified to be a Member of Parliament.

To qualify for election as a member of parliament, a person must be a citizen of Uganda, a registered voter and must have completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law.

b. Presidential Elections Act 2005¹⁶⁸

The Presidential Elections Act and the Parliamentary Elections Act detail the procedures for the conduct of parliamentary and presidential elections. The acts provide in detail the procedures and guidelines for: nomination of candidates, election campaigns, voting, counting, tallying, declaration of election results, election petitions.

The EC is mandated to conduct presidential and parliamentary elections within the first 30 days of the last 90 days of the tenure of the incumbent president. In addition to qualifications set out in the constitution, the acts provide for the financial requirements for candidate nomination and as well as campaigning regulations.

A prospective presidential candidate is expected to pay a fee of 20 million Uganda Shillings and be supported by the signatures of 100 registered voters from at least two thirds of all the country’s districts.

c. Parliamentary Elections Act 2005¹⁶⁹

¹⁶⁸ Date of Assent of this Act was on 5th June, 2010 and the legislation Commenced on the 25th June, 2010.

This legislation was passed to amend the Parliamentary Elections Act, 2005 to require the Secretary General of a political party or organization to notify the Commission where a candidate sponsored by a political party or organization withdraws from an election; to require the Electoral Commission to declare a candidate elected unopposed where one of only two candidates withdraws from an election.¹⁷⁰

It was intended to allow representatives of political parties and organizations and independent candidates taking part in an election to be present during the packing and dispatch of election materials; to require the Commission to provide political parties, political organizations and independent candidates taking part in an election with serial numbers of ballot papers and seals of ballot boxes supplied to each polling station.

The act also allows a person who has no voter's cards but whose name and photograph appear on the voter's register to vote and to require a returning officer to compile and submit to the Commission a report of the elections within the returning officer's electoral district within seven days after the conclusion of the election; to prohibit fundraising and the giving of donations during the period of campaigning; and for related matters¹⁷¹.

d. Electoral Commission Act, 1997

This particular legislation was commencement in 1997.¹⁷² This legislation primary intention was to make miscellaneous provisions relating to the functions of the Electoral Commission (EC) under the Constitution and to provide for other related matters pertaining to election Management and Administration in Uganda. It has had many amendments which are all aimed at addressing the discomfort that the political parties

¹⁶⁹ This Act was assented to on the 5th June, 2010. And its date of Commencement was on the 25th June, 2010.

¹⁷⁰ Ibid (n 171)

¹⁷¹ Ibid (n 171) section 2

¹⁷² Commenced on the 2 May, 1997

being stakeholders have raised on the management and operations of the Electoral Commission as an institution.

e. Political parties and Organizations Act 2005

This particular Act has had two amendments which are Political Parties and Organizations (Amendment) (No. 2) Act, 2010 and the Political Parties and Organizations (Amendment) (No. 4) Act, 2010. The Political Parties and Organizations Act (PPOA) 2005 regulates the registration, financing and functioning of political parties and organizations.

Whilst Articles 71 to 73 of the Constitution already provided for establishment of political parties and organization, the return to multiparty democracy following the 2005 referendum necessitated an enabling legislation to regulate the operations of political parties in the new dispensation.

This Act particularly provides for the registration of political parties by the Electoral Commission, conduct of political parties, including sources of party funding and declaration of assets and accounting to the auditor general every year, the code of conduct for parties and penalties for breaching the provisions of the act and the establishment of a national consultative forum of political parties and organizations.

f. Local Government Act¹⁷³

This was a legislation that was passed to amend the Local Governments Act to remove the compulsory membership of every village resident to a village council and to provide for every Ugandan citizen of eighteen years and above residing in a village to be a

¹⁷³ Date of Assent: 24th April, 2008 Date of Commencement: 2nd May, 2008.

member of a village council if willing; to make every person resident in the village bound by the decisions of the village council.

The Act further is to provide for the Electoral Commission to maintain a register of persons willing to be members of a village council; to provide for written nominations for elections at the village, parish or ward, or county council and for sponsorship of persons by political parties or political organizations to be nominated for elections to the village, parish or ward, or county council.

The Act further is to provide for the Electoral Commission to appoint nomination dates, campaign periods and election dates to the village, parish or ward, or county councils; and to provide for the Electoral Commission to resolve complaints during the electoral process of local councils¹⁷⁴.

g. National Women's Council (Amendment) Act, 2010¹⁷⁵

This legislation was intended to amend the National Women's Council Act to provide for membership of the village women's council, to empower the Electoral Commission to designate a period for registering voters and to maintain a voters' register for the village women's council.

h. National Youth Council (Amendment) Act, 2010

This was an Act passed by parliament to amend the National Youth Council Act and to provide for membership of a village youth council; to empower the Electoral

¹⁷⁴ Ibid

¹⁷⁵ It was assented to on the 5th June, 2010 and it commenced on the 25th June, 2010.

Commission to designate a time period for registration of prospective voters for the youth council elections and to maintain the voters register at village and parish level.¹⁷⁶

i. The Referendum Act and Other Provisions Act, 2005

This was an Act that was passed to make provision for the holding of referenda in pursuance of the provisions of articles 74 and 76 of the Constitution; to give effect to articles 255, 259 and 260 of the Constitution; to cater for a change in the political system by representatives of the people in Parliament and district councils under article 74(2) of the Constitution; to repeal and replace the Referendum Act and to provide for other matters connected with or incidental to the foregoing.¹⁷⁷

The only problem is that it is rarely invoked and most amendments have taken place at the floor of parliament and the last time a referendum was held was during the question of opening up multiparty space in Uganda's political scene in 2005.

Some of the other local legislations and legal framework that aids the finance department in processing payments or accessing funding are the Public Finance Act, Treasury Accounting Instructions, Pensions Act, Standing orders, Circular Standing instructions, Commitment control system procedures /guidelines and The Public Procurement and Disposal of Public Assets Act 2003.

Over the years, it has become apparent that several interest groups, including political parties, parliamentary committees, civil society groups selected governmental agencies and national and international election observers, have proposed several improvements in Uganda's electoral system since 2006, some basic and others more technical.¹⁷⁸

¹⁷⁶ The Act was assented to on the 5th June, 2010 and it commenced on the 25th June, 2010.

¹⁷⁷ The Act was assented to on the 10th February, 2005 and it commenced on the 22nd February, 2005

¹⁷⁸ Sabiti Makara, Lise Rakner and Rwengabo Sabastiano, Administering Uganda's 2006 Multiparty Elections (fountain publisher 2008).

Before the 2011 elections, the following changes were made: the 2005 presidential election law; the law on parliamentary elections of 2005; the law of the electoral commission, Cap 243; Law on Political Parties and Organizations, 2005; the law of the National Women's Council, Cap 318, and the regulation of the National Youth Council. Before the parliamentary elections in 2021, Cap 319 and many more reforms were planned to take into account the recommendations and orders of the courts, in particular, the Supreme Court of Uganda.

The previous amendments were mainly concerned with the administrative aspect of the elections. For example, the twelve-month period for which individuals were required to seek consultation in preparation for their appointment as presidential candidates were deleted.

A provision was introduced which provided for the declaration of a candidate without objection if other candidates of the race withdrew from the election; the amendments also prohibited candidates from using state funds for campaigning purposes and imposed a sanction. The changes prohibited the creation of individual polling stations for the army and other security personnel.

Members of the Organization for Internal Security (ISO) and the Organization for External Security (ESO) could also not be appointed as election constables; the seven-day obligation, during which the returning officer should draw up a report and submit it to the commission, was canceled. Also, fundraising, donations, and similar activities by candidates were banned during the campaign periods.

A new addition was the requirement that the candidate's nomination records should be supported and sealed by the party or organization that sponsors them; and a provision for

two weeks before Election Day, within which the commission was required to have transmitted the register voters.

3.1.2 2019 Electoral Law Reforms

The recent developments after the tabling of the election reform bills by the Honourable Attorney General of Uganda in Parliament. The bills are five of them, and they have interesting proposals for reforms¹⁷⁹.

The five bills that have been tabled for debate are; The Presidential Elections (Amendment) Bill No.17, 2019, The Parliamentary Elections (Amendment) Bill No.18, 2019, The Electoral Commission (Amendment) Bill No. 19, 2019, The Political Parties & Organization (Amendment) Bill No. 20, 2019 and The Local Governments (Amendment).

The 2016 specific recommendations of the Supreme Court came against the backdrop of numerous calls for substantive electoral reforms by both state and non-state actors including: Cabinet (2005, 2009 and 2015), 7th, 8th and 9th Parliaments, Electoral Commission, Uganda Law Reform Commission, National Consultative Forum, Uganda Law Society, Inter-Party Organization for Dialogue, Inter Party Cooperation, Citizens' Coalition for Electoral Democracy in Uganda, international election observation outfits, among others. Calls for legislative consideration of these reforms had for long been frustrated in one way or another.¹⁸⁰

¹⁷⁹ The proposal includes provisions prohibiting cameras and mobile phones in polling stations, prohibiting political party liaison with lobbyists and banning alliances of independent presidential candidates with political parties. Other requirements include the prohibition of candidates on standing as an Independent if they lose in the party's primaries.

¹⁸⁰ <https://www.monitor.co.ug/Magazines/PeoplePower/Supreme-Court-refreshes-drive-for-electoral-reforms/689844-5185746-g572qlz/index.html>

3.1.3 A Look at the Proposed Reforms in the five pending Bills

The five electoral reform bills, which have since become popular and which the government has largely submitted, provide for the participation of independent candidates in the elections and limit the funding sources for candidates to finance the polls; calls on the electoral commission to identify restricted areas and establish a specific procedure for voting in these areas.

The Attorney General¹⁸¹ has suggested in the context of the above reforms that a former Party member can only run independently as a Member of Parliament if he left the political party twelve months before the date of appointment and was duly dismissed by the party.

The above amendments also propose or require that the candidates of the Electoral Commission notify, within 14 days of the date of the nomination, the source of funds they wish to use to finance their election campaigns. The amendments also prevent candidates from receiving support from foreigners who have an intention of overthrowing the Ugandan government or jeopardizing its security.

The Attorney further proposes that those guilty of a particular clause will be charged under the 2002 Anti-Terrorism Law and lose money to the state. The reforms will also prohibit the submission of voting material within 48 hours of the voting date and to amend it to any time before the election date.

During the last parliamentary elections, electoral documents reached some areas, notably opposition strongholds, a few hours after the official start of voting. Political parties in

¹⁸¹ The Hon. Attorney General of the Republic of Uganda is the Official Government adviser and he is the one under Ugandan law who tables amendments to the law on behalf of the government.

the country's opposition asked Parliament to permit them to present a bill proposed by the opposition¹⁸².

The proposed reforms suggest that the opposition seek to restore the presidential term limit, which was removed from the constitution in 2005; and to switch the position of the vice president to deputy president. They also support the removal of the post of Prime Minister, and the reduction of the number of ministers and secretary of state, among other reforms generally in line with the recommendations of the Supreme Court.

3.2 Regional and International Framework

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

Regional documents like the African Charter on Democracy, Elections and Governance¹⁸³ are very emphatic and declaratory in issues of election management. The Charter states that 'State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa'.¹⁸⁴

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

¹⁸² Through Mr. Niwagaba, an independent MP representing the Ndorwa East constituency.

¹⁸³ http://archive.ipu.org/idd-E/afr_charter.pdf

¹⁸⁴ Article 17.

This is in line with the national legal requirements for media houses to have a balanced coverage of all political candidates.

The most important regional legal instrument on electoral democracy is the African Charter on Democracy, Elections and Governance, which has been signed and ratified by only 10 States. 28 States including Uganda have signed but not ratified the treaty¹⁸⁵. Article 3 of the Charter calls on parties to implement this Charter in accordance, which include among others, respect for human rights and democratic principles, promotion of a system of government that is representative, holding of regular, transparent, free and fair elections et cetera.

Under Article 4, state parties undertake to commit themselves to the promotion of democracy, the principle of the rule of law and human rights and also recognize popular participation through universal suffrage as the inalienable right of the people.

Although the Charter is essentially about democracy, Article 9 nonetheless provides that state parties shall undertake to design and implement social and economic policies and programmes that promote sustainable development and human security. From this provision, one can rightly aver that there is a commonly assumed nexus between development and democracy.¹⁸⁶

The International Covenant on Civil and Political Rights (ICCPR)¹⁸⁷ states that "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions; to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be

¹⁸⁵ Ratification Table: African Charter on Democracy, Elections and Governance, Found at <http://www.achpr.org/instruments/charter-democracy/ratification/>

¹⁸⁶ Ibid

¹⁸⁷ <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

held by secret ballot; guaranteeing the free expression of the will of the electors; to have access, on general terms of equality and to public service in his country"¹⁸⁸.

Uganda is a United Nations member country¹⁸⁹ and it has incorporated into her domestic law (using a variety of constitutional means) key United Nations decisions and treaties, such as the 1966 ICCPR and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁹⁰.

In this case, the Constitution and a series of domestic electoral laws, and the Electoral Commission of Uganda policies and actions, consider the treaties' provisions as treaty obligations that Uganda as a country has voluntarily agreed to adhere to, especially in relation to issues such as universal and non-discriminatory suffrage, secret and free voting, the rights of women to be elected and hold public office, and the rights of minority and interest based groups as the disabled in Uganda.

Bilateral agreements between countries and regional treaties on supranational bodies (e.g. the East African Community) also contains electoral requirements¹⁹¹. The Universal Declaration of Human Rights (UDHR)¹⁹² expressly elaborates both the substance of the right in article 21 which states that, "The will of the people shall be the basis of authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free

¹⁸⁸ Article 25

¹⁸⁹ Uganda was admitted as a member of the United Nations on 25 October 1962 after gaining Independence from the British Colonial Protectorate on 09th October, 1962.

¹⁹⁰ <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>

¹⁹¹ East African Legislative Assembly, Kampala, Uganda, 19 February 2010: The Third Meeting, Third Session of the Second Assembly under the chairmanship of EALA Speaker, Rt. Hon. Abdirahin Haithar Abdi wound up its sitting in Kampala on Friday by among others, adopting an Election Observation Manual for the East African Community

¹⁹² https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

voting procedures¹⁹³.” Article 21 of the UDHR clearly establishes the nexus between citizens’ participation and the legitimacy to govern.

The East African Legislative Assembly (EALA) adopted the said election observation manual and the same is expected to enhance democracy, rule of law and governance, which is essential for political, social and economic development of the region. While complementary laws are usually required to give effect to such treaties, The Electoral Commission of Uganda’s actions that contradict rights contained in ratified treaties may still be legally challengeable in the East Africa Court of Justice (EACJ)¹⁹⁴ sitting in Arusha, Tanzania.

The Constitutive Act of the African Union¹⁹⁵ is another regional instrument that forms part of the legislative framework of election management in Uganda. The Constitutive Act of the African Union is the foundation of the governance framework.

The Act is the basis for policy and institutional arrangements; it defines the establishment, objectives, and principles of the AU and the major implementing organs and institutions. Reflected in the Constitutive Act are global values, principles, and norms relating to human rights, sovereignty, peace and security, good neighborliness, cultural and socio-economic values and international cooperation that are also contained in the Purposes and Principles of the UN as stated in the Charter of the United Nations (UN) Organization.

The Constitutive Act also calls for the promotion of sustainable development at the economic social and cultural levels as well as the integration of African economies.¹⁹⁶

¹⁹³ Universal Declaration of Human Rights, Art. 21 (3), GA Res. 217 A (III), U.N. GAOR, 3rd Session, U.N. DOC. A/810, at 71 (1948).

¹⁹⁴ The East African Court of Justice is a treaty-based judicial body of the East African Community tasked to ensure adherence to law in the interpretation and application of and compliance with the East African Community Treaty of 1999 founded in 2001.

¹⁹⁵ <https://au.int/en/treaties/constitutive-act-african-union>

¹⁹⁶ Article 3(j) of the Constitutive Act of the African Union

The regional and international legislative framework in that regard demonstrates that indeed Uganda is informed on the regional and international obligations especially relating to good governance and election management and there is no reason why the electoral Commission of Uganda should fall short of the regional and international standard especially with the fact that Uganda has ratified and adopted all of the regional and International legislative frameworks that have been discussed herein relating to good governance and election management.

Uganda's current legislation generally complies with international and regional standards, with four main exceptions: the NGO Registration (Amendment) Act 2006; the Political Parties and Organisations (Amendment) Act 2010; laws restricting media freedom and freedom of assembly; and inadequate legislation relating to a state of emergency and election-related violence.

The removal of term limits from the presidency in a 2005 amendment to the Constitution and the recent amendments to remove age limit on presidency under Article 102 of the Constitution also contravenes guidelines adopted by the African Union (AU).

3.3 Institutional Framework

Good governance of electoral administration systems can serve as an entry point to raising institutional performance in the delivery of election services. Essential to high performance are election administration bodies' independence, election management (institutional) model, and history of the country, legalization, impartial, behavior, integrity and skill of expertise, standards, information, incentives and accountability¹⁹⁷.

¹⁹⁷ Nabukeera Madinah, 2018, Governance of Electoral Processes in Uganda, Quest Journals Journal of Research in Humanities and Social Science Volume 6 ~ Issue 11 (2018) pp.: 39-53

3.3.2 Local Institutional Systems

The Republic of Uganda as is constituted legally, politically and socially is a presidential system where the president is the Head of State and head of the Executive arm and one of the three organs of government.

There is also the Judiciary headed by the Chief Justice and the Legislature commonly known as the Parliament. All these arms of government are independent constitutionally and with all the three working together they bring life to the provisions of the Constitution.

The Electoral Commission of Uganda relies on all the three organs in the management of elections in Uganda. The Executive formulates policy through the Executive Cabinet of appointed ministers of the President on election management and sends the said policies as government papers or cabinet minutes to the Parliament for formulation of the law and the judiciary on the other hand determines ant disputes that arise before, during and after elections.

3.3.2.1 The Legislature

The Constitution¹⁹⁸ prescribes the composition of Parliament¹⁹⁹ as members directly elected to represent constituencies; One woman representative for every district²⁰⁰; such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine²⁰¹; and the Vice-President and Ministers

¹⁹⁸ Article 78 (1)

¹⁹⁹ Article 77

²⁰⁰ Article 78 (1) (b)

²⁰¹ Article 78 (1) (c)

who, if not already elected Members of Parliament, shall be ex-officio members without the right to vote on any issue requiring a vote in Parliament²⁰².

All these Parliamentarians are elected by Ugandans through general national elections that are conducted by the Electoral Commission of Uganda and they are sworn in by the officials of the commission as members elected by the people.

Therefore, this study argues that in the 21st Century Africa and in Uganda, there is growing interest more than ever before in issues related to democracy and good governance around the world.

This is a reflection of the increasing acceptance of the fact that democracy and good governance are not a luxury, but a fundamental requirement to achieve sustainable development. Parliaments as one of the key state institutions in a democratic system of governance have a critical role to play in promoting democracy and good governance²⁰³.

As the democratically elected representatives of the people, parliaments have the honorable task to ensure government by the people and for the people. In the performance of their key functions of legislation, representation and oversight parliaments can actively engage in the development and implementation of laws, policies and practices that promote democracy and good governance²⁰⁴.

²⁰² Article 78 (1) (d)

²⁰³ Siri Gloppen, E. Kasimbazi and A. Kibandama (2008), "Elections in Court: The Judiciary and Uganda's 2006 Election Process" in J. Kiiza, Sabiti Makara and L. Rakner (2008), *Electoral Democracy in Uganda*.

²⁰⁴ <https://www.uneca.org/publications/role-parliament-promoting-good-governance>

3.3.2.2 The Executive

According to the constitution²⁰⁵, the executive is made up of the cabinet of Uganda, which, under the said provision it is provided that:

“Shall consist of the President, the Vice President, the Prime Minister and such number of Ministers as may appear to the President to be reasonably necessary for the efficient running of the State.”

The cabinet has of recent been elected from the members of the parliament and this has been President Museveni’s way of doing things²⁰⁶. Under the law, the Prime Minister assists the President in the supervision of the cabinet and is largely referred to as the leader of government business.

3.3.2.3 The Judiciary

The Ugandan judiciary²⁰⁷ is constitutionally an independent branch of government and consists of magistrate’s courts, high courts, the court of appeal (which transforms to the Constitutional Court of Uganda when hearing constitutional issues), and the Supreme Court. Judges for the High Court are appointed by the president, while Judges for the Court of Appeal are appointed by the president and approved by the legislature.

The functioning of the judiciary is provided for in the constitution²⁰⁸, which states that judiciary power is derived from the people and is to be exercised by the courts established under the constitution in conformity with the values, norms and aspirations of the people.

²⁰⁵ Article 111

²⁰⁶ Article 99 (1)

²⁰⁷ Article 126

²⁰⁸ Article 126 (2)

According to the Constitution²⁰⁹ the judiciary should be independent and should not be subject to the control or direction of any persons or authority and further no person shall interfere with the courts or judicial officers in the exercise of their functions²¹⁰.

The need to have a fully independent Judiciary as an institution on which the management and administration of election claims can be premised and which should be the oil that informs legislative and institutional reforms cannot be understated in Uganda and especially in the way the previous last two general national elections have been managed and from where the Courts of judicature made legal pronouncements and verdicts on how the Electoral Commission managed the elections.

An independent judicial system is a critical factor in promoting good governance and democracy in any country. According to experts²¹¹ on this subject of election management and democracy in Uganda, the judiciary plays such a role in two ways; on one part 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 charges²¹².

Although observers of the 2006 elections²¹³ noted that compared to the ones of 2001, these were less violent acts, and it was reasonably well organized, this judicial

²⁰⁹ Article 128 (1)

²¹⁰ Article 128(2)

²¹¹ Siri Gloppen, E. Kasimbazi and A. Kibandama (2008), "Elections in Court: The Judiciary and Uganda's 2006 Election Process" in J. Kiiza, Sabiti Makara and L. Rakner (2008), *Electoral Democracy in Uganda*.

²¹² Besigye was cleared of rape charges in March 2006, and of treason in October 2010.

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 and the Supreme Court decision was to be the verdict that Ugandans had spoken. 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 favored the ruling party²¹⁴.

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 elections of representatives of the youth, workers and the army in parliament as unconstitutional²¹⁵.

It remains to be seen how effective the courts will be in political cases in the future thus the role of the judiciary as an institution in election management and administration can not be underestimated.

²¹³ Sabiti Makara, Lise Rakner & L. Savsand, (2009) "Turn-round: The National Resistance Movement and the Reintroduction of Multiparty System in Uganda". In *International Political Science Review*. Vol. 30 No. 2 pp. 185 .204.

²¹⁴ While 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.

²¹⁵ Julius Kiiza, S. Makara and L. Rakner (2008). *Electoral Democracy in Uganda*, Kampala: Fountain Publishers.

3.4 Conclusion

This chapter set out to discuss the legislative and institutional framework of management and administration of elections in Uganda. Various statutes and legislations locally, regionally and internationally have been considered in the discussion and briefly analyzed their purpose and limitations. It has emerged from this chapter that Uganda is not lacking in the legislative and institutional framework of election management but it is short of good governance values and culture to facilitate free, fair, transparent and credible elections in Uganda.

It is noteworthy that the underlying principle emerging from the local legislative framework is that the local laws try to regulate and structure the management of elections to facilitate the delivery of free, fair, transparent and credible elections but they have gaps and the entire local set of legislation needs to be centralized and reviewed with public participation as a major indicator of good governance being done. To achieve what the local and international legislative framework seeks to achieve, the dependence of legal reform from politicians shall not help much but the civil society has to be brought on board to engage the politicians.

Having analyzed the legislative framework, the chapter has concluded that the legislative and institutional framework of election management in Uganda needs to be reformed to incorporate good governance cultural structures.

The study shall proceed examine the Organizational and structural set up of the Electoral Commission of Uganda.

CHAPTER FOUR

A CASE STUDY OF THE ELECTORAL COMMISSION (EC) OF UGANDA

4.0 Introduction

This study examines the organizational and structural set up of the Electoral Commission of Uganda and primarily focuses on the administration, directorates and departments of the EC as a way of analyzing whether such set up has either failed or been unable to manage and administer elections that can be said to be free, fair and credible.

The Constitution of Uganda bestows sovereign power on the people which may be exercised directly or indirectly²¹⁶. In Uganda; indirectly, the power is delegated to legislature²¹⁷ manifestly and to the executive²¹⁸ at the election of the president and further spread both at the local (district and Municipality level) and national level (Parliament and Executive), the executive both at the county and national level²¹⁹.

The Constitution that creates the EC also outlines requirements for the Commission's staff. The Constitution²²⁰ and the Electoral Commission Act enumerate the EC's functions, which include organizing, supervising and safeguarding free and fair elections; demarcating constituencies; ascertaining and publishing official election and referendums results; ensuring the necessary security provisions are in place; hearing

²¹⁶ Article 1, Article 17 (1) (h).

²¹⁷ Article 77

²¹⁸ Article 98

²¹⁹ Article 59 and Article 76

²²⁰ Article 61

elections complaints; implementing civil education programmes; and compiling and updating the register of voters.

The vision of the EC is to ‘promote peaceful continuity of governance through an impeccable electoral process’. Its standing resolution is to ‘promote public confidence in the EC as a credible institution in charge of management of the electoral process through a transparent, accountable and efficient human resource, conducting continuous voter education and update of the voters’ register in order to deliver peaceful, free and fair elections and referendums in accordance with the Constitution’.

The Electoral Commission is established by the Constitution²²¹, which states that the EC shall be independent²²² and “in the performance of its functions²²³, not be subject to the direction or control of any person or authority.” It comprises a Chair, Deputy Chair and five other members²²⁴. Members of the Commission are required to be “persons of high moral character, proven integrity and who possess considerable experience and demonstrated competence in the conduct of public affairs.²²⁵”

Perhaps more importantly than the appointments process, electoral commissioners do not enjoy security of tenure as judges do, and are also subject to term limits, so even without a formal process to remove them, they could simply not be reappointed. The provisions on dismissals of commissioners are provided for under the Constitution²²⁶ which states that a member of the commission may be removed from office by the President only for inability to perform the functions of his or her office arising out of physical or mental incapacity; misbehavior or misconduct; or incompetence. Accordingly, for the

²²¹ Article 60 (1)

²²² Article 62, section 13 of the Electoral Commission Act cap 140, Laws of Uganda

²²³ Article 61

²²⁴ Section 3 of the Electoral Commission Act, cap 140, Laws of Uganda

²²⁵ Article 60 (2) of the Constitution

²²⁶ article 60 (8)

government to dismiss any of the commissioners, it would require a reason that falls into the above categories to avoid litigation arising out of such dismissals.

There is no authority that has found the current members of the EC as incompetent. The Supreme Court ruling on the Presidential Election Petition No.1 of 2006, brought by opposition presidential candidate Kiiza Besigye was highly critical of some aspects of electoral management, but did not comment or allude to the competence of the members of the Commission. The independence of the commission is provided for in the constitution²²⁷. Currently the Commission has 12 permanent regional offices and 112 permanent district offices as well as 1402 temporary staff at the parish level around election time.²²⁸

The Electoral Commission Management is managed by commissioners and it also has a secretariat which is headed by the Secretary,²²⁹ assisted by 3 Directors responsible for 3 Directorates of Operations, Finance and Administration and Technical Support Services. The Secretary is charged with the day to day running of the Commission. He or she coordinates all the activities and functions of the three Directorates of Elections, Technical Services and Finance and Administration.²³⁰

4.1 The Legal and Institutional Structure of the Electoral Commission (EC) of Uganda

4.1.1 Composition and Appointment of Commissioners to the EC

The Electoral Commission is the statutory and body corporate²³¹ responsible for the management of all elections in Uganda. The Electoral commissioners are appointed by

²²⁷ Article 62

²²⁸ <https://www.ec.or.ug.com>

²²⁹ Section 4 and 5 of the Electoral Commission Act, cap 140 Laws of Uganda

²³⁰ <https://www.ec.or.ug/?q=content/departments> accessed on 28th October, 2019

²³¹ Section 2 of the Electoral Commission Act, cap 140, Laws of Uganda

the President with the approval of Parliament.²³² Commission members hold office for a seven-year period, with the possibility of an additional one-term renewal.²³³ The President has the power to remove Electoral Commission members if they are unable to fulfil their duties or for acts of misconduct or incompetence.²³⁴

4.1.2 Functions of the Commission

The constitution charges the commission with the following functions which are;

- i.** Preparing maintaining and updating a national voter register and voters' rolls,
- ii.** Demarcating polling areas,
- iii.** Recruiting and training polling officers,
- iv.** Accrediting election observers,
- v.** Conducting civic and voter education;
- vi.** Procurement and distribution of polling materials,
- vii.** Harmonizing campaign schedules and mediating election disputes that might arise from time and again within or out of the election cycle.²³⁵

4.1.3 Day to day Management and Administration of the Commission

The Secretary of the Commission heads the Secretariat, assisted by the Directors of Elections and Finance and Administration. Under the Directorate of Elections are five departments: Legal and Public Relations, Voter Registration, Data Processing, Voter Education and Training, and Election Management.

The departments in the Directorate of Finance and Administration are Finance, Administration, Human Resources, and Planning and Research. There are also

²³² Article 60 (1)

²³³ Article 60 (3)

²³⁴ Article 60 (8)

²³⁵ Article 61

subordinate district-level electoral offices, which are headed by district registrars. Each district in Uganda is meant to have one district office.

In order to carry out its functions, the Commission came up with a number of departments to help it achieve its role and among them is Election Management Department. The Department is spearheaded by a Head of Department and consists of various sections. This office referred to as the statistical section is responsible for the maintenance of database on the following; nomination of candidates, election programs, election results, election budgets, bye-elections, administrative units, compilation of Electoral Commission budget.

4.2 The Directorates and Departments of the Electoral Commission (EC)

The Electoral Commission of Uganda has different administrative departments that are created internally to assist in the running of the Commissions mandate.²³⁶ In an effort to perform its functions, the Commission is divided into three Directorates; namely Operations, Technical Support Services and; Finance and Administration. The Directorate of Finance and Administration is composed of three Departments namely; Administration, Finance and Human Resource Management.

4.2.1 Directorates

a. Directorate of operations

The Directorate of Operations is headed by a Director who handles technical issues in election administration. It comprises of five departments which are; Election Management, Field Operations, Voter Data Management, Voter Education and Training

²³⁶ Ibid

and Legal and Public Relation that are designed to work in a synergy to management and administer elections in Uganda²³⁷.

In the directorate of Operations there is the head of department. The head of department is the over-all Coordinator and Overseer of the electoral issues, tasks and activities falling under the department. Below the Head of department, are a national special interest groups and Regional Election officers. Under the Regional Election Officers are the District Registrars and Assistant District Registrars charged with all the electoral tasks in their districts of jurisdiction. Each Regional Election Officer is charge of a region in the country demarcated for ease of administration.

The Functions of The Department of Field Operations are; Study, interpretation and operationalization of electoral laws, co-ordinate the establishment and operation of polling stations, liaise the maintenance of databases of elections results, liaise the specification of the structures, quality and quantity of polling materials, drawing election programmes and budgets for electoral activities, co-ordinate and oversee the preparation, packing, dispatch and delivery of polling materials to the field, receives, compiles and summarizes district electoral reports; liaise the designing, overseeing the production, distribution and control the use of ballot papers, Co-ordinate organizing and supervising candidates campaign meetings.

Other functions of the department of field operations are handling Electoral complaints, supervising, monitoring and evaluation of election activities, co-ordinate all field electoral activities.

The Voter Education & Training department is one of the departments of the Uganda Electoral Commission, and one of the departments under the Directorate of Operations.

²³⁷ Supra

Its sole mission is "to formulate Civic Education Programs related to elections." It is derived from Article 61 (g) of the Constitution of the Republic of Uganda 1995.

The vision of the department is to create a citizenship with skills, competence and disposition for freely and purposefully participate in their governance. This is derived from Article 61 (g) of the 1995 Constitution of the Republic of Uganda and its goal is to increase awareness and motivation of all Ugandans who are five years and above for effective participation in elections.

Some of its objectives are; to develop, design and disseminate voter education materials, to formulate and implement voter education programs, to formulate and implement training programs, to create and sustain awareness of democratic process, to manage, operate and run the department.

The Key functions of this department are; to develop training programs, manuals and materials, to organize translation of voter education materials into local languages, to set standards and guidelines for civic/voter education by civil society, supervise and coordinate the activities of the accredited NGOs involved in civic education and election monitoring, to sensitize the people on aspects of the Constitution, including their rights, freedoms and obligations, relevant to their effective participation in governance.

Other functions are to educate voters on election procedures and processes; to initiate and develop Civic Education Programs relating to elections, organize training workshops and study tours and to monitor the progress of civic education and training.

The voter materials include manuals, brochures, posters, fliers and guidelines. The materials produced are tailored to the relevant laws and guidelines relating to elections.

b. Directorate of Technical Support Services

The Directorate of Technical Support Service is charged with ensuring that all technical services are availed. It comprises two departments, these are; Planning and Research and Information Technology.

Legal Department has the following roles; to offer legal advice, Litigation, drafting amendments to electoral laws; drafting contracts and/or agreements, drafting Statutory Instruments and Gazette Notices on election activities, handling complaints at any stage of the electoral process, drafting guidelines on the electoral process and any other official duty as may be assigned to the Department from time to time.

All operations are governed by the Constitution of the Republic of Uganda, electoral laws and regulations and other relevant laws on the conduct of an election or referendum and the operation of the Electoral Commission.

c. Directorate of Finance and Administration

The Directorate of Finance and Administration is charged with ensuring that financial, material and human resources are availed. It comprises three departments, these are; Finance, Administration, Human Resource Management and Auditing. The Finance Department is run literally like other government institutions and it follows government accounting policies, procedures and guidelines.

The law guarantees adequate resources and facilities to enable it to perform its functions. This in essence means that it should not be subjected to cuts or reductions by the Ministry of Finance. In practice, however, the EC does not enjoy financial autonomy or adequate resources.

Like all self-accounting institutions in Uganda, the EC is subject to the Medium Term Expenditure Framework (MTEF), which in essence is a ‘budget ceiling’ which government institutions should not exceed when budgeting for every financial year. It provides a realistic figure that the Ministry of Finance will be able to provide to any given institution.

Therefore, although Article 61(1) stipulates that Parliament shall ensure that adequate resources and facilities are provided to the Commission to enable it to perform its functions, the Ministry of Finance, Planning and Economic Development does not usually live up to its expectations. The budget submitted to Parliament is often reduced and the one approved does not sufficiently cover all election activities.

This explains the continual shortage of funds to carry out vital programmes such as civic education and the recruitment of quality and well-trained staff.

4.2.2 Departments

a. Department of Administration

The overall objective of the Administration Department is to provide administrative support services for the efficient and effective implementation of Commission activities and programs. The Commission programs include major elections such as the Presidential, Parliamentary, Local Council, By-elections and repeat Elections and referenda.

The key outputs of the Administration Department include the following; Operation and maintenance of motor vehicles; transmission and receipt of messages, printing and production of generic requirements for the Commission, timely acquisition of appropriate Commission supplies, ensuring safety of lives and property, provision of administrative

support services (rent, accommodation, communication, water, electricity and telephones) and maintenance and upkeep of buildings.

a. Department of Finance

The role of the Finance Department is to ensure timely acquisition of funds for commission activities; to ensure proper financial control of commission funds in line with the Public Finance Act and Financial Treasury accounting instructions, process timely completion and submission of financial reports on periodical and annual basis, make compilation /consolidation of directorate budgets, coordinate with ministry of finance and donors on financial matters, answer internal and external audit queries.

The EC is self-accounting, and its administrative expenses are charged on a Consolidated Fund²³⁸ in accordance with the Electoral Commission Act. The Act further provides that the funds of the commission may, with the prior approval of the Minister responsible for finance, include grants and donations from sources within or outside Uganda to enable the commission to discharge its functions.²³⁹

The Finance Department is run literally like other government institutions and it follows government accounting policies, procedures and guidelines.

The major role of the Finance Department of the Electoral Commission is to ensure timely acquisition of funds for commission activities, ensure proper financial control of commission funds in line with the Public Finance Management Act, 2015 and Financial Treasury accounting instructions and timely completion and submission of financial reports on periodical and annual basis²⁴⁰.

²³⁸ A consolidated fund is a framework into which shall be paid all revenues or other monies raised or received for the purpose of, or on behalf of, or in trust for, the government.

²³⁹ Article 66 of the Constitution

²⁴⁰ <https://www.ec.or.ug/?q=content/departments> accessed on 28th October, 2019

The Finance department further according to the Electoral Commission Act, is to do a compilation /consolidation of directorate budgets, Coordinate with ministry of finance and donors on financial matters and to answering internal and external audit queries.

b. Human Resource Management

The Planning and Research department has various activities which include; generating Planning and Research awareness and coordination of planning and research activities in mobilizing materials, human and financial resources; Integrating the department work plans and develop tools to increase effectiveness for the management of election activities.

It also evaluates the external environment and development and assesses its potential impact on the Commission and raise the concern of the Commission integration in overall national planning framework; Initiate strategic plans of action to suit every election scenario in order for the Commission to attain a state of election readiness; Prepare election work plans to guide the Commission and keep the Commission focused for the planned elections, bye-elections and referenda as may be required by law and ensure strict adherence of all programmed activities and deadlines;

It further provides the Commission with innovative fact-finding capabilities for investigating breach of electoral laws, most of which are civil in nature and provide timely reports for correction thereafter; research and update the Commission Resource Center for the users; produce reports on activities during elections, bye-elections and referenda; Initiate and review the formulation of election related policies and programmes; develop appropriate records management systems and procedures;

It also mandates the commission to undertake research and; collect data useful for planning purposes publish reports in past elections and referenda for the improvement of

performance during subsequent elections; monitor and evaluate implementation compliance of Commission policies and planned activities using performance indicators and report on their progress for the necessary action by the Commission and liaise with other electoral agencies and acquire relevant information resources and sample materials for the improvement of the operations of the Commission.

Public Relations Section has the following roles; to enhance the image of the Electoral Commission through specific interventions such as to protect and promote the good image of the Commission; to continuously update the public on the various electoral programmes being executed by Commission; to create and sustain good relations with the media; to plan, budget and execute PR programmes for EC; and, to co-ordinate/enhance the flow of information between departments; between Management and staff; and between the head office and district offices.

The Voter Data Management department has certain key activities that involve; text data processing, involving data entry, i.e. capturing of voter details on to the database, online editing focuses on correcting of voter's particulars, duplicate analysis ensures that no voter is registered more than once, and also, intends to eliminate impersonation in the voting process. The department has personnel who are specialized in the development of new and required software to be used by staff to ensure effective work in the Electoral Commission.

This registry section office is responsible for maintaining all documents used during elections and these include; nomination forms, tally Sheets, declaration of result forms and transmission of result forms. All the above sections are co-ordinated by a senior election officer for harmonizing departmental programmes and activities.

4.3 The Electoral Commission Central Registry (ECCR)

This is the center where information in form of letters on various subjects is received and arranged for storage in a systematic manner. The Central Registry falls directly under the Human Resource Management Department.

It is called the Central Registry in order to differentiate it from the other two registries in the Electoral Commission, namely the Election Management Department Registry and Voter Data Registration Department Registry.

The Electoral Commission Central Registry (ECCR) was started in July 1995 under the Uganda Constitutional Review Commission, with one file titled Constituency Assembly. Since then, the Registry has expanded and contains subject/personal/open and confidential files.

The Central Registry has recorded and stored documents from the Commission for the Constituent Assembly (CCA), the Interim Electoral Commission (IEC) and the (permanent) Electoral Commission, which are categorized as active, semi-active and inactive records.

Future plans include establishment of customized records center where all closed files (from the CCA, IEC etc) can be arranged systematically for easy retrieval.

The Electoral Commission has published a Road Map to the 2021 general Elections and with this they have launched and published different strategies that they intend to employ to ensure that they deliver an election that can be ruled as free, fair, transparent and credible to all interest based groups at all levels of the election.

The Commission using the various reports, borrowing from the challenges and reading of the assorted sets of election laws in Uganda and in the region have come up these strategies.²⁴¹

From the above analysis of the organizational and structural set up of the EC, the constitution and the electoral law presuppose that the EC operates with consideration of the good governance indicators in the management of elections in Uganda.

Section 8 of the Electoral Commission Act establishes that every decision of the Electoral Commission shall, as far as possible, be adopted by consensus. Only if consensus fails, decisions may be adopted by majority. This can only tell that indeed the parameter of consensus is very important in reaching policy decisions at the EC. However, recently the operations of the EC have fallen short of such expectations.

It is very important to note from the outset indeed, the current practice and the law provides that all the electoral laws or reforms and general programmes regarding elections originate from the Executive, which communicates them to Parliament for enactment and approval.

Meanwhile EC is responsible for recruiting its own staff and drawing its own budget, which it communicates to the Executive for consideration and forwarding to Parliament for approval. Any monies approved by Parliament for EC has a high priority in Government and must have the first call in votes allocation and releases²⁴².

²⁴¹ <https://www.ec.or.ug/?q=election/20202021-general-elections-strategic-plan> last accessed on 3rd November, 2019

²⁴² Report for the Parliamentary Committee on Election Violence, (2002), Parliamentary Commission Uganda.

4.4 The Road Map to 2021 Elections

The National Launch of the Strategic plan²⁴³ and the road map for 2020/2021 General Elections took place on 11th December 2018 at Hotel Africana and was launched by the Prime Minister of Uganda, Rt. Hon. Dr. Ruhakana Rugunda.²⁴⁴

The Electoral Commission has formulated an elaborative road map to the 2021 General elections and set up different cycles, and from the reading of the various Election Road Maps that were published earlier on and the intentions of the Electoral Commission.

The objectives of these road maps are varied and are; to provide a basis for better planning, implementation, benchmarking and performance assessment, encourage stakeholder involvement in the election process, improve on the election process planning and administration, avoid last-minute rush in implementation of electoral activities, deliver timely electoral results freely and transparently and to contribute towards good governance and security.

The Electoral Commission has put forward as the guiding principle and it has reviewed the electoral process through the Electoral Cycle with the enabling laws and PPDA requirements for purposes of prioritizing activities and setting time frames in the Roadmap.²⁴⁵

So generally the guiding principles during the development of this Road map included the published electoral Cycle, the enabling laws, the PPDA Requirements, the Electoral Commission's Strategic Plan, Returning Officers and Observer Reports, the Election Reports and Comments, Critics, Court Rulings/Judgements and Complaints.

²⁴³ Ibid

²⁴⁴ Office of the prime minister (2012) retrieved from: <http://opm.go.ug/news-archive/statement-by-the-prime-minister-of-the-republic-of-uganda-rt.-hon.-dr-ruhakana-rugunda-on-the-occasion-of-the-celebration-o>

²⁴⁵ Ibid.

Subject to the Constitution²⁴⁶ as amended, the Road map covers the whole electoral process activities of demarcation of Constituencies, delineation of Electoral areas, re-establishment of Polling Stations, general Update of the National Voter Register, display of National Voter Register, nomination of Candidates, campaigns and polls²⁴⁷.

The Commission has also formulated the Electoral Commission Gender Strategy 2019²⁴⁸ was developed as a guide for gender mainstreaming within the Electoral Commission and the entire electoral cycle. It complements other existing frameworks that address gender within elections such as the National Women Councils Act (as Amended) 2015, National Youth Council Act (as Amended) 2015 and the Political Parties and Organizations Act (2005) in addition to reinforcing the National Gender Policy (NGP) 2007, which encourages all government ministries to gender mainstream with the long term goal of eliminating all inequalities.

The Electoral Commission Gender Strategy reiterates commitment to the values and principles of democracy, including gender equality and empowerment. The strategy will, therefore serve as a reference tool to hold EC leadership and staff to appropriate gender outcomes and standards.

It seeks to strengthen and guide the organization towards an enabling environment, allowing staff and partners to monitor and evaluate progress towards achievement of these intentions.²⁴⁹

²⁴⁶ Article 61

²⁴⁷ Published by the Electoral Commission on 1st November, 2019, <https://www.ec.or.ug/?q=election/20202021-general-elections-strategic-plan> last accessed on 3rd November, 2019

²⁴⁸ <https://www.ec.or.ug/sites/default/files/press/Electoral%20Commision%20Gender%20Strategy%202019.pdf> last accessed on 3rd November, 2019

²⁴⁹ <<https://www.ec.or.ug/?q=news/electoral-commission-gender-strategy-2019>> accessed on 3 November 2019

In developing this Strategic Plan and Roadmap, it is expected that the EC takes consideration of all comments, inputs, critics, and guidance from stakeholders basing on the 2016 General Elections.²⁵⁰

It has been further argued that these ideals for a democratic electoral process that is credible and sustainable the election being prepared for 2021 should or shall be anchored of certain pillars referred to as Strategic Key Result Areas (SKRA).

The Strategic Plan is based on six (6) Strategic Key Result Areas (SKRA), namely Democratic and unbiased elections; a national voters register (NVR) that is accurate and easily accessible, an electoral management body reinforced at the institutional level, adequate and complete voter training, an efficient service management body focused on services / stakeholders; and a reinforced monitoring and evaluation framework. These Strategic Key Result Areas (SKRA) and their Objectives have been largely drawn from the values of good governance, and democratic governance and the same shall be briefly elaborated.²⁵¹

However, the good governance indicators have been cherry picked in the preparation of the road map and the institutional and organizational management of the forth coming elections of 2021.²⁵²

The dispute in the current pre-election period has been over the composition and functioning of Uganda's Electoral Commission (EC), particularly because many allege

²⁵⁰Sabiti Makara, Lise Rakner and Rwengabo Sabastiano, (2008) Administering Uganda's 2006 Multiparty Elections Fountain Publisher

²⁵¹ The Strategic Plan 2013–2017 of the Electoral Commission, Uganda, EC of Uganda, Kampala, (hereafter 'Strategic Key Result Area (SKRA) Plan'). <<https://www.ec.or.ug/docs/EC%20Strategic%20Plan%202017-2021>> accessed 30 November 2019

²⁵² HC Deb, 8 January, 2019 c106WH, Debate AT THE British Parliament, West Minister 2019, <<https://hansard.parliament.uk/Commons/2019-01-08/debates/D535112A-A796-4E2E-8461-788F6495CFBD/UgandaDemocracy>> accessed on 5 November, 2019

that the Commission is inefficient and is not independent. The Commission's mandate in the Constitution and in national law provides for its independence.

Many respondents felt that the commissioners in particular are not independent due to the fact that they are appointed by a majority party that is putting up its candidates for re-election.²⁵³ Although the process for appointing commissioners is the same as that for many other government officials, including for High Court judges, members of the EC do not enjoy the same security of tenure as judges.

Allegations of the Commission's incompetence stem from the complaints filed in the Supreme Court after the 2006 elections; but although the Court found that there were many malpractices and inconsistencies, they declared the results valid and did not declare the EC to be incompetent.²⁵⁴

The Constitution²⁵⁵ states that the EC shall be independent subject to the Constitution's provisions, and 'shall not be subject to the direction or control of any person or authority' in the performance of its functions. Some of the key indicators of an independent EC include the impartiality of Commission staff and election administrators, a free and fair process of voter registration, the existence of a Code of Conduct for elections, and the extent to which the Commission seeks to ensure that the whole process is free and fair.

The importance of the EC's independence is especially implicated in some of the Commission's mandated functions, including the distribution and collection of ballot

²⁵³ Margaret Sekaggya, (2010) Uganda, Management of Elections, Open Society Initiative for Eastern Africa, p.16

²⁵⁴ Ibid (n 255) 17

²⁵⁵ Article 62

boxes, registering political parties²⁵⁶, and ensuring that all election officers and candidates comply with the provisions of all electoral laws.

Despite these legal provisions relating to the appointment and independence of the EC, many political groups strongly believe that the Commission is not independent and does not reflect diversity as expected in a multi-party dispensation. In particular, there are concerns related to the system for appointments to the EC, security of tenure for commissioners, and the Commission's lack of financial autonomy.

Electoral management encompasses both the entity responsible for governing elections and the various mechanisms, roles and functions this entity may have. While Uganda as a democracy has an election administration of sort, the Electoral Commission of Uganda, the responsibilities of this entity is constitutionally prescribed. From being responsible for the polling, conducting and tabulating of votes, Electoral Commissions responsibilities can extend to also include registration of political parties, oversight of campaign finance, design of the ballot papers, drawing of electoral boundaries, resolution of electoral disputes, civic and voter education and media monitoring.

Consequently, electoral management bodies vary greatly in shape and size. However, as the agencies responsible for governing elections and referenda, Election management bodies are ultimately responsible for safeguarding the legitimacy of democratic institutions and the peaceful transitions of power.

Therefore, they need to ensure all aspects of any electoral contest meets global norms, good governance values, good democratic values and follows the fundamental guiding principles of elections, including independence, impartiality, integrity, transparency, efficiency, professionalism and service-mindedness.

²⁵⁶ The Political Parties and Organisations Act 2005 gives Uganda's Electoral Commission the responsibility of registering political parties

The concept of Electoral Management usually seeks to elucidate to the knowledge and expertise about the structure and functioning of Electoral Management Bodies. By highlighting key principles and good practices from different parts of the world, election management tends to promote professional, impartial, accountable, and sustainable electoral management having institutions that perform in the best interest of the voters²⁵⁷.

Electoral management and governance are a crucial variable in securing the credibility of elections in emerging democracies like Uganda.

4.5 Conclusion

Like this study has come to appreciate, One of the most controversial topics in Uganda's electoral system is the Electoral Commission (EC) which, many²⁵⁸ believe, is not able to properly assert its independent authority. The EC's official mandate is to "organize, regulate free and fair elections and referendums" and they are, in theory, supposed to be nonpartisan, non-affiliated persons.

All commission members get training by the National Electoral Commission in Kampala before each election in which they are briefed on the particulars of this election and the process is framed and explained in detail. In addition, the EC meets with officials and political party member to make sure everything is clear. After the elections, votes are tallied at the polling stations and then transported back to the EC regional headquarters. On paper, the Electoral Commission is a non-partisan, free body which is able to conduct elections objectively and without influence²⁵⁹.

²⁵⁷ <<https://aceproject.org/ace-en/topics/em/onePage>> accessed 30 November 2019

²⁵⁸ Tabachnik, Sam, (2011), "Bills, Bribery and Brutality: How Rampant Corruption in the Electoral System Has Helped Prevent Democracy in Uganda" Independent Study Project (ISP) Collection. 1204.

< https://digitalcollections.sit.edu/isp_collection/1204/> accessed 30 November 2019

²⁵⁹ Ibid (n 260) 28-29

The Ugandan public, however, including those in the village, in elected positions and otherwise, feel that the Commission does not act in due conscience. In fact, the president has the power to appoint and drop members from the commission and although there is parliamentary confirmation necessary, they often act as a rubber stamp in this regard. Thus, the president is able to appoint his people to the commission, knowing that they will do his bidding²⁶⁰.

Just like in the previous elections in Uganda, the constitution, composition and appointments of the election managers to the Electoral Commission and corporate operations of Uganda's Electoral Commission (EC) have been a source of heated disputes and hot debate.

It has also been reported in the various election observer reports that the ordinary Ugandans perceptions of the Electoral Commission (EC) is that it lacks independence and that it is inefficient and that a majority of the stakeholders wanted to see reforms in at least one aspect of the electoral process, including the Commission.

Although the Ugandan Constitution and legal code provides for the Commission's independence, never the less the commissioners are appointed by the president, which erodes confidence in the institution's autonomy. Other especially the funding of the commission factors fuel this perception²⁶¹.

First, its budgetary allocations are insufficient to fulfill all of its mandated tasks on an independent threshold thus the deep dependency on the Executive and donor Community who have deep rooted interests in the elections in Uganda.

²⁶⁰ Ibid (n 260) 29-31

²⁶¹ <https://www.democracyspeaks.org/blog/strategic-reform-ahead-uganda%E2%80%99s-2021-election> accessed on 30 November 2019

These shortcomings are especially evident in failures to adequately address voter harassment and intimidation and vote stuffing or vote stealing by the incumbents who facilitate their financial environment.

Second, as in previous elections, discrepancies in voter registration were common and they still persist. These include duplicate names, missing names, and names registered in the wrong districts and this has impacted on how the stakeholders receive the results bearing in mind the discrepancies thus affecting a free, fair, transparent and credible election process.

Third, the voting process has intentionally suffered delays and complaints of vote rigging in some stations especially those that are not biased to the incumbent administration and this has directly been placed at the doorsteps of the Commission as a technical arrangement to disenfranchise a section of voters on election-day.

Reviews of global and African democratization experiences point to the indispensability of independent electoral commissions to create the legitimacy that elections are intended to generate and ensure stability in their aftermath.²⁶²

However, the regional authorities' such as the African Union and the East African Community has failed to put to account the governments that have fallen short of their electoral standards and this has delayed on the fast and steady entrenchment of good governance values, principles and culture in election management in Uganda.

After appreciating the history of election management in Uganda and how it has impacted on the way elections are seen, managed and organised and appreciating the legislative and institutional framework of election management and examination of the Organizational structure of the Electoral Commission (EC) of Uganda, the study shall

²⁶² <https://www.voanews.com/africa/study-many-uganda-voters-fear-violence-next-elections>

proceed to discuss the findings, suggest recommendations and draw conclusions to the study in the next chapter.

CHAPTER FIVE

KEY FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

This study in the previous Chapter has established that the Electoral Commission of Uganda is properly constituted under the Constitution and the enabling statute of the Electoral Commission Act, 2005. This means that the Electoral Commission from its legislative and institutional mandate has some level of governance structure.

In determining whether these legislative and institutional structures and framework have been effective in delivering free, fair, transparent and credible elections, the study found that despite the existing legislative and institutional framework available to the Electoral Commission of Uganda, there is lack of good governance failing the election management system of Uganda from delivering free, fair, transparent and credible

elections. The study established that good governance is lacking in the election management system and framework that the Electoral Commission is premised upon.

This chapter will summarize the findings of this study, provide recommendations and draw conclusions on the application of good governance in Election Management in Uganda.

5.1 Summary of Findings

5.1.2 The Main Finding

This study has made a finding that there are gaps in the legislative and institutional framework of the Election management system in Uganda. The study has further found that despite the existing constitutional guarantee that the Electoral Commission of Uganda is and ought to be Independent in its operations and in the way it exercises its constitutional mandate, there are calculated and purposeful legislative and institutional gaps that flow from deficiency of good governance in election management that have made the electoral commission not to deliver free, fair and transparency.

Although the history all through the years has had certain general and specific lessons to teach election managers in Uganda nevertheless the ills that were seen in history seem to always haunt Uganda every after election cycle because there is a wide feeling that Uganda has failed to hold, organise manage and administer free, fair, transparent and credible elections since the elections are always signified with violence, mistrust and litigation.

5.1.3 The Minor Findings

The attempts to make substantial reforms in the legislative and institutional framework of election management in Uganda is only cosmetic and lipstick service to the ideal of good

governance of a society because there is no deep rooted desire to incorporate good governance in its entirety in the election management fabric in Uganda.

The legal and institutional operations and mandate of the Electoral Commission are so intertwined with the political fancies, impulses and whims of the incumbent government for it to facilitate the necessary good governance reforms that have potential to affect the interests of the appointing Authority of the incumbency political status.

The funding of the Electoral Commission is too small from the government to enable it to nationally roll out all the published strategies to deliver a free, fair, transparent and credible elections.

The government has not exhibited genuine political will to engage other stakeholders such as the civil society in making the necessary reforms to incorporate good governance values, principles and culture in election management in Uganda.

5.2 Recommendations

The Electoral Commission of Uganda is the sole election manager in Uganda with a constitutional mandate and is bestowed with a duty to make sure that it delivers on its mandate in a free, fair, transparent election environment throughout the election process of and election cycle and with this constitutional obligation at its hands.

It is recommended that it undertakes reforms in the legislative and the institutional framework to incorporate good governance values and principles so that delivering free, fair, transparent and credible elections is not just an elusive responsibility to its stakeholders such as the voters and the interest based stakeholders like political parties, civil society groups and the development partners of Uganda.

The following recommendations in the legislative and institutional framework of election management in Uganda are suggested in the short and long term period to deepen good governance in the election Management in Uganda.

5.2.1 Legislative framework

5.2.1.1 Short Term Recommendations

- a.** Laws should also be put in place to enable access to the media outlets as the fourth estate. The media has a major role it plays in an election and curtailing their access and activities hides the face of transparency in an election in Uganda where issues of vote rigging are always rampant.
- b.** The Commission should ensure that an accurate, credible, and accessible national voter register is maintained,²⁶³ improve the conduct of elections by training all election officials and ensuring that they comply with the electoral law, improve dispute settlement mechanisms by strengthening and establishing boards of appeal in all districts and at the national level to handle complaints related to elections, establish and strengthen election committees composed of representatives of the police, the Electoral Commission and the opposing political parties at national and district level.
- c.** The political party actors should ask candidates, party members, and supporters to act lawfully at all times during the elections, condemn publicly and quickly, intimidation, extortion, and other election crimes and noise or report out all cases of electoral crimes to the legal authorities and, where appropriate, to the electoral administrative bodies.

²⁶³ Oliver Mtapuri, 'Chapter Two: Holding 'Free But Not Fair'and 'Fair But Not Free Elections: Be The Judge.'.

- d. Civil society is encouraged to convince the government of the importance of credible elections, in particular without voter bribery and intimidation.
- e. The government should prevent the military from campaigning or from supervising the electoral process, particularly on election-day, as its presence can intimidate independent and opposition party members and supporters.
- f. The limitation of the president's term in office should and ought to be revisited especially after the removal of the presidential terms and the age limit. These were the only safe guards to ensure that a sitting president after a certain term is rejected by the law without and implementation of deadlines for declaring the results of the parliamentary elections should be revisited to reduce on possibility of “cooking results”.
- g. The need to enforce the ideals of good governance in the conduct and administration of elections or the reforms of the electoral law refers in particular to both private and public relations and always to the dynamic changes in the social fabric, aspirations, and expectations of the people is recommended on a day to day basis in an election cycle. In a given community, the prosecution is only the key to making good governance reforms in electoral management in Uganda.

5.2.1.2 Long Term Recommendations

- a. Uganda's international donors, especially those who finance the elections, should call on the government to ensure that the fundamental electoral rights of are protected; and that all serious violations, are adequately investigated and legal action taken against the perpetrators. Human Rights

Watch formulates these suggestions with the aim of encouraging democratic and credible elections that are free of any irregularities.²⁶⁴

- b.** The Electoral Commission should not be subject to the medium-term expenditure framework for critical areas like the national voter register and procurement of election-related documents. The phased financing approach used in the 2011 and recently in 2016 election cycle should be maintained or improved. It was the best-organized election, better than the 2016 elections so far probably due to an enhanced fund to help the electoral Commissions operations.
- c.** The Commission should also ensure that there is enough police or other personnel during election processes with a mandate to provide adequate security, refer to and apply all election and penal laws during the electoral campaigns, notably the Presidential Election Law and the 2005 Parliamentary Elections Act, make sure that the army performs its duties unbiased and does not participate in the electoral process, ask candidates, their agents, and voters to comply with the law during the election period, condemn publicly and quickly any violations of the electoral law and demand impartial responsibility, investigate crimes related to elections promptly, impartially, and thoroughly, quickly refer to all kinds of criminal affairs to the police and follow up the investigation and beseech all candidates to observe all laws during their campaign activities regularly. All these would be better if they are anchored in the law.
- d.** The Parliament of Uganda should adopt relevant electoral laws related to the appointment and dismissal of Electoral Commission members without waiting for the president to relieve them at his pleasure.

²⁶⁴ Human rights watch 2009 Report p. 42

- e. The Electoral Commission's legislative amendments need to be taken into account to establish provisions on access to the media, voter education and the timely adoption of electoral laws.
- f. The Commission should encourage its partnerships with the Ugandan police to ensure that the election process is carried out securely and that no one interrupts it illegally. The use and reliance of the military before, during and after elections should be discouraged as it creates comfort to the incumbents that are usually in the office. The military has been used to intimidate the voters and the electoral Commission officials themselves.

5.2.2 Institutional Framework

5.2.2.1 Short Term Recommendations

- a. Civil society organizations need to enhance their ability to monitor elections by electronic means and be able to follow the entire electoral process, before and after the elections, not just on the voting day.
- b. The Electoral Commission must fulfill its role holistically and use its constitutional powers to ensure that the election process has transparency under the electoral law. It has to advocate for the change the current statute of limitations for electoral crime prosecutions from merely three months to at least twelve months. It should also modify the electoral laws to clarify the constitutional powers of the Electoral Complaints desk.
- c. The use of government resources by the incumbents in offices to aid them in an election should be checked. This shall give all players in an election an equal playing field without abuse of the offices and the power that such offices come with.

5.2.2.2 Long Term Recommendation

It may be necessary for the Electoral Commission to set up an independent monitoring system to monitor the entire election process from start to finish. They should also coerce the Ugandan government to reconsider specific laws, case in point, and the time frame of prosecution for election crimes to facilitate the prosecution of perpetrators of poor election practices; urge the Ugandan Government to investigate serious election crimes and other instigated violations of law during the election process.

5.3 Areas for Future Research

Research should be encouraged to find answers to questions such as how can enforcement be enhanced in weak regions where the power of incumbency is overburdening and how can you design a better enforcement environment in this type of regions without putting it effect the political will of certain people.

It should be appreciated further that the degree of public-private-civil society partnership to improve law enforcement is essential, but not extensively examined both theoretically and empirically. Researchers to investigate what factors determine the extent to which the private/public sector of civil society can solve the problems of enforcement and what determines the necessity of the general civil society sector involvement in enforcement and what role do voluntary mechanisms play.

Further evidence is needed on how voluntary mechanisms (e.g., codes of conduct for election management or standards based on international values) can be more valuable in regions that are prone to violence like Uganda considering the history of elections in Uganda.

The interaction of such values with national legal reforms and developments is another potentially useful field of research, as certain values in the internal perspective may be weakened depending on the social aspirations of a particular community and further examine really what is the governance role of the Electoral Commission of Uganda when the laws are amended without going back to the people in a referenda.

In many countries, especially Europe, Election Management Bodies have important functional governance roles, because they are directly accountable to themselves and act as agents for other stakeholders.²⁶⁵

There are indications that voluntary mechanisms and good governance, in general, are only of limited effectiveness in resisting negative influences or forces when sound governance systems and public institutional rights of a country are weak. However, very few studies have looked at how to improve the application in such environments, and the success rate is close to zero.²⁶⁶

Targeted improvement of good governance in the legislative and institutional framework of the Electoral Commission of Uganda can be an effective means of improving the instruments of good governance and accountability, sustainability, and credibility of the election results as a whole and with that the researcher can examine what insights from research on good governance be transferred to the governance of the Electoral Commission of Uganda after a series of election cycles.

This is not a new study area, but it still has knowledge gaps, from general good governance research, and especially from the emerging concept of the combination of good governance and the management of elections in Uganda in the face of an emerging

²⁶⁵ Sarah Birch, 'Electoral Institutions and Popular Confidence In Electoral Processes: A Cross-National Analysis' (2008) 27 *Electoral Studies*.

²⁶⁶ Abbas Mugisha, *Civil Society and Electoral Reforms* (2017).

dictatorship, that can be useful lessons to improve regulatory and administrative governance for young and troubled democracies like Uganda.

5.4 Conclusion

This study concludes that although the Constitution of Uganda and the entire legislative backbone (the local, regional and international election legislations) for election management in Uganda sufficiently guarantees the independence of the Commission nevertheless the way the Commission is constituted in its composition and the procedural manner of appointments of the members and Commissioners of the Electoral Commission of Uganda and its entire leadership, the process of appointment and the overwhelming dependence of the Commission on the Executive which is politically biased and partisan for funding cannot independently facilitate it to exercise neutrality, transparency and independence in decision making to manage and deliver a free, fair, transparent and credible election in Uganda because the legislative and institutional framework the Electoral Commission of Uganda is premised does not incorporate good governance values and culture to guarantee free, fair, transparent and credible elections.

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