

East Africa Law Society Human Rights & Rule of Law Journal

Volume 2 (2022)



A Legal Analysis of the Electoral Process in Uganda During the 2021 General Elections: Challenges and Lessons Learned. A Case Study of Mbarara City

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Abstract

It is the right of every citizen to participate in the governance of their countries, through many ways, including the right to vote as exercised through free and fair elections. Elections in Uganda have had a history of irregularities. This is so, notwithstanding the existence of a legal framework that enables a free and fair electoral process. This article seeks to analyse the electoral process from a legal perspective examining the extent to which Uganda conducted its recently concluded elections in accordance with the law. The article further examines the challenges and lessons learned from the elections and makes recommendations on ways of enhancing the electoral process in Uganda.

Key words: Right to Vote, Electoral Process, Law, Uganda

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1.0 Introduction

It is the duty of every democratic government to ensure that the civil and political rights of their citizens, including the right to take part in the affairs of their government either directly or through freely elected representative, are protected and ensured.¹ This includes the right to vote and be voted for.² This is in accordance with their international obligations as outlined under the different international, and regional legal instruments.³ In addition, the right to vote can be realised and exercised through holding regular free and fair elections. Although this enables citizen participation, it can only be achieved through ensuring that other fundamental rights and freedoms are safeguarded.⁴ These rights include the right to freedom of expression as well as the right to access to information. It is important to note that the electoral process does not only start and end on the election day but rather involves all other procedures that enable citizens to vote and be voted.⁵ These include among others, voter education, ensuring the necessary logistics are available and also the need for governments to ensure that all the necessary measures are in place to ensure that this right of citizens is ensured.⁶

As already highlighted, the electoral process involves a number of processes which enable citizens to vote and be voted for. The *United Nations Committee on Human Rights on the Right to Participate in Public*

¹ Universal Declaration of Human Rights (UDHR) (1948), Article 21.

² *Ibid*; article 25 (b), *International Covenant on Civil and Political Rights (ICCPR)* (1966) (article 25 a).

³ Please see the *UDHR (art. 21)*; *ICCPR (article 25 (a))*; *African Charter on Human and People's Rights (ACHPR) (1981) (art. 13 (1); 23 (1) (a))*; *African Union Declaration on the Principles Governing Democratic Elections in Africa (AUDPGDE) (2002)*; *African charter on Democracy, Elections and Governance (2007)*.

⁴ Office of The High Commissioner for Human Rights (OHCHR), *Monitoring Human Rights in the Context of Elections Manual on Human Rights Monitoring* (United Nations 2011) 4.

⁵ United Nations Committee on Human Rights on the Right to Participate in Public Affairs, *Voting Rights and the Right to Equal Access to Public service* (1996).

⁶ *Ibid*.

Affairs, Voting Rights and the Right to Equal Access to Public service (1996)⁷ recommended that States must adopt all the necessary means including legislation to ensure that the rights are enjoyed. The committee, in paragraph 1 emphasised that this is an indicator of a democratic government. The right to participation in public affairs through freely chosen representatives by voting or being voted for at periodic elections, should be legally provided for, subject to the necessary restrictions, for example age.⁸ In order to achieve this, effective measures have to be in place, for example, voter education and voter registration have to be facilitated.⁹ It has, however, been observed that although many citizens turn up at voting day and vote for their chosen representatives, they hardly possess any civic education or voter education. Voters hardly possess knowledge about their right to vote including the reason why they actually need to vote.¹⁰ This has also contributed to many eligible voters staying in their homes or choosing to attend to other business on polling days. Civic education on the other hand would be important in order to educate the masses about the political history of their country, the meaning and relevance of democracy to any given nation and exercising the right to vote as an important aspect of a democratic society, among other aspects.¹¹ Given this brief introduction therefore, this article seeks to interrogate the extent to which the right to vote is safeguarded in Uganda as a way of ensuring that the citizen's right to participate in their governance.

2.0 The Right to Vote in Uganda

Uganda has so far succeeded in legally providing for the right to vote. The Constitution provides that "All power belongs to the people

⁷ United Nations Human Rights Committee General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7.

⁸ ICCPR, Article 25(b).

⁹ United Nations Human Rights Committee General Comment No. 25 (n7).

¹⁰ United Nations, 'Voter and Civic Education' <https://www.un.org/womenwatch/osa-gi/wps/publication/Chapter5.htm>, accessed 06th October 2022.

¹¹ Ibid.

who shall exercise their sovereignty in accordance with this constitution.”¹² It further provides that, “the people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.”¹³ This means that Uganda is under legal obligation to ensure that regular elections are organised to enable people to vote and choose their leaders and representatives. Moreover, the Constitution provides for Citizen’s “duty to register for electoral and other lawful purposes” and for the right to vote.¹⁴ These provisions give Uganda citizens the right to be registered for voting purposes and for them to exercise their right to vote. These constitutional rights are inviolable. Government should do everything possible to ensure that these rights are respected. Furthermore, Uganda also has in place the *Access to Information Act*,¹⁵ which is aimed at ensuring that Ugandans can access any kind of information except if it possesses a security threat. In place also is the *Local Governments Act*¹⁶ which establishes local governments as well as elections for local governments. The *Electoral Commission Act*¹⁷ establishes the Electoral Commission, the body responsible for ensuring successful electoral processes in Uganda. The *Presidential Elections Act*¹⁸ governs the conduct of presidential elections and the *Parliamentary Elections Act*¹⁹ governs the conduct of Parliamentary elections. Similarly, the *Political Parties and Organisations Act*²⁰ establishes Political parties and Organisations and enables citizens to form and join the same, whereas the *National Women’s Council Act*²¹ regulates the elections of national council and local council women’s committees. Moreover, the *National*

¹² The Constitution of Uganda (1995), Article 1(1).

¹³ *Ibid*, article 1(4).

¹⁴ *Ibid*, article 17 (h); article 59.

¹⁵ Act 06 of 2005 (Uganda).

¹⁶ Cap 243, Laws of Uganda 2000.

¹⁷ Cap. 104, Laws of Uganda 2000.

¹⁸ Act 16 of 2005.

¹⁹ Act 17 of 2005.

²⁰ Act 18 of 2005.

²¹ Cap. 318 (as amended), 2015

*Youth Council Act*²² regulates the elections of youth representatives to the national council. All these laws are to ensure a successful electoral process. These laws are an indicator that Uganda has made effort to ensure that her Citizens' right to participation in their governance is legally safeguarded. As to whether these laws are currently being implemented will be analysed in the fourth section of this article.

Uganda has also largely succeeded in facilitating voter registration through displaying the voter registers for verification by the voters²³ and voter education, although it has not entirely been sufficient especially concerning other elections for counsellor positions for the different electoral colleges like the youth, Persons with Disabilities (PWDs) and the elderly at all levels.²⁴ Emphasis is placed on the presidential and parliamentary elections but even then, although attempts were made to educate the masses through the media, including television and radios, the information was not sufficient enough especially seeing as much of the voter population in Uganda is largely rural and might not be able to own television sets or radios.²⁵ In addition, the voter information was scanty and viewers were referred to the Electoral Commission (EC) website which the biggest voter population cannot access either because they cannot afford the internet costs or the internet enabled phones or gadgets.²⁶ It is therefore recommended that voter education be enhanced by trickling the information down to village or town level lack and preferable physically.

²² Cap 319 (as amended), Laws of Uganda 2000.

²³ Electoral Commission, 'EC concludes display of the National Voter's Register' <https://www.ec.or.ug/news/ec-concludes-display-national-voters-register> accessed 16th January, 2021.

²⁴ Electoral Commission, 'Voter Information on Elections of Special Interest Groups' <https://www.ec.or.ug/info/voter-information-elections-special-interest-groups> accessed on 20 January, 2021.

²⁵ The Independent, 'Uganda registers 13% decline in households with radio sets' <https://www.independent.co.ug/uganda-registers-13-decline-in-households-with-radio.sets/#:~:text=According%20to%20the%20survey%20on,17%20indicating%20a%2013.5%25%20decline>, accessed on 18th January 2021

²⁶ Frankline Kibuacha, 'Mobile Penetration in Uganda' <https://www.geopoll.com/blog/mobile-penetration-uganda/#:~:text=The%20State%20of%20Mobile%20Penetration%20in%20Uganda>,

The UN Committee²⁷ further recommends the free choice of representatives and non-discrimination.²⁸ Uganda has so far achieved this and it has been reflected in the recently concluded elections as held on 14th January 2021 as well as many elections before this one, as held in 2011, 2006 and 2001 where all elections were conducted through secret ballot in accordance with the law.²⁹ Ugandans are free to vote for any candidate of their choice through adult suffrage.³⁰ In addition, the election contestants for the presidential seat included a female contestant, an indicator that non-discrimination on the ground of gender is practiced in Uganda.³¹ In addition, women participated in the voting process.³² Moreover, the UN Committee recommends that States parties should have in place an independent electoral authority.³³ This requirement is reiterated in the *African Union Declaration on the Principles Governing Democratic Elections in Africa* (AUDPGDE)³⁴ which also requires that State parties have in place proper institutions in order to realize the right to vote. Uganda has one in place (Electoral Commission)³⁵ which is responsible for the electoral process in Uganda and is responsible for ensuring the smooth running of the electoral process in Uganda. The independence of this authority has however been contested by some critics and masses who argue that it has been subject to government interference. The AUDPGDE also requires that voter information be circu-

²⁷ UN Committee (n7), paragraph 15.

²⁸ Ibid, paragraph 16.

²⁹ Electoral Commission, `Voter Education Handbook` Revised Edition (Electoral Commission, Uganda 2019) 2 and 40. <https://www.ec.or.ug/sites/default/files/press/VET%20Handbook%202020.pdf>

³⁰ The Constitution of Uganda, Article 59.

³¹ Electoral Commission Gender Strategy, 2019. <https://www.ec.or.ug/info/electoral-commission-gender-strategy-2019>.

³² Electoral Commission, *The Electoral Commission Report on the 2020/2021 General Elections* (Electoral Commission 2021) https://www.ec.or.ug/sites/default/files/docs/EC%20REPORT%202020_2021.pdf.

³³ UN Committee (n 7) Paragraph 20.

³⁴ African Union Declaration on the Principles Governing Democratic Elections in Africa AHG/Decl.1(XXVIII) 2002.

³⁵ The Constitution of the Republic of Uganda, Article 60-68; Electoral Commission Act (Cap 104).

lated accordingly. Although the EC run advertisements and announcements on election guidelines, it has not been entirely sufficient. People were referred to the EC website, yet a large population of Uganda lives in rural areas and are living in poverty and are therefore not well acquainted with internet use or are unable to access or afford internet costs. Although some voter information was relayed through radio and television stations, the rural poor hardly own radios and televisions. This further curtails the right to information of Ugandans in relation to voting. Uganda has taken strides to ensure the realisation of free and fair elections, challenges still abound as observed during the 2021 elections and as will be discussed in the subsequent sections of this paper. Although the AUDPGDE is soft law and non-binding, it was endorsed by the *African Charter on Democracy, Elections and Governance* (ACDEG) (2007) which Uganda signed on the 16th of December 2008. Although Uganda is yet to ratify the Charter for purposes of being legally bound by its provisions, signature is a good step towards ratification because signature of treaties by States is a commitment not to engage in Acts or Omissions which will defeat the object and purpose of the treaty.³⁶ It is important to note that Uganda applies a dualistic approach to international. In Uganda therefore, in order for a an international or regional instrument to be applicable, it has to be enabled by an Act of Parliament through the process of ratification.³⁷ Uganda signed and ratified several treaties and other international instruments relevant to the right to vote as will be analysed in the preceding paragraphs.

This article therefore seeks to carry out a critical legal analysis of the extent, to which Uganda has ensured the right of its citizens to participate in their governance through carrying out democratic elections using the recently concluded presidential and parliamentary elections which were conducted on the 14th of January, 2021. The first part contains a brief introduction, the second part discusses the right to vote in Uganda and highlights the best practices which Uganda has adopted

³⁶ The Vienna Convention on the Law of Treaties (VCLT) 1969, Article 10; 18.

³⁷ The 1995 Constitution (Uganda), Article 123(2); Ratification of Treaties Act Cap 204 (Laws of Uganda).

in ensuring free and fair elections, the third part analyses the challenges Uganda has had in achieving free and fair elections, the fourth part analyses other illegal practices and irregularities during the electoral process and the fifth part contains the conclusion and recommendations. In achieving the objectives of this paper, the authors employed the doctrinal method of research where different laws that govern the electoral process in Uganda were analysed. Literature on the electoral process was also analysed. This was augmented by the observation method whereby authors conducted field visits to various polling centres on the polling day, noting and recording the legal issues that arose during the polling process. The authors then analysed the issues arising against the legal provisions in relation to electoral processes at the international, regional and national (Ugandan) levels. The authors also gathered information from various television and radio stations as well as newspaper articles noting the issues that were reported, evaluating them against the law. Finally, through interviews, information was gathered from other people including election officials and voters who were at the various polling centres in selected Districts in the Western Uganda region, majorly Mbarara city.

3.0 Analysis of Challenges and Lessons learned during the January 2021 general elections in Uganda

Uganda has managed to hold consistent elections as evidenced during the recently concluded elections (2021) as well as the 2016, 2011 and 2006 elections which are proof that Uganda holds elections regularly.³⁸ Uganda has therefore fulfilled its obligation under the *African Charter on Human and Peoples' Rights* (ACHPR)³⁹ which provides that, 'Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen represent-

³⁸ See for instance, The Electoral Commission report on the 2015/2016 General Elections <https://www.ec.or.ug/docs/Report%20on%20the%202015-2016%20General%20Elections.pdf>, accessed on 07th October, 2022.

³⁹ 1981.

atives in accordance with the provisions of the law' in article 13 (1). By doing this, Uganda fulfilled its mandate under international and regional law, although it has not been without challenges as will be analysed in subsequent paragraphs. Uganda ratified the ACHPR in 1986 and is therefore bound by its provisions. In addition, the *AUDPGDE*, requires states to hold regular elections. These provisions are reiterated in Uganda's Constitution which gives mandate to the Electoral Commission to hold regular free and fair elections.⁴⁰ The 2021 election days in Uganda started on the 11th to 13th of January 2021 with the elections of the counsellor representatives, representatives at the municipality/city divisions for the youth, People with Disabilities (PWDs) and the elderly. Although the author only visited the Kakiika Sub County headquarters polling station in Kakiika Division, Mbarara City and Kakyeka stadium (Rwebikoona) polling station in Mbarara City, it was observed that the voter turn up for these elections was very low across the country. Although these elections were specific to certain electoral colleges, the low turn up could indicate that voter education is still not very widely carried out in Uganda. Emphasis is mainly placed on presidential and parliamentary elections. This infringes on the right to vote of all Ugandans as enshrined in *Constitution of Uganda*.⁴¹ The right to vote as elaborated by the *United Nations Committee on Human Rights*⁴² while elaborating on the Right to participate in public affairs, voting rights and the Right to equal Access to Public Service, requires that States put in place all the *necessary and effective* measures to ensure that the mentioned rights, including the right to vote enjoyed as this is a key indicator of a democratic government. Effective measures include voter education where voters are supposed to be educated on their right and the need to vote. Voters should also be educated on how and where they can vote from as well as all the necessary requirements necessary for them to vote. This information should not only be in respect to presidential and parliamentary elections but also elections concerning all other electoral colleges.

⁴⁰ The Constitution of Uganda, 1995, Article 1 (4); 61(a).

⁴¹ *Ibid*, Article 39.

⁴² United Nations Human Rights Committee General Comment No. 25, (n 7).

In addition, Part III (d) and part V (5) of the *AUDPGDE* provide for the freedom of movement, association and campaign. In order to achieve this, it is required that States put in place all necessary measures to ensure that this is achieved. The Electoral Commission of Uganda is mandated and has always released a campaign schedule for all the presidential contestants including the 2021 elections. Campaigns for the 2021 elections in Uganda were duly carried out although with some restrictions in line with enforcing the COVID-19 Standard Operating Procedures (SOPs). Along the way however, campaigns were halted abruptly and presidential candidates were restricted from campaigning in some districts, hence affecting the outlined rights under the *AUDP-GDE*. This also contravened Section 21 (2) of the *Presidential Elections Act* (2005) which allows candidates to hold campaign meetings in any part of the Country. Section 23 further provides for freedom of expression, equal treatment and access to information by all candidates during the campaign period. The same provision is reiterated in Section 21 (2) of the *Parliamentary Elections Act* (2005). The abrupt halt of campaigns in some districts was contested in the courts of law in the case of *Lukwago Erias v Electoral Commission*⁴³ in which the Applicant argued that the press statement by the Respondent (dated 26th Dec. 2020) in which the Respondent suspended campaign meetings in some districts of the country infringed on the Applicant's right to freedom of 'association, assembly and interface of electorate and the entire citizenry' which is at the helm of a free and fair election. Whereas court noted that freedom of speech, assembly and association are at the helm, of a democratic system, Court noted that the right to assembly and association is not absolute and can be limited 'where exceptional circumstances demand so and specifically, either where it is prescribed by law or where it is necessary and proportionate to do so or when the limitation pursues a legitimate aim.' Court further pointed out that a limitation to the enjoyment of rights and freedoms has to be measured for validity and the limitation has to be justified within the confines of *article 43 (2) (c) of the Constitution of the Republic of Uganda*. It was the court's view therefore

⁴³ *Lukwago Erias v Electoral Commission* (Misc. Cause no. 393 of 2020) (Uganda).

that whereas the respondent's press release by the respondent limited the applicant's rights as outlined, the limitation is justifiable, in the face of the COVID-19, in order to ensure public safety among other reasons and also in face of undeniable scientific evidence of the spread of the pandemic in the districts where campaigns were restricted. In addition, the respondent (Electoral Commission) has special powers under *Section 50* of the *Electoral Commission Act* in cases of emergency. The application was therefore dismissed with costs.

Furthermore, the campaigns were marred with intimidation of some of the presidential candidates and their supporters as well in violation of the section 21 of the Presidential Elections Act, 2005 as amended (Uganda).⁴⁴ For example, Robert Kyagulanyi and Patrick Oboi Amuriat (presidential candidates) were incarcerated and they missed campaigns for a few days.⁴⁵ In addition, some of the supporters of these presidential candidates were sprayed with teargas several times, arrested and detained and some even died.⁴⁶ Whereas this was the case, the Police and the Electoral Commission pointed out that these candidates were holding Campaign rallies contrary to the COVID-19 SOPs and guidelines contrary to the *Public Health (Control of COVID-19)*⁴⁷ which prohibited mass gatherings as an SOP against the spread of COVID-19 and Section 171 of the *Penal Code Act*⁴⁸ which prohibits the spread of harmful disease. Whereas this might have been the case, it is important to note that the guidelines were selectively applied with some of the candidates for example Yoweri Kaguta Tibuhaburwa Museveni (the then incumbent president) being allowed to traverse the nation and hold mass gatherings with their supporters.⁴⁹ Furthermore, this is an indicator that the right to freedom of association and campaign for the affected candidates

⁴⁴ Electoral Commission, 'EC Suspends Campaign Meetings in Specified Districts' <https://www.ec.or.ug/news/ec-suspends-campaign-meetings-specified-districts> accessed on 19th January, 2021.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Public Health (Control of COVID-19) Regulations S.I.83 of 2020.

⁴⁸ Cap 120, Laws of Uganda 2000.

⁴⁹ Electoral Commission (n 44).

(Kaygulanyi and Amuriat) were violated by the police and the electoral commission.

On the 13th of January, 2021, the government of Uganda shut down the internet across the country.⁵⁰ This was preceded by the shutdown of social media.⁵¹ The president of Uganda, Yoweri Kaguta Tubuhaburwa Museveni in his national address held on the 12th of January, explained that this was in a bid to prevent interference or manipulation of the general elections.⁵² Uganda government's interference with internet connection as well as the disconnection of social media is a violation of *Constitution of the Republic of Uganda*⁵³ which provides that 'power belongs to the people.' By curtailing their use of social media, the citizens of Uganda were denied the power or liberty to receive any kind of information across any form of media and hence exercising their power to make informed decisions (whether influenced by social media content or not). People should therefore be given the liberty to decide on which leaders they want without any interference. In addition, the switching off of the internet grossly affected various human rights, including the right to freedom of expression, the right to information, the right to education and the right to health among others, as outlined under the various international, regional and national legal provisions as elaborated here under. The *Universal Declaration of Human Rights (UDHR)*⁵⁴ provides for people's right to hold opinions, without interference and the right to expression including the right to seek, receive and impart information or ideas of all kinds regardless of frontiers, either orally, in writing or print or *other media of choice* (Social is one such media and it can only be used while the internet is accessible). It is however important to note that the same article provides that this right comes with 'rights and responsibilities' and could be restricted in order to protect the rights of others,

⁵⁰ This was confirmed by President Yoweri Museveni's national address held on the 12th of January 2021 at 8pm and aired on NTV television (Uganda).

⁵¹ New Vision News Paper and The Daily Monitor News Papers, Wednesday 13th January, 2021, page 3.

⁵² Ibid.

⁵³ The Constitution of Uganda (1995), Article 29.

⁵⁴ The UDHR (1948), Article 19.

security, public order and behavior such as libel, slander, pornography, incitement etc. cannot be entertained in the in the name of trying to safeguard this right. In the Ugandan context, what should have been done by the Ugandan government is to point out the communications of the people that misuse the internet and the media and rightfully have them punished accordingly, including turning off their internet as opposed to having all Ugandans pay dearly. This is so, especially because the government boasts of having a strong intelligence system.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) contains provisions similar to those in the UDHR. It provides for freedom of expression which includes articulation of opinions and ideas without fear of retaliation, censorship or legal sanction regardless the medium used. Uganda acceded to the ICCPR in 1995. Similarly, the *ACHPR*, in article 9 provides that every individual has right to express and disseminate his opinion within the law. A similar provision is enshrined in the *African Charter on Democracy, Elections and Governance (ACDEG) (2007)* in Article 27 (8) and provides that States parties should promote freedom of expression especially in relation to press freedom. Similar provisions are also reflected in the *AUDPGDE*⁵⁵ which requires States to ensure freedom of expression of political opinion and access to media (Part V (5)). Turning off the internet therefore breached the right to expression through the media especially since social media could not be accessed. Moreover, the internet shutdown interfered with the right to information as provided for under *article 41 of the Constitution of the Republic of Uganda* and provides that every citizen has a right to access information from government or any other organ. For example, NBS television live at 9 pm news of 13th January 2021 reported that because of internet interference, they were unable to broadcast elections news from across all the other parts of the country hence denying their viewers the opportunity to get information. This was the same case for their social media platforms like Facebook and twitter. The same was the case for TV West television which could not broadcast election information or the electoral process on the polling day (14th January, 2021) as they could

⁵⁵ AHG/Decl. 1 (XXXVIII, AUDPGDEA (2002).

not receive any information from their journalists in the field due to the internet shut down. In addition, as already cited above, *article 19* of the *UDHR* provides for the right to seek, receive and impart information or ideas of all kinds regardless of frontiers, either orally, in writing or print or other media of choice. The *ACHPR*, in *article 9* provides for the right of every individual to receive information. The *AUDPGDEA* already cited above requires states parties to safeguard all human and civil liberties, for example, access to information during the electoral process (Part III (d)). By turning off the internet therefore, Ugandans' could not receive any information through social and in some cases through television and radio, hence a violation of their right to exchange information on the electoral process. Ugandans should therefore have been left to receive information in any form and make informed decisions while exercising their right to vote.

Moreover, the internet shutdown interfered with other rights, for example, the right to education of Ugandans as enshrined under *article 30* of the *Constitution of the Republic of Uganda* and as enshrined under various international and regional instruments (*article 26* of the *UDHR*, *article 17* of the *ACHPR* and *article 13* of the *ICESR*). Institutions of higher learning like the Law Development Centre were holding online classes before the internet was shut down. The classes had to be suspended. Similarly, the right to health as enshrined under *article 12* of the *International Covenant on Economic Social Rights (ICESR)* which is reiterated in *article 16* of the *ACHPR*. It is important to note that although the Ugandan Constitution does not expressly provide for the right to health, it recognizes the Government mandate to provide medical services (*Objective and Directive Principle of State Policy no XX*). In *article 23 (5) (c)*, *the Constitution*) recognizes the right to every person to access to medical services. Internet is one way in which some people access medical services. Many people in Uganda access their doctors online through medical apps or online communication.⁵⁶ By interfering with the internet and social media therefore, their doctors could not be accessed on

⁵⁶ This was also reported on Bukkedde Television news live at 10pm on the night of 13th January 2021.

time hence an interference with their right to proper health. Even more serious is the fact that the internet shut down negatively affected the control of and fight against the COVID-19 pandemic especially because people who tested for COVID-19 were unable to receive their results during the internet shutdown period. This is because the results were always relayed through email and therefore people were unable to receive their results. The people whose tests turned out positive therefore, were unable to take the necessary precaution to avoid the spread of the virus so the health of their contacts was in jeopardy.⁵⁷

Important to note also is the fact that no media/press/journalists were available at the polling stations visited and at many other polling stations across the country. Journalists were not allowed to cover the general elections without obtaining accreditation from the Electoral Commission to cover the 2021 general elections.⁵⁸ This arose from a directive issued by the Uganda Media Council (UMC) that all journalists needed to be accredited in order for them to be able to cover the 2021 elections.⁵⁹ This directive affected the foreign journalists as well. Although the UMC argued that they issued the directive under the *Press and Journalist Act*⁶⁰ which gives the UMC mandate to regulate and promote good ethical standards and discipline journalists and to promote, generally, the flow of information. Where this is the case, the UMC seems to have conveniently invoked this provision at a time when the media has documented excesses of police and other state organs. The UMC therefore seemed to be trying to avoid the same, during the electoral period. The *Press and Journalist Act* instead requires the Media

⁵⁷ Daily Monitor newspaper, Friday, January 15 2020, page 3, reported that Ugandans who submitted samples for COVID tests are unable to receive test results because results are usually delivered through email (Prof. Ponsiano Kaleebu of Uganda Virus Research Institute).

⁵⁸ The Electoral Commission Act, s 16; Electoral Commission, <https://www.ec.or.ug/election/media-accreditation-20202021>; Electoral Commission,

⁵⁹ Uganda Media Council, 'Guidelines for Media Council Accreditation of Journalists for Coverage of 2021 Elections and other State Events' <https://mediacouncil.go.ug/wp-content/uploads/2020/12/Press-Statement-on-accreditation-for-media-coverage-in-Uganda.10.12.2020.doc> accessed on 07th October, 2022.

⁶⁰ Cap 105 Laws of Uganda 2000.

Council to issue practicing certificates to journalists who are enrolled by the Institute of Journalists of Uganda (NIJU) (which has been moribund for about 15 years now hence unable to issue the practicing certificates), leaving the role of the UMC to entering enrolled journalists on the role of journalists and issuing them practicing certificates.⁶¹ The law hence requires no accreditation for local journalists. Although foreign journalists require accreditation (which they already have) they need no further accreditation specially designed to enable them to cover elections.⁶² The move by the UMC therefore could be argued to have other ends to achieve other than fishing out quack or fake journalists as they have alleged. This requirement curtailed the freedom of expression of which shall include freedom of press and other media in accordance with *article 29 of the Constitution of the Republic of Uganda* especially since the press could not gather news, report it and possibly, analyze it. The aggrieved journalists petitioned court for redress and Court ruled in their favour in the case of *Editors Guild Uganda Limited and Centre for Public Interest Law Limited v Attorney General*.⁶³ The applicants sought court orders to quash the directives of the UMC; to quash the illegal registration and accreditation of journalists by the UMC in order to cover the 2021 elections and other state events the requirement, being irregular; a declaration that failure to constitute, maintain and operationalize the statutory NIJU to have journalists enrolled under the *Press and Journalist Act* is illegal and irregular; a declaration that registration of the journalists by the UMC without an operational NIJU in accordance with the *Press and Journalists Act* is illegal and irregular. Court ruled in favour of the applicants and stated that registration and accreditation of Journalists (local and international) by the UMC outside the confines of the law for purposes of covering the 2021 elections is illegal, irregular and tantamount to procedural irregularity. Court therefore quashed the directives of the UMC, the illegal registration of the journalists, prohibited the UMC or any other government agents from curtailing journalist

⁶¹ The Press and Journalist Act, s 15; 16; 26; 27.

⁶² *Ibid*, s 29.

⁶³ *Editors Guild Uganda Limited and Centre for Public Interest Law Limited v Attorney General* Misc. Cause no. 400 of 2020.

from covering the 2021 elections. Although the ruling was delivered in favour of the applicants, it was delivered late on the 18th of January, 2021 after the 2021 general presidential and Parliamentary elections. It will however serve as a precedent for future similar cases. In addition, some local government elections were yet to be held by the time of the ruling for example elections for the District local councilors, municipality chairpersons and councilors, counselors for youth, PWDs and older persons to the district local government councils, chairpersons and councilors for sub county/town/municipal division. It therefore hoped that the ruling will aid the journalists to cover these elections.

Both women and men were involved in the election either as aspirants for various positions or as voters. There was one female aspirant in the presidential race.⁶⁴ There were female contestants for the directly elected Member of Parliament seat.⁶⁵ Although female numbers were significantly less than the males, it is commendable that females in Uganda have been given an equal footing with men to be involved in politics. There is a need for continued affirmative action in favour of women among other strategies, in order for them to fully participate in the political sphere. Important to note also, is the fact that women turned up in large numbers, to cast their votes.⁶⁶ The political involvement of women is important to note especially because Uganda is committed to its international standards on non-discrimination and full participation of women. International, regional and national law prohibits discrimination against women under the article 2 of the *International Covenant on*

⁶⁴ Presidential Campaign Programme, <http://www.ec.or.ug/election/presidential-campaign-programme>.

⁶⁵ For example, there were only two women contestants out the 11 contestants for all the different divisions of Fort portal city; 3 women out of the 28 contestants for all the different divisions of Kasese District; All the 16 contestants were male, for Kyenjojo District, all the 19 contestants were male for Kasese district; 3 females and 25 men for Kabale District; 2 females and 13 males for Sheema District; 1 female out of the 34 contestants for Mbarara City and all the other Division; 1 female out of the 19 contestants for Ntungamo District; 2 females out of the 18 contestants for the Rukungiri District (Nominated candidates for Parliamentary Elections 2021) 18.11.2020, <https://www.ec.or.ug/info/nominated-candidates-parliamentary-and-local-government-councils-elections-2021>).

⁶⁶ Ibid.

Civil and Political Rights (ICCPR),⁶⁷ article 2, *Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW)*⁶⁸ article 18 (3) of the *ACHPR*,⁶⁹ the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)*⁷⁰ (all of which Uganda is a party to), article 2, 21 and 33 *Constitution of Uganda*. In addition, the *Local Government Act (LGA)* (Cap 243, Law of Uganda, 2000) contains similar provisions. Therefore, whereas Uganda has taken steps in ensuring gender equality especially through legislation, a lot more affirmative action and education needs to be done in order to practically realize gender parity in the electoral process. The female numbers are still significantly low, compared with those of the men.⁷¹

Uganda, in fulfillment of its obligation invited accredited election observers including accredited observers from the AU, amongst many others. Observers were deployed across the country to observe the election process on the polling day, across the country in all the 146 Districts. It can therefore be said that Uganda acted within the legal requirements under Section 16 of the *Electoral Commission Act* and article 19 of the ACDEG which requires African Union State parties to '... inform the Commission of scheduled elections and invite it to send an electoral observer mission and ... guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.' In addition, the *Declaration of Principles for International Election Observation (DPIEO)*⁷² contains similar provisions.

Although it is commendable that Uganda accredited election observers, the Alliance for Finance and Monitoring (AFM) headquarters were raided over allegations of having a parallel tally centre and some of their members were arrested.⁷³ Although the AFM may not be a UN observer, the 'non-interference' principle should be applied to all ob-

⁶⁷ 1966.

⁶⁸ 1979.

⁶⁹ 1981.

⁷⁰ 2001.

⁷¹ Refer to (n 65) on a sample of the numbers of female contestants.

⁷² Endorsed by the United Nations Secretariat.

⁷³ The New Vision newspaper, Thursday 14th January, 2021.

servers. This notwithstanding, the head of the European Union (EU) Diplomatic Watch commended Uganda for having had a peaceful election although he too pointed out some anomalies like arrest of some election observers and fighting among supporters of different camps.⁷⁴ Similarly, the African Union and East African Community (EAC) observers in their preliminary report commended the Ugandan elections as peaceful, free and fair and also noted the high turn up of women and youth. His Excellency Domitian Ndyizeye, EAC head of mission noted that the polling started late and that COVID 19 SOPs like the wearing of masks and social distancing were not strictly adhered to. In addition, they pointed out many other hiccups, for example the faulty biometric machines and the late commencement of the elections in almost all polling centres across the country.⁷⁵ The hiccups notwithstanding, Uganda is commended for fulfilling its mandate of bringing on board election observers. It is hoped that their observations and recommendations will be implemented during the next election.

4.0 A Legal Analysis of Other Illegal Practices and irregularities during the electoral process

The presidential and parliamentary elections were held on the 14th of January 2021. Various polling centres were visited by the authors and the arising legal issues were monitored. The authors visited 8 polling centres including Kakyeka Stadium South (Rwebikoona) (A-L), including Kakyeka Stadium South (Rwebikoona) (M-Z), Kakyeka Stadium North (Kakyeka) (A-L), Kyapotani polling centre in Kakoba Mbarara, Kakoba Demonstration Primary School polling station and Rwemigyina polling station, Kakiika, all in Mbarara City. Although the authors did not visit all polling stations within and outside Mbarara, information was canvassed through Newspapers, Radio and Television stations and from media agents from other districts in Western Uganda, including but not limited to Mbarara, Kabale, Isingiro, Kanungu, Kabarole,

⁷⁴ Saturday Monitor newspaper, 16th January, 2021, page 1 and 3.

⁷⁵ Uganda Broadcasting Corporation (UBC) news at 10pm, Monday 18th January, 2021.

Ntungamo, Kabale, Sheema, Rukungiri and Bushenyi, among others. Many legally related incidents took place as will be analysed. Some of the observed positive legal practices during the election process, including the polling process is the fact that Ugandans were able to cast their votes in accordance with *article 59 (1) of the Constitution of the Republic of Uganda*, on the right to vote. It provides that `every citizen of Uganda of eighteen years of age or above has a right to vote.`

It was observed that the elections were conducted in open spaces in accordance with Section 29 (1) of the *Parliamentary Elections Act* and Section 30 of the *Presidential Elections Act*. The presiding officers also carried out a mini voter education exercise before the commencement of the voting exercise although the people that voted after the education exercise missed the information. In addition, the voters formed one line in order to vote in an authorized manner in accordance with Section 30 (3) of the *Parliamentary Elections Act* and Section 31 (3) of the *Presidential Elections Act*. The elderly and expectant mothers were also given priority to vote in accordance with section 34 of the *Presidential Elections Act and Section 33 of the Parliamentary Elections Act*. Although this was the case, there were observed illegal practices and irregularities, some occasioned by government officials and others by the voters. On the election days, there was delay in arrival of voting materials and hence delayed commencement of the voting process. At the polling stations which were visited by the authors and across the country, electoral materials did not arrive on time.⁷⁶ The voting process therefore, did not start on time. Materials arrived at 07:43am and voting started at 8:43am at Kakyeka Stadium South (Rwebikoona) (A-L) and 9:15 am at Kakyeka Stadium South (Rwebikoona) (M-Z). Similarly, at all of the polling centres which were visited, voting did not start on time. Similar incidents were reported by Radio West 100.2⁷⁷ emphasising that elections commenced late and election materials arrived late although people were eager to exercise their right to vote even amidst an early morning down pour. This was the same case in Bunyangabu District where most polling centres had not yet opened by

⁷⁶ Uganda Broadcasting Corporation (UBC), 8pm news bulletin of 17th January, 2021.

⁷⁷ Radio West Lunch Time News at 1pm, 14th January, 2021.

9am and some places in Ntungamo Municipality and Kasengyengye and NTC (L) polling stations in Mbarara District where voting kicked off at 10 am and 9am.⁷⁸ The delay in the commencement of the voting process is contrary to the *Parliamentary Elections Act*⁷⁹ and the *Presidential Election Act*,⁸⁰ which requires voting to commence at 7:00am in the morning. *Section 33 of the Parliamentary Elections Act and Section 34 of the Presidential Elections Act* further requires voters to vote without undue delay. Information from all the visited polling centres revealed that polling materials arrived late and that voting commenced late at all the polling centres. This is something government, needs to put to order, through the electoral commission. Some voters arrived before 7 am so that they can voted and proceed to work there after or attend to other things. With this status quo, however, some people had to walk away in order for them to be at work. They were therefore unable to vote. This could tantamount to voter disenfranchisement hence a violation of their right to vote.⁸¹ Although the Presidential and the Parliamentary election days were declared public holidays,⁸² some people still have to go to work so they try to use the 7am polling time to their advantage. It is also important to note that the other election days for `non-presidents` and parliamentarians were not declared public holidays so working voters were not able to vote.

In addition, some voters' names were missing from the voters' register at the visited polling centres as well as some other districts likes Kagadi. Although this amounts to voter disenfranchisement, and hence a violation of the right to vote of the affected persons under article 59 of the Constitution, it is important to note that it is the voter's duty to participate in the verification of the voter's register whenever displayed in order to avoid or minimise such anomalies. Whereas voters have rights, they also have responsibilities. For examples, it is the duty of the citizens

⁷⁸ Daily Monitor Newspaper, Friday 15th January, 2021, page 9 (Uganda).

⁷⁹ Parliamentary Elections Act (Uganda), s 29.

⁸⁰ Presidential Elections Act (Uganda), section 30.

⁸¹ The Constitution of Uganda, Article 59.

⁸² Crispus Mugisha, `Election day and day after declared public holidays in Uganda` 13th January, 2021 <https://nilepost.co.ug/2021/01/13/election-day-and-day-after-declared-public-holiday-in-uganda/> accessed on 16th January, 2021.

or voters to crosscheck with the voters` register and ensure that their particulars appear on the list and that they have no errors.⁸³ Otherwise it is also important that they register their complaint with the Electoral Commission representatives at the polling station or at the District/City level and ensure that the issue is rectified, most likely, for the next election. This is because rectifying the issue on polling day may be difficult hence defeating the possibility to vote on that actual day. In addition, although the affected voters have a right to take legal action against the responsible government entity (Electoral Commission), weighing the cost against the benefits of pursuing legal action is vital, keeping in mind the fact that legal action might not enable the aggrieved party to vote during the polls as desired, because the polling will have passed by and it might not alter the result of the election result either. That having been pointed out, nothing in the law hinders the affected persons to follow the necessary due process including petitioning the Electoral Commission and if not satisfied with the decision, the courts of law. It is a general principle of law that the Jurisdiction of court cannot be ousted.⁸⁴

An important observation is that the president addressed the nation shortly before the elections⁸⁵ and among others issues, he pointed out that only finger print screening using the biometric machines should be used for voting.⁸⁶ The president stated that the Electoral Commission 'should not allow anybody to vote where the thumb print is not used.' This statement was contrary to Section 35 (3) of the *Presidential Elections Act* and Section 34 (3) of the *Parliamentary Elections Act* which provide that as long as a voter`s name appears on the voter`s register, they are eligible to vote. The president`s statement was therefore not in line with the law. Many voters whose names appeared on the voters` register were therefore unable to vote because their finger prints could

⁸³ Electoral Commission, `EC concludes display of the National Voter`s Register` <https://www.ec.or.ug/news/ec-concludes-display-national-voters-register> accessed 16th January, 2021.

⁸⁴ *Wandera v Wafula* [2016] UGHCCD 142.

⁸⁵ NTV television news broadcast at 9pm, on Tuesday 12th January, 2021 (Uganda); New Vision newspaper, Wednesday 13th January, 2021, page 3.

⁸⁶ *Ibid.*

not be captured by the biometric machines or because the machines went faulty.⁸⁷ The emphasis on the use of biometric machines however was a recommendation in the case of *Amama Mbabazi v Yoweri Kaguta Museveni Electoral Commission and the Attorney General*⁸⁸ which recommended that a law be enacted to provide for the use of technology in the conduct and management of Elections. The *Electoral Commission Act* was hence amended to provide for the use of technology, perhaps following this amendment.⁸⁹ The EC is mandated to take steps to ensure that there are secure conditions necessary for the conduct of any election under the EC Act.⁹⁰ This notwithstanding, the use of the hard copy voter's register has not been done away with legally. The voters' register hence still remains the primary document which determines whether a person can vote or not and polling assistants need to be educated about this. In addition, It is imperative to note that that biometric machines across the country disappointed many voters because the machines were either slow or non-functional and in some cases, voters' finger prints could not be read.⁹¹ This was the case in Katete Central polling station as well as Sheema District. As already highlighted, in some instances, voters were sent away since their finger prints could not be captured. The machines were introduced to 'enhance transparency, avoid multiple voting and curb election fraud' (*Amama Mbabazi v Yoweri Kaguta Museveni and others*). In this case, court was also aware that technology can malfunction and that the use of biometric machines could not have been perfect but court also mentioned that the biometric machines were not the sole determinant of a voter's ability to vote, but the voter's register, which is the sole document for ensuring voting. During the 2016 elections, the biometric machines also malfunctioned. It is important to note that although biometric machines were used in the 2016 presidential elections, there was no law that specifically regulated their use. The enactment of

⁸⁷ Uganda Broadcasting Corporation (UBC) live at 8pm news bulletin of 17th January, 2021.

⁸⁸ *Amama Mbabazi v Yoweri Kaguta Museveni and Another*, Election Petition 1 of 2016.

⁸⁹ The Electoral Commission Act, Cap. 104 as amended, s 12 (1) (a);(f).

⁹⁰ *Ibid*.

⁹¹ The Daily Monitor Newspaper, Friday 15th January, 2021, page 4.

a specific law was recommended by the Supreme Court in the case of *Amama Mbabazi* as discussed above to among other reasons minimize electoral malpractices. Following the recommendation therefore, the use of biometric machines was also adopted in the 2020 amendment to the Electoral Commission Act, already cited. From this 2021 election, however, the biometric machines cannot be said to have served the purpose for which they were introduced in the electoral process, as highlighted above. They instead further inconvenienced the voters, notwithstanding the fact that the spirit behind their introduction was positive. Proper training of presiding officers who use the machines, in future elections. The alternative of having to use the voters' register was therefore ideal rather than have the voters being denied the opportunity to vote.

Similarly, some voters were not in possession of voters' cards/slips. Section 34 (1) of the *Parliamentary Elections Act* requires a voter to have a voter's card. A voter may, however, vote if his/her name or photograph appear in the voters' register (Section 34 (3)). The same provision is reiterated in the *Presidential Elections Act* (Section 35) and the *Registration of persons Act*.⁹² Some voters were therefore sent away for lack of possession of voters' cards, contrary to law. At the Kakyeka Stadium South (Rwebikoona) (A-L), the voter register was not displayed for the first voters hence contravening the cited law. The same was the case at the Katete central polling centre, in Mbarara and Bunyangabu District.⁹³ Also, the voters register was not made available to be able to track the voter turn up as well as for tallying purposes. As already highlighted, the available biometric machines were slow and in some cases they got faulty hence delaying the voting process or leading to some voters' being sent away. As already highlighted in the preceding paragraphs, this was in breach of the affected persons' right to vote. The Electoral Commission therefore needs to place emphasis on the education and training of their staff/agents and ensure that they are in possession of and have read copies of the electoral laws.

⁹² Registration of persons Act, section 66 (2) (b).

⁹³ Daily Monitor Newspaper, Friday 15th January, 2021, page 6.

Relatedly, at Rwemigyina polling centre, in Kakiika, Mbarara the names of some voters were missing from the voters' register. It is not certain, however, whether the affected persons were actually voters at that polling station and whether they took part in the voter verification exercise. If, however, they were actual voters of that polling station and they actually took part in the verification exercise, then this amounts to voter disenfranchisement which affects their right to vote under article 59 of the *Constitution* of the Republic of Uganda. Court in the case of *Retired Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni*,⁹⁴ at page 25 pointed out that the 'Electoral Commission has a duty to ensure that all citizens who are qualified to vote register and exercise their right to vote and that the entire process of cleaning the register should be fair and transparent and should be preceded by adequate voter education.' Whereas the Electoral Commission displayed the voter's register for verification and ran some announcements for voter's to ensure the verification of their names, as already alluded to in the preceding paragraphs, it cannot be said with certainty that the voter education in this respect was sufficient or that the voters in question actually carried out the verification of their names. In addition, Justice Bart Katureebe (JSC) pointed out in the above case that deletion/ the case of missing voters' names from the register indeed amounted to voter disenfranchisement under Section 19 of the *Electoral Commission Act* which provides for voter registration and provides for the right of voters to vote in the ward or parish where they are registered. He also elaborated the procedure for de-registering voters under Section 25 of the *Electoral Commission Act*, which he concluded, was not duly followed before striking off the names of the affected voters from the register hence the deregistration was illegal. This notwithstanding, he added that given that 90% of the registered voters took part in the exercise, the non-appearance of the affected eligible voters on the register could not have substantially affected the result of the election, even if all their votes were to be transferred to one candidate especially the candidate of the aggrieved parties, in this case, the petitioner. The facts are similar to

⁹⁴ *Retired Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni*, Petition no.1 of 2006 (Uganda).

the current situation where some voters did not appear on the register. They represented a small percentage which would not have altered the result of the election. Nonetheless, this is not a ground to support the violation of voters' right to vote by having their names missing on the voter's register whether by some mistake or any other reason.

Although Section 29 (3) of the *Parliamentary Elections Act* and Section 30 of the *Presidential Elections Act* prohibits carrying a bag that can be used for concealment, this was not effected at any of the polling centres visited by the authors. Many voters were carrying back packs and handbags. It was however observed that neither the security personnel nor the polling agents or assistants made any effort to call these voters to order. It was therefore questionable as to whether the security personnel and polling agents received enough training or are in possession of the copies of the law. The challenge, however, is that many voters come straight from home very early in the morning, in order to vote first and go to work straight after casting their votes. Leaving their bags and belongings at home might be difficult. The polling stations too, do not provide any place for the safe custody of voters' belongings on polling day. It is therefore recommended that safe places as well as personnel to guard those belongings be provided and the law be amended to reflect this. This might also be an indicator that voter education as well training of the polling officials is not sufficient and therefore needs to be enhanced. In relation to prohibition of carrying bags to the polling stations, although Section 42 of the *Parliamentary Elections Act* and Section 43 of the *Presidential Elections Act* prohibit the possession of firearms and ammunition at the polling centres, there was no check point or security personnel to ensure this especially as people as well as their bags were not searched. It was free entry and exit at the polling centres and hence security of the voters was compromised. The same recommendation on the education and sensitisation of both the security personnel as well as the polling agents/assistants needs to be carried. Voters also need to be sensitized on their rights and duties during the electoral process.

Other irregularities and illegal practices that were observed include holding gatherings around polling centres contrary to Section 30

of the *Parliamentary Elections Act* and Section 77 (1) (a) of the *Presidential Elections Act*, prohibit gatherings of more than 12 people at the polling stations, and allows voters to stay at least 20 meters within the vicinity of the polling station. In addition, the EC issued a guideline which requires people not to stay around the polling station in order to observe COVID guidelines.⁹⁵ Gatherings of more than 12 people were recorded at the Kyapotani polling station in Kakoba Division in Mbarara District where people were heavily crowded around the polling centres. Similarly, voters who had finished voting were crowded around the polling centre and the police and polling agents and assistants were present but did not disperse them. The gatherings were also contrary to the COVID-19 prevention guidelines and Standard Operating Procedures as issued by the World Health Organisation and the Ministry of Health, in respect to social distancing.⁹⁶ Similar incidents were reported in Bunyangabu District.⁹⁷

Moreover, campaigning for particular candidates at the polling centres was being carried out contrary to section 81 (1) (a) of the *Parliamentary Elections Act* and Section 77 (1) (b) of the *Presidential Elections Act*. This was, however, done at Kakoba Demonstration Primary school in Kakoba, Mbarara District and Kakyeka Stadium South (Rwebikoona) (A-L). Although security personnel and polling assistants were present, they did not intervene in this situation. Similarly, some voters whom the authors interacted with alleged that they were sent away and that they were prohibited from voting on the ground that voting had been concluded. A similar incident was recorded in Kabura Primary School polling station in Bukanga District.⁹⁸ This is tantamount to voter obstruction contrary to Section 67 of the *Presidential Elections Act* and Section 71 of the *Parliamentary Elections Act*. Voter bribery was also observed at Nyakinengo and Ruhinda Sub Counties, Rukungiri District, where 7 people were

⁹⁵ Daily Monitor, 'Voters fail to follow Covid-19 prevention guidelines' Thursday 14th January, 2021 <http://www.monitor.co.ug/uganda/news/national/voters-fail-to-follow-covid-19-prevention-guidelines-3257348> accessed 15th January 2021.

⁹⁶ Ibid.

⁹⁷ Daily Monitor newspaper, Friday 15th January, 2021, page 4 (Uganda).

⁹⁸ Ibid.

arrested while issuing money to voters in favour of one of the aspirants for the Member of Parliament seat. The suspects were arrested and taken to police. The same was the case in Bunyangabu and Kabarole District.⁹⁹ This is tantamount to voter bribery contrary to sections 64 of the *Presidential Elections Act* and Section 68 of the *Parliamentary Elections Act*.

All these observed irregularities lay bare the fact that the Uganda government, through its agency, the EC, needs to ensure that enough personnel and/or logistics are available during the electoral process and on the day of elections to monitor such acts and take the necessary action. The Act of issuing money to potential voters is tantamount to bribery contrary to section 64 of the *Presidential Elections Act* and Section 68 of the *Parliamentary Elections Act*. Justice Bart Katureebe in the case of *Rtd. Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni*,¹⁰⁰ however, stated that “in cases of bribery, I think it is not enough for a deponent to say “*people were being bribed at road junctions.*” This must be stated with precision as to who gave the money, who received it and the purpose must be to influence their vote. Merely being seen giving money to a person or receiving money from a person cannot per se be evidence of bribery upon which a court can rely.» That «If this court were to accept every allegation of bribery made by politicians against each other in an election in this country without insisting on strict proof thereof, every single election would be annulled and it would encourage losers to simply go out there and swear affidavits that people were bribed at road junctions. Moreover, section 64 of the *Presidential Elections Act*, requires that the bribe is given to a person to influence his vote. The bribe must be to a voter. If money were given to people who are not voters, this would not amount to bribery within the meaning of the Act. Therefore, more particulars must be given in allegations of this nature, and must be proved. In the cited case of Rukungiri District scenario therefore, the alleged money exchanges/bribery acts should be supported by the relevant proof, that they were aimed to compromise voters against a particular candidate.

⁹⁹ New Vision newspaper, Thursday 14th January, 2021, page 9 (Uganda).

¹⁰⁰ *Rtd. Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni* (Election petition no. 1 of 2006) [2007] UGSC 24.

Election Violence (fighting and beating) was reported in Sheema District between the supporters of the different Parliamentary candidates. Some arrests had been made in connection to the incidents. In addition, it was alleged that the Residential District Commissioner (RDC) of Sheema had pre-ticked ballots. Should this allegation be confirmed to be true after proper police investigations, he can be charged with among other offences, being in possession of election material as an unauthorized person under section 76 (e) of the *Parliamentary Elections Act*. He would also be tasked to explain how the ballots got illegally ticked should the allegations be confirmed to be true. Justice Kanyeihamba in the case of *Retired Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni*¹⁰¹ pointed out that, "In my view, the illegalities, malpractices and irregularities (including possession of pre-ticked ballots) reported and proved to the unanimous satisfaction of this court dug too deep in the foundations and legitimacy of the Presidential elections of 2006 and leave no shadow of doubt that that election was fatally flawed and a fresh one ought to be ordered and held... I find that the Presidential election results of 2006 were affected in a substantial manner." In the same judgment however, Justice Bart Katureebe, JSC pointed out that the "there can be no doubt that there were many instances of non-compliance with the law and principles thereof in the conduct of these elections. But on the whole, I am not satisfied by the evidence on record that this non-compliance affected the result of the election substantially." The petition was therefore dismissed. So according to this case, there has to be enough evidence to prove the allegations against the RDC of Sheema and even if evidence is found, the irregularity has to have affected the 2021 elections in substantial manner. In addition, there were allegations that there was a physical fight between the supporters of the two contestants for the MP seat of Mwizi, Rwampara District. The culprits should be charged with the offence of affray under Section 79 the *Penal Code Act (Cap 120)*.¹⁰² In addition, during the fight, a kitchen of an individual belonging to one of the camps was set on fire. The culprits

¹⁰¹ Ibid, Petition no.1 of 2006.

¹⁰² Cap 120 Laws of Uganda 2000.

should be charged with arson under Section 327 of the *Penal Code Act*¹⁰³ of Uganda. Some suspects had been suspected by press time (Information obtained from a police officer). Other than a few cited cases of violence, the situation was generally calm in the region.

Other anomalies during the voting included postponement of elections at some polling centres and tampering with ballot boxes. Voting was postponed one of the polling centres. Although this is not an irregularity if done in accordance with the law, voters get disorganized. For example, those who come very far from the polling station may not be able to make it back for voting on another day. Voting did not take place in the Albert region in Hoima, polling due to flooding.¹⁰⁴ This was because the election season took place during the rainy season. *Sections 45 of the Parliamentary Elections Act* provides that the elections can be adjourned to the following day, where they have been interrupted or a complaint may be lodged to the presiding officer who may resolve the issue. The course of action in the current Hoima case was therefore in accordance with the law. At Engari polling station in Kazo, 2 boxes were tampered with. The elections were suspended as well.¹⁰⁵ As already elaborated in the preceding paragraphs, the elections can be postponed where an occurrence takes place that makes it practically impossible to proceed with the elections or where it is safer or reasonable to do so. In addition, all the allegations mentioned must be first proved through proper investigations even if this constituted an inconvenience to the voters.

Moreover, although article 30 (5) of the *Parliamentary Elections Act* and Section 31 of the *Presidential Elections Act* require polling stations to have four tables in place, and although Section 48 (7) of the *Presidential Elections Act* and Section 47 (4) of the *Parliamentary Elections Act* require the presiding officer to empty the contents of the ballot box on the polling table before counting the ballots, there was no table at the Kakyeka Stadium South (Rwebikoona) (A-L). EC officials had no tables or chairs to use in the process. The Local Council 1 chairman had to improvise

¹⁰³ Ibid.

¹⁰⁴ According to the TV West News updates (14th January 2021).

¹⁰⁵ Crooze FM news (14th January 2020).

tables and chairs for this purpose. This was the same case at the Kakye-ka Stadium South (Rwebikoona) (A-L) in Mbarara District and all the polling stations visited by the authors. The lack of logistics for the Electoral Commission not only contravenes the law cited (including the international legal provisions), it makes the work of the polling assistants and presiding officer difficult especially because the ballots have to be emptied on the ground. This even worse on rainy days and/or where the vote counting goes on into the night. Sometimes the ballots get damaged. In addition, it was observed that vote counting and tallying at many polling stations went on in the night. For example, at the polling stations visited by the authors and also at Kyeruma polling station in Rushozi, Kabwohe, Sheema Municipality. Section 48 (2) of the *Presidential Elections Act* and Section 47 (2) of the *Parliamentary Elections Act*, provide that no votes shall stay uncounted overnight and that where necessary, the presiding officer shall offer light for purposes of counting but having already noted the logistical issues with the EC during this election, the burden to find light might be heavy on the presiding officer as well. It is also important to note that the duty to ensure that the electoral process is successful does not solely lie on the EC. Each government department needs to play its part to ensure that this is realized. Article 66 (1) of the *Constitution of Uganda* provides that "Parliament shall ensure that adequate resources and facilities are provided to the Commission to enable it perform its functions effectively." Budgets must therefore be passed on time and sufficient funds and resources provided to the EC in order for it to ably perform its duties. This position was emphasized by the Justice Bart Katureebe, JSC, in *Rt. Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni*. The logistical challenges cycle has however been observed to repeat itself every election cycle.

Several other irregularities were observed during the electoral process and on the polling day. They include errors on ballot papers. For examples, at the Itazi Bulimanyi polling station, Mwenge North constituency in Kyenjojo District, polling station, where MP candidate photos were not tallying with their election symbols on the ballot paper so voting did not take place. The image of the National Resistance Movement (NRM) candidate switched with the one of the independent candidate.

The elections were suspended indefinitely.¹⁰⁶ At some other polling centres, some of the voters were not issued with ballot papers for presidential candidates. They were only issued with ballot papers for Members of Parliament only. This took place at Mutoozo polling station.¹⁰⁷ There were also reported cases of personation in which some voters arrived at the polling stations and found that their names were already ticked off in the voters' register as having already voted. This happened in Kihuuka cell polling station in Masindi District. This is contrary to section 75 of the *Presidential Elections Act* which provides that anyone who votes as some other person commits the crime of personation and is liable on conviction to imprisonment or to pay a fine. Voter Intimidation and undue influence was also observed in Bazzar ward in Central Division, Fortportal City. This is a crime under section 80 of the *Parliamentary Elections Act* and Section 76 of the *Presidential Elections Act, 2005* which prohibits undue influence over voters especially through threats and intimidation in order to sway them to vote a different candidate from their candidate of choice. Less ballot papers than the voter number was also observed in Kyabakoto village in Ntooma parish, Bwijangi Sub County.¹⁰⁸ This is tantamount to voter disenfranchisement as well as a violation of their right to vote under article 59 of the *Ugandan Constitution* and the already cited ICCPR, the UDHR and the AUDPGDEA. In addition, in Rushenyi Ntungamo, a ballot box was stolen on the polling day (14th January, 2021). The elections were postponed to 15th January, 2021. This too is an acceptable legal step as outlined in Section 45 of the *Parliamentary Elections Act* and Section 46 of the *Presidential Elections Act* which provide that polling may be postponed to the following day in instances where it has been interrupted by different circumstances. The New Vision newspaper reported the same incident that occurred in Ntungamo.

There was non-compliance with COVID-19 prevention guidelines across all the polling centres visited by the authors and across the coun-

¹⁰⁶ Daily Monitor newspaper, Friday 15th January, 2021, page 12.

¹⁰⁷ Ibid.

¹⁰⁸ New Vision newspaper, Thursday 14th January, 2021) page 9.

try.¹⁰⁹ This was in violation of the electoral commission guidelines on COVID prevention during the electoral process. It was further reported that voters in some places like Sheema argued that COVID-19 was non-existent in their villages and is only in cities (as per a voter in Rutooma polling station in Sheema District.¹¹⁰ The case was similar in Rukungiri Districts where there was no washing of hands nor social distancing at some polling centres like Nyakagyene sub county headquarters, Kasoro primary school, Kagorogoro, Kahoko primary school in Rujumbura constituency and Rukungiri main stadium A and B polling centres.¹¹¹ In addition, this conduct was also in violation of Section 171 of the *Penal Code Act*¹¹² which prohibits ‘doing a negligent act likely to spread infectious disease.

The irregularities as presented bring to light the fact that the government of Uganda through its agent, the Electoral Commission still has a lot to do in order to realize the right of their citizens to participate in the governance of their country. This among many other avenues should be realized through the right to vote and the right to vote is realized through ensuring that the electoral process is adequate as highlighted in the preceding paragraphs of this article. The irregularities in the electoral process as highlighted however leave questions as to the adequacy of the electoral process. For example, whether presiding officers were handed the Electoral Laws as outlined in Section 6 of the *Presidential Elections Act* and the *Parliamentary Elections Act* and if they were, whether they read and understood them or whether they were adequately trained. One cannot help but wonder what the role of police is at the polling centres since most, if not all the anomalies passed unnoticed by the police or while police and the presiding officers were looking on. Therefore, voter education on all electoral positions needs to be equally enhanced in order for voters to be able to fully enjoy this right. Justice Bart Katureebe (JSC) in the already cited case of *Rtd. Col. Dr. Kiiza*

¹⁰⁹ Daily Monitor newspaper, Friday 15th January, 2021, page 3 (Uganda).

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Cap. 120, Laws of Uganda, 2000.

Besigye pointed out that some of the irregularities during the 2006 elections were as a result of lack of voter education. He stated that, “There is evidence that some of the problems and malpractices that had occurred at some polling stations were due to a lack of voter education.” It is therefore important that timely and efficient voter education be carried out toward every election and sufficient resources be availed to ensure this (Article 66 of the *Constitution of Uganda*). In addition, it is important that proper planning be carried out in order to avoid irregularities like less ballot papers than the voters at a polling station.

The electoral irregularities were quite a number as observed and analysed above. The Supreme Court in *Amama Mbabazi v Yoweri Kaguta Museveni, Electoral Commission and Attorney General* quoted the case of *Nana Addo Dankwa Akofuo-Addo and 2 Others v John Dramani*¹¹³ where court pointed out that it is not enough that a petitioner proves that there was non-compliance with the law hence an irregularity, there must be proof that such non-compliance with the law affected the validity of the election. This view of court is reflected in Section 59 (6) (a) of the *Presidential Elections Act*. The same was the position of Justice Bart Katureebe Bart (JSC) in *Rtd. Col. Dr. Kiiza Besigye v Electoral Commission and Yoweri Kaguta Museveni*, already cited above. He stated that ‘... The question as to the impact of these malpractices on the result of the election would, in my view depend on the extent, i.e. the number of polling stations, the number of voters involved, whether any interventions were made by the electoral officials and police. Although these incidents were found to have occurred, evidence shows they were in a few polling stations, compared to the total number of polling stations in the districts concerned, and some were arrested in time.’ Kanyeihamba JSC in the same case, however, disagreed with this position when he stated that it is absurd that court will arrive at a finding that an election was marred with irregularities yet rule that they were not substantial enough to alter the validity of an election. That a finding that the law was contravened by the existence of irregularities should be enough to annul an election.

¹¹³ *Nana Addo Dankwa Akofuo-Addo and 2 Others v John Dramani*, Presidential Election Petition Writ no. JI/06/2013.

Bottom line, the courts of law are open to any aggrieved party to lodge their electoral process complaint, for determination as provided for under the *Constitution of the Republic of Uganda (article 104)*. Similarly, the *Presidential Elections Act (2005) in Section 59 (1)* provides that 'any aggrieved candidate may petition the Supreme Court for an order that a candidate declared elected as president was not validly elected.' The *Presidential Elections (Election Petition) Rules* provide for the procedure for the filing of the petition.

To buttress the findings of the above analysis of the electoral process, the African Union and East African Community (EAC) observers in their preliminary report commended the Ugandan elections as peaceful, free and fair and also noted the high turn up of women and youth.¹¹⁴ His Excellency Domitian Ndyizeye, EAC head of mission noted that the polling started late and that COVID 19 SOPs like the wearing of masks and social distancing were not strictly adhered to. In addition, they pointed out that many other hiccups, for example the faulty biometric machines and the late commencement of the elections in almost all polling centres across the country.¹¹⁵

5.0 Conclusion and Recommendations

This article set out to conduct a legal analysis of the electoral process in Uganda, using the 2021 general elections as a case study with specific focus on Mbarara city. More specifically, the paper analysed the extent to which Uganda has realized the right of its citizens to participate in the government of their country especially through the right to vote. The paper concluded that in line with her international obligations, Uganda has been holding elections regularly and that the equal participation of both men and women has been practiced. It was further observed and concluded that campaigns were carried out although

¹¹⁴ East African Community, 'Election Observation Mission - Uganda General Elections' Preliminary Statement, Arusha Tanzania, 18th January 2021 <https://www.eac.int/press-releases/1925-eac-election-observation-mission-urges-electoral-commission-of-uganda-to-register-all-eligible-voters-in-future> accessed 18th January, 2021.

¹¹⁵ Uganda Broadcasting Corporation news bulletin at 10pm, the 18th of January 2021.

with some challenges as highlighted in the article. In addition, Uganda accredited election observers who observed the elections in all districts across the country and mini voter education was conducted by the different presiding officers of the polling centres that were visited. Further, the elderly, the expectant mothers and the sickly persons were given first priority to vote at the polling centres that were visited. In addition, the electoral process in Uganda is governed by a designated entity, the Electoral Commission. Although these positive steps as taken by the government of Uganda are commendable, the electoral process came with some challenges, which included but are not limited to government interference in the electoral process through internet shutdown hence a violation of vital rights relevant to realization of the right to vote for example the right to information and the right to freedom of expression. In addition, as highlighted in the article, the government requirement by the journalists to get accreditation for purposes of covering the 2021 was illegal and also infringed on the right to citizens to information and the right to practice one's profession. In addition, although the introduction of the biometrical machines in the voting process was very good especially in the age of technological advancement, they generally slowed down the electoral process and malfunctioned and in some cases voters were unable to vote as discussed in this article. The government of Uganda therefore needs to train election assistants on technology use and also agree and enforce a uniform alternative across the country in case technology disappoints. Voter education on rights and responsibilities during the election process needs to be strengthened as this will among others, aid voters in ensuring that they respond to the call to verify the appearance of their names on the voters' register. Training of polling assistants and security personnel on their rights and responsibilities before, during and after elections as well as provision for logistics for example tables, chairs, umbrellas, among others, during budgeting. Seats should be provided for the elderly, the sick and expectant, nursing or mothers with little children as wait in line for their turn to vote. In order for citizens to be able to participate in their governance and especially through exercising their voting rights, so many factors play a part in the realisation of this, as discussed in this article.



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ISSN 2789-9772



2789-9772