

**Election Politics and the New Partnership for Africa's Development (NEPAD):
Comparing the 2001 Elections in Zambia and Uganda**

**Submitted in Partial Fulfilment of the Requirement of the LLM Degree (Human
Rights and Democratisation in Africa)**

By

Abraham Mwansa

**Prepared under the Supervision of Professor J. Oloka-Onyango
At the Faculty of Law Makerere University, Kampala Uganda.**

31 October 2004.

Declaration

I **Abraham Mwansa** do hereby declare that this dissertation is my own work and has not been submitted to any other University for the award of a degree.

Signed:

Approved by Supervisor:

Date: 31 October 2004

Dedication

To my wife, Muchindu and our children, Muleya and Chishimba for their support and understanding, to have allowed me to deprive them of my love and care for the entire period of study.

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List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
APRM	African Peer Review Mechanism
AU	African Union
CA	Constituent Assembly
CEDAW	Convention on the Elimination of Discrimination of All forms Against Women
CMI	Christian Michelsen Institute
CRC	Constitutional Review Commission
DDPECG	Declaration on Democracy, Political, Economic and Corporate Governance
DPGI	Democracy and Political Governance Initiative
DWR	District Women Representatives
EC	Electoral Commission
ECZ	Electoral Commission of Zambia
ERTC	Electoral Reform Task Team
FDD	Forum for Democracy and Development
FPTP	First-Past-The-Post
HRW	Human Rights Watch
HSIC	Heads of State and Government Implementation Committee
ICCPR	International Covenant on Civil and Political Rights
LC	Local Council
MAP	Millennium Partnership for the African Recovery Programme
MMD	Movement for Multiparty Democracy
MP	Member of Parliament
NAI	New African Initiative
NCC	National Citizens Coalition
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NORDEM	Norwegian Institute of Human Rights
NOTU	National Organisation of Trade Unions
NRA	national Resistance Army
NRM	National Resistance Movement
NRM-O	National Resistance Movement Organisation
NUDIPU	National Union of Disabled People of Uganda
OAU	Organisation of African Unity

PEA 2000	Presidential Elections Act
PEA 2001	Parliamentary Elections Act
PPOA	Political Parties and Organisations Act
SACC	South African Council of Churches
SCZ	Supreme Court of Zambia
SIGR	Special Interests Groups Representatives
TFM	The Free Movement
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNHCHR	United Nations High Commission for Human Rights
UNIP	United National Independence Party
UPDF	Uganda Peoples Defence Force
UPIMAC	Uganda Project Implementation
ZNBC	Zambia National Broad Casting Corporation

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Chapter One – Introduction

1.1 Background to the study

The right to participate in the political and economic life of one's state is guaranteed in most African constitutions as well as in regional and international human rights instruments. It is practiced in various forms, one of which is through elections. Zambia and Uganda are among African countries that have embarked on the democratisation process. The leadership of the two countries ascribed to the New Partnership for Africa's Development (NEPAD) launched in October 2001. NEPAD emphasises a "common vision and a firm and shared conviction" by African leaders for Africa's development. It is the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.¹

Africans have in the past tried plans to emancipate the continent. Adebayo Adedeji² identifies at least five previous landmark strategies, which together provide the continent's preferred development agenda from about the 1980s. First of all there was the Lagos Plan of Action for the Economic Development of Africa (1980-2000); Africa's Priority Programme for Economic Recovery (1986-1990) which was later converted to the United Nations Programme of Action for Africa's Economic Recovery and Development (1986); the African Alternative Framework to Structural Adjustment Programme for Socio-economic Recovery and Transformation (1989); the African Charter for Popular Participation for Development (1990) and the United Nations New Agenda for Development of Africa (1991). One of the reasons proffered for the failure is the lack of ownership of these plans by Africans themselves. To what extent this might be true must be the subject of another thesis.

NEPAD envisions that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. NEPAD calls for the respect of global standards of democracy whose core components include political pluralism, free, fair and open elections periodically organized that enable the citizenry to choose their leaders.³ NEPAD will achieve this through the Democracy and Political Governance

1 Para. 1 of New Partnership for Africa's Development Document (NEPAD).

2 Adedeji, A, 'From the Lagos Plan of Action to the New Partnership for Africa's Development and from the Final Act of the Lagos Plan to the Constitutive Act: Wither Africa?' in Anyang' Nyong'o, P *et al* (eds) (2002) '*NEPAD, A New Path*', at 35.

3 Para. 79 of NEPAD.

Initiative (DPGI). The DPGI will contribute to a strengthening of the administrative and political frameworks of participating countries.⁴ Therefore NEPAD adopted the Declaration on Democracy, Political, Economic and Corporate Governance (DDPECG).⁵ Through the DDPECG, the inalienability of the right of the individual to participate in democratisation process by means of democratic political processes in periodically electing their leaders was re-affirmed.⁶ NEPAD will ensure adherence to these virtues through a self-monitoring mechanism, namely, the African Peer Review Mechanism (APRM). The APRM will ensure participating states' conformity to political, economic and corporate governance values, codes and standards as contained in the DDPECG.⁷

Since, the return to multiparty politics in 1991, Zambia has had periodic elections every five years, the latest being in December 2001. Uganda too, after two decades of instability and military dictatorship returned to the path of democracy under the leadership of Yoweri Kaguta Museveni and the National Resistance Movement (NRM) and had the latest elections in June 2001, although in contrast to Zambia, it was held on the basis of a “no-party” system. Common to the elections in the two countries are alleged electoral malpractices. The electoral processes in place in the two countries have perpetuated the trend. As a result, the electorate have been cheated of their genuine choices.

For NEPAD to achieve the vision it postulates Africa requires committed leadership borne out of free, fair, open and democratic electoral processes. Africa needs electoral practices that guarantee fairness, inclusiveness and accountability of the elected to the electorate. Zambia and Uganda must adopt electoral practices that would foster democracy in the two countries and in line with the NEPAD vision for Africa stipulated in the DDPECG.

1.2 Statement of the research problem

This thesis is not a prophecy of doom for NEPAD, but it is imperative to observe from the outset that previous plans for Africa failed because to a large extent the political will was lacking on the part of the leadership. Such leaders remained committed to these plans at best on paper only.

4 Para. 80 of NEPAD.

7 DDPECG was adopted by the Assembly of Heads of State and Government during the 38th Ordinary Session of the AU in Durban South Africa; See <http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/au/H3_nepad.pdf> (accessed on 14/09/2004).

6 AHG/235(XXXVIII) Para. 7.

7 Para. 2 APRM Document.

Worldwide there exist various electoral practices to which Zambia and Uganda, may look for practices that would reassure and sustain the vision and initiatives envisaged by NEPAD. Such electoral practices would be a vehicle through which committed leaders would champion NEPAD initiatives. Leaders that are borne out of flawed electoral processes are preoccupied with ways and means of retaining their stay in power. National, regional or continental development at most is not of their concern.

The real problem is to develop a good electoral system and practices. Secondly, there is a need to safeguard a good electoral system from manipulation by selfish leaders and conform to universally accepted democratic norms and standards. These are the issues that this thesis will grapple with relating the same to the initiatives envisioned by NEPAD.

1.3 Relevance of the study

NEPAD emphasizes peace, security, democracy, good governance and free and fair elections. Within NEPAD much effort has been devoted to developing electoral codes and the establishment of independent electoral commissions. What is the practice in Zambia and Uganda? How were the 2001 elections in the two countries conducted? What are the changes if any that the two countries have put in place to conform to the NEPAD pronouncements and vision for the continent? This thesis shall endeavour to wrestle with the fact that development cannot come without democracy, (Singapore and the United Arab Emirates are rare exceptions) and that the backbone of democracy lies in good electoral practices that guarantee basic democratic tenets. It is believed that this study shall contribute to the on going brainstorming about the NEPAD strategies necessary for the development of Africa by identifying and emphasising good electoral practices that may be a model for NEPAD, and in particular for countries participating in the APRM.

1.4 Hypothesis

This thesis is premised on the fact that peace, security, democracy and good governance and the development of the African continent may not be achieved unless NEPAD envisages a reform of electoral practices. Electoral practices that conform to the Universal Declaration on Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the African Charter on Human and Peoples' Rights (African Charter);

and indeed to national constitutions is the answer to the new democratic dispensation that the Africa Union and NEPAD has embarked upon.

1.5 Research Problems/issues

The development strategies adopted by NEPAD need to be fostered by committed leadership elected by the popular will of the African peoples through electoral processes which are free and fair, inclusive, and guarantee accountability of the elected to the electorate.

Electoral practices' in Zambia and Uganda need to be reformed in order to conform to universally accepted democratic norms and standards. The NEPAD implementing mechanism ought to make such reforms a prerequisite for participation by African countries in NEPAD development initiatives and in the APRM.

1.6 Literature review

Elections in Africa and the world over have attracted considerable literature. Most writers have devoted themselves to analysing the electoral systems and practices in Zambia and Uganda. However, very little has been written on electoral systems and practices from the perspective of NEPAD. Njunga-Michael Mulikita⁸ refers to the NEPAD initiative as a blue print recovery for Africa. To what extent are the leaders in Zambia and Uganda ready to abide by it? Ian Taylor labelled the failure by African leaders to pronounce upon the flawed 2002 elections in Zimbabwe as the death of NEPAD.⁹ Yet in another article he questions the commitment of African leaders to the NEPAD initiatives and cites their failure to act as a hurdle to the full realisation of the programme.¹⁰ The electoral practices that befell Zimbabwe may not be so strange to what obtained in Zambia and Uganda during the 2001 elections under study. Lise Rakner and Lars Svasand¹¹ examine the electoral structures and the nature of African parties and party systems, using the 2001 elections in Zambia as a case study. They state that it is impossible to conceive of democracy without elections,

8 Mulikita NM, 'NEPAD: A Viable Recovery Blueprint for Africa', in *New Agenda* Issue 13 First Quarter 2004 46.

9 Taylor, I 'Foreign Policy In Focus "We are the Democrats:" Zimbabwe and the of Death', 18 March 2002 See <<http://www.fpif.org/outside/commentary/2002/0203nepad.html>> (accessed on 2 July 2004).

10 Ian Taylor, 'The NEPAD, Zimbabwe, and Elites as Obstacles to Change' An "Outside the U.S" Global Affairs Commentary, As above (accessed on 2 July 2004).

11 Rakner, L and Svasand, L '*Multiparty elections in Africa's new democracies*' CMI Reports 2002.

but that in Africa however, it is possible to have elections without democracy. Citizens are free to choose their leaders but leaders have found ways to win electoral mandates without opening up political space.

Khabele Matlosa¹² also looks at electoral systems in Africa. He points out that the value of democracy is either enhanced or reduced depending on the nature of the electoral system. The value of democracy lies in the hands of the people and their ability to fully and freely participate in the political life of their countries. As Adedeji¹³ observes, Africa's persistent failure to decolonise its political economy by confronting the past and making necessary changes has continued to impede its much-needed socio-economic and political transformation. Most African countries, Zambia and Uganda included, have maintained electoral practices that their colonial masters have otherwise since abandoned. There is still a great deal that the two countries need to get rid of.

Dani Nabudere¹⁴ has argued that NEPAD is an instrument of contestation between Africans seeking self-determination and those forces that seek the continuation of the exploitation of the continent. He argues that this contestation is historical and is manifested in the continuing structures of imperialist domination of the post-colonial state that impedes the postcolonial state to respond to the demands of its people. The opposite however, may be the truth because leaders advance their own interests with the same methods used by those who dominate their countries. Shadrack Gutto,¹⁵ points out that the weak development of the rule of law, especially with regard to compliance with norms and standards of basic international and regional instruments on human and peoples' rights, contribute significantly to the endemic social and political instability in Africa. The practices in the 2001 elections in the two countries appear to support Gutto's observation. The non-compliance to these instruments will certainly negatively affect the ideals and objectives of NEPAD.

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

13 See (n 2 above).

14 Nabudere W. Dani, 'NEPAD: Historical Background and its Prospects' in Anyang' Nyongo et al (See n 3 above) 49.

15 Gutto BS, 'The Compliance to Regional and International Agreements and Standards by African Governments with Particular Reference to the Rule of Law and Human and Peoples' Rights' in Anyang' Nyongo et al (See n 3 above) 94.

Holding elections per se does not amount to democracy. However, periodically held free and fair elections are a critical component of the democratic process without which a healthy democracy cannot survive. Other components of democracy are as important as elections. Tarsis Bazana Kabwegyere¹⁶ likens the birth of democracy in Uganda to a human being's anatomy and physiology. He states that democracy has several tenets one of which is popular participation through regular, free and fair elections. He observes:

[T]he solution will not come out of our heads. It requires the collective efforts of all stakeholders...that is why the emergence of a new Africa cannot be an act of individual courage, fortitude and example.

He further argues that it is only through mass mobilisation and popular opinion that the will and determination to see things through can be established. He says to reawaken the continent is to begin to give back to its people mastery over their present and future. He heralds the National Resistance Movement (NRM) in Uganda as a unifying factor and a people driven government. Did Zambians and Ugandans really have a choice of leadership or were they mere rubber stamps of the existing electoral laws and practices? Human Rights Watch,¹⁷ while acknowledging that Uganda's past political problems were mainly due to the ravages caused by divisive "sectarian politics" which to a great extent were subdued by Museveni's Movement System, has explored the legal restrictions on civil and political rights brought about by the system. They argue and the writer agrees that the Movement System has been hostile to democracy. Sabati Makara¹⁸ also looks at elections, their legal and institutional framework in Uganda between 1996 and the 2001 elections. He observes that the NRM has placed itself in the organs of the state with the intent to hoodwink Ugandans that it is working towards constitutionalism and democratisation. He opines that the NRM has found it expedient to use Resistance Councils, (renamed Local Councils) as state institutions, which at the same time are recognised as Movement organs. According to the Movement System any political contestation has to be done under the Movement. This to many is a semblance of a political party and it therefore disadvantages others who by law are precluded from going about political organisation.

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

17 Human Rights Watch (August 1999) *'Hostile to Democracy: The Movement System and Political Repression in Uganda.'*

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

Elections start with the registration of voters and ends with transforming one's vote into a parliamentary or presidential seat. To be enfranchised is to be accorded a fair chance to register as a voter when you attain the voting majority. The Norwegian Institute of Human Rights¹⁹ and the Christian Michelsen Institute²⁰ examined the 2001 elections in Zambia and Uganda, paying much attention to the pre-election, election and post election periods, and made recommendations. Justus Mugaju *et al*²¹ explore democracy in Uganda and unveil the "No-Party" system weighing its pros and cons. They question the sustainability of the system in a democratic dispensation and look at the question of the referendum and the probable questions for consideration. The question remains as to whether the governments of Zambia and Uganda have taken a deliberate move to effect changes to the undesirable electoral processes since the 2001 elections. Michael Cowen and Liisa Laakso²² look at electoral processes in Africa. They argue that the actual form and content of the electoral process is one aspect by which one can gauge the extent to which liberal democracy is realised.

The present study is premised on the fact that the success of NEPAD lies partly in the reform of electoral practices in Africa. Uganda is participating in the APRM while Zambia is not. To what extent have the two countries been able to evaluate their electoral frameworks since the 2001 elections in order to conform to international norms and standards? The study will analyse and propose electoral changes that maybe adopted by the two countries and NEPAD in order to improve the situation. Do the leaders in these two countries give effect to the rights the national constitutions, regional and international human rights instruments guarantee?

1.7 Limitation of the study

This study is not an overview of NEPAD initiatives and how they may be achieved. The study is limited to electoral practices' reforms in Zambia and Uganda depicting the need for reforms as a core foundation for what NEPAD envisages. The study is further restricted to electoral processes that obtained in the two countries during and what is obtaining after the respective 2001 elections. What is it that the two governments have done to improve their electoral processes? The study revolves around political pluralism as a right, the right

19 Petersen C. E , *'Uganda: Parliamentary Elections 2001'*, (Nordem Report (2)).

20 See n 11 above.

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

22 Cowen M. and Laakso L. et al (eds) (2002)., *'Multi-Party Elections in Africa'*, (2002).

to register as a voter and the right to vote. The study is tailored to show that meaningful participation and representation can only be achieved where there is popularly guaranteed participation.

1.8 Overview of Chapters

This thesis consists of five chapters. The first chapter outlines the context of the study. Chapter two is devoted to a study of NEPAD objectives, goals and tasks with particular attention to democracy, good governance, and free and fair and periodic elections. Chapter three looks at the electoral and legal framework of Zambia while Chapter four addresses the electoral and legal frame of Uganda. Chapter five is a summary of the study and makes conclusions from the entire study and some recommendations for the adoption of particular electoral practices by the two countries, NEPAD, the Civil Society and the Donor Community.

Chapter Two – NEPAD and the African Peer Review Mechanism (APRM): A Broad Overview

2.1 Introduction

This chapter first defines NEPAD and explores the NEPAD Democracy and Political Governance Initiative (DPGI) as enshrined in the constitutive document. We then look at DDPECG. An examination of the APRM and the Implementing Committee of the Heads of State and Government conclude the chapter. Thereafter we may appreciate the need for electoral processes reform in Zambia and Uganda.

2.2 NEPAD: Historical background

NEPAD is part of a continuing struggle for the search for Africa's emancipation in the contemporary globalising world. It is a creation borne out of two development plans for Africa initiated by two African presidents.²³ President Thabo Mbeki initiated the Millennium Partnership for the African Recovery Programme (MAP).²⁴ Presidents Obasanjo and Bouteflika approved President Mbeki's first concept paper in September 2000, following the OAU Summit held in Togo in July 2000. The work on developing the MAP then began in earnest and a process of engagement on a bilateral and multilateral level was pursued. A presentation on MAP was made to the World Economic Forum in Davos, Switzerland in January 2001.

President Maitre Abduolaye Wade of Senegal conceived the OMEGA Plan.²⁵ The OMEGA Plan was presented at the OAU Extraordinary Summit in Sirte in March 2001. The two plans were however merged, and during the merging process Hosni Mubarak of Egypt was also involved.²⁶ With the pressure by five Heads of State from South Africa, Nigeria, Senegal, Egypt and Algeria, the Organisation of African Unity Extraordinary Summit in Sirte, Libya, of March 2001, succeeded in formulating the New African Initiative (NAI), representing a merger between MAP and Plan OMEGA.²⁷

²³ President Mbeki of South Africa and Abduolaye Wade of Senegal.

²⁴ Even though MAP was President Mbeki's brainchild, presidents Olusegun Obasanjo of Nigeria and Abdul Aziz Bouteflika of Algeria helped in the drafting of the document. (Seen 16 above).

²⁵ Historic Overview of NEPAD, Department of Foreign Affairs, Republic of South Africa at <http://www.dfa.gov.za/au.nepad/historical_overview.htm> (accessed on 25/09/2004).

²⁶ A meeting of experts from nine African states, as well as the MAP Steering Committee discussed the merger.

²⁷ Origins of NEPAD; See <<http://www.nepad.org.ng/html>> (accessed on 07/09/2004).

On 11 July 2001, the NAI was presented to the OAU Summit of Heads of State and Government in Lusaka, Zambia in the names of Presidents Mbeki, Obasanjo, Bouteflika, Wade and Mubarak. It was enthusiastically received and unanimously adopted by the Summit²⁸ as a descriptive working title that was finalised later as NEPAD,²⁹ a belief by all African leaders that they have the responsibility, together with the African peoples, to address development of the African continent.

2.3 What is NEPAD?

NEPAD, as described in the constitutive document establishing it is defined in the following terms:

A pledge by African leaders based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic. The Programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.³⁰

A common criticism waged against NEPAD has been the lack of consultation with stakeholders such as academia, civil society, and women's groups. In the words of one scholar: "...if the NEPAD process is not democratic: how will another development be possible in Africa".³¹ This process therefore puts question to the foundation on which the partnership is premised through its lack of consultation. The South Africa Council of Churches (SACC) also observed that,

Local communities and civil society organisations had no meaningful opportunities to influence the development of NEPAD's process or content...Although the architects of NEPAD chose not to consult civil society groups, they did solicit input from senior IMF/World Bank officials, leaders of industrialised countries and the captains of global industry in the World Economic Forum.³²

²⁸ As above.

²⁹ See (n 26 above).

³⁰ Para. 1 NEPAD.

³¹ This statement was echoed by Adebayo Adedeji (now a member of the Panel of Eminent Persons) See <<http://www.worldsummit2002.org/texts/NEPAExecSummaryFinal.pdf>> (accessed on 14/09/2004).

³² Un-blurring the Vision: An Assessment of the New Partnership for Africa's Development by South African Churches, at <<http://www.sacc.org.za/docs/NEPAD.html>> (Accessed on 7/09/2004).

SACC thus concluded that there could be no sustainable development without the informed participation of the masses.³³

The fundamental objective of NEPAD is to promote sustainable development on the African continent, and eradicate poverty and to consolidate democracy. The NEPAD constitutive document puts it thus:

Through the Programme, African leaders are making a commitment to the African people and the world to work together in rebuilding the continent. It is a pledge to promote peace and stability, democracy, sound economic management and people-centred development, and to hold each other accountable in terms of the agreements outlined in the Programme.³⁴

To this extent NEPAD aims at achieving the Millennium Development goals set by the United Nations.³⁵ It is a vision and programme of action for the redevelopment of Africa Continent. The initiatives adopted by NEPAD comprehensively integrate development plans that address social, economic and political issues.³⁶ African leaders have committed themselves to give effect to these challenges and bring about development and integration of African into the global economy.³⁷

2.4 NEPAD and democratisation

NEPAD being a top-down initiative requires concerted effort to bring to the knowledge and encourage participation of the peoples of Africa. Otherwise the African ownership claimed would remain no more than the ownership of the heads of governments and their immediate advisers.³⁸

Development is impossible in the absence of true democracy, respect for human rights, peace and good governance.³⁹ African leaders have undertaken to respect the global

³³ Tremendous efforts to involve the peoples of Africa in the NEPAD programs are underway. A number of workshops, conferences and seminars have been conducted at national and regional levels. (See, <<http://www.sacc.org.za/docs/NEPAD.html>>; <<http://www.worldbank.org/wbi/governance/parliament/nepad/>>; (accessed on 7/09/2004).

³⁴ Para. 202 NEPAD.

³⁵ See; "NEPAD: Report to the HSIC July-October 2002" at <http://www.au2002.gov.za/docs/key_oau/hsic5rep.htm> (accessed on 27/09/2004).

³⁶ Initiatives adopted by NEPAD include among others the DPGI, which is the main focus of this paper.

³⁷ Para. 6 of NEPAD calls for bold and imaginative leadership genuinely committed to a sustained human development.

³⁸ See (n 2 above) 48.

³⁹ Para. 79 NEPAD.

standards of democracy, the core components of which include political pluralism, free, fair, open and democratic elections periodically organised to enable people to choose their leaders. In fostering this recognition, NEPAD came up with the Democracy and Political Governance Initiative (DPGI) to strengthen the political and administrative framework of participating countries.⁴⁰ The DPGI, if properly implemented, coupled with necessary reforms recommended in this study, it is believed, will strengthen and harness the energies for the development of Africa.

2.4.1 The Democracy and Political Governance Initiative

This initiative falls under the provisions of the NEPAD Constitutive Document (NEPAD) relating to conditions for sustainable development. Paragraph 81 of the NEPAD identifies the essential elements of the Initiative. These include the following:

- A series of commitments by participating countries to create or consolidate basic governance processes and practices;
- An undertaking by participating countries to take the lead in supporting initiatives that foster good governance and
- The institutionalisation of commitments through the leadership of NEPAD to ensure that the core values of the initiative are abided by.

Participating states in NEPAD will be diagnosed and assessed in compliance with the shared goals of good governance through the APRM. Through this assessment NEPAD will identify institutional weaknesses and seek resources and expertise for addressing those weaknesses. Zambia and Uganda need require electoral processes assessed and their weaknesses addressed in order to make them conform to democratic norms and standards.

Paragraph 84 of NEPAD envisages that participating states in the initiative have to take the lead in supporting and building institutions and initiatives that protect these commitments. It also provides that the states will dedicate their efforts towards creating and strengthening national, subregional and continental structures that support good governance. This does not only require the mere amendment of the laws, but it also calls for practical changes in the manner in which such laws and institutions are implemented

⁴⁰ Para. 80 NEPAD.

and run.⁴¹ Have Zambia and Uganda made any headway towards the realisation of the initiative?

African leaders have joint responsibility in the following areas, namely to promote and protect democracy and human rights in their respective countries and regions, by developing among other things standards of participatory governance at the national and sub national levels.⁴² Allowing the electorate by means of good electoral practices to choose leaders of their own choice by universally accepted democratic norms and standards is the ultimate guarantee that the people of Zambia and Uganda require.

2.4.2 Declaration on Democracy, Economic, Political and Corporate Governance (DDPECG)

African leaders to give effect to NEPAD initiatives adopted the DDPECG by the 38th Session of the Heads of State and Government, July 2002 in Durban. This is seemingly a response to the fact that the process of democratisation is uneven and inadequate in Africa and NEPAD has to expedite the process to foster the creation of democratic regimes that are committed to the protection of human rights.⁴³

The adoption of the DDPECG reaffirms the commitment of African leaders to comply with international best practice. The component of the DDPECG that is of most interest here is the party that provides for democracy and good political governance. Paragraph 7 of the Declaration reaffirms the leaders' commitment to the promotion of democracy in their respective countries. They undertake among other things to promote and protect:

- The equality of all citizens before the law and the liberty of the individual;
- Individual and collective freedoms, including the right to form and join political parties;
- The inalienable right of the individual to participate by means of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office; and
- The adherence to the principal of separation of powers, including the protection of the independence of the judiciary and of effective parliaments.

⁴¹ Currently 23 countries have acceded to the APRM. See, <<http://www.nepad.org/aprm.html>> (accessed on 20/09/2004).

⁴² Para. 49(b) NEPAD.

⁴³ Para. 7 NEPAD.

The African leaders through DDPECG further undertake to bridge the wide gap between men and women and acknowledge that women should have every opportunity to contribute on terms of full equality to political and socio-economic development of African countries African leaders pledged to:

- Ensure that our respective national constitutions reflect the democratic ethos and provide for demonstrably accountable governance;
- Promote political representation, thus providing for all citizens to participate in the political process in a free and fair political environment;
- Enforce strict adherence to the position of the African Union (AU) on unconstitutional changes of government and other decisions of our continental organization aimed at promoting democracy, good governance, peace and security;
- Strengthen and, where necessary, establish an appropriate electoral administration and oversight bodies, in our respective countries and provide the necessary resources and capacity to conduct elections which are free, fair and credible; and
- Reassess and where necessary strengthen the AU and sub-regional election monitoring mechanisms and procedures;

It has been argued that an electoral code and electoral norms, standards and mechanisms ought to be based on constitutional and legal frameworks that the African Union and NEPAD will agree on.⁴⁴

Clear electoral systems, electoral management structures and independent electoral commissions functioning parliaments and other accountability institutions and guaranteed independent judicial systems. African leaders also agreed to promote human rights and support the African Charter on Human and Peoples' Rights, the African Commission and the Court on Human and Peoples' Rights as important instruments for ensuring the promotion, protection and observance of human rights and to cooperate with the UN High Commissioner for Human Rights.⁴⁵ To give effect to the DDPECG and the undertakings

⁴⁴ Landsberg, C 'A Project Proposal for Mapping an Electoral Code for the AU, NEPAD and Independent Electoral Commissions' A paper prepared for the NEPAD Mapping Project, Centre for Global Studies, University of Victoria, Canada, 31 March 2003.

⁴⁵ The AU Heads of State Summit in 2002 adopted the Declaration on the Principles Governing Democratic Elections. See, (AHG/Decl. 1-2(XXXVIII)); See <http://www.au2002.gov.za/docs/summit_council/oaudec.pdf> (accessed on 19/09/2004).

African leaders conceived the APRM that would ensure participating states' adherence to best democratic practices.

2.5 The Africa Peer Review Mechanism

The APRM emanates from the principles enunciated in the DDPECG. The overall purpose of the APRM is to allow African states monitor and observe each other on their progression towards realising the goals of NEPAD and accelerated continental and regional cooperation and integration.⁴⁶ Therefore the mandate of the APRM is:

To ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the DDPECG.

Participation in the APRM is open to all African Union member states upon giving notice to the chairperson of the Heads of State and Implementing Committee (HSIC). All participating states are mandated to undertake to submit to periodic reviews and to facilitate such reviews guided by agreed parameters for political governance and good economic and corporate governance.

It is believed the peer review process will spur countries to consider seriously the impact of domestic policies, not only on internal political stability and economic growth, but also on neighbouring countries. It will promote mutual accountability, as well as compliance with best practice as would be identified.

2.5.1 Management and the review process

The APRM introduces the monitoring capability, which provides the instruments for governments and Heads of State to live up to their commitments. The supreme political authority of the APRM is the HSIC. A Steering Committee and a Secretariat support the HSIC. The two bodies are responsible for developing and coordinating the detailed technical work. The AU Secretariat also participates at all the meetings of the Steering Committee. It is hoped through this process, the best electoral practices will be identified and implemented.

⁴⁶ See (n 14 above).

A Panel of Eminent Persons appointed by the HSIC manages the APRM. The panel consists of Africans of distinguished careers relevant to the APRM and committed to the ideals of NEPAD and Pan Africanism.⁴⁷ These will serve for a period of four years, except for the chair who is appointed by the HSIC from amongst them and serves for a term of five years. The peer review will cover four areas,⁴⁸ among which is the Democracy and Political Governance.

The APRM provides for four types of reviews. First, a country would be reviewed within 18 months of acceding to the APRM; then every two to four years; upon request by a participating state and finally where early signs of impending political and economic crisis exist. In the latter case the review has to be sanctioned by the participating Heads of State and Government. In all cases however, the period of review is supposed to last no longer than six months.

2.5.2 Stages of review

The review is planned to evolve through four stages,⁴⁹ namely:

- The first stage would involve a study of the political, economic and corporate governance and development environment in each country. This study would be prepared by the APRM secretariat;
- Stage two would involve country visits by the review team to carry out wide-ranging consultations with key stakeholders that include the state and non-state entities.
- Stage three would involve the preparation of country reports by the review team based on the studies and consultations carried out. This will give an opportunity to the government concerned to respond to the findings of the review team.
- The final and last stage involves submission of the review team's report and responses from the governments concerned to the Heads of State and Government through the APRM Secretariat. The Heads of State and Government would then consider and adopt the final report.

⁴⁷ The first APRM Panel members are: Marie-Angelique Savane (Chair), Dorothy Njeuma, Graca Machel, Adebayo Adedeji, Bethuel Kiplagat, Mourad Medelci and Chris Stals.

⁴⁸ Kanbur, R. 'The African Peer Review Mechanism (APRM): An Assessment of Concept and Design', See <www.people.cornell.edu/pages/sk145> (accessed on 20/09/2004).

⁴⁹ See (n 26 above).

What is clear from the above analysis is a commitment by African leaders to yield to accepted democratic norms and standards. The desire to change, to give the people of Africa a chance to participate in the development of the African continent is vividly evident. Of course this can only come by through the establishment of better electoral practices. The DDPECG coupled with the AU Declaration on the Principles Governing Democratic Elections in Africa are important instruments that can foster change in the right direction if only the APRM is made effective.

It is not clear however what the Heads of State and Government would do if the country under review does not comply with their decision. It is argued that there must be a way to sanction the erring state so that meaning is given to the initiative and states compliance to the common goals envisaged by NEPAD.

Chapter Three – The Legal and Electoral Framework of Zambia

3.1 Introduction

The 27 December 2001 elections in Zambia were the third in a row since the return to multipartism in 1991. Ordinarily Zambia is expected to record a progression in the democratisation process and see the entrenchment of democracy. This chapter analyses the conduct of the 2001 elections in Zambia, the existing law, regulations and institutions put in place for the proper management of elections. The chapter also looks at whether the independence of electoral institutions is guaranteed in practice and what measures have been taken since the elections to remedy the flaws.

3.2 Zambia's Electoral system

Zambia, like many other former colonies, inherited the Simple Plurality System of the First-Past-The-Post (FPTP) from Britain at Independence.⁵⁰ Unlike in majority systems, only a plurality of votes is necessary, second elections are not required even where one candidate secures less than a 50 per cent majority of the vote in the first election.⁵¹

Several pieces of legislation govern electoral processes in Zambia.⁵² Zambia is equally party to a number of regional and international instruments that provide for elections.⁵³ The need to amend the electoral law and regulations in Zambia has since the return to multiparty politics in 1991 been echoed by many scholars and commentators, including foreign and local election monitors. However such observations has to the dismay of the electorate been confined to rhetoric on the part of those that wield power.

The Constitutional Review Commission headed by Patrick Mvunga (the Mvunga Commission) constituted in 1990 by the first Zambian President Kenneth Kaunda to allow for plural politics on the basis of negotiations with the then newly formed Movement for

⁵⁰See (n 12 above) 52.

⁵¹See (n 11 above) 3.

⁵² These include: the Constitution, the Electoral Act Chapter 13 of the Laws of Zambia, the Electoral Commission Act of 1996, the Local Government Elections Act Chapter 282 of the Laws of Zambia and the Referendum Act Chapter 14 of the Laws of Zambia.

⁵³ Among others, the UDHR, ICCPR, African Charter and CEDAW.

Multiparty Democracy (MMD). However the Mvunga Commission left executive powers untouched and did not address issues that would consolidate democracy.⁵⁴

Meanwhile the MMD formed the third Republican government in 1991 after a landslide victory over UNIP.⁵⁵ Part of their campaign hinged on reform of the electoral process. They accordingly, in 1993 constituted another Constitutional Review Commission headed by John M. Mwanakatwe (Mwanakatwe Commission).⁵⁶

After extensive review of popular sentiments, the Mwanakatwe Commission came up with a report and a draft constitution. Their recommendations, like the Mvunga Commission's, did little to check executive powers. However, the Commission recommended that a special Constituency Assembly adopts the Constitution⁵⁷ and that it be put to a national referendum before being signed into law. The executive did not adhere to these calls. There was also the infamous third generation clause for Presidential candidates to have parents who are Zambians by birth or descent.⁵⁸

The MMD government passed the constitution, through the use of a transient legislative majority to push through the hotly contested constitutional provisions. By the same token, the contested constitution seriously undermined the legitimacy of the elections held in 1996.⁵⁹ The 2001 elections also held under the same Constitution with no amendments. Dejo Olowu, while acknowledging that there have been noticeable improvements in democratisation since the end of the Cold War observes that:

On a continent where democratisation is more fixated on personalised coalitions of power brokers than on democratic performance, and where leadership is often recognised as ascendancy to wealth, fame and power, the challenge today is to overhaul the democratic process ranging from electoral structures to party systems. Every effort must be made to make the democratic process respond to freely articulated popular opinions.⁶⁰

⁵⁴ Gould, J 'Contesting Democracy: The 1996 Elections in Zambia' in Cowen, M and Laakso, L. (Eds) (2002) *'Multi-party Elections in Africa'* 306.

⁵⁵ As above.

⁵⁶ See (n 54 above).

⁵⁷ Mr Mwanakatwe has encouraged leaders to heed to peoples' demands in Zambia. See for example, "Selfishness has led to political impasse" – Mwanakatwe, *The Post Newspaper* 30 September 2004.

⁵⁸ The Zambia Democratic Congress party challenged the constitutionality of the third generation clause. The matter ended up at the African Commission (Legal Resources Foundation v. Zambia, *Application* No.211/98). Despite the favourable decision of the Commission the law has remained the same.

⁵⁹ Cowen, M and Laakso, L et al (eds) (2002) *'Multi-Party Elections in Africa'* 308.

⁶⁰ Olowu, D "human Development Challenges in Africa: A Rights Based approach" 17.5 *San Diego International Law Journal*, 179.

The MMD has resisted change and as Jeremy Gould concluded Zambia's 1996 elections provided the means to measure the degree of "consolidation" or "slippage" of democratisation but the general verdict has however fallen on the side of "slippage."⁶¹ The 2001 elections appear to present the same results.

3.3 The Electoral Commission of Zambia (ECZ)

The ECZ established under Article 76(1) of the Zambian Constitution is an autonomous institution mandated to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review constituencies.⁶² The nature of the organisational structure for administering the electoral process is a decisive factor in determining whether elections were of high quality and added legitimacy to the processes. The presence of an independent electoral commission with autonomous funding, appointment and organisation procedures cannot be over-emphasised. In Zambia however, the limited autonomy and capacity of the ECZ has contributed to both low levels of participation and wrangles over the legitimacy of the electoral results.⁶³

The President subject to ratification by the National Assembly appoints the ECZ commissioners.⁶⁴ However the executive may manipulate the legislature to meet the desirable ends. The President appoints Ministers and Deputy Ministers from amongst members of Parliament.⁶⁵ These are bound by the principle of collective responsibility.⁶⁶ Funding of the ECZ is the preserve of Parliament.⁶⁷ The executive that owes allegiance to the appointing authority dominates the Zambian Parliament, they would not be interested in equipping and facilitating a watchdog institution. Besides the ECZ can accept donations or grants with the approval of the President.⁶⁸ On the other hand the ECZ reports directly to the President.⁶⁹ Claude Ake has thus observed that the introduction of multi-party

⁶¹See (n 54 above) 299.

⁶² Section 13 of the Electoral Act.

⁶³ CMI Report, 19.

⁶⁴ Section 4(3) of the Electoral Commission Act.

⁶⁵ Articles 46 and 47 of Zambian Constitution.

⁶⁶ Article 51 of Zambian Constitution.

⁶⁷ Section 13(1) of Electoral Act.

⁶⁸ Section 13(2) of Electoral Commission Act.

⁶⁹ Section 16 Electoral Commission Act.

democracy without significant alterations in the structure of the state makes democratisation meaningless.⁷⁰

Both International and local monitoring teams have pointed to the poorly administered elections, and the role of the ECZ, as a major factor of concern.⁷¹

3.4 Phases of elections

For the first time in Zambia the electorate elected Local Government leaders, Members of Parliament and the President on the same day. To appreciate the 2001 elections, we shall look at the pre-election, election and post election phases.

3.4.1 The Pre-election phase

The pre-election phase is a preparatory stage of any election. It is probably the most important stage of an election as it is the cradle of fairness or otherwise of an electoral process. It engages all interested parties at the earliest possible stage. However, what has alarmed observers as well as participants in Zambia, is that the electoral process is seen to be an unlevelled playing field, tilted to the benefit of the incumbent party.⁷²

3.4.2 Constituency delimitation

The Zambian Parliament consists of 158 members excluding the speaker. 150 of these are directly elected from single member constituencies while the President nominates eight. The demarcation of constituencies for the directly elected MPs is dependent on a number of factors. Kwadwo Afari-Gyan lists them as population, land size, existing administrative and traditional jurisdictions, geographical features and the distribution of different racial, ethnic and linguistic communities.⁷³ Population however in most cases is given more weight than land size. Thus the urban constituencies in Zambia have greater population than the rural constituencies.

⁷⁰ As quoted by CMI Report, 13.

⁷¹ CMI Report, 19.

⁷² CMI Report, 7.

⁷³ See (n 12 above).

Concerns arise over disparities in the number of constituencies in each Province. For example Lusaka Province, with over 690,000 registered voters had only 12 seats compared to Northern Province with 21 seats for only 296,811 voters. Again in Lusaka, the smallest constituency in terms of electorates was 6, 715 and the largest was 61,438 a multiple in excess of nine.⁷⁴ Despite these disparities, the same polling facilities and compliments of election officers were provided for each polling station. This aspect, which is not only important to competing parties, but also relevant for effective representation of the electorate, was not addressed by ECZ prior to the elections.

3.4.3 The voter registration Exercise

Voter registration in Zambia has been a conflicting issue throughout the third Republic and registration process is cumbersome even compared to other African countries.⁷⁵ Any person who is a Zambian and has attained the minimum age of 18 may register as a voter.⁷⁶ One however has to be ordinarily resident in the constituency where they are to register.⁷⁷ A new voter register for the 2001 elections was created and voters' cards issued. Initially, the 2001 registration period was set from 21 June to 15 July. After a fourth extension, the voter registration exercise ended on 31 July.⁷⁸ By the time ECZ finalised the voters' register it was reported that 2.6 million voters were registered for the 2001 elections out of a total eligible population of 4,687,997 according to the 2000 census.⁷⁹ The registration of voters in 2001 was to be the last to have a set final date, by which an elector had to register. Continuous registration was introduced from 2002. This however has not been implemented and the by-elections have depended on the 2001 register.

The quality and capacity of the voter registration process greatly affects the level of voter turnout. All citizens that fulfil the voter qualification requirement should have the right to vote and no one who does not fulfil the requirement should be allowed to vote.⁸⁰ In order to fulfil this requirement it is imperative that voters' rolls are created prior to elections. The registration was extremely inadequate and this no doubt affected voter turnout. The registration process is critical in the electoral process and where not properly

⁷⁴ CMI Report 20.

⁷⁵ See (n 22 above).

⁷⁶ Article 75 of Zambian Constitution and Section 3 of Electoral Act.

⁷⁷ Section 5 of Electoral Act.

⁷⁸ CMI Report.

⁷⁹ CMI Report.

administered, it casts doubt not only on the electoral process, but also on the legitimacy of the elected government.

3.4.4 The Election date

The date of elections in Zambia has always remained a preserve of the President. This is despite the law providing that the ECZ has the mandate to set the date of elections.⁸¹ The ECZ has exercised such powers whenever there is a by-election and not for the general elections. The secrecy of the election date has not been without numerous adverse effects such as constraints on resources of political players unpreparedness in the campaigns; voter apathy etcetera. Interestingly Zambia has a history of conducting elections during the rainy season.⁸² This has greatly benefited those in power. As Claude Ake observes:

The democratisation of Africa has focused on the power elite, who are the natural enemies of democracy...their involvement in democracy movement is mainly a tactical manoeuvre. It is a response to internal contradictions and power struggles within a group for whom democracy is essentially a means to power⁸³

In this vein the then President Fredrick Chiluba kept the date of the election a secret, to the disadvantage of the electorate and other political players. He settled for 27 December 2001. The Opposition were ill equipped to reach most constituencies especially the rural constituencies The MMD used government resources at their disposal to reach the electorate in areas with poor road networks.⁸⁴

The electorate therefore were denied a chance to listen to all the candidates and hence a denial to making meaningful choices. Due to the long distances to polling stations many could not vote for fear of the rains. The rural peasantry was busy in their gardens. Also the election date equally coincided with Christmas and therefore most of the voters were not in the constituencies where they were registered.⁸⁵ Equally, some students and pupils were disenfranchised. Universities, Colleges and High Schools were closed at the time and most students, and pupils had registered as voters in those respective areas.

⁸⁰ CMI Report, 18.

⁸¹ Regulation 8 of Electoral (General) Regulations, 1991.

⁸² See <<http://www.elections.org.zm>> (accessed August 2004).

⁸³ CMI Report, 11.

⁸⁴ Personal experience as Parliamentary candidate for FDD in Lubansenshi Constituency 2001 elections.

⁸⁵ CMI Report, 21.

3.5 The campaign for the 2001 elections

Out of the 36 or so registered political parties, only 11 of them contested the 2001 elections.⁸⁶ The Opposition was weak and fragmented, and the weakness contributed to incumbency dominance. Furthermore, this weak and fragmented opposition was unable to present the electorate with a viable alternative policy. As observed by Savsand and Rakner “African political parties are plagued by weak organisations, low levels of institutionalisation, and weak links to the society that they are supposed to represent.”⁸⁷ Despite the short falls on the part of the ECZ, the opposition had many problems. Most of them had no network of branches. This is not strange, as opposition parties in Zambia have failed to develop and to observe regularised procedures in their different spheres of activity and finally maintain themselves over time.⁸⁸

Irrespective of these problems, a level playing field between contesting parties, the equal application of the laws, equal access to media and funding must be ensured. The issue of equal funding of candidates did not arise and is not provided for in the law. A level playing field is most desired, there should be no discrimination of the candidates, especially when it comes to use of the media. The candidates from the ruling party should not be favoured. Application of the electoral laws ought to be equal, irrespective of whether it is a candidate from the ruling party or not. As observed earlier, the election date was chosen to influence level of participation and disadvantaged the opposition in the electoral campaign. It is also imperative that voters’ registers are availed to all interested parties at the earliest date to allow the candidates to canvas for votes, and the voters to inspect such registers, and to have corrections if any made thereto in good time.

The ECZ failed to enforce the Electoral Code of Conduct. The Police mainly served the interests of the incumbent government, was thereby constrained the campaigns by the.⁸⁹ This is despite the law enunciated in *Christine Mulundika and 7 Others v. The People*⁹⁰ that recognised the constitutionality of the rights and freedoms of expression, association

⁸⁶ As above.

⁸⁷ CMI Report, 10.

⁸⁸ A good example is Nevers Mumba’s party, the National Citizens Coalition that went underground on his appointment as Vice President.

⁸⁹ The Police on several occasions misapplied the Public Order Act cancelled permits issued to Opposition candidates at short notice without valid and convincing reasons.

⁹⁰ S.C.Z Judgment No. 95 of 1995.

and assembly. The problem may be attributed to the fact that the Commissioner of Police and the Inspector General of Police are at the mercy of the appointing authority, the President. This definitely affects the manner in which they discharge their duties, and this trickles down to the junior rank and file of the Police Service.

Unlike in Zambia, the Ugandan Constitution enshrines equal chances for candidates to have access to public media.⁹¹ Government on most occasions intervened in the programming of the Zambia National Broadcasting Corporation (ZNBC).⁹² For example, on 23 December 2001 ZNBC dropped a scheduled discussion program for presidential candidates who were barred by paramilitary police from entering the station building.⁹³

The poor campaign culminated in vote buying as well as the use of state resources by the MMD. Both the MMD and Opposition distributed food and clothing in order to induce voters to support their respective candidates. According to the ECZ these practices have led to widespread voter apathy, as potential voters now demand to be paid even before registering as voters.⁹⁴

On the other hand it is virtually impossible to separate parties along ideological or programmatic lines. A reading of the parties' manifestos will disclose the aspiration to continue with MMD policies, albeit better managed than MMD. Most of the competing parties were mainly based in Lusaka with no party structures at the grassroots level. They adopted candidates in Lusaka and imposed them on the electorate.⁹⁵ These were among several other issues that blurred the campaign during the December 2001 elections in Zambia. The campaign was however peaceful.

3.6 The election phase

This phase addresses issues relating electoral choice and participation. The right to vote is not enshrined in the Bill of Rights. It is a citizen's duty under Article 113. It is therefore doubtful as to whether this right may be enforced.

⁹¹ Article 67(2) of Ugandan Constitution.

⁹² CMI Report, 21.

⁹³ As above 22.

⁹⁴ CMI Report.

⁹⁵ CMI Report 25.

3.6.1 Presidential election

The President is elected directly by universal adult suffrage and by secret ballot⁹⁶ for a five-year term.⁹⁷ To qualify for candidacy, one has to be a Zambian of not less than 35 years and his/her parents must be Zambians by birth or descent. In addition, he/she must be a member of or sponsored by a political party, must have been domiciled in Zambia at least for 20 years preceding nomination and be qualified for election to National Assembly.⁹⁸

11 candidates contested the presidential elections. Due to the fragmentation of the Opposition the MMD once again emerged victorious although the election was fraught with malpractices. Peter Burnell has observed, that the Zambian phenomenon reveals a state whereby many politicians like to conceive of themselves as the president of a political party and envisage being the next republican president, and to that end treat parties as personal to holder vehicles.⁹⁹ This has greatly disadvantaged the electorate. The incumbent Levy Patrick Mwanawasa emerged victor with a meagre 28.69 per cent of the total votes, while his closest rival Anderson Mazoka of the UPND secured 26.76 per cent.¹⁰⁰ Mwanawasa's votes represented only 19.49 per cent of the voting population, revealing the wasted vote syndrome of the FPTP system. These results can only be understood in the light of the pre-election electoral processes and fragmentation of Opposition.

The office of President in Zambia is politically vastly superior to other state institutions. The predominance of the Presidency turns the electoral process into a zero-sum game. Whoever controls the presidency controls everything. Combined with the strong powers of the presidency compared to other state institutions, the party system is poorly developed to hold the national leadership to account by the electorate.¹⁰¹ Therefore, all interested parties did not accept these results.

⁹⁶ Article 34(1) of Zambian Constitution.

⁹⁷ Article 35 of Zambian Constitution limits the terms to two.

⁹⁸ Article 34(3) of Zambian Constitution.

⁹⁹ As quoted by CMI Report, 26.

¹⁰⁰ ECZ, 2001 Presidential Results, see n 29 above.

¹⁰¹ CMI Report 17.

3.6.2 Parliamentary elections

Any Zambian citizen who has attained the minimum age of 21 years and is literate and conversant with English is eligible to contest for election to the National Assembly.¹⁰² 2001 Parliamentary elections even with the shortcomings presented in the preceding arguments presented a fair distribution of seats in the House. There was no single party that managed to secure a dominant majority.¹⁰³

This state of affairs was however short lived when President Mwanawasa took advantage of the lacuna in the law and appointed ministers from the Opposition including the Republican Vice President. These appointments effectively neutralised the Opposition in the House. Besides, the MMD lured suspecting Opposition MPs to cross the floor thereby encouraging by-elections, which were all except for one taken by the MMD.¹⁰⁴ Today the MMD dominates the House with a number just above the quorum of the House and this makes it much easier for them to make law as they deem fit.

3.6.3 Local Government Elections

These elections are provided for under the Local Government Elections Act. Any person who is Zambian and has attained the age of 21 years and is ordinarily resident in a given ward may contest the Local Government elections. The controversies that bogged the other two elections did not spare the Local Government elections. It is interesting to note however that residents who otherwise by law qualify to vote in these elections were not accorded the opportunity to cast their votes.¹⁰⁵ Residents have never voted despite this provision in the law because there is no independent register for purposes of the Local Government elections.¹⁰⁶

¹⁰² Article 64 of Zambian Constitution.

¹⁰³ See (n 82 above).

¹⁰⁴ Two Heritage Party MPs crossed to MMD, one for Zambia Republican Party appointed Minister of Local Government, three were appointed Ministers from FDD, Vice President from NCC.

¹⁰⁵ Section 14(1)(b) of the Local Government Elections Act, allows residents who have resided for not less than three years to vote in these elections.

¹⁰⁶ ECZ maintained one electoral register for the elections, which excluded residents not, registered under this roll.

3.7 The Post-elections phase

The electoral misadministration that besieged the ECZ resulted in several contested election results. Probably the only exception is the Local Government election results. Quite a number of losing parliamentary candidates petitioned for the nullification of election results. As a result since the 2001 general election, the Government has convened 15 parliamentary by-elections.

The presidential election results were equally challenged. The Supreme Court closed the hearing of the Petition, which was commenced in January 2002 in October 2004, some three years later. The failure to conclude the Presidential election petition whose judgment is still pending makes the whole exercise academic and casts a shadow on the Judiciary. Even if the election results were to be turned down, President Mwanawasa will have served his first five-year term of office.

3.8 Towards remedying the situation

The government has appointed an Electoral Reform Task Committee (ERTC)¹⁰⁷ to look into various electoral issues emanating from the previous elections. The ERTC has since submitted its recommendations to the government. As expected the government has since flouted the law and one of the recommendations by postponing local government elections which were due in November 2004 to 2006 on the grounds that it has no money.

The President also appointed a CRC. However, Political Parties and Civil Society boycotted to participate in the process, as there was disagreement on the road map for the constitutional review process, especially the mode of adoption and also for the fact that there was no wide consultation on appointment of Commissioners.¹⁰⁸

The above analysis shows that whoever can determine the 'rules of the game' may have a distinct advantage over their political competitors in gaining access to power. It is evidently possible for a misuse of the democratic mandate to undermine the very foundations of democracy. It all started in 1996, when the MMD backtracked on its rhetoric of

¹⁰⁷ See, ERTC terms at <<http://www.ertc.gov.zm>> (accessed on 24/09/2004).

¹⁰⁸ Miyanda, G 'Review of the Constitution: The other view' available at <<http://www.zambia.co.zm/articles/constitutionreview.html>> (accessed on 25/10/2004).

accountability, manipulated the constitution, and refused to consult with other political players on procedural electoral issues and improved its grip on power at the polls. The rules that obtained in 1996 have remained the same and the MMD has continued to exploit them. Arguably, the government of Zambia should know that it has distinct, national responsibilities, which transcend the narrow partisan interests of the ruling party.

Chapter Four – The Legal and electoral framework Uganda

4.1 Introduction

The electoral system of Uganda as is the case in Zambia is First-Past-The-Post inherited from Britain at independence in 1962.¹⁰⁹ The 2001 elections were only the second since the end of the two-decade turbulences in 1986 that rocked the country. This chapter analyses the electoral system under which these elections were conducted. It looks at law, the electoral institutions and the main political players. The discussion would assist in ascertaining whether electoral processes conform to the democratic norms and standards to which Uganda ascribed in the NEPAD initiatives.

4.2 The legal Framework

The laws governing elections in Uganda include the 1995 Constitution, the Presidential Elections Act of 2000 (PEA 2000), the Parliamentary Elections Act of 2001 (PEA 2001), the Electoral Commission Act,¹¹⁰ and various regulations made thereunder. Electoral institutions relevant to this discussion include the Electoral Commission (EC) and the Judiciary.

4.3 The constitution making process

The constitution making process had a direct bearing on the 2001 elections. In 1993, Uganda established a Constituency Assembly (CA),¹¹¹ though election to the CA was a heated issue, for the purposes of reviewing submissions made to the Uganda Constitutional Review Commission (CRC).¹¹² However the election of members of the CA raised discontentment.¹¹³ Anyhow, following to the deliberations of the CA, “Ugandans” conceived the 1995 Constitution.

¹⁰⁹ See (n 12 above) 9-10.

¹¹⁰ Chapter 140 Laws of Uganda 2000 Volume.

¹¹¹ Kanyeihamba, G.W ‘*Constitutional and Political History of Uganda from 1894 to the Present*’ (2002), 253.

¹¹² Kabwegyere Tarsis points out that a 21 member Constitutional Review Commission was constituted in March 1989 under the leadership of Justice Benjamin Odoki. (See n 16 above).

¹¹³ See (n 111 above) 252.

4.4 The Movement Political System

Pursuant to article 69 of the Constitution, a referendum was held in 2000 for the purposes of choosing a political system. Political parties were however unable to canvas sufficient support for a multiparty political system.¹¹⁴ Unlike supporters for the Movement Political System (the Movement), other political players went to the referendum polls empty-handed. Ugandans who participated in the polls overwhelmingly voted for the Movement under which the 2001 elections were conducted.¹¹⁵ The Constitutional Court nullified the Referendum Act, but the Supreme Court while acknowledging the irregularities upheld the referendum law.¹¹⁶ Until the promulgation of the 1995 constitution, the National Resistance Movement (NRM) was not properly defined as a political system. Its meaning remained the preserve of its leadership. Article 70 of the constitution now defines the Movement thus:

The Movement political system is broad based, inclusive and non-partisan and shall conform to the following to participatory democracy, accountability and transparency, accessibility to all positions of leadership by all citizens and individual merit shall be the basis for election to political offices.

Hitherto, the NRM had established organisational structures known as Resistance Councils (renamed the Local Councils (LCs)).¹¹⁷ The LCs were inherited by the Movement and today one can hardly draw a line between NRM organs and the Movement organs.

The NRM, which helped to dismantle the dictatorial Chieftainships, that exploited the peasantry since colonial rule¹¹⁸ had no political organisation of its own but could be home to all political parties. However, the NRM behaved like any other political party during the CA elections.¹¹⁹ It is clear that while participatory politics was effective for local communities, the further away it got from the village boundaries, the less inclusive it became.

¹¹⁴ Article 271(2) 1995 Constitution of Uganda.

¹¹⁵ Obong-Oula, Q. 'Referendum 2000 on Political Systems in Uganda: Evidence of False Promise' in Makara S et al (See n 19 above).

¹¹⁶ Constitutional Appeal No.3 of 2000: Attorney General v. Paul Kawanga Ssemogerere and Zachary Olum.

¹¹⁷ Oloka-Onyango, J 'New Wine or New Bottles? Movement Politics and One-partyism in Uganda' in Mugaju, J. and Oloka-Onyango, J. (eds) (2000) *No-Party Democracy in Uganda: Myths and Realities*, 41.

¹¹⁸ Mamdani, M 'The Politics of Democratic Reform in Contemporary Uganda', (1995) 2 *East African Journal of Peace and Human Rights*, 96.

¹¹⁹ As above, 100.

During Parliamentary elections, irrespective of the provisions of article 269 of the 1995 Constitution, Museveni urged people to vote into Parliament people who would support his manifesto and the Movement¹²⁰ and advised Movement candidates not to compete against each other.

Nabudere has since observed that Kiiza Besigye put the Movement system to test by challenging its democratic pretensions. The election was equally a test on the constitutional viability of the system.¹²¹ Today the NRM has transformed itself into NRM-Organisation as opposed to becoming a political party.¹²²

4.5 The Electoral Commission

Article 60(1) of the Constitution establishes the EC as an autonomous institution.¹²³ It is a seven-member commission, appointed by the President who may remove commissioners from office on grounds *inter alia*, of misbehaviour or misconduct and incompetence.¹²⁴

Article 61 of the Constitution tabulates the functions of the EC.¹²⁵ Among these are to demarcate constituencies, maintain the voters register on a rolling basis, gather, collate and announce the election results. The EC is equally responsible for appointing and programming the time and manner of campaigns for candidates and the publication of this information in the Gazette. It is mandatory to forward a copy to each returning officer.¹²⁶

The EC is also mandated to attend to electoral complaints by ensuring strict adherence to the Electoral Code of Conduct.¹²⁷ The EC has to ensure that the entire electoral process is conducted under conditions of freedom and fairness.¹²⁸

¹²⁰ Barya, J 'The Significance of the 2001 Parliamentary Elections and the Role of Parliament' A presentation made at The Free Movement (TFM) workshop on "Presidential and Parliamentary Elections 2001" Makerere University 26 July 2001, 3.

¹²¹ Nabudere, D.W 'The Uganda Presidential Elections 2001', a presentation made at the TFM workshop, 2.

¹²² NRM-O is officially registered as an organization with the Registrar of Companies.

¹²³ Article 62 1995 Constitution of Uganda and Section 13 of Electoral Commission Act.

¹²⁴ Article 60(8) of 1995 Constitution.

¹²⁵ Others are listed under Sections 11, 12 and 18 of the Electoral Commission Act.

¹²⁶ Section 18 of Electoral Commission Act.

¹²⁷ Section 15 of Electoral Commission Act.

¹²⁸ Section 12(1) of Electoral Commission Act.

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

4.6 Phases of elections: Presidential and Parliamentary elections

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

4.6.1 The pre-election phase

The pre-elections phase is decisive and puts to test the independence and capacity of electoral institutions. Voter registration and compilation of voters' registers, eligibility of candidates and the campaigns for both Presidential and Parliamentary candidates are considered here.

4.6.2 Voter registration exercise

All Ugandans above the age of 18 have the right to vote and may register as voters.¹³⁰ The 2001 elections depended on the CA elections register of 1993, which was updated shortly before the Presidential elections by a tribunal of three LC members.¹³¹ This process was halted on 30 April 2001.¹³²

Thereafter, the registers were sent to the EC before they were displayed at District, Sub county and polling stations during which period the voter cards could be fetched. Those who did not find their names, or wanted a transfer to another area, filled in forms to be processed by the EC. However the period was too short to effect the necessary corrections and the EC failed to satisfactorily update voter registers, to issue voters' cards, to announce the total number of polling stations on time or to distribute polling materials to all polling stations.¹³³

The display exercise should, according to section 25 the Electoral Commission Act, 1997 be of not less than 21 days. But for Presidential elections the EC used the special powers

¹²⁹ Section 9(3) of Electoral Commission Act.

¹³⁰ Article 59 of Constitution and Section 19(1) of Electoral Commission Act.

¹³¹ At least one woman, a chief and an elder constituted the tribunal.

¹³² Nordem Report 1, 12.

¹³³ Nordem Report 2, 15.

given to it in section 38 of the Electoral Commission Act to decide that the display period should only be 3 days.¹³⁴ Elections were held on 12 March and therefore time was inadequate for EC to make corrections to the voter's roll. Likewise, the EC a day before Parliamentary elections pursuant to Section 38 announced that voters without voters' cards could vote. For both Presidential and Parliamentary elections the EC did not take stock of collected and uncollected cards. This created opportunities for fraud, which were exploited in a number of polling places.

4.6.3 Voter and civic education

The EC has the responsibility to educate the electorate on electoral processes.¹³⁵ Before the Presidential elections the EC formulated civic education programme for voters, which had little effect.¹³⁶ For Parliamentary elections, the EC delegated this responsibility to NGOs under the Uganda Project Implementation and Management Centre (UPIMAC). Formal responsibility for the programme remained with the EC while practical implementation was left with UPIMAC. All district teams were equipped with a pick-up vehicle and public announcement system plus materials.¹³⁷ The overall result was that voter education was better conducted for Parliamentary elections than for the Presidential elections.

4.7 Election campaigns: Presidential and Parliamentary

Article 29 of the Constitution guarantees the right of every person to freedom of speech and expression, assembly and association, and to form and join associations such as political organisations. These rights however are constrained by article 269, which prohibits rights of political association. These rights and freedoms have become academic. The right to form political parties and other political organisations¹³⁸ is not meaningful if political parties are restricted to having headquarters only. These issues affected the campaign in both elections.

¹³⁴ From 26 – 28 of February.

¹³⁵ Article 61(g) of 1995 Constitution of Uganda.

¹³⁶ Nordem Report, 17.

¹³⁷ As above.

¹³⁸ Article 72(1) of 1995 Constitution of Uganda.

4.7.1 Presidential Campaign

The Presidential Elections Act of 2000 (PEA 2000) regulates Presidential elections. There were a total of six presidential candidates.¹³⁹ To qualify for election as President one has to be Ugandan of not less than 35 years of age and not more than 75 and qualified to be elected as a Member of Parliament.¹⁴⁰ According to article 80(1) a Ugandan citizen who is a registered voter and has completed a minimum formal education of Advanced Level or its equivalent qualifies for election to Parliament. The latter qualification has been controversial.¹⁴¹

All candidates received two cars and a sum of 15 million shillings (approx. U.S\$ 8.800) to facilitate their respective campaigns.¹⁴² Candidates were free to raise additional funds “through lawful means”.¹⁴³ Towards the end of the campaign period however Museveni’s task force accused Besigye of receiving money from Rwanda, a country deemed hostile by the Ugandan government.¹⁴⁴

Museveni had an advantage because he had legal access to government facilities such as transport and security.¹⁴⁵ He also had access to resources from the Movement as its chairman, while the other candidates were not allowed to solicit support from political parties. Even Besigye from “inside” of the Movement could not access Movement resources to any considerable degree.¹⁴⁶

All candidates by law have equal access to state owned media.¹⁴⁷ However, Uganda television represented the most blatant imbalance, giving Museveni more coverage with a positive slant, while Besigye got considerably less.¹⁴⁸ Besides, Dani Nabudere has stated that though the candidates had 70 days within which to campaign in all the districts,

¹³⁹ Even though the contest was between Yoweri Kaguta Museveni and Kiiza Besigye.

¹⁴⁰ Article 102 of 1995 Constitution of Uganda.

¹⁴¹ See (n 120 above).

¹⁴² Nordem Report 1.

¹⁴³ Section 20 of PEA 2000 prohibits candidates from receiving assistance from any government or organisation considered hostile to the government of Uganda.

¹⁴⁴ See Nordem Report (1): Funding of candidates.

¹⁴⁵ Section 21 of PEA 2000 though requires the Minister responsible to present before Parliament facilities under and utilized by the President.

¹⁴⁶ The NRM of which Museveni is chairperson and the Movement system are one and the same.

¹⁴⁷ Article 67(2) of Constitution and Section 22 of PEA 2000.

¹⁴⁸ Nordem Report (2) 18.

Museveni had already campaigned under the guise of state duties using government resources.¹⁴⁹ Museveni also used state officials in LCs which are over two million across the country as his election agents. He had thus canvassed like votes to himself even before elections.¹⁵⁰

Generally, intimidation and violence marred parts of the campaign, some of which were conducted by government agents. For example, a student at Makerere University believed to be Kiiza Bisigye supporter was murdered, and another eight people died when a UPDF soldier rammed into them at Kazinga.¹⁵¹ The incumbent also threatened not to hand over power if he lost and this worked as an inducement to vote for him for fear of wasting votes by the electorate.¹⁵² This is typical of his response to honourable Omara Atubo in 2002, when Atubo suggested that Uganda risks going the “Madagascar way” if the will of the people is not respected. President Museveni retorted:

Do not be tempted, we cannot have a situation like Madagascar, we would break you. We are people in suits by day but in uniforms by night. We fought a liberation war.¹⁵³

4.7.2 Parliamentary campaign for directly elected Representatives

The seventh Parliament of Uganda elected in 2001 has a total number of 305 members.¹⁵⁴ It must be observed at the outset that Presidential elections affected Parliamentary elections. The Movement being based on individual merit as observed by Barya cannot implement the 305 manifestos of each MP. The President’s manifesto was an incisive factor in the campaign especially by “Movement candidates”.¹⁵⁵

¹⁴⁹ Barya (n 120 above) 3.

¹⁵⁰ Nabudere (n 14 above).

¹⁵¹ As above, 4.

¹⁵² See (n 14 above).

¹⁵³ The Monitor, 15/3/2002. See also Kanyeihamba (n 111 above) 272.

¹⁵⁴ These include 214 directly elected constituency representatives, and representative of interest groups who include: 56 District Women Representatives, 10 from the Army, five for the workers, five for the youths, five the disabled and 10 ex-official members with no right to vote. See <http://www.parliament.go.ug/index_composition.htm> (accessed on 09/10/2004).

¹⁵⁵ See (n 120 above).

The Parliamentary Elections Act of 2001 (PEA 2001) governs Parliamentary elections.¹⁵⁶ This campaign was on all fours with the Presidential campaign. Like the Presidential campaign the media was open to all candidates, but disproportionate space and time was given to the President and known Movement candidates.¹⁵⁷ The radio was an important vehicle for the campaigns to many candidates throughout the country; the lack of a system of allocating time to different candidates certainly favoured those with resources and influence.

4.7.3 Campaign for Special Interest Groups Representatives (SIGR)

The campaign for the SIGR was reported to be less visible than their number and importance implied. The campaigns were conducted at respective Electoral Colleges after candidates had been nominated. Reports are to the effect that both the campaign and elections were marred with malpractices.¹⁵⁸ In fact the selection of persons to the Electoral Colleges presented a great challenge to the system, which favoured the Movement.

4.8 The Election Phase

This phase is divided into three. The Presidential elections, directly elected Representatives and the election of representatives of the SIGR.

4.8.1 The Presidential elections

As observed earlier, the contest was mainly between President Yoweri Museveni and Kiiza Besigye. Despite the repeated statements that candidates were to be elected on individual merit as opposed to partisan lines, the National Executive Committee of the Movement endorsed Museveni as the sole Movement candidate.¹⁵⁹ This shows how partisan the Movement was. The elections took place on 12 March 2001 after two postponements,¹⁶⁰ not without consequences for all interested parties. The delay, however, allowed the EC to

¹⁵⁶ PEA 2001 regulates the nomination of candidates, required qualifications for candidates, campaigning, voting and counting procedures, announcement of results, illegal practices and the process for handling complaints.

¹⁵⁷ As above.

¹⁵⁸ Nordem Report 2.

¹⁵⁹ Makara, S and Tukahebwa, G.B 'An overview of the Presidential elections' in Mugaju, J and Oloka-Onyango, J. (See n 21 above) 271.

¹⁶⁰ Initially 6 March was set as the election date, then it was moved to 7 March yet again to 12 March.

put a few more provisions in place. Violence continued throughout the campaign period and up to polling day.¹⁶¹ Army personnel were deployed at the polling stations.¹⁶²

Presidential elections however took off without enabling laws in place.¹⁶³ Erias Lukwago states that the law, which was later enacted notwithstanding its late legislation, made a provision that technically disqualified Alhajji Nasser Ntege Sebagala.¹⁶⁴ Equally, regulations for the determination of qualifications were only passed on 3 January 2001, when nominations were slated for 8 and 9 February 2001. Candidates with who obtained their qualifications outside Uganda could not access theirs. The rules providing for the conduct of election petitions were also enacted on 6 March 2001, a few days before polling day.¹⁶⁵

Despite a voter registration process that proved to be rather inconclusive, the late legislation of enabling electoral law and other vice elections took place. Museveni emerged winner by 69.3 per cent while Besigye got 27.8 per cent.¹⁶⁶

4.8.2 The Parliamentary Elections

The elections of directly elected MPs took place on 26 June 2001 while those for the SIGR were conducted earlier in the same month.¹⁶⁷ Like the Presidential elections, the enabling law for Parliamentary elections was enacted late.¹⁶⁸

4.8.2.1 Directly elected Representatives

The 214 directly elected MPs were elected amidst a competition characterised by violence and intimidation of candidates and their supporters right to the polling day.¹⁶⁹ The ill

¹⁶¹ Makara and Tukahebwa reports that at 17 people died during the Presidential elections alone.

¹⁶² Section 42 of PEA 2000 forbids presence of armed personnel during elections unless called upon by election officer. See also Article 208 of the Constitution.

¹⁶³ Lukwago, E 'The search for an effective electoral administration system in Uganda' A paper presented at a civic education seminar at Makerere University, 17 August 2001, 6.

¹⁶⁴ 'A' level qualifications is determined by Uganda National Examination Board.

¹⁶⁵ Section 58(11) of PEA 2000 empowers the chief Justice to make such rules.

¹⁶⁶ Uganda Presidential Election Results, available at <www.ifes.org/elecguide.htm> (accessed 15/09/2004).

¹⁶⁷ Elections for Youth Representatives, Workers' Representatives, Representatives for people with disabilities, District Women Representatives, and Army Representatives took place on 15, 18, 21 and 22 June 2001 respectively.

¹⁶⁸ See (n 186 above). The PEA 2001 and was enacted on 18 May 2001 and the parliamentary Elections (Special Interest Groups) Regulations 2001 S.I No. 31 of 2001 for the election of representatives for special interest groups were enacted on 26 May 2001.

preparation of the EC during the pre-election phase affected the conduct of these elections.¹⁷⁰ As was the case with the Presidential elections, the government deployed military personnel to conduct elections.¹⁷¹ The President openly supported those who had close ties with the Movement.¹⁷²

4.8.2.2 Election of Special Interest Groups Representatives

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

(i) Election of District Women Representatives (DWRs)

169 candidates were nominated for election of the DWRs for the 53 districts. The nominations were conducted dismally, disadvantaging the non-movement candidates.¹⁷³ Elections were conducted at an Electoral College consisting of Women Committees from LC1 to LC 3. The compilation of the voter register for the Electoral College was left to the Parish Chief who was assisted by LC Chairpersons. It was observed that anti-Movementists were deleted from the hand written voters' roll.¹⁷⁴

(ii) Election of Army Representatives

A total of 31 candidates were nominated after the Commander-in-Chief, President Museveni, had reduced the list from 40.¹⁷⁵ The elections took place on 22 June 2001 in Bombo Barracks, a highly guarded barracks.¹⁷⁶ The NRA Statute governs the composition of the Electoral College.

¹⁶⁹ The Uganda Human Rights Commission Report January 2001-September 2002, tabulates election violence during the Presidential and Parliamentary elections, 40. See also The Human Rights Reporter 2001-2002, 33-36.

¹⁷⁰ See Nordem Reports (1) and (2).

¹⁷¹ Section 43 of PEA 2001. See also Makara, S and Tukahebwa, G.B (n 183 above) 290.

¹⁷² Nordem Report (2).

¹⁷³ As above.

¹⁷⁴ Nordem Report (2).

¹⁷⁵ Regulation covering election of Army Representatives only states that UPDF Council shall elect them in such procedure as shall be determined by the Council.

¹⁷⁶ Nordem Report (2).

(iii) Election of Regional Youth Representatives

In addition to PEA 2001 and the Regulations made under this Act, these elections are governed by Guidelines for the Regional Meetings for the Youth Elections issued by the EC on 29 May 2001. The elections took place in the respective regions between 13 and 15 June. The Electoral Colleges were drawn from Youth Councils set up in 1993. It was made possible by virtue of a Statutory Instrument that deemed the Youth Councils to be in existence since they had lapsed in November 2000.¹⁷⁷ However, no fresh elections were conducted but the Electoral College was elected from old Youth Councils loyal to the Movement.¹⁷⁸ The elections took off with many irregularities in the Electoral Colleges: the voters' registers, identification of delegates, and the campaign process was reportedly fraught with rampant malpractices.¹⁷⁹ The delegates to the Electoral Colleges lacked formal identification papers and the EC depended on word of District Youth Chairpersons. This was equally the case for election of Woman Youth Representative.¹⁸⁰

(iv) Election of the Workers Representatives

The Annual Delegates Conference of the National Organisation of Trade Unions (NOTU) nominates candidates in accordance with its constitution. The Annual Conference took place on 17 June and a total of eight candidates were nominated. The elections took place on 18 June. It was reported to be peaceful, though union leaders handpicked some delegates to the Annual Conference.¹⁸¹

(v) Election for Representatives of Persons with Disabilities

These are elected from structures affiliated to the National Union of Disabled People of Uganda (NUDIPU). An Electoral College consisted of four persons from associations affiliated to NUDIPU. Delegates from each district represented categories of the blind, physically handicapped and the hearing impaired. The governing law is the same as with

¹⁷⁷ National Youth Council (Amendment of Schedule) Instrument No. 27 of 2001. The National Youth Council Statute No. 2 of 1993 had provided for the lapsed of these councils after three years from November. The then youth Councils were established in November 1997 and they lapsed in November 2000.

¹⁷⁸ See (n120 above) 7.

¹⁷⁹ Nordem Report (2), 29.

¹⁸⁰ Electoral College delegates for the election of Woman youth representative are from the existing youth structures plus 18 students elected by the Uganda National Students Association.

¹⁸¹ See Nordem Report (2).

the other groups.¹⁸² The elections took place in Mukono District on 21 June 2001. Of all the elections for SGR, it is reported these were better organised.¹⁸³

4.9 The Post-election Phase

This is the aftermath phase and takes into account what the Government of Uganda has done to improve on the electoral process, especially in the light of the 2006 elections. Numerous reports in the aftermath of the elections revealed inflated voter registers, widespread voter buying, the stuffing of ballot boxes with pre-marked ballot papers, double voting, missing voters' lists, and the names of eligible voters missing from the register including widespread violence.¹⁸⁴ As predicted by Charles Onyango-Obbo, the 2001 elections were far nastier than the presidential race of 1996.¹⁸⁵ The presidential election, it was acknowledged, was the most violent in Uganda's political history.

Onyango-Obbo further reported that the elections, according to all the contenders, beginning with President Yoweri Museveni, down to Chaapa Karuhanga were rigged¹⁸⁶ and that whatever the results, they could have been rejected.¹⁸⁷ Thus one of the losing candidates, Kiiza Besigye petitioned against the election results.¹⁸⁸ The Court may nullify the Presidential election results on the grounds set out in section 60 of PEA 2000.¹⁸⁹

Despite the legal challenge, President Museveni could not be unseated. The Chief Justice Benjamin Odoki, accepted complaints against the EC and concluded that the EC did not comply with the provisions of the law but held the malpractices alleged against the Second Respondent, Yoweri Kaguta Museveni, were not proved to have been committed with his knowledge or consent.¹⁹⁰ The failure by the EC according to the Court did not substantially

¹⁸² As above.

¹⁸³ Nordem Report (2), 23.

¹⁸⁴ See (n 18 above).

¹⁸⁵ 'Will Uganda's Election 2001 End In Chaos?' *The Monitor*, 10 January 2001.

¹⁸⁶ 'Uganda Elections Are Like Going For Kwanjula After 15 years' *The Monitor*, March 21, 2001.

¹⁸⁷ See Possible outcomes at <<http://www.africanews.com/article449.html>> (accessed on 19/10/2004).

¹⁸⁸ Section 57 of PEA 2000 provides that an aggrieved party may petition the Supreme Court within 10 days challenging a presidential election. Supreme Court must determine the petition not later than 30 days from date of filing.

¹⁸⁹ The grounds include non-compliance with the Act, non-qualification of candidate or committing any offence under the Act.

¹⁹⁰ *Kiiza Besigye v. The Electoral Commission of Uganda and Yoweri Kaguta Museveni*, Petition No.1 of 2001.

affect the election results. The Court dismissed the Petition. In the court of public opinion, however, the Petitioner had won the case.

As for Parliamentary elections, there were a number of election petitions too. Any Petition for the annulment of results or re-runs must be filed within 30 days of the results. A number of petitions filed were equally dismissed.¹⁹¹

4.10 Remediating the obvious

The government has made strides towards remediating the electoral flaws. A Parliamentary Select Committee was constituted to look into the 2001 election violence.¹⁹² Some members of this Committee could have been the perpetrators of the violence. An independent commission therefore could have done better.

Long after the elections, the President exercised his powers under article 60(8) of the Constitution on 31 July 2002 and retired the Chair of the Electoral Commission and five commissioners for incompetence. He appointed new members on 5 November 2002.¹⁹³ Equally, the Political Parties and Organisations Act (PPOA) No. 18 of 2002 was passed to govern political parties and organizations.¹⁹⁴ This Act has changed little, otherwise it has bolstered the provisions of articles 72, 73 and 269 of the Constitution that hamper the enjoyment of the right to form or join political parties, and the freedoms of assembly and association.¹⁹⁵ The Act was also challenged in the Constitutional Court.¹⁹⁶ Sections 18 and 19 were declared unconstitutional because they restrict activities of political parties. The State has however appealed to the Supreme Court. To date political parties still face

¹⁹¹ Amnesty International Annual Report on Uganda, available at <<http://web.amnesty.org/web/ar2002.nsf/afr/uganda?Open>> (accessed on 19/10/2004).

¹⁹² Terms of reference available at Parliament of Uganda <http://www.parliament.go.ug/ToR_elections.htm> (accessed on 20/10/2004).

¹⁹³ Uganda: Key Historical and Constitutional Developments <<http://www.kituoachakatiba.co.ug/ug%20const.htm>> (accessed on 20/10/2004).

¹⁹⁴ The Uganda Human Rights Commission (UHRC Report 2001-2002) has observed that this law defies International law to which Uganda is a party.

¹⁹⁵ These provisions have been litigated upon. See Human Rights Commission: Complaint No. 671 of 1998; In the matter of The Free Movement.

¹⁹⁶ See for example: Paul Ssemogerere and 5 others v. Attorney General, Constitutional Petition No. 5 of 2000 and James Rwanyarare and 9 others v. Attorney General Constitutional Petition No. 7 of 2002.

difficulties to register.¹⁹⁷ The nullification of the PPOA provisions however would only be meaningful when the Constitutional provisions are nullified.

Earlier a CRC headed by Fredrick Ssempermbwa was constituted in February 2001 in the heat of Presidential elections to examine constitutional provisions relating to sovereignty, political systems, democracy and good governance.¹⁹⁸ The CRC made its recommendations and submitted to the government,¹⁹⁹ but the Government White Paper reveals that very little concerning electoral institutions and the electoral process has been accepted. For example, the government has retained the requirement for minimum “A” level qualification for Parliamentary and Presidential candidates.²⁰⁰ The government equally rejected the need for electoral laws to be passed at least six months before polling.²⁰¹ The recommendation by the CRC would have worked to provide certainty to all political players and eliminate the possibility of manipulating electoral laws at the eleventh hour.²⁰²

The government has rejected recommendations for Parliament to amend the law for change of political system, and prefers a referendum.²⁰³ The provisions of Article 74 of the 1995 Constitution are untenable. It however will take the willingness of those in power to effect these changes. Again despite the 1995 Constitution having settled the issue of presidential term, by restricting it to two five-year terms, the government has suggested that Parliament would decide and not by way of referendum. This is a setback especially given the fact that Parliament is dominated by Movement MPs.

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

¹⁹⁷ ‘Government explains FDC registration’ *The Monitor* 8 October 2004.

¹⁹⁸ See (n 193 above).

¹⁹⁹ The CRC Report was submitted on 10 December 2003.

²⁰⁰ See Government White Paper.

²⁰¹ As above (6:32).

²⁰² For a detailed discussion, see Oloka-Onyango, J ‘The White Paper and Political Transition in Uganda: Assessing the Implications’ Report to the Donor Democracy Group (DDGG) under the project *Review and Assessment of the GoU White Paper on the Report of the Commission of Inquiry on the Constitutional Review and Uganda’s Political Transition*; 25 October 2004, 9.

Do not play around with freedom fighters. You can see Zimbabwe's Robert Mugabe. Freedom fighters already have *entandikwa* (a foundation). Liberation armies are not like these mercenary ones, which earn salaries. We fought and we can still fight. Even if Morgan Tsavangirai had won, do you think ZANU would have accepted if Mugabe had lost? Oh, no. You are playing with fire. It is not possible and it is not necessary. Let everybody use the peaceful channel. I am not against liberalising politics but I do not accept your line that we bring multipartism whether the peasants want it or not.²⁰⁴

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

²⁰³ See (n 200 above).

²⁰⁴ 'Movement shall not handover power easily' *The Monitor* 15 March 2002.

Chapter Five – Critical appraisal, conclusions and recommendations

5.1 Introduction

Since the onset of the process of democratisation African countries have had elections. Elections per se however are not synonymous with democracy. The analysis in the preceding chapters shows that both Zambia and Uganda clearly despite holding elections are not democratic. However, elections are an important ingredient of the democratisation process. They allow for *inter alia*, the electorate to freely choose their national and local leaders. The nurturing and consolidation of democracy requires the concerted and collaborative effort of various interest groups in society. Governments must recognise and accept this stark reality. The NEPAD Initiative will not achieve its desired results if the masses are not involved.

5.2 Obligations of Zambia and Uganda under NEPAD

The NEPAD initiative has not reinvented the wheel. The obligations of Zambia and Uganda remain the same as those enunciated in the many international human rights instruments to which the two countries subscribe. What is envisaged under NEPAD simply gives effect to international law. It is imperative therefore to review international law provisions pertinent to this discussion. Thomas Franck states that the right to democratic entitlement is still a fragile concept, and needs some forceful systemic support where the forces within a country are insufficient to protect it from the counterpoised forces of totalitarianism.²⁰⁵ The systemic support it is argued may be offered by NEPAD.

5.2.1 *International obligations*

Some instruments considered here of course amount to “soft” laws, which may not be binding on states. However, the frequent reiterations of their provisions in subsequent textual practice, make these declarations and resolutions “hard” law, acquiring customary status.²⁰⁶

²⁰⁵ Franck, T ‘Democracy as a Human Right’ in Henkin, L and Hargrove, J. L ‘*Human Rights: An Agenda for the Next Century*’ (1994), 73.

²⁰⁶ Udombana, N J. ‘Articulating the right to Democratic Governance in Africa’ in ‘*The right to democratic entitlement in International law*’ 24 Mich. J. Int’l L. 2003, 1209.

The right to democracy is the right of people to participate and to be consulted in the process by which choices are made.²⁰⁷ This right has become part of customary international law from which states cannot escape.²⁰⁸ As budding democracies Zambia and Uganda must conform to international norms and standards and govern by consent.

The UDHR specifically recognises the freedoms of expression, assembly and association.²⁰⁹ Under Article 20(2) of the UDHR no person may be compelled to belong to an association, while Article 21 provides for the right to participate freely in the governance process directly or through freely chosen representatives. The UDHR though a declaration, has become part of customary international law binding on all states (*jus cogens*). These rights reappear in the legally binding ICCPR with some specificity. Both Zambia and Uganda are parties to the ICCPR.²¹⁰ These include the freedoms of thought²¹¹ and association.²¹² Article 19(2) specifically spells out the right to democratic entitlement, thus:

Everyone shall the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of choice.

Article 25 of the ICCPR extends to every citizen the right:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Law may only restrict this right in circumstances necessary for the protection of public order, public health or morals justifiable in a democratic society.²¹³

At its 45th session, the General Assembly adopted a resolution on “enhancing the effectiveness of the principle of periodic and genuine elections”, reaffirming the right to electoral entitlement enshrined in the UDHR and Article 25 of the ICCPR. The resolution

²⁰⁷ See (n 205 above) 73.

²⁰⁸ As above.

²⁰⁹ Articles 19 and 20.

²¹⁰ Zambia ratified the ICCPR in 1984 while Uganda ratified it in 1995.

²¹¹ Article 18.

²¹² Article 22.

²¹³ Article 19(3).

recognises that periodic and genuine elections are crucial in the effective enjoyment of other human rights and freedoms.²¹⁴

An electoral process must provide for an opportunity for citizens to become candidates and air their political views without restriction, individually and in association with others. The 1995 Constitution of Uganda in many respects closed up the political space. This is despite constitutional guarantees for the freedoms of assembly and association, and the right to form and belong to political parties. Effectively as Oloka-Onyango and Fredrick Jjuuko have observed, Uganda is the *de facto* one-party state.²¹⁵ This is contrary to international law and equally repugnant to NEPAD initiative to which Uganda purportedly ascribed. As succinctly put by Joe Oloka-Onyango:

If the avenues for the expression of ideas are closed off, then the extent to which a government can be said to be respecting the overall ideals of democracy are necessarily limited.²¹⁶

Oloka-Onyango thus surmises that, “the state of political expression in contemporary Uganda is at its lowest ebb since the outright proscription of political party activity under the Idi Amin military regime.”²¹⁷ In the absence of an open political space, elections in Uganda would remain a facade. On the other hand, although the political space is open in Zambia the reality is not far from the situation that prevails in Uganda. The Opposition have been frustrated and manipulated by the ruling MMD.²¹⁸ Chapter three of this paper has demonstrated this point vividly.

Uganda law makes provision for the representation of special interest groups. However, the arrangement benefits the Movement much than it does other political players. In this area Zambia has failed, despite acceding to the Covenant for the Elimination of all forms of Discrimination Against Women (CEDAW). Stacy Sandusky argues that the UDHR, the ICCPR and CEDAW all urge states parties to take necessary legislative or other measures

²¹⁴ GA Res.45/150(21 February 1991).

²¹⁵ See (n 125 above) and Jjuuko, FW ‘Freedom of Assembly, Participation and Organised Opposition in Uganda’ Paper Presented at HURIPPEC Conference: A decade of the NRM Government, 10-11 December 1996.

²¹⁶ Oloka-Onyango, J ‘*Telling jokes and upsetting the government: Reflections on “Dhikuula, the Tinyefuza syndrome and the limits of free expression under ten years of the NRM”*’, paper presented to HURIPPEC Conference, 10-11 December 1996, 3.

²¹⁷ Oloka-Onyango (n 21 above) 16.

²¹⁸ CMI Report.

for citizens to realise the rights and freedoms enshrined therein and to ensure that they apply without discrimination based *inter alia* on sex.²¹⁹ Zambia should take a leaf from the experiences of Uganda, Namibia and South African.²²⁰

NEPAD recognises the United Nations Commission on Human Rights (UNCHR) and the African Commission on Human and Peoples' Rights (African Commission).²²¹ The UNCHR passed a resolution that a right to democratic governance exists, and this includes free voting procedures, periodic and free elections.²²² Zambia and Uganda must conform to this resolution because they have both subscribed to NEPAD.

Equally, the right to self-determination is provided under article 1 of the UN Charter. This right was reinforced as a substantive individual right in the UDHR, which states in part:

...the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote.

Article 1 of ICCPR also provides for the right to self-determination. Today, self-determination enjoys primacy of place in international law, acquiring the status of *jus cogens*.²²³ This right depicts the right of the governed to participate in the governance processes.

5.2.2 Regional level Obligations

The two countries are parties to the African Charter on Human and Peoples' Rights (The African Charter) and numerous other regional arrangements.²²⁴ The African Charter guarantees the right to associate²²⁵ and assemble.²²⁶ In a replica of the provisions in the UDHR and the ICCPR, Article 13 provides for the right to participate. The African

²¹⁹Sandusky, S. R 'Women's Political Participation in Developing and Democratising Countries: Focus on Zimbabwe' (1999) 5 *Buffalo Human Rights Law Review* 253

²²⁰ As above 271.

²²¹ See (n 45 above).

²²² Lippincott, A.N 'Is Uganda's "No-Party" System Discriminatory Against Women and a Violation of International law?' (2002) 27 *Brooklyn Law Journal of International Law* 1141.

²²³ See (n 206 above) 1248.

²²⁴ Zambia ratified the African Charter in 1985 while Uganda in 1986.

²²⁵ Article 10.

²²⁶ Article 11.

Commission has interpreted this article broadly to include *inter alia*, the right to vote for the representative of one's choice and a duty to respect the results of that choice.²²⁷

To complement the normative provisions of the Charter, the African Commission also adopted a Resolution on Electoral Process and Participatory Governance during the Commission's 19th Ordinary Session in Burkina Faso in 1996. The resolution affirmed and asserted "elections are the only means by which the people can elect democratically the government of their choice in conformity to the African Charter..."

The AU has also passed a number of Declarations and Resolutions on elections. The Addis Ababa Declaration of 1990 on the democratisation and consolidation of democratic institutions; the Algiers Declaration of 1999 for the protection and promotion of human rights and fundamental freedoms, and the 2000 Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government.²²⁸

The 38th Ordinary Session of the AU equally adopted a Declaration on the Principles Governing Democratic Elections in Africa. That declaration asserts that democratic elections are the basis of the authority of any representative government and that regular elections constitute a key element of the democratisation process.²²⁹ The declaration affirmed the right to freedom of association and assembly and the right to establish political organizations.

These rights have not been given much prominence in either Zambia or Uganda. This can be discerned from the way Zambia and Uganda have tried to make/amend Constitutions. A flawed constitution making process cannot produce a good constitution. The adoption of a democratic constitution, its preparation, content and method of revision should conform to democratic principles. Adherence to international law, separation of powers and independence of the judiciary, promotion of political pluralism or other form of participatory democracy cannot be over-emphasised.²³⁰

Both Zambia and Uganda are reviewing their Constitutions and hopefully will improve the provisions governing elections. It is an opportunity for the two countries to renew their

²²⁷ Civil liberties v. NIGERIA Communication No. 102/93.

²²⁸ For a detailed discussion see (n 206 above).

²²⁹ As above, 1268.

²³⁰ See (n206 above) 1260.

international and regional commitments. The CRC in Uganda constituted prior to 2001 Presidential elections, submitted its findings, however the government have rejected most of its recommendations.²³¹

In Zambia, the CRC is impartial.²³² All the Commissioners are personal appointees of the President. It is doubtful whether a good Constitution will come out the exercise and avoid another Constitutional review. Zambians want a Constituent Assembly to adopt the Constitution and to subject it to a national referendum. Law must be enacted to make provision for Parliament to call for a referendum and not the President.²³³ Otherwise leaders would be failing in their mandates from the people and their commitments to international, regional and national programmes. The gloomy picture has partly fed on the lack of significant political change emanating from the electoral process and these must be addressed for NEPAD to succeed.

5.3 Independence of Electoral Institutions

The impartiality of electoral institutions is an essential aspect of free and fair electoral processes. Electoral Commissions and the Judiciary must be Independent. Both Zambia and Uganda have Constitutional provisions that guarantee the independence of these institutions. However, this largely remains on paper. Transparency lacks in the manner the Electoral Commissioners and judges are appointed. In both countries, Presidents appoint all the judges on recommendation of the judicial service commissions but ratified by Parliament. The Presidents also make appointments to the Judicial Service Commissions. Therefore only compliant members are appointed. The requirement for Parliament to approve is thus merely cosmetic. As observed by Muna Ndulo, many African parliaments have practically been converted into tools for legislating at the respective executives' pleasure and convenience.²³⁴ Such tendencies must take a u-turn for NEPAD initiatives to succeed. The South African experience is recommended for both Zambia and Uganda. The President appoints the President and Deputy President of the Constitutional Court

²³¹ See (n 202 above).

²³² See (n 110 above).

²³³ Section 2(1) Referendum Act, Chapter 13 of Laws of Zambia empowers President to call for Referendum.

²³⁴ Ndulo, M *'Presidentialism in Southern African States and Constitutional Restraint on Presidential Power'*, in 26 *Vt. L. Rev.* (2002), 783.

after consultation with the Judicial Service Commission and the leaders of parties represented in the National Assembly.²³⁵

Article 26 of the African Charter urges states parties to guarantee the independence of the courts and the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter. This was emphasised by the African Commission.²³⁶

The Police are another branch of government that is involved in the enforcement of electoral laws. The Police have worked much more to serve the incumbent government than they have all interested parties in the electoral processes. In the case of Zambia the weakness lies in the fact that appointment, promotion, dismissal and discipline of Officers such as Inspector General of Police and Police Commissioner is at the President's pleasure.

5.4 Conclusions

The crude simplicity of elections in Zambia and Uganda has benefited the autocratic tendencies of our leaders, who now parade democratic credentials without reforming the repressive regimes. Recently in Zambia, the Executive postponed the Local Government elections, which were due this to 2006 on grounds simply that there was no money.²³⁷ The weak Opposition has done nothing to counter the decision. Opposition groups have looked to serving in the cabinet of the incumbent party.²³⁸ The electorates have been swindled of a chance to change leaders.

Scholars and commentators have observed that minimum core standards exist that qualify any electoral system, as conforming to democratic norms and standards. Legal pronouncements are nothing but a mockery if what they provide for cannot be realised in practice. According to James and Hadland electoral systems *inter alia* must ensure fairness, inclusiveness and accountability.²³⁹ They postulate that fairness in electoral

²³⁵ Article 174(3) of SA Constitution.

²³⁶ Civil Liberties v. Nigeria Communication No 129/94.

²³⁷ 'Local Government Elections Suspended' *The Post* 27 July 2004.

²³⁸ CMI Report.

²³⁹ James, W and Hadland, A 'Shared Aspirations: The imperative of Accountability in South Africa's Electoral System', in (See n 12) 15.

terms mean that every eligible voter should have the opportunity to vote and that each vote is of equal value. It also implies that the result of an election should reflect the aggregated wishes of the voters.²⁴⁰

The leaders in the two countries have not been accountable. Ian Thynne has described accountability as simply “answerability”.²⁴¹ Through accountability, the electorate has the power to change unaccountable leaders. Preceding chapters revealed that in Zambia and Uganda the electorate have not been able to use the ballot without manipulation. Leaders should stop paying lip-service attention to constitutional government and embrace popular participation.²⁴²

Leaders have proclaimed their commitment to propelling Africa into the 21st century, while acknowledging past profound failures in economic development and democratic governance. They need to nurture the confidence of Africans and mobilise support for new development paradigms and models. They must be open enough and should involve citizens in governance and development initiatives.²⁴³

5.5 Recommendations

The following recommendations flow from the analysis of the two case studies and the conclusions that flow therefrom. They particularly focus on the Zambian and Ugandan governments, NEPAD Implementation Committee, the Civil Society and the Donor Community.

5.5.1 To the Zambian and Ugandan governments

- The appointment of Electoral Commissioners should be done in consultation with the Opposition, and further ratified by Parliament. Commissioners’ tenure of office must be secure and they should only be removed from office after probes by a duly constituted impartial tribunal. Commissioners must be competently qualified personnel in the

²⁴⁰ Tom Lodge: *Electoral Options and Core Values: Summary*, (See n 12), 41.

²⁴¹ See n 259.

²⁴² See Oloka-Onyango J ‘Towards the Future: Confronting Myriad Constitutional Challenges’ in Oloka-Onyango J (Ed) (2001) *Constitutionalism in Africa: Creating Opportunities, Facing Challenges*, 339.

²⁴³ See, Mastered seed: <<http://www.sacc.org.za/docs/NEPAD.html>> (accessed on 14 September 2004)

electoral processes. The Electoral Commissions must be properly funded and be given the leeway to fundraise. They must conduct elections without interference.

- Judges must be appointed in consultation with the Opposition, the Judicial Service Commissions and the Law Societies subject to approval by Parliament. In the case of Zambia, the Chief Justice should not be the Returning Officer for Presidential elections. The Chairperson of the EC should be the Returning Officer. Since the Chief Justice also sits to hear Presidential election petitions and that constitutes a definite conflict of interest. Zambia should take a leaf from Uganda, Presidential and Parliamentary election petitions must be heard within a definite period enshrined in the law. Petitioners and Respondents must be heard unless exempted by law. During the Presidential petition in 1996, Fredrick Chiluba did not testify. In the just-ended Presidential petition, Levy Mwanawasa did not testify in his case. On the contrary, President Yoweri Museveni testified in the Kiiza Besigye Petition, as did Nigerian President Olusegun Obasanjo.
- The governments must fund presidential candidates equally and no candidate must use government resources. For the incumbent President, the law must prescribe what he might use under his office, which must be Gazetted. All candidates must have equal access to state owned media, and the modalities must be put in place to regulate time allocation.
- Zambia should enact law to make provision for the representation of certain interest groups, as is the case in Uganda, but Army representatives in Uganda must be scrapped.
- The date of the general elections must be enshrined in the Constitutions and should specifically be held during the dry season.
- Ministers should be appointed from outside Parliament to enhance the principle of separation of powers. The Vice Presidents must be running mates to the Presidents to avoid a multiple of Vice Presidents within a term, appointed.
- The offices of the Police Inspector General and Commissioner of Police must be made Constitutional to avoid bias in the execution of their duties.

- The political space must be opened to allow for multipartism in Uganda. All laws that restrict political parties' activities must be repealed.
- Electoral laws must be passed in good time before elections and no security forces should play a role in elections.

5.5.2 To the NEPAD Implementation Committee

Accession to NEPAD/APRM by participating states should remain voluntary, the HSIC must put in place the minimum core requirements to which participating states must conform before accession. These may include:

- Establishment of independent Electoral Commissions;
- Functioning, accessible and independent Courts;
- Presence of popular Constitutions and electoral laws and regulations that guarantee all basic human rights enshrined in international human rights instruments;
- Guaranteed regular, free, fair and open elections; and
- Independent media.

5.5.3 To the Civil Society

- The Civil Society is a watchdog inevitable in the democratisation processes. It is recommended that the civil society should actively lobby the governments of the two countries to take legislative or other measures in the electoral processes in order to conform to international human rights instruments.
- The Civil Society should take a leading role in educating the masses about the NEPAD Initiative.

5.4.4 To the Donor Community

The donor community has a role to play in the democratisation process. Their involvement has not been without fruits. In 1990, the donor community played a significant role in ensuring regime change in Zambia.²⁴⁴ The NEPAD Initiative has been received and applauded by the donor community. They should as well ensure that participating

²⁴⁴ CMI Report, (n 11 above) 27.

countries conform to democratic principles, before they can lend support to these countries developmental programmes. This is not prayer for more conditionality, but an emphasis to adherence to international law.

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