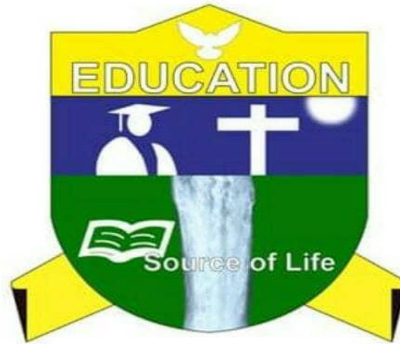


RUAHA CATHOLIC UNIVERSITY

(RUCU)



FACULTY OF LAW

**LEGAL EXAMINATION OF THE PRINCIPLE OF GOOD
GOVERNANCE IN ELECTIONS: LESSONS, UGANDA AND
TANZANIA CAN LEARN FROM KENYA**

**A Research Paper Submitted in Partial Fulfillment of the Requirements for the
Award of Bachelor of Law Degree (LL. B) of Ruaha Catholic University**

By

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634/LLB/T/2017

Prepared under Supervision of

Ms. Caroline Ruvuga

At the Faculty of Law

June, 2021

CERTIFICATION

The undersigned certifies that she has read and hereby recommend for acceptance by Ruaha Catholic University, a research paper titled: “*Legal Examination of the Principle of Good Governance in Elections: Lessons, Uganda and Tanzania can learn from Kenya*” in partial fulfillment of the requirements for award of the degree of Bachelor of Laws (LL. B) of Ruaha Catholic University.

Signed on Day of 2021

.....

Ms. Caroline Ruvuga

(Supervisor)

DECLARATION

I, **Francis J.Magege**, hereby declare that this research paper is original work and that it has never been presented in any other institution(s) before for a similar or any other degree award. I also declare that any secondary information used has been duly acknowledged in this research paper. It is in this regard; I declare that these work as originally mine.

Date:

Signature

Francis Magege

(Researcher)

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ACKNOWLEDGEMENT

I wish to express my gratitude to the Almighty God for giving me life and all blessings he saves upon my life as to mention few, health, strength, courage, family and the golden chance of getting education.

My deepest pride goes to all those assisted me in the whole process of preparing this study, the information which they shared are very useful and relevant to this research as the result the study become rich and authoritative. It is not possible to mention all but I should extend my thanks to Ruaha Catholic University for affording me the opportunity to undertake degree Bachelor of Laws, the experience I got from here and for the full academic support I received during my four years of been at the university. With greatest pleasure I mention Ms Caroline Ruvuga as my supervisor, I cannot erase the memory of incredible guidance and support from her, she really committed on supervising and advising me during the whole time of preparing this research.

Much thanks to Dr Ana Luis for teaching me how and what to think, your lesson in jurisprudence can never be forgotten and most of all computer skills you passed to me helped me to prepare this research paper with no any hurdles.

I pass my thanks to Mr. Mlay, Dr Nyana, Learned Advocate Nyalusi and all staff members at Ruaha Catholic University for their full support and advice during my whole time of pursuing my law degree, to my friend Matunda Mpogole for your support during researching and being a good friend to me.

To my family, I acknowledge your love to me as we were together all this time, you supported in each and everything, much appreciation to my father Joseph Magege and my mother Consolatha Evarist, and all my brothers and sisters.

LL. B class of 2017-2021 thanks for being my family for this four year at the university.

DEDICATION

This research paper is dedicated to:

My parents

Mr. & Mrs. Joseph Magege

My family members

My Brothers and Sisters

My Friend

My dearest Elizabeth Msuya

They gave me the love and full support that encouraged me to
perform my duty and fulfill my goals.

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David Ndii and Others v. Attorney General and Others (the BBI Judgment) Petition No 397 of 2020 [2021] eKLR

LIST OF ABBREVIATIONS

EAC	East African Community
AU	African Union
CAP	Chapter
RUCU	Ruaha Catholic University
LL.B	<i>LegumBaccalaureus</i> (Bachelor of Laws)
ICCPR	International Covenant on Civil and Political Rights
CEAFRD	the Convention of the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
UDHR	the Universal Declaration of Human Rights
IEBC	Independent Election and Boundaries Commission
GG	Good Governance
UNDP	United Nations Development Programme
EU-EOM	European Union Election Observation Mission
VPN	Virtual Private Network
ULS	Uganda Law Society
OSJI	Open Society Justice Initiative
CCU	Constitution Court of Uganda
NRM	National Resistance Movement Party
UCC	Uganda Communications Commission
CNN	Cable News Network (international television)
BBC	British Broadcasting Corporation (International Broadcasting Company)

ABSTRACT

This study base on the concept of the principle of good governance: there is need for having laws which ensure good governance in elections, in Uganda and Tanzania as the lesson taken from Kenya. By considering democracy, rule of law and transparency, this study shows the nature and the applicability of the laws governing elections toward protection of the principle of good governance in Tanzania and Uganda.

Although the international instrument and the constitutions of Tanzania and Uganda designed to cover good governance, but there are number of legislation which hinder the parameters of good governance through giving power to the authorities to bar the full participation to the election especially members of opposition parties.

The authorities like the communications have been shutting down house Medias which cover the opposition activities, the police forces have been arresting and detaining members of opposition parties even the registrar of political parties use such power given by the law to undermine the constitution rights given to the political parties.

The whole acts of undermining the opposition parties and their members are direct construed from the legislations, which even make more hurdles to the aggrieved party to claim their rights since the legislation themselves include the provision which undermine the principle of good governance as discussed herein.

Therefore, this study examined those legislations to determine how far do they protect or undermine the principle of good governance, and at the very latest to consider a lesson to learn from Kenya basing on observing the principle of good governance in elections.

CHAPTERISATION

The study contains of five chapters, whereby chapter one entails the historical background of the problem, statement of the problem, literature review, hypothesis, objective of the study, significance of the study, methodology employed to collect data as well as scope and limitations available to this study.

Chapter two contains the conceptual framework of the study which provides the meaning of key concepts like good governance, the concept of election, elections in relation to democracy and the meaning of elections in relation to the good governance.

Chapter three provides for the legal framework, which includes international, regional and domestic legal framework which actually provide a guideline to the elections conducted in Kenya, Uganda, and Tanzania to ensure are consistent to good governance and their critique in general.

Chapter four entails the examination of the principle of good governance in elections, which explain concerning the existence of the laws which hinder the principle of good governance. This chapter is very essential since it proves or disapproves the hypothesis provided on the first chapter. The last chapter is conclusion which provide for the summary of the findings, recommendations and conclusion proposed by the researcher so as to ensure that elections taking place in Kenya, Uganda, and Tanzania are on line with principle of good governance according to the treaty establishing the East African Community (hereafter EAC).

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CHAPTER ONE:

GENERAL INTRODUCTION

The researcher intended to examine the principle of good governance under Article 6(d) of the Treaty for the Establishment of East African Community. The principle of good governance includes democracy, rule of law and transparency, whereby Kenya, Uganda and Tanzania are subjected to be bound by the principle. The main focus of the research is to examine whether the aforementioned states observe the principle of good governance during elections.

1.1. Historical Background

The East African Community is among the regional integration where its union is traced back during colonialism. Previously the community was made of three countries, which were Tanzania (Tanganyika then) Kenya and Uganda.¹ Where they enjoyed the long history of cooperation as the successive regional integration, this cooperation began as the customs union which was of Kenya and Uganda because all were under one colonial master (under British rule) and Tanganyika was under Germany rule. After the Second World War Germany was defeated and lost almost all the colonies including Tanganyika.²

In 1927 Tanganyika was under League of Nations under the trustee of British, Tanganyika was joined the customs union and make the total countries of three and both were under British rule.³ The East African Community is a successor of the East African cooperation which was formed after the independence of the member states in 1967 and it

¹ EAC History- East African Community <https://www.eac.int/eac-history&ved> (accessed on 1st October, 2020)

² EAC- East African Community <https://www.uneca.org/oria/pages/eac> (accessed on 1st October, 2020)

³ *Idem*

collapsed in 1980s. It was re-established in 1999 by the Treaty for the Establishment of East African Community of 1999 which came into force in 2000.⁴

In 2007, Rwanda and Burundi joined the community and in 2016 South Sudan joined and made the total number of six partner states of the community; the headquarters of the communities located in Arusha Tanzania.⁵ In the East African Community, Partner States share a common history, language, culture and infrastructure, through this advantages provide strong and unique framework for the regional cooperation and integration through which the community can offer benefits like increase of trade and expansion of markets, attractions of foreign direct investment, increase of bargaining power, strengthen of security and conflict resolution, free movement of people within a region as well as ensuring good governance and protection of the human rights within the partners states.⁶

East African Community is a very strong economic cooperation which lays on the groundwork for further political, economic and social integration to its partner states.⁷ The Treaty for the Establishment of East African Community has stipulated different principles to enhance policy harmonization and integration of the region.⁸

Partner states are required to live in mutual trust and strong political will as well as sovereign equality, strengthening and consolidation of cooperation in agreed field by maintaining peaceful co-existence and good neighborliness.⁹ In case any dispute raises between the partner states should ensure peaceful settlement of the dispute, and lastly partner states should ensure that they maintain good governance by adhering the principle of democracy, rule of law, accountability, transparency, social justices, equal opportunity,

⁴ R. E. Mshomba, *Economic Integration in Africa: The East African Community in Comparative Perspective*, England, Cambridge University Press, 2017, 46.

⁵ *Ibid*, 49.

⁶ *Idem*.

⁷ P. Drummond & S. K. Wajid et al, *The East African Community: Quest for Regional Integration*, Washington, D.C., International Monetary Fund, 2015.

⁸ *Idem*.

⁹ *Supra*, note 2.

gender equality and the protection of human and people's rights.¹⁰ And all these principles are provided under Article 6(d) of the treaty and the foresaid treaty binds all partner states to be bound by the treaty as long as they signed to be a member to the community.¹¹

1.2.Statement of the Problem

The East African Community is composed of six countries which are partner states to the community, which include Kenya, Uganda and Tanzania. All of these countries often conduct elections as the means of transferring power upon the public officers.

Free and fair elections go according to the law, and which is accepted by the community since it gives rights to the people to express their views toward political, economic, and social-cultural development. Basing on that ideology, the East African Community (hereafter EAC) is established on the foundation of the principle of good governance as provided under Article 6(d).¹²

By considering the principle of good governance,¹³ the researcher examined the elections which have been taking place in Uganda and Tanzania by taking a lesson from Kenya, to access their compatibility toward the parameters of good governance as (*inter alia*) democracy, rule of law, and transparency. Since there are laws in Tanzania and Uganda include provisions which are contrary to the treaty (*supra*). Like in Tanzania, The Media Services Act¹⁴ criminalize sedition, defamation and false news publication whereby all these acts are not clearly defined by the Act, and, The Political Parties Act¹⁵ which gives broader power to the registrar of political party. In Uganda there are the Public Order and Management Act¹⁶ which regulate the public meeting including political rallies, by giving

¹⁰ Article 6 (d) of the Treaty for the Establishment of East African Community, 1999.

¹¹ *Idem*.

¹² The Treaty for the Establishment of East African Community of 1999.

¹³ *Idem*.

¹⁴ The Media Services Act of 2016 section 35, 53 and 54.

¹⁵ The Political Parties Act [CAP 258 R.E 2019].

¹⁶ Act No 9 of 2013 which enacted to regulate for the public meetings.

power to the Inspector to allow or deny the permission to conduct such meetings, and, the Communication Act¹⁷ which regulate the communications sector in Uganda including radio communication, broadcasting and Telecommunication.

1.3.Literature Review

Herrmann, C.,¹⁸ in his book says that, at the Centre of the economic right issues, good governance is the most important thing. This extends to the rule of law as the regional body of law, economic rights as a minimum standard of equality before the law and an effective balance of power between the executive, legislature and judiciary.¹⁹

The East African Community recognizes these interrelationships and it's complimented in the proposed protocol on good governance, the East African Community Bill of Rights which will help to bring the good governance in the community.²⁰ East African Community infers that those whom are governed by the *acquis Communautaire*²¹ have rights to access an effective remedy before the competent regional tribunals. The Treaty for the Establishment of East African Community is driven from economic human rights and rule of law, so judiciary needs to be free from any kind of interference.²²

The writer provide a good idea about the importance of good governance and my study continue to examine direct the principle of good governance in Uganda and Tanzania if are compatible to the parameters of the good governance and to consider lessons to learn from Kenya.

¹⁷ The Communication Act [CAP 4 R.E 2013]

¹⁸ C. Herrmann, *European Yearbook of International Economic Law*, Berlin, Springer Science& Business Media, 2011, 540.

¹⁹ *Idem.*

²⁰ *Idem.*

²¹ 'French term which means accumulated body of law' found through <https://www.dictionary.com> (accessed on 15 December 2020).

²² *Supra* note, 18, 540.

Gombe K. & et el,²³ the writers provide that, the East African Community aim at becoming a decision-making body for all matters affecting its partner states, but it is not yet reached there.²⁴ But now it makes a decision at the very heart of the national identity for all partner states this include money and monetary policies, economic organization and labor market, borders and migrations, public services and welfare guarantees, and democracy.²⁵

The fragmented nature of democracy in East African Community is that all policies are decided at the East African Community level, the writer establishes the idea that the issues of democracy as one of the elements of good governance should be decided at the community level first so as to ensure protection of the principles provided by the treaty.²⁶

This study continues to examine the election conducted in Uganda and Tanzania if they fit to the principle of good governance since the writer said good governance is at community level which members have idea about good governance as provided by the treaty.

Ribeiro A. & Vleuten A.²⁷, The writers say good governance should include the issue of democracy, where the regional democracy as the dependent variable; and he tries to ask like which elements influence democracy at the regional level.²⁸

On that context he focuses on two specific conditions: national democracy and regional parliaments. To ensure good governance partner states should make sure that they start to maintain democracy at national level, which means there must be a public participation in decision making which could create a strong institution to protect good governance.²⁹

²³ K. Gombe, & et el, *Popular Participation in the Integration of the East African Community: Eastafricanness and Eastafricanization*, New York, Rowman & Littlefield, 2020, 101

²⁴ *Idem.*

²⁵ *Idem.*

²⁶ *Idem.*

²⁷ A. Ribeiro, & A. Vleuten, *Closing or widening: Legitimacy and Democracy in Regional Integration Organizations*, New York, Routledge, 2016, 46

²⁸ *Idem.*

²⁹ *Idem.*

It is hard to agree at international level the maintenance of good governance while at national level there is greater violation of it.³⁰ The writer provides the idea that maintenance of good governance should begin at national level so as to give power the community to protect it, the study continues on examining on the issue of people's participation especially in elections matters since through their participation shows democracy as one of the parameters of good governance.

Lombaerde P.³¹, There probably many definitions of governance, however there by now a common understanding which make the concept of good governance more appropriate framework that democratic government, for evaluating the democratic quality of regional systems.³² At national level has been noted that the way in which the society order themselves do not only depends on the existence of functionally differentiated group of governors.³³

Good governance is not only a verbal noun meaning 'the activity of governing' but also it includes multiple mechanisms of socialization and social control by which a human conduct is regulated. The writer mentions the basic principle of good governance which includes: accountability, meaning possibility to identify and hold public officials to account for their actions;³⁴ transparency, which means reliable, relevant and timely information about the activities of the government is available to the public; openness, which means that the government that listen to the citizen and business, and take their suggestions into account when designing and implementing public policies.

The researcher considers the idea provided by the writer that, good governance is not only a verbal noun but it should be an action, and the study continues to examine the elections in Kenya, Uganda and Tanzania if are conducted openly with transparence.

³⁰ *Idem.*

³¹ P. Lombaerde, *Assessment and measurement of Regional Integration*, New York, Routledge, 2006, 185-186.

³² *Idem*

³³ *Idem*

³⁴ *Idem*

1.4.Hypothesis

It seems that, in Uganda and Tanzania there are laws which hinder good governance in elections.

1.5.Objective of the Study

The objective of the study divided into general objective and specific objectives of the study

1.5.1. General Objective of the Study

To examine the elections conducted in Kenya, Uganda, and Tanzania, whether the whole processes are compatible to the parameters of good governance.

1.5.2. Specific Objective of the Study

To examine the applicability of the principle of good governance during elections

To analyze the effectiveness of legal and institutional frameworks in Kenya, Uganda, and Tanzania

To determine the impact of effective law toward free and fair elections as observed from Kenya.

1.6.Significance of the Study

The study helps a reader to understand the practicability of the principle of good governance in Kenya, Uganda, and Tanzania.

The study helps us to understand the effectiveness of legal frameworks governing elections in Kenya, Uganda, and Tanzania.

The study helps us to realize the impact of having elections which are compatible to the parameters of good governance especially democracy, rule of law, and transparency.

The study provides the consequences of the elections which are not compatible to good governance within the three countries.

1.7. Research Methodology

The study employs primary source and secondary source of data collections. Since this source of data provides a necessary information which are useful to this study.

1.7.1. Source of Data

Primary source of data, include International laws which provide about the good governance and the matters relating to elections, Regional treaties and laws like the African Union and East African Community laws which provide for good governance within the regional and the domestic laws which govern the issue of elections and good governance.

1.7.2. Primary Data Collection

The study base on library research whereby, involves information from books and other written materials including materials from online libraries.

1.7.3. Secondary Data collection

The study base on library research whereby information obtained as primary source, secondary source and secondary source data collection; Benjamin Mkapa Learning Resources Center located at Ruaha Catholic University as a university's library used to get information relating to principle of good governance in elections.

Benjamin Mkapa Learning Resources Center is a nearest library to the researcher and it is easy to access it since the library is daily open with exclusion of Sunday only.

The study also employs on the information provided by the Online Library and websites and the different reports given out by different domestic and International institutions concerning observation of elections in Kenya, Uganda and Tanzania.

1.7.4. Data Analysis

The collected data has been scrutinized and examined in details before analyzed; this has assisted the researcher to determine whether the collected data are accordance with the objective of the study. Here the researcher has used qualitative data analysis to describe the data collected, however this method involved summarizing the key findings including data collected through libraries.

1.8.Scope and Limitations

1.8.1. Scope

The study bases on East African Community Law since it examine the principle of good governance in Uganda and Tanzania, by considering a lesson from Kenya.

1.8.2. Limitations

A researcher faced several limitations and challenges which cannot be avoided. He found difficult to move to other states due to presence of lockdown in Kenya and Uganda followed after the eruption of the pandemic disease COVID-19, although the researcher overcame these limitation by accessing both countries through the use of interment including online libraries.

CHAPTER TWO:

CONCEPTUAL FRAMEWORK ON LEGAL EXAMINATION OF THE PRINCIPLE OF GOOD GOVERNANCE IN ELECTIONS: LESSONS, UGANDA AND TANZANIA CAN LEARN FROM KENYA

While the connection between law and ideology is difficult to qualify, it still remains a useful explanation of how law behaves and how it is related to the social and political sphere.³⁵

2.1. Introduction

This chapter entails the meaning of the key concepts of the study, the meaning of the good governance and the essential elements of good governance, the meaning of elections and the election in relations to the democracy and good governance. The essential elements of election which give the direction of how elections which are consistent with good governance supposed to be. And lastly the chapter give an over view of the concepts defined in connection to the elections which are compatible to the principle of good governance.

2.2. The Concept of Good Governance

This can be described into two ways which are governance and good governance. Governance is said as the process which involves decision making and what decisions are to be implemented and which one not to be implemented.³⁶ Governance can be used in different context like local governance, national governance, international governance, or corporate

³⁵ A. Luis, *Constitutional Basic Structure and Constitutionalism in East Africa*, unpublished PhD thesis, Ruaha Catholic University, 2016, 30.

³⁶ United Nations Economic and Social Commission for Asia and the Pacific, What is Good Governance <https://www.unescap.org/sites/filesPDF>

governance. Government either in central government or local government is one of the actors in governance.³⁷

There is no general agreed definition of the term good governance although the definition may depends on the time and the institution on how it can be defined. According to Asian Development Bank defined good governance as “*the manner in which power is exercised in the management of a country’s social and economic resources for development*”.³⁸ According to the International Monetary Fund on its policy paper describes good governance as a very normative concept which acknowledges the existence of the quality governance which impacts its effectiveness and efficiency in archiving the desired outcome of the community.³⁹ The definition of good governance may covers to a particular field which include economic, social, and political arena where it can apply to ensure development within the community.⁴⁰

The government committed on creating a just system which is accepted as a good one which protects peace, individuals’ rights and, liberty, the system entails sound public sectors management (efficiency, effectiveness and economy) accountability, exchange and free flow of information (transparency), and a legal framework for development.⁴¹

The country which keeps up the respect of human rights is considered to be one of the most reasons of having well today’s status, and such status requires the government to protect

³⁷ *Idem.*

³⁸ Asian Development Bank: 2000 *Promoting Good Governance: ADB’S Medium-Term Agenda and Action Plan*, 3.

³⁹ International Monetary Fund Policy Paper: 2017 the role of the fund in governance issues review of the guidance note- preliminary considerations- background notes, 6. Accessed through <https://www.imf.org/externalpp/ppindex.aspx> on 5 February, 2021.

⁴⁰ International Monetary Fund Policy Paper: 2017 the role of the fund in governance issues review of the guidance note- preliminary considerations- background notes, 7. “*In economic arena good governance covers the decision affecting the public resources, stability and management of regulatory environment and public accounts, in social arena covers strong institutions and in political arena covers the issue of legitimacy of the government by ensuring public accountability, rule of law and respect of human rights*”. (Accessed through <https://www.imf.org/externalpp/ppindex.aspx> on 5 February, 2021)

⁴¹ Dr Shikha Jain, *Good Governance and Media in Bihar*, Prabhat prakashan, New Delhi, 2008, 34.

its people against the violation of human rights as long as it still a part of the world, that is good governance.⁴²

Good governance is generally accepted to be a key and premise to sustainable social and economic development which also lead to political development.⁴³ It must be constituted by mutual supportive and cooperative relationships between governments, civil society and the private sectors through participation, transparency of decision making, accountability, rule of law and predictability. Where the system which respect human rights and have a sound policies is bound to the constitution and controlled by an independent judiciary which plays a very important role for a well governed state.⁴⁴ Therefore, good governance may be achieved by both the creation and the use of system that ensure consistency and repeatability of the processes.⁴⁵

2.2.1. Essential Elements of Good Governance

As it is explained prior that good governance has no general definition but it can be described according to the time and the institution. When discussing good governance in East African Community it is described by looking the essential elements which have been provided under Article 6(d) of the Treaty.⁴⁶ Which include the principle of democracy, Rule of law, Accountability, Transparency, Social justice, Equal opportunity, Gender equality, and, Protection of human and people's right.⁴⁷

Basing on these study, it concentrate only by looking on three elements which are democracy, rule of law, and transparence because, the elections which observe these

⁴² Timo Alexander Holthoff, *National Human Rights Institutions as the means to foster Good Governance and Human Rights in Developing Countries: Exemplified by the Commission on Human Rights and Administrative Justice in Ghana*, GRIN Verlag, Accra, 2008, 3.

⁴³ *Idem.*

⁴⁴ *Idem.*

⁴⁵ *Ibid*, 7.

⁴⁶ Article 6 (6) of the Treaty for the Establishment of East African Community of 1999

⁴⁷ *Idem.*

parameters bring development to the society together with its people, where this is a most desired goal to many societies around the world.⁴⁸

2.2.1.1. The Concept of Democracy

Democracy comes from a Greek word “*demos*” which means ‘people’ and it can be defined as the government in which the supreme power is vested in the people. The sixteenth president of the United States, Abraham Lincoln defined democracy as to mean “*the government of the people, by the people and for the people*”.⁴⁹ During elections, democracy brings about competition and definitive elections in which the chief decision makers are selected by the people who enjoy broad freedom to criticize government, to publish their criticism and to present their alternatives which are to be taken into consideration.⁵⁰

2.2.1.2. The Concept of Rule of Law

Rule of law can be defined as the concept whereby both the government and citizens know the law and obey it.⁵¹ Nevertheless it protects fundamental political, social and economic rights and citizens are protected from threats tyranny and lawlessness.

2.2.1.3. The Concept of Transparency

This is principle allows those who are affected by the administration decisions to know the results and the process that led to such decisions, the government officials to act openly with citizens’ knowledge of the decision, by making the information available and clear.⁵² As the modern societies grow, the arena of communication and public debate become dominated

⁴⁸ The Good Government Agenda of International Development <https://digitalcommons.odu.edu/cgiPDF> (accessed on 15 January, 2021)

⁴⁹ <https://www.britannica.com/topic/democracy> (accessed on 26 June 2021)

⁵⁰ <https://www.merriam-webster.com> (accessed on 26 June 2021)

⁵¹ www.ruleoflaw.org.au (accessed on 27 June 2021)

⁵² <https://icma.org> (accessed on 27 June 2021)

by the media such as radio, Television, Newspapers, Magazine and Books, so transparency is observed through the increasingly important role which is done by the Medias.

2.3. Elections

These are cornerstones of any democratic government and political stability, since through elections people choose their leaders, give them power and held them accountable for their duty and decisions while are in office.⁵³ Example of elections consider in Tanzania the general elections which are held every after the elapse of five years where the voters elect the president, members of the parliament and local government councilors.⁵⁴

2.3.1 The Concept of Election

This is defined as an official process of selecting or choosing a person for the public office, accepting or rejecting a certain political position through voting.⁵⁵ Using election process to get public officers is a good thing and it contribute to democracy since political decision is not directed to a single person but all qualified members of the community.⁵⁶ Election enables people to select their leaders and to hold them accountable for their performance in the given office, so through voting people get a chance to express their views and how they feel toward those leaders.⁵⁷

2.3.2 Elections in Relation to Democracy

This involves government to look on the way to plant an idea to the people to believe that all members of the community have right and are free to determine their own kind of politics,

⁵³ International IDEA <https://www.idea.int> (accessed on 26 December, 2020).

⁵⁴ *Idem.*

⁵⁵ <https://www.britannica.com> (accessed on 11 January, 2021).

⁵⁶ *Idem.*

⁵⁷ Election <https://www.britannica.com> (accessed on 11 January, 2021).

culture, social and economic system.⁵⁸ According to the subcommittee on International terrorism described that, although commonly the concept of democracy is much used to describe political system where ordinary citizens are given power which is clear defined and limited by the law to participate in making decisions which include electing the government officials.⁵⁹

Democratic elections involve critical and visible means through which ordinary citizens peacefully choose their leaders or remove them from their positions without violence.⁶⁰ Existence of many political parties (multiparty system) so as to give citizens more rooms to make a political choice through voting for the competing candidates, peaceful changeover of government power with the winning opposition by accepting the electoral results but not replying with violence and intimidations.⁶¹

2.3.3 Elections in Relations to Good Governance

Elections relating to good governance involve that election which is very credible and reflect the free expression of the wills of the people in the country.⁶² The process is achieved when there is equal chance for every member of the community to participate in accordance with the law of the land, transparency which involves free sharing of information, rule of law which involve that everyone who is participating in the electoral process to act in accordance to what law provide and accountability.⁶³

⁵⁸ United States, United States Congress. House Committee on International Relations Subcommittee on International Terrorism, Nonproliferation, and Human Rights, *United States Support of Human Rights and Democracy: Hearing Before the Subcommittee on International Terrorism, Nonproliferation, Human Rights of the committee on International Relations, House of Representatives, One Hundred Eighth Congress, Second Session*, U. S. Government Printing Office, Washington, D.C., 2004, 45 (Accessed through <https://books.google.co.tz> on 4 February, 2021).

⁵⁹ *Idem*.

⁶⁰ Timo Alexander Holthoff, *supra* note, 39.

⁶¹ Elections, Election Outcomes, and Democracy <https://www.tandfonline.com> (accessed on 15 January 2021).

⁶² Speaking of election by looking on how it works <https://www.collinsdictionary.com> (accessed on 26 December 2020)

⁶³ Supporting free and fair elections <https://www.usaid.gov/what-we-do/supporting-free-and-fair-elections> (accessed on 11 January 2021)

2.3.4 Essential Elements of Elections

The following are the essential elements of good elections which when observed the elections is said to be under good governance.

A. Periodic elections

This element requires that there must be elections and that elections should take place in a country within specified and organized time, example elections which take place after every five year like in Tanzania, or after every four year like in USA so this process create the so called electoral cycle.⁶⁴

B. Genuine elections

The contents of elections should be that of free and fair election which involves determining the wills of the people in the electoral process which provide equal chance for all individuals to participate in electoral process by putting forward their political views, and cooperation with others as according to the constitution and national legislations.⁶⁵ The process should be characterized with freedom of thoughts, speech, and freedom of press, assembly and associations in the exercise of the right to participations.⁶⁶ And to ensure genuine elections there fulfillment of the conditions like, Democratic expression of the will of the people, Existence of more than one political party, Secret vote, Legal prohibitions on undemocratic acts in the course of elections, Independent Electoral body, Freedom of an individual to express his political opinions to support or oppose or criticize any political party, and, Absence of martial law and similar measures during elections.⁶⁷

⁶⁴ V. Hinz & M. Suksi, Election Elements: On the International Standards of Electoral Participation, Institute for Human Rights, Abo Akademi University Turku/ Abo, 2003, 5.

⁶⁵ *Idem.*

⁶⁶ *Ibid* 11.

⁶⁷ *Ibid*, 13.

C. Stand for elections

This element needs citizens who are qualified under the provisions of the laws to have equal opportunity to stand as a candidate during elections; the rights to be elected develop a concern which relates to the nomination of the candidates which target even special groups that may be at disadvantage to participate in the exercise of their right.⁶⁸

D. Universal suffrage

This involves registration of voters and to avoid all acts which might cause unreasonable restrictions for the voters to vote. This element is subject only to some certain reasonable restrictions like age, so generally universal suffrage means those entitled to vote should be entered on the registration book or on list of voters and have an equal chance as others to vote.⁶⁹

E. Voting in elections on the basis of the right to vote

This is the splendid and most important moment during the whole process of elections, it deals with the issues which arise on the voting day in the polling station.⁷⁰ This process involve receiving of ballot papers and casting the vote fairly and the right to vote at either elections or referendums must be established by the laws and such laws should be enacted in a way that give equal opportunity to those who are entitled to vote they vote.⁷¹

F. Equal suffrage

The element requires that counting of votes should be conducted equally like ‘one person, one vote’ which means casting of votes should go equally, if one voter represent two votes then should be the same to all voters, this brings the idea to the voters that their votes have the equal value in determining the results of the elections.⁷²

⁶⁸ V. Hinz & M. Suksi, Election Elements: On the International Standards of Electoral Participation, Institute for Human Rights, Abo Akademi University Turku/ Abo, 2003, 17.

⁶⁹ *Ibid* 21.

⁷⁰ *Ibid*, 27.

⁷¹ *Ibid* 28.

⁷² Equal suffrage – Usenix <https://www.usenix.org>legacyurl> (accessed on 11 January, 2021)

G. Secret vote

This means giving voters right to cast the votes in privacy of the polling booth this give them that rights to express their feeling freely without any intimidations from the candidates or parties. The situation of free choice must be made for the voter when he or she is about to fill the ballot paper.⁷³

H. Free expression of the will of the electors

This provide that people to be free to express their will if are satisfied with the elections or not, since the freely chosen representatives exercise governmental power, and are accountable for their exercise of power during elections either to continue to be in that power or not.⁷⁴ So the will of the people can change the system of the government and the government must change accordingly when people evaluate the performance of their rules in elections.⁷⁵

2.5. Conclusion

The concept of good governance is very wider and vital to the elections since it leads to the elections which are free and fair with full people's participation in making decision. Elections give power to the people to elect their public officers freely, and the process of transferring power which is democratic and it involves the free expression of the people's will and secret vote.

⁷³ V. Hinz & M. Suksi, Election Elements: On the International Standards of Electoral Participation, Institute for Human Rights, Abo Akademi University Turku/ Abo, 2003, 31.

⁷⁴ *Idem.*

⁷⁵ *Ibid* 34.

CHAPTER THREE:

LEGAL FRAMEWORK ON EXAMINATION OF THE PRINCIPLE OF GOOD GOVERNANCE IN ELECTIONS: LESSONS, UGANDA AND TANZANIA CAN LEARN FROM KENYA

3.1. Introduction

This chapter entails the laws which cover up the examination of the principle of good governance in elections. The International standards which cement on the existence of the principle of good governance, Regional and Domestic laws which provide about the monitoring of electoral process and the way to ensure the elections lie on favoring citizens' wishes.

3.2. International Legal Framework

3.2.1. The Universal Declaration on Human Rights (UDHR) of 1948

It was established in 1948, most of the countries have consistently applied it and turned to be a source of international human rights law, so it acquired the status of customary international law where even a state not member to it is supposed to follow it since it provides openly the rights of the people inter alia right to participate into public affairs, freedom of opinion and expression.⁷⁶ Under Article 21 provide for the right to equal access to the public service including taking part in the government direct or through freely chosen representative, as Uganda and Tanzania have to adhere to these legal standards in its domestic legal system to ensure good governance during elections.⁷⁷

⁷⁶ Article 19 of the Universal Declaration of Human Rights of 1948.

⁷⁷ Article 21, *Ibid*.

3.2.2. International Covenant on Civil and Political Rights (ICCPR),

Kenya decided officially to be bound by this treaty in 1972; Uganda accepted and ratified it in 1995, and Tanzania accessed it on 1976. The treaty provides for the rights for the citizens to participate in public affairs which can be direct or indirect but the representatives should be freely chosen by majorities.⁷⁸ The process of electing the representatives should give an equal chance for everyone to vote or to be voted under the periodic elections which are genuine, universal, and equal suffrage held by secret ballot so as to give more rooms for freedom of expression.⁷⁹ Kenya, Uganda and Tanzania accepted and ratified this treaty, are abound to ensure citizens are participating freely to the public affairs, having right to freedom to express their views without any fear and the elections should within a specific period of time, and all people should have equal chance to participate to the elections which are free and fair.⁸⁰

3.2.3. The Convention on the Elimination of all Forms of Racial Discrimination (1965)

In Kenya the Treaty was ascended in 2001, in Uganda the treaty was ratified in 1980 and in Tanzania ratified in 1972. The Treaty intends to eliminate any kind of discrimination and to give equal right to everyone without considering their race, color, nationalities, or their original ethnic.⁸¹ Equal treatments go further to the political right as per Article 5(c)⁸² which grants people right to participate in elections which is universal and equal suffrage. As the main purpose of this treaty which gives indication to the states which are part to it, to consider that any kind of racial discrimination has nothing to do with eligible elections. So, the government should give equal chance to people to participate in elections by putting behind

⁷⁸ Article 2(a) of the International Convention on Civil and Political Rights

⁷⁹ *Idem*

⁸⁰ *Idem*

⁸¹ Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination

⁸² *Idem*

all elements which might discard other members of the community because they are belong to the certain race or political party which a certain leader does not like.⁸³ Kenya, Uganda and Tanzania are part to this treaty and are supposed to ensure that all citizens who qualified to participate in elections according to the laws of the land should be involved since it is their rights.

3.2.4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979

The treaty passed in 1979 and ascended in Kenya in 1984, Uganda accepted and ratified it in 1985 and Tanzania ratified in 1985. The treaty intends to end discrimination toward women and to join women at the center in the whole process of making decision especially to the matters affecting women including societal affairs this include right to vote and to be voted.⁸⁴ The treaty perpetuate about right to equal participate in public affairs without considering gender of participants by giving women equal chance to men as now Kenya, Uganda and Tanzania are part to the treaty are supposed to ensure elections have no any kind of discrimination and members of the community have right to choose their leaders freely.

3.3. Regional Framework

There are regional instruments adopted by the members in the East African Community which touch the rights of the people to participate in affairs to ensure good governance.

3.3.1. The African Charter on Human and People's Rights

The charter binds all states which are part to the African Union which include all states alongside the East African Community and it was adopted in 1981. The Charter provide for

⁸³ *Idem*

⁸⁴ Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women

the rights of the people to participate in public affairs and to recognize rights, duties and freedom.⁸⁵

3.3.2. The Treaty for the Establishment of East African Community of 1999

East African Community was established under this treaty as per Article 2⁸⁶, and the members of the community are specified under Article 3 of the treaty includes Kenya, Uganda and Tanzania.⁸⁷ The treaty has provided different objectives where each partner states should work toward those objectives which include political development and endeavoring and enhancement of the role of women in political issues.⁸⁸ Toward achievements of the objectives provided under Article 5 of the treaty, the treaty also provide for the fundamental principles which should be adhered to, by the partner states and among those principles is good governance which include the principle of democracy, rule of law, and transparency.⁸⁹ This means that even the elections conducted within the community should be compatible to this principle by ensuring democratic elections which explained on the previous chapter and transparent during elections.

The treaty go further and provides for political affairs which require to develop and consolidate democracy and rule of law and to ensure respect of human rights and the fundamental freedom to the citizen especial in making decision on matters affecting their daily activities.⁹⁰ Article 130 requires partner states to honor their commitment to other international organizations and to ensure they accord the cooperation with African Unity, United Nations and its agencies and all treaties which they are part to.⁹¹

⁸⁵ Article 13 of the African Charter on Human and People's Rights

⁸⁶ The treaty for the Establishment of East African Community of 1999

⁸⁷ *Ibid*, Article 3

⁸⁸ *Ibid*, Article 5(3)(e)(f)

⁸⁹ *Ibid*, Article 6(d).

⁹⁰ *Ibid*, Article 123(3)(c)

⁹¹ *Ibid*, Article 130

3.4. Domestic Legal Framework

3.4.1. Kenya

Kenya has different laws which govern the whole process of elections, which include provisions which gives rights to the citizen to participate in elections as their rights.

3.4.1.1. The Constitution of Kenya, 2010

This is the mother law in Kenya; it provides a good foundation of any other laws which include those governing the election process in Kenya. As per Article 2⁹² provide about the supremacy of the constitution and it binds all people and the organs of the state, the constitution requires all laws to be consistent with the constitution and in case contravene each other the constitution prevail and that other law shall be null and void.⁹³

In political arena, the constitution has provided different rights which give power to the people to enjoy and to ensure observation of good governance within the state, freedom of expression⁹⁴ is granted to every individual so as to give them power to give out their opinions, medias have rights to be free and are independent.⁹⁵ And all people are given chance to access the information which include all information concerning election even during election campaign.⁹⁶

In Kenya, people are given rights to participate in political parties freely, forming political party, campaigning and to participate to the election which is free, fair, regular which based on universal suffrage and where people have equal chance to express their view willingly without any kind of intimidation. To ensure all this are done the Independent

⁹² The Constitution of Kenya of 2010

⁹³ Ibid Article 2(4)

⁹⁴ Article 33 *Ibid*

⁹⁵ Article 34 *Ibid*

⁹⁶ Article 35 *Ibid*

Electoral and Boundaries Commission was introduced as per Article 88(1)⁹⁷ where among of its function is to facilitate the observation, monitoring and evaluation of the election and to ensure the whole electoral process complies to the parameters of good governance which include democracy, rule of law and transparency.⁹⁸

3.4.1.2. The Elections Act of 2011

This is the specific regulation which deals with general matters concerning elections in Kenya, starting with the registration of citizens which its foundation comes from the constitution as per Article 82.⁹⁹ To ensure all matters concerning elections are in accordance to the provisions of the constitution, the parliament came up with the Elections Act so as to fulfill those obligations. The Act provide for the right to vote which is granted to an adult citizen, giving out the registration process as per section 4¹⁰⁰ and the eligibility to vote¹⁰¹ also part III of the Act covers different issues concerning elections which include the nomination of the candidates which is done by the political parties, initiation of the presidential election and initiation of the election of the members of the parliament and the qualifications of the person to be nominated as the candidates during general elections as per section 22.¹⁰² The Act also includes the referendum election where Kenya now has a standing law concerning referendum, when a president wants to initiate a referendum on any necessary issue he shall issue to the commission for the purposes of conducting a referendum as per section 49 of the Act¹⁰³ and part V of the Act gives all procedures to be followed.

⁹⁷ The Constitution of Kenya of 2010

⁹⁸ Article 88(4), *Ibid*

⁹⁹ *Idem*

¹⁰⁰ The Election Act of 2011.

¹⁰¹ Section 10, *Ibid*.

¹⁰² Section 22, *Ibid*.

¹⁰³ *Idem*.

3.4.1.3. The Election Offences Act, 2016

This is Act number 37 of 2016 which was enacted so as to deal with all offences relating to elections in Kenya, where it include offences like offences relating to the registration of voters and multiple registrations.¹⁰⁴ It also provide for the offences relating to voting by prohibiting among other things forges, destroying any ballot paper, counterfeits, interfering the voter on their casting, voting more than once during election and all other offences provided under section 5 of the Act¹⁰⁵ the Act goes further to the staffs of the commission which are required to act with accordance to the law and to ensure maintenance of secrecy at elections as per section 7.¹⁰⁶

The Act prohibits personification, bribery, undue influence, use of force or violence during the elections, and the candidate to use national security organs to induce or to compel any person to support him or her.¹⁰⁷ It prohibits any person to use technology during elections to steals or to cause any damages or to interfere with internet to do anything which is prohibited by the Elections Offences Act which include shutting down of internet system.¹⁰⁸

3.4.2. Uganda

Uganda also has different laws which govern the whole process of election apart from the treaties and convention that mentioned prior, the following are the laws governing elections in Uganda

¹⁰⁴ Section 3 and 4 of the Election Offences Act of 2016.

¹⁰⁵ Section 5, *Ibid.*

¹⁰⁶ Section 7, *Ibid.*

¹⁰⁷ Section 8,9,10,11, and 12 of The Election Offences Act of 2016

¹⁰⁸ Section 17, *Ibid.*

3.4.2.1. The Constitution of the Republic of Uganda of 1995

The Uganda's constitution is the mother law which gives a foundation of all rights which include rights concerning elections, as per Article 2¹⁰⁹ gives the supremacy of the constitution. In case any inconsistency with any provision of any law the constitution prevails.¹¹⁰ Participating in elections is a statutory right as provided under Article 59¹¹¹ which gives rights to the qualified citizen's right to vote and the parliament entrusted power to enact laws which facilitate all citizens are voting including those with disability.¹¹²

Electoral Commission is a statutory body established by the Constitution under Article 60 which includes members like chair person, Deputy Chair Person and other five members who are appointed by the Parliament.¹¹³ Among the functions of the Electoral Commission under Article 61¹¹⁴ are to ensure the elections are regularly free and fair, well organized and are under the supervision which are in accordance the Constitution, and the commission is independent from any person or authority.¹¹⁵

Nevertheless the supremacy of the constitution seems to be challenges since Uganda have legislations which are contrary to the constitution and such laws have been used especially during election to undermine the democratic election, rule of law and transparency.

3.4.2.2. The Electoral Commission Act of 1997 and the Electoral Commission (Amendment) Act of 2020

This is given power by the Constitution under Article 60 of the Ugandan Constitution which establish the Electoral Commission and this Act govern all activities concerning the commission which include power vested to it like making sure that the entire electoral process

¹⁰⁹ The Constitution of the Republic of Uganda of 1995

¹¹⁰ Article 2(2) *Ibid.*

¹¹¹ *Ibid* Article 59.

¹¹² *Ibid.*

¹¹³ *Ibid*, Article 60.

¹¹⁴ *Ibid* Article 61.

¹¹⁵ *Ibid* Article 62.

is conducted under conditions of free and fairness and all powers provided under section 12.¹¹⁶ In case a person has a complain the act provide the procedure to follow which include submitting it to the commission and if not satisfied with the decision of the commission he or she has room to appeal to the High Court as per Section 15.¹¹⁷ The amendment to the Act allows the commission to adopt the use technology as in management of the elections as per section 12 which amended by section 1(1) (1a).¹¹⁸ This Act faces some weaknesses since the complaints which have been lodged by the opposing party, no action or investigation done to deal with the matter according to the instead the commission used its power given by this Act as a weapon against opposing parties.

3.4.2.3. Political Parties and Organization Act of 2005

These acts deal with registrations, supervisions and the management of political parties and Organizations in Uganda as in accordance with the Constitution of Uganda specifically as per Article 71, 72, and 73.¹¹⁹ As the act gives right to every citizen to form or to join any political parties or organization of his or her own choice and that political parties shall be founded and registered in accordance with the Political Parties and organizations Act with its amendment.¹²⁰ But this Act seems that it fails to protect other political parties since are facing threat to be deregistered and even their members have been tortured, arrested and sometimes killed and this Act seems to protect only the ruling party and incumbent Museveni.

3.4.2.4. Political Parties and organizations (Amendment) (No. 2) Act, 2020

The principal Act was amended specifically section 19 to add the code of conduct for the political parties and organizations which requires to ensure tolerance, peaceful co-existence

¹¹⁶ The Electoral Commission Act [Cap 140] of 1997

¹¹⁷ *Idem*

¹¹⁸ The Electoral Commission (Amendment) Act of 2020

¹¹⁹ The Constitution of the Republic of Uganda of 1995

¹²⁰ Section 3 of the Political Parties and Organizations Act of 2005

and democratic principles between the political parties and the organizations, free and fair political campaigns and open public debates between the candidates, contributions to ensure governance through periodic elections of office bearers and internal democracy.¹²¹

The political Parties and the Organizations are vested with different roles which include defending the constitution, rules and regulations, working with the Electoral Commission so as to ensure they promote rule of law and transparency.¹²²

The Act also prohibit the abuse of position which include using the position they have for the political purpose like offering rewards, threatening a penalty toward the citizens or other political parties of organizations, or using public resources be it from central government or local government for campaign purposes.¹²³ Despite of such provisions of the laws still the Electoral Commission is not autonomous to stop the incumbent Museveni from mistreating other political parties, since the commission itself has turned its power to ensure that opposing parties are not fully challenging the ruling party.

3.4.3. Tanzania

Likewise to Tanzania have laws which govern elections, and the following are some of the laws which govern elections in Tanzania;

3.4.1. The Constitution of the United Republic of Tanzania of 1977

The constitution is the basis of the fundamental right to the people to vote and to be voted as per Article 5(1)¹²⁴, in order to ensure free and fair elections the constitution established the National Electoral Commission to oversee the whole process of free

¹²¹ Section 1 of the Political Parties and Organizations (Amendment) Act of 2020

¹²² Section 3 and 5 *Ibid*

¹²³ Section 6 of the Political Parties and Organizations (Amendment) Act of 2020

¹²⁴ The Constitution of the United Republic of Tanzania of 1977

elections.¹²⁵ The constitution provides for the procedures for the election of the president and the members of parliament as per Article 38 and 77.¹²⁶ Article 5(2) gives mandate to the parliament to enact laws which give guidance to the elections. Although it seems that the Commission is restricted by some legislation like the Political Parties Act which acts as the barrier toward free and fair election since the Act turned to be a weapon upon the opposing parties in Tanzania because the registrar has given broad power to control the political parties.

3.4.2. The Political Parties Act [Cap 258 R.E 2019]

The Act provides for the terms, conditions and the procedures for the registration of the political parties in Tanzania, section 6A¹²⁷ provide for the formation of the political parties which are to be in line with the constitution. Section 4¹²⁸ establishes office of the registrar, whereby the registrar is among the appointee of the president, he has power to register and deregister a political party and his decision is final and cannot be challenged before any court of law.¹²⁹ Such power given to the registrar has been used against the opposing parties so as to undermine them to ensure that are not fully participating during election so as to protect the ruling party (CCM) to remain in power.

3.4.2. The National Election Act [Cap 343 R.E. 2015]

The Act provides for the procedures which regulate the election of President and election to the National Assembly, the Act provide for the composition of the Commission which is responsible for overall supervision of the general conduct of all parliamentary and presidential election in the United Republic of Tanzania.¹³⁰ It provides the qualification and the

¹²⁵ The Electoral Commission established under Article 74(1) of the Constitution of the United Republic of Tanzania of 1977

¹²⁶ The Constitution of the United Republic of Tanzania of 1977

¹²⁷ The Political Parties Act of 2019

¹²⁸ *Idem*

¹²⁹ Section 20, *Ibid*

¹³⁰ Section 4 of the National Election Act, 2015

disqualification of the registration of the voters, nomination of the president and the election procedures.¹³¹ Whereby due to the power given to the commission and its chairperson (a presidential appointee) who is more loyal to the president, chairperson to the ruling party, the commission acts with loyalty to impress the president, like to use power given by the law to disqualify the opposing party's candidate and in case they appeal, the commission has power to accept such appeal or not. As the result many opposition candidates have been disqualified by the commission due to the power granted by these Act.

3.4.3. The National Elections (Presidential and Parliamentary Elections) Regulations, 2020

The regulation made in pursuant of section 124 of the parent Act,¹³² the regulation provide for the right to be educated to the voter, but any person who want to provide voter's education should seek approval from the commission.¹³³ The regulation allows the invitation of the election observers so as to accredit the electoral process,¹³⁴ after the election results the observers' organizations or institutions are required to provide report concerning the election.¹³⁵ It also provide for the procedures of the campaigns as per regulation 41,¹³⁶ voting to be conducted secretly and ballot paper count. Although such power given to the commission has been used as the thorn toward opposing party since regarding the power of granting approve when it comes to the opposing parties the approves are mostly denied with intention of undermining the opposing parties not to associate with their followers.

¹³¹ Chapter III, *Ibid*

¹³² The National Election Act [Cap 343 R.E. 2015]

¹³³ Part II of the National Elections (Presidential and Parliamentary Elections) Regulation, 2020

¹³⁴ Regulation 18, *Ibid*.

¹³⁵ Regulation 23, *Ibid*.

¹³⁶ *Ibid* regulation 41.

3.5. Conclusion

This chapter exhausted the legal frame work concerning the principle of good governance specifically concerning the involvement of the public in political affairs, both at international level, regional level, and at domestic level. The discussion provides for the great contributions done by the international and regional legal framework on emphasizing rights of the people to participate of elections freely. The chapter has cemented the existence of the main problem found in Uganda and Tanzania concerning observation of the principle of good governance since it appears that the constitutions are adhering to the international standard to ensure good governance, the issue arose to the legislations (as discussed herein) which bar the principle by involving provisions which hinder the principle of good governance.

CHAPTER FOUR:

LEGAL EXAMINATION OF THE PRINCIPLE OF GOOD GOVERNANCE IN ELECTIONS: LESSONS, UGANDA AND TANZANIA CAN LEARN FROM KENYA

4.1. Introduction

This chapter entails examination of the principle of good governance in elections, as Uganda, and Tanzania can take lessons from Kenya. The chapter proves the hypothesis that, in Uganda and Tanzania there are laws which hinder good governance in elections.

Different reports have been made on the circumstances concerning good governance in Kenya, Uganda and Tanzania and they show how the principle has been observed in Kenya, while highly violation in Uganda and Tanzania. And at the very least the researcher calls upon Uganda and Tanzania to take steps to learn from Kenya, as the discussion follows;

4.2. Good Governance in Kenya, Uganda and Tanzania

Under the East African Community, good governance is known as the exercise of political, economic and administrative authorities in the management of a country's affairs at all levels, incorporating of the complex mechanisms, processes and institutions through which the citizens and groups articulate their interests, mediate their rights and obligations.¹³⁷ According to the Global Campaign for Good Urban Governance,¹³⁸ explain about good governance to mean “an *efficient and effective response to problems done by governments*

¹³⁷ United Nations Development Programme (UNDP) Governance for Sustainable Growth and Equity: Report of the Growth and Equity of the International Conference, New York, 1997

¹³⁸ The Global Campaign for Good [Urban] Governance draft 3 of 1st December 1999.

which are accountable.¹³⁹” In the Case of *Hon. Sitenda Sebalu v the Secretary General of the East African Community and three others*¹⁴⁰ the court came to the conclusion about good governance to mean, fundamentally political, philosophical and elastic subject, it connotes sound management of societal affairs and what that entails.¹⁴¹

In Kenya, Uganda and Tanzania, good governance is one of the fundamental principles which are provided under Article 6(d) of the treaty, this principle requires Kenya, Uganda and Tanzania to be bound and to ensure *inter alia* democracy, rule of law and transparency so as to connote sound managements.¹⁴² Although it’s applicability still a challenge specifically in Uganda and Tanzania especially during elections which result to violation of Article 3(3)(b), 5, 6(d),7(2),8(1)(c) of the treaty establishing the EAC as discussed in this chapter.

4.3. Elections situation in Kenya, Uganda, and Tanzania

4.3.1. Elections in Kenya

The electoral situations in Kenya were reported through different reports which are written down including the report prepared by the European Union Election Observation Mission (EU-EOM).¹⁴³ EU-EOM observed that the Kenyan elections have been facing a lot of challenges since independence. Following the aftermath of the electoral process and the elections results of 2007 where many people died. Despite efforts to improve the situation and to beneath those challenges to ensure elections are consistent to good governance.¹⁴⁴ Kenyan

¹³⁹ *Idem*

¹⁴⁰ Reference No. 1 2010.

¹⁴¹ *Ibid* pg 35.

¹⁴² Article 8(2) of the treaty direct partner states to ensure enactment legislations and to give effective implementation so as to give necessary effect to the treaty which include observation of the principle of good governance.

¹⁴³ Republic of Kenya, European Union Election Observation Mission, *Final Report General Elections 2017*, prepared in January 2018. The Report contains the findings of the EU Election Observation Mission on the general elections 2017 in Kenya. Found at <https://www.europarl.europa.eu/cmsdata> (accessed on March 24, 2021).

¹⁴⁴ *Ibid*, 2.

demonstrated to reform the system, demanding greater independence and accountability, sustained communication and more meaningful stakeholders' consultation.¹⁴⁵

The demonstration resulted to the Constitutional changes which improved Bill of Rights devolving the system of governance like the Parliament and a president, the Judiciary was strengthened with more judges and different measure to secure its administrative, operational and financial independence.¹⁴⁶ As the results of those changes, the last election held in 2017 was recorded to have more improvement where good governance was highly observed.¹⁴⁷ The institutions were independents, and candidates were given equal chance to participate without threat, detention to the candidates or violations done by the members of the arms.¹⁴⁸

4.3.2. Elections in Uganda

As it was in the previous elections, on January 14, 2021 Uganda had another election and the election was hold for presidential and legislative seats. The Electoral process was clearly defined by the increase of violence which was done by the police and the armed forces.¹⁴⁹

The violence happened was for the purpose to ensure that Yoweri Museveni remains with his power as the president, where he has such power for almost thirty-five years (35), since 1986.¹⁵⁰ Following the removal of presidential age limit in 2017 Museveni sought his sixth term in office on the last election in early of 2021's election.¹⁵¹

¹⁴⁵ *Idem*

¹⁴⁶ *Ibid*, 12

¹⁴⁷ *Idem*

¹⁴⁸ *Ibid*

¹⁴⁹ J. Siegle & C. Cook, *Taking Stock of Africa's 2021 Elections*, African Center for Strategic Studies, January 14, 2021 updated on February 9, 2021 found at <https://africacenter.org>spotlights> (accessed on March 23, 2021)

¹⁵⁰ *Idem*

¹⁵¹ *Idem*

During the 2021's election, 11 opposition candidates who were certified by the Electoral Commission, they were repeatedly detained, threatened, and blocked from campaigning, and their supporters were harshly harassed, beaten and at least 55 people were reported killed.¹⁵²

Complains over the biasness have been given out upon Electoral Commission, but instead the legal framework itself is used to arrest and block other candidates from fully participating in elections by having laws like The Public Order Management Act,¹⁵³ The Communications Act, The Preventative Detention Act, and The Stage Play and Entertainment Rules which are used to block opposition candidates, Journalist and the freedom of press in general.¹⁵⁴ A daily tax on social media were instituted in 2020 which requires all users to obtain license and agreed not to engage in distortion of facts or contents which create public insecurity, the Amnesty International characterized such act as criminalizing the right to freedom of expression.¹⁵⁵ On such regards this study looks on the electoral situation in Uganda that does not observe the principle of good governance as per Article 6(d) of the treaty since some of the laws like the Public Order Management Act, have been used by the authorities as the weapon to undermine opposition candidates from participating in democratic elections.

¹⁵² Said by Ms. Shamdasani on 8 January, 2021 and published through <https://news.un.org/story/2021/01> (accessed on 23 March, 2021) reported that, The UN Human rights office, were deeply concerned by the violation of human rights in Uganda ahead the parliamentary and presidential elections scheduled for 14 January, 2021. At least 55 people were killed between 18 and 20 November of 2020 during riots and protests over the arrest and detention of Mr. Kyagulanyi The leader of the National Unity Platform (NUP) and Patrick Oboi Amuriat candidate for the Forum for Democratic Change (FDC)

¹⁵³ Act No 9 2013 the Act enacted to provide for the regulation of public meetings, to provide for the duties and responsibilities of police organizers, participants in relations to public meetings, to prescribe measures for safeguarding public orders

¹⁵⁴ Supra, note 149.

¹⁵⁵ *Ibid*

4.3.3. Elections situation in Tanzania

According to the UN Human Rights, through twitter account commented on the elections situations especially the last election which was held in 2020 that, the record of deteriorating good governance in Tanzania continued under the president John Magufuli. As pointed that

“We have been following with concern the shrinking of democratic space in #Tanzania, with worrying reports of intimidation, harassment, arbitrary arrest & physical attacks against political opponents, journalists, women rights defenders & other activists”¹⁵⁶

The government lifted some restriction on the publication of independent statistics under Online Contents Regulations of 2020, media censorship which controlled under the Media Service Act of 2016, and arrest of the opponents by the power driven from the Political Parties Act of 2019, deregisters civil society groups, and arrest of journalists.¹⁵⁷

4.4. Transparency during Elections

Transparency is one of the important principles during elections, Dr. Ana Luis pointed out in her thesis that,

*“Transparency encourages public participation by allowing the general public, media and civil society to be informed about and partake in the various stages of the process from the very beginning to the very end”*¹⁵⁸

Transparency makes clear how elections should be conducted, who should peacefully assume the public office and the limitations of power to each institutions, as well as public consultations and feedback for the results. Transparency involves the freedom of press and right of the citizens to be informed during elections;

¹⁵⁶ UN Human Rights @UNHumanRights twitted on 27 October 2020 15:15.

¹⁵⁷ Human Rights watch report of 2020 found at <https://www.hrw.org/tanzania-and-zanzibar> (accessed on 29 March 2021).

¹⁵⁸ A. Luis, *Constitutional Basic Structure and Constitutionalism in East Africa*, unpublished PhD theses, Ruaha Catholic University, 2016, 83-84.

4.4.1. Freedom of press in Kenya during Elections

In Kenya, report concerning freedom of press was provided by George W. Gathigi, Lecturer at the University of Nairobi on August 10, 2017 at 7:24 P.M basing on the comments given by journalists, commentators, and experts.¹⁵⁹ He said the freedom of expression during election remain at the forefront of presenting different views given by the people leading newspapers, television and radio to be free to present people's opinions.¹⁶⁰ Comparing to the previous elections where media experienced a time of pains to emphasize messages of peace due to censorship, and this was evidenced compared to the coverage provided by the international media with the Kenyan media.¹⁶¹

The 2017's election there was been an improvement in live coverage, immediacy, and updates during campaigns and all media houses also followed the various legal challenges relating to the 2017 elections very closely. Media houses deployed more resources than ever before to cover the campaigns in various parts of the country.¹⁶²

4.4.2. Freedom of press in Uganda during Elections

Dr. Livingstone Sewanyana, made a presentation on the *World Press Freedom Day* which was held in Golf Course Hotel on the day of 3rd May 2019, the main topic of the presentation was "*Media and elections in Uganda*".¹⁶³

Dr. Sewanyana said that, the media coverage during elections in Uganda remains thorny. Even though that provision of the laws specifically the Electronic Media Act in the first schedule requires the elections for public office must afford equal coverage to all

¹⁵⁹ G. W. Gathigi, *Kenyan Papers the day after the polls closed*, Nairobi, 2017. The Conversation is funded by the National Research Foundation, eight Universities, including Kwa-Zulu Natal. Found at <https://theconversation.com> (accessed on March 29, 2021).

¹⁶⁰ *Idem.*

¹⁶¹ *Idem.*

¹⁶² *Idem.*

¹⁶³ DR. Livingstone Sewanyana is a Executive director, Foundation for Human Rights Initiative and United Nations Independent Expert on promoting a Democratic and Equitable International Orders.

candidates.¹⁶⁴ But instead opposition leaders have had their own media for coverage of their campaigns, due to biasness on coverage, state interference in Media's freedom raise which brings for intimidations and arrest of the broadcasters and blocking of radio signals example when the elections results were reported during the 2006 and 2016 there was a press restriction, this happened because of the power given to the Commission (hereafter UCC) by the law to control medias.¹⁶⁵

Dr. Sewanyana mentioned public platforms known as *Bimeeza* was banned, he mentioned Uganda to be in a rank of 22nd countries in Africa with press restriction.¹⁶⁶ Any criticism to the authorities' result to the journalist being beaten, abducted, or deprived of their equipment with impunity. In Uganda during elections the internet is disconnected and the access to social networks blocked, media are threatened when they cover the opposition's activities by imposing daily tax which penalizes the journalists and bloggers in Uganda.¹⁶⁷

Dr. Sewanyana mentioned the number of journalists who were physically assaulted by aides, police, security personnel or supporters of the ruling party when reporting violations to the electoral process in 2010, despite reporting the incidents but no any investigations was done up-to-date even no actions was taken to punish the perpetrators.¹⁶⁸

Social media such as Face book, Twitter, and Instagram and other media platforms were blocked during 2021's election. These were reported through different world broadcasting such as BBC, that internet shutdown was imposed ahead only few people accessed using Virtual Private Networks (VPN).¹⁶⁹ This act reflects the violation of the principle of good governance since no transparence and freedom to access information and freedom of pre ss.

¹⁶⁴ Dr. L. Sewanyana, *Media and Elections in Uganda*, a presentation on World Press Freedom Day, Kampala Uganda, 2019.

¹⁶⁵ *Idem.*

¹⁶⁶ *Idem.*

¹⁶⁷ *Idem.*

¹⁶⁸ *Idem.*

¹⁶⁹ <https://www.bbc.com>world-africa-55705404> (accessed on 29 March, 2021).

4.4.3. Freedom of Press in Tanzania during Elections

In 2018 the Parliament passed the Electronic and Postal Communications (Online Content Regulations) which was amended in 2020, and the Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018 made under section 103 of the Electronic and Postal Communication Act [Cap 306].

The regulations give the Tanzania Communications Regulatory Authority (TCRA) wide discretionary powers to license blogs, websites, and other online contents.¹⁷⁰ Basing on those laws critics have been arrested and journalists like Erick Kabendera who had written several international publications critiquing Tanzania politics, including *The East African*, *the Guardian* and *the Times of London*.

Banning of Medias such as Watetezi TV, and Kwanza TV, and on February 27, 2019 *the Citizen newspaper* and website were suspended for seven days by the government, following the publication of a story titled “Closely Monitor Falling of Shilling, Experts Caution” the government claimed to be a false and misleading information about the devaluation of the country’s currency which is contrary to the Media Service Act of 2016 and the Electronic and Postal Communication (Online Contents) Regulations of 2018.¹⁷¹

Whereby the Act (The Media Service Act) was challenged in the case of *Media Council of Tanzania (MCT) and 2 others v the Attorney General of the United Republic of Tanzania*¹⁷² where the applicants were challenging provisions of the Tanzania Media Service Act of 2016 for contravening Article 6(d), 7(2) and 8(1)(c) of the Treaty.¹⁷³

¹⁷⁰ Human Rights Watch Report found at <https://www.hrw.org>tanzania-and-zanzibar> (accessed on 23 April 2021).

¹⁷¹ Tanzania 2019 Human Rights Report found at <https://www.state.gov>uploads>2020/03> (accessed on 25 April 2021).

¹⁷² Reference Number 2 of 2017 [2019] EACJ 2; (28 March 2019).

¹⁷³ The Treaty for the Establishment of East African Community of 1999.

The applicants contended that the Act restricts types of the news thus impose arbitrary and unjust restrictions on giving news and sharing of information which violate the right to freedom of expression in Tanzania. The court found that section on sedition;¹⁷⁴ criminal defamation and false news publication restrict press freedom and freedom of expression and thereby breach the treaty.

The amendment of the Films and Stage Plays Act (amendment 3) gives power to the Tanzania Film Board power to regulate, monitor and determine if foreign and local motion pictures, television, radio and stage plays and performance are approved for exhibition.

The power turned to be overweening toward opponents of the government by restricting airing programs which covers opposition parties' activities. Example on 27 September 2019, the Tanzania Communication Regulatory Authority (hereafter TCRA) fined three online television channels Kwanza TV, Millard Ayo TV, and Watetezi TV five million TZS, and suspended Kwanza TV for six months because all three channels have reported news which was described to be critical of President Magufuli.¹⁷⁵

In Tanzania there is, neither specific law nor provision in any law which gives power to the government to slow down or total shut down the internet, although Online Content Regulations¹⁷⁶ gives power to the authority (hereafter TCRA) to give order to the service provider to block certain contents if are prohibited by the authority.¹⁷⁷

On 28 October 2020 Tanzania faced a blocking of social media, after the state issued a directive restriction of text messaging within the country, a day before the election *Access Now and Net blocks* confirmed the blockage of Twitter, WhatsApp, Facebook and Instagram

¹⁷⁴ Section 36 of the Media Service Act of 2016 which make defamation a criminal act.

¹⁷⁵ Tanzania 2019 Human Rights Report found at <https://www.state.gov/uploads/2020/03> (accessed on 25 April 2021).

¹⁷⁶ The Electronic and Postal Communications (Online Content) Regulations, 2020.

¹⁷⁷ Kill Switch: Will Tanzania #keepit on during the upcoming election www.paradigmhq.org/election-2020 (accessed on 04 June 2021).

which are the very vital platforms for the people to give out their views and to get information concerning election. Following the shutdown of the internet and stopping bulk messages as it was ordered by the authority (hereafter TCRA) to telecom companies, left millions without having effective communication ahead the elections and few people accessed through Virtual Private Networks (VPN).¹⁷⁸

On April 14, 2021 the Minister of Communication and Information Technology, Dr. Faustine Ndugulile held a meeting to inform the public about the plan to amend the regulation dealing with online contents, radio and television regulations.¹⁷⁹ Among other things the minister agreed to reform the power and duties of the TCRA which include reforming the tax imposed to the media since the regulations undermines the freedom of press.¹⁸⁰ The information provided by the minister proves on the violation of freedom of press in Tanzania due to the existence of laws which violate Article 6(d) of the treaty.

4.8. Rule of Law in Kenya, Uganda, and Tanzania

4.8.1. Rule of Law in Kenya

In 2010 Kenya adopted a new constitution which established more decentralized governing system, whereby the concept of separation of power with checks and balance came up into existence.¹⁸¹ As the power of the imperial president was reduced and other institution such as judiciary became independent, and capable of making sure the government activities are strictly undertaken in conformity with the constitution.¹⁸² This is supported by the case of *Raila Amaro Odinga and Stephen Kalonzo Musyoka v. Independent Electoral and Boundaries*

¹⁷⁸ Said by Felicia Anthonio, a campaigner for Access Now under #keepItOn further underscored, Tanzania's Magufuli blocks Twitter, Facebook, SMS on election www.qz.com/africa/tanzanias-magufuli-blocks-twitter-facebook-sms-on-election (accessed on 04 June 2021).

¹⁷⁹ Wizara ya Habari, Utamaduni, Sanaa na Michezo- Tovuti Kuu <https://www.tanzania.go.tz/details> (accessed on 23 May, 2021).

¹⁸⁰ *Idem*.

¹⁸¹ John Mbaku, *Kenya: Presidential elections and the rule of law*, Africa in Focus, Nairobi, 2017 found at <https://www.brookings.edu/blog/2017/09/06> (accessed on 30 March 2021).

¹⁸² *Idem*.

*Commission and two others*¹⁸³ where the judiciary performed an important role to protect the rule of law. The presidential election held on 8 August 2017, was declared invalid, null and void since the court satisfied itself that, the election was not conducted in accordance with the Constitution of the Republic of Kenya.

Rule of law in Kenya is more cemented by the case of *David Ndii and Others v Attorney General and Others*¹⁸⁴ (*the BBI Judgment*) when the High Court of Kenya set the contentious proposals to amend the Kenyan constitution which was done under the supervision of the president. The High Court struck down the whole BBI process as unconstitutional.¹⁸⁵

Kenya is almost ahead than Uganda and Tanzania on ensuring the protection of the principle of rule of law, due to the presence of independent of the organs of the states like judiciary. The proper management of power to the institutions likes IEBC which also act independently as according to the constitution and other laws of the land.

4.8.2. Rule of Law in Uganda

According to the report which was given out by the Uganda Law Society under Simon Peter M. Kinobe (the president to the Uganda Law Society hereafter ULS) concerning rule of law in Uganda.¹⁸⁶ The report provides that even though that rule of law is, and remains a fundamental cornerstone and component of any democratic society. The ULS noted the courts decisions ought to be emphasized within government institution and other arms of the government.¹⁸⁷ This argument is cemented by the paper prepared by the Open Society Justice Initiative (OSJI)¹⁸⁸ when cited the case of *Samuel Mukira Mohoch v Attorney General of*

¹⁸³ Election Petition No 1 of 2017 eKLR.

¹⁸⁴ Petition No 397 of 2020 [2021] eKLR.

¹⁸⁵ Under the Constitution of Kenya, the BBI process contravene Article 256 which requires the process to be passed by the House of Parliament and Article 257 requires signature of one million registered voters.

¹⁸⁶ Uganda Law Society, *The State of the Rule of Law in Uganda: Second Quarterly Report*, 2018 found at <https://www.uls.or.ug/site/assets/files> (accessed on 30 March 2021).

¹⁸⁷ *Idem*.

¹⁸⁸ Open Society Justice Initiative, *Human Rights Decisions of the East African Court of Justice*, Case Digests, Abuja, 2013 found at <https://www.justiceinitiative.org/uploads> (accessed on 02 April 2021).

Uganda.¹⁸⁹ As the material facts explain that, a member of the International Commission of Jurists Kenya chapter, travelled to Uganda to meet the Chief Justice of Uganda. But he was detained by the Ugandan authorities and he was forced to flight back to Nairobi without being given a reason for his denial to entry. During the verdict the court observed violation of the principle of good governance as per article 6(d) of the treaty which include violation of rule of law, and Article 7(2) of the said treaty,¹⁹⁰ since he was judged with no fair trial which include right to be heard and the reasons for the judgment given upon him, but none of such right were observed. This gives the affirmative answers concerning violation of the principle of good governance in Uganda.

The ULS observed on the Executive interference to the functions of other organs like judiciary, in a case of *James Katabazi and 21 others v Secretary General of the East African Community and the Attorney General of the Republic of Uganda*¹⁹¹ as another authority to violation of the principle. Whereby the subject of the case was the infringement of Article 7(2)¹⁹², Article 8(1) and 6 of the treaty¹⁹³ which require the partner states to ensures that they abstain from anything which might jeopardize the objective of the treaty which include observation of the principle of good governance.

On the mentioned case there was intervention of the armed security agents of Uganda to prevent execution of a lawful court order (granting a bail), and the accused were rearrested and charged before the General Court Martial with the same charges brought before the High Court. The ULS challenged the interference of the court by the security personnel before the Constitution Court of Uganda (hereafter CCU) and the constitutionality of conducting

¹⁸⁹ EACJ First Instant Division, Reference No. 5 of 2013.

¹⁹⁰ *Idem*.

¹⁹¹ Reference No. 1 of 2007.

¹⁹² The Treaty for the Establishment of East African Community Article 7(2) provide that “the Partner states undertake to abide by the principles of good governance including adherence of the principle of democracy, the rule of law, social justices and the maintenance of universally accepted standards of human rights”.

¹⁹³ *Idem*.

prosecution simultaneously in civilian and military court, the verdict mentioned the act violated the principle of rule of law.

The determination of rule of law in Uganda was more discussed in the case of *Honorable Sitenda Sibalu v Secretary General of the EAC, Attorney General of Uganda, and two others*.¹⁹⁴ In that case the applicant filed election petition in the High Court of Uganda against the Election Commission, the case was unsuccessful, and he appealed to the Ugandan Court of Appeal and the Supreme Court which also the claim was unsuccessful due to the delay done by the respondents. The applicant filed a bill of costs and the court awarded him although the respondents did not pay and the council of ministers did not implement the judgment. During the verdict the court (EACJ) observed violations *inter alia* the contempt of the court and violation of the principle of rule of law in Uganda as per Article 6(d) and Article 7(2) of the treaty specifically on ensuring rule of law which was violated by the authorities in Uganda.¹⁹⁵

4.8.3 Rule of Law in Tanzania

The equal treatment before the law during elections turned to be worse in Tanzania followed after the amendment of the Political Parties Act. The Act grants broad power to the registrar of the political parties to demand any information from political parties,¹⁹⁶ to suspend individual members of political parties, and for the institutions and individual seek for permission¹⁹⁷ and approval from the registrar to conduct civic education.¹⁹⁸

¹⁹⁴ EACJ First Instance Division, Ref. No. 1 of 2010.

¹⁹⁵ The Treaty for the Establishment of East African Community, 1999 (amended on 2006 and 2007).

¹⁹⁶ Section 5B political Parties Act, [CAP 258 R.E 2019].

¹⁹⁷ Section 5A *Ibid*.

¹⁹⁸ Human Rights Watch Report found at <https://www.hrw.org>tanzania-and-zanzibar> (accessed on 23 April 2021).

Example in March 2019 the registrar of the political parties threatened to deregister ACT Wazalendo for contravening the Political Party Act, the threat followed after Seif Sharif announced his defection from CUF Party and to join ACT.¹⁹⁹

Due to the power given to the registrar of the political parties, turned to be a weapon against the opposition parties whereby nine leaders of the opposition party (CHADEMA) were arrested and charged for sedition, incitement to violence and holding of illegal rally as in the case of *Republic v Freeman Mbowe and 8 others*.²⁰⁰ The defendants were, among other things charged of sedition and illegal rally while conducting political assembly which is allowed by the constitution as per Article 20(1) but under the Political Party Act is a crime for them to conduct a political assembly.

Abduction of the opposition members like Mdude Nyagali, a high profile dissident and opposition activist, he was kidnapped on May 2019 in Mbozi, Songwe by armed masked men, he was found beaten and unconscious five days later at a village near Mbeya. His release came after the public outcry and massive online campaign with the hash tag *#BringBackMdudeAlive*.²⁰¹

And on 26 May 2021 through newspaper opposition parties specifically CHADEMA experienced another challenges done by the registrar of political party when he interfered the freedom of the party as reported that “*Msajili aivuruga CHADEMA awarejesha wabunge waliofukuzwa*” which means *Registrar disrupts CHADEMA and reinstates expelled MPs*.²⁰² This proves the violation of the principle of rule of law since political parties are not facing the same treatment instead opposition parties are not fairly treated comparing to the ruling party.

¹⁹⁹ Tanzania 2019 *Human Rights Report* found at <https://www.state.gov/uploads/2020/03> (accessed on 25 April 2021).

²⁰⁰ Criminal Case No. 112 of 2018 (unreported).

²⁰¹ Supra, note 170.

²⁰² Raia Mwema newspaper 26 May 2021.

4.9. Democracy

*While democracy is an argument about who should rule, constitutionalism is an argument about the limits that all government should abide to.*²⁰³

4.9.1. Democratic Elections in Kenya

Barbara Yoxon an Associate Lecture in Politics University of York once he presented concerning democracy in Kenya.²⁰⁴ He said despite the history of political instability, the Country's new democratic direction was seemingly confirmed when Kenyan Supreme Court overturned the result of the 8 August, 2017 elections since the court wanted fair competition toward candidates. He mentioned the report provided by the Amnesty International which expressed that Kenya has tried to ensure free and fair election by giving equal chance to all candidates, despite of having some flaws which include killings done by the police in the 2017 elections.²⁰⁵

4.9.2. Democratic Elections in Uganda

It was reported through DW Live TV on 13 January, 2021 when Kalebbo Ahimbisibwe the head of the Citizens' Coalition for Electoral Democracy in Uganda was interviewed. She said that, talking about free and fair elections you have to talk about the quality of the campaign, nomination and talk about both the "pre" and the "during" process. During pre-election almost two million Ugandans were not given a chance to register, and during the election, there was lack of participation because voters were not given a full chance to interact with their candidates due to police and army interference and the shutdown of the social media.

²⁰³ J. Couso, *Radical Democracy and the 'New Latin American Constitutionalism*, Paper Presented at SELA, 2013 as quoted by Ana Luis, *supra*, note 32, 243.

²⁰⁴ <https://theconversation.com> (accessed on 5 April, 2021).

²⁰⁵ *Idem*.

EU Observation Mission reported that Uganda Broadcasting Corporation (UBC) failed to comply with its legal obligations to treat each presidential and parliamentary candidate equally, gave the incumbent president and the ruling National Resistance Movement Party (hereafter NRM) substantially more coverage than other opposition candidates. Example Basoga Baino Radio was banned for interviewing an opposition candidate; three journalists were suspended from their jobs for the reason of appearance of the opposition candidate when airing a radio program.²⁰⁶

Uganda Communications Commission (hereafter UCC) directed 13 radio and television stations to suspend their staff accusing of airing programs that were unbalanced after they aired news reports covering opposition politician Robert Kyagulanyi also known as Bobi Wine another three radio were switched off in Kabale, Jinja and Mubende after they hosted opposition leader Kizza Besigye.²⁰⁷

On 15 January, 2021 CNN reported that Robert Kyagulanyi was under siege from military for almost eleven days, following the election held on 14 January, 2021. He talked to one of the reporters, he said *“the military has jumped over the fence and has now taken over my home and my security guards are arrested by the military”*²⁰⁸

All that reports show that democratic elections in Uganda still a challenge since no equal treatment of the candidates, no full participations of the people and violation of human rights which include right to life which is against Article 6(d) of the treaty.²⁰⁹

²⁰⁶ Human Rights Watch Report found at <https://www.hrw.org/country-chapters/uganda> (accessed on 4 April, 2021).

²⁰⁷ *Idem.*

²⁰⁸ CNN World News on 15 January, 2021 (12:24 pm).

²⁰⁹ The Treaty for the Establishment East African Community of 1999.

4.9.3. Democratic Elections in Tanzania

The electoral processes in Tanzania have been described by different commentators basing on observation of the principle of democracy during elections as the Human Right Report of 2019 explains that some provisions of the laws²¹⁰ which allow the presidential appointees to supervise elections undermine the democratic electoral process in Tanzania.²¹¹ Civil society organizations (hereafter CSOs) and politicians relied on the court to challenge such decision of the government.²¹² The High Court annulled the constitutional provision that empowered presidential appointees to supervise elections since 80 percent belong to the ruling party (CCM). Although the decision of the High Court was not upheld in practice and the Court of Appeal in October 16 overturned the decision of the High Court.

The government restricted the peaceful assembly and association; it requires organizers of the rallies to obtain permission from the police.²¹³ Police may deny permission on public safety or security reasons according to the political Parties Act and the Police Force and Auxiliary Services Act. The ruling party is the only party which conducts rallies under the shadow of implementing party's manifesto including informing members' time to register to vote.

²¹⁰ Tanzania 2019 Human Rights Report found at <https://www.state.gov/uploads/2020/03> (accessed on 25 April 2021).

²¹¹ *Idem.*

²¹² *Idem.*

²¹³ Section 11(4), *supra*, note 196.

4.10. Conclusion

This chapter has provided the discussion concerning the findings of the study towards the observation of the principle of good governance in elections. The conclusion determines that, Kenya has improved its mechanism to ensure protection of the principle of good governance. By ensuring democratic elections which give equal chance to every qualified citizen to participate in elections and equal coverage to all candidates, rule of law which include equal treatments to all before the law without biasness, and transparency which include free flows of information concerning elections without press censorship. But Uganda and Tanzania, the principle is not yet in a position to be observed since there are laws and regulations which are passed by the parliament contravene with Article 6(d) of the treaty, like the Media Service Act, Electronic and Postal Communication (Online Contents) Regulations, Electronic and Postal Communication (Radio and Television) Regulation and the Political Parties Act which should be considered to ensure they abide to the constitutions and the international standards.

CHAPTER FIVE:

RECOMMENDATIONS AND CONCLUSION

5.1. Introduction

The main essence of the study is to examine the principle of good governance in Uganda and Tanzania, specifically on issues concerning elections. This chapter is a conclusive chapter which underscores what has been discussed herein and the recommendations on what should be done to redress and eradicate the problem.

5.2. Summary of the Research Findings

The researcher has been able to prove the affirmative of the hypothesis that there are legislations in Uganda and Tanzania which hinder good governance in elections, by showing the existence of the legislations which (some provisions of the legislations) were declared by the court that they violate the principle of good governance. And other legislations through different reports and commentators give out their views on such violation done by such legislations.

The violation of the principle of good governance is highly observed in Uganda and Tanzania while Kenya is more ahead on being abide to the principle.

The laws which impose restriction to democracy, rule of law and transparency fail to adhere to the principle of good governance and as the result, the societies suffer since citizens fail to choose leaders of their choice, access to information becomes difficulty, the institutions become weak as the result may lead to conflict as Kenya experienced in the elections of 2007 which were covered with bloodshed.

5.3. Recommendations

Since the study examine the principle of good governance in elections conducted in Kenya, Uganda and Tanzania, and the researcher found that Kenya is ahead of Uganda and Tanzania on observing the principle of good governance in electoral process. A researcher recommend on the following

5.3.1. To Uganda and Tanzania

A lesson from Kenya brings new ideas of how elections should be; the institutions like electoral commissions should stand on people's side to protect their interest. The supremacy of the constitution have been shown when the court stands to nullify election which was inconsistent to the constitution. Uganda and Tanzania should ensure that institutions dealing with the whole process of elections like electoral commissions are autonomous so as to protect Article 6(d) of the Treaty for the Establishment of East African community.

5.3.2. Having strong Institutions

It is better to have strong institutions which are independent to lead the country rather than strong people who are very powerful to lead the country according to their discretions. Having strong institution needs to have effective laws which are legitimacy, like in Kenya the 2010 constitution have defined each power and what to be done to each organ, that made the improvements to other organs like judiciary by adding more personnel, and are independent in terms of financial budgets. By having separation of power with strong institutions, can be a good way to have elections which are compatible to good governance especially democratic elections, rule of law, and transparence during elections.

5.3.3. To the People

Abraham Lincoln the 16th president, lawyer and the statesman of the United States defined democracy to mean *the government of the people, for the people, by the people*; this study is on the same line as Lincoln, that the government must be of the people. People should have power to determine and choose who should assume the power to lead the community as Kenyans do, but not those with power like Yoweri Museveni who use the power they have to remain on throne and brainwashing the community that, they are the right persons to lead them since no one can do the best as they do. But in real essence they are undermining and violating the principle of good governance by using force to remain in power, by using armed forces to arrest, detain and even to kill their opponents.

A single ruler person cannot bring developments which are intended by the whole community, but strong and independent institutions can do. Removing time limit is to hinder the opportunity for others to participate in the development activities, shutting down the internet is to bar freedom of expression and right to access to information which also violates the principle of transparency. Torturing members of opposition parties undermine the trust toward the government since state officials (the few) have power while the majorities are weak.

The leadership of the single person for long time beneath to cope with the modern way of leading the community which face changes frequently according to the existence of the new generation and development of science and technology which also needs modern leaders to move on the same line with the modern society which are changing with the law.

5.3.4. To the Legislative Bodies

The most important thing to learn from Kenya is that, good governance can occur due to presence of effective laws. Ineffective laws cause bad results as that of the general elections

of 2007 and before, which were covered with unsatisfied results, corruption, favoritism, poor management of electoral process, violence and death. Effective laws result to peaceful and democratic elections, transparency and rule of law like the Kenyan elections of 2017. On such regard the countries shall develop and people will have positive image with trust toward their governments, which reduces conflicts and crimes as the results developments will be attained in terms of political, economic, and social development.

On such regard, bodies dealing with enactment of laws like the parliament should take their duties effectively to amend the provisions which are contravening with Article 6(d) of the Treaty. Example provisions in The Media Services Act, The Political Parties Act, The Electronic and Postal Communications (Online Contents) Regulations, The Preventive Detention Act, The Public Order Management Act and the like statutes

5.4. Conclusion

The study provides a deep discussion concerning the legal examination of the principle of good governance. And it was possible to prove that having elections which are consistent to the principle of good governance as required by the Treaty for the Establishment of East African Community as per Article 6(d) depends on the effectiveness of the laws of the land within the specific country in the EAC.

Through examining laws and regulations, reports and other sources used in this study, a researcher came to the conclusion that Kenya is ahead than Uganda and Tanzania on observing the principle of good governance. Because Uganda and Tanzania have laws which violate the principle, the principle of good governance is very essential for the development of the state, and give power to the citizens to make decisions on the matters affecting their daily lives. That is to say in Uganda and Tanzania the principle of good governance is not well observed and promoted.

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