



# PREPARATIONS FOR UGANDA'S 2021 SCIENTIFIC ELECTIONS:

ISSUES, CONTROVERSIES AND OPTIONS AHEAD

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## LIST OF ACRONYMS AND ABBREVIATIONS

ANT	Alliance for National Transformation
CBS	Central Broadcasting Station
CBR	Centre for Basic Research
CNN	Cable News Network
COVID-19	Corona Virus Disease, 2019
CP	Conservative Party
CSO	Civil Society Organization
DGF	Democratic Governance Facility
DP	Democratic Party
EC	Electoral Commission
FDC	Forum for Democratic Change
FGD	Focus Group Discussion
HURINET	Uganda Human Rights Network
IDs	Identity Cards
IEC	Independent Electoral Commission
INEE	International Network for Education in Emergencies
IPOD	Inter Party Organization for Dialogue
KCCA	Kampala Capital City Authority
LCs	Local Councils
LDU	Local Defense Units
MDAs	Ministries Departments and Agencies
MoH	Ministry of Health
MPs	Members of Parliament
NRM	National Resistance Movement
NTVU	Nation Television Uganda
NUDIPU	National Union for Disabled Person in Uganda
NUP	National Unity Platform
PWDs	People with Disability
RDC	Resident District Commissioner
SIG	Special Interest Groups
SOPs	Standard Operating Procedures
TV	Television
UBC	Uganda Broadcasting Corporation
UNDP	United Nations Development Programme
UPC	Uganda People's Congress
UPDF	Uganda Peoples Defense Forces
UPE	Universal Primary Education
UPM	Uganda Peoples Movement
WHO	World Health Organization

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## 1.1 BACKGROUND

Inspired by the momentum generated by its path-breaking book on the 2016 general elections<sup>1</sup>, a decision was reached by management of Centre for Basic Research (CBR) to conduct a research study on the implications for different stakeholders and actors of the on-going preparations for the 2020/2021 General Elections<sup>2</sup>. The original electoral roadmap announced by the Independent Electoral Commission (IEC) in December 2019 was suspended in March 2020 after government announced an array of measures to prevent the spread of the Corona Virus Disease of 2019 (COVID-19) in Uganda. This followed a worldwide outbreak of the virus that started in November 2019 in Wuhan Province of China, from where it was rapidly spread to the rest of the world by international travelers.

The Minister of Health (MoH) issued a series of Statutory Instruments detailing the various Standard Operating Procedures (SOPs) that were instituted in respect of public health measures to prevent the spread of COVID-19<sup>3</sup> which included the following, among others: (i) always keeping two (2) meters from one another while in public; (ii) always wearing a mask on the mouth and nose while in public; (iii) staying at home (isolated) if you have cold (flu) like symptoms, and staying away from anyone with such symptoms, including not interacting with them even if they are family members; (iv) never touching one's mouth, nose or eyes with unwashed hands; (v) frequently washing ones hands with soap and water or using sanitizers to disinfect one's hands; (vi) sanitizing surfaces that are used by many people (door-handles, table-tops, chair arm-rests, etc.); (vii) calling the Ministry of Health help-line (0800- 100-066) for any assistance, in case one suspects him/herself or another person to be presenting with COVID-19-like symptoms. While these SOPs and their attendant statutory instruments were generally appreciated by the public, there were no specific guidelines issued to enforce them, for example, in ways that clarified the actual conduct of the 'digital' or 'scientific' aspects of the elections to the entire citizenry/voters.

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1 See Joe Oloka-Onyango and Ahikire Josephine, (eds.) (2017) *Controlling Consent: Uganda's 2016 Elections*. Africa World Press. Trenton, New Jersey.

2 This study was funded under the Democratic Governance Facility (DGF) II programme funded Civic Education project at Centre for Basic Research titled: 'Strengthening evidence-based Democratic Governance Agenda-setting and Engagement by Civil Society in Uganda.

3 These include: (a) *The Public Health (Notification of Covid-19) Order of 17 March 2020*; (b) *the Public Health (Prevention of Covid-19) Order of 17 March 2020*; (c) *the Public Health (Prohibition of Entry into Uganda) order of 24 March 2020*; (d) *the Public Health (Control of Covid-19) Rules of 24 March 2020*, and; (e) *the Public Health (Control of Covid-19) (No. 2) (Amendment No. 2) Rules, 2020. S.I No. 64 of 2020 of 8 May 2020.*

Before the pandemic, elections in Uganda were characterized by massive carnival-like public campaign rallies that attracted mammoth crowds, were held day and night, mainly outdoors, but also sometimes indoors. However, the general elections slated between 10<sup>th</sup> January to 8<sup>th</sup> February 2021, and the several electoral activities that preceded it<sup>4</sup>, including the political party delegates conferences for election of new office bearers<sup>5</sup>, primary elections for political party flag bearers<sup>6</sup>, as well as the elections for Special Interest Groups (SIGs)<sup>7</sup>, are unique in many ways. This is not only because of its presumed reliance on Information and Communication technology (ICT) and online platforms as the predominant mode of vote solicitation and meetings by candidates and supporters during political activities, but also because of the attendant SOPs mentioned above. Among others, these SOPs have the effect of limiting the numbers of people who can be present at a public rally or meeting, whether indoors or outdoors. They also have a limit to the time electoral activities can be conducted because of the dusk-to-dawn curfew.

It should be noted that the use of either static or digital ICT platforms as well as other forms of media during elections is not new. For example, billboards, Short Messaging services (SMS); radio and TV adverts, were widely used in 2012 and 2016 general elections. The only difference between the past elections and the forthcoming 2021 general elections is that significant restrictions on mass rallies have been imposed to prevent the spread of COVID-19, making the use of ICT and other media platforms as the most cost-effective way of complying with the SOPs, and reaching out to the highest number of voters, instantly and simultaneously. This raises a number of issues regarding the forthcoming elections, and the implications of the modalities that will be used to deliver the elections, among which are the following:

If the use of digital platforms and ICT in elections is not new, why is their recommended use for the 2021 polls raised such heated debate and disagreement? Why are candidates and their supporters oblivious of the fact that digital campaigns can enable them reach out to more voters quickly, while at the same time, adhering to the SOPs? If a dusk-to-dawn curfew limits the time aspiring candidates have to interact with their supporters and solicit for votes from the electorate, wouldn't the recourse to ICT and other media platforms therefore become a solution to this constraint? If limiting the size of the entourage that accompanies candidates to nomination venues and crowds that converge at campaigns rallies, and polling centers helps to avert the spread of COVID-19, why would any well-meaning politician not welcome such interventions, that in any case have potential to reduce the financial expenditure of candidates?

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4 See summary of revised roadmap in the appendix 2 at the back.

5 The NRM Political Party held its 3<sup>rd</sup> National Delegates Conference on 18 August 2020 –DP---UPC--- NUP— ANT--FDC

6 NRM political party held elections for flag bearers for MPs from --- to---. –DP---UPC---NUP—ANT--FDC

7 Elections for SIGs were held between ----



Yet, in real terms, mass rallies attract relatively higher costs such as venue hire, allowances for mobilizers, providing for security, transport for supporter to and from the venue, refreshments, hiring public address systems, constructing campaign platforms, hiring tents and chairs, sanitation facilities, and other paraphernalia for public rallies. This implies, the costs entailed in going digital can easily be off-set by the savings likely to be made by using digital electoral platforms. Why then, would there be such opposition to the conduct of scientific elections during the 2021 general elections?

There is need to understand the nature of disagreements surrounding the adoption of scientific elections. What kinds of political interests manifest in support for or opposition to the scientific election? Is it opposition to digitalization of elections per se, or to the size of crowds that assemble in a given space? What is the substantive difference between crowding during election gatherings and other physical sites of people congestion in business hubs in down-town Kampala, especially in shopping malls, arcades and Kikuubo lane?<sup>8</sup> Is opposition to the scientific election a disguised vote of no confidence in the overall IEC handling of the entire electoral process? What exactly is the science component within the practical conduct of scientific elections? How inclusive/exclusive will these scientific elections be? Will the results of these elections be acceptable to all those involved in the elections, considering the controversies that have characterized their perception and interpretation? Ultimately, what, will be the long-term consequences, and implications, for Uganda's political future, if elections are conducted in the proposed 'scientific' mode? Such important questions have been raised by the voters, but the response, so far, from different government actors, including the officials from the IEC, to them has not been satisfactory. But they point to public scrutiny of challenges likely to arise in implementing a 'Scientific Election'.<sup>9</sup>

Following the conclusion of political party delegates conferences and the election of flag bearers, the earlier expectations and fears about scientific elections expressed at the start of the current electoral cycle in June 2020 are beginning to unfold. There are already as many examples of successful application of SOPs, as there are flagrant violations of these very public health restrictions.

This report is organized in five chapters. Chapter one discusses the background to the forthcoming elections, statutory instruments regarding the control of the COVID-19 pandemic and the methodology /approach used to undertake the study. Chapter two highlights and discusses issues and controversies that inhere in the law and legal framework within which elections have to be conducted. Chapter four presents and discusses the empirical findings synthesized from the views of stakeholders that were contacted by the CBR Elections Research Team. Chapter five outlines the future projections/implications of options ahead, as well as lessons and insights to be drawn from the NRM party primaries, as a recent mirror image of what may happen come January/February 2021. A list of relevant appendices has also been provided for ease of reference.

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<sup>8</sup> Critics have averred that if Arcades and shopping malls in down town Kampala have been allowed to operate, what could be the problem with holding public campaign rallies, especially if those attending enforce SOPs such as hand washing, sanitization, wearing face masks and social distancing observed (see views of leaders of political parties during a meeting with the EC Chairperson, Justice Byabakama in June 2020): (footnote: This question was raised by... put dates Gen Henry Tumukunde)

<sup>9</sup> In an early morning show hosted on Urban Television on 11 August 2020, an official of the IEC, the Registrar of Kampala Area, attempted to disassociate the IEC from the deployment of the concept of 'scientific' elections, arguing that it is the public that had imposed this word on the elections. President Museveni used the term 'scientific' in regard to limiting numbers invited to weddings. The IEC on its parts used the notion of a 'digital' campaigns.

## 1.2 THE CORONA VIRUS 2019 (COVID-19) CONUNDRUM

Globally, the COVID-19 pandemic is wreaking unprecedented havoc on the lives of millions. The performance of advanced economies has been affected as much as the less developed countries. It is estimated that the pandemic is creating devastating social, economic, psych-social, cultural, economic and political impacts on women, children, families, and communities around the world with more than 1.5 billion learners - over 90% of the world's student population (World Vision 2020). Similarly, the International Network for Education in Emergencies (INEE, 2020) observes that COVID-19 driven school closures were preventing children and adolescents in every country, including those affected by conflict and displacement, from fulfilling their right to quality, safe and inclusive education. UNESCO (2020) estimated that closure of education institutions to contain the spread of the Corona Virus (COVID-19) pandemic had negatively impacted over 91% of the world's student population.

In Uganda, following a routine health screening at Entebbe International Airport, a returning passenger in early-March 2020 presented with a high fever, and upon being subjected to a COVID-19 screening, tested positive. This prompted the Minister of Health, using powers conferred under the Public Health Act of 15 October 1935 (Cap. 281) to issue the following two orders on 13<sup>th</sup> March 2020. In the first order, Corona Virus Disease of 2019 (COVID-19) was declared a notifiable disease, which necessitated making of rules for the prevention and suppression of Covid-19, and enforcement of precautions at boarders.<sup>10</sup> In the second order, medical officers of health were empowered to subject any person arriving in Uganda by air or by road or by sea to examination for COVID-19; as well as to quarantine any person suffering from COVID-19.<sup>11</sup>

In his address to the nation on 18 March 2020, President Museveni announced several measures aimed at preventing the further spread of COVID-19 in the country. The measures included: restrictions on travel in and out of the country, with returning citizens subject to mandatory quarantine; closure of all educational institutions; suspension of religious gatherings and places of prayer; suspension of mass meetings, whether political or cultural, including conferences; public rallies; funerals; places of merry-making, including night clubs, discos, dances, bars, sports, music shows, cinemas and concerts; hexagonal mass weddings, among others. President Museveni advised couples intending to marry to 'go for purely scientific weddings' - ones which would involve only the core stakeholders namely; the bride-groom, the bride, the best-man, the assistant to the bride (matron), the Priest (or the Chief Administrative Officer - CAO), "as long as the number is less than 10 people".<sup>12</sup> The presidential directive proscribing the number of people that can attend any form of gathering is what has come to be conceptualized as 'scientific', hence the notions of 'scientific weddings' and subsequently 'scientific elections'.

10 See the Public Health (Notification of Covid-19) Order of 17 March 2020, Statutory Instruments 2020 No. 45, the Uganda Gazette No. 17, Volume CXIII, dated 17th March, 2020.

11 See the Public Health (Prevention of COVID-19) (requirements and conditions of entry into Uganda) order, 2020, Statutory Instruments No. 46 of 2020, Statutory Instruments Supplement to the Uganda Gazette No. 17, Volume CXIII, dated 17th March, 2020

12 See 'Address by H.E. Yoweri Kaguta Museveni, President of the Republic of Uganda to the Nation on the Corona Virus (Covid-19). Guidelines on the Preventive Measures, 18th March, 2020. State House, Entebbe. Available at: <https://www.mofa.go.ug/files/downloads/ADDRESS%20TO%20THE%20NATION%20CORONA%20VIRUS%2018%20MARCH%202020.pdf> (accessed August 2020).

The 1935 Public Health Act (CAP. 281) also bestowed onto the Minister responsible for Health sweeping powers to manage and prevent the propagation of pandemics, which was put to effect through the issuance of several rules and regulations as well as wide-ranging regulations and order. On 24 March 2020, in exercise of powers conferred upon the Minister by sections 11 and 27 of the Public Health Act of 1935, the Minister issued the Public Health (Control of COVID-19) Rules of 2020 which specifies in section 9(1) the places and the premises and the activities, events, meetings and gatherings that were closed or banned (temporarily until specified dates). These included: (a) schools and institutions of higher learning, until 18th April 2020; (b) bars and cinema halls, until 16th April 2020; (c) prayers in churches and mosques and open air prayers, until 16th April 2020; (d) marriage ceremonies, wedding parties, vigils and funerals, until 18th April 2020, except where the people gathered are not more than 10; (e) public meetings, including political rallies, conferences and cultural related meetings, until 18th April 2020; (f) indoor and outdoor concerts and sports events, until 16th April 2020; and (g) trading in live animals at places designated for this purpose by a local authority, until 18th April 2020.<sup>13</sup>

On 24<sup>th</sup> March 2020, the minister issued the Public Health (Prohibition of Entry into Uganda) Order of 2020, in which entry into Uganda by any person and the introduction into Uganda of any animal, article or thing at or through any of the border posts of Uganda was prohibited with effect from Monday 23<sup>rd</sup> March 2020 (section 2). This prohibition was however not applicable to any person, animal, article or thing belonging to any United Nations Organization and any humanitarian organization that seeks to enter into Uganda through any border post (section 3a); and any vehicle or aircraft used for the conveyance of cargo into Uganda through any border post (section 3b).<sup>14</sup>

Between the 18<sup>th</sup> of March and the 30<sup>th</sup> of March, President Museveni had announced a total of 35 measures intended to prevent the further spread of Covid-19. By September 2020, they had increased to 39. After government announced the flattening of the curve in May 2020, restrictions were eased that made possible a temporary lifting of the lockdown. This subsequently enabled the resumption of certain trade and business as well as political activities that had been in abeyance since March 2020.

On 16 June 2020, the IEC issued a revised roadmap for the 2020/2021 general elections. It also announced that given the continuing presence of the Covid-19 pandemic, and the public health risks entailed, the preparations and conduct of the forthcoming elections would take different modes. This was occasioned by the need to balance the responsibility of preserving the health of the citizens, on one hand, and ensuring that citizens' constitutional and democratic right to elect leaders of their choice as guaranteed under the Constitution is upheld, on the other hand. And for the IEC, the plan that was considered feasible was one that ensured minimal person-to-person contact during the implementation of the electoral process.<sup>15</sup>

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13 See the Public Health (Control of Covid-19) Rules, 2020, Statutory Instruments 2020 No. 52, published as Statutory Instruments Supplement to The Uganda Gazette No. 19, Volume CXIII, dated 24th March, 2020.

14 See The Public Health (Prohibition of Entry into Uganda) Order, 2020, Statutory Instruments 2020 No. 53, Published as a Statutory Instruments Supplement to the Uganda Gazette No. 19, Volume CXIII, dated 24th March, 2020.

15 See Electoral Commission, 'Resumption of Electoral Activities under the Revised Roadmap for 2020/2021 General Elections'. Available at: <https://www.ec.or.ug/news/resumption-electoral-activities-under-revised-roadmap-20202021-general-elections>

The IEC announced that while hard copies of nomination forms would still be available, intending candidates would be required to download the forms from the IEC website. Aspiring candidates would be accompanied to the nomination venue by only two people; the nominator and a seconder. Mass rallies would not be allowed as campaigns were to be conducted mainly through media. All public campaigns for presidential elections, parliamentary elections and local government elections were to be conducted 'digitally'.<sup>16</sup> In addition, all electoral activities would be required to adhere strictly to Ministry of Health (MoH) approved SOPs to facilitate safe participation by all stakeholders in the electoral process from nomination, to conduct of campaigns, to the polling day, including the following: (i) Practicing social distancing; (ii) Wearing face masks in public; and (iii) Regular washing of hands<sup>17</sup>

Some earlier predictions/prophesies about the link between COVID-19 pandemic and governance have come to pass. Political pundits and doomsday pessimists had projected massive devastation of third world countries in Africa in terms of confirmed cases and loss of lives<sup>18</sup>. It had also been predicted that authoritarianism would become entrenched at the expense of democratic governance, with leaders postponing elections, outlawing opposition protests and demonstrations in the name of enforcing COVID-19 public health measures, while tightening their grip on power.<sup>19</sup>

While COVID-19 may have re-energized authoritarianism in several ways, there are also some elements of optimism. For example, some countries have postponed the elections citing COVID-19, including Australia, Argentina, Bangladesh, Botswana, Brazil, Chad, Ethiopia, Gabon, and Gambia<sup>20</sup>. In other countries, bye-elections have been postponed such as Kenya, Zambia, and Zimbabwe. On the other hand there are also many countries where the pandemic has been defied and elections conducted successfully between March and May 2020.<sup>21</sup> In Africa these include: Benin, Burundi, Cameroon, Guinea, Mali have conducted elections with Malawi holding fresh presidential elections in June 2020. Uganda seeks to add to the number of these states, and this assessment focuses on the period between June and September 2020.

In Uganda, contrary to the various predictions, by the end of July 2020, only 5 deaths directly attributed to COVID-19 had happened. As of October 2<sup>nd</sup> 2020, Uganda had registered 75 deaths, about 8,287 COVID-19 positive cases and 4,430 recovered cases.<sup>22</sup>

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16 *ibid*

17 *ibid*

18 Cooper L and G Aitchison, [2020] *The Dangers Ahead: COVID-19, Authoritarianism and Democracy*. Accessed from [Eprints.lse.ac.uk](https://eprints.lse.ac.uk). on October 3<sup>rd</sup> 2020 at 12.04 pm

19 Thomson S, [2020] *COVID-19 Emergency Measures and the Impeding Authoritarian Pandemic*. *Journal of Law and Biosciences* Accessed from [academic.oup.com](https://academic.oup.com) October 4<sup>th</sup>, 2020 1:41 pm

20 International Foundation for Election systems (IFES), *Elections Postponed Due to COVID-19, 17 June 2020*, accessed on [https://www.ifes.org/sites/default/files/elections\\_postponed\\_due\\_to\\_covid-19.pdf](https://www.ifes.org/sites/default/files/elections_postponed_due_to_covid-19.pdf)

21 Shaun Mackay, *Elections in the Time of COVID-19*, NIMD, 24 April 2020

22 See *COVID-19 Tracker*, New Vision, Friday 2 October 2020, p.2

### 1.3 A HISTORICAL PERSPECTIVE ON ELECTIONS IN UGANDA

At face value, the boundary between a credible election and a façade election is not always distinctly manifest, particularly so in cases where the two tendencies are mixed up in some proportion. In the former, there is political competition in an environment of confidence, transparency, and accountability, which provides voters with an informed choice between clear political alternatives. In the case of a façade, the above attributes may exist alongside inherent underlying deficits such as manipulation and fraud.

At the level of international standards, global political norms for elections have hitherto tended to privilege freedom of expression, a free and vibrant media, freedom of association, freedom of assembly and movement, adherence to the rule of law, the right to compete for political office, nondiscrimination and equal rights for all, freedom from intimidation, and respect for human rights and freedoms.<sup>23</sup> Compared to these high ideals, the country specific practices have tended to vary widely. To understand the issues at stake, we need to look at what have been the sticking issues in Uganda's previous elections.

Uganda has had a whole gamut of contestations around elections in its political history, right from the first elections held under colonial tutelage, for a Legislative Council [LegCo] in 1958<sup>24</sup>. At that time, voting was a privilege for a few Ugandans, in a context where a protracted fight for the very right to vote and be represented had been carried on for more than two decades.

The first direct elections held in 1961 were contested by two political parties, and were boycotted by an entire region, Buganda, basing on the fact that Buganda wanted its local legislative Assembly, known as the Lukiiko, to nominate members representing Buganda in Uganda's Parliament. The sticking issue here was direct versus indirect elections between Buganda and the rest of Uganda. Because of Buganda's boycott of the 1961 elections, the outcome was deemed un-representative, precipitating a decision to conduct another election in 1962, which produced the leaders that took over from the departing colonial administrators. For almost 2 decades, no election took place in Uganda, despite a provision in the independence Constitution, that elections would be conducted after every five years.

After this long interlude, the national election held on 10<sup>th</sup> and 11<sup>th</sup> December, 1980 was contested by four (4) political parties namely, the Conservative Party (CP), the Democratic Party (DP), the Uganda Patriotic Movement (UPM) and the Uganda Peoples' Congress (UPC). Two sticking issues in this election included the last-minute demarcation of electoral constituencies, leading to claims of gerrymandering. The second issue was whether to use one ballot box for all the four parties or whether to use four ballot boxes, with one for each party.

Between 1986-2005, under the 'Movement System of Governance', Uganda had a 'no-party' system of governance, which considered individual merit of a candidate as the basis for election to political office, and not party affiliation<sup>25</sup>.

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23 *there are various international instruments, particularly the Inter-Parliamentary Union's Declaration on Criteria for Free and Fair Elections adopted at its 154<sup>th</sup> Session in Paris on March 26<sup>th</sup> 1994.*

24 *See Sallie Simba Kayunga, 1991, Uganda National Congress and the Struggle for Democracy: 1952 – 1962. Centre for Basic Research Working Paper 14.*

25 *For detailed analysis of elections at the time, refer to Expedite Ddungu and Wabwire Arnest, 1991, Electoral Mechanisms and the Democratic Process: The 1989 RC – NRC Election. Centre for Basic Research Working Paper Number 9*

In the initial stages of this phase, the election mode was by lining up behind the candidate of choice, while electoral colleges were used to fill positions at Local Government Councils. There was also introduction of Special Interest Groups (SIGs): Women, Workers, Youth, People with Disabilities, and the Army.

The sticking point in elections under the Movement System was a struggle over the right of organized political groups to freely participate in politics.<sup>26</sup>

It took concerted pressure from all organized political groups for the ban on political party activity to be lifted and following a referendum to decide return to multi-party-political system to be considered. Subsequent elections in 2011 and 2016 have been held under a multi-party system. All this time, the absence of a level playing field was one of the sticking issues. It is precisely because of the semblance of multi-partism that the outcomes of the previous 3 elections have been contested in courts of law.<sup>27, 28, 29</sup>

This is where the 2021 elections come into the picture, with hard sticking points:

1. Whether, we must have, an election at the time when the pandemic is ravaging the country and the world.
2. Whether enough logistical and physical infrastructure will be in place to ensure safety for Ugandans as they participate in the 2021 polls.
3. Whether we can have adequate sensitization of the voters for them to understand well what has changed from the previous conventional ways of conducting the 2021 polls.
4. Whether equal access to the political candidates will be given by the media houses for them to convey their electoral messages and pledges to voters.
5. Whether all eligible voters will be able to receive, and evaluate, the candidate's messages, and what the candidates stand for in the coming election.

The above are some of the issues that need to be addressed/resolved for the 2021 elections to be conducted successfully.

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26 See Mahmood Mamdani, 1993. *Pluralism and the Right of Association*. Centre for Basic Research Working Paper Number 29

27 *The Republic of Uganda in the Supreme Court of Uganda at Kampala (Coram: Odoki, Cj; Oder, Jsc; Tsekooko, Jsc; Karokora, Jsc; and Mulenga, Jsc.) Election Petition No. 1 of 2001, Col (Rtd.) Dr. Besigye Kizza (Petitioner) Versus 1. Museveni Yoweri Kaguta 2. Electoral Commission (Respondents)*. April 21, 2001. [http://www.ulii.org/cgi-bin/uganda\\_disp.pl?file=ug/cases/UGSC/2001/3.html&query=Besigye/](http://www.ulii.org/cgi-bin/uganda_disp.pl?file=ug/cases/UGSC/2001/3.html&query=Besigye/).

28 *The Republic of Uganda in the Supreme Court of Uganda at Mengo (Coram: Odoki, Cj, Oder, Tsekooko, Karokora, Mulenga, Kanyeihamba and Katureebe, Jj. Sc.), Presidential Election Petition No.01 of 2006, RtdCol. . Dr. Kizza Besigye (Petitioner) Versus 1. Electoral Commission 2 Yoweri Kaguta Museveni (Respondents)*. January 31, 2007.

29 The most recent being the *Amama Mbabazi v Museveni & Others (PRESIDENTIAL ELECTION PETITION NO. 01 OF 2016) [2016] UGSC 3 (31 March 2016)*, which has, respectively, confirmed that electoral malpractices indeed happened, emphasizing that the irregularities were not serious enough to change the election outcome.

## 1.4 CONDUCTING ELECTIONS UNDER COVID-19: EXPERIENCES FROM OTHER COUNTRIES

The onset of COVID-19 and its unprecedented spread across the globe resulting in numerous infections and deaths has seen many countries either canceling indefinitely or postponing elections. The countries that have postponed elections include Australia, Argentina, Bangladesh, Botswana, Brazil, Chad, Ethiopia, Gabon, and Gambia<sup>30</sup>. Bye-elections were postponed in Kenya, Zambia, and Zimbabwe.

The United States President Donald Trump has recently mooted on postponing elections due to COVID-19<sup>31</sup>. On one hand it is being debated whether this is based on the fact that the president's Republican party is fairing badly compared to the Democratic Party of his competitor Joe Biden, or whether the decision is informed by genuine fears that holding the elections could exacerbate the already dire situation of high incidence of the pandemic. For example, in Wisconsin US, the courts overturned the Governors decision to postpone elections. The US debate is a significant one for Uganda, where despite the swelling COVID-19 deaths since loosening the lockdown in July, the ruling party and government is bent on holding elections. It is reported that in different states of the US, elections are witnessing a significant decrease in voter numbers; could this happen in Uganda? Outside the US, broadly speaking, it is reported that in recent polls held during COVID-19, voter turnout has been low in all the countries.

South Africa one of the worst hit countries in Africa with over 8000 reported deaths according to August 2020 updates (WHO, 2020), announced the delay of 30 municipal bye-elections and warned that polls scheduled for 2021 could be affected. This could have significance to next year elections in Uganda following warnings from health experts that Uganda could experience a surge in cases and deaths.

However, despite the challenges posed by COVID-19 some African countries have conducted elections during this period and several countries still have scheduled elections in 2020. The factors pushing for or against holding elections cannot be simply reduced to either an economic or purely public health considerations. African countries namely Benin, Burundi, Cameroon, Guinea, Mali have conducted elections between March and May 2020 with Malawi holding fresh presidential elections<sup>32</sup>, with precautions and protective measures that included, among others, regular cleaning 'fumigating' of polling stations; the mandatory use of masks and gloves for election officials; temperature checks at polling stations; provision of hand washing facilities for voters; enforcing strict social distancing in queues<sup>33</sup>.

Closer to Uganda, Burundi got more attention on its elections due to the geopolitical relationship within the East African Community, EAC. It was noted that Burundi did not, in the run up to the vote, adhere to-related COVID-19 control measures in conducting the polls. This created anxiety of a possible spike in corona virus cases. Among the few measures Burundi took was to ask all foreign election observers to quarantine for 14 days.

30 . *International Foundation for Election systems (IFES), Elections Postponed Due to COVID-19, 17 June 2020, accessed on [https://www.ifes.org/sites/default/files/elections\\_postponed\\_due\\_to\\_covid-19.pdf](https://www.ifes.org/sites/default/files/elections_postponed_due_to_covid-19.pdf)*

31 . *Donald Trump suggests delay to 2020 US presidential election, BBC World News 30 July 2020 (accessed on [bbc.com/news/1](https://www.bbc.com/news/1) August 2020)*

32 . *Shaun Mackay, Elections in the Time of COVID-19, NIMD, 24 April 2020*

33 . *Ibid*

In Mali, which held legislative elections, voters did not observe social distancing and other precautionary COVID-19 measures at all. The elections were held in March 2020 in a tense atmosphere due to the ongoing instability in the northern and central parts of the country that ended in a coup, a situation which has not normalized up to now.

Benin, which held its local elections in May 2020 took the most precautionary measures. It was reported that the government cancelled campaign events and banned gatherings of over 50 people (recommended number by the World Health Organisation, 2020) forcing candidates to focus on media appearances and campaign posters just as Uganda is doing.

In all these four African cases, that is Malawi, Burundi, Mali and Guinea, the common thread was the fact that most of the protracted election-and governance - related issues existed prior to the 'full' outbreak of COVID-19 in Africa. As it were, this will not be the case for the 2021 scientific elections in Uganda, which is likely to take place amid what is being dubbed the 'second wave' of the pandemic. The so called 'second phase of the deadly COVID-19 Pandemic is a reality, prompting alerts from some sections of the international community in Uganda as the as expressed by Christopher Krafft, an American diplomat below.

*COVID-19 is in Kampala – possibly a lot of it ... In the phase we are now in, we will continue to have a lot of cases out there that we just do not know about. And it is not only Kampala. We have had "hotspots" of community transmission for several weeks now in other areas of the country and will expect to see more.<sup>34</sup>*

In Uganda, the Independent Electoral Commission (IEC) has adopted a staggered approach to the 2020/2021 elections by rolling out the 2020/2021 elections in phases, commencing with Special Interest Groups (SIG) campaigns in August 2020, followed by Presidential and Parliamentary nominations in the first week of October 2020, leading to the Presidential polls in January 2021. Political parties in August and September 2020 are supposed to complete selecting their flag bearers before the nominations in October 2020. The adoption of the staggered approach is justified to control crowding and enforce distancing and other Ministry of Health Standard Operational Procedures (SOPs) to control the spread COVID-19 during the elections. The campaigns for Special Interest Groups – people with disability, women, youths, and elderly were complied in August 2020. The question that remains to be asked is: will staggering elections and COVID-19 SOPs deliver a legitimate election for Ugandans?



## 1.5 PROPOSALS FOR CONDUCTING SAFE ELECTIONS DURING COVID-19

This section reports on special voting arrangements that can allow polls to go ahead but reduce the risk of spreading the virus. Where postal infrastructure and online voting is insufficient, other systems, which have worked elsewhere can be considered, as presented below.

The South Africa government allows the elderly, the invalid and election officials to vote in advance of the general population. Home voting is also possible in South Africa for the housebound voters. Unfortunately, this may not be possible in Uganda given the limited access to online voting systems in a country where most rural areas are still lacking ICT technologies and electricity remain unstable across the country.

In Mauritius, government allows both proxy and staggered voting to reduce the pressure and risk of transmissions on Election Day. This seems to have been adopted by Uganda as well as because under the new EC roadmap for the 2020/2021 elections, there is provision for staggered elections as a measure to curb crowding. For example, the Electoral Commission has concluded nominating candidates for Special Interest Groups (SIGs) across the country. According to Paul Bukenya, the deputy spokesperson of the Electoral Commission, the exercise targeted candidates to represent older persons, persons with disabilities (PWDs) and youth at councils and committees at the village/cell level. The exercise which commenced on Wednesday July 29<sup>th</sup> 2020 ended on Wednesday 5 August 2020 at the respective sub county/town council/municipal division headquarters across the country. According to the revised electoral roadmap, campaigns were conducted from August 6-13, 2020 while polling took place on different dates in all the 68,740 villages across Uganda.<sup>35</sup>

According to IEC, polling for village older person's committees took on August 11, 2020 with a total of 1,701,518 older persons participating. Polling for village Persons With Disabilities committees took place on August 13, 2020 with a total of 382,577 participating while the village youth committees took place on August 17, 2020 with 7,846,373 youths participating.

"All the elections were held with voters lining up behind candidate's portraits or candidate's symbols or candidate's agents or the individual candidates of their choice," Mr. Bukenya the IEC Spokesperson stated. He also added, "that all persons participating in the elections shall be required to comply with guidelines issued by the Electoral Commission per the Ministry of Health measures against the spread of COVID-19" (The Independent, August 7, 2020).

While staggering offers some hope, it remains to be seen if this alone will yield the expected distancing outcomes at polling stations come January 2021. Still, it provides space for learning from experience as elections progress to next year.

Slightly different from all the above cases, South Korea's elections held in April 2020, the electoral commission encouraged people to vote before Election Day at any of the polling stations throughout the country<sup>36</sup>. It was reported with this approach nearly 27% of voters which is around 12 million people voted. This approach helped to decongest the polling stations and contributed to the highest voter turnout in the country. Uganda could as well benchmark on this model for the 2021 Poll.<sup>37</sup>

<sup>35</sup> See *The Independent*, August 7, 2020

<sup>36</sup> See Shaun Mackay, *Elections in the Time of COVID-19*, NIMD, 24 April 2020

<sup>37</sup> *Ibid*

The study adopted a descriptive design using the rapid appraisal method. The study was implemented between July and August 2020. The rapid appraisal method is justified because of time constraints as the scientific election was literally dumped on a non-suspecting population and immediately thereafter, the IEC was contending with its own internal challenges and those of anxious stakeholders trying to get on the same page with this uncanny 'scientific' election held in such as crisis period. The study took a dual pronged approach:

The first was to review the existing secondary sources relevant to elections in Uganda. This was intended to identify the key issues, as well as to draw lessons from a comparative experience of other countries that have implemented elections during the COVID-19 pandemic. In addition, we undertook to review the legal and policy framework for elections in Uganda to try and establish and understand how this informs our engagement with the on-going scientific elections.

The second approach was the empirical dimension of talking to, and discussing with, stakeholders in Mukono and Wakiso districts, in adherence to the SOPs, in data collection.

## 2.1 STANDARD OPERATIONAL PROCEDURES (SOPS)

We took the adherence with the MoH SOPs as a fundamental aspect of this project. Practically, the pace of the study was also induced by the contextual challenges as we also had to exercise the SOPs at venues and in transit to minimize spread of the COVID-19 pandemic. Hand washing, wearing masks and distancing or spacing during meetings and dialogues were strictly adhered to. However, what we could not control as extraneous factors was the access and momentum of mobility, particularly in view of respecting the 7.00 pm dusk to dawn curfew then in place. It was later extended to 9.00 pm to dawn.

## 2.2 TOOLS FOR DATA COLLECTION

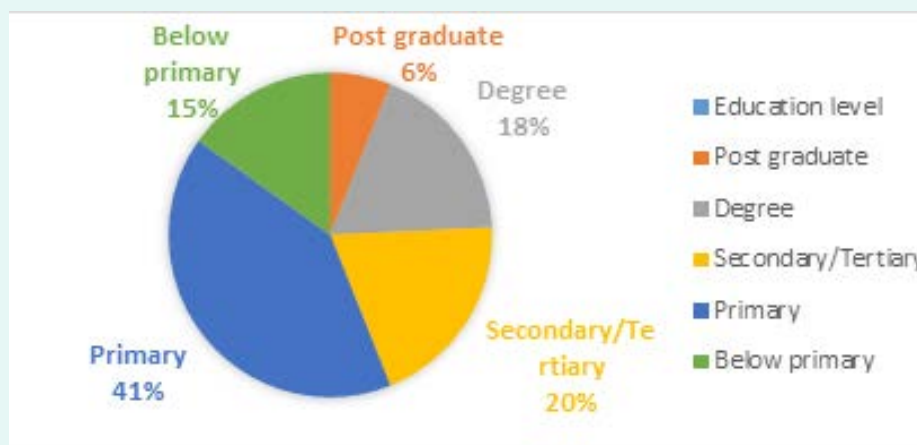
Mixed data collection tools were used to collect both statistical and narrative data from respondents in two purposively selected locations in two districts: Nansana Municipality in Wakiso District and Mukono Municipality in Mukono District. The justification for these study areas is that they both experience unique responses to electoral politics in the past; the former very volatile and disruptive, while the latter is more often rational and therefore normal. In each district, both rural and urban settings were purposively selected along those very parameters.

## 2.3 AREA OF STUDY

In Nasana Municipality and Kisoga Town Council, 66 respondents were asked close ended questions to elicit statistical analysis as described in the charts and tables in the report. Over 40 were interviewed or discussed with using open ended approaches notably in-depth interviews, meetings and discussions and focus group discussions. The deliberate review of relevant secondary sources; from official reports, media news, online and unpublished grey materials was done to enrich the empirical findings. Statistical data were analysed using Excel, while the narratives or qualitative data was edited thematically using axial coding.

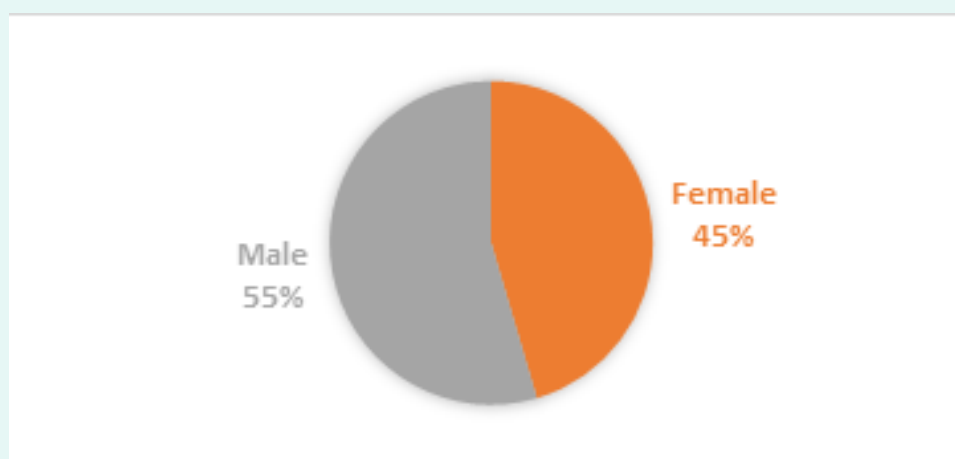
## 2.4 BIO-GRAPHICS OF THE RESPONDENTS

Figure 1: Distribution of the respondents by Education level (N=66)



The educational level of respondents shows in majority (41%) had only completed primary, followed by secondary/tertiary level (20%) degree (18%) while very few (6%) had a post graduate, much as 15% were below primary i.e. they had either not completed primary level or they did not have any formal education attained. The chart reflects the reality that the bulk of Ugandans are still semi-literate. Thanks to UPE, more Ugandans have attained the basic primary education, however combined with those below primary level, this educational curve favors badly for expectations that eligible voters will equitably participate gainfully in the coming digitized elections.

Figure 2: Distribution of the Respondents by Gender (N=66)



As observed in the Figure 2, the majority (55%) of the respondents were male while (45%) were female. This proportion is commendable since there is a tendency to have fewer women active in civic or political processes, especially during such a COVID-19 crisis period when they are burdened by the household chores, care giving and production roles as sisters and mothers in families. However, the other explanation is that the COVID-19 lockdown has also dumped young girls and working women into the community as both the formal and informal sector has been under shut down.

**Figure 3: Distribution of the Respondents by Age Bracket (N=66)**

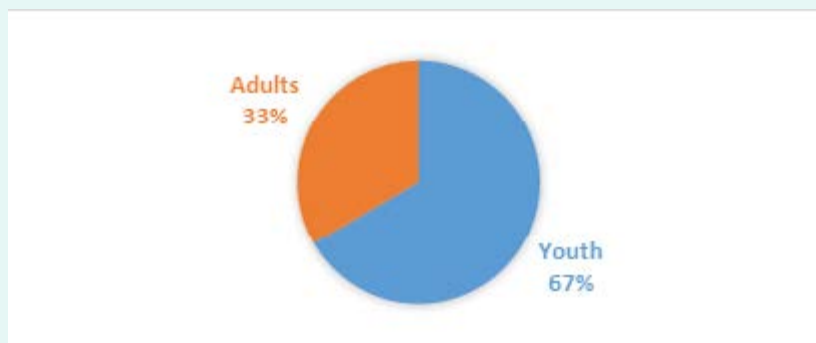
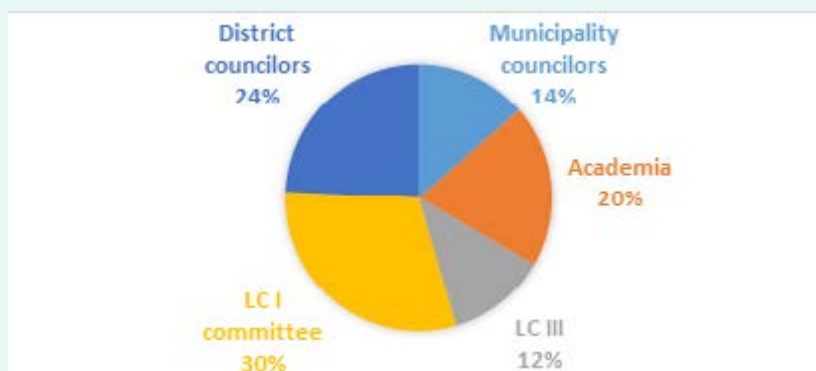


Figure 3 shows that most of the respondents for this study were youth (67%) compared to adults (33%). This reflects the demographic structure of Uganda's population whose pyramid is dominated by the youth. This is significant in politics as youth not only constitute the future generation of leaders but as the findings demonstrate are the most active stakeholders before, during and after elections in Uganda.

**Figure 4: Distribution of the Respondents by Employment and Position (N=66)**



The data in Figure 4 shows that most of the respondents were grassroots leaders (LC I Committee) members that includes Chairpersons, secretary for youth, mobilisers, among others. This was followed up by District Councilors (24%), in this case through the Speaker, we were able to obtain views of Councilors from Mukono District Local government. Academia were also consulted outside and in institutions (20%) and so were Councilors from Mukono and Nansana and Municipal Councils (14%) and Sub-County Councilors from both districts (12%).

The significance of this desegregation is that we were able to compare opinion on the scientific vote from a mix of administrative, civil and political audiences all of which encounter electoral politics from different vantages and therefore represent different interests when it comes to agency in the electoral cycle.

Figure 5: Distribution of the Respondents by Location of Residence (N=66)

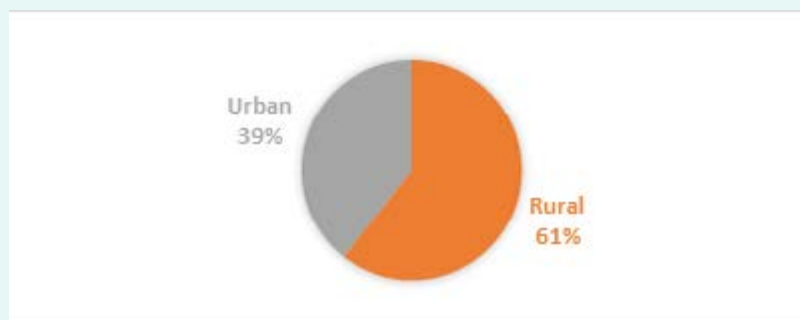


Figure 5 shows the location of the respondents across the two districts of Mukono and Nansana. The rural-urban divide in Uganda corresponds with inequitable household incomes, literacy rates and regional development imbalances in the country. This indirectly affects political participation and was extremely important in view of the coming elections that presumes access to digital assets as the major modality for 'scientific' campaigning in 2021.

Broadly speaking Mukono Districts is more urbanized and is located on the historical and economically busier Trans-Africa Highway from Mombasa in Kenya to South Sudan. However, with the discovery of Oil in Albertine region, Wakiso District that is home to Entebbe Airport and route to Hoima District where most of the oil wells are located has experienced phenomenal growth and development in recent years, with Nansana acquiring Municipality status.

## 2.5 LIMITATIONS

Foremost, focusing on the 'scientific election' in the Ugandan context presented itself as shooting at a moving target. Every moment that elapsed, new and important developments emerged in very quick succession, and keeping pace of the unraveling developments sapped some of the energies of the research team. Also, a key challenge with the study was the limited time and geographical scope in which it had to be implemented. This affected the statistical generalizability of the results, albeit providing strong insights to inform debate and discussion. In the opinion of the authors, a study of this relevance required wider, and deeper enquiry, and an opportunity to undertake such an inquiry, or at least specific thematic studies on critical aspects of these elections, as highlighted in chapter five later, must remain on the cards. It is hoped that the findings will be subjected to various levels of validation and interrogation, through seminars and workshops within the field population where the bulk of the information was sourced, as well as diverse policy audiences and intellectual fora. Once comments and contributions from all platforms are considered, the final report will be published as a monograph.

## 2. SCIENTIFIC ELECTIONS AND THE LAW: A CRITICAL REVIEW

### 2.1 THE LEGALITY OF SCIENTIFIC ELECTIONS: WEIGHING EVIDENCE AGAINST PRACTICE

On 16<sup>th</sup> June 2020, the Electoral Commission (EC) announced a revised roadmap for the 2021 general elections. Under the revised roadmap the electoral process, right from the party primaries to nominations, campaigns, polling, tallying and declaration of results would, this time round, be 'scientific'. According to Justice Simon Byabakama Mugenyi, the EC Chairman, "mass rallies will not be allowed but campaigns will be conducted mainly through media." The change from the traditional mode of campaigning and electioneering and, consequently, the departure from the roadmap that had been announced way back on 11 December 2018, which envisaged a traditional election characterized by open campaigns in public spaces and an equally public polling process, was understandable. As the Covid-19 pandemic continues to run riot, with thousands of cases reported in Uganda and over 21 million worldwide as at mid-August 2020, it would be nothing short of madness to simply allow mass gatherings at campaign rallies, polling stations, and tallying centres. Indeed, the country having been in general lockdown since 18<sup>th</sup> March 2020, which was partially lifted over the subsequent months, leaving attendance of schools and other education facilities, religious, entertainment and other mass gatherings still banned. The prospect of imposing some form of restriction on traditional electioneering was only to be expected for as long as the spread of the virus continued, with no cure and or vaccine available.

While announcing the revised roadmap, the EC Chairman claimed the revision was based on scientific advice received from the National Covid-19 Taskforce and other scientists. But the question remained whether the decision was made in utmost good faith and was devoid of political calculations and partisan biases. In other words, was the decision "informed by science, politics, panic, or opportunism...?"

Not surprisingly, given the atmosphere of suspicion on the one hand, and opportunism on the other, that pervades the electoral process in Uganda and, indeed, Africa as a whole, the bulk of the opposition came out to roundly reject the proposal, contending that it falls short of the basic tenets of a free, fair and credible election, and vowed to oppose it by every means possible. Thus, from the onset, the proposals for a 'scientific', 'virtual' or 'digital' election, were dogged by controversy, made worse by the eagerness with which the ruling party accepted them without query. Within a couple of days of the announcement, the proposed mode of elections was the subject of litigation, in addition to all manner of analyses on TV and radio talk shows, the mainstream media, social media and even in Parliament. It became immediately clear that the unusual electoral arrangement came with far-reaching political, moral as well as legal and policy implications.

This section of the study, therefore, seeks to interrogate the legal and policy aspects of the proposed 'scientific' election. It addresses a number of concerns regarding the legal status of the proposed virtual, digital, or scientific elections, in particular dealing with several issues, namely; whether the laws of Uganda governing elections have room for or recognise 'scientific elections' and, if so, to what extent elections may be held scientifically or virtually; whether the manner in which the decision to go for scientific elections was legally arrived at and implemented; what legal consequences are likely to be encountered on account of adopting the option of scientific elections; and what alternatives are available to those responsible for the management of the elections.

### 2.1.1 The legality of digital, virtual, or scientific elections

Opposition politicians have been most critical of IEC position on scientific elections, preferring traditional public rallies. The IEC justifies its adoption of 'scientific elections' not only from purely public health and medical grounds, but also moral imperatives. Proponents of scientific elections are often surprised by the type of politicians in Uganda who would, for the sake of an election, put at great risk the lives of the people they purport to represent. In support of World Health Organization (WHO), proponents of scientific elections claim that until an effective vaccine or treatment for Covid-19 is found and made widely available, it would be irresponsible to subject the country to waves of campaign rallies, and that "with large gatherings off the table, radio and phones are the key."

The media in general, and social media in particular has been instrumental in not only voter mobilization for voter registration, attendance of campaign rallies, delivering campaign messages and urging voter to turn up on voting day, but also in undermining opponents and responding to negative publicity. Hence, proponents of scientific elections argue that the point of contention is not whether the voters are accessible through the media but how to structure and guide the media to ensure a level playing ground for different candidates in the various clusters.

Those opposed to scientific elections are not convinced about its scientific inevitability on one hand, and the good faith of its proponents. Critics read in it a ploy by NRM proponents to extend President Museveni's reign for another 5 years. The majority of the critics see a self-serving motivation in the idea of a scientific elections, reasoning that such an election would mostly favor incumbents, who are rich and have capacity to buy all the airtime on private radio and television stations to deny their poorer counterparts audience. NRM leaning politicians have been accused of benefitting from privileged access to the public media compared to opposition politicians. In addition, those with connections to state structures that control of government's coercive machinery are more likely to flout the SOPs for political campaigns. Matters have not been helped by partisan actions by law enforcement agents who have been more enthusiastic to reign in on opposition politicians as compared to supporters of NRM.

Critics have also argued that a scientific election is inherently undemocratic and in-egalitarian. They argue that an election is all about a 'once-in-five-years' undertaking when politicians get to 'beseech' their voters, and the voters get to make the most of every opportunity to demand accountability from their leaders, on the basis of which make an informed decision on which to entrust with leadership responsibilities. To the extent that this is impossible where candidates do not directly interact with voters, critics of scientific elections consider the IEC proposal as undermining everything about free and fair elections.

Whether or not an election should be held the context of COVID-19 and its associated public health restrictions? Can't the elections be postponed? Must they be scientific? In several public forums, the IEC Chairperson, Justice Simon Mugenyi Byabakama has stressed that Article 61(2) of the Constitution requires the EC to hold the 2021 general elections within the first 30 days of the last 120 days before the expiration of the current term of the president. This means in one way or another, the February 2021 elections have to be held as planned, whether or not there is COVID-19.

Commentators point to section 21(1) of the Presidential Elections Act; Section 20 of the Parliamentary Elections Act, and; Sections 123(5) and 172 of the Local Government Act that grant the IEC powers to determine the time and manner of candidates' campaigns. In addition, section 50(1) of the Electoral Commission Act which grants the IEC special powers to issue particular or general instructions to meet the exigencies of 'an emer-

gency or unusual or unforeseen circumstances' during the electoral process. COVID-19 happens to be one such unusual circumstance. This implies the IEC could have done better than just a blanket declaration of 'digital campaigns' during 'scientific elections'.

Beyond the political arguments, the ensuing debates on the modality of scientific elections raise more fundamental questions regarding the legality of scientific elections. Will the scientific elections in Uganda meet the acceptable minimum legal standards; and how far a country can legally pursue scientific election. Critics argue the IEC directive to conduct candidates' campaigns digitally is plainly unconstitutional and invalid.<sup>38</sup>

### 2.1.2 Constitutional Supremacy

First and foremost, the EC's discretion to determine the time and manner of candidates' campaigns under the electoral laws is not absolute. It is plainly qualified by an overriding constitutional duty to organise, conduct and supervise 'free and fair elections' as defined by the Supreme court in the 2001, 2006 and 2016 presidential election petitions, and approved and adopted by the Constitutional court in *Rubaramira Ruranga v. Electoral Commission & Attorney General*, Constitutional Petition No 21 of 2006 – the four leading cases which determined, among others, that 'to ensure that elections are free and fair, there should be sufficient time given for all stages of elections, nomination, campaign, voting and counting of votes.'

In Ruranga's 2006 case, court quashed EC guidelines that sought to limit candidates' campaigns in local council, women's council, and youth council elections to just five minutes. Therefore Ssemakadde is of the view that despite its good intentions, the EC directive to ban public campaign meetings and require candidates to campaign digitally will obviously have a more harmful effect of forbidding and discouraging 'the active participation of all citizens at all levels in their governance', and is therefore inconsistent with 'democratic principles' as enshrined in paragraph II(i) of the National Objectives and Directive Principles of State Policy and Articles 1(4) and 61(1)(a) of the Constitution.

### 2.1.3 State of Emergency

The legality and constitutionality of the planned 'scientific elections' has been questioned by critics, it has been argued thus: first, the EC's discretion to determine the time and manner of candidates' campaigns under the Constitution of Uganda Article 61, Section 2 is not absolute; second, the planned digital campaigns would be a violation of the cardinal principles of constitutional democracy; and was based on a misguided, biased and self-serving interpretation of the constitution and the country's electoral laws.<sup>39</sup> If the IEC were convinced that the public health regulations associated with Covid-19 prevention currently in force throughout the country prevent a normal general election from being held, why then would it not be advisable to recommend invoking of section 50(1) of the Electoral Commission Act as the legal basis for its 'ad hoc' ban on political rallies and the introduction of the requirement to conduct candidates' campaigns digitally?

<sup>38</sup> See Ssemakadde Isaac, 'EC digital campaign order is unconstitutional and invalid', *The Observer Newspaper*, July 1, 2020. Available at: <https://observer.ug/viewpoint/65497-ec-digital-campaign-order-is-unconstitutional-and-invalid> (accessed July 2020).

<sup>39</sup> . *Ibid*



It has been intimated by commentators that instead of proceeding with scientific elections as a response to Covid-19, an IEC, acting in good faith to protect the life of all Ugandans, ought to have reported to the president, parliament and all stakeholders that the Covid-19 situation prevents a normal general election from being held so that the president would then be duty-bound to declare a state of emergency in terms of Article 110(1)(c) of the Constitution, or ease Covid-19 rules appropriately with a view to safe guarding our constitutional democracy.<sup>40</sup>

#### 2.1.4 Human rights violations

Another issue raised by Ssemakadde (2020), is that the EC ignored the fact that, in exercising its powers under the aforementioned electoral laws, it remains duty-bound to respect, uphold and promote the fundamental rights and freedoms enshrined in Article 59(1)(a) (the right to vote) as read together with Articles 29(1)(a), 29(1)(d), 29(1)(e) and 29(2)(a), i.e. freedom of speech, freedom of assembly and peaceful protest, freedom of association and freedom of movement respectively. In his view, whereas the rights and freedoms at issue may be limited as a means of combating Covid-19, the restrictions invoked by the EC and government for this aim must not be arbitrary, unfair or based on irrational considerations. Therefore, according to Ssemakadde that SOPs must be evidence-informed and revisited frequently with a view to restoring normalcy.<sup>41</sup>

#### 2.1.5 The limitations imposed by the SOPs

Lastly, SOPs must also not impair the rights and freedoms at issue disproportionately, i.e. beyond what is necessary to accomplish the intended lawful objective. In other words, the limitations must be acceptable and demonstrably justifiable in a free and democratic society. They cannot be speculatively justified under the banner of “unique local circumstances”. Applying this strict weighing and balancing test in Art 43 of the national Constitution, the requirement to conduct candidates’ campaigns digitally is not a reasonably justifiable measure for dealing with Covid-19.<sup>42</sup>

### 2.2 THE RIGHT TO FREE AND FAIR ELECTIONS UNDER INTERNATIONAL LAW

The conventional and customary international law which Uganda subscribes to, as well as the national constitution, enjoin Uganda to respect human rights, and to practice democratic governance which entails holding elections that meet certain standards. The 1948 Universal Declaration of Human Rights (UDHR) provides the basic benchmark for human rights. Though not expected to be justiceable, the Declaration, as its Preamble asserts was intended as “a common standard of achievement for all peoples and nations.” Article 21 of the UDHR stipulates:

- 21 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right to equal access to public service in his country.

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<sup>40</sup> See Ssemakadde (2020, 3).

<sup>41</sup> *Ibid*

<sup>42</sup> *Ibid*

- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal suffrage and shall be held by secret vote or by equivalent free voting procedures. (emphasis supplied).

In 1966, the United Nations (UN) developed out of the aspirational provisions of the UDHR two Covenants whose provisions are more directly enforceable, namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 25 of the ICCPR provides: that every citizen shall have the right and the opportunity:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; and

(b) To vote and be elected at genuine and periodic elections...guaranteeing the free expression of the will of the electors.

To this may be added the provisions of Articles 19, 21 and 22 of the same Covenant. These provide for the rights to freedom of expression, peaceful assembly and association, which include the right to air one's views, to hold rallies, processions and other forms of assembly, and the right to form political parties and, through them, and engage in electoral campaigns and other political party activities unhindered.

In 1996, the UN Committee on Human Rights adopted General Comment 25 on the right to participate in public affairs, voting rights and the right of equal access to public services, in other words, on the scope of Article 25 above cited. The general comment explains in some detail what the right to vote entails: that whatever form of constitution is in force, the Covenant (ICCPR) requires states to adopt such legislation and other measures as may be necessary to ensure that citizens have, "an effective opportunity" to enjoy the rights set out in Article 25. That the right to vote in elections or referenda must be established (provided for) in law and may be subject only to reasonable restrictions; the General Comment also confirmed the nexus between the right to vote and the right to freedom of expression, assembly, and association, stating:

*Freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected.*

At the regional level, the African system has reiterated the right to vote, in Article 13 and the related freedoms of expression, assembly and association in Articles 9, 10, and 11 of the African Charter on Human Peoples' Rights (ACHPR).

In 2002, the African Union (AU), which was just being launched, issued the African Union Declaration on the Principles Governing Democratic Elections in Africa. Part II of the Declaration laid down in detail the "principles of democratic elections" which the state parties agreed to. The Principles emphasise elections as a basis for the authority of government and a means of preventing, managing, and resolving conflicts. The Declaration also reiterated the right of every citizen "to fully participate in the electoral process of the country."

Then in 2007 the African Charter on Democracy, Elections and Governance was adopted. The Charter entered into force on 15<sup>th</sup> February 2012, after obtaining the necessary number of signatures. Article 2 of the Charter sets down the Charter's objectives which include promotion of adherence to the values of democracy and promotion of "the holding of free and fair elections to institutionalise legitimate authority of representative government as well as change of government..." Under Chapter 7 of the Charter, state parties re-affirm commitment to holding transparent, free, and fair elections.

The importance of this plethora of international instruments is that they assert the right to democratic free, fair, transparent, and credible elections as an inalienable human right which is inherent and not a privilege granted by the state. Uganda as a party to all these instruments is bound by the principles enshrined therein. It is not entitled to conduct an election that falls short of the principles proclaimed by the instruments. Above all, it is legally obligated to enact national laws and formulate policies, which give effect to the letter and spirit of the instruments. Indeed, the Constitution of Uganda reiterates the provisions of the above international instruments.

## 2.7 THE 1995 CONSTITUTION AND THE RIGHT TO FREE AND FAIR ELECTIONS

The National Objectives and Directive Principles of the State Policy, one of the novel features of the 1995 Constitution of Uganda, prescribe that, "the state shall be based on democratic principles which empower and encourage the participation of all citizens in their governance." This broad principle is given effect in Article 38 (2) of the Constitution which restates almost verbatim the provisions of Article 21 (1) of the UDHR above quoted. The Constitution also reiterates the rights to freedom of expression, association and assembly."

Moreover Article 38 (2) recognises the right of every Ugandan to participate in peaceful activities to influence the powers of government. Outside the Bill of Rights (Chapter Four of the Constitution) the provisions on representation of the people (Chapter Five) give meaning to the general provisions of Article 38. Article 59 provides:

- 59 (1) Every citizen of Uganda aged 18 years and above has a right to vote.
- (3) The state shall take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.

The Constitution then goes on to put in place the institutional framework for the management of the process of actualisation of the right to vote, by establishing the EC and providing for its composition and functions, which include organising , conducting and supervising regular, free and fair elections. To give it the necessary ability to carry out credible elections, the Constitution gives the EC a measure of autonomy and stature. Members of the Commission are required to be "persons of high moral character, proven integrity and who possess considerable experience." They serve for a term that is longer than that of the leaders whose election into office they superintend. They serve for one term, renewable once. To guarantee that they are not subject to manipulation or control by government/political officials, or are not influenced by partisan considerations, members of the Electoral Commission must not be members of Parliament, a local government council, the executive of a political party, or public officers. Most importantly, Article 62 of the Constitution provides:

*"Subject to the provisions of the Constitution, the commission shall in the performance of its functions, not be subject to the directions or control of any person or authority."*

To make this autonomy real, Article 66 of the Constitution enjoins Parliament to ensure that adequate resources/facilities are provided to the Commission, makes the Commission self-accounting, and charges the administrative expenses on the Commission, including the salaries, allowances and pensions of its members and staff on the consolidated fund.

These provisions, however, are somewhat watered down by Article 60 (8) which empowers the President to remove a member of the Commission on grounds of inability

to perform his or her duties as a result of physical or mental incapacity, misbehaviors or misconduct, and incompetence. These, especially the last two, are very subjective criteria, which can easily be abused by a determined president to remove an 'unco-operative' chairperson or member of the Commission. Moreover, the president, who is also supposed to submit himself to the process managed by the Commission in the event that he/she wishes to serve another term of office, also appoints the chair and members of the Commission.

The history of Uganda is replete with suspicious conduct by electoral commissions which have shown all signs of being at the beckon and call of the sitting government.

It has been suggested that fairness would require that the Commission be selected either by a committee of Parliament or some way other independent body, like the Judicial Service Commission. While this would go some way towards creating a resemblance of autonomy, it is submitted that that would not necessarily render the Commission immune to manipulation. Interestingly, to make its point in support of such an arrangement, HURINET-U refers to the process in Zimbabwe under whose constitution the Electoral Commissioners are selected by a committee of parliament and approved by the president. But Zimbabwe has had some of the most discredited elections on the continent over the last several decades, and hardly provides best practices, to say the least. The problems with the elections in Uganda, and Africa generally, are not so much the fault of the legal provisions as such, but are more to do with the history and political realities of the various countries and the lack of a democratic culture and politically conscious and organized citizens ready and willing to stand up to the machinations of those in power.

For present purposes, the point being made is that the domestic legal framework, just like the international one, guarantees the right to free, fair and credible elections, and obligates the state and the Electoral Commission to deliver the same. The right to vote in a free, fair, credible, and democratic election is unarguably a human and constitutional right.

Of course, the right to vote, and the associated rights to freedom of expression and assembly are not absolute. They are subject to the general limitations to which all rights are subject.

Article 29(2) of the UDHR provides that in the exercise of his/her rights and freedoms, everyone is subject only to such limitations as are determined by the law solely for the purpose of securing the recognition and respect of the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. General Comment 25 also provides in its paragraph 4 that the citizen's right of participation, which includes the right to vote, may be excluded on grounds which are established by law and are objective and reasonable. The African Charter on Human and Peoples' Rights provides that the rights and freedoms of everyone "shall be exercised with due regard to the rights of others, corrective security, morality, and common interest."

Above all, the 1995 Constitution of Uganda in its Article 43 lays out a general limitation on the enjoyment of fundamental rights stating:

43 (1) in the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

But these limitations to the enjoyment of rights are very narrow ones. In the first place, for a limitation on the enjoyment of rights to be valid, it must be one which is prescribed by law. It cannot be a product of the wishes and sentiments of a government official,

police or LDU functionary, a minister or even a president. It must be a creature of legislation or at least a statutory instrument. Secondly, the limitation must be just, objective, and reasonable. It must be a limitation that is necessary to enable others to enjoy their own rights and freedoms or one that is necessary to protect the public interest.

It would of course be very easy for government functionaries to limit a person's enjoyment of a given right, like the right to vote, by claiming to be doing so in the public interest! Mindful of this danger, the Uganda Constitution has set limits on this ground of abridging any constitutionally protected right. Hence Article 43(2) restricts the public interest limitation allowed by Article 43 (1) by stating:

Public interest under this Article shall not permit-

- a) Political persecution
- b) Detention without trial
- c) Any limitation to the enjoyment of the rights and freedoms prescribed by the Chapter that is beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.

This rhymes with Article 30 of the UHDR, which provides:

*Nothing in the Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*

There is a long chain of decisions by the highest courts of record, to the effect that the burden is on the party seeking to restrict the enjoyment of a given right to satisfy court that the restriction is fair and reasonable, and is no more than what is necessary and demonstrably justifiable in a free and democratic society, a usually stringent criterion. In other words when the question of whether a right ought to be restricted arises, there is a presumption that the right should prevail unless the restriction is justified.

In *Rev. Christopher Mtikila v Attorney General of Tanzania*, Lugakingira, J., summarised the position thus:

*...The Court is enjoined to incline to the realisation of the fundamental rights and may for that purpose disregard even the clear words of a provision if their application would result in gross injustice... These provisions rest, above all, on the realisation that it is the fundamental rights which are fundamental and not the restrictions.*

And in *Muwanga Kivumbi v Attorney General*, the Constitutional Court of Uganda explained what the test of a 'free and democratic society' entails, stating:

*The standard... is an objective one. The provision... clearly presupposes the existence of universal democratic values and principles, to which every democratic society adheres. It also underscores the fact that by her Constitution, Uganda is a democratic state committed to adhere to those principles and values, and therefore, to that standard. While there may be variations in applications, the democratic values remain the same... Democratic values and principles are the criteria on which any limitation on the enjoyment of rights and freedoms guaranteed by the Constitution must be justified. The Court must be guided by the values and principles essential to a free and democratic society. The following is a summary of the criteria for justification of law imposing limitation on guaranteed rights: (1) the legislative objective which the*

*limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right; (2) the measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations; and (3) the means used to impair the right of freedom must be more than necessary to accomplish the objective.*

In other words, the court applies the “proportionality” test, comparing a person's right to enjoy a given right or freedom, vis-à-vis the need to protect the rights of others or the public interest, which normally covers public order, national security, public safety, public health and morality.

Which brings us to the specific question of whether instituting a scientific election as a measure to contain the Covid-19 pandemic infringes on the right to vote in a free, fair, credible and democratic election that is guaranteed by international law and the Constitution of Uganda. The related question is whether the package of measures contained in the EC's revised roadmap, being a limitation on the enjoyment of the said right, are permissible limitations, that is to say, limitations which are provided for in law, are fair reasonable and demonstrably justifiable in a free and democratic society.

On the constitutionality of the 2021 elections, Counsel Ssemakedde (2020) offers some illustrations on some of the dangers that the EC's failure to follow the constitutional approach, could bring about as presented below.

First, “to campaign digitally” is not defined in any gazetted instrument, which means that it shall be the subject of multiple interpretations by law enforcement authorities, including the notoriously trigger-happy LDUs who may shoot candidates and their agents for merely taking a stroll on the street or handing out a flyer to a potential voter in a market.

Secondly, there is unacceptable vagueness concerning the range of prohibited conduct. Is it only political rallies or public gatherings of all kinds that are barred? Are processions also prohibited, and if so why? How about the statutory meetings of political parties and other political organisations?

This ambiguity creates a chilling effect on many rights and freedoms of candidates and political parties, e.g., delegates' conferences, meetings to select party flag bearers, resolve party conflicts arising party primaries, train flag bearers and polling agents, and consultative meetings with the candidate's campaign agents for planning and organising the candidate's election campaign, freedom of expression and access to information, freedom of movement, to mention but a few. A case in point, are the blockades at the FDC offices in Najjanankumbi and NUP offices in Kamwokya.

Thirdly, the directive is based on speculative considerations. For instance, there is no evidence of adequate and balanced distribution of media resources, appropriate levels of media literacy and rural electrification, etc., across the country to make this directive fair for all. For example, in coming sections of the report, respondents from Kisoga B Cell in Mukono District and Nansana in Wakiso district raise several concerns about the majority not accessing or owning radio, TV and cell phones, while some politicians raised the fact that they may not afford the high costs for engaging campaigns meaningfully on commercial radio and TV.

Lastly, there is abundant evidence of the potential for interference with or obstruction of electioneering activities of other persons, especially those in opposition, to gain unfair advantage in the election over them. The suggested regulation of private electronic media in the manner that would promote equality is a legal impossibility, given the

constitutional protection of media freedom<sup>43</sup>. Such practices are aimed at intimidating such media houses into self-censorship, which would also imply being hesitant to host and publicize views of the opposition or any other controversial political commentators.

## 2.8 WHETHER THE 'SCIENTIFIC ELECTION' MEASURES INFRINGE THE RIGHT TO VOTE

From the foregoing discourse, the right to vote comes out as the right to vote in a free, fair, transparent, and democratic election. The test of whether the announced roadmap meets the test of legality, therefore, requires an inquiry into whether the roadmap interferes with or fetters the freeness, fairness, transparency, or democratic character of the forthcoming general election. It is contended that in a way it does.

The laws and instruments cited above provided for a free, fair, and transparent election, but do not explain what such an election entail. However, HURINET-U, while examining the 2011 elections, suggested the criteria for such an election, some of which this study associates itself with thus:

*A free and fair election should strive to achieve fairness between political parties; effective representation of minority and special interest groups; political integration; effective representation of constituents; effective voter participation; effective government; effective parliament; effective parties; and legitimacy... these standards can only be achieved where there is a comprehensive and effective electoral legal framework in place.*

Some of the elements listed above go beyond the polling process itself, and deal with the governmental dispensation the electoral process results into. There is no doubt, however, that the requirements of fairness as between the parties participating in an election, effective voter participation, and legitimacy are crucial if an election is to pass the test of being demonstrably free and fair. To what extent, then will these be ensured in the context of a 'scientific election'?

To achieve fairness as between the parties, it is necessary that the playing field be seen to be level. While making the case for an election for which the campaigns are conducted in the media rather than through public rallies, Don Wanyama, a State House Publicist, has contended that the prospect of a richer candidate getting better reach than his poorer counterpart when campaigns are conducted through the media is an inevitable reality of life, pointing out that even in the US and other developed countries, money matters in an election. While that may be so, it can never justify a situation where the electoral body knowingly puts in place hurdles that inequitably affect the poor as opposed to the rich. If a candidate cannot afford a media presence, it is not fair that he is also denied options that do not involve the same magnitude of expenses. A poor campaigner should be able to walk on foot or by boda boda, taxi and still access his/her target audiences.

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43 August 8, 2020 "NUP Condemns blockage of Kyagulanyi's Radio Talk Show in Mbale", *Independent New, Kampala* and "August 13, 2020, "Kyagulanyi sues IGP, RDC for blocking his talk show" in *Independent News Kampala*.

It has been correctly pointed out the decision to go 'scientific' does not affect all sides equally. New entrants into politics would need more time than already known veterans such as incumbents in government, to introduce themselves to the electorate. Moreover, it is already emerging that incumbents easily use their social status and influence with the forces of law and order to override the restrictions imposed as part of the Covid-19 package. The press is already replete with stories and images of the likes of Ministers like Dr. Ruth Acheng and Hon. Evelyn Anite conducting processions with masses of their supporters with impunity while on the other hand, the likes of Ret. Maj. Gen. Mugisha Muntu and Robert Kyagulanyi (Bobi Wine) of Alliance for National Transformation (ANT) and People Power/ National Unity Platform (NUP) respectively have not even been allowed to hold small meetings to launch their campaigns. For as long there is no guarantee that the restrictions will apply equally to all sides, the process is cast into doubt from the onset.

The EC having earlier suspended its electoral roadmap when lockdown was announced in March 2020, suddenly thrust onto the country the revised roadmap on 16<sup>th</sup> June. The roadmap announced in December 2018 had envisaged that with general elections planned to be held between 10<sup>th</sup> January and 8<sup>th</sup> February 2021 nominations for Local Government Council elections would have to be completed latest by the third week of July 2020. It was also envisaged that campaigns for parliamentary elections would commence latest by the second week of August 2020 while the presidential campaigns would begin by the first week of September 2020. This required that nominations for Local Government Councils, Parliamentary and Presidential elective would be concluded by the third week of July, second week of August and third week of September, respectively. This in turn meant the National voters' register would be displayed by mid-March and early April 2020.

With lockdown announced in March 2020, the roadmap was torpedoed. All those new entrants intending to come out and fit their plans into the roadmap were ordered to stay at home. Meanwhile their counterparts who were in Government continued to be visible in Parliament and everywhere on the ground, as they were declared "essential" to the continued running of the country. Then suddenly a new roadmap was announced with condensed timelines. Under the revised roadmap, nominations for Local Government Councils would take place between 7<sup>th</sup>–17<sup>th</sup> September, for Parliament between 12<sup>th</sup>–13<sup>th</sup> October and for Presidential elections, between 2<sup>nd</sup> and 3<sup>rd</sup> November. That automatically means the campaign period shrunk by the same factor. This two-month shrinkage means that the candidates have less time to campaign, and yet at the same time fewer campaigning options available to them. The restricted time factor has not augured well with many experts, for example:

*According to Ssemakadde (2020) this imposed roadmap represented an improper use of discretionary powers conferred on the IEC which admits that it consulted scientists exclusively from the ministry of Health, as urged by the President during the Covid-19 lockdown, before reaching this decision. An independent constitutional body, acting reasonably within its mandate, could not have consulted a narrow range of opinion on such an important issue. IEC would have diversified the range of scientists to consult since the government's health experts are the authors of the Covid-19 regulations in issue and they are obviously interested in their continuity, despite the demands of democracy. This is precisely because Covid-19 is both an issue of public health as it is about citizen's political and human rights. Yet, as admitted by the IEC, disproportionate attention was given to public health considerations and scientists were entrusted with determining issues of our constitutional democracy for which they are not only incompetent but ill-suited<sup>44</sup>.*

44 Ssemakadde Isaac (2020), IEC digital campaign order is unconstitutional and invalid, July 1. The author is CEO Legal Brains Trust, a Kampala-based democracy and human rights watchdog.



In Rt. Col. Dr. Kizza Besigye v Electoral Commission and Yoweri Kaguta Museveni, Presidential Election Petition No. 107 of 2006, Odoki CJ addressed the issue of time and unfair incumbent advantage thus:

*Sufficient time should be given for all stages of the elections, nominations, campaigns, voting and counting of votes. Candidates should not be deprived of their rights to stand for elections and citizens to vote candidates of their choice through unfair manipulation of the process by electoral officials. There must be a levelling off the ground so that the incumbents or government ministers and officials do not have an unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence, coercion, or anything intended to subvert the will of the people. Election law and guidelines for those participating in the election should be made and published in good time (emphasis supplied).*

It is manifestly clear that even before one considers the strictures imposed by the Standard Operating Procedures (SOPs) lifted from the Public Health (Control of Covid- 19) Rules, and presented as Guidelines for Nominations of Candidates Including Standard Operating Procedures for Mitigating Covid-19 Effects, and Campaign Guidelines for Presidential Candidates Including Standard Operating Procedures to Mitigate the Effects of Covid-19, and the corresponding guidelines for Parliamentary and Local Government nominations and campaigns (which collectively constitute the legal framework for the scientific elections), the very timing of the revised roadmap rules out the possibility of the level playing field that the Supreme Court considered central to a free and fair election.

Turning to the second criterion for a free and fair election—the requirement for effective voter participation—again the proposed roadmap seriously falls short.

Voter participation implies that the voter is not to be treated as a passive recipient of campaigners' harangues. He/she is not simply to be talked to (or to be more exact talked "at") but must be actively engaged in the process. An election process in which the institution in charge commands that the candidates and their agents must predominantly use one-way means of campaigning (radio, TV, and the press and, where possible, telephone-based social media) is clearly one in which the voter is reduced to a passive recipient of the campaign messages with only limited participation (through calling into radio and TV programs, letters to the newspaper editor and maybe sending SMS text, WhatsApp, Twitter and Facebook replies to messages on the part of the few who can), cannot be said to be participatory. The voter is to be bombarded with messages from disembodied voices to whom she/he cannot talk back and whose demeanor and poise the voter cannot scrutinize.

Even on the voting day, the usual practice of voters remaining at the polling station and also being present at the counting and tallying to prevent tampering and manipulation is to be discouraged, because to do so would be to build crowds and therefore open the way for person-to-person spread of the virus. It could well be that indeed such crowds would have that effect. The point is that not allowing such crowds irredeemably taints the outcome of the elections, as there is no way of preventing mischief when only a few candidates' agents (who can be bribed, intimidated or otherwise manipulated) are allowed to remain at the polling station and tally centre.

Then on the question legitimacy, the moment the election process is rushed through; the moment normal campaigning and voter participation are rendered impossible; the moment the playing field is not level; then the legitimacy of the poll is compromised. Legitimacy is not a question of whether the thing is permitted by law or not, but one of

perception. An election that does not appear transparent in the eyes of the onlooker is illegitimate, even if it strictly complies with the letter of the law.

To add to the above, the revised roadmap was conceived, presented and has been implemented in a manner that again robs it of its legitimacy. The first person to rob the process of the badly needed legitimacy was the Chairman of the EC himself. Challenged over why he had not bothered to consult with the various shareholders, especially leaders of the opposition and civil society so as to generate consensus, and across-the-board support for the roadmap, Justice Byabakama retorted that the EC is "under no obligation to consult anyone when designing an election roadmap." When it was pointed out to him that just before coming up with the roadmap, he and his team had visited State House for a meeting with the President, he rather lamely claimed that they had only gone there to as for a new head office for the Commission.

Whatever the truth of his explanation, Justice Byabakama's stance on the matter of consultations did not do the EC any favour. He seems to have conceived a literal and legalistic construction of Section 21 (1) of the Presidential Elections Act (PEA) 2005, which provides:

*Subject to the Constitution and this Act, the Commission may determine the manner and the period during which campaigns shall take place...*

This power is a derivative of Article 61(b) which gives one of the functions of the EC as "to organise, conduct and observe elections and referenda." The Chairman seems to operate under the conviction that this provision gives him absolute powers to determine and prescribe the mode of campaigning, a notion that would be erroneous.

In the first place, in accordance with the basic rules of statutory interpretation, the given law must be construed as an integral whole. Secondly a statute must not be given a construction that is in conflict with the letter and spirit of the Constitution, considering that under Article 2 (1) of the Constitution, the Constitution is the supreme law of the land, and any law that is in conflict with it is void to the extent of its inconsistency.

In this regard, it is to be noted that the section begins with the phrase, "subject to the Constitution and this Act..." This means that the EC's power to determine the manner and period of campaigning is subject to other prescriptions of the same Act. Subsection (2) of that Section provides that, "Every candidate may hold individual public campaign meetings in any part of Uganda in accordance with any existing law." Under Subsection (3) he or she may do so personally or through agents. Under Subsection (4) he may even do so jointly with other candidates. Presidential candidates have a right to campaign anywhere in the country, so long as they do so in accordance with a programme submitted to the EC.

When it comes to the Constitution, it can be argued that the EC's power under section 21(1) of the PEA cannot be executed in a manner that infringes the right to freedom of assembly guaranteed by Article 29. Moreover, Article 61(1) of the Constitution enjoins the EC "to ensure that regular free and fair elections are held." An election in which a candidate cannot campaign normally and present his agenda to the electorate, one in which the voters' right of participation is suppressed, cannot be a free and fair election within the meaning of this provision. Once it is accepted that such an election would be unconstitutional, it follows that section 21 cannot be claimed to have the effect or empowering the EC to conduct such an election.

Indeed, it is a standard principle of law that when a public body is given certain powers, there is a presumption that the powers are to be exercised reasonably and fairly to achieve the ends for which they are conferred, not capriciously or wantonly for a selfish purpose or in a manner that defeats the objects for which they were conferred. That being the case the EC cannot logically exercise its section 21 powers in a manner that defeats the object of a free and fair election.

The principles above discussed also apply to the parliamentary elections, considering that the corresponding provisions of the Parliamentary Elections Act are couched in the same phraseology.

But even from a purely strategic point of view, it does not do the Commission any good to ride roughshod over the major stakeholders in the election it presides over. Sound management principles emphasise consultation and building bridges, even if one is under no legal duty to do so, because then the outcomes are more acceptable. What is the benefit of conducting an election in a manner that attracts hostility and suspicion, and increases the risk of the outcome being challenged?

Related to the foregoing, it has also been argued that a careful reading of section 21 or the PEA and 20 of the Parliamentary Elections Act leads to the conclusion that these laws envisaged open public campaigns as the basic mode of campaigning, and media campaigns as only a supplementary mode. This is so considering that the two laws first provide for public campaigns before subsequently providing for the option to use media, in section 24 of the PEA and 22 of the Parliamentary Elections Act, respectively. It is therefore clear that the legislature did not have in mind an election in which campaigns were only conducted electronically, when it enacted the PEA, the Parliamentary Elections Act and the Local governments' Act. It is also doubtful whether such an election would meet the level of freedom and fairness envisaged under the 1990 Constitution.

With regards to the basic tenets of the proposed scientific elections, it must be noted that the documents so far generated stop short of defining the said election as a matter of law. They lack legal precision.

The legal frame work for the scientific elections can be said to be contained in the presidential and parliamentary nomination and campaign guidelines referred to above, as well as, the Political Parties and Organizations (Conduct of Public Meetings and Elections) Regulations, approved by Cabinet on 30<sup>th</sup> June and adopted by Parliament in July 2020.

The Regulations provide that in the conduct of their affairs, political parties, in addition to complying with Articles 71 and 72 of the Constitution, must also adhere to the Public Health Act, and the Rules made thereunder for the control of infectious diseases, in particular the Public Health (Control of Covid-19) Rules, SI 83 of 2020. According to Regulation 2 of the Regulations, they are to apply to any political party which intends to hold a meeting or elections during a time when public health restrictions are in force. The Regulations impose conditions on how a political party is to hold meetings or carry out elections for members of its executive committee, or other organs or its flag bearers. The political party may do so through virtual meetings, resolutions by circulation, phased elections, secret ballot, open ballot, lining up behind candidates, or by an electoral college comprising of members of an organ of the political party or organisation. They require that the political party should opt for a method that enables the meeting or election to take place without contravening the requirements of the Public Health Act and the Rules aforesaid. They empower (in fact tacitly encourage) the executive committees of political parties or organisations to extend the terms of office of effected members of the party/organisation, other than the executive committees, for a period of up to six months when it is not practicable to hold elections for the membership of

such organisation as a result of the restrictions or other measures imposed under the Public Health Act or the Rules aforesaid.

While on the surface the Regulations present an innocent façade of a law seeking to make the best of a crisis, they in effect seek to micromanage how political parties are to internally constitute themselves. Worse still the Regulations encourage political parties to go against their own constitutions, to the extent of making decisions and choosing leaders and flag bearers in a manner not envisaged by their constitutions. The evident intention was to encourage political parties to handpick their flag bearers, waiving requirements to hold their delegates conferences for the purpose. The Regulations seek to enable parties to pick candidates using electoral colleges, and to hold meetings by way of video conferencing, followed by resolutions which are signed by circulation to members who are not in physical attendance, and voting on major decisions signing to assent or dissent. They seek to override the constitutions of political parties, which explains why the parties like the DP and FDC have opposed and vowed to defy them in deference to their own constitutions. High Court commences hearing petitions challenging the legality of these new political party regulations on 17 August 2020.

When it comes to elections, the nominating and campaigns are to be regulated by the guidelines above referred to. These have not even been enacted as statutory instruments, and so they are of a dubious legal status.

Be that as it may, the guidelines and the subsequent Political Parties and Organisations (Conduct of Public Meetings and Elections) Regulations lay down elaborate procedures for issuance of nomination forms, collection of signatures, actual nominations, campaigns, polling and tallying. The thrust of the provisions is that they minimise physical contact between candidates or their agents and election officials, and between candidates and other members of the public. The need for this, in terms of preventing Covid-19 infection is obvious and need not be belaboured here. Without having to impute bad faith on the part of the framers of the Regulations, the point of the instant discourse is that while the Guidelines and the Regulations may have been necessary, the issue here is whether with such strictures, it is conceptually and practically possible to have the free and fair election envisaged by the international and municipal law just cited.

This question can only be answered in the negative. The electoral regime enshrined in the existing law and the international standards for free and fair elections simply never envisaged a 'scientific' election in the form in which it is being rolled out in Uganda. To disregard this reality and obstinately go ahead to roll out a virtual election is to lay ground for contestation of the outcome of the election, at both the political and legal level.

## 2.9 LIKELY CONSEQUENCES OF THE 'SCIENTIFIC ELECTION'

At the political level, it has been suggested that the groundswell of frustration and anger that is likely to result from conducting a deeply controversial, generally unsatisfactory and visibly illegitimate election would be to tip-over an already delicate situation with the real possibility of widespread unrest and possibly an uprising. But even if things do not go that far, the feeling that the measures are self-serving could rob the next government of the last vestiges of legitimacy. This is more so, if it appears that the guidelines were not applied in an impartial manner but were instead used to give undue advantage to the ruling party's presidential, parliamentary, and local government council candidates.

If, as the early indicators demonstrate, the incumbents and those connected to the regime in power appear to breach the guidelines with impurity, then this could trigger widespread hostility towards and defiance of the entire range of anti-Covid19 measures, which could easily plunge the country into a health disaster of incalculable proportions.

But besides the political repercussions, the scientific election could result in long drawn legal battles. As already pointed out, a case (application) was lodged in the High Court on 19 June 2020, in which one Joseph Kabuleta sought a declaration that the guidelines and revised roadmap were a violation of the right to vote, to be elected and to participate in public affairs; was unconstitutional, high-handed, ultra vires, arbitrary and unfair; and violate Uganda's obligations under international law. The application was dismissed by High Court with costs on 14 August 2020. High Court Judge Esther Nambayo ruled that the applicant did not follow the required procedures because he had to first petition Electoral Commission before heading to court.<sup>45</sup>

It is possible that after the elections are carried out, scientifically, a court of law like the Constitutional Court could successfully be moved to nullify the entire exercise as having been unconstitutional, again creating a crisis and forcing another round of electioneering, with the attendant expenses and socio-political uncertainty and tensions. It would of course be understandable if the political leaders of the country were willing to risk the possibility of litigation, if there is no alternative, that is to say, if the holding of the election was a command of the Constitution, which the state has no way around. It is therefore important to explore what other options are available.

## 2.10 WHAT ALTERNATIVES ARE AVAILABLE?

The Electoral Commission seems hell-bent on conducting the election its own way, in the middle of a global pandemic, come what may. Yet some alternatives have been floated.

It would of course be irresponsible to suggest throwing caution to the winds and allowing normal (old style) nominations, campaigns and polling, complete with convoys and huge crowds of screaming supporters, massive rallies and huge crowds staying at polling stations all day long on polling day. What is going on all over the world has amply demonstrated that Covid-19 is real. It does kill and has the potential to wreck whole nations, if not continents. Electioneering the usual way is out of the question.

However, it is entirely possible to carry out a safe election without the obsessive measures that have been instituted. It is for example possible to limit the size of campaign rallies, as opposed to completely outlawing them, so long as social distancing and other protocols can be observed at campaign venues. It is also possible to limit the number of supporters that can escort a candidate to nominations. Likewise, voters can be allowed to remain at polling stations but observe social distancing in addition to other SOPs such as hand washing or sanitizing, wearing masks and avoiding badly ventilated environments. So instead of investing the national energy and resources into effecting an illegitimate election, the policy makers and implementers ought to spend such resources in working out and financing a more legitimate election process. The additional expenditure that would result from enforcing and implementing additional health protocols are nothing compared to the cost of having an unconstitutional election and an illegitimate government.

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45 . "Court dismisses Kabuleta's case against EC revised Electoral Roadmap", *chmireports* 14 Aug 2020.

There is really no serious harm in allowing the hosting of events such as manifesto launches, unveiling, of task forces and agents, meetings and similar occasions involving up to a few hundred people, so long as the forces of law and order are on hand to ensure that SOPs are observed at the candidate or party's cost. The EC can also consider encouraging house-to-house, door to door campaigns which are in any case common in practice (locally known as kakuyege). These are safe and yet quite effective in enabling participatory involvement of the voter and are common in countries such as the US and the UK.

The problem with the EC is that instead of engaging the stakeholders to explore such options, it chose to go along with the position already taken by the government, whose umbilical cord with the ruling party makes even its most well-intended proposal appear suspect.

The other alternative is to suspend the election, at least for now. The claim by Don Wanyama, that there is no vaccine or cure in sight and that therefore this would be impracticable, is without merit. In the first place, it is a known fact that there are literally hundreds of vaccines under development, some of which are in advanced stages of trial. The overwhelming medical opinion is that in the course of 2021, viable vaccines will be available.

Covid-19 is not the first viral pandemic to attack humanity, and humanity has always found a way. There is no good reason to treat the holding of the general election in January or February 2021 as a matter of life and death, as if the law had no provision for postponing the election until such a time as it is possible to have legitimate a process. This can be done by invoking the emergency provisions of the Constitution. Article 77 (4) of the Constitution provides that:

*Where there exists a state of emergency which would prevent a normal election from being held, Parliament may, by resolution supported by not less than two-thirds of all members of Parliament, extend the life of Parliament for a period not exceeding six months at a time (emphasis added).*

This is an interesting provision. In the first place it shows that the spirit of the Constitution is against forcing an election during abnormal times, the way it is being down. Where a normal election is not possible, the option available under the Constitution is to declare a state of emergency and extend the life of the current Parliament. Secondly, the six-months extension can be repeated over and over until the situation normalises. The provision, however, only applies to the term of Parliament.

Article 103 (3) commands that presidential elections are to be held "during the first thirty days of the last ninety days before the expiration of the term of the president." The EC Chairman has correctly computed that give that the current five-year presidential term expires on 12<sup>th</sup> May 2016, the election must be held between 10<sup>th</sup> January and 8<sup>th</sup> February 2021. However, that is not the end of the story.

Although the Constitution does not provide for extension of the Presidential term on account of a state of emergency, nevertheless, Article 103 (d) implicitly indicates that the Constitution did envisage a situation where "a normal presidential election could not be held as a result of the existence of a state of war or a state of emergency", in which case one would then be held outside the narrow window prescribed in Article 103 (3), at such a time as Parliament may by law prescribe.

So both presidential and parliamentary election can be postponed and held later where a state of emergency is declared, save that in the case of the latter the term of the sitting parliament can be extended (to among other things enable it pass legislation, including one for a special presidential election). On the other hand, for the presidency, the term of office would simply expire, and the president would have to vacate office in May 2021.

The question then is whether the prevailing conditions warrant the declaration of a state of emergency, to trigger the invocation of Article 77(4) and 103(3) (d) of the Constitution.

A state of emergency is not something to be declared lightly, considering that it has the effect of suspending civil liberties and empowering the government to exercise extraordinary powers and take measures that would ordinarily be considered illegal, ultra-vires or unconstitutional. Generally, a state of emergency should only be declared when a public emergency 'threatens the life of the nation' in a way that cannot be adequately addressed by the Constitution and existing law.

Uganda's legal provisions regarding declaration of a state of emergency, that is to say, what a state of emergency is, when one can be called, and what consequences a state of emergency has on rights, freedoms and the electoral process are rather scanty. Article 110(1) of the Constitution provides:

- (1) The President may, in consultation with the Cabinet, by proclamation, declare that a state of emergency exists in Uganda, or any part of Uganda if the President is satisfied that circumstances exist in Uganda or in that part of Uganda -
  - (a) in which Uganda or that part of it is threatened by war or external aggression;
  - (b) in which the security or the economic life of the country or that part is threatened by internal insurgency or natural disaster; or
  - (c) which render necessary the taking of measures which are required for securing the public safety, the defence of Uganda and the maintenance of public order and supplies and services essential to the life of the community.

It has been suggested that these provisions do not meet the level of specificity required by international law. It is however submitted that the Covid-19 phenomenon is a natural disaster which threatens the security and economic life of the country and calls for the taking of extraordinary measures, and is precisely the kind of situation the above provisions of the Constitution, such as they are, were designed to address. If a pandemic that has forced the entire world to go into lockdown for months even at the risk of bringing the global economy to a standstill, one that has claimed hundreds of thousands, does not call for a state of emergency being declared, what does! There is no doubt that under Covid-19, an election cannot be held naturally. Under Article 77 (4) and 103 (3), when elections cannot be held naturally the available option is not to come up with alternative processes that are not founded in law, but to declare a state of emergency, suspend the elections, and hold them when the emergency has passed.

Incidentally, Uganda is not the only country which finds itself having to consider whether to hold elections under Covid-19. And different countries have reacted differently. According to the Institute for Democracy and Electoral Assistance—IDEA International, from 21<sup>st</sup> February to 11<sup>th</sup> August 2020, at least 69 countries and territories across the globe postponed national or subnational elections due to Covid-19. Out of these, 16 subsequently held them, after they were satisfied that they had since put in place sufficient measures to be able to hold the elections safely.

On the other hand, at least 53 countries and territories decided to go on with the elections. In Africa alone, by-elections have been postponed in Botswana, Gambia, Kenya, Nigeria, and Zimbabwe, while parliamentary elections were postponed in Chad, Gabon, Liberia (for Senate), and Somalia. Municipal elections were postponed in South Africa and Tunisia. Meanwhile, some of the countries of the world in which elections were held include the following:

Country/Territory	Election type	Date
Iran	Parliamentary	21 February
Togo	Presidential	22 February
Slovakia	General	29 February
Cameroon	Parliamentary re-run	22 March
Guinea	Legislative + Const. Referendum	22 March
Guyana	General	2 March
Israel	Legislative	2 March
Mali	General	29 March
Tajikistan	Parliamentary	1 <sup>st</sup> March
Vanuatu	General	19 March
South Korea	Parliamentary	15 April
Burundi	Presidential	20 May
Benin	Local	17 May
Suriname	General	25 May
St. Kitts & Nevis	National Assembly	6 June
Mongolia	Parliamentary	24 June
Iceland	Presidential	27 June
Serbia	Parliamentary and Local	21 June
Malawi	Presidential re-run	23 June
Poland	Presidential	28 June
Russia	Constitutional Referendum	1 July
Croatia	Parliamentary	5 July
Japan	Gubernatorial	5 July
Dominican Republic	Presidential & Parliamentary	5 July
North Macedonia	Parliamentary	15 July
Syria	Parliamentary	19 July
Sri Lanka	Parliamentary	5 August
Belarus	Presidential	9 August
Trinidad & Tobago	General	10 August
Egypt	Senate	11-12 August

*Source: Institute for Democracy and Electoral Assistance—IDEA International*

In all the cases where elections were held in Africa, the respective governments took some protective measures. These included: regular cleaning of polling stations; mandatory use of masks and gloves for election officials; temperature checks at polling stations; provision of hand washing facilities for voters; and social distancing in queues. Benin took the most precautionary measures, whereby the government cancelled campaign events and banned gatherings of over 50 people, forcing candidates to focus on media appearances and campaign posters. In all these elections, voter turnout was unusually low.

What the above demonstrates is that there is no hard and fast rule as to whether elections ought to be held or postponed on account of Covid-19. Each country responds according to its own political dynamics.



## 3 EMPIRICAL FINDINGS On Scientific Elections

### 3.1 THE GENESIS OF 'SCIENTIFIC ELECTIONS': THE 'WHY' AND 'HOW'

In this section we present the official pronouncements of the Chairman of the Independent Electoral Commission, Justice James Mugenyi Byabakama on the revised road-map for the Scientific 2021 general elections. This is followed up with some debates on the EC road map.

#### 3.1.1 Why the Scientific Election?

The stated reason for justifying a scientific election, as given by the Independent Electoral Commission (IEC), was to avoid the spread of the COVID-19 virus through activities related to the election such as mass campaign rallies, sporadic movements, recklessness and crimes. To this extent, stakeholders are agreed on the necessity of this as a public health consideration. All of these are considered very high risk and prone to contagion and rapid spread of the pandemic. Be this as it may, however, there are many versions of the un-stated versus the real justifications/ulterior motives behind the planned 2021 scientific elections, which has left citizens across the age, gender and socioeconomic divided confused and anxious about the future of democratic governance in the country.

Foremost among the above, there has been an expressed concern to the effect that if the COVID pandemic was such a big national risk, then the most rational option would have been to invoke the state of emergency article in the constitution, as discussed in the previous chapter, and establish an interim government, and postpone the polls to a time when the pandemic would have been brought under effective control. As a youth leader in an FGD in Nansana, argued: "elections are not and must never be a matter of life or death; if there are indeed, real and high risks to lives, then postpone elections and save lives". Across the spectrum of respondents, there is skepticism as to why we must have the 2021 polls at the expense of the health, safety and lives of Ugandans. There is a sense in which the some have gone ahead to claim that the 2021 election is being imposed on Ugandans against all odds. The political interests behind this may not be, to some people, for the genuine public good.

The fact that the timing and schedule of the elections has been intensely questioned, particularly the way every activity is being crammed into a very short period, has raised the anxiety of portraying the election as an emergency in its own right. This emergency-like mode, in such an important matter as a national election is faulted for adversely impinging on the free will of the citizens, as discussed in the previous chapter. Local leaders and their constituents have one thing in common when asked about the scientific elections, which is that they were all ambushed by the Independent Electoral Commissions (IEC) pronouncements regarding this unique general election and yet there has been no effort whatsoever to sensitize the masses on what this means, or how different stakeholders fit into its implementation and management, among others.

#### 3.1.2 IECs Statement on the Revised Roadmap for 2020 Scientific Elections

According to IEC Chairman, the corona virus pandemic has influenced some electoral activities under the Roadmap for the 2020/2021 General Elections. Among others, this is because on the 23rd day of March, 2020, when Government declared a nationwide lockdown, the Commission was already implementing preliminary activities under the

Roadmap for the 2020/2021 General Elections notably by updating and displaying of the National Voters Register and Registers of Special interest groups. According to the Chairman, by the time of the lockdown, the EC was particularly carrying out activities for the conduct of elections for the Special Interest Groups (Persons with Disability, Older Persons, Youth) Committees from Village to National Levels. This was to be followed by other preparatory activities for elections of Local Government Councils, Members of Parliament, and the President. However, because of COVID-19 and the lockdown, The Electoral Commission postponed the above activities under the Roadmap, in response to measures introduced by Government to prevent the spread of the deadly Coronavirus. This is because electoral activities involve public gatherings and hence pose high COVID- 19 risk of person-to-person and object-to-person transmissions.

The Chairman observed that because of the postponement, the Commission has lost three months of critical Roadmap activities, and regretted the resulting inconveniences, which included; political parties and organisations, which were preparing internal primaries to identify their flag bearers at various elective levels, as well as individuals who are aspiring to contest as independent candidates at various levels. The Chairman IEC further added: “the postponement was inevitable. The Commission recognises the constitutional right of citizens to vote and choose their leaders, as well as our duty to facilitate the exercise of those rights. The Commission is further mindful of the need to ensure a healthy and safe environment for all stakeholders during the electoral process”. On June 16, 2020, came the pronouncement:

*Accordingly, after consultations with, and expert guidance from the Ministry of Health, the Commission has considered and approved a revised Roadmap for the 2020/2021 General Elections as indicated here in this Revised Roadmap highlights the dates for commencement of various key electoral activities, namely, nominations, campaigns and polling for various elective positions, that is, Presidential, General Parliamentary and Local Government Councils. The Roadmap also highlights the period for conduct of elections for Special Interest Groups (Persons with Disability, Older Persons and Youth) Committees from Village to National Levels. A copy of this Revised Roadmap has been availed to each one of you to enable you study the details and identify the necessary action to take. A soft copy of the same document has been uploaded on the Electoral Commission website: [www.ec.or.ug](http://www.ec.or.ug) for easy access by other stakeholders (p.2)<sup>46</sup>*

The Chairman EC then declared that given Covid-19 pandemic, and health risks involved and the expectations during the electoral activities, preparations and conduct of “these elections will take different modes”. The Commission has done a risk analysis, the implications and instituted mitigation measures in line with the guidelines issued by the Ministry of Health. The Commission has also considered the need to preserve the health of the Citizens vis-à-vis their constitutional and democratic right to elect leaders of their choice as guaranteed under the Constitution, and come up with a plan that ensures minimal person-to-person contact during the implementation of the electoral process (p. 3). For example:

1. The Commission will avail nomination forms on its website that can be printed by those with access to the internet. However, for those with no access to internet, hard copies will be availed.
2. Important to note is that EC will only allow an aspiring candidate with only two (2) people, that is the nominator and a seconder.

46 . *The Republic of Uganda; The Electoral Commission (2020), “Press Statement: Resumption of Electoral Activities under the Revised Roadmap for 2020/2021 General Elections”, June 16, Electoral Commission Head office, Kampala.*

3. Mass rallies will not be allowed but campaigns will be conducted mainly through media.
4. Furthermore, the Commission in consultation with the Ministry of Health considered and adopted Standard Operating Procedures (SOPs) to facilitate safe participation by all stakeholders in the electoral process. These emphasize safe practices, which have been customized to elections and electoral process includes: (i). Practicing social distancing; (ii). Wearing face masks in public; and (iii). Regular washing of hands (p.4).

The following key appeals IEC made to all stakeholders before, during and after the coming 2021 election are worth noting:

1. EC appealed to political parties and organisations as well as individuals aspiring to contest as independent candidates, to utilize the limited time provided in the revised Roadmap and prepare to participate in the respective activities.
2. EC appealed to media owners to avail opportunities to all the candidates for fair coverage of the digital elections.
3. EC advised political parties and aspiring independent candidates to ensure safe practices during primaries and other preparatory activities by ensuring their agents and supporters strictly follow the guidelines on public meetings as issued by the Ministry of Health.
4. Finally, EC called upon all Ugandans to work together to ensure safe and healthy participation in the elections (Electoral Commission Roadmap 2020/2021, Ibid, p.5).

The revised elections Roadmap sparked an array of mixed reactions from stakeholders across the country and beyond. One of the key concerns was the glaring silence in the content on any reference to the 'now infamous' phrase 'scientific election'. Perhaps, it is understandable considering the challenges IEC is facing in defending this as the modality of the coming 2021 general elections. Whereas most have come to accept ECs notion of scientific elections to mean "these elections will take different mode", particularly because of being conducted under stringent COVID-19 standard operational procedures (SOPs), others have looked beyond the box for explanations, and cried out aloud that having elections of this nature, under the guise of the pandemic environment, is nothing short of a breach of the principle of free and fair elections as a key tool of a democracy. Coming below are selected debates on the IECs 2020/2021 Elections Road map.

### 3.1.3 The Joint CSO Position Paper on Election Roadmap 2021

The Civil Society Organisations (CSOs) point out that when EC launched the revised election roadmap on 16th June 2020, it proposed 'digital' political campaigns ahead of the 2020/21 general elections it was on the pretext of integrating amendments that promote health and safety measures to control the spread of Covid-19. The Electoral Commission stated that all election campaigns will be conducted mainly through media while Election Day activities will be conducted with specific Standard Operating Procedures (SOPs) to facilitate safe participation by all stakeholders in Election Day activities. These measures include:

1. Practicing social distancing;
2. Wearing face masks in public, and;
3. Regular washing of hands (CSO Position paper 2020).

However, the Joint CSO Position paper raises several concerns on this roadmap. From the point of view of civil society, whereas the Commission demonstrated pro-activeness in proposing 'digital' campaigns, it did so with limited or no stakeholder consultations beyond MoH. This has resulted in a public discourse that characterizes the proposed digital campaigns as unfair. There are therefore key challenges that relate to the fairness, credibility, and inclusivity of the method of campaigns that IEC seeks to embrace.

In addition, CSOs are also concerned that the Constitution and other related laws are designed to ensure that elections foster free physical interaction between voters and the voted as a basis for informed decision-making. Therefore, the interaction between a candidate and the electorate ensures free and fair election based on the tenets of representative democracy. Direct interaction ensures information sharing and provides a feedback mechanism necessary to execute the social contract between leaders and voters. For most voters, it provides this only one-off moment in a 5yr cycle when they effectively exercise their power as voters over those they elect into leadership positions.

Furthermore, the CSOs correctly observe that the proposed 'digital' method of campaigns does not conform to provisions in Section 21 of the Presidential Elections Act; Section 20 of the Parliamentary Elections Act, and; Section 122 of the Local Government Act on campaign meetings and rallies. A 'fair' electoral process is one where the 'playing field' is reasonably level and accessible to all electors, parties, and candidates. In the 2016 presidential elections petition, the Supreme Court observed that while the introduction of technology in the election process should be encouraged, it should be done well within time to train the officials and sensitize voters and other stakeholders<sup>47</sup>.

Above all, the CSOs noted that though an amendment to the Electoral Commission Act, Cap 140 was made in March 2020 to allow for the integration and use of technology in Uganda's electoral process, the provision remains largely generic and does not offer a threshold to hold the implementer accountable (Joint CSO Position Paper, 2020).

### 3.1.4 IPOD engages EC on conducting an election with integrity

In a meeting held on July 3, 2020 at Sheraton Hotel, Kampala, heads of political parties under the Interparty Organization for Dialogue (IPOD) asked the Independent Electoral Commission (IEC) to engage various political players to harmonize the revised electoral roadmap as the country battles COVID-19. The matter came up during a discussion between the parties and IEC. The deliberations centered on IEC scrapping public campaigns in the revised roadmap saying they attract crowds which may fuel the spread of COVID-19.

In lieu of public campaigns, the IEC advised candidates to resort to virtual campaigns to reach out to their voters triggering a heated public debate. EC chairperson Justice Simon Byabakama said the commission would issue guidelines on how the roadmap would be implemented.<sup>48</sup> The response from political parties are as depicted below reveal and absence of consensus with the IEC:

47 . See, for example *Presidential Election Petition 10, 01, 2016 UGSC, 3 (31, March 2016)*.

48 . "IPOD members engage EC on conducting an election with integrity" *Political independent.co.ug* July 3, 2020. The meeting was held at Sheraton Hotel in Kampala under the theme "Delivering Safe and Credible Elections amidst COVID-19 in Uganda"

Hon. Jimmy Akena, the president of Uganda Peoples' Congress wished the Electoral Commission could engage different agencies of government to harmonies guidelines on how the roadmap will be implemented. According to the heads of UPC, the commission needs to engage the Ministry of Health and security agencies to avoid colliding with politicians as they conduct business.

Hon. Norbert Mao, the president of the Democratic Party asked parliament to discuss the possibility of postponing the election saying the country cannot treat the election as a do or die affair. According to the DP President General, the commission should dialogue with different political players on how to proceed.

The National Resistance Movement-NRM party secretary general Justine Lumumba who opposed suggestions regarding postponement of the elections, asked the Commission to devise ways to ensure that people in different areas like those at the border access information through media. From the point of view of the NRM Secretary General, some areas at the border listen to radios from neighboring countries, and the country cannot count on candidates going to radio stations in neighboring countries to reach out to people inside Uganda's border areas.

Mugisha Muntu, the presidential candidate of the Alliance for National Transformation (ANT) asked the Ministry of Health through the Commission to conduct a study in busy areas like taxi parks and Kikuubo so as to inform on the impact of crowds amidst COVID-19. The Coordinator of ANT intimated that the large numbers in such areas are like a daily rally and that their existence beats the logic behind banning rallies.

In response, Justice Simon Byabakama Chairperson of the IEC said the Commission is open to suggestions and will continue engaging with different stakeholders and consider their suggestions. He says they are also thinking about how else campaigns can be conducted outside media outlets.

### 3.1.5 EC Bows to Pressure, Considers Allowing "Limited" Political Rallies

As we conclude this section, it is worth noting that the Electoral Commission has continued to engage stakeholders on the way forward for the 2021 Scientific elections. It is reassuring to note that the IEC could consider allowing limited number of people on political rallies. According to Trumpet News (2020), this was announced by the Electoral Commission Chairman Justice Simon Byabakama while meeting political actors from Inter- Party organization for dialogue (IPOD) at Sheraton Hotel<sup>49</sup>. IEC Chairperson noted that:

*"We have taken note of these concerns and as a result of the engagements we have had with stakeholders, the commission is considering numerous recommendations floated by the stakeholders," According to Justice Byabakama, "these rallies could have numbers as small as 50, or 30 or 100... we have never encountered these kinds of challenges before. We never imagined that there would be a day when we couldn't go to church, or our children to school," he said<sup>50</sup>.*

49 . *Chimpreports.com, August 7, 2020*

50 . *EC is Studying Possibility of allowing 50-100 People on Rallies - Trumpet News trumpetnews.co.ug, July 2, 2020*

According to Trumpet News, the Alliance for National Transformation (ANT) presidential candidate Gen Mugisha Muntu welcomed IEC idea saying, "regulated meetings are possible as long as you stick to the regulations like wearing of masks and social distancing and washing hands. If we all work together, we can achieve that" (Gen. Muntu, Coordinator, ANT).

### 3.1.6 More Policing expected during scientific elections

On August, 7 2020, the EC Chairman appeared on NTVU, 10.00 pm. News Bulletin, and announced that candidates, and their agents, would be allowed to hold public rallies with 'regulated' numbers of supporters provided it is done in 'open' spaces and, above all, the spaces are permitted and inspected by the Police. On the same day, chimreports.com (2020) reported that the elections body, the Electoral Commission had welcomed the new police unit that was recently established to prevent supporters of candidates who have made it a norm to cheer them on as they make their way to and from the talk shows on the various media houses. Apart from stopping supporters from escorting their preferred candidates to and from media houses, the media house will be required to share with police in advance, the details of the guest they intend to host. Presidential hopeful Robert Kyagulanyi has had his supporters escort him and gather outside various radio and TV stations in Kampala and Jinja. On Friday, the Commission chairperson Justice Simon Byabakama said police is an independent organ of the state mandated to perform its duties of ensuring law and order.

If this unit is meant specifically to address issues related to violence, we welcome it because we have to ensure that our election remains peaceful and, therefore, the Uganda Police Force as an agency tasked with maintenance of law and order, and to ensure that there is peace, is required to put in place measures as they deem necessary, said Byabakama. He, however, added that they are having engagements with the police to see how the candidates and voters can participate in the electoral process as freely as possible while observing COVID-19 preventive measures". Byabakama also said that,

*"Conveners of meetings should notify the police authority in the respective area on the identified venues which shall be inspected for suitability in regard to compliance with the Ministry of Health guidelines," he added. Candidate's agents, he said, may also conduct regulated campaign meetings on behalf of the candidate but in compliance with the COVID-19 preventive guidelines issued by the Ministry of Health. "All candidates, conveners and venue owners shall ensure that the campaign or meeting venues are provided with hand washing facilities and sanitizers."*

The IEC has however clearly stipulated that when meetings are convened, police should be there to only ensure COVID-19 preventive measures are observed. "Let it be understood, the factor of notifying police is not to seek their permission to hold that process but to establish whether you will be able to observe the SOPs with regard to the fight against the virus (COVID-19) in that place," he said<sup>51</sup>

Therefore, the debates on the need and efficacy of the 2021 'scientific' elections are still raging on. As we demonstrate in coming sections of the report, whereas some Ugandans agreed with IEC that these elections should go on, especially for as long as IEC and other stakeholders uphold the required SOPs on COVID-19, and constitutional liberties and democratic outcomes, the majority of them still maintain that the elections are unhealthy both for the lives and democratic future of the country, and therefore, they should be postponed altogether

<sup>51</sup> . "EC Welcomes New Police Unit Set Up to Enforce Order, Compliance to SOPs during Electoral Campaign Activities". chimreports.com14h

### 3.1.7 How will the scientific election be conducted: What will be different from previous polls?

The 'how' of the scientific election has not been explained convincingly, and stakeholders had very diverse understandings of what it exactly means and what the voting procedures will be. Some think it will mean voting by electronic voting machines, as was attempted in the 2016 polls; for others that it will mean using internet and social media to electronically send ones voting choice to a central server in the Electoral Commission; others think that only those with smart phones will be able to vote; yet many others, think that only those with computers connected to the internet will vote in the 2021 scientific elections or will voters post their ballots through the mail, i.e. mail voting.

The fact that almost no commensurate investment has been made to conduct a mass voter awareness of the how question on the actual definition and conduct of the scientific election in 2021 is seen by most of the citizens as a grave, and deliberate omission to sow confusion so that many eligible voters are frustrated not to vote. An issue was raised over electoral irregularities which have plagued previous elections that were done in the conventional 'non-scientific' manner and wondered how this 'new' approach will not simply exacerbate and amplify old problems under the guise of scientific.

Among others, citizens pondered on the time it will take all eligible voters to successfully complete the scientific cycle of elections given the stringent enforcement of observing all the Standard Operation Procedures, such as: the regular cleaning of polling stations; the mandatory use of masks and gloves for election officials and voters; temperature checks at polling stations; the provision of hand washing facilities for voters; social distancing in queues which will make it a very slow voting process, and to the extent that, unless otherwise stated, the usual duration of voting time will not suffice for all to vote under these circumstances.

### 3.1.8 Fear of brutality and harassment during 2021 Elections

On August 7, 2020, IEC Chairperson welcomed the establishment of a special Elections Police Unit for the 2021 scientific elections. IEC welcomed this unit if it was meant specifically to address issues related to violence, as this would ensure that our election remains peaceful and, therefore, the Uganda Police Force as an agency tasked with maintenance of law and order, and to ensure that there is peace, is required to put in place measures as they deem necessary. The IEC Commissioner, however, added that:

*"they are having engagements with the police to see how the candidates and voters can participate in the electoral process as freely as possible while observing COVID-19 preventive measures" (chimreport.com, 2020).*

However, be it as it may, Ugandans have their fears about the police, or indeed armed forces, including the Uganda Peoples Defence Forces (UPDF) getting directly involved in matters of elections. From experience, under the guise of maintaining law and order, the forces have a history of being partisan and practicing unfair hostilities on the opposition. Police has usually been accused of corruption and failing to protect the poor during election time.

## 3.2 THE REACTION TO THE 'SCIENTIFIC ELECTION': PERSPECTIVES OF STAKEHOLDERS

It was not anticipated that a consensus on the merits and demerits of holding a 'scientific' election would be easy or quick to arrive at. But the reactions assessed in this section were based on what different people understood the scientific election to be, and to mean. As the findings show, the reaction stems from the fact that the concept, 'scientific' was not explained satisfactorily to citizens, which led to each taking a different interpretation of what scientific meant. Below are some of the reactions.

### 3.2.1 Conceptions of the 'scientific election: What people understood

*"What is this scientific election like? Does it mean digitalized elections because anything scientific has elements of Information Technology? In which ways will the elections 2020/2021 be digitalized?" [July 27, 2020, In-depth interview with Councilor, Nansana Municipality].*

Citizens across the board stated that they had not experienced before, been informed, or sensitized. It is feared, that in a country where the majority of media; broadly to include print, audio, auidial visual and increasingly even virtual or social media, is controlled by the government directly and indirectly, the opposition cannot enjoy level spaces for free and fair electoral practice and outcomes, and are therefore not sure of what 'scientific' election means. Several concerns led to this state of affairs: a). IEC made a unilateral decision and pronouncement on this scientific election; b). IEC or any associates never undertook to educate or sensitize any forum, organization or structures about the meaning, management, and implementation of this new scientific election; c). IEC has not even indulged in any substantial way, leaders at national and local levels what this scientific election is all about; d). Similarly, no leaders were empowered by any form of authority to hold mass sensitization on the scientific elections for them to raise awareness of their electorate. Therefore, for many Ugandans, led or leaders, this scientific election remains a mystery and something that everyone can interpret as they so wish, and probably, during campaigns and voting periods, apply to the best of their different interests.

The findings also show that, mainly because of the above, many Ugandans question the 'science' aspects of these elections. Among others, the following reasons: a). under normal circumstances science was used to mean sophistication, novelty and something that eases chores or life, an essential human good and high social order. However, in this case, Ugandans are confused on why this 'scientific' election seems not to fit their conception of science as interpreted above. Among others the following concerns: (a). the scientific elections are conceptually and practically complicated and a source of obscurities that for many portends chaos in future; (b), therefore, for many, the scientific election is in reality 'a non-science', make fit for the benefit of incumbents. Some respondents referred to it, in pidgin Luganda as 'Ku Sayansa".

"Ku Sayansa" literarily means 'lies, trickery, or deceptions' to attain ones ends. In this parlance, most times the end is to satisfy selfish interests of the one promoting it, at the expense of the common good. In the ensuing discussions, some stated: "I think scientific election is voting on social media and using phones to campaign and vote." [July 28, 2020, FGD at Yesu Amala, Nansana Municipality]. Another one stated "for me this scientific election means that the politicians will campaign over the radios, televisions and I think on phones. And then during voting, we go and vote at polling stations, and must leave the polling station immediately to avoid COVID-19" [July 28, 2020, FGD at



Yesu Amala, Nansana Municipality).

*Another one agreed about the technique but wondered "in my view, scientific election means voting using the phone but still on the phone I may not have data. Using my phone to vote may require having some data. Maybe it is also about the type of phone required to vote. Maybe only those with smart or touch screen phones will be able to vote but how many Ugandans have a touch screen phone?" (July 28, 2020, Yesu Amala, Nansana Municipality).*

*Yet another was of the view that "this concept of a scientific election was a real big puzzle. Most of us are not educated, and even when I tried to ask my neighbors, they too are illiterate, so we started asking ourselves what is this scientific all about; EC did not explain the meaning to people" (July 27, 2020 FGD at Nansana 2 B Zone).*

This means, coming into the scientific elections in 2021, Ugandan citizens are skeptical of the intentions behind and ponder on what common good that is likely to come out of conducting the elections 'scientifically'. Many Ugandans feel the 2021 election is being imposed on the society since it favors the incumbents or old politicians who already have access to media, sophisticated phones and can manipulate them to their advantage. However, those who cannot afford ICT, fresh politicians and first-time voters will suffer exclusion and some contemplate not participating in the electoral processes, including staying away on voting day.

*Another reaction was that "even the word 'scientific' itself is complicated, many may fail to pronounce it others have to Google it. It means you must have a smart phone so you can know the meaning so many people are so ignorant about the meaning of this word the context of elections. I feel sorry for the people with the button phones, they will be left aside. Basically, this election is only for the rich who will actively participate (July 28, 2020 FGD in Nansana 1B Zone).*

### 3.2.2 Why not postpone the 2020/2021 elections?

In addition, many of the citizens raised their apprehension over holding the 2021 elections under this 'scientific' roadmap. Among others: (a), if indeed there is concern over holding the elections the normal or traditional open campaign manner, because of the prevailing health risks posed by COVID-19 why not postpone these elections until the pandemic is fully controlled?

Figure 6: Distribution of the Respondents by Opinion on 2021 elections (N=66)

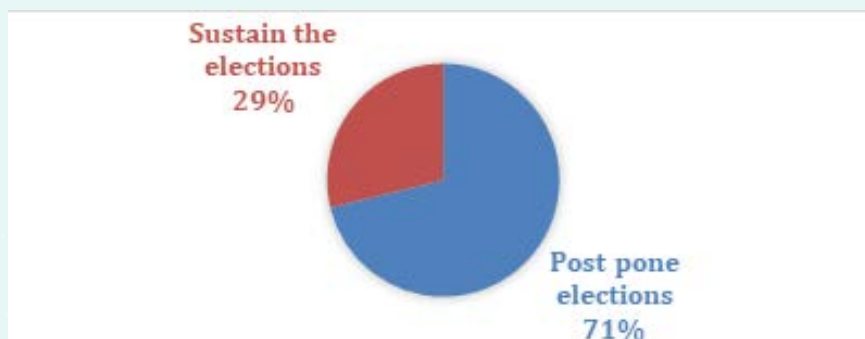


Figure 6 shows that the majority (71%) of the respondents preferred the scientific elections 2021 to be postponed for various reasons reflected in another chart. 29% seconded the IEC position to go ahead with these elections.

Most of those who question the logic of holding 'scientific' elections under the COVID-19 SOPs, among others, observed that the expected social distancing, high levels of hygienic hand washing practices and sanitizing of campaign and voting spaces, among others, may serve the health aspects but grossly inconvenience and agitate voters sparking conflict and violence. For example, Special Interest Groups candidates from Busoga lamented the very high costs of furnishing the voting spaces with hand washing facilities, sanitizers, and the costs of producing posters in lieu of candidates presenting themselves to the electorate<sup>52</sup>. Others feel the SOPs, particularly will be very hard to sustain, in fact FDC threatened to challenge these SOPs altogether because they deem them unconstitutional.<sup>53</sup> On August 8, 2020, the Independent News and other online networks reported that NRM candidates like Hon. Anite in Koboko, Mike Mukula in Soroti, and others, were abusing the SOPs by campaigning openly with crowds. As a result, the police branded NRM and NUP as top violators of health guidelines.<sup>54</sup> This forced some commentators to lambast the government – IEC – and armed forces for practicing 'double standards' on enforcing SOPs.<sup>55</sup>

The specific concerns arising from holding elections under this 'new normal' of 'stay away from me!' (a), how will voters engage their candidates under conditions where they cannot meet to discuss their manifestos? Similarly, (b), under such circumstances how will new entrants compete fairly with old or incumbent politicians who are already known to their electorate? How are new voters, comprising the youth who have just reached voting age, going to enjoy free and fair elections under conditions of not being able to witness and fully participate in political campaigns before choosing their leaders? How will different political camps monitor and secure outcomes of their votes when they will not be allowed to fully participate in the process under the do not crowd and curfew environment?

### 3.2.3 Digital elections and exclusion

The reactions to the scientific vote also drew in concerns about the people with disability and the elderly. It was argued that:

*"To me scientific elections are a computerized system of voting which only elites can use gainfully however the elderly, who are mostly illiterate and the disabled persons, for example the deaf blind, will be left on the sidelines. But we could also worry about people in remote areas like the hills of Bududa who may not have accessible roads, electricity, and water. In all, to this Ugandan, "I only understand that 'scientific election' is something too complicated for those who did not go to school. Meaning there is no fairness in this". They will be left out" (July 31, 2020, FGD in Kisoga, Mukono).*

Many faulted the IEC for trying to deliver hi-tech voting which they may not be able to manage for lack of the requisite infrastructure and scientific capabilities by the 2021 election timeline. For example, it was stated:

*"They always use the word scientific elections, but they have not educated or taught people what they exactly mean. For me scientific election has two words; 'election' to mean voting/casting a vote and 'scientific', that is referring to the campaigns. These are two different things. For example, in the previous election, we had machines for checking thumb prints so one who has voted is recognized and I don't have any problem with that because everyone will see it and it reduces double or multiple voting"*

52 . Views were expressed on the 6.00 pm evening news bulletin on Baaba TV (2020).

53 . FDC (2020): "EC guidelines are unconstitutional; we won't respect them.", August: [nilepost.co.ug](http://nilepost.co.ug)

54 . Police names NRM and NUP as top violators of health guidelines."

55 . Crispin Kaheru "EC should not have double standards on who should hold rallies." [pm1daily.com](http://pm1daily.com)

(July 27, 2020, FGD in Nansana, Wakiso District).

However, if you are saying scientific mean having an election, like it is done in USA, does the IEC have the capacity to release results instantly? In USA, if someone enters the voting booth and ticks a democrat candidate or a republican, the votes are immediately tallied automatically and publicized on an open screen such that even before all their counties finish voting, they already know the winner in that election. Will IEC be able to meet this level of science-meaning automation? (July 28, 2020, FGD in Yesu Amala, Nansana Municipality).

### 3.2.4 The concerns over IEC not undertaking Voter education

Some respondents who called for the postponement. This was on grounds of lack of voter education. This was prevalent and repeated by respondents across the urban-rural divides in the two districts. A disgruntled young lady commented that: "you cannot introduce something without educating people. First educate about something before imposing it on them. But if you just pass a law that we are going into a scientific election, like now in our villages in Kakiri people who have smart phones are very few. My question about the scientific election is that: 'Does it mean that on the polling day will I vote using my phone? Or will I go to the polling station like I usually do and cast my vote?'" (July 28, FGD in Nansana 1 B Zone).

Figure 7: Distribution of the Respondents by Residence and Opinion on elections (N=66)

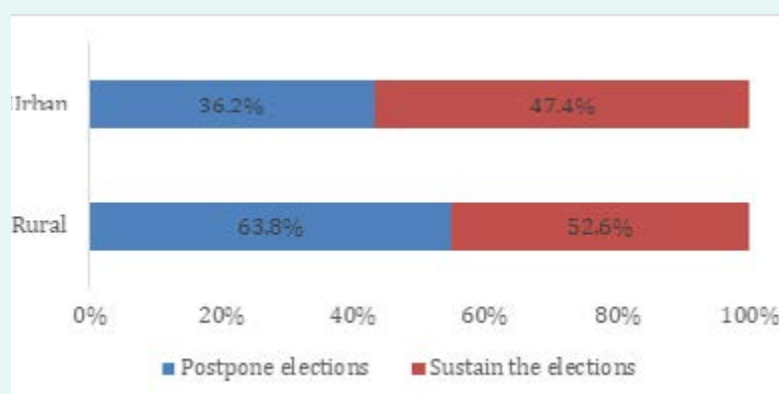


Table 7 shows where most of the opinion for or against holding the scientific elections of 2020/2021 came from in terms of residence of respondents. More respondents in urban areas (47.4%) did not have any problems going ahead with the elections compared to (36.2%). In rural areas, who preferred to have the elections postponed beyond 2020/2021. This differed in rural areas where most of the respondents (63.8%) preferred that the 2020/2021 elections should be postponed compared to those in favor of having the elections held (52.6%). It still presents the scenario in Figure 6, above that give an opportunity to decide, most of the respondents would rather have the 2020/2021 scientific elections postponed.

Another source of anxiety concerned the medium of implementing the scientific elections through Information Communication and Technologies (ICT). It was on many occasions asked. Who and how many in the Ugandan population own ICT for elections knowing that it is a 'banana republic' and third world country? The youth are the bulk of the population, but they are the most unemployed or underemployed sections of society, with the female youth apparently the most burdened by poverty. Consequently, it follows that this bulk of politically active and keen voter population will be unable to enjoy full participation in scientific elections 2021 owing to the lack of access to ICT tools as the medium for participation in 2021 elections. For example:

*"This scientific election issue of voting using the internet will only work in Kampala city. They have neglected or not considered the people who are used to lining up to vote in the village. For example, my grandmother in the village does not have a radio, TV, a smart phone and yet she would have wanted to participate in the 2020/2021 election so I feel she will have been discriminated. The poorest person will have been removed from participating in the election if they will insist on voting from the internet." [July 28, 2020, FGD in Nansana 1A Zone].*

There are also concerns over people with disabilities who are even more likely to get eclipsed in participating in the elections by virtue of structural forms of discrimination, poverty and limited access to ICT, which are now being thrust at the centre of the coming elections 2021. Most of the youth, disabled and elderly have no access to ICT. The girl child has historically remained in the backseat of access, ownership, and full utilization of ICT for development. Therefore, there are fears that girls and women may not be able to enjoy their full participation in coming elections under the challenges of inequitable opportunities for ICT optimization. ICT facilities are expensive. This further complicates its usage in an election, most especially if it is to be borne by the end user. The masses both urban and rural that are poor are automatically excluded. ICTs are more of elite gadgets, but this is a country with very high levels of ignorance, poverty, and illiteracy.

The issue of ICT barriers pointed at the possibility of a deliberate scheme of instrumentalizing elections through the promotion of preferential access to media in ways that exclude certain political categories, for example, excluding the opposition, independent political actors, and non-aligned organizations. There is concern that, as is already being practiced, the ruling National Resistance Movement party (NRM) is using its wide grassroots base, by which it controls most of the FM stations in the country, to block the opposition from accessing and fully utilizing the media. It is feared, that in a country where the majority of media; broadly to include print, audio, audial visual and increasingly even virtual or social media, is controlled by the government indirectly, the opposition cannot enjoy level spaces for free and fair electoral practice and outcomes.

In addition, NRM is accused of fighting other proxy wars with the opposition, notably NUP through UPC. On August 17, 2020, the Independent published an article "In the spotlight – Why NUP is test for ECs boss Byabakama", in which they allege that IEC has been dragged into two wrangles involving the National Unity Platform (NUP) of Kyadondo East MP Robert Kyagulanyi aka Bobi Wine. We quote:

*The first is a fight between NUP and another opposition party; the Uganda People's Congress of Lira Municipality MP Jimmy Akena over the use of the colour red. The other is a petition challenging how Bobi Wine became president and presidential flag bearer of NUP. They allege that Jimmy Akena has turned UPC into an ally of President Yoweri Museveni's government in which his wife, Oyam South MP Betty Amongi, is a minister. Akena's fight with Bobi Wine is seen by many as a proxy fight on behalf of Museveni. Bobi Wine's fight with people claiming to be aggrieved NUP members has also been cast in similar tones. According to social commentary, the petitioners against Bobi Wine to the EC are agents of the ruling party NRM (The Independent, August 17, 2020: Cover Page).*

According to the Independent, many say how the EC Chairperson, Simon Byabakama; a former prosecutor and judge, handles the affairs of Bobi Wine and NUP could either kill or kindle his career. The Independent further points out that, whether rightly or wrongly,

Byabakama has been tied to the NRM and Museveni but so have all past heads of the Electoral Commission. Most have been called “NRM cadres”. But some have earned respect as election managers under tough conditions while others have been criticised for being overly pro-Museveni<sup>56</sup>.

There were claims of impunity by NRM supporters who are said to be breaking the SOP rules with impunity, while members of the opposition and their supporters are being undermined, including not being allowed inside media houses, and if they do, there is always heavy security deployment gagging their free expression by intimidation and harassment of their supporters. Many are also very concerned that print and social media could be used through phot-shop and worse off cybercrime to defame opponents in ways likely to further disadvantage level playing field for the government and opposition candidates. Issues of language barrier, gerrymandering of electoral areas, unfair access and use rights as well as direct state fiat meted on the opposition are likely to diminish the value of an ICT driven election going under the ‘scientific’ label in 2021.

### 3.2.5 Where is evidence of government support for the ‘scientific’ elections?

Citizens the study team interacted with posed this question several times in different ways. If people are poor and may not afford the ICT; TV, Radio, social media and so on, is government ready to lower taxes such as OTT and in so doing the costs for accessing these mediums for them to gainfully engage in coming elections? Will the national Uganda Broadcasting Corporation (UBC) provide ‘free for all’ campaign hours during the scientific elections? Will government prevail on privately owned media to freely or lower tariffs for politicians and interest groups to deliver campaigns and monitor elections in substantive ways equitably across the political divide and country? We quote:

*“If they insist on the scientific vote, let government ensure that there is substantial investment in availing a level playing ground, among others the state should fund the airwaves and provide free media spaces and airtime. Besides the Presidential and the Parliamentary candidates, let the state buy airtime and media spaces for grassroots and local government campaign candidates as well. The state should even consider making pictures and posters for local councilors for campaigns and placement on ballot boxes and papers so that the voters can identify their councilors using the photos” (July 31, 2020 FGD in Kisoga, Mukono).*

There are also fears that electricity or mobile phones networks could be disrupted in favor of the incumbent since most of these utility companies are owned and managed by people sympathetic to the government. This comes on the backdrop that since lockdown, government has failed to satisfactorily supply food, masks and other promised support to citizens during COVID-19, so they wonder: how can government fail to deliver basic needs and promise to delivery ICT for free and fair elections during the coming 2021 elections? What seems to happen in most cases, is that NRM is manipulating the monopoly over ICT and using its control over the security forces to skew the electoral process to their advantage and weaken the opposition.

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56 . August 17, 2020 “Will Bobi Wine make or break EC”, Independent Team, Kampala-Uganda

### 3.2.6 State repression and Voter intimidation

The Electoral Commission has come out to explain why some of the youths had their names missing during the election today for youth village committees across the country. In some parts of the country, the elections were marred by violence caused especially by missing names on the voter's register. In places like Bwaise, Kawempe, Kazo, Kibuye, Namasuba, Mengo among others, youths were incensed when they found their names missing on the register. However, this also happened up country. For example, the IEC was accused of frustrating the opposition NUP (National Unity Platform) youth from getting nominated on Wednesday August 5, 2020, in areas such as Rakai, Lyantonde, Ssembabule, Lwengo, and nearby districts. It is also claimed that: a), the way they excluded the opposition from design to the point of rolling out the scientific elections unilaterally; b), the EC has denied technical and political leaders' substantive participation in the processes leading to the roll out of the 2021 elections. Most of these leaders; LC I-V are at a loss of how best to inform their electorate about these elections in an official manner, without contradicting IEC or themselves?

Thus, several youths accused the Electoral Commission of being in cahoots with the ruling National Resistance Movement to deny the opposition chance to win the elections. But speaking to Uganda Radio Network, Paul Bukonya, the spokesperson of the Electoral Commission said many of those complaining about their names missing on the register, never registered to take part in the elections. According to Mr. Bukonya, a person having a national identity card, that doubles as a voter's card and being between 18-30 years is not enough to qualify as a voter.

*"We updated the register between November and December last year from which we compiled a youth register but not every youth was automatically put on the youth register unless those who were willing. The law doesn't conscript people, it is by choice," added Bukonya <sup>57</sup>.*

However, opposition candidates have been complaining on media, that many Ugandans have lost more lives because of elections related torture, those who have tried to use 'science' to convey messages e.g. political satire like comedy groups have been arrested and detained. There are several extra-judicial arrests of innocent artistes, journalists and open-minded or vocal political activists, and obviously opposition party leaders and their members in recent times. As someone in Kisoga complained,

*"It seems police has got no body to hold them accountable". He also pointed out that "the problem is also our parliament. It is "a yes parliament" that it cannot defend the citizens. Civilians have been cowed and not been sensitized on their rights and suffer silently as police brutalises them. It seems there is no coordination in the country to tame the police offenders and their poor leadership". (July 30, 2020, FGD Kisoga, Mukono District).*

Consequently, the following specific citizen concerns are worth noting; a). as in the past, the armed forces are acting in a very partisan manner, b). the growing indirect and direct police brutality is an attempt to gag the opposition. Youth are becoming more agitated in their demand for political change against an equally belligerent incumbent, c). deploying security to shut-down media houses and arrest journalists is evident as these elections unfold, d). the electorate are concerned that youth, people with disabilities and girls and women are likely to avoid participating in these elections because of fear of security brutality. A Councilor in Nansana commented:

<sup>57</sup> . August 18 2020, THE INDEPENDENT, Kampala, Uganda

*“Considering my experience and age (45yrs), under elections situation, our police and other security agencies face major challenges in that they fail to protect the people and just follow the orders ‘from above’. Our security is practicing favoritism; they seem to listen only to government orders at the expense of citizens” (July 27, 2020, In-depth interview at Municipal Council, Nansana).*

The lockdown and curfew that is in place to enforce it have stressed society in multiple ways and this is having negative attitude from citizens towards the coming elections. For example, most of the business community have lost income as a result, many people are unemployed and restricted in homes in ways that curtail fulfillment of their livelihood and political freedoms and activism. Worse still, the selective application of the law enforcement and interpretation of the law in favor of the incumbent has despaired Ugandans as to what good to expect in the coming 2021 elections.

### 3.2.7 Interrogating the claim that the 2020/2021 elections are illegitimate and undemocratic

On the other hand, others felt that the on-line nature of the ‘science’ of these elections was a breach of the basic principles of democratic process and outcomes of elections. Among others, fears are that the elections are unlikely to be free and fair because the high-tech or digitized expectations for their conduct are way above the majority of voting age Ugandans to fully participate in them, there are worries over how scientific elections can be conducted with level playing ground, and the fact that IEC did not undertake any significant voter education on them. Large proportions of respondents concerned that the 2020/2021 elections are inherently undemocratic to the extent they are premised on an absence of a level playing field.

*Figure 8: Distribution of the Respondents by Reason for postponing elections (n=47)*

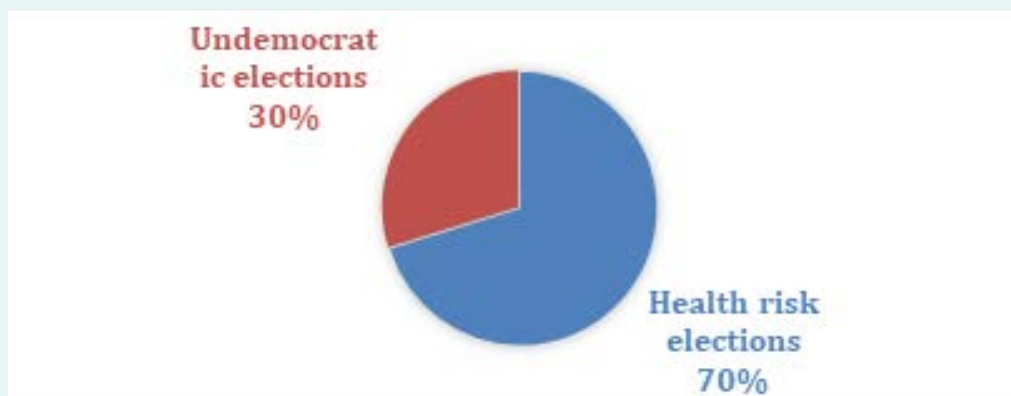


Figure 8 shows that most respondents preferred to have the 2020/2021 elections postponed rather than being held as has been planned by the IEC. The finding is that most respondents (70%) were of the view that holding the elections during this COVID-19 pandemic era was very risky for the health of Ugandans. While Uganda’s management of the pandemic has won acclaim, with loosening of lockdown and now the elections the country is likely to witness a spike the incidence of the COVID-19 infections in the communities.

The constitutionality of the whole notion of scientific elections has also been raised; where is this coming from because under the prevailing pandemic, the Constitution would have expected a State of Emergency, to be declared by the President, who would then step down for the Speaker of Parliament to govern the country until such a time when free and fair elections can be organized without COVID-19. However, since

the IEC sought to push on with the elections under the pandemic, questions are being raised as to how the right of citizens to free and fair elections and outcomes is being respected?

### 3.3 ISSUES OF GENDER, YOUTH AND PWDS IN THE SCIENTIFIC ELECTIONS'

In this section, the concerns of the elderly, women, youth and PWDs are presented and discussed. Particularly for women, issues of lockdown have always been a part of their lives, but this situation is exacerbated during crises, when as Kotamuraju (2020) points out, even the superficial gains made on the path to gender equality have quickly crumbled in the wake of COVID-19.

Therefore, the complexity and controversies surrounding the scientific elections aside, the issue of women's participation in electoral processes and outcomes merits deeper analysis in the context of the pandemic. Globally, the COVID-19 pandemic has suppressed female liberties and wellbeing disproportionately much more than their male counterparts. As we deliberate the implications of the voting rights of Ugandans during the pandemic it is important to start by appreciating how COVID-19 itself has exacerbated the disempowerment of women. We provide scenarios from India before coming to the Ugandan context.

#### 3.3.1 Global impacts of COVID-19 on Women

According to Kotamuraju (2020), the superficial gains women have made on the path to gender equality have quickly crumbled in the wake of COVID-19. Basing on the situation in India, she points out that when these facts are disaggregated by caste, class and location, the picture becomes grimmer still, as inequalities of caste, class and gender persist and thrive. Why does gender-based violence increase at a time like this? Why are women more vulnerable to the economic after-effects of crises and why do they end up shouldering more of the burdens? How will we remember this pandemic, these lockdowns, this distancing? How will women – especially those whose voices have long gone unheard, whose opinions are not sought, and whose work is uncounted and unvalued – remember their own lockdowns, new and old? <sup>58</sup>

#### 3.3.2 COVID-19 and Ugandan Women in the 'Scientific elections'

In Uganda, girls of voting age and women are equally disturbed by the obscurities surrounding the coming scientific elections in 2021. In terms of meaning for example, during a focus group discussion with girls and women in Kisoga B Cell (LC I) respondents were hearing of scientific elections for the first time but all they heard was: "the scientific elections, will not be like the normal election where people go to vote in large numbers because of this condition of COVID-19. Scientific election will mean you vote and leave the polling station immediately. This is not clear but raises suspicions about the results and outcomes of these elections". On the participation of women, a respondent observed that:

*"As women would have wanted to participate fully, in this election but some of us do not understand this issue of scientific election. My plea is that government or IEC should train women youth leaders and facilitate us to reach out to other women groups and train their members on how this scientific election will be handled. Women should get enough knowledge about this issue of scientific elections because we*

58 . Priyanka Kotamuraju (2020), *Local Diaries: Untold Stories of Women in India's lockdown July*. This blog post was originally published on The Sociological Review's website "Solidarity and Care during the Covid-19 Pandemic".



*all want to vote since we are all citizens of Uganda” (July 28, 2020, FGD Kabulengwa, Nansana).*

Arising from the above concerns, most young girls and women had a plea that the scientific election has come but it should be free and fair. It should be as normal an election as possible for women to have confidence in participating gainfully in the 2020/2021 elections. This arises from experience of how women have always suffered the burden of crises like COVID-19. A Councilor for Women at Nansana Municipal Council observed that during COVID-19 period, many women have suffered domestic violence. Lots of fights. At the peak of lockdown, some women were thrown out of homes and needed shelter, for example, but as women leaders we could not do much. For example, Councilor Irene narrates that:

*“Under COVID lockdown, some expectant mothers did not have easy access to transport. For one to access maternity care or go to hospital to deliver one had to obtain permission from the Resident District Commissioner (RDC), who was in most cases, distant from them, or even inaccessible. Therefore, as leaders we were stuck and yet delivery time does not ask whether there is transport or not?” (Interview, Nansana Municipality July 27, 2020).*

Given this situation, Councilor Irene was worried about how women's voting rights would be protected during the 'scientific' elections if their right to maternity care and safe delivery was not respected in the first place. In her view, past experience shows that women who are always challenged by violence in and outside their homes before, during and even after elections.

However, some women from Kisoga Cell, in Mukono District, observed that the planned scientific elections “could have advantages and disadvantages. A lady stated that one of the advantages is that politicians and their voters will be interacting directly since they will be campaigning house-to-house. This has not been possible during the 'traditional' elections where candidates only interfaced with voters in mass rallies and had to rely on campaign agents (middle-men), some of who lied to them about the views of the voters”. “The disadvantage is that it may not be possible for candidates to cover much ground owing to limited time, considering limitations of the curfew, yet not being able to effectively utilize radio and TV for campaigns as is being proposed under the scientific elections. Therefore, in her view, during the coming elections, the voters are likely just to vote without knowing a candidate's manifesto”.

Another respondent proposed the possibility of extending the election so that people are better prepared for it so that people can vote for those whom they know and believe have the ability to lead them” Joan a secondary school student in Mukono, shut out of school by COVID-19 lockdown argues that: “in this election, even though most of you say the pandemic has some advantages in reality it has lots of disadvantages. For example, right now we know only few contestants for Presidency because they are less popular than the incumbent in the media. Meaning during voting time, people will just vote for the person they know and leave out the other candidates who may be eligible but unknown to them. She noted that while the EC said the campaigns would be on TVs and radios most of the people in Kisoga and other parts of Uganda do not own any of those media gadgets nor the smart screen touch phones. Therefore, Joan concluded that government should concentrate on defeating COVID-19 and postpone the elections to sometime in future after the pandemic is brought under control”.

Another female student, in Kisoga, Mukono also called for the postponement of the elections because much as she was being told to follow campaigns on media like the radio or TV she just does not know how this will happen. Therefore, she will not vote for candidates she is not conversant with. However, the facilitators reminded the group that there was a possibility that the scientific elections shall not be postponed and that what matters today is how to make them as safe and fair as possible. This prompted another round of discussions shared below.

A female student from Kireka pointed out that " I have never voted before in my life but I hope the IEC will provide sufficient guidelines to help us - first-time voters - understand what voting scientifically is all about, then I will be willing to vote". Similarly, another one was saddened by the fact that "these elections will take place in a very restricted COVID-19 environment. There will be no open campaigns or rallies to enable voters fully interact with candidates. To make it even worse, even campaign agents, who usually helped candidates explain their manifestos to voters, may also be missing in these elections too.

A respondent was further worried that because the entire election process will be on mobile phones or radios, most likely many votes will be wasted, particularly those of women, who are least exposed to mobile technologies, mostly because they cannot afford them.

A young Crime Preventer from Nansana was of the view that "as long as the youth are given the chance to vote, they will not have any problem regardless of their sex, because the women in this generation are also active in leadership. He stated that "I do not think the scientific election will affect youth or women in a negative way if they are given the freedom to participate. However, in case of restriction on the side of the youth or oppression, it may cause commotion". However, his optimism was countered by a female respondent who stated that "I think this election will treat the youth badly because they comprise the biggest number during public rallies but will be denied such a mode of campaigns this time round. She said she witnessed harassment of the youth supporting the opposition. "I have witnessed that during the campaign rallies for the NRM ruling party candidates, there is no commotion or arrests or tear gas but it is the total opposite for the opposition rallies, which always end with tear gas and harassment of supporters. As a result, youth in the opposition may not vote because they have been arrested and nobody bails them out. To me this will be a challenge for the youth in 2021 elections".

The above concerns of girls and women correspond with the stories of women in other parts of the world who have seen their opportunities for a more equitable access to socioeconomic, cultural, and political rights further eroded by the COVID-19 pandemic. These concerns of Ugandan women resonate with the experience worldwide (UN Women 2020; UNESCO 2020; Kotamraju, 2020; Salli 2019) have all documented how adolescent girls are being left behind as education and other social services move increasingly online. As a result, so girls lose valued peer-to-peer support, access to nutritious meals, and the windows of opportunity for upward social mobility. Most essential workers, including the health workers at the frontline of the fight against the deadly virus, are women who are poorly paid, lack decent social protections, and are given neither respect nor dignity. This situation paints a gloomy picture for girls and women's rights to enjoy free and fair elections during the coming 'scientific elections in 2021.

### 3.3.3 Not the 'Same Old' Response: Youth and the 2021 Scientific election

The fact that Africa has a budding youth population needs no amplification and could not be ignored in a study of this nature which seeks to interrogate their experience at the crossroads of COVID-19 and electoral politics in Uganda today. Even here youth have been actively engaged, to the extent of sometimes being misused, abused, and even killed before, during and after elections in Uganda. The findings in this section arise from discussions held with mixed sex group of youth 19-35 focusing on their broad interests and roles in Ugandan politics and specifically through this experience, have a directed discussion on what and how youth understand or perceive the proposed scientific elections 2021. A total of 7 group discussions of this nature were held, of which 4 were conducted in Nansana Municipality in Wakiso District and the 3 in Kisoga B Cell, in Mukono District.

In an interesting article "Not the Same Old Response", Honwana and Honwana (2020) correctly argue that "given its under-resourced health-care systems and lack of social safety nets, Africa's best hope for mitigating the spread of COVID-19 lies in community-based prevention. We contend that Africa's large youth population must play a prominent role in that. They pointed out that, in fact, young volunteers are already involved in a myriad of actions to support their communities under COVID-19 in mainly two ways: 1) Mitigating contamination through communication and accessibility to information, control of digital spaces, and provision of health and related services; and 2) promoting community cohesion and social solidarity with appreciation for local values and kinship bonds, and with support for the most vulnerable <sup>59</sup>.

In the coming discussion, we ought to find several resonances of our youth's experiences as they anticipate an anxiously but also most perplexing election episode in the history of Uganda. One in which, they would like to mitigate contamination for themselves and their families from the vagaries of COVID-19 and that of promoting community cohesion an social solidarity by way of seeking gainful roles in the political developments in the country, notably the planned 2021 'scientific elections'.

### 3.3.4 On what is scientific elections

Like the concerns raised by the female youth, most of the male youth confessed their ignorance about the exact meaning of, and the 'how' of the 'scientific' as applicable to the forthcoming 2021 polls. Most of the male youth raised concern that the scientific election is indeed "not the Same Old response" of conducting them. This is mainly because they have been rushed, are mysterious and there is fear that those promoting them are most likely aiming at rigging the election. The centre of departure from the past are the prerogative of observing the COVID-19 standard operational procedures, laying lot of emphasis on social distancing, which is radically at variance with traditional forms of electioneering. Hence as we shall be told in the stories below, young population are skeptical that the outcomes may be even less legitimate and devoid of free and fair elections, and yet Ugandans would have been exposed to the pandemic.

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59 . Honwana Alcinda and Honwana Nyeleti (2020), "Covid-19 in Africa: How Youth are Stepping Up" July. This is a shortened and slightly updated version of a post by Alcinda Honwana and Nyeleti Honwana, which first appeared on the SSRC's Kujenga Amani blog

The youth intimated that from what they have been told, under the planned scientific election, Ugandans are required to use maybe a smart phone, television or radio to campaign, yet this is financially costly for most of the ordinary youth. In rural settings, Ugandans are poor and may not own a single radio to use. One of the youth stated that the scientific elections may favor incumbent leaders because they have already made their name, among others, because they have been in power and delivered some services to the voters in the past; such a politician has a big chance of retaining his/her position in these elections.

According to one of them, the coming scientific election will be likened to what people in Buganda call “Kibwatakila” – it literally means something very abrupt and is often likened to thunder and sudden death. This demonstrates the fact that this is a unique kind of election, however unlike in the past this unique election is also one that has been rolled out by the IEC unilaterally in disregard of community structures and without any significant attempt at mass voter education to ensure voter sensitization.

### 3.3.5 On Youth participation

A youthful LC I Chairperson, in his mid-30s, categorically stated that, grassroots leaders had not been approached or given any chance to interact with the IEC on this scientific election. The only time the IEC went to their village was when they came to review and update the Voters' Register in 2019, but since then they have never come back to consult us on the issue of the 2021 scientific election. The LC I had not discussed with EC on how the scientific elections would be handled nor have we been engaged on whether we agree with it or not in the first place'.

According to the LC I Chairperson, just like his voters, the youth are worried that the nature of the coming on-line elections implies that people will go out to vote with very limited knowledge of their candidates, since they would not have had prior meetings with most of them or even examined their manifestos. This is what previous elections could avail through holding 'open' rallies during which candidates would inform the voter about what they plan for them and the voter could decide on that basis and in future hold them accountable for unmet promises thereafter.

Youth were also concerned that during the coming COVID-19 campaign period most of his electorate would be disenfranchised for lack of access to on-line modalities for politicking and voting. For example, in his area of Kisoga, the entire village only has one “public address” or “community radio” system, which was also outlawed by the government and cannot be used as alternative medium to fill the communication gap on the scientific elections. Consequently, no leader, other than those in government or the ruling party, can reach every village they are interested in representing in search of votes, so not all voters will get the information the candidates and their manifestos in order for them to make informed decisions.

A young farmer felt this 'scientific' election is a forced on them and it was unlikely that we voters will get proper access to listen to the opinions of the leaders, “it feels like we are going to vote in darkness” he concludes. This is because unlike the past, the EC would provide voter education. In that case, right now we just hear of the scientific election which we have not understood and we have never witnessed it before so in my opinion, in Uganda, we have not reached that level of voting using on-line because we are still lagging behind in technology and democratic governance systems to effectively manage such an election.

A male student supported the idea of postponing the scientific elections until such a time when COVID is defeated and Ugandans can fully participate in open elections. He argues that postponing is the sensible option in because relying on voting posters or voices may not be authenticated, how can a voter prove that he voted his or her real candidate? In Kisoga, for example, those with smart or touch screen phones are few, so the majority only have old key board phones. Besides, as first-time voters, as Nakazzi stated we need a lot of guidance before and during voting but that is not going to be allowed. Many youths will miss the polls.

In addition, other youth noted that in Kabulengwa, Nansana, just like many other villages in Uganda, radios, phones and TV are few and even where they are found in some places there is no airwaves or electricity connectivity; the network has been frequently on and off so some people will not receive the messages. "There are so many things we would like our leaders to account for, and we thought with the coming elections time had come for them to account but it seems this will not be the case if we cannot communicate, for that reason, it is better if someone does not vote at all. Youth were further concerned that:

*"if malpractices have been there in the non-scientific elections, what of now with so much we cannot observe of see in day light? The IEC will just declare winning results for whoever they want". "This means we youth are not going to benefit from this election", he concluded (FGD, Mukono District, July 2020).*

A young Social Worker was disappointed that it appears the NRM leadership is rigid on having the scientific vote at all costs. That is why we are voting during the pandemic in the first place. However, in his view, if indeed COVID-19 is the health threat they claim it is, why not invoke the Constitution of Uganda, which provides for a State of Emergency, to enable change of leadership, without risking lives of Ugandans who will engage in voting during this pandemic? He also felt it is still possible to postpone these elections to avoid infecting more Ugandans with corona virus. One of them pointed out that:

*"Sometime back, while President Museveni was on CNN, he declared that holding elections under COVID-19 is madness", but shortly after, the EC was declaring the elections will take place and there was a roadmap for what has been termed 'scientific elections'; the government had changed its mind. So how can citizens exercise their rights to force government to declare a state of emergency, form an interim government led by the Rt. Hon. Speaker and President Museveni saves Ugandans from this risky and wasteful adventure of an election? In his view, the insistence on elections under the pandemic shows that we are under a dictatorship and our leaders does not value the lives of its citizens" (Kisoga B, Mukono, July 31, 2020).*

Several youths also pointed out that "we should ask ourselves why the government brought the scientific election? In this election if we shall not vote as we usually do via the ballot box, we shall not have the rallies like we are used to because they say the campaigns will be on TVs and radios; why? Is the IEC not an independent organ to make decisions based on popular will, which seems against holding these elections in these circumstances?" The scientific election is biased and about rigging. A respondent intimated that (...) when President Museveni went to NRM Electoral Commission to picking and fill in and returning his nomination forms to the NRM party electoral commissioner, all radios and TVs were focused on him and no one was harassed during the process, even when there was evident abuse of the SoPs".

On the contrary, opposition candidates have had it almost impossible to access media houses or navigate the streets of the country during these 'scientific' campaigns. For example, Daily Monitor of Monday August 10, 2020 reported on "how security foiled Bobi Wine's Talk Show in Mbale on Saturday 8 August 2020 <sup>60</sup>. In the article, Fred Wambembe and Yahud Kitunzi reporter quote Mr. Godfrey Kakungulu, the Station Management Bugisu Cooperative Union Radio, as saying

*"It is true they (security) called me and asked me on what grounds I invited Bobi Wine to appear on the radio talk show. I told them I invited him as an ordinary person, but they insisted that he should not be allowed because he is a security threat" Dr. Kakungulu told the Daily Monitor".*

*"It is reported that there are efforts to embrace digital campaigns as advised by Electoral Commission (EC) are failing because of partisan behaviors of police and RDCs" said Mr. John Baptist Nambeshe, MP for Manjiya County, Bududa District.<sup>61</sup>*

As a result, "as a youth, I wonder if the IEC of Uganda is independent. A partisan IEC makes youth hate participation in electoral processes to vote. Actions of the IEC manifests bias. During this confusion, some officials of the IEC were retired under circumstances that left stakeholders pondering what could have happened. This cast the IEC not in good light. In this country, even during local elections, at grassroots election of an LC I (village leader), a "big political wing" will come and give orders that will overrule the popular mandate, so what will happen at the IEC and national positions? "As Ugandans we should not depend on parliament either because it is already hostage." "As Ugandans let us collectively rebel against the election until it is postponed to next year around July or August. There was a feeling among many respondents that the forthcoming election is unlikely to be free and fair".

Similar sentiments were raised by another youth over "who has the power to postpone elections in Uganda? Because while it appears that most Ugandans, including leaders of political parties and aspiring candidates are calling for postponement they are merely ignored". "In my view, the NRM and government are insisting that the election must take place in a so-called 'scientific way' because it works in their interests to cling onto power."

An LCI Councilor spoke as "a person who has voted before" considering one of my colleagues said it will be her first time to vote. In his view, "There is a big difference between the previous voting and what we anticipate in 2021 and I believe beginners may not be able to vote freely". For example, "as councilors, our ballot papers will probably not bear our photos on them.

A Senior citizen in Mukono Municipal Council observed that, for example, in the whole of Mukono we only have one radio called Donabis. But if you ask, the residents of Mukono whether they do listen to this radio, the answer is NO. They listen to other radios. However, as a politician in Mukono this is the radio I can afford. I cannot afford to go to CBS to pay for a program or even a TV station in Kampala. His Excellency The president acknowledged that many Ugandans don't have TVs and he promised to give 2 TVs to every village home for children to have their lessons, as well as, for them to follow these scientific general elections. However, even children do not believe in his pledge because they know it will not work. It was another false promise because there are no radios, TVs in rural areas, and even the aspiring candidates do not have the capacity to pay for airplay on available media stations.

<sup>60</sup> . August 20, 2020, The Daily Monitor, Kampala

<sup>61</sup> . *Ibid*

Lastly, the first elections are going to be for Special Interest Groups like the youths, elderly and PWDs, what are they going to do without access to commensurate media? You cannot say they will travel to Kampala to access national media so they can campaign. This whole thing does not make sense, postponing the 2021 elections is the right thing to be done.

A Councilor at Mukono Municipal Council was concerned that “this scientific election feels like it will not be democratic because the elderly will not understand scientific mainly because it’s a youth word”. If they want a fair election, let them allow the traditional approach to elections but if not, that means they ought to invest in promoting free and fair access to media and airtime or simply put the government should take lead in making the ‘new normal’ accessible to all without discrimination.

The analysis shows that young Ugandans across the gender divide are grappling with the COVID-19 driven “not the Same Old” response. The way the IEC and other government MDAs have designed the elections has been typically top heavy, over centralized, and insensitive to ‘community participation’ as a prerequisite for democratic outcomes of political processes, especially before, during and after elections. Local government and lower local governments have been ignored and left to their own whims in these times when Ugandans are grappling with a unique form of election. To the disadvantage of young voters, the disregard and or neglect of voter education, even when it is clear the ‘scientific’ election is a novel experience was a source of many concerns.

### 3.3.6 The ‘scientific election’ and inherent Challenges for PWDs

IEC has historically overlooked the plight of persons with disabilities and yet this section of the population cuts across age and other social divides. While mention has been made to this effect in previous sections, this section is intended to re-assert their multiple jeopardy in the context of the 2020/2021 ‘scientific’ elections as articulated by the PWD Rights Lobby.

According to Disability Rights Activists, “to begin with PWDs were not consulted before implementation of ‘Scientific Elections’; ‘Following the conclusion of the nomination of candidates for Special Interest Groups (SIGs) leadership positions which include PWDs, campaigns are yet to start.<sup>62</sup> The PWD lobby is complaining that ‘with ‘scientific campaigns’ arrangements, disability rights are being sidelined as per participation in the electoral activities is concerned since some of them cannot listen to radios while others are visually impaired, and as such cannot watch TVs. David Nangosi, head of the National Union for Disabled Persons of Uganda (NUDIPU) said:

“Before passing the implementation of scientific elections, authorities needed to have taken into consideration the views and opinions of Persons with Disabilities in this country. Consulting PWDs matters a lot. .... In addition, we have persons with hearing impairment, the deaf and the deaf-blind. How are these going to follow up in these processes of scientific elections” (chimpreport.com, *ibid.*).

According to Nangosi, the 2016 report by National Council for Disability indicates that the limited participation of PWDs in the 2016 election was due to limited information flow. He further argues that the “National Youth Council Act has a key role to play in inclusion of youth with disabilities”, however in his view, “it should be amended to cause youth inclusion especially on the executive committee”. Mr. Nangosi further points out that “Article 29 of the Convention of the Rights of PWDs, which was ratified by government of Uganda is supposed to guarantee the political rights of PWDs without discrimina-

<sup>62</sup> . CHIMPREPORTS.COM (2020), “PWDs weren’t consulted before implementing of ‘Scientific Elections.’

tion". Mr. Nangosi concludes that ... "We are in the social and human rights model where views and opinions of PWDs are supposed to be catered for in any undertaking"<sup>63</sup>.

### 3.3.7 End note on Women, Youth and PWDs in the Scientific elections

The fact that crises, such as pandemics like COVID-19, always reproduce, and, or even exacerbate the inequitable access, use and control of technologies and other political resources between women, youth, elderly and PWDs has also been ignored in rolling out the scientific elections 2020/2021. This is of grave concern given the fact that information and communication technologies are at the epi-centre of these elections. We contend that to ignore these sections of the population is a failure to appreciate that the special interest groups (SIGs) are a considerable part of Africa's, and more so, Uganda's large youth population who must play a prominent role in elections. For example, Honwana and Honwana (2020) noted that, in fact, young volunteers are already involved in a myriad of actions to support their communities mainly, mitigating contamination through communication and accessibility to information, control of digital spaces, and provision of health and related services; and promoting community cohesion and social solidarity with appreciation for local values and kinship bonds, and with support for the most vulnerable <sup>64</sup>.

In connection with the planned 'scientific' election, young people are using social media platforms to communicate and disseminate information as well as organizing within their communities through canvassing campaigns and public awareness programs alongside community lead. They point out that this is happening in many African countries <sup>65</sup>, and here in Uganda. In fact, here in Uganda, using the slogan "Our challenges, our solutions!," a group of young people from Zetu Africa (Our Africa) launched the campaign #SmarterThanCorona to bring people together to share information and discuss solutions to problems caused by the Covid-19 outbreak (Honwana, Ibid). Information sharing aside, young people in many countries have also taken an active role in providing access to preventive health services and equipment, from making face masks, soaps to sanitizers. Unfortunately, this ingenuity among youth seems to be lost again as the usual manipulation and deployment of youth into violence to fight the competing candidate's wars is already playing out before the elections start <sup>66</sup>.

A common appeal from PWDs has implored the IEC not to continue aggravating the marginalization of special interest groups in the design, processes, and outcomes of the elections in the country. Their voice and roles matter, just like those of the rest of the citizenry (National Council for Disabled Persons, 2016).

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63 . Ibid.

64 . Honwana Alcinda and Honwana Nyeleti (2020), "Covid-19 in Africa: How Youth are Stepping Up" July. This is a shortened and slightly updated version of a post by Alcinda Honwana and Nyeleti Honwana, which first appeared on the SSRC's Kujenga Amani blog

65 . They cite examples from the Democratic Republic of the Congo (DRC), in Burkina Faso, in Nigeria, in Mozambique, in South Africa, in Côte d'Ivoire, in Kenya and in South Sudan

66 . According UGVote 2021, NBS TV of August 4, 2020, in Bughaya Hoima District, Kinobe the competitor and MP Wakabi youth brigades are ambushing opponents and fighting street battles. Similarly, in Gulu UPC and NUP youth are fighting the party colors battles on streets; and in Sheema District, the MP. Dr. Elioda was accused of inciting violence on the Mayor of the Municipality for supporting his youthful opponent.



## 4 IMPLICATIONS AND CONSEQUENCES OF 'SCIENTIFIC ELECTIONS'

### 4.1 LIKELY SCENARIOS

A scenario forecast of the feasible options, together with their implications and consequences, has been generated, taking into consideration various factors in the contextual environment and varied opinions on the way forward for the 2021 Scientific elections.

#### 4.1.2 Scenario 1: What if a cure or vaccine is discovered for COVID-19 soon?

If a cure, or a vaccine, or both, for the Covid-19 virus are discovered today, Monday 5th October 2020, there isn't even the remotest likelihood that these discoveries would impact in any way on the 2021 polls in Uganda. The time it will take to roll out the two antidotes to the virus is way beyond the remaining four months to the election day. This scenario is therefore summarily discounted on this ground.

#### 4.1.3 Scenario 2. Can the 2021 elections be postponed?

With the rolling out of the SOPs for the 2020/2021 general elections, on August 7, 2020, Justice Byabakama, the Chairman IEC ruled out any possibility that the scientific elections being postponed or adjusted in any significant way. Besides, there is no arrangement, as of now, being considered, to amend the constitution to provide for such an eventuality, as was discussed in chapter two earlier. This scenario is likewise summarily discounted in its entirety. Besides COVID-19 is likely to be with us for longer than anticipated, hence it is increasingly being accepted that the best bet was to learn to live with the pandemic, with the attendant 'new normals' which everyone is learning to work within.

The majority of those consulted for this study expressed a clear preference for having the 2021 polls postponed for 3 main reasons. One, to allow adequate time for the EC and its partners to conduct comprehensive voter education that will enable citizens make informed decisions. Two, to wait until COVID-19 has come under control so that the democratic right to vote is exercised in a free and un-constrained environment. Three, there were expressed fears of impartiality, or lack of strictness in enforcing the SOPs across the political spectrum.

#### 4.1.4 Scenario 3. Scientific Elections are conducted as scheduled: Proposals from the stakeholders

Having discounted the first 2 options, the only way forward is to proceed with the elections as scheduled, following the rolling out of SOPs. After all, international law and the Constitution of Uganda do impose on all concerned the obligation to carry out an election that is free, fair, transparent, democratic and credible; one in which all sides have reasonable access to the electorate; in which the outcome is seen to reflect the will of the electorate. Yet, we have clearly indicated in the foregoing discussions that the arrangements which have been put in place for the 2021 general election fall short of guaranteeing a free and fair election as envisaged under the various international instruments, the national constitution and the laws of Uganda governing elections. Inherently, they cannot conceivably deliver an election whose outcome would withstand multiple legal challenges. From conversations with stakeholders, it is evident that such a contentious poll may have far-reaching consequence, capable of precipitating political

instability and social tensions. This is the worst-case scenario. To get round the above projection, pre-empt the above scenario and improve on the process and outcome of the elections, the following were recommended by those consulted for this study:

a) Health first, the IEC should work in partnership with Elections Police and other stakeholders to ensure all voting venues and facilities are managed in accordance with the Ministry of Health SOPs (from availing fumigation and hand washing facilities to ensuring effective respect for wearing masks and social distancing) in a sustainable manner.

b) The IEC needs to conduct some minimum level of public voter sensitization especially targeting youth and rural populations to be able to engage meaningfully in the 'scientific' elections. In event that this is considered, IEC should ensure that lower level leaders and technical personnel like teachers are used as a reserve force that can be drawn on to contribute to a much needed but belated massive voter education campaign. In the coming elections 2021, first-time voters require highest priority in this exercise.

c) IEC should ensure that the management of the electoral facilities, process and outcomes is level, to the extent that ballots and ballot boxes arrive at the electoral areas in time or better still they are delivered overnight so that voting takes place early and conveniently. As one stated, the 'science' in the past was that they either delayed or did not deliver electoral materials in opposition strong holds in time to deny or frustrate and exclude them from voting altogether". Ugandans hope scientific elections will not be handled in such a way as to precipitate disagreement.

d) IEC should allow campaign agents at each polling centre to remain after the voting and witness the vote counting, tallying and declaration of results as well as appending their signatures to the Declaration of Results Forms. This will curb likely contentions over results which could spark off violent scenes and culminate in numerous petitions. As experienced in the past, vote counting and tallying, as well as conveying the tally forms from polling stations to the sub counties and therefrom, to the district has caused controversies and claims of tampering and alterations. The remaining time before elections should partly be used to an audit system that can trace the declared results across the tiers of conveyance of results from the polling centre to the national tally centre.

g) It is unfortunate that the IEC did not consult PWDs, elderly and other special interest groups before passing the implementation of scientific elections, but of them PWDs matter a lot. Among others, therefore, efforts should be made to enable PWDS directly excluded by digital campaign arrangements, such as persons with hearing impairment, the deaf and the deaf-blind, to participate as fully as possible in the processes of scientific elections".

h) Politicians particularly from the opposition are proposing that government and IEC should consider lowering the fees charged from politicians for verifying their academic papers. As it is now, politics in Uganda favors the rich at the expense of intelligent politics driven by good manifestos which die with poor politicians that get excluded over high nomination processing fees. For political organisations, their required fees for nomination for flag bearer candidates are also high. For NRM primaries, a presidential candidate must pay 10,000,000 Uganda Shillings, while the same fee goes for any candidate for national Chairman of the NRM.

i) Citizens were of the view that the credibility of the scientific elections also depended on the NRM government through Ministry of Health National and District COVID-19 Task Forces ensuring that the standard operational procedures (SOPs) are enforced

uniformly and not in a manner that seems to target mistakes only among opposition sections of the society. This was borne out of the events that show NRM politicians are flaunting the SOPs during the primaries where flag bearers of parties are being screened, without harassment, while members of the opposition are never given such opportunity.

j) Government should come out expressly to provide support in form of facilities for people with disabilities who may not be able to vote scientifically given that even in the past 'non-science' elections they had some exclusions. PWDS need their special needs sensitization and funding support to ensure they are not marginalized.

The way forward, then, to initiate and exhaustive consultation with all stakeholders and come out with heavily revised guidelines and protocols providing for a consensus framework that can deliver a credible election. Consultations between IEC and stakeholders have been comprehensive, but so far, they have not yet translated into much needed adjustments.

## 4.2 SCIENTIFIC ELECTIONS DURING POLITICAL PARTY PRIMARIES: LESSONS FOR THE 2021 NATIONAL POLL

To the extent that political party primaries held between August and September 2020 and organized under the 'scientific elections' mode, are likely to mirror what will happen during the February 2021 general elections, it is essential to draw some lessons. In addition to the empirical survey on scientific elections carried out in Wakiso and Mukono Districts in August 2020, the Centre for Basic Research also partnered with a new national elections civil society umbrella organization called National Electoral Watch Uganda (NEW-U) housed at the Uganda National NGO Forum (UNNGOF) to undertake research through participant observation of two NRM party primaries at Maganjo B Polling station, in Maganjo Parish, Nabweru Division, Nansana Municipality. The first were elections for the Constituency MP, and the second, for the Wakiso District Chairperson, held on 4th September 2020, and, 11th September 2020, respectively. Using insights obtained from this and other undertaking, the Centre for Basic Research Elections Research Team also analyzed the conduct of the NRM and other Political Party primaries on the basis of which these reflections are made.

### 4.2.1 Broader Lessons to draw and areas to improve

The credibility and integrity of an election directly derives from the practical preparations undertaken long before national electoral road maps are issued. Among others, the most basic are:

- the early discussion and consensus over necessary electoral reforms; demarcation of electoral constituencies,
- the up dating, display and validation of the electoral voter register, the procurement of voting materials,
- adequate training of electoral staff at the various levels, the establishment of a logistical plan for safe custody and punctual delivery of all voting materials,
- the early and comprehensive civic and voter education.

Subsequent management of the process to secure electoral integrity include the following elements:

- political parties have to organize delegates conferences to select office bearers, such as party presidents, and other positions.
- Orderly conduct of internal political party primaries to choose flag bearers for MPs, district and lower local government chairpersons and councilors organized by political party electoral bodies
- Conducting internal party elections to decide presidential flag bearers
- The establishment of a dispute settlement mechanism for complaints and petitions that arise after party primaries and selection of presidential flag bearers
- The nomination process for candidates for the general elections, from the President, MPs and all other elective positions, handled by the Independent Electoral Commission (IEC)

Contrary to the above preparatory measures, most political party primaries were beset by challenges and setbacks. The challenges encountered in the different political party primary elections depended on the methods that were deployed in selecting flag bearers.

The various political parties opted for different approaches for conducting their primary elections. NUP constituted an internal vetting committee to select flagbearers using a standard check list based on the following, among others: ones' visibility, popularity, level of education, ability to articulate issues, relevance of a candidate's manifesto to the needs of the common person. For MP flag bearers, district FDC branches nominated candidates who were vetted at national level by the FDC Party Electoral Commission. Selection of DP flag bearers ---

Under the NRM party, primaries were affected by two differing announcements on voter eligibility which caused uncertainty and confusion. Two days to the elections for Constituency and Woman MP NRM flag bearers on Tuesday 1st September 2020, the Chairperson of the NRM Electoral Commission, Dr. Fred Tanga Odoi announced that only NRM card holders, whose names were already confirmed in the Village NRM register (the so-called Yellow Book) would take part in voting. On the eve of elections, on Thursday 3rd September 2020, the NRM National Chairperson who is also the National NRM Party President and President of the Republic, H.E. Yoweri Museveni made a last-minute announcement that neutralized the earlier one, to the effect that any Ugandan above 18 years, who can be recognized as resident in a particular village, must be recorded in a separate book from the register and allowed to vote. This announcement, which the president made without qualifying guidelines, later turned out to be a fulcrum of diverse, self-serving interpretations, some of which directly precipitated voting malpractices. The two qualifying guidelines needed to have been: (1) To be a card holding NRM member, and; (2) The Village NRM Chairman and his /her fellow leaders must be able to identify you, both as a resident of the village, and as a confirmed member of the NRM party.

Certainly, the party chairman never implied that all Ugandans above 18 years of age, irrespective of their political affiliation, known or unknown, were free to fully participate in the NRM party primary elections. One school of thought on why the President made the announcement holds that intelligence had indicated that some candidates had colluded with registrars to deliberately delete/omit names of supporters of their opponents. Allegations of tampering with voter registers to exclude certain voters may have precipitated this last minute decision, which implied the NRM party primaries were conducted without adherence to any voters' register. It was an open election where everyone who was a known resident of a village participated, if they so wished.

Some, but not all, of the problems that manifested in the primary elections can be directly traced to the contestations around the register, and the contradicting announcements about who qualified to vote in the NRM primaries. From what was observed, the eligibility to vote should not be left to a last minute decision of party officials. It must be a clearly resolved matter long before any polling event is conducted. The election petitions already announced to contest the process and outcome of the primaries are increasing by the day, and by the end of September 2020, 197 petitions arising from local government NRM primary elections, and 495 arising from flag-bearer elections for constituency MP and Woman member of parliament have been lodged with the NRM electoral commission<sup>67</sup>. To dispose of this high number of cases, the party hired 20 senior advocates, who were given a duration of only 2 weeks. In addition, a parallel initiative to reconcile selected flag bearers and their political rivals by senior party officials commenced in earnest. Whether aggrieved members run as an independent candidate to compete with the official flag bearers was never out of the options.

#### 4.2.2 The Adherence to the Ministry of Health COVID-19 Standard Operating Procedures (SOPs)

Given the very high level of publicity around the Corona Virus Disease of 2019 and its consequences, it was shocking that most of those who were physically present at polling stations, including voters, voting officials, security agents and observers did not heed most of the recommended precautionary measures at all times. SOPs were often violated during campaigns, whether in-doors or out-doors; and on election day, in the process of lining up behind their candidates of choice; counting of votes, which was done by tapping on the shoulder of each voter; tallying of votes counted; declaration of results; celebrations by winners and protestations by losers.

Apart from enforcement of the dusk-to-dawn curfew when the lock-down commenced in March 2020, complaints regarding police brutality thereafter may have hindered the strict enforcement of SOPs when political activities for party primaries commenced around July/August 2020. Despite the NRM party issuing polling directives to all aspiring candidates on August 25, 2020, enforcement was seriously wanting. The Police was often accused by the Political opposition of selectively enforcing the SOPs to the disadvantage of the opposition. Citing several NRM politicians whose breach of COVID-19 SOPs was never faulted by the law enforcement, critics pointed to several instances when Police dispersed political meetings by opposition on the grounds of non-compliance, as complained about by the FDC below:

It was argued by critics that COVID-19 SOPs were being selective enforced to deter the activities of the political opposition which may have a bearing on election outcomes. Opposition leaning politicians often cite instances where their campaign meetings, rallies, and processions have been disbursed, while turning a blind-eye to similar activities by NRM politicians. Critics cite many NRM primary elections that were as rowdy as any ordinary roadside market could be, with no attempt to adhere to the SOPs, or even pretend to be doing to be doing.

Wherever the police sought to disperse crowds for whatever reasons, whether opposition or NRM, SOPs were utterly disregarded. The process of arresting and confining suspects seldom paid any attention to SOPs. Whether in NRM or other opposition political parties, when disagreements led to fights, as they often did, it was not always possible to adhere to the SOPs as those involved indulged in running battles amongst themselves, and with whip-wielding and tear-gas hurling Police officers.

<sup>67</sup> . Aired during a television live show on Sunday, 27th September 2020 by Rogers Mulindwa, a senior administrator at the National Secretariat of NRM party.

This may have compelled the NRM leadership to prevail upon Police on the strict enforcement of the COVID-19 SOPs. On August 30, 2020, President Museveni directed Police on the strict enforcement of the COVID-19 SOPs by arresting any politician or government official who facilitate campaign gatherings or big rallies in violation of the SOPs. Earlier, the NRM Secretary General had issued a stern warning to police over their complacency in enforcing the SOPs, and threatened to cause the arrest of any Police officer who would not enforce the SOPs during political campaigns by NRM candidates and their political supporter <sup>68</sup>.

Large political gatherings can be convened and elections held 'scientifically' as was demonstrated during the NRM Central Executive Committee (CEC) meeting and elections of new office bearers which were conducted online via video-linked conferencing covering all regions of the country, notwithstanding the huge cost and logistical nightmare entailed. Every region convened its own CEC meeting and election, which were all linked to State House and all the media houses via video conferencing facilities. This was a demonstration that to conduct elections scientifically is possible with a high level of discipline and sufficient resources.

Centre for Basic research, under the umbrella of National Electoral Watch Uganda (NEW-U) housed at the Uganda National NGO Forum (UNNGOF), participated in observing two NRM party primaries, the first for the constituency MP, and the second, for the Wakiso District Chairperson, held on 4th September 2020, and, 11th September 2020, respectively, at Maganjo B Polling station, in Maganjo Parish, Nabweru Division, Nansana Municipality.

At this polling centre there was no violence during, and after, the first poll, but arguments about the village NRM register and eligibility to vote almost amounted to threatening violence at the commencement of business. Duly registered voters at this centre complained loudly that the new voters who came in that day were higher in number than those in the old register. The fact that villages in highly urbanized locations, unlike those in rural, have residents who do not know each other, and most of them are tenants who shift from place to place, makes confirmation of their residency status uncertain. The village leaders may not also know each and every resident, given the fact that the old requirement of each new resident presenting an introductory letter from the leaders in the area he/she had shifted from is no longer enforced.

In the second poll of flag-bearers for district local government, there was actual violence that erupted directly from the counting process. The two queues of the two candidates were such that one was half of the other. But the results announced showed that the result between the two was quite close. Voters were infuriated by this declared result, and agents of both candidates refused to sign the Results Declaration Forms. A scuffle ensued, where the aggrieved voters swore to hold the presiding officer until he declared the true results. After 2 hours there was compromise and the presiding officer wrote what the agents had counted as the tally.

In this case, it was the counting was not done in a manner which was transparent enough, and precipitated a disorderly contestation of the numbers declared. The winning candidate's voters were so happy by the mere length of the line that they lost interest in the actual counting of those supporting a rival candidate. When results were declared, they were deemed un-representative of the voting itself, and it took a lot of argument before an agreed position was reached and declaration of results forms signed.

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68 . These led the AIGP, Edward Ochom to circulate a message on 25th August 2020 to all RPCs, DPCs to enforce this directive, confirming that they will be arrested for not strictly enforcing this directive.

To move from the particular to the general, and improve on the process and outcome of the 2021 elections, the following are what is emerging:

a) Health first, the IEC should work in partnership with Elections Police and other stakeholders to ensure all voting venues and facilities are managed in accordance with the Ministry of Health SOPs (from availing fumigation and hand washing facilities to ensuring effective respect for wearing masks and social distancing) in a sustainable manner. At least one constable must man the point of entry and ensure those entering the venue have masks on, and do hand washing before they mix with others already arrived.

b) The IEC needs to conduct some minimum level of public voter sensitization especially targeting youth and rural populations to be able to engage meaningfully in the 'scientific' elections. In event that this is considered, IEC should ensure that lower level leaders and technical personnel like teachers are used as a reserve force that can be drawn on to contribute to the massive voter education. In the coming elections 2021, first-time voters require highest priority in this exercise. Those who participated in the NRM primaries may think the 2021 polls will be conducted by lining up behind a candidate, which, clearly, will not be the case.

An important standard in elections with respect to secrecy of the ballot was violated by the decision to use lining up behind a candidate, his agent/his portrait. This one compromised the conscience of some voters some of whom opted not to vote at all. This also may explain the abysmally low number of actual voters. In Magamjo B less than 100 of the registered 1000 NRM voters participated in the primary elections

The dispute and grievance procedure needs to be invoked instantly for votes conducted by lining up. Here, it is much easier to re-do the vote, and this indeed avoids the longer route of petitioning the party electoral commission to undertake a new round of voting. If you re-schedule another voting, the voters who turn up may be completely different ones.

It also emerged that collecting and adducing evidence of election malpractices at a polling centre is not easy. may be difficult to prove in the absence of cameras at voting centres. There was an inconclusive debate on the issue of allowing or prohibiting cameras at polling centres, which needs to be opened up again in the light of experiences during the NRM primaries. Other critical observations are:

The perceived lack of impartiality of presiding officers and registrars affected the process and outcome of the primaries. Security agencies were more often not impartial in enforcing SOPs was a big gap.

The voting time allowed loopholes for multiple voting, particularly where polling centres are close to one another.

The strict following up of the tallies after declaration of results is done, to sub counties and districts had issues and loopholes

Chairpersons of villages who were politically opposed to some candidates adversely affected the equality of access to voters in some villages, while some directly and actively campaigned for particular candidates.

The violence exhibited in primaries, including loss of life, destruction of property, hate speech, and misuse of security agencies, is a grave matter of concern that needs to be addressed. Some of the orchestrators of these incidents have been arrested, and all eyes are on whether due action will be taken through courts of law to punish them, and set a precedent that deters future malpractices. Fortunately, there now exist several mappings of election violence hot spots that can be a sound basis for robust security preparedness.

Uganda does not yet have a national digitized register. The Independent Electoral Commission can invest in this in a phased way such that by the next cycle of elections in 2026 challenges related to the register are minimized.

### 4.3 Matters arising for follow up

#### 4.3.1 What contribution to electoral studies, does this research make?

Hitherto, electoral studies have largely addressed elections as events, rather than as long drawn up processes that need to be viewed in their entirety. This CBR study has pioneered the shift of focus, and adduced evidence that practical preparations before an election are as important as, or even in some cases more important than, the actual conduct of the poll on voting day. Inadequate or skewed preparations are a real recipe for an outcome and process that cannot be accepted as credible across the political spectrum. The evidence for this is the NRM party primaries. CBR will continue to monitor and observe the subsequent phases of the elections, beginning with actual nominations of candidates, to the campaign process and eventual voting.

#### 4.3.2 The Need for Voter Education

There has been a tendency to downplay the value of voter education as a core component of the preparations for a national election. Our findings have adduced evidence that the majority of eligible voters, even in locations very near the capital city of Kampala, [Nansana and Mukono districts], have inaccurate and distorted understanding of what the 'scientific' will mean for the actual voting. We found many cases of elites who believed, erroneously, that voting will be conducted on smart phones and computers and will require stable and fast internet. Very few respondents had the information that it is only mass campaign rallies that will be banned in the 2021 election. It is late, but possible to undertake some very basic voter education, which can also be done 'scientifically' via the media. There is even a possibility that limited voter education has a connection with low turn out of voters.

Low turn up in any election, is a disturbing element. Yet, the laws that apply to elections in Uganda, do not specify any threshold on how many voters need to have voted before an electoral result is declared valid. The bigger implication here is that any slim majority can impose a leader or leaders on the majority, if the turn up is so low. Legal as it may be, it will be devoid of all pretensions to legitimacy, turning democracy into a liability with no concrete dividend for the country.

#### 4.3.3 COVID-19 and Elections

Interestingly, it was expected that both the government and voters would weigh, side by side, the risk of COVID-19 versus the risk of postponing an election. The behavior of voters and candidates during the party primaries exposed the country to real risk of spreading the coronal virus. What is needed now, is a longitudinal study that profiles



the impact of COVID-19 on the conduct of an election. This will be a benchmark study for countries in Africa, and beyond on what works and what does not work when conducting elections under a rampaging pandemic.

#### **4.3.4 Election Violence**

The perennial issue of violence directly related to elections must be addressed squarely because it is fast becoming an entrenched part of the body politic. Possible strategies to stem the violence have been proposed. From the NRM primaries, some voters, candidates and election officials have been arrested, and some arraigned in court. This is an opportune moment to profile the violence in terms of what the underlying causes are, who the perpetrators are, who the victims are, where the violence most manifests, and long term solutions to violence. This also needs to be fast-tracked before, during, and after an election to afford us a holistic picture of this vice.

#### **4.3.5 Elections in Uganda: How participatory? How is inclusive?**

The issue of inclusivity and participation has also continued to plague elections in Uganda. The matter of special interest groups needs to be evaluated in the light of experiences for the youth, the women, the workers, People with disabilities, the army. What contribution has it made? How far can it be extended? What other categories equally merit inclusion in the political spectrum? What are the functional strategies to comprehensively resolve the matters of political participation for all categories of minorities? Another longitudinal study of this issue will be a strategic resource for political action

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## 6. ANNEX ONE: LIST OF FIELD PARTICIPANTS CONSULTED

### 6.1 List of participants in the CBR-DGF Scientific Elections Study, July-August 2020

#### 27/7/2020: NANSANA- EAST 2 ZONE (Morning)

S/No.	Name	Contact
1	Sylvia Kasule	0783-793742
2	Kakooza Michelle	0759-812950
3	Harriet Kakooza	0782-064572
4	Kalule Phionah	0785-305854
5	SSazi Martin	0788-014504
6	Kato Mathias Mawejeje	0782-076008
7	Namwebe Rita	0703-847080
8	Nansubuge Rehemah	0789-960270
9	Nambi Margaret	0703-001432
10	Tebukoza Godfrey	
11	Kalungi Boda Boda man	

#### 27/7/2020 –AFTERNOON: LOCAL LEADERS, NANSANA

S/No.	Name	LC I	Contact
12	Tuyizere Sam	Nansana	0756 256749
13	Kigozi Muhammed	Kyebando LC I	0706 140986
14	Lumala Fred	Nansana LC I	0759 076178
15	Karegeya	Nansana LC I	0756 256749
16	Tebukooza	Nansana E.1 A	0759 082181
17	Waswa Karoli	Nansana 1 A	0775 004556
18	Ssemanda Jibril	Nansana E. 1	0706 225914
19	Namboozo Barbara	Kyaliwajjala	0773 230929
20	Kalungi Jerry	Nansana E. 1B	0773 296579
21	Joseph Muhumuza	Kyebando	0772 451978

#### 28/7/2020 – MORNING: NANSANA-YESU AMALA

S/No.	Name	LC I	Contact
22	Nabagesera Stella	Yesu Amala	0709 520701
23	Kusemererwa Joan		0755 126961
24	Ninsima Aderine		0706 793372
25	Masikala Irene		0700 478711
26	Namugerera Gorretti		0706 129310

27	Ssemakula Wycliff		0752 930014
28	Bakulu Benny		0788 439945
29	Kazibwe Yusuf		0781 809805
30	Nambi Rebecca Regina		0708 279922
31	Kato Mathius		0782 076008
32	Kigozi Muhamed		0706 140986
33	Namugera Denis		0701 410382

### 28/7/2020 (AFTERNOON): NANSANA MUNICIPALITY COUNCILORS

S/No.	Date	Name	Title	Telephone
34	28/7/2020	Nakanwagi irene	Municipal councilor	0702-686068
35	28/7/2020	Lutwama Isa	LCV councilor	0704-069686
36	28/7/2020	Ssenyondwa Erisa	Municipal councilor	0700121309
37	28/7/2020	Kiyita Tonny	Deputy speaker	0703-388830

### 29/7/2020 (AFTERNOON): ELECTION

S/No.	Date	Name	Title	Contact
38	28/7/2020	Ssemakula Festo	EC Supervisor	0752-930014
<b>ACADEMIA</b>				
39	28/7/2020	Dr. Paddy Atuka	Academia/Lecturer	0772-608571
40	28/7/2020	Dr. Vicent Wada	Medical Doctor	0772 649623

### 29/7/2020 – NANSANA SECURITY LEADERS (Morning)

S/No.	Date	Names	Contact
41	28/7/2020	Nyakato Jackie	0787-445790
42	28/7/2020	Zalwango Sophia	0774-365176
43	28/7/2020	Sokie Marion	0772-907433
44	28/7/2020	Biira Doreen Bishnan	0774-524161
45	28/7/2020	Mbalira Kateteyi	0787-466218
46	28/7/2020	Ssendyowa Frank	0782-383599
47	28/7/2020	Kato Mathias	0782-076008
48	28/7/2020	Ssentoogo Jerry	0773-196857

**30/7/2020: YOUTH OF MUKONO – KISOGA CELL B**

S/No.	Name	Contact
49	Nakkazi Hamlimah	0701-106347
50	Nabulime Shadiah	0757-315251
51	Babirye Rebecca	0702-945307
52	Ssemuju Edward	0753-868652
53	Musaasizi Samuel	0778-209124
54	Ssenyonjo Abrah	0704-880152
55	Mpagi Samuel- social worker	0758-572579
56	Bagenda Sirijah	0750-626821
57	Mubiru Ismail-Councilor	0753-887544
58	Olari Charles	0706-384399
59	Nassejje phionah	0750—30558
60	Joan Nakiyemba	0754-711632
61	Bogere paul	0702-256644
62	Rwande Ben	0701-104088
63	Kyagulanyi	0757-340115

**31 AUGUST 2020: MUKONO MUNICIPALITY AND DISTRICT LOCAL GOVERNMENT**


Mukono Municipality		
S/No.		
64	His Worship George Kagimu – Lord Mayor	0701468098
65.	Mr. Jamadha Kajoba – Deputy Mayor	0702678478
Mukono District Local Government Council		
66.	Mr. Emanuel Mbonye – Speaker, District Councilww	0774157941











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