



THE 8TH JUDGES CONFERENCE

**ELECTORAL PETITIONS, REGULATIONS IN UGANDA:
CHALLENGES AND BEST PRACTICES.**

A Presentation By

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1.0 Background to Electoral Petitions and Regulations in Uganda

Electoral Regulations and petitions have their legal foundation in the Constitution, which is the supreme law of this land by which the citizens of this country define their fundamental and common values and aspirations and agree with their leaders on the system by which they shall be governed in pursuance of the common good to achieve their needs and aspirations, in an atmosphere of freedom, liberty and harmony.

Under our Constitution, national leaders must rise to their offices through a regular, free and fair electoral process in accordance with the Constitution and electoral laws made there under in order for such leaders to have the colour of legitimacy. It is only then that elected leaders are efficient, transparent, and accountable and are always guided in the decisions they make by public interest. Such is what may be safely called good governance founded on constitutionalism and rule of law.

All electoral laws and Regulations made there under including the Constitution itself tailor a lengthy and fairly complex electoral process intended to achieve good governance. This process involves both the protection of fundamental human rights and implementation of statutory duties and procedures inclusive of the following:-

2.0 The Right to Vote

Basic qualifications for voting rights found across the commonwealth are citizenship and age, usually 18 years and above. However, other jurisdictions may have exceptions to this rule on age. Whatever system a country may opt for, it must be to answer the questions on who may be entitled to registration, where and how.

The right to vote in Uganda is constitutional. Although universal franchise means different things in different contexts, it is common to most democratic electoral systems as it is in Uganda that all citizens over the age of 18 years are allowed to register and vote. Article 59 of the Constitution of Uganda refers.

The objective of the Commission therefore remains to compile an inclusive and accurate register of those entitled and willing to vote.

For example, the register to be used in the upcoming general elections has a voter population of 10,450,788.

3.0 Voter Registration

Voter registration is a key factor to a free and fair election and the basis on which the electoral process and a person's right to participate in an election lies.

According to election experts, the compilation of a satisfactory Voters' Register remains perhaps the biggest test of competence that an election management body has to pass. Therefore, having a competent and well-managed voter registration system is the first step in ensuring a free and fair electoral process.

The electoral process therefore begins with the compilation, maintenance and continuous update of a credible National voters register. This is followed by the following electoral processes:-

- **Update of the Voters' Register** (This is by law in Uganda continuous unless there is a cut-off of registration prior to pending elections/by-elections)
- **Cut-off of Registration** (This is done by Statutory Instrument by the Commission or the Minister depending on the election being conducted)
- **Display of Voters' Register** (This is usually for a period of at least 21 days to determine eligibility and/or ineligibility of a voter in Local Government Council Elections, Presidential, Parliamentary (except District Women Representatives where display is for at least 7 days). Display in law is not applicable in elections at administrative units – Village, Parish and County and the other elections conducted but administratively the registers/list of voters/members of the electoral college in these elections undergo a verification process to determine the eligibility of the “voters”).
- **Polling Stations** (These are established taking into account the distances to be traveled by voters, the number of voters and the geographical features in a given area except for the election

of District Women Representatives where the polling stations have been at the respective Parishes.

- **Nomination of Candidates** (Usually covers 2 days for Presidential, Parliamentary and Local Government Council Elections except Representatives of Youth, Workers and Army to Parliament, Election at Administrative units and Youth and Women Council & Committee elections where one day is appointed for nomination, campaign and polling)

NB: Elections during the National Youth and Women Conference are usually administratively given more than one day.

- **Inspection of Nomination Papers** (This is prescribed by law for purposes of verifying the qualification of a nominated candidate).
- **Candidates' Meetings/Campaigns** (This is individual for Presidential and Parliamentary elections and joint for Local Council election and other elections conducted by the Electoral Commission)

NB: For the Presidential Election, an agent may hold campaign meetings on behalf of his/her candidate

- **Polling** (Only one day is appointed as polling day and in Parliamentary elections it should not be later than 45 days after nomination days while in Presidential elections, not later than 90 days. For other elections, it is not prescribed but is subject to statutory deadlines, save for elections at administrative units (Local Councils) which depend on the term of office.
- **Tallying of Results** (This is done by the Returning Officer with the assistance of tally clerks at a venue which must be officially gazetted by the Commission)
- **Possible Recount of Votes** (This is applicable, upon request in writing, in instances of equality of votes or where the number of vote difference between candidates is less than fifty. This is

applicable after the official addition of votes by the Returning officer, and done in the presence of a Senior Police Officer).

Where the recount results in yet an equality of votes, a run off elections shall be held involving the candidates with equal votes; and the election shall take place not later than thirty days from the date of the recount.

- **Declaration of Results** (This is done by the Returning Officer thereafter transmit the said results to the Commission and the Commission thereafter, ascertains and declare in writing under its seal and publish the same in the Gazette.

The Commission's mandate on any complaint on elections stops at declaration of results. Thereafter redress to Courts of law is advisable.

The Commission is expected as soon as practicable after each general election, to produce a detailed report on the conduct of the election and submit it to the Minister who shall in turn present it before Parliament.

- **Reporting Vacancies** (This is made by the respective Clerks to the Local Government Councils and Clerk to Parliament. There is no prescribed procedure for reporting vacancies at the administrative units (Local Councils).

- **Constitutional Deadline/Term of Office**

- Presidential Elections (Article 103(3) of the Constitution)
- Parliamentary Elections (Article 81(1) of the Constitution)
- Local Governments Council Elections (Every 5 years & Article 181(5))
- Local Council Elections (Administrative Units)(Every 5 years)
- National Women & Youth Council & Committees (Every 5 years)
- The Movement Elections (Every 5 years)
- Referenda (Subject to the Constitution)

In the case of Uganda, like in many commonwealth countries, the entire electoral process including the compilation, maintenance and continuous update of the National Voters' Register is tailored by numerous electoral laws which include:-

- ✓ The Constitution of the Republic of Uganda, 1995
- ✓ The Political Parties and Organisations Act, 2005
- ✓ The Presidential Elections Act, 2005
- ✓ The Presidential Elections (**Election Petitions**) Rules, 2001
- ✓ The Parliamentary Elections Act, 2005
- ✓ The Parliamentary Elections (Special Interest Groups) Regulations, 2001(**Covers Elections of Youth, Workers and the Army Representatives to Parliament**)
- ✓ The Parliamentary Elections (**District Women Representatives**) Regulations, 2001
- ✓ The Parliamentary Elections (**Election Petitions**) Rules, 1996
- ✓ The Local Governments Act, Chapter 243, (as amended)
- ✓ The Local Governments (Amendment) Act, No 13 of 2001
- ✓ The Local Governments (Amendment) Act, No 17 of 2001
- ✓ The Electoral Commission Act, Chapter 140

There are enabling laws (Acts) and regulations which have been enacted and formulated to cover the requisite situation.

NB: Presently, there is no substantive law governing the conduct of Referenda. Referendum is the process of referring a political question to the electorate for a direct decision by a general vote.

Under the 1995 Constitution of Uganda, the entire electoral process is the exclusive mandate of the Electoral Commission, which is an independent institution (Article 62 of the 1995 Constitution) capable of suing and being sued. In the conduct of elections, the Commission is duty bound and mandated to make decisions and dispose of complaints. Consequently the Commission operates as a quasi-judicial body whose decisions at every stage of the electoral process are appealable to the Courts of law.

4.0 Electoral Petitions

In Uganda, petitions have generally arisen pre, during and post electoral events.

a) Pre-electoral process petitions

The Commission receives quite a number of complaints regarding the election activities inclusive of compilation and maintenance of an up to date national voters' register.

b) During electoral process petitions

During the electoral process, the Commission receives very many complaints/petitions, which it handles and makes decisions. For the 2006 elections, 350 complaints/petitions have been received. 150 have been handled and the rest are pending. The decisions of the Commission in these complaints/petitions will attract appeals to the High Court.

c) Post electoral process petitions

These generally arise from the results of the elections. The Commission expects to receive a number of such petitions, as has always been the case in previous elections.

5.0 Challenges and Best Practices

5.1 Late Enactment of Electoral Laws

Uganda faces a chronic problem of late enactment of electoral laws. This means that the Electoral Commission receives funding late and conducts elections in haste to beat constitutional deadlines. This leaves room to several mistakes. Some of the requirements of the electoral laws are impracticable. For instance the current regime of

electoral laws requires that all public servants wishing to contest for membership of the 8th Parliament must have resigned at least three months prior to their nomination. However by the time this law became effective, the three months were no longer available under the Constitution.

Lastly, the bulk of our population is illiterate. The Commission is only funded to conduct voter education, which is a tiny fraction of the massive civic education necessary to educate our voters.

The Commission notes that the courts of law have been completely blind to these circumstances under which the Commission operates.

The Commission calls on the courts to take into account some of the special adverse circumstances under which the Commission operates.

5.2 Budgetary Constraints and Exorbitant Costs

Like in many young democracies Uganda suffers from budgetary shortages. Time and again the Commission has failed to afford the material requirements of conducting regular free and fair elections and by-elections. This has been compounded by exorbitant costs awarded by the courts of law against the Commission. To date costs arising from election petitions still sky rocket to well over Shs. 100,000,000/=.

The Commission appreciates the costly nature of electoral petitions and litigation. However the award of exorbitant costs does not only punish the Commission when it makes un-intentional mistakes.

Rather the award of exorbitant costs disables the functioning of the Commission and affects the entire conduct of regular free and fair elections and referenda and the aspirations of the people of this nation to live in a democratic society.

The Commission therefore calls on the Courts of law to be cognizant of these effects of costs awarded against the Commission.

5.3 Lack of Adequate Legal Services

As the people of Uganda become increasingly aware of their legal rights, the number of lawyers in the Commission's legal department has remained 8. Only 4 of these are court going. The Commission does not have the personnel structure and funding to hire more lawyers. Yet the number of cases filed against the Commission keeps going up. This has not been helped by the speed at which the courts dispose of election petitions. As I speak, the Commission still has over 20 petitions arising from the general elections of 2001, which are pending hearing, and over 50 pending taxation of costs.

From the 2006 general elections, the Commission has so far received 350 complaints. The number keeps going up. More than half of these complaints are likely to end up in the courts of law. In these circumstances the Commission calls on the courts to handle election matters expeditiously.

5.4 Inconsistency of Decisions from the Courts

In the conduct of regular, free and fair elections the Commission has made and is still bound to make mistakes here and there. This is due to a number of reasons inclusive of late enactment of electoral laws, illiteracy of the electorate and even some Commission officials and other reasons. The Commission gets a lot of lessons and punishment from the Courts.

However, the courts have some times been inconsistent in their findings. For instance the Commission to date does not understand what amounts to sufficient natural justice. This is partly because the decisions from appeal arising from Commission decisions pursuant to the exercise of its quasi-judicial powers have been inconsistent. The Commission therefore calls on the courts to maintain some consistency notwithstanding that every case has its own merits.

The Commission sometimes makes tough decisions on such cases as:-

- Denomination of nominated candidates
- Decisions against the advise of the Attorney General
- Cause arrest of field election officials

- Through the advise of the Police, engage the military in certain insurgent areas

Such decisions must be made else paralysis can prevail in an electoral environment

6.0 Conclusion

The Courts have become an important partner to the Commission. By policing and punishing the Commission when it makes wrong decisions, the courts have become an important teacher to the Commission. For this I thank the Judiciary. I also wish to take this opportunity to invite the Judiciary to be a partner to the Commission rather than a watchdog and punisher when the Commission makes mistakes.

In this direction, the Commission shall propose a workshop to sensitize the Judges about the general electoral environment and attendant social consequences and to this the Chief Justice had earlier accepted.

I thank you.

FOR GOD AND MY COUNTRY

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