



**THE CHALLENGES OF CONDUCTING FREE
AND FAIR ELECTIONS AND REFERENDA**

**PRESENTATION BY MRS. GLADYS M. K. NDURU,
DIRECTOR, ELECTIONS, ELECTORAL COMMISSION**

**AT THE WORKSHOP FOR DISTRICT REGISTRARS AND
ASSISTANT DISTRICT REGISTRARS**

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1.0 Definitions

Elections are of vital importance in representative democracy whose process should recognize the people's will and sovereignty. It is on this premise that the Electoral Commission was established under Article 60 of the Constitution of the Republic of Uganda, and mandated to organize, conduct and supervise regular, free and fair elections and referenda in accordance with Article 1 of the Constitution.

James Nits in his book, "**Management Dimension of Free and Fair Elections**" shades more light on what constitutes a free and fair election:

"... to determine whether an election has been free and fair, the election must be conducted under conditions that enable the voter to cast his or her vote as he or she wishes purely on his or her own accord. The conditions must be such as the voter is able to cast his or her vote for whoever candidate he or she wishes to vote for. There must be no obstruction, harassment, hindrance, threats or intimidation. There must be no bribery to induce the voter to vote in one way or another. There must be no conditions creating fear in the minds of the voters for prosecution or victimization after the elections have taken place", he writes.

There must therefore be a competent, honest and non-partisan body to conduct the elections without confusion, inaccuracies, bickering or fraud.

1.1 Definitions of "Free and Fair" Elections

There is an extensive body of knowledge that deals with elections and democracy as well as defining the criteria used in assessing whether an election is –

- Free and fair and the variations thereof such as 'substantially free and fair';
- Credible, legitimate and demonstrates the will of the people;
- Acceptable; and
- Successful, etc

In the electoral context, the concept of fairness refers to the impartiality and ability to participate in the electoral process without coercion or restriction and having equal access to opportunities available to them in order to contest the elections. Freedom on the other hand, contrasts with coercion and implies the right to make choices.

Thus an analysis of the legislative framework of the elections as well as the socio-political conditions under which elections are conducted and its impact on the democratization process needs to be considered. Needless, to say, this does not mean that the observers are entitled to making judgement on the political process of any country.

1.2 Criteria and Methodology for Evaluating Free and Fair Elections

The first approach involves investigating the various phases of the electoral process involving the legislative framework, the demarcation process, voter registration, access to the media, campaigns, and then assessing whether the conditions within each aspect either hinders or promotes freedom and fairness of the election.

The second approach, which is rather popular is where the investigation of the electoral process is predicted on an examination of the relationship between elections and democratic development. This is aimed at providing the basis for defining the concept of free and fair as this approach takes into account the pre-election processes and the nature of institutional arrangements required in conducting such elections.

This option considers whether political freedoms as well as the human rights conditions are in place, not only prior to the elections but that they form an intrinsic part of the democratic culture of the society.

It is therefore not a functional evaluation of the routines and techniques of voting, but takes into account broader issues related to the process of democratic transition and consolidation.

1.3 Challenges in Conducting Free and Fair Elections

All aspects in the electoral process have to receive due attention from all stakeholders, as this will enlist the spirit of fairness in the running of electoral activities.

The electoral process itself must, in its design and implementation, reflect best practice principles, which are accepted by all the relevant stakeholder engaged in the electoral process. The definition thereof however, varies from country to country, although the basic concerns for the management, conduct and supervision can be developed by individual countries.

In the execution of its functions, the Commission has been faced with the following challenges:- late enactment of laws, qualification of candidates, campaigns characterized by election violence, voter fatigue, putting in place a credible voters' register, to mention, but a few.

1.3 (a) Late enactment of enabling laws

Late enactment and amendments of the laws greatly hamper the electoral process in that the elections are organized hurriedly and often limiting periods for the successful conduct of the various stages of the electoral process. For example, the Presidential Elections Act, 2000, was passed on 12th December, 2000 leaving hardly three months within which to prepare for the Presidential Election scheduled for March 2001.

Furthermore, the Local Governments Act, 1997, was amended by Amendment Act 13/2001 and Amendment Act 17/2001 in June and November, 2001 leaving very little time within which to execute the planned electoral process.

1.3(b) Qualification of Candidates and Voters

The issue of equivalence to determine a candidate's qualification is still susceptible to misinterpretation coupled with the problem of forgery by some persons in order to qualify.

The electoral laws pertaining to eligibility of voters and candidates for particular elections are paramount. These have to be communicated to the voters and candidates in order not to create mishaps over which group of persons are being favored for whichever elections.

Requirements for candidates to contest during elections for some offices have frequently raised concern from opponents – leading to court cases. A few by-elections have already been conducted as a result of this.

1.3 c) Election Violence

The Electoral Commission draws guidelines for campaigns for candidates. These guidelines are derived from provisions of the laws governing the conduct of elections during campaigns

The Commission does this in anticipation that candidates shall be free to expound on their programs and campaign manifestos in an orderly manner. Likewise, the behavior of voters/supporters of candidates should demonstrate restraint from intimidation and violence.

However the phenomenon of violence is taking root and is becoming a serious challenge in our electoral process. Some candidates now use it as a method of campaign causing fear and intimidation among the electorates. The causes are rivalry among candidates, ignorance and lack of democratic culture, monetization of elections and bribing of voters, partisan politics and campaigns, greed for power coupled with fear to lose elections on polling day, weak electoral laws to effectively curb violence and affinity to rig.

1.3(d) Voter Fatigue

It has been noted that frequent elections may be good for the people to choose representatives but it also causes voter fatigue thereby furthering voter apathy. The challenge thereby is what should be done with the population to ensure that they sustain consistent participation in the electoral process. The possibility of combining elections which do not have many variations like the Presidential and Parliamentary elections (with the exception of election for Special Interest Groups to Parliament) could be explored.

The table below illustrates the trend of Voter fatigue and apathy for the period stated.

VOTER TURN OUT FROM VARIOUS ELECTIONS		
NO	TYPE OF ELECTION	VOTER TURN OUT
1	Constituency Assembly, 1994	86.8%
2	Presidential Election, 1996	70.3%
3	Parliamentary Elections, 1996	61.7%
4	Referendum, 2000	53.1%
5	Presidential Elections, 2001	70.4%
6	Parliamentary Elections, 2001	58.5%
7	Local Council Elections, 2002	60.6%
8	Parliamentary By-Election for Rubanda County East, 2002	67.2%
9	Parliamentary By-Election for Bukomansimbi County, 2002	75.0%
10	Parliamentary By-Election for Kassanda County, 2002	63.6%
11	Mukono District Election for Chairperson, 2003	36.5%

1.3(e) Putting in Place a Credible Voters' Register

Availability of a credible Register on polling day before casting a vote underscores the significance of the register in elections.

Thus, the following activities that have to be carried out prior to production of the polling day register should be given special attention:

- (i) Registration of eligible voters
- (ii) Compilation/processing of the register,
- (iii) Display of the register
- (iv) Production/availability of the polling-day register

Consequently the Electoral Commission, under the Photographic Voter Registration Identification System (PVRIS) Project, carried out fresh registration of voters nationwide in a bid to improve the quality of the old register by adding pictures of the voters biodata as well in the register database.

Already about 8.2 Million voters are registered under the project and close to 2 Million voter cards bearing photographs have been produced. Similarly several elections and by-elections have been conducted using the photo bearing registers.

The project stalled due to lack of funds; it is necessary to secure the required funds and complete the project and embark on continuous voter registration

because the success of Election Day largely depends on the accuracy of the Voters' Register.

1.3(f) Independence of the Electoral Commission

The Electoral Commission, established by the Constitution is a statutory body and there is need to ensure that sufficient safeguards are in place to protect its independence.

By way of its operations, the Commission plays an impartial role in organizing and conducting elections. The aim of this is for the reason that no other body including the line Ministry and other complementary bodies should influence its work.

It should be noted that impartial organization and management of the electoral process is essential for the conduct of free and fair elections. Impartiality helps build voter and political confidence in the electoral system and the end results. The election officials in-charge of organizing and supervising elections must be competent and well trained.

1.3(g) Independent Election Monitoring

Monitoring and observing of elections by the Commission is a challenge in that most often a time, it becomes expensive to involve Commission staff to overseeing or presiding over some of the electoral process. However, with resources available, this is important because it ensures transparency in the electoral process.

While the supervision of elections is primarily the responsibility of the Commission, due credence is attached to ratification of the entire process by independent observers. Thus, the scope of monitoring or observing the electoral process should transcend both preparatory and polling day activities of an election by not restricting it to polling day activities alone.

1.3(h) Inadequate Funding

Management of the electoral process is a complex issue and it requires an appropriate organization structure, systems, and process, resources and values that can be achieved through strategic training, planning and management. However there has been a problem of inadequate funding, understaffing and lack of personnel development.

Inadequate funding affects the remuneration of field election officials hence, low calibre persons are recruited and entrusted with the conduct of election activities like display and polling. Many a time, these officials are not paid in time.

1.3(i) Inadequate Training

In line with the foregoing, and in relation to our election officials, adherence to voting procedures and regulations is as important as material preparation for

elections. Well-trained personnel at all levels of the electoral structure contribute significantly to the conduct of elections and in keeping with accepted international standards for open and transparent participatory elections.

Verbatim reading of the electoral laws does not constitute training. To be effective, a training program should be participatory. Trainees need to leave the training with some kind of memory aid, copies of legal documents governing the elections, regulations, guidelines, related posters/pictorial demonstrations or election officials manual to be the best option and serves as a reference document for trainers and practitioners.

There is need for election officials, especially the core group of trainers to be experienced and mature persons of good character and integrity, for example professionals, Head-teachers, magistrates and bureaucrats. In Eritrea and Ghana, for example, retired professionals are recruited as election officials.

Training should not be considered a luxury but an integral part of election preparation and this can only be achieved if there is adequate funding.

The Commission is also called upon to fill up existing vacancies in its structure so as to have an efficient human resource to competently handle its programs.

1.3(j) Inadequate Funding Voter Education and Training

It should be noted that voter education programs have been inadequately funded and this has a negative impact on the program.

Voter education programs should be on going and not confined to only the election date. Radio, print media, music and drama should be drawn to ensure effective dissemination of voter education messages. There is need for more innovation in this area as a management strategy.

Setting up civic activities network, namely religious groups, schools women groups, as such, to spread voter educational information and materials at local levels should be explored. Adequate funding for the programs should be provided.

1.4 Recommendations and Way Forward

The Commission must seek at all times to maintain/build public confidence in the electoral system by issuing regular and timely guidelines and holding regular consultative meetings with candidates or their agents and urging candidates to abide by the guidelines on the electoral process, aimed at among others, leveling the ground and minimizing election violence.

The media is a partner in the electoral process and without them the electorate may not be well informed. Unhindered but progressive media coverage of electoral activities should be encouraged. Frequent guest programs on major

radio and television stations would help present activities relating to elections to the voters.

A further dimension to this includes organizing well-tailored workshops or training programs for media personnel on coverage of electoral activities.

The Commission should also take into consideration the following:

- Allowing sufficient time to plan and conduct an election properly.
- Adequate funding for timely and adequate voter education and training.
- Completion of the PVRIS Project and continuous voter registration.
- Maintaining a realistic electoral Calendar.
- Timely consistent and realistic budgeting subject to available resource.
- Identifying low cost avenues of conducting and management of elections.
- Keeping the public/electorate informed.
- Involvement of civic society to improve credibility and legitimacy of the electoral process.
- Integrity of election staff and field officials.

Conclusion

The fundamental benefit from a successful and “free and fair” election is that it creates a legitimate and representative government. At a minimum a “free and fair” election reflects an election in which all the major players compete equally and accept the outcome of the process. Thus the successful conduct of elections themselves depend on a series of other conditions which form the body of the democratic process, and whose realization is to a large extent the essence of the transition from authoritarian to democratic consolidation.

Moreover, the conduct of equality elections and the required framework for such elections is one of several critical preconditions that need to be in place before democracy can be seen to be in place. This is the reason why it is important to engage in the process of developing and refining the electoral process, and also understanding what is needed in order to have “free and fair” elections towards consolidating democracy.