

MANAGING SUCCESSFUL FREE AND FAIR ELECTIONS

A LECTURE DELIVERED

BY

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1.0 INTRODUCTION:

- The goal of managing free and fair elections is to promote democratic governance which recognizes that democratic processes and institutions is the common responsibility of governments, the electorate and organized political forces.
- Both the Electoral Commission and the Uganda Police force are key stakeholders in the electoral process.
- As government agencies providing services to the people, we both derive our mandate from the Constitution of the Republic of Uganda.

1.1 GUIDING LAWS:

- The Conduct of free and fair elections calls for a comprehensive legal frame - work consistent with the holding of such elections.
- The electoral process in Uganda is conducted in accordance with relevant laws here under and regulations made under them;
 - The Constitution of the Republic of Uganda (1995);
 - The Electoral Commission Act 1997;
 - The Presidential Elections Act (2005);
 - The Parliamentary Elections Act (2005);
 - The Local Governments Act. (1997) with amendments; and
 - The Political Parties and Organizations Act (2005).
- Article 1(1) of the Constitution of the Republic of Uganda (1995) states:

All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.
- Article 4 goes on to say:

The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.
- The Electoral Commission (Uganda) is the body that was established under Article 60 of the 1995 Constitution and mandated under articles 61 and 62 to organize, conduct and supervise regular, free and fair elections and referenda.
- The Commission's **Mission** is to "organize and conduct regular free and fair elections and referenda professionally, impartially and efficiently" and
- The **Vision** is "to be a model institution and centre of excellence in election management".
- The Electoral Commission has worked closely with the Uganda Police Force which admirably coordinated the security details during the time for various Elections, by-elections and Referenda.

- The Commission is grateful to the Uganda Police Force for coordinating and ensuring security throughout the election period and during several Presidential, and General Parliamentary and the Local Governments' Councils by-elections and elections as well as referenda that have been held.

1.2 WHAT IS A FREE AND FAIR ELECTION?

- **Free** means that there is no restriction on access to the process, and
- **Fair** is that it is run impartially and in accordance with **international standards**.

1.2.1 Free electoral process

A free electoral process is one where fundamental human rights and freedoms are respected, including:

- ❖ freedom of speech and expression by voters, parties, candidates and the media;
- ❖ freedom of association; that is, freedom to form organizations such as political parties and NGOs;
- ❖ freedom of assembly, to hold political rallies and to campaign;
- ❖ freedom of access to and by voters to transmit and receive political and electoral information messages;
- ❖ freedom to register as a voter, a party or a candidate;
- ❖ freedom from violence, intimidation or coercion;
- ❖ freedom of access to the polls by voters, party agents and accredited observers;
- ❖ freedom to exercise the franchise in secret, and
- ❖ freedom to question, challenge and register complaints or objections without negative repercussions.

1.2.2 Fair electoral process

A fair electoral process is one where the **playing field** is reasonably level and accessible to all voters, parties and candidates and their agents, and includes:

- ❖ an independent, non-partisan electoral organization to administer the process;
- ❖ guaranteed rights and protection through the constitution and electoral legislation and regulations;
- ❖ equitable representation of voters provided through the legislation;
- ❖ clearly defined universal suffrage and secrecy of the vote;
- ❖ equitable and balanced reporting by the media;
- ❖ equitable access to financial and material resources for party and candidate campaigning;

- ❖ equitable opportunities for the electorate to receive political and voter information;
- ❖ accessible polling places;
- ❖ equitable treatment of voters, candidates and parties by elections officials, the government, the police, the military and the judiciary;
- ❖ an open and transparent ballot counting process, and
- ❖ election process not disrupted by violence, intimidation or coercion.

1.3 STAKEHOLDERS IN UGANDANS ELECTORAL PROCESS:

- Stakeholders are persons/groups who have an interest or stake in the process.
- The stakeholders depend on the Commission as they seek to fulfill their own goals and objectives;
- The Commission in turn depends on the stakeholders for its credibility, legitimacy and even support;
- The Electoral Commission and the Uganda Police forces are strongly interlinked stakeholders in the electoral process.
- Other stakeholders are;
 - ❖ **Voters:** They hold the franchise and without them there would be no elections. Informed voters make informed choices that result in free and fair elections and therefore, democratic governance.
 - ❖ **Candidates and their Agents:** they offer the choices from which the electorate can pick their representatives. The candidates and agents who promote their candidates need to know and observe democratic rule of the game as they canvass.
 - ❖ **Political Parties/Organizations:** they mobilize the population to participate by offering a platform of action around which to rally the electorate. They sponsor candidates.
 - ❖ **Election Officials:** Must be competent, people of integrity, neutral, transparent, and impartial. Their competence and integrity have a profound impact on the success of the electoral process.
 - ❖ **Election Observers/Monitors:** Their presence gives confidence to the electorate, candidates, political parties/organizations and the general public.
 - ❖ **The Media:** They are crucial in disseminating information and unfolding events in the course of elections and sensitizing the population through coverage of the electoral process. Their coverage must be balanced and fair. They must observe the code of conduct governing their profession.
 - The Electoral Commission has adopted a relatively open-door policy, which seeks to respond to inquiries as fast as possible.
 - Under this policy, the Commission also seeks to expeditiously respond to inquiries from the media.
 - The Commission provides information to the media in four major options including: Press Conferences; Press releases; Inviting the press to Commission events; and On request by the press.

- ❖ **Government and its arms: the (Executive Legislature, Judiciary and Security):** They legislate; fund and arbitrate the electoral process and ensure security. This category includes the police and other security agencies that ensure peace and security during the electoral process.
- The Electoral Commission seeks the cooperation of all these Key Actors in the electoral process in order to deliver free and fair elections.

1.4 THE ELECTORAL PROCESS:

- An election is a process that involves many stages and activities.
- The proper interface of the Electoral Commission with the stakeholders and the participation of the stakeholders or lack of it and their manner of participation can aid or hamper the attainment of a free and fair election.
- Some of the activities are not directly the mandate of the Electoral Commission but are critical to its mandate, while most of them are the direct mandate of the Commission;
- **Amendment and Enactment of Electoral Laws and regulations which will govern those elections.**
 - ❖ It is the responsibility of the Executive and Parliament.
 - ❖ The enactment must be timely.
 - ❖ The Electoral Commission cannot access funds to carry on activities in a timely manner without an enabling law.
 - ❖ It cannot develop relevant educational messages and guidelines to disseminate to the electorate, general public, candidates and political parties/organizations without the laws and regulations.
- **Voter Registration and a Credible Voters' Register**
 - ❖ The Backbone of a Free and Fair Election is an accurate Voters' Register
 - ❖ It must be credible since it determines who can vote during the election.
 - ❖ It is therefore important that all stakeholders have a sense of ownership of the Voters' Register by participating in the mobilization and monitoring of voter registration and Update process and the subsequent Display of the Voters' Register.
 - ❖ The Electoral Commission conducts continuous voter registration and a General Update before major elections.
 - ❖ The law requires that people can register and vote where they originate from or reside.
- **Demarcation of Constituencies and Setting up of Polling Stations**
 - ❖ The criteria for demarcating constituencies must be clear and in accordance with the law.
 - ❖ Grass roots stakeholders must be involved in the setting up of polling stations and the demarcations of constituency boundaries.
 - ❖ Polling stations must be gazetted as required by law.

- **Voter Education and Publicity.**

- ❖ Article 1 of the Constitution of the Republic of Uganda cited earlier vests all power in the hands of the people of Uganda. For them to exercise this responsibility effectively, they must be informed.
- ❖ An informed electorate is an empowered electorate.
- ❖ Voter Education creates awareness and knowledge of the electoral system and the roles of the various stakeholders in the whole process.
- ❖ Voter education and publicity entail provision of three types of information:
 - **Publicity:** involves giving information about an impending activity e.g registration of voters, display of Voters' Register, nominations, campaigns, where to vote and when etc.
 - **Know-how:** involving imparting knowledge about the electoral process e.g what to look out for and do during Display of the Voters' Register, what to do at a polling station during voting, observance of secrecy of the ballot etc.
 - **Value orientation:** involves discussion of issues like why vote at all, rights and responsibilities of a voter, and general information the electorate must know about democracy.
- ❖ The value orientation function is played in small part by the Electoral Commission but is largely the responsibility of the Uganda Human Rights Commission.
- ❖ Civil Society has a very big role to play in Voter Education.
- ❖ The challenge in these times is for the Electoral Commission to identify educators who will pass on unbiased voter education messages.

- **Nominations of Candidates and Campaigns.**

- ❖ The law should and the laws of Uganda do guarantee the right of a citizen to vote and be voted for.
- ❖ The laws spell out the requirements and eligibility for various elective positions.
- ❖ These must be obeyed to avoid conflict and calling into question the validity of an election.
- ❖ For example, the requirement for an A-Level qualification or its equivalent for parliamentary candidates is a challenge which has over the years led to some parliamentarians being thrown out by courts of law for presenting forged academic papers.
- Campaign period can easily be one of the most explosive periods in the electoral process.
 - ❖ This is where a code of conduct for Political Parties/Organizations is essential, for a free and fair election.
 - ❖ All parties/organizations, candidates and their agents must subscribe to the Code of Conduct and impress their supporters to do the same, to restrain themselves and be respectful of the opposing views.
 - ❖ Observance of such a Code should be strictly enforced.
 - ❖ The Code of conduct which was expected to be a subsidiary legislation under the Political Parties and Other Organizations Act (PPOA) is not yet out.

- **Procurement, Packing and Despatch of Election Materials.**
- ❖ The Commission must plan well, procure, pack and despatch in time materials needed for the various stages of the electoral process. Government must appropriate and release adequate funding and in time for the process to proceed unhindered.
- ❖ Police provide escorts and general security of electoral materials during the electoral process;
- ❖ Delays at any stage in the process can create suspicion and accusations and call into question the credibility of the process.

- **Polling Day Activities**
- Polling day is preceded by recruitment, training and deployment of polling officials.
- People so employed must display the same integrity, impartiality, transparency and competence expected of full-time Electoral Commission employees.
- The names of people recruited for training and deployment as polling officials are, by law, displayed for 7 days for political parties/organizations, candidates and the general public to raise objections .
- Activities at the polling station must be transparent.
- Accusations of intimidation, ballot stuffing, bribery, over – voting etc can call into question the credibility of the final result of the election.
- The Electoral Commission has introduced a number of strategies to close the gaps and strengthen delivery of free and fair elections. Among these are serialized D.R forms, translucent ballot-boxes, tamper-evident envelopes for D.R. forms, software which red-flags over-voting at any polling station etc.

1.5 TYPES AND MODES OF ELECTIONS:

- The Electoral Commission Act 1997 (as amended) spells out the functions and powers of the Commission.
- The Electoral Commission conducts the following elections;
 - Presidential, parliamentary elections (held once after every 5 years);
 - Local government councils' elections at district, municipal/city division, subcounty/ town/municipal division council, and administrative councils levels;
 - Women council/committees elections (village to national level);
 - Youth councils/committees elections (village to national level); and
 - Special Interest Groups: Workers, Youth, People with Disabilities (PWDs) and the Army (UPDF) elections (national level).
 - By-elections; and
 - Referenda.
- Presidential, Parliamentary (Directly Elected and Woman Representative) elections are through adult suffrage secret ballot. Special Interest Groups are elected through their respective Electoral Colleges using secret ballot through adult suffrage.

1.6 CROSS –CUTTING ISSUES:

There are certain issues that cut across the entire spectrum of the electoral process which must also be well –managed to have a free and fair election. They include:

1.6.1 The Role of Police and other Security Organ

- In accordance with Article 212 of the 1995 Constitution of the Republic of Uganda, the main duties and functions of the Uganda Police Force are to;
 - ❖ **To protect life and property,**
 - ❖ **To preserve law and order, and**
 - ❖ **To detect and prevent crime.**
- Section 12 (f) of the Electoral Commission Act (1997) enjoins the Commission:
 - ❖ **to take steps to ensure that there are secure conditions necessary for the conduct of any election in accordance with this Act or any the law.**
- Security of persons (life) and election materials must be safeguarded to create a conducive atmosphere for all stakeholders to go about their legitimate business unhindered.
- ❖ Freedom of movement, assembly, association and expression must be respected.
- ❖ The Police is the lead agency and other security organs are called in as and when need arises, are critical partners to the Electoral commission in provision of security.
- ❖ The Police form the bulk of polling constables at polling stations, escort election materials and generally secure the election environment.
- ❖ Police also investigate electoral offences.
- ❖ During the 2006 elections, the Electoral Offences Squad was set up in Police and greatly assisted the Electoral Commission, especially with regard to investigation of questionable academic documents as well as other offences related to the electoral process.
- ❖ The Political Crimes Management Department has been set up in the Police Force and will continue to greatly help the Electoral Commission both at Headquarters and the districts, as it strives to deliver free and fair elections.
- My colleague last week sufficiently covered the role of security in elections, so I will not go into any more details.

1.6.2 Interface between the Electoral Commission and Political Parties/Organizations.

- Sustained consultations and interface between the Electoral Commission and Political Parties/Organizations is important for the smooth running of elections so that the end product is regarded as free and fair.
- Regular consultations afford stakeholders the chance to air out concerns and grievances so that they can be handled in a timely manner.

- Under the PPOA, a National Consultative Forum is to be set up and shall provide the platform for this interface.
- The forum is to be replicated at the Districts and lower levels. During the 2006 elections, a National Consultative Forum and District/Subcounty Liaison Committees were set up with the help of the Donor Community and greatly assisted in resolving electoral related issues at those levels.
- The Commission also instituted National and District Complaints/Inquiries Desks where representatives of Political Parties/Organizations are included for quick receipt and response to complaints/inquiries on polling day. Telephone numbers of the people manning these Desks are publicized.

1.6.3 Voter Education & Training

- Voter education is a continuous process that is carried out whenever an electoral event is taking place.
- Discussion on voter education has already been covered above, under the section of electoral process.

1.7 CHALLENGES, RECOMMENDATIONS AND WAYFOWARD:

- A large part of making an election free and fair has to do with how it is run, but managing free and fair elections has its own challenges;
- ❖ Potential for voter fraud, duplicate voter registration records, inaccurate voter information large number of voters in a polling station.
- ❖ Elimination of multiple registrations may call for additional security features on the voters' register and cards which increases cost;
- ❖ Late enactment and/or amendment of enabling laws leaves the Commission with inadequate time to organise, conduct and supervise Elections including activities that have legal time requirements.
- ❖ Organising and conducting Elections within a short timeframe, does not give the various stakeholders adequate time to internalize the requirements for participation in the elections.
- ❖ Inadequacy of the laws. For example laws that allow for absentee balloting, early voting of poling officials and security official s deployed on the Election Day is not in place.
- ❖ Effectively monitoring campaigns for candidates at various levels and categories of elections country wide coupled with hearing and determining large volumes of Complaints/Petitions within a limited time;
- ❖ Voter apathy during registration and update of the National Voters' Register leading to over crowding during the last days and hence pressure on the Commissions.
- ❖ Bad roads and unpredictable natural calamities like rain, flood, and, and lack of shelter in the event of inclement weather at polling stations in open grounds.
- ❖ Inadequate and late release of funds leading to budgetary constraints which has many adverse effects like inadequate remunerations of election officials and other stakeholders, including the Police Officers deploy during elections;

- ❖ Inadequate facilitation to Police for use in maintaining law and order during the election period, and for procuring tear gas to control riotous situations to protect the public and property.

1.8 WAYFORWARD:

- To achieve event better results in future requires;
- ❖ Timely enactment and harmonization of electoral laws to enable the Commission plan for implementation;
- ❖ Timely and adequate release of funds; and
- ❖ Retention, strengthening, and facilitation of the Police Election Offences Squad, National and District Complaints/Inquiries Desks, and a National Consultative Forum and District/Subcounty Liaison Committees;
- ❖ Sustained consultations and interface between the Electoral Commission and Political Parties/Organizations, and other stakeholders which is important for the smooth running of elections so that the end product is regarded as free and fair.
- ❖ Adequate sensitization of the electorates and stakeholders.

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