



26th April, 2007

PROPOSED AMENDMENTS TO ELECTORAL LAWS

Introduction

The Commission has continued to discover lacunas and weaknesses in the electoral laws that will hamper its field activities and affect the quality of elections. It is therefore proper that all those areas in the electoral laws be identified and forwarded for amendment now to create an ideal and practical legal environment for future elections.

In this document, the Electoral Commission continues to highlight those areas and proposes amendments to improve the legal regime within which it operates. Some of the proposals previously submitted have since been dropped. This document therefore captures the complete and up to date set of proposed amendments by the Electoral Commission.

1. Voter Education

The Constitution provides in article 61 (1) (e) that the Electoral Commission shall formulate and implement voter education programmes related to elections. Voter education is however only a micro component of civic education which is the constitutional duty of Uganda Human Rights Commission. In a country with the majority of the population illiterate or semi illiterate, voter education has remained inadequate.

Recommendation

It is proposed that the laws should be amended to require the National Media to allocate time and space to periodically conduct voter education programmes.

2. By-elections for District Chairpersons

Section 171 of the Local Governments Act was amended to the effect that a by-election for District Chairperson shall be conducted within 60 days from the occurrence of the vacancy. Previously it was 6 months. In practice it is difficult to squeeze electoral activities for an entire district especially those with more than two counties in 60 days for the following reasons-

- i. The same section provides that where the office of a chairperson becomes vacant, the clerk to the council shall have up to 21 days to notify the Commission of the vacancy. That reduces the statutory period to just 39 days;

- ii. Section 25 of the Electoral Commission Act requires the voters' register for every election to be displayed for not less than 21 days prior to polling. That reduces the statutory period further;
- iii. Unlike Parliament, a District can function without a Chairperson since it has a Vice Chairperson and a Council of elected leaders. The absence of a Chairperson does not therefore deprive the district of representation unlike Parliament.
- iv. The electoral area for the entire district is much bigger than a parliamentary constituency for instance.

Recommendation

It is proposed that the Local Governments Act be amended to reinstate the 6 months period for the conduct of by-elections for District Chairpersons.

3. Multi-party Dispensation

Although elections at Administrative lower councils are provided for under sections 160 to 172 of the Local Governments Act, the law does not specifically set out the role and participation of political parties in the electoral process at that level. This makes the work of the Electoral Commission very difficult in the multi-party dispensation.

Recommendation

It is proposed that the Local Governments Act be amended to clearly and specifically set out the role and participation of political parties and organizations in the electoral process at those levels.

4. Effect of creation of new electoral areas

- (i) Both the Parliamentary Elections and the Local Governments Acts provide in sections 8 (5) and 181 (2) respectively that where a new electoral area is created, the incumbent Woman Member of Parliament or District Chairperson as the case may be is required to and must choose one electoral area of representation. However, the law is not clear on the rest of the Local Governments elective offices.

Recommendation

It is proposed that the law be amended to exhaustively cover the effect of creation of new electoral areas at all local government levels.

- (i). New administrative units from Village to District levels are created by splitting existing units to form new ones.

The voters' registers for the affected administrative units are re-organized to accommodate new changes and in many cases, it necessitates changing the whole set-up of the polling station basing on villages. As a result, voters' particulars are bound to be confused whenever the register is re-organized.

In most cases information about the newly created units is received by the Electoral Commission belatedly, a fact that complicates the processing of the registers for the affected areas leading to inaccuracies. As a result, the Commission is always criticized for lack of thoroughness arising from inaccurate registers.

Recommendation

It is proposed that a cut off date in respect of creation of administrative units be included in the Local Governments Act and such creation should be at least six months prior to general elections. No creation should be made after the gazetted date in preparation for elections.

5. Elections of representatives of PWDS and Elders

Both the Electoral Commission and the National Union of Disabled Persons of Uganda have found major problems conducting elections for representatives of persons with disabilities and elders for the reasons set out hereunder;

The provisions of the National Council for Disabilities Act of 2003 and section 118 (2) and (2A) of the Local Governments Act are not exhaustive;

There are no comprehensive laws and regulations for the conduct of those elections;

The Electoral Commission has no role in the election of Councils and Committees for PWDS from grass root up to the national levels;

The Electoral Commission has no role in the formation of the Electoral College for election of Councillors for the elderly to the Districts;

The electoral structure for representatives of PWDS is unclear;

The electoral structure for representatives of elders is unknown to law and the Electoral Commission;

The Electoral Commission conducts elections for Councillors and MPs for PWDS but does not control the formation of the Electoral College; and

The Electoral Commission conducts elections for Councillors for elders but does not control the formation of the Electoral College.

Recommendation

It is proposed that laws be urgently enacted to regulate the elections of representatives of PWDS and Elders at all Local Government levels and in Parliament in the case of representatives of PWDS.

It is further proposed that the laws should clearly set out the structures of representation of PWDS and Elders.

The laws should also clearly set out the functions, powers and duties of the Electoral Commission vis that of NUDIPU and the Associations of Elderly persons.

Finally, the laws should clearly set out the financial obligations of the Electoral Commission if any.

6. **Conduct of by - elections**

Section 3 (c) of the Parliamentary Elections Act, 2005 provides that where the seat of a Member of Parliament becomes vacant, the Clerk to Parliament shall notify the Commission in writing within ten days after the vacancy has occurred; and a by – election shall be held within sixty days after the vacancy has occurred.

In the same breath, the Local Governments Act in section 171 provides that; in the case of vacancy in the office of District Chairperson or councillor, the Clerks to council shall notify the Commission in writing within 21 days and the by–election shall be conducted within six months

In all cases, the laws do not provide for the method of accessing the knowledge of occurrence of the vacancies by the clerks to Parliament and the District Councils. Consequently, they often get to know of vacancies, especially those arising from court decisions from press reports. This almost always delays performance of their statutory duty to notify the Commission whose time to conduct the by–elections is also consequently affected.

Recommendation

It is proposed that the laws be amended so that where the courts nullify an election and declare a vacancy, the Registrars of the courts are legally bound to transmit copies of the judgements to the Clerks to Parliament and Councils at different local governments within a specified period. Such period should be excluded from the statutory time for the conduct of by – elections.

7. **Lacunae in the electoral Laws created by the judgement of the Constitutional Court in Election Petition No. 8 of 2006.**

The Constitutional Court in the above judgement nullified the following enabling laws:-

- section 160 of the Local Governments Act
- regulation 12 (1) of the National Women’s Council (Women’s Council and Committees) (Elections) Regulations
- section 161 (4) of the Local Governments Act
- regulation 14 (3) of the National Women’s Council (Women’s Council and Committees) (Elections) Regulations
- regulation 14 (3) of the National Youth Council (Council and Committees) (Elections) Regulations
- section 161 (2) of the Local Governments Act
- regulation 14 (1) of the National Women’s Council (Women’s Council and Committees) (Elections) Regulations

- regulation 14 (1) of the National Youth Council (Council and Committees) (Elections) Regulations
- section 46 (1) (c) of the Local Governments Act
- section 6 (1) of the National Youth Council Act
- regulation 12 (1) of the National Women's Council (Women's Council and Committees) (Elections) Regulations
- regulation 12 (1) of the National Youth Council (Council and Committees) (Elections) Regulations
- regulations 3, 6 (1) (a), 7, 8, 9 and 11 (3) of the National Youth Council (Council and Committees) (Elections) Regulations
- section 46 (c) of the Local Governments Act
- sections 6 (1), 2 (2) and 5 (2) of the National Women's Council Act
- sections 6 (1), 2 (2) and 5 (2) the National Youth Council Act

The nullification of the above enabling laws leaves a lacuna in the enabling laws for the conduct of elections at Administrative Units.

Recommendation

It is proposed that the laws be amended to fill the lacunas created by the judgement urgently to enable the Electoral Commission to discharge its mandate.

8. Late Enactment of Electoral Laws and Regulations

Given the fact that Electoral Commission conducts elections/referenda within statutory time frames, late enactment of enabling laws and regulations creates problems in implementation of the relevant provisions of the said laws. For instance, the electoral laws for the February, 2006 general elections were enacted as late as November, 2005 and some of the provisions were rendered nugatory.

Recommendation

In light of the above, it is proposed that an amendment to the Electoral Commission Act should be enacted to enable the Electoral Commission to defer the implementation of any legislation relating to electoral matters passed by Parliament less than one year prior to the latest date for a Presidential, Parliamentary or Local Government/Council polls. Such legislation should come into force only for subsequent elections.

9. Consolidation of Electoral Laws

There are numerous electoral laws scattered in several texts inclusive of the following;

- The Constitution of the Republic of Uganda, 1995
- The Constitution (Amendment) (No. 3) Act, 2005
- The Electoral Commission Act, Chapter 140
- The Electoral Commission (Constituency Boundary Demarcation) (Appeals Tribunal) Rules, SI 140-1

- The Electoral Commission (Prescription of Form of Voter Register) Instrument, SI 140-2
- The Political Parties and Organisations Act, 2005 (applicable for registration, monitoring and supervision of Political Parties and Organizations)
- The Political Parties and Organisations (Appeals and Applications) Rules, 2005
- The Presidential Elections Act, 2005
- The Presidential Elections (Forms) Regulations, SI 142-1
- 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 (Appeals to the High Court from the Commission) Rules, SI 141-1
- The Parliamentary Elections (Election Petitions) Rules, SI 141-2
- The Parliamentary Elections (Prescription of Forms) Regulations, SI 141-3

- The Parliamentary Elections (Election Petitions) (Production of Records of Appeal) Directions, SI 141-4
- The Resolution of Parliament under section 8(3) of the Parliamentary Elections Act, 2005 (Act No. 17 of 2005) for a review of the representation under article 78(1)(b) and (c) of the Constitution.
- 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 National Youth Council Act, Chapter 319
- The National Youth Council (Councils and Committees) (Elections) Regulations SI 319-1
- The National Youth Council (Amendment of Schedule) Instrument, 2001
- The National Women's Council Act, Chapter 318
- The National Women's Council (Women's Councils and Committees) (Elections) (No.1) Regulations, SI 318-1
- The National Women's Council (Amendment) Act, 2002
- The National Women's Council (Councils and Committees) (Elections)(Amendment) Regulations, 2001
- The National Women's Council (Councils and Committees) (Elections)(Amendment) Regulations, 2003
- The Movement Act, Chapter 261 (presently in abeyance)
- The Movement (Elections) (No. 1) Regulations, SI 261-1 (Presently in abeyance)
- The Movement (Elections) (No. 2) Regulations, SI 261-2 (Presently in abeyance)
- The Referendum and Other Provisions Act, 2005
- The Referendum Regulations, 2005
- The Referendum (Petition) Rules, 2005

The fact that electoral laws are numerous and scattered in different text books makes access and interpretation difficult to electoral officials, the public and even judicial officers. It also undermines voter education and causes lacunas and inconsistencies in the law.

Recommendation

It is proposed that apart from the Constitution, the other electoral laws should be consolidated into one called The Electoral Act and the same should be done to the Regulations and Rules. This is the case in many countries like Seychelles for example where the Electoral Act of 1995 provides the main detailed legal framework for elections. Similar laws exist in India.

10. Registration of Voters

Section 19(1) of the Electoral Commission Act provides that a person aged at least 18 years and above and is a citizen of Uganda may register as a voter in the parish where he/she originates from or resides.

The law does not provide for provisional registration of a person who is less than 18 years but who would have attained the voting age by polling day. The lack of such a provision therefore disenfranchises many persons.

There have been many complaints of under age voters on the National Voters' Register and yet the Constitution and the enabling laws do not provide for avenues for determining persons of voting age.

Recommendations

It is proposed that a provision should be included in the law to enable all Ugandans who would have attained the Voting age by polling day, to be provisionally registered before cut-off of registration.

The law should also set out a clear procedure to be followed for purposes of determination of age.

The issuance of National Identity Cards should be expedited.

11. Display of the Voters' Register

Section 25(2) of the Electoral Commission Act Cap.140 provides that before any election is conducted, the voters' register shall be displayed for a period of 21 days.

The Commission, due to late enactment and amendments of laws and other time frames stipulated by the law in the conduct of elections is often at pains to meet this requirement.

The Supreme Court ruled in Presidential Election Petition No. 1 of 2006 that the law on display of the voters register does not provide for natural justice to voters before deletion from the voters register.

Recommendation

It is therefore proposed that Section 25(2) be amended to reduce the display period to 15 days.

It is also proposed that after the 15 days of display, another 5 days be enacted to accommodate a further display of those persons recommended for deletion from the voters register.

12. **Issuance of Duplicate Cards**

Section 27(1) of the Electoral Commission Act provides that where a voter's card is lost, destroyed, defaced, torn or otherwise damaged, the voter shall at least seven days before polling day notify the Returning Officer or other duly authorized officers stating the circumstances of that loss, destruction, defacement or damage.

Section 27(2) provides that if the Returning Officer is satisfied with the circumstances stated above, he shall issue a duplicate copy of the voters' original card.

Section 27(3) provides that no person shall issue a duplicate voter's card to any voter on polling day or within seven days before polling day.

There is no contradiction in the above stated provisions of the law. However, the said provisions are self defeating. What is the purpose of reporting loss or destruction of a voter's card at least seven days before polling day if a duplicate copy cannot be issued within that time?

Recommendation

It is proposed that;

- (i) Section 27(1) be amended to reflect a period of at least 3 months before polling day, in which duplicate voter's cards can be applied for; and
- (ii) Section 27(3) should be amended such that issuance of voters cards, whether original or duplicate ceases at the end of display period.
- (iii) The section should also be amended to include a requirement to report and obtain a report from the Uganda Police as well as payment of a fee for the replacement.

13. **Academic Qualifications**

The electoral laws provide that reference to the words "equivalent standard" in respect to Advanced level of education means such equivalent standards certified by the National Council for Higher Education

Academic qualification is susceptible to misinterpretation and remains a fundamental problem. Candidates who forge academic papers have many times been cleared by the National Council for Higher Education.

Although the Electoral Commission does not have the competence or duty to verify academic qualifications, it has been found liable for nominating persons who lack academic qualifications even where they have been certified by academic institutions and or the National Council for Higher Education.

Recommendation

It is proposed that the electoral laws be amended to exempt the Commission from liability where a person otherwise not qualified is nominated on the basis of academic certificates from academic institutions and or the National Council for Higher Education.

It is further proposed that such academic institutions and or the National Council for Higher Education as the case may be should be made a statutory respondent to any petition where academic qualifications are challenged.

14. Campaigns

Bribery is one of the common illegal practices in Uganda. The current electoral laws allow candidates or their agents to serve refreshments and food at meetings. In practice, it is difficult to police the campaign period to prevent the illegal practice of bribery. That is because there are no sufficient legal controls to candidates and their agents.

Recommendation

It is proposed that electoral laws be amended to ban all fund raisings, donations and similar activities by candidates, candidates' agents and Political Parties and Organizations during the campaign period. This is done in other countries like Bangladesh.

15. Reporting of Vacancies

There is no system provided by the law in reporting the occurrence of vacancies at Parish and Village levels.

Recommendation

It is proposed that that the parish chief should report vacancies to the sub-county chief within 7 days of occurrence and the sub-county chiefs should report any vacancies within 14 days of occurrence to the District Registrar who in turn shall notify the Commission of the same.

16. Powers of the Commission to curb Election Offences.

Section 12 of the Electoral Commission Act 1997 spells out the various functions of the Electoral Commission which include inter alia, "taking measures for ensuring that the entire electoral process is conducted under conditions of freedom and fairness". However, the law does not give adequate powers to the Commission to discharge this function.

Recommendation

It is proposed that the law be amended so that anyone who commits an offence shall on conviction be liable to a fine or imprisonment for a term not exceeding two years and in addition to the imprisonment, be disqualified for a period of five years from the date of his/her conviction from running for an elective office.

17. **Returning Officer's Report**

The electoral laws provide in mandatory terms that election results shall be ascertained and declared by the Electoral Commission within 48 hours of closure of polling. Thereafter, the Returning Officers must make and submit a report on the elections in their area together with the results. However, the Commission has found problems in securing the reports within the same period as the results largely due to the fact that the report covers the entire electoral process not just the results, time constraints and communication problems especially from distant parts of the country. This has caused distrust and suspicion from the stakeholders.

Recommendation

Whereas the 48hours for declaration of results stays; the Commission proposes that the electoral laws be amended to increase the period for submission of reports of Returning Officers to 1 week after polling.

18. **Tenure of the Electoral Commission**

The Constitution guarantees the independence of the Electoral Commission in article 62. However the tenure of office of the Commission is limited to 7 years after appointment by the President and approval by Parliament. This undermines the independence of the Commission whose tenure after the 7 years is, under article 60, only renewable and even then, for only one additional term.

Recommendation

It is proposed that the Constitution be amended to provide for tenure of the Electoral Commission to be similar to that of Judges. This will further protect and guarantee the independence of the Commission.

Conclusion

The above proposals have been prompted largely by practical constraints to the Electoral Commission, whose exclusive duty it is to ensure continuity of governance through the conduct of regular, free and fair elections. In a country such as Uganda, which aspires for democratic governance, it is therefore imperative that the proposed amendments to the electoral laws are enacted to improve the quality of elections in Uganda.