

# **VOTING FOR DEMOCRACY (THE UGANDAN EXPERIENCE)**

## **AN ASSESSMENT OF THE STATE OF MODERN ELECTION**

One of the most important element of democracy is that leaders and representatives of the people are to be elected at regular intervals. Regular elections are the expression of the will of the people on how they are to be governed and by whom. For elections to be regarded as having legitimacy in a democracy, they have to be free and fair. The electorate must have opportunities to judge between different policies and their relevant and practical application to their daily life. The electorate must be free to exercise their inherent constitutional rights to vote for persons or political parties of their choice. For these reasons, it is a prerequisite to have a body either created by the Constitution or another law to organise, conduct and supervise elections in a given democracy. Electoral bodies, wherever they exist are expected by the citizen to be independent and impartial. Consequently in many democracies the composition of electoral bodies is a subject of intense consultations and debates. Usually persons appointed to the electoral bodies are expected to be people of integrity.

Free and fair elections, where a majority of people accept the out come of the elections are some of key factors which contribute to stability and development in a country. They give legitimacy and acceptance of a political system in power.

Uganda has been independent for thirty six years. We have had two general elections based on a multi party system in 1962 and 1980. The results of the 1980 elections were highly disputed although the commonwealth observers said it was “free and fair under the circumstances” . Whatever that meant!

In 1989, we had election to the National Resistance Council (NRC) through electoral colleges from the village up to the national level. In 1996, we had both Presidential and Parliamentary elections based on merits and not on political party lines. Political parties in Uganda are suspended. Candidates’ campaigns are regulated by law. The candidates hold meetings chaired by an official of the Electoral Commission. No candidate may address the public individually. Candidates are prohibited by law to hold a meeting of more than ten people in a public place. A candidate may however, have consultative meetings with his/her agents.

## WHAT KIND OF ELECTION MANAGEMENT BODY?

The Uganda Electoral Commission is a body established by Article 60 of the 1995 Constitution. It was legally constituted on 11th November 1997. It consists of Chairperson, Deputy Chairperson and five Commissioners appointed for seven years. The seven are nominated by the President and approved by Parliament which has the right to reject any Presidential nominee. The appointment may be renewed for one more term. The functions of the Electoral Commission under Article 61 of the constitution of 1995 are:

1. To ensure that regular, free and fair elections are held.
2. To organise, conduct and supervise elections and referenda.
3. To demarcate Constituencies.
4. To ascertain publish and declare the results of the elections and referenda.
5. To compile, maintain, revise and update the voter's register,
6. To hear and determine elections complaints arising before polling.
7. To formulate and implement civic education programme relating to elections.
8. To perform any other functions as may be prescribed by Parliament.

The Commission is independent and is not subject to direction or control of any person or authority in the performance of its functions. Parliamentary Election Statutes and the Electoral Commission Act gives the Commission wider powers.

## WHAT KIND OF ELECTIONS?

Since Uganda and the movement does not have political parties, the elections are organised on the basis of individual or personal merit. The Presidential candidates are allowed to have their manifesto individually and so are Parliamentary hopefuls or Local council candidates. Uganda has two systems of elections lining up behind the candidate of one's choice and secret ballot elections.

At village and parish levels. which are the lowest administrative units, elections for the Executives are conducted by voters lining up behind the candidates they wish to vote for. There are ten positions at the village and parish executive committees. Seven people are elected by the members of the village or parish, respectively. The village youth council sends its Chairperson to the village executive as secretary for youth. The village women council send their Chairperson to the village executive council as Secretary for women. Similarly the village chairperson of people with disabilities is the Secretary for persons with disabilities for the Village Executive. The same arrangement applies respectively at the

parish level for the Youth, the Women and the persons with disabilities. At least four seats for the village and parish executives must be occupied by women.

At the sub-county level, the Chairpersons are elected by universal adult suffrage and secret ballot while all the Councillors are elected by universal adult suffrage, by lining behind candidates.

In every local government council, a third of the council must consist of women. Consequently constituencies have to be created for woman within the sub-county. This involves aggregating some parishes to have one women representative or dividing a parish in order to bring two women councillors. All councillors must have representatives of the youth and the disabled, elected by the respective electoral colleges.

At a county level, which is also an administrative unit. all the Executive members of the sub-counties, in the county, form an electoral college and elect the chairperson and vice chairperson only.

There are thirteen Municipalities in Uganda. Chairpersons of Municipalities and councillors are elected by universal adult suffrage and secret ballot. The 1/3 of women councillors for municipalities are elected by universal adult suffrage by lining behind a candidate, his/her agent or portrait.

### **District Council Election**

District chairpersons and councillors are elected under secret ballot, by universal adult suffrage and the women councillors are elected by lining behind a candidate or his/her agent or portrait.

### **The Uganda Parliament under Article 78 of the Constitution comprises:-**

- a) Members directly elected to represent constituencies;
- b) One woman member for each district;
- c) Ten members representing the army elected by an electoral college in the army;
- (ii) Five youths one of whom must be a woman.
- (iii) Five members representing people with disabilities , and
- (iv) Three Members representing the workers

Since Uganda has suspended all political parties activities the issues of “First Past The Post” or proportional representation are not there.

The Law requires that candidates for the Presidency and Parliament stand on their individual

merit and that a Presidential candidate must get absolute majority to be declared a winner. The elections are by secret ballot, one ballot box is used for all candidates. The voters are counted and recorded at each polling station and agents of candidates are required to certify the results. The results are taken to the Returning Office to be tallied.

Although the Constitution and the laws have endeavoured to uplift the status of women, the electoral laws are discriminative against women by making their election at the Municipalities and Districts conducted by lining. The women of Uganda are protesting against this mode of discrimination but Parliamentarians argue that the country does not have enough financial resources to have all levels of our elections conducted by secret ballot.

With regard to the special interest group i.e. the women, the army, youth, workers and people with disabilities. Article 78(2) of the Uganda Constitution states that after ten years from the promulgation of the Constitution in 1995, and thereafter every five years, Parliament shall review the representation of special interest groups.

### Getting the Register Right

Article 59(2) of the Constitution of Uganda makes it a duty for every Ugandan citizen of eighteen years or above to register as a voter for public elections. A person may register in any of the following places:-

- 1) where he/she originates from, or
- 2) resides, or
- 3) works in gainful employment.

One of the functions of the Uganda Electoral Commission is to compile, maintain and update on a continuous basis a national voters' register - (S. 18 of the Electoral Commission Act 1997).

There are Voters' rolls for each polling station in a constituency and only persons whose names are on the register are entitled to vote at an election (S. 19(2) Electoral Commission Act 1997).

Under the Electoral Commission Act, the Minister of State for Constitutional Affairs may by Statutory instrument appoint a date on which the update of the register shall end. The Electoral Commission appoints a date when the update of voters' register shall commence and this must be gazetted in Government Gazette.

After the update of the register, the Electoral Commission takes the register back to the polling stations for display. Any person whose name was omitted may apply for registration. Names of the dead and the under aged if contained in the register may be objected to by any person filling and signing an objection form. The Commission then cleans the register and displays it before any elections are held. (S.25). The voters' register (which has been computerized, is a public document which can be accessed by anybody.

The Electoral Commission has appointed a registrar for each of the 45 Districts of Uganda. The Registrars have a duty to maintain and update the voters' register on a continuing basis. The Registrars are independent and cannot be subjected to direction or control of any person or authority except the Electoral Commission. Update officers are appointed for a limited period by the returning officer whenever there is an update.

Each person whose names are in the voters' register must get a voter's card. The card must be presented to an election officer before a voter is allowed to vote. The card must have a corresponding number with the names and voter number in the register. Loss of a card must be reported to the Returning Officer who may, after ascertaining the truth of the matter, issue a duplicate card.

Candidates' agents are required to sit near the Table where identification of the voter takes place and where the election officer gives the ballot paper to the voter. This is for the identification of the voter and to ascertain that the voter gets only one ballot paper.

### **Preparation : The Devil's in the Details.**

First and foremost there must be funds for holding elections. Then the voters register must be updated and displayed. After the display the register is cleaned i.e. removing the dead and effecting transfers of voters from one voting location to another, for those who have asked for transfers.

There are nominations of candidates and in the case of secret ballot elections, the ballots have to be printed with photographs of candidates. This enables illiterate people to identify candidates of their choice. Ballot boxes have to be secured. Indelible ink to dip the fingers of those who have already voted so that they don't vote twice must be procured.

Returning Officers are gazetted and are the representatives of the Electoral Commission in the Districts. Returning Officers have to recruit and train Electoral Officials in their districts.

At the same time the Electoral Commission and non-Government Organisations carry out

civic education programmes on Radio and Television by Drama and Songs. The Commission advertises in the Newspapers and radio about the democratic rights of citizens regarding elections.

In Uganda candidates are not allowed by law to campaign individually. They can advertise themselves by posters and manifesto but are not allowed to address rallies i.e a gathering of more than ten people.

Campaign meetings are arranged between the candidates and the Returning Officer. They make an itinerary of meeting the people. The candidates draw lots for the order in which they will talk. The candidates are not allowed to use abusive language about their opponents. They are expected to say what they are going to do in Parliament or Local Council Governments and why a candidate considers himself/herself the best candidate of the lot. Questions are asked of candidates and the election officer who chairs the meeting between the people and candidate has discretion to disallow a question.

Meanwhile the Electoral Commission has to gazette: polling day and time, usually between **7.00** a.m. to 5.00 p.m. Poling stations also have to be gazetted and published in news papers.

Ballot boxes with election kit, i.e. ballots, pens, ropes and basins have to be dispatched. Basins are for actual voting, to guard against voters cheating by putting several already ticked ballots in a ballot box.

One box is used for all candidates. When the polls close, the Presiding Officer must open the ballot box in the full view of all present, i.e. candidates, or their agents and on lookers. The contents of the ballot box are emptied and votes are counted for each of the candidates. The results are certified by the Presiding Officer and candidates' agents.

### **Civil Society and the Electoral process**

The Uganda civil society is just beginning to learn that they have a stake in the electoral process. Since more than forty percent of the people are illiterate, it is difficult to expect them to be vigilant about their civic rights and duties. However, the Radio has been substantially used by the Electoral Commission. The Electoral Commission also has two civic educators in every Parish to sensitise people about elections. However, they are mainly more concerned with voter education. The Human Rights Commission is charged with the general education on Civil Rights and fundamental freedoms.

The Media has played a big part in educating people about electoral process. However,

some members of the Media tend to look at the Commission as a body to redress anomalies in the electoral process. They seem to think that they are not instruments for exposing these malpractices. Sometimes there is irresponsible reporting, i.e. they don't cross check the information from the Electoral Commission.

The Commission has a Public Relations Office and it is the link between the Media and the Commission. Frequent press conferences are held by the Chairperson to brief journalists about the electoral process and pending elections.

Civil society, in the form the Media, Non-Governmental Organisation and ordinary citizens are being made aware of their important contributions to the electoral process in Uganda. Political Parties are banned in Uganda so their role can not be assessed.

Election observers are welcome to Uganda and have witnessed the 1996 Presidential and Parliamentary Elections which they pronounced as free and fair. The Electoral Commission has power to accredit International and National observer bodies. The Commission gives accreditation to some Non-Governmental Organizations to carry out programme of civic education after Commission's approval of its content.

### **THE VOTER AND THE ELECTORAL PROCESS**

Before our Presidential and Parliamentary Elections, the people of Uganda were consulted by the Constitutional Commission on the kind of Constitution which would be appropriate for Uganda.

Women were particularly targeted for their views which were taken into account in the 1995 Constitution. The Uganda Constitution provides that in the establishment of any public body gender consideration shall be a factor. Consequently, as a result of intensive education of women on the Constitution and the electoral process, many women participated in the electoral process. The Ministry of Gender and Community Development had a project on the political sensitization of women. The women members of Parliament have an association particularly formed to help women register as voters, to encourage them to vote and to offer themselves as candidates for elections.

The Constitution of Uganda provides for the facilitation of persons with disabilities to register as voters and to vote. People with disabilities have representatives in Parliament from each of the four regions of Uganda. The usually marginalised groups, the women and youth have special representation in Parliament. They are elected through legally constituted Electoral Colleges.

## **Training and Technology**

1. Training encompasses: -
  - i) Electoral Management which includes a major training in administration and costs of elections and establishment of an information service on Electoral Technology aiming to promote electoral management efficiency and professionalism;
  - ii) Capacity building of national institutions both governmental and civil. in functions vital to democratic process;
  - iii) Imbibing core principles embedded in a code of conduct of Electoral officers for transparency and security of elections;
  - iv) Techniques in resolution of electoral disputes.
2.
  - i) In regard to technology, specifically most societies do not need high technology in the management of the electoral process. For instance, in India, Electronic voting machines were introduced and then scrapped as people prefer a piece of paper.
  - ii) However, computers cannot be condemned. Mistakes are attributable to lack of skills and the problems of adjusting computer technology that is rapidly needed with the realities of election every five years.

Computers have an important role in many countries (Uganda included) and are a valuable tool, but their costs and technical possibilities must be assessed against the cost and availability of PERSONNEL, AND SOFTWARE, TRAINING AND EFFECTIVENESS. It will take Uganda some time to adopt electronic technology for the purpose of voting. This is because the level of illiteracy is still high and few educated people are computer literate.

## **ELECTION DAY**

In Uganda elections start at 7.00 a.m. - 5.00 p.m. Elections are planned for one day. Unless something happens in a particular polling station to warrant elections to take place the next day. Because of our experience in the 1980 elections which were highly controversial, there is a need for transparency. We had used booths in some places for voting to ensure secrecy but this was abused-by voters having pre-ticked ballot papers in their pocket and then inserting them in the ballot box.

It was found that as much as five or more ballots were folded and put by the same person in the ballot box during the Presidential and Parliamentary elections.



The voter will obtain a ballot paper from an election official after his/her names are identified in the voters' register. He/she will proceed to the basin, some ten meters away and put the ballot paper in the basin, where there is a pen and an ink pad for those who will use their thumb print on the ballot paper. The voter will then fold the ballot paper lengthwise in the basin. He/she will then go to the ballot box which is placed some meters away and cast the ballot in the full view of all present. It has already been mentioned in a previous paragraph that one ballot box is used for all candidates and when it is filled, it will be locked and another ballot box brought. The locked ballot box must be kept in full view of all present.

The ballots are counted at each polling station and the agents of the candidates and the public are informed which of the candidate has won in that particular polling stations. The agents certify the result if they wish. Usually the election officers hold the ballot paper up for the people to see and the people themselves participate in the counting of votes. The ballots are then put back in the box and sealed and taken to the Returning Officer whose staff will then tally all the votes for each candidate. Results of elections are declared as soon as practicable. The Electoral Commission must ascertain, declare in writing under its seal and publish in the gazette the results of the elections in each constituency.

### **AFTER THE EVENT**

After the results are declared, any candidate or a registered voter may petition against the results of the election within thirty days after the day on which the result of the elections have been published by the Commission in the gazette. The petition must be made to the High Court.

For Local Government elections, petitions against the election of Chairpersons must be filed in the High Court within fourteen days. Petitions against the election of Councillors must be filed in the Chief Magistrate's Court having jurisdiction in the constituency. The Courts must by law suspend any other case and hear and determine an electoral matter expeditiously.

The Court may:

- a) dismiss the petition; or
- b) declare that a candidate other than the candidate declared elected was validly elected; or

- c) set aside the election and order a new election. The Court may also order a recount of the votes. If a recount is ordered and the votes are found to be as recorded, the person who petitioned for a recount bears the cost.

The Electoral Commission must as soon as practicable, after general elections produce a detailed report of the conduct of the election.

Candidate and their agents have the right to complain to the Commission about the conduct of elections.

Suggestions or changes or improvement in law considered desirable by candidates or agents or any other person may be sent to the Electoral Commission.

The Commission also holds post election workshop or seminar in which the observers, NGO and stake holders can evaluate the process and make suggestions.

At the moment Drafts of the Presidential and Parliamentary Bills have been sent to the Electoral Commission for comments before the Bills are taken to Parliament. The Electoral Commission and the Legal and Parliamentary Affairs Committee of Parliament have consultations on relevant legislations.

The Uganda electoral system is still at its infancy in that since independence Uganda has held only four elections in thirty four years. The fact of high percentage of the electorate being illiterate also compounds the problems of the Electoral Commission. So far there is no evidence of interference with the Permanent Electoral Commission which has been in place for slightly over one year.