

# VOTING BY LINING UP FOR SPECIAL INTEREST GROUPS: A CHEAP PROCESS IN THE SHORT TERM WITH EXPENSIVE CONSEQUENCES

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## I. Introduction

The right to self-determination through voting is one of the most important civil and political rights, and as is evident in the 1995 Constitution of the Republic of Uganda, there is a guarantee that every citizen above the age of 18 years has a right to vote.<sup>1</sup> The State therefore has the duty to facilitate and ensure that all citizens exercise that right.<sup>2</sup>

Article 68 (1) of the Constitution provides for secret ballot system as the mode for voting at all public elections or referendums. However, Article 68(6) empowers Parliament to exempt any public election, other than a presidential or parliamentary election, from the requirements of Article 68(1). Due note must be made though that the right to vote is closely related to freedom of expression, the right to privacy and freedom from discrimination all guaranteed under Articles 29, 27 and 21 of the Constitution of the Republic of Uganda. The implementation of the chosen mode of voting must therefore not violate the rights mentioned above.

Internationally, both Article 21 of the Universal Declaration of Human Rights (UDHR) and Article 25 of the International Covenant on Civil and Political Rights (which Uganda is party to) echo the same voice.

Article 21(3) of the UDHR states that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

By virtue of Article 68(6)<sup>3</sup> the Parliament of Uganda passed The National Women's Council (Amendment) Bill 2015, The National Youth Council (Amendment) Bill 2015, The National Council for Older Persons (Amendment) Bill 2015 and The National Council for Disability (Amendment) Bill 2015. Section 7B(2), Section 8(a), Section 28(7) and Section 31AA(2) respectively of the laws aimed at amending the respective parent acts by exempting elections

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Article 59 (1) of the 1995 Constitution of the Republic of Uganda

<sup>2</sup> Article 59 (3)

<sup>3</sup> 1995 Constitution of the Republic of Uganda

from the LC 1 level downwards from the requirement for secret ballot. These amendments follow that of the Local Government Act which is all triggered by the huge costs required to run these local elections. Hence the need to cut costs of printing and distribution of materials required for secret ballot elections through voting by lining up.

## **II. Underscoring the Effectiveness of Voting by Lining Up in Democratic Systems**

On the 24<sup>th</sup> day of July, 2015, Parliament passed the Local Government (amendment) Bill, 2014. The bill just like the ones in question exempted a section of local council elections from the secret ballot system. The Bill provided that, "Election of village or cell council and parish or ward council chairperson shall be by the electorate lining behind the candidates nominated for the office, their representatives, portraits or symbols."

It was argued by the proponents of the bill that the Country could not afford the secret ballot expenses especially given the fact that the last local council elections had last been held in 2002. Local Government Minister, Hon. Adolf Mwesigye argued that despite efforts made to conduct elections at village and parish or ward levels since 2002, the huge cost amounting to Shs500 billion had made it impracticable for the elections to be held for the past few years.<sup>4</sup> Basing on this Parliament therefore passed the bill as a new safe guard for transparency and cost effectiveness in conducting elections.

Whereas the Parliament is within its powers to adopt another method as opposed to the Secret Ballot,<sup>5</sup> one question for us to consider is whether voting by lining up qualifies as a free voting procedure? Let's examine these one by one;

As already noted above, the proponents of the lining up system argue that it is cheap and can save the country money which will be effectively applied elsewhere. The Daily Monitor on Sunday 28<sup>th</sup> June 2015 reported that voting by lining up would reduce the cost of elections from a whopping UGX 500 billion to about UGX 35 billion and the saved money would be invested in provision of other requirements of the local council system.

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<sup>4</sup> House approves Voting by Lining Up in LC elections. Reported at [www.parliament.go.ug](http://www.parliament.go.ug)

<sup>5</sup> Rubaramira Ruranga v Electoral Commission and Attorney General, Constitutional Petition No. 21 of 2006 available at <http://www.ulii.org/files/ug/judgment/constitutional-court/2007/3/3.pdf>

Secondly, it has been argued that Ugandans are guaranteed timely elections and a proper shift of power due to the reduced costs. The government seems to suggest that the high cost of secret ballot voting is the sole reason for the absence of local government elections.

More-so the argument has been advanced that voting by lining up will curb the commercialization of politics. This is because the transparency of the system will discourage people from taking bribes from candidates that they don't intend to vote.

In my opinion this is an oversimplification of the issue, the other side of the coin would involve serious human rights roadblocks; Parliament itself in considering this bill recalled that:

Voting by lining constituted the major single cause of failed and repeated elections. Voters and an overwhelming number of candidates complained about time wastage, manipulation and fraud, intimidation and the high financial burden borne by the candidates.<sup>6</sup>

Privacy as a right guaranteed under Article 27 of the Constitution and very interrelated with the right to vote would be extinguished. In a country with a history of voter intimidation,<sup>7</sup> voting by lining up would expose the decision of voters. The proponents of the system have argued that the difference in the cost is exceedingly high and not worth paying for with the limitation of the right to privacy. They have however neglected the benefits rooted in guaranteeing that secrecy.<sup>8</sup> We must not forget that the bills are targeting special interest groups at the grass root levels. This means that the participants are very familiar with one another making it easy to follow up on each person's decision.

In addition, the leadership positions targeted are so interconnected with the communities, the candidates involved already have existing relationships with the people. Voting by lining up makes it difficult for people with varying opinions to vote as it would be viewed as betrayal of already existing relationships. The cost of community harmony and security cannot be underestimated in terms of budgetary concerns which would at the end of the day be spent on conflict resolution and deployment of security forces to control the unavoidable chaos.<sup>9</sup> We

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<sup>6</sup> An extract from the Electoral Commission report on local government council elections in 1997/1998: captured in Report of The Committee of the Whole House Parliament dated Wednesday, 24 June 2015 at Parliament, Kampala.

<sup>7</sup> Col. Dr. Besigye Kiiza v Museveni Yoweri Kaguta, Electoral Commission (Election Petition No.1 Of 2001) available online at <http://www.ulii.org/ug/judgment/constitutional-law-election-petitions/2001/3>

<sup>8</sup> *Ibid.*

<sup>9</sup> Nelson Wesonga & Yasiin Mugerwa, 'Voters to Line Up in Local Council Polls,' DAILY MONITOR Friday, June 26, 2015 available at <http://www.monitor.co.ug/News/National/Voters-to-line-up-in-local-council-polls/-/688334/2765280/-/149rwp8z/-/index.html>.

therefore risk losing participants who may opt to abandon participation in the electoral process to safeguard the existing relationships in the community.

General Comment 25 by the UN Human Rights Committee emphasizes the fact that elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.<sup>10</sup> Persons entitled to vote must be free to vote for any candidate without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will.

Secret ballot does away with all forms of coercion because at the end of the day, regardless of any threats or violence a person might have been exposed to, the decision is his to make, no one else knows the decision thus guaranteed security for the voters.

It is also worth noting that the return to lining up may escalate corruption in local council elections or inflame hatred among the people instead of promoting democracy. This is because the lining up system allows a candidate who has paid his voters the opportunity to follow up and ensure that they fulfill their end of the bargain. It is no secret that aspiring candidates give voters favors in order to influence their decision. The candidates are most likely going to exploit the vulnerability of the voters by offering favors in exchange for the slot on his line.

Furthermore, the fact that voting by lining up is applying to a few select groups is discriminatory and sows seeds of discord. The fact that the government can afford to facilitate secret ballot elections on some levels but cannot on others undermines the importance of the latter. The bills risk being challenged on grounds of human rights abuses such as these. Rather than reverting to rudimentary systems of voting that have never been practiced in modern countries or were abandoned in other countries for decades, we should find ways of reducing the cost of the secret ballot system.

Voting by lining up requires a lot of time especially because people appear at different intervals. The mode of voting adopted must be one that encourages participation. Voting by lining up automatically eliminates people with busy schedules; it is discriminatory to persons with disabilities who may not be in a position to stand in the lines for the duration. The Electoral Commission proposed to use only two hours for the elections at every level to reduce the strain

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<sup>10</sup> Convention on Civil and Political Right CCPR/C/21/Rev.1Add7, General Comment 25 available at <https://www1.umn.edu/humanrts/gencomm/hrcom25.htm>

of waiting but the practicality of this is heavily suspect. The reality is that the law has not made special provision for special groups including the elderly and expectant mothers who may want to exercise their right to vote. The law seems hell bent on order at the venue as opposed to the best possible mode to include the vast categories of the electorate with special regard to those special interest groups.

### **III. Recommendations & Conclusion**

1. All proposed and passed legislations should strive to represent people's interests and protect people's freedoms and should never be driven by economic motive alone.
2. The Electoral Commission and CSOs should ensure that voter sensitization covers the mode of election, reassures the voters that they are free to vote as they wish and ensuring that they are not penalized for their decisions.
3. Electoral Laws should be proposed and implemented to promote voter protection in the community with stringent measures against actual voter intimidation to ensure protection of fundamental individual freedoms before and after the polls.
4. The physical strain of lining up for the disabled, elderly and some women—especially pregnant women should not be overlooked as it will ultimately inform ones decision to participate in the election. Special procedures should be adopted to accommodate the process for these groups with special needs within their communities to promote better turnouts and electoral participation.

All in all, it is considerate of the legislature to open up the mode of conducting elections especially in light of the shadow that looms over the Local Council elections. The failure to hold elections at that level since 2002 is glaringly apparent but it is not the most compelling reason to change a system that guarantees everyone freedom to participate for one that limits the election to the most courageous voters.

The parliamentary debate captured critical areas of this discussion in which several members reported on the systemic domestic violence that arose out of the past elections especially towards women who did not tow the same political lines as their husbands. As is with the conclusion of several parliamentarians, this is a step back into a system that is clearly only advantageous in

cost saving terms. The price of democracy is never too high to ensure harmony and inclusion for all.