

A MISSED OPPORTUNITY FOR REFORM? QUERYING UGANDA’S ELECTORAL AMENDMENTS

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I. Background of the Electoral reforms and subsequent amendments.

On 22 September 2015, government through the Attorney General tabled before Parliament three pieces of legislation geared towards electoral reforms. In order to follow the stated procedure of tabling these laws, Parliament was recalled from an indefinite recess. Nationwide announcements for the public hearings on the Bills were made, but the Committee on Legal and Parliamentary Affairs only had about 5 days to conduct the public hearings and produce a report.¹ Within the short time that Parliament had, they only managed to pass Presidential Elections (Amendment) Act and the Parliamentary Elections (Amendment) Act and the laws were assented to by the President on 1st October, 2015. The Electoral Commission (Amendment) Bill was withdrawn by the Attorney General for further consultations from government.²

The amendments came after calls by different segments of the public for the government to enact reforms within the legal regime in order to ensure free and fair elections especially in the upcoming 2016 general elections. Over the past year, proposals to Parliament have come from different Civil Society Organizations (CSOs) and coalitions like the Inter-Party Coalition for Dialogue (IPOD). These groups have called for reforms such as a review of the recruitment and identification process for members of the Electoral Commission, through engagement with the Judicial Service Commission, and in consultation with political parties. Groups have also argued that the EC’s term of office should be restricted to seven non-renewable years in order to minimize the possibility of compromise in anticipation of re-appointment.³ None of the popular proposals were included in the amendments which Government tabled under the Presidential

¹ Winnie Watera, Parliament Watch Uganda, ‘Electoral Bills: Little time and unrealistic amendments’, available at <http://parliamentwatch.ug/electoral-bills-little-time-and-unrealistic-amendments>.

² Parliament Watch Uganda, ‘The Electoral Commission (Amendment) Bill 2015’, available at <http://parliamentwatch.ug/bill-updates/the-electoral-commission-amendment-bill-2015/>.

³ Parliament of Uganda, ‘Parties propose 43 electoral reforms’, available at <http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/549-parties-propose-43-electoral-reforms>.

Elections (Amendment) Bill, Parliamentary Elections (Amendment) Bill, and the Electoral Commission (Amendment) Bill, 2015.

II. Analysis of the Amendments

The Amendments passed by Parliament have received heavy criticism from politicians and civil rights activists over the monetization of political participation in elections⁴. Presidential nomination fees have been increased from UGX 8,000,000 to UGX 20,000,000⁵ and nomination fees for members of Parliament increased from UGX 200,000 to UGX 3,000,000.⁶ This state-sanctioned monetization of politics poses grave challenges on the Ugandan political scene and for Ugandan politics generally. First, the increase in nomination fees for both Presidential and Parliamentary aspirants would disempower the majority of Ugandans,⁷ especially women, who may not be able to afford such exorbitant nomination fees effectively preventing them from participating in civic activities by presenting themselves for political office as envisioned under Article 38(1) of the constitution. This can also be considered discriminatory under Article 21 of the Constitution because all positions of leadership should be accessible to all persons regardless of their economic status. Moreover, the amendment on nomination fees cannot convincingly be justified by the Electoral Commission when there are no corresponding benefits provided by the body.

While the Electoral Commission previously provided UGX 20,000,000/= and a vehicle to every candidate, the new law repealed this provision, thus making it more difficult for smaller political parties and independent candidates to conduct their electoral activities. This has already been evidenced in the presidential campaigns. Independent candidate Maureen Kyalya—the only female candidate--has been holding joint campaigns with another independent candidate Joseph Mabirizzi to manage the financial constraints on the trail. However, she has had to suspend her campaigns altogether and is now in the diaspora, with intended fundraising drives in the United

⁴ Parliament of Uganda, 'Parties propose 43 electoral reforms', op. cit.

⁵ Section 1 of the Presidential Elections (Amendment) Act 2015.

⁶ Section 2 of the Parliamentary Elections (Amendment) Act, 2015.

⁷ Parliament of Uganda, 'Report of the Sectoral Committee on Legal and Parliamentary affairs on the Parliamentary Elections (Amendment) Bill 2015', September 2015.

Kingdom and the United States.⁸ This has all been triggered by the meagre resources at her disposal and noting that the IEC did not provide monies to help in the campaigns. This shows the underlying effects the amendments are already causing on independents that lack party structures to mobilize for funds, which affects their active participation in politics. It is more worrying when this affects a historically underprivileged group of people and the only woman in the presidential race.

Secondly, monetization of political participation has contributed to the increase in the culture of violence during the election period. For example, during the ongoing NRM primaries, there have been a number of instances of violence with party members burning membership cards and seeking to stand as independent candidates when they lose the party primaries.⁹ While internal politics of the party cannot be blamed on the national laws, it is a clear indication of the possible shortfalls of monetizing politics and the risk that it poses in carrying out free and fair elections. The electoral reforms required in Uganda therefore ought to address these challenges to create a safer electoral environment but this has not been done in the recent amendments.

The Presidential Elections (Amendment) Act 2015 removed the requirement for a presidential candidate to campaign in every district of Uganda.¹⁰ This proposal was justified by the increased number of districts in Uganda, making it difficult, if not impossible to campaign in each of the 112 districts within the limited time. The new changes have already impacted the electoral process with the Electoral Commission revising the electoral roadmap to postpone nomination dates from October to November to allow the candidates more time to pay the new fees. However, the postponement reduces the time allocated for campaigns, making it difficult for candidates to traverse the country.¹¹ The current state of affairs has raised concerns about the

⁸ Financial Constraints force Kyalya to suspend presidential campaigns, accessed at <http://www.ntv.co.ug/news/politics/24/nov/2015/financial-constraints-force-kyalya-suspend-presidential-campaigns-9929#sthash.VbkrUrE.dpbs>.

⁹ Eriasa Mukiibi, The Daily Monitor, 'Why are NRM primaries riddled with violence?' October 18th, 2015, available at <http://www.monitor.co.ug/Magazines/PeoplePower/Why-are-NRM-primaries-riddled-with-violence/-/689844/2918282/-/item/1/-/11yxpm6z/-/index.html>.

¹⁰ Section 2 Presidential Elections (Amendment) Act 2015.

¹¹ NTV Uganda, 'Electoral Commission postpones nomination dates for presidential candidates', available at <https://www.youtube.com/watch?v=XxSVKbiV5I4>.

ability of the Electoral Commission to conduct free and fair elections since the postponement of the nomination dates seems to favour the ruling NRM party.¹²

Electoral reforms in Uganda are not only desirable, they are necessary. Over the years, there have been concerns about the independence of the Electoral Commission and under the present legal regime whereupon the chairperson, deputy and five members of the Commission are appointed by the President under Article 60 of the Constitution. This has created concerns about the independence of the electoral body whose leadership serves at the pleasure of the incumbent President, a candidate in the upcoming elections.

Some of the additional changes made under these amendments include the change of the close of voting time from 5:00pm to 4:00pm. The time change was intended to allow the electoral Commission more time to count the votes, but even this has raised concerns that the counting may be subject to manipulation¹³ if such a wide window is allowed. This assertion is one that the Electoral Commission will have to address and the implications would have to be investigated once voting has been carried out. This provision also raises concerns about the ability of working class Ugandans to participate in this vote. A typical office work day begins at 8am and ends at 5pm, with an allowance for traffic jam to get from work to the polling station. This would mean that unless the vote is scheduled for a weekend, there would hardly be any time for this category of individuals to carry out their civic duty.

To government's credit, Clause 6 of the Parliamentary Elections (Amendment) Act, 2015 proposed to include medical personnel and election officers in the special procedures for voting. However, Section 38 of the Parliamentary Elections Act relating to special voting procedures for certain groups, which government sought to amend has never been implemented since its adoption in 2005.¹⁴ The amendment also leaves out some key populations, including about 2.5 million Ugandans living in the diaspora (this figure is from a 2009 UNDP report).¹⁵

¹² See letter from Muwema & Co Advocates and Solicitors addressed to the Electoral Commission, 'Extension of date for nomination of candidates for presidential elections', 6th October, 2015.

¹³ Minbane (2015), available at <https://minbane.wordpress.com/2015/09/23/the-proposed-changes-and-added-amendments-of-the-election-laws-that-can-be-seen-as-preparation-for-the-election-in-2016-in-uganda/>, last accessed 11/23/2015.

¹⁴ Parliament of Uganda, 'Report of the Sectoral Committee on Legal and Parliamentary affairs on the Parliamentary Elections (Amendment) Bill 2015', op.cit.

¹⁵ Parliament of Uganda, ibid.

The government has also swiftly moved to regularize the elections of special interest representation of the youth, army and workers in parliament—following the September 2015 Constitutional Courts ruling that declared the regulations made by the Minister on the elections of youth, army and workers MP void since they were not made by Parliament as required by the Constitution, and thus unconstitutional. The Parliamentary Elections (Amendment) (No. 2) Bill, 2015, has been tabled and seeks to prescribe the procedure for elections of these representatives. It is intended to address the procedural irregularities highlighted in the Constitutional Courts’ ruling for voting for the special interest groups representatives in Parliament. It is however, important to appreciate that the Minister filed a notice of appeal with the constitutional court and Parliament needs to reconcile this with the tabled bill to respect the separation of powers principles. Parliament should not be seen to legislate on matters before the judiciary keeping in mind that any decision from the judiciary may affect the legislation. The minister should either withdraw the notice of appeal or the Bill pending the decision of the courts. However, seeing that the 2016 elections are only 2 months away, harmonizing the election procedures with the Constitutional Courts ruling seems a more practical step if special interest representation is to stay in the 10th parliament.

III. Recommendations and conclusion

The amendments to the Parliamentary Elections Act and the Presidential Elections Act are a missed opportunity to make meaningful reforms on issues like regulation of campaign funding and leveling the playing field to ensure equal access to resources and facilitation for all candidates. Considering that an increase in fees was one of the salient features of these amendments, campaign financing ought to be considered as a serious concern and the implications are already being manifested during the 2016 campaign period.

Some of the key proposals put forward ought to have been seriously reconsidered; for instance IPOD proposals to re-instate Presidential term limits and the introduction of proportional representation as an electoral system for Uganda, as well as registration and voting for Ugandans living in the diaspora.¹⁶ Uganda also needs a requirement for the Electoral Commission to

¹⁶ Parliament of Uganda, ‘Parties propose 43 electoral reforms’, op.cit.

formulate civic and voter education programs jointly with political parties in order to tackle voter apathy and encourage political participation at all levels.