

# **THE INTRICACIES OF PRESIDENTIAL CONSULTATION MEETINGS: DISSECTING SECTION 3 OF THE PRESIDENTIAL ELECTIONS ACT, 2005.**

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## **I. Introduction**

The Presidential Elections Act 2005 (PEA) lays out the process of electing the President of the Republic of Uganda. This process follows four stages of consultation, nomination, campaigning and voting. All these stages are very important in ensuring a free and fair electoral process and must at all times be streamlined within democratic principles. While the PEA is elaborate on the procedures for the other three stages, it is very ambiguous on the nature of consultations by presidential aspirants. Therefore, this analysis focuses on the issue of holding consultations. Section 3 of the PEA allows for a presidential aspirant to consult and this may involve carrying out nationwide consultations, preparing a manifesto and other campaign materials, raising funds for the campaign and convening meetings of national delegates. Section 3(3) lays out preliminary requirements to be complied with before consulting including introducing oneself to the Electoral Commission (EC)<sup>2</sup> and notifying the relevant local council and the police of the area to which the aspirant intends to go. This analysis gives an overview of opinion on the scope of consultative meetings, assesses how different political players are affected by the law in its current state and ultimately suggests a way forward past the current crisis regarding consultative meetings.

## **II. The Scope of Consultative Meetings**

The ambiguity of section 3 springs from the lack of a definitive scope of consultative meetings by presidential aspirants. In essence, this has led to immense opportunity for diverse interpretation from the different responsible sectors. Some advance the argument that consultations in their very nature require a mechanism of information flow between the aspirant and those being consulted which cannot be facilitated by a mass rally. The Independent Electoral

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Commission (IEC) subscribes to this thought and defines consultations to mean an exchange of views in an attempt to reach a decision and therefore the venue, mode and manner of the consultative meeting should enable such an exchange.<sup>3</sup>

The second group argues that in absence of specifics on the location of the consultation meetings or on the number of attendees, the IEC guidelines limiting the attendees to not more than 1000 people and confining the meetings to Town Halls is unconstitutional and contrary to the law. The subscribers to this theory include Independent presidential aspirant Amama Mbabazi. It is from this premise that his supporters have gone ahead to file a suit against the IEC challenging the legality of the body's actions in halting Amama's consultation meetings.<sup>4</sup>

While the IEC guidelines draw some light on the definitive scope of consultation meetings, they do not have legal efficacy to overcome the ambiguity in the law. This means that the law on presidential consultation meetings remains subject to diverging interpretations by different interest groups.

### **III. Consultation Meetings or Campaigns: Where is the Divide?**

The acts of the Police and the IEC in halting consultation meetings has been based on the deduction that the presidential aspirants particularly Amama Mbabazi, are conducting campaigns and not consultation meetings.<sup>5</sup> While Political party presidential aspirants have similarly suffered the brunt of the police in halting any rallies similar to campaign rallies, in those other cases Police justifies its actions under the Public Order and Management Act (POMA) and not the Presidential Elections Act. According to Assistant Inspector General of Police Abbas Byakagaba the FDC Rukungiri Mobilization on 9<sup>th</sup> October 2015 was blocked because FDC did not meet all the conditions prescribed in the POMA.<sup>6</sup> This shows the discriminate application of section 3 of the PEA to Independent presidential aspirants.

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<sup>3</sup> The Electoral Commission, '*General Guidance to all Presidential Aspirants Seeking to Conduct Consultative Meetings*,' 12<sup>th</sup> September 2015. Available at <http://www.ec.or.ug/index.php/media-centre/publications/press-releases-1/100-press-statement-clarification-on-consultative-meetings-12-09-2015> Accessed on 19<sup>th</sup> October 2015

<sup>4</sup> Derrick Kiyonga, '*Electoral Commission in Court over Mbabazi Rallies*,' The Observer, 12<sup>th</sup> October 2015.

<sup>5</sup> Uganda Police Force, '*Guidance to Presidential Aspirants*,' 9<sup>th</sup> September 2015, Available at <http://www.upf.go.ug/guidance-to-presidential-aspirants/> Accessed on 20<sup>th</sup> October 2015.

<sup>6</sup> Andante Okanya and Umaru Kaskaka, '*Besigye, FDC Leaders Arrested*,' The New Vision, 10<sup>th</sup> October 2015.

According to section 21(2) of the PEA a presidential candidate ‘duly nominated’ by the EC may carry out ‘public’ campaign meetings. The emphasis on the words ‘duly nominated’ and ‘public’ is key. Prior to nomination by the EC in accordance with section 10 of the PEA, an individual is not a candidate but only as aspirant. This implies that he/she has no mandate to solicit for votes from the electorate. Upon nomination the individual becomes entitled to hold public campaigns. Section 4 of the POMA defines a public meeting as a gathering in a public place held for purposes of expressing views on a matter of public concern. Although this definition has been greatly criticized for being amorphous it still remains the core reference for the definition of public meetings.<sup>7</sup>

The thrust of the IEC position suggests that since section 3 of the PEA makes no specific mention of the word ‘public’, the consultations should be held within confined spaces. However, this does not resolve the ambiguity since speculation and unjustified inference have never been a means of deciphering meaning from a legal provision.

Laws on presidential Elections in neighboring Kenya<sup>8</sup> and Tanzania<sup>9</sup> do not have a similar provision as Uganda’s and therefore a comparative analysis with East African states on presidential consultation meetings is limited. Similarly the debate has not arisen previously in Uganda’s history of multi party democracy. This may be explained by the fact that previously the major contenders for presidency have been under the umbrella of political parties<sup>10</sup> and therefore not directly affected by section 3 of the PEA.

#### **IV. Contextualizing Consultation Meetings: Different Realities for Different Political Players**

The reality about consultation meetings plays out differently for the incumbent, flag bearers of Political parties and individuals pursuing the office of presidency as independents. Uganda is currently governed under the multiparty political system that was adopted following the 2005

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<sup>7</sup> J. Oloka-Onyango, ‘*Understanding the Genesis and Impact of Recent Legislation in Uganda*,’ Pambazuku News 2014-05-01, Issue 676.

<sup>8</sup> The National Assembly and Presidential Elections Act Cap. 7.

<sup>9</sup> The National Elections Act Cap. 343.

<sup>10</sup> Yusuf Kiranda & Mathias Kamp (Eds), ‘*The State of Multiparty Democracy in Uganda*,’ KONRAD-ADENAUER-STIFTUNG, 2010 page 48.

referendum which ushered in political pluralism. This section of the paper dissects the significance of consultation meetings to the different political players in a multiparty democracy.

The functioning of the political parties is governed by the Political Parties and Political Organizations Act, 2005 wherein they are mandated to have a constitution that deals with aspects such as the election of a presidential aspirant for the party. A political party may in accordance with its constitution carry out internal nationwide campaigns in the process of electing its flag bearer. This can be done prior to the official presidential campaign under the Presidential Elections Act. Political parties may also engage in nationwide mobilization coordinated by the Party Secretary for mobilization to among other things, identify candidates to take up the different political offices. With such opportunities to reach out, presidential aspirants participating as Political Party flag bearers do not necessarily need to convene meetings dubbed ‘consultations’ as anticipated by section 3 of the Presidential Elections Act.

The incumbent H.E Kaguta Museveni has guaranteed platforms to reach out to his supporters without categorically holding consultation meetings. He has the structures of the National Resistance Movement (NRM) open to him and his office as; the head of state, head of government, commander in chief of the UPDF and the fountain of honour, offers him undisputable opportunities to meet and engage the electorate outside the confines of section 3 of the PEA.

On the other hand, the participation and financing of individuals seeking political office as independent candidates remains unregulated despite the constitutional mandate in article 72(5) placed upon parliament to pass a law regulating the same. This essentially implies that any outreach by an Independent presidential aspirant prior to the IEC official campaigning dates must be justified under the ambiguous section 3 of the PEA on consultative meetings.

John Patrick Amama Mbabazi is the first Independent presidential aspirant to arouse much debate about his popularity with the electorate. Previously, the FDC flag bearer has dominated this space—but under an opposition party with structures. When Mbabazi held his first consultation meeting in Mbale district in Eastern Uganda, he attracted thousands of crowds and the trend followed him when he went to Kapchorwa. As though the IEC and Police had been in slumber, they awakened to the reality and on Amama’s next destinations; Jinja and Soroti, the

public rallies were disrupted with heavy police and military deployment, arguing that his intended rallies were illegal as they contravened section 3 of the PEA.<sup>11</sup>

The platform to consult guaranteed under section 3 of the PEA holds a lot of significance to individuals without affiliation to any political party. Consultation meetings remain the only avenue for an Independent aspirant to reach out to the electorate prior to the official campaign period. According to the IEC roadmap, campaigns for presidential candidates 2016 are slated to take place between 9<sup>th</sup> November 2015 and 10<sup>th</sup> February 2016.<sup>12</sup> A short campaign period of two months cast against the opportunities that Political Party aspirants may have prior to that, is unfair to independent candidates who before the official campaign dates are not allowed to meet the hold public rallies.<sup>13</sup>

## V. Conclusion

The controversy surrounding the scope of consultation meetings by presidential aspirants in Uganda is on the rise as nomination days approach. It is a great concern likely to affect future election processes if unresolved. The play out of events has revealed a disproportionate application of section 3 towards the independent aspirant. The recommended approach is for Parliament to amend section 3 of the PEA and give it a more elaborate scope spelling out the venue, mode and manner of the consultative meeting. Such amendment should only be pursued following extensive consultations with Ugandans. Secondly, Article 72(5) of the constitution should be operationalized by Parliament passing a law regulating the participation of individuals seeking political office as independent candidates.

Beyond the law, the ruling Government must annihilate the discriminate use of police brutality against opposition and respect the intended independence of organs like the Police and the Independent Electoral Commission. This would be geared towards addressing the criticism

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<sup>11</sup> Timothy Kalyegira, 'Will Mbabazi Eastern Tour Change 2016 Dynamics?', The Daily Monitor, September 13 2015.

<sup>12</sup> Electoral Commission Press Release, 'Extension of Date for Nomination of Candidates for Presidential Elections.' Available at <http://www.ec.or.ug/index.php/media-centre/publications/press-releases-1/101-press-statement-on-extension-of-dates-for-nomination-of-candidates-for-2016-presidential-elections> Accessed on 20th October 2015.

<sup>13</sup> Sabiti Makara et al. 'Administering Uganda's 2006 Multiparty Elections: The Role of the Electoral Commission.', CMI Working paper No. 5, 2008 pg 11.

against the NRM for administering a Government where political pluralism is only peripheral and intolerance towards the opposition is profound.<sup>14</sup>

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<sup>14</sup> Larok, Arthur, '*Civil Society and Politics A Niche for Civil Society Organizations in the Reviewed Multiparty System in Uganda*,' National NGO Forum Working Paper, December, 2007