

# **WHO IS ELIGIBLE TO VOTE IN UGANDA? INTERROGATING THE NORBERT MAO FAILED NOMINATION QUESTION IN THE 2016 GENERAL ELECTIONS**

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## **I. Introduction**

In February 2016, Ugandans went to the polls for the 2016 general elections which were largely overshadowed by a number of irregularities both during the electoral process and on Election Day. One of the key issues that informed numerous discussions during the electoral process was on who was eligible to vote. This dilemma was mainly triggered by the mixed information and misinformation from the different Electoral Commission (EC) officials regarding the new compiled voters register. The EC, following their mandate to compile and update the voters register, collected data obtained during the National Identity registration exercise and based on this to not only compile a new voters register, but also to retire or archive the 2011 voters register. In essence this meant that anyone that missed the National ID registration process was missing from the new voters register. This assumption became more alive when previous Presidential Candidate, Former Member of Parliament and LC V Chairman for Gulu Municipality; Hon. Norbert Mao failed to be nominated due to his name missing on the 2016 voters register. This reinforced the uncertainty of many citizens' eligibility to vote, notwithstanding the fact that they had participated in previous elections and still held valid voters cards.

On April 1, 2015, the Electoral Commission had announced that effective March 31, 2015, it had retired the 2011 national voters register.<sup>1</sup> It then commenced on the compilation of a new voters register by extracting data collected from the National Identification Register whose purpose was to aid issuance of National Identity cards.<sup>2</sup> The Electoral Commission explained that the national

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<sup>1</sup> Derrick Kiyonga, EC's Kiggundu can't discard old register, The Observer, December 14, 2015, available at <http://www.observer.ug/news-headlines/41615-ec-s-kiggundu-can-t-discard-old-register>.

<sup>2</sup> Shabibah Nakirigya, "10 Questions for EC on voters' register," The Daily Monitor, Vol 342, dated Wednesday, December 9, 2015

voters register used during the 2011 elections and other bye elections was officially retired and gazzetted on March 31, 2015— meaning that it could not be relied upon in the 2016 general elections. The new voters register to be relied on had biometric data which included the verification of the prospective voters.

It is from this predicament that Norbert Mao was denied nomination to contest as an MP on the basis that his name was missing from the new voters register. All this stemmed from the fact that Mao missed the national ID registration process; as such his details were not captured and updated in the new voters register. However, according to retired Supreme Court Justice; Professor Kanyeheimba, who came out strongly against the retiring of the old voters register, “once a Ugandan citizen always a Ugandan citizen and once a voter, always a voter.”<sup>3</sup> He further argues that,

[Uganda] had a voters’ register ever since the 1960s. Personally I have a voter’s card which was issued to me just before the 1996 elections and that’s what I intend to use for the upcoming elections. I will use the voter’s card, not because I don’t have a national identity card but because using the national identity card for voting is not backed up by any law. The law is clear that in order for one to vote, he/she must have a voters’ card and he/she must be on the voters’ register.

It was noted that Hon. Mao missed registration during the exercise of the National Identity card registration and that even when he prayed that his name be included on the newly created register and be issued with a National Identity card, his request was time barred.<sup>4</sup> The EC Chairman noted that his request had been raised after conclusion of the general update of the register whose cut off was May 11, 2015. This action in its entirety was absurd and quite unfair to a person whose citizenship or even right to vote is not in question, and who has previously contested for the highest office of the country. Kanyeheimba argues that “the only authority that Kiggundu has is to update the voters’ register [and that] updating doesn’t mean writing off original members of the register.”<sup>5</sup>

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<sup>3</sup> Derrick Kiyonga, “EC’s Kiggundu can’t discard old register,” The Observer, December 14, 2015, accessed at <http://observer.ug/news-headlines/41615-ec-s-kiggundu-can-t-discard-old-register>.

<sup>4</sup> Ibid

<sup>5</sup> Ibid.

This issue was not only unique to Mao. There are so many voters that were disfranchised during the just concluded general elections due to the fact that they had missed the national ID registration exercise. Pertinent to note is that Mao and other such Ugandans may not have been able to register for the National ID due to circumstances beyond their control. Even then, there should be a deeper scrutiny of the legality of the Electoral Commission's decision to rely on the newly compiled national voters register largely with data collected by a different government institution. This should be critically analyzed to appreciate if at all the EC has any legal basis whatsoever to retire the old register and compile a new one—basing only on data collected during the national ID registration exercise. The issuance of National Identity cards was a process initiated by the Ministry of Internal Affairs with the sole purpose of identifying Ugandan citizens. It was not meant to be the basis upon which Ugandans (in) eligibility to vote would be determined. As has always been the case, possession of the voters card and not the national ID cards was a key requirement for verifying eligible voters. More still, there have been allegations that some non-citizens were issued with IDs a matter that, if not addressed, will continue to affect the electoral processes in the country. <sup>6</sup> In the just concluded elections, the National ID was not specifically relied on to identify voters, however, majority of those that had missed the ID registration exercise found their names missing on the new voters register and were denied the right to vote—notwithstanding the fact that some still carried and were in possession of the 2011 voters cards.

It is also important to note that the EC is an independent body and is meant to make its decisions without the influence of any other person or authority. The Ministry of Internal Affairs is part of the Executive branch of government and is not in any way given the mandate to influence the EC in its decision making on the electoral process. Hence, relying on only the data from the Ministry in its compilation of the new voters register, disfranchised many Ugandans eligible to vote, but had missed the ID registration process for various reasons.

## **II. Critical Legal Analysis.**

Article 61(e) of the Constitution of the Republic of Uganda mandates the Electoral Commission to compile maintain, revise and update the national voters register. The Constitution is the

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<sup>6</sup> *Ibid*

supreme law of the land; and as such, any other laws, orders and implementations that contravene it are null and void.<sup>7</sup> The Constitution also provides for the right to vote to every Ugandan citizen.<sup>8</sup> The criteria for this includes among others, possession of a valid national voters card. The EC's reliance on National ID registration Data and the resultant requirement of a national ID as verification of eligible voters was not backed up by any law. That was an administrative decision of the government that was being implemented by the Electoral Commission to the detriment of many members of the electorate that missed out on the ID registration process.

Section 18 of the Electoral Commission Act empowers the Electoral Commission to compile, maintain, revise and update the National Voters Register, but nowhere does it provide for retiring of a voters register. The EC's decision to retire or archive the 2011 voters register as it now views it has no legal foundation. As noted above, there is no law that gives the EC the right to delete a member off a voters register—unless they are dead or have renounced or changed citizenship.<sup>9</sup> Updating a voter's register does not by implication entail deleting or writing off original members of the register, unless there is a clear indication that the once registered voter has ceased being one. Even then the EC has to conduct thorough investigation and have proof of these new developments before it can delete a previously eligible voter from the register. Another clear circumstance that leads to removal from the register is where there is evidence of a court decision in which such a person has been found guilty of a criminal offense. However, not all offenses warrant deletion from a voters register.

In the Norbert Mao case, none of these circumstances were evident, neither were due process measures taken before deleting his name off the register. As noted above, Norbert Mao's life has largely been entrenched in politics. He has served as a Member of Parliament, LC 5 chairman of Gulu Municipality, Presidential Candidate and is currently the President of the Democratic Party. All these positions can only be held or contested for only if one is an eligible voter. It was from this long political history that the issue of his name missing on the compiled 2015 voters register

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<sup>7</sup> The 1995 Uganda Constitution, Article 2.

<sup>8</sup> Ibid., Article 10.

<sup>9</sup> Section 19 of the Electoral commissions Act Cap 140..

was not only surprising but also suspect. The EC's explanation on how a senior citizen of the country and long term political player was all of a sudden not eligible to vote—let alone to contest for political office was very wanting. But more worrying was the fact that if this could happen to a person of that status in Uganda's political space, what of the common person?

To reinforce the matter, Section 41 (1) (b) of the Parliamentary Elections Act provides that a person is only qualified to be a Member of Parliament if that person is a registered voter. Since Mao had a valid voter's card used in all the previous elections, the circumstances that led to his failed nomination were worrisome for the whole electoral process and raises further questions on what that meant for other previously registered voters that may not have participated in the ID registration process. The answer was to come through the many previously registered voters that were turned away on polling day due to their names missing from the new compiled register notwithstanding the fact that they were in possession of voter's cards.

### **III. Moving Forward: What Can be Done to Calm the Situation?**

Norbert Mao's failed nomination bid was not unique to him alone, but to many other Ugandans who had also missed the ID registration process—including those with valid voters' cards. It is a fact that affected the democratic process of the 2016 general elections—an issue among those being interrogated by the Supreme Court in the 2016 Presidential Elections Petition. It is a matter that will be ruled on and one that needs to be keenly addressed so as not to continuously haunt the EC in coming elections.

All Ugandans should take critical interest in the Presidential Petition—especially on particular issues that speak to the validity of the entire electoral process. Similarly, concerned Government authorities, agencies, and Civil Society Organizations should stand out and demand that democratic and transparency principles be respected by the EC to always ensure free and fair elections. It has continuously been reechoed even from the EC that the National Identity cards and National Identity Register newly compiled was wholly irrelevant and had no basis whatsoever as far as the voting process of 2016 was concerned. Sensitization drives should have been taken across the country regarding people's rights to vote and participation in political matters. These should have targeted both the voters and the election officials who were accused

of turning away some eligible voters but who didn't have their National IDs. All concerned communities and the media should be engaged with to sensitize the people that their Constitutional right to vote is inherent and they have it by virtue of birth and citizenship, and it is not granted by anybody but by virtue of being alive and a citizen of Uganda.<sup>10</sup>

**a. What can Parliament do?**

The Ugandan Parliament is mandated with legislative functions. Among others, the Parliament has a huge task to ensure that any laws enacted towards electoral processes must reassure Ugandans that their right to vote is not threatened or stripped away due to reliance on modalities that discard some sections of eligible voters. It has been evident that at times laws enacted end up conflicting with already existing legal provisions or at times are simply misinterpreted by some bodies mandated to implement them.

The Parliament of Uganda should therefore, incorporating numerous electoral reforms suggestions and electoral observer's recommendations, hold an interim session intended to harmonize these issues and ensure that respect and trust of the EC to be independent in electoral processes is realized. The general electorate should be consulted to ensure that whatever measures are put in place to address the gaps in the just concluded elections, are informed by the electorate. Harmonizing the Registration of Persons Act, the Electoral Commission's Act and other electoral laws should be urgently undertaken to address the whole dilemma surrounding the powers to update, compile or retiring a voter's register. Any ambiguities that surrounded the manner in which some voters were disfranchised should be critically analyzed.

The right to vote as guaranteed by the constitution should always be key and what informs it for every Ugandan citizen is possession of a verifiable voter's card. Another matter of importance is for Parliament to take notice of the irregularities that followed the whole process of collection of data during the National Identity card registration process and the alleged irregularities concerning registration of foreigners and minors who may have ended up on the 2016 voters register.

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<sup>10</sup> Article 59 of The 1995 Constitution , See also Section 19 of The Electoral Commission Act.

All in all, Norbert Mao's failed nomination incident awakened more Ugandans to the realization that mere possession of the 2011 voters card would not suffice to participate in the general elections. Many found their names missing and there was no time to rectify the anomaly. Whereas many should have taken steps to ascertain whether their names were on the register during the display process, the manner in which the 2011 register was retired still portrays an EC that acted beyond its powers. It was a hard lesson to learn and one that should have not occurred had the EC chosen to update the 2011 voters register in their compilation of the 2016 register, and not retiring the entire 2011 register. Parliament should take keen interest in this matter, review all issues abound and call to order the EC in case of any unconstitutional conduct. It is a matter in issue in the 2016 Presidential Election Petition that if the Supreme Court addresses its mind on it, will help in addressing the issue once and for all. And in case this matter is not resolved, the Constitutional Court should also be brought on board to offer a deeper analysis and interpretation of the laws that govern the EC and pronounce itself on the issue so as to reinforce the fundamental right to vote.

#### *References*

- 1. The Constitution of the Republic of Uganda. 1995 as amended*
- 2. The Electoral Commissions Act Cap 140*
- 3. The Parliamentary Act as amended Act No 17 of 2005*
- 4. The Registration of Persons Act 14 May 2015*
- 5. The Daily Monitor Newspaper dated 9 December /2015*
- 6. The Observer newspaper dated 15/12/2015*