



**DEMOCRATIC GUARANTEES OF THE INDEPENDENT ELECTION
MANAGEMENT BODIES**

PRACTICE IN THE REPUBLIC OF UGANDA

PRESENTED BY

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1.0 Introduction

The Electoral Commission is a body corporate that was set up in 1997 under Article 60 of the Constitution of the Republic of Uganda and is composed of a Chairperson, Deputy Chairperson and five other Members who work full time for a seven (7) year term renewable only once.

The Commission's mandate is to organize and conduct public elections and referenda and to register and regulate political parties and organizations under the Political Parties and Organisations Act, No. 18 of 2005.

The Commission's functions are set out under Art. 61(a)-(h) of the Constitution as amended and includes compiling and updating the voter's register, demarcation of electoral constituencies, nomination of candidates for various elective offices (Presidential, Parliamentary, Local Government Councils and Administrative units), conduct of campaigns for nominated candidates, handling election complaints, certifying, declaration and publication of election results.

In its operations and execution of its activities the Commission is guided by the following main electoral laws:

- a. The Constitution of the Republic of Uganda, 1995 (As amended)**
- b. The Electoral Commission Act, Cap. 140(As amended)**

- c. The Political Parties and Organizations Act, 18 of 2005 (As amended);
- d. The Presidential Elections Act, Act Number 16 of 2005(As amended);
- e. The Parliamentary Elections Act, 17 of 2005(As amended);
- f. The Local Governments Act, Cap 243 (As amended);
- g. The National Youth Council Act, Cap 319(As amended);
- h. The National Women Council Act, Cap 318(As amended); and
- i. The Referendum and Other Provisions Act, 2005, Act No. 1 of 2005.

2.0 Appointment of Members of the Commission

The appointment of members of the Electoral Commission is done by President of the Republic of Uganda with the approval of Parliament, under Article 60 (1) of the Constitution.

Article 60 (5) prohibits members of Parliament, members of local government councils, members of the executive of a political party/organization and public officers from taking up appointments as members of the Commission without relinquishing the said offices.

There is, however, on-going debate, in the country, as to whether political parties/organizations should have representation in the Commission. This, however, will have far-reaching implications on the independence of the Commission; and would require

amendments to the provisions on the appointment and composition of the Commission.

The debate tends to voice out the stakeholders' perception of what an election management body should be, which borders to mistrust to which the Commission has endeavored to counter by keeping an open door policy, holding regular dialogues, especially with political parties and civil society organizations. During the last general elections earlier this year political parties were accredited to observe the printing of ballot papers for presidential and parliamentary elections and the packing of polling kits for the general elections.

3.0 Independence of the Election Management Body

3.1 Operations

Under Article 62 of the Constitution, the Uganda election management body is independent and shall in the performance of its functions not be subject to the direction or control of any person or authority.

The said Constitutional provision guarantees adequate resources and facilities to be provided to cover the expenses of the Commission (Article 66). All administrative expenses of the Commission are charged on the Consolidated Fund.

The Commission is a self-accounting institution and deals directly with the Ministry responsible for Finances on matters relating to its finances. The Commission's budget following this arrangement is supposed to be laid before Parliament, approved and passed as is, yet in practice, this is not usually the case.

The Ministry of Finance in practice, determines what funds to allocate for the Commission's activities depending on the resource envelope.

The Uganda' practice, therefore, is that its independence is pegged to the body' operations and functions and depends on the Government' Consolidated Fund to which its expenses are charged.

3.2 Tenure of Members of the Commission

The members of the Commission may be removed from office in accordance with Article 60 (8) for the following reasons:

- (a) inability to perform the functions of his or her office arising out of physical mental incapacity;
- (b) misbehavior or misconduct; or
- (c) incompetence.

Unlike the removal of members of other constitutional commissions and Judges wherein a tribunal is set up to determine the grounds for such removal, when it comes to members of the Electoral Commission, there is no such tribunal and a member of the constitution simply provides for the grounds for such removal.

The issue of security of tenure of office therefore needs to be addressed.

3.3. Appointment of Staff

The Commission, subject to Article 65 of the Constitution has the mandate to appoint its own staff as may be required, in consultation with the Public Service Commission. It is however, not clear as to what this consultation entails, yet their decision is not binding on the Commission. The staff are expected to be non-partisan, are not to stand for elective posts without relinquishing their appointments.

3.4 Quasi-judicial functions vis avis its independence

One of the major functions of the Electoral Commission is to hear and determine election complaints arising before and during polling, under both Article 61(1) (f) of the Constitution and Section 15 of the Electoral Commission Act. In doing so the Commission assumes a quasi judicial role in executing this task. All its decisions, however, can be appealed against to the High Court, whose finding, then is final.

3.5 Amendments to existing legal framework

This is done by the Commission through proposals made to the line Ministry of Justice, which then studies the same and presents the same to legislature for consideration. Challenges arise when the proposals are adopted and passed late as laws or not at all.

3.6 Demarcations of Electoral areas

In practice the views of the political leaders and community leaders play a vital role in determining consensus when conducting the demarcation and/or creation of electoral areas, despite legal dictates on the creation and/or demarcation of the same.

4 Conclusion

Given the foregoing framework within which the Electoral Commission – Uganda operates, it can be concluded that fulfilling its constitutional mandate to organize, conduct and supervise free and fair elections and referenda is made practicable since all its activities are derived from and backed by an exhaustive legal framework.

Nevertheless, the legislative effort to guarantee the independence of any election management body should explore the issue of funding with focus to objective independence as opposed to subjective independence. Any neutral organ should be independent in both its operations and funding.

The independence of such a neutral body, therefore, can be eroded if in appointment of members and recruitment of staff, regard is first made to expectations of political parties or any other stakeholder in the electoral process.

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