

2021

ASSESSING THE
EFFICACY OF A
**SCIENTIFIC PROCESS
IN UGANDA**

Background

The Electoral Commission has issued a revised road map for the 2020/2021 General Elections in Uganda.

Of great importance is the fact that the Electoral Commission has set specific dates for the conduct of digital campaigns for Local Government Elections, Parliamentary Elections and Presidential Elections referred to as a “scientific elections”.

The conduct of digital campaigns, is premised on the need to mitigate the spread of COVID-19 in Uganda; the epidemic that is still prevalent in the populace.

The Electoral Commission stated that it has considered the need to preserve the health of the Citizens vis-a-vis their constitutional and democratic right to elect leaders of their choice as guaranteed under the Constitution and come up with a plan that ensures minimal person-to-person contact during the implementation of the electoral process.

The matter to be discussed is what is the practicality of this approach in fostering democracy among the masses while safeguarding their guaranteed right and duty to vote for their leaders?

The duty of the Electoral Commission

The Electoral Commission is charged with the duty pursuant to Art. 61 of the Constitution, to organize, conduct and supervise elections and referenda in accordance with the Constitution.

Pursuant to Art 62 of the Constitution and S. 13 of the Electoral Commissions Act as Amended, The Electoral Commission is independent and shall in the performance of its functions, not be subject to the direction or control of any person or authority.

The Electoral Commission is at liberty to determine and provide guidance on how an election is to be conducted.

However, in exercise of its powers the Electoral Commission is enshrined with the duty to ensure that regular, free and fair elections are held.

Mode of Campaigns

Pursuant to S.20 of the Parliament Elections Act, 2005 and S.20 of the Presidential Elections Act, 2005, The Commission is given the discretion to determine the manner and the period during which campaigns shall take place and must publish that information in the Gazette and forward a copy to each returning officer.

This power is exercised by the Electoral Commission subject to the respective Acts and the Constitution Article 17 of The African Charter on Democracy, Elections and Governance, provides for the state parties holding transparent, free and fair elections in accordance with the Union's Declaration on the principles Governing Democratic elections in Africa.

To that end, State parties are required to establish and strengthen independent and important national electoral bodies responsible for the management of elections.

To ensure fair and equitable access by contesting parties and candidates to State controlled media during elections.

The Code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.

A free and fair election has been defined in Col. Rtd. Dr. Kiiza Besigye v Yoweri Kaguta Museveni, Presidential Petition No. 1 of 2001 wherein Court defined free and fair election “as elections that entail freedom of candidates and their agents to lawfully solicit for support from the electorate without hindrance or interference; it entails the right of every citizen to vote freely in accordance with his free will without hindrance or interference; it entails equal opportunity for candidates to access the electorate, as well as the electorate to choose between competing candidates.

For those attributes to be attained, the public and private campaign meetings must be unhindered, voter registration must be in order, only entitles voters and exclude persons not entitled to vote. Voting must be in accordance with the procedure laid down by law and the candidates must have an opportunity to observe the proceedings of voting and of counting votes either in person or by their appointed agents.”

liberty to determine the manner in which Presidential and Parliamentary elections campaigns are to be conducted by the respective candidates subject to adherence to the provisions of the Constitution.

The Parliament Elections Act of 2005 gives a candidate liberty to campaign through electronic media which includes television, radio, internet and email.

Legitimization of the ‘scientific electoral process’

The digital approach to election activities have been relied on around the world for purposes of fostering peaceful and credible elections.

However in most democracies it has been relied on for mainly purposes of electronic voter identification, voter verification and results transmission. Notably in Africa, roughly half of all national-level elections now involve use of biometric voter registration and electronic results transmission.

However the notion of conducting digital campaigns for national election seems to be a novel area even in advanced democracies around the world.

Whereas it was accommodated as an option a candidate is at liberty to explore, never at any one time was it adopted by the National Electoral body as the default mode of conducting campaigns.

Owing to the new normal during the COVID-19 Pandemic, it has now rendered it the safest avenue to undertake so as to balance the interest of democracy while at the same time safeguarding the well-being and health of the citizens.

In the circumstances of this case, it may be very important for EC to come up with standard guidelines to guide the conduct of these digital campaigns and or elections come 2021. Below are some of the matters that ought to be pondered by the EC in adoption of the “scientific electoral process.

(a) Internet connectivity and digital reach

Provide legitimate and affordable alternatives to the accessibility to the technology hosting devices by persons in rural and or hard to reach areas. Whereas the urban population may have access to electronic media platforms and trending alternatives like whatsapp, facebook and twitter et al, the same cannot be said for the rural population that not only do not have the technology facilitating devices that can host a variety of electronic avenues, but also face challenges in accessing mass-media like televisions and radios. Therefore it is pertinent that the Electoral Commissions rolls ought a conclu-

(b) Data Privacy

Put in place minimum standards to be satisfied by online platforms to be used by the candidates to conduct the campaigns.

The purpose of this to regulate the standard of content to be hosted and shared on these platforms, to ensure protection of data of participants that engage with the candidates or their agents for purposes of ensuring that the right to privacy is not breached while at the same time ensuring that the platforms used foster cyber security.

The proprietors / controllers of these platforms ought to be mandated to put in place procedures that ensure that they preserve the data of their subjects, authenticate the identity of the participants pursuant to the Data Protection and Privacy Act, 2019.

As Data Controllers they ought to be aware of their duty as data controllers who are legally responsible for protecting the Data of their participants ought a conclusive plan to cater for campaigns in these areas especially for purposes of presidential Election campaigns.

(c) False Information

The Electoral Commission must work in conjunction with the UCC so as to effectively tackle the prevalent challenge of the fast -wide spread of false information.

The Parliamentary Elections Act, 2005 and the Presidential Elections Act, 2005 prohibit publication of false, reckless, malicious statements, statements that are abusive, derogatory, exaggerations or words of ridicule by candidates, their agents or potential voters too.

The Proprietors or operators of the private electronic media are tasked with ensuring that they do not use or allow the platforms to be used for these prohibited acts that render the perpetrators liable under the law.

Therefore the Electoral Commission ought to collaborate with the UCC that is empowered to prosecute any persons that engage in creating, initiating the transmission of, circulating and/or forwarding fake stories and misinformation using communication facilities, service or applications for violating

provisions of the Computer Misuse Act, 2011 , the Data Protection and Privacy Act, 2019 and other penal laws.

(d) Voter Education

Voter education of the masses regarding their rights, liabilities and duties while participating in the digital campaign process.

The Electoral Commission is charged with the task of rolling out voter education programs aimed at sensitizing the masses about the benefits and advantages of a digital electoral process, their rights, responsibilities and liabilities when interacting on the various electronic media platforms during the campaign process.

(e) Personal Identification Process

Provide guidelines regarding personal identification processes to be followed when accessing the various digital campaign platforms.

The right to privacy as envisaged in Art 27 of the Constitution is a fundamental right guaranteed by the Constitution of the Republic of Uganda. This right encompasses the right to privacy of the person's correspondence, communication and other property.

(f)

Do we need an enabling law to provide for digital elections?

The Electronic Transactions Act, 2011 covers any form of exchange of information or data between individuals and or public or private organizations conducted over computer-mediated work which may include personal data in from of an electronic signature.

The masses ought to be educated about their personal data and the rights of the data processors / controllers using this data so as to ensure that both persons comply with the right to privacy.

The Right to privacy is clearly fostered in the S.10 of the Data Protection Act, 2019, prohibits collection or processing of personal data in a manner that infringes the privacy of a data individual.

The voters ought to be sensitized about the fact that their personal data is confidential information that cannot be shared without their express consent.

(g)

Data Protection

The Electoral Commission also ought to sensitize the data processors of personal information on how to deal with the information of the voters upon conclusion of the Electoral process.

The Data Protection Act, 2019 provides guidelines on how deal with the information collected and goes ahead to stipulate that information should not be kept for longer than necessary. Therefore the digital platform hosts ought to be sensitized about the legal parameters within which to deal with or discard this information.

The voters' right to be forgotten must be protected during this after conclusion of the electoral process. The Release of this information without consent of the data subject may result into criminal prosecution of the data controllers pursuant to S. 17 and 18 of the Computer Misuse Act, 2011 and S. 35 of the Data Protection Act, 2019.

Conclusion

As the Electoral commission has rolled out the road map that facilitates digital campaigns, it ought to consider that not all persons in the country are in the possession of the apparatus needed to facilitate this entire process, neither are they aware of the legal implications that result from use of these electronic methods of conducting campaigns and elections.

With the above parameters will render great assistance in easing the digital electoral process in Uganda now and in the future.

Furthermore, the issue of risks of voter disenfranchisement especially in hard to reach or rural areas will greatly be mitigated.

Notable cases include

1. Maj John Kazoora v/s
Dr. Bitekyerezo Medard and EC
2. Matsiko Rurangaraga v/s
Eng Yorokamu Katwiremu & EC
3. Odo Tayebwa v/s
Arinda Gordon K
4. Kyamadidi Vincent v/s
Ngabirano Charles & EC
5. Winnie Matsiko v/s
Bamukwatsa Betty & EC

About KTA

KTA is a firm of Advocates who have handled electoral disputes, appellant and original causes, bye elections and nomination contests and election disputes arising from party primaries.

The electoral disputes team is headed by Edwin Tabaro and Justus Karuhanga who together with a team of Associates handled 2011 post electoral disputes and 2016 and various by elections.

The firm has successfully handled 54 electoral disputes.

KTA's Technology, Media and Telecommunications (TMT) Practice regularly advises e-commerce giants, banks, telecoms, tech startups and Fintech companies on their corporate, tax and legal existence and has been instrumental in getting many of them off the ground and running.

Our team of Tech lawyers is headed by Kenneth Muhangi backed by four other Associates.



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