

# **Handbook for Civil Society on Elections and Electoral Campaigns under Multiparty Political System in Uganda**

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## **Acronyms**

ACORD:	Agency for Cooperation and Research in Development
AVSI:	Associazione Volontari per il Servizio Internazionale (in English, the International Service Voluntary Association).
CBO:	Community Based Organisation
CEFIM:	Coalition for Election Finance Monitoring
CS:	Civil Society
CSO:	Civil Society Organisation
DANIDA:	Danish International Development Agency
EC:	Electoral Commission
eds:	editors
ESO:	External Security Organisation
IDEA:	International Institute for Democracy and Electoral Assistance
IGG:	Inspector General of Government
ISO:	Internal Security Organisation
LC:	Local Council
MP:	Member of Parliament
NGO:	Non-Governmental Organisation
PGB:	Presidential Guard Brigade
PPOA:	Political Parties and Organisations Act
PPS:	Principal Private Secretary
PPU:	Presidential Press Unit
PWDs:	Persons with Disabilities
TI-U:	Transparency International-Uganda

## **Legislation and Guidelines**

### **Legislation**

Anti-Terrorism Act No. 7 of 2002  
Constitution of the Republic of Uganda 1995  
Election Commission Act Cap. 140  
Electronic Media Act Cap. 104  
Leadership Code Act Cap. 168  
Local Government Act Cap. 243  
Non-Governmental Organisations Registration Act Cap. 113  
Parliamentary Elections Act No. 17 of 2005  
Political Parties and Organisations Act No. 18 of 2005  
Presidential Elections Act No. 16 of 2005

### **Guidelines**

Parliamentary Elections Nomination Guidelines 2005  
Campaign Guidelines for Presidential Elections 2006

## **Preface**

Parties need to generate income to finance not just their electoral campaigns but also their running costs as political institutions with a role to play between elections. Yet parties, in newer as in older democracies, are under increasing pressure, faced with a vicious cycle of escalating costs of campaigning, declining or negligible membership income, and deepening public mistrust about the invidious role of money in politics. Their problems of fundraising are causing deep anxiety not just to the politicians but to all those who care about democracy. The issue of party finance has in the past been dealt with in sharply contrasting ways across the world, but there are now some signs of convergence in the debate. There are at least three distinct but interrelated questions:

- How free should parties be to raise and spend funds as they like?
- How much information about party finance should a voter be entitled to have?
- How far should public resources be used to support and develop political parties?

The above statement by Ms. Karen Fogg, the President of the International Institute for Democracy and Electoral Assistance (IDEA), in a preface to a book entitled *Funding of Political Parties and Election Campaigns*\* aptly sums up the concerns that this Handbook seeks to address.

This *Handbook for Civil Society on Elections and Electoral Campaigns under Multiparty Political System in Uganda* has been developed at the time when Uganda is transiting into a multi-party system of governance and is set to hold elections under that system in February-March 2006. The first multi-party elections in Uganda in over 25 years raise several multi-faceted concerns that the electoral laws must endeavour to address in order to ensure “free and fair elections”. This Handbook does not seek to address all the concerns. Rather, it seeks to address an area of elections that is the concern in the above quotation and where transparency is seen as much needed to ensure freeness and fairness in elections – *electoral campaign finance*. The Handbook examines provisions of existing laws and guidelines on political party and electoral campaign financing as well as on the use of public/government resources by incumbent office holders. The Handbook also explores the provisions on compliance and penalties for non-compliance (sanctions) and the agencies charged with monitoring and ensuring candidates comply with the electoral law and guidelines. The Handbook’s primary function however is to provide the electoral law and guidelines in an “easy read, use-friendly” manner so that the civil society and the civil society organisations involved in the electoral process can be able to assess and monitor compliance with the legal and policy guidelines on electoral campaign financing. Whether the legal and policy guidelines will be a success during the 2006 elections is yet to be seen. However, it is

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\* Austin, R. and M. Tjenström (eds), *Funding of Political Parties and Election Campaigns* (IDEA Handbook Series, 2003) p. v.

hoped that the Handbook coupled with the experiences of the civil society and CSOs monitoring the elections will help map the way forward in terms of reform of the law and development of better guidelines and practices on electoral campaign financing for future political party activities and multi-party elections in Uganda.

The Coalition for Election Finance Monitoring (CEFIM) commissioned the preparation of this Handbook as an explanatory document to the legal and policy guidelines on electoral campaign financing. Overall, CEFIM wants to thank the Human Rights and Good Governance Programme (HUGO) of DANIDA for financing the preparation and printing of this Handbook.

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## **Chapter I: Electoral System in Uganda**

### **1.1 What is an electoral system?**

An electoral system is the sum of the ways and means by which a country allows the participation of its citizens in the political affairs of government directly through voting and indirectly through election of representatives at all levels of government.

### **1.2 Nature of electoral system in Uganda**

The electoral system in Uganda is based on certain democratic principles, the system of government and levels of democratic governance. These are spelt out under the 1995 Constitution as well as under several laws such as the Election Commission Act, Presidential Elections Act, Parliamentary Elections Act and the Political Parties and Organisations Act, and can be summarised as–

(a) *Principles*: The electoral system is based on the democratic principle of “active participation of all citizens at all levels in their own governance”, under which every citizen has a right to *vote* for and *freely elect* his or her chosen representatives at all levels of government.

(b) *System of government*: The electoral system is further defined by the system of government. The features of the system of government and their influence on the electoral system can be seen in the following–

- (i) There is a hybrid of *presidential* and *parliamentary* systems of government under which–
- The President is *directly* elected on basis of universal suffrage and the Presidential Elections Act 2005 regulates the election of the President.
  - The election of Members of Parliament (MPs) depends on the category of the representatives–
    - Constituency or directly elected representatives and the district women representatives are elected on the basis of universal suffrage.
    - Representatives of persons with disabilities (PWDs) are elected through electoral colleges.
    - Representatives of the youth, army and workers are to be elected in a manner and through special procedures as will be set out by Government in electoral rules.

The Parliamentary Elections Act 2005 regulates the election of members of Parliament.

- (ii) Uganda is administered under both *centralised* and *decentralised* system of government. The provision for decentralised governance, i.e. local government is provided for under the Constitution and the electoral system covers local government/council elections from the district to the village as the smallest political unit at the grassroots in the following order:
- district (referred to as Local Council V).
  - county (Local Council IV).
  - sub-county (Local Council III).
  - parish (Local Council II).
  - village (Local Council I).
- (iii) The political system of government is *multi-party political system*. This follows the referendum held in July 2005 that voted to transit from a movement political system to a multi-party political system. The 2006 elections are being conducted on the basis of multi-party politics. The electoral law and procedures provide that,

“nomination of candidates may be made by a registered political organisation or political party sponsoring a candidate” (see the Presidential Elections Act, sec. 8(9) and Parliamentary Elections Act, sec. 10).

The multi-party political system however allows for individuals to be nominated and stand for elections at both the national and local elections as “independents”.

Under the multi-party political system, the elections are undertaken through a number of stages:

- Primaries to elect the representative of a political party/organisation at the national/local elections.
- Nomination of candidate for the political party/organisation on the nomination day.
- Election of a winning candidate whose representation at the national/local politics is considered that of the political party/organisation.

The management of the electoral system and conduct of elections at all the levels of government is carried out by the Electoral Commission (EC). The role and functions of the EC are provided for under the Constitution and the Electoral Commission Act.

## **Chapter II: Disclosure Requirements by Parties and Candidates**

### **2.1 What are disclosure requirements?**

Disclosure is to reveal or expose certain facts or situation. In elections and electoral campaigns, there are certain facts or situations that the electoral law and guidelines require a political party or organisation and candidates to reveal or expose. A key area of disclosure requirements under the laws and guidelines is electoral campaign finances and the use of public/state resources.

### **2.2 Basic issues in legal requirements on disclosure**

The requirements on disclosure relevant to electoral campaign finance and use of public/state resources are contained in provisions of several legal and policy guidelines, including–

- 1995 Constitution
- Leadership Code Act
- Parliamentary Elections Act
- Political Parties and Organisations Act
- Presidential Elections Act
- and
- Parliamentary Elections Nomination Guidelines 2005
- Campaign Guidelines for Presidential Elections 2006

#### ***2.2.1 Political parties and organizations***

The 1995 Constitution states that:

“Political parties shall be required by law to *account* for the *sources* and *use* of their *funds and assets*” (art. 71(e)).

“Parliament shall by law regulate the *financing* and functioning of political parties and organisations” (art. 72(3)).

The Political Parties and Organisations Act outlines the requirements on disclosure by political parties and organisations with regards to financing and assets. The Act requires political parties and organisations to file with the EC certain declarations and statements on sources and use of finances or funds. These include–

- Written declaration of assets and liabilities including “sources of funds and other assets” (sec. 9(1)(3)).

- Audited statement of accounts (sec. 12(4)).
- Reporting of lawful contributions from foreign sources (sec. 14(4)).

The declaration, statement of accounts and reporting of contributions are to be filed with the EC as follows:

- *Written declaration of assets and liabilities:* within sixty (60) days after first year of registration (unless the EC allows a longer period).
- *Audited statement of accounts:* within six (6) months from the end of the financial year of a political party or organisation.
- *Reporting of lawful contributions from foreign sources:* within twenty-one (21) days after receipt of the contribution.

*The legal requirements on filing of the declaration of assets and liabilities, audited statement of accounts and the limitations on lawful contributions from foreign sources are outlined in detail in 3.3.1 below.*

These provisions of the political parties law help in disclosing and availing information on *finances* of a political party/organisation and its *sources*.

### **2.2.2 Candidates**

There are no *direct* legal provisions requiring candidates in election with regards to sources of electoral campaign finances.

Apart from a contribution of a sum of US\$ 20 million by the EC to each candidate in presidential elections that is to be used solely for the election, the Presidential Elections Act only provides that a candidate (or his/her agents) may raise additional funding for the candidate's campaign through *lawful means* (sec. 22(2)-(3)). There are however certain restrictions on asking for and receiving funds for campaigns from a foreign Government, institution, body or person (sec. 22(4)). *However, there is no requirement to disclose the source of a candidate's electoral campaign finances* except that a candidate is to—

- account, within thirty (30) days after the election, for the use of the public resources (i.e. the US\$ 20 million) and the other facilities.
- keep a record of all funds he/she asked for and received (and their sources)(sec. 22(6)).

*The disclosure in this case is after rather than before the election.*

There are similarly no provisions on *pre-election* disclosure requirements on *campaign finances* for candidates in parliamentary elections under the Parliamentary Elections Act. The only disclosure requirements are on the use of public/state resources where a candidate who is a Minister or holds any political office is, during the campaign period, restricted to the “use of

the official facilities ordinarily attached to his or her office to the execution of her official duties” (sec. 25(2)). The EC is required to write to the minister or the holder of a political office

“to state in writing the *facilities ordinarily attached to any office held by that person ... and the candidate shall comply with the requirement*” (sec. 25(3)).

This pre-election disclosure requirement as to the public/state resources that are available to a holder of a political office also extends to:

- an employee of a statutory corporation or company in which the government owns a controlling interest.
- a member of a commission or committee established by the Constitution (sec. 25(4)).

This would be case of, for example, an employee of Uganda Broadcasting Corporation or a member of the Health Service Commission.

*The legal requirements on disclosure of use of the public resources given to the presidential candidates in elections and the public/state resources that are available to holders of political offices contesting parliamentary elections are outlined in detail in 3.3.2 and 4.2 below.*

The possibility of pre-election disclosure of sources of electoral campaign funds is however possible with regards to candidates in the presidential and parliamentary elections under the Leadership Code Act.\* Under the Code, a public official or leader is required from time to time to *declare* his or her *income, assets and liabilities* and how he or she acquired them.+ However, the Code only applies to candidates holding certain positions in government or public office, e.g. the President, Minister, MPs.

The disclosures in a declaration of wealth are not required as part of the electoral law or guidelines. However, they are useful in terms of–

- It serves to show whether a public official is corrupt. This is the case where there is unexplained increase in wealth (and assets) within a

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\* The Leadership Code (of Conduct) is provided for under Chapter XIV of the 1995 Constitution. The Constitution recognises the role and need for code of conduct for public officials and leaders (art. 233). The Leadership Code Act enacted by the Parliament in 2002 (replacing the Leadership Code, Statute No. 8 of 1992) seeks to provide a minimum standard of behaviour and conduct for leaders.

+ The declaration of wealth extends to spouses, children and dependants of the public officials and leaders. The Code, which came in force in July 12, 2002, requires those who were leaders at that time to declare their statements of income, assets and liabilities within three (3) months after the commencement date, those becoming leaders thereafter within three (3) months of one becoming a leader and thereafter every two (2) years during the month of March.

short period of public employment that cannot be a result of salary earnings.

- An individual who fails or refuses without good reasons to submit a declaration of wealth is not entitled to stand for elections during the next five (5) years.

The failure without good reasons to submit declaration of wealth may also result in the IGG recommending that certain courses of action be taken (including dismissal from a public office to which an individual has been elected, e.g. Member of Parliament).

### **2.3 Monitoring Compliance of disclosure requirements**

The major disclosure requirements can be summarised as follows–

1. From political parties and organisations to the EC:
  - written declaration of assets and liabilities.
  - audited statement of accounts.
  - reporting of lawful contributions from foreign sources.
2. From presidential election candidates to the EC:
  - account for the use of allocated public resources (US\$ 20 million) and other facilities.
  - record of all funds asked for and received (and their sources).
3. From parliamentary election candidates (who are ministers or the holders of political offices) to the EC:
  - written statement of facilities ordinarily attached to the office held by that person.<sup>#</sup>
4. From candidates in presidential and parliamentary elections (and holding certain positions in government/public office) to the IGG:
  - declaration of income, assets and liabilities (between 2002-2005).

For the purposes of monitoring the compliance with the various disclosure requirements long before, immediately before or after the elections, a CSO or an election observer needs only to access the declarations, statements, records or reports filed with the EC or IGG. Under the political parties law

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<sup>#</sup> This however requires the EC to *initially* write to the various ministers or holders of political offices who are then required to provide in writing a list of the facilities attached to their offices (sec. 25(3) of the Parliamentary Elections Act). [Therefore, there should be documentary evidence at the EC offices that the EC wrote to the various ministers or holders of political offices on this requirement on facilities.](#)

and the Leadership Code, the declarations, statements, records or reports are a “public record” available for inspection by the members of the public upon payment of a prescribed fee. This is clear from the provisions of the political parties law and the Leadership Code–

- declaration of assets and liabilities of political parties/organisations (sec. 9(5) of the Political Parties and Organisations Act).
- audited accounts of political parties/organisations (sec. 12(5) of the Political Parties and Organisations Act).
- contents of the declarations of income, assets and liabilities (sec. 7 of the Leadership Code).

The right of an election observer or CSOs to access and inspect the various declarations, statements, records or reports also arises from the general right of access to information in the possession of agencies of government (i.e. EC, IGG) as stated in article 41 of the Constitution.

## **Chapter III: Restrictions on Electoral Campaign Finance and Sources**

### **3.1 What is electoral campaign finance?**

Electoral campaign finance is defined as the “resources acquired and spent by electoral candidates and political parties (and organisations) in election campaigns”. This includes the following–

- *Campaign income*: the means by which candidates and parties (and organisations) *obtain* resources during electoral campaigns.
- *Campaign expenditure*: the way in which candidates and parties (and organisations) *spend* resources during electoral campaigns.
- *Public/state resources*: the manner in which candidates and parties (and organisations) *use* or *abuse public/state* resources in electoral campaigns.

### **3.2 What is the relevance of campaign finance in elections?**

The manner in which candidates and political parties and organisations acquire and spend resources is of importance for two major reasons–

#### ***3.2.1 Freeness and fairness of elections***

The aim of every electoral process is that there is a “free and fair elections” and therefore every effort from the electoral law itself to the conduct of the elections should achieve this result. The need to control and restrict the manner in which candidates acquire and use money and other resources to be used in an election becomes necessary given that–

- It may enable a candidate with more funds and resources to “buy” votes and therefore the election.
- A candidate who is an incumbent (i.e. he/she is holder of a public/political office) is, in using the public/state resources (e.g. vehicles, media) at an advantage over his/her opponents who have no use of such resources.

In both instances, the election will not be *fair* given the advantage that one candidate has over the other candidates.

#### ***3.2.2 Political and electioneering corruption***

The basic idea about “good” government is that political/public office (be it that of President, Minister or an MP) is not “sold” for *money* or *personal*

*gain*. The need to regulate and restrict electoral campaign finances is thus necessary to ensure that–

- The sources of the campaign finances are not from certain interest groups (e.g. big businesses, criminal gangs) who hope for “favours” (*scratch my back, scratch your back* kind of favours) in the form of award of contracts, tenders, etc. when the candidate wins office. It is therefore necessary to root out “illegal” political contributions or donations from persons or groups with “vested interests”.
- There is no “abuse of office” which the use of public/state resources (vehicles, personnel) constitutes. This is because the candidate who is holder of a political office and has access to these resources is diverting those resources from public use to his/her personal use in an election.

In the above instances, either would constitute political or electioneering corruption.

### **3.3 What are the legal restrictions on campaign finance?**

There are a number of legal restrictions as regards campaign finance. This is in respect of political parties (and organisations) and candidates and are stipulated in a number of laws passed in 2005 in the run-up to the 2006 election nominations and campaigns, including–

- Political Parties and Organisations Act 2005
- Parliamentary Elections Act 2005
- Presidential Elections Act 2005

The legal restrictions on campaign finance in terms of *campaign income* (i.e. resources and monies made available) with regards to political parties (and organisations) and candidates are as follows.

#### ***3.3.1 Political parties and organisations***

The formation and operations (including the financing) of political parties and organisations is regulated by the 1995 Constitution and the Political Parties and Organisations Act of 2005. The Constitution states that:

“Parliament shall by law regulate the *financing* and functioning of political parties and organisations” (art. 72(3)).

Elsewhere the Constitution states:

“Political parties shall be required by law to *account* for the *sources* and *use* of their *funds and assets*” (art. 71(e)).

The legal regulation and restrictions on financing of political parties and organisations is provided for under the Political Parties and Organisations Act in the following ways–

1. Political parties and organisations are required to submit to the EC a *written declaration of assets and liabilities* including “sources of funds and other assets ...” (sec. 9(3))

This should be done within sixty (60) days after the first year of registration (unless the EC allows longer period).

The written declaration should be in the format of Form 2 provided in the Third Schedule to the PPOA.

2. Political parties and organisations are required to maintain an *accurate and permanent record* of, among others–

- (i) Contributions, donations (or pledges of contributions or donations) in cash or in kind<sup>+</sup> by founders or promoters\*
- (ii) Statement of accounts showing–
  - Sources of funding (and names of contributors).
  - Memberships dues paid.
  - Donations in cash and in kind.
  - Financial transactions of party/organisation conducted through or by or with national office.
- (iii) Property (including when and how it was acquired)(sec. 12(1)(a)-(c)).

This permanent record is to be accessible to and by any member of a political party or organisation (sec 12(2)).

The accounts of a political party or organisation are to be audited once every year (sec 12(3)).

A copy of the audited accounts is to be filed by a political party or organisation with the EC within six (6) months from the end of the financial year of the political party or organisation (sec 12(4)). The EC can also request records of contributions, accounts and property to be availed to it for inspection (sec. 15(1)).

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<sup>+</sup> Contributions/donations ‘in kind’ are non-monetary sources, e.g. vehicles, campaign materials, air time on radio/TV, advertisements.

\* A promoter is a ‘signatory to the original documents registering a political party or organisation’.

The public is entitled upon payment of a reasonable fee to inspect copies of the audited accounts (sec 12(5)).

3. Political parties and organisations are restricted in respect of *contributions from foreign sources* within any period of *twelve (12) months* as follows–
  - (i) A foreign person or body cannot make a contribution to a political party or organisation in excess of the value of US\$ 400 million (sec. 14(1)).
  - (ii) A political party or organisation cannot *ask for* or *receive*–
    - a contribution in excess of the value of US\$ 400 million from any foreign source.
    - a contribution in excess of the total value of US\$ 4 billion from one or more foreign sources (sec. 14(3)).

The contributions from foreign sources can be either (a) donation or loan or (b) in cash or in kind.

The “foreign sources” are listed as–

- A non-Ugandan citizen (e.g. a Canadian entrepreneur)
- A foreign Government (e.g. United States) or diplomatic mission (e.g. United States embassy in Uganda)
- A non-Ugandan NGO registered under the NGO Act (e.g. ACORD, AVSI)(sec. 14(2)).

A “non-citizen” is defined as–

- An individual who is not a citizen of Uganda in terms of the Constitution and the laws on citizenship.
- A company where –
  - majority of shares (51%) are held by individuals who are not citizens of Uganda,
  - decisions are made by the majority who are not citizens of Uganda,
  - the shares are held in trust for non-citizens (sec. 14(7)-(8)).

Furthermore, a political party or organisation cannot *obtain, ask for* or *receive* and *use for its operations* funds from–

- (i) A foreign Government, institution, body or person that has shown an intention to overthrow the government of Uganda or endanger the security of Uganda.
- (ii) An organisation declared a terrorist organisation under the Anti-Terrorism Act 2002 (sec. 14(5)).

The PPOA requires the Minister with approval of Parliament to list in a law the foreign Governments, institutions, bodies or persons from whom a political party or organisation cannot *obtain, ask for* or *receive* funds.

The Anti-Terrorism Act 2002 lists *Al-Qaeda* and Lord's Resistance Army (LRA) as "terrorist organisations".

### **3.3.2 Candidates**

The legal regulation of and the restrictions on financing of candidates in elections are provided under the Presidential Elections Act 2005 and the Parliamentary Elections Act 2005.

#### *(a) Presidential elections*

The financing of candidates in the presidential elections is provided under the Presidential Elections Act 2005 in the following ways–

1. The EC gives to each candidate as a *contribution to be used solely for the election* a sum of UShs. 20 million (sec. 22(2)). Additionally, the EC provides each candidate with such *other facilities* as may be approved by Parliament.

This is a formal public funding contribution to presidential election candidates. The other facilities as contribution to election campaign have been non-monetary, i.e. vehicles, police escorts.

2. A candidate (or his/her agents) may raise additional funding for the candidate's campaign through *lawful means* (sec. 22(3)).

What is meant by "lawful means" is not defined by the Act. This can nonetheless be seen to include–

- (i) Local donations from well-wishers, friends, etc.
- (ii) Local fundraising activities.
- (iii) Membership subscriptions and contributions from registered members of a political party/organisation to which candidate belongs.
- (iv) Personal financial resources (e.g. savings, monies or profits from businesses), loans, etc.
- (v) Foreign contributions/donations (except as limited by law (see below)).

However, this cannot be seen as including–

- (i) Corrupt “kickbacks” (*you give me, I give you back*).
  - (ii) Funds obtained through other illegal or criminal acts (e.g. money laundering).
3. A candidate (and his/her agents) is restricted in respect of asking for and receiving funds for campaigns from a foreign Government, institution, body or person that has shown intention to overthrow the government of Uganda or endanger the security of Uganda (sec. 22(4)). A law is to be presented and approved by Parliament as to the prohibited foreign Governments, institutions, bodies or persons three months before the nomination day (for the presidential candidates)(sec. 22(5)).

*This provision is similar to that on restrictions on contributions to a political party/organisation (3.3.1 above).*

4. A candidate is expected to submit account for campaign finances to the EC in terms of–
- (i) Keeping a record of all funds he/she asked for and received (and their sources).
  - (ii) Accounting for the use of the public resources (i.e. the UShs. 20 million) and the other facilities (sec. 22(6)).

*The accounting for campaign finances to the EC is to be done within thirty (30) days after the elections are held.*

*(b) Parliamentary elections*

The Parliamentary Elections Act 2005 does not contain provisions on the financing of candidates in parliamentary elections. It merely mentions the sponsoring of candidates by a political party or organisation by fact of the nomination of a candidate by a particular political party or organisation (sec. 10).

However, the Act contains other provisions relevant to electoral campaign finance and resources, in respect of–

- (i) Bribery as an illegal electoral practice (sec. 68).
- (ii) Use of public/government resources in campaigning (sec. 25).

*These aspects of electoral campaign finance are looked at in detail below in 3.4.1 and in Chapter IV (public resources) respectively.*

### **3.4 Basic concerns regarding legal requirements on campaign finance**

#### **3.4.1 Campaign income**

##### *(a) What is campaign income?*

Campaign income constitutes the resources that are available to a political party or organisation and a candidate during elections. The legal and policy guidelines are concerned with the *sources* of these resources and the means by which a political party or organisation or a candidate *obtains* those resources during electoral campaigns.

There are various ways of raising electoral campaign *income*, including–

- Public funding contributions (e.g. US\$ 20 million to each of the candidates in the presidential elections).
- Donations (including local and foreign sources).
- Loans.
- Earnings from investments in businesses and property (and other assets).
- Contributions “in kind” (i.e. goods/services offered to a candidate free of charge or at a discount).
- Personal financial resources (e.g. savings).
- Fundraising activities.
- Subscription dues from registered members of political party.

##### *(b) Legal requirements as to sources of campaign income*

The sources of campaign income for political parties or organisations are to a large extent detailed out in the PPOA (sec. 12(1)) in terms of–

- Local and foreign contributions, donations (or pledges)(in cash or in kind) and loans.
- Memberships dues.
- Property (including when and how it was acquired).

**The details of these financing of political parties or organisations are dealt with in detail in 3.3.1 above.**

It is to be noted that apart from the US\$ 20 million to each candidate in presidential elections, the electoral law only requires that a candidate raise additional funding for the campaigns through *lawful means* (Presidential Elections Act, sec. 22(3)). It does not list or define what the *lawful means* are, except that it prohibits any sources of campaign finance from a *hostile* foreign governments or institutions (sec. 22(4)). It can therefore be said

that the lawful means could include any of the sources listed above (from donations, loans to membership subscription dues).

It is also to be noted that the Parliamentary Elections Act does not contain provisions on campaign income for parliamentary election candidates. It can be assumed that candidates can raise such electoral campaign incomes through lawful means (from the sources listed above). There is however a particular aspect of campaign income that the Parliamentary Elections Act addresses, i.e. contributions “in kind” (i.e. goods or services offered to a candidate). As part of concerns on “bribery” in elections, section 68 of the Parliamentary Elections Act provides:

- (1) A person who, either before or during an election with intent either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any money, gift or other consideration to that person, commits an offence of bribery and is liable on conviction to a fine not exceeding [UShs. 1,440,000] or imprisonment not exceeding three years or both.
- ...
- (3) Subsection (1) does not apply in respect of the provision of *refreshments or food*–
  - ...
  - (b) *offered by any person other than a candidate or a candidate’s agent who, at his or her own expense provides refreshments or food at a candidate’s campaign planning and organisation meeting.*

Such contributions “in kind” (beers, sodas, etc.) are to be seen as campaign income in terms of their market prices. While this is the law and relates to “gifts” or “money” in elections, there will be legitimate concerns that are not addressed by the law in terms of whether the contributor “in kind” has no other motives of offering the *refreshments and food* at his/her expense. What if a businessman offered to provide *refreshments and food* at his expense throughout the campaigns of a mayoral/LC V candidate in return for political “favours” (tenders, contracts) once the candidate is elected to office?

### *(c) Disclosure requirements*

The disclosure requirements under the various legal and policy guidelines on campaign income generally call for any of the following–

- *Declarations* (of assets and liabilities of parties and individuals).

- *Statements* (of accounts, use of public funding of UShs. 20 million, facilities ordinarily attached to ministerial/political office).
- *Records* (of funds asked for and received by presidential candidate).
- *Reports* (of lawful contributions from foreign sources).

These are covered in detail in 2.2, 2.3 and 3.3 above.

### **3.4.2 Campaign expenditure**

#### *(a) What is campaign expenditure?*

Campaign expenditure constitutes the expenses incurred by a political party or organisation or a candidate to promote the party or organisation or candidate in an election. It is the manner in which a political party or organisation or a candidate *spends* resources during electoral campaigns. This includes spending by–

- A political party/organisation itself or a candidate.
- Other persons or entities on *behalf* of a political party/organisation or a candidate.

Expenditure or spending by other persons can be the kind contemplated by the Parliamentary Elections Act, where an individual “at his or her own expense provides refreshments or food at a candidate’s campaign planning and organisation meeting” (sec. 68(3)(b)). It is an expense on the part of another person on *behalf* of a candidate. But as noted above (3.4.1 (b)), it can also be regarded campaign income for a candidate as a contribution “in kind” by that other individual.

On the other hand, the Parliamentary Elections Act also recognises (not as a “bribe”) direct expenses on *refreshments* or *food* by a candidate (or his/her agent). The prohibited acts of “bribery” do not apply to the provision of *refreshments* or *food*–

“offered by a candidate or a candidate’s agent who provides refreshments or food as an *election expense* at a candidate’s campaign planning and organisation meeting” (sec. 68(3)(a)).

#### *(b) Categories of campaign expenditure*

There are several categories of campaign expenditure. The existing legal and policy guidelines do not provide any such categories. In fact, there is only a general mention of expenditures–

- Statements of accounts of a political party/organisation to the EC are to show “financial transactions of party/organisation conducted through or by or with national office” (sec. 12(1)(b) of the PPOA).

- A presidential candidate is to account for campaign finances to the EC in terms of the use of the public funding of UShs. 20 million and the other facilities (sec. 22(6) of the Presidential Elections Act).

The details of the financial transactions of a party/organisation (which will not be limited to electoral campaigns) or the presidential candidate are not spelled out.

On the other hand, the only campaign expenditure specifically identified in the Parliamentary Elections Act as not constituting “bribery” is in respect of refreshments or food at election campaigns by a candidate or by another person on his/her behalf (3.4.2 (b) above).

However, the categories of campaign expenditure have been identified to include–

- Advertising and publicity
- Administrative expenses (non-advertising expenditure)

*(i) Advertising and publicity*

Advertising and publicity constitute the “dominant cost in many election campaigns”. Advertising, especially in mass media (television, radio, internet) is key to modern political campaigning, although in Uganda, publicity through posters, T-shirts, caps, mobile media, etc. is perhaps the most used during electoral campaigns.

The major areas of advertising and publicity as campaign expenditures that is most visible (can be seen) and for which monitoring can be done include–

- (i) Production (i.e. printing and designing) of program and *manifestos* (and other documents, e.g. books, leaflets, pamphlets) of a political party/organisation or a candidate.
- (ii) Political advertising/publicity in–
  - *Electronic* media (TV, radio, inter-net).
  - *Print* media (newspapers, magazines).
  - *Out-door* media (posters, billboards).
  - *Mobile* media (trucks fitted with audio equipment).
- (iii) Design and production of other campaign promotional materials (e.g. logos, posters, car stickers, cards, T-shirts, caps, pocket tags).

In light of the above and the practical observation of campaigns shows that advertising and publicity is dominant as a campaign expenditure. In the end, the concerns will be–

- (a) What amount of campaign finance has a political party or candidate allocated to advertising and publicity?
- (b) Are these expenses on advertising and publicity broken down into specific items?
- (c) What is the *actual* spending on advertising and publicity in light of–
  - number and length of advertisements on TV, radio and internet?
  - amount of advertising space in print media (newspapers)?
  - number of out-door advertisements (billboards)?

The actual or estimated costs of advertising and publicity can be obtained independently from media companies (TV, radio) and printing firms.

*(ii) Operational and administrative costs*

The operational and administrative costs do constitute the second biggest component of campaign expenditure (after advertising and publicity). This generally it consists of–

- (i) *Rent for office space* for electoral purposes.
- (ii) Payments for *cost of utilities* (water, electricity, etc).
- (iii) *Cost of communications* (telephone, fax, inter-net).
- (iv) *Office supplies* (pens, paper, computers, furniture, etc).
- (v) *Salaries* for administrative and other staff.

and

- (vi) *Research and campaign strategies* (consultancy, etc).

Item (vi) is listed given that there is now a growing tendency of parties and candidates to hire consultants, public relations (PR) experts, campaign managers and other specialists to conduct research and develop campaign strategies.

As is the case with advertising and publicity as campaign expenditure, the operational and administrative costs of electoral campaigns can be looked at in terms of–

- allocation by a party or candidate in its budgeting, and
- actual spending on the various items.

Other campaign expenditure that can be seen as part of operational and administrative costs of electoral campaigns includes the following.

- *Rallies, events and direct contact with voters*

Organised rallies and other campaign events (meetings) is the “traditional” way of campaigning. In fact, no candidate can survive without campaign rallies since they offer the most direct contact with voters. Inevitably, these activities and organising them cost money. The campaign expenditure will consist of organising not just the campaign rallies but also events such as meetings, concerts, shows, etc. and these will attract costs in terms of–

- (i) *Renting space/premises* (e.g. venue for rallies, meetings, concerts).
- (ii) *Renting equipment* for use at events (e.g. microphones, public address systems).
- (iii) *Hiring people* to organise meetings, rallies, etc.
- (iv) *Hiring individuals/groups to participate in events* (e.g. musicians).
- (v) *Transport and accommodation costs* (for staff and participants at events).

These campaign expenditures can also be monitored by looking at how much a candidate allocates to them in the campaign budget and how much is actually spend during the campaigns on those items.

- *Distribution of money and other direct benefits to voters*

In the course of campaigns, candidates often distribute money (cash) and other direct benefits to voters (such as refreshments and food, cooking oil, salt, sugar, soap, blankets, saucepans, etc). In fact, given the nature of campaigns in Uganda, this kind of spending has been a significant part of electoral campaign expenditure. Of major interest is that fact that the distributing of money and other direct benefits to voters is to seen as “vote buying” and therefore a form of “corruption”. The Parliamentary Elections Act specifically prohibits this as an “illegal” practice:

“A person who, either before or during an election with intent either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any *money, gift or other consideration* to that person, commits an offence of bribery and is liable on conviction to a fine not exceeding [UShs. 1,440,000] or imprisonment not exceeding three years or both” (sec. 68(1)).

As noted above (3.4.1 (a)), the Act does however exclude the providing of *refreshments* or *food* during campaigns from constituting “bribery”. It is regarded as an “election expense” (sec. 68(3)(a)).

## **Chapter IV: Use of Public/State Resources by Incumbent Office Holders**

### **4.1 Why concern with use of use of public/state resources?**

The concern with use of public/state resources is a recent one in electoral campaigns, even in democracies in Europe and America. The concern here is the use mainly by incumbents (i.e. those holding political offices, e.g. the President, Ministers, LC V) of the resources attached to their offices for purposes of electoral campaigns. The *misuse* of the public resources to that end is a form of “corruption”. It is in fact an “abuse of office” because the candidate who is a holder of a political office and has access and use of the public/state resources (vehicles, personnel) is diverting those resources from *public use* to his/her *personal use* in an election.

### **4.2 What are the legal requirements regarding the use of public/state resources?**

The 1995 Constitution as well as the Presidential Elections Act of 2005 and the Parliamentary Elections Act of 2005 regulate the use of public/state resources during elections.

1. The Constitution provides that:

“Parliament shall make laws, regulating the use of public resources and institutions during election campaigns”(article 67(4)).

[On that basis, Parliament passed the Presidential Elections Act and the Parliamentary Elections Act with specific provisions on use of public/state resources during electoral campaigns.](#)

2. The Presidential Elections Act states that:

“Except as authorised by law, no candidate shall use Government resources for the purpose of campaigning for election.

Notwithstanding the foregoing, a candidate who holds the office of President may continue to use Government facilities during the campaign, but shall only use the said facilities which are ordinarily attached to and utilised by the holder of that office.”

These provisions of the Presidential Elections Act have been stated again by the EC when it released the Campaign Guidelines for Presidential Elections in January 2006.

3. The Parliamentary Elections Act states that:

“Except as authorised under this Act or otherwise authorised by law, no candidate shall use Government or public resources for the purpose of campaigning for election.

Where a candidate is a Minister or holds any political office, he or she shall during the campaign period, restrict the use of the official facilities ordinarily attached to his or her office to the execution of her official duties.

For the purposes of enforcing this section, the [EC] shall, by writing require any candidate to state in writing the facilities ordinarily attached to any office held by that person to which subsection (2) applies and the candidate shall comply with the requirement

This section applies with necessary modifications to an employee of a statutory corporation or company in which the government owns a controlling interest and a member of a commission or committee established by the Constitution as it applies to a public officer” (sec. 25(1)-(4)).

**The issue of use of public/state resources by candidates for parliamentary elections has already been highlighted above (2.2.2).**

From the above, it is clear that the incumbent as *President can continue to use Government facilities during the campaign*. However, he shall only use the said facilities which are ordinarily attached to and utilised by the holder of that office. What does this last part mean? In real and practical terms, it means that an incumbent President can continue to use *all* public resources that have been available to him as President, including the press unit (PPU), protection unit (PGB), administrative personnel (e.g. PPS and advisers).

On the other hand, the Parliamentary Elections Act *restricts* a Minister or holder of a political office in the use of public/state resources.\* This is the case of especially those resources ordinarily attached to his or her office to the execution of her official duties. In fact, he/she is required to avail a list of the public/state resources attached to the office. The problem is what

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\* “Restricted” is however not the same as “prohibited”.

are these resources? What guarantee is that a Minister or the holder of a political office will list all the public/state resources attached to the office?

### **4.3 Basic concerns regarding legal requirements on use of public/state resources**

#### ***4.3.1 What constitutes public/state resources?***

What constitutes public/state resources is not stated in the electoral law.

Since an incumbent President is allowed to continue using public/state resources “*which are ordinarily attached to and utilised by the holder of that office*”, as noted above (4.2), [this would include the press unit \(PPU\), protection unit \(PGB\), administrative personnel \(e.g. PPS and advisers\).](#)

The Parliamentary Elections Act restricts a Minister or holder of a political office in the use of public/state resources ordinarily attached to his/her office to the execution of her official duties. [It is left to the Minister or the holder of a political office to list the public/state resources attached to his/her office when requested by the EC.](#)

Generally, public/state resources can be categorised as–

- (i) *Coercive resources* (e.g. army, police and other law enforcement institutions, including the courts (especially criminal prosecution), intelligence agencies (e.g. ISO, ESO)).
- (ii) *Legislative resources* (i.e. using legislature to pass laws favourable to the incumbents).
- (iii) *Institutional resources* (i.e. material and human resources of the state, including office space and equipment, vehicles, etc).
- (iv) *Financial resources* (public finances).
- (v) *Media resources* (especially state-owned communication media).

[The use of the resources is discussed in detail in 4.3.2 below.](#)

#### ***4.3.2 What constitutes misuse of public/state resources by incumbents?***

As noted above, an incumbent President is [permitted](#) to continue using public/state resources *ordinarily attached to and utilised by the holder of that office*. On the other hand, a Minister or holder of a political office campaigning in parliamentary elections is [restricted](#) in the use of public/state resources.

What constitutes misuse of public/state resources depends on the types of public/state resources in question. Five (5) types of public/state resources are considered as follows.

*(a) Coercive resources*

This involves use of coercive apparatus of the state in election campaigns. The misuse of these resources includes, for instance–

- using the army, police and intelligence/security agencies to harass and intimidate supporters of other candidates.
- using other law enforcement institutions, for instance, courts (e.g. having false criminal charges to be brought for criminal prosecution of an opposition candidate).

The use of the army and intelligence/security agencies to harass and intimidate supporters of other candidates was a feature of the 2001 elections.

*(b) Legislative resources*

This involves using legislature to pass laws favourable to the incumbents. This is usually before the elections. It is not to common but the misuse of legislative resources has occurred, for instance, in Zimbabwe, where a law was passed that political parties were to have a certain number of MPs in the current Parliament to be able to qualify for public/state funding.

An example in Uganda is the provision that appears in the electoral law requiring a “public officer or a person employed in any government department or agency or an employee of a local government or any body in which government has a controlling interest, who wishes to stand for election as a member of Parliament” to resign his/her office at least 90 days before nomination day (sec. 4(4)(a) of the Parliamentary Elections Act). While this was intended do deal with elections in the era of a multi-party political system, there was the feeling that this was a trick by the incumbent MPs to try to stop other public officials contesting in elections, as those officials would have to debate whether to leave a permanent job to contest in an election whose result is not clearly known.

*(c) Institutional resources*

These are generally material and human resources of the state, including office space and equipment, vehicles, etc. The concerns over permitted or the misuse of institutional resources arise where incumbent office holders (President, ministers, LC V Chairperson) uses *institutional* public/state resources they control to promote their *individual* electoral interests. This

includes the use of public premises, office equipment, vehicles and public officials/employees for campaign purposes. The examples include–

- senior state officials in their capacity as *public* employees publicly endorsing a candidate.
- public officials/employees being required to attend campaign events (e.g. rallies) of a candidate.
- public officials/employees campaigning for a candidate during *official* working hours.
- government premises being used for campaign purposes (e.g. voters meetings, rallies, concerts) by one candidate (which is not the case for the others).
- logistical resources of public office (e.g. computers, fax, telephone, internet) being available to a candidate.
- public/official vehicles being used for campaign purposes, e.g. transporting candidate, supporters, campaign materials (T-shirts, posters, etc.).

The abuse of public/state resources is greatest in this area of institutional resources.

*(d) Financial resources*

This involves generally the use of public finances. The misuse of such public resources in electoral campaigns includes–

- distribution to voters of goods and services bought with public funds.
- institutional advertising, i.e. boosting the image of incumbent by increasing advertising of government activities.

Would the following for instance constitute a misuse of financial resources as public/state resources–

- (i) Boosting the image of Uganda through the “Gifted by Nature” adverts?
- (ii) Creating the Media Centre (including committing funds)?
- (iii) Publishing in newspapers the progress on incumbent’s 2001 presidential manifesto (from 2001-5)?

*(e) Media resources*

This involves generally the use of the media, especially state-owned media. There are several legal provisions on the use of state-owned media by candidates in elections.

1. The 1995 Constitution states in article 67:

“(2) No candidate in an election shall be denied reasonable access, and use of State-owned communication media.

(3) All presidential candidates shall be given equal time and space on the State-owned, media to present their programmes to the people”.

Clause (2) seems to be directed to candidates in elections generally while clause (3) is specific to presidential candidates (and includes concerns over *equal time and space*).

The provisions of the Constitution are the basis for the provisions on use of state-owned media in the Presidential Elections Act and Parliamentary Elections Act.

2. The Parliamentary Elections Act states:

“A candidate in an election shall not be denied access, and use of State-owned communication media” (sec. 22(1)).

The misuse of media resources as public/state resources can be seen in a number of ways, including–

- *unequal access and coverage* on state-owned media (e.g. Uganda Broadcasting Council Television (UBC TV)) as between incumbent and other candidates. This can arise in several ways such as–
  - *censorship* of campaign news items relating to the other candidates.
  - not providing equal *advertising coverage* to other parties or candidates.
  - disproportionate amount of *news and reporting* on one candidate at expense of the others.
- *bias* in items in state-owned media. This can arise in several ways such as–
  - use of a *poor portrait* of opposition candidate.
  - *negative coverage* of opposition candidate (e.g. criticism and negative views).
  - disproportionate *coverage and reporting* on participation of one candidate at social events at expense of the others.

## **Chapter V: Sanctions for Violation of Electoral Laws and Guidelines**

### **5.1 What are sanctions?**

Sanctions are essentially the penalties (punishment) imposed for the not following the provisions of a law. A person or entity (e.g. political party) who fails to observe or follow certain requirements or undertake an act stated in law is often considered to “commit an offence” under the particular provision of the law. The provision of the law then states the sanction or penalty for the “offence”.

### **5.2 Sanctions that exist for violation of electoral laws/guidelines**

#### ***5.2.1 Overview of nature of sanctions***

In most of the existing laws, the sanctions or penalties for “committing an offence” and they include–

- (i) *Fines* (not exceeding certain stipulated sums of money).
- (ii) *Imprisonment* (for a specified term of months or years).
- (iii) Both the *fine* and *imprisonment*.
- (iv) Other sanctions/penalties (e.g. for political parties/organisation – (a) deregistration (i.e. removing name of party/organisation from the register kept by the EC) and (b) forfeiture of property/assets to the State). These penalties however require an order of court.

The fine is often stipulated in terms of an amount of “currency points”. The currency point corresponds to UShs. 20,000/=. Thus a provision of a law mentioning a “fine not exceeding 72 currency points” refers to a “fine not exceeding UShs. 1,440,000/=”.

The PPOA and the electoral laws have provisions specifying the sanctions or penalties in terms of *fin*es or *imprisonment* or both. The PPOA also has the other sanctions/penalties on the deregistration of a party/organisation and forfeiture of property/assets of party/organisation to the State.

#### ***5.2.2 In respect of campaign finance disclosures/ requirements***

There are specific sanctions/penalties for the failure to fulfil or undertake certain disclosure requirements as to campaign finance and use of public/state resources.

The table of the sanctions in relation to certain disclosure requirements is provided in appendix A.

### **5.2.3 In respect of elections and electoral process**

As noted above (5.2.1), the electoral laws have many provisions specifying the sanctions or penalties in terms of *finer* or *imprisonment* or both. These go beyond disclosure requirements as to campaign finance and the use of public/state resources.

A table of the sanctions in relation to “offences” in elections and electoral process under the Parliamentary Elections Act is provided in appendix B.

### **5.3 Monitoring sanctions**

The primary task is to monitor how the EC applies/imposes the sanctions or penalties against the various political parties or organisations and the candidates. Is it being done equally across the parties/organisations or the candidates irrespective of who they are? Is there a seriousness to apply or impose the sanctions? An election observer or a CSO should be able to look at the statements and documents by the EC with respect to the–

- Incidents involving breach of electoral law.
- Offences committed by candidates in breach of electoral law.
- Use of sanctions/penalties under the law.

## **Chapter VI: Agencies monitoring Compliance with Electoral Laws and Guidelines**

### **6.1 Monitoring agencies under the electoral laws**

The monitoring of elections and observance of the electoral laws is in the hands of the Electoral Commission (EC). This is evident from the general functions of the EC as stated in article 61 of the 1995 Constitution and under the Electoral Commission Act.

The EC has specific powers to monitor compliance as regards to *electoral campaign finance* under specific provisions of the political parties law and the electoral laws. These include:

1. From political parties and organisations:
  - declaration of assets and liabilities.
  - audited statement of accounts.
  - reporting of lawful contributions from foreign sources.
2. From presidential election candidates:
  - use of allocated public funding (UShs. 20 million) and other facilities.
  - funds asked for and received (and their sources).
3. From parliamentary election candidates (who are ministers or the holders of political offices) to the EC:
  - facilities ordinarily attached to the office held by that person.

### **6.2 Other agencies**

The other agencies involved monitoring compliance with elections and the electoral process includes the Election Fraud Squad. However, the powers and mandate of this agency is specific to malpractices occurring during the elections and campaigns, e.g. sectarian campaigning, defacing posters, acts of bribery.

## **Chapter VII: Role of Civil Society in monitoring Compliance with Electoral Laws and Guidelines**

### **7.1 What is civil society and civil society organisations?**

Civil society (CS) is now a common phrase. The phrase describes the sum total of persons, entities and organisations and networks operating outside the formal state institutions. It refers to individuals, groups, communities and organisations that address, through expertise and networks, issues of common concern, including monitoring and assessing transparency and integrity in elections and the electoral process. It includes, but is not limited to non-governmental organizations (NGOs) and community-based organizations (CBOs). The Anti-Corruption Coalition of Uganda (ACCU) sees “civil society” as:

“... a cross section of citizens that have organised themselves, inter-linked and grouped to promote specific and chosen social issues of concern. Advocacy groups influence policies and decision-making processes. Religious groups, professional associations, diverse civil society grassroots organisations and civic educators are a few examples of civil society determined to cause attitude and policy changes”.

The work of civil society and CSOs in Uganda is based on a number of legal provisions including articles 17(i), 29 and 38 of the Constitution on–

- Duty of citizens to fight corruption and misuse of public resources.
- Right of association for lawful purposes.
- Right to participate in the affairs of the country.

### **7.2 Role of civil society in Uganda in elections**

Civil Society and CSOs perform various roles within society. Traditionally, the role of CSOs has involved, among others, monitoring, advocacy, networking and service delivery.

#### ***7.2.1 Monitoring of elections***

Monitoring involves looking into and assessing whether a particular act or behaviour conforms to expected standards or values. This will involve the use of number of approaches:

- Studying and assessing of the existing legal and policy guidelines (e.g. PPOA, electoral laws, EC guidelines, public service standing orders, etc.)
- Obtaining reports on elections and electoral process (this is mainly from reporting in print and electronic media).
- Conducting interviews with prominent persons.
- Direct observation of the elections and campaigns activities

The reporting on elections will call for the monitoring of the media (both state-owned and private).

From the existing legal and policy guidelines, the civil society and CSOs can engage in the following–

*(a) Assessing legal framework and its enforcement*

Since elections are being held and conducted on the basis of existing legal and policy guidelines, civil society and CSOs can address the concerns that arise from the use and application of those guidelines through assessing–

- The basic legal principles on elections and the electoral process.
- The observance of those principles by candidates and those who are involved in elections and the electoral process.
- The enforcement of those principles by the electoral body (EC).

*(b) Assessing correctness of disclosure/reporting requirements*

Civil society and CSOs can ensure a transparent electoral process by monitoring compliance with disclosure requirements on campaign finance and use of state/public resources. CSOs can access and inspect the various declarations, statements, records and reports filed to meet the disclosure requirements on the basis of the fact that–

- (i) They are a “public record” available for inspection by the members of the public upon payment of a prescribed fee.
- (ii) There is a right of access to information in possession of agencies of government (in this case, the EC) as stated in article 41 of the 1995 Constitution.

(a) With regards to disclosure requirements by parties/organisations, civil society and CSOs should monitor and assess the correctness of whether they have filed–

- written declaration of assets and liabilities.
- audited statement of accounts.
- statement of lawful contributions from foreign sources.

- (b) With regards to presidential candidates, this would be in respect of the reporting requirements after elections in respect of–
- whether candidates have accounted for the use of allocated public resources (US\$ 20 million) and other facilities.
  - whether candidates have provided a record of all funds asked for and received (and their sources).
- (c) With regards to parliamentary candidates, who are ministers or the holders of political offices, the civil society and CSOs would monitor and assess–
- whether the EC wrote to all Ministers and holders of political offices to facilities ordinarily attached to the office held by that person.
  - who are the so-called “holders of political offices” contesting for parliament.
  - whether all ministers and holders of political offices who are contesting for Parliament provided to the EC such a written statement of those facilities.
  - whether during the campaigns, the ministers and holders of political offices actually restricted the use of the public/state resources.
- (d) With regards to all the candidates in presidential and parliamentary elections who hold official positions in government/public office) have between 2002-2005 filed declarations of income, assets and liabilities to the IGG.

The civil society and CSOs can then assess the correctness of disclosures made by the political parties/organisations and candidates in elections in terms of electoral campaign “income” and “expenditure”.

*(c) Monitoring and assessing the media and media reporting*

The civil society and CSOs can monitor and gather information on the use of media resources and reporting by the media in order to assess–

- (a) Use of media resources as public/state resources in terms of–
- whether there is equal access and coverage on state-owned media as between incumbents and other candidates.
  - whether there is any bias in news items and reporting in state-owned media.
- (b) Reporting on electoral campaign activities and the misuse of other public/state resources (coercive, institutional and financial).
- (c) Reporting on electoral offences.

The misuse of media resources as public/state resources is dealt with in detail in 4.3.2 (e) above.

### **7.2.2 Direct observation of electoral campaigns**

Direct observation of elections and electoral campaigns is very useful not only in assessing voter turn-outs and views but is also perhaps most useful in monitoring the use and misuse of public/state resources by incumbent candidates. Direct observation can particularly be used in monitoring the use of institutional resources, especially for instance–

- Use of senior state officials to publicly endorse a candidate in their capacity as *public* employees
- Use of public officials/employees to attend or their being required to attend campaign events (e.g. rallies) of a candidate. Is this mandatory or forced attendance of public officials/employees?
- Use of public officials/employees to campaign for a candidate during *official* working hours.
- Use of government premises for campaign purposes (e.g. voters meetings, rallies, concerts) by the incumbent candidate while these are not availed to the other candidates.
- Use of the logistical resources of public offices (e.g. computers, fax, telephone, internet) by the incumbent candidate.
- Use of public/official vehicles for electoral campaign purposes, e.g. transporting candidate, supporters, campaign materials (T-shirts, posters, etc).

The observations can be recorded on camera and will help to highlight the misuse of institutional resources by incumbent office holders (President, ministers, LC V Chairperson, etc).

### **7.2.3 Advocacy for reform in electoral laws/guidelines**

The present electoral laws come at a time that Uganda is holding multi-party elections for the first time in over 25 years. They fall short of dealing with all aspects of electoral campaign finance. Most of the *pre-election* disclosure requirements on electoral campaign finance are too inadequate. The legal controls of use of public/state resources are not strong and leave a lot of room for the incumbent to abuse these resources. There will be a lot of lessons from the 2006 elections that should provide the civil society and CSOs with evidence to campaign and lobby for reform of the electoral laws and guidelines to ensure greater *accountability* and *transparency* in future elections and electoral processes.

**Appendix A: Table on sanctions in relation to certain disclosure requirements under PPOA and electoral laws**

[Charles: see separate sheet!]



**Appendix B: Table on sanctions in relation to “offences” in elections and electoral process under the Parliamentary Elections Act**

	Offence(s)	Sanctions/Penalties for Offence(s)		
		Provision	Fine (UShs) (Not to exceed)	Imprisonment (in Years) (Not to exceed)
1.	Forgery of certificate of academic qualification*	5(1)(2)	4,800,000/=	10
2.	Revealing of matters contrary to secrecy of the voting by election officers and other persons	7(5)-(6)	480,000/=	1
3.	Use by candidate of a convoy of more than 2 vehicles, etc. for purposes of nomination	11(7)-(8)	480,000/=	1
4.	Use by candidate of insulting and abusive language during campaigns that incites violence and hatred	21(3)-(4)	2,400,000/= 480,000/=	5 1
5.	Publication of report, article, etc. on election issue without author’s name and address	22(3) (9)(a)	480,000/=	1
6.	Use by candidate (or other person) of private electronic media to make false, malicious statements against other candidates	22(5)-(6), (9)(b)	2,400,000/=	5
7.	Proprietor/operator using or allowing private electronic media to be used to decampaign other candidates	22(8), (9)(b)	2,400,000/=	5
8.	Engaging in sectarian campaigns	23(1), (3)(a)	2,400,000/=	5
9.	Interfering with election activities of other candidates	24	1,440,000/=	3
10.	Providing in writing list of facilities ordinarily attached to office by a candidate who is a Minister or holder of a political office+	25(3), (5)	480,000/=	1
11.	Unauthorized voting (where person is not entitled to vote) and voting or more than once.	31(1), 77	2,400,000/=	5
12.	Refusal of inspection of fingers and voting or attempting to vote more than once	31(2), (4)	240,000/=	½
13.	Voting at polling station when person’s name not on voters’ roll at that polling station	34(5)-(6)	480,000/=	1
14.	Making false statement as to identity where two voters appear under the same name on voters’ roll	36(3)	480,000/=	1
15.	Pretending to have a disability during voting or purports to assist a PWD without the PWD voluntarily requesting assistance	37(1), (5)- (6)	480,000/=	1
16.	Unauthorized carrying of arms/ammunition during polling day or within one (1) kilometre of polling station	42	480,000/=	1
17.	Use of loudspeakers for campaigning/decampaigning on polling day or within hearing distance of polling station	43	480,000/=	1

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18.	Posting or displaying campaign materials at polling station or wearing of symbols while at polling station	44(2), (5)	480,000/=	1
19.	Payment of bribe (by money, gift or other consideration) before or during election	68(1)	1,440,000/=	3
20.	Receipt of bribe (of money, gift or other consideration) before or during election	68(2)	1,440,000/=	3
21.	Obtaining, providing or promising alcohol to a person on polling day by candidate, agent or other person	68(5), 72	960,000/=	2
22.	Soliciting from a candidate money, alcohol, etc. so as to influence a person to vote for candidate	68(6), 72	960,000/=	2
23.	Causing a person who is prohibited by law from voting to vote at election <sup>#</sup>	69, 72	960,000/=	2
24.	Publishing before or during election untrue statements about illness, death or withdrawal of a candidate	70, 72	960,000/=	2
25.	Obstructing of voters/candidate on way to polling station or place of nomination	71, 72	960,000/=	2
26.	Making or publishing before or during election untrue statements about personal character of a candidate	73	240,000/=	1/2
27.	Misbehaving at and disrupting campaign meeting to prevent meeting taking place	74(1)	480,000/=	1
28.	Returning to place of a campaign meeting after being removed from that place for misbehaving/disruption	74(3), (4)	240,000/=	1/2
29.	Failure of a presiding officer without reason to provide election results to a returning officer within time	75	480,000/=	1
30.	Engaging in voting-related acts, including– <ul style="list-style-type: none"> <li>• Forging, defacing, destroying election-related documents</li> <li>• Supplying without authority a ballot paper to a person</li> <li>• Selling or offering to sell election-related documents</li> <li>• Possession without authority of election-related documents</li> <li>• Putting in ballot box things other than ballot paper</li> <li>• Taking without authority a ballot box or documents out of polling station</li> <li>• Destroying, taking or opening without authority a ballot box</li> <li>• Printing without authority ballot papers or what can be used as ballot paper</li> <li>• Making a mark on a ballot paper other than by person it is issued.</li> </ul>	76	2,400,000/=	5
31.	Making by an election officer of wrong returns of an election (through entries, allowing someone who is not PWD to vote in certain manner, vote-counting, etc.)	78	2,400,000/=	5
32.	Voting as another person who is living, dead or does not exist	79	2,400,000/=	5
33.	Using and inflicting or threatening to use/inflict force, violence or injury, etc to influence person's voting	80	2,400,000/= 960,000/=	5 2

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34.	Carrying out certain activities on polling day, including– <ul style="list-style-type: none"><li>• Soliciting for votes, using slogans, distributing leaflets and organising singing, etc. within 100 meters of polling station</li><li>• Influencing or seeking to ascertain candidate voter is voting or has voted for</li><li>• Selling alcohol</li></ul>	81	480,000/=	1
35.	Destroying, tearing and removing notices, documents, election posters of candidates	82	480,000/=	1
36.	Obstructing or interfering with election officers from executing their duties	83	1,440,000/=	3
37.	Interrupting or disturbing proceedings of court in respect of elections, etc.	90	480,000/=	1

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\* A court convicting a person forging certificate of academic qualification shall impose fine of not less than UShs. 1,440,000/= or imprisonment of not less than 3 years or both (s. 5(2)).

+ See Appendix A.

# This would include for instance persons below the age of 18 years.

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