

**THE REPUBLIC OF UGANDA**

**IN THE CONSTITUTIONAL COURT OF UGANDA AT  
KAMPALA**

**[Coram: A Nshimye, R Kasule, R Opiro Aweri, R Buteera & F  
Egonda-Ntende, JJA]**

**CONSTITUTIONAL PETITION NO. 37 OF 2010**

**BETWEEN**

Kasozi Robinson=====Petitioner

**AND**

The Attorney General=====Respondent

**&**

**CONSTITUTIONAL PETITION NO.40 OF 2010**

**BETWEEN**

Legal Actions for Persons with Disability==Petitioner

**AND**

The Attorney General=====Respondents

The Electoral Commission

National Union of Disabled Persons of Uganda

**&**

**CONSTITUTIONAL PETITION NO.48 OF 2010**

**BETWEEN**

Moses Mauku

Petitioners

Catherine Aneno

**AND**

The Attorney General

Respondent

## **JUDGMENT OF THE COURT**

### **Introduction**

1. All the above three petitions were filed in 2010 challenging the constitutionality of different aspects of the law relating to the election of special interest groups to Parliament. Unfortunately these petitions were not heard until the latter part of 2015. In the meantime one national parliamentary election had taken place in 2011 under the challenged law and another election is about to take place in early 2016. The failure by this court to hear and dispose of these matters in time as required by the Constitution, including setting aside every other matter to dispose of pending constitutional matters is a regrettable lapse which is simply not acceptable.
2. Prior to the hearing of the said petitions the court ordered that the said petitions be heard together as the matters in issue were basically challenging the constitutionality of election law in relation to special interest groups and it was convenient that the same be heard together. Parties were allowed to file amended petitions to take account of later developments from the time of the filing of the petitions to date which impacted the petitioners' complaints while these petitions were in limbo. All the petitioners filed amended petitions and the respondents responded in respect of CP No.37 of 2010.
3. All petitions including the amended petitions and the answers to the petition were supported with affidavits.

### **Preliminary Points of law**

4. We shall start by considering and resolving the preliminary points of law raised by the respondents before we consider the main petitions.
5. The respondents object, in their answer to CP No. 37 of 2010, as a preliminary point of law, that the Petition is overtaken by events following the conduct and conclusion of the 2011 elections, and in particular, the claim by the Petitioner that the 2011 general elections in respect of the

workers, youth, persons with disabilities were inconsistent with and contravened Article 29(d) and (e) of the Constitution; the grant of a declaration that the holding of the 2011 general election in respect of the youth, workers, and persons with disabilities contravened Articles 29 and 35(1) of the Constitution; and that a permanent injunction does issue against holding elections in respect of the special interest groups under the present legal framework.

6. The respondents further object that the Petition is overtaken by events, specifically in respect of the Workers and Persons with Disabilities special Interest Groups, following the enactment of the National Council for Disabilities (Amendment) Act, 2013 and Statutory Instrument No. 6 of 2011.
7. The respondents further object to any and all amendments to the Petition in relation to: (i) amendments challenging provisions of the amended statutes not existing at the filing of this petition. (ii) amendments challenging the manner in which the 2011 Special Interest Groups Elections were conducted- which elections had not been conducted at the time of filing this petition; and (iii) amendments purporting to originate new causes of action following the filing of this Petition.
8. The foregoing preliminary points were raised by the answer to the amended petition No. 37 of 2010. Much as no amended answers were filed in respect of the CP no.40 and 48 of 2010 those petitions would be affected as the subject matter of the said objections would arise in the said petitions as well. We were addressed by all counsel for the respondents and for the petitioners on the said objections.
9. It is pertinent to observe that firstly, the amendments in question were allowed by the court itself. These amendments having been allowed by the court itself, we cannot now sit on appeal on the earlier decision that allowed the amendments to be made.
10. Secondly these objections would not have arisen had this court met its constitutional responsibility, heard and determined the petitions prior to the holding of the 2011 elections. It was the duty of this court imposed by the Constitution under Article 137(7) to grant priority to the

hearing of constitutional petitions in preference to all other matters before the Court of Appeal. It was the failure of this court that allowed further developments to take place while the petitioners' actions remained unheard. We cannot fault the petitioners for taking into account the developments that occurred since they filed their petitions so that the same are considered together with the original complaint.

11. The basic complaint of the petitioners has not changed in character and basically remains the same, in spite of the holding of 2011 elections, and the holding of the forthcoming elections in 2016. Their complaint was that the Parliamentary Elections Act, in relation to the Special Interest Groups, was unconstitutional. The fact that 2011 elections took place does not 'overtake' the petitioner's complaint against the law under which it was held. It makes it more urgent to resolve that question, notwithstanding the elections that took place.
12. If new laws have come into force since the filing of the petitions in question, this does not render the petitions incompetent, irrelevant or untenable per se. The petitioners are quite entitled and it is logical in our view that they consider their petitions in light of the new legislation and if it addresses their concerns they will say so or the court will find so. If the new laws do not address their complaint that is a matter rightly in issue before their complaint is determined.
13. We accordingly reject all objections raised as preliminary points of law and shall proceed to consider the amended petitions.

### **Constitutional Petition No. 37 of 2010**

14. It is contended in CP No. 37 of 2010 that sections 8 (4) (b), (c), (d) and (e) of the Parliamentary Elections Act; SI No. 31 as amended by SI No. 6 of 2011; National Council for Disability (Amendment) Act 2013 and the National Youth Council (Amendment) Act are inconsistent with and contravene Article 78 (4) of the Constitution. It is further contended that the Parliamentary Elections (Special Interest Groups) Regulations S1 31 of 2001 as amended by SI 6 of 2011 is inconsistent with Articles 29(d), (e); 38(1); 61(a); 67(1) and 1(4) of the Constitution. It was further contended that sections 18 to 20 of the National Youth Council Act are

inconsistent with and contravene Article 155 of the Constitution.

15. The 2011 general elections in respect of the workers, youth and persons with disabilities as special interest groups are contended to be inconsistent with and to have contravened Article 29(d) and (e) of the Constitution.
16. The National Council for Disability (Amendment) Act 2013 and the National Youth Council (Amendment) Act 2010 are challenged for being inconsistent with Articles 29(e) and 38(1) of the Constitution.
17. The substance of the petitioner's complaint is set out in paragraph 2 of the petition and we shall reproduce the same:

(a) That the constitution requires parliament to enact law prescribing the procedure for elections of parliamentary representatives for the army, youth, workers and persons with disabilities.

(b) That instead of prescribing the procedure parliament made law delegating its authority to the minister.

(c) That in respect of the army the minister then made regulations delegating the delegated authority to prescribe the procedure to the army council.

(d) That the army council has never made known to Uganda the procedure by which army representatives are elected.

(e) That in respect of representatives of workers, the minister did not prescribe the procedure but instead invoked the constitution of the Federation of Trade Union Organisations.

(f) That in respect of person with disabilities the minister prescribed the procedure to elect members of Parliament in one sentence. The "procedure" does not amount to a procedure intended by Article 78 (4) of the Constitution.

(g) In respect of the youth no procedure exists since provision establishing district youth councils which form the Electoral College were declared unconstitutional. The National Youth Council (Amendment) Act 2010 and the National Women's Council (Amendment) Act 2010 are themselves unconstitutional and their term had come to an end.

(h) The national budget of 2010/11 contains provision for National Youth Councils which are voluntary organisations and as such not expenditure envisaged by Article 155(1) of the Constitution.

(i) Whereas the constitution provides for workers representatives, the majority of workers have no voice in determining who will represent them.

(j) Both Parliament and the minister have not prescribed a procedure as required by the Constitution.’

18. The Petitioner seeks several declarations relating to the laws which are inconsistent with and contravene the Constitution and specifically seeks the following orders.

‘(a) That parliament enacts a law as required by Article 78(4) of the Constitution.

(b) A permanent injunction do issue against holding elections in respect of the special interest groups under the present legal framework.’

### **Answer to Petition No.37 of 2010**

19. The respondent denied the allegations and stated that neither of the cited provisions of the law nor the actions that have taken place were inconsistent with the Constitution or contravened any provisions of the Constitution. All the provisions that the petitioner had impugned were consistent with the Constitution.

20. Secondly the respondent objected to the amended petition in particular on the following grounds.

‘(a) The Petition is overtaken by events following the conduct and conclusion of the 2011 elections, specifically in respect of paragraphs 1(e), 3(d) and 4(b) of the Petition.

(b) The Petition is overtaken by events, specifically in respect of Workers and Persons with Disabilities Special Interest Groups, following the subsequent enactment of:  
i. National Council for Disabilities (Amendment) Act, 2013.  
ii. Statutory Instrument No. 6/2011

(c) The Respondent addressed the determination of the Constitutional Court in respect of the National Youth

Councils and National Women's Councils in Constitutional Petition No. 7 of 2003; Rubaramira Ruranga vs. The Attorney General by enacting:-

- i. National Youth Council (Amendment) Act, 2010.
- ii. National Women's Council (Amendment) Act, 2010.

(d) The Respondent shall object to any and all amendments to the Petition, specifically:-

- i. Amendments challenging provisions of the amended Statutes – not existing at the filing of this Petition.
- ii. Amendments challenging the manner in which the 2011 Special Interest Group Elections were conducted which elections had NOT been conducted at the time of filing the petition.
- iii. Amendments purporting to originate new causes of actions following the filing of this Petition.

(e) The respondent shall contend that the effect of the stipulated amendments resolved matters raised in the Petition in respect of the affected Special Interest Groups.'

21. The respondent prayed that this petition be dismissed with costs.

### **Constitutional Petition No. 40 of 2010**

22. In addition to the Attorney General, the Electoral Commission and the National Union of Disabled Persons in Uganda are the other respondents in this petition. It is contended in the amended petition that the provisions of section 8(4) of the Parliamentary Elections Act, 2005 (as amended), provisions of 31A(1) and (6) (read together with Schedule A of the Act) of the National Council for Disability Act, 2003 (as amended by the National Council for Disabilities (Amendment) Act, No.6 of 2013, provisions of Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulations, 2001 regarding the elections of Members of Parliament representing PWDs are unconstitutional in as far as they run contrary and against Articles 20(2); 21(1), (2) & (3); 24; 29(1) (e); 35(1) and (2); 38(1); 59(1); 61(1); 62 and 63(1),(3)& (4) of the Constitution.

23. The substance of this petition is set out in paragraph 5 (a) to (h) which we shall set out here below.

‘(a) Section 8(4) of the Parliamentary Elections Act provides for procedures of elections of Members of Parliament representing PWDs which are different from those of other special interest groups including women and youth elected there under and therefore discriminatory.

(b) While members of Parliament representing women are under section 8(4) (a) of the Parliamentary Elections Act, read together with section 6(1) of the National Women’s Council Act, Chapter 318 (as Amended by the National Women’s Council (Amendment) Act, No. 10 of 2010 are elected by secret ballot by all women qualified and registered to vote under a voter’s register maintained by the Electoral Commission. In contrast and in a discriminatory manner, members of Parliament representing PWDs in 2011 were elected under section 8(4) (e) of the Parliamentary Elections Act, read together with Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulations, 2001 by an unelected Electoral College of National Union of Disabled People (NUDIPU) and without a voter’s register maintained by the Electoral Commission.

(c) Additionally, unlike women and the youth who solicit for voters only in their designated geographical constituencies, contestants for the position of member of Parliament for persons who contested to represent PWDs during the 2011 elections were forced to traverse the whole country soliciting for voters since they were to be elected by all members of the Electoral College referred to in the Regulations of the Parliamentary Elections (Special Interest Groups), drawn from each district from organised associations and groups under the structures of NUDIPU and those contestants who could not afford were disadvantaged. Section 31A(1) read together with Schedule A of the National Council for Disability Act (as amended) has not cured this constitutional anomaly.

(d) Regulation 10 in effect forced any PWD who in 2011 wished to be a member of the Electoral college referred to hereinabove to be a member of an association or group that is affiliated to the NUDIPU, which was contrary to and against Article 29(1)(e) of the Constitution and excluding PWDs who were not members of association or groups affiliated to the NUDIPU violated their right to vote and be voted and was against Articles 50(1) and 38(1) of the Constitution.

(e) In 2011, NUDIPU neither operated in all nor had affiliates in all districts in Uganda, which excluded PWDS in districts not covered by NUDIPU or its affiliates, thereby infringing on the rights to vote and participate in the affairs of Government under Articles 38(1) and 59(1) of the Constitution of PWDs outside the covered districts.

(f) The election of members of Parliament through an Electoral College not based on demarcated constituencies but on the basis of the structures of the NUDIPU and its affiliates is contrary to and against the provisions of Article 63 of the Constitution.

(g) The conduct of elections through an Electoral College which was convened in Kampala required that the PWDs be transported to Kampala which not only excluded those who were unable to travel, but greatly inconvenienced those who travelled owing to their disabilities thereby infringing on their right to respect and human dignity guaranteed by Article 35(1) of the Constitution.

(h) Placing election matters in the hands of a non-governmental organisation which is not a statutory body but functions under its own constitution as was done in 2011 is an abrogation by Government of its Article 59(3) constitutional obligation to take all necessary measures to ensure that all citizens qualified to vote register and exercise their right to vote.'

### **Answer to CP No. 40 of 2010**

24. The Attorney General and the Electoral Commission filed a joint answer to the original petition which maintained that none of the impugned provisions are unconstitutional. They further denied contravention of the United Nations Convention on the Rights of People with Disabilities. They prayed that this petition should be dismissed with costs.

25. Likewise the third respondent maintained the same stance in its answer to the petition. It contended that the impugned provisions were not at all unconstitutional and prayed that this petition be dismissed with costs.

## **Constitutional Petition No. 48 of 2010**

26. The two petitioners have 3 basic complaints in their petition. Firstly that the participation of workers representatives in Parliament, and intending workers' representatives in partisan politics, is inconsistent with and contravenes Articles 29(1) (e) and 40(3) of the Constitution in so far as they cease to represent workers and their interests. Secondly it is contended that the Parliamentary Elections (Special Interest Groups) Regulations 2001 as amended by SI No. 6 of 2011 are inconsistent and contravene Articles 29 and 40(3) of the Constitution in so far as representation of workers in Parliament is restricted only to two trade union federations. Lastly that the act of workers representatives in Parliament holding salaried and permanent offices in Trade Unions is in contravention of and inconsistent with Article 40(3) of the Constitution.

27. The petitioners pray for declarations that the impugned provisions of the law and or actions are inconsistent with and contravene the Constitution. They also prayed for costs of this petition.

### **Answer to the CP No. 48 of 2010**

28. The respondent opposed the petition. It asserted that neither the impugned provisions of the law nor any actions complained against by the petitioner contravene or are inconsistent with the Constitution. It prayed that this petition be dismissed with costs.

### **Issues**

29. The major issue for determination is whether section 8(4) (b) (c) (d) and (e) of the Parliamentary Election Act is inconsistent with and contravenes Articles 29(e) and 78 (4) of the Constitution. We shall take this issue first.

### **Whether section 8(4) (b) (c) (d) and (e) of the Parliamentary Election Act is inconsistent with and contravenes Articles 29 (1) (e) and 78 (4) of the Constitution.**

30. We shall start by setting out the relevant provisions of the law. Article 29(1) (e) of the Constitution states,

‘Every person shall have the right to –  
(e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.’

31. Article 78(4) of the Constitution provides,

‘(1) Parliament shall consist of ---

(a) members directly elected to represent constituencies;

(b) one woman representative for every district;

**(c) such numbers of representatives of the army, youth and workers, persons with disabilities and other groups as Parliament may determine;**

**(4) Parliament shall, by law, prescribe the procedure for elections of representatives referred to in clause (1)(b) and (c) of this Article.’** [*Emphasis is ours.*]

32. Parliament enacted the law, the Parliamentary Elections Act, 17 of 2005, under which in section 8 it purported to comply with the above constitutional directives. The relevant portion states,

‘(4) The following provisions shall apply to district women representatives and special interest groups referred to in the subsection (2)—

(a)

(b) the representatives of the Uganda Peoples’ Defence Forces shall be elected in a manner to be prescribed by regulations made by the Minister under section 100;

(c) the representatives of the youth shall be elected in the manner prescribed by regulations made by the Minister under section 100 by district youth councils within the region of representation constituted into an electoral college in accordance with such regulations and the women youth representative shall be elected by a national youth conference in accordance with the regulations;

(d) the representatives of the workers shall be elected in a manner prescribed by regulations made by the Minister under section 100;

(e) the representatives of persons with disabilities shall be elected by an electoral college of representatives of such persons from each district in a manner prescribed by the regulations made by the Minister under section 100;’

33. It is the contention of the petitioners that these provisions, in relation to the election of representatives of the army, youth, workers, and persons with disabilities to Parliament, are in contravention of and inconsistent with the provisions of the Constitution under Articles 29(1) (e) and 78(4) thereof. It will be convenient to consider each special interest group separately.

### **Army**

34. In addition to the section 8 of the Parliamentary Elections Act, Act 17 of 2005, SI No. 30 of 2001 provides,

‘3. The representatives of the Uganda People’s Defence Forces to Parliament shall be elected by the Uganda People’s Defence Council in such manner and by such procedure as shall be determined by that Council.’

35. The thrust of the argument for the petitioners is that neither the minister nor the Uganda People’s Defence Council have the authority in law to make any such laws and regulations with regard to the election of the representatives of the army, as this power was conferred only on Parliament by the Constitution and Parliament could not delegate the same to the Minister. Neither could the Minister delegate that which he was not authorised to do.

36. The Attorney General has relied on Article 79 (2) of the Constitution to argue that Parliament was authorised when it makes law to delegate to other persons the authority to make law. We shall set out the provisions of the same starting with subsection (1).

‘(1) Subject to the provisions of this Constitution Parliament shall have the power to make laws on any

matter for the peace, order, development and good governance of Uganda.

(2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under the authority conferred by An Act of Parliament.'

37. The wording in Article 78 (4) is very clear. To paraphrase the same, 'Parliament shall by law prescribe the procedure for elections of representatives of the army, youth, workers, and persons with disabilities.' This obligation is cast squarely upon Parliament by the Constitution.
38. Under Act 17 of 2005 in relation to the army, this obligation was delegated to the Minister under Section 8(4) (b). Did Parliament have the authority to delegate what had been delegated to it? We agree with the petitioners that Parliament did not have this authority. Its duty under the Constitution was to enact the relevant law that would provide the procedure of election of the representatives of the army. In constitutional and administrative law it is a generally accepted principle of interpretation that one cannot delegate a duty that was cast upon one to perform. This is what is often referred to as the principle of *delegata potestas non potest delegari* (Latin) meaning no delegated powers can be further delegated.
39. Obviously all the provisions of the Constitution must be read together in harmony. Doing so and acknowledging that Parliament has the authority under Article 79(2) of the Constitution to delegate some powers to a person or body of persons does not and cannot override a specific provision of the Constitution in Article 78(4) where the Constitution has specifically ordered Parliament to carry out a specific task. The specific provision will override the general provision in such circumstances. In any case looking at the wording of Article 79(2) it is clear that it is referring only to matters authorised under an Act of Parliament. It is not intended to refer to constitutional imperatives such as the one contained in Article 78(4).
40. If Parliament did not have the authority to delegate its duty in this regard then, definitely the Minister did not have the authority to delegate a duty or power he did not have. And even if the Minister had such powers he or she would have

no authority to further delegate the same. Clearly regulation 3 of S1 No. 30 of 2001 is unconstitutional.

41. The other limb was that the impugned provisions were contrary to Article 29(1) (e) of the Constitution. The argument advanced by Mr Wandera Ogalo for the Petitioners was that political parties are not allowed to campaign for representatives among this special interest group contrary to their right to freely associate. We are not persuaded that the impugned provisions in relation to the army were contrary to Article 29(1) (e). If this Article is read together with Article 208 (2) of the Constitution that requires the Army to be, among other things, non-partisan it is clear that there is no leeway for partisan political activity within the army, whether for purposes of selecting candidates to vie for the seats in Parliament or any other activity within that institution.

## **Workers**

42. Section 8(4) (d) provides,

‘the representatives of the workers shall be elected in a manner prescribed by regulations made by the Minister under section 100;’

43. For the reasons we have endeavoured to provide in relation to the provisions relating to the army we find that this particular provision is unconstitutional. Parliament was obliged to make the law itself. It had no authority to delegate it to another person, in this case the Minister. Both this provision and the regulations made by the Minister, SI No. 30 of 2001, as amended, by SI 6 of 2011, in relation to the elections of workers’ representatives are clearly unconstitutional. It is the duty of Parliament, by law, to provide for the procedure for the election of representatives of workers. This duty cannot be delegated to any other person. What can be delegated are ancillary or subsidiary matters that assist in the achievement of the duty cast upon Parliament. It cannot delegate the duty itself. This provision contravenes and is inconsistent with Article 78(4) of the Constitution.

44. We now must consider whether or not the said provisions contravene Article 29(1) (e) of the Constitution. The

substance of the impugned provision is to create an electoral college out of members of two federations of workers, NOTU and COFTU. Only workers affiliated with the said organisations can participate in the elections of representatives of workers. Non-unionised workers cannot participate in this process. The Constitution provides not for representation of only unionised workers but also non-unionised workers by the simple use of the word ‘workers’. Workers who are not members of the said two federations are thus excluded from participating in this process of electing representatives for workers in Parliament. Such workers are disenfranchised contrary to Article 59(1) of the Constitution, read together with Article 78(1) (e) of the Constitution, rather than infringement of the right to associate under Article 29(1) (e) of the Constitution.

### **Persons with Disabilities**

45. Prior to the enactment of The National Council for Disability (Amendment) Act, Act 6 of 2013 the election of representatives of this particular special interest group were governed by section 8(4) (e) of the Act 17 of 2005, SI No. 30 of 2001 as amended by SI No. 6 of 2011. Initially it is these provisions that were challenged. We shall address that question first.

46. Section 8(4) (e) of the Parliamentary Elections Act provides,

‘the representatives of persons with disabilities shall be elected by an electoral college of representatives of such persons from each district in a manner prescribed by regulation made by the Minister under section 100;’

47. Regulation 10 of SI 30 of 2001 stated,

‘The representative of persons with disabilities in Parliament shall be elected by an electoral college consisting of four persons elected from each district from the organised associations and groups under the structure of the National Union of Disabled People of Uganda in that district.’

48. Parliament complied partly with its duty and partly delegated the rest of its duty to the Minister. It defined that elections

will be by way of electoral colleges which it had authority to do. However, in delegating to the Minister the authority to determine composition of the Electoral College, Parliament exceeded its authority.

49. Guidance as to the extent of the duty of Parliament can be derived from Article 78(3) of the Constitution where the Constitution itself determines the procedure for the election of members of Parliament provided under Article 78(1) (a). It states,

‘The representatives referred to in clause (1) (a) of this Article shall be elected on the basis of universal adult suffrage and by secret ballot.’

50. The Constitution provides for the procedure of elections of members of Parliament in the foregoing provision. It provides for who shall be entitled to vote at such an election (universal adult suffrage) and how such person shall vote (secret ballot). The procedure is clearly laid out.

51. In the impugned provision it is left to the Minister to determine who will vote or participate in the election of members of the Electoral College. This duty did not belong to the Minister. It was conferred upon Parliament and Parliament was to do so by law. It could not delegate the same.

52. We would therefore find that the impugned provisions were unconstitutional.

53. We now turn to whether Act 6 of 2013 is inconsistent with and contravenes Articles 29 (e); 38(1) and 78(4) of the Constitution.

54. Parliament promulgated Act 6 of 2013 which introduces ‘Part VA’ dealing with the election to Parliament of representatives for persons with disabilities. The provisions are compliant with the right to freely associate in relation to political parties. Elections shall be by way of electoral colleges which are clearly defined. The elections are managed by the Electoral Commission. We do not see how these provisions contravene Articles 29(1) (e); 38(1) or 78(4) of the Constitution in anyway.

## Youth

55. Prior to the enactment of the National Youth Council (Amendment) Act, 2010, the election for representatives of the youth were conducted under the National Youth Council Act, Cap 319 as well as section 8(4) (c) of Act 17 of 2005. Section 8(4) (c) of the Parliamentary Elections Act is under attack. It states,

‘the representatives of the youth shall be elected in a manner prescribed by regulations made by the Minister under section 100 by the district youth councils within the region of representation constituted into an electoral college in accordance with such regulations and the woman youth representative shall be elected by a national youth conference in accordance with the regulations;’

56. Parliament partly performed its duty and delegated the rest of its duty in this regard to the Minister. For reasons we have explained above in relation to the workers, army and other special interest groups, we do find that Parliament had no authority to delegate its duty in whole or in part.

### **Whether sections 20 and 16 of the National Youth Council Act and National Women Council Act, respectively contravene Article 155 of the Constitution**

57. Article 155 states,

#### **‘155. Financial year estimates.**

(1) The President shall cause to be prepared and laid before Parliament in each financial year, but in any case not later than the fifteenth day before the commencement of the financial year, estimates of revenues and expenditure of Government for the next financial year.

(2) The head of any self-accounting department, commission or organisation set up under this Constitution shall cause to be submitted to the President at least two months before the end of each financial year estimates of administrative and development expenditure and estimates of revenues of the respective department, commission or organisation for the following year.

(3)The estimates prepared under clause (2) of this Article shall be laid before Parliament by the President under clause (1) of this Article without revision but with any recommendations that the Government may have on them.

(4)At any time before Parliament considers the estimates of revenues and expenditure laid before it by or on the authority of the President, an appropriate committee of Parliament may discuss and review the estimates and make appropriate recommendations to Parliament.

(5)Notwithstanding the provisions of clause (1) of this Article, the President may cause to be prepared and laid before Parliament—

(a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year;

(b) estimates of revenues and expenditure covering periods exceeding one year.

(6) Parliament may make laws for giving effect to the provisions of this Article.

58.The impugned provisions of the National Youth Council Act and The National Women’s Council Act are similarly worded and provide that the funds of those two bodies shall include funds from the Consolidated Fund that may be appropriated by Parliament. It is contended that this contravenes Article 155 as those bodies are voluntary organisations and are not one of the persons mentioned in the Article that can prepare estimates to be laid before Parliament.

59.Article 155 is about financial year estimates and provides that the President shall cause to be laid before Parliament the estimates of revenue and expenditure for each financial year, including those of self-accounting bodies set up under the Constitution for consideration by Parliament. These two statutory organisations are set up by law and that law prescribes that they will be funded, *inter alia*, out of public monies from the Consolidated Fund. The organisations in accessing public funds will have to comply with the law and the Constitution. There is nothing in Article 155 that suggests that those two organisations’ financial estimates cannot be caused to be laid before Parliament by the President. If the law passed by Parliament ordains that those statutory organisations shall be funded from the public purse

their estimates are properly part and parcel of the estimates of expenditure of Government to be laid before Parliament for its consideration. Therefore we do not see how section 16 of Chapter 318 and section 18 of Chapter 319 contravene Article 155 of the Constitution.

### **Constitutional Petition No.40 of 2010**

60. We have decided to re-frame the issues in this petition in light of the amended petition and its prayers and the original answer to the petition as no amended answer to the amended petition was filed in this matter.

**Whether section 8(4) (e) of the Parliamentary Elections Act, 2005 and Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulations 2001 as used to hold elections in 2011 violated and were in contravention of Articles 20(2); 21(1) (2) & (3); 24; 29(1) (e); 35(1) and (2); 45; 59(1); 61; 62 and 63(1), (3) & (4) of the Constitution, rendering the whole electoral process for persons representing PWDs in Parliament unconstitutional**

61. We have already found that the impugned provisions contravened Article 78(4) of the Constitution in Constitutional Petition No.37 of 2010 herein above. We now consider whether they contravene other provisions of the Constitution. The 2011 elections for persons with disabilities were conducted in accordance with the structures of a voluntary non-governmental organisation as directed by the Minister. This organisation is the third respondent. Clearly, in substance, the elections were restricted to members of this voluntary organisation. If one did not belong to this organisation, it was not possible to participate in this election. In effect people with disabilities that were not members of this organisation were unconstitutionally disenfranchised contrary to Article 59 of the Constitution.

62. The Constitution required Parliament to enact law that would provide the procedure for electing representatives of people with disabilities. The law in force in 2011 provided for a voluntary non-governmental organisation to form the Electoral College and elect its members to represent people with disabilities. In doing so, non-members of NUDIPU who are people living with disabilities, had no opportunity to participate in this election unless they opted for membership

of this private organisation. This would certainly infringe the right to freely associate under Article 29 (1) (e) of the Constitution.

63. Article 21(2) and (3) deal with discrimination. It is contended that different procedures were prescribed for other interest groups like youth and women and this was discriminatory. It was open to Parliament to prescribe different procedures for each special interest groups as long as those procedures conform to the Constitution. The mere fact that procedures for each group may be different in certain respects is not necessarily evidence of discrimination. This depends on other considerations possibly including the population of the special interest group in question.
64. It has been contended that the impugned provisions, in so far as they constituted one national Electoral college with representatives from the whole country, this was contrary to Article 24 and amounted to inhuman and degrading treatment for some of the intending candidates as they had to traverse the whole country to campaign. We do not agree. It may be inconvenient or expensive for some intending candidates. This does not render the same inhuman and degrading treatment. It also does not infringe the right to respect and human dignity for disabled people provided for under Article 35(1) and (2) of the Constitution.
65. There is no emerging right articulated that is missing from Chapter 4 which is purported to have been infringed by the impugned provisions. Article 45 is therefore not applicable in the circumstances.
66. Article 20 (2) is a promotional Article requiring respect for, the upholding of and promotion of all the rights and freedoms set out in chapter 4 by all organs and agencies of Government and all persons. One needs therefore to refer to a specific right enshrined in Chapter 4 first before invoking Article 20(2). It cannot be invoked alone. It must be coupled with the specific right referred to in Chapter 4 before any finding can be made of infringement of the same.
67. The respondent, and indeed any other person in Uganda, is obliged to comply with Article 20 of the Constitution by respecting, upholding and promoting the rights and freedoms

enshrined in Chapter 4 of the Constitution. It is clear that the respondents are in breach of this Article in relation to the Chapter 4 rights that we have found contravened.

68. It is contended that the impugned provisions are contrary to Article 59 of the Constitution. We agree. In so far as they disenfranchised people with disabilities that did not belong to NUDIPU for the election of 2011 the said provisions were contrary to Article 59 (1), (2) and (3).

69. It is further contended that the Electoral commission failed to maintain a voters' register for persons with disabilities as it is obliged to do under Article 61(1) (e) which provides,

‘(1) The Electoral Commission shall have the following functions—

- (a)
- (b)
- (c)
- (d)

(e) to compile, maintain, revise, and update the voters register;’

70. What this provision requires the Electoral Commission to do is to maintain a voters' register and not voters' registers. A voter, whether under universal adult suffrage, or under any other mechanism or procedure set up by Parliament may have to be registered on that voters' register. There is no requirement for separate registers for each special interest group, though of course, there are qualifications necessary to belong to each special interest group which are the *sine qua non* for participation of such persons in the elections of representatives for each special interest group. This information would presumably have to be captured in the voters register maintained by the Electoral Commission under this Article, where such persons presumably qualify to be on the voters' register.

71. It is our view therefore that Article 61(e) of the Constitution was not infringed by the impugned provisions.

72. We do not see how the independence of the Electoral Commission under Article 62 is in issue in regard to the new provisions for elections of representatives of people with disabilities.

73. We are of the view, that Article 63, read as a whole, deals with constituencies for election of directly elected members of Parliament under Article 78(1) (a) of the Constitution and is not applicable to 'constituencies' for special interest groups. This can be inferred or gathered from its provisions or content. It is not applicable to special interest groups and could not have been contravened.

**Whether section 31A of the National Council for Disability Act, 2003 (as amended) read together with Schedule A of the same Act is in contravention of Articles 20(2); 21(1), (2) & (3); 24; 29(1) (e); 35(1) and (2); 45; 59(1); 61; 62 and 63(1), (3) & (4) of the Constitution**

74. We shall start by considering whether the said impugned provisions contravene or are inconsistent with Articles 21(1), (2) & (3); 24, 29(1) (e), 35 (1) and (2), and 45 before considering Article 20 (2) for the reason already articulated that Article 20(2) is not applied singly. It must be coupled with an existing right in Chapter 4 of the Constitution.

75. Turning to whether the impugned provisions contravene Article 21(1), (2) & (3), we wish to repeat that Article 21(2) and (3) deal with discrimination. It is contended that different procedures were prescribed for other interest groups like youth and women and this was discriminatory. It was open to Parliament to prescribe different procedures for each special interest groups as long as those procedures conform to the Constitution. The mere fact that procedures for each group may be different in certain respects is not necessarily evidence of discrimination. This depends on other considerations possibly including the population of the special interest group in question.

76. It has been contended that the impugned provisions, in so far as they continue to constitute one national Electoral college with representatives from the whole country, is contrary to Article 24 and amounts to inhuman and degrading treatment for some of the intending candidates as they would have to traverse the whole country to campaign. We do not agree. It may be inconvenient or expensive for some intending candidates. This does not render the same inhuman and degrading treatment. It also does not infringe the right to

respect and human dignity for disabled people provided for under Article 35(1) and (2) of the Constitution.

77. With regard to the claim that the impugned provisions contravene Article 29(1) (e) of the Constitution, it is contended that since there are people living with disabilities who may not wish to participate in the National Council for Disability and it would be their right not to associate with the same, this right would be violated as they would not be able to participate in the elections.
78. The National Council for Disability Act creates a statutory body which is open to all disabled people. If one wishes to participate in elections for persons with disabilities one has to comply with what is set out in the law which Parliament has set in place for the purposes of electing representatives of people living with disabilities. This law does not contravene Article 29(1) (e) merely because an individual chooses to exercise his / her right not to participate in such statutory organisation. For as long as he / she is not compelled to participate, Article 29(1) (e) is not infringed. The law is compliant with Article 29 (1) (e) for as long it does not compel the individual to participate.
79. Where the Parliament has determined that the structures of such statutory organisation provide the most practical avenue for choosing the Electoral College that will elect the representatives of the people with disabilities, it is important that such structures be open to the voluntary participation of all people with disabilities. Once the structures are open to all members of the special interest group, there can be no question of disenfranchisement under Article 59 of the Constitution.
80. With regard to whether the impugned provisions contravene or are inconsistent with Article 45, we are satisfied that they do not. There is no right arising under Article 45 which is alleged to have been infringed or contravened by the impugned provisions. Article 45 cannot come into play in the situation before us.
81. It is further contended that the impugned provisions contravene and or are inconsistent with Article 61(1) (e) which provides,

‘(1) The Electoral Commission shall have the following functions—

- (a)
- (b)
- (c)
- (d)

(e) to compile, maintain, revise, and update the voters register;’

82. What this provision requires the Electoral Commission to do is to maintain a voters’ register and not voters’ registers as earlier stated. A voter, whether under universal adult suffrage, or under any other mechanism or procedure set up by Parliament may be registered on that voters’ register. There is no requirement for separate registers for each special interest group though of course there are qualifications necessary to belong to each special interest group which are the *sine qua non* for participation of such persons in the elections of representatives for each special interest group. This information would presumably have to be captured in the voters register maintained by the Electoral Commission under this Article.

83. It is our view therefore, that Article 61(e) of the Constitution is not infringed by the impugned provisions.

84. We do not see how the independence of the Electoral Commission under Article 62 was in issue in regard to impugned provisions.

85. Turning to Article 63, as already noted above, read as a whole, deals with constituencies for election of directly elected members of Parliament under Article 78(1) (a) of the Constitution and is not applicable to ‘constituencies’ for special interest groups. This can be inferred or gathered from its provisions or content. It is not applicable to special interest groups and could not have been contravened.

**Whether section 8(4)(e) of the Parliamentary Elections Act, 2005 and Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulations 2001 as used to hold elections in 2011 and section 31A of the National Council for Disability Act infringe upon the Articles 3(a), (b), (c) & (e); 4; 5; 12 and 29 of the United Nations Convention on the Rights of Persons with**

## **Disabilities, 2006 which Uganda has ratified and is bound by its provisions**

86. We are of the view that this issue is not a matter calling for constitutional interpretation of the Constitution of Uganda and we need not consider the same as it does not arise within the terms of Article 137 of the Constitution. In any case, we have already considered and determined whether or not these provisions contravene the Constitution of Uganda. That is the extent of our mandate or jurisdiction.

## **Whether a permanent injunction should issue directing the first and second respondents not to conduct elections or engage in any electoral process for PWDs under the provisions of the National Council for Disability Act, 2003**

87. No case has been established upon which a permanent injunction could issue against the respondents in relation to the holding of the elections of representatives for people living with disabilities in relation to the law now in force.

## **Constitutional Petition No. 48 of 2010**

88. The issues that arise for determination in this petition are four. Some of them, or, at least one of them, is similar to some, or, one of the issues that arose in constitutional petition no. 37 of 2010. We shall proceed to address each one of them below.

## **Whether the act of workers representatives in Parliament and persons intending to represent workers in Parliament participating in partisan elections as political party flag bearers at any level is inconsistent with and contravenes Articles 29 and 40 of the Constitution**

89. The right and freedom to participate in political organisations as well as trade unions is protected under Article 29 of the Constitution. The right to freely associate, form and join trade unions is further protected as a species of social and economic rights under Article 40 of the Constitution. These two rights or fundamental freedoms are not at war with each other and do exist side by side without conflict.

90. We are not persuaded that persons representing or intending to represent workers in Parliament infringe any of the aforesaid Articles by being sponsored or associating with any political party or organisation. Indeed the contrary would be true if they were denied to associate for political purposes because they associate together in a trade union or vice versa. We answer this issue in the negative.

**Whether Regulation 12 of the Parliamentary Elections (Special Interest Groups) Regulations 2001 as amended by Statutory Instrument No.6 of 2011 is inconsistent with and contravenes Articles 29(1) (e) and 40(3) of the Constitution.**

91. We have already held under CP No. 37 of 2010 that regulation 12 of the Parliamentary Elections (Special Interest Groups) 2001 as amended by SI No. 6 of 2011 contravenes Article 78(4) of the Constitution but does not contravene Article 29(1) (e) of the same. For the same reasons we hold that the provisions of the Regulation do not contravene Articles 29(1) (e) and 40(3) of the Constitution as claimed by the Petitioner in Constitutional Petition No. 48 of 2010. Both these two provisions are protecting the right to associate whether for political or civic purposes or social and economic purposes.

92. The fact that there are members of the special interest group of workers who were excluded from participating in the elections of representatives because the electoral colleges that elect such members were from voluntary associations is not an infringement of the right to associate as it is an infringement of the right to vote vide Article 59 (1) read together with Article 78(1) (c) of the Constitution in the special interest group in question.

**Whether the act of workers representatives in Parliament who hold permanent and salaried offices at the same time in their respective trade unions and federations is inconsistent with the spirit of Article 40(3) of the Constitution.**

93. Article 40(3), as we have endeavoured to explain above, is intended to protect social and economic rights including specifically to form trade unions. Having workers' representatives in Parliament who are also permanent and salaried offices in their trade unions might raise a policy

issue for those unions as to whether a person should occupy both offices at the same time. This, however, is not a constitutional question for interpretation of the Constitution. It is for the individual trade unions and federations to decide or provide for it in their bye laws. We answer the issue in the negative.

## **Relief**

94. We have held that the law in force in relation to the elections of the special interest groups of the army, youth and workers is unconstitutional for reasons we have elaborated herein above. It was prayed by the respondents that in the event we find that to be the case, there should be prospective overruling of the same, presumably to allow the concerned parties take corrective actions. This has been opposed by the Petitioner.

95. No doubt this court has the jurisdiction to make such an order but as we have no timetable within which the concerned parties would take corrective action it would leave in place laws which are unconstitutional in a very important area of governance. Worse still, it would leave several constitutional bodies continue to act unconstitutionally, implementing unconstitutional laws, whereas what is required is swift action to comply with the Constitution.

96. Article 2 of the Constitution is of paramount importance in this regard. It states,

‘(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency be void.’

## **Decision**

97. The impugned law in relation to the election of the representatives of the army, youth, and workers is void and we declare so in accordance with Article 2 of the Constitution.
98. We do grant an injunction against the respondents restraining them from conducting elections for the special interest groups of the army, youth and workers under the law that we have found to be unconstitutional.
99. The election for representatives of people living with disabilities may go ahead as the law in relation to the same passes constitutional muster.
100. As this is a matter of significant public interest we order each party to bear their costs.

Signed, dated and delivered at Kampala this 29<sup>th</sup> day of September 2015

Augustine Nshimye  
**Justice of Appeal**

Remmy Kasule  
**Justice of Appeal**

Ruby Opio Aweri  
**Justice of Appeal**

Richard Buteera  
**Justice of Appeal**

Fredrick Egonda-Ntende  
**Justice of Appeal**