

ACTS SUPPLEMENT

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Act 1 *Referendum and Other Provisions Act* **2005**

THE REFERENDUM AND OTHER PROVISIONS ACT, 2005.

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THE REFERENDUM AND OTHER PROVISIONS ACT, 2005.

An Act to make provision for the holding of referenda in pursuance of the provisions of articles 74 and 76 of the Constitution; to give effect to articles 255, 259 and 260 of the Constitution; to cater for a change in the political system by representatives of the people in Parliament and district councils under article 74(2) of the Constitution; to repeal and replace the Referendum Act and to provide for other matters connected with or incidental to the foregoing.

DATE OF ASSENT: 10th February, 2005.

Date of commencement: 22nd February, 2005.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.**1. Short title**

This Act may be cited as the Referendum and Other Provisions Act, 2005.

2. Interpretation

In this Act unless the context otherwise requires—

“agent” means a person authorized by a side to represent the side in a referendum;

“Commission” means the Electoral Commission established by article 60 of the Constitution;

“currency point” has the meaning assigned to it in the First Schedule to this Act;

“election officer” includes a returning officer, assistant returning officer, registration officer, assistant registration officer and any other officer appointed by or under the authority of the commission with responsibility for registration of voters, or for presiding over voting in any election or for counting votes at any election.

“Minister” means the Minister responsible for public elections and referenda;

“side” means the supporter of an affirmative answer to a question in a referendum or the supporter of a negative answer to a question in a referendum, as the case may be, and sides shall be taken to mean both the supporters of an affirmative answer and the supporters of a negative answer to a question in a referendum.

PART II—REFERENDA GENERALLY

3. Referendum generally

(1) Referenda shall be held in the following circumstances—

- (a) if a demand is made by citizens of Uganda under article 255 of the Constitution and the provisions of section 11 of this Act are complied with;
- (b) if a request is made for the holding of a referendum under paragraph (a), (b), or (c) of clause (1) of article 74 of the Constitution and the provisions of section 15 of this Act are complied with; and

(c) if a referendum is required for amending the Constitution under article 259 of the Constitution.

(2) Where a referendum is to be held under this section, the Commission shall, in consultation with the sides in the referendum, frame the question to be used in the referendum.

(3) Any question submitted to a referendum under this section shall be framed so as to enable the voters to make a choice.

(4) In a referendum the voting may be on one question or a series of questions.

(5) For the avoidance of doubt, two or more referenda may be held on the same day.

4. Electoral commission to be responsible for referenda.

(1) For the avoidance of doubt, the Commission shall organise, conduct and supervise all referenda held under this Act.

(2) The Commission shall, by notice published in the *Gazette*, notify the date for a referendum to be held under this Act and shall state in the notice the issue in respect of which the referendum is to be held.

(3) The Commission shall provide for the referendum to be held everywhere on the same day in the whole of Uganda or as the case may be, in the whole of the part of Uganda where the referendum is intended to be held, unless it is impracticable so to do; and in that case the referendum may be held on different dates in different places as is practicable.

(4) Where the referendum is to take place in a particular part of Uganda the notice issued under subsection (2) shall specify clearly the boundaries of that part.

(5) The Commission shall, at least two months before a referendum, formulate and implement civic education programmes relating to the referendum.

4. Voting at a referendum.

(1) Before polling begins in a referendum, the presiding officer at each polling station shall open each ballot box to be used at that polling station and show it to the voters present as being empty and shall give the voters present reasonable opportunity to inspect the ballot box.

(2) The Commission shall, in consultation with the sides, select symbols which shall be used on the ballot paper in a referendum to facilitate the exercise of a choice by voters.

(3) The symbols agreed upon shall be published in the *Gazette*.

(4) At a referendum, voting shall, subject to the provisions of the Constitution, be by secret ballot using one ballot box at each polling station for all sides in the referendum.

(5) Immediately after the close of the poll, the presiding officer shall proceed to count at the polling station, the ballot papers of that station and record the votes cast in favour of or against each question.

(6) Subject to this Act, agents of a side in a referendum shall be entitled to be present at the polling station throughout the period of voting, counting and tallying of the votes and ascertaining of the results of the poll.

(7) The presiding officer and the sides contesting in the referendum or their agents, if any, shall sign and retain a copy of a declaration stating—

(a) the polling station;

(b) the number of votes cast in favour of each question;

and the presiding officer shall there and then, announce the results of the voting at that polling station before communicating them to the returning officer.

(8) The following shall apply in respect of the signing of the declaration and the announcement of results of voting under subsection (7)—

- (a) the sides or their agents shall sign the declaration form before the announcement of the results under subsection (7);
- (b) where any of the sides or their agents refuse or fail to sign the declaration form—
 - (i) the sides and their agents refusing or failing to sign shall record on the declaration form the reasons for the refusal or failing to sign; and
 - (ii) where they refuse or fail to record the reasons, the presiding officer shall record the fact of their refusal or failure;
- (c) where any side or agent is absent, the presiding officer shall record the fact of their absence;
- (d) the refusal or failure of a side or agent to sign any declaration form under subsection (7) or to record the reasons for their refusal to sign as required under this subsection shall not by itself invalidate the results announced under subsection (7);
- (e) the absence of a side or an agent from the signing of a declaration form or the announcement of results under subsection (7) shall not by itself invalidate the results announced under subsection (7).

6. Majority of votes required in a referendum

Subject to the provisions of the Constitution and this Act, an issue for determination by a referendum shall be taken to be determined by a majority of the votes cast at the referendum.

7. Where no side obtains required majority

Where in any referendum no side obtains the majority referred to in section 6, the position prevailing before the referendum and in respect to which a decision by way of referendum was sought, shall remain.

8. Publication of results of a referendum

(1) The Commission shall ascertain, publish and declare in writing in the prescribed form, under its seal, the results of a referendum within forty eight hours from the close of final polling in the referendum.

(2) The Commission shall publish the results of the referendum in the media and shall, within fourteen days after publication of the results under subsection (1), cause them to be published in the *Gazette*.

(3) For all purposes of the referendum, the results published in the *Gazette* shall be taken to be the official results of the referendum.

9. Application of other electoral laws.

(1) This Act shall be read as one with the Electoral Commission Act.

(2) The provisions of the Parliamentary Elections Act, 2001 relating to voting, counting and tallying of votes and announcing of results of elections shall, subject to this Act, apply to a referendum held under this Act, with such modifications as may be necessary.

(3) The Commission may also apply to a referendum held under this Act such other provisions of the Parliamentary Elections Act, 2001 as may be relevant and subject to such modifications as may be necessary.

10. Persons entitled to vote at a referendum

The persons entitled to vote at a referendum under this Act are—

- (a) persons registered as voters for public elections by the date of voting in the referendum; or
- (b) where the referendum is to take place only in a particular part of Uganda, persons registered as voters for public elections in that part of Uganda, by the date of voting in the referendum and who are present in that part of Uganda on that date.

11. Right of citizens to demand referenda

(1) The Commission shall cause a referendum to be held for the purposes of article 255 of the Constitution, either nationally or in any particular part of Uganda if a petition is made for the purpose under this section.

(2) A referendum shall be held under this section—

(a) if a petition is made in writing, in the case of a national referendum, by a registered voter and in the case of a referendum in a particular part of Uganda, by a voter registered in that part of Uganda; and

(b) if the petition is supported—

(i) in the case of a national referendum, by at least one tenth of the total registered voters from at least one third of the districts of Uganda; and

(ii) in the case of a referendum in a particular part of Uganda, by at least one third of the total registered voters in that part of Uganda.

(3) A petition under this section shall be addressed to the Commission.

(4) The petition shall be signed by each registered voter supporting the petition and shall state the issue on which a referendum is requested and such other matters as may be prescribed by regulations made under section 31.

(5) The Commission shall, on receiving a petition under this section, verify whether the petition has been duly submitted by a registered voter and supported by the required number of registered voters.

(6) The Commission shall verify whether the signatures are those of registered voters and that subsection (2) (b) has been complied with.

(7) For the avoidance of doubt, it shall be sufficient for the purposes of subsection (6), if the Commission ascertains whether the names of the persons who purport to have signed the petition appear on the national voters register for the purpose of the referendum.

(8) The Commission shall, notwithstanding subsection (7), display the petition with the list of the names and signatures supporting the petition, in a public place in each polling station to which the referendum relates, for public scrutiny.

(9) A person who claims that his or her name was included in the petition without his or her consent, or that the petition includes the name of a person who died before the date of the petition, shall lodge an objection in the prescribed form to the Commission.

(10) The Commission shall, by notice in the *Gazette*, appoint a period of not less than fourteen days for the purpose of public scrutiny and lodging of objections under subsections (8) and (9).

(11) If the Commission, upon inquiry into an objection lodged under subsection (9) is satisfied that the name of the person lodging the objection was included in the petition without his or her consent, or that the petition includes the name of a person who died before the date of the petition, the Commission shall not count that person as one of the persons supporting the petition.

(12) A person who includes among the persons supporting a petition under subsection (2) the name of a person without the consent of that person, or who knowingly includes the name of a person who died before the date of the petition among the persons supporting the petition, commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

(13) The Commission, upon being satisfied that a petition has been duly submitted in accordance with this section, shall issue a certificate to that effect in the prescribed form stating its findings in the matter.

(14) The Commission shall, within fourteen days, cause the certificate under subsection (13) to be published in the *Gazette*.

(15) If the Commission certifies that the particulars in the petition are correct and in accordance with this section, the Commission shall, within thirty days after publication of the certificate in the *Gazette*, appoint under section 4 a date for the holding of the referendum nationally or in the particular part of Uganda as requested in the petition.

12. Canvassing for a referendum

(1) Subject to the Constitution and this Act, any person or group of persons is free to canvass for support of any side in a referendum and may form a referendum committee or a similar structure for the purpose.

(2) It shall be the duty of a referendum committee to organise the canvassing for its side, and to appoint agents for the purposes of canvassing and voting.

(3) A referendum committee shall be free to organise at national and local levels until the referendum is held.

(4) Subject to the Constitution and any other law, every person or group of persons shall enjoy freedom of expression and access to information in the exercise of the right to canvass in a referendum.

(5) The Commission shall issue guidelines for orderly canvassing which shall be complied with by every committee or agent while conducting canvassing for the referendum under this Act.

(6) Canvassing for a referendum shall cease twenty four hours before the date of polling in the referendum.

(7) Any person who contravenes subsection (6), commits an offence and is liable on conviction, to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both.

13. Prohibition of incitement to public disorder etc.

(1) A person shall not, while canvassing in a referendum, use any language which is defamatory or which constitutes incitement to public disorder, hatred, or violence.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both.

14. Supply of copies of Bill for referendum under article 259 and processing of Bill for Presidential assent

(1) Where a Bill is to be submitted to a referendum under article 259 of the Constitution, the Clerk to Parliament shall, within fourteen days after the Bill has been passed by Parliament, forward to the Commission, a copy of the Bill as passed and cause the Bill to be published in the *Gazette* and also in the media.

(2) The Clerk to Parliament shall, in the case of a Bill to be forwarded to the Commission under subsection (1), in addition to the statement issued by him or her under section 8 of the Acts of Parliament Act, certify in the prescribed form that the Bill has been supported at the Second and Third Readings in Parliament by not less than two-thirds of all members of Parliament.

(3) Notwithstanding subsection (2) of section 3, the question for the approval of a Bill referred to a decision of the people by referendum under article 259(1)(b) of the Constitution shall be in the form specified in the Second Schedule to this Act.

(4) The Commission shall take steps to hold a referendum under article 259 of the Constitution within six months after receipt of a Bill and a certificate of the Clerk to Parliament under this section, or where doing so is impracticable, within a further period not exceeding six months from the expiry of the first period of six months.

(5) Where the result of a referendum held for approving a Bill has been declared under section 8, the Commission shall, within seven days after the declaration of the result—

- (a) if the Bill was approved at the referendum, forward to the Clerk to Parliament a certificate under article 262(2) (b) of the Constitution in the form specified in Part VIII of the Second Schedule to the Acts of Parliament Act in respect of the Bill; or
- (b) if the Bill was not approved at the referendum, forward to the Clerk to Parliament a statement in the prescribed form indicating that the Bill was not approved at the referendum.

(6) Where the Clerk to Parliament receives a certificate of the Commission under subsection (5)(a) that a Bill has been approved at a referendum, the Clerk to Parliament shall, within fourteen days after receipt of the certificate, forward the Bill to the President for assent, accompanied by the certificate of the Commission together with a certificate issued by the Speaker of Parliament under clause (2)(a) of article 262 of the Constitution which shall be in the form specified in Part VI of the Second Schedule to the Acts of Parliament Act.

PART III—CHANGE IN POLITICAL SYSTEM BY REFERENDA
OR BY PETITIONS AND RESOLUTIONS

15. Referenda for change in political system under article 74 (1) of the Constitution

(1) Where a resolution has been passed by Parliament in accordance with paragraph (a) of clause (1) of article 74 of the Constitution, the Clerk to Parliament shall, within seven days after the passing of the resolution, forward to the Commission a copy of the resolution certified by him or her in the prescribed form to have been supported by more than one half of all the members of Parliament.

(2) The Speaker of each district council which passes a resolution under paragraph (b) of clause (1) of article 74 of the Constitution in support of a request for the holding of a referendum shall forward the resolution to the Commission, in the prescribed form stating the total membership of the Council, the names of the members of the Council and indicating the number of members who

voted in favour of the resolution and the number of those who voted against; and the statement shall be certified by the Speaker of the Council to be correct.

(3) The Commission, upon receipt of a resolution under subsection (2) in respect of a request for the holding of a referendum under paragraph (b) of clause (1) of article 74 of the Constitution, shall verify the matter and shall certify whether or not the resolution was duly passed; and upon receipt of the required number of duly passed resolutions in accordance with paragraph (b) of clause (1) of article 74 of the Constitution in support of the request, certify in the prescribed form—

- (a) that a request has been made by resolution for the holding of a referendum for the purpose of changing the political system; and
- (b) that the resolution is supported by a majority of the total membership of each of at least one half of all district councils in Uganda.

(4) Where the Commission has received a request for a referendum made in accordance with paragraph (c) of clause (1) of article 74 of the Constitution, the Commission shall, within thirty days after receipt of the petition, certify in the prescribed form whether or not the requirements of paragraph (c) of clause (1) of article 74 of the Constitution have been complied with.

(5) For the avoidance of doubt, it shall be sufficient for the purposes of subsection (4), if the Commission ascertains whether the names of the persons who purport to have signed the petition appear on the national voters register for the purpose of the referendum.

(6) The Commission shall, notwithstanding sub section (5), display the petition with the list of the names and signatures supporting the petition, in a public place in each polling station to which the referendum relates, for public scrutiny.

(7) A person who claims that his or her name was included in the petition without his or her consent, or that the petition includes the name of a person who died before the date of the petition, shall lodge an objection in the prescribed form to the Commission.

(8) The Commission shall, by notice in the *Gazette*, appoint a period of not less than fourteen days for the purpose of public scrutiny and lodging of objections under subsections (7) and (9).

(9) If the Commission, upon inquiry into an objection lodged under subsection (7) is satisfied that the name of the person lodging the objection was included in the petition without his or her consent, or that the petition includes the name of a person who died before the date of the petition, the Commission shall not count that person as one of the persons supporting the petition.

(10) A person who includes among the persons supporting a petition under subsection (4) the name of a person without the consent of that person, or who knowingly includes the name of a person who died before the date of the petition among the persons supporting the petition, commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

(11) The Commission shall, within thirty days after—

(a) receipt of a resolution of Parliament under subsection (1); or

(b) issuing a certificate under subsection (3) certifying that a request for a referendum has been duly made in accordance with paragraph (b) of clause (1) of article 74 of the Constitution; or

(c) issuing a certificate under subsection (4), to the effect that the requirements of paragraph (c) of clause (1) of article 74 of the Constitution have been complied with;

take necessary steps under section 4 to appoint a date for the holding of a referendum as demanded in the request or petition.

(12) Any Speaker of a district council who in communicating any information under this section, makes a statement which he or she knows to be false in any material particular commits an offence.

(13) A Speaker of a district council charged with the responsibility of communicating information under this section who wilfully or knowingly omits to do so, commits an offence.

(14) A person who commits an offence under this section is liable on conviction, to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both.

16. Change of political system by representatives of the people in Parliament and district councils under article 74 (2) of the Constitution.

(1) A petition to Parliament under article 74 (2) of the Constitution may be proposed by any registered voter or group of registered voters or by a district council.

(2) A petition to Parliament for a resolution for a change of the political system under article 74 (2) of the Constitution shall not be valid unless it is supported by not less than two thirds majority of the total membership of each of at least half of all district councils.

(3) The support of members of a district council for a petition referred to in subsection (2) shall be expressed by a resolution by the district council supporting the petition.

(4) Where a resolution referred to in subsection (3) is passed by a district council it shall be forwarded by the Speaker of the district council to the Commission together with a certificate by the Speaker in the prescribed form, stating the total membership of the district council, the number of members who voted in support of the petition and the number of members who voted against the petition.

(5) Upon receipt of a resolution and a certificate of the Speaker of a district council under subsection (4), the Commission shall verify the facts stated in the Speaker's certificate.

(6) Where the Commission is satisfied that a petition is supported by not less than two thirds majority of the total membership of each of at least half of all districts in Uganda, the Commission shall certify to the Clerk to Parliament in the prescribed form, that it is so satisfied and forward to the Clerk a copy of the petition.

(7) Upon Parliament passing a resolution in support of the petition referred to in subsection (6) supported by not less than two thirds of all members of Parliament, the Clerk to Parliament shall forward to the Commission a copy of the resolution certifying in the prescribed form, that the resolution was supported by not less than two thirds of all members of Parliament.

(8) Upon receipt by the Commission of the resolution of Parliament forwarded under subsection (7), the Commission shall, within forty eight hours, cause the resolution to be published in the media and shall, within fourteen days, cause the resolution to be published in the *Gazette*.

(9) A Speaker of a district council who—

(a) in communicating any information under this section, makes any statement which he or she knows to be false in any material particular; or

(b) charged with the responsibility of communicating information under this section, wilfully or knowingly omits to do so;

commits an offence and is liable on conviction to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both.

(10) So far as practicable, the provisions of this Act relating to referenda shall apply with the necessary modifications, to any proposal for a change in the political system under this section.

17. Time for resolutions or petitions for changing of political systems under article 74 of the Constitution

The resolutions or petitions for the purpose of changing the political system under article 74 of the Constitution shall be taken only in the fourth year of the term of any Parliament.

18. Subsequent elections to be held under adopted system

(1) Where the result of a referendum held under this Act, or a resolution of Parliament passed in accordance with clause (2) of article 74 of the Constitution, determines that a change shall be made in the existing political system, then, subject to the Constitution, subsequent Presidential, Parliamentary, local government and other public elections shall be held under the new political system adopted.

(2) This section does not apply to a by-election held before the expiration of the term of Parliament under article 77 of the Constitution.

(3) Where a change of political system has been effected under article 74 of the Constitution, any enactment relating to elections shall have effect with such modifications as may be necessary to give effect to the change in accordance with this section.

(4) The Minister may, with the prior approval of Parliament, make such regulations as may be necessary for ensuring a smooth transition from the previous political system to the newly adopted political system.

19. Parliament to approve other political systems before acceptance in referendum

No political system shall be accepted as any other democratic and representative political system under clause (1) (c) of article 69 of the Constitution for the purposes of a referendum under clause (1) of article 74 of the Constitution or for the purposes of a resolution of Parliament under clause (2) of article 74 of the Constitution unless it has been approved by Parliament under the Other Political Systems Act.