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Act 11 *Constitution (Amendment) Act* 2005

THE CONSTITUTION (AMENDMENT) ACT, 2005

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**THE CONSTITUTION (AMENDMENT) ACT, 2005.**

**An Act to amend the Constitution in accordance with article 261 of the Constitution: to distinguish Kampala as the capital city of Uganda and to provide for its administration and for the delineation of its boundaries; to provide for Swahili as the second official language of Uganda; to provide for the leader of the opposition in Parliament under the multiparty political system; to remove the limits on the tenure of office of the President; to create the offices of Prime Minister and Deputy Attorney General; to provide for the independence of the Auditor General and to provide for the procedure for his or her removal; to provide for the creation and functions of special courts to handle offences relating to corruption; to establish and prescribe the functions of a Leadership Code Tribunal; to provide for the control of minerals and petroleum; to provide for the holding of referenda generally; to make miscellaneous repeals to the spent provisions of the Constitution and to provide transitional provisions having regard to the amendments made in the Constitution; and for related matters.**

DATE OF ASSENT: 26th September, 2005.

*Date of Commencement:* 30th September, 2005.

BE IT ENACTED by Parliament as follows:

## PART I—PRELIMINARY.

**1. Short title**

This Act may be cited as the Constitution (Amendment) Act, 2005.

PART II—AMENDMENT OF CHAPTER TWO OF THE  
CONSTITUTION —THE REPUBLIC**2. Amendment of article 5 of the Constitution**

Article 5 of the Constitution is amended by substituting for clause (4) the following—

“(4) Kampala, located in Buganda shall be the capital city for Uganda and shall be administered by the Central Government.

(5) The territorial boundary of Kampala shall be delineated by Act of Parliament.

(6) Parliament shall, by law, make provision for the administration and development of Kampala as the capital city.”

**3. Replacement of article 6 of the Constitution**

For article 6 of the Constitution, there is substituted the following—

**“6. Official language**

(1) The official language of Uganda is English.

(2) Swahili shall be the second official language in Uganda to be used in such circumstances as Parliament may by law prescribe.

(3) Subject to this article, any other language may be used as a medium of instruction in schools or other educational institutions or for legislative, administrative or judicial purposes as Parliament may by law prescribe.”

**4. Insertion of new article 8A**

Chapter Two of the Constitution is amended by inserting immediately after article 8, the following—

**“8A. National Interest**

(1) Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy.

(2) Parliament shall make relevant laws for purposes of giving full effect to clause (1) of this article.”

PART III—AMENDMENT OF CHAPTER THREE OF THE  
CONSTITUTION—CITIZENSHIP

**5. Amendment of article 14 of the Constitution**

Article 14 of the Constitution is amended by the repeal of paragraph (a).

**6. Amendment of article 15 of the Constitution**

Article 15 of the Constitution is amended—

(a) by substituting for clauses (1) and (2) the following—

“(1) A citizen of Uganda of eighteen years and above, who voluntarily acquires the citizenship of a country other than Uganda may, retain the citizenship of Uganda subject to this Constitution and any law enacted by Parliament.

(2) A person who is not a citizen of Uganda may, on acquiring the citizenship of Uganda, subject to this Constitution and any law enacted by Parliament, retain the citizenship of another country.”

(b) by repealing clauses (3) and (4);

(c) by inserting immediately after clause (5) of that article the following—

“(6) Parliament shall by law prescribe the circumstances under which—

(a) a citizen of Uganda who acquires the citizenship of another country may retain the citizenship of Uganda;

(b) a citizen of Uganda whose citizenship of origin is of another country and who holds the citizenship of another country may cease to be a citizen of Uganda;

(c) a person who is not a citizen of Uganda may, on acquiring Uganda citizenship retain the citizenship of another country;

(7) Parliament shall, by law, prescribe the offices of State which a person who holds the citizenship of another country in addition to the citizenship of Uganda is not qualified to hold”.

## **7. Amendment of article 16 of the Constitution**

Article 16 of the Constitution is amended by substituting for clauses (2) and (3) the following—

“(2) The Board shall consist of a Chairperson, a Deputy Chairperson and such other members as Parliament shall by law prescribe.

(3) The members of the Board shall—

(a) be persons of high moral character and proven integrity and appointed by the President with the approval of Parliament;

(b) hold office for such period and on such terms and conditions as Parliament shall by law prescribe.

(4) The functions of the Board shall be prescribed by Parliament by law”.

### **8. Amendment of article 17 of the Constitution**

Article 17 of the Constitution is amended—

(a) in clause (1), by inserting immediately after paragraph (j) the following—

“(k) to perform such other national duties and obligations as Parliament may by law prescribe”; and

(b) by inserting immediately after clause (2) the following—

“(3) Parliament may, in the case of any duty or obligation under clause (1), prescribe a penalty for contravention of that duty or obligation”.

#### **PART IV—AMENDMENT OF CHAPTER FOUR OF THE CONSTITUTION—PROTECTION AND PROMOTION OF FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS**

### **9. Amendment of article 23 of the Constitution**

Article 23 of the Constitution is amended in clause (6) by substituting for paragraphs (b) and (c) the following—

“(b) in the case of an offence which is triable by the High Court as well as by a subordinate court, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable;



- (c) in the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.”

### 10. Amendment of article 31 of the Constitution

Article 31 of the Constitution is amended—

- (a) by substituting for clause (1) the following—

“(1) A man and a woman are entitled to marry only if they are each of the age of eighteen years and above and are entitled at that age—

(a) to found a family; and

(b) to equal rights at and in marriage, during marriage, and at its dissolution.”

- (b) by inserting immediately after clause (2) the following—

“(2a) Marriage between persons of the same sex is prohibited.”

### 11. Amendment of article 32 of the Constitution

Article 32 of the Constitution is amended by substituting for clause (2) the following—

“(2) Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group to which clause (1) relates or which undermine their status, are prohibited by this Constitution.

(3) There shall be a Commission called the Equal Opportunities Commission whose composition and functions shall be determined by an Act of Parliament.

(4) The Equal Opportunities Commission shall be established within one year after the coming into force of the Constitution (Amendment) Act, 2005.

(5) Parliament shall make laws for the purpose of giving full effect to this article.”

## **12. Amendment of article 33 of the Constitution**

Article 33 of the Constitution is amended by repealing clause (6).

### **PART V—AMENDMENT OF CHAPTER FIVE OF THE CONSTITUTION - REPRESENTATION OF THE PEOPLE**

## **13. Amendment of article 61 of the Constitution**

Article 61 of the Constitution is amended—

(a) by renumbering existing article 61 as clause (1) of article 61;

(b) by substituting for paragraph (g) of clause (1) of article 61 as renumbered the following—

“(g) to formulate and implement voter educational programmes relating to elections; and”;

(c) by inserting at the end of the article the following—

“(2) The Electoral Commission shall hold presidential, and general parliamentary and local government council elections within the first thirty days of the last ninety days before the expiration of the term of the President.

(3) Except where it is impracticable to do so, the Electoral Commission shall hold presidential, and general parliamentary and local government council elections on the same day.

(4) Subject to this Constitution, the Electoral Commission shall, in accordance with the law, determine the dates for holding the elections referred to in clause (2).”

**14. Amendment of article 68 of the Constitution**

Article 68 of the Constitution is amended by inserting immediately after clause (5) the following—

“(6) Parliament may by law exempt any public election, other than a Presidential or Parliamentary election, from the requirements of clause (1) that it shall be held by secret ballot.”

**15. Amendment of article 71 of the Constitution**

Article 71 of the Constitution is amended—

(a) by renumbering article 71 as clause (1); and

(b) by inserting immediately after clause (1) the following—

“(2) Parliament shall by law prescribe a code of conduct for political organisations and political parties and provide for the establishment of a national consultative forum for political parties and organisations with such functions as Parliament may prescribe.”

**16. Amendment of article 72 of the Constitution**

Article 72 of the Constitution is amended by inserting after clause (3) the following—

“(4) Any person is free to stand for an election as a candidate, independent of a political organisation or political party.

(5) Parliament, shall by law, regulate the manner of participation in and financing of elections by individuals seeking political office as independent candidates.”

PART VI—AMENDMENT OF CHAPTER SIX OF THE  
CONSTITUTION—THE LEGISLATURE

**17. Amendment of article 77 of the Constitution**

Article 77 of the Constitution is amended by substituting for clause (3) the following—

“(3) Subject to this Constitution, the term of Parliament shall be five years from the date of its first sitting after a general election.”

### 18. Amendment of article 80 of the Constitution

Article 80 of the Constitution is amended—

- (a) by substituting for paragraph (c) of clause (1) the following—

“(c) has completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law.”

- (b) by inserting at the end of clause (2) the following—

“(f) has, within the seven years immediately preceding the election, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

(g) has, within the seven years immediately preceding the election, been convicted by a competent court of an offence under any law relating to elections conducted by the Electoral Commission.”

- (c) by substituting for clause (3) the following—

“(3) Under the movement political system, a person elected to Parliament while he or she is a member of a local government council or holds a public office shall resign the office before assuming the office of a member of Parliament.”

- (d) by inserting immediately after clause (3) the following—

“(4) Under the multiparty political system, a public officer or a person employed in any government department or agency of the government or an employee of a local government or any body in which the government has controlling interest, who wishes to stand in a general election as a member of Parliament shall resign his or her office at least ninety days before nomination day.”

### **19. Amendment of article 81 of the Constitution**

Article 81 of the Constitution is amended by repealing clause (1).

### **20. Insertion of new article 82A**

Chapter Six of the Constitution is amended by inserting immediately after article 82 the following—

#### **“82A. Leader of the opposition**

(1) Under the multi organisations or multiparty form of democracy, there shall be, in Parliament, a leader of the opposition.

(2) Parliament shall, by law, prescribe the following in respect of the Leader of the Opposition—

- (a) how he or she is chosen and how he or she ceases to hold that office;
- (b) his or her status;
- (c) his or her role and functions; and
- (d) the benefits and privileges attached to his or her office.”

### **21. Amendment of article 84 of the Constitution**

Article 84 of the Constitution is amended by inserting immediately after clause (6) the following—

“(7) The right to recall a member of Parliament shall only exist while the movement political system is in operation.”

**22. Amendment of article 85 of the Constitution**

Article 85 of the Constitution is amended by substituting for clause (1) the following—

“(1) A member of Parliament shall be paid such emoluments, such gratuity and pension, and shall be provided with such facilities, as may be determined by Parliament.”

**23. Replacement of article 87 of the Constitution**

For article 87 of the Constitution, there is substituted the following—

**“87. Clerk to Parliament and other staff of Parliament**

(1) There shall be a public officer designated Clerk to Parliament appointed by the President acting in accordance with the advice of the Public Service Commission.

(2) There shall also be such other members of staff as may be necessary for the efficient discharge of the functions of Parliament.

(3) The other staff referred to in clause (2) shall be public officers who shall, notwithstanding articles 166 and 172, be appointed, disciplined and removed by the Parliamentary Commission subject to any law made by Parliament.

(4) The salary, emoluments and gratuity of the staff of Parliament shall be determined by Parliament subject to article 93 of this Constitution”.

**24. Insertion of new article 87A**

Chapter Six of the Constitution is amended by inserting immediately after article 87 the following—

**“87A. Parliamentary Commission**

There shall be a Commission called the Parliamentary Commission whose composition and functions shall be prescribed by Parliament by law.”

**25. Replacement of article 88 of the Constitution**

For article 88 of the Constitution there is substituted the following—

**“88. Quorum of Parliament**

(1) The quorum of Parliament shall be prescribed by the rules of procedure of Parliament made under article 94 of this Constitution.

(2) For the avoidance of doubt, the rules of procedure of Parliament may prescribe different quorums for different purposes.”

**26. Replacement of article 90 of Constitution**

For article 90 of the Constitution there is substituted the following—

**“90. Committees of Parliament**

(1) Parliament shall appoint committees necessary for the efficient discharge of its functions.

(2) Parliament shall, by its rules of procedure, prescribe the powers, composition and functions of its committees.

(3) In the exercise of their functions under this article, committees of Parliament—

(a) may call any Minister or any person holding public office and private individuals to submit memoranda or appear before them to give evidence;

(b) may co-opt any member of Parliament or employ qualified persons to assist them in the discharge of their functions;

(c) shall have the powers of the High Court for—

(i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

(ii) compelling the production of documents; and

- (ii) issuing a commission or request to examine witnesses abroad.”

PART VII —AMENDMENT OF CHAPTER SEVEN OF THE  
CONSTITUTION - THE EXECUTIVE

**27. Amendment of article 103 of the Constitution**

Article 103 of the Constitution is amended—

- (a) by substituting for clause (3) the following—

“(3) Apart from the election required to be held by clause (2) of article 61 of this Constitution, election of the President shall also be held in the following circumstances—

- (a) an election held under clause (6) of article 104 of this Constitution;
- (b) an election held under clause (3) of article 105 of this Constitution;
- (c) an election held under clause (2) of article 109 of this Constitution; and
- (d) an election necessitated by the fact that a normal presidential election could not be held as a result of the existence of a state of war or a state of emergency in which case, the election shall be held within such period as Parliament may, by law, prescribe.”

- (b) by inserting immediately after clause (6) the following—

“(6a) Notwithstanding the provisions of clauses (4) and (6) of this article, where, in a presidential election only one candidate is nominated, after the close of nominations, the Electoral Commission shall declare that candidate elected unopposed”.



**28. Amendment of article 105 of the Constitution**

Article 105 is amended by repealing clause (2) and substituting for it the following—

“(2) A person may be elected under this Constitution to hold office as President for one or more terms as prescribed by this article.”

**29. Amendment of article 108 of the Constitution**

Article 108 of the Constitution is amended by substituting for clause (6) the following—

“(6) Article 106 shall, subject to this Constitution, apply to the Vice President”.

**30. Insertion of new article 108A**

Chapter Seven of the Constitution is amended by inserting immediately after article 108, the following—

**“108A. Prime Minister**

(1) There shall be a Prime Minister who shall be appointed by the President with the approval of Parliament by simple majority from among members of Parliament or persons qualified to be elected members of Parliament.

(2) The Prime Minister shall—

(a) be the Leader of Government Business in Parliament and be responsible for the coordination and implementation of Government policies across ministries, departments and other public institutions; and

(b) perform such other functions as may be assigned to him or her by the President, or as may be, conferred on him or her by this Constitution or by law.

(3) The Prime Minister shall, in the performance of his or her functions, be individually accountable to the President and collectively responsible for any decision made by the Cabinet.

(4) The office of the Prime Minister shall become vacant if—

- (a) the appointment is revoked by the President;
- (b) the incumbent resigns or dies; or
- (c) the incumbent becomes disqualified to be a member of Parliament.

(5) The Prime Minister shall, before commencing to perform the functions of his or her office, take and subscribe the oath of allegiance and the oath of Prime Minister, specified in the Fourth Schedule to this Constitution.

(6) Clause (6) of article 108 applies to the Prime Minister with necessary modifications as it applies to the Vice President.”

### **31. Amendment of article 111 of the Constitution**

Article 111 is amended by substituting for clause (1) the following—

“(1) There shall be a Cabinet which shall consist of the President, the Vice President, the Prime Minister and such number of Ministers as may appear to the President to be reasonably necessary for the efficient running of the State.”

### **32. Insertion of new article 119A**

Chapter Seven of the Constitution is amended by inserting immediately after article 119, the following—

#### **“119A. Deputy Attorney General**

(1) There shall be a Deputy Attorney General who shall be a Minister appointed by the President under article 114 with the approval of Parliament.

(2) A person shall not be qualified to be appointed Deputy Attorney General unless he or she is qualified to practise as an advocate of the High Court and has so practiced or gained the necessary experience for not less than seven years.

(3) The Deputy Attorney General shall deputise for the Attorney General”.

PART VIII—AMENDMENT OF CHAPTER NINE OF THE  
CONSTITUTION—FINANCE

**33. Amendment of article 163 of the Constitution**

Article 163 of the Constitution is amended—

(a) in clause (1), by repealing the phrase “and whose office shall be a public office”;

(b) in clause (3), by inserting immediately after paragraph (b) the following—

“(c) in consultation with the Public Service Commission, employ and discipline his or her own staff;

(d) have power to engage private auditors to assist him or her in the performance of his or her functions.”; and

(c) by inserting immediately after clause (10) the following—

“(11) The Auditor General may retire at any time after attaining the age of 60 years, and shall vacate office on attaining the age of 70 years.

(12) The Auditor General shall vacate office if he or she is under a sentence of death or a sentence of imprisonment exceeding nine months without the option of a fine, imposed by a competent court.

(13) Any question for the removal of the Auditor General shall be referred to a tribunal appointed by the President, which shall submit its findings to the President; and the President may remove the Auditor General if the tribunal recommends that he or she should be removed on any of the grounds specified in clause (10).

(14) Where the question for removal of the Auditor General involves an allegation that the Auditor General is incapable of performing the functions of his or her office arising from infirmity of body or mind, the President shall, on the advice of the head of the Health Services of Uganda, appoint a medical board which shall investigate the matter and report its findings to the President with a copy to the tribunal.

(15) Where a tribunal is appointed by the President under clause (13) in respect of the Auditor General, the President shall suspend that Auditor General from performing the functions of his or her office.

(16) A suspension under clause (15) shall cease to have effect if the tribunal advises the President that the Auditor General suspended should not be removed.

(17) Parliament shall make laws to regulate and facilitate the performance of the functions of the Auditor General.”

PART IX—AMENDMENT OF CHAPTER TEN OF THE  
CONSTITUTION— THE PUBLIC SERVICE

**34. Insertion of new article 173A**

Chapter Ten of the Constitution is amended by inserting immediately after article 173 of the Constitution, the following—

**“173A. Head of the Public Service**

(1) There shall be a Head of the Public Service who shall be appointed by the President acting on the advice of the Public Service Commission.

(2) The functions of the Head of the Public Service are as follows—

- (a) tendering advice to the President on matters relating to the Public Service;
- (b) coordination of the activities of Permanent Secretaries;
- (c) supervision of the work of Permanent Secretaries;
- (d) serving as a link between the Executive and the Public Service;
- (e) serving as a link between Service Commissions;
- (f) ensuring the implementation of Cabinet and other Government decisions; and
- (g) any other duties assigned to him or her from time to time by the President.”

PART X—AMENDMENT OF CHAPTER ELEVEN OF THE  
CONSTITUTION—LOCAL GOVERNMENT

**35. Amendment of article 181 of the Constitution**

Article 181 of the Constitution is amended by substituting for clauses (4) and (5), the following—

“(4) All local government councils shall be elected every five years.

(5) Subject to article 61 of this Constitution, elections of all local government councils shall take place on such date as the Electoral Commission shall determine in accordance with the law.”

**36. Replacement of article 188 of the Constitution**

For article 188 of the Constitution, there is substituted the following—

**“188. Chief and Deputy Chief Administrative Officer**

(1) There shall be a Chief Administrative Officer and Deputy Chief Administrative Officer for every district.

(2) Notwithstanding articles 176(2) and (3) and 200 of this Constitution, the Public Service Commission shall appoint persons to hold or act in the office of Chief Administrative Officer and Deputy Chief Administrative Officer, including the confirmation of their appointments and the exercise of disciplinary control over such persons and their removal from office.

(3) Parliament shall by law establish the qualifications and functions of a Chief Administrative Officer and Deputy Chief Administrative Officer.”

**37. Amendment of article 191 of the Constitution**

Article 191 of the Constitution is amended in clause (2) by repealing the phrase “personal graduated tax”.

**38. Amendment of article 200 of the Constitution**

Article 200 of the Constitution is amended by inserting immediately after clause (3) the following—

“(4) Notwithstanding anything in this article or in articles 172 and 176(2) and (3) of this Constitution, the power to appoint persons to hold or act in the office of Town Clerk in the service of a city or a municipality, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove those persons from office is vested in the Public Service Commission.”

**39. Replacement of article 203 of the Constitution**

For article 203 of the Constitution there is substituted the following—