

ACTS SUPPLEMENT

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Act 16

Presidential Elections Act

2005

THE PRESIDENTIAL ELECTIONS ACT, 2005

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THE PRESIDENTIAL ELECTIONS ACT, 2005

An Act to provide for elections to the office of President; to repeal and replace the Presidential Elections Act; to provide for qualifications and disqualifications for candidates and the manner of establishing equivalent qualifications; to provide for the nomination, campaigning, polling procedure, counting and tallying and declaration of results of a presidential election and the procedure for challenging the results; and for other related matters.

DATE OF ASSENT: 16th November, 2005.

Date of commencement: 21st November, 2005.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.**1. Interpretation**

(1) In this Act, unless the context otherwise requires—

“agent” by reference to a candidate, includes a representative and polling agent of a candidate;

“aspirant” means a person intending to stand as a candidate during the election for the office of President;

- “authorised mark of choice” means the tick or mark authorised under section 31 to be applied to a ballot paper against the picture of a candidate of choice of a voter;
- “campaign period” means the period determined by the Commission under section 21 as the period during which campaigning may take place;
- “candidate” means a person duly nominated as a candidate for a presidential election under section 10;
- “Commission” means the Electoral Commission established by article 60 of the Constitution;
- “Commission Act” means the Electoral Commission Act;
- “constituency” means one of the constituencies into which Uganda is divided pursuant to article 63 of the Constitution for the purpose of elections;
- “currency point” means the value specified in relation to a currency point in the First Schedule;
- “district” means an electoral district;
- “election” means a presidential election;
- “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;
- “election petition” means a petition filed in accordance with section 59;
- “illegal practice” means an act declared to be an illegal practice under Part IX of this Act;
- “Minister” means the Minister responsible for presidential and parliamentary elections and referenda;

“money” includes a pecuniary reward;

“nomination day” means a day fixed to be nomination day under this Act;

“nomination paper” has the meaning assigned to it in section 10;

“office hours” means the hours on a week-day during which the relevant office is open to members of the public;

“parish” includes a ward;

“payment” includes a pecuniary or other reward;

“pecuniary reward” includes any office, place of employment, and valuable security or other equivalent for money and any valuable consideration;

“polling agent” means a person appointed by a candidate as a polling agent;

“polling day” means a day appointed to be polling day under this Act;

“presiding officer” means a person appointed under the Commission Act to be a presiding officer for a polling station;

“registered”, in relation to a voter, means registered for the purpose of voting at an election;

“registered voter” means a person whose name is entered on the voters` register;

“returning officer” means a returning officer appointed under the Commission Act;

“voter” means a person qualified to be registered as a voter at an election who is so registered and at the time of an election is not disqualified from voting;

“voters card” means a voter’s card issued under section 26 of the Commission Act to a voter whose name appears in the voters’ register;

“voters’ register” means the National Voters’ Register compiled under section 18 of the Commission Act;

“voters’ roll” means the voters’ roll for any constituency or parish prepared and maintained under the Commission Act.

(2) The Commission Act shall be construed as one with this Act.

**PART II—MODE OF ELECTION AND QUALIFICATIONS FOR
ELECTION OF PRESIDENT.**

2. Election of President

(1) The election of the President shall be by universal adult suffrage through a secret ballot using one ballot box for all candidates at each polling station.

(2) The election of the President shall, subject to article 61 of the Constitution, be held during the first thirty days of the last ninety days before the expiration of the term of the President.

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

(a) an election held under clause (6) of article 104 of the Constitution where a presidential election is annulled;

(b) an election held under clause (3) of article 105 of the Constitution where the office has become vacant by expiration of the term of the President or if the incumbent dies or resigns or ceases to hold office as President by removal under article 107 of the Constitution;

- (c) an election held under clause (2) of article 109 of the Constitution within six months after the death, resignation or removal of the President; 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 a period as Parliament may, by law, prescribe.

3. Aspirant consultations

(1) An aspirant may consult in preparation for his or her nomination as a presidential candidate within twelve months before the nomination date.

(2) While consulting under subsection (1), a presidential aspirant may—

- (a) carry out nation-wide consultations;
- (b) prepare his or her manifesto and other campaign materials;
- (c) raise funds for his or her campaign through lawful means;
- (d) convene meetings of national delegates.

(3) While consulting, the aspirant shall introduce himself or herself to the Commission and notify the relevant local council and the police of the area to which he or she goes.

4. Qualifications for candidates

(1) Subject to clause (7) of article 15 of the Constitution, a person is not qualified for election as President unless that person is—

- (a) a citizen of Uganda by birth;
- (b) not less than thirty-five years and not more than seventy-five years of age; and

(c) a person qualified to be a member of Parliament.

(2) The Commission shall request such evidence as it thinks necessary of the qualifications specified in subsection (1).

(3) For the purposes of subsection (1), a person is qualified to be a member of Parliament if that person—

(a) is a citizen of Uganda;

(b) is a registered voter; and

(c) has completed a minimum formal education of Advanced Level standard or its equivalent.

(4) A person is not qualified for election as a member of Parliament if that person—

(a) is of unsound mind;

(b) is holding or acting in an office the functions of which involve a responsibility for or in connection with the conduct of an election;

(c) is a traditional or cultural leader as defined in clause (6) of article 246 of the Constitution;

(d) has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged;

(e) is under a sentence of death or a sentence of imprisonment exceeding nine months imposed by any competent court without the option of a fine;

(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 for contravention of any law relating to elections conducted by the Commission.

(5) Under the movement political system, a person who is elected President while he or she is a member of a local government council or who holds a public office shall resign that office before assuming the office of President.

(6) 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 for election as President shall resign his or her office before nomination day.

(7) For the purposes of subsection (3)(c), any of the following persons wishing to stand for election as President shall establish his or her qualification with the Electoral Commission as a person holding a minimum qualification of Advanced level or its equivalent at least two months before nomination day, in the case of a normal presidential election, or where a presidential election is held otherwise than as a result of expiry of the term of the President, at least two weeks before nomination day—

- (a) persons, whether their qualification is obtained from Uganda or outside Uganda, who are claiming to have their qualification accepted as equivalent to advanced level education;
- (b) persons claiming to have advanced level qualifications obtained from outside Uganda;
- (c) persons claiming to have academic degrees which were obtained from outside Uganda.

(8) A person required to establish his or her qualification under subsection (7) shall do so by the production of a certificate issued to him or her by the National Council for Higher Education in consultation with the Uganda National Examinations Board.

(9) A person who claims to possess a qualification referred to in subsection 7(c) of this section shall, before the issue of the certificate prove to the satisfaction of the National Council for Higher Education that admission to that qualification was obtained on the basis of Advanced Level Standard of Education or its equivalent.

(10) The certificate issued under subsection (9) shall be in the form in the Second Schedule to this Act.

(11) A certificate issued by National Council for Higher Education under subsection (8) shall be sufficient in respect of any election for which the same qualification is required.

(12) A certificate issued by the National Council for Higher Education under any other enactment, to the same effect as a certificate required to be obtained under subsection (8) shall be sufficient for the purposes of subsection (3)(c).

(13) A person aggrieved by the grant or refusal to grant a certificate by the National Council for Higher Education under this section is entitled to appeal to the High Court against the decision and the High Court may confirm, modify or reverse the decision.

(14) The Chief Justice may, in consultation with the Attorney General make rules to regulate the procedure for appeals under subsection (14) and may for that purpose apply, with or without modifications, rules of court applicable to civil proceedings in the High Court.

(15) For the avoidance of doubt, if a candidate has an advanced level certificate obtained in Uganda or qualifications higher than the prescribed qualification obtained in Uganda or obtained from the former University of East Africa or any of its constituent colleges, then, there shall be no need for the verification of his or her qualifications by the National Council for Higher Education.

(16) The Electoral Commission shall not accept for the purpose of this section a statutory declaration or affidavit as evidence of an academic qualification required by this section.

(17) Under the movement political system, a person holding a public office, or a member of a Local Government Council or a Commission established under the Constitution, wishing to be a candidate shall apply for leave of absence at least sixty days before the expiry of the term of the President; except that in the case of an election taking place other than by reason of the normal expiry of the term of the President, the person shall apply for leave at least fourteen days before the nomination for the election.

(18) Where a person to whom subsection (17) applies wishes to be a candidate he or she shall, before proceeding on leave, relinquish any vehicle or office equipment in his or her custody belonging to his or her employer.

(19) For the purposes of enforcing this section the Commission shall, by writing require any candidate to state in writing the facilities ordinarily attached to any office held by that person to which subsection (18) applies or by virtue of that office; and the candidate shall comply with the requirement.

(20) Every employer to whom subsection (17) relates shall, upon receiving an application by an employee, grant to the employee leave of absence with pay, or where the employee has not earned leave, leave without pay, to seek nomination as a candidate and to be a candidate for election, and for such period as may be requested by the employee.

(21) In this section, "public service" and "public officer" have the meanings assigned to them by article 257 of the Constitution; and "public officer" shall for the avoidance of doubt, include an employee of any Commission established by the Constitution.

(22) This section applies with the necessary modifications, to an employee of a statutory corporation or of a company in which the Government owns a controlling interest as it applies to a public officer.

(23) Where any person intends to stand for election he or she shall not accept office as an election officer.

(24) A person to whom a certificate is issued under this section shall pay to the National Council for Higher Education a prescribed fee for the certificate.

5. Forgery of certificate of academic qualification

(1) A person who—

(a) forges a certificate purporting it to be issued by the National Council for Higher Education under section 4 or utters such a forged certificate; or

(b) forges any academic certificate for the purpose of nomination for any election under this Act or utters such a forged certificate, commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years or both.

(2) A court which convicts a person under this section shall sentence him or her to a fine not less than seventy two currency points or imprisonment not less than three years or both.

PART III—INFORMATION TO RETURNING OFFICERS
AND SECRECY.

6. Information to be given to returning officers

(1) Whenever it is considered necessary and, in any case, immediately after the date of an election is appointed, the Commission shall transmit to every returning officer—

(a) sufficient copies of this Act, and such instructions prepared by the Commission, as are required for the proper conduct of an election by the returning officer and to enable the returning officer to supply to each election officer a copy of those instructions as each election officer may need;

(b) copies of the voters roll for each polling station within the electoral district;

- (c) sufficient blank report books and other election materials; and
- (d) sufficient funds to cover all the expenses to be incurred by the returning officer in carrying out the electoral process.

(2) The Commission shall also transmit to each returning officer as soon as practicable after nomination days, a sufficient number of ballot papers for each constituency within the electoral district of the returning officer.

7. Secrecy required of election officers and others

(1) Every candidate, election officer, clerk, candidate's agent or other person in attendance at a polling station during the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and a candidate, officer, clerk, candidate's agent or other person shall not—

- (a) at the polling station, interfere with, or attempt to interfere with, a voter when marking the ballot paper, or otherwise attempt to obtain information with respect to the candidate for whom any voter is about to vote or has voted;
- (b) at any time, communicate any information with respect to the manner in which any ballot paper has been marked in his or her presence in the polling station;
- (c) at any time or place, directly or indirectly, induce or endeavour to induce any voter to show his or her ballot paper after he or she has marked it, so as to make known to any person the name of the candidate for or against whom the voter has cast his or her vote;
- (d) at a polling station, induce or endeavour to induce any voter to vote for a person other than the person of his or her choice;
- (e) at any time, communicate to any person any information obtained at a polling station with respect to the candidate for whom any voter at the polling station is about to vote or has voted; or

- (f) at the counting of the votes, attempt to obtain any information or communicate any information obtained at the counting with respect to the candidate for whom any vote is given in any particular ballot paper.
- (2) A candidate, election officer, candidates agent or other person on duty at a polling station shall not, except for a purpose authorised by law, communicate to any person any information as to—
- (a) the name of a voter who has or has not applied for a ballot paper or voted at a polling station; or
 - (b) the number on the voters register of a voter who has or has not applied for a ballot paper or voted at a polling station.
- (3) A person who has undertaken under section 38 to assist a blind, illiterate or other voter with disability to vote, shall not communicate at any time to another person information as to the candidate for whom the assisted voter intends to vote or has voted, or as to the number, if any, on the ballot paper given for the use of the voter.
- (4) A person shall, before assuming the duties of election officer, take and subscribe the oath in Form EO specified in the Sixth Schedule to this Act.
- (5) A person who contravenes subsection (1), (2) or (3), 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.
- (6) A election officer who, without lawful authority, reveals to any person any matter that has come to his or her knowledge or notice as a result of his or her appointment, 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.

PART IV—NOMINATION OF CANDIDATES FOR ELECTION
AS PRESIDENT.**8. Appointment of nomination days**

(1) The Commission shall issue a notice in the *Gazette* appointing two days during which the nomination of candidates are to take place indicating—

- (a) the places and times fixed for the nomination of candidates; and
- (b) the hours of each nomination day, during which nominations are to take place.

(2) Every place fixed under subsection (1) (a) for the nomination of candidates shall be a public place such as a court house, city or town hall, community centre or other public or private building in a central place.

(3) The hours to be indicated in accordance with subsection (1) (b) shall be from ten o'clock in the forenoon to four o'clock in the afternoon on each nomination day.

9. Sponsorship of candidates by political organisation or political party

Under the multiparty political system, nomination of candidates may be made by a registered political organisation or political party sponsoring a candidate or by a candidate standing for election as an independent candidate without being sponsored by a political organisation or political party.

10. Procedure of nomination

(1) A person shall not be a candidate in a presidential election unless—

- (a) that person submits to the Commission on or before the day appointed as nomination day in relation to the election, a document, in this Act referred to as a nomination paper, in the form specified in the Third Schedule to this Act, which is signed by that person, nominating him or her as a candidate; and

(b) the nomination is supported by not less than one hundred voters in each of at least two thirds of all the districts in Uganda.

(2) A candidate shall be proposed and seconded in the manner specified in the Third Schedule to this Act.

(3) Each candidate shall attach to his or her nomination paper a list of names of the registered voters required under subsection (1) (b); and each of those registered voters shall, append to that list his or her name, signature, physical address and voter registration number as specified in the Third Schedule.

(4) A person shall not subscribe to more than one nomination paper and no person shall give his or her support under subsection (3) to more than one candidate.

(5) A person who contravenes subsection (4) 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.

(6) The nomination paper shall be accompanied by—

(a) a declaration in the form specified in the Fourth Schedule to this Act;

(b) a non-refundable fee of four hundred currency points payable to the Uganda Administration in cash or bank draft; and

(c) three postcard size copies of a recent photograph of the proposed candidate; except that professional or occupational attire shall not be worn by the candidate in the photograph.

(7) Where under the multi party political system, a person is sponsored by a political organisation or political party, the nomination paper shall indicate that he or she is so sponsored, stating the name and address of the political organisation or political party.