

ACTS SUPPLEMENT

to The Uganda Gazette No. 74 Volume XCVIII dated 21st November, 2005.

Printed by UPPC, Entebbe, by Order of the Government.

Act 17

Parliamentary Elections Act

2005

THE PARLIAMENTARY ELECTIONS ACT, 2005.

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**THE PARLIAMENTARY ELECTIONS ACT, 2005**

**An Act to make provision for parliamentary elections and related matters in accordance with article 76 of the Constitution; to repeal and replace the Parliamentary Elections Act, 2001; to provide for qualifications and disqualification for election, the manner of establishing equivalent of advanced level, nomination, campaigning, polling, counting of votes, tallying and declaration of election results; to provide for petitions for challenging election results, election offences, parliamentary constituencies and tenure of office of members of Parliament; to make provision for parliamentary elections whether under the movement political system or under the multiparty political system; and to provide for other matters related to the foregoing.**

WHEREAS paragraph 11 (Democratic Principles) of the National Objectives and Directive Principles of State Policy of the Constitution, provides *inter alia* as follows—

- “(i) The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance;
- (ii) All the people of Uganda shall have access to leadership positions at all levels subject to the Constitution”;

AND WHEREAS clauses (3) and (4) of article 1 of the Constitution provide as follows—

“(3) All power and authority of Government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to be governed in accordance with this Constitution.

(4) The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda”;

DATE OF ASSENT: 16TH NOVEMBER, 2005.

*Date of commencement:* 21st November, 2005.

NOW THEREFORE, 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;

“authorised mark of choice” means the tick or mark authorised under section 30 to be applied to a ballot paper against or in the picture of a candidate of choice of a voter;

“campaign period” means the period determined by the Commission under section 20 as the period during which campaigning may take place;

“candidate” means a person nominated as a candidate for election as an elected member of parliament;

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

“Commission Act” means the Electoral Commission Act;

“constituency” means subject to section 101, one of the constituencies into which Uganda is divided under 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 to this Act;

“district” means an electoral district;

“election” means the election of a member of Parliament;

“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 60;

“illegal practice” means an act declared to be an illegal practice under Part XI 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;

“nomination paper” has the meaning assigned to it in section 11;

“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;
- “public officer” means a person holding or acting in any public office;
- “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;
- “Speaker” means the Speaker of Parliament;
- “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;
- “voter’s 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—PARLIAMENTARY ELECTIONS GENERALLY.

**2. Election of members of Parliament**

(1) A general election of members of Parliament shall be held in accordance with article 61 of the Constitution.

(2) Every person elected to Parliament shall take the oath of allegiance and the oath of a member of Parliament specified in the Fourth Schedule to the Constitution.

(3) Except for the purpose of taking the oaths referred to in subsection (2) of this section, no person shall sit or vote in Parliament before taking and subscribing the oaths.

**3. By-elections**

(1) Whenever a member of Parliament—

(a) dies; or

(b) where the seat of a member of Parliament becomes vacant under article 83 of the Constitution; or

(c) where the seat of a member becomes vacant under section 4, the Clerk to Parliament shall notify the Commission in writing within ten days after the vacancy has occurred; and a by-election shall, subject to section 95, be held within sixty days after the vacancy has occurred.

(2) A by-election shall not be held under this section within six months before the holding of a general election of members of Parliament.

PART III—QUALIFICATIONS, DISQUALIFICATIONS, TENURE OF OFFICE  
AND RIGHT OF RECALL.**4. Qualifications and disqualifications of members of Parliament**

(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.

(2) 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; or
- (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; or
- (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.

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

(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 for election as a member of Parliament shall—

- (a) in the case of a general election, resign his or her office at least ninety days before nomination day; and
- (b) in the case of a by election, resign his or her office at least fourteen days before nomination day.

(5) For the purposes of paragraph (c) of subsection (1), any of the following persons wishing to stand for election as a member of Parliament shall establish his or her qualification with the 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 general election, and two weeks in the case of a by election—

- (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 from outside Uganda;
- (c) persons claiming to have academic degrees which were obtained outside Uganda.

(6) A person required to establish his or her qualification under subsection (5) 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.

(7) A person who claims to possess a qualification referred to in sub-section (5)(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.

- (8) The certificate shall be in the form in the Second Schedule to this Act.
- (9) A certificate issued by National Council for Higher Education under subsection (6) shall be sufficient in respect of any election for which the same qualification is required.
- (10) 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 (6) shall be sufficient for the purposes of subsection (1)(c).
- (11) 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.
- (12) The Chief Justice may, in consultation with the Attorney General make rules to regulate the procedure for appeals under subsection (10) and may for that purpose apply, with or without modifications, rules of court applicable to civil proceedings in the High Court.
- (13) 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.
- (14) The Commission shall not accept for the purposes of this section a statutory declaration or affidavit as evidence of an academic qualification required by this section.
- (15) 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.

(16) Where a person to whom subsection (15) 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.

(17) 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 (15) applies or by virtue of that office; and the candidate shall comply with the requirement.

(18) Every employer to whom subsection (15) 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.

(19) 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.

(20) 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.

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

## **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 IV—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 require;
- (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 in any case not later than three days before the polling day.

#### **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 no candidate, officer, clerk, candidate's agent or other person shall—

- (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 the counting of the votes, attempt to ascertain the number on the counterfoil of any ballot paper;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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

(g) 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, candidate's agent or other person on duty at the polling station shall not, except for a purpose authorised by law, communicate to any person any information as to—

(a) the name of the 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 the 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 37 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 that voter.

(4) A person shall, before assuming the duties of election officer take and subscribe the oath in Form EO specified in the Second 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) An 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 to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.



## PART V—DISTRICT, CITY WOMEN REPRESENTATIVES AND SPECIAL INTEREST GROUPS.

**8. District or city women representatives and special interest groups**

(1) As required by article 78(1)(b) of the Constitution, there shall be one woman representative in Parliament for every district or city.

(2) There shall be the following representatives of special interest groups in Parliament for the purposes of article 78(1)(c) of the Constitution—

- (a) for the Uganda Peoples Defence Forces there shall be ten representatives at least two of whom shall be women;
- (b) for workers there shall be five representatives at least one of whom shall be a woman;
- (c) for the youth there shall be five representatives at least one of whom shall be a woman; and
- (d) for persons with disabilities, there shall be five representatives, at least one of whom shall be a woman.

(3) In accordance with article 78(2) of the Constitution, Parliament shall review the representation under article 78(1)(b) and (c) of the Constitution and may by resolution supported by not less than two thirds of all members of Parliament, retain, increase or abolish any such representation.

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

(a) in the case of the election of district women representatives—

- (i) the election shall be by secret ballot;
- (ii) the election shall be by universal adult suffrage;

- (iii) subject to the provisions of this Act, the election of district women representatives may be held on a different day from the day on which the general election of members of Parliament elected directly to represent constituencies under article 78(1)(a) of the Constitution is held;
  - (iv) separate ballot boxes shall be used in respect of the election of district women representatives from those used for the election of members of Parliament directly elected to represent constituencies;
  - (v) the provisions of this Act shall apply with the necessary modifications to the election of district women representatives as they apply to members directly elected to represent constituencies;
  - (b) the representatives of the Uganda People's Defence Forces shall be elected in a manner prescribed by regulations made by the Minister under section 100;
  - (c) 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;
  - (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 regulations made by the Minister under section 100.
- (5) Where a new district is created the following provisions shall apply to the election of district women representatives—