

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;

- (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);

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.

- (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.

- (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 -

- (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.

- (6) An election officer appointed by the Commission shall be present when the resolution for ratification of a Bill under this section is being voted on and shall record in the prescribed form a statement indicating the total membership of the district council, the names of members of the council, the number of members who voted in favour of the resolution and the number of members who voted against the resolution.
- (7) Notwithstanding subsection (2) of section 3, the question in a motion for a resolution to be submitted to district councils for ratification of a Bill under article 260(1)(b) of the Constitution shall be in the form specified in the Third Schedule to this Act.
- (8) The statement referred to in subsection (6) shall be certified by the presiding officer to be correct.
- (9) The Commission shall be responsible for bearing the expenses of the district council for the purpose of voting on ratification of a Bill under this section.
- (10) Any election officer who in carrying out any duty of recording the votes of a district council under this section -
 - (a) knowingly makes a statement which is false; or
 - (b) makes a statement in respect of which he or she is reckless, commits an offence.
- (11) 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.
- (12) The Commission shall, after tallying the results of voting on a Bill by the district councils under this section, if satisfied that the required number of resolutions have been passed in accordance with paragraph (b) of clause (1) of article 260 of the Constitution, certify to the Clerk to Parliament in the form specified in Part IX of the Second Schedule to the Acts of Parliament Act, that the Bill has been duly ratified by at least two thirds of the members of the district council in each of at least two thirds of all districts in Uganda.
- (13) If the Commission, after tallying the results of voting on a Bill by district councils under this section, is not satisfied that the Bill has been ratified in accordance with paragraph (b) of clause (1) of article 260 of the Constitution, the Commission shall certify to the Clerk to Parliament in the prescribed form, that it is not so satisfied and state the number of resolutions supported by two-thirds of the members of the district councils and those not so supported or the cases where no resolutions were passed under this section.

the authors' names and addresses, as the case may be, are set out at the end of the article, report, letter or other matter or, where part only of the article, report, letter or matter appears in any issue of a newspaper, circular or pamphlet, at the end of that part.

- (4) Subject to the following provisions of this section, an agent may use electronic media for canvassing.
- (5) A person shall not, during canvassing, do any of the following acts against another side or their agent -
 - (a) knowingly making statements which are false or making statements in respect of which the maker is reckless;
 - (b) making malicious statements;
 - (c) making statements containing sectarian words;
 - (d) making abusive, insulting or derogatory statements;
 - (e) making exaggerations using caricatures of the agent or using words of ridicule;
 - (f) using derisive or mudslinging words against a side or their agent; or
 - (g) using songs, poems or images with any of the effects described in the foregoing paragraphs.
- (6) A proprietor or operator of electronic media shall not knowingly use the media or allow it to be used to do any of the acts prohibited in subsection (5).
- (7) A person who contravenes any of the provisions of subsections (2), (3), (5) and (6) commits an offence and is liable on conviction -
 - (a) in the case of an offence under subsection (2) or (3), to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both; and
 - (b) in any other case to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.
- (8) In this section "electronic media" includes television, radio, internet and email and any other similar medium.

PART VI - CHALLENGING RESULTS OF REFERENDA

24. Challenging results of referenda

- (1) Any registered voter supported by the signatures of not less than two percent of the total number of registered voters in Uganda may petition the High Court challenging the results of a referendum.

- (b) but for the non-compliance, the majority of the votes in the referendum could have been in favour of a side different from the side declared as the side with the majority by the Commission.
- (11) A petition under subsection (1) shall be in the prescribed form and shall be lodged in the High Court registry within thirty days after the referendum results are published in the *Gazette*.
- (12) The High Court may require the petitioner to deposit an amount of money as security for costs not being more than one hundred currency points.
- (13) The High Court shall inquire into and determine the petition expeditiously and may for that purpose, suspend any other matter pending before it.
- (14) The High Court shall declare its findings not later than thirty days from the date on which the petition is filed.
- (15) Where no petition is filed within the time prescribed under subsection (11), or where a petition having been filed, is withdrawn by the person who filed it or is dismissed by the High Court, the declared results of the referendum shall conclusively be the final results of the referendum.
- (16) After due inquiry under this section the High Court may -
- (a) dismiss the petition;
 - (b) declare the published results to be incorrect and declare the correct results;
 - (c) order the Commission to repeat the polling in any particular place or places; or
 - (d) annul the referendum and order a new referendum to be held.
- (17) Subject to subsection (4), a referendum may only be annulled on the ground specified in subsection (9).
- (18) The High Court may, before coming to a decision under subsection (16), order a recount of the votes cast.
- (19) Nothing in this section confers on the High Court power to convict a person of a criminal offence when hearing a petition under this section.
- (20) Where it appears to the High Court, on hearing a petition under this section that the facts before it disclose that a criminal offence may have been committed, it shall make a report on the matter to the Director of Public Prosecutions for appropriate action to be taken and shall state in the report the name of the person,

- (3) Unless the Court of Appeal extends the time on exceptional grounds, the hearing of an appeal by the court shall be completed within thirty days from the lodging of the record of appeal.
- (4) A person aggrieved by a decision of the Court of Appeal under this section may appeal to the Supreme Court against the decision within fourteen days after the decision.
- (5) Subsections (2) and (3) apply to the Supreme Court as they apply to the Court of Appeal.

PART VII - MISCELLANEOUS

28. Prohibition of ethnic or religious symbols etc

- (1) A person shall not, for canvassing in respect of a referendum, use any words, slogans or symbols which could arouse division on the basis of sex, race, colour, ethnic origin, tribe, birth, creed or religion or other similar division.
- (2) Any 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.

29. Expenses of referenda

- (1) The expenses incurred by the Commission in the holding of any referendum under this Act shall be paid out of monies voted by Parliament.
- (2) The Commission shall give equal facilitation to all sides for the purposes of a referendum, out of monies approved by Parliament.

30. Use of public resources

Except as authorised by section 29 or any other law, no person shall use public resources for the purpose of canvassing for any side in a referendum.

31. Regulations

- (1) The Minister may, by statutory instrument, make such regulations as may be necessary for carrying into effect the provisions of this Act.
- (2) Without prejudice to the general effect of subsection (1), regulations may be made under that subsection -
 - (a) prescribing forms to be used for the purposes of this Act;
 - (b) to ensure the secrecy of the voting;
 - (c) applying with or without modifications, the provisions of any enactment relating to elections, including any provisions relating to election offences;

SECOND SCHEDULE

QUESTION FOR APPROVAL OF A BILL BY REFERENDUM UNDER ARTICLE 259 OF
THE CONSTITUTION

SECTION 14(3)

“In this Bill for an Act of Parliament entitled, which is now before you, Parliament has amended the following provisions of the 1995 Constitution of the Republic of Uganda, among other provisions of the Constitution -

.....

Do you approve this Bill, Yes/No?

THIRD SCHEDULE

QUESTION FOR RATIFICATION OF A BILL BY MEMBERS OF DISTRICT COUNCILS
UNDER ARTICLE 260 OF THE CONSTITUTION

Section 20(7)

“In this Bill for an Act of Parliament entitled, which is now before you, Parliament has amended the following provisions of the 1995 Constitution of the Republic of Uganda, among other provisions of the Constitution -

.....

Do you ratify this Bill, Yes/No?

Cross References

Constitution

Acts of Parliament Act, Cap.2

Electoral Commission Act, Cap.140

Other Political Systems Act, Cap.262

Parliamentary Elections Act, 2001, Act No. 8 of 2001