



PARLIAMENT OF UGANDA

REPORT OF THE COMMITTEE ON DEFENCE AND INTERNAL AFFAIRS ON THE EXPLOSIVES BILL, 2023

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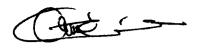
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Office of the Clerk to Parliament P.O.Box 7178, Kampala, OCTOBER, 2023

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1 INTRODUCTION

The *Explosives Bill 2023* was read for the first time on Tuesday, 15th August 2023 and was referred to the Committee on Defence and Internal Affairs under Rule 129 of the Rules of Procedure for consideration and report back. Upon the expiry of the forty-five days due to recess, Parliament, on Tuesday, 3rd October 2023, granted an extension of three weeks for the Committee to conclude the review of the Bill.

The Committee has considered the Bill in consultation with various stakeholders and now reports under Rule 129 of the Rules of Procedure.

2 BACKGROUND TO THE EXPLOSIVES BILL, 2023.

The Explosives Act Cap 298 was enacted in 1936 to regulate the manufacture, storage, sale, transportation, importation, exportation and use of explosives in Uganda. Since its enactment in 1936, the Explosives Act has not undergone significant reforms to update it to the prevailing circumstances and developments that have affected its implementation. For example, technological developments have changed the substances and products for which the Explosives Act was intended to regulate. This has created a gap and left some explosives that do not fall within the ambit of the current law unregulated.

In 2018, the Uganda Law Reform Commission conducted a study review of the Explosives Act Cap. 298 to ensure a balanced approach in managing the safety of explosives and security risks, investigate the best practices in the regulation of explosives, and explore the challenges faced implementing the Act and device mechanisms suitable for the regulation of explosives generally². Essentially, the review was done to respond to the economic, social, security and technological developments³ in the explosives industry and use.

¹ Ministry of Defence and Veteran Affairs

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² Uganda Law Reform Commission review of the Explosives Act, Cap. 298



3 OBJECT OF THE BILL

The Bill seeks to-

- (a) Repeal the Explosives Act, Cap. 298;
- (b) Provide for the establishment of a National Explosives Committee and the designation of the Chief Explosives Inspector;
- (c) Provide for restrictions on the manufacture, storage, use, dealing, import, export and transportation of explosives;
- (d) Provide for the appointment of the explosives inspectors;
- (e) Provide for safety and precaution measures in the use and handling of explosives and related matters.

4 THE DEFECTS IN THE EXISTING LAW.

The Explosives Act Cap 298 was enacted in 1936 to regulate the manufacture, storage, sale, transportation, importation, exportation and use of explosives in Uganda. However, the Act has not been amended to address technological developments in using, storing and manufacturing of explosives. Currently, the misuse of explosives is primarily caused by the inadequate provisions in the Explosives Act Cap. 298, which poses a security threat to the country.

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The absence of major reforms in the existing law on explosives has made it difficult to regulate the use, storage and manufacture of explosives, resulting in unauthorized access to explosives.

5 METHODOLOGY

During the consideration of the Bill, the office of the Clerk to Parliament ran adverts in the New Vision on Monday, 4th September 2023, and the Daily Monitor on Tuesday, 5th September 2023 (Appendix A), inviting the public to submit views and written memoranda on the Explosives Bill, 2023. Additionally, the Committee met with and received written

memoranda from the following;

i. Ministry of Internal Affairs (MIA)

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- ii. Ministry of Defence and Veteran Affairs (MoDVA)
- iii. Ministry of Energy and Mineral Development (MoEMD)
- iv. Uganda Revenue Authority (URA)
- v. Uganda Law Reform Commission (ULRC)
- vi. National Enterprise Corporation (NEC)
- vii. Atomic Energy Council (AEC)
- viii. Kilembe Mines Limited
- ix. Uganda Hotel Owners Association (UHOA)

The Committee received and reviewed written memoranda from;

- i. Uganda National Roads Authority (UNRA)
- ii. Fireworks Dealers Association

5.1 Document Review

The Committee referred to the following documents.

- i. The Constitution of the Republic of Uganda, 1995
- ii. The Uganda People's Defense Forces Act Cap. 205
- iii. The Police Act Cap. 303
- iv. Decided cases in Uganda
- v. UBOS reports
- vi. Halsbury's Laws of England (4th edition) volume 34
- vii. NEMA Environmental Impact Assessment (EIA) Study Report

International instruments.

- i. The Explosive Substances of the International Labour Organisation
- ii. Charter of United Nations

6 SALIENT OBSERVATIONS ON THE BILL

The Ministry of Defence and Internal Affairs informed the Committee that an explosive is a substance that, when subjected to stimuli, undergoes a violent chemical decomposition with the evolution of heat and gas. The

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Committee established that Chapter 15 of the Explosive⁴ Substances of the International Labour Organisation (ILO)⁵ defines an explosive as a solid or liquid substance (or mixture of substances) which in itself is capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

The Committee established that explosives are susceptible materials easily ignited by small heat, impact, friction and electrostatic stimuli. MoDVA further informed the Committee that these Commercial explosives are used extensively in construction, mining, petroleum exploration and the entertainment industry. However, because of their intrinsic flammable and explosive nature, they have potential safety risks in production, transportation, storage and use. The Committee has studied the Bill and makes specific and salient observations on the Explosives Bill, 2023, as enumerated below.

6.1 Interpretation Clause.

Clause 2 of the Bill is the interpretation Clause, and it defines some of the significant words used in the Act. However, the Committee noted that some words need more elaboration for clarity. At the same time, in other instances, there is a need to insert some other terms used in the Bill for interpretation purposes. For example, the Bill refers to "explosives factory", and "mental illness" in the various provisions in the Bill, yet these are not defined under the interpretation Clause.

Recommendation

⁴ The use of the word "explosive" has different meanings and interpretations. It is commonly understood to mean substances or articles in Class 1 of the Scheme of the UN Recommendations on the Transport of Dangerous goods

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⁵ https://www.ilo.org/static/english/protection/safework/ghs/ghsfinal/ghsc1528.pdf

Primary Explosives (N. Mehta et al., 2014), wiley online library



The Committee, therefore, recommends that the interpretation Clause should be amended to have the definition of the "manufacturing plant" and "mental illness".

6.2 Application of the Act.

The Committee observed that the Bill is intended to make the Act applicable to the authorized explosives used for commercial purposes, mining, construction and entertainment. However, under Clause 3 (b), the Bill creates exceptions for the application of the Act on the importation, exportation, storage, use, manufacture or transportation of explosives by a Defence force or Police force of any country or any multinational or international Defence force or Policing agency used in warfare.

The Committee finds that this provision poses a high risk to the security of the public and the country. Instead, the Committee posits that the importation, exportation, storage, use and transportation of explosives across international borders should be highly regulated and controlled to ensure the safety and security of all parties involved. Countries have the inherent right to individual or collective self-defense as enshrined in Article 52 of the Charter of the United Nations?

The Committee opines that in the spirit of territorial sovereignty, respective countries should have their regulations and procedures for transporting dangerous goods for warfare, including explosives, and, in our case, the Uganda People's Defence Forces (UPDF) Act and Uganda

Police Act takes care of this.

Recommendation.

² See United Nations Charter

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However, it is worth noting that the government of Uganda has implemented significant economic reforms, including liberalization of the economy since 1987. Article 40(2) of the Constitution allows every person in Uganda to practice their profession and to carry on any lawful occupation, trade or business. Therefore, the Committee construes the provision in Clause 14 to be economically restrictive on Ugandan investors whose individual enjoyment of economic rights will be infringed upon. The requirement under Clause 14 seems to dictate the majority shareholding of explosive manufacturing plants under ownership of government, regardless of whether a private investor is unwilling to partner with government.

The Committee believes that this arrangement will create monopoly for government in the manufacture of explosives, which would lock out private investors. Should the government not have priority to invest in an explosive manufacturing plant, the interested private investor wouldn't set up the factory. The Committee, therefore, posits that the role of government is to keep an oversight role on the manufacture of explosives and put reasonable conditions for those interested in the manufacture of

explosives to abide with.

Recommendation

The Committee, therefore recommends that;

Clause 14 should be amended to grant the Minister the discretion to determine the Government participating interest at the time of licensing instead of prescribing the quantum of government participation as propo

1.1 Regulation of blasting activities.

The Committee established that blasting vibrations have long been associated with quarrying. Blasting to break rock from the ground necessitates the use of explosives that generate blast vibrations required



to break rock from the ground8. In Uganda, the quarrying business has been steadily developing; in 2010/2011, it registered a 15.8% increase.9 Quarries contribute to the economy of any developing country, and their management requires a suitability assessment and restoration policy to reduce the impact of this important economic activity on the environment¹⁰. The potential effects of blasting quarrying activities¹¹ include noise, vibration, dust, water amount and quality, lowering of the water table, and effects on the natural heritage, cultural heritage, landscape, traffic and waste materials.

The Committee opines that explosive blasting operations may, in a way, affect the local population both positively and negatively. On the one hand, they may create jobs (i.e., quarrying) and prosperity for the local people, but on the other hand, they may pose risk, danger and environmental issues. As such, the Committee deems it necessary to impose critical requirements on the person who uses explosives and blasting materials

Recommendations

The Committee, therefore, proposes a provision to cover the business of quarry blasting explosives and spell out under what conditions should a blasting of explosives be conducted.

5.5 Duty of care and compensation.

British Geological survey, quarrying and the environment at https://www2.bgs.ac.uk/mendips/aggregates/environment/blasting.html

⁹ Uganda Bureau of Statistics. Report on the Census of Business Establishments 2010/2011. Dec 2011. Page

http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2010%20COBE%20Report.pdf

¹⁰ Environmental impact of quarries on natural resources in Lebanon (Darwish et al., 2010)

[&]quot;Environmental Impact Assessment (EIA) Study Report for the proposed Aggregate Quarry at Kaputier area, Kajiado County - 2019



The Committee observed that the management and control of explosives require particular attention to the safety and protection of life. Whereas Clause 41 imposes the duty of care and penalties for explosives misuse on any person conducting activities involving explosives, there is no provision for compensation to the affected party. The Committee deems it prudent that the affected person or community members who suffer a loss due to recklessness and negligence should be compensated by the person responsible for such a loss. This is espoused in Mukwasi General Contractors Ltd v Living Words Assembly Limited & 2 Ors (Civil Suit No. 230 of 2013), where in the High Court considered the scholars for guidance and cited that-

According G V Odunga in his book Odunga's Digest on Civil Case Law and Procedure Volume 8 pg 5889 - 5890 while citing Sarova Hotels v Annabells Kenya Limited [1991] KLR 266 (Pall, J on 10

April 1991) states that:

"... a person who disturbs another person in his legitimate enjoyment of his property cannot justify that disturbance as being the natural result of the exercise of his own rights of enjoyment if he exercises his rights in an excessive and extravagant manner. See Halsbury's Laws of England (4th edition) volume 34, paragraph 323

The Act complained of is an inconvenience if it materially interferes with the ordinary physical comfort of human existence not merely according to elegant or dainty modes and habits of living but according to plain and sober and simple notions obtaining among the people." See Halsbury's Laws of

England (4th edition) volume 34, paragraph 324/

Therefore, the actions, whether by an individual, state organs or multiinternational organizations, that affect the quiet enjoyment of someone's rights in property, need to be remodified by compensation. Exempting



any organization whose actions are likely to affect the common person is to endanger the local person without a recourse.

Recommendation:

The Committee, therefore, recommends that upon conviction by court, compensation of affected parties for reckless and negligent use of explosives be provided in the Bill.

7 CONCLUSION

The repeal of the Explosive Act Cap 298 was overdue. However, the Bill introduced requires critical consideration so that the standards already set by the current Act are improved to address the emerging challenges. The Committee reviewed the Bill and made proposals deemed fit to achieve the set objectives.

The Committee recommends that the Bill be considered for second reading subject to the proposed amendments attached hereto and any other modifications the House may propose and approve.

I beg to report.

8 PROPOSED AMENDMENTS TO THE EXPLOSIVES BILL, 2023

CLAUSE 2: INTERPRETATION

Clause 2 is amended:

- (a)In the definition of the word "explosive" by substituting for paragraph (a) the following;
- "(a) a substance, or a mixture of substances, in a solid, liquid or gaseous state which is capable of producing an explosion;"
- (b) by inserting the following definitions in their appropriate order— "explosives factory" means premises licensed to manufacture authorised explosives under section 14;

"explosive shop" means premises licensed for dealing or trading in authorised explosives under section 20:

"mental illness" has the meaning assigned to it under the Mental Health Act, 2018;

Justification

- The definition of explosives is amended to cater for all states that an explosive may appear.
- The Bill provides restrictions in establishing an explosives factory, yet it does not define what amounts to an establishment known as explosives factory.
- To provide a working definition for the phrase explosives shop.
- \square The substitution of the words "unsound mind" with "mental illness" is to conform to the Mental Health Act, 2018.

CLAUSE 3: APPLICATION

Clause 3 is amended by substituting for sub-clause (2), the following—

"(2) For the avoidance of doubt, this Act does not apply to the exportation, storage, manufacture transportation of explosives used in warfare by a security agency in execution of its mandate conferred by an Act of

Parliament."

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Justification

- To empower security agencies to import, export, store, manufacture or transport explosives used in warfare.
- □ Sub-clause 2(b) is proposed for deletion since it is redundant aware that the importation, exportation, use, manufacture or transportation of explosives by multinational or international defence forces or policing agencies is governed by international law.

CLAUSE 8: REMOVAL OF MEMBER OF THE COMMITTEE

Clause 8 is amended in sub-clause (2)—

- (a) by inserting immediately after the word "Minister" the words "on recommendation of the Committee"; and
- (b) by substituting for paragraphs (a) and (c), the following
 - "(a) is suffering from a mental illness which renders him or her incapable of performing the duties of his or her office;
 - (c) declared bankrupt;"

Justification

- ☐ To conform the provision to the Mental Health Act, 2018 that substituted the use of the words "unsound mind" with "mental illness"
- [] To harmonize the provision with the insolvency Act, 2011

CLAUSE 12: POWER OF CHIEF EXPLOSIVES INSPECTOR

Clause 12 is amended by inserting immediately after sub-clause (1), the following—

"Where the Chief Explosives Inspector exercises any of the powers under subsection (1), the Chief Explosives Inspector shall, within five days, file a report to the committee."

Justification

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• To enable the committee effectively supervise the exercise of the powers by the Chief Explosives Inspector.

INSERTION OF NEW CLAUSE

Insert immediately after clause 12, the following-

"Vacation of office by Chief Explosives Inspector

- (1) The Chief Explosives Inspector may resign his or her office in writing under his or her hand addressed to the Minister and the resignation shall take effect from the date of receipt of the letter of resignation by the Minister.
- (2) The Chief Explosives Inspector may be removed from office by the Minister if he or she—
 - (a) is suffering from a mental illness which renders him or incapable of performing the duties of his or her office;
 - (b) is declared bankrupt;
 - (c) is convicted of an offence involving fraud or dishonesty; or
 - (d) is convicted of an offence punishable by more than three months' imprisonment.

Justification

 To make provision for the vacation from office by the Chief Explosives Inspector.

CLAUSE 14: ESTABLISHMENT OF EXPLOSIVE FACTORY

Clause 14 is amended—

- (a) by deleting the words "manufacturing plant" and thereafter, wherever the words appear in the Bill; and
- (b) by substituting for sub clause (2) the following-

" (2) A person shall not be licensed to establish or operate an explosive factory unless the person has granted to Government a participating interest in the explosives plant, as the Minister may, by statutory instrument prescribe".

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Justification

- ☐ The deletion of the words "manufacturing plant" is to achieve clarity since the term explosive factory includes a manufacturing plant.
- ☐ To grant the Minister discretion to determine the Government participating interest at the time of licensing instead of prescribing the quantum of Government participation as proposed in the Bill.

CLAUSE 15: APPLICATION FOR A LICENCE TO ESTABLISH EXPLOSIVE FACTORY

Clause 15 is amended in sub-clause (2), by substituting for paragraph (c), the following—

"proof of payment of fees;"

Justification

☐ To require the applicant to pay fees and attach evidence of payment to accompany the application.

CLAUSE 17: APPLICATION FOR A LICENCE TO MANUFACTURE EXPLOSIVES

Clause 17 is amended in sub-clause (2), by substituting for paragraph (c), the following—

"proof of payment of fees;"

Justification

To require the applicant to pay fees and attach evidence of payment to accompany the application.

CLAUSE 18: ESTABLISHING OF EXPLOSIVES MAGAZINE

Clause 18 is amended in sub-clause (3) by substituting for the words "fifty thousand currency points", the words five hundred thousand currency points"

Justification

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☐ To make the provision more deterrent since the storage, establishment or operation of an explosives magazine in contravention of safety standards poses a danger to the public.

CLAUSE 19: APPLICATION FOR LICENSE TO ESTABLISH EXPLOSIVES MAGAZINE

Clause 19 is amended in sub clause (2), by substituting for paragraph (b), the following—

"proof of payment of fees;"

Justification

☐ To require the applicant to pay fees and attach evidence of payment to accompany the application.

CLAUSE 20: DEALING IN AUTHORISED EXPLOSIVES

Clause 20 is amended in sub-clause (2), by substituting for paragraph (c), the following—

"proof of payment of fees;"

Justification

☐ To require the applicant to pay fees and attach evidence of payment to accompany the application.

CLAUSE 24: REFUSAL TO GRANT A LICENCE

Clause 24 is amended—

- (a) In sub Clause (1), by substituting for the words "a fit and proper person", the words "suitable"; and
- (b) by inserting immediately after sub-clause (2), the following—
 "A person aggrieved by the decision of the Minister may, within thirty days from the date of receipt of the decision, seek redress from the court of competent jurisdiction."

Justification

To achieve consistency in the use of the word "suitable".

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• To provide for the remedy to the applicant when the Minister refuses to grant the licence

CLAUSE 28: PROHIBITION OF POSSESSION OR USE EXPLOSIVES

Clause 28 is amended in sub-clause (3) by substituting for the words "fifty thousand currency points", the words "five hundred thousand currency points".

Justification

• To make the provision more deterrent since the possession, use, dealing or sale of explosives without a license or permit has potential to endanger the public.

CLAUSE 29: APPLICATION FOR PERMIT TO POSSESS OR USE EXPLOSIVES

Clause 29 is amended in sub-clause (3), by substituting for paragraph (d), the following—

"proof of payment of fees;"

Justification

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☐ To require the applicant to pay fees and attach evidence of payment to accompany the application.

CLAUSE 31: PROHIBITION OF IMPORT AND EXPORT EXPLOSIVES

Clause 31 is amended —

- (a) in sub-clauses (1) and (2), by substituting for the word "qualified", the word "suitable"; and
- (b) by substituting for the words "Chief Explosives Inspector", wherever the words appear in the provision, the word "Minister".

Justification

- ☐ To harmonize clause 31 with clauses 4, 16 and 20 which recognise that the Minister is the licensing authority for the manufacture, import and export of explosives and not the Chief Explosives Inspector as proposed in clause 31.
- ☐ To require, in accordance with clause 16, that a person who manufactures explosives must be licensed by the Minister.

CLAUSE 32: APPLICATION FOR IMPORT OR EXPORT PERMIT

Clause 32 is amended in sub-clauses (1) and (2) by substituting for the words "Chief Explosives Inspector", the word "Minister".

Justification

☐ To harmonize clause 4, 16 and 20 which all recognise that the Minister is the licensing authority for the manufacture, import and export of explosives and not the Chief Explosives Inspector as proposed.

CLAUSE 35: BLASTING OF EXPLOSIVES

Clause 35 is substituted with the following-

"35. Blasting of Explosives

A person shall not use explosives or a blasting material for purposes of blasting explosives unless the person has undergone training in a recognized institution and is in possession of—

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III blasting	permit	issued	by	the	Chief	Explosives
Inspector; or						

Ima blasting certificate issued by the Chief Explosives Inspector.

- III A permit issued under subsection (I) shall not be transferable to another person.
- The Minister shall, by statutory instrument, prescribe the procedures and requirements necessary for the grant of a blasting certificate and the issuance of a blasting permit.
- The Chief Explosives Inspector may, with the approval of the committee, issue guidelines and procedures for the blasting of explosives in order to ensure safety and security.
- III A person who contravenes subsection (I) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand currency points or to imprisonment for a term not exceeding ten years, or both.

Justification

- ☐ To merge clauses 35 and 37 since they relate to the same subject matter.
- To require a person to undergone training by a recognized institution and to possess either a blasting permit blasting or blasting certificate before blasting explosives.

CLAUSE 37: BLASTING PERMITS

Delete clause 37

Justification

☐ Consequential amendment arising from the merger of clause 35 with clause 37 since they relate to the same subject matter.

CLAUSE 41: DUTY OF CARE

Clause 41 is amended by inserting immediately after clause 12

following —

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"Court may, in addition to the penalty imposed under subsection (2), order the person convicted, to pay compensation to the victim."

Justification

The management, use and control of explosives require extra care and attention to the safety, protection of life and property. The bill makes it an offence for any person to cause an explosion by which life or property is endangered. However, duty of care is a tortious act that calls for civil obligation in which the breach calls for compensation or reinstating the person who has incurred loss in his or her former status, punishing a person who has breached the duty of care leaves the victims without appropriate remedy, the proposed amendment is intended to reinstitute the person who has suffered loss in his or her original state due to negligence of the user or possessor of explosives.

AMENDMENT OF SCHEDULE 2

Schedule 2 is amended by substituting paragraph 12 the following; "12. Nitrogen Based Compound Explosives".

Justification.

For clarity as to the name of the authorised explosive.

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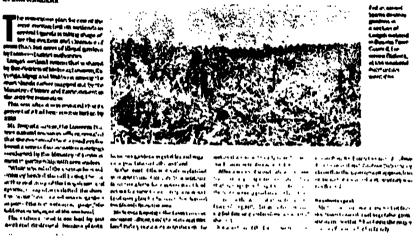


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COMPOSITION OF THE COMMITTEE ON DEFENCE AND INTERNAL AFFAIRS, $3^{\rm RD}$ SESSION, $11^{\rm TH}$ PARLIAMENT

No	Name	Constituency	Party	Signature
1	Hon. Wilson Kajwengye-C/P	Nyabushozi	NRM	10 the ask
2	Hon. Ngompek Linos-D/CP	Kibanda North	NRM	1000
3	Hon. Namanya Naboth	Rubabo	FDC	C.
4	Hon. Okot Moses Junior Biteke	Kioga	FDC	THE
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8	Hon. Arinaitwe Rauben	Isingiro West-Isingiro	Ind	Auris &
9	Hon. Museveni William	Buwekula South-Mubende	Ind	(Amor
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11	Hon. Wakooli Godfrey	Buiiru County	NRM	Jamp 9 level
12	Hon. Okeyoh Peter	Bukooli	NRM	Menn,
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15	Hon. Ssekikubo Theodore	Lwemiyanga	NRM	
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17	Hon. Kauma Sauda	DWR-Iganga	NRM	A)
18	Hon. Niyonsaba Alex	Bufumbira South	NRM	Alembrica C
19	Hon. Mugabe Donozio Kahonda	Ruhinda South	NRM	
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21	Hon. Kintu Alex Brandon	Kagoma North	NRM	Alia
22	Hon. Lokii Peter Abrahams	Jie County	NRM	2426
23	Hon. Nyamutoro Phiona	National Female Youth	NRM	(-V-1-)
24	Hon. Ssebikaali Yoweri	Ntwetwe	NRM	
25	Hon. Aeku Patrick	Soroti County	NRM	Maria.
26	Hon. Katabaazi Francis K	Kalungu East	NUP	Mapai)
27	Hon. Kiwanuka Abdallah	Mukono County North	NUP	
28	Hon. Nambooze Betty Bakireke	Mukono Municipality	NUP	West /
29	Hon. Odur Jonathan	Erute South	UPC	
30	Hon. Lt. Gen. Elwelu Peter	UPDF		