



PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE PARLIAMENTARY ELECTIONS (AMENDMENT) BILL, 2019

OFFICE OF THE CLERK TO PARLIAMENT,
PARLIAMENT BUILDINGS, KAMPALA.
December, 2019.

Handwritten signatures and initials:
Hababara
Hale
A
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V
W
X
Y
Z
AA
AB
AC
AD
AE
AF
AG
AH
AI
AJ
AK
AL
AM
AN
AO
AP
AQ
AR
AS
AT
AU
AV
AW
AX
AY
AZ
BA
BB
BC
BD
BE
BF
BG
BH
BI
BJ
BK
BL
BM
BN
BO
BP
BQ
BR
BS
BT
BU
BV
BW
BX
BY
BZ
CA
CB
CC
CD
CE
CF
CG
CH
CI
CJ
CK
CL
CM
CN
CO
CP
CQ
CR
CS
CT
CU
CV
CW
CX
CY
CZ
DA
DB
DC
DD
DE
DF
DG
DH
DI
DJ
DK
DL
DM
DN
DO
DP
DQ
DR
DS
DT
DU
DV
DW
DX
DY
DZ
EA
EB
EC
ED
EE
EF
EG
EH
EI
EJ
EK
EL
EM
EN
EO
EP
EQ
ER
ES
ET
EU
EV
EW
EX
EY
EZ
FA
FB
FC
FD
FE
FF
FG
FH
FI
FJ
FK
FL
FM
FN
FO
FP
FQ
FR
FS
FT
FU
FV
FW
FX
FY
FZ
GA
GB
GC
GD
GE
GF
GG
GH
GI
GJ
GK
GL
GM
GN
GO
GP
GQ
GR
GS
GT
GU
GV
GW
GX
GY
GZ
HA
HB
HC
HD
HE
HF
HG
HH
HI
HJ
HK
HL
HM
HN
HO
HP
HQ
HR
HS
HT
HU
HV
HW
HX
HY
HZ
IA
IB
IC
ID
IE
IF
IG
IH
II
IJ
IK
IL
IM
IN
IO
IP
IQ
IR
IS
IT
IU
IV
IW
IX
IY
IZ
JA
JB
JC
JD
JE
JF
JG
JH
JI
JJ
JK
JL
JM
JN
JO
JP
JQ
JR
JS
JT
JU
JV
JW
JX
JY
JZ
KA
KB
KC
KD
KE
KF
KG
KH
KI
KJ
KK
KL
KM
KN
KO
KP
KQ
KR
KS
KT
KU
KV
KW
KX
KY
KZ
LA
LB
LC
LD
LE
LF
LG
LH
LI
LJ
LK
LL
LM
LN
LO
LP
LQ
LR
LS
LT
LU
LV
LW
LX
LY
LZ
MA
MB
MC
MD
ME
MF
MG
MH
MI
MJ
MK
ML
MM
MN
MO
MP
MQ
MR
MS
MT
MU
MV
MW
MX
MY
MZ
NA
NB
NC
ND
NE
NF
NG
NH
NI
NJ
NK
NL
NM
NN
NO
NP
NQ
NR
NS
NT
NU
NV
NW
NX
NY
NZ
OA
OB
OC
OD
OE
OF
OG
OH
OI
OJ
OK
OL
OM
ON
OO
OP
OQ
OR
OS
OT
OU
OV
OW
OX
OY
OZ
PA
PB
PC
PD
PE
PF
PG
PH
PI
PJ
PK
PL
PM
PN
PO
PP
PQ
PR
PS
PT
PU
PV
PW
PX
PY
PZ
QA
QB
QC
QD
QE
QF
QG
QH
QI
QJ
QK
QL
QM
QN
QO
QP
QQ
QR
QS
QT
QU
QV
QW
QX
QY
QZ
RA
RB
RC
RD
RE
RF
RG
RH
RI
RJ
RK
RL
RM
RN
RO
RP
RQ
RR
RS
RT
RU
RV
RW
RX
RY
RZ
SA
SB
SC
SD
SE
SF
SG
SH
SI
SJ
SK
SL
SM
SN
SO
SP
SQ
SR
SS
ST
SU
SV
SW
SX
SY
SZ
TA
TB
TC
TD
TE
TF
TG
TH
TI
TJ
TK
TL
TM
TN
TO
TP
TQ
TR
TS
TT
TU
TV
TW
TX
TY
TZ
UA
UB
UC
UD
UE
UF
UG
UH
UI
UJ
UK
UL
UM
UN
UO
UP
UQ
UR
US
UT
UU
UV
UW
UX
UY
UZ
VA
VB
VC
VD
VE
VF
VG
VH
VI
VJ
VK
VL
VM
VN
VO
VP
VQ
VR
VS
VT
VU
VV
VW
VX
VY
VZ
WA
WB
WC
WD
WE
WF
WG
WH
WI
WJ
WK
WL
WM
WN
WO
WP
WQ
WR
WS
WT
WU
WV
WW
WX
WY
WZ
XA
XB
XC
XD
XE
XF
XG
XH
XI
XJ
XK
XL
XM
XN
XO
XP
XQ
XR
XS
XT
XU
XV
XW
XX
XY
XZ
YA
YB
YC
YD
YE
YF
YG
YH
YI
YJ
YK
YL
YM
YN
YO
YP
YQ
YR
YS
YT
YU
YV
YW
YX
YY
YZ
ZA
ZB
ZC
ZD
ZE
ZF
ZG
ZH
ZI
ZJ
ZK
ZL
ZM
ZN
ZO
ZP
ZQ
ZR
ZS
ZT
ZU
ZV
ZW
ZX
ZY
ZZ

1.0. Introduction

On the 25th July 2019, the Government introduced in Parliament, The Parliamentary Elections (Amendment) Bill, 2019 as part of the electoral reform Bills of 2019. The Bill was accordingly referred to the Committee on Legal and Parliamentary Affairs pursuant to Rule 128 of the Rules of Procedure of Parliament.

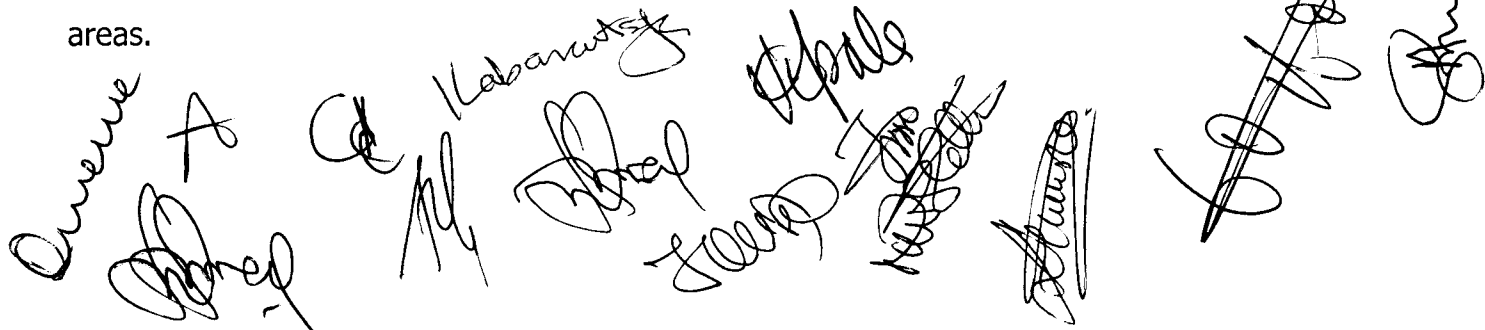
2.0. Methodology

In considering the Bill, the Committee was guided by Rule 128 (2) of the Rules of Procedure of Parliament and met and received memoranda from a number of interested stakeholders including;

1. The Attorney General, the Mover of the Bill
2. The Minister of Justice and Constitutional Affairs
3. The Electoral Commission
4. Uganda Law Reform Commission
5. Citizens' Coalition for Electoral Democracy in Uganda
6. Inter-Religious Council of Uganda
7. Uganda Joint Christian Council
8. Members of the National Consultative Forum
9. Different Political Parties
10. Consulted with citizens from a cross the five (5) regions of the Country
11. Received different written memorandum from various stakeholders, including Members of Parliament.

3.0. Objectives of the Bill

The object of the Bill is to amend the Parliamentary Elections Act, 2005 to provide for the participation of independent candidates in elections; to provide for restrictions on candidates' sources of funding to finance elections; to require the Electoral Commission to designate restricted areas and to provide for a special procedure for voting in restricted areas.



4.0. Analysis of the proposals made by the Bill

4.1. Election of Members of Parliament for newly created district

The Bill proposes in Clause 1 to amend section 8 of the Parliamentary Elections Act by substituting for subsection (5) the following-

"(5) Where a new district or constituency is created after the general elections, the elections for the district or constituency shall not be held until the next general elections, to fill the vacant elective positions."

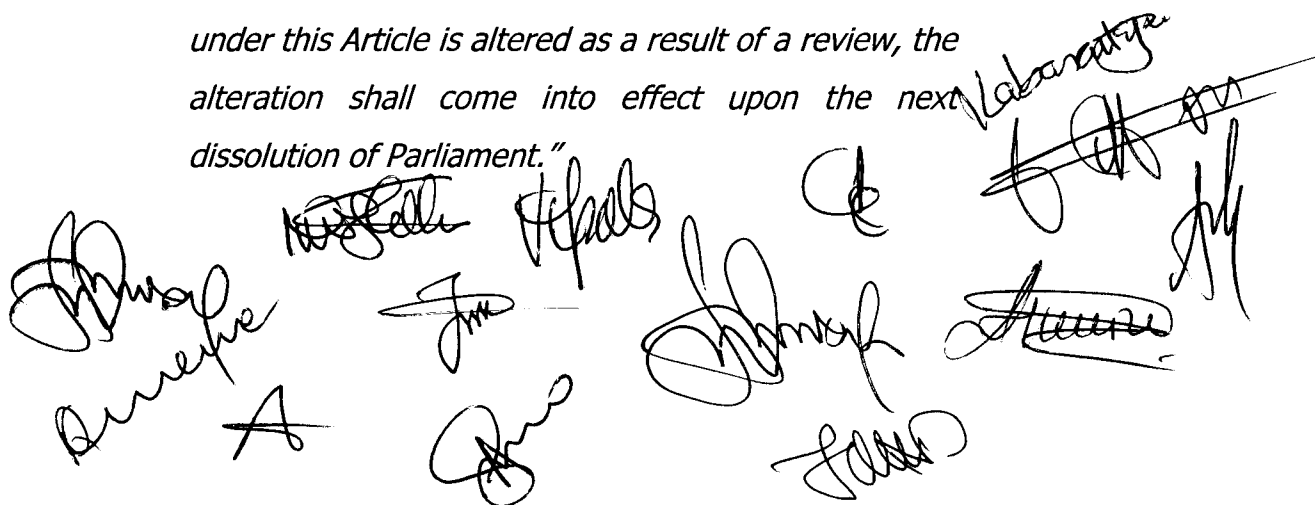
Section 8 (5) of the Parliamentary Elections Act currently grants a District Woman Representative the option, where a new district is created, to continue representing the district of her choice. Furthermore, the provision requires the election in the district that remains without a representative to be held within 60 days.

The effect of the above amendment is to require that when a new district or constituency is created after a general election, the elective positions created are not filled immediately as has been the case, but are filled at the next general elections.

The Committee thinks the proposed amendment should be supported for the following reasons;

1. The proposal to stagger the commencement of a constituency and the election of Members of Parliament for a newly created district is in line with the principle contained in Article 63 (6) of the Constitution here reproduced;

"(6) Where the boundary of a constituency established under this Article is altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament."



2. Secondly, the proposal will help the planning and budgeting of Parliament and Government generally in so far as knowing the exact number of Members of Parliament. It should be noted that at the moment, once a new district is created during the subsistence of the term of Parliament, that newly created local Government commences immediately, unless the commencement is staggered to a further date. This means that the number of Members of Parliament cannot be ascertained since this can change any time from the creation of new districts.

However, whereas this provision is important and should be supported, there is need for this provision to be harmonized with the Constitution, especially Article 1 of the Constitution. The proposal as it stand in the Bill might be challenged for infringing on Article 1 (4) of the Constitution in as far as it proposes to postpone the holding of elections in the district to fulfil the elective offices in that district when such district has already come into effect.

Article 1 of the Constitution deals with sovereignty of the people of Uganda and it commands that the people of Uganda are sovereign. Clause 4 of Article 1 directs that the people of Uganda shall express their will and consent on who shall govern them and how they are governed, through regular, free and fair elections of their representatives or through referenda.

Once a new district is created and commenced, the people resident in that district have the right to choose their representative, including their Member of Parliament. The proposal in the Bill however, will mean that the residents of that District will not, in spite of the commencement of the District, be able to choose their representative in contravention of Article 1.

In order for the proposal in the Bill to be effective and to comply with Article 1 of the Constitution, there is need for a standalone provision in the Bill to specifically require that once a new district is created, it only commences at the next dissolution of Parliament.

More so, the provision is ambiguous in as far as requiring the postponement of the elections to fill those vacant elective positions existing in the district until the next general elections. The ambiguity is in the use of the words "general elections".

The Committee is alive to three types of general elections in Uganda as outlined in Article 61 (2) of the Constitution; the Presidential election, General Parliamentary Elections and Local Government Election. It is not unascertainable when the elections to fill the vacant positions will be held since the provision makes reference to three general elections.

Recommendation

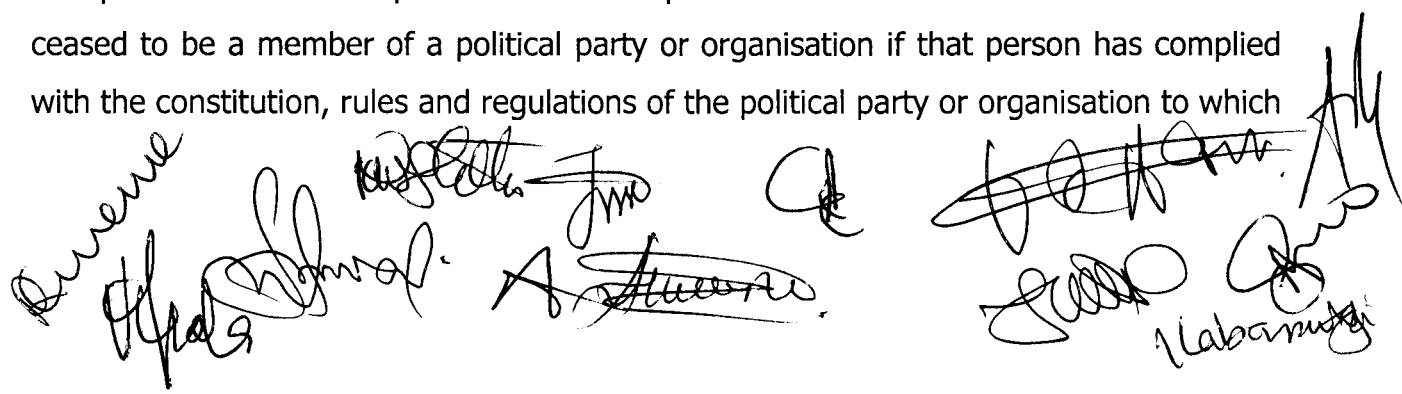
- *The Committee recommends that Clause 1 stands part of the Bill albeit with amendments in order to comply with Article 1, 78 (1) (a) and (b) and Article 63 of the Constitution to ensure that the district or constituency does not commence immediately it is formed.*
- *The Committee further recommends that the provision should for clarity specify the general election being referred to and that this should be the general Parliamentary elections.*

4.2. Eligibility to stand as independent candidate

The Bill proposes in Clause 2 to insert sections 10A dealing with eligibility of an independent person to stand in a parliamentary elections.

The Bill proposes that a person who intends to stand for election independent of a registered political party or organisation must have ceased to be a member of a political party or organisation and either ceased to be a member of a Political party or organisation twelve months before nomination day or has never been registered as a member of a political party or organisation.

The provision further requires that an independent candidate shall be taken to have ceased to be a member of a political party or organisation if that person has complied with the constitution, rules and regulations of the political party or organisation to which

The bottom of the page features several handwritten signatures and initials in black ink. On the left, there is a large, stylized signature that appears to be 'Dennis Muhesi'. To its right are several smaller, more compact signatures and initials, including one that looks like 'JMO' and another that resembles 'A. Muhesi'. On the far right, there is a large, bold signature that appears to be 'Nabamunda'.

he or she belonged, that relate to cessation of membership of that political party or organisation, and was discharged by the political party or organisation.

To appreciate this, there is need to consider the effect it will have on Articles 1, 21, 29 (1) (e), 72 (4), 80, 83 (2a) and (2b) of the Constitution and section 3 (2) of the Political Parties and organisations Act. These provisions collectively and individually guide and guarantee the enjoyment of rights by independent Members of Parliament.

The Constitution, in Article 72 (4) grants and guarantees a person's right to stand for election as a candidate independent of a political party or organisation. The same constitution commands that all persons in Uganda are equal before law in all spheres of political, economic, social and cultural life and in every other respect and direct that such persons must enjoy equal protection of the law. Other than the provisions of Article 80 of the Constitution, the Constitution does not impose any additional requirements on a person to be eligible for election to Parliament and does not discriminate against such persons whether independent or party sponsored. It's important to note that the Constitution guarantees a person's right to associate with others and the only limitations imposed on such a person must be demonstrably necessary in a free and democratic society as prescribed in Article 43 (2) (c) of the Constitution.

The Committee reviewed the proposal made in the Bill and identifies the following areas as controversial and susceptible to be challenged in Courts of law;

- (a) The requirement that a person can only stand as an independent candidate if that person ceased to be a member of a political party or organisation twelve months before nomination day;
- (b) The requirement that for one to be taken to have ceased to be a member of a political party or organisation one must have complied with the constitution, rules and regulations of the political party or organisation to which he or she belonged, that relate to cessation of membership of that political party or organisation;

A series of handwritten signatures and initials, including the name 'Dumene' on the left, followed by several stylized signatures and a circled '3' on the right.

- (c) The requirement that a person ceases to be a member of a political party or organisation if he or she is discharged by the political party or organisation.

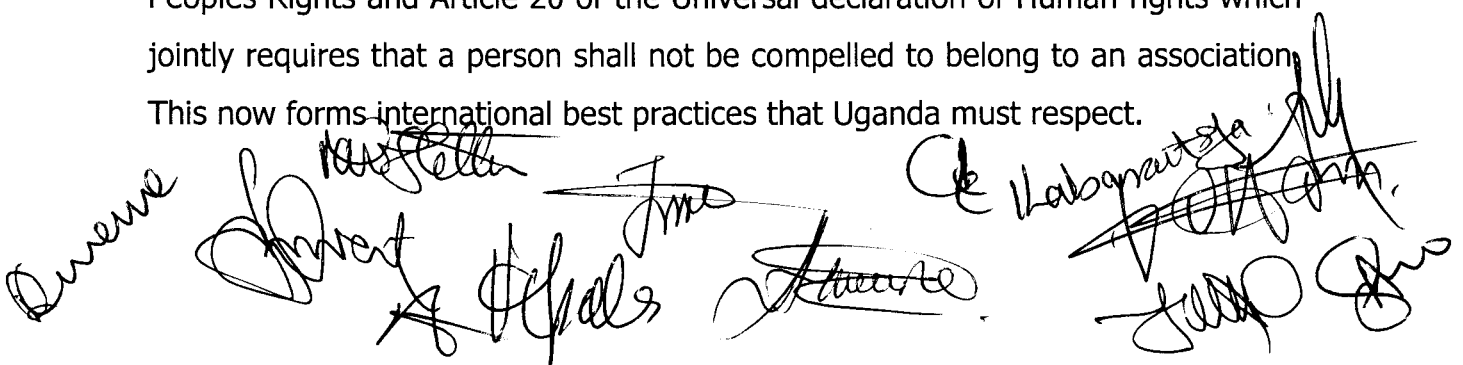
Whereas the above provision may be well intentioned, the above identified issues may collectively and individually be challenged for-

- (a) Infringing on the right to association as guaranteed under the Constitution. Article 29(1) (e) of the Constitution guarantees a person's right to associate with others and it commands that every person shall have a right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

The Bill, in prescribing the conditions which must be satisfied by a person to stand as an independent candidate, may have inadvertently infringed the rights of association of individual members of Parliament. The provision particularly infringes on the right to association by requiring a person to be eligible to stand as an independent candidate if he or she has ceased to be a member of a political party or organisation twelve months before nomination day. The provision further infringes on the right to association in so far as requiring that a person ceases to be a member of a political party or organisation if that person is discharged by the political party she belonged.

The above provisions will have the effect of forcefully conscripting a person to remain a member of a political party against his or her wishes. It should be noted that section 3 (2) of the Political Parties and Organisations Act 2005 guarantees a person's right to form or join a political party of his/her choice. By that provision, association with political parties must be voluntary in nature, and no individual should be forced to join, remain or belong to any association against their will. That same right is re-echoed in Article 10 of the African Charter on Human and Peoples Rights and Article 20 of the Universal declaration of Human rights which jointly requires that a person shall not be compelled to belong to an association.

This now forms international best practices that Uganda must respect.

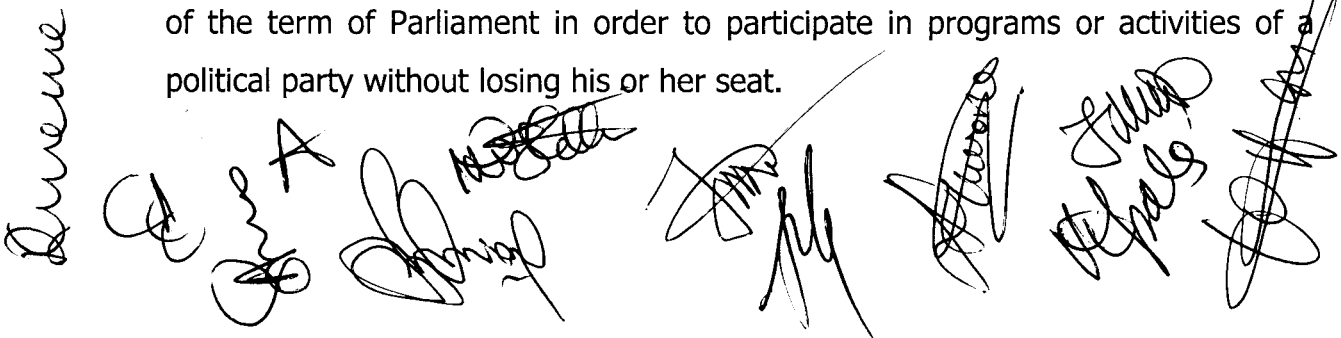
A collection of handwritten signatures and initials in black ink, located at the bottom of the page. The signatures are varied in style, with some being more legible than others. They appear to be signatures of various individuals, possibly members of a committee or legal counsel, endorsing the document.

- (b) infringing on Article 21 (1) of the Constitution. Article 21 (1) deals with equality before the law and commands that all persons are equal before the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. The provision, especially Clause 10A (a) which requires that a person should have ceased being a member of a political party or organisation twelve months before nomination day might infringe on Article 21 (1) in so far as imposing additional qualification requirements which do not apply to any other person other than an independent member of parliament. For instance, whereas an independent candidate must have ceased being a member of a political party or organisation twelve months before nomination day in order to participate in Parliamentary Elections, an independent member joining a political party qualifies immediately to stand in Parliamentary Elections. This differential application of the law contravenes Article 21 of the Constitution.
- (c) Additionally, the provision may be challenged for amending Article 83 (2a) by infection, thereby infringing on the Constitution. Article 83 (2a) is reproduced below-

"(2a) Clause (1) (g) and (h) shall not to an independent Member joining a political party or political organisation or a Member leaving one political party or organisation or become an independent member within twelve months before the end of the term of Parliament to participate in activities or programmes of a political party or organisation relating to a general election."

The above provision empowered a Member of Parliament to cease to be a member of a political party or organisation which he or she belongs to in Parliament or if independent, to join a political party or organization twelve months before the end of the term of Parliament in order to participate in programs or activities of a political party without losing his or her seat.

Dune

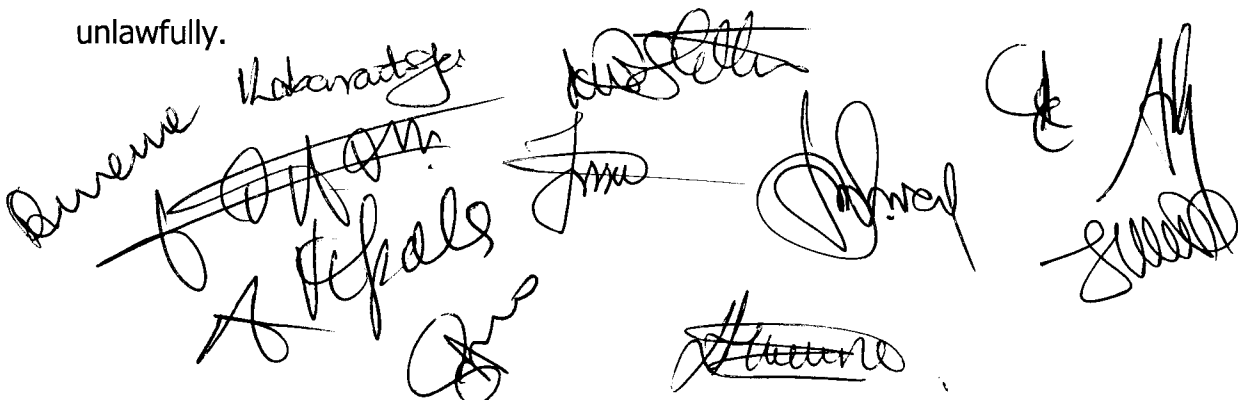


(d) The proposed amendment, especially the requirement on a person intending to stand for election as an independent member to cease being a member of a political party or organisation 12 months before nomination day, directly conflicts with Article 83 (2a) of the Constitution as follows-

(i) Unlike Article 83 (2a) which allows a person to leave a political party or organisation to join a political party or organisation or to stand as independent candidate within 12 months before the end of the term of Parliament, the proposed amendment requires such a person to have ceased being a member of a political party or organisation 12 months before the nomination day;

(ii) Unlike Article 83 (2a) which allows a person to leave a political party or organisation at the end of the term of Parliament, the proposed amendment proposes that such a person leaves before nomination day. It should be noted that unlike the term of Parliament which is ascertainable and prescribed in Article 77 of the Constitution, nomination day is unascertainable. Indeed, nomination day is un-ascertainable by law considering that section 9 of the Parliamentary Elections Act allows the Electoral Commission to declare by gazette nominations day for candidates.

(e) This provision, not only conflicts directly with Article 83 (2a), it also imposes additional qualifications on a person intending to stand as a Member of Parliament beyond those prescribed in Article 80 of the Constitution. Article 80 of the Constitution prescribes the qualifications of a person to stand for election. These qualifications are re-echoed in section 4 of the Parliamentary Elections Act. The proposal therefore to include a unique qualification for persons running as independent candidates as proposed in the Bill not only amend Article 80 by infection but expands the provision of Article 80 unlawfully.

A collection of handwritten signatures and initials in black ink, located at the bottom of the page. The signatures are written in various styles, some appearing to be names like 'Bureme', 'Hokanadze', 'Jana', 'Shirley', and 'Shirley'. There are also some initials and marks that are less legible.

It is important to note that the Constitution specifically prescribes the manner in which it is to be amended. Article 259 is instructive on this matter and requires as follows-

"259. Amendment of the Constitution

(1) Subject to the provisions of this Constitution, Parliament may amend by way of addition, variation or repeal, any provision of this Constitution in accordance with the procedure laid down in this Chapter.

(2) This Constitution shall not be amended except by an Act of Parliament—

(a) the sole purpose of which is to amend this Constitution;
and

(b) the Act has been passed in accordance with this Chapter"

in this situation, Article 259 (1) and (2) (a) is relevant and it allows for the amendment of the Constitution by way of addition, variation or repeal as long as there is an Act the sole purpose of which is to amend the Constitution. This means that for the Constitution to be amended, there must be a specific Bill for an Act of Parliament to amend the Constitution. The effect of the amendment of the Constitution by infection was discussed in the landmark decision in the case of Paul K. Ssemogerere, Zachary Olum and Juliet Rainer Kafire vs. Attorney-General Constitutional appeal No. 1 of 2002 wherein Oder JSC observed that-

"Amendment of the Constitution is provided for by Article 258 of the Constitution, the provisions of which are to the effect that the Constitution can only be amended if an Act of Parliament is passed for that purpose; the Act has the effect of adding to, varying or repealing any provision of the Constitution; and the Act has been

passed in accordance with the provisions of Chapter Eighteen of the Constitution. To me, it follows that if an Act of Parliament has the effect of adding to, varying or repealing any provisions of the Constitution, then the Act must be said to have amended the affected Article of the Constitution"

He further observed that-

"In view of my finding that Act 13/2000 is in conflict with the constitution, it is my considered opinion that Act 13/2000, was a "colourable" legislation. A colourable legislation occurs where a legislature lacking legislative power or subject to a constitutional prohibition may frame its legislation so as to make it appear to be within the legislative power or to be free from the constitutional prohibition. Such a law is "colourable" legislation, meaning thereby that while pretending to be a law in the exercise of undoubted power, it is, in fact, a law on a prohibited field".

In the end, he held that-

"in the instant case, Act 13/2000, in my view, was a colourable legislation, by which Parliament sought to amend Articles 28, 41, 44(c), 128 and 137 (1) and (3) of the Constitution without saying so. It did indirectly what it could not do directly, without complying with the Constitutional procedural requirements. For this reason and the others I have already given in this judgment, section 5 of Act 13/2000 is in conflict with the provisions of the Constitution in question, and is null and void."

In the instant case, since Clause 2 of the Bill proposes to expand the qualification requirements for a Member of Parliament, it ought to have amended Article 80 directly instead of doing so through an Act whose sole purpose is not to amend the Constitution.



The Committee is fortified in the conclusion that currently, there exists no law in Uganda prescribing how a Member of Parliament ceases to be a member of a political party or organisation. We take cognizance that Article 83 (2b) of the Constitution directed Parliament to prescribe the grounds and procedures that every political party or organisation must follow before terminating a person's membership to a political party or organisation.

Therefore the proposal that in determining whether a person has ceased be a member of a political party or organisation, consideration has to be made to the constitution, rules and regulations of the political party or organisation to which such a person belonged as well as requiring the issuance of some form of discharge by the party is not only an affront to the right to association but does not take into account the command of the Constitution as contained in Article 83 (2b) that the grounds, procedures and processes through which a person ceases to be a member of a political party or organisation are to be prescribed by law and not by the individual political party or organisation's constitution, rules and regulations.

Recommendation

The Committee recommends that Clause 2 stands part of the Bill albeit with the following amendments in the proposed section 10A,-

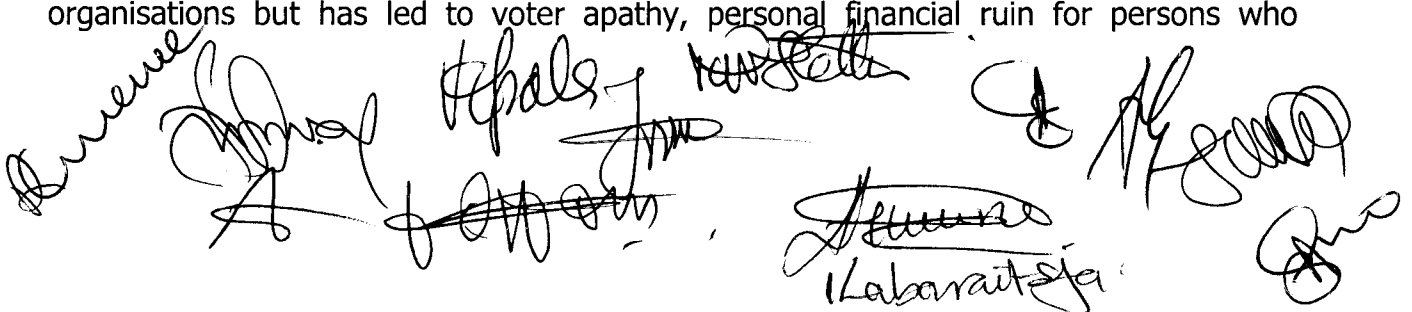
- *by removing matters that infringe on the Constitution, specifically, Article 1, 7 Articles 1, 21, 29 (1) (e), 72 (4) and 102 of the Constitution and section 3 (2) of the Political Parties and Organisations Act.*
- *By requiring compliance with the law made pursuant to Article 83 (2b) of the Constitution before a Member of Parliament is dismissed from a political party or organisation.*

4.3. Election financing

The Bill proposes to insert a new section 10B in the Parliament Election Act to provide for financing of elections. The Bill proposes to impose an obligation on a candidate in a Parliamentary election to declare to the EC, within fourteen days after nomination day, the source of funds for financing his or her election. The Bill proposes to prohibit the obtaining, soliciting or receiving any financial or other assistance from any foreign Government, institution, body or person which or who has demonstrated an intention to overthrow the lawfully established Government of Uganda, or to endanger the security of Uganda and from organisations that have been declared terrorist organisations. The Bill proposes to impose a punishment on a candidate or agent for contravening the provisions of that section in form of a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both. The provision empowers court to order the funds received in contravention of the provision to be forfeited to the state.

It is the considered opinion of the Committee that the proposed amendment on election financing should be lauded and supported. Firstly, the current legislation regulating the election finance and expenditure, such as the Constitution of the Republic of Uganda, 1995, the Electoral Commission Act, Cap 140, the Parliamentary Elections Act, 2005, the Presidential Elections Act, 2005, the Local Government Act, Cap 243 and the Kampala Capital City Authority Act, 2010, do not adequately regulate election financing and expenditure in Uganda.

The inadequacy of the legal regime has resulted in commercialisation of politics: increasing the cost of running for political office and resulting into unsustainable pressure on the part of candidates, wastage of resources, macro-economic volatility such as was experienced after the 2011 General Elections as well as increased occurrence of corruption cases in Uganda. The increased commercialisation of politics has not only resulted in an uneven playing field amongst candidates and political parties and organisations but has led to voter apathy, personal financial ruin for persons who



Handwritten signatures and initials at the bottom of the page, including names like 'Kabarukaga' and 'Kabarukaga'.

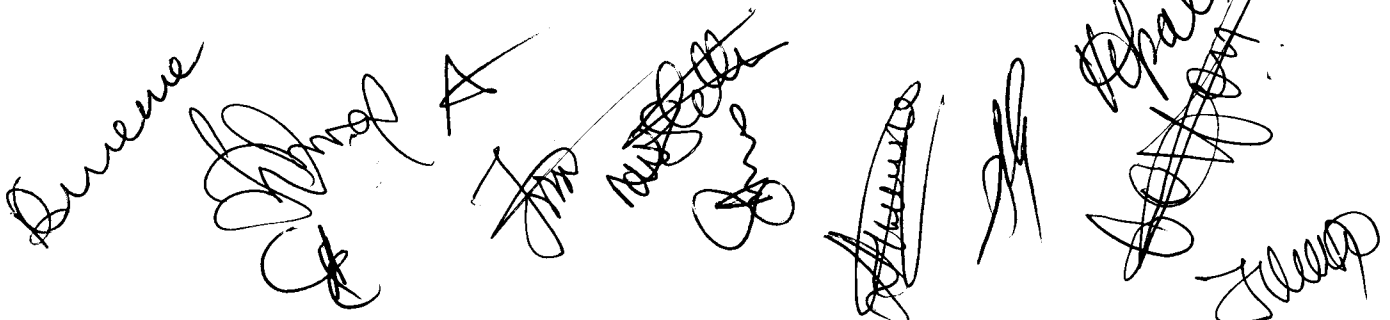
participate in elections as well as abuse of state resources. Unless election campaign financing and expenditure is regulated by enacting legislation limiting the election financing and expenditure, the unrestricted funding will hinder the progress of democracy in Uganda as well as the economic social development of the country.

The proposed amendment is also a best practice that should be copied. In most countries, such as Kenya, Ghana, Nigeria, Malawi, Rwanda, South Africa, United Kingdom, United States of America, India and Canada there is some form of restrictions on elections finance and expenditure, both legislative and non-legislative, like is the case in Rwanda.

Whereas the proposed amendment should be supported, the proposal does not go far enough in order for it to be effective.

- (i) The provision is likely to face challenges for failure to impose a limit on how much a candidate may spend during the election. The provision only deals with campaign financing and does not impose any restrictions on the amount a person may spend. For instance, in most countries that have campaign financing laws, the laws impose a spending cap. Indeed, in India, the law imposes a spending limit cap of about United States Dollars one hundred thousand for a seat in the Indian Lok Sabha. There is also a requirement for candidates to submit a true account of election expenses with the EC. An incorrect account or expenditure beyond the ceiling can attract disqualification for up to three years under Section 10A of The Representation of the People Act, 1951.

In Kenya, the Independent Electoral and Boundaries Commission (IEBC), empowered under the Election Campaign Financing Act sets the expenditure cap for all elections in Kenya. In the 2017 elections cycle, IEBC imposed a cap on campaign expenditure for those vying for national assembly seats ranging between Ksh 2.2 Million to a maximum of Ksh 33.3 Million.



- (ii) The provision only imposes an obligation on a candidate to merely declare the sources of their income before nomination day. There is no obligation to declare any finances solicited, obtained or received at any time after the nomination day.
- (iii) The punishment is not deterrent enough and complying with the provision might be challenging. The Bill proposes to impose a punishment on a candidate or agent of fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both. In most countries, violation of such a provision results in being banned for a defined period of time from participating in elective politics. This is happening in Kenya and India.
- (iv) The proposal should be contained in a stand-alone legislation that deals with all aspects of election finance and expenditure as is the case with countries such as India and Kenya where there is dedicated legislation detailing all the procedures applicable to election financing prescribed in a standalone legislation.
- (v) The provision is also ambiguous since it does not prescribe who is to make the determination that a foreign Government, institution, body or person has demonstrated an intention to overthrow the lawfully established Government of Uganda, or to endanger the security of Uganda.

Recommendations

The Committee recommends that the proposed section 10B stands part of the Bill albeit with the following amendments-

- to expand the provision to include the submission of a budget to the Commission;*
- to prohibit the use of government resources or assistance from a government institution, corporation or a public officer in campaigns.*
- To remove the ambiguity in the current provision which appears to allow the receipt of financial and other assistance from a domestic source which has*

Bureau

[Handwritten signatures and initials]

demonstrated an intention to overthrow the lawfully established Government of Uganda, or to endanger the security of Uganda.

- *To specifically prohibit the obtaining of financial or other resources from a foreign government*

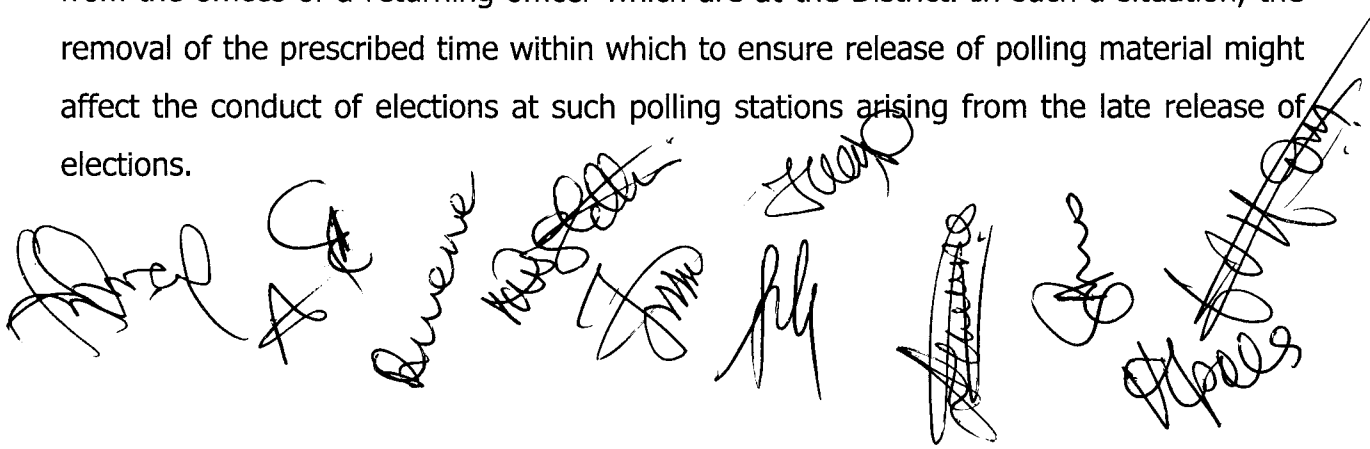
4.4. Time for distributing election material

The Bill proposes in Clause 3 to amend the time within which to distribute polling material. The Bill proposes to amend section 27 by substituting for the words "Within forty-eight hours before polling day" the words "At any time before polling time".

Currently section 27 imposes an obligation on a returning officer to, within 48 hours before polling day, furnish every presiding officer ballot papers, a statement showing the number of ballot papers issued and other voting material. The Bill proposes that this statutory duty should not be carried out within forty eight hours as is currently the law, but should be carried out "at any time before polling time." It should be noted that the law does not define what amounts to polling time but section 29 (2) of the Parliamentary Elections Act guides that at every polling station, polling time commences at seven o'clock in the morning and closes at five in the afternoon.

The proposed amendment, although well intentioned may cause a number of challenges which might affect the integrity of election as well as disfranchise voters.

The proposal to remove the time within which to distribute polling material is likely to lead to delay in dispatching, receiving, set up and commencement of polling time since the time prescribed in the current provision was intended to ensure that election material arrive early enough at a polling station. Furthermore, the proposal does not take into account the fact that some polling stations are hard to reach or in most cases, far away from the offices of a returning officer which are at the District. In such a situation, the removal of the prescribed time within which to ensure release of polling material might affect the conduct of elections at such polling stations arising from the late release of elections.

A series of approximately ten handwritten signatures and initials in black ink, arranged horizontally across the bottom of the page. The signatures vary in style, with some being more legible and others being more stylized or scribbled.

Therefore, amending the provision as proposed by the Bill will be legislating for inefficiency, incompetence and negligence. It is important to note that during the 2016 elections, there was a delay in delivering voting material to certain polling stations, including Kampala and Wakiso. The Supreme Court, in the case of *Amama Mbabazi vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General, Presidential Election Petition No. 1 of 2016* admitted evidence which pointed at the effect of delaying to receive polling material before polling day. Indeed, court observed as follows-

"In our opinion, the measures taken during the emergency meeting were not effective because according to the evidence of Sendagire Gerald a resident of Zana, although voting started at 12:30 p.m. it ended at exactly 4:00 p.m. Further, according to Kajoro Allan, voting at his polling station started at 1:00p.m. and ended at 8:00 p.m., which indicates that the messages sent out by the Commission to extend the time of voting might not have been received at all the polling stations. In our judgment, the blame for this confusion lay squarely with the Commission,"

Court went on to find the failure by EC to deliver polling material within the time prescribed in the law to be grossly negligent and inefficient. The Supreme Court held that-

"The readiness of the Commission to conduct an election is an essential ingredient in delivery of a free and fair election and it is irrelevant that it is only in two Districts that delays were experienced or that the voter- turn up was an improvement on

essential ingredient in delivery of a free and fair election and it is irrelevant that it is only in two Districts that delays were experienced or that the voter-turn up was an improvement on

the previous elections. It was imperative that the Commission availed voting materials to each and every voter in every corner of Uganda within the time prescribed by the law and not create chaos and panic as was evidenced in the Districts of Kampala and Wakiso.

It was the Court's finding that the Commission did not comply with its duty under Section 28 of the PEA in the affected areas. We accordingly held that the failure to deliver polling materials to polling stations within such close proximity to the Commission was evidence of incompetence and gross inefficiency by the electoral body."

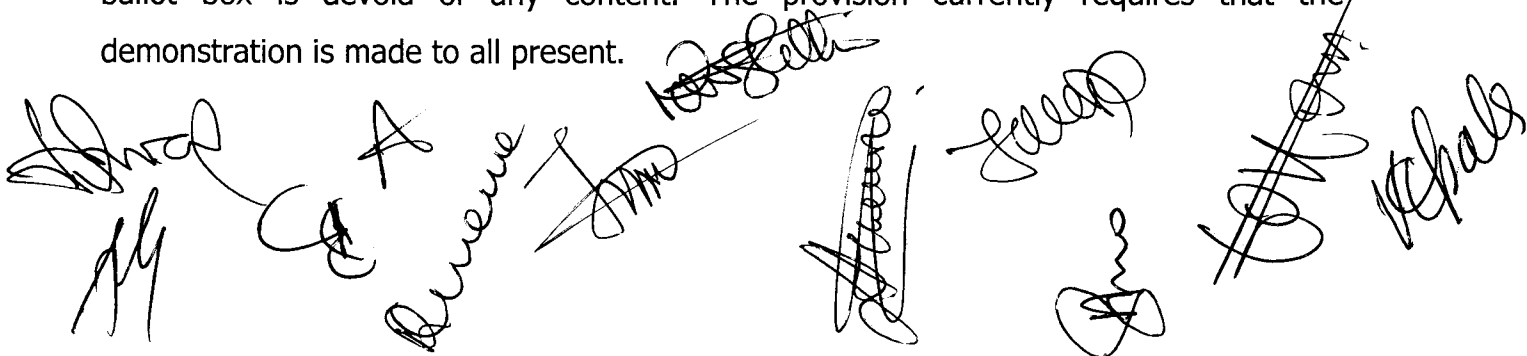
Recommendation

The committee recommends that Clause 3 is rejected and deleted from the Bill with the justification that the proposal to remove the time within which the commission may deliver polling material will disfranchise voters, cause delay in commencing polling and is likely to affect the readiness of the Commission to conduct election yet readiness to conduct elections is an essential ingredient in delivery of a free and fair election.

4.5. Polling and polling procedures

The Bill proposes in Clause 4 to make changes to polling and polling procedures outlined in section 30 of the Parliamentary Elections Act. The Bill proposes to replace the dipping of a person's finger in indelible ink as a sign that such person has voted to instead require such a person to be marked with indelible ink.

The Bill further proposes that at the commencement of polling, the presiding officer shall demonstrate to at least 5 people who are registered to vote at the polling station that the ballot box is devoid of any content. The provision currently requires that the demonstration is made to all present.

A collection of handwritten signatures and initials in black ink, located at the bottom of the page. The signatures are varied in style, with some being more legible and others being more stylized or scribbled. They appear to be signatures of various individuals, possibly members of a committee or legal representatives.

The proposal as contained in the Bill is a good proposal and should be supported for enhancing transparency in the electoral process. It should be noted that currently, section 30 of the Parliamentary Elections Act requires the presiding officer to demonstrate to all present that the ballot box is devoid of any content. This provision is too broad since it does not guide the presiding officer to whom the demonstration is supposed to be done.

The requirement to demonstrate to all present allows the presiding officer to demonstrate to any person available at the polling station, including persons who do not vote at the polling station, soldiers and security personnel who are not concerned with the election.

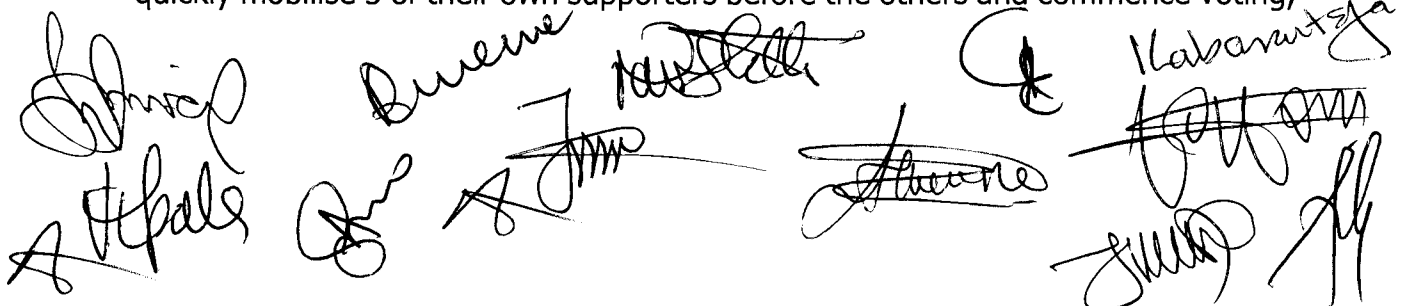
The proposal by the Bill has a number of advantages over the current provision, namely-

(a) The demonstration is done to people who can be ascertained unlike the current provision where the people to whom the demonstration was done cannot be ascertained since the demonstration is made to "all present". This amendment will therefore mean that if there is need to prove compliance with the provision, the evidence of the people who were available when the demonstration was being done will be admissible since their identity is ascertained.

(b) The demonstration is done to persons who have an interest in the election since it is now a requirement that the people who are available when the demonstration is done must be registered voters in the area. The current provision allows the demonstration to be done to any person, irrespective of whether they have an interest or not or whether they are registered voters or not.

(c) Unlike the current provision which does not prescribe the minimum number of people who must be available before polling starts, the proposed amendment requires that at least 5 registered voters must be available before polling start. This will enhance transparency in the electoral process.

(d) However, the proposal also runs a risk of being abused by candidates who may quickly mobilise 5 of their own supporters before the others and commence voting,



thereby denying the other people the chance to scrutinize the sanctity of the ballot box.

Transparency is a key principle for credible elections. A transparent election process is one in which each step is open to scrutiny by stakeholders, political parties, election observers and voters alike, who are able to independently verify that the process is conducted according to procedures and no irregularities have occurred. Providing transparency in an election helps establish trust and public confidence in the process, as voters have a means to verify the results are an accurate reflection of the will of the people.

Recommendation

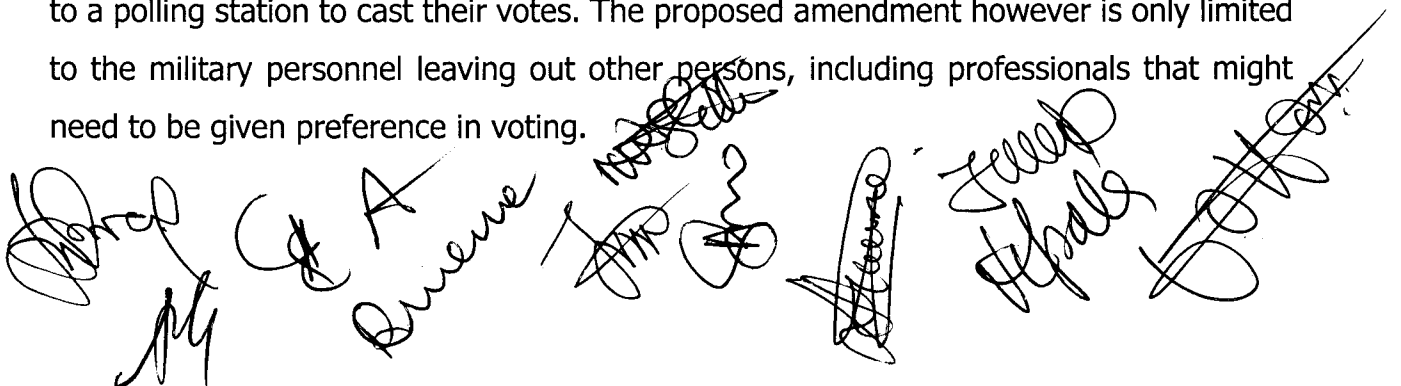
In light of the above, the Committee recommends that Clause 9 is supported albeit with the amendment that the Polling Officer shall demonstrate to a full view of at least ten registered voters that the ballot box is devoid of any content.

4.6. Special procedure for voting of persons in restricted areas

The Bill proposes to make changes to the procedure for voting of persons in restricted areas. The Bill proposes to empower the Electoral Commission to make special provision for voting for specified persons in restricted areas and operation areas. The provision proposes to apply to the Military and not to any other person.

The proposed amendment needs to be rethought especially its application to the military. Currently, section 38 of the principal Act obligates the EC to make special provision for the collection of votes from patients in hospital, or persons admitted in sanatoria or homes for the aged and similar institution, including the Military.

It is the considered opinion of the Committee the current provision is broader and it recognizes the rights of every person, including persons who might not be able to come to a polling station to cast their votes. The proposed amendment however is only limited to the military personnel leaving out other persons, including professionals that might need to be given preference in voting.

A series of handwritten signatures and initials in black ink, located at the bottom of the page. From left to right, they include: a stylized signature, the initials 'A', the name 'Brenne', a signature that appears to be 'M. S.', a signature that appears to be 'J. S.', a signature that appears to be 'J. S.', and a signature that appears to be 'J. S.'.

In rejecting the proposed amendment to the Bill, The Committee is guided by Article 59 of the Constitution of the Republic of Uganda, 1995 which guarantees the right of a person to vote. The same Constitution, in Article 59 (3) enjoins the state to take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote. The committee therefore believes that the amendment which seeks to take away the civic rights of the other persons specifically mentioned in the current section 38 and reserve it only for persons in the army or special operation areas cannot be justified in a free and democratic society.

Recommendation

- *Section 38 is not amended as proposed in the Bill with the justification that the amendments will limit the enjoyment of the right to vote by other persons except for the military and persons in operation areas.*
- *the EC is allowed to make rules for the collection of votes from persons employed in institutions engaged in the administration of elections,*
- *when the EC makes such rules, it should be published in the gazette and in a newspaper of wide circulation.*

newspaper of wide circulation.

GENERAL RECOMMENDATION

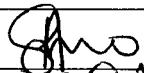
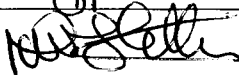
I recommend that the Bill is passed into law, subject to the following amendments;

I beg to report.

[Handwritten signatures and initials]

SIGNATURE OF MEMEBERS OF THE COMMITTEE ENDORSING THE REPORT

SN	NAME	CONSTITUENCY	SIGNATURE
1.	Hon. Oboth Jacob Marksons (Chair)	West Budama South	
2.	Hon. Bitangaro Sam Kwezira	Bufumbira South	
3.	Hon. Jovah Kamateeka	Mitooma DWR	
4.	Hon. Isala Eragu Veronica	Kabera maido County	
5.	Hon. Kafuuzi Jackson K	Kyaka South	
6.	Hon. Kajara Aston	Mwenge South	
7.	Hon. Mwiru Paul	Jinja East County	
8.	Hon. Obua Denis Hamson	Ajuri County	
9.	Hon. Basalirwa Asuman	Bugiri Municipality	
10.	Hon. Gureme R. Rwakoojo	Gomba West	
11.	Hon. Ongalo Kenneth Obote	Kalaki County	
12.	Hon. Agaba Abbas Mugisha	Kitagwenda County	
13.	Hon. Azairwe Dorothy. K	DWR Kamwenge	
14.	Hon. Mugoya Kyawa Gaster	Bukooli North	
15.	Hon. Akamba Paul	Busiki County	
16.	Hon. Otto Edward Makmot	Agago County	
17.	Hon. Adeke Anna Ebaju	NFY MP	
18.	Hon. Nsereko Muhammed	Kampala Central Division	
19.	Hon. Wilfred Niwagaba	Ndorwa East	
20.	Hon. Abdu Katuntu	Bugweri County	
21.	Hon. Ssemujju Ibrahim	Kira Municipality	
22.	Hon. Medard Ssegona Lubega	Busiro East	
23.	Hon. Mathias Mpuuga	Masaka Municipality	
24.	Hon. Byarugaba Alex	Isingiro County South	
25.	Hon. Akello Rose Lilly	DWR, Karenga	

26	Hon. Asamo Hellen Grace	PWD Eastern	
27	Hon. Namoe Stella	Napak DWR	
28	Hon. Akampulira Prosy	DWR Rubanda	
29	Hon. Suubi Brenda Asinde	DWR Iganga	

PROPOSED AMENDMENTS TO THE PARLIAMENTARY ELECTIONS (AMENDMENT) BILL, 2019

CLAUSE 1: AMENDMENT OF SECTION 17 OF THE PRINCIPAL ACT

Clause 1 of the Bill is amended by redrafting the proposed (5) as follows

"(5) Where a new district or constituency is created after the general parliamentary elections, the elections to fill the vacant elective position for the District or Constituency Member of Parliament shall be held at the next general parliamentary elections."

Justification

- *For clarity*
- *In order to comply with Article 1, 78 (1) (a) and (b) and Article 63 of the Constitution to ensure that the district or constituency does not commence immediately it is formed.*
- *To specify the general election being referred to in the provision.*

CLAUSE 2: INSERTION OF SECTION 10A AND 10B IN THE PRINCIPAL ACT

Clause 2 of the Bill is amended-

(a) By substituting for the proposed section 10A the following-

"10A. Eligibility to stand as independent candidate

(1) A person is eligible to stand for election as an independent candidate if that person is not a member of a registered political party or organisation—

- (a) having ceased to be a member of a political party or organisation before nomination day;
- (b) having had his or her membership of a political party or organisation terminated before the nomination day; or
- (c) having never been registered as a member of a political party or organisation.

(2) A person shall be taken to have ceased to be a member of a political party or organisation under subsection (1) (a) and (b), if that person has complied with the law enacted pursuant to Article 83 (2b) of the Constitution

prescribing the grounds and procedures to be followed before terminating a person's membership to a political party or organisation.

(b) **In the proposed section 10B**, amend the proposed subsection (2) (a) by deleting the word 'foreign government'

Justification

- *To remove matters that infringe on the Constitution, specifically, Article 1, 7 Articles 1, 21, 29 (1) (e), 72 (4) and 102 of the Constitution and section 3 (2) of the Political Parties and Organizations Act especially the requirement to wait 12 months before being eligible to stand in an election as well as the requirement to be discharged by the political party.*
- *To allow a person who has had his or her membership to a political party or organisation terminated before the nomination day to stand in the election as an independent candidate.*
- *The proposed subsection (2) is deleted since it conflicts with article 83(2b) of the Constitution.*
- *To require compliance with the law made pursuant to Article 83 (2b) of the Constitution. Article 83 (2b) empowers parliament to enact a law to prescribe the procedure and grounds that a political party or organisation must follow before terminating the membership of a person in that political party or organisation.*

In 10B,

- *To remove the ambiguity in the current provision which appears to allow the receipt of financial and other assistance from a domestic source which has demonstrated an intention to overthrow the lawfully established Government of Uganda, or to endanger the security of Uganda.*
- *To expand the provision to prohibit the receipt of funds from any source, foreign or domestic which has demonstrated an intention to overthrow the lawfully established Government of Uganda, or to endanger the security of Uganda.*

CLAUSE 3: AMENDMENT OF SECTION 27 OF THE PRINCIPAL ACT

Delete Clause 3

Justification:

- *The proposal to remove the time within which the commission may deliver polling material will disfranchise voters, cause delay in commencing polling and is likely to affect the readiness of the Commission to conduct election yet readiness to conduct elections is an essential ingredient in delivery of a free and fair election.*
- *Consequential amendment arising from the proposal to delete Clause 8 of the Presidential elections (amendment) Bill on the same grounds.*

CLAUSE 4: AMENDMENT OF SECTION 30 OF THE PRINCIPAL ACT

Clause 4 of the Bill is amended in paragraph (c), by substituting for the word 'five' the word 'ten'.

Justification

- *To increase the number of persons that must be demonstrated to from 5 to ten in order to enhance transparency of the vote.*

CLAUSE 5: SUBSTITUTION OF SECTION 38 OF THE PRINCIPAL ACT

For Clause 5, there is substituted the following-

"5. Amendment of section 38 of the principal Act

Section 38 of the principal Act is amended-

(a) in subsection (1) by inserting immediately after the word-

- (i) "persons", in the fourth line, the words "employed in institutions engaged in the administration of elections and"
- (ii) "gazette" the words " and in a newspaper of wide circulation the special provisions and"

(b) by substituting for subsection (2) the following-

'(2) An area provided for voting for members of the Uganda People's Defense Forces shall be outside of any barracks and the commission shall not create special or separate polling stations exclusively for the army or any other security personnel.

Justification:

- *To allow the making of rules for the collection of votes from persons employed in institutions engaged in the administration of elections,*
- *To require the publication of the special provisions in the gazette and in a newspaper of wide circulation,*
- *The current section 38 is broader than the proposed amendment since it allows the making of rules for the collection of votes from a wide range of persons and not exclusively from the military.*
- *The current provision is a furtherance of the command of article 59 of the Constitution, amending it as proposed in the Bill will be considered regressive to the enjoyment of such a right by the general populace.*
- *The proposed amendment does not introduce anything new since already; the Commission is empowered to make rules for the collection of votes from soldiers and military personnel.*

INSERTION NEW CLAUSE IMMEDIATELY AFTER CLAUSE 5

The Bill is amended by inserting the following new Clause immediately after Clause 5 as follows-

"Insertion of new section 83A in the principal act

The Principle Act is amended by inserting immediately after section 83 the following-

"83A. Involvement of public officers in political campaigns

(1) A public officer who-

(a) campaigns, solicits for votes or public support for a candidate;

(b) uses or permits another person to use public resources for purposes of campaigning, soliciting for votes or support for a candidate,

commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment for a period not exceeding five years or both."

Justification

- *In compliance with the recommendation of the Supreme Court in the case of Amama Mbabazi vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General, Presidential Election Petition No. 1, wherein the Supreme Court directed the enactment of legislation to explicitly prohibit public servants from involvement in political campaigns.*
- *To maintain a level playing ground in political campaigns.*

-END-