

BILLS SUPPLEMENT

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Bill No. 5 *Constitution (Amendment) (No. 2) Bill* **2005**

THE CONSTITUTION (AMENDMENT) (NO. 2) BILL, 2005.

MEMORANDUM

1. The object of this Bill is to make various amendments that have been felt to be necessary having regard to the experience gained in operating the Constitution since it was promulgated in 1995.

2. The Bill takes account of the following—

- (a) the report and recommendations of the Constitutional Review Commission submitted by the Commission to Government on 10th December, 2003 and Government decisions on the report and recommendations;
- (b) so much of the Government proposals for amendment of the Constitution, submitted to the Constitutional Review Commission in September, 2003 which were not addressed by the Commission in its report and recommendations;
- (c) other Government decisions taken since the submission to the Commission of the Government proposals;
- (d) the Government White Paper on the Report of the Commission of Inquiry (Constitutional Review) issued in September, 2004.

3. In particular the amendments being effected by the Bill are amendments relating to the provisions on local government and regional governments in the Constitution the amendment of which fall under article 260 of the Constitution. According to article 260, these amendments require, to be valid, to have been passed by Parliament supported at Second and Third Readings by not less than two thirds of all members of Parliament and to be ratified by at least two thirds of the members of the district council in each of at least two thirds of all the districts of Uganda.
4. Clause 2 - Amendment of article 5
Clause 2 seeks to replace article 5(2) of the Constitution to recognise that there will be regional governments formed by districts which agree to form regions as provided in the amendments to article 178 and the Fifth Schedule to the Constitution as well as districts as reflected in the First Schedule to the Constitution. Clause 2 also recognises the special place of Kampala which is located in Buganda, as capital city of Uganda.
5. Clause 3 - Amendment of article 176 of the Constitution
Clause 3 of the Bill seeks to amend clause (1) of article 176 of the Constitution to subject that article to the provisions of article 178 of the Constitution as amended by the Bill to provide for the formation of regional governments.
6. Clause 4 - Replacement of article 178 of the Constitution
The existing article 178 of the Constitution had been enacted in order to meet the demands of various communities to be allowed to cooperate as one entity to promote culture and development in the areas specified in the Fifth Schedule to the Constitution.
7. It has been realised over the years that the various communities and districts for whose benefit article 178 was drafted have not been satisfied with the provision and have therefore not taken full advantage of the article.

8. Government consulted with representatives of the traditional or cultural leaders and the relevant communities on the matter. Thus the amendments now proposed in article 178 represent a consensus reached as a result of these consultations.

9. The general principles proposed in the new article 178 and the Fifth Schedule are as follows—
 - (a) Two or more districts may cooperate to form a regional government to perform the functions and services specified in the Fifth Schedule to the Constitution.
 - (b) A district shall not be taken to have agreed to enter into a cooperation arrangement to form a regional government unless—
 - (i) the proposal to join the regional government has been approved by resolution of the district council by a majority of two thirds of the members of the district council; and
 - (ii) the decision of the district council has been ratified by not less than two-thirds of the sub county councils in the district.
 - (c) Subject to clause (1) of article 178 and to the provisions of the Constitution, the districts of Buganda specified in the First Schedule to the Constitution, shall be deemed to have agreed to form a regional government for the purposes of this article.
 - (d) There is established a municipality in Buganda to be known as Mengo Municipality the boundaries of which shall be delineated by Act of Parliament.
 - (e) The districts forming the regional government shall form a regional assembly.

- (f) A regional assembly shall be a body corporate with power to sue and be sued and shall have power to do all things that may be done by a body corporate and shall be subject to all obligations to which a body corporate is subject.
 - (g) A regional assembly formed under this article shall be the highest political authority within its region and shall have political, legislative, executive, administrative and cultural functions in the region.
 - (h) A regional assembly shall in particular have in relation to the region, the functions and services conferred upon a regional government in the Fifth Schedule to the Constitution and may make laws which shall have the force of law in the region.
 - (i) Laws made by a regional assembly shall conform to the Constitution and to Acts of Parliament.
 - (j) The provisions of the Fifth Schedule to the Constitution shall have effect in respect of the matters specified in it in relation to regional governments.
10. The Fifth Schedule provides inter alia, for the following—
- (a) the name of regional governments to be chosen by the regional governments themselves;
 - (b) Composition of regional assembly
- The regional assembly comprises—
- (i) directly elected representatives;
 - (ii) representatives of women who shall be one third of the membership;

- (iii) representatives of cultural interests in areas where there is traditional or cultural leader not exceeding 15 percent of the members of the regional assembly.
- (c) committees of the regional assembly;
- (d) composition of the Regional Government headed by a directly elected chairperson;
- (e) number of ministers of regional government not more than six;
- (f) voting in Regional Assembly;
- (g) role of traditional or cultural leader—
 - (i) is titular head of the regional government;
 - (ii) is titular head of regional assembly to open, address and close sessions of the assembly;
 - (iii) to enjoy the benefits and privileges and roles provided for in article 246 of the Constitution and by Parliament and the regional assembly.
- (h) Functions and services of regional governments
Specifies thirteen sets of functions to be performed by regional governments including culture functions or services surrendered voluntarily by a district council;
- (i) Land
Establishment of regional land board.
- (j) Financial provisions for regional government
Funding is determined in accordance with Seventh Schedule to the Constitution.

(k) Recognition of cultural diversity and equality of distribution of resources by regional government;

(l) Take over or regional government by the President in a manner similar to the take over of the executive and legislative powers of a district under article 202 of the Constitution;

11. The Fifth Schedule to the Constitution is being replaced by clause 7 of the Bill.

12. Clause 5 - Amendment of article 189 of the Constitution
This clause seeks to amend article 189 (Functions of Government and district councils) in order to recognize the new role of regional governments. For that purpose the clause inserts a new clause (5) in article 189.

13. Clause 6 - Replacement of First Schedule to the Constitution
The opportunity is being taken in the Bill to replace the First Schedule which incorporates all the districts so far created since the Constitution was promulgated on 8th October, 1995. The First Schedule is to be read with article 5(2) of the Constitution as amended by the Bill.

14. Clause 8 - Amendment of 6th Schedule to the Constitution

(i) Clause 8 seeks to amend the Sixth Schedule to the Constitution by inserting a new function to the functions and services of Government namely; Development and upgrading of national roads;

This is being done because it is felt that national road development and upgrading is a matter for the central government and not for districts or regional governments.

- (ii) Clause 8 further adds management of forest and game reserves to the functions of the central government under item 24 of the 6th Schedule to the Constitution. This is because it is felt that the central government has better financial and manpower resources to manage forests and game reserve of than district or regional governments. At present the central government only has the function of determining policy in respect of forests and game reserves. The Sixth Schedule is to be read with article 189 of the Constitution.

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ARRANGEMENT OF CLAUSES

Clause

1. Short title.
2. Amendment of article 5 of the Constitution.
3. Amendment of article 176 of the Constitution.
4. Replacement of article 178 of the Constitution.
5. Amendment of article 189 of the Constitution.
6. Replacement of First Schedule to the Constitution.
7. Replacement of Fifth Schedule to the Constitution.
8. Amendment of Sixth Schedule to the Constitution.

A Bill for an Act

ENTITLED

THE CONSTITUTION (AMENDMENT) (NO. 2) ACT, 2005.

An Act to amend the Constitution to provide for Kampala as the capital city of Uganda; to provide for the districts of Uganda; to provide that subject to the existence of regional governments the system of local government in Uganda shall be based on a district as a unit; to provide for the creation of regional governments and to provide for the composition and functions of the regional governments; to provide for regional assemblies for each regional government as the highest political authority in the region with political, legislative, executive, administrative and cultural functions in the region; to replace the Fifth Schedule to provide for details relating to regional governments; to amend article 189 to recognize the functions and services of regional governments and to provide for related matters.

BE IT ENACTED by Parliament as follows—

1. Short title

his Act may be cited as the Constitution (Amendment) (No. 2) Act, 2005.

2. Amendment of article 5 of the Constitution

Article 5 of the Constitution is amended by substituting for clause (2) the following—

“(2) Subject to article 178 of this Constitution, Uganda shall consist of—

(a) regions administered by regional governments when districts have agreed to form regions as provided for in this Constitution;

(b) Kampala; and

(c) the districts of Uganda;

as specified in the First Schedule to this Constitution, and such other districts as may be established in accordance with this Constitution or any other law.”

3. Amendment of article 176 of the Constitution

Article 176 of the Constitution is amended by substituting for clause (1) the following—

“176. Local government system

(1) Subject to article 178, the system of local government in Uganda shall be based on the district as a unit under which there shall be such local governments and administrative units as Parliament may, by law, provide”.

4. Replacement of article 178 of the Constitution

For article 178 of the Constitution there is substituted the following—

“178. Regional governments

(1) Two or more districts may cooperate to form a regional government to perform the functions and services specified in the Fifth Schedule to this Constitution.

(2) A district shall not be taken to have agreed to enter into a cooperation arrangement to form a regional government unless—

(a) the proposal to join the regional government has been approved by resolution of the district council by a majority of two thirds of the members of the district council; and

(b) the decision of the district council has been ratified by not less than two-thirds of the sub county councils in the district.

(3) Subject to clause (1) and to the provisions of this Constitution, the districts of Buganda specified in the First Schedule to this Constitution, shall be deemed to have agreed to form a regional government for the purposes of this article.

(4) There is established a municipality in Buganda to be known as Mengo Municipality the boundaries of which shall be delineated by Act of Parliament.

(5) The districts forming the regional government shall form a regional assembly.

(6) A regional assembly shall be a body corporate with power to sue and be sued and shall have power to do all things that may be done by a body corporate and shall be subject to all obligations to which a body corporate is subject.

(7) Notwithstanding article 180, a regional assembly formed under this article shall be the highest political authority within its region and shall have political, legislative, executive, administrative and cultural functions in the region.

(8) A regional assembly shall in particular have in relation to the region, the functions and services conferred upon a regional government in the Fifth Schedule to this Constitution and may make laws which shall have the force of law in the region.

(9) The categories of laws to be passed by a regional assembly and the manner in which those laws are passed shall be as prescribed by Parliament by Act of Parliament.

(10) Subject to this article and to the Fifth Schedule to this Constitution, the executive and administrative powers of a regional assembly shall extend to the execution and implementation of the laws enacted by the regional assembly and other laws operating in the region and the management of the affairs of the regional government.

(11) Laws made by a regional assembly shall conform to this Constitution and to Acts of Parliament.

(12) The provisions of the Fifth Schedule to this Constitution shall have effect in respect of the matters specified in it in relation to regional governments.

5. Amendment of article 189 of the Constitution

Article 189 of the Constitution is amended by inserting immediately after clause (4), the following—

“(5) This article shall have effect without prejudice to the functions and services authorised or required to be performed by a regional government under this Constitution”.

6. Replacement of First Schedule to the Constitution

For the First Schedule to the Constitution there is substituted the following—

“FIRST SCHEDULE

Article 5, 178

KAMPALA AND DISTRICTS OF UGANDA

Kampala

DISTRICTS OF UGANDA

- 1. Bundibungyo
 - 2. Busia
 - 3. Kasese
 - 4. Kotido
 - 5. Mbale
 - 6. Moroto
 - 7. Pallisa
 - 8. Tororo
 - 9. Kapchorwa
 - 10. Sironko
 - 11. Nakapiripirit

 - 12. Adjumani
 - 13. Arua
 - 14. Moyo
 - 15. Nebbi
 - 16. Yumbe

 - 17. Gulu
 - 18. Kitgum
 - 19. Pader

 - 20. Hoima
 - 21. Masindi
 - 22. Kibale
- } of West Nile
- } of Acholi
- } of Bunyoro

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| 23. Kabarole | } | of Tooro |
| 24. Kamwenge | | |
| 25. Kyenjojo | | |
| 26. Katakwi | } | of Teso |
| 27. Kumi | | |
| 28. Soroti | | |
| 29. Kaberamaido | | |
| 30. Kalangala | } | of Buganda |
| 31. Kayunga | | |
| 32. Kiboga | | |
| 33. Luwero | | |
| 34. Masaka | | |
| 35. Mpigi | | |
| 36. Mubende | | |
| 37. Mukono | | |
| 38. Nakasongola | | |
| 39. Rakai | | |
| 40. Sembabule | | |
| 41. Wakiso | | |
| 42. Bushenyi | } | of Ankole |
| 43. Mbarara | | |
| 44. Ntungamo | | |
| 45. Apac | } | of Lango |
| 46. Lira | | |
| 47. Bugiri | } | of Busoga |
| 48. Iganga | | |
| 49. Jinja | | |
| 50. Kamuli | | |
| 51. Mayuge | | |

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| <p>52. Kabale
53. Kanungu
54. Kisoro
55. Rukungiri</p> | <p>} of Kigezi</p> |
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7. Replacement of Fifth Schedule to the Constitution

For the Fifth Schedule to the Constitution there is substituted the following—

“FIFTH SCHEDULE

REGIONAL GOVERNMENTS

1. Name of regional governments

A regional government may adopt its own name.

2. Composition of Regional Assembly

(1) The composition of a regional assembly shall be prescribed by Act of Parliament and shall consist of—

- (a) directly elected representatives elected on the basis of universal adult suffrage at elections conducted by the Electoral Commission;
- (b) representatives of women, who shall not be less than one third of the membership;
- (c) representatives of the youth and persons with disabilities;
- (d) representatives of cultural interests in areas where there is a traditional or cultural leader, nominated by the traditional or cultural leader not exceeding fifteen per cent of the members of the regional assembly;
- (e) district chairpersons in the region who shall be ex-officio members with no right to vote.

(2) A regional assembly shall have a speaker, the election and functions of whom shall be prescribed by Act of Parliament.

(3) The central government shall establish a formula to ensure equitable representation on the basis of cultural diversity.

(4) Members of regional assemblies shall serve for the same term as members of district councils.

3. Committees of the Regional Assembly

(1) A regional assembly may establish standing and other committees or organs for the efficient discharge of its functions.

(2) The representatives of cultural interests shall constitute the standing committee on cultural matters.

(3) The standing committee on cultural matters shall have exclusive jurisdiction on the cultural matters of the region.

(4) In this paragraph “cultural matters” include the following—

(a) the choice and installation of a traditional leader or cultural leader;

(b) all traditional and cultural matters relating to the traditional or cultural leader and to the institutions of the traditional leader or cultural leader as well as royal members of the traditional leadership;

(c) the choice, appointment and succession to clan and sub-clan leadership;

(d) clan, traditional and customary matters;

(e) matters relating to cultural funeral rites, cultural succession and customary heirs;

(f) cultural or traditional lands, sites, shrines and installations;

(g) clan lands, sites, shrines and installation; and

(h) traditional, customary and cultural practices which are consistent with this Constitution.

4. Regional Government

A Regional Government shall be led by a Chairperson who shall—

- (a) be directly elected by universal adult suffrage at an election conducted by the Electoral Commission;
- (b) be a citizen of Uganda by birth as defined by article 10 of this Constitution and one of whose parents or grandparents is or was resident in the region and a member of the indigenous communities existing and residing within the borders of the region as at the first day of February, 1926;
- (c) be willing and able, where applicable, to adhere to and perform the cultural and traditional functions and rites required by his office;
- (d) where applicable, upon election, be given instruments of office by the cultural or traditional leader of the region; and
- (e) be the political and administrative head of the regional government.

5. Ministers of Regional Government

Ministers of the regional government shall be appointed by the head of the regional government with the approval of the regional assembly; except that the Ministers shall not be more than six.

6. Cooperation with Central Government

A regional government shall cooperate with the Ministries of the Central Government but on policy matters they shall liaise with the office of the President.

7. Voting in the Regional Assembly

(1) Representatives of cultural interests as defined in paragraph 3 shall not vote on any partisan matter and in any case may vote only on cultural matters.

(2) A matter shall be considered to be of a partisan nature if in the course of its being tabled or debated in a regional assembly it is declared by a majority vote of the directly elected representatives to be partisan.

8. Role of traditional or cultural leader

Where a traditional leader or cultural leader exists in a region the traditional or cultural leader shall—

- (a) be the titular head of the regional government;
- (b) be the titular head of the regional assembly and shall open, address and close the sessions of the regional assembly; and
- (c) enjoy the benefits and privileges and roles as provided for in article 246 of this Constitution and by Parliament and the regional assembly.

9. Functions and services of regional governments

The functions and services for which a regional government is responsible are as follows—

- (a) secondary education and tertiary institutions except national universities and other national institutions;
- (b) maintenance of regional roads;
- (c) regional referral hospitals other than national referral hospitals and national medical institutions;
- (d) co-ordination, monitoring and supervision of agriculture;
- (e) forests other than national parks and forests managed by the Government;
- (f) culture;
- (g) cultural and traditional lands;
- (h) promotion of local languages, crafts and antiquities;
- (i) water;
- (j) sanitation;
- (k) to levy surcharge or cess subject to the approval of Central Government;

- (l) functions and services surrendered voluntarily by a district council or district councils;
- (m) receiving copies of financial accountability of districts to the Central Government to enable the regional government monitor and supervise the implementation of government programmes.

10. Land

(1) A regional government may establish a regional land board whose functions may include the following—

- (a) coordination and monitoring of land use in the region;
- (b) planning of land use in the region; except that if there is a conflict between regional land planning and Central Government land planning, the latter shall prevail.

(2) A regional land board shall consist of—

- (a) all chairpersons of the District Land Boards in the region;
- (b) an equal number of members appointed by the regional government.

11. Financial provisions for regional governments

(1) Where a regional government is established the government shall work out a formula of granting unconditional grants to the regional government having regard to the Seventh Schedule to this Constitution.

(2) A formula shall be agreed upon by financial experts in regard to the grants to be sent to the regional government to run the devolved functions and responsibilities.

(3) Grants sent to the region may change in light of economic and social conditions such as population and other similar considerations.

(4) There shall also be a mechanism to resort to in case the central government deliberately fails to remit funds to the regional government.

12. Recognition of cultural diversity and equitable distribution of resources

(1) Each regional government must recognize and respect the different cultures existing within the region.

(2) A regional government shall ensure that there is equitable distribution of the resources of the region in accordance with a formula to be worked out by the central government.

13. Take-over of regional government by President

(1) Where—

(a) there is evidence of persistent failure to comply with the requirements of paragraph 12;

(b) the regional government so requests and it is in the public interest to do so;

(c) a state of emergency has been declared in the region or in Uganda generally; or

(d) it has become extremely difficult or impossible for the regional government to function;

a regional government shall be liable to a take-over of its administration by the President in a manner prescribed by an Act of Parliament and similar to the take-over of administration of a district under article 202 of this Constitution.

(2) In the circumstances described in subparagraph (1), the President may, with the approval of two thirds of the members of Parliament, assume the executive and legislative powers of the regional government.

(3) The exercise by the President of the power to assume the executive and legislative powers in subparagraph (2), may be done through such persons or officers as the President may appoint; and the legislative functions shall be exercised by making statutory instruments.

(4) Where the President assumes the exercise of the legislative powers of a regional government under this paragraph, the President shall have no power to make laws on cultural matters as defined in paragraph 3 of this Schedule.

(5) Unless approved by Parliament for a longer term, the exercise by the President of the power to take over, shall be for a period not exceeding ninety days.

(6) Upon the expiry of the term under subparagraph (5)—

(a) the President shall hand back the administration of the region to the incumbent regional government; or

(b) if Parliament decides that the prevailing circumstances still make it impossible for the incumbent regional government to resume the administration of the region—

(i) where the unexpired term of the regional assembly is longer than twelve months, the President shall cause elections to be held for a new regional assembly within sixty days; or

(ii) where the unexpired term of the regional assembly is less than twelve months the President shall continue to administer the region until the next elections are held.”

8. Amendment of Sixth Schedule to the Constitution

The Sixth Schedule to the Constitution is amended—

(a) by inserting immediately after paragraph 16 the following—
16A Development and upgrading of national roads;

(b) by substituting for item 24, the following—

“24. Forest and game reserve policy and management.”