
THE EAST AFRICAN COMMUNITY

BILL SUPPLEMENT

No. 7.

5th December, 2008

to the East African Community Gazette No. 9 of 5th December, 2008.

Printed by the Uganda Printing and Publishing Corporation, Entebbe by Order of the East African Community.



THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY ELECTIONS BILL, 2008.

MEMORANDUM.

The object of this Bill is to make provision to ensure the full, comprehensive and effective management of Presidential and National Assembly Elections through an established model East African Electoral Commission that will manage free, fair and credible elections and processes incidental to the conduct of the Elections in the EAC Region.

HON. DAN OGALO, MP,

Member of the East African Legislative Assembly.



THE EAST AFRICAN COMMUNITY ELECTIONS BILL, 2008.

ARRANGEMENT OF CLAUSES

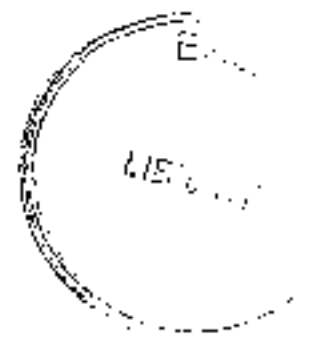
Clause.

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ESTABLISHMENT OF COMMISSION

3. Establishment of Commission
4. Composition of Commission
5. Seat of Commission
6. Functions of Commission
7. Demarcation of constituencies
8. Independence of Commission



PART III—CONDUCT OF ELECTIONS

9. Appointment of electoral officers
10. Registration of voters
11. Nominations
12. Campaigns
13. Polling
14. Counting
15. Tallying
16. Avoidance of elections
17. Election petitions
18. Election offences

PART IV—MISCELLANEOUS.

19. Political parties forum
20. Determination of complaints
21. Regulations

—280



A BILL FOR AN ACT

ENTITLED

THE EAST AFRICAN COMMUNITY ELECTIONS
ACT, 2008

An act of the Community to make provision for the conduct of Presidential and National Assembly Elections, to establish the East African Electoral Commission, to provide for the registration and management of the Register, demarcation of constituency boundaries, appointment of election officers, procedure at elections and other incidental matters.

ENACTED By the East African Community and assented to by the Heads of State.

PART I—PRELIMINARY

1. This Act may be cited as the East African Community Elections Act, 2008 and shall come into force on such date as the Council of Ministers may, by notice in the *Gazette* appoint.

Short title
and
commence-
ment

2. In this Act unless the context otherwise requires—

Inter-
pretation

“Assembly” means the East African Legislative Assembly;

“National Assembly” has the same meaning as Parliament;

"Constituency" means that electoral area represented in the National Assembly by a Member;

"Returning Officer" means the officer in charge of the management of an election in a constituency.

PART II—ESTABLISHMENT OF COMMISSION

Establishment of Commission

3. (1) There is established a Commission known as the East African Electoral Commission.

(2) The Commission shall be an organ of the Community with perpetual succession, capacity of suing and being sued in its name.

(3) The Commission may hold property both movable and immovable and do all other things a body corporate may do.

Composition of Commission

4. (1) The Commission shall consist of a Chairperson, Deputy Chairperson and fifteen other members.

(2) The Chairperson shall be a sitting Judge of the highest court of any of the Partner States, nominated by his or her respective Judicial Service Commission, vetted by the East African Political Parties Forum established under this Act and appointed by the Chairperson of the Summit on address of the Assembly.

(3) When appointed, the Chairperson shall take leave of absence and shall serve for a non-renewable term of five years.

(4) The other members of the Commission shall be nominated by the Public Service Commission of their respective Partner States, vetted by the East African Political Parties Forum and appointed by the Chairperson of the Council of Ministers on address of the Assembly.

(5) The Public Service Commission of each Partner State shall call for applications from citizens of high moral character, proven integrity with considerable experience in the conduct of public affairs, conduct interviews, select and submit two names to the Secretary General.

(6) A Judicial Service Commission of a Partner State required to nominate a Chairperson shall submit the name of the nominee to the Secretary General.

(7) The Secretary General shall convene and submit the names of all the nominees to the East African Political Parties Forum which shall consider and submit its report on the suitability of the nominees to the Assembly.

(8) The Assembly shall in plenary consider and make a decision by consensus on each nominee and shall by way of address communicate its decision to the Chairperson of the Summit or the Council, as the case may be, for formal appointment.

(9) In the event that a nominee is rejected by the Assembly, the Secretary General shall immediately request the nominating service to forward the name of the best candidate among those not nominated, and the Secretary General shall submit the name to the Speaker of the Assembly without recourse to the East African Political Parties Forum.

(10) A person shall not be appointed as a member of the Commission if the person is—

(a) a member of a registered party;

(b) has in the last fifteen years been;

(i) a Minister in a government of a Partner State;

(ii) an employee or officer of a registered political party;

(iii) has held an elective political office;

(c) an officer or employee of a registered party;

(d) holds an elective political office.

(11) If a member of the Commission resigns or dies, the vacancy shall be filled following the same procedure prescribed under this section.

(12) A member of the Commission may be removed from office only for inability to perform his or her functions arising from infirmity of body or mind, impartiality or grave misconduct.

(13) A member of the Commission may be removed from office by the Chairperson of the Summit or the Council of Ministers in pursuance of an address from the Assembly.

(14) No motion shall be made for an address under subsection (13) unless the Speaker's committee has presented a report to the Assembly, stating that the committee is satisfied that the Member in question is unable to perform his or her functions.

(15) The members of the Commission shall serve for a term of five years renewable once, provided that such renewal shall be done at least six months before expiry of the first term.

(16) Members of the Commission shall be paid such emoluments as the Council of Ministers shall determine.

Seat of
Commission

5. The Seat of the Commission shall be at Arusha, in the United Republic of Tanzania.

Functions of
Commission

6. (1) The Commission shall—

- (a) compile, maintain and update an East African voter's register which shall include names of persons entitled to vote in national elections or referenda;
- (b) be responsible for conduct of free and fair elections;
- (c) issue to returning and registration officers such directives as to ensure compliance with the law;
- (d) demarcate National Assembly constituencies;
- (e) determine the dates for holding elections;
- (f) accredit any individual, group or institution to act as an election observer;
- (g) formulate, regulate and implement civic education programme relating to elections;
- (h) design, print, distribute and control the use of all ballot papers;
- (i) establish and manage polling stations; and
- (j) perform any other function consistent with ensuring the conduct of a free and fair election.

7. (1) Each Partner State shall transmit to the Commission the composition of its National Assembly, and the Commission shall demarcate constituencies for purposes of elections, taking into account population, means of communication, geographical features and density of population. Demarcation
of con-
stituencies

(2) The Commission shall publish the demarcation of the constituencies under subsection (1) in the *Community Gazette*.

Inde-
pendence of
Commission

8. (1) The Commission shall be independent and shall, in the performance of its functions not be subject to the direction or control of any person or authority, save that it shall make periodic reports to the Assembly on its functions.

(2) Decisions of the Commission shall as far as possible be by consensus, provided that where none can be reached the question shall be decided by a vote.

PART III--CONDUCT OF ELECTIONS

Appointment
of electoral
officers

9. (1) The Commission shall appoint a returning officer for each National Assembly Constituency and such other employees as may be necessary for the discharge of its functions, and may establish its offices in the Partner States.

(2) The returning officer and the other employees shall be appointed on such terms and conditions as the Commission may determine.

Registration
of voters

10. (1) The Commission shall compile a register of voters for each polling station and constituency, showing all persons entitled to vote at the polling station and in the constituency.

(2) The registration officer shall give wide notice in both print and electronic media, the fact of registration, dates, places and the time when applicants shall be registered.

(3) An applicant shall complete a form prepared by the Commission in presence of the registration officer and shall thumb mark it.

(4) The Commission shall after completing of the lists by the registrar, give notice in the *Gazette* and other media, notice that the register is open for inspection at such places and times, as it may deem necessary.

(5) Any person may lodge a complaint to the registration officer, on the inclusion or non-inclusion of an applicant, within 7 days of the publication of the list, and the registrar shall after an inquiry make a decision on the complaint.

(6) Any person aggrieved by the decision of the registration officer may appeal to the Commission within 14 days of the decision of the registrar, and decision of the Commission shall be final.

11. (1) The Commission shall publish in the *Gazette* the day of polling, the location of each polling station, and a list of all polling station in the constituency or country as the case may be at least 21 days before nomination. Nominations

(2) For purposes of a general election in respect of those Partner States with a fixed term for the National Assembly and the Presidency the Commission shall at its own discretion publish in the *Gazette* a notice specifying the dates and place for the nominations of candidates for the office of the President and member of Parliaments the period for campaigns and polling day.

(3) In respect of those Partner States with no fixed term for the office of President or members of Parliament, the President shall transmit to both the Speaker of the National Assembly and the Commission, the instrument of dissolution of the National Assembly, and upon receipt of the said instrument the Commission shall commence the electoral process in the same manner as in respect of those Partner States with fixed presidential and parliamentary terms.

(4) On the day and at the place fixed for nomination of candidates for the office of the President and National Assembly, the Commission and its returning officers shall attend between 9.00 a.m and 5.00 p.m., to receive the nominations of candidates to the seat of President and National Assembly respectively.

(5) The Procedure of nomination, including but not limited to the form and contents of the nomination paper, requisite documents, circumstances under which nomination papers may be rejected and inspection of nomination papers, shall be prescribed by each partner State by statute.

(6) If after one hour of the time appointed for closure of nomination there is only one candidate duly nominated, the Commission or returning officer shall publicly declare that the candidate is elected, and in case of National Assembly elections the returning officer shall transmit the fact to the Commission.

(7) A candidate may, in writing to the Commission supported by ten signatures of registered voters, withdraw his or her nomination at least 72 hours before polling day.

(8) The Commission shall issue a *Gazette* and announce in electronic or print media having wide circulation, the fact of withdrawal by any candidate.

(9) Where any candidate dies before polling day and the Commission or returning officer satisfies himself or herself of the fact of death, the poll shall be postponed and the electoral process shall be commenced afresh within a reasonable time, to allow for new candidates to be nominated.

(10) The remaining candidates previously nominated shall not be required to be re-nominated.

(11) In event of a vacancy by reason of death, resignation, declaration by a court or otherwise, the Chief Justice, Speaker of the National Assembly of a partner state, registrar of the court as the case may be, shall immediately notify the commission of the vacancy within one week from the date of the vacancy and the Commission shall commence the process of holding a bye election.

12. (1) Subject to other electoral laws of a partner state, ^{Campaigns} the Commission shall determine the manner and the period during which campaigns shall take place and shall publish the information in the *Gazette*.

(2) Every candidate shall have unhindered access to the electorate.

(3) No candidate shall use the resources of a Government for purposes of campaigning. Provided the Commission shall have authority to exempt a facility or facilities which are attached to and utilized by the holder of that office.

(4) The Commission shall ensure adequate protection of each candidate in respect of Presidential candidates and security at all campaign meetings.

(5) The Commission shall ensure equal treatment by state owned media in presentation of programmes by political parties.

(6) A person who during the campaign period for the purpose of affecting or preventing the election of a candidate directly or indirectly does any act which interferes with the electioneering activities of other persons commits an offence and is liable on conviction of a fine not exceeding five hundred dollars or imprisonment for a period not exceeding three years.

(7) Campaigns shall not extend beyond midnight or the day before polling day.

(8) Any person who on polling day for purposes of promoting or opposing a candidate makes any communication or displays any campaign literature, emblem, badge, banner, flag, that could be taken as an indicator of any candidate commits an offence.

Polling

13. (1) Within twenty-four hours before polling day, the returning officer shall furnish each presiding officer in the constituency with all election materials for conduct of the poll.

(2) Any building other than a dwelling house may be used for polling if required by the returning officer.

(3) The arrangement at each polling station shall be to ensure the secrecy of the ballot, but enabling the agents if any, of the candidates, to ensure protection of the interests of their principals.

(4) Before commencement of the poll the presiding officer shall in full view of all present demonstrate to the satisfaction of all present that the ballot box is empty.

(5) Polling shall commence at 7.00 a.m. and close at 5.00p.m, provided that voters in line as at 5.00p.m shall be allowed to cast their vote.

(6) Every voter shall surrender his or her voter's card to the presiding officer or his or her assistant, who if satisfied that the particulars on the card correspond to those in the register, shall issue a ballot paper to the voter.

(7) Prior to issuing the ballot paper, the presiding officer or his or her assistant shall ensure that the ballot paper is stamped with an official mark, and the voter's name on the roll is ticked to prove that a ballot paper has been received.

(8) The voter on receiving the ballot shall go directly to the screened compartment and secretly record his vote.

(9) The voter shall then proceed to have his or her thumb on the right hand is dipped in indelible ink to indicate the voter has cast his or her vote.

(10) A voter is entitled to remain at the polling station provided he is at least twenty meters from the table of the presiding officer.

(11) A voter incapacitated by blindness or other cause shall at the screened compartment inform the presiding officer the name of the candidate he wishes to vote, and the presiding officer shall mark and place his or her ballot paper in the ballot box.

(12) For avoidance of doubt, no person other than an electoral official and a candidate's agent shall be present or within hearing at the time an incapacitated voter makes his or her choice known to the presiding officer.

(13) A voter who satisfies a presiding officer that the ballot paper has been spoiled by accident shall be issued with another ballot paper and the spoiled one shall be marked as cancelled.

(14) Any ballot paper found in polling station not in the ballot box shall together with its counterfoil be marked cancelled and it shall be deemed to be a spoiled paper.

(15) Save for a returning officer, presiding officer, police officer or a person employed in an official capacity at a polling station, every other person shall vote at the polling station at which he is registered.

(16) The officers specified under subsection (15) may vote at a polling station at which they are employed with prior authorization of the returning officer, by a certificate under his or her hand which shall state the particulars of each officer.

(17) Every political party or candidate shall be entitled to appoint two agents at each polling station for purposes of safeguarding the interests of the political party or candidate.

(18) The agents shall present their appointment letters to the presiding officer for purposes of identification only.

(19) The agents shall be seated at such places as to enable them observe the voting process and may have in their possession a copy of the voter's register.

(20) If polling is interrupted by violence, the presiding officer shall adjourn the polling to another or the next day and the procedure described in sections hereinabove shall apply.

(21) Every returning officer and presiding officer shall have all the power of justice of the place.

Counting

14. (1) The presiding officer shall, with the assistance of polling assistants immediately after closing the poll, commence with the counting of the votes by opening the ballot box in full view of the candidate's agents and all present, emptying the contents on the polling table and separating the votes polled by each candidate.

(2) The presiding officer shall count the total votes polled by each candidate and shall thereafter announce the results and both the presiding officer and the candidate's agents if any, shall sign the declaration of result form.

(3) Immediately after signing the declaration form the presiding officer shall post the results at the polling station or on such building as the returning officer shall indicate.

(4) The presiding officer shall keep a report book in which he or she shall enter all objections raised by a candidate's agent or voter during the counting of votes.

(5) The presiding officer shall mark the ballot paper in respect of which an objection is raised with the same number as that recorded in the report book.

(6) Subject to reversal on a recount, the decision of the presiding officer in respect of the objection raised shall be final.

(7) A vote shall only be invalid if the choice of the voter cannot be reasonably ascertained.

(8) The presiding officer shall—

(a) place in the ballot box, ballot papers received by each candidate, invalid ballot papers, unused ballot papers all tied separately in bundles, the voters roll and a signed declaration of results form;

(b) seal the box and deliver it directly to the returning officer, provided that the agents of the candidates may go along with the presiding officer to witness the delivery;

(c) deliver to the returning officer a duly filled and signed results form and the report book.

15. (1) The returning officer shall open each envelope in the presence of the candidate's agents containing the declaration of results form immediately on its receipt and record the number of votes cast for each candidate and shall subsequently cumulatively add the number of votes for each candidate as and when he or she receives any declaration form. Tallying

(2) For the avoidance of doubt, the returning officer shall not wait for all envelopes containing the declaration of results forms prior to tallying.

(3) If counting or tallying of votes is interrupted by violence, the presiding officer or returning officer shall adjourn the counting or tallying to the next day or any other time of the same day, provided that where counting is adjourned the ballot boxes shall be kept in safe custody and the candidate's agents shall be entitled to be present to keep watch on the boxes until counting resumes.

(4) After addition of votes the returning officer shall declare the number of votes obtained by each candidate, complete a return and transmit to the Commission, the return, a report of the elections in the constituency, the tally sheets and the declaration of results forms and the Commission shall publish the results in the *Community Gazette*.

(5) The Commission shall within sixty hours from close of the poll declare in writing and under seal, the results of the presidential election and soon thereafter publish the results in the *Gazette*.

(6) A declaration executed and sealed by the commission shall be evidence that the person named in the declaration has been elected President.

(7) The election of a candidate as president elect or member of the National Assembly shall not be challenged anywhere save by way of an election petition praying for the election to be declared void.

Avoidance
of elections

16. (1) The election of the President or member of National Assembly shall be declared void on any of the following grounds being proved to the satisfaction of the court—

- (a) that the majority of voters were or may have been prevented from electing the candidate whom they preferred by reasons of bribery, treating, intimidation or any other reason;
- (b) that there was non-compliance of the election laws, if it appears that the election was not conducted in accordance with principles laid down in such provisions and that such non-compliance, affected the results of the election;

- (c) that an election offence was committed in connection with the election by the candidate personally or with knowledge or consent by an agent of the candidate;
- (d) that at the time of his or her election a person was not qualified or disqualified for election as President or member of the National Assembly.

(2) Notwithstanding the provisions of section(1), where the court finds that a candidate has been guilty by his or her agents of an election offence and the court further finds that the candidate has not proved to the court that—

- (a) the offence was committed contrary to his or her express orders and without connivance of the candidate;
- (b) he or she took all reasonable means to prevent the commission of the offence;
- (c) the offence was of a trivial nature, unimportant and of limited character;

then the election of such candidate shall not be void by reason of such offence.

17. (1) A petition shall be filed in and tried by a municipal court as may be provided by municipal law, provided that when the petition alleges that the election was not held in conformity with the principles of democracy, accountability and transparency enshrined in Article 6 of the Treaty, the court shall determine first whether to refer the case to the East African court of Justice for a preliminary ruling and if so, it shall dispose of the petition in accordance with the ruling of the East African court of Justice.

(2) Witnesses shall be summoned, examined and cross examined in the same manner as nearly as circumstances admit as in a trial by the High Court in its original civil jurisdiction.

(3) The court shall immediately after judgment issue a certificate to the Commission certifying the outcome of the petition and, subject to reversal on appeal, such determination shall be final; provided that no subsequent proceedings either by way of appeal or application shall entitle a member of the National Assembly whose seat has been declare vacant to remain a member of the Assembly.

(4) All petitions whether in respect of presidential or parliamentary elections shall be presented within 30 days of the date of publication of results.

(5) The President of the East African Court of Justice shall make regulations in respect of practice and procedure for determination of questions under section 13 (17) of this Act.

Election
offences

18. (1) Any person who applies for a ballot paper in the names of another person whether, living, dead or fictitious commits the offence of impersonation.

(2) Any person who either before, during or after polling provides drink, refreshment or any other consideration or does so to enable the procuring of any drink, refreshment to or for any person in order to influence that person or any other person to give or refrain from giving his or her vote at such election or any other person having voted or refrained from voting commits the offence of treating.

(3) A voter who accepts or takes any drink consideration or refreshment commits the offence of treating.

(4) Any person who makes use of or threatens to make use of force, violence or restraint or threatens to inflict any physical or spiritual injury, damage harm or loss upon or against any person in order to induce or compel such person to vote or refrain from voting or on account of such person have voted or refrained from voting or in any way impedes or prevents the free exercise of the franchise of any voter commits the offence of undue influence.

(5) The following persons shall be guilty of the offence of bribery—

- (a) any person who directly or indirectly gives, lends or agrees to give or lend or offers, promises any money or valuable consideration to or for any voter in order to induce any voter to vote or refrain from voting;
- (b) any person who directly or indirectly gives or procures or agrees to give or procure or offers, promises or promises to procure any office, place or employment for any voter in order to induce such voter to vote or refrain from voting;
- (c) any person who advances or pays or causes to be paid any money to or to the use of any other person with intent that such money or any part thereof shall be expended in bribery at an election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at an election;
- (d) any person who during an election directly or indirectly receives any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting;

- (e) any person who after an election directly or indirectly receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting;
- (f) any person who in order to induce any other person to be nominated as a candidate or refrain from becoming a candidate or to withdraw if he has become a candidate gives any money or valuable consideration to such person or to any person on behalf of such person.

(6) Any person who commits the offence of impersonation, treating, undue influence or bribery shall be guilty of a corrupt practice and shall in addition to a sentence imposed by a municipal court become disqualified for a period of five years from the date of his conviction from being registered a voter.

PART IV—MISCELLANEOUS.

Political
parties
forum

19. (1) There is established the East African Political Parties Forum, which shall comprise of one delegate from every political party represented in a National Assembly of a Partner State.

(2) Each political party shall submit to the Secretary General the name of the person to represent the party in the Forum.

(3) The Secretary General shall convene the first meeting of the Forum which shall elect the Executive Committee comprising of the Chairperson, Vice Chairperson, Secretary and such number of Committee Members as the Forum shall determine.

(4) The Members of the Forum shall hold office for a period of four years but shall be eligible for re-election by their political parties.

(5) The Forum shall make regulations to determine its own procedure.

20. (1) The Commission shall hear and determine election complaints alleging any irregularity at any stage of the electoral process. Deter-
mination of
complaints

(2) An appeal from such determination shall lie to the first division of the East African Court of Justice and shall be made by way of petition filed in the sub-registry of the Court in a partner state.

(3) The President of the Court shall make rules of the court for regulating the procedure of appeals to the court.

(4) No appeal shall lie from the decision of the court confirming or reversing the decision of the Commission;

21. The commission may make regulations prescribing— Regulations

- (a) anything that is required to be prescribed under this Act;
- (b) anything that it considers necessary to prescribe for the efficient and proper administration of elections;
- (c) forms for the effective management of the elections.

22

RADIO CULTURE
Tel.22218452
BP 489 BUJUMBURA
BURUNDI

RADIO CULTURE
Tel.22218452
BP 489 BUJUMBURA
BURUNDI

RADIO CULTURE
Tel.22218452
BP 489 BUJUMBURA
BURUNDI

RADIO CULTURE
Tel.22218452
BP 489 BUJUMBURA
BURUNDI