

ACTS SUPPLEMENT

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Act 2

Equal Opportunities Commission Act

2007

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THE EQUAL OPPORTUNITIES COMMISSION ACT, 2007

An Act to make provision in relation to the Equal Opportunities Commission pursuant to articles 32 (3) and 32 (4) and other relevant provisions of the Constitution; to provide for the composition and functions of the Commission; to give effect to the State’s constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability, and take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them; and to provide for other related matters.

DATE OF ASSENT: 4th April, 2007.

Date of Commencement: 18th May, 2007.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.**1. Interpretation.**

In this Act, unless the context otherwise requires—

“Commission” means the Equal Opportunities Commission established by section 2;

“court” means a court of competent jurisdiction;

“currency point” has the meaning assigned to it in the first Schedule to this Act;

“discrimination” means any act, omission, policy, law, rule, practice, distinction, condition, situation, exclusion or preference which, directly or indirectly, has the effect of nullifying or impairing equal opportunities or marginalizing a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability;

“equal opportunities” means having the same treatment or consideration in the enjoyment of rights and freedoms, attainment of access to social services, education, employment and physical environment or the participation in social, cultural and political activities regardless of sex, age, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability;

“gender” means the social and cultural construct of roles, responsibilities, attributes, opportunities, privileges, status, access to and control over resources and benefits between men and women, boys and girls in a given society.

“marginalization” means depriving a person or a group of persons of opportunities for living a respectable and reasonable life as provided in the Constitution;

“Minister” means the minister responsible for gender, labour and social development;

“Parliament” means the Parliament of Uganda;

“person” includes any individual, firm, company, association, partnership or body of persons, whether incorporated or not;

“sex” means the natural state of being male or female.

PART II—ESTABLISHMENT AND MEMBERSHIP OF THE COMMISSION.

2. Establishment of Commission.

(1) In accordance with article 32 (3) of the Constitution, there is established a Commission called the Equal Opportunities Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and, may do, enjoy or suffer anything that bodies corporate lawfully do, enjoy or suffer.

3. Independence of Commission

Subject to the Constitution, the Commission shall, in exercise of its functions, be independent and shall not be subject to the direction or control of any person or authority.

4. Seal of Commission

(1) The seal of the Commission shall be—

(a) in such form as the Commission may determine;

(b) applied in such circumstances as the Commission may determine, subject to any written law; and

(c) kept under the custody of the Secretary.

(2) Judicial notice shall be taken of the seal of the Commission and any document sealed with the seal shall be admissible in evidence.

5. Composition of Commission

(1) The Commission shall consist of five members who shall include a Chairperson, Vice-Chairperson, at least one person with a disability, a youth and two women.

(2) The members of the Commission shall be appointed by the President with the approval of Parliament.

(3) Members of the Commission shall be persons of high moral character and proven integrity and possess considerable experience in, and a record of commitment to, matters relating to the promotion of equal opportunities or human rights.

6. Tenure of office of members of Commission

(1) A member of the Commission shall hold office on a full-time basis for five years and is eligible for reappointment for one more term.

(2) A member of the Commission may at any time resign his or her office in writing addressed to the President.

(3) A member of the Commission may be removed from office by the President—

- (a) for inability to perform the functions of his or her office arising out of infirmity of body or mind;
- (b) for misbehavior or misconduct;
- (c) for incompetence;
- (d) if the member is absent without prior communication to the Chairperson for more than four consecutive meetings of the Commission, or is absent from Uganda for more than twelve consecutive months;
- (e) if the member is or becomes bankrupt or insolvent or enters into a composition scheme with his or her creditors; or
- (f) if the member is convicted of an offence involving dishonesty, fraud or moral turpitude.

(4) A member of the Commission shall not be removed from office—

- (a) under paragraph (3) (a), unless the Medical Board certifies that the person concerned is unable to perform the functions of the Commission;

- (b) under paragraphs (3) (b) to (d), unless the person concerned is notified in writing and given an opportunity to defend himself or herself.

(5) Where a member is removed from office under this section, the President may appoint another person in accordance with section 5 to replace that member and the person appointed shall hold office for the remainder of the term of the member removed.

7. Oath of members of Commission.

Every member of the Commission shall, before assuming his or her duties under this Act, take and subscribe to the oath specified in the Second Schedule to this Act.

8. Remuneration and allowances of members of Commission.

Emoluments of the members of the Commission shall be prescribed by Parliament and shall be a charge on the Consolidated Fund.

9. Chairperson of Commission.

(1) The Chairperson of the Commission shall—

- (a) be the head of the Commission;
- (b) preside over or chair all meetings of the Commission;
- (c) be responsible for the general direction of the affairs and administration of the Commission; and
- (d) monitor and supervise the work of the Secretary.

(2) The Vice-Chairperson shall deputize for the Chairperson and perform such other functions as the Chairperson or the Commission may assign.

10. Members of Commission to relinquish particular offices.

A person holding any of the following offices shall relinquish that office on appointment as a member of the Commission—

- (a) a member of Parliament;
- (b) a member of the East African Legislative Assembly;
- (c) a member of a local government council;
- (d) a member of the executive of a political party or organization at all levels; or
- (e) a public officer.

11. Secretary and other staff of Commission.

(1) The Commission shall have a Secretary who shall be a public officer appointed by the Commission in consultation with the Public Service Commission, on terms and conditions determined by the Commission in consultation with the Public Service Commission and specified in his or her instrument of appointment.

(2) The Secretary shall be a person—

- (a) of high moral character and proven integrity, possessed with relevant qualifications and experience in the field of public administration; and
- (b) qualified to be appointed to the office of Permanent Secretary.

(3) Subject to section 9, the Secretary shall—

- (a) be responsible for the carrying out of the policy decisions of the Commission and the day to-day administration and management of the affairs of the Commission;
- (b) be responsible for the control of the other staff of the Commission;
- (c) be responsible for recording all minutes of the meetings of the Commission, and keeping all records and documents of the Commission;
- (d) have the custody of the seal of the Commission, and

(e) perform any other function assigned to him or her by the Commission.

(4) The Secretary may be removed from office only for—

(a) inability to perform the functions of his or her office arising out of infirmity of body or mind;

(b) misbehavior or misconduct;

(c) incompetence; or

(d) mismanagement or abuse of office.

(5) The Secretary shall be informed of the decision to remove him or her and shall be given adequate opportunity to defend himself or herself before he or she is removed.

(6) The Commission shall have such other officers and employees as may be necessary for the discharge of its functions.

(7) The officers and employees referred to in subsection (6) shall be appointed by the Commission in consultation with the public Service Commission and shall hold office upon such terms and conditions as may be specified in their instruments of appointment.

(8) A public officer may, at the request of the Commission, be seconded to the service of the Commission.

(9) The Commission may engage the services of consultants, experts or advisers to assist it in the discharge of its functions and may remunerate them at such rates as may be determined by the Commission.

12. Offices of Commission

The Commission may establish offices at appropriate administrative levels as it considers fit for the better performance of its functions.

13. Meeting and procedure of Commission

(1) The Commission shall meet for the discharge of business at least once in every three months at such time and place as the Commission may determine and the Chairperson shall convene all the meetings.

(2) The Chairperson may, at any time, convene a special meeting of the Commission and shall convene a meeting within fourteen days if requested to do so in writing by at least three members of the Commission.

(3) Except for a special meeting referred to in subsection (2), notice of a meeting of the Commission shall be given in writing to each member at least fourteen working days prior to the date of the meeting.

(4) The Chairperson shall preside at every meeting of the Commission and in the absence of the Chairperson the Vice Chairperson shall preside; in the absence of both the Chairperson and the Vice Chairperson, the members present shall elect one of their number to preside at the meeting.

(5) The quorum for a meeting of the Commission shall be three members, and all decisions at a meeting of the Commission shall, as far as possible, be arrived at by consensus.

(6) Where on any matter consensus cannot be obtained, the matter shall be decided by a majority of the votes of the members present and voting and in case of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) The Commission may invite any person who, in the opinion of the Commission, has expert knowledge to attend and take part in any discussion or meeting of the Commission on any matter with respect to which his or her advice is required, but shall not have the right to vote at that meeting.

(8) The Commission may act, notwithstanding the absence of a member or any defect in the appointment or qualification of a member or any vacancy, in the office of a member.

(9) A member of the Commission who is in any way directly or indirectly interested in any matter before the Commission shall disclose the nature or extent of his or her interest at a meeting of the Commission, and any disclosure made shall be recorded in the minutes of that meeting.

(10) A member who makes a disclosure at a meeting of the Commission shall not participate in any deliberation, or take part in any decision of the Commission with respect to that matter.

(11) Subject to the provisions of this Act, the Commission may regulate its own procedure.

PART III—FUNCTIONS AND POWERS OF COMMISSION

14. Functions of Commission.

(1) The functions of the Commission are to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of—

- (a) organs of state at all levels;
- (b) statutory bodies and agencies;
- (c) public bodies and authorities;
- (d) private businesses and enterprises;
- (e) non governmental organizations, and
- (f) social and cultural communities,

are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.

(2) Without prejudice to the generality of subsection (1) the Commission may—

- (a) investigate or inquire into, on its own initiative or on a complaint made by any person or group of persons, any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or to otherwise undermine equal opportunities;
- (b) examine any law, proposed law, policy, culture, tradition, usage, custom or plan which is likely to have effect of nullifying or impairing equal opportunities to persons in employment or enjoyment of human rights.
- (c) develop, conduct and manage information and educational programs to facilitate and promote public awareness, understanding and acceptance of equal opportunities and treatment in employment, occupation, education and all social services;
- (d) undertake research and organize, coordinate and promote workshops, seminars, conferences and public discussions on equal opportunities and treatment in employment, education, social services or social and cultural construct of roles and responsibilities in society;
- (e) consider such recommendations, suggestions and requests concerning the promotion of equal opportunities as it may receive from any source;
- (f) prepare and publish, guidelines for implementation of equal opportunities and the avoidance of acts, practices, usage, customs, tradition or cultures that undermine equal opportunities;
- (g) monitor the compliance, in Uganda, with the provisions of international and regional conventions, treaties and other instruments to which Uganda is a party, that relate to or are relevant to the functions and objects of the Commission;
- (h) perform such other functions that are incidental or conducive to the above functions.

(3) The Commission may rectify, settle or remedy any act, omission, circumstance, practice, tradition, culture, usage or custom that is found to constitute discrimination, marginalization or which otherwise undermines equal opportunities through mediation, conciliation, negotiation, settlement or other dispute resolution mechanism.

(4) Subject to subsection (3) the Commission may hear and determine complaints by any person against any action, practice, usage, plan, policy programme, tradition, culture or custom followed by any organ, body, business organization, institution or person which amounts to discrimination, marginalization or undermines equal opportunities.

15. Powers of Commission

(1) In the performance of its functions under this Act, the Commission shall have the powers of a court to—

- (a) require the attendance before the Commission of any person;
- (b) require the production of any books, papers or documents;
- (c) inspect any books, papers, materials or documents produced before it or otherwise and—
 - (i) retain any such books, papers, materials, or documents for such reasonable period as the Commission deem fit;
 - (ii) make copies of any of them, or their contents;
- (d) require any person to make oath or affirmation to answer truthfully all questions put by members of the Commission relating to any matter being inquired into by the Commission;
- (e) require any person appearing before the Commission, including the person whose conduct is subject to an inquiry, whether summoned to appear or not, to answer any question put by any member of the Commission, or by any other person appearing before the Commission.

- (2) Subject to subsection (3), where a person—
- (a) who has been served with a summons to attend before the Commission fails without reasonable excuse to attend in obedience to the summons; or
 - (b) who has been served with a summons to produce any books, papers, materials or documents fails without reasonable excuse to comply with the summons;
 - (c) misbehaves before the Commission, willfully insults the Commission or a member of the Commission, or interrupts the proceedings of the Commission;
 - (d) refuses to be sworn or to affirm or to answer a question when required to do so by the Commission,

that person commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred currency points or imprisonment not exceeding nine months or both.

- (3) In the course of its proceedings, the Commission may—
- (a) receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw such conclusions of fact from that evidence as it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.
- (4) In the discharge of its functions, the Commission may—
- (a) refer any matter to any other institution, body, tribunal or authority which, in the opinion of the Commission can best handle that matter;
 - (b) recommend to or order any institution, body, authority or person to adopt or take particular steps or action which, in the opinion of the Commission will promote equal opportunities;

- (c) recommend to any Minister, institution, body or authority to adopt a new legislation which is promoting equal opportunity, and the institution, body, authority, person or Minister shall implement or cause the implementation of the recommendation within six months from the date of communication of the recommendation.

(5) The Commission may, in writing, delegate to a member of the Commission any of its powers or functions under this Act other than this power of delegation.

(6) The Commission shall not investigate—

- (a) any matter which is pending before a court or judicial tribunal or is under investigation by another constitutional commission.
- (b) a matter involving the relations or dealings between the Government of Uganda and the government of any foreign state or international organization;
- (c) a matter relating to the exercise of the prerogative of mercy;
or.
- (d) any matter involving behaviour which is considered to be—
 - (i) immoral and socially harmful, or
 - (ii) unacceptable,

by the majority of the cultural and social communities in Uganda.

(7) In the performance of its functions, the Commission—

- (a) may establish its operational guidelines and rules of procedure;
- (b) may request the assistance of any department, bureau, office, agency or person in the performance of its functions; and
- (c) shall observe the rules of natural justice.

PART IV—FINANCIAL PROVISIONS

16. Funds of Commission

(1) The funds of the Commission shall include the following—

- (a) moneys appropriated by Parliament for the purposes of the Commission;
- (b) loans, grants, donations or gifts from sources within or outside Uganda, or
- (c) such other sums of money as may become payable to the Commission in the discharge of its functions.

(2) All moneys of the Commission shall be administered and controlled by the Secretary who shall be the accounting officer for purposes of the Public Finance and Accountability Act, 2003, Act No. 6 of 2003.

17. Commission to be self-accounting body.

The Commission shall be a self-accounting body and shall deal directly with the ministry responsible for finance on matters concerning its finances.

18. Commission's expenses to be charged on consolidated fund

All the administrative expenses of the Commission including salaries, allowances and pensions payable to persons serving with the Commission shall be a charge on the Consolidated Fund.

19. Financial year of Commission

The financial year of the Commission shall be the same as that of the Government.

20. Estimates of Commission

All moneys to defray the expenses of the Commission in the discharge of its functions or in the carrying out of the purposes of this Act, including the payment of allowances, salaries and pensions payable to or in respect of persons serving with the Commission, shall, without alteration by the Minister responsible for finance, be submitted to Parliament for approval.

21. Accounts and audit

(1) The Commission shall keep proper books of account in respect of its income and expenditure, in a form approved by the Auditor General.

(2) The books of accounts of the Commission shall be audited by the Auditor General or by an auditor appointed by him or her within three months after the end of each financial year.

(3) The Auditor General or an auditor appointed by him or her shall have access to all books of account and other financial records of the Commission and may request for any information and explanation in relation to those books or records.

(4) The Auditor General shall within six months after the end of each financial year, submit to the Minister a copy of the audited accounts of the Commission together with his or her report on the accounts, stating any matter which in his or her opinion has to be brought to the attention of the Minister.

(5) The auditor General shall, within six months after the end of each financial year submit a copy of the audited accounts and report referred to in subsection (4) to the Commission.

22. Minister to lay report before Parliament

The Minister shall, as soon as practicable after receiving the audited accounts and reports referred to in subsection (4) of section 21, lay them before Parliament.

PART V MISCELLANEOUS PROVISIONS**23. Lodging Complaints**

(1) A person may lodge a complain relating to discrimination, marginalization or any act which undermines or impairs equal opportunities with the Commission.

(2) A complaint made under subsection (1) shall be in writing and signed by the complainant or complainants.

(3) The Commission shall consider or hear the complaint within six months after receipt of the complaint.

24. Reports by Commission

(1) The Commission may, at any time, submit a report to the Minister on any matter arising during the course of the performance of its functions under this Act; and shall when requested to do so, submit a report on any matter to the Minister.

(2) The Commission shall publish and disseminate periodic reports on its findings and shall submit annual reports to Parliament on the state of equal opportunities in the country.

(3) The annual reports referred to in subsection (2) shall be signed by the Chairperson addressed to the Speaker of Parliament with a copy to the President.

25. Representation by Counsel.

A person appearing before the Commission may be represented by a legal counsel at his or her own expense.

26. Immunity of Members of Commission and Staff.

A member of the Commission or an employee of the Commission or any other person performing any function of the Commission under the direction of the Commission shall not be personally liable to any civil proceedings for any act done in good faith in the performance of the functions or the exercise of the powers of the Commission under the Act.

27. Immunity of witness.

A witness appearing before the Commission shall have the same immunities and privileges as if he or she were a witness before a court of law.

28. Attendance allowance.

(1) Any person summoned to appear before the Commission as a witness is entitled to be paid by way of reimbursement of his or her expenses, such allowance as is payable to a witness appearing before the High Court in criminal proceedings.

(2) Any other person invited by the Commission to attend any meeting of the Commission to assist the Commission may be paid by the Commission such allowances as the Commission may consider reasonable.

29. Appeals.

(1) Any person aggrieved by a settlement, recommendation or an order of the Commission may subject to this Act, appeal to the High Court within thirty days after the settlement, recommendation or order of the Commission is communicated to him or her.

(2) The Chief Justice shall make rules of court for regulating appeals under this section.

30. Application of Court rules.

Where the rules of procedure of the Commission do not provide for a particular matter before the Commission, rules applicable to civil or criminal proceedings in a court of law may be applied by the Commission with such modifications as may be necessary.

31. Offences relating to administration of Act

(1) A person shall not hinder, obstruct, molest or interfere with—

- (a) a member participating in an inquiry or examination under this Act; or
- (b) a person acting on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act;
- (c) a person implementing an order of the Commission.

(2) A person, who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment for a term not exceeding eighteen months, or both.

- (3) A person who—
- (a) refuses to employ another person;
 - (b) dismisses or threatens to prejudice another person in that other person's employment; or
 - (c) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to another person, by reason that the other person—
 - (i) has made, or proposes to make a complaint to the Commission;
 - (ii) has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to this Act or impairs equal opportunities;
 - (iii) has furnished, or proposes to furnish, any information or documents to the Commission or to a person acting on behalf of the Commission; or
 - (iv) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission,
 - (d) contravenes or refuses to implement any order, or settlement made by the Commission,

commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment for a term not exceeding eighteen months, or both.

32. Regulations

(1) The Minister may, by statutory instrument and in consultation with the Commission, make regulations prescribing any matter required to be prescribed under this Act and for carrying out or giving effect to the provisions of this Act.

(2) Any regulation made under this section may prescribe in respect of a contravention of the regulation, or any provision of this Act where no penalty has been prescribed, a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding eighteen months or both; and in the case of a continuing offence, an additional fine not exceeding one hundred currency points in respect of each day on which the offence continues.

33. Minister's power to amend Schedule.

The Minister may by, statutory instrument and with the approval of Parliament, amend the First Schedule to this Act.

SCHEDULES

FIRST SCHEDULE

Section 1

Currency point.

A currency point is equivalent to twenty thousand Uganda shillings.

SECOND SCHEDULE

Section 7

Oaths.

Part I.

Oath of Member of the Equal Opportunities Commission.

I, _____, being appointed chairperson /member of the Equal Opportunities Commission swear in the name of the Almighty God/solemnly affirm that I will well and truly exercise the functions of chairperson/member of the Equal Opportunities Commission and do right to all manner of people in accordance with the Constitution and in accordance with the laws of the Republic of Uganda without fear or favor ,affection or ill will.(So help me God.)

Part II.

Oath of Secretary/Officer of the Commission

I, _____, being appointed Secretary to/officer of the Commission being called upon to perform the functions of Secretary to /officer of the Commission swear in the name of the Almighty God /solemnly affirm that I will not directly or indirectly reveal to any unauthorized person, or otherwise than in the course of duty, the contents or any part of the contents of any documents, communication or information which may come to my knowledge in the course of my duties as such.(So help me God).