

THE ANTI-HOMOSEXUALITY BILL, 2023**MEMORANDUM****1. Principles of the Bill**

The object of the Bill is to establish a comprehensive and enhanced legislation to protect the traditional family by –

- (a) prohibiting any form of sexual relations between persons of the same sex and the promotion or recognition of sexual relations between persons of the same sex.
- (b) strengthening the nation's capacity to deal with emerging internal and external threats to the traditional, heterosexual family. This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic.
- (c) protecting the cherished culture of the people of Uganda, legal, religious, and traditional family values of Ugandans against the acts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.
- (d) protecting children and youth who are made vulnerable to sexual abuse through homosexuality and related acts.

2. Defects in existing law

This proposed legislation is designed to address the gaps in the provisions of other laws in Uganda, for example the Penal Code Act, Cap. 120. The Penal Code Act, Cap. 120 has no comprehensive provision catering for anti-homosexuality. It focuses on unnatural offences under section 145 and lacks provisions for penalising the procurement, promoting, disseminating literature and other pornographic materials concerning the offences of homosexuality. As a result, there is need for a legislation to enhance offences relating to homosexuality and clear provisions for charging, investigating, prosecuting, convicting and sentencing of offenders.

This legislation seeks to supplement the provisions of the Constitution of the Republic of Uganda and the Penal Code Act, Cap. 120 by criminalizing same-sex sexual acts and related acts.

3. REMEDIES

The Bill seeks to:

- (a) prohibit marriage between persons of the same sex;
- (b) prohibit and penalize homosexual behavior and related practices;
- (c) prohibit the promotion of homosexuality; and
- (d) protect and provide assistance and payment of compensation to victims of homosexuality.

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Schedule

Currency point.

A Bill for an Act

ENTITLED

THE ANTI-HOMOSEXUALITY BILL, 2023

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of sexual relations between persons of the same sex; and for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires—

"advanced age" means seventy-five years and above;

"child" means a person below the age of eighteen years;

"child care institution" includes an orphanage, children's home, open shelter, an institution of learning or any residential childcare institution, whether licensed or unlicensed, established for purposes of providing care and protection to children who need such services;

"computer" means an electronic, magnetic, optical, electrochemical or other data processing device or a group of such interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or group of such interconnected or related devices;

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

“disability” means a substantial limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

"female person" means a person born with a female sexual organ;

“homosexual” means a person who engages in an act of homosexuality;

“homosexuality” means the performance of a sexual act by a person on another person of the same sex;

"Imprisonment for life" means imprisonment for the natural life of a person without the possibility of being released;

"information system services" includes a provision of connections, operation or facilities for information systems, the provision of access to information systems, the transmission or routing of data messages between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service;

“intersex” means a person who is born with both male and female sexual organs or is born with ambiguous genitalia;

"male person" means a person born with a male sexual organ;

“Minister” means the Minister responsible for ethics and integrity;

"organisation" means a legally constituted non-governmental organisation registered under the Non-Governmental Organisations Act and includes a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part thereof, but not for profit or commercial purposes;

"person in authority" means a person who is charged with the duty or responsibility for the health, welfare or supervision of a person;

“serial offender” means a person who has previous convictions of the offence of homosexuality or related offences;

"sex contraption" means a device or object used to stimulate a sexual organ or simulate sexual intercourse between persons of the same sex;

"sexual act" means the stimulation or penetration, however slight,

- (a) of a person's anus or mouth by a sexual organ of another person of the same sex
- (b) of a person's anus, sexual organ or mouth by a sex contraption, by a person of the same sex; or
- (c) of a person's anus or sexual organ by any part of the body of a person of the same sex;

"sexual organ" means a vagina or penis;

"terminal illness" means a disease without scientific cure;

"victim of the offence" means –

- (a) a child against whom the offence of aggravated homosexuality has been committed,
- (b) a person suffering from mental illness or any other form of disability against whom the offence of aggravated homosexuality has been committed, or
- (c) any other person against whom the offence of homosexuality or aggravated homosexuality has been committed
 - i. by means of threats, force, fear of bodily harm, duress, undue influence, through misrepresentation as to the nature of the act or intimidation of any kind, or
 - ii. while unconscious or in an altered state of consciousness due to the influence of medicine, drugs, alcohol or any other substance that impaired his or her judgment;

"vulnerable person" means a person who is in need of protection because of age, gender, illness, physical or mental disability, social or personal status, or other status, including a refugee, an internally displaced person, a stateless person, an asylum seeker, a victim of gender-based violence, an illiterate person or an elderly person.

PART II – HOMOSEXUALITY AND RELATED PRACTICES

2. The offence of homosexuality

- (1) A person commits the offence of homosexuality if the person performs a sexual act on another person of the same sex or allows a person of the same sex to perform a sexual act on him or her.
- (2) A person who commits the offence of homosexuality is liable, on conviction, to imprisonment for life.
- (3) A person who attempts to perform a sexual act in circumstances referred to in subsection (1), commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years.
- (4) For purposes of subsection (3), a person shall be deemed to attempt to commit an offence when the person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfilment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

3. Aggravated homosexuality

- (1) A person who commits the offence of homosexuality in any of the circumstances specified in subsection (2) commits the offence of aggravated homosexuality and is liable, on conviction to suffer death.
- (2) The circumstances referred to in subsection (1) are where-
 - (a) the person against whom the offence is committed is a child;
 - (b) the offender is a parent, guardian or relative of the person against whom the offence is committed;
 - (c) the person against whom the offence is committed contracts a terminal illness as a result of the sexual act;
 - (d) the offender is a serial offender;
 - (e) the offender is a person in authority over the person against whom the offence is committed;
 - (f) the person against whom the offence is committed is a person with disability or suffers a disability as a result of the sexual act;
 - (g) the person against whom the offence is committed is a person with a mental illness or suffers a mental illness as a result of the sexual act;
 - (h) the person against whom the offence is committed is of advanced age;
 - (i) the offence was committed against a person by means of threats, force, fear of bodily harm, duress, undue influence, through misrepresentation as to the nature of the act or intimidation of any kind;
 - (j) the person against whom the offence is committed was at the time the offence was committed, unconscious or in an altered state of consciousness due to the

influence of medicine, drugs, alcohol or any other substance that impaired his or her judgment;

(3) A person who attempts to perform a sexual act in circumstances referred to in subsection (1), commits an offence and is liable, on conviction, to imprisonment for a period not exceeding fourteen years.

(4) For purposes of subsection (3), a person shall be deemed to attempt to commit an offence when the person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

4. Punishment of child homosexuality

A child who is convicted of an offence under section 2 or 3 of this Act shall, instead of the punishments prescribed under the relevant section, be liable, on conviction, to imprisonment for a period not exceeding three years.

5. Protection, assistance and payment of compensation to victims of homosexuality

(1) A person involved in the investigation, prosecution or trial of offences under this Act shall assist the victim of the offence present his or her views and concerns at the appropriate stages of the criminal proceedings.

(2) Where a person is convicted of homosexuality or aggravated homosexuality under this Act, the court may, in addition to any punishment provided, order the person to pay compensation to the victim, of an amount which, in the opinion of the court is just, having regard to the physical, sexual or psychological harm suffered by the victim, the degree of force used, medical and other expenses incurred by the victim as a result of the offence.

(3) The order referred to in subsection 2 shall be deemed to be a decree under the Civil Procedure Act, and shall be executed in the manner provided under that Act.

6. Consent to sexual act is no defence

The consent of a person to commit a sexual act shall not constitute a defence to a charge under this Act.

7. Confidentiality

Any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilising trimedia facilities or information technology who publishes or causes the publicity of the names and personal circumstances or any other information tending to establish the victim's identity without authority of the victim or court, commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points.

PART III – RELATED OFFENCES AND PENALTIES

8. Child grooming

(1) A person who -

- (a) recruits, transports, transfers, harbours or receives a child for the purpose of engaging the child in homosexuality or any other conduct prohibited under this Act,
- (b) displays, distributes or supplies, to a child, any material demonstrating, depicting or illustrating a sexual act between persons of the same sex or any other conduct that is prohibited under this Act,
- (c) shows or avails a child a picture, video or film showing, depicting or illustrating a sexual act between persons of the same sex or any other conduct that is prohibited under this Act, or
- (d) in the presence of a child, performs a sexual act with a person of the same sex or causes another person to engage in a sexual act with a person of the same sex,

commits an offence and is liable, on conviction to imprisonment for a period not exceeding twenty years.

- (i) in the case of contravention of paragraph (a), to imprisonment for life; or
- (ii) in the case of contravention of paragraphs (b), (c), and (d), to imprisonment for a period not exceeding twenty years.

(2) The consent of a child or that of the child's parent, guardian, person in authority or any other person with parental responsibility over the child to the acts prescribed in subsection (1) shall not be a defence to a charge under this Act.

9. Keeping premises to facilitate homosexuality

(1) A person who keeps a house, room, set of rooms or place of any kind for purposes of facilitating the commission of the offence of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years.

(2) The owner, occupier or manager of premises who knowingly allows the premises to be used by any person for purposes of homosexuality or to commit an offence under this Act, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years.

10. Prohibition of marriage between persons of the same sex

(1) A person who-

- (a) purports to contract a marriage with a person of the same sex;
- (b) presides over, conducts, witnesses or directs such a marriage ceremony between persons of the same sex; or
- (c) knowingly attends or participates in the preparation of a marriage between persons of the same sex;

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years

(2) In this section, marriage means the union, whether formal or informal, between persons of the same sex.

11. Promotion of homosexuality

(1) A person who knowingly promotes homosexuality commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

(2) A person promotes homosexuality where the person-

- (a) encourages or persuades another person to perform a sexual act with another person of the same sex or to do any other act that constitutes an offence under this Act;
- (b) knowingly advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution by any means, including the use of a computer, information system or the internet, or any material promoting or encouraging homosexuality or the commission of an offence under the Act;
- (c) provides financial support, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalization of conduct that is prohibited under this Act;
- (d) knowingly leases or subleases, uses or allows another person to use any house, building or establishment for the purpose of undertaking activities that encourage homosexuality or any other offence under this Act; or

- (e) operates an organisation which promotes or encourages homosexuality or the observance or normalization of conduct that is prohibited under this Act.
- (3) Where an offence prescribed under this section is committed by a legal entity, court may-
- (a) impose a penalty not exceeding fifty thousand currency points for breach of any of the provisions of this section;
- (b) suspend the license of the entity for a period of 10 years;
- or
- (c) cancel the licence granted to the entity.

PART IV - MISCELLANEOUS

12. Disqualification from employment upon conviction

A person who is convicted of the offence of homosexuality or aggravated homosexuality shall be disqualified from employment in a child care institution or in any other institution which places him or her in a position of authority or care of a child or a vulnerable person until such a time as a probation, social or welfare officer determines that the person is fully rehabilitated or no longer poses a danger to a child or other vulnerable person.

13. Disclosure of sexual offences record

- (1) A person convicted of an offence under this Act shall disclose the conviction when applying for employment in a child care institution or any other institution which places him or her in a position of authority or care of a child or any other vulnerable person.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding two years' imprisonment, and the employment of that person shall terminate.

14. Duty to report acts of homosexuality

- (1) A person, who knows or has reasonable suspicion that a person has committed or intends to commit the offence of homosexuality or any other offence under this Act, shall report the matter to police for appropriate action.
- (2) A person who is otherwise prevented by privilege from making a report under subsection (1) shall be immune from any action arising from the disclosure of

information without the consent or waiver of privilege first having been obtained or had.

(3) A person who, knowing or having reason to believe that a person has committed or intends to commit an offence and does not report the matter to police commits an offence and is liable to a fine of five thousand currency points or imprisonment for six months.

(4) A person who makes a report referred to in this subsection shall be treated as a whistle-blower and shall be protected from victimization.

(5) This section shall not apply to an advocate.

15. False sexual allegations

(1) A person who intentionally makes false or misleading allegations against another person to the effect that the person has committed an offence under this Act commits an offence and is liable, on conviction, to imprisonment for one year.

(2) In this section, an allegation is false or misleading if at any stage of investigation or prosecution, it is proved that the alleged act did not take place or the information was reported maliciously.

16. Rehabilitation of homosexuals

(1) Court may, upon convicting a person for the offence of homosexuality, order the provision of social services for purposes of rehabilitating the convicted person.

(2) The services referred to in subsection (1) may be provided by the prison services or by a probation, social and welfare officer of the area where the convicted person is serving his or her sentence.

17. Repeals

Section 145 (1)(a) and (c) are repealed.

Part IV – Miscellaneous

18. Regulations

The Minister may, by statutory instrument, make regulations for better carrying out the provisions of this Act.

SCHEDULE 1

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings.

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