

THE ANTI-HOMOSEXUALITY ACT, 2023

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

1. Interpretation

PART II—HOMOSEXUALITY AND RELATED PRACTICES

2. The offence of homosexuality
3. Aggravated homosexuality
4. Punishment for child offender
5. Protection, assistance and payment of compensation to victim of homosexuality
6. Consent to sexual act is no defence
7. Confidentiality

PART III—RELATED OFFENCES AND PENALTIES

8. Child grooming
9. Premises
10. Prohibition of marriage between persons of same sex
11. Promotion of homosexuality

PART IV—MISCELLANEOUS

12. Disqualification from employment upon conviction
13. Disclosure of sexual offences record
14. Duty to report acts of homosexuality
15. False sexual allegations
16. Rehabilitation of homosexual
17. Repeal
18. Regulations

SCHEDULE — Currency point

THE ANTI-HOMOSEXUALITY ACT, 2023

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

DATE OF ASSENT:

Date of Commencement:

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 of age 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 the provision of connections, operation 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 who 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, 2016 and includes a private voluntary grouping of individuals or associations established to provide voluntary services to a community or any part of the community, 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 for the offence of homosexuality or related offences;
- “sex” means the biological state of a person as either male or female and in the case of an intersex person, means the status adopted by the intersex person as being dominant either naturally or through medical transition but does not include sexual orientation;
- “sex contraption” means a device or object used to stimulate a sexual organ or to 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) in the case of a female person, a vagina; or
- (b) in the case of a male person, a penis;

“sexual orientation” means a person’s identity in relation to the sex to which the person is sexually attracted;

“terminal illness” means a disease without a 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 was committed—
 - (i) by means of threats, force, fear of bodily harm, duress, undue influence, intimidation of any kind or through misrepresentation as to the nature of the act; 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 in need of special protection as a result of age, sex, illness, physical or mental disability, social or personal status, or other status and includes a refugee, an internally displaced person, a stateless person, an asylum seeker, a victim of gender-based violence and an illiterate person or 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 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 the 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 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 sexual act is committed against a person by means of threats, force, fear of bodily harm, duress or undue influence, intimidation of any kind, or through misrepresentation as to the nature of the act; or
- (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 the 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 or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

4. Punishment for child offender

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 victim of homosexuality

(1) A person involved in the investigation, prosecution or trial of an offence 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 the offence of homosexuality or aggravated homosexuality under this Act, the court may, in addition to any punishment imposed, order the person to pay compensation to the victim of the offence, 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 of the offence, the degree of force used and medical and other expenses incurred by the victim of the offence 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 the case of printed materials, announcer or producer in the case of television and radio,

producer or director of a film in the case of the movie industry, or any person utilising trimedia facilities or information technology who publishes or causes the publication of the names and personal circumstances or any other information tending to establish the identity of a victim of the offence without the authority of the victim of the offence 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 purposes 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 to 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 or causes another person to engage in a sexual act,

commits an offence and is liable, on conviction—

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

(2) The consent of a child or the consent of the child’s parent or 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. Premises

(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 a period not exceeding 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 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 a ceremony purported to be a marriage between persons of the same sex; or
- (c) knowingly attends or participates in the preparation of a purported 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 promotes homosexuality commits an offence and is liable, on conviction, to imprisonment for a period not exceeding twenty years.

- (2) A person promotes homosexuality where the person—
 - (a) encourages or persuades another person to perform a sexual act 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, of any material promoting or encouraging homosexuality or the commission of an offence under this Act;
 - (c) provides financial support, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalisation of conduct 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 normalisation of conduct prohibited under this Act.
- (3) Where an offence prescribed under this section is committed by a legal entity, the court may—
 - (a) impose a fine not exceeding fifty thousand currency points for breach of any of the provisions of this section;
 - (b) suspend the licence of the entity for a period of ten 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 and welfare officer determines that the person is fully rehabilitated or no longer poses a danger to a child or a 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 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 and the employment of that person shall terminate.

14. Duty to report acts of homosexuality

(1) A person who knows or has a 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 the information without the consent or waiver of privilege first being 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, on conviction, to a fine not exceeding five thousand currency points or imprisonment for a period not exceeding six months.

(4) A person who makes a report referred to in this section shall be treated as a whistle-blower in accordance with the Whistleblowers Protection Act, 2010 and shall be protected from victimisation.

(5) This section shall not apply to an advocate under the Advocates Act.

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 a period not exceeding 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 homosexual

(1) The court may, upon convicting a person of 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 prisons service or by a probation, social and welfare officer of the area where the convicted person is serving his or her sentence.

17. Repeal

Section 145 (a) and (c) of the Penal Code Act is repealed.

18. Regulations

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

Act

Anti-Homosexuality Act

2023

SCHEDULE

section 1.

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings.

Cross References

Advocates Act, Cap. 270.

Civil Procedure Act, Cap. 71

Non-Governmental Organisations Act, 2016, Act No. 5 of 2016

Penal Code Act, Cap. 120

Whistleblowers Protection Act, 2010, Act No. 6 of 2010

