Bill No. 35  

**SEXUAL OFFENCES BILL, 2015**

**MEMORANDUM**

The object of this Bill is to; consolidate laws relating to sexual offences; combat sexual violence; provide for the punishment of perpetrators of sexual offences; provide for procedural and evidential requirements during trial of sexual offences and for other related matters.

**PART I - PRELIMINARY** of the Bill incorporates clause 1 and provides for the interpretation of the words and phrases used in the Bill.

**PART II - SEXUAL OFFENCES** incorporating clauses 2 to 22 provides; Rape, Aggravated Rape, Attempt to commit rape, Administering substance for purpose of committing a sexual act, Sexual Assault, Sexual harassment, Sexual offences relating to position of authority and persons in position of trust, Sexual act with a person incapable of giving consent, Detention with sexual intent, Person living on earnings of prostitution, Prohibition of prostitution, Exploitation of prostitution, Unnatural offences, Attempt to commit unnatural offences, Indecent practices and acts, Incest, Test of relationship, incest on a child, Disclosure of sexual offence and Offence to make a false allegation.

**PART III - SEXUAL OFFENCES AGAINST CHILDREN** incorporating clauses 23 and 31 provides for Defilement, Aggravated defilement, attempted defilement, Failure to disclose offence of defilement for economic gain, Child to child sex, Householder permitting defilement, Defilement or rape before a child, Supply of sexual content and material to a child, child prostitution and child pornography.
PART IV - SPECIAL POWERS OF COURT AND JURISDICTION incorporating clauses 32 to 41 provides for Payment of compensation to victims of defilement, Proceedings held in camera, Prohibition of publication of information, Evidence of character and previous sexual history and Sexual offenders data bank.

PART V - MISCELLANEOUS PROVISIONS incorporating clauses 40 to 43 provides for Extra-Territorial Jurisdiction, Regulations and Savings

HON. AMODING MONICAH (MP),
Youth Representative.

Bill No. 35 Sexual Offences Bill 2015

THE SEXUAL OFFENCES BILL, 2015

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Interpretation.

PART II—SEXUAL OFFENCES

2. Rape.
3. Aggravated Rape.
4. Attempt to commit rape.
5. Administering substance with the intent of committing a sexual act.
6. Sexual Assault.
7. Sexual harassment.
8. Sexual offences relating to position of authority and persons in position of trust.
9. Sexual act with a person incapable of giving consent.
10. Detention with sexual intent.
13. Soliciting
15. Brothels
16. Unnatural offences
17. Attempt to commit unnatural offences.
18. Incest.
19. Incest of a child
20. Test of relationship.
21. Disclosure of sexual offence
22. Offence to make a false allegation

PART III—SEXUAL OFFENCES AGAINST CHILDREN

23. Defilement.
24. Aggravated defilement
25. Child to child sex.
Consultative Affairs.

"Minister" means the Minister responsible for Justice and

Act by a person in association with others;

"Criminal Law" means committing the offence of rape under this

Participation;

Informed, and environmental factors resulting in limited
the activities caused by physical, mental or sensory
"Disability" means a substantial functional limitation of daily

"Child" means a person below the age of 18 years;

In this Act, unless the context otherwise requires—

1. Interpretation

PART I—PRELIMINARY

BE IT ENACTED by Parliament as follows:

matters.

under Part X of the Penal Code Act and for other related
establish the Sexual Offences Data Bank; to repeal provisions
and establish the Sexual Offences Data Bank; to repeal provisions

THE SEXUAL OFFENCES ACT 2015

ENTITLED

A BILL for an ACT

Sexual Offences Bill

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PART V—MISCELLANEOUS PROVISIONS

Evidence of a victim or sexual offence or a child

Expert evidence in sexual assault cases

Sexual Offences Data Bank

Corroboration of evidence of child

Evidence of character and previous sexual history

Prohibition of publication of information

Proceedings held in camera

Payment of compensation

PART VI—COURT POWERS AND JURISDICTION

Sexual Offences

SUPPLEMENTARY

Child Pornography

Supply of sexual content and material to a child.

Development of rape before a child.
“Serial offender” means a person with a record of a previous conviction for the offence of rape, aggravated rape, defilement or aggravated defilement;

“Sexual act” means—

(a) direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of the body of another person; or

(b) the insertion of any part of the body of a person or of any part of the body of an animal or any object into the vagina or penis or anus of another person, or

(c) cunnilingus; fellatio or any other form of genital stimulation:

but does not include contact, exposure, insertion or genital stimulation done by a hand or any unharmed object—

(a) for sound health practices or proper medical purposes;

(b) for reasonable necessary body search by law enforcement agencies—

(i) done for lawful purposes without putting in jeopardy the health and safety of the arrestee suspect or person being searched and

(ii) not carried out abusively or for humiliating or punishing an arrestee, suspect or any person who is being searched.

“Sexual exploitation” means, the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials or the use of a person for sexual conduct or other lascivious conduct;

“Sexual organ” means a vagina or a penis.

“Spouse” means husband or wife;

“Person in position of authority” means any person who is charged with any duty or responsibility for the health, welfare, or supervision of a minor or any person for any length of time;

“Person in position of trust” means a person committed into the care or charge of another or a person who is regularly involved in caring for, training, supervising or being in sole charge of a minor or any person for a given length of time;

“Prostitute” means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain.

PART II—SEXUAL OFFENCES

2. Rape

(1) Any person who forcefully performs a sexual act on another person, without consent, or with consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married person by personating his or her spouse commits the felony termed rape and shall on conviction be liable to life imprisonment.

(2) For the purposes of an offence under subsection (1) where the spouses are living together a spouse may refuse consent to a sexual act on any ground which may include—

(a) poor health or medical condition of the spouse refusing to perform a sexual act,
3. Aggravated rape.
   (1) Where Court is satisfied that there are aggravating circumstances in the Commission of the offence of rape, the person shall upon conviction be liable to suffer death.

   (2) In determining whether or not there are aggravating circumstances, the court shall take into account but shall not be limited to the following:

   (a) Whether or not the offender is infected with HIV or suffering from AIDS,

   (b) Whether or not the offender is infected with a sexually transmitted disease,

   (c) Whether or not the offender is a serial offender,

   (d) Whether or not the victim suffers disability,

   (e) Whether or not the act constituted a gang rape,

   (f) Whether or not the offence was committed in the presence of a child.

   (g) The age of the person against whom the offence was committed

   (h) The extent of harm caused to the person against whom the offence was committed.

   (3) Where a person is charged with an offence under this section that person shall undergo a medical examination as to his or her health status and this shall include a test for his or her Human Immunodeficiency Virus (HIV) status.

4. Attempt to commit rape.
   A person who attempts to commit rape commits an offence and is liable on conviction to imprisonment not less than five years.

5. Administering a substance with intent of committing a sexual act.
   (1) A person who intentionally administers or applies a substance to, or causes a substance to be taken by another person—

   (a) knowing that the person does not consent, and

   (b) with the intention of inducing, stupefying or overpowering that person so as to enable any person to perform a sexual act with that person

   commits an offence under this section and is liable on conviction to imprisonment for a period not less than seven years.

   (1) Any person who engages another person in a sexual manner against their will forcefully or otherwise by direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of that person; or exposure or display of his or her genital organs to another person; or with the intention to insult the modesty of that other person utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by that person or intrudes upon the privacy of such person commits a misdemeanor and is liable upon conviction to a term of imprisonment for a period of not less than one year or a fine of twenty four currency points.
2. Sexual Offences Bill

2015

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Crime is not below three years.

17. Attempt to commit unnatural offences.

Any person who attempts to commit any of the offences specified in section 15 above commits an offence and is liable to imprisonment for a term not exceeding seven years.

18. Incest.

Any person who has sexual act with another person with whom he is not of their knowledge or of the following relationship exists.

(1) A person who has sexual act with another person with whom he is not of the knowledge or of the following relationship.

19. Imprisonment for a period of seven years.

Any person who keeps a house or room set of rooms or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for a period of seven years.

20. Soliciting.

Any person who solicits another person on a road or public place.

21. Prostitution of a person under 21 years.

Any person who procures or attempts to procure a person under 21 years.

22. Sexual Offences.

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Part III — Sexual Offences Against Children

22. Offence to make false allegation.


19. Incest on a child.

20. Test of relationship.


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29. Child prostitution.

30. Reproductive health.

(4) This material does not include sex education material for other visual aids.

(3) For the purposes of subsection (1) above the material includes text, audio recording, computer material, video recording of

(2) Any material whose common usage is for the performance of a sexual act involving a child:

(1) Any material which is liable upon conviction to imprisonment for 5 years or less than that term:

28. Supply of sexual content and material to a child.

27. Development of rape before a child.


25. Where an offence under (1) is committed by a male child and


Human Immunodeficiency Virus (HIV) status.

23. Where a person is charged with an offence under this section

22. Where the offence is a sexual act in a sexual matter.

21. Where the victim of the offence is a person with a disability.

20. Where the offender is a person of great strain or a person in incommunicable strain (HIV):
30. CHILD PORNOGRAPHY

A person who—

(1) produces, distributes, or makes available for circulation or distribution, or possesses, a representation of a child engaged in an explicit sexual act or in other explicit or sexual activities;

(2) produces, distributes, or makes available for circulation or distribution, or possesses, a representation of a child in any explicit sexual activity or engaging in other explicit or sexual activities;

(3) produces, distributes, or makes available for circulation or distribution, or possesses, a representation of a child engaged in an explicit sexual act or in other explicit or sexual activities;

(4) produces, distributes, or makes available for circulation or distribution, or possesses, a representation of a child in any explicit sexual activity or engaging in other explicit or sexual activities;

(5) commits the offense of child prostitution and is liable on conviction to imprisonment for a term of not less than ten years.

offense under this Act with a child by any person;

offense of murder of any child under this Act.

no part in or receives profits from any business in the

proceeds of any child by any person;

proceeds of any child by any person;

in any business in the

advertisements or other similar means.

in any business in the

the purposes specified in subsection (a) of this section and

improper, explicit or otherwise offensive for any purpose.

representation or feature which depicts the image of any

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3.7. Expert testimony in sexual assault cases.

(1) A person who has specialized knowledge in sexual assault matters may give expert evidence in a criminal proceeding.

(2) The expert's evidence is admissible in evidence.

3.9. Sexual offenders database.

(1) A database of sexual offenders shall be kept and maintained by the Minister.

(2) The database shall be kept for the purposes of a criminal proceeding and shall contain such particulars as may be determined by the Minister.

3.9. Sexual offenders database (continued).

(1) Where the Minister determines that a person is a sexual offender, the Minister shall give notice to the person in writing.

(2) The notice shall include the following:

(a) the person's name;

(b) the nature of the sexual offence committed by the person;

(c) the date of the sexual offence;

(d) the period for which the person is required to register as a sexual offender.


(1) No person shall publish any information which may be harmful to the best interests of the child.

(2) Where the person is a child, the court may order the person to desist from publishing the information.

3.11. Payment of compensation.

(1) A person who is found guilty of an offence under this Act shall be liable to pay compensation to the person who has been adversely affected by the commission of the offence.

(2) The amount of compensation payable shall be determined by the court.


(1) Where the proceedings are in camera, the court may order that only the judge and the parties shall have access to the proceedings.

(2) Where the proceedings are in public, the court may order that only the judge, the parties, and the legal representatives of the parties shall have access to the proceedings.


(1) Where two or more persons agree to engage in consensual sexual activity, the court may order that the sexual activity be conducted without any further judicial process.

(2) Any representation or consent of any ancient monument, other than a representation which is made in accordance with any ancient monument, shall be deemed to be invalid.
Giving effect to the provisions of this Act, the Minister shall by statutory instrument make regulations for

40. Regulations

the purpose of

of the Sexual Offences Act, 2015.

39. Extra-Territorial Jurisdiction

The sexual offences shall be transferred to the applicable court prescribed over

section 2 of the Penal Code (Amendment) Act, 2007. Any such

139, 145, 146, 147, 148, 149, 150 of the Penal Code Act CP, 120 and

sections 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138,

4. Transgender provision

4.3. Transgender Provision

section 2 of the Penal Code (Amendment) Act, 2007 are repealed.

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Currency Point

A currency point is equal to twenty thousand shillings