



Summarised analysis of the impact of the Sexual Offences Bill 2015 on sex workers, LGBTI persons and people living with HIV / AIDS

Executive Summary

The Sexual Offences Bill, 2015 is back on the floor of parliament. By the time we put this analysis together, the bill had been referred to the Parliamentary Committee on Gender, Labour and Social Development for Public Hearings. The Bill introduces new and innovative provisions, which will be helpful in combating sexual violence, and is a welcomed effort to create a codified law on sexual offences. Nevertheless, there are a few worrying provisions as far as LGBTI persons, sex workers and persons living with HIV/AIDS are concerned. These are provisions that seek to further criminalise consensual same sex relations and sex work and may also fuel discrimination and stigma against persons living with HIV/AIDS. The bill, rather than following the current worldwide trend of decriminalising same sex relations, further criminalises consensual same sex conduct and widens its definition to prohibit a female person from permitting anyone to have carnal knowledge of her against the order of nature; it also maintains the criminalisation of sex work and expands it to cover soliciting for sexual services and makes the HIV positive status of an offender an aggravating factor for rape. This analysis considers the bill from the perspective of an organisation working on the protection of LGBTI persons, sex workers and persons living with HIV/AIDS. It analyses each of those provisions of the Bill that affect LGBTI persons, sex workers and persons living with HIV/AIDS in light of international and domestic human rights standards, and makes recommendations.

Clause	Provision	Problematic aspects of provision	Recommendation
Clause 1	<i>'Sexual act' means– (a) direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina o one person and any other part of the body of another person;</i>	This definition is overly broad and vague and thus subject to multiple interpretations and misinterpretations. It simply focuses on the contact without even attaching sexual intent. LGBTI persons, sex workers and PLHA are likely to suffer under this provision since it allows for accusations of sexual offences even where the contact in question was not intended to be sexual.	The definition of a sexual act should be amended to include the intention of the person making such contact. Intention shall be determined with due regard to the manner in which it is made, and the circumstances under which it is made.
Clause 2(1)	<i>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.</i>	This provision presupposes that spouses are the only regular sexual partners who could be personated to the detriment of the victim. Protection in cases of personation would not be available to Ugandans who engage in sex with persons other than spouses and have consented only because they have been deliberately mislead about the identity of their partner. Considering that same-sex marriages are explicitly prohibited in the Constitution, this limitation of personation 'of a spouse' excludes LGBTI persons from the full protection that it offers to married persons.	The provision should be further extended to discount consent obtained through the personation of a person's regular sexual partner, not just a spouse.
Clause 2(3)	<i>A spouse who performs a sexual act with his or her spouse without the consent of that spouse, whether the spouses are</i>	It is inconsistent and unfair to make a person convicted of rape liable to life imprisonment, while a person convicted of marital rape is only liable to	The provision should be amended to provide the same punishment to all categories of rape regardless of the

	<i>living together or in separation, commits an offence known as marital sexual assault and is liable upon conviction to imprisonment to a period not less than one year or a fine of not less than twenty four currency points.</i>	up to one year's imprisonment. The clause is discriminatory as it does not provide victims of rape who are married to their perpetrators with equal protection of the law. Sex workers, LGBTI persons, and persons living with HIV are all at risk of suffering marital rape due to their respective vulnerabilities and ought to be sufficiently protected under this provision.	marital relationship between the offender and the victim.
Clause 3	<i>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;</i>	The creation of different punishments for people living with HIV/AIDS is discriminatory and against public policy. It entrenches the stigma and discrimination that these people already face. In most cases where the presence of HIV/AIDS is an aggravating factor, lack of knowledge of one's HIV status can be used as a defence. This discourages people from testing and accessing treatment in a bid to escape criminal liability. This exacerbates the HIV/AIDS scourge.	This provision should be amended to remove the HIV status of an offender from the list of factors which a court should consider in determining whether or not there were aggravating circumstances in the commission of the offence of rape.
Clause 6(1)	<i>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</i>	This provision, just like the definition of a sexual act is overly broad and vague and thus prone to abuse. This is because in some instances the intention may not be sexual.	This provision, just like the definition of a sexual act is overly broad and vague and thus prone to abuse. This is because in some instances the intention may not be sexual. The provision should be amended to

	<i>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...</i>		clearly define the circumstances that constitute the requisite intent.
Clause 12	<i>A person who practices or engages in prostitution commits an offence and is liable on conviction to imprisonment not exceeding seven years.</i>	This clause is a repetition of the offence of prostitution in the Penal Code Act. The offence is redundant: its enforcement usually fails because it is so difficult to gather enough evidence to prove all of its elements. The police arrest sex workers and charge them with vagrancy offences instead, for the sole purpose of harassing and soliciting bribes from them. The criminalisation of sex work drives sex workers to the margins of society, makes them vulnerable to abuse and creates a barrier in their access to HIV/AIDS treatment and healthcare services.	The provision should be repealed in its entirety.
Clause 13	<i>A person who solicits another in a vehicle, on a street or public place for the purpose of obtaining their sexual services as a prostitute commits an offence...</i>	Criminalisation of even the clients of sex workers will drive sex work even further underground, increasing the insecurity of sex workers and worsening their access to HIV services.	The provision should be repealed in its entirety.
Clause 14	<i>(1) A person who causes or incites another person to become a prostitute in any part of the world in the expectation of</i>	This provision criminalises pimps. Criminalisation of 'pimping' feeds into the general criminalisation of sex work, the perils of which, have been	The provision should be repealed in its entirety, as any form of criminalisation of sex work is self-

	<p><i>gain for him or herself or a third party commits an offence</i></p> <p><i>(2) A person who controls any of the activities of another person relating to that person's prostitution in any part of the world for or in expectation of gain for himself or a third person commits an offence and is liable on conviction to imprisonment for a term not below fifteen years.</i></p> <p><i>(3) A victim of exploitation of prostitution shall not be penalized for practicing or engaging in prostitution.</i></p>	discussed above. Where such activities qualify to be trafficking, Uganda has an anti-trafficking law that can adequately address the issues	defeating. Also, the issue of trafficking is adequately addressed in another law.
Clause 15	<i>Any person who keeps a house, 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.</i>	This provision is part of the criminalisation sex work, the pitfalls of which have been discussed above.	The provision should be removed from the bill, along with all other provisions relating to sex work. The Penal Code sections which create and regulate the offence of prostitution should be repealed.
Clause 16 and 17	<p>16. Unnatural Offences.</p> <p><i>Any person who-</i></p> <p><i>(a) has carnal knowledge of any person against the order of nature;</i></p> <p><i>(b) has carnal knowledge of an animal;</i></p> <p><i>or</i></p> <p><i>(c) Permits a male or female person to</i></p>	Sexual acts between consenting adults should not be criminalised. Criminalisation of these acts contravenes established international and regional human rights standards, as well as the Constitution of the Republic of Uganda in that it unfairly limits the fundamental rights of people who are lesbian, gay, bisexual, transgender and intersex.	These clauses should be removed from the bill.

	<p><i>have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.</i></p> <p>17. Attempt to commit unnatural offences.</p> <p><i>Any person who attempts to commit any of the offences specified in section 16 above commits a felony and is liable to imprisonment for seven years.</i></p>	<p>Criminalisation of same-sex conduct has the effect of driving LGBTI persons to the margins of society, denying them access to opportunities and services and rendering them susceptible to abuse and discrimination from the majority groups in society. Accused persons are made to undergo the humiliating experience of arrest and examination; even though not a single charge of consensual same sex conduct has ever been successfully prosecuted.</p>	
--	---	---	--

Clause	Provision	Commendable aspects of provision	Recommendation
Clause 2(1)	<p><i>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.</i></p>	<p>In terms of the Penal Code Act, only women and girls can be victims of rape. The bill's definition of rape, however, is gender neutral and covers crimes of forceful sex committed against men and transgender women as well. This broadened protection allows for severe sentences to be passed for a wide range of harmful sexual offences, which may fall short of the traditional definition of rape.</p> <p>Section 123 of the Penal Code Act provides that a person who obtains consent of a married woman by personating her husband commits rape. Clause 2(1) of the new bill discounts consent obtained through the personation of a married person's spouse. The clause embraces gender-neutrality and extends its protects to both married men and women.</p>	<p>The provision should be further extended to discount consent obtained through the personation of a person's regular sexual partner, not just a spouse.</p>
Clause 11	<p><i>An official or an employee of a correctional facility who;</i></p> <p><i>(1) engages in sexual contact or sexual intercourse, sexual harassment or sexual assault or performs a sexual act, or perform sexual intercourse with an individual in custody;</i></p>	<p>Sexual minorities, especially LGBTI persons, are subjected to inhuman and degrading practices when in custody. They are subjected to humiliating searches by officials and sexual harassment by their fellow suspects/prisoners.</p> <p>Although the definition of a sexual act provides exceptions in instances of medical procedures and</p>	

	<p><i>(2) employs, authorizes, or induces another person to; have sexual contact, perform sexual intercourse, or engage in sexual harassment or sexual assault or performs a sexual act with an individual in custody</i></p> <p><i>Commits an offence and is liable upon conviction to imprisonment for a period not below seven years.</i></p>	<p>lawful searches, the bill provides that such procedures and searches should not be carried out abusively and should not humiliate the suspects or arrestees. This provision gives sexual minorities prosecutorial grounds against the injustices they often face when held in custody.</p>	
--	--	---	--