



PARLIAMENI OF UGANDA

21 MAR 2023

**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND
PARLIAMENTARY AFFAIRS ON THE ANTI - HOMOSEXUALITY BILL, 2023**

**OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA-UGANDA**

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1.0. INTRODUCTION

On Thursday, 9th March, 2023, a Bill entitled "The Anti-Homosexuality Bill, 2023" was, in accordance with Rule 128 of the Rules of Procedure of Parliament, read for a first time and referred to the Committee on Legal and Parliamentary Affairs for scrutiny. The Bill is a Private Member's Bill sponsored by Hon Basalirwa Asuman (Mp Bugiri Municipality)

2.0. OBJECT 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, and
- (d) protecting children and youth who are made vulnerable to sexual abuse through homosexuality and related acts

The Bill seeks to address the gaps in the provisions of other laws in Uganda, for example the Penal Code Act, Cap 120, which has no comprehensive provision catering for homosexuality and majorly 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

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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

3.0. METHODOLOGY

In the process of analyzing the Bill, the Committee received submissions from the following delegations.-

- 1 Hon Basalirwa Asuman The Mover of the Bill

ii. Attorney General's Chambers

- a. Hon Kiryooowa Kiwanuka Attorney General
- b Mr Pius P Biribonwoha Deputy Solicitor General
- c Ms Olivia Natwazagye Senior State Attorney
- d Mr Lazaka Tibakuno State Attorney

iii. Ministry Gender, Labour and Social Development

- a Hon Asamo Hellen Minister of State for Disability
- b. Mr Eitu James Director, Ministry of Gender
- c Ms Tusaasira Ruth Principal Officer, Ministry of Gender
- d Mr Bakaye Lubega Ass Comm Ministry of Gender

iv. Ministry of Ethics and Interguity

- a Hon Akello Rose Lilly Minister of State for Ethics and Integrity
- b Mr Moses Makumbi Commissioner, Ministry of Ethics
- c Ms Iribagiza Geneviene Legal Officer

v. Office of Director of Public Prosecutions

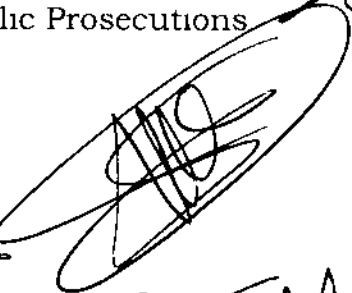
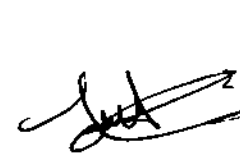
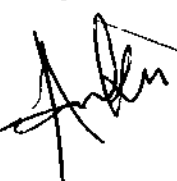
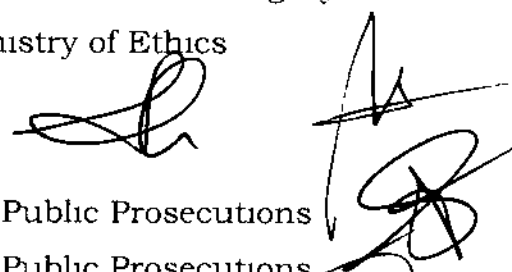
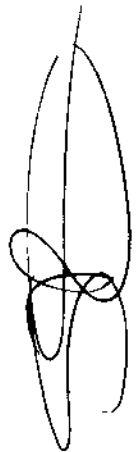
- a Mr George Byansi Deputy Director of Public Prosecutions
- b Mr James Owere Deputy Director of Public Prosecutions
- c Ms Barbara Masike Chief State Attorney

vi Human Rights Awareness and Promotion Forum

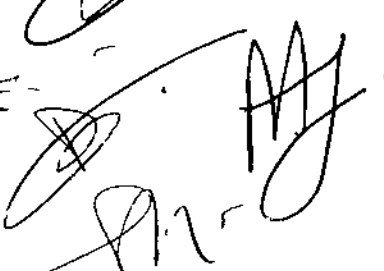
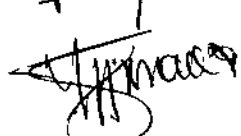
- a Dr Adrian Jjuuko Executive Director



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- b Ms Justine Balya Program Director
- c Ms Flavia Zalwango Program Director
- d Ms Kabanzi Maureen Volunteer

vii. Uganda Police Force

- a Mr Tusemererwa James Commissioner of Police (CPO)
- b Mr Muyango Kambada Ass Superintendent of Police (ASP)
- c Mr. Owona Isaac Ass Superintendent of Police (ASP)
- d Mr Beyanga Cornelius Ass Superintendent of Police (ASP)

viii. Chapter four Uganda

- a. Mr. Anthony Masike Ag Executive Director
- b Mr Paul Wasswa Head, Policy and Development

ix. Law Development Center (LDC)

- a Mr Paul Mukibi Head of Department
- b. Ms Kaburungi Dorothy Research Assistant
- c. Ms Nuwemuhwezi Prane Research Assistant
- d Ms Kawesa Rose Nalule Research Assistant

x. Family Life Network

- a. Mr Stephen Langa Executive Director
- b Mr Charles Tuhaise Program Officer, Policy
- c Rev Francis Osire Program Officer, Development
- d Ms Sylvia Mumisiriza Staff

xi. Coalition against Homosexuality

- xii Pastor Male Solomon Executive Director
- xiii Mr Kasolo Solomon Member

Individuals

- xiv. Prof Tamale Slyvia Professor of Law
- xv. Dr Kabumba Busingye Senior Lecturer of Law
- xvi. Bishop David Kiganda President Of Pastors Forum
- xvii Pastor Dr Martin Sempa Makerere Community Church
- xviii Rev. Canon Christine Shimanya Chaplain of Parliament

Burune

xix	Pastor Kusasira Samuel	Vision Worship Centre
xx	Pastor Edson Muhawenimano	Christian Living Water, Kibuye
xxi	Pastor Herbert Kaytale	Pastor
xxii	Bishop Batera Geoffrey	Accord (U)
xxiii	Pastor Kayizzi Denis	Victory Church Kireka
xxiv	Dr Luswata Herbert	Gen Sec Uganda Medical Assn
xxv	Ms Bukirwa Maria	Women's Probono Initiative
xxvi	Ms Grace Namatak	Akina Mama Wa Africa
xxvii	Mr Mukisa Elisha	Victim of homosexuality
xxviii	Mr Anthony Muhwezi	Advocate of High Court
xxix	Mr Kanso Viola	Advocate of High Court
xxx	Mr Oundo George	Ex- Gay Community Uganda

Reviewed,

The Constitution of the Republic of Uganda, 1995, the Penal Code Act Cap 120 and various court decisions

4.0. HOMOSEXUALITY IN UGANDA

In Uganda, conduct amounting to homosexuality is not recognised as a right under the Constitution of the Republic of Uganda, 1995 and is instead treated as a crime under various provisions of the Penal Code Act, Cap 120, specifically under sections 145, 146 and 129

Article 31 of the Constitution recognises that men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. This provision recognises that only men and women in Uganda may have relations and by extension recognises that sexual intercourse/relationships can only be legally performed between persons of the opposite gender of majority age with their free and voluntary consent. Where sex is performed in

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any other circumstances other than as referred to above, it is treated as an unnatural act punished in sections 145 and 146, rape under section 123 or defilement under section 129 of the Penal Code Act respectively.

In the same vein, the Constitution recognises the cultural diversity of Uganda and recognises, in article 37 of the Constitution every person's right to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. The Committee notes article 126 (1) of the constitution enshrines the cultural norms and values of the people of Uganda by requiring that judicial power is derived from the people and is exercised in conformity with the law and with the values, norms and aspirations of the people.

Uganda enjoys rich cultural diversity and although all are richly different, they do not recognise same sex relations. Whereas some few individuals have existed with such tendencies, these were isolated by society and in some cases punished for such unnatural acts. The prohibition against homosexuality is entrenched in the laws of Uganda and our cherished and shared cultural norms and values.

Homosexuality as an offence is prescribed in section 145 of the Penal Code Act and is reproduced below-

"145. Unnatural offences

Any person who—

- (a) has carnal knowledge of any person against the order of nature;**
 - (b) has carnal knowledge of an animal; or**
 - (c) permits a male person to have carnal knowledge of him or her against the order of nature,**
- commits an offence and is liable to imprisonment for life."**

The above section specifically prohibits and punishes the conduct of a person who has carnal knowledge of any person against the order of nature as well as

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the conduct of a person who permits a male person to have carnal knowledge of him or her against the order of nature

Whereas the term "against the order of nature" is not defined under the laws of Uganda, at common law, the crime against nature or unnatural act has historically been a legal term in English-speaking states identifying forms of sexual behaviour not considered natural or decent and are legally punishable offenses These sexual practices that have historically been considered to be "crimes against nature" include sodomy and bestiality.

In Uganda, Section 145 creates three standalone offences, namely-

(a) **The offence of having carnal knowledge of any person against the order of nature.** The offence of having carnal knowledge of any person against the order of nature occurs where a person has anal sex with another person In the case of **Christopher Mubiru Kisingiri Vs Uganda, HCCA No. 108 of 2015** court noted that for the offence of unnatural offence to be sustained, the prosecution must prove that a person has had anal sexual act against another person In the same decision, court observed that the prosecution must prove that there was penetration of the anus by a male sexual organ This provision usually applies against a male person and it is irrelevant whether the victim is a woman or man

(b) **The offence of having carnal knowledge against an animal,** this offence occurs where a person has carnal knowledge of an animal The prosecution here must prove that the person indeed had penetrative sex with an animal

(c) **The offence of permitting a male person to have carnal knowledge of another person against the order of nature** This offence occurs where a person allows a male person to have anal sex

with him or her Prosecution must prove that there was penetration of the anus by a male sexual organ, although this provision usually applies against a male person and it is irrelevant whether the victim is a woman or man

The Committee notes that inspite of the existence of the provisions of section 145 of the Penal Code Act, the Annual Crime Police Reports have continually reported increased occurrence of conduct that are prohibited under section 145 For instance, the Annual Police Report for the last 5 years have reported increasing cases of unnatural offences of sodomy, lesbianism and bestiality such as in 2017 where 120 cases were reported, in 2018, 100 cases were reported, in 2019, 103 cases were reported, 79 cases were reported in 2020, 80 cases were reported in 2021 and 83 in 2022

The Committee is also aware that the media has recently been awash with reports of sodomy and lesbianism in Ugandan schools and have reported that grooming and recruitment of school children into homosexuality has taken shape in Uganda Incidents of teachers engaging their students in homosexuality are being reported with increasing regularity, schools have reported expelling homosexual students while teaching materials recognising and normalising same sex relationships have found their way into schools

The Committee is further aware that a number of non-governmental organisations have been found to directly promote the normalisation of same sex relations in Uganda For instance, the NGO Board suspended activities of the Sexual Minorities Uganda for their activities in promoting the normalisation of same sex relations All the above incidents are taking place in spite of the existence of provisions that prohibit and ban unnatural sexual acts in Uganda

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5.0. GENERAL OBJECTIONS TO THE BILL

The Committee received memoranda from a number of stakeholders who advanced both general and specific objections to the Bill. The Committee has examined the objections and reports as follows,

5.1. Duplication of provisions in the Penal Code Act

One of the most common objections received by the Committee has been that the Bill does not introduce anything new since the provisions are already prescribed in the Penal Code Act and other laws making the Bill unnecessary and redundant.

Dr Adrian Jjuuko who made a presentation on behalf of Human Rights Awareness and Promotion Forum (HRAPF) and the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) objected to the Bill reasoning that whereas the majority of the clauses of the Bill are unconstitutional, the rest are redundant and become useless once the unconstitutional provisions are removed. The redundant clauses that he pointed out include clauses 5(2) – (4), 7, 9, 10, 11, 13, 15, 16 and 17. The same views were expressed by Dr Kabumba Busingye, Senior Lecturer, School of Law, Makerere University, Dr Sylvia Tamale, a retired professor of Law, Mr Anthony Masike, Ag Executive Director of Chapter 4 and Bukirwa Maria of Women Pro bono Initiative, all who reasoned that the Bill is a duplication of the provision already in place under the Penal Code and is unnecessary.

The Office of the DPP also objected to the Bill on grounds that the proposals contained in the Bill should be introduced in the Penal Code Act rather than being introduced in the proposed Bill. They reasoned that the Penal Code has overtime been disintegrated, chapter by chapter, leading to scattering of the provisions.

The Attorney General advised that nothing prevents Parliament from enacting new laws or indeed improving on existing provisions of the law to meet

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emerging challenges in or of society in so far as it cautions itself to avoid duplication of provisions

The Committee has examined the above assertions as to the need to enact stand-alone legislation on homosexuality and finds that, it is the mandate of Parliament to enact legislation. The Committee notes that whereas homosexuality as an offence already exists on the law book under the Penal Code Act, there is need to redefine the law, placing emphasis on the new and emerging matters which are not contained in the Penal Code Act such as promotion of homosexuality and the recruitment of children into homosexuality which have been blamed for the rising incidents of homosexuality in Uganda

The Committee also took cognisance of the need to give visibility to the offence of homosexuality by introducing a comprehensive law that deals with the offence and all its manifestations, the identification and rehabilitation of perpetrators and victims of offences as well as dealing with incidental matters such as compensation, which cannot be included in the Penal Code Act, a law of general application. The Committee also observed that Homosexuality is a unique offence which needs a specific law to deal with its manifestations and the introduction of the Bill builds on a strong foundation already laid by Government and Parliament in dealing with new and emerging matters of public interest

For instance, Parliament, when faced with acts of terrorism in Uganda enacted a specific law to comprehensively deal with terrorism and all its manifestation and removed those provisions from the Penal Code Act. Likewise, the Anti-Corruption Act was enacted to give visibility to the fight against corruption and to comprehensively deal with the vice of corruption which had reached endemic levels and could not be dealt with adequately under the Penal Code Act. These interventions were informed by the need to adequately address challenges faced in responding to new and emerging matters that had not been covered under the Penal Code Act, a law that was made more than 100 years ago and

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could not have anticipated new developments and advancements that require adequate regulation at the time

The Committee, guided by the reasons above found that it is necessary to have matters of homosexuality adequately dealt with in a stand-alone law rather than being included in the Penal Code Act. In doing this, the Committee, as guided by the Attorney General, will and cautions itself to ensure that there is no duplication of matters already in the Penal Code to ensure the effectiveness of legislation

On the issue as to whether the Bill is necessary, the Committee has examined the provisions section 145 of the Penal Code Act relating to the offence of homosexuality and found that whereas the offence of unnatural offences has been applied in Uganda, it has a number of shortcomings which have prevented its effectiveness. For instance-

- (a) the provisions of section 145 only requires proof of actual carnal knowledge in proof of the offence, making other sexual conduct not amounting to carnal knowledge irrelevant. In **Christopher Mubiru Kisingiri Vs Uganda, HCCA No 108 of 2015** court set aside the conviction of Mr Christopher Mubiru since the prosecution did not prove the first ingredient of the offence (penetration) beyond reasonable doubt, notwithstanding that the prosecution had brought evidence that the accused person had engaged in other sexual contact with the victim of the offence. This means that a person who does not have carnal knowledge of a person but penetrates the person's mouth cannot be charged with the offence, thereby normalising and allowing such conduct between persons of the same sex. The Bill addresses this by proposing a new nomenclature, as was adopted by the Penal Code Act, in the offence of Defilement which does not entirely depend on penetration alone for the commission of the offence.

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(b) the offence falls short of the clarity expected of a penal provision under article 28 (12) of the Constitution since it does not define the major elements of the offence including the phrase "carnal knowledge" and "against the order of nature" yet these have to be proved by the prosecution. The failure to define the words and phrases which form part of the ingredients of the offence leaves the provision vague and open to challenge for infringing article 28 (12) of the Constitution

The phrase "carnal knowledge" has been given diverse interpretation by court owing to the fact that the same phrase is used in other offences such as the offence of rape under section 123 of the Penal Code Act, wherein court regards carnal knowledge to mean the penetration of the vagina, however slight, of the victim by a sexual organ where sexual organ means a penis

Thus if a man forcibly penetrates a woman's anus or if he forcibly inserts any other object into her vagina or anus or if he forces her to have fellatio (oral sex) with him or cunnilingus (touching the female sex organ with the lips and tongue), such conduct does not amount to rape although it may constitute other less serious offences such as indecent assault In **Uganda v kyamusungu Ivan, criminal session case No 107/96** High Court held inter alia that carnal knowledge means penetration of the sexual organ into the female sexual organ and if there was no penetration, then the offence of rape is not established It was further held in **Uganda v Odwang Dennis and Olanya HCB 71** that in rape cases, the prosecution must prove penetration of the male reproductive organ into female reproductive organ However, when it comes to unnatural offences, court in **Christopher Mubiru Kisingiri Vs Uganda** defined carnal knowledge to mean penetration of the anus contrary to the definition given by Court in cases involving rape This makes the offence of unnatural

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offences ambiguous in its current form since of the main ingredient forming this offence is incapable of exact definition

The Committee is concerned that courts in Uganda have declared provisions that are vague unconstitutional, including in the case of **Andrew Mujuni Mwenda and other Vs AG (consolidated constitutional petitions No.12 of 2005 and No. 3 of 2006)** wherein Court declared the offence of sedition unconstitutional for infringing Articles 29(1) (a) and 43(2) (c) of the Constitution. Furthermore, in **Constitutional petition No. 13 of 2014, Centre for Domestic Violence Prevention & 8 ors -VS- AG**, court declared Sections 2, 11, 13, and 15 of the Anti-Pornography Act, which defined and created the offence of pornography, unconstitutional due to the vague definition of the offence of pornography

Court reasons that offences that are prescribed vaguely prevent a person from tempering his or her conduct so as not to be caught up by the provisions since they fail to provide a precise definition of the conduct they intend to prevent. The provisions also allow abuse of such provisions by law enforcement officer since the prosecution of the offence will depend on the interpretation and subjective understanding of the provision by the prosecution, vis-a-vis the conduct of the person, leading to inequality in the application of such laws. Significantly though, the most important rules of legality in criminal law are "notice" and "fair warning" and the State has a duty to ensure citizens have sufficient notice and fair warning of prohibited conduct and the corresponding sanctions.

Therefore, the vagueness, uncertainty and ambiguity that is embedded in the offence of unnatural offences make it impossible to determine what conduct is acceptable and what conduct is in fact criminalised and prohibited by law, and this certainty is required by

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the Constitution The Bill proposes to address these matters by providing a clear and concise definition of the term homosexuality as well as all the working definitions of all words that might be confused as used in the Bill

(c) The provision only criminalizes the use of a sexual organ and not the use of any other contraption in the sexual act This means that if a person penetrates the anus of another person using a contraption, that person does not commit an offence since the provision only applies to the use of a sexual organ The Bill proposes to remedy this by including objects and sex contraptions, in addition to sexual organs so that a person who performs a sexual act with the aid of a sex contraption is also charged with the offence

(d) The provision does not also prohibit or deal with conduct related to gender identity such as transgender and queer people and neither does it prohibit a person from identifying as a lesbian, gay, bisexual, transgender, and queer, thereby allowing the normalisation of such sexual orientation as well as gender in Uganda The Bill proposes various offences against persons that identify as a lesbian, gay, bisexual, transgender, and queer;

(e) The provision does not prohibit the promotion of same sex sexual acts and has allowed the proliferation of persons and entities whose main role is to advocate for and normalise the same sex sexual acts, including recruitment, grooming, training and advocacy with the aim of equipping homosexuals and members of LGBTQ organizations to carry out such activities which are aimed at normalising illegal acts The Bill proposes to prohibit the promotion of homosexuality in Uganda and proposes tough sanctions

The Committee notes that the Bill also incorporates the findings and gives effect to various decisions of court relating to homosexuality, including the case

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of *Victor Mukasa & Another vs Attorney General (High Court Miscellaneous Cause No 24 of 2006, Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd and Giles Muhame (High Court Miscellaneous Cause No 163 of 2010) and Nabagesera & 3 Ors v Attorney General & Anor (Miscellaneous Cause 33 of 2012* which makes various findings which if not given effect to, will affect the fight against homosexuality and the desecration of our cherished cultural values, customs and norms by the introduction of new and emerging sexual orientations which contravene the above values

5.2. Human Rights issues in the Bill

The Committee also received memoranda from various stakeholders who objected to the Bill on grounds that the Bill contains provisions which affront the protected rights and freedoms guaranteed under the Constitution of the Republic of Uganda

The objections were raised by Dr Adrian Jjuuko, Dr Kabumba Busingye, Dr Sylvia Tamale, Mr Wasike Anthony of Chapter 4 and Bukirwa Maria of a the Women Pro bono Initiative who all opined that some of the provisions of the Bill contravene various provisions of the Constitution including article 27 on the right to privacy, article 24 and 44 (a) relating to non derogable right to freedom from inhuman and degrading treatment as protected under article 24 and article 44(a) and article 21 of the Constitution on the right against discrimination They also opined that some provisions of the Bill go beyond the limitations envisaged in article 43 of the Constitution and that some other provisions contravene the principle of legality prescribed in article 28 (12) of the Constitution

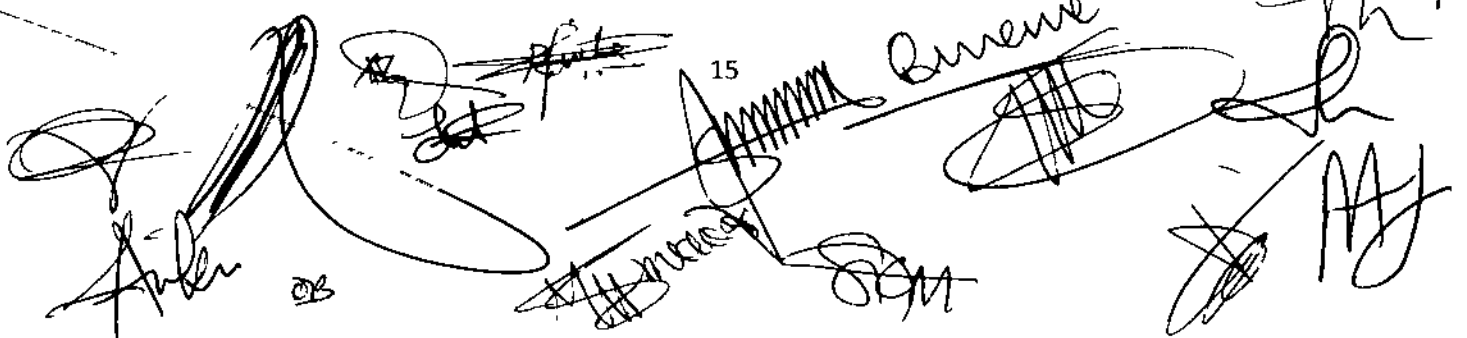
It is the in position of Dr Adrian Jjuuko, Dr Kabumba Busingye, Dr Sylvia Tamale and Bukirwa Maria of Women Pro bono Initiative that sexual acts between consenting adults should not be criminalised The criminalisation of these acts, according to them, contravenes provisions of the Constitution of the Republic of Uganda, as well as established international and regional human

rights standards, as it unfairly limits the fundamental rights of LGBTQ persons. This criminalisation also denies them equal protection under the law, owing to the harsh differential treatment they receive based on their sexual orientation and the criminalisation of the same

The Committee has examined the above assertions in light of the provisions of the Constitution and Bill and reports as follows,

The Constitution of the Republic of Uganda contains, in chapter 4, a Bill of rights which guarantees and protects a number of rights and freedoms. The rights recognised and protected in the Constitution are enjoyed by all persons in Uganda

The Committee is aware that courts in Uganda have determined that the rights and freedoms guaranteed in the Constitution apply to all persons in Uganda irrespective of their real or perceived sexual orientation. Court in the case of **Victor Mukasa & Another vs. Attorney General (High Court Miscellaneous Cause No 24 of 2006)** and in **Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame (High Court Miscellaneous Cause No 163 of 2010)** found that constitutionally protected rights belong to all Ugandans, whatever their perceived sexuality. These cases formed the basis for supporters of sexual minorities to object to the restrictions imposed on them under various laws, alleging that such restrictions contravene their inherent rights. Supporters of sexual minorities also argue that the limitations imposed on the enjoyment of the rights of sexual minorities go beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution. They also argue that rights and freedoms guaranteed in the Constitution are not exhaustive and in this, they refer to article 45 of the Constitution which provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in the Constitution are not to be regarded as excluding others not specifically mentioned



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The Committee observes whereas the rights and freedoms enshrined in the Constitution apply to all persons in Uganda irrespective of their sexual orientation, these rights, especially the rights articulated by the supporters are not absolute, save for those rights recognised in article 44 since they have to be exercised within the confines of the law as recognised in article 43 of the Constitution

The Committee is aware that General limitation on fundamental and other human rights and freedoms exist in the Constitution under article 43 of the Constitution which provides that in the enjoyment of the rights and freedoms prescribed in the Constitution, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. The same provision allows limitations to be imposed on the enjoyment of rights and freedoms as long as those limitations do not go beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution

The Committee is aware that the Constitution of Uganda does not recognise a right to homosexuality but instead, bans and prohibits same sex marriages. The argument advanced for recognition of same sex relations is mainly grounded under article 45 of the Constitution which provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned. This provision of the Constitution, according to persons who advocate for rights and freedoms of sexual minorities, recognises "other rights" including the rights of sexual minorities as articulated in various international instruments, including the Universal Declaration of Human Rights, 1948 and other human rights treaties, which contain provisions recognising the right to equality and non-discrimination as core principles of human rights

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The equality and non-discrimination guarantees provided by international human rights law apply to all people regardless of sex, sexual orientation and gender identity or "other status" The thrust of the argument is that under international human rights law, States are required to guarantee full rights to all persons within their territory without discrimination purely on the basis of sexual orientation and gender identity and further, that states have to respect the autonomy and bodily integrity of persons, and the State is under obligation to refrain from enacting laws that jeopardize this right.

The Committee notes that whereas Uganda is a signatory to a number of international instruments that might be interpreted to recognise sexual minorities, these do not create legally binding obligations on Uganda since the Constitution, which is the supreme law of Uganda and other enactments such as the Penal Code Act specifically bar sexual acts between sexual minorities. The Committee notes that since article 43 of the Constitution recognizes that the rights prescribed in the Constitution can be restricted in public interest, any rights must be exercised within or according to the existing law

The Committee is aware that the human rights compliance of the restrictions imposed on sexual minorities, especially on the enjoyment of the rights and freedoms guaranteed in the Constitution of Uganda, were examined by Court in *Nabagesera & 3 Ors v Attorney General & Anor (Miscellaneous Cause 33 of 2012)* where the High Court was called to examine whether the closure of a workshop advocating for normalization of minority rights in Uganda was an affront to the freedom of assembly, speech and expression, association and equality before the law The court held that the workshop was illegal as it engaged in the direct and indirect promotion of same-sex practices which are prohibited by the Penal Code Act Court further held that the applicants exercised their rights of freedom of expression, association, and assembly to promote prohibited acts that amounted to action prejudicial to the public interest The court also noted that the invoked rights are limited under article 43 of the Constitution in the public interest The closure of the workshop was

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to protect national security and public order and public interest Accordingly, this did not violate their rights and freedoms The decision of court found that-

- (a) It is trite law that any rights must be exercised within or according to the existing law The exercise of rights may be restricted by law itself Court noted that domestic law is the framework within which human rights are enjoyed and in which human rights promotion activities should be conducted
- (b) Persons enjoying rights have a corresponding duty and requirement to exercise them in accordance with the law
- (c) Where the law prohibits homosexual acts and persons knowingly promote those acts, they are acting contrary to the law Such persons cannot allege that the actions taken to prevent their breach of the law amount to denial of 'equal protection' of the law because the law abiding people were not equally restricted.
- (d) It is trite law that the prevention of promotion of illegal acts is clearly acceptable and justifiable in any free and democratic society because it is based on the law All democratic countries are founded on the rule of law
- (e) The restriction on the exercise of rights based on the need to protect moral values fits well within the scope of valid restrictions under Article 43 of the Constitution

The Committee therefore finds that rights and freedoms guaranteed in the Constitution can be enjoyed by all persons in Uganda whatever their perceived sexuality save that the restrictions on the enjoyment of the rights of sexual minorities through the existence of a legal provision such as article 31, section

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145 and the proposed Bill are legally permissible since such restrictions are justifiable, in public interest, as recognised in article 43 of the Constitution

5.3. Homosexuality as a result of nature or nurture

The Committee was informed that homosexuality has existed in Africa since time immemorial and is not a recent introduction Professor Sylvia Tamale also argued that homosexuality can manifest naturally without any promotion, making the provisions restricting same sex relations unreasonable since they are not alive to the naturally occurring sexual traits The Committee also received information from Christian Lawyers, who informed the Committee that studies proponents of same sex relationships have often argued against the criminalising same sex relationships based on the reasoning that the homosexual tendencies occur naturally The lawyers argued that this was not entirely true and dismissed the claims made by the proponents that research in various countries has proved this, including the existence of homosexual tendencies in animals

The Committee invited the Uganda Medical Association, an Association that brings together medical doctors in Uganda and the diaspora to submit on this matter, and Uganda Medical Association informed the Committee that-

- (a) Medical science recognizes the variety and spectrum of human sexual behaviour Science also recognizes that the expression of human sexual behaviour is associated with biological as well as social and cultural factors Sexual behaviour is affected by nature, society, religions, cultures, and many other factors.
- (b) Studies of human sexuality in all races throughout the world and throughout human history have documented the variety of human sexuality, Heterosexuality, homosexuality, and other forms of sexual expression Many genetic studies have attempted, though unsuccessfully to pinpoint one specific homosexual gene

(c) Studies in sexology have shown that sexual phenomena exist on a normal distribution continuum like most human attributes e.g. where most people are in the middle but others may be taller or shorter. Thus also in sexuality, there is a spectrum of sexual behaviours. Some people are less fixed in one form of sexuality than others. Thus sexuality is a far more flexible human quality than used to be assumed in the past, demonstrating the biological variability within the human race.

(d) Sexual expression is a function of biology, psychology, sociology and anthropology, the latter including cultural and religious influences. Thus the factors associated with homosexuality or same sex behaviour can be traced to biological, social, environmental, psychological or a combination of them, with these influencing each other.

(e) There are some rare biological cases affecting the genes that code for unusual expressions of physical phenotypic expression associated with the genital organs. These include Klinefelter's Syndrome (XXY), a random genetic occurrence when a boy has an extra X chromosome that emerges in adulthood with feminine appearance and behaviour. Another congenital condition called Ambiguous genitalia exists, in this case an infant's genitalia are not clear whether they are male or female. This condition, recognized in early infancy, may be corrected by surgery after assessing whether the genes of the infant are male or female.

(f) Homosexuality is therefore a sexual orientation and sexual attraction to same-sex persons which may be followed by homosexual behavior toward people of the same sex. Medical science is further exploring the factors associated and continues to do so. It is not clear whether

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this differing physiological response exists at/from birth or developed after a homosexual experience later in life The conclusion from the current body of scientific evidence is that there is no single gene responsible for homosexuality and there is no anatomical or physiological data that can fully explain its occurrence

Uganda Medical Association therefore concluded that in every society, there is a small number of people with homosexual tendencies and/or behaviour and that homosexuality is not a disease

Based on the above, the Committee is of the considered opinion that homosexuality is mainly an acquired and learnt sexual practice, with little or no influence from nature, save for some rare biological cases where a few people are born with cases affecting the genes that code for unusual expressions of physical phenotypic expression associated with the genital organs

6.0. ANALYSIS OF THE PROVISIONS OF THE BILL

This part of the report examines the Bill, its legality, effect and the mischief it intends to cure

6.1. Offence homosexuality

Clause 2 of the Bill creates the offence of homosexuality and it provides that this offence is committed where person-

- (a) penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption,
- (b) uses any object or sexual contraption to penetrate or stimulate the sexual organ of a person of the same sex,
- (c) touches another person with the intention of committing the act of homosexuality,

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- (d) holds out as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female

The Clause proposes a punishment of ten years upon conviction of the offence of homosexuality. In addition, clause 1 defines the term "homosexual" to mean a person who engages or attempts to engage in same gender sexual activity while "homosexuality" is defined to mean same gender or same-sex sexual acts.

The Committee has examined the provisions of clause 1 and 2 relating to the offence of homosexuality and is of the considered opinion that there is need to harmonise these provisions in order to create clarity as to the offence of homosexuality.

The Committee noted that whereas clause 1 of the Bill, defines homosexuality to mean same gender or same-sex sexual acts, the offence of homosexuality created in clause 2 makes specific acts performed by persons of the same gender criminal offences. In this regard the definition of homosexuality is broader than the acts prescribed in clause 2 which create the offence of homosexuality. Indeed, in the definition of the term homosexuality, the use of the phrase "sexual act" expands the definition of homosexuality to include acts such as

- (a) physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another's breast, vagina, penis or anus,
- (b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ,
- (c) the unlawful use of any object or organ by a person on another person's sexual organ or anus or mouth,

It can be inferred from the above that to prove homosexuality as defined in clause 1, one must prove that the accused person engaged in-

- (a) physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another's breast, vagina, penis or anus,
- (b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ, or
- (c) unlawful use of any object or organ by a person on another person's sexual organ or anus or mouth

On the other hand, the offence of homosexuality created in clause 2 requires the proof that the accused person-

- (a) penetrated the anus or mouth of another person of the same sex with his penis or any other sexual contraption,
- (b) used any object or sexual contraption to penetrate or stimulate the sexual organ of a person of the same sex,
- (c) touched another person with the intention of committing the act of homosexuality,
- (d) held himself or herself out as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female

The challenge with the above provisions is that-

- (a) whereas in clause 1 in proving homosexuality, one need not to prove penetration of the anus or mouth of another person of the same sex with his penis or any other sexual contraption, clause 2 creating the offence of homosexuality specifically requires the proof of penetration of the anus or mouth of another person of the same sex with his penis or any other sexual contraption,

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- (b) in clause 1, mere touching of a another person's breast, vagina, penis or anus, irrespective of the gender of the persons involved amounts to homosexuality while in clause 2, the offence of homosexuality is committed where a person penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption,
- (c) in clause 1, a person who stimulates a vagina or mouth or anus or any part of the body of any person, however slight, by a sexual organ commits homosexuality but in the offence of homosexuality in clause 2, one must prove either actual penetration or stimulation of the sexual organ of a person of the same gender by any object or sexual contraption,
- (d) Unlike in clause 2 where a person commits the offence of homosexuality by merely holding out as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female, in the definition of the offence of homosexuality, that is not a requirement

The effect of the above conflicting requirements between the definition of homosexuality in clause 1 and the offence of homosexuality in clause 2 makes the provision vague, thereby contravening the principle of legality prescribed in article 28 (12) of the Constitution. It has been found by court that a penal provision which is vague as to elements of the offence contravenes article 28 (12) of the Constitution. Courts in Uganda have declared provisions that are vague unconstitutional, including in **Andrew Mujuni Mwenda and other Vs AG (consolidated constitutional petitions No.12 of 2005 and No. 3 of 2006)** wherein Court declared the offence of sedition unconstitutional for infringing Articles 29(1) (a) and 43(2) (c) of the Constitution. Court reasoned that the offence of seditious was prescribed so vaguely that one may not know the boundary to stop at, while exercising one's right under article 29(1) (a) of

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the Constitution and therefore struck it off Furthermore, in **Centre for Domestic Violence Prevention & 8 ors -VS- AG, Constitutional petition No. 13 of 2014**, , court declared Sections 2, 11, 13, and 15 of the Anti-Pornography Act, which defined and created the offence of pornography unconstitutional due to the vague definition of the offence of pornography

The Committee is also aware that whereas clause 2 makes provision for matters contained in section 145 (a) and (c) of the Penal Code Act, the Bill does not replace or make provision for treatment of the provisions of section 145 Section 145 of the Penal Code Act is reproduced below-

"145. Unnatural offences

Any person who—

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life."

The proposals in Bill, coupled with continuation of the offence of unnatural offence in the Penal Code Act, specifically section 145 (a) and (c) will complicate the prosecution of the offence of homosexuality which will be prescribed in three provisions, in clause 1 and 2 of the Bill and section 145 (a) and (c) of the Penal Code Act. It should be noted that these provisions prescribe different elements that the prosecution must prove For instance, while for the offence of homosexuality in clause 2, one must prove the elements prescribed in clause 2 of the Bill, in the offence of homosexuality under section 145 (a) and (c), one must prove carnal knowledge, being the actual penetration of a person's anus by a male sexual organ

In the case of **Christopher Mubiru Kisingiri Vs Uganda, HCCA No 108 of 2015** noted that for the offence of unnatural offence to be sustained, the

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prosecution must prove that a person has had anal sexual act against another person In the same decision, court observed that the prosecution must prove that there was penetration of the anus by a male sexual organ This provision usually applied against a male person and it is irrelevant whether the victim is a woman or man The above section specifically prohibits and punishes the conduct of a person who has carnal knowledge of any person against the order of nature as well as the conduct of a person who permits a male person to have carnal knowledge of him or her against the order of nature

This will create confusion since on one part, in section 145 there must be actual penetration of the anus by a male sexual organ while in clause 2, the provision is broader and covers penetration, stimulation and touching of a person's sexual organ with the anus or mouth of a person of the same gender Furthermore, while the Bill in clause 2 prohibits the holding out of a person as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female and terms it as homosexuality, the provisions of section 145 (a) and (c) of the Penal Code Act only limits the acts of homosexuality to actual penetration of the anus by a person's sexual organ

This therefore means that in addition to the two offences of homosexuality proposed in the Bill, if the provisions of section 145 (a) and (c) of the Penal Code Act are retained, it would mean that the law book would have three offences of homosexuality, each prescribing different elements These offences would be so broad and vaguely defined that a person would not know how to temper his or her conduct so that he or she is not caught up by the prohibitions prescribed in those provisions

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Recommendations

In light of the above, the Committee recommends that-

- (a) the definition and offence of homosexuality prescribed in clauses 1 and 2 of the Bill should be harmonised in order to clearly prescribe the elements of the offence under those provisions
- (b) The offences created in the Bill should be harmonised with section 145 (a) and (c) of the Penal Code Act to ensure that only one offence remains on the law book prescribing the offence of homosexuality.
- (c) The offence of homosexuality should equally apply to a person who allows another person to penetrate his or her anus or mouth with a sexual organ since currently, the proposal in the Bill only punishes a person who penetrates and does not extend to one who allows the penetration
- (d) In order to enhance clarity, all the words used in the Bill that are incapable of exact definition should be defined.
- (e) The offence of homosexuality and penalty prescribed in the Bill should be harmonised with other sexual offences, including the offence of rape and defilement as prescribed in the Penal Code Act in order to ensure that the Bill is not used to water down the provisions of the Penal Code Act

6.2. Aggravated Homosexuality

Clause 3 of the Bill proposes to create the offence of aggravated homosexuality committed where —

- (a) a person against whom the offence is committed is below the age of eighteen years,
- (b) the offender is a person living with HIV,
- (c) the offender is a parent or guardian of the person against whom the offence is committed,

- (d) the offender is a person having authority or control over the person against whom the offence is committed,
- (e) the victim of the offence is a person with disability,
- (f) the offender is a serial offender, or
- (g) the offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy or overpower him or her so as to enable any person to have unlawful carnal connection with any person of the same sex

The provision imposes a sentence of 10 years imprisonment against a person who is convicted of an offence of aggravated homosexuality and further requires a person charged with the offence of aggravated homosexuality to undergo a medical examination to ascertain his or her HIV status

The Committee has examined the offence of aggravated homosexuality and is of the considered opinion that whereas the proposal is noble, there is need to remedy the following matters in order to ensure the effectiveness of the provision The issues are-

(a) the offence of aggravated homosexuality prescribes the same penalty as the offence of simple homosexuality created in clause 2. The essence of creating an aggravated offence is to impose a more severe penalty against a person who commits the offence Since in the circumstances of this offence, the aggravating offence and the simple offence carry the same penalty The aggravating offence becomes redundant since it introduces nothing new to the provisions of the Bill,

(b) The provision creates an incomplete offence since it proposes to create an independent offence of aggravated homosexuality without prescribe the elements of this offence For instance, the Bill proposes that a person commits the offence of aggravated homosexuality where the

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person against whom the offence is committed is below the age of eighteen years This is an incomplete offence since it does not prescribe what elements must be proved to sustain a charge of the aggravated homosexuality owing to the lack of elements for conduct that would fall in the prohibition of aggravated homosexuality The provision therefore contravenes the principle of legality prescribed in article 28 (12) of the Constitution which requires that except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law

The Committee notes that in all provisions creating an aggravating offence, the provision makes the aggravating circumstances a matter of sentencing by clearly prescribing the elements of the offence For instance, section 129 (3) of the Penal Code Act creates the offence of aggravated defilement in the following terms "Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death." This clearly prescribes the elements of the offence of aggravated defilement and requires court to take into account the special circumstances under which the offence was committed in sentencing the offender and finding him guilty of aggravated defilement This is missing from the provisions of clause 3 of the Bill

Recommendations

In light of the above, the Committee recommends that-

- (a) *There is need to enhance the punishment proposed in clause 3 for the offence of aggravated homosexuality and harmonise the penalties prescribed in clause 3 with those in clause 4 (2) of the Bill as well as*

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those prescribed for similar conduct prohibited under the Penal Code Act, especially the offence of rape and Defilement,

- (b) Clearly provide the elements of the offence of aggravated homosexuality and make the aggravating circumstances relevant during sentencing as is always the case with such offences

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

The Bill proposes in clause 5 of the Bill to introduce provisions relating to the protection, assistance and payment of compensation to victims of homosexuality

The provision requires that a victim of homosexuality-

- (a) shall not be penalised for any crime committed as a direct result of his or her involvement in homosexuality;
- (b) shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the criminal proceedings,
- (c) shall be awarded compensation paid by a person convicted of an offence of homosexuality or aggravated homosexuality

The Bill defines a victim of the offence as a person who is involved in homosexual activities against his or her will. The Committee observes that whereas the provision is noble and should be supported, the following matters should be reconsidered in order to make the provision effective-

- (a) the provision does not provide how the victim of the offence will be identified considering that consent is irrelevant in the offence of homosexuality. Essentially, all the parties involved in the commission of acts which are prohibited under the offence of homosexuality are

prosecuted for the offence of homosexuality, leaving the provision redundant,

- (b) the provision is likely to be abused by victims or relatives of victims to harm and in some cases kill or injure persons who are suspected for committing homosexuality since the provision grants immunity to victims over all actions done against the suspected homosexual person. This provision is inconsistent with the guarantees of innocence under article 28 (3) (a) since it allows the victim to punish the suspected homosexual without first having the person tried in courts of law or have the matter investigated. This provision has potential to increase incidents of mob justice against suspected homosexuals and might be used by individuals to banish suspected homosexuals or take their property merely because they are suspected of the offence of homosexuality.

RECOMMENDATIONS

In light of the above, the Committee recommends that-

(a) provision should be made to clearly provide for the identification of victims of an offence under the Bill through clarifying the definition of who amounts to a victim.

(b) Sub clause (1) of the Bill should be deleted since it has potential to be abused by victims to commit crimes, against accused persons before the acts complained of are investigated by the police and the accused person prosecuted. It will encourage mob justice and it takes away the accused person's presumption of innocence prescribed in article 28 (3) (a) of the Constitution.

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6.4. Promotion of homosexuality

Clause 14 of the Bill proposes to punish the promotion of homosexuality and it proposes that a person commits the offence where that person-

- (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality,
- (b) funds or sponsors homosexuality or other related activities,
- (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality,
- (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality, or
- (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices

The Committee notes that one of challenges faced currently in the fight against homosexuality is grooming and promotion of homosexuality, especially in schools. Grooming is when a person builds a relationship with a child, young person or an adult who is at risk so they can abuse them and manipulate them into doing unlawful sexual acts. Grooming can take place on-line or in person and is usually done by persons who have authority over children, including teachers and other care givers in schools.

On the other hand, there are currently in Uganda direct and indirect means of promoting homosexuality in schools and other places. These promotion measures are usually disguised and are difficult to detect but are designed to recruit people, especially children and the youth into homosexuality. These endeavours are undertaken, usually, by some individuals and/or non-governmental organisations who disguise their activities as legitimate advocacy work done by civil society organisations. Government has in recent times banned the operation of certain civil society organisations and has stopped

certain meetings that were intended to promote and normalise homosexuality and conduct repugnant to public policy in Uganda. The provisions on promotion of homosexuality are therefore welcome since they will stop the on-going promotion and recruitment of individuals into acts of homosexuality.

Recommendations

The Committee recommends that-

The provisions of clause 14 should stand part of the Bill albeit with amendment to ban activities of civil society organisations that are intended to normalise acts and conduct that normalises conduct that is banned or unlawful in Uganda.

The provision should also criminalise grooming of persons to engage in homosexuality and enhance penalties against corporate bodies to ensure that the offence of promotion committed by legal entities is adequately punished.

The provision should be widened to cater for all the methods through which homosexuality and all its manifestation are promoted, including in academic institutions in order to protect the children and other vulnerable members of society from the vice.

7.0. EMERGING MATTERS

During consultation undertaken by the Committee, a number of new matters were brought to the attention of the Committee. These new matters which are currently not provided for in the Bill have been considered by the Committee in accordance with Rule 129 of the Rules of Procedure of Parliament and reports as follows.

7.1. Punishments for children offenders

The Minister of Gender, in her submission to the Committee, pointed out that the Bill makes no provision for sentencing of children offenders and imposes similar punishments for all persons in Uganda, including children. The

Minister noted that section 94 (1) of the Children Act Cap 59 limits the penalties that can be imposed on a child to three years for capital offences and she sought that this should be reflected in the Bill. The Committee agrees with the submission of the Minister to ensure clarity and harmonise the Bill with the provisions of the Children Act relating to sentencing.

Recommendations

The Committee recommends that different penalties for children offenders should be introduced in the Bill.

7.2. Criminalising the appearance of a person

Dr Jjuuko pointed out that the Bill has potential to criminalise LGBTQ+ people who have not committed any offence but merely based on the appearance of the accused person. He noted that the majority of arrests of LGBTQ+ persons under the provisions of this law will continue to be premised on the appearance of the suspects, with persons being deprived of their liberty only on the ground that they 'look gay', a phenomenon that has been well-documented during the enforcement of the Penal Code Act. He pointed out the decided case of **Victor Mukasa & Another vs. Attorney General (High Court Miscellaneous Cause No 24 of 2006)** where the plaintiff in the case was arrested by police based on appearance and without having committed an offence and taken to police to determine her "sexuality".

The Committee was also informed by Uganda Medical Association that there are some rare biological cases affecting the genes that code for unusual expressions of physical phenotypic expression associated with the genital organs. These include Klinefelter's Syndrome (XXY), a random genetic occurrence when a boy has an extra X chromosome that emerges in adulthood with feminine appearance and behaviour. Another congenital condition called Ambiguous genitalia exists, in this case an infant's genitalia are not clear whether they are male or female. This condition, recognized in early infancy,

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may be corrected by surgery after assessing whether the genes of the infant are male or female Uganda Medical Association proposes that the law should cater for such people including persons with genetic abnormalities and inter sex persons who have both male and female sexual organs

The Committee is also aware that court has already pronounced itself on this matter in the case of **Kasha Jacqueline Vs Rolling Stone Limited & another, Misc. Cause 163 of 2010** where court held that "the scope of S 145 of the Penal Code Act is narrower than gayism generally That one has to commit an act under S 145 to be regarded as a criminal" This decision means that being or appearing as a LGBTQ+ person is not in itself an offence until a person commits any of the prohibited acts under the law This means that a person cannot be criminalized but the conduct of the person, if contrary to the law, should be criminalized and punished

The Committee has examined the above and agrees that there is need for the law to distinguish between acts that constitute an offence which should be punished and the person, who should only be punished if his or her conduct breaches a legal provision The Committee is aware that clause 2 (1) (d) of the Bill proposes to declare as acts of homosexuality a person who holds out as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female This provision has the effect of criminalising the persons who identify as lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female without such persons having committed an offence under the laws of Uganda The DPP also cautioned the Committee about clause 2 (1) (d) which seeks to punish a person based on appearance and reasoned that if a person holds out as a thief, he cannot be charged of theft unless there is clear evidence that prove that he or she has either stolen or attempted to steal anything

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Recommendations

The Committee agrees with the above assertions recommends the following-

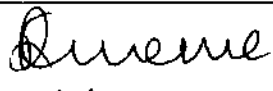
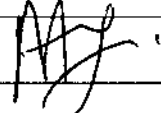

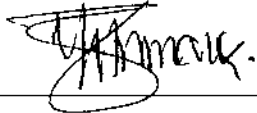

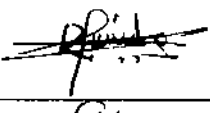
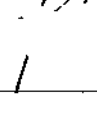
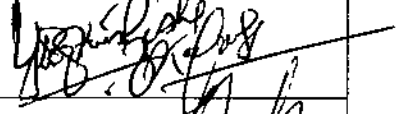
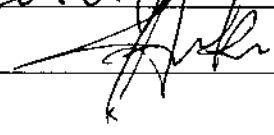
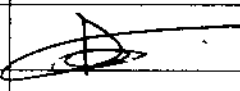

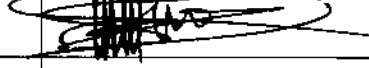
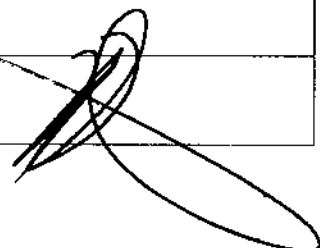
- (a) *There should be a requirement in the law obligating a person charged with an offence of homosexuality to submit evidence from a medical practitioner appointed by the Medical and Dental Practitioners Council, proving that the accused person was, at the time of the commission of the offence, suffering genetic abnormalities which might have contributed to the acts that constitute the offence of homosexuality This will help in mitigating the punishment that might be imposed on a person*
- (b) *Clause 2 (1) (d) of the Bill and all provisions that criminalise a person who has not committed an offence based on their appearance or physical characteristics should be deleted*
- (c) *The provision should be made in the Bill on intersex people and those persons born with ambiguous genitalia to recognise their difficulties*
- (d) *For clarity, the term "gender" and "sex" should be defined in the Bill*

The Committee recommends that Parliament considers and approves this report and that the Anti- Homosexuality Bill, 2023 be passed into law subject to the following amendments.

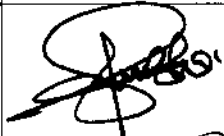


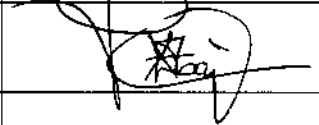




Rt. Hon. Speaker and Hon Members, I beg to report.

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SIGNATURES OF MEMBERS ENDORSING THE REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE ANTI - HOMOSEXUALITY BILL, 2023

NO	NAME	CONSTITUENCY	PARTY	SIGNATURE
1	Hon Rwakoojo Robina Gureme	Gomba West County	NRM	
2	Hon Mutembuli Yusuf	Bunyole East	NRM	
3	Hon Okiror Bosco	Usuk County	NRM	
4	Hon Nkwasiabwe Zinkurature Henry	Ruhaama County	NRM	
5	Hon Odoi Benard	Youth Eastern	NRM	
6	Hon. Odoi Oywelowo Fox	West Budma North East	NRM	
7	Hon Oseku Richard Oribo	Kibale County	NRM	
8	Hon Baka Stephen Mugabi	Bukooli County North	NRM	
9	Hon Cherukut Emma Rose	DWR Kween	NRM	
10	Hon. Kajwengye Twinomugisha Wilson	Nyabushozi County	NRM	
11	Hon Okia Joanne Aniku	DWR Madi Okollo	NRM	
12	Hon Obigah Rose	DWR Terego	NRM	
13	Hon Achayo Lodou	Ngora County	NRM	
14	Hon Kasaja Stephen	Burahya County	NRM	
15	Hon Teira John	Bugabula North County	NRM	
16	Hon Silwany Solomon	Bukhooli Central	NRM	
17	Hon. Kwizera Paul	Kisoro Municipality	NRM	
18	Hon Werikhe Christopher	Bubulo West	NRM	



19	Hon Malende Shamim	DWR Kampala	NUP	
20	Hon Lubega Medard Ssegona	Busiro East	NUP	
21	Hon Ssekitoleko Robert	Bamunanika County	NUP	
22	Hon Ssemuju Ibrahim	Kira Municipality	FDC	
23	Hon Adeke Ann Ebaju	DWR Soroti	FDC	
24	Hon Lt Gen James Mugira	UPDF		
25	Hon Asuman Basalirwa	Bugiri Municipality	JEEMA	
26	Hon Alum Santa Sandra Ogwang	DWR Oyam	UPC	
27	Hon Shartsı Musherure Nayebare Kutesa	Mawogola North County	INDEP	
28	Hon Abdu Katuntu	Bugwerı county	INDEP	
29	Hon Acrobert Kıza Moses	Bughendera County	INDEP	
30	Hon. Niwagaba Wilfred	Ndorwa County	INDEP	



PROPOSED AMENDMENTS TO THE ANTI-HOMOSEXUALITY BILL, 2023

CLAUSE 1: INTERPRETATION

Clause 1 is amended-

- (a) by deleting the definition of the word "authority",
- (b) by deleting the definition of the word "court",
- (c) by deleting the definition of the word "felony",
- (d) by deleting the definition of the word "misdemeanour",
- (e) by substituting for the definition of the word, "homosexual", the following-

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

- (f) by substituting for the definition of the word "homosexuality", the following-

"homosexuality" means the performance of a sexual act by a person on another person of the same gender,"

- (g) by substituting for the definition of the phrase "sexual act", the following-

"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 gender,

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(b) of a person's anus, sexual organ or mouth by a sex
contraption, by a person of the same gender; or

(c) of a person's anus or sexual organ by any part of the
body of a person of the same gender,"

(h) in the definition of the term "sexual organ", by deleting the words "or
any artificial sexual contraption,",

(i) by deleting the definition of the word "touching";

(j) by substituting for the definition of the word "victim", the following-

"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, 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;”;

(k) by inserting the following definition, appropriately-

“advanced age” means seventy five years and above;”

“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,

“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 ”

“female person” means a person born with a female sexual organ;

“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 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;

“gender” 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,


“male person” means a person born with a male sexual organ,


“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, but not for profit or commercial purposes;

“sexual orientation” means a person's identity in relation to the gender to which the person is sexually attracted to,

“sex” means gender,

“sex contraption” means a device or object used to stimulate a sexual organ or simulate sexual intercourse between persons of the same gender,”




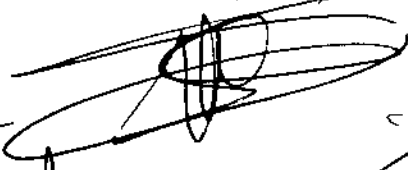


 “person in authority” means a person who is charged with the duty or responsibility for the health, welfare or supervision of a person;

“terminal illness” means a disease without scientific cure, 

“vulnerable person” means a person who is in need of special 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 elderly person

 **Justification**

4 | Page 03

- to remove terms and words that are redundant since they are not used in the Bill
- the substitution of the definition of the word "homosexuality" is for clarity.
- The amendments proposed to the term "sexual act" is for clarity and to harmonise the definition with the offence of homosexuality as proposed in clause 2 of the Bill
- The deletion of the words "or any artificial sexual contraption" from the definition of a sexual organ is prevent abuse of the provision by extending the definition of a sexual organ to include an artificial sexual contraption.
- The amendment of the term "victim" is to enhance identification of victims of the offence of homosexuality and to include a child, persons suffering with mental illness as well as other persons against whom a sexual act performs who are forced to perform sexual acts that constitute an offence
- To define the term life imprisonment.
- To clearly define words and phrases that are used in the Bill which are ambiguous and capable of multiple understanding

CLAUSE 2: THE OFFENCE OF HOMOSEXUALITY

For clause 2, there is substituted the following-

"2 Offence of homosexuality

- (1) A person commits the offence of homosexuality if the person performs a sexual act on another person of the same gender or allows a person of the same gender 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 seven years.

- (4) Notwithstanding subsection (2), a person charged with an offence under this section may, in mitigation of sentence, submit evidence from a medical practitioner appointed by the Medical and Dental Practitioners Council, proving that the accused person was, at the time of the commission of the offence, suffering genetic abnormalities which might have contributed to the acts that constitute the offence of homosexuality
- (5) 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.

Justification

- *To remove a conflict between the definition of the words "homosexuality" and "sexual act" in clause 1 and the prescription of the offence of "homosexuality" in clause 2 of the Bill since they each prescribed different elements, making the offence of homosexuality vague, thereby contravening the principle of legality prescribed in article 28 (12) of the Constitution.*
- *To limit the offence of homosexuality to the penetration, however slight of a person's anus, by another person's sexual organ, of a person's anus, sexual organ or mouth by a sexual organ of another person of the same gender; or of a person's anus, sexual organ or mouth by an object or sex contraption, by a person of the same gender.*
- *As guided by Court in the case of Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd and Giles Muhame (High Court Miscellaneous Cause No 163 of 2010), to limit the offence of homosexuality to the actual performance of a sexual act between persons*
- *As required in section 37 of the Interpretation Act, to prescribe the maximum penalty that can be imposed by court in order to recognise and maintain court discretion in sentencing.*

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- To expand the provision to include an attempt to commit the offence of homosexuality
- To move provisions relating to sexual orientation to clause 14 on promotion of the offence of homosexuality.
- To increase the penalty for the offence, in the case of homosexuality, from ten years as proposed in the Bill to 20 years and for the attempts, from 2 years to 7 years in tandem with sentences imposed for similar sexual offences.
- The proposal to allow a person charged with an offence under the section to mitigate the sentence by adducing evidence of genetic disorders is to recognise evidence from Uganda Medical Association which explained that a small number of people may have homosexual tendencies because of abnormalities in their genes or biological disorders.
- To delete provisions that criminalises a person who has not committed an offence of homosexuality

CLAUSE 3: AGGRAVATED HOMOSEXUALITY

For clause 3, there is substituted the following-

“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;

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- (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 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) A person charged with an offence under this section may, in mitigation of sentence, submit evidence from a medical practitioner appointed by the Medical and Dental Practitioners Council, proving that the accused person was, at the time of the commission of the offence, suffering genetic abnormalities which might have contributed to the acts that constitute the offence of homosexuality

(5) For purposes of subsection (4), 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

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overt act, but does not fulfil his or her intention to such an extent as to commit the offence.”

Justification

- To harmonise the punishment for aggravated homosexuality, with the punishment prescribed for similar offences under the Penal Code;
- To harmonise the penalty prescribed in this clause with section 129 of the Penal Code Act relating to defilement
- To harmonise the punishment for the offence of homosexuality and aggravated homosexuality;
- To expand the provision to include other matters that aggravate the offence of homosexuality;
- To expand the provision to include other categories of infection and incurable diseases that might arise from the sexual act.
- The proposal to allow a person charged with an offence under the section to mitigate the sentence by adducing evidence of genetic disorders is to recognise evidence from Uganda Medical Association which explained that a small number of people may have homosexual tendencies because of abnormalities in their genes or biological disorders

CLAUSE 4: ATTEMPT TO COMMIT HOMOSEXUALITY

 Delete clause 4

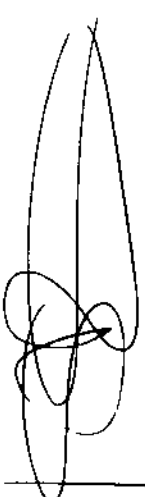


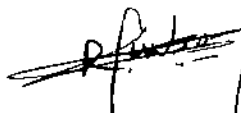




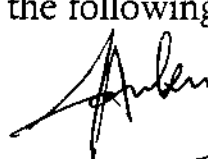



Justification

- The provisions of clause 4 have been inserted in clauses 2 and 3 of the Bill

INSERTION OF NEW CLAUSE IMMEDIATELY AFTER 4

The Bill is amended by inserting immediately after clause 4, the following new clause-

“Punishment for 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

Justification

- *To limit the punishment that can be imposed on a child homosexual to three years as required in section 94 (1) (g) of the Children Act Cap 120.*

CLAUSE 5: PROTECTION, ASSISTANCE AND PAYMENT OF COMPENSATION TO VICTIMS OF HOMOSEXUALITY

Clause 5 of the Bill is amended by-

- (a) deleting sub clause (1),
- (b) substituting for sub clause (2), the following-

“(2) 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

Justification

- *Sub clause (1) is deleted since it has potential to be abused by victims to commit crimes, against accused persons before the acts complained of are investigated by the police and the accused person prosecuted It will encourage mob justice and it takes away the accused presumption of innocence prescribed in article 28 (3) (a) of the Constitution*
- *For clarity and better drafting*

CLAUSE 6: CONSENT OF A VICTIM OF HOMOSEXUALITY

For clause 6, there is substituted the following-

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“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 ”

Justification

- *To expand the provision to declare, as irrelevant, the consent of any person to the performance of a sexual act that constitutes an offence under this Act rather than limiting the provisions to victims of offences as proposed under the Bill.*

CLAUSE 7: CONFIDENTIALITY

In clause 7, delete sub clauses (1) and (2)

Justification

- *Clause 7 (1) and (2) are redundant since clause 7 (1) is already a practice of court while 7 (2) is provided for under article 28 (2) of the Constitution which allows a court or tribunal to exclude the press or the public from all or any proceedings before it, for reasons of morality, public order or national security, as may be in a free and democratic society.*

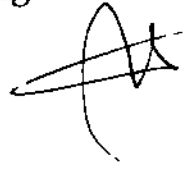
INSERTION OF NEW CLAUSES IMMEDIATELY BEFORE CLAUSE 8

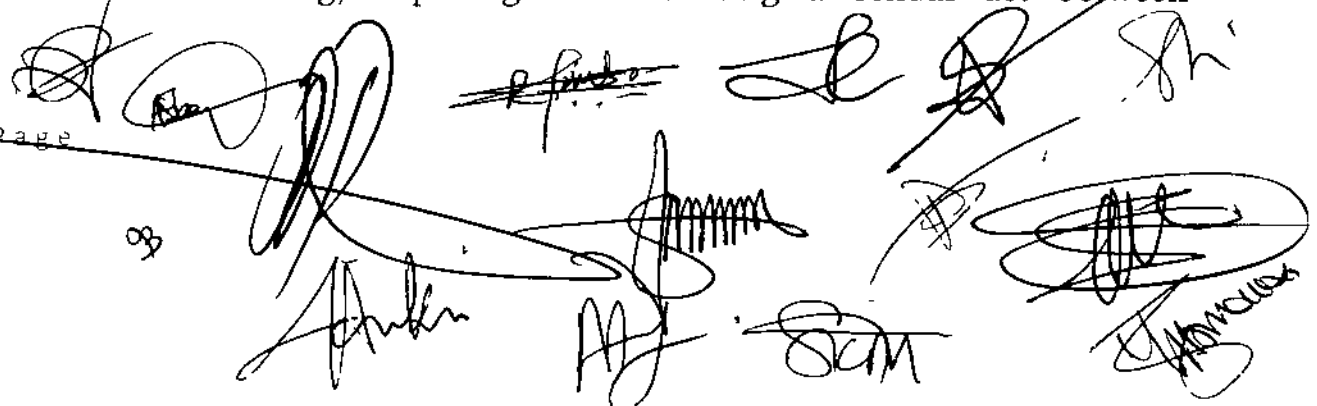
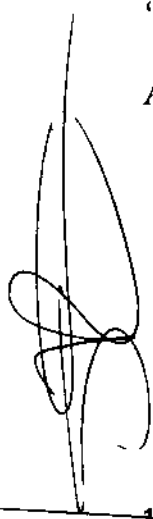
The Bill is amended by inserting immediately before clause 8, the following-

“Child grooming

A person who-

- (a) recruits, transports, transfers, harbours or receives a child for 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

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persons of the same gender 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 gender 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 gender or causes another person to engage in a sexual act with a person of the same gender,

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

Justification

To prohibit acts that expose children to acts of homosexuality.

CLAUSE 8: AIDING AND ABETTING HOMOSEXUALITY

Delete clause 8

Justification

- *The provision is redundant since it is provided for under section 19 of the Penal Code Act and the conduct intended to be cured can be dealt with under clause 14 on promotion*
- *The provision uses words such as "acts of homosexuality" which are ambiguous since they are not defined, thereby making the provision contrary to the principle of legality prescribed in article 28 (12) of the Constitution*

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CLAUSE 9: CONSPIRACY TO ENGAGE IN HOMOSEXUALITY

Delete clause 9

Justification

- *The mischief intended to be cured by the clause can be dealt with under clause 14.*

CLAUSE 10: PROCURING HOMOSEXUALITY BY THREAT

Delete clause 10

Justification

- *Consequential amendment arising from the amendment of clause 3 of the Bill relating to the offence of aggravated homosexuality wherein, the sub clauses (1) and (2) of clause 10 were inserted in clause 3.*
- *Clause 10 conflicts with section 123 relating to the offence of rape and 129 relating to Defilement by prescribing lesser sentences than those prescribed under the above provisions, affecting the provisions of the above acts*
- *To remove a redundant sub clause 10 (2), which proposes to recognise a practice of court requiring corroboration*

CLAUSE 11: DETENTION WITH INTENT TO COMMIT HOMOSEXUALITY

Delete clause 11

Justification

- *Clause 11 is redundant*

CLAUSE 12: BROTHELS

Clause 12 of the Bill is amended-

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 - "Ph 7" written in the middle right section.
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 - "RB" written at the bottom center.
 - "Amm" written at the bottom center.
 - "H. J." written at the bottom right.
 - "S.M." written at the bottom right.
 - "A. H. A." written at the bottom right.

(a) by renumbering the provisions as sub clause (1) and (2);

(b) in sub clause (a), by inserting the words "facilitating the commission of the offence of" immediately after the word "purposes",

(c) by substituting for sub clause (b), the following-

"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 one year.

Justification

- *For clarity and better drafting*
- *As required in section 37 of the Interpretation Act, to prescribe the maximum penalty that can be imposed by court in order to recognise and maintain court discretion in sentencing*

CLAUSE 13: SAME SEX MARRIAGE

For clause 13, there is substituted the following-

"13 Prohibition of marriage between persons of the same gender

(1) A person who—

(a) contracts a marriage with a person of the same gender;

(b) presides over, conducts, witnesses or directs a marriage ceremony between persons of the same gender; or

(c) knowingly attends or participates in the preparation of a marriage between persons of the same gender;

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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 gender

Justification

- To operationalize article 31 (2) (a) of the Constitution which prohibits same sex marriages
- For clarity and better drafting.
- As required in section 37 of the Interpretation Act, to prescribe the maximum penalty that can be imposed by court in order to recognise and maintain court discretion in sentencing.
- To expand the provision to apply to all persons who participate in a marriage or the marriage ceremony of persons of the same gender.

CLAUSE 14: PROMOTION OF HOMOSEXUALITY

For clause 14, there is substituted the following-

“Promotion of homosexuality

- (1) A person who promotes homosexuality commits an offence and is liable, on conviction, to imprisonment for a term not exceeding ten 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 gender or to do any other act that constitutes an offence under this Act;
 - (b) 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 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 normalisation 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) hold a shareholder, director, employee, manager, officer or any other principle officer in the legal entity to be responsible for the actions of the legal person and therefore liable for the offence committed and punished as provided in this section, and
- (b) in addition to any penalty stipulated in the relevant provision,-
 - (i) impose a penalty not exceeding twenty thousand currency points for breach of any of the provisions of this section; or
 - (ii) suspend or cancel the license or other authorisation granted to the legal entity to undertake any activity in Uganda.”

Justification

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- *For clarity and better drafting*
- *To expand the provision to cater for all acts done with the aim of encouraging the observance of conduct that is prohibited under the Act,*
- *To prohibits acts done in public which are calculated to encourage homosexuality or the normalisation of acts that are prohibited under the Act*
- *To grant additional powers to court where a legal entity commits an offence*

CLAUSE 15: SPECIAL POWERS OF COURT

For clause 15, there is substituted the following-

“Rehabilitation of homosexual

- (1) Court may, upon convicting a person for the offence of homosexuality, order the provision 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 ”

Justification

- *To make the provision discretionary in light of the limited resources.*
- *To designate who is to provide the rehabilitation services referred to in the section.*
- *For clarity and better drafting.*

CLAUSE 16: EXTRADITION

Delete clause 16

Justification

- *The provision is redundant since extradition thrives on reciprocal arrangements of given states and in the case of Uganda, the Extradition Act, Cap.117 provides for*

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extradition of persons accused of crimes committed within the jurisdiction of another State.

INSERTION OF NEW CLAUSE IMMEDIATELY BEFORE CLAUSE 15

The Bill is amended by inserting the following new clauses immediately before clause 15 as follows-

“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 a probation, social and welfare officer determines that the person is fully rehabilitated or no longer poses a danger to a child or other vulnerable person.

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 and the employment of that person shall terminate.

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

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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 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 a whistle-blower and shall be protected from victimization
- (5) This section shall not apply to an advocate ”

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

Repeals

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

Justification

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- The proposal to disqualify a person convicted of an offence of homosexuality 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 is intended to protect children and various other vulnerable people from exploitation
- The proposal to have a person convicted of an offence to 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 is to enable such institutions to make an informed determination of the suitability of the person before employing him or her in such institution,
- The proposal to impose an obligation on a person to report offences is intended to ensure that incidents of homosexuality are reported and investigated
- The proposal to penalise persons who make false or misleading allegations is to guard against persons who intentionally make malicious and misleading reports to police in light of the seriousness of the offences
- The repeal of section 145 (a) and (c) is to harmonise the Bill with the provisions of the Penal Code Act and to ensure that only one offence of homosexuality exists on the law book

I beg to move.

Duene

Sh

Andh.

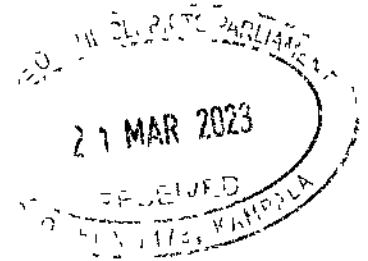
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PARLIAMENT OF UGANDA



**MINORITY REPORT TO THE REPORT OF THE SECTORAL COMMITTEE ON
LEGAL AND PARLIAMENTARY AFFAIRS ON THE ANTI HOMOSEXUALITY
BILL, 2023**

**OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA-UGANDA**

MARCH 2023

1.0. INTRODUCTION

On Thursday, 9th March, 2023, a Bill entitled "The Anti-Homosexuality Bill, 2023" was, in accordance with Rule 128 of the Rules of Procedure of Parliament, read for a first time and referred to the Committee on Legal and Parliamentary Affairs for scrutiny.

2.0. OBJECT 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.

The Bill purports to address the gaps in the provisions of other laws in Uganda, for example the Penal Code Act, Cap 120, which allegedly has no comprehensive provision catering for anti-homosexuality and only 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

3.0. POINTS OF DISSENT TO THE MAIN REPORT

Rule 205 of the Rules of Procedure of Parliament grants a Member or Members dissenting from the opinion of a majority of a Committee to state, in writing, the reasons for his or her or their dissent and the statements of reasons shall be appended to the report of the Committee. In accordance with this rule, we the minority, advance the following reasons for dissenting with the majority report-

3.1. The Bill is misconceived

Honorable Members and Madam Speaker, the explanatory memorandum of the Bill indicates that the intention of the Bill is designed to address the gaps in the provisions of other laws in Uganda, for example the Penal Code Act, Cap. 120. The explanatory memorandum further indicates that the Penal Code Act, Cap. 120 has no comprehensive provision catering for anti-homosexuality since, according to the Bill, the Penal Code Act focuses on unnatural offences under section 145 and lacks provisions for penalising the procurement, promoting, disseminating literature and other pantographic materials concerning the offences of homosexuality.

Honorable Members this is not a factual statement since we all know that homosexuality is an offence prescribed in section 145 of the Penal Code Act which is reproduced below-

"145. Unnatural offences

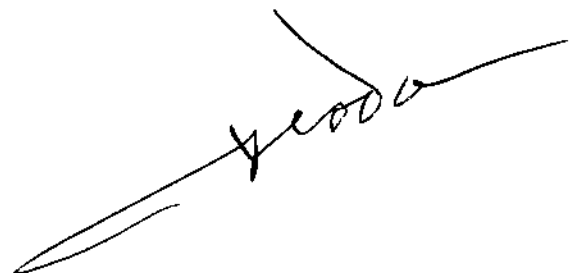
Any person who—

(a)has carnal knowledge of any person against the order of nature;

(b)has carnal knowledge of an animal; or

(c)permits a male person to have carnal knowledge of him or her against the order of nature,

commits an offence and is liable to imprisonment for life."



The above section specifically prohibits and punishes the conduct of a person who has carnal knowledge of any person against the order of nature as well as the conduct of a person who permits a male person to have carnal knowledge of him or her against the order of nature. This provision has been in the Penal Code Act for more than 100 years and for the member to state that there are no provisions criminalizing homosexuality is disingenuous. Whereas the term "homosexuality" is not used specifically in section 145 of the Penal Code Act, the provision specifically deals with conduct that amounts to homosexuality and it prohibits it and anal sex.

The explanatory memorandum also indicates that the Penal Code Act focuses on unnatural offences under section 145 and lacks provisions for penalising the procurement, promoting, disseminating literature and other pantographic materials concerning the offences of homosexuality. This is not true since the provisions of section 145 criminalise, in addition to homosexuality, sexual acts between animals and human beings. In addition, the Penal Code Act has comprehensive provisions that deal with penalising the procurement, promoting, disseminating literature and other pornographic materials concerning the offences of homosexuality under the general prohibition on conspiracies under Chapter XLI of the Penal Code Act, Cap 120 (conspiracy to commit felony, conspiracy to commit misdemeanor and other conspiracies).

For instance, court in case of ***Nabagesera & 3 Ors v Attorney General & Anor (Miscellaneous Cause 33 of 2012)*** recognised that the actions of petitioner in organizing a workshop advocating for normalization of minority rights in Uganda was a conspiracy since it engaged in the direct and indirect promotion of same-sex practices which are prohibited by the Penal Code Act. This means that acts that tend to promote homosexuality can be dealt with as conspiracies under the Penal Code Act.

We, the minority surmise that this Bill was introduced under a reasonable but mistaken belief that the Penal Code Act is not sufficient to deal with the

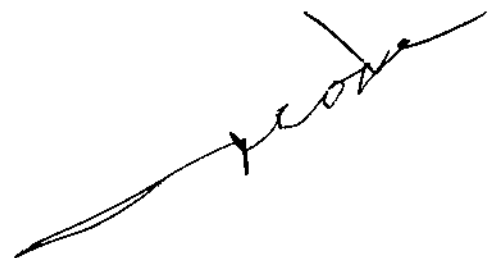
matters relating to homosexuality It was introduced during a time when anti-homosexual sentiments have been wiped up across the country and is not based on any evidence to show that incidents of homosexuality have increased and require additional legislative interventions Indeed, according to the Annual Crime Police Reports, incidents of homosexuality have been reducing in Uganda, peaking in 2017 where 120 cases were reported, in 2018, 100 cases were reported, in 2019, 103 cases were reported, 79 cases were reported in 2020, 80 cases were reported in 2021 and 83 in 2022 This means that the legislative interventions that are existing in the laws of Uganda are having effect. In light of the above, we the minority find that the Bill was misconceived and serves no purpose

3 2 **Criminalising the appearance of a person**

The second point of dissent is that the Bill in its current form creates penal sanctions against a person merely based on appearance, thereby attempting to reverse the decision of court in *Kasha Jacqueline Vs Rolling Stone Limited & another, Misc Cause 163 of 2010*

The minority are aware that clause 2 (1) (d) of the Bill proposes to declare as acts of homosexuality a person who holds out as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female This provision has the effect of criminalising the persons who identify as lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female without such persons having committed an offence under the laws of Uganda

The Committee was also informed by Uganda Medical Association that there are some rare biological cases affecting the genes that code for unusual expressions of physical phenotypic expression associated with the genital organs. These include Klinefelter's Syndrome (XXY), a random genetic occurrence when a boy has an extra X chromosome that emerges in adulthood with feminine appearance and behaviour Another congenital condition called

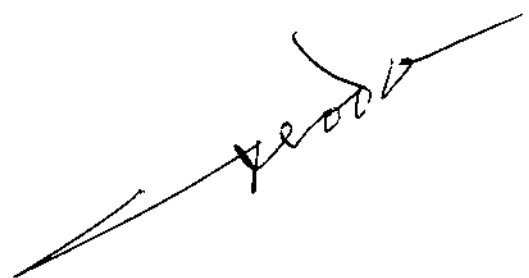


Ambiguous genitalia exists, in this case an infant's genitalia are not clear whether they are male or female. This condition, recognized in early infancy, may be corrected by surgery after assessing whether the genes of the infant are male or female. Uganda Medical Association proposes that the law should cater for such people including persons with genetic abnormalities and inter sex persons who pose both male and female.

The DPP also cautioned the Committee about clause 2 (1) (d) which seeks to punish a person based on appearance and reasoned that if a person holds out as a thief, he cannot be charged of theft unless there is clear evidence that proves that he or she has either stolen or attempted to steal anything.

The minority are concerned that the police has been arresting people based on their appearance as was found in the case *Victor Mukasa & Another vs Attorney General (High Court Miscellaneous Cause No 24 of 2006)* where the plaintiff in the case was arrested by police based on appearance and without having committed an offence and taken to police to determine her "sexuality".

The minority are aware that following police conduct in *Victor Mukasa supra*, court guided in the case of *Kasha Jacqueline Vs Rolling Stone Limited & another, Misc Cause 163 of 2010* that "the scope of S 145 of the Penal Code Act is narrower than gaysim generally. That one has to commit an act under S 145 to be regarded as a criminal". This decision means that being or appearing as a LGBTIQ+ person is not in itself an offence until a person commits any of the prohibited acts under the law. This means that a person cannot be criminalized but the conduct of the person, if contrary to the law, should be criminalized and punished. The minority are of the considered opinion that this Bill is intended to reverse the decision *Kasha Jacqueline Vs Rolling Stone Limited & another, Misc Cause 163 of 2010* by criminalizing persons based on appearance and not prohibited conduct.



3.3. Duplication of provisions in the Penal Code

The third point of dissent the minority have with the majority report concerns the duplication of provisions that exist in other laws and are reproduced in the Bill

The minority note that majority of stakeholders who appeared before the Committee point out that the Bill introduces nothing of practical value and merely reproduces provisions that already exist in other laws Whereas the majority of the clauses of the Bill are unconstitutional, the rest are redundant and they become useless once the unconstitutional provisions are removed The redundant clauses include 5(2) - (4), 7, 9, 10, 11, 13, 15, 16 and 17 The Bill is a duplication of the provision already in place under the Penal Code and is unnecessary

The DPP also objected to the Bill on grounds that the proposals contained in the Bill should be introduced in the Penal Code Act rather than being introduced in the proposed Bill The DPP reasoned that the Penal Code has overtime been disintegrated chapter by chapter, leading to scattering of the provisions

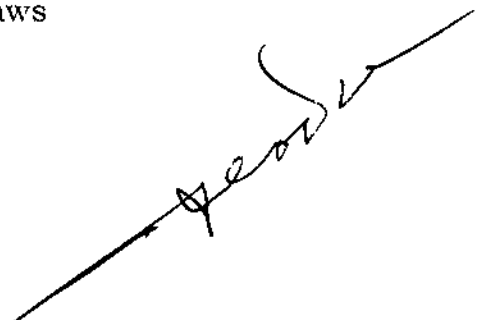
The Attorney General advised and pointed out a number of provisions that are already prescribed in our laws, making the Bill redundant and of no legislative value The minority find the following provisions redundant-

- (a) Clause 1 defines matters that are ready provided in other laws, including the Penal Code Act
- (b) Clause 1 on the offence of Homosexuality is provided in section 145 of the Penal Code Act,
- (c) Clause 2 of the offence of aggravated homosexuality can be prevented in section 129 of the Penal Code Act on the offence of defilement,
- (d) Clause 4 is already prescribed in section 146 of the Penal Code Act,

- (e) Clause 7 is well entrenched in article 28 (2) of the Constitution which gives judicial discretion to a court or tribunal to exclude the press or the public from all or any proceedings before it, for reasons of morality, public order or national security, as may be in a free and democratic society
- (f) Clause 8 is already provided for in section 19(1)(c) of the Penal Code Act, Cap 120
- (g) Clause 9 of the Bill already exists in Chapter XLI of the Penal Code Act, Cap 120 as an offence,
- (h) clause 11 is already provided under in section 134 of the Penal Code Act, Cap 120 which broadly criminalizes detention with criminal intent
- (i) Clause 13 is redundant since article 31 (2) specifically bans same sex marriages and the marriage Act defines a marriage and does not include same sex marriage
- (j) Clause 16 is redundant since there exists a law to regulate extraditions from and to Uganda, being the Extradition Act, Cap 117

The minority are aware that the provisions of this Bill once passed into law will complicate the prosecution of offences under the Penal Code Act since there will be multiple offences, with varying penalties. The minority know that section 39 of the Interpretation Act, Cap 3 provides guidance on an act which constitutes an offence under two or more laws. Section 39 provides as follows-
"Where an act constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

The Committee was cautioned by the Attorney General that there is nothing prevents Parliament from enacting new laws or indeed improving on existing provisions of the law to meet emerging challenges in or of society as long it cautions itself against duplication provision in other laws



3 4 **Constitutionality of the Bill**

The Bill makes provision for the matters which infringing the Constitution of the Republic of Uganda, 1995 including article 27 on the right to privacy, article 24 and 44 (a) relating to non derogable right to freedom from inhuman and degrading treatment as protected under article 24 and article 44(a) and article 21 of the Constitution on the right against discrimination. The Bill goes beyond the limitations envisaged in article 43 of the Constitution and some provisions contravene the principle of legality prescribed in article 28 (12) of the Constitution.

Not only does the Bill contravene provisions of the Constitution of the Republic of Uganda, it also contravenes established international and regional human rights standards, as it unfairly limits the fundamental rights of LGBTIQ persons. This criminalization also denies them equal protection under the law, owing to the harsh differential treatment they receive based on their sexual orientation and the criminalization of the same. The provisions that infringe the Constitution include-

- (a) Clauses 3(1) (b) and (e), which make the offence of homosexuality aggravated when the offender is a person living with HIV and when the victim is a person with a disability would violate article 21 of the Constitution as they would be discriminatory. The discrimination is on the basis of HIV status and being a person with disability. These provisions perpetuate the stereotype that People Living with HIV (PLWHIV) cannot engage in safe adult-to-adult sex and that People with Disabilities (PWDs) are eminently victims in human relationships.
- (b) Clause 5(1), which provides that 'a victim of homosexuality shall not be penalized for any crime committed as a direct result of his or her

involvement in homosexuality' combined with the definition of 'victim' in clause 1 as including 'a person who is involved in homosexual activities against his or her will' introduces the 'homosexual panic' defence, which essentially gives so called 'victims' leeway to harm suspected LGBTIQ persons and get away scot free, thereby contravening the presumption of innocence guaranteed under article 28 (3) (a) of the Constitution

- (c) Clauses 1, 2(1)(d), (3(1)(b), (e), and (f), 4(1) and 8 in as a far as they define 'touching' as constituting the offence of 'homosexuality', 'aggravated homosexuality', 'attempts to commit homosexuality', and 'aiding and abetting' homosexuality respectively would violate the principle of legality under Article 28(12) of the Constitution This provision requires that all criminal offences be properly defined, and is part of the non-derogable right to a fair hearing protected under Article 28 and Article 44(c) of the Constitution Court has declared provisions of laws that are incapable of exact definition unconstitutional.

It is therefore the position of the minority that the provisions of the Bill if passed into law will infringe the rights of Ugandans, specifically the rights and freedom of expression, association, and liberty, privacy, Equality and Freedom from Discrimination, Inhuman and Degrading Treatment, right to fair hearing and finds that if Parliament enacts this law, it will be challenged before the Constitutional Court and struck off.

3.5. The reverses the gains registered in the fight against gender based violence especially against women and girls

Some clauses of the Bill reverse the gains registered in the fight against gender based violence, especially of women and children The Bill in clauses 2 and 3 of the Bill makes provision for the offence of homosexuality and aggravated



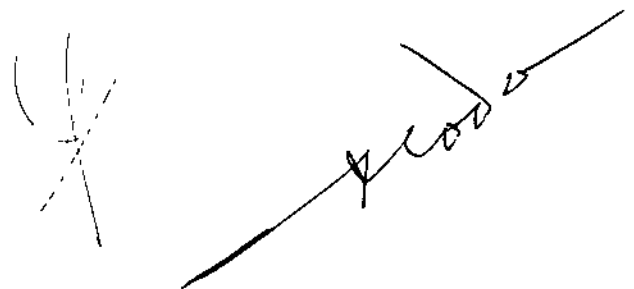
homosexuality. The provisions prescribe sanctions of ten years against a person who infringes the provisions of the Bill.

The minority has examined these provisions and finds them to infringe sections 123 and 129 of the Penal Code Act which create the offence of rape and defilement, respectively. These offences prescribe varying sentences against a person who conducts himself or herself in a manner that constitutes the offence ranging from death and life imprisonment. The Bill now proposes to make various indirect amendments to those provisions of the Penal Code Act by reducing the penalties for the same conduct that is prohibited under sections 123 and 129 of the Penal Code Act from death and life imprisonment to 10 years imprisonment. This makes the provision regressive, affects the fight against gender based violence against girls and women and reverses the gains so far registered in the fight against rape and defilement by reducing the severity of the penalties prescribed for those offences.

4.0. CONCLUSIONS AND RECOMMENDATIONS

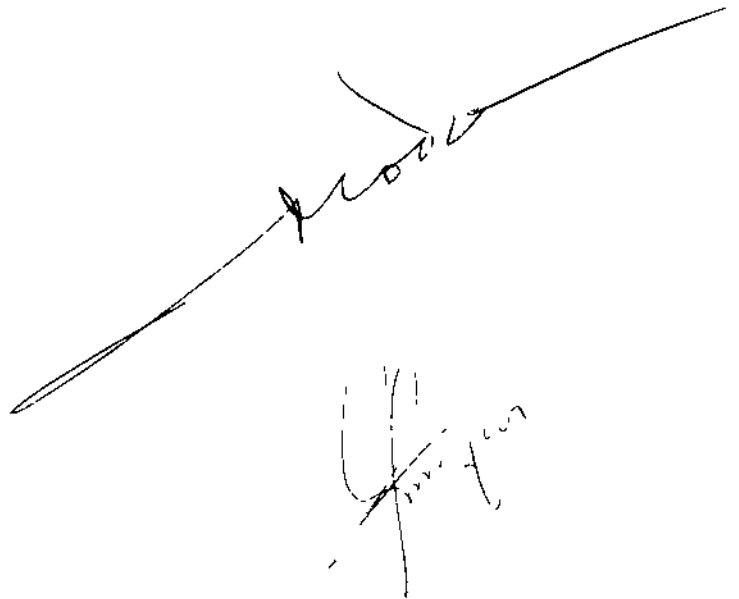
The minority have examined the Bill and are of the considered opinion that the Bill is misconceived, it contains provisions that are unconstitutional, reverses the gains registered in the fight against gender based violence and criminalizes individuals instead of conduct that contravenes legal provisions. The Bill does not introduce any value addition to the statute book and available legislative framework. In light of the above, the minority recommend the following-

- (a) The spirit of the Anti-Homosexuality Bill, 2023 guides the enrichment of a comprehensive non-discriminatory sexual offences Bill,
- (b) The proposals contained in the Bill should be presented to the Law Reform Commission to study and advise Government on the possible reforms of sexual offences laws
- (c) That Government should introduce legislation and a framework for the provision of rehabilitation of victims of sexual and gender based violence.

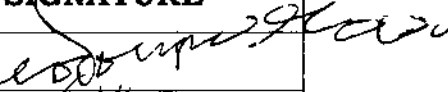
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(d) That the existing legislation be amended to provide clarity where necessary

Rt Hon Speaker and Hon Members, I beg to report

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**ENDORSEMENT OF THE MINORITY REPORT TO THE REPORT OF THE
 SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON
 THE ANTI HOMOSEXUALITY BILL, 2023**

NO.	NAME	CONSTITUENCY	SIGNATURE
01	FOR ODOI-DYWELDWO	WBNE	
02	Kwizera B Patu	Kisumu	