

BILLS SUPPLEMENT

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Bill No. 3

The Anti-Homosexuality Bill

2023

THE ANTI-HOMOSEXUALITY BILL, 2023

MEMORANDUM

1. Principles of the Bill

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

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

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

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

3 REMEDIES

The Bill seeks to:

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

ASUMAN BASALIRWA, MP
Bugiri Municipality.

THE ANTI-HOMOSEXUALITY BILL, 2023

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Interpretation

PART II—PROHIBITION OF HOMOSEXUALITY

2. The offence of homosexuality
3. Aggravated homosexuality
4. Attempt to commit homosexuality
5. Protection, assistance and payment of compensation to victims of homosexuality
6. Consent of the victim
7. Confidentiality

PART III—RELATED OFFENCES AND PENALTIES

8. Aiding and abetting homosexuality
9. Conspiracy to engage in homosexuality
10. Procuring homosexuality by threats, etc
11. Detention with intent to commit homosexuality
12. Brothels
13. Same sex marriage
14. Promotion of homosexuality

PART IV—MISCELLANEOUS PROVISIONS

15. Special powers of court
16. Extradition
17. Regulations

Schedule

Currency point.

A Bill for an Act

ENTITLED

THE ANTI-HOMOSEXUALITY ACT, 2023

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

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires—

“authority” means having power and control over other people because of your knowledge and official position; and shall include a person who exercises religious, political, economic or social authority;

“child” means a person below the age of eighteen years;

“court” means a chief magistrates court;

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

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

“felony” means an offence which is declared by law to be a felony or if not declared to be a misdemeanour is punishable without proof of previous conviction, with death or with imprisonment for three years or more;

“HIV” means the Human Immunodeficiency Virus;

“homosexual” means a person who engages or attempts to engage in same gender sexual activity;

“homosexuality” means same gender or same sex sexual acts;

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

“misdemeanour” means any offence which is not a felony;

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

“sexual act” includes—

- (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;

“sexual organ” means a vagina, penis or any artificial sexual contraption;

“touching” includes touching—

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything;

and in particular includes touching amounting to penetration of any sexual organ, anus or mouth;

“victim” includes a person who is involved in homosexual activities against his or her will.

PART II—HOMOSEXUALITY AND RELATED PRACTICES

2. **The offence of homosexuality**

(1) A person commits the offence of homosexuality if the 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;
- (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.

(2) A person who commits an offence under this section is liable, on conviction, to imprisonment for ten years.

3. **Aggravated homosexuality**

(1) A person commits the offence of aggravated homosexuality where the—

- (a) person against whom the offence is committed is below the age of eighteen years;
- (b) offender is a person living with HIV;
- (c) offender is a parent or guardian of the person against whom the offence is committed;
- (d) offender is a person having authority or control over the person against whom the offence is committed;
- (e) victim of the offence is a person with disability;
- (f) offender is a serial offender; or
- (g) 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.

(2) A person who commits the offence of aggravated homosexuality shall be liable, on conviction, to imprisonment for ten years.

(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

4. Attempt to commit homosexuality

(1) A person who attempts to commit the offence of homosexuality commits an offence and is liable, on conviction, to imprisonment for two years.

(2) A person who attempts to commit the offence of aggravated homosexuality commits an offence and is liable, on conviction, to a term of imprisonment for ten years.

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

(1) A victim of homosexuality shall not be penalised for any crime committed as a direct result of his or her involvement in homosexuality.

(2) A victim of homosexuality shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the criminal proceedings.

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

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

6. Consent of a victim of homosexuality

Consent of the victim to homosexuality shall not be a defence under this Act.

7. Confidentiality

(1) At any stage of the investigation or trial of an offence under this Act, a law enforcement officer, prosecutor, judicial officer, medical practitioner, and any party to the case, shall recognise the right to privacy of the victim.

(2) For purposes of subsection (1), proceedings of the court in cases involving children and other cases where the court considers it appropriate, shall be conducted in camera.

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

PART III—RELATED OFFENCES AND PENALTIES

8. Aiding and abetting homosexuality

A person who aids, abets, counsels or procures another person to engage in acts of homosexuality commits an offence and is liable, on conviction, to imprisonment for two years.

9. Conspiracy to engage in homosexuality

A person who conspires with another to induce another person of the same sex by any means of false pretence or other fraudulent means to permit any person of the same sex to have unlawful carnal knowledge of him or her commits an offence and is liable, on conviction, to imprisonment for two years.

10. Procuring homosexuality by threats

(1) A person who—

(a) by threat or intimidation procures or attempts to procure any woman or man to have any unlawful carnal knowledge with any person of the same sex;

(b) by false pretences or false representations procures any woman or man to have any unlawful carnal connection with any person of the same sex,

commits an offence and is liable, on conviction, to imprisonment for five years.

(2) A person shall not be convicted of an offence under this section upon the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

11. Detention with intent to commit homosexuality

A person who detains another person with the intention to commit acts of homosexuality with him or her or with any other person commits an offence and is liable, on conviction, to imprisonment for two years.

12. Brothels

- (a) A person who keeps a house, room, set of rooms or place of any kind for purposes of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years.
- (b) A person being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly causes any man or woman to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man or woman of the same sex whether such carnal knowledge is intended to be with any particular man or woman, commits an offence and is liable, on conviction, to imprisonment for one year.

13. Same sex marriage

- (a) A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable, on conviction, to imprisonment for ten years.
- (b) A person commits an offence if that person conducts a marriage ceremony between persons of the same sex and shall, on conviction, be liable to imprisonment for a maximum of ten years for individuals.

14. Promotion of homosexuality

- (1) A person who—
 - (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;

commits an offence and is liable, on conviction, to a fine not exceeding five thousand currency points or imprisonment for a term not exceeding five years, or both.

(2) Where the offender is a corporate body, a business, an association or a non-governmental organization,

- (a) the director, proprietor or promoter shall be liable, on conviction, for the offence under sub section (1); and
- (b) the court shall, on conviction of the offender, order the cancellation of the certificate of registration.

PART IV—MISCELLANEOUS**15. Special powers of court**

(1) The court shall, in determining whether to impose a sentence of imprisonment for any related offences under this Act, have regard to the need for rehabilitating the person and may, order the

Minister to facilitate the rehabilitation of that person in the length of the period of the sentence.

(2) In assessing the need for rehabilitation, the court shall have regard to—

- (a) evidence of past conduct and behaviour of the offender;
- (b) character of the offender; and
- (c) criminal record.

(3) A magistrate court, may if satisfied that a child is likely to engage in acts of homosexuality, upon application by any person, issue a protection order.

(4) Where the protection order is issued in respect of a child, the magistrate court may issue appropriate order for the child as it deems necessary

16. Extradition

A person charged with an offence under this Act shall be liable to extradition under the existing extradition laws.

17. Regulations

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

SCHEDULE

s.1.

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings.