

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;

- (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

- *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.*

- *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;

- (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

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-

“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

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.*

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-

- (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;

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

- *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 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 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

- *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.