



PARLIAMENT OF UGANDA

**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY
AFFAIRS ON THE SEXUAL OFFENCES BILL, 2019**

**Office of the Clerk to Parliament
Parliament Buildings, Kampala**

February, 2021

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1.0. INTRODUCTION

The Sexual Offences Bill, 2019 was read for the first time on the 24th of November 2019 and referred to the Committee of Legal and Parliamentary affairs for scrutiny as required in Rule 128 of the Rules of Procedure of Parliament. It is a private member's Bill sponsored by Uganda Women Parliamentary Association (UWOPA) and introduced by its Chairperson, Hon. Monica Amoding.

The Sexual Offences Bill, 2019 is a resubmission of a Bill that was first introduced on the 14th of April 2016 and referred to the Committee of Legal and Parliamentary affairs for scrutiny. The Sexual Offences Bill, 2015 was withdrawn from the House on the 24th February, 2019 in order to incorporate the amendments that were proposed by the mover during the House's consideration of the Bill.

2.0. METHODOLOGY

The Committee was guided by the provisions of Rule 128 of the Rules of Procedure to examine the Bill in detail, made inquiries in relation to it and received views and memoranda from the following stakeholders;-

- (a) Mover of the Bill and members of UWOPA
- (b) The Minister of Justice and Constitutional Affairs
- (c) Uganda Law Reform Commission
- (d) Uganda Law Society
- (e) Equal Opportunity Commission
- (f) Chapter Four
- (g) Human Rights Awareness and Promotion Forum
- (h) Justice Centre Uganda
- (i) Jenga Afrika
- (j) Centre for Health, Human Rights and Development

3.0. OBJECTIVES OF THE BILL

The object of the Bill is to enact a specific law on sexual offences for the effectual prevention of sexual violence; to enhance punishment of sexual offenders; to provide for

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the protection of victims during sexual offences trials; to provide for extra territorial application of the law; to repeal some provisions of the Penal Code Act, Cap. 120 and for other related matters.

The Bill is prompted by the need to cure the defects in the existing legislation, especially the Penal Code Act, Cap. 120 which, while it makes provision for a number of sexual offences, the provisions are outdated and the ingredients constituting the offences are narrow given the fact that they do not reflect the evolving trends in social attitudes, values and sexual practices.

The mover of the Bill also argues that there is also need to outlaw new forms of sexual violence and exploitation that have emerged such as sex tourism, indecent communication and child marriages among others which are currently not effectively dealt with under the current laws thereby posing a challenge while dealing with them.

It is therefore necessary that a specific law on sexual offences be enacted to provide for the effectual prevention of sexual violence and to consolidate all sexual offences into a single legislation.

4.0. CONSOLIDATION OF SEXUAL OFFENCES IN UGANDA

In Uganda, sexual offences are prescribed in a number of legislations including the Penal Code Act, Cap 120, the Prevention of Trafficking in Persons Act, 2009, the Domestic Violence Act, 2010, and the Children Act Cap 59. In order to enhance the effectiveness of these laws, efforts have been made by Government in the past to have a single legislation on sexual offences.

For instance, in 2000, Government introduced the Sexual Offences (Miscellaneous Amendment) Bill, with the intention of amending various legislations on sexual offences.

This was followed by the Sexual Offences Bill, 2012 spear headed by UWOPA which was

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put on hold to enable consultation between UWOPA and government, specifically, the Ministry of Justice. All the above measures have not been successful for various reasons.

Whereas various commonwealth countries such as India, United Kingdom and Kenya have all consolidated sexual offences in one law, Uganda still has sexual offences scared in various pieces of legislation.

The consolidation of sexual offences into a single piece of legislation will provide the public with a single piece of legislation on the subject matter, ensuring clarity and easy access to the public. Furthermore, it will help the legislation respond to the evolving and current trends in sexual offences, curb sexual violence and adopt international best practices in the prevention of sexual violence.

5.0. GENERAL ANALYSIS, OBSERVATION, FINDINGS AND RECOMMENDATIONS

This part of the report will examine the amendment proposed, its legality, effect and effectiveness in light of the Constitution, existing public policy, court decisions, other laws and the mischief it intends to cure. The analysis will be in thematic areas the bill touch on as well as the new proposals made by the Bill.

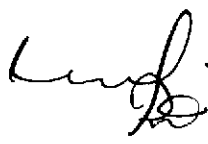
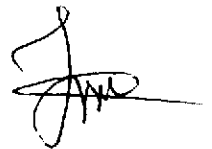
5.1. SEXUAL ACT

The Bill proposes to change and standardize the nomenclature used in sexual offences from carnal knowledge to sexual offences. The Bill adopts the word sexual act in all offences under the Bill which is defined as follows-

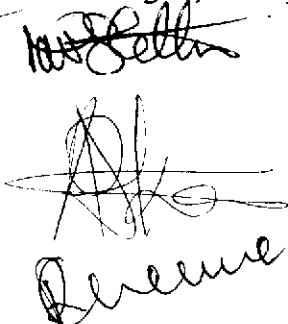
"sexual act" means the-

(a) penetration of a person's sexual organ and mouth or anus by a person's or an animal's sexual organ or object;


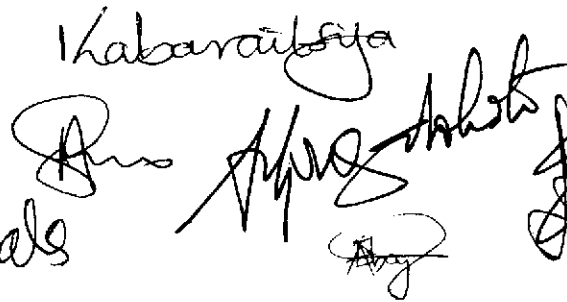
(b) contact or stimulation of a person's sexual organ with another person's or animal's sexual organ, or object; or



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(c) insertion of a person's or animal's body part or any object into the sexual organ, anus or mouth of another person; but does not include the penetration of person's sexual organ, mouth or anus, contact, or stimulation of person's sexual organ, or insertion of any object into the sexual organ, anus or mouth of another person done for sound health practices or proper medical procedure;"

The penal code has been using the words "carnal knowledge" or sexual act interchangeably. For instances, the word carnal knowledge has been used in the penal code in the offence of rape in section 123, defilement of idiot or imbeciles in section 130, procurement in section 131, Procuring defilement of women by threats, in section 132, Householder, etc. permitting defilement of girl under the age of eighteen in section 133, Conspiracy to defile in section 140 and in the offence of unnatural offences in section 145. On the other hand, the word sexual act is used in the offence of Defilement of persons under eighteen years of age in section 129 of the penal code Act.

Whereas these words are used interchangeably, they are defined differently. For instance, the word sexual act is defined in section 129 (7) as follows-

"sexual act" means— (a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; (b) the unlawful use of any object or organ by a person on another person's sexual organ;

On the other hand, whereas the word carnal knowledge is not defined in the Penal Code Act, it has been defined by court to mean the penetration of the vagina, however slight, of the victim of by a sexual organ, where the sexual organ is the penis.

The committee has reviewed the proposal to standardize the use of the word sexual act in all sexual offences and it supports it. The Committee notes that the word sexual act is gender neutral, meaning the acts constituting the offence can be committed by both sexes rather than the current situation where certain offences, which can be committed

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by both sexes can only be committed by persons of the male gender exclusively because of the use of the word carnal knowledge.

The Committee also notes that sexual act is broader than carnal knowledge since carnal knowledge is exclusively about penetration of the vagina by the penis yet sexual acts include penetration of other body parts with or without the sexual organ.

The Committee notes that the standardization of the nomenclature used in sexual offences from carnal knowledge to sexual act is an international best practice as exemplified in countries like Kenya, United Kingdom and many other commonwealth countries.

Recommendation

In light of the above, the committee recommends that;

- 1. the word sexual act be used instead of carnal knowledge.*
- 2. the definition of sexual act should only be limited to sexual organs since the rest of the provisions deals with acts that would constitute unnatural offences.*

5.2. RAPE AND AGGRAVATED RAPE

Clauses 2 and 3 of the Bill deal with the offences of rape and aggravated rape. The Bill in clause 2 creates the offence of rape and requires the offence is committed when a person performs a sexual act with another person-

- (a) without that other person's consent; or
- (b) incapable of consenting to the sexual act.

The Bill further proposes that when a person obtains consent for a sexual act by means of threats, duress, undue influence, misrepresentation or intimidation of any kind, the consent is negated.

The Bill also proposes that a person who is asleep, unconscious, in an altered state of mind due to influence of medicine, drugs, alcohol or any substance that adversely affects his or her judgment or is mentally impaired is incapable of consenting to a sexual act.

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The Bill further proposes to prescribe a penalty of life imprisonment if a person commits the offence of rape and eight years if he or she attempts to commit the offence of rape.

The Bill further proposes to create an offence of aggravated rape, where the rape is committed in the following circumstances-

- (a) the sexual offender is infected with HIV or suffering from AIDS;
- (b) the offender is a serial offender;
- (c) the victim suffers disability;
- (d) the act was committed by two or more persons;
- (e) the act was committed in the presence of another person;
- (f) the offender is a person in authority or a person in trust; or
- (g) the victim is of advanced age.

The Bill proposes the death penalty as a sentence for a person who commits the offence of aggravated rape or imprisonment for 8 years for a person to attempt the offence of aggravated rape.

The Committee notes that the provision in clause 2 seeks to replace section 123 and 124 of the Penal Code Act. These sections relate to rape and the punishment for rape and provide as follows-

123. Definition of rape.

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape.

124. Punishment for rape.

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A person convicted of rape is liable to suffer death.

The Committee notes that for the offence of rape, as defined in section 123, the offence could only be committed by a person of the male gender and not any other person of any gender. The prosecution had to prove that there was unlawful sexual intercourse between the man and the victim of the offence, there was no consent or if there was consent, the consent was obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband. The punishment for rape was death.

The Committee further notes that clause 2 of the Bill seeks to change all that by prescribing that-

- (a) Carnal knowledge is no longer a requirement in proving the offence of rape;
- (b) Rape is now gender neutral, meaning that unlike section 123 of the penal code which required that the offence of rape could only be committed by a male person, clause 2 of the bill requires that any person, irrespective of gender can commit the offence of rape;
- (c) Reduces the penalty upon conviction from death to life imprisonment;

The Committee has examined the proposals and is agreeable to the amendment since it recognizes that not every rape is the same since there may be aggravating circumstances that aggravate the rape.

The Committee also notes that the amendment removes an ambiguity in the law which assumed that rape could be committed against a person below the age of 18 years yet this is legally not possible. The Committee notes section 123 currently allows a person who has sexual intercourse with a person below the age of 18 years to be charged with the offence of rape. The Committee notes that persons below the age of 18 years cannot legally consent to a sexual act or carnal knowledge and since consent is a total defense

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to a charge of rape, persons who cannot give consent cannot then be assumed to have consented to the carnal knowledge.

The ambiguity of the section 123 was discussed in the case of ***Uganda Vs Kusemererwa Julius HCCA No. 15 of 2004***, where court held that the offence of rape cannot be committed against persons below 18 years of age. Court reasoned that-

"I would understand a woman to be an adult above eighteen years of age going by Article 31 of the Constitution of the Republic of Uganda, 1995 (as amended). Any female below the age of majority (eighteen years) would be described as a girl. A child below eighteen years is incapable of giving consent to sex. In rape LACK OF CONSENT to the sexual act is what makes it an offence. Consent is a complete defence to Rape. But in defilement under S.129 consent is not a defence. It is irrelevant as long as the victim is below the age of eighteen years. That means that Age is a central factor in the construction of defilement as a crime differentiating it from rape"

Court further held that-

"Having legislated and amended the Penal Code to create the new offence of Simple defilement, Parliament cannot be said to have intended to retain any age of girls as victims of rape under S.123 of the PCA. It is a question of an omission or poor legislative draftsmanship or poor cross-referencing not to delete the words "or girl" from the definition of Rape. The word 'girl' in that section is redundant and meaningless. We cannot say that we are

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correctly interpreting the law of defilement or rape if we go by the mere wording "woman or girl" in Section 123 PCA. Law is not mere words. Therefore, the provision should be redrafted to specifically provide circumstances aggravating a rape."

Court concluded that-

"Technically speaking, Rape ceased to apply to girls in 1990 and was replaced with provisions of defilement. Going by the 2007 amendments to the PCA, the two offences are distinct, distinguishable by the age element, criminal jurisdiction and the difference in the prescribed punishments."

The Committee therefore supports the amendment to restrict rape to persons above the age of 18 years since it is clear that rape cannot be committed on persons below the age of 18years.

The Committee also supports the proposal to make the offence of rape gender neutral since it will harmonise it with the offence of defilement which is gender neutral and also, it will close a lacuna in law as to whether a person of the male gender can be raped. The Committee notes that currently, the offence of rape is not gender neutral, meaning that it can be committed by a person of the male gender only and against a person of the female gender.

In such a situation, the law did not cater for the rape of persons of the male gender yet incidents of such rape are continually being reported in media. This unjustified distinction in the application of the law between the different genders contravenes article 21 (1) of the Constitution which relates to equal protection before the law.

The Committee has examined the proposals in clauses 2 and 3 on the penalty for attempts and has finds the amendment to be unjustified. The committee is aware that the Bill

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proposes that a person who attempts to commit the offence of rape is liable to imprisonment for a period not exceeding 8 years while a person who attempts commit the offence of aggravated rape is liable to imprisonment not exceeding 10 years.

The Committee notes that currently, section 125 prescribes a penalty of life imprisonment for a person who attempts to commit the offence of rape. The Committee is of the considered opinion that the proposal to reduce the penalty prescribed from life imprisonment to 8 years is unreasonable since the punishment is not commensurate with the offence. The Committee notes that a person convicted of the offence of attempted rape fulfils all the ingredients of rape save for carrying out the actual rape.

In this, the Committee is fortified by section 386 of the penal code Act which defines an attempt in the following words-

"When a 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, he or she is deemed to attempt to commit the offence"

For rape, such a person may have used force in attempting the rape but doesn't actually carry out the actual rape because of some intervening factors. For all intents and purposes, such a person has formed the necessary *mens rea* and it is only the act that remains.

In such an event, such a person should ordinarily serve a punishment that is commensurate with the crime, being slightly less than the one prescribed for persons who have committed such offence. Section 388 of the Penal code Act is directive on this matter and it provides guidance as follows-

"Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the

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punishment of death or imprisonment for a period of fourteen years or upwards, with or without other punishment, commits a felony and is liable, if no other punishment is provided, to imprisonment for seven years."

In this regard, since section 125 of the penal code act had prescribed a penalty of imprisonment for life and the punishment for rape is proposed to be reduced from death to life imprisonment, attempted rape should carry at least ten years imprisonment and for the aggravated attempt to carry a sentence of life imprisonment.

The reasoning behind this is that rape is a grave offence, the punishment for attempted rape should be lower than the punishments prescribed for rape or aggravated rape but should be stringent enough to deter such vice.

Recommendation

In light of the above, the Committee recommends that clauses 2 and 3 be adopted albeit with the amendments to-

- (a) provide, as one of aggravating circumstances, the rape of a person with mental illness"*
- (b) provide as one of circumstances that may negate consent where the consent is obtained by force or by fear of bodily harm, or by means of false representations as to the nature of the act,*
- (c) Define advanced age.*
- (d) to require a medical test to be carried out against a person who is charged with an offence to determine his or her health status, including a test for his or her Human Immunodeficiency Virus (HIV) status.*

5.3. SEXUAL ASSAULT

The Bill proposes in clause 5 to provide for the offence of sexual assault in the following terms-

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Sexual assault.

(l) A person who unlawfully-

(a) touches the anus, breasts, penis, buttocks, thighs or vagina of another person;

(b) exposes or displays his or her sexual organ to another person;

(c) exposes or displays the sexual organ of another person.

(d) utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen another person;

or

(e) intrudes upon the privacy of a person,

with intent to insult the modesty of that other person, commits an offence and is liable on conviction, to imprisonment for a term of one year or a fine of twenty four currency points or both.

The amendment proposes to replace section 128 of the Penal Code Act which deals with indecent assaults. Section 128 of the penal code act is reproduced below-

128. Indecent assaults, etc.

(1) Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of eighteen years to prove that she consented to the act of indecency.

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(3) Any person who, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanour and is liable to imprisonment for one year.

The Committee has examined the proposal and is of the considered opinion that the provision appears to merge two distinct offences of sexual assault and indecent assault into one offence.

The Committee notes that there is a difference between a sexual assault and an indecent assault.

The Committee observes that whereas the penal code Act doesn't define what amounts to indecent assault, the Osborn's concise law dictionary, 8th Edition defines indecency as an act which is "offensive to public morality" and indecent assault to mean an assault or battery accompanied by circumstances of indecency.

Indeed in the case of ***DPP Vs Rogers [1943]2 ALL ER 834*** Lord Goddard had this say about indecent assault

"before you can find a man guilty of an indecent assault, you have to find that he was guilty of an assault, for an indecent assault is an assault that is accompanied by indecency."

In another case of ***R Vs Court [1987]1 ALL ER 120*** court held that the essential element of an indecent assault was that the accused knew or was reckless about the existence of circumstances which where indecent, in the sense of contravening standards of decent behaviour in relation to sexual modesty or privacy.

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The above cases illustrate that in order for an accused person to be convicted of indecent assault, the prosecution must prove an act (assault) which is accompanied by utterances suggestive of sexual intercourse. This was followed in the case of ***Ssenyondo Wilson Vs Ug Criminal Appeal No. 53 of 2009.***

In the instance case, the first part of the provision has nothing to do with indecent assault unless the direct and indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of a person as well as the display of sexual organs to another person is accompanied by utterances of indecency.

The Committee therefore notes that whereas an indecent assault deals with the spoken words, a sexual assault is an assault accompanied by a sexual act.

In the proposal in the Bill, it is evident that the Bill merges indecent assaults and sexual assaults into one provision. For instance, whereas paragraphs (a), (b) and (c) are sexual assaults, paragraphs (c) and (d) are indecent assaults and should ordinarily be placed in different offences.

Recommendations

In light of the above, the Committee recommends that clause 5 stands part of the Bill albeit with the amendment that the provision should be separated into three distinct offences, namely the offence of indecent assault, sexual assault and indecent exposure.

5.4. INDECENT COMMUNICATION

The Bill in clause 6 proposes to create the offence of indecent communication and proposes that it is committed when a person who by whatever means transmits, transfers, sends, forwards, directs material of a sexual nature to another person without the consent of that other person. The proposed offence imposes a penalty of a fine not exceeding three hundred currency points or to imprisonment for seven years or both.

The Committee has reviewed the offence of proposed to be created in clause 6 and whereas it is agreeable to the creation of the offence of offensive communication, it may

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be viewed as watering down the provisions of the anti-pornographic Act, especially, section 13 of that Act.

The Committee notes that section 13 of the Anti-pornographic Act creates an offence of pornography, which is committed by a person who produces, traffics, publishes, broadcasts, procures, imports, exports, sells or abets any pornography. The Committee observes that section 13 of the Anti-pornography Act prescribes a penalty of ten years and a fine of five hundred currency points.

The Committee observes that the proposal in clause 6 is likely to water down the provisions of the Anti-Pornography Act in so far as prescribing a lower penalty for the offence and also requiring the consent of a person who receives the offensive communication, yet the same conduct is expressly prohibited under the anti-pornography Act. Indeed, the Committee is aware that clause 6 proposes to define material of a sexual nature to include sexually suggestive conversations, texts, pictures, videos, objects or written materials, which would all fall within the definition of pornography as defined in the Anti-pornography Act.

The Committee also notes that whereas consent is requirement under the proposed clause 6, it is not clear in the provision at what time this consent is required or the form it will take and whether it is express or constructive.

Recommendation

In light of the above, the Committee recommends that clause 6 is harmonized with the provisions of section 13 of the Anti-pornography Act and that consent is removed from the provision.

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5.5. SEXUAL HARASSMENT

Clause 7 of the Bill proposes to introduce into Uganda's legal regime the offence of sexual harassment. Clause 7 proposes that a person commits the offence of sexual harassment where he or she-

(a) makes direct or indirect sexual advances or requests whether verbal or written to;

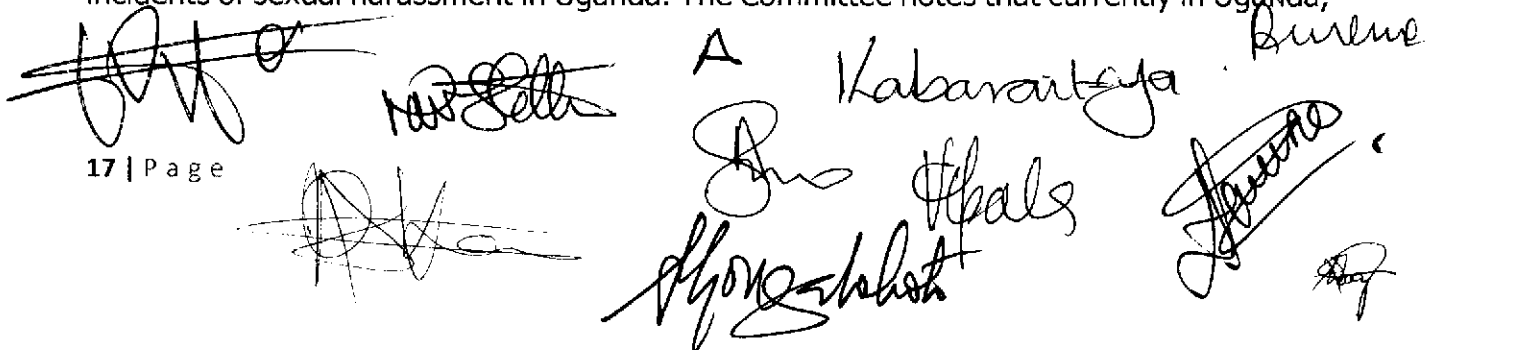
(b) displays sexually suggestive pictures, objects, written materials or sexually suggestive gestures to ;

(c) engages in unwelcome touching, patting, pinching or any other unsolicited physical contact with; or

(d) makes sexually oriented comments, jokes, obscene expressions or offensive flirtations with ;

an employee, student, patient or other person under his or her authority knowing or having reason to believe that such conduct is not welcome or offensive, as a pre-condition for preferential treatment in employment, promotion, recommendation, academic progress, healing or other favor and that by its nature has a detrimental effect on that other person commits an offence and is liable on conviction, to a fine not exceeding two thousand currency points or to imprisonment not exceeding ten years or both."

The Committee has examined the Bill and supports the proposed criminalisation of incidents of sexual harassment in Uganda. The Committee notes that currently in Uganda,

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incidents of sexual harassment have been on the increase yet the law does not sufficiently deal with the matter.

It is important to note that currently, sexual harassment is not a criminal offence under the laws of Uganda. The only law that deals with sexual harassment is section 7 of the employment Act, 2006 as well as the Employment (sexual harassment) regulations of 2012.

The committee notes that one of challenges of the current provisions on sexual harassment under the Employment Act is that sexual harassment is considered a civil matter which is handled by the labour officer rather than a criminal offence carrying criminal sanctions. Secondly, it is evident that the provision doesn't prescribe any sanctions for breach, thereby making it non deterrent.

The Committee further notes that the only criminal sanctions attaching against a person accused of sexual harassment are found in Regulation 19 of the employment (sexual harassment) regulations but these are not deterrent enough considering that it prescribes a fine not exceeding six currency points or imprisonment not exceeding three months or both. Therefore, the proposal to criminalize sexual harassment is welcome and should be supported.

Recommendation

In light of the above, the Committee recommends that clause 7 stand part of the Bill albeit with amendments to;

- *Make it immaterial that the person consented to the sexual harassment or that the sexual harassment was welcome or did not have a detrimental effect;*
- *require persons who commit the offence of sexual harassment while public officers to vacate their offices in addition to the penalty prescribed in the section.*

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5.6. PROTECTION OF DETAINEES FROM SEXUAL EXPLOITATION

Clauses 8 and 9 of the Bill propose to create two offences, namely, the offence of detention with sexual intent and sexual act with persons in custody.

In clause 8, the Bill proposes to create an offence against a person who unlawfully detains another person with the intention of performing a sexual act with that other person. On the other hand, clause 9 proposes to create an offence against a person who being an officer or an employee of a detention facility performs a sexual act, with a person in custody of the detention facility or procures, authorizes, facilitates, compels or induces another person to perform a sexual act, with a person in custody of a detention facility.

The Committee is in support of these proposals since they will protect persons in detention from being sexually exploited while in detention or subjecting them to inhuman degrading treatment while in custody.

The Committee observes that sometimes detainees are subjected to humiliating searches as officers try to use their genitals to ascertain their actual sex or gender and are subjected to tests such as the anal exams. They are also subjected to sexual harassment by their fellow suspects/prisoners, which is in most cases constructively sanctioned by the officials in charge. These searches are inhuman and degrading and are a form of torture to the person detained and are not adequately prohibited or punished under the law, making these provisions necessary.

The Committee however notes that the efficacy of these provisions may be affected by the fact that consent is a total defense to most sexual offences. This means that if a person in custody consents to the performance of a sexual act with any person, such consent shall bar the prosecution of the offenders for offences under this Act.

Therefore, considering that the consent of a person in such circumstances might not be voluntary, independent or informed due to the fact that such a person is held in custody, the consent of a person to the sexual act may be abused.

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The Committee also notes that the clause 8 does not define what amounts to detention which may create confusion between clauses 8 and 9.

For instance, the offence prescribed in clause 8 is one that can be committed by any person who prevents a person to leave any place he or she is at while the offence in clause 9 is one which can be committed by a person in charge of a gazetted place of detention, say like prison, police station or any other lawful place of detention.

The word detention, if not defined may be confusing to the user of the law book, resulting in ambiguity. For instance, a person may confuse the word detention, which ordinarily means the keeping or confining of a person in custody without any lawful reason, with the words unlawful imprisonment which occurs when a person is restricted in their personal movement within any area without justification or consent.

The words described above are so similar and interchangeably used that the definition of the word "detention" should be able to cater for both detention and unlawful imprisonment. For instance, in the case of **Chopra v. T. Eaton Company, 1999 A.J. 277 and 240 A.R. 201** false imprisonment was defined to mean-

"The detention of a person contrary to his/her will, the restraint of a person's personal liberty, coercion exercised upon a person to prevent the free exercise of his powers of locomotion. It may take place without the actual application of any physical agencies of restraint, such as locks or bars, as by verbal compulsion and the display of available force. Every confinement of the person is an imprisonment, whether it be in a prison, in a private home, or even by forcibly detaining one in the public streets, any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to be."

RECOMMENDATION

In light of the above, the Committee recommends that clauses 8 and 9 do stand part of the Bill albeit with the following amendments-

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(a) Clause 8 and 9 should be expanded to make consent of a person to the sexual act immaterial and not a defense;

(b) In clause 8, the word detention should clearly be defined and should include, where possible, the unlawful imprisonment of a person;

5.7. SEXUAL EXPLOITATION.

The Bill in clauses 10 propose to create the offence of sexual exploitation.

The Bill proposes that a person commits the offence of sexual exploitation were that person, for gain to him or herself, causes, encourages, induces, entices, incites another person to be sexually exploited or controls any of the activities of another person to the effect that that person is sexually exploited.

The offence of sexual exploitation has always existed in the penal Code and the Prevention of Trafficking in Persons Act, 2009, except that under the Penal Code, it is taken to be an offence associated with living on the earnings of prostitution, contrary to section 136 (2) of the Penal Code Act. Section 136 (2) of the Penal Code Act is reproduced below.

"Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person, or generally, that person shall, unless he or she shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution"

The Committee also notes that under Prevention of trafficking in persons Act, sexual exploitation is not a standalone offence but a example of exploitation, a matter that has

A collection of handwritten signatures and initials in black ink, including names like 'Kabaratson', 'A', 'Mongabhat', 'Quene', and 'Shawna', along with various scribbles and initials.