

PROPOSED AMENDMENTS TO THE SEXUAL OFFENCES BILL, 2015

MOVED BY

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(a) CLAUSE 1: INTERPRETATION

- **insert immediately before the definition of “child” the following-**

“carnal knowledge” means the penetration of the vagina, penis or anus, by another person’s sexual organ;

- **insert immediately after the definition “disability” the following-**

“gang” means two or more persons;

- **Insert immediately after the definition of “minister” the following-**

“Registry” means the Sex Offender Registry established under Part V of this Act;

- **Substituting for the definition of “serial offender” the following-**

“Serial offender” means a person with a record of a previous conviction for an offence under this Act;

- **Substituting for the definition of “sexual act” the following-**

“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;

- **insert immediately after the definition “sexual act” the following**

“Sexual offence” means an offence under this Act.

“Sex offender” means a person who has been convicted of a sexual offence and whose particulars are entered or required to be entered in the Sex Offender’s Register.

- **Substitute for the definition of “prostitution” the following-**

Prostitute” means a person who regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain.

Justification

- *to define major words used in the bill*
- *for clarity*

(b) CLAUSE 2: RAPE

- Replace clause 2 with the following-

“2. Rape

(1) A person commits the offence of rape where-

- (a) he or she commits a sexual act on another person,
- (b) without his or her consent, or
- (c) with his or 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 person, by personating his or her spouse.

(2) A person convicted of an offence in subsection (1) shall be liable to imprisonment for life.

Justification:

- *To differentiate between the offence of defilement and rape*
- *To make the provision gender neutral*
- *To make the provision apply equally to both married persons and not to married women alone;*
- *For clarity and better drafting*

(c) CLAUSE 3: AGGRAVATED RAPE

- Replace clause 3 with the following-

“3. Aggravated rape

(1) A person who performs a sexual act with another person in any of the circumstances specified in subsection (2) commits a felony called aggravated rape and is on conviction, liable to suffer death.

(2) The circumstances referred to in subsection (1) are as follows—

- (a) where the offender is infected with the Human Immunodeficiency Virus (HIV);
- (b) where the offender is a serial offender,

- (c) where the victim suffers disability as a result of the unlawful act;
 - (d) where the act constituted a gang rape,
 - (e) where the offence was committed in the presence of a child, relative or family member of the victim;
 - (f) where the offender is a person in authority or person in position of trust;
- (3) A person is charged with an offence under this section shall undergo a medical examination to determine his or her health status, including a test for his or her Human Immunodeficiency Virus (HIV) status.

Justification

- *For better drafting*
- *To specifically provide the circumstances aggravating the offence of rape.*

(d) CLAUSE 4: ATTEMPT TO COMMIT RAPE.

- Replace clause 4 with the following-

“4. Attempted rape

- (1) A person who attempts to commit the offence of rape commits an offence and is liable on conviction to imprisonment for ten years.
- (2) Notwithstanding subsection (1), a person who attempts to perform a sexual act in any of the circumstances specified in section 3, commits an offence and is liable on conviction, to imprisonment for life.

Justification

- *To provide for the offence of attempted rape in circumstances aggravating a rape.*
- *To align the punishment for attempted rape with the general punishment for attempts under the Penal code Act.*
- *To increase the penalty for attempted rape from five to ten years.*

(e) CLAUSE 5: ADMINISTERING A SUBSTANCE WITH INTENT OF COMMITTING A SEXUAL ACT.

- Replace clause 5 with the following-

“5. Administering a substance with intent of committing a sexual act

A person who intentionally administers or causes a substance to be administered, applied or consumed by another person—

- (a) knowing that the person does not consent, and
- (b) with the intention of inducing, stupefying or overpowering that person so as to enable that person or any other person to perform a sexual act with that person,

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

Justification

- *To ensure that both the person who personally administers a subsistence and any other person who causes the administration of a substance for purposes of carrying out a sexual act is punished*
- *To increase the penalty from five to ten years.*
- *For clarity and better drafting*

(f) CLAUSE 6: SEXUAL ASSAULT

Replace clause 6 with the following-

“6. Sexual assault

- (1) A person who intentionally, unlawfully and without consent touches or comes into direct or indirect contact with the sexual organ, breasts, buttocks or thighs of any person with—
 - (a) any part of his or her body;
 - (b) any part of the body of another person; or
 - (c) any object, including any part of the body of an animal;
 commits an offence called sexual assault and is liable upon conviction to imprisonment for three years.
- (2) It shall not be a defence to a charge of sexual assault on a child to prove that he or she consented to the act constituting a sexual assault.
- (3) A person who commits the offence of sexual assault in the presence of a person’s spouse, family member or child commits an offence and is liable upon conviction to imprisonment for seven years.”

Justification

- *To differentiate the offence of sexual assault from the offence of rape and indecent assault.*
- *For clarity and better drafting*

(g) CLAUSE 7: SEXUAL HARASSMENT

- Replace clause 7 with the following-

“7. Sexual harassment

- (1) A person, being-
 - (a) in a position of trust or authority,
 - (b) a holder of a public office,
 - (c) a head teacher, lecturer or any employee of an educational institution,
 - (d) a prospective employer, or
 - (e) an employee, supervisor or employer of another person
 who makes sexual advances or requests which he or she knows, or has reason to believe that they are unwanted commits the offence of sexual harassment and is liable to imprisonment for two years or to a fine not exceeding two hundred and fifty currency points or both.
- (2) It shall be necessary to prove in a charge of sexual harassment that—
 - (a) the submission or rejection of the advance by the person to whom the advance or request is made is either implicitly or explicitly-
 - (i) a term or condition of an individual’s employment or continued employment;

- (ii) a condition to taking a decision relevant to the career or employment of such a person; or
 - (iii) a condition for receipt of a service due to such a person in the case of a public officer;
 - (iv) a condition for performing a statutory duty or exercising any discretionary powers grant to such a person
 - (b) such advances or requests have the effect of interfering with the alleged victim's work or educational performance or creating an offensive, intimidating or hostile working or learning environment for the alleged victim;
- (3) Notwithstanding subsection (1) a person who, intending to sexually harass another person utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person or intrudes upon the privacy of such person, commits a misdemeanour and is liable to imprisonment for two years.
- (4) In this section-
- (a) "Unwelcome sexual advances" mean conduct that the person subjected to the advances considers unwelcome;
 - (b) "Hostile working environment" means a work environment created by unwelcome sexual behaviour directed at an employee that is offensive, hostile or intimidating and adversely affect that employees ability to do his or her work.

Justification

- *to expand the instances and conduct in which the offence of sexual harassment may arise.*
- *For clarity and better drafting*

(h) CLAUSE 8: SEXUAL OFFENCES RELATING TO POSITION OF TRUST AND PERSONS IN POSITION OF AUTHORITY

Replace clause 8 with the following-

"8. Sexual offences relating to position of trust and person in position of authority

- (1) A person who, being in a position of trust, takes advantage of his or her influence over another person to have sexual intercourse or perform a sexual act on such a person in circumstances not amounting to rape or defilement, or induces such a person or another person to have sexual intercourse or perform a sexual act with such a person or on any other person, commits an offence is liable upon conviction to imprisonment for ten years.
- (2) A person who, being in a position of authority takes advantage of his or her position over another person to have sexual intercourse or perform a sexual act on such a person in circumstances not amounting to rape or defilement, or induces such a person or another person to have sexual intercourse or perform a sexual act with such a person or on any other person in their care, commits an offence and is liable upon conviction to imprisonment for ten years.
- (3) For avoidance of doubt, where the person in subsections (1) or (2) is-

- (a) a religious or traditional leader;
 - (b) a manager or an employee of a hospital or any other health facility;
 - (c) a head-teacher, teacher or employee in an educational institution; or
 - (d) a police officer, a person in charge of a police station, a prison, detention facility or a remand home,
- court shall, in addition to the penalty in subsections (1) and (2), make any other orders it deems fit, including the prohibition of such a person from holding such office for a duration court deems fit.

Justification

- *for clarity and better drafting*
- *to differentiate the offence with the offences of rape and defilement*
- *To comply with section 37 of the Acts of Parliament Act, Cap 3.*
- *To recognise the discretion of court in sentencing.*

(i) CLAUSE 9: SEXUAL ACT WITH A PERSON INCAPABLE OF GIVING CONSENT

Replace clause 9 with the following-

“9. Sexual act with a person suffering a disability

- (1) A person who performs or attempts to perform a sexual act on or with a person who is suffering from a mental or physical disability commits an offence and is liable upon conviction to imprisonment for life imprisonment.
- (2) A person suffering from a mental or physical disability shall be regarded incapable of consenting to a sexual act where he or she-
 - (a) does not understand nature of the act;
 - (b) cannot form a decision as to whether to engage in the act or not; or
 - (c) cannot communicate any such decision
- (3) A person who performs or attempts to perform a sexual act on or with a person who is suffering from a mental or physical disability in any of the circumstances specified in subsection (4) commits a felony and is on conviction, liable to suffer death.
- (4) The circumstances referred to in subsection (1) are as follows—
 - (a) where the offender is infected with the Human Immunodeficiency Virus (HIV);
 - (b) Where the offender is a serial offender,
 - (c) Where the act constituted a gang rape,
 - (d) Where the offence was committed in the presence of a child, relative or family member of the victim;
 - (e) Where the offender is a person in authority or person in position of trust;
- (5) A person is charged with an offence under this section shall undergo a medical examination to determine his or her health status, including a test for his or her Human Immunodeficiency Virus (HIV) status.

Justification

- *For clarity and better drafting*
- *To differentiate the provision from the offence of rape and defilement*
- *To comply with section 37 of the Acts of Parliament Act, Cap 3*

- *To provide for circumstances aggravating a sexual act with a person suffering from a disability.*

(j) CLAUSE 10: DETENTION WITH SEXUAL INTENT

Replace clause 10 with the following-

“10. Detention with sexual intent

- (1) A person, who unlawfully detains another person against his or her will-
- (a) in or upon any premises, vehicle or vessel with the intent that such person may-
 - (i) have sexual intercourse with him or her or any other person;
 - (ii) perform a sexual act on him or her or any other person; or
 - (iii) have a sexual act performed on him or her or any other person;
 - (iv) be subjected to a sexual assault or indecent assault by any person.
 - (b) in a brothel,
- commits an offence and is liable to imprisonment for seven years.
- (2) In this section, a person shall be deemed to have unlawfully detained another person where-
- (a) such a person compels, induces, restrains or prevents such a person, by any means, from leaving the premise, vehicle, vessel or brothel;
 - (b) with the intent to compel or induce a person to remain in or upon the premises, vehicle, vessel or brothel, does any act which prevents such a person from leaving such premises, vehicle, vessel or brothel;
 - (c) Such a person withholds from the other person any clothing apparel or other property belonging to that other person detained or where wearing apparel has been lent or supplied by that person, such person in any manner threatens that other person if he or she takes away the wearing apparel.
- (3) No legal proceedings, whether civil or criminal, shall be taken against any person unlawfully detained under this section for taking away or being found in possession of any wearing apparel as was necessary to enable that person to leave the place or brothel where the detention occurred.

Justification

- *For clarity and better drafting*
- *To define what amounts to unlawful detention*
- *To define acts that would amount to sexual intent.*

(k) INSERT OF NEW CLAUSE

Immediately after clause 10, insert the following new clause-

“Abduction of a child with sexual intent

- (1) A person, who takes, or causes to be taken a child out of the possession and against the will of his or her parent or guardian, with the intent that such child should have sexual intercourse with or perform a sexual act or have a sexual act performed on him or her commits an offence and is liable to suffer death.

- (2) It shall not be a defence for a person charged with an offence under subsection (1) to show that the person had reasonable cause for believing that the child was of or above the age of eighteen years.

Justification

- *To create an offence of abduction of a child with sexual intent*

(l) CLAUSE 11: IMPROPER SEXUAL ACTIVITY WITH PERSONS IN CUSTODY

Replace clause 11 with the following-

“11. Sexual act with person in custody

- (1) A person, having authority to detain or keep a person in custody, being an employee of or in charge of a detention facility, prison or police station or being an inmate, who-
- (a) procures, participates in, compels or facilitates; or
 - (b) has sexual intercourse;
 - (c) requests or performs a sexual act; or
 - (d) has a sexual act performed on him or her ;
- by a person in custody, commits an offence and is liable to suffer death.
- (2) For avoidance of doubt, the consent of the person in custody shall not be a defence to a charge under subsection (1).

Justification

- *For clarity and better drafting*
- *To include, among the prohibited acts, the act of procuring, participating in, compelling, facilitating as well as performance of a sexual act;*
- *To clearly spell out the persons who the provision applies to*
- *To clearly require that the consent of a person detained is not a defence to a charge under this section*

(m) CLAUSE 12: PROHIBITION OF PROSTITUTION

Replace clause 12 with the following-

“12. Prohibition of prostitution

- (1) A person who engages in prostitution commits an offence and is liable on conviction to imprisonment not exceeding seven years.
- (2) A person shall be taken to engage in prostitution where he or she -
- (a) is a prostitute; or
 - (b) seeks or obtains sexual intercourse or sexual gratification from a prostitute and pays for such sexual services.
 - (c) solicits another in a vehicle, on a street or public place for the purpose of obtaining their sexual services as a prostitute commits

Justification

- *For clarity and better drafting*
- *To punish both the prostitute and the person who pays for the services of the prostitute.*

- *To merge clause 12 and 13 since they relate to the same subject matter.*

(n) CLAUSE 13: SOLICITING

Delete clause 13

Justification:

- *Consequential amendment arising from amendment of clause 12*

(o) CLAUSE 14: SEXUAL EXPLOITATION OF PROSTITUTION.

- Replace Clause 14 with the following-

“14. Sexual exploitation of prostitution

- (1) A person who—
 - (a) intentionally controls any of the activities of another person relating to that person’s prostitution in any part of the world; or
 - (b) intentionally causes, encourages, arranges, facilitates or incites another person to become a prostitute in any part of the world; and
 - (c) does so for or in the expectation of gain for himself or herself or any other person,
commits an offence and is liable to imprisonment for ten years.
- (2) A person who knowingly lives wholly or in part on the earnings of prostitution and commits an offence and is liable to imprisonment for seven years.
- (3) A victim of exploitation of prostitution shall not be penalized for practicing or engaging in prostitution.
- (4) In this section “gain” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or the goodwill of any person which is or appears likely, in time, to bring financial advantage.

Justification

- *For clarity and better drafting*
- *To prohibit living on earnings of prostitution.*

(p) CLAUSE 15: BROTHELS.

- Replace clause 15 with the following-

“15. Keeping a brothel used for prostitution

A person who owns, keeps, manages or assists in the management of, a brothel, a house, room, vehicle, vessel or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for seven years.

Justification

- *For clarity and better drafting*
- *To include in prohibited places, vehicles, vessels and houses*

(q) CLAUSE 18: INCEST.

- Replace clause 18 with the following-

“18. Incest

- (1) A person who has sexual intercourse or performs a sexual act with another person with whom, to his or her knowledge, he or she is related to by blood or marriage, commits an offence and is liable to imprisonment for three years.
- (2) It is immaterial that the sexual intercourse or sexual act took place with the consent of the other person.

Justification

- *For clarity and better drafting as compared to the current provision in the law*

(r) CLAUSE 19: INCEST ON A CHILD.

- Replace sub clause (2) with the following-

“(2) For purposes of an offence under (1), a person who—

- (a) has adopted a child shall in relation to the child be deemed to be the father or mother of the child as the case may be;
- (b) is a foster parent, guardian or other person in the position of a parent shall be deemed to be the father or mother of the child as the case may be;

Justification

- *For clarity and better drafting*

(s) CLAUSE 20: TEST OF RELATIONSHIP.

- Delete clause 20

Justification

- *Consequential amendment arising from the amendment of clause 18 of the bill*

(t) CLAUSE 21: DISCLOSURE OF A SEXUAL OFFENCE

- Delete clause 21

Justification

- *Clause 21 is misplaced since it relates to disclosure of sexual offence yet the part is on sexual offences.*

(u) CLAUSE 22: OFFENCE TO MAKE A FALSE ALLEGATION

- Delete clause 22

Justification

- *Clause 22 is misplaced since it creates an offence against false allegations yet the part is on sexual offences. This provision is better placed in miscellaneous provisions*

(v) CLAUSE 24: AGGRAVATED DEFILEMENT.

Replace clause 24 with the following-

“24. Aggravated defilement

- (1) A 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 (2) commits a felony called aggravated defilement and is on conviction, liable to suffer death.
- (2) The circumstances referred to in subsection (1) are as follows—
 - (a) where the person against whom the offence is committed is below the age of fourteen years;
 - (b) where the offender is infected with the Human Immunodeficiency Virus (HIV);
 - (c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed;
 - (d) where the victim of the offence is a person with a disability; or
 - (e) where the offender is a serial offender.
- (3) A person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.
- (4) Where a person is charged with the offence under this section, that person shall undergo a medical examination as to his or her Human Immuno Deficiency Virus (HIV) Status.

Justification

- *For clarity and better drafting*

(w) INSERTION OF NEW CLAUSE

- **Immediately after clause 25, insert the following new clause -**

“Procuration of a child

- (1) Any person who—
 - (a) procures or attempts to procure any child to have unlawful carnal knowledge or sexual act, either in Uganda or elsewhere, with any other person or persons;
 - (b) procures or attempts to procure a child to become, either in Uganda or elsewhere, prostitute;
 - (c) procures or attempts to procure a child to leave Uganda, with intent that she may become an inmate of or frequent a brothel elsewhere; or
 - (d) procures or attempts to procure any child to leave his or her usual place of abode in Uganda, such place not being a brothel, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Uganda or elsewhere,commits an offence and is liable to imprisonment for seven years.

Justification

- *To provide an offence of defilement of person suffering a disability*
- *to provide the offence of procuration of a child*

(x) CLAUSE 26: CHILD TO CHILD SEX.

- **Replace clause 26 with the following-**

“26. Householder permitting defilement of child

A person who, being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly allows a child to enter, stay and be upon such premises for the purpose of carnal knowledge or a sexual act being performed on him or her, commits a felony and is liable to imprisonment not exceeding five years.”

Justification

- *For clarity and better drafting*

(y) CLAUSE 27: DEFILEMENT OR RAPE BEFORE A CHILD.

Delete clause 27

Justification

- *It is already an aggravating factor in the offence of aggravated rape and defilement.*

(z) CLAUSE 28: SUPPLY OF SEXUAL CONTENT AND MATERIAL TO A CHILD.

Replace clause 28 with the following-

“28. Unlawful supply of sexual material to a child

- (1) It is an offence for a person to unlawfully give, display, distribute or supply to a child, material-
- (a) of a sexual nature;
 - (b) demonstrating, depicting or illustrating a sexual act;
 - (c) whose common usage is for the performance of a sexual act; or
 - (d) mimicking a sexual organ;
- (2) A person who commits an offence under subsection (1) is liable, upon conviction, to imprisonment not exceeding ten years.
- (3) For avoidance of doubt, subsection (1) shall not apply to material given, displayed, distributed or supplied to a child as part of sex education or reproductive health as part of the curriculum of an approved institution of learning.

Justification

- *For clarity and better drafting*
- *To expand the provision to-*
 - (a) *include giving, display, distribution or supply to a child of sexual material as well as material demonstrating, depicting or illustrating a sexual act, whose common usage is for the performance of a sexual act; or mimicking a sexual organ.*
 - (b) *Punish the supply, distribution, display or giving where it is made to a child whether the sexual material involves a child or not.*

(aa) CLAUSE 29: CHILD PROSTITUTION.

Replace clause 29 with the following-

“Child prostitution

A person who for monetary consideration, goods or other benefit—

- (a) Intentionally causes, encourages, entices or does any act which makes a child engage in prostitution;
- (b) intentionally controls any of the activities of a child relating to its prostitution or engagement in prostitution in any part of the world;
- (c) intentionally arranges or facilitates the engagement of a child in prostitution in any part of the world;
- (d) knowingly permits any child to remain in any premises, for the purposes of causing such child to participate in any form of sexual activity or in any obscene or indecent exhibition or show;
- (e) acts as a procurer of a child for the purposes of sexual intercourse or sexual act;
- (f) induces a person to be a client of a child for sexual intercourse or sexual act;
- (g) takes advantage of his influence over, or his relationship to a child, to procure the child for sexual intercourse or sexual act;
- (h) threatens or uses violence towards a child to procure the child for sexual intercourse or sexual act,
- (i) intentionally or knowingly owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of any offence under this Act with a child by any person; or
- (j) gives monetary consideration, goods, other benefits or any other form of inducement to a child or its parents with intent to procure the child for sexual intercourse or sexual act or any form of sexual abuse or indecent exhibition or show,

commits the offence of child prostitution and is liable to imprisonment for ten years.

Justification

- *for clarity and better drafting*

(bb) INSERTION OF NEW CLAUSE

- **Immediately after clause 29, insert the following new clause-**

“Child sex tourism

A person including who—

- (a) makes or organizes any travel arrangements for himself or herself or on behalf of any other person, whether that other person is resident within or outside the borders of Uganda, with the intention of facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed; or

- (b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child;
 - (c) introduces, organizes or facilitates contact with another person under the auspices of promoting tourism, in any manner, in order to promote conduct that would constitute a sexual offence against a child,
- commits the offence of promoting child sex tourism and is liable upon conviction to imprisonment for ten years.

Justification

- *To prohibit child sex tourism*

(cc) CLAUSE 30: CHILD PORNOGRAPHY.

Replace clause 30 with the following-

“30. Child pornography

(1) Any person who—

- (a) knowingly displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio-visual or any other media to a child with intention of encouraging or enabling a child to engage in sexual acts;
- (b) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his or her possession any obscene book, pamphlet, paper, drawing, painting, art, representation or figure or any other obscene object whatsoever which depict the image of any child;
- (c) imports, exports or conveys any obscene object for any of the purposes specified in paragraph (a) and (b), or knowingly or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;
- (d) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that any such obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;
- (e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or
- (f) offers or attempts to do any act which is an offence under this section,

commits the offence of child pornography and is, upon conviction, liable to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to for seven years.

(2) For avoidance of doubt, this section shall not apply to—

- (a) a publication which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing,

- drawing, painting, art, representation or figure is in the interest of science, literature, learning or other objects of general concern;
- (b) any book, pamphlet, paper, writing, drawing, painting, representation or figure which is kept or used bona fide for religious purposes;
 - (c) any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument recognised as such in law; and
 - (d) activities between two consenting adults.”

Justification

- *For better drafting*

(dd) INSERTION OF NEW CLAUSE

Immediately after clause 30, insert the following new clause

‘Child marriage

- (1) A person who-
 - (a) performs, conducts, directs or abets a child marriage, including participation in formal or informal marital arrangements and initiation practices into child marriage involving parents or legal guardians of the minor; or
 - (b) marries a child in a formal or informal ceremony of marriage or any other arrangement with or without the consent of a parent or guardian, commits an offence of child marriage and is liable to imprisonment for a period not exceeding seven years.
- (2) In this section, child marriage means the union whether formal or informal involving any person below the age of 18 years for the purpose of living as husband and wife, including child engagement and civil cohabitation.

Justification:

- *To create an offence against persons who marry children*

(ee) AMENDMENT OF THE HEAD NOTE

In the head note of Part IV, delete the words “and jurisdiction”

Justification

- *The part doesn’t have any matter on jurisdiction, making the inclusion of the deleted words in the headnote, redundant.*

(ff) CLAUSE 31: PAYMENT OF COMPENSATION.

Replace clause 31 with the following-

“31. Payment of compensation to victim of sexual offence

- (1) Where a person is convicted of an offence under this Act, court may, in addition to any sentence, order the convict to pay compensation to the victim

of the sexual offence as may be determined by court.

- (2) The compensation referred to under subsection (1) shall take into account-
- (a) the extent of harm suffered by the victim of the offence,
 - (b) the degree of force used by the offender,
 - (c) the medical and other expenses incurred by the victim as a result of the offence,
 - (d) the Physical or mental harm;
 - (e) Lost opportunities, including employment, education and social benefits;
 - (f) Material damages and loss of earnings, including loss of earning potential;
 - (g) Moral damage, and
 - (h) costs required for legal or expert assistance, psychological and social services.
- (3) For purposes of this section, a victim of a sexual offence means a person against whom an offence is committed under this Act, and shall also include such a person's immediate family or dependents or any other person who has suffered damage as a result of the commission of the sexual act.

Justification

- *For clarity and better drafting*
- *To define a victim of a sexual offence*
- *To provide the nature of compensation that may be made by court*

(gg) CLAUSE 32: PROCEEDINGS HELD IN CAMERA

Replace clause 32 with the following-

“32. Proceedings to be held in camera

- (1) In proceedings under this Act, court may, upon application or on its own volition,-
- (a) hold all or any part of the proceedings in camera; or
 - (b) bar, remove or order for the removal from court or court precincts, any person or group of persons;

Justification

- *For clarity and better drafting*
- *To empower court to remove, bar or order for the removal of any person from court or its premises.*

(hh) CLAUSE 33: PROHIBITION OF PUBLICATION OF INFORMATION

Replace clause 33 with the following-

“33. Prohibition of publication of information

- (1) Except with leave of court, a person shall not-
- (a) reveal the name, address, or any particulars leading to the identification of the victim of a sexual offence, a witness or complainant; or

- (b) publish in print or electronic media or broadcast or include in a broadcast or programme information intended to lead to the identification of victim of a sexual offence, a witness or complainant;
 - (c) take a picture of a victim of a sexual act, a witness or complainant;
- (2) A person who contravenes this section commits an offence and is liable upon conviction to imprisonment for five years.

Justification

- *To prescribe a more deterrent punishment for contravening the section*
- *To empower court to prohibit the publication of revealing the identity of a complainant or victim, on its own volition or application.*

(ii) CLAUSE 34: EVIDENCE OF CHARACTER AND PREVIOUS SEXUAL HISTORY

Replace clause 34 with the following-

“34. Restriction on evidence during trial

- (1) Except with leave of court, no evidence shall be adduced and no question shall be asked in cross examination relating to the sexual behaviour of the victim of a sexual offence with a person other than the accused.
- (2) Subject to subsection (4), court shall not grant leave under subsection (1) unless-
 - (a) the evidence or question in respect of which leave is sought, is or relates to, evidence-
 - (i) of specific instances of the complainant's sexual behaviour which tend to establish the identity of the person who had sexual contact with the victim of the sexual offence on the occasion set out in the charge;
 - (ii) of other sexual activity that took place on the same occasion as the sexual activity that forms the subject matter of the charge and relates to the consent which the accused alleges that the accused believed was given by the victim of a sexual offence; or
 - (iii) which rebuts evidence of the complainant's sexual behaviour or absence thereof that was previously adduced by the prosecution; or
 - (b) the Judge is satisfied that the exclusion of the evidence or question in respect of which leave is sought, would be unfair to the accused because of the extent to which that evidence-
 - (i) relates to behaviour on the part of the victim of the sexual offence which was similar to the alleged behaviour on the occasion of, or in relation to, events immediately preceding or following the alleged offence; and
 - (ii) is relevant to issues arising in the proceedings.

- (3) In determining for the purposes of subsection (2) whether evidence is admissible or questioning should be allowed, court shall be satisfied that the probative value of the evidence sought to be admitted or allowed is-
- (a) significant; and
 - (b) likely to outweigh any risk of prejudice to the proper administration of justice if it is admitted.

Justification

- *for clarity and better drafting*
- *to prescribe circumstances under which court may exercise its discretion.*

(jj) CLAUSE 36: SEXUAL OFFENDERS DATA BANK.

Delete clause 36

Justification:

- *Clause 36 is contained in the proposed new part on sex offender's register.*

(kk) INSERTION OF NEW PART

- Insert the following new part immediately after clause 38 as follows-

“PART V-SEX OFFENDER’S REGISTER

Establishment of a Sex Offender’s Register

- (1) There is established a sex offender’s Register.
- (2) The Register shall be managed and maintained by the National Identification and Registration Authority established under the Registration of Persons Act, 2015.
- (3) The Register shall be maintained as an electronic database or in any other form.

Registration of sex offenders

- (1) A person convicted of an offence under this Act shall have his or her particulars as well as a sample of his or her DNA entered in the Sex Offender’s Register.
- (2) Where a person is convicted of an offence under this Act, the person presiding over such a trial or the registrar of that court or any other person concerned with the trial shall, within ten days of that judgement, send a certified copy of the judgement to the National Identification and Registration Authority.
- (3) The National Identification and Registration Authority shall upon receipt of a judgement register the particulars of the convict in the sex offender’s register.
- (4) For avoidance of doubt, an appeal lodged by the convict shall not act as a bar to the registration of such convict.

Content of the Register

- (1) The Register shall consist of information by persons who are required to be registered under this Act and such other information as may be prescribed by the Minister.
- (2) Notwithstanding subsection (1), the register shall contain the following information—
 - (a) the sex offender's name and date of birth and, where the offender uses one or more other names or dates of birth, each of those names and dates of birth;
 - (b) the sex offender's national identification number;
 - (c) the sex offender's address;
 - (d) the offence for which the sex offender was convicted of;
 - (e) a sample of the offender's DNA, finger prints and any other unique identifying features;
 - (f) a photograph of the offender, and
 - (g) any other information that the Minister may prescribe by regulations;

Access to the Register

- (1) The Register shall be accessed by any person, in accordance with the prescribed procedure and on any condition as maybe prescribed by the Minister, by regulations.
- (2) Notwithstanding subsection (1), government agencies shall be granted automatic access to the contents of the register.

Duration of registration

The registration of a person in the Sex Offenders Register shall, unless the conviction is successfully appealed against, be for the natural life of the offender.

Reporting requirements

- (1) A person registered in the Sex Offender's Register shall-
 - (a) within fourteen days after changing his or her residence;
 - (b) five days before applying for a job involving caring for or being in charge of children or any other vulnerable person;
 - (c) within fourteen days after he or she changes his or name;
 - (d) upon being release from prison and every six months thereafter,by written notification, notify the National Identification and Registration Authority.
- (2) The National Identification and Registration Authority shall upon receipt of the notification in subsection (1) update the register or do any other act as it deems fit.
- (3) Notwithstanding subsection (1), the Minister may by regulation make provision requiring a person registered in the Sex Offender's Register who intends to travel outside Uganda—
 - (a) to give in accordance with the regulations, before such a person leaves, a notification to the National Identification and Registration Authority; and
 - (b) if they subsequently return to Uganda, to give in accordance with the regulations a notification.
- (4) A notification under subsection (3) shall disclose—
 - (a) the date on which the offender will leave Uganda;

- (b) the country or countries to which he or she will travel and his or her point of arrival in that country;
 - (c) any other information which the offender holds about his or her departure from or return to the Uganda or his or her movements while outside the Uganda; and
 - (d) any other information as prescribed by regulations.
- (5) Notwithstanding anything to the contrary, a person registered on the Sex Offender's Register shall upon arrival in a district where he or she is not ordinarily resident, give notification of his or her presence to the local authorities in the area.
- (6) A person who contravenes any provision of this section commits an offence and is liable on conviction to imprisonment for five years.

Justification

- *To provide a specific part on the sex offender's register*
- *To establish a sex offender's register and to provide how one gets registered on the register, removal and reporting requirements*
- *For clarity, completeness and better drafting.*

(II) INSERTION OF NEW CLAUSE

Immediately after clause 38, insert the following new clauses-

“Uncorroborated evidence of a victim of a sexual act

Nothing in this Act shall be interpreted as requiring the corroboration of the evidence of a victim of a sexual act or a witness of a sexual act.

“Liability for false or misleading allegation of a sexual offence

- (1) A person who makes a false or misleading allegation against another for commission of an offence under this Act commits an offence and is liable for imprisonment for three years or a fine not exceeding ten thousand currency points or both.
- (2) In this provision, an allegation is false or misleading if at any stage of investigations or prosecution, it is proved that the alleged act did not take place.

Consent during sexual intercourse

Consent to sexual intercourse can be withdrawn at any time, with or without the consent of either party to the sexual act.

DPP to decide whether police investigations should be discontinued

- (1) The decision as to whether the prosecution or investigation by a police officer of a complaint that a sexual offence has been committed should be discontinued shall rest with the DPP.

- (2) A police officer or a person investigating a sexual offence who withdraws or discontinues such investigation without the consent of the DPP commits an offence and is liable upon conviction to imprisonment for a term not exceeding ten years
- (3) A parent, guardian, relative or person in authority or trust who-
- (a) fails to report the commission of a sexual offence or threatens, intimidates or coerces the victim of a sexual offence from reporting a sexual offence; or
 - (b) enters into a compromise or settlement with the person suspected of having committed a sexual offence,
- commits an offence and is liable upon conviction to imprisonment for a term not exceeding ten years.
- (4) Subsection (3) (b) shall not apply to court plea bargain

Justification:

- *to allow the conviction of a person based only on the evidence of the victim*
- *to create an offence on false or misleading allegation of commission of sexual act.*
- *To allow the withdrawal of consent to sexual intercourse*
- *To specify that the DPP is the only person who can discontinue investigations into the commission of sexual offences*
- *To prohibit out of court settlements where a sexual offence has been committed.*
-

(a) CLAUSE 39: EXTRA-TERRITORIAL JURISDICTION

- Replace clause 39 with the following-

“39. Extra-Territorial Jurisdiction

A person who, being a citizen or resident of Uganda, commits an unlawful sexual act outside Uganda on another person being a citizen or resident of Uganda, commits an offence and is triable as if the offence was committed in Uganda.’

Justification

- *For clarity and better drafting*

(b) CLAUSE 40. REGULATIONS

- Replace clause 40 with the following-

“40. Regulations

- (1) The Minister may make regulations generally for giving effect to the provisions and purposes of this Act.
- (2) Without limiting the generality of the foregoing, the Minister may make regulations in respect of-
 - (a) the reporting and notification obligations of sex offenders;

- (b) the form and contents of the Register;
 - (c) the grant of access to the Register;
 - (d) the functions and operations of the Registry;
 - (e) the monitoring of sex offenders;
 - (f) the management of and retention requirements for information recorded in the Registry;
 - (g) the circumstances under which sex offenders may be required to participate in rehabilitation schemes.
 - (h) Reporting offences.
 - (i) Offences and penalties.
- (3) Regulations made under this Act may provide for the imposition of penalties for offences in contravention thereof of a fine not exceeding one twenty five currency points or imprisonment for a term not six months or of both.

Justification

- *For clarity and better drafting*
- *To provide specific matters the Minister has to make regulations on.*

(c) CLAUSE 41: REPEAL AND SAVINGS

- Replace clause 41 with the following-

“Savings and repeal

- (1) Part XIV of the Penal Code Act Cap 120 is repealed in as far as it applies to offences provided for under this Act.
- (2) Section 2 of the Penal Code (Amendment) Act, 2007 is repealed.
- (3) The repeal by this Act, of Part XIV and section 2 of the Penal Code (Amendment) Act, 2007 shall not apply to an offence committed before the commencement of this Act.

Justification

- *For clarity and better drafting.*
- *To include, in provisions repealed, section 2 of the penal code (Amendment) bill, 2007*