

**BILLS  
SUPPLEMENT No. 13**

**BILLS SUPPLEMENT**

to the Uganda Gazette No. 67 Volume XCVIX dated 17th November, 2006

Printed by UPPC, Entebbe by Order of the Government.

**Bill No. 20**

*Penal Code (Amendment) Bill*

THE PENAL CODE (AMENDMENT) BILL, 2006

**MEMORANDUM.**

1. The object of this Bill is to amend section 286 (2) of the Penal Code Act, (Cap 120) to provide that mere possession of a deadly weapon at the time of or, immediately before or immediately after the time of robbery is sufficient to constitute robbery punishable by death.

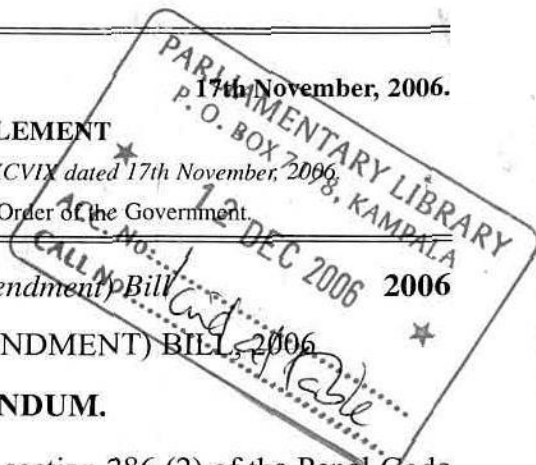
2. The definition of “deadly weapon” is being changed to include any instrument which when used is capable of inducing fear in a person and that it is likely to cause death or grievous bodily harm, including an imitation instrument.

3. At present, according to the interpretation given by the Courts on the section, section 286 (2) applies **only** where an offender at the time of or immediately before or immediately after the time of the robbery uses or threatens to use a deadly weapon or causes death or grievous harm to any person and in case the weapon is a gun it must be fired at the scene of crime or must be recovered and test fired to prove that it was capable of firing.

A similar amendment has been made in section 319 of the Code in the definition of “deadly weapon”.

4. The Bill also seeks to amend the Penal Code Act as follows—

- (a) to broaden the definition of defilement from “unlawful sexual intercourse with a girl under age of eighteen years” to include the performance of a sexual act with another person below the age of eighteen years and attempts to perform such acts;



- (b) to create the offence of aggravated defilement;
- (c) to alter the penalty for defilement from “liable to suffer death” to life imprisonment;
- (b) to create the felony of aggravated defilement triable and bailable only by the High Court and that a person who commits that offence is liable to suffer death;
- (c) to provide for the award of compensation to victims of defilement and aggravated defilement; and
- (d) to formally abolish corporal punishment which the Constitutional Court has declared to be inhuman treatment contrary to article 24 of the Constitution and therefore unconstitutional.

5. The Bill further makes transitional provisions relating to the change in the penalty for defilement by requiring that cases in which hearing has not commenced when this Act comes into force or in respect of which the Director of Public Prosecutions so directs, should be transferred to the appropriate courts presided over by a Chief Magistrate. This will empower the DPP to transfer defilement cases to Chief Magistrates so as to reduce the case backlog in the High Court and also to expedite the hearing of defilement cases.

6. Finally, references in the Bill to Acts and sections of Acts in existence before the year 2001 which are now contained in the Revised Edition of the Laws of Uganda 2000 are now adapted to read as references to the corresponding sections and chapters as contained in the Revised Edition.

HON. (DR.) E. KHIDDU-MAKUBUYA (MP),  
*Attorney General and  
Minister of Justice and Constitutional Affairs.*

A Bill for an Act

ENTITLED

**THE PENAL CODE (AMENDMENT) ACT, 2006**

**An Act to amend the Penal Code Act**

BE IT ENACTED by Parliament as follows:

**1. Abolition of corporal punishment**

(1) Corporal punishment is abolished and accordingly, all references to corporal punishment in the Penal Code Act in this Act referred to as the principal Act, are repealed.

(2) Without prejudice to the general effect of subsection (1) of this section, section 125, subsection (2) of section 129 and section 205 of the Penal Code Act, are amended by the repeal of the words “with or without corporal punishment”.

**2. Section 129 of the Penal Code Act replaced**

The principal Act is amended by substituting for section 129 the following new sections—

**“Defilement of persons under eighteen years of age**

129. (1) Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

(2) Any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction, liable to imprisonment not exceeding eighteen years.

(3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.

(4) The circumstances referred to in subsection (3) are as follows—

(a) where the person against whom the offence is committed is below the age of fourteen years;

(b) where the offender to his or her knowledge, is infected with Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS);

(c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed; or

(d) where the offender is a serial offender.

(5) Any 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.

(6) In this section unless the context otherwise requires—

“serial offender” means a person who has a previous conviction for the offence of defilement or aggravated defilement;

“sexual act” means penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ or the use of any object or organ by a person on another person’s sexual organ;

“sexual organ” includes a vagina or penis.

### **Payment of compensation to victims of defilement**

129A. (1) Where a person is convicted of defilement or aggravated defilement under section 129, the court may, in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence.

(2) The amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence”.

### **3. Amendment of section 286 of the principal Act**

The principal Act, is amended in section 286 by substituting for subsections (2) and (3) the following—

“(2) Notwithstanding subsection (1) (b), where at the time of or immediately before or immediately after the time of the robbery, an offender is in possession of a deadly weapon, or causes death or grievous harm to any person, the offender or any other person jointly concerned in committing the robbery shall, on conviction by the High Court, be sentenced to death.

(3) In this section, “deadly weapon” includes any instrument made or adapted for shooting, stabbing or cutting, any imitation of such an instrument and any other instrument which when used for offensive purposes is capable of inducing fear in a person that it is likely to cause death or grievous harm”.

**4. Repeal of section 288**

The principal Act is amended by repealing section 288.

**5. Amendment of section 319 of principal Act**

Section 319 of the principal Act is amended by substituting for subsection (3) the following new subsection—

“(3) In subsection (2), “deadly weapon” includes any instrument made or adapted for shooting, stabbing or cutting, any imitation of such an instrument and any other instrument which when used for offensive purposes is capable of inducing fear in a person that it is likely to cause death or grievous harm”.

**6. Transitional provision**

Where at the commencement of this Act any proceedings are pending before the High Court for the prosecution of the offence of defilement under section 129 of the Penal Code Act, any such proceedings shall be transferred to the appropriate court presided over by a Chief Magistrate if—

- (a) *the hearing of the case in the trial has not commenced; or*
- (b) if the Director of Public Prosecutions so directs.