



**JUSTIFICATION AND RECOMMENDATIONS FOR THE  
ENACTMENT OF**

**SEXUAL OFFENCES BILL, 2015, (no. 35)**

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## **A. BACKGROUND & OVERVIEW**

The Sexual Offence Bill (hereinafter SOB or Bill) was drafted in 2000 and in 2016 it was tabled as a private member bill by Kumi Woman MP, Monicah Amoding (UWOPA Chairperson). A renewed call for an enactment of the bill came at the beginning of March 2018 as a result of recent allegations of sexual abuse in learning institutions, which are argued to occur in a state of absence of a clear legal regime to prosecute this kind of crimes. The SOB is a key legal document seeking to address this and other forms of sexual violence by consolidating laws relating to sexual offences as well as addressing some of the gaps in existing legal frameworks in regards to sexual violations. As such it repeals sections 123, 124, 125, 128, 129, 130, 133, 134, 135, 136, 137, 138, 139, 145, 146, 147, 149, and 150 of the Penal Code Act, 1950 as well as Cap. 120 and section 2 of the Penal Code (Amendment) Act, 2007. Considering that new forms of sexual and gender-based violence is on the rise in Uganda and that some sexual offences are continuing without interruption, the Ugandan law as it stands now is not providing enough protection and redress to survivors of sex-related crimes. Data from the Annual Crime Report, Uganda, testify to an incidence of 14,985 sex related crimes with 1,335 rape cases in 2017 slightly less than 2016 with 17,395 cases of sex related crimes and 1,494 rape cases (Uganda Police, 2017:12-3). Considering that most sex related crimes are still not reported and that current legislation is lacking, the actual figures of sexual violence crimes are arguably considerably higher than this. Against this backdrop the UWOPA (2015:2) who drafted the SOB states that, apart from strengthening the currently weak legislation, the SOB seeks to address two other areas where challenges persists, namely lack of awareness and institutional shortcomings. There is a general lack of awareness around viewing sexual offences as crimes. Particularly women, sexual minorities, and sex workers face additional hurdles in seeking access to justice, non-exclusive to stigmatization and the lack of interest and responsiveness of mostly male police and judicial officials. However, it is not a bill without its contestations for it to be truly gender-sensitive and anti-patriarchal. This surgery of the SOB will go through it clause by clause and give justification and/or recommendation for improvement. It is done from

a rationale of making the SOB embody feminist principles and for it to be as gender-sensitive as possible. This publication is an outcome of AMwA’s research on sexual violence in Uganda, engagement with other Civil Society Organisations, such as FIDA-Uganda, and consultations with its alumnae and other people of concern.

## **B. CLAUSE BY CLAUSE**

### MEMORANDUM

“The object of this Bill is to; consolidate laws relating to sexual offences; combat sexual violence; provide for the punishment of perpetrators of sexual offences; provide for procedural and evidential requirements during trial of sexual offences and for related matters.”

### COMMENT

*As much as the Bill consolidates existing laws by expanding them and adding new provisions that are crucial to the criminalisation of sexual offences, it does not entirely consolidate laws. For the provisions under part III (Sexual Offences Against Children) many makes reference to parts of the Children Act. This shows a lack of truly providing a Bill that consolidates all relevant legal frameworks for sex related crimes. This, as well as all other areas of concern, is explored in the subsequent section, clause by clause.*

### **Part I – Preliminary (clause 1): interpretation of words and phrases**

#### 1. INTERPRETATION

- a.) **“Child”** means a person below the age of 18 years;
- b.) **“Disability”** means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;
- c.) **“Gang rape”** means committing the offence of rape under this Act by a person in association with others;
- d.) **“Minister”** means the Minister responsible for Justice and Constitutional Affairs;
- e.) **“Serial offender”** means a person with a record of a previous conviction for the offence of rape, aggravated rape, defilement or aggravated defilement;

- f.) **“Sexual act”** means –
- a. direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of the body of another person; or
  - b. the insertion of any part of the body of a person or any part of the body of an animal or any object into the vagina or penis or anus of another person, or
  - c. cunnilingus; fellatio or any other form of genital stimulation:
- g.) **“Sexual exploitation”** means, the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials or the use of a person for sexual conduct or other lascivious conduct;
- h.) **“Sexual organ”** means a vagina or a penis;
- i.) **“Spouse”** means husband or wife;
- j.) **“Person in position of authority”** means any person who is charged with any duty or responsibility for the health, welfare, or supervision of a minor or any person for any length of time;
- k.) **“Person in position of trust”** means a person committed into the care or charge of another person or who is regularly involved in caring for, training, supervising or being in sole charge of a minor or any person for a given length of time;
- l.) **“Prostitute”** means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other gains.

#### COMMENT

*This section is provided to ensure that the law is duly interpreted. While some of the definitions given in the SOB are extracted directly from the Penal Code (Amendment) Act, 2007, others have been enriched and there are also new additions that provide extended legal room for conviction. The Penal Code (Amendment) Act, 2007, replaced section 129 of the Penal Code Act, 1950 thus making the language used under defilement gender-neutral. In general the SOB builds on this by providing a gender-neutral language for both amended and new forms of sexual offences. It thus reaches far in providing support for all survivors of sexual violence. This is a paramount step towards removing stigmas for some groups who have been subjected to sexual violence and it ensures that all people are at least formally protected.*

*While providing a definition of 'disability' is welcome it could be said to be limiting by describing it as "substantial functional limitation", thus being exclusionary to the wider spectrum of people with functional variation. The new additions of "gang rape", "person in position of authority", "person in position of trust", and "sexual exploitation" are all indicative of how the Bill seeks to address formerly ignored and/or newer forms of sexual violence such as sexual harassment in learning institutions. The Bill's definition of a "sexual act" is extensive. It recognises that a sexual act can be either physical or mental abuse. It expands on the parts of the body considered sexual to also add the anus, breast, thighs or buttocks as opposed to only include the sexual organ as indicated in the Penal Code Act. Furthermore it states that contact with these body parts can be either direct or indirect and that insertion of body parts, animal parts, or any object as well as "cunnilingus; fellatio or any other form of genital stimulation" should be considered sexual acts. The definition of "prostitution" is a direct importation from the Penal Code Act. To begin with, there is a debate around the word 'prostitute' itself with advocacy for replacing it with sex worker as it has a derogatory connotation. This as well as the criminalisation of it will be explored further under the respective clauses dealing with 'prostitution'.*

*A general contestation, however not as pressing, is that the Bill uses the language of 'victim' versus that of 'survivor'. Considerable debate has flourished around the misleading perception that comes with labelling someone who has been subjected to sexual violence with the term 'victim' as this denotes lack of agency and lower standing. The proposed terminology 'survivor' emphasises the strength and agency of the person who has been affected.*

## **Part II – Sexual Offences (clauses 2-22)**

### **2. RAPE**

(1) Any person who forcefully performs a sexual act on another person, without consent, or with 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 commits the felony termed rape and shall on conviction be liable to life imprisonment.

- (2) For the purpose of an offence under subsection (1) where the spouses are living together a spouse may refuse consent to a sexual act on any ground which may include –
- a) Poor health or medical condition of the spouse refusing to perform a sexual act,
  - b) Evidence or reasonable fear that engaging in a sexual act is likely to cause injury or harm to the spouse refusing to perform a sexual act; or
  - c) Any other ground deemed to be reasonable to the court
- (3) A spouse who performs a sexual act with his or her spouse without the consent of that spouse, whether that spouses are living together or in separation, commits an offence known as marital sexual assault and is liable to upon conviction to imprisonment to a period not less than twenty four currency points.

#### COMMENT

*Rape laws largely translate consent against the relationship the woman has to the man even though consent is supposedly defined as women's agency and control in sexual encounters to decline or accept the male proposal. That is, a woman falls into different categories of consent depending on her relationship to the alleged man and his desire for her, not based on her expressed agreement in talk or comportment to the sexual act (Mackinnon, 1997:44-5). Consequently, marital rape, rape of sex workers, and rape where a prior or current relationship exist often become sanctioned rather than protected against by the law. It is also problematic that rape law is often centring on the element of 'force' induced by the perpetrator rather than that of consent. The Bill has adopted a language that is more suitable to the times. Compared to the old section (123) on rape in the Penal Code Act the Bill adds clause 2(3) that handles marital rape. However it presents it so that marital rape becomes zero-summed to 'a sexual act without consent' and thereby marital rape receives a punishment of minimum one year whereas rape is penalised with life imprisonment. As argued by Adrian Jjuuko, Executive Director of Human Rights Awareness and Promotion Forum, this becomes problematic<sup>1</sup> as it differentiates and creates a value-order between rape cases depending on the relationship between perpetrator and survivor. While a complete removal of the caveat in the rape clause which degrades marital rape to 'a sexual act*

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<sup>1</sup> <https://twitter.com/fesuganda>

*without consent' seems like the only way to go if the SOB is to protect all people from experiencing rape, doing so might result in the bill not being passed. Therefore advocating for more specification of marital rape by adding aggravated factors and raising the minimum level of the penalty might be the threshold for social and political acceptance. Furthermore, it would be recommendable to move towards a definition of 'sexual acts forced upon a partner within an intimate cohabitate relationship' as to provide protection for newer forms of intimate relationships. In line with this the provision of personation, as given under clause 2, should also become applicable to all cases of personation of any persons who have regular sexual partners, including cohabiting couples. There is also a need to streamline the penalties for rape as to avoid the creation of a value-order between rape cases upon the relationship between offender and survivor.*

### 3. AGGRAVATED RAPE

- (1) Where Court is satisfied that there are aggravating circumstances in the Commission of the offence of rape, the person shall upon conviction be liable to suffer death.
- (2) In determining whether or not there are aggravating circumstances, the court shall take into account but shall not be limited to the following;
  - a) Whether or not the offender is infected with HIV or suffering from AIDS,
  - b) Whether or not the offender is infected with a sexually transmitted disease,
  - c) Whether or not the offender is a serial offender,
  - d) Whether or not the victim suffers disability,
  - e) Whether or not the act constituted a gang rape,
  - f) Whether or not the offence was committed in the presence of a child,
  - g) The age of the person against whom the offence was committed,
  - h) The extent of harm caused to the person against whom the offence was committed.

#### COMMENT

*This is a completely new provision that the Bill introduces. The justifications for the addition come from the knowledge that, despite the palpable harm induced by any form of rape, there are certain circumstances that make it a more aggravated crime.*

*However, while this clause is generally justifiable there is a need to look deeper at some of the suggested circumstances. By making perpetrators who are living with HIV/AIDS part of aggravating circumstances of rape it is feared that already existing discriminatory practices and stigmas are exacerbated. This also goes against public policy dealing with HIV/AIDS populations.*

#### 4. ATTEMPT TO COMMIT RAPE

##### COMMENT

*This repeals section 125 of the Penal code act. However, the only alteration that has been made in this case is the incurred punishment. Whereas the Penal Code Act deemed “attempt to commit rape” to be punishable with imprisonment for life with or without corporal punishment, the present Bill constitutes it to be liable to imprisonment not less than five years. [FR1]*

#### 5. ADMINISTERING SUBSTANCE WITH INTENT OF COMMITTING A SEXUAL ACT

- (1) A person who intentionally administers or applies a substance to, or cause a substance to be taken by another person –
- a) Knowing that the person does not consent, and
  - b) With the intention of inducing, stupefying or overpowering that person as to enable any person to perform a sexual act with that person
- commits an offence under this section and is liable on conviction to imprisonment for a period not less than seven years.

##### COMMENT

*This is a new introduction made by the Bill that cannot be described as anything but crucial and timely. Date rape and the usage of intoxication by different types of drugs and alcohol are on the rise, but there is currently no provision in the Penal Code Act to penalise these sexual offences. When survivors of sexual violence were intoxicated they are generally discarded and rather blamed for what happened to them. Instead of penalising the perpetrator who abused someone’s trust and intoxicated them to a state where they could commit a sexual act with the person in a state of low defence and consciousness, the existing legal system places the responsibility on the survivor for not*



*being 'careful' enough and for allowing herself to be in a situation where this could occur. With this new provision it becomes possible to move from this victim-blaming praxis to penalising the intent of perpetrators who uses intoxication to disarm people they intend to abuse sexually.*

## 6. SEXUAL ASSAULT

- (1) Any person who engages another person in a sexual manner against their will forcefully or otherwise by direct or indirect contact with the anus, breasts, penis, buttocks, thighs, or vagina of that person; or exposure or display of his or her genital organs to another person; or with the intention to insult the modesty of that other 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 that person or intrudes upon the privacy of such person commits a misdemeanour and is liable upon conviction to a term of imprisonment for a period of not less than one year or a fine of twenty four currency points.
- (2) It shall be no defence to a charge for a sexual assault on a child to prove that she or he consented to the act of the assault.

### COMMENT

*While this new section introduced by the Bill has a clear justification and linkage to the fact that sexual offences also takes the form of sexual assault and that this has to be provided for in the law, it introduces contestation as this provision is overlapping with the definition of a 'sexual act' which in turn is used to prosecute for rape. Thereby the Bill renders it impossible to delineate between rape and sexual assault, given that both the definition of 'sexual act' and 'sexual assault' mentions the same incidences as seen in "direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person". Unfortunately this entails that there is a need to go back to the drawing board and clearly tease out what should be conceptualised as a sexual act as it is used for rape compared to the provision for a sexual assault. Another issue arises when analysing this provision, namely how the framing of a sexual assault coincides with a moralising language in how it states that a sexual assault is an act done "with the intention to insult the modesty of that other person". Hence, the problem is not that someone has experienced a violation, but rather that the morality of that person has*

*been tattered. This is indicative of how deeply rooted the notions of moral sin is while discussing sexuality. It is therefore recommended that 'modesty' be removed.*

## 7. SEXUAL HARASSMENT

A person who makes unwelcome sexual advances or requests for sexual favors or engages in verbal or physical conduct of a sexual nature and where;

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or
- b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or
- c) Where the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment

Commits the offence of sexual harassment and is liable upon conviction to imprisonment for a term of not less than two years or a fine of forty eight currency points.

### COMMENT

*This is another highly relevant newly introduced provision by the SOB considering that sexual harassment is recorded at high levels in many work environment and sectors without any legal room for it to be tried. Thus, clause 7 serves as crucial justification and point of reference from where cases of sexual harassment can be tried and it could furthermore be a source from where policies against sexual harassment in both workplaces and learning institutions get developed. However, it would be advisable that it becomes cognizant of how sexual harassment also increasingly takes the form of sending messages, images, videos, and other material of sexual content.*

## 8. SEXUAL OFFENCES RELATING TO POSITION OF TRUST AND PERSONS 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 any other sexual act commits an offence under this Act and shall be liable upon conviction to imprisonment for a term not less than ten years.

- (2) A person who being in a position of authority takes advantage of his or her influence over another person to have sexual intercourse or any other sexual act commits an offence under this Act and shall be liable upon conviction to imprisonment for a term not less than ten years.

#### COMMENT

*This is another new provision that the SOB has introduced against the backdrop of reports on sexual assaults and harassment in learning institutions. The recent allegations of Makerere lecturer, Dr Swizen Kyomuhendo and other university staff abusing their positions of power and authority to force and pressure students into sexual acts, more popularly named ‘sex for marks’, is without a doubt a clear indication and justification for the need to legalise against sexual offences committed by persons in position of trust and/or authority. In the wake of this, Makerere University undertook an investigation (‘Report on the Investigation of Sexual Harassment at Makerere University’) to address the allegations of increased sexual harassment at its tertiary institution. In this report inquired staff at Makerere University aired their views of how incidences of sexual harassment can largely be derived from the ‘skimpy’ way the female students dress and project themselves<sup>2</sup> (Makerere University, 2018). One male lecturer in the investigation made the following statement: “Women loitering around with their open thighs is not okay... these are devils, little temptresses who harass innocent, defenceless lecturers” (Makerere University, 2018:8). While the report did not find any causality between females’ dress and the advent of sexual harassment (Makerere University, 2018:viii) it is evident that this is still a broad-based perception that flourish within not only institutions of higher learning, but within the society at large despite the various reports that show that men are using their relative power (monetary and positional) to force women to have sex with them for the advancement at workplaces or to not be failed in their classes<sup>3</sup>. This victim-blaming indisputably works to protect perpetrators whilst victims are further stigmatised and violated by mistrust and discrediting campaigns. Hence, it is a way of remaining patriarchal control and dominance over women’s bodies and to castigate them further if they do*

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<sup>2</sup> <https://theinsider.ug/index.php/2018/06/25/report-skimpily-dressed-students-cited-on-rampant-sexual-harassment-cases-at-makerere/>

<sup>3</sup> [https://www.newvision.co.ug/new\\_vision/news/1463998/losing-war-sexual-harassment-abuse;](https://www.newvision.co.ug/new_vision/news/1463998/losing-war-sexual-harassment-abuse;)  
<https://www.softpower.ug/opinion-give-makerere-a-break-sexual-harassment-is-a-national-problem/>

*not accept the patriarchal order (Tamale, 2014:174). Yet, the same recommendations that were given for clause seven holds here. That is, it is a highly relevant and adequate addition, but it should also take note and criminalise the rising form of sexual harassment and assault occurring through sending messages, images, videos, and other material of sexual content.*

## 9. SEXUAL ACT WITH A PERSON INCAPABLE OF GIVING CONSENT

- (1) A person who performs a sexual act with a person incapable of giving consent to a sexual act commits an offence and is liable upon conviction to imprisonment for life.
- (2) A person is incapable of giving consent if he or she;
  - a) Lacks the capacity to choose whether to agree to the sexual act or
  - b) Is unable to communicate such a choice to another person
- (3) A person who attempts to perform a sexual act with a person incapable of giving consent to a sexual act commits an offence and is liable on conviction to imprisonment for a term not below a period of three years.

### COMMENT

*This is replacing section 130 of the Penal Code Act, which guides on defilement of idiots or imbeciles. The removal of 'idiots' or 'imbeciles' is justified as they are derogatory terms that also were not well defined. However, this definition might be too broad to provide clarity for someone to prosecute in a case where consent cannot be given. Additionally, although consent is a core principle of making laws related to sexual offences truly gender-equal it is not an easily transferable concept. Consent is supposedly defined as a person's agency and control in sexual encounters to decline or accept the other party's proposal. However, the reality is that rape laws largely translate consent according to the relationship between the two parties. It is known that women fall into different categories of consent depending on her relationship to the alleged man and his desire for her. Therefore rape laws need to be very explicit on what consent is. Rape laws have to clarify that the principle of consent is regardless of the relationship that exists. not based on her expressed agreement in talk or comportment to the sexual act.*

## 10. DETENTION WITH SEXUAL INTENT

A person who unlawfully detains another person for the purpose of committing an unlawful sexual act commits an offence and is liable on conviction to imprisonment for a term not below five years.

#### 11. IMPROPER SEXUAL ACT WITH PERSONS IN CUSTODY

An official or an employee of a correctional facility who;

- (1) engages in sexual contact or sexual intercourse, sexual harassment or sexual assault or performs a sexual act, or perform sexual intercourse with an individual in custody
- (2) employs, authorizes, or induces another person to; have sexual contact, perform sexual intercourse, or engage in sexual harassment or sexual assault or performs a sexual act with an individual in custody

Commits an offence and is liable upon conviction to imprisonment for a period not below seven years.

#### COMMENT 10 & 11

*By altering the old 134 provision of the Penal Code Act into section 10 and 11 the SOB has removed some confusing elements that were earlier part of the offence, including being found in a brothel. The clarity that is provided in these repealed clauses makes it easier for both civilians and legal practitioners to navigate and prosecute. The justification for these clauses is that oftentimes perpetrators who abuses their positions of power in for example the police or mental health institutions are not reported or convicted and this might be due to the earlier 134 section being to unorganised and mixing different types of offences. The Bill has also lowered the penalties for these offences.* [FR2]

#### 12. PROHIBITION OF PROSTITUTION

A person who practices or engages in prostitution commits an offence and is liable on conviction to imprisonment not exceeding seven years.

#### 13. SOLICITING

A person who solicits another in a vehicle, on a street or public place for the purpose of obtaining their sexual services as a prostitute commits an offence and is liable upon

conviction to imprisonment for a period to a term not below two years or a fine of 48 currency points.

#### 14. SEXUAL EXPLOITATION OF PROSTITUTION

- (1) A person who causes or incites another person to become a prostitute in any part of the world in the expectation of gain for him or herself or a third person commits an offence;
- (2) A person who controls any of the activities of another person relating to that person's prostitution in any part of the world for or in the expectation of gain for himself or a third person commits an offence and is liable on conviction to imprisonment for a term not below fifteen years.
- (3) A victim of exploitation of prostitution shall not be penalized for practicing or engaging in prostitution.

For the purpose of 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.

#### 15. BROTHELS

Any person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for a period of seven years.

#### COMMENT CLAUSES 12-15

*Clauses 12-15 of the SOB repeal section 136-139 of the Penal Code Act. While the Bill is not replacing the contested terms 'prostitute' and 'prostitution', it is providing some clarity by structuring these offences differently. However, it has introduced its own areas of contestation and confusion. To begin with it is not clear from clause 14(1) what the punishment for such an offence should be, that is, if it should be liable with the same as 14(2). In 14(2) the Bill has fallen short of being gender-neutral, which it has employed successfully in other clauses. Hence, it should be changed into "gain for him or herself". Whereas the Penal Code Act made all of these offences liable with imprisonment for seven years, the Bill has introduced a differentiation of penalties for*

*the four different offences. However, by doing so it might have fallen short of being gender sensitive. Feminist scholars and activist have long advocated for replacing the terms 'prostitution' and 'prostitute' with sex work and sex worker due to the historical and continuous discrimination and stigma attached to it. Hence, by using the terms 'prostitution' and 'prostitute' the SOB (2015:5) commits itself to a patriarchal understanding of moral sin connected to women's sexual autonomy. Moreover, by criminalising sex work – both the buyer and the seller with a caveat for exempt of penalty in the case of being "a victim of exploitation of prostitution"<sup>4</sup> the SOB largely resorts to moralising rather than penalising violations. Alarming, such moralising clauses adversely affects women and girls since they make up the great majority within commercial sex work. Furthermore, existing public health research and data evidence that criminalisation of sex work and related activities, instead of preventing it, rather makes it go underground with increased public health risks and dangers, both at an individual and societal level as it leads to lower access to and delivery of health services to the workers (Tamale, 2014:165). Sex workers have also raised the issue of how criminalisation of their profession will lead to inability for them to report any cases of sexual violence and rape that they might be susceptible to from clients<sup>5</sup>. The graver penalty for acts of prostitution (maximum 7 years) as compared to soliciting (minimum 2 years)<sup>6</sup> reveals a hidden bias of harsher punishments for women than men, as the former constitutes the majority of the 'prostitutes'. This is indicative of inconsistent sexual morality with a masked patriarchal bias as it is seen as more immoral and problematic that women and girls engage in commercial sex work (often due to the socio-economic plights that adversely affects them to a larger extent than they burdens men and boys) than that men and boys decide to buy sexual services (Tamale, 2014:160-165). While a removal of these clauses is paramount to assure that the human rights of all people, independent of sexual pattern and profession, it might prove difficult in the existing socio-political fabric. However, to revise the language from 'prostitute' and 'prostitution' to sex worker and sex work and to revise the provision of clauses 12, 13 & 14 to address the hidden patriarchal notions behind penalties is highly recommendable before the Bill is enacted.*

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<sup>4</sup> Clause 14(3)

<sup>5</sup> <https://twitter.com/fesuganda>

<sup>6</sup> Clause 12 & 13

## 16. UNNATURAL OFFENCES

Any person who –

- a) has carnal knowledge of any person against the order of nature;
- b) has carnal knowledge of an animal; or
- c) Permits a male or female person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.

## 17. ATTEMPT TO COMMIT UNNATURAL OFFENCES

Any person who attempts to commit any of the offences specified in section 16 above commits a felony and is liable to imprisonment for seven years.

### COMMENT 16 & 17

*Clause 16 and 17 are almost exact replicas of section 145 and 146 of the Penal Code Act. The difference is that it has introduced a gender-neutral language under clause 16(c) moving from defining it as “permits a male person” to “permits a male or female person”. The penalties remain. Apart from the harsh punishment, this addition to the SOB arguably evades progressive jurisprudence. By criminalising non-heterosexual sexuality the SOB takes a moralistic rather than protective approach. This direct import from the old Penal Code Act from 1950, engages in moralising certain sexual identities and orientations that do not comply with the heteronormative narrowness of what is appropriate sexual behaviour (Tamale, 2014:153-8). It is a ‘victim-less’ provision that rather than protecting possible ‘victims’ from sexual violations penalises non-normative sexual scripts. By also keeping section 146 through clause 17 on “attempt to commit unnatural offences” the SOB perpetuates the space for constructing any physical contact from an LGBTQI person as an attempt to commit a sexual act as a violation and criminal offence liable to imprisonment for seven years. Arguably, existing hostile and discriminatory practices towards the LGBTQI community are likely to find legitimatisation and breeding ground in these provisions by the SOB. A removal of these clauses is paramount to assure that the human rights of all people, irrespective of sexual identity and orientation, are guaranteed. However, it would most likely prove to be rather immensurable owing to the current state of a tightly held hetero-normative discourse on sexuality in Uganda.*



## 18. INCEST

## 19. INCEST OF A CHILD

- (1) Notwithstanding the provisions in Sec (18) a person who commits incest on a child shall be liable to imprisonment for life.
- (2) For the purposes of an offence under (1) –
  - a) A person who 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) A person who 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;
- (3) It is immaterial that the sexual intercourse took place with the consent of the child.
- (4) Where a person is convicted of an offence under this section in relation to a child, the court may divest the offender of all authority over that person, and if the offender is the guardian of such person the court may order the termination of the guardianship and appoint another person as a guardian.
- (5) The High Court may, at any time, vary or rescind an order made under subsection (4) by the appointment of any other person as a guardian or in any other respect.

### COMMENT 18 & 19

*The Bill repeals section 149 and breaks it down into two separate clauses as to facilitate the reading and understanding of the differentiation that is needed between incest and incest on a child. Apart from adequately structuring these offences, the new provisions has introduced changes in the language and replaced “sexual intercourse” with “sexual act”. This is an important alteration since a sexual act is more comprehensive than sexual intercourse, which in turn provides for more effectively prosecuting these types of sexual offences and not just those that take the form of penetration sex. It should however be observed that clause 19(3) has fallen back to the language of ‘sexual intercourse’ and it is recommended that this be changed to ‘sexual act’. The penalty has been lowered from seven years of imprisonment to a term not below three years.*

## 20. TEST OF RELATIONSHIP

### COMMENT

*No alterations have been made. This is a direct importation from section 150 of the Penal Code Act. There is no reason to argue for it to be altered.*

## 21. DISCLOSURE OF SEXUAL OFFENCE

- (1) A person who has been convicted of a sexual offence should disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other vulnerable person or when offering or agreeing to take care of or supervise children or any other vulnerable person.
- (2) A person who is seeking employment as prescribed in section (1) above, fails to disclose the fact of their previous conviction for sexual offence is guilty of an offence and is liable upon conviction to imprisonment for a term not less than three years and termination from the said employment.

### COMMENT

*Introducing this new section is a big stroke in the fight against continuum and impunity in cases of sexual offences committed by person in trust and authority. The Bill is tapping into the evidence of how sexual offences are thriving in institutions of learning and other institutions where children are being subjected to sexual abuse by people that they are supposed to be able to trust and confide in. Instead of providing guidance and due support many children fall victims of sexual violence at the hands of these authoritative and supposedly trustworthy figures. This can be seen in the unfathomable case of former Kibuli SS Head teacher Haj Ali Mugagga and that of school director Mukiibi where it was found that, after he had deceased, he had sexually abused female students and it was approximated that this had resulted in two dozen children<sup>7</sup>. According to a senior police officer, Ministers and Member of Parliament make up the largest group of SGBV offenders. “The SGBV problem is big. Most cases involve high-profile people such as the minsters, MPs, judges, politicians,” Dr John Kamya, a police commissioner in charge of human resource development, said in an interview on Thursday 7<sup>th</sup> of June 2018.*

## 22. OFFENCE TO MAKE A FALSE ALLEGATION

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<sup>7</sup><https://chimpreports.com/female-mps-want-st-lawrence-schools-investigated-over-sexual-exploitation/>

A person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment on conviction to imprisonment to a term not less than three years.

#### COMMENT

*A responsive law is known for legalising against putting forth false accusations. However, it is debatable whether the penalty of 'not less than three years' is justifiable. It is arguably highly probable that this provision will function as intimidation for survivors of SGBV who are already battling against stigma to report, fear of not being believed, and being seen as 'spoilt', 'victims', and 'tarnished'. The evidence burden is also falling disproportionately on the survivors who are often thoroughly interrogated about their accounts and their response at the event of having taken the step to report. Conclusively, these issues combined with the high penalty in this provision work to discourage survivors of sexual offences to come out and prosecute. Even though it is arguably difficult to amend this provision, it should be noted that this penalty is not proportionate to the crime at hand and that it is rather blind to the social and legal reality of how sexual violence and the prosecution against it is usually framed.*

### **Part III – Sexual Offences Against Children (clause 23-30)**

#### 23. DEFILEMENT

- (1) A 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) A 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.

#### 24. AGGRAVATED DEFILEMENT

- (1) A person who commits the offence of aggravated defilement –
  - 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 in a sexual matter,
- is liable to life imprisonment.
- (2) Where a person is charged with an offence under this section that person shall undergo a medical examination.
- (3) Where a person is charged with an offence under this section that person shall undergo a medical examination as to his or her Human Immunodeficiency Virus (HIV) status.

COMMENT 23 & 24

*The Penal Code (Amendment) Act, 2007, replaced section 129 of the Penal Code Act, 1950 thus making the language used under defilement gender-neutral by replacing girl with person. Thereby defining it as “Defilement of persons under eighteen years of age”. The language was also changed from “sexual intercourse” to “sexual act” and the punishment moved from “liable to suffer death” to “life imprisonment”. By repealing The Penal Code (Amendment) Act, 2007 this Bill has repealed the penalty for aggravated defilement from “liable to suffer death” to “life imprisonment”; otherwise it has not introduced any new provision.*

25. CHILD TO CHILD SEX

- (1) Where the offender in the case of any offence is a child under the age of twelve years, the matter shall be dealt with as required by Part V of the Children Act.
- (2) Where an offence under (1) is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by Part X of the Children Act.

COMMENT

*Instead of providing the penalties here, this is referring back to the Children Act and it thus falls short of its promise to be a comprehensive Bill that stands alone. By not specifying which section of the Parts in the Children Act that it is referring to, it creates*

*a vacuum where one is not able to know how to interpret the 'crime'. It should therefore be amended so that one does not have to consult other legal documents. This provision is arguably prone to abuse unless proper guidelines are developed to actualize this proposal. With that being said, it could be discussed whether this constitutes a crime in the first place since the so-called 'victim' in this provision is conspicuous by its absence. "Child to child sex" is arguably a manifestation of the social discomfort and moral panic invoked at the thought of 'children' being sexually active despite the glaring evidence of this taking place. Considering that, according to the 2016 Uganda Demographic Health Survey, teenage pregnancy is as high as 25%. That is, one out of four girls aged 15-19 become pregnant (UBOS & ICF, 2017:14) and there is a need to provide accurate information and services not to criminalise consensual sexual activities between adolescents. By criminalising 'child to child' sex the Bill conflicts with other policy instruments that acknowledge adolescents SRHR and that they are entitled to seek out health services, such as HIV/AIDS testing and contraceptives, without parental consent at an earlier age than that of 18. A recommendation is therefore that Uganda follows the example of South Africa who has adopted a Sexual Offences and Related Matters Amendment Act (2015), which legalises consensual sexual acts between 12-15 years old in the same age bracket or with an age difference of 2 years (Strode, Sarumi, Essack & Singh, 2017:80).*

## 26. HOUSEHOLDER PERMITTING DEFILEMENT

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 suffers any child to resort to or be upon such premises for the purpose of a sexual act being performed upon him or her, whether or not the sexual act is intended to be with any particular person, commits a felony and is liable to imprisonment not exceeding five years.

### COMMENT

*In this repeal of section 130 of the Penal Code Act 1950 the Bill has made the provision gender-neutral by replacing "any girl" with "any child". This is of importance since, although girls are known to more often be the targets of sexual offences, boys also fall victim of the vice. The language has also been made more accessible and easier to interpret in the Bill through its replacement of "carnal knowledge" with the more well-*

*defined term “sexual act” notwithstanding that this definition comes with its own contestations as has been presented above.*

## 27. DEFILEMENT OR RAPE BEFORE A CHILD

A person who intentionally commits rape or defilement with another within the view of a child is guilty of an offence and is liable upon conviction to imprisonment for a term which shall not be less than ten years.

### COMMENT

*By providing this new section the Bill makes it possible to penalise people who engage in mental sexual abuse. It has long been known that trauma is not only induced to someone who is directly affected by it, but also to those that witness it. Acknowledging that this can be a specific tactic of terror that some perpetrators use to traumatise children is of outmost importance considering the trauma that comes with it. While it is not known how widespread this type of mental sexual abuse is, it is likely that it might be brought up on the agenda when it has been given attention in the law and it is possible to prosecute.*

## 28. SUPPLY OF SEXUAL CONTENT AND MATERIAL TO A CHILD

- (1) A person who manufactures any material demonstrating a sexual act involving a child commit an offence and is liable upon conviction to imprisonment for a term of not less than ten years.
- (2) A person who distributes supplies or displays to a child –
  - a) any material demonstrating a sexual act involving a child;
  - b) any material whose common usage is for the performance of a sexual act.commits an offence and is liable upon conviction to imprisonment for a term not less than ten years.
- (3) For the purposes of subsection (1) above the material includes text, audio recording, computer material, video recording or other visual aids.
- (4) This material does not include sex education material for reproductive health.

### COMMENT

*This new section is largely overlapping with section 30 on Child Pornography where supplying material of sexual content that is “involving a child” is already provided for*

*in more detail. Thus, this section should either be removed or revised. It could also be revised in case there is a need to provide legal room for cases of supplying sexual consent (involving adults) to children. It has been argued that material with sexual content can be violating and traumatising to a child of a tender age, also taking the maturity of the child into consideration. Therefore it might be more suitable with a revision instead of removal.*

## 29. CHILD PROSTITUTION

- (1) A person who for monetary consideration, goods, other benefits or any other form of gain –
- a) knowingly permits any child to remain in any premises, for the purposes of causing such child to participate in any form of sexual act or in any obscene or indecent exhibition or show;
  - b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show;
  - c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;
  - d) takes advantage of influence over, or relationship to a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
  - e) threatens or uses violence towards a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
  - f) 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;
- commits the offence of child prostitution and is liable upon conviction to imprisonment for a term not less than ten years.

### COMMENT<sup>[FR3]</sup>

*This new provision that the SOB introduces takes cognizance of how trafficking and child prostitution has been and continues to be a plight in society. Estimations from the United Nations Office on Drugs and Crimes (UNODC) in their 2016 “Global Report on Human Trafficking” children amounts to 28% (girls 20% and boys 8%) of all*

*trafficked persons, with women comprising the biggest share. However, in Sub-Saharan Africa this figure rises to 64%. Thus, while not all of the trafficking is done for purposes of sexual exploitation, it is gravely important that children are protected against this vicious crime. However, what one should take notice of here is that all of the subsections (a-f) are liable with the same punishment. The question is then how justifiable it is depending on if they are all as grave in nature or if they should be differentiated. Another point of discussion is whether this crime is not more severe than that of supplying children with sexual content and material (section 28), which is receiving the same minimum punishment of 10 years of imprisonment. Paying close attention to language one notices that hidden moralistic notions are underpinning this section in how the Bill frames the offence as “indecent”. It is rather straightforward that “indecent” in the landscape of Uganda is equal with anything that goes against a ‘reproductive heterosexual marital sexuality’.*

### 30. CHILD PORNOGRAPHY

(1) A person who –

- a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution and public exhibition, 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;
- b) imports, exports or conveys any obscene object for any of the purposes specified in subsection (a), 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;
- c) 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;
- d) 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



e) offers or attempts to do any act which is an offence under this section is guilty of an offence of child pornography and upon conviction is liable to imprisonment for a term not less than six years.

(2) 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 recognized as such in law; and
- d) activities between two persons of over eighteen years by mutual consent.

COMMENT<sup>[FR4]</sup>

#### **Part IV – Special Powers of Court and Jurisdiction (clauses 31-38)**

##### **31. PAYMENT OF COMPENSATION**

Where a person is convicted of an offence under this Act, 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.

##### **COMMENT**

*This progressive introduction made by the Bill is anchored in the knowledge of how ‘out of court settlements’ is still commonly practiced with many families that opt for marrying of the survivor to the abuser instead of filing a case; reported defilement are almost exclusive to cases of protracted pregnancy and failure to get the perpetrator to marry the survivor and/or pay contribution to the survivor’s family. Thus, by ensuring that compensation is part of the Bill it addresses the need families feel to seek out ‘out of court’ settlements as this will fulfil some of the economical needs that they are facing. It is however recommended that the SOB provide clarity for clause 31 to ensure that payment of compensation is ensured and adequate considering that a majority of*

*vulnerable groups (people living in poverty, illiterate, refugees, among others) are those that are less likely to otherwise proceed and try their cases in court. It is at the same time a recognition of the deep impact a sexual offence often has on a survivor and the need to provide them with support to deal with the trauma after such incidents.*

### 32. PROCEEDINGS HELD IN CAMERA

- (1) In criminal proceedings under this Act, the court before which such proceedings are held shall, direct that any person whose presence is not necessary at such proceedings, not be present, unless the complainant and the accused otherwise request.
- (2) Where the complainant and the accused are disagreeing under subsection (1), the court shall decide as it deems fit.
- (3) Where the complainant is a child, the court shall take into consideration, and act in accordance with the best interest of the child.

#### COMMENT

*This ensures that survivors of SGBV are given a safe space when they have to present the evidence without being intimidated by a large number of people and having to face the person who abused them. It is of general importance since sexual offences are sensitive crimes that often come with stigma and trauma for the person who has been subjected. It is furthermore of particular importance in the case of children and other vulnerable groups, as they might otherwise fear to come out and report and prosecute these kind of sensitive and stigmatising crimes.*

### 33. PROHIBITION OF PUBLICATION OF INFORMATION

- (1) Where a court directs under section 32 that any person or class of persons shall not be present at criminal proceedings, no person shall publish any information which may reveal the identity of a complainant or accused in the proceedings.
- (2) Subject to subsection (1), a judicial officer may authorize the publication of the information if the judicial officer is of opinion that –
  - a. the publication is just and equitable; or
  - b. the complainant or accused is 18 years of age or above.

(3) A person who publishes any information in contravention of this section commits an offence and is liable on conviction to a fine of twelve currency points or imprisonment for six months or both.

#### COMMENT

*This section follows sound jurisprudence and proceedings to ensure anonymity and protection of survivors of sexual offences.*

### 34. EVIDENCE OF CHARACTER AND PREVIOUS SEXUAL HISTORY

A victim of sexual offence shall not be cross examined on his or her prior sexual experience except with leave of Court.

#### COMMENT

*As mentioned before this new inclusion that the Bill makes is highly needed to counter continuous attempts to discard the credibility of the survivor of sexual violations by requiring an exploration of his/her sexual history. However, it is crucial to also be clear on the disallowance of taking affected people's appearance, dress, and prior relationship to the offender into account as these are commonly used in discrediting and blaming the person that comes out and reports a sexual offence. While various research and reports, as that on Sexual Harassment at Makerere University, deter any causality between females' dress and the advent of sexual harassment, it is evident that this is still a broad-based perception that flourish within not only institutions of higher learning, but within the society at large. Victim-blaming is thus rife despite the various reports that show that men are using their relative power (monetary and positional) to force women to have sex with them for the advancement at workplaces or to not be failed in their classes<sup>8</sup>. This victim-blaming indisputably works to protect perpetrators whilst victims are further stigmatised and violated by mistrust and discrediting campaigns. Hence, it is a way of remaining patriarchal control and dominance over women's bodies and to castigate them further if they do not accept the patriarchal order (Tamale, 2014:174).*

### 35. CORROBORATION OF EVIDENCE OF CHILDREN

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<sup>8</sup> [https://www.newvision.co.ug/new\\_vision/news/1463998/losing-war-sexual-harassment-abuse;](https://www.newvision.co.ug/new_vision/news/1463998/losing-war-sexual-harassment-abuse;)  
<https://www.softpower.ug/opinion-give-makerere-a-break-sexual-harassment-is-a-national-problem/>

The evidence of a child of tender years shall be admissible in court in the following circumstances –

- (i) Where the judge or magistrate determines that the child is of sufficient mind to provide sound testimony
- (ii) Where the child has been able to identify the perpetrator
- (iii) Where there is sufficient evidence to corroborate the child's testimony

#### COMMENT

*This section provides due protection for the children who have been subjected to sexual offences.*

### 36. SEXUAL OFFENDERS DATA BANK

- (1) The court shall, where the accused person is convicted, order that the DNA sample or DNA samples be stored in a databank for sexual offenders.
- (2) The sexual offenders databank referred to in subsection (1) shall be kept for such purposes and at such place and shall contain such particulars as may be determined by the Minister.

#### COMMENT

*One of the biggest challenges of combating sexual violence is that there is very little information on the prevalence of the vice and that the information that is there is not handled and gathered in a streamlined, efficient, and structured manner. As such the Bill offers this provision on a sexual offenders data bank, which is crucial in order to detect serial offenders and to have due evidence in cases of sexual offences as this has been identified as a continuous challenge in the combat of these crimes.*

### 37. EXPERT TESTIMONY IN SEXUAL ASSAULT CASES

In a criminal proceeding, a witness may be qualified by the court as an expert if the witness has specialized knowledge beyond that possessed by the average layperson on the witness's knowledge, skill, experience, training or education that will assist the court to understand the dynamics of sexual violence, victim responses to sexual violence and the impact of sexual violence on victims during and after being assaulted.

- (1) A person who is qualified as an expert witness may testify to facts and opinions regarding specific types of victim responses and victim behaviors.
- (2) The witness's opinion regarding the credibility of any other witness, including the victim, shall not be admissible.
- (3) An expert for purposes of this section includes a clinical officer, a medical officer, a nurse or qualifies medical personnel under the Medical and Dental Practitioners Act or a counsellor, psychiatrist, psychologist, social worker and any other person with experience in treating or handling sexual assault victims who possess specialized knowledge about common victim behaviors and victim responses to trauma.

#### COMMENT

*This is an important introduction of the SOB. It attempts to tackle the ubiquitous issue of misconceptions and social beliefs and/or myths about 'proper' and 'accurate' responses and behaviours of SGBV survivors and perpetrators. There is substantive evidence of sexual violence and offences being opaque with myths that then hinder some survivors to be seen as credible, as well as it renders some cases of sexual offences unlawful and these then become ruled out. It is through widely held 'social beliefs/truths/myths' that marital rape, rape of sex workers, and rape where a prior or current relationship exists often become sanctioned rather than protected against by the law. Thereby law on sexual offences is oftentimes complicit and inextricably intermeshed with 'rape myths': widely spread and strongly held attitudes and beliefs that serves as justification and/or denial of male sexual aggression towards women despite the fact that most of these are false (Ryan, 2011:774). This is a manifestation of how patriarchal domination is working through rape myths in order to ensure that the male understanding of accepted sex is maintained. These myths however, often serve as a comfort for both men and women to not see themselves as perpetrators or survivors of rape or other sexual offences. Thus, many men and women do not subscribe their sexual experiences as rape or assault even if this is the case. Rape myths similarly goes to warn females of being 'unguarded', engaging in 'risky behaviour', and exposing an 'inviting appearance' (Ryan, 2011:775). Rape myths go further to warns us against that stranger lurking in the dark preying on a young unaccompanied woman, especially if she is dressed 'revealingly' and she is out in the late hours after drinking alcohol. While this rape certainly happens, it is far from being the most common one. Most rapists are*

*found in our close proximity. They are our intimate partners, parents, relatives, friends, and so forth. However, as Ryan (2011:779) argues, rape myths indeed implicate that rapists are essentially different from 'ordinary' men. Consequently, it may be that neither the rapist nor the raped is able to identify a rape that does not fit the description of a violent and mentally unstable stranger sexually forcing himself on a woman. Furthermore, if the woman is not fitting the category of a young woman fighting back she is unlikely to identify herself with the 'role' of a victim of sexual violence.*

#### 38. EVIDENCE OF A VICTIM OF A SEXUAL OFFENCE OR A CHILD

An accomplice or a child shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such a person.

COMMENT<sup>[FR5]</sup>

### **Part V – Miscellaneous Provisions (clauses 39-42)**

#### 39. EXTRA-TERRITORIAL JURISDICTION

A person who, while being a citizen or resident of Uganda, commits an unlawful sexual act outside Uganda in relation to another citizen or resident of Uganda commits an offence and is triable under the courts of Uganda.

#### 40. REGULATIONS

The Minister shall by statutory instrument make regulations, for giving effect to the provisions of this Act.

#### 41. REPEAL AND SAVINGS

Sections 123, 124, 125, 128, 129, 130, 133, 134, 135, 136, 137, 138, 139, 145, 146, 147, 149 and 150 of the Penal Code Act, Cap. 120 and section 2 of the Penal Code (Amendment) Act, 2007 are repealed.

## COMMENT

*This is a due practice to ensure that any person of interest has the full picture and the background of which legal documents the Bill substitute and/or amend so that comparisons and analysis can be made.*

## 42. TRANSITIONAL PROVISION

Where the commencement of this Act any proceedings are pending before the High Court for the prosecution of the offences under sections 123, 124, 125, 128, 129, 130, 133, 134, 135, 136, 137, 138, 139, 145, 146, 147, 149 and 150 of the Penal Code Act, Cap. 120 and section 2 of the Penal Code (Amendment) Act, 2007, any such proceedings shall be transferred to the appropriate court presided over by a Chief Magistrate if the hearing of the case in the trial has not commenced.

## **ADDITIONAL COMMENTS AND RECOMMENDATIONS**

### **CROSS REFERENCES**

PENAL CODE ACT UGANDA, 1950

PENAL CODE (AMENDMENT) ACT, 2007

ANTI-PORNOGRAPHY ACT (APA, Act No. 1), 2014

CHAPTER 59, THE CHILDREN (AMENDMENT) ACT, 2016