

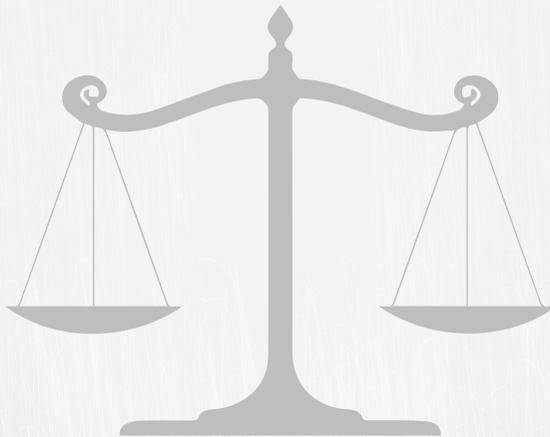


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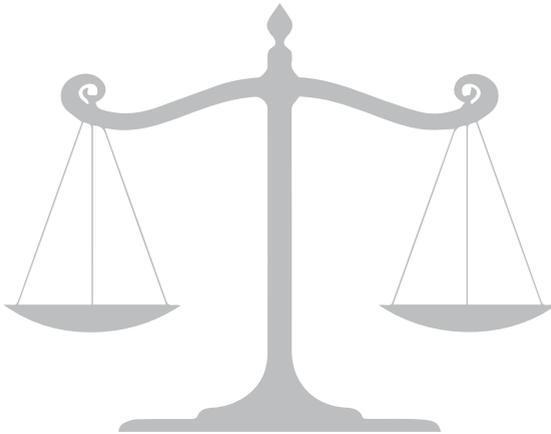
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PROPOSED AMENDMENTS ON THE SEXUAL OFFENCES BILL 2019



**Submission to the Legal and Parliamentary
Affairs Committee**

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INTRODUCTION

Sexual Abuse and its Prevalence in Uganda:

Sexual offences are a daily occurrence within communities and these have largely become a public health and human rights concern not only for Uganda but also around the globe. The high prevalence of sexual offences has been consistently documented in the annual police crime reports. For instance the 2019 Annual Police Crime Report recorded 1,528 cases of rape while 13,613 defilement cases were reported in 2019.

The 2016 Uganda Demographic Health Survey (UDHS) reports that 22% of women and 8% of men aged 15-49 have experienced sexual violence at least once in their lifetime. Likewise, it is recorded that 19% of women had their first sexual encounter against their will.

According to Uganda's National Adolescent Health Strategy, girls aged 15 to 19 are sexually abused about three times more often than boys the same age, while young women aged 20 to 24 are sexually abused over four times as often as young men the same age.

Consequently, sexual offences leave permanent emotional scars to the victims and their relatives. They may also result into death, unwanted pregnancy or infection with HIV among other Sexually Transmitted Diseases. As such, a suitable sexual offences law should therefore go beyond merely punishing the perpetrators but also cater for the needs of the victims like access to free medical care and provision of shelters.

It is upon this background that we commend the Government for drafting the Bill to address the existing legal vacuum. Nevertheless, we have identified areas that require amendment and our proposals are indicated in the table below;

No.	ISSUE	PROPOSAL	JUSTIFICATION
1.	Clause 1: Interpretation clause	<ul style="list-style-type: none"> ◆ The Clause should define what amounts to sexual violence and sexual harassment. ◆ The definition of a sexual act should include “however slight” as used in the Penal Code (Amendment) Act 2007 ◆ The definition of what amounts to sound health practices or proper medical procedures in the context of the definition of sexual act ought to be defined. ◆ The definition of sexual exploitation should include persons in authority and persons in trust 	Definitions of key terms used in the law aid interpretation of the law and guide the practitioners and the general public

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2.	<p>Clause 2 : Rape “A person is incapable of consenting to a sexual act if at the time of performance of the sexual act he or she was asleep”.</p>	<ul style="list-style-type: none"> ◆ Clause 2(3)(a) should be removed because of its impracticability ◆ Expound on the provisions of Clause 2(3) to cater for anaesthesia being a ground under which a person is incapable of consenting to a sexual act. 	<ul style="list-style-type: none"> ◆ It is practically impossible to prove that a person was asleep and therefore did not consent to the Sexual Act. ◆ It is possible for a sexual act to happen (without a person’s consent) when he or she is in a state of anesthesia
3.	<p>Clause 3: Aggravated Rape</p>	<ul style="list-style-type: none"> ◆ The Clause should provide for similar penalties for rape, attempted and aggravated rape. ◆ The prescribed punishments seem too lenient and contradict the Bill’s objective of providing for enhanced punishment for sexual offenders. Therefore the maximum punishment should be life imprisonment. 	<ul style="list-style-type: none"> ◆ Victims of both rape and aggravated rape face the same emotional, physical and psychological trauma, so we can’t differentiate the penalties/ punishments rather the convicts should suffer the same ◆ punishments.

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4.	Clause 4: Administering substance with intent to commit a sexual act.	<ul style="list-style-type: none"> ◆ The Bill should clearly define what amounts to a substance. ◆ The Clause should include a subsection on aiders and abettors being criminally liable for this offence. 	The Clause should be drafted in line with Section 19 of the Penal Code Act where aiders and abettors are principle offenders and therefore criminally responsible.
5.	Clause 9: Sexual act with person in custody.	<ul style="list-style-type: none"> ◆ The Clause ought to include officers or employees in charge of quarantine centres, SGBV shelters and health centres ◆ The punishment should be increased to life imprisonment. 	Quarantine centres, SGBV shelters and health centres are also places of custody where people are kept/detained. They should be considered by this law.
6.	Clause 13: Defilement	<ul style="list-style-type: none"> ◆ The Clause should prescribe the punishment of life imprisonment for the offences of defilement, attempted 	<ul style="list-style-type: none"> ◆ All these are grave offences which should have similar and enhanced penalties as per the long title of the Bill which includes providing for enhanced

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7.	<p>Clause 16: Sexual offences by children.</p>	<ul style="list-style-type: none"> ◆ This Clause should prescribe specific sexual offences for children below 18 years. 	<ul style="list-style-type: none"> ◆ Many sexual offences are committed by mature minors (13- 17) and should be held criminally responsible.
8.	<p>Clause 18: Supply of sexual content and material to a child (2);</p> <p>“For avoidance of doubt, subsection (l) 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”.</p>	<ul style="list-style-type: none"> ◆ Under sub-clause 2, the clause should also provide for approved Policies and Guidelines by the relevant Government Ministries on sex education and reproductive health for students both in the formal and informal learning divisions. 	<ul style="list-style-type: none"> ◆ Sex education or reproductive health is not only part of the curriculum for learners in an approved institution of learning but should also extend to the learners out of school.

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9.	<p>Clause 20: Child sex tourism b) “A person who prints or publishes in any manner, information that is intended to promote or facilitate arrangements for sexual acts with a child; commits an offence and is liable on conviction, to a fine of two thousand currency points or imprisonment not exceeding ten years or both”.</p>	<ul style="list-style-type: none"> ◆ Under Clause 20(b), the information which is intended to promote or facilitate arrangements for sexual acts with a child should be clearly defined and/or examples stated. 	<ul style="list-style-type: none"> ◆ The provision is not clear on what kind of information promotes or facilitates arrangements for sexual acts with a child.
10.	<p>Clause 22: Marriage involving child (1) A person who (a) conducts, directs, participates or abets a marriage of a child including participation in formal or informal</p>	<ul style="list-style-type: none"> ◆ For better effecting of this Clause, we recommend that other laws on marriage should be amended to provide for 18 years as the age of marriage. 	<ul style="list-style-type: none"> ◆ Other laws on marriage such as the Customary Marriages Registration Act and the Hindu Marriage and Divorce Act, still provide for 16 as the age at which a girl can get married.

No.	ISSUE	PROPOSAL	JUSTIFICATION
	<p>marital rites and initiation practices with a child; or</p> <p>(b) Purports to marry a child in a formal or informal ceremony of marriage or any other arrangement with or without the consent of a parent or guardian of the child;</p> <p>Commits an offence and is liable on conviction, to imprisonment for ten years.</p>	<ul style="list-style-type: none"> Under Clause 20(b), the information which is intended to promote or facilitate arrangements for sexual acts with a child should be clearly defined and/or examples stated. 	<ul style="list-style-type: none"> The provision is not clear on what kind of information promotes or facilitates arrangements for sexual acts with a child.
11.	<p>Clause 25: Prohibition of publication Except with leave of court, a person shall not</p> <p>(a) Reveal the name, address, or any particulars leading to the identification of the victim of a sexual</p>	<ul style="list-style-type: none"> This Clause should provide for use of pseudonyms as a way of protecting victims of sexual offences. 	<ul style="list-style-type: none"> Even with leave of Court, revealing of personal details like name and address of a victim of a sexual offence should not be permitted by law for the purpose of protecting the victims from

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	<p>offence, a witness or complainant; or</p> <p>(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!</p> <p>(c) take a picture of a victim of a sexual act, a witness or complainant;</p>		<p>stigmatization and discrimination in their communities.</p>

General Recommendations:

- The Bill should prescribe offences and penalties for duty bearers that obstruct justice and delay investigations into alleged sexual offences e.g. police, politicians, judicial officers etc.
- The Bill should also specifically provide for the victim's right to access free medical care.
- As a future recommendation, Regulations stemming from the Bill should make provision for specific facilitation of courts to handle sexual offences.
- The Bill should make a provision which makes it mandatory for the state to provide psychosocial support shelters for victims of sexual offences.
- The Bill should make a penal provision on persons who settle sexual matters out of court

CONCLUSION

The Sexual Offences Bill 2019 is highly commended for attempting to integrate new aspects of sexual offences than those provided in earlier legislations like the Penal Code Act. However, the Bill mainly focuses on penalizing the perpetrators and does not speak much about protection of survivors which is highly recommended. The Bill should extensively provide for the welfare of victims/survivors by making provision for access to free medical care, shelters among others.

Whilst the Bill is undoubtedly a significant improvement on existing legislation, there is room for further improvement in protecting victims of sexual offences. As legislation that deals with incredibly traumatic offences, careful drafting is needed for a new Sexual Offences Act that protects all possible victims, and to ensure that all inappropriate behaviour that is considered severe enough to warrant a criminal sanction is included and dealt with accordingly.

Generally, the proposals made in this review focus on improved procedures for victim handling and support, inclusion of additional sexual offences, broadening the definitions of the offences to cover more victim categories, redefinition of offences to make them gender neutral and creation of new offences to cater for developing social trends among others.

This review also calls for implementation of victim's right to medical care and managing of their wellbeing generally.

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