



PARLIAMENI OF UGANDA

21 MAR 2023

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE ANTI - HOMOSEXUALITY BILL, 2023

**OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA-UGANDA**

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legislation to enhance offences relating to homosexuality and clear provisions for charging, investigating, prosecuting, convicting and sentencing of offenders. This legislation seeks to supplement the provisions of the Constitution of the Republic of Uganda and the Penal Code Act, Cap 120 by criminalizing same-sex sexual acts and related acts.

3.0. METHODOLOGY

In the process of analyzing the Bill, the Committee received submissions from the following delegations.-

- 1 Hon Basalirwa Asuman The Mover of the Bill

ii. Attorney General's Chambers

- a. Hon Kiryooowa Kiwanuka Attorney General
- b Mr Pius P Biribonwoha Deputy Solicitor General
- c Ms Olivia Natwazagye Senior State Attorney
- d Mr Lazaka Tibakuno State Attorney

iii. Ministry Gender, Labour and Social Development

- a Hon Asamo Hellen Minister of State for Disability
- b Mr Eitu James Director, Ministry of Gender
- c Ms Tusaasira Ruth Principal Officer, Ministry of Gender
- d Mr Bakaye Lubega Ass Comm Ministry of Gender

iv. Ministry of Ethics and Integrity

- a Hon Akello Rose Lilly Minister of State for Ethics and Integrity
- b Mr Moses Makumbi Commissioner, Ministry of Ethics
- c Ms Iribagiza Geneviene Legal Officer

v. Office of Director of Public Prosecutions

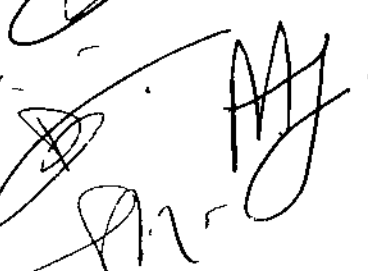
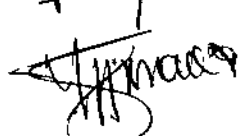
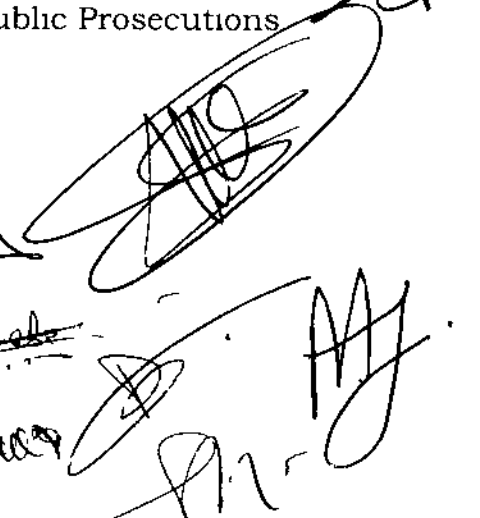
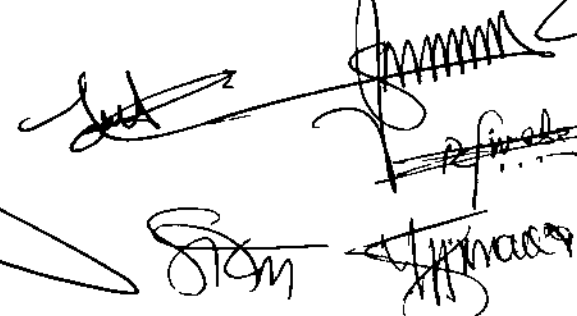
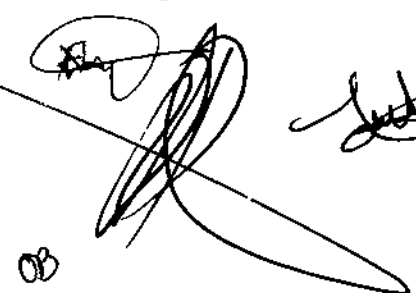
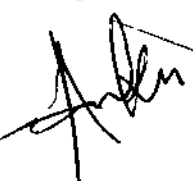
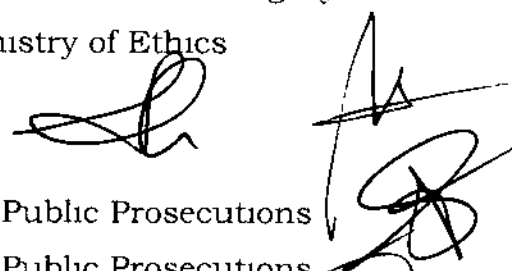

- a Mr George Byansi Deputy Director of Public Prosecutions
- b Mr James Owere Deputy Director of Public Prosecutions
- c Ms Barbara Masike Chief State Attorney

vi Human Rights Awareness and Promotion Forum

- a Dr Adrian Jjuuko Executive Director



Amendo



- b Ms Justine Balya Program Director
- c Ms Flavia Zalwango Program Director
- d Ms Kabanzi Maureen Volunteer

vii. Uganda Police Force

- a Mr Tusemererwa James Commissioner of Police (CPO)
- b Mr Muyango Kambada Ass Superintendent of Police (ASP)
- c Mr. Owona Isaac Ass Superintendent of Police (ASP)
- d Mr Beyanga Cornelius Ass Superintendent of Police (ASP)

viii. Chapter four Uganda

- a. Mr. Anthony Masike Ag Executive Director
- b Mr Paul Wasswa Head, Policy and Development

ix. Law Development Center (LDC)

- a Mr Paul Mukibi Head of Department
- b. Ms Kaburungi Dorothy Research Assistant
- c. Ms Nuwemuhwezi Prane Research Assistant
- d Ms Kawesa Rose Nalule Research Assistant

x. Family Life Network

- a. Mr Stephen Langa Executive Director
- b Mr Charles Tuhaise Program Officer, Policy
- c Rev Francis Osire Program Officer, Development
- d Ms Sylvia Mumisiriza Staff

xi. Coalition against Homosexuality

- xii Pastor Male Solomon Executive Director
- xiii Mr Kasolo Solomon Member

Individuals

- xiv. Prof Tamale Slyvia Professor of Law
- xv. Dr Kabumba Busingye Senior Lecturer of Law
- xvi. Bishop David Kiganda President Of Pastors Forum
- xvii Pastor Dr Martin Sempa Makerere Community Church
- xviii Rev. Canon Christine Shimanya Chaplain of Parliament

Burume

xix	Pastor Kusasira Samuel	Vision Worship Centre
xx	Pastor Edson Muhawenimano	Christian Living Water, Kibuye
xxi	Pastor Herbert Kaytale	Pastor
xxii	Bishop Batera Geoffrey	Accord (U)
xxiii	Pastor Kayizzi Denis	Victory Church Kireka
xxiv	Dr Luswata Herbert	Gen Sec Uganda Medical Assn
xxv	Ms Bukirwa Maria	Women's Probono Initiative
xxvi	Ms Grace Namatak	Akina Mama Wa Africa
xxvii	Mr Mukisa Elisha	Victim of homosexuality
xxviii	Mr Anthony Muhwezi	Advocate of High Court
xxix	Mr Kanso Viola	Advocate of High Court
xxx	Mr Oundo George	Ex- Gay Community Uganda

Reviewed,

The Constitution of the Republic of Uganda, 1995, the Penal Code Act Cap 120 and various court decisions

4.0. HOMOSEXUALITY IN UGANDA

In Uganda, conduct amounting to homosexuality is not recognised as a right under the Constitution of the Republic of Uganda, 1995 and is instead treated as a crime under various provisions of the Penal Code Act, Cap 120, specifically under sections 145, 146 and 129

Article 31 of the Constitution recognises that men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. This provision recognises that only men and women in Uganda may have relations and by extension recognises that sexual intercourse/relationships can only be legally performed between persons of the opposite gender of majority age with their free and voluntary consent. Where sex is performed in

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any other circumstances other than as referred to above, it is treated as an unnatural act punished in sections 145 and 146, rape under section 123 or defilement under section 129 of the Penal Code Act respectively.

In the same vein, the Constitution recognises the cultural diversity of Uganda and recognises, in article 37 of the Constitution every person's right to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. The Committee notes article 126 (1) of the constitution enshrines the cultural norms and values of the people of Uganda by requiring that judicial power is derived from the people and is exercised in conformity with the law and with the values, norms and aspirations of the people.

Uganda enjoys rich cultural diversity and although all are richly different, they do not recognise same sex relations. Whereas some few individuals have existed with such tendencies, these were isolated by society and in some cases punished for such unnatural acts. The prohibition against homosexuality is entrenched in the laws of Uganda and our cherished and shared cultural norms and values.

Homosexuality as an offence is prescribed in section 145 of the Penal Code Act and is reproduced below-

"145. 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 person to have carnal knowledge of him or her against the order of nature,**
- commits an offence and is liable to imprisonment for life."**

The above section specifically prohibits and punishes the conduct of a person who has carnal knowledge of any person against the order of nature as well as

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the conduct of a person who permits a male person to have carnal knowledge of him or her against the order of nature

Whereas the term "against the order of nature" is not defined under the laws of Uganda, at common law, the crime against nature or unnatural act has historically been a legal term in English-speaking states identifying forms of sexual behaviour not considered natural or decent and are legally punishable offenses These sexual practices that have historically been considered to be "crimes against nature" include sodomy and bestiality.

In Uganda, Section 145 creates three standalone offences, namely-

(a) **The offence of having carnal knowledge of any person against the order of nature.** The offence of having carnal knowledge of any person against the order of nature occurs where a person has anal sex with another person In the case of **Christopher Mubiru Kisingiri Vs Uganda, HCCA No. 108 of 2015** court noted that for the offence of unnatural offence to be sustained, the prosecution must prove that a person has had anal sexual act against another person In the same decision, court observed that the prosecution must prove that there was penetration of the anus by a male sexual organ This provision usually applies against a male person and it is irrelevant whether the victim is a woman or man

(b) **The offence of having carnal knowledge against an animal,** this offence occurs where a person has carnal knowledge of an animal The prosecution here must prove that the person indeed had penetrative sex with an animal

(c) **The offence of permitting a male person to have carnal knowledge of another person against the order of nature** This offence occurs where a person allows a male person to have anal sex

with him or her Prosecution must prove that there was penetration of the anus by a male sexual organ, although this provision usually applies against a male person and it is irrelevant whether the victim is a woman or man

The Committee notes that inspite of the existence of the provisions of section 145 of the Penal Code Act, the Annual Crime Police Reports have continually reported increased occurrence of conduct that are prohibited under section 145 For instance, the Annual Police Report for the last 5 years have reported increasing cases of unnatural offences of sodomy, lesbianism and bestiality such as in 2017 where 120 cases were reported, in 2018, 100 cases were reported, in 2019, 103 cases were reported, 79 cases were reported in 2020, 80 cases were reported in 2021 and 83 in 2022

The Committee is also aware that the media has recently been awash with reports of sodomy and lesbianism in Ugandan schools and have reported that grooming and recruitment of school children into homosexuality has taken shape in Uganda Incidents of teachers engaging their students in homosexuality are being reported with increasing regularity, schools have reported expelling homosexual students while teaching materials recognising and normalising same sex relationships have found their way into schools

The Committee is further aware that a number of non-governmental organisations have been found to directly promote the normalisation of same sex relations in Uganda For instance, the NGO Board suspended activities of the Sexual Minorities Uganda for their activities in promoting the normalisation of same sex relations All the above incidents are taking place in spite of the existence of provisions that prohibit and ban unnatural sexual acts in Uganda

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5.0. GENERAL OBJECTIONS TO THE BILL

The Committee received memoranda from a number of stakeholders who advanced both general and specific objections to the Bill. The Committee has examined the objections and reports as follows,

5.1. Duplication of provisions in the Penal Code Act

One of the most common objections received by the Committee has been that the Bill does not introduce anything new since the provisions are already prescribed in the Penal Code Act and other laws making the Bill unnecessary and redundant.

Dr Adrian Jjuuko who made a presentation on behalf of Human Rights Awareness and Promotion Forum (HRAPF) and the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) objected to the Bill reasoning that whereas the majority of the clauses of the Bill are unconstitutional, the rest are redundant and become useless once the unconstitutional provisions are removed. The redundant clauses that he pointed out include clauses 5(2) – (4), 7, 9, 10, 11, 13, 15, 16 and 17. The same views were expressed by Dr Kabumba Busingye, Senior Lecturer, School of Law, Makerere University, Dr Sylvia Tamale, a retired professor of Law, Mr Anthony Masike, Ag Executive Director of Chapter 4 and Bukirwa Maria of Women Pro bono Initiative, all who reasoned that the Bill is a duplication of the provision already in place under the Penal Code and is unnecessary.

The Office of the DPP also objected to the Bill on grounds that the proposals contained in the Bill should be introduced in the Penal Code Act rather than being introduced in the proposed Bill. They reasoned that the Penal Code has overtime been disintegrated, chapter by chapter, leading to scattering of the provisions.

The Attorney General advised that nothing prevents Parliament from enacting new laws or indeed improving on existing provisions of the law to meet

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emerging challenges in or of society in so far as it cautions itself to avoid duplication of provisions

The Committee has examined the above assertions as to the need to enact stand-alone legislation on homosexuality and finds that, it is the mandate of Parliament to enact legislation. The Committee notes that whereas homosexuality as an offence already exists on the law book under the Penal Code Act, there is need to redefine the law, placing emphasis on the new and emerging matters which are not contained in the Penal Code Act such as promotion of homosexuality and the recruitment of children into homosexuality which have been blamed for the rising incidents of homosexuality in Uganda

The Committee also took cognisance of the need to give visibility to the offence of homosexuality by introducing a comprehensive law that deals with the offence and all its manifestations, the identification and rehabilitation of perpetrators and victims of offences as well as dealing with incidental matters such as compensation, which cannot be included in the Penal Code Act, a law of general application. The Committee also observed that Homosexuality is a unique offence which needs a specific law to deal with its manifestations and the introduction of the Bill builds on a strong foundation already laid by Government and Parliament in dealing with new and emerging matters of public interest

For instance, Parliament, when faced with acts of terrorism in Uganda enacted a specific law to comprehensively deal with terrorism and all its manifestation and removed those provisions from the Penal Code Act. Likewise, the Anti-Corruption Act was enacted to give visibility to the fight against corruption and to comprehensively deal with the vice of corruption which had reached endemic levels and could not be dealt with adequately under the Penal Code Act. These interventions were informed by the need to adequately address challenges faced in responding to new and emerging matters that had not been covered under the Penal Code Act, a law that was made more than 100 years ago and

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could not have anticipated new developments and advancements that require adequate regulation at the time

The Committee, guided by the reasons above found that it is necessary to have matters of homosexuality adequately dealt with in a stand-alone law rather than being included in the Penal Code Act. In doing this, the Committee, as guided by the Attorney General, will and cautions itself to ensure that there is no duplication of matters already in the Penal Code to ensure the effectiveness of legislation

On the issue as to whether the Bill is necessary, the Committee has examined the provisions section 145 of the Penal Code Act relating to the offence of homosexuality and found that whereas the offence of unnatural offences has been applied in Uganda, it has a number of shortcomings which have prevented its effectiveness. For instance-

- (a) the provisions of section 145 only requires proof of actual carnal knowledge in proof of the offence, making other sexual conduct not amounting to carnal knowledge irrelevant. In **Christopher Mubiru Kisingiri Vs Uganda, HCCA No 108 of 2015** court set aside the conviction of Mr Christopher Mubiru since the prosecution did not prove the first ingredient of the offence (penetration) beyond reasonable doubt, notwithstanding that the prosecution had brought evidence that the accused person had engaged in other sexual contact with the victim of the offence. This means that a person who does not have carnal knowledge of a person but penetrates the person's mouth cannot be charged with the offence, thereby normalising and allowing such conduct between persons of the same sex. The Bill addresses this by proposing a new nomenclature, as was adopted by the Penal Code Act, in the offence of Defilement which does not entirely dependent on penetration alone for the commission of the offence.

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(b) the offence falls short of the clarity expected of a penal provision under article 28 (12) of the Constitution since it does not define the major elements of the offence including the phrase "carnal knowledge" and "against the order of nature" yet these have to be proved by the prosecution. The failure to define the words and phrases which form part of the ingredients of the offence leaves the provision vague and open to challenge for infringing article 28 (12) of the Constitution

The phrase "carnal knowledge" has been given diverse interpretation by court owing to the fact that the same phrase is used in other offences such as the offence of rape under section 123 of the Penal Code Act, wherein court regards carnal knowledge to mean the penetration of the vagina, however slight, of the victim by a sexual organ where sexual organ means a penis

Thus if a man forcibly penetrates a woman's anus or if he forcibly inserts any other object into her vagina or anus or if he forces her to have fellatio (oral sex) with him or cunnilingus (touching the female sex organ with the lips and tongue), such conduct does not amount to rape although it may constitute other less serious offences such as indecent assault In **Uganda v kyamusungu Ivan, criminal session case No 107/96** High Court held inter alia that carnal knowledge means penetration of the sexual organ into the female sexual organ and if there was no penetration, then the offence of rape is not established It was further held in **Uganda v Odwang Dennis and Olanya HCB 71** that in rape cases, the prosecution must prove penetration of the male reproductive organ into female reproductive organ However, when it comes to unnatural offences, court in **Christopher Mubiru Kisingiri Vs Uganda** defined carnal knowledge to mean penetration of the anus contrary to the definition given by Court in cases involving rape This makes the offence of unnatural

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offences ambiguous in its current form since of the main ingredient forming this offence is incapable of exact definition

The Committee is concerned that courts in Uganda have declared provisions that are vague unconstitutional, including in the case of **Andrew Mujuni Mwenda and other Vs AG (consolidated constitutional petitions No.12 of 2005 and No. 3 of 2006)** wherein Court declared the offence of sedition unconstitutional for infringing Articles 29(1) (a) and 43(2) (c) of the Constitution. Furthermore, in **Constitutional petition No. 13 of 2014, Centre for Domestic Violence Prevention & 8 ors -VS- AG**, court declared Sections 2, 11, 13, and 15 of the Anti-Pornography Act, which defined and created the offence of pornography, unconstitutional due to the vague definition of the offence of pornography

Court reasons that offences that are prescribed vaguely prevent a person from tempering his or her conduct so as not to be caught up by the provisions since they fail to provide a precise definition of the conduct they intend to prevent. The provisions also allow abuse of such provisions by law enforcement officer since the prosecution of the offence will depend on the interpretation and subjective understanding of the provision by the prosecution, vis-a-vis the conduct of the person, leading to inequality in the application of such laws. Significantly though, the most important rules of legality in criminal law are "notice" and "fair warning" and the State has a duty to ensure citizens have sufficient notice and fair warning of prohibited conduct and the corresponding sanctions.

Therefore, the vagueness, uncertainty and ambiguity that is embedded in the offence of unnatural offences make it impossible to determine what conduct is acceptable and what conduct is in fact criminalised and prohibited by law, and this certainty is required by

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the Constitution The Bill proposes to address these matters by providing a clear and concise definition of the term homosexuality as well as all the working definitions of all words that might be confused as used in the Bill

(c) The provision only criminalizes the use of a sexual organ and not the use of any other contraption in the sexual act This means that if a person penetrates the anus of another person using a contraption, that person does not commit an offence since the provision only applies to the use of a sexual organ The Bill proposes to remedy this by including objects and sex contraptions, in addition to sexual organs so that a person who performs a sexual act with the aid of a sex contraption is also charged with the offence

(d) The provision does not also prohibit or deal with conduct related to gender identity such as transgender and queer people and neither does it prohibit a person from identifying as a lesbian, gay, bisexual, transgender, and queer, thereby allowing the normalisation of such sexual orientation as well as gender in Uganda The Bill proposes various offences against persons that identify as a lesbian, gay, bisexual, transgender, and queer;

(e) The provision does not prohibit the promotion of same sex sexual acts and has allowed the proliferation of persons and entities whose main role is to advocate for and normalise the same sex sexual acts, including recruitment, grooming, training and advocacy with the aim of equipping homosexuals and members of LGBTQ organizations to carry out such activities which are aimed at normalising illegal acts The Bill proposes to prohibit the promotion of homosexuality in Uganda and proposes tough sanctions

The Committee notes that the Bill also incorporates the findings and gives effect to various decisions of court relating to homosexuality, including the case

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of *Victor Mukasa & Another vs Attorney General (High Court Miscellaneous Cause No 24 of 2006, Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd and Giles Muhame (High Court Miscellaneous Cause No 163 of 2010) and Nabagesera & 3 Ors v Attorney General & Anor (Miscellaneous Cause 33 of 2012* which makes various findings which if not given effect to, will affect the fight against homosexuality and the desecration of our cherished cultural values, customs and norms by the introduction of new and emerging sexual orientations which contravene the above values

5.2. Human Rights issues in the Bill

The Committee also received memoranda from various stakeholders who objected to the Bill on grounds that the Bill contains provisions which affront the protected rights and freedoms guaranteed under the Constitution of the Republic of Uganda

The objections were raised by Dr Adrian Jjuuko, Dr Kabumba Busingye, Dr Sylvia Tamale, Mr Wasike Anthony of Chapter 4 and Bukirwa Maria of a the Women Pro bono Initiative who all opined that some of the provisions of the Bill contravene various provisions of the Constitution including article 27 on the right to privacy, article 24 and 44 (a) relating to non derogable right to freedom from inhuman and degrading treatment as protected under article 24 and article 44(a) and article 21 of the Constitution on the right against discrimination They also opined that some provisions of the Bill go beyond the limitations envisaged in article 43 of the Constitution and that some other provisions contravene the principle of legality prescribed in article 28 (12) of the Constitution

It is the in position of Dr Adrian Jjuuko, Dr Kabumba Busingye, Dr Sylvia Tamale and Bukirwa Maria of Women Pro bono Initiative that sexual acts between consenting adults should not be criminalised The criminalisation of these acts, according to them, contravenes provisions of the Constitution of the Republic of Uganda, as well as established international and regional human

rights standards, as it unfairly limits the fundamental rights of LGBTQ persons. This criminalisation also denies them equal protection under the law, owing to the harsh differential treatment they receive based on their sexual orientation and the criminalisation of the same

The Committee has examined the above assertions in light of the provisions of the Constitution and Bill and reports as follows,

The Constitution of the Republic of Uganda contains, in chapter 4, a Bill of rights which guarantees and protects a number of rights and freedoms. The rights recognised and protected in the Constitution are enjoyed by all persons in Uganda

The Committee is aware that courts in Uganda have determined that the rights and freedoms guaranteed in the Constitution apply to all persons in Uganda irrespective of their real or perceived sexual orientation. Court in the case of **Victor Mukasa & Another vs. Attorney General (High Court Miscellaneous Cause No 24 of 2006)** and in **Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame (High Court Miscellaneous Cause No 163 of 2010)** found that constitutionally protected rights belong to all Ugandans, whatever their perceived sexuality. These cases formed the basis for supporters of sexual minorities to object to the restrictions imposed on them under various laws, alleging that such restrictions contravene their inherent rights. Supporters of sexual minorities also argue that the limitations imposed on the enjoyment of the rights of sexual minorities go beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution. They also argue that rights and freedoms guaranteed in the Constitution are not exhaustive and in this, they refer to article 45 of the Constitution which provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in the Constitution are not to be regarded as excluding others not specifically mentioned

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The Committee observes whereas the rights and freedoms enshrined in the Constitution apply to all persons in Uganda irrespective of their sexual orientation, these rights, especially the rights articulated by the supporters are not absolute, save for those rights recognised in article 44 since they have to be exercised within the confines of the law as recognised in article 43 of the Constitution

The Committee is aware that General limitation on fundamental and other human rights and freedoms exist in the Constitution under article 43 of the Constitution which provides that in the enjoyment of the rights and freedoms prescribed in the Constitution, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. The same provision allows limitations to be imposed on the enjoyment of rights and freedoms as long as those limitations do not go beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution

The Committee is aware that the Constitution of Uganda does not recognise a right to homosexuality but instead, bans and prohibits same sex marriages. The argument advanced for recognition of same sex relations is mainly grounded under article 45 of the Constitution which provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned. This provision of the Constitution, according to persons who advocate for rights and freedoms of sexual minorities, recognises "other rights" including the rights of sexual minorities as articulated in various international instruments, including the Universal Declaration of Human Rights, 1948 and other human rights treaties, which contain provisions recognising the right to equality and non-discrimination as core principles of human rights

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The equality and non-discrimination guarantees provided by international human rights law apply to all people regardless of sex, sexual orientation and gender identity or "other status" The thrust of the argument is that under international human rights law, States are required to guarantee full rights to all persons within their territory without discrimination purely on the basis of sexual orientation and gender identity and further, that states have to respect the autonomy and bodily integrity of persons, and the State is under obligation to refrain from enacting laws that jeopardize this right.

The Committee notes that whereas Uganda is a signatory to a number of international instruments that might be interpreted to recognise sexual minorities, these do not create legally binding obligations on Uganda since the Constitution, which is the supreme law of Uganda and other enactments such as the Penal Code Act specifically bar sexual acts between sexual minorities. The Committee notes that since article 43 of the Constitution recognizes that the rights prescribed in the Constitution can be restricted in public interest, any rights must be exercised within or according to the existing law

The Committee is aware that the human rights compliance of the restrictions imposed on sexual minorities, especially on the enjoyment of the rights and freedoms guaranteed in the Constitution of Uganda, were examined by Court in *Nabagesera & 3 Ors v Attorney General & Anor (Miscellaneous Cause 33 of 2012)* where the High Court was called to examine whether the closure of a workshop advocating for normalization of minority rights in Uganda was an affront to the freedom of assembly, speech and expression, association and equality before the law The court held that the workshop was illegal as it engaged in the direct and indirect promotion of same-sex practices which are prohibited by the Penal Code Act Court further held that the applicants exercised their rights of freedom of expression, association, and assembly to promote prohibited acts that amounted to action prejudicial to the public interest The court also noted that the invoked rights are limited under article 43 of the Constitution in the public interest The closure of the workshop was

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to protect national security and public order and public interest Accordingly, this did not violate their rights and freedoms The decision of court found that-

- (a) It is trite law that any rights must be exercised within or according to the existing law The exercise of rights may be restricted by law itself Court noted that domestic law is the framework within which human rights are enjoyed and in which human rights promotion activities should be conducted
- (b) Persons enjoying rights have a corresponding duty and requirement to exercise them in accordance with the law
- (c) Where the law prohibits homosexual acts and persons knowingly promote those acts, they are acting contrary to the law Such persons cannot allege that the actions taken to prevent their breach of the law amount to denial of 'equal protection' of the law because the law abiding people were not equally restricted.
- (d) It is trite law that the prevention of promotion of illegal acts is clearly acceptable and justifiable in any free and democratic society because it is based on the law All democratic countries are founded on the rule of law
- (e) The restriction on the exercise of rights based on the need to protect moral values fits well within the scope of valid restrictions under Article 43 of the Constitution

The Committee therefore finds that rights and freedoms guaranteed in the Constitution can be enjoyed by all persons in Uganda whatever their perceived sexuality save that the restrictions on the enjoyment of the rights of sexual minorities through the existence of a legal provision such as article 31, section

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145 and the proposed Bill are legally permissible since such restrictions are justifiable, in public interest, as recognised in article 43 of the Constitution

5.3. Homosexuality as a result of nature or nurture

The Committee was informed that homosexuality has existed in Africa since time immemorial and is not a recent introduction Professor Sylvia Tamale also argued that homosexuality can manifest naturally without any promotion, making the provisions restricting same sex relations unreasonable since they are not alive to the naturally occurring sexual traits The Committee also received information from Christian Lawyers, who informed the Committee that studies proponents of same sex relationships have often argued against the criminalising same sex relationships based on the reasoning that the homosexual tendencies occur naturally The lawyers argued that this was not entirely true and dismissed the claims made by the proponents that research in various countries has proved this, including the existence of homosexual tendencies in animals

The Committee invited the Uganda Medical Association, an Association that brings together medical doctors in Uganda and the diaspora to submit on this matter, and Uganda Medical Association informed the Committee that-

- (a) Medical science recognizes the variety and spectrum of human sexual behaviour Science also recognizes that the expression of human sexual behaviour is associated with biological as well as social and cultural factors Sexual behaviour is affected by nature, society, religions, cultures, and many other factors.
- (b) Studies of human sexuality in all races throughout the world and throughout human history have documented the variety of human sexuality, Heterosexuality, homosexuality, and other forms of sexual expression Many genetic studies have attempted, though unsuccessfully to pinpoint one specific homosexual gene

(c) Studies in sexology have shown that sexual phenomena exist on a normal distribution continuum like most human attributes e.g. where most people are in the middle but others may be taller or shorter. Thus also in sexuality, there is a spectrum of sexual behaviours. Some people are less fixed in one form of sexuality than others. Thus sexuality is a far more flexible human quality than used to be assumed in the past, demonstrating the biological variability within the human race.

(d) Sexual expression is a function of biology, psychology, sociology and anthropology, the latter including cultural and religious influences. Thus the factors associated with homosexuality or same sex behaviour can be traced to biological, social, environmental, psychological or a combination of them, with these influencing each other.

(e) There are some rare biological cases affecting the genes that code for unusual expressions of physical phenotypic expression associated with the genital organs. These include Klinefelter's Syndrome (XXY), a random genetic occurrence when a boy has an extra X chromosome that emerges in adulthood with feminine appearance and behaviour. Another congenital condition called Ambiguous genitalia exists, in this case an infant's genitalia are not clear whether they are male or female. This condition, recognized in early infancy, may be corrected by surgery after assessing whether the genes of the infant are male or female.

(f) Homosexuality is therefore a sexual orientation and sexual attraction to same-sex persons which may be followed by homosexual behavior toward people of the same sex. Medical science is further exploring the factors associated and continues to do so. It is not clear whether

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this differing physiological response exists at/from birth or developed after a homosexual experience later in life The conclusion from the current body of scientific evidence is that there is no single gene responsible for homosexuality and there is no anatomical or physiological data that can fully explain its occurrence

Uganda Medical Association therefore concluded that in every society, there is a small number of people with homosexual tendencies and/or behaviour and that homosexuality is not a disease

Based on the above, the Committee is of the considered opinion that homosexuality is mainly an acquired and learnt sexual practice, with little or no influence from nature, save for some rare biological cases where a few people are born with cases affecting the genes that code for unusual expressions of physical phenotypic expression associated with the genital organs

6.0. ANALYSIS OF THE PROVISIONS OF THE BILL

This part of the report examines the Bill, its legality, effect and the mischief it intends to cure

6.1. Offence homosexuality

Clause 2 of the Bill creates the offence of homosexuality and it provides that this offence is committed where person-

- (a) penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption,
- (b) uses any object or sexual contraption to penetrate or stimulate the sexual organ of a person of the same sex,
- (c) touches another person with the intention of committing the act of homosexuality,

The bottom of the page is heavily annotated with handwritten marks. On the left, there is a large, vertical scribble. Below it, the letters 'OB' are written. In the center, the name 'Bwene' is written in a cursive script. To the right of 'Bwene', the number '21' is written. Further right, there are several more signatures and scribbles, including one that appears to be 'A. K. M.' and another that looks like 'M. M. M.'. There are also some circular scribbles and other illegible marks scattered across the bottom section.