

BILLS SUPPLEMENT

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Bill No. 35

Sexual Offences Bill

2015

THE SEXUAL OFFENCES BILL, 2015

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 other related matters.

PART I - PRELIMINARY of the Bill incorporates clause 1 and provides for the interpretation of the words and phrases used in the Bill.

PART II - SEXUAL OFFENCES incorporating clauses 2 to 22 provides; Rape, Aggravated Rape, Attempt to commit rape, Administering substance for purpose of committing a sexual act, Sexual Assault, Sexual harassment, Sexual offences relating to position of authority and persons in position of trust, Sexual act with a person incapable of giving consent, Detention with sexual intent, Person living on earnings of prostitution, Prohibition of prostitution, Exploitation of prostitution, Unnatural offences, Attempt to commit unnatural offences, Indecent practices and acts, Incest, Test of relationship, incest on a child, Disclosure of sexual offence and Offence to make a false allegation.

PART III - SEXUAL OFFENCES AGAINST CHILDREN incorporating clauses 23 and 31 provides for Defilement, Aggravated defilement, attempted defilement, Failure to disclose offence of defilement for economic gain, Child to child sex, Householder permitting defilement, Defilement or rape before a child, Supply of sexual content and material to a child, child prostitution and child pornography.

PART IV - SPECIAL POWERS OF COURT AND JURISDICTION incorporating clauses 32 to 41 provides for Payment of compensation to victims of defilement, Proceedings held in camera, Prohibition of publication of information, Evidence of character and previous sexual history and Sexual offenders data bank.

PART V - MISCELLANEOUS PROVISIONS incorporating clauses 40 to 43 provides for Extra-Territorial Jurisdiction, Regulations and Savings

HON. AMODING MONICAH (MP),
Youth Representative.

THE SEXUAL OFFENCES BILL, 2015

ARRANGEMENT OF CLAUSES

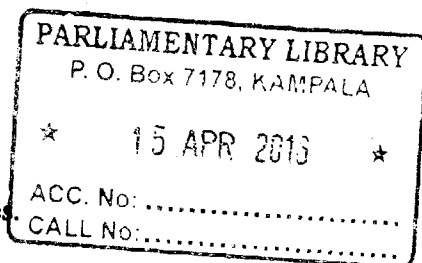
Clause

PART I—PRELIMINARY

1. Interpretation.

PART II—SEXUAL OFFENCES

2. Rape.
3. Aggravated Rape.
4. Attempt to commit rape.
5. Administering substance with the intent of committing a sexual act.
6. Sexual Assault.
7. Sexual harassment.
8. Sexual offences relating to position of authority and persons in position of trust.
9. Sexual act with a person incapable of giving consent.
10. Detention with sexual intent.
11. Sexual act with persons in custody.
12. Prohibition of prostitution.
13. Soliciting
14. Sexual Exploitation of prostitution.
15. Brothels
16. Unnatural offences
17. Attempt to commit unnatural offences.
18. Incest.
19. Incest of a child
20. Test of relationship.
21. Disclosure of sexual offence
22. Offence to make a false allegation



PART III—SEXUAL OFFENCES AGAINST CHILDREN

23. Defilement.
24. Aggravated defilement
25. Child to child sex.
26. Householder permitting defilement.

Clause

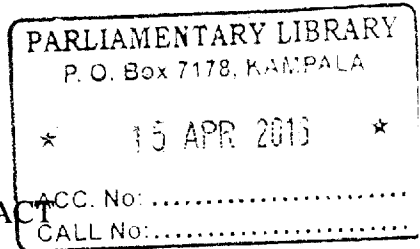
- 27. Defilement or rape before a child.
- 28. Supply of sexual content and material to a child.
- 29. Child prostitution
- 30. Child pornography.

PART IV—COURT POWERS AND JURISDICTION

- 31. Payment of compensation
- 32. Proceedings held in camera.
- 33. Prohibition of publication of information.
- 34. Evidence of character and previous sexual history
- 35. Corroboration of evidence of children
- 36. Sexual Offenders data bank
- 37. Expert testimony in sexual assault cases
- 38. Evidence of a victim of a sexual offence or a child

PART V—MISCELLANEOUS PROVISIONS

- 39. Extra-Territorial Jurisdiction
- 40. Regulations
- 41. **Repeal and savings**
- 42. Transitional provision



A BILL for an ACT

ENTITLED

THE SEXUAL OFFENCES ACT 2015.

An ACT to consolidate and amend the law relating to sexual offences from various enactments, and to provide for procedural and evidential requirements during the trial of sexual offences; to establish the Sexual Offenders Data Bank; to repeal provisions under Part XIV of the Penal Code Act and for other related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires—

“**Child**” means a person below the age of 18 years;

“**Disability**” means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

“**Gang rape**” means committing the offence of rape under this Act by a person in association with others;

“**Minister**” means the Minister responsible for Justice and Constitutional Affairs.;

“Serial offender” means a person with a record of a previous conviction for the offence of rape, aggravated rape, defilement or aggravated defilement;

“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 of 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:

but does not include contact, exposure, insertion or genital stimulation done by a hand or any unharmed object—

- (a) for sound health practices or proper medical purposes;
- (b) for reasonable necessary body search by law enforcement agencies-
 - (i) done for lawful purposes without putting in jeopardy the health and safety of the arrestee suspect or person being searched and
 - (ii) not carried out abusively or for humiliating or punishing an arrestee, suspect or any person who is being searched.

“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;

“Sexual organ” means a vagina or a penis.

“Spouse” means husband or wife;

“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;

“Person in position of trust” means a person committed into the care or charge of another or a person 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;

“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 material gain.

PART II—SEXUAL OFFENCES

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 purposes 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 by the court.

(3) A spouse who performs a sexual act with his or her spouse without the consent of that spouse, whether the spouses are living together or in separation, commits an offence known as marital sexual assault and is liable upon conviction to imprisonment to a period not less than one year or a fine of not less than twenty four currency points.

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.

(3) Where a person is charged with an offence under this section that person shall undergo a medical examination as to his or her health status and this shall include a test for his or her Human Immunodeficiency Virus (HIV) status.

4. Attempt to commit rape.

A person who attempts to commit rape commits an offence and is liable on conviction to imprisonment not less than five years.

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

(1) A person who intentionally administers or applies a substance to, or causes 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 so 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.

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 misdemeanor 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 assault.

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.

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 of 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 of not less than ten years.

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.

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 upon conviction to imprisonment for term not below five years.

11. Improper sexual activity 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 offense and is liable upon conviction to imprisonment for a period not below seven years.

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

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.

18. Incest.

(1) A person who has a sexual act with another person with whom, to his or her knowledge, any of the following relationships exists—

mother father; mother's daughter father's son; daughter son;

father's mother father's father; mother's mother mother's father;
 son's daughter son's son; daughter's daughter daughter's
 son; sister brother; wife's mother husband's father; wife's
 daughter husband's son; father's sister father's brother;
 mother's sister mother's brother; brother's daughter
 brother's son; sister's daughter sister's son; father's
 brother's daughter father's brother's son; mother's sister's
 daughter mother's sister's son; son's wife daughter's
 husband; father's wife mother's husband

commits an offence and is liable on conviction to imprisonment for a term not below three years.

(2) It is immaterial that the sexual intercourse took place with the consent of the other person.

19. Incest on 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 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 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.

20. Test of relationship.

In section 18, the expressions “brother” and “sister” respectively include half-brother and half-sister, and the section shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

21. Disclosure of a 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 in seeking employment as prescribed in section (1) above, fails to disclose the fact of their previous conviction for a sexual offence is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than three years and termination from the said employment.

22. Offence to make a false allegation.

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 of not less than three years.

PART III—SEXUAL OFFENCES AGAINST CHILDREN**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.

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 with as required by Part X of the Children Act.

26. Householder permitting defilement of child.

A person who, being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly 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.

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.

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 of 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.

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 of not less than ten years.

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 of 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.

PART IV—COURT POWERS AND JURISDICTION

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.

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 interests of the child.

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.

34. Evidence of character and previous sexual history.

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

35. Corroboration of the Evidence of a child of tender years.

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

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 purpose and at such place and shall contain such particulars as may be determined by the Minister.

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 based 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 qualified medical personnel under the Medical and Dental Practitioners Act or a counselor, 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.

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.

PART V—MISCELLANEOUS PROVISIONS

39. Extra-Territorial Jurisdiction

A person who, while being a citizen or a 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.

42. Transitional provision

Where at 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.

Schedule

Currency Point

A currency point is equal to twenty thousand shillings

