



PARLIAMENT OF UGANDA

Draft
**MINORITY REPORT BY MEMBERS OF THE SECTORAL
COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS
ON THE ANTI-HOMOSEXUALITY BILL, 2009**

OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDINGS
KAMPALA - UGANDA

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1.0 Introduction

The Anti - homosexuality Bill, 2009 was read for the first time on 14th October 2009 and it was referred to the Committee of Legal and Parliamentary Affairs in accordance with Rules 117 and 118 of the Rules of Procedure of Parliament. The Bill was re-introduced in the 9th Parliament by way of a Resolution of Parliament on 31st October, 2011. Rt. Hon. Speaker, Some Members of the Committee present this minority Report in line with Rule 194 (1) of the Rules of Procedure of Parliament which provides that;

"Any Member or Members dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent, and the statements of reasons shall be appended to the report of the Committee."

2.0 Points of Dissent from the Committee Position

"A citizen loses a right to his/her citizenry the moment the state intervenes in the affairs of his/her bedroom and ~~in~~^{to} that end that act offends ~~the~~^{the} provision of Article 27 of the Constitution of the Republic of Uganda which comprehensively provides for the Right to Privacy of Persons."

1. Rt. Hon. Speaker, The signatories to this report primarily disagree with the principal^{le} of having this bill. What two consenting adults do in the privacy of their bedroom should not be the business of this Parliament. It is not right to have the state allowed in the bedrooms of people.
2. Further, matters of sexual intercourse between consenting adults neither be restricted nor reduced into a hard rule as to what is allowed and what is not allowed;

For example:

- *Oral sex in some societies is taboo,*
- *There are also some men who have consensual anal sex with their wives in a marital arrangement,*
- *There are some men who use fingers, sex toys and other contraptions on their wives in a consensual arrangement, and*

- *There are some women who will not 'reach climax' or 'get an orgasm' except when they are whipped and engage in games of Bondage/Dominance Sadism/Masochism (BDSM).*

The key words in this argument are 'two consenting adults'.

3. While the Members agree that there is the need for children to be protected against recruitment by homosexuals, The Members disagree that this is the law to protect the children since a closer analysis of the Bill also reveals that there are no specific clauses that provide for the protection of children against recruitment.

The Members argue that in that regard there is a need for a comprehensive law to protect children against more than just homosexual recruitment and sex. This other law can protect children against child labour, violence, sexual exploitation, female genital mutilation, slavery and trafficking.

4. It should be noted that Uganda belongs to an International Polity and cannot afford to exclude herself from the rest of the world by way of enactment of this law. The introduction of this law contravenes many International conventions and treaties which are already ratified by Uganda;

Such as;

- *The African Charter on Human and People's Rights (The Banjul's Charter) ratified by Uganda on 10th May, 1986.*
- *The International Covenant on Civil and Political Rights (ICCPR)*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

5. The Bill is discriminatory and rather than persecute the homosexuals in our society, the State should be trying to find ways to help them reform.

(R.V.P)

In the wise ruling of Justice Mulenga of the Supreme Court "in the case of Andrew Mwenda and Charles Onyango Obbo Vs The Attorney General, he states that, The duty to protect those we do not agree with is a duty we have over and above protecting those that we agree with.

"if there is any principle of the Constitution that more imperatively call for attachment than any other it is the principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate"

In the same spirit, a Child who has been a victim of this recruitment, funding and other acts of homosexuality that this house is attempting to legislate against should be protected rather than sending him/her off to rot in Prison for the rest of his/her life.

6. The Laws in Uganda as they are currently already prohibit homosexuality and the new law does not add any significant value. *The 1995 Constitution of the Republic of Uganda is already very clear on the matter of homosexuality and in Article 31 (2a) prohibits marriage between persons of the same sex.*

Sections 145 – 150 of the Penal Code Act are also very clear against homosexuality and other unnatural acts.

For example, in the Penal Code Act it is provided as follows;

"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."

3.0 Recommendation

The Members recommend that the Bill be rejected by this House and no further consideration of the same be done.

**PROPOSED AMENDMENTS BY SOME MEMBERS OF THE
COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS TO THE
ANTI-HOMOSEXUALITY BILL, 2009**

1 - Clause 1 Interpretation

Clause 1 is deleted.

Justification

- There is nothing to provide for as all offences created by this Bill are already catered for in the Laws of Uganda specifically in the 1995 Constitution and the Penal Code Act.

2 - The offence of homosexuality

Clause 2 is deleted.

Justification

- It's already provided for (together with other unnatural acts) in the Penal Code Act in Sections 145 - 150
- The Constitution in Article 31 (2a) already prohibits same sex marriages Matters of the bedroom should not be subject to legislation

3. - Aggravated Homosexuality

Clause 3 is deleted.

Justifications

- 3 (1a) It's already provided for (together with other unnatural acts) ~~in the~~ in Sections 145 - 150 of the Penal Code Act
- 3 (1b) It is not an offence to be a person living with HIV.
- 3 (1c) Incest is already prohibited by section 149 of the Penal code Act.
- 3 (1d) It is difficult to prove that there was no consent even where the alleged offender is a person holding authority over the alleged victim.
- 3 (1e) This sub clause is discriminatory against PWDs. It is possible for a person with disability to consent.
- 3 (1f) How serial offenders are dealt with is already provided for in the Magistrates Courts Act, CAP 16.
- 3 (1g) The penal code captures the use.
- 3 (2) This provision ~~is~~ is discriminatory and drives underground the people who are living with HIV and are supposed to access medical care.

Clause 4 – Attempt to Commit Homosexuality

The Members agree with the amendment of the Committee for the deletion of the Clause.

Further Justification

- Attempt to commit homosexuality is hard to prove and may result in absurdities.
- It will open a door for victimization since it can be used to settle personal scores.

Clause 5 – protection, assistance and payment of compensation

Clause 5 is deleted.

Justification

- -It is difficult to determine who a victim of homosexuality is.
- It is open to abuse. The courts already have discretion to give awards/reparation to victims.

Clause 6 – Confidentiality

Clause 6 is deleted.

Justification

- The right to privacy is already provided for in the 1995 Constitution and the courts already have the discretion to decide which cases may heard in camera
- Clause 6(3) is an infringement on the freedom of the press and right to access information.
- The right to the privacy of the victim has to be weighed against the right of the accused person to be availed all the incriminating evidence brought against him/her.

Clause 7: Aiding and abetting homosexuality

Clause 7 is deleted.

Justification

- The offence of aiding and abetting is difficult to prove as provided in this clause.
- In (2) if procurement is with another adult's consent, it is not wrong.

Clause 8: conspiracy to engage in homosexuality

Clause 8 is deleted.

Justification

- It is provided for under the penal code Act in Section 390.

Clause 9: procuring homosexuality by threats e.t.c

Clause 9 is deleted.

Justification

- -Its already provided for in the section 145 of the Penal Code Act.
- -Homosexuality is Homosexuality regardless of how it is procured and it should be punished as such. It is already illegal anyway.

Clause 10: Detention with intent to commit Homosexuality

Clause 10 is deleted

Justification

- Its already provided for under Section 134 of the Penal Code Act.

Clause 11: Brothels

Clause 11 is deleted

Justification

- Its already provided for under section 134 of the Penal Code Act

Clause 12: Same Sex Marriage

Clause 12 is deleted

Justification

- It is already catered for under Article 31(2a) of the 1995 Constitution.

Clause 13: Promotion of Homosexuality

Clause 13 is deleted

Justification

- There is no legal basis for one to claim that they are promoting homosexuality which is already prohibited by the 1995 Constitution.
- This does not add any value.

- Funding or sponsoring homosexuality and related activities is aiding and abetting which is already a crime under the Penal Code Act. Further, homosexuality is already a crime under the 1995 Constitution as amended in 2005.

Clause 14: Failure to disclose the offence

Clause 14 is deleted.

Justification

- The offence will create absurdities and the provision will be too hard to implement.

Clause 15: Jurisdiction

Clause 15 is deleted.

Justification

- The court should is already defined in the Penal Code Act.

Clause 16: Extra- Territorial Jurisdiction

Clause 16 is deleted.

Justification

- The practical enforcement of the provision will be difficult.

Clause 17: Extradition.

Clause 17 is deleted.

Justification

- The practical enforcement and implementation of the provision will be difficult.

Clause 18: Nullification of inconsistent international treaties, protocols, declarations and conventions

Clause 18 is deleted.

Justification

- It is not necessary to put such a provision in the bill.
- Deleted with the same reason as the Committee.

Schedules

The Schedules of the Bill are Deleted.

Justification

- There is nothing more to be provided for.

Long title of the Bill

The long title of the bill is deleted.

Justification

- The bill is obnoxious.

Conclusion

The Signatories to this minority report will raise the issues pertaining to protection of children against recruitment into homosexuality with the Committee on gender, Labour and Social Development which is currently considering the bill on Children.

The Proposals to protect children are as follows;

- (a) *It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:*
 - a. *Solicit a minor child under the age of eighteen (18) years to participate in a sexual act;*
 - b. *Cause or have sexual contact with such minor child, not amounting to lewd conduct.;*
 - c. *Make any photographic or electronic recording of such minor child; or*
 - d. *Induce, cause or permit a minor child to witness an act of sexual conduct.*
- (b) *For the purposes of this section "solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.*
- (c) *For the purposes of this section "sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.*
- (d) *For the purposes of this section "sexual conduct" means human masturbation, sexual intercourse, sadomasochistic abuse, or any*

touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(e) Any person guilty of a violation of the provisions of this section shall be imprisoned for a period not to exceed twenty-five (25) years.

I beg to report.

SIGNATURES

NO.	NAME	CONSTITUENCY	PARTY	SIGN
1.	Hon. Otada Sam Amooti	Kibanda County	Indpt	
2.	Hon. Fox Odoi Oywelowo	West Budama North	Indpt	
3.	Hon. Katuntu Abdu	Bugweri County	FDC	
4.	Hon. Ayena Krispus	Oyam North	UPC	