

APRIL 20, 2009

THE ANTI - HOMOSEXUALITY BILL, 2009

MEMORANDUM

1. The Principle

The object of this Bill is to establish a comprehensive legislation to protect the traditional family by prohibiting (i) any form of sexual relations between people of the same sex; and (ii) the promotion or recognition of such sexual relations in public institutions as healthy, normal or an acceptable lifestyle, including in the public schools, through or with the support of any government entity in Uganda or any non-governmental organization inside or outside the country. Research indicates that the homosexuality has a variety of negative consequences including higher incidences of violence, sexually transmitted diseases, and use of drugs. The higher incidence of separation and break-up in homosexual relationships also creates a highly unstable environment for children raised by homosexuals through adoption or otherwise, and can have profound psychological consequences on those children. In addition, the promotion of homosexual behavior undermines our traditional family values.

Given Uganda's historical, legal, cultural and religious values which maintain that the family, based on marriage between a man and a woman is the basic unit of society. This Bill aims at strengthening the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family. These threats include: redefining human rights to elevate homosexual and transgender behavior as legally protected categories of people.

This legislation is aimed at halting the advance of the "sexual rights" agenda, which seeks to establish additional legally protected classes based on sexual preferences and behaviors, as well as claims that people have rights based on these preferences and behaviors. Sexual rights activists have created new euphemisms to promote this agenda such as "sexual orientation," "gender identity," "sexual minorities" and "sexual rights."

This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic and that people who experience this mental disorder can and have changed to a heterosexual orientation. It also recognizes that because homosexuals are not born that way, but develop this disorder based on experiences

and environmental conditions, it is preventable, especially among young people who are most vulnerable to recruitment into the homosexual lifestyle.

The Republic of Uganda needs comprehensive and enhanced legislation to protect our cultural, legal, religious, and traditional family values against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity on Uganda.

There is also need to protect our children and youths who are made vulnerable to sexual abuse and deviation as a result of cultural changes, uncensored information technologies, parentless child developmental settings and increasing attempts by homosexuals to raise children in homosexual relationships through adoption, foster care, or otherwise.

2. Defects in the existing law.

This legislation is designed to fill the gaps in the provisions of the constitution of Uganda and the penal code Act by establishing that, in Uganda, marriage is only between a man and a woman and that no other sexual unions or relationships will be recognized by the government.

The Penal Code Act (Cap 20) does not directly address this issue of homosexuality. It instead talks about unnatural offenses under section 145. This section does not specifically talk about homosexuality as an offense. It does not even have any reference to homosexuality. Not surprisingly the Act does not have a definition for homosexuality in the definition section.

The Penal Code Act does not explicitly address the issue of same sex unions and gender identity disorders which are damaging the social fabric of our nation at an alarming rate. There are no provisions in the Penal Code Act penalizing the procurement, promotion, disseminating literature and other forms of report for the offenses of homosexuality hence the need for legislation to provide for charging, investigating, prosecuting, convicting and sentencing of offenders on the above law. There is need for equal treatment of man and woman before the law in regard to homosexual offenses.

This legislation comes to complement and supplement the provisions of the Constitution of Uganda and the Penal Code Act by not only criminalizing same sex marriages but same -sex sexual acts and other related acts.

3.1. The objectives of the Bill

The objectives of the Bill are:

- (a) To protect marriage as that only between a man and a woman in Uganda;
- (b) To prohibit homosexual behavior and related practices in Uganda as they constitute a threat to the traditional family;
- (c) To safeguard the health of Ugandan citizens from the negative effects of homosexuality and related practices;
- (d) To establish progressive legislation protective of the traditional family that can serve as a model for other countries;
- (e) To prohibit ratification of any international treaties, conventions, protocols and declarations which are contrary or inconsistent with the provisions of this Act;
- (f) To ensure that no international instruments to which Uganda is already a party can be interpreted or applied in Uganda in a way that was never intended at the time the document was created;
- (e) To withdraw from any international agreements to which Uganda already is a party, or file reservations to them, which are re-interpreted to include protection for homosexual behavior, or that promote same-sex marriage, or that call for the promotion or teaching about homosexuality as being healthy, normal, or an acceptable lifestyle choice, or that seek to establish sexual behavior, sexual orientation, or gender identity, or sexual minorities as legally protected categories of people; and
- (f) To prohibit Uganda from becoming a party to any new international instruments that expressly include protection for homosexual behavior; promote same-sex marriage; call for the promotion or teaching about homosexuality or homosexual relations as being healthy, normal, or an acceptable lifestyle choice; and/or seek to establish sexual behavior, sexual orientation, gender identity or sexual minorities as legally protected categories of people

3.2. Part 1 of the Bill incorporating clauses 1 and 2 provides for Preliminary matters relating to commencement and Interpretation of the words and phrases used in the Bill

3.3. Part II of the Bill incorporating clause 3 to clause 6 prohibits homosexuality and related practices by introducing the offences of engaging in homosexuality, and the penalties of imprisonment upon conviction. This part also creates offences and penalties for acts that promote homosexuality, failure to report the offence and impose a duty on the Community to report Suspected Cases of homosexuality.

3.4. Part III of the Bill incorporating of clause 7 to clauses 9 provides for the jurisdiction of Ugandan Courts in Case of Homosexuality, including extra territorial Jurisdiction.

3.5. Part IV of the Bill incorporating clauses 10 and 11 provides for miscellaneous provisions on International Treaties, Protocols, Declarations and Conventions and the Minister to make regulations to give effect to the Act.

4. Schedule 1 of the Bill gives the value of the currency.

Hon. David Bahati
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Kabale**

ARRANGEMENT OF CLAUSES

PART I -PRELIMINARY

Clause.

1. Commencement
2. Interpretation

PART II – PROHIBITION OF HOMOSEXUALITY

3. Offence of Homosexuality
4. Aggravated Homosexuality
5. Promoting Homosexuality
6. Failure to report offence

PART III – JURISDICTION

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Schedule 1

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PART I - PRELIMINARY

1 – Commencement

This Act shall come into force upon publication in the Gazette.

2 - Interpretation

In this Act, unless the Context otherwise requires –

“Gender” means male or female;

“Homosexuality” means same gender or same sex sexual acts;

“Homosexual” means a person who engages or attempts to engage in same gender sexual activity.

“Minister” means the Minister responsible for Ethics and Integrity.

“Sexual act” means –

(a) Stimulation or penetration of a vagina or mouth or anus or any part of the body, however slight of any person by a sexual organ;

(b) The use of any object or organ by a person on another person’s sexual organ or anus or mouth;

“Sexual organ” means-a vagina or penis.

PART II: PROHIBITION OF HOMOSEXUALITY AND RELATED PRACTICES

3. Prohibition of homosexuality

(1) Homosexuality is prohibited.

(2) Any person who engages in homosexuality contrary to sub-section (1) commits an offense and on conviction is liable to a fine not exceeding 500 currency points or imprisonment not exceeding 10 years or both.

4. Aggravated homosexuality

(1) Any person who commits the offense mentioned in section 3 above with another person who is below the age of 18 years in any of the circumstances specified in sub-section (2) of this section commits the offense and on conviction is liable to suffer death.

(2) The circumstances referred to in sub-section (1) are as follows: -

- (a) Where the person against whom the offense is committed is below the age of 14;
 - (b) Where the offender is infected with HIV;
 - (c) Where the offender is a parent or guardian or a person in authority over, the person against whom the offense is committed;
 - (d) Where the victim of the offense is a person with disability; or
 - (e) Where the offender is a serial offender.
- (3) Any person who attempts to commit the offense of homosexuality with another person below 18 years in any of the circumstances specifies in sub-section (2), commits an offense and is liable on conviction to imprisonment for life.
- (4) Where a person is charged with the offense under this section, that person shall undergo a medical examination to ascertain his or her HIV status.
- (5) Any person who without the consent of an adult victim being under their authority or not commits the offense mentioned in this section

5. Promotion of homosexuality

- (1) Any person who,
- (a) Participates in production, trafficking, procuring, marketing, broadcasting, disseminating, publishing homosexual materials;
 - (b) Funds or sponsors homosexuality and related activities
 - (c) Offers premises and other fixed or movable assets
 - (d) Uses electronic devices which include internet, films, mobile phone and
 - (f) Who acts as an accomplice or attempts to legitimize or in any way abets homosexuality and related practices
- Commits an offense and on conviction is liable to a fine of five thousand currency points or imprisonment of atleast five years or both.
- (2) Where the offender is a corporate body or a business or an association or a Non-governmental organization conviction its Certificate of Registration shall be cancelled and the Director(s) or proprietors or promoter(s) shall be criminally liable.

6. Failure to report the offense

Any person who being aware of the commission of any offense under this Act omits to report the offense to the relevant authorities within 24 hours commits an offense and on conviction is liable to a fine not exceeding five hundred currency points or imprisonment not exceeding six months year.

PART IV -JURISDICTION

7. Jurisdiction.

Save for aggravated homosexuality which shall be tried by the High Court, other offenses under this Act shall be tried by the Magistrates Court.

8. Extra – Territorial Jurisdiction.

This Act shall apply to offences Committed outside Uganda Where-

- (1) A person who, while being a citizen of, or permanently residing in Uganda, Commits an act Outside Uganda, which act would Constitute an offence had it been Committed in Uganda.
- (2) The offence was committed partly outside and or partly in Uganda.

9. Extradition.

A person charged with offence under this Act shall be liable to extradition under the existing Extradition laws.

PART V-MISCELLANEOUS

10. Nullification of inconsistent International treaties, protocols, declarations and conventions.

(1). Any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in this Act, are null and void to the extent of their inconsistency.

(2). The foreign definitions of “sexual orientation”, “sexual rights”, “sexual minorities”, “gender identity” shall not be used in anyway to legitimize homosexuality, gender identity disorders and related practices in Uganda.

11. Regulations.

The Minister may by statutory instrument make regulations to effect implementation of the provisions of this Act, and Promote the objects of this Act.

SCHEDULE 1 CURRENCY POINT

One currency point is equivalent to twenty thousand Shillings.