

# ANALYSIS



## SEXUAL OFFENCES BILL

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### WHERE DID IT ALL START

In 2000, the Uganda Government introduced the Sexual Offences (Miscellaneous Amendment) Bill intending to amend various legislations on sexual offences. The next citing of the law was 2012 when the Uganda Women Parliamentary Association (UWOPA) spearheaded the process calling The Sexual Offences Bill.

Later, the consultations between the Ministry of Justice and Constitutional Affairs stalled for various reasons. MP Amoding Monica introduced the Bill in 2015 as a private members bill under the UWOPA umbrella (a private member's Bill means that the Bill is not a government-sponsored Bill).

In 2018, public consultations were held following Jacob Oulanyah, the Deputy Speakers suggestions; in 2019, the Bill was sent to the Legal and Parliamentary Affairs Committee. It took 20 years of the Bill morphing itself into what is now the Sexual Offences Bill which was passed on 3rd May 2021. The Bill still awaits signing by the President of the Republic of Uganda (the President has 30 days to sign the Bill in to law) for it to be considered a law and implemented by the different institutions like the Ministry of Justice and Constitutional Affairs and Uganda Police Force.

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### KEY PROVISIONS

Clause 11 of the Bill prohibits sexual acts “contrary to the order of nature”, defining such to include anal sex, using objects for penetration, and sexual acts between persons of the same gender.

The offence, titled “Unnatural Offences”, is an expansion of section 145 of the Penal Code Act, which is widely cited and used to criminalise lesbian, gay, bisexual and transgender (LGBT) persons in Uganda.

The criminalisation of sexual acts between consenting adults who are of the same sex clearly targets LGBT persons. The effect is that LGBT persons, who are already marginalised due to homophobic societal attitudes, are further discriminated against by the law.

Moreover, the same provision includes a prohibition against sexual acts with animals, thereby equating such acts to consensual same-sex relations. This is dehumanising to LGBT persons, who are often reduced to the sexual acts they are presumed to be engaged in rather than the full breadth of their lives.

This clause also criminalises an “attempt” to perform sexual acts between persons of the same gender. This provision is likely to be used by law enforcement agencies to raid events, offices, and homes of LGBT persons as it has been in the past.

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Clause 3 of the Bill, which provides for the offence of rape, and clause 14 of the Bill, which provides for the offence of aggravated defilement, include HIV/AIDS as an aggravating factor and require that anyone suspected of this offence is subjected to a mandatory HIV test.

This framing contributes to the stigma against persons living with HIV, as it casts them as worse sex offenders. The distinction between people living with HIV and others is discrimination.

This provision is also concerning because gay men, men who have sex with men (MSM) and transgender persons are at a higher risk of contracting HIV due to systemic health inequities that exclude and marginalise them.

The Bill further prohibits the operating of brothels and the practice of “prostitution” and “engaging in a sexual act with a prostitute”. This provision criminalises sex workers, who already live on the margins of society, and puts LGBT persons who are also sex workers at an even higher risk of police violence and incarceration.

The criminalisation of sex work further pushes LGBT persons underground where they are less likely to be protected by the law for fear of incarceration. In fact, the criminalisation of the clients and or partners of sex workers is likely to make their working conditions even more precarious as the clients try to evade the law.

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### CONCLUSION

Lastly, the Bill creates a Sex Offender Register which is maintained by the National Identification and Registration Authority (NIRA). Since LGBT persons, persons living with HIV, and sex workers are criminalised, it follows that they are at a high risk of being included on this register for conduct that should not be criminalised.

This will jeopardise their lives by further marginalising them and reducing their employment opportunities as persons on the Sex Offenders Register are required to disclose this status to potential employers where their work entails caring for children. This framing also further entrenches homophobic attitudes that equate same-sex conduct to paedophilia or cast LGBT persons as inherently harmful to children.

Whereas there is no legislation that pronounces Uganda as “a Judeo-Christian morality country”, legislators keep refereeing to their religions and appealing to an ambiguous morality when drafting legislation. The result is bills like the Sexual Offenders Bill which dehumanise a section of Ugandans living on the margins of society like sex workers, HIV+ persons and LGBT persons. Morality is not a clause or a section in the Ugandan Constitution which is the supreme law of the land.

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