

Uganda Joint Christian Council

Special Committee Recommendations on the Anti-Homosexuality bill. 2009

INTRODUCTION

We take this opportunity to extend our appreciation to the presidential and legal affairs committee of the Parliament of Uganda and Parliament as a whole for the work being done in the service of our country. We thank the Committee for considering UJCC as one of the stakeholders to make a contribution to this Bill. We consider this an important gesture of commitment on the part of the Parliament to involve a broad spectrum of the Ugandan population, including faith-based organizations such as ours to participate in the decision making and legislative process of Parliament.

We consider the Anti-Homosexuality Bill of 2009. We note the object of this Bill is to establish a comprehensive consolidative legislation to protect the traditional family by prohibiting;

- i) Any form of sexual relations between persons of the same sex and;
- ii) The promotion or recognition of such sexual relations in public institutions and other places through or with the support of any Government entity in Uganda or any non-governmental organization inside or outside Uganda.

It also aims at strengthening the nations capacity to deal with emerging internal and external threats to the traditional heterosexual family and to protect the children and youth of Uganda who have become vulnerable to sexual abuse and deviation, as a result of cultural changes, uncensored information technologies, parent less child development settings and increasing attempts by homosexuals to raise children in homosexual relationships.

We have the following comments and recommendations to make;

1. Definition of "Authority"
 - a. It should be reformulated to include police, military or anyone or institution related to security.
2. Aggravated Homosexuality
 - a. S.3 provides for aggravated homosexuality. Under S.3 (2) it is stated that a person who commits the offense of aggravated homosexuality shall be liable on conviction to suffer death. **UJCC is against the death penalty but stands for life imprisonment of 20 years. The death penalty is so severe and yet many of these are victims of sodomy. The bill should take care of victims of sodomy. We are of the opinion that the penalty should be 20 years in a rehabilitation facility. Rehabilitation to be given by Faith-based organizations in partnership with government subject to review should be included.**
 - b. Focus must be clearly on the two protected classes of children and the handicapped. To avoid ambiguity other sections of offenders such as people with HIV/AIDS, abuse of authority, repeat offenders must be clearly interpreted where the victims are **children** or the **handicapped**.
 - c. The handicapped must also be defined to clearly mean those whose disabilities
3. Attempt to Commit Homosexuality

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- a. S.3 (2) provides that a person who attempts to commit the offense of aggravated homosexuality commits an offense and is liable on conviction to imprisonment for life.
4. Protection, Assistance and Payment of Compensation to Victims of Homosexuality
 - a. S.5 (4) should be amended to read; The amount of compensation shall be determined by court and the court shall take into account the extent of harm suffered by victims of the offense, the degree of force used by the offender and medical and other expenses incurred and/or to be incurred by the victim as a result of the offence. The words and/or to be incurred should be added to make liability continuous in case the injuries caused persist. Some of the victims suffer irreparable damage that might not be seen at the time of compensation.
5. Confidentiality
 - a. S.6 (1) Provides that at any stage of the investigation or trial of an offense under this ACT.. law enforcement officers, prosecutors, judicial officers and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim.
 - b. The word investigation should be deleted, after judicial officers; human interveners should be added. Human interveners are people or professionals who help victims to realize their problems and seek intervention, these include but are not limited to psychologists, counselors, spiritual counselors, religious leaders and parents. The paragraph should therefore read as follows; at any stage of the trial of an offence under this Act, law enforcement officers, prosecutors, judicial officers, human interveners and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim.
6. Aiding and Abating Homosexuality
 - a. S.7 provides that a person convicted under this section is liable to 7 years imprisonment. This should be reduced to 5 years.
7. Conspiracy to Engage in Homosexuality
 - a. S.8 provides that a person convicted under this section shall be liable to imprisonment for 7 years. It is our opinion that this should also be reduced to 5 years.
8. Procuring Homosexuality
 - a. S.9 provides for procuring homosexuality by threats or otherwise. Paragraph 1 (b) should be amended to read as follows;
 1. A person who;
 - (b) by false pretenses or false representations procures any woman or man to have unlawful carnal connection with any person of the same sex, either in Uganda or elsewhere shall have committed an offense and shall be liable to imprisonment;
 - i) for 10 years where the procured is of minor years,
 - ii) And for 5 years if the victim is over 15 years of age.

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Paragraph 2 provides for corroboration of evidence. It is our opinion that it should be deleted because process of adducing evidence is provided for in the Evidence Act.

9. Same Sex Marriage

- a. S.12 criminalizes same sex marriage but this has already been provided for by the Marriage Act and the Penal Code Act. We suggest that this provision be replaced with the following: A person who purports to solemnize a same sex marriage commits a felony and shall be liable to 5 years imprisonment.

10. Promotion of Homosexuality

- a. S.12 (1) provides for promotion of homosexuality by the acts listed in (a) to (e) and ends by stating;

... commits an offense and is liable on conviction to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment. It is our opinion that five thousand currency points for the offenses listed is too much, it should be two thousand five hundred currency points.

The statement also ends with both fine and imprisonment, the fine and imprisonment should be deleted. Therefore it should read as follows:

...commits an offense and is liable on conviction to a fine of two thousand five hundred currency points or imprisonment of a minimum of five years and a maximum of seven years or both.

Paragraph 2 should be amended to include a fine of five thousand currency points and should therefore read as follows;

... where the offender is a corporate body or a business or an association or a non-governmental organization, on a conviction its certificate of registration shall be cancelled and the director(s) or proprietor(s) or promoter(s) shall be liable on conviction to imprisonment for seven years or a fine of five thousand currency points or both.

11. Failure to Disclose the Offense

- a. S.14 provides for failure to disclose the offense. The currency provision should be paragraph 1 and those the following should be added as paragraph 2.

This paragraph should read as follows: Where it is proved that the employer of the offender has had knowledge of the offense but has deliberately kept quiet over the matter, or has aided or abated the offense, he will be liable to compensate the victim. This should be added because in most of the cases the victims have been sodomized by their bosses or supervisors and when they report to the authorities, they are told to keep quiet. This provision will be able to check employers and all those in senior positions of authority.

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- b. Consideration must be made to balance the need to protect the victims of homosexuality and giving confidentiality to those who are primary providers of care and guidance such as parents and counselors.

12. Extradition

- a. S.17 provides extradition. It should also provide for deportation of foreign citizens who cannot be tried by Ugandan laws to their countries of origin.

13. Nullification of Inconsistent International treaties, Protocols, Declarations and Conventions

- a. S.18 should be deleted and we suggest that it is replaced with; any law which is inconsistent with the constitution of Uganda shall be null and void.

Another paragraph on Uganda's right to reserve its right to ratify international instruments that are inconsistent with our laws should be added.