

THE ANTI HOMOSEXUALITY ACT, 2013,

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THE ANTI HOMOSEXUALITY ACT, 2013,

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.

BE IT ENACTED by Parliament as follows:

PART I — PRELIMINARY.

1. Interpretation.

In this Act, unless the context otherwise requires –

“authority” means having power and control over other people because of your knowledge and official position; and shall include a person who exercises religious, political, economic or social authority;

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

Court means the Chief Magistrates Court;

“currency point” has the value assigned to it in the Schedule to this Act;

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

“felony” means an offence which is declared by law to be a felony or if not declared to be a misdemeanor is punishable without proof of previous conviction, with death or with imprisonment for 3 years or more.;

“HIV” means the Human Immunodeficiency Virus;

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

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

“Minister” means the Minister responsible for ethics and integrity;

“misdemeanor” means an offence which is not a felony;

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Deleted: “bisexual” means a person who is sexually attracted to both males and females; -

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Deleted: “gay” means a male person who engages in sexual intimacy with another person of the same sex; -

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Deleted: “gender” means male or female; -

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Deleted: “lesbian” means a female who engages in sexual intimacy with another female;

“serial offender” means a person who has previous convictions of the offence of homosexuality or related offences;

“sexual act” includes –

- (a) physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another’s breast, vagina, penis or anus;
- (b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ;
- (c) the unlawful use of any object or organ by a person on another person’s sexual organ or anus or mouth;

“sexual organ” means a vagina, penis or any artificial sexual contraption;

“touching” includes touching—

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything;

and in particular includes touching amounting to penetration of any sexual organ. anus or mouth.

“victim” includes a person who is involved in homosexual activities against his or her will.

PART II — HOMOSEXUALITY AND RELATED PRACTICES.

2. The offence of homosexuality.

(1) A person commits the offence of homosexuality if-

- (a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;
- (b) he or she uses any object or sexual contraption to penetrate or stimulate sexual organ of a person of the same sex;
- (c) he or she touches another person with the intention of committing the act of homosexuality.

(2) A person who commits an offence under this section shall be liable on conviction to imprisonment for life.

3. Aggravated homosexuality.

(1) A person commits the offense of aggravated homosexuality where the

- (a) person against whom the offence is committed is below the age of 18 years;

- (b) offender is a person living with HIV;
- (c) offender is a parent or guardian of the person against whom the offence is committed;
- (d) offender is a person in authority over the person against whom the offence is committed;
- (e) victim of the offence is a person with disability;
- (f) offender is a serial offender, or
- (g) offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy overpower him or her so as to there by enable any person to have unlawful carnal connection with any person of the same sex,

(2) A person who commits the offence of aggravated homosexuality shall be liable on conviction to suffer imprisonment for life.

(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

4. Attempt to commit homosexuality.

(1) A person who attempts to commit the offence of homosexuality commits a felony and is liable on conviction to imprisonment seven years.

(2) A person who attempts to commit the offence of aggravated homosexuality commits an offence and is liable on conviction to imprisonment for life.

5. Protection, assistance and payment of compensation to victims of homosexuality.

(1) A victim of homosexuality shall not be penalized for any crime committed as a direct result of his or her involvement in homosexuality.

(2) A victim of homosexuality shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the criminal proceedings.

(3) Where a person is convicted of homosexuality or aggravated homosexuality under sections 2 and 3 of 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 or psychological harm caused to the victim by the offence.

(4) The amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence. the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence.

6. Confidentiality.

(1) At any stage of the Investigation or trial of an offence 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.

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(2) For the purpose of subsection (1), in cases involving children and other cases where the court considers it appropriate. proceedings of the court shall be conducted in camera.

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(3) Any editor or publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry or any person utilizing trimedia facilities or information technology who publishes or causes the publicity of the names and personal circumstances or any other information tending to establish the victim's identity without authority of the victim or court commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points.

7. Aiding and abating homosexuality

A person who aids, abets, counsels or procures another to engage in acts of homosexuality commits an offence and is liable on conviction to imprisonment for seven years.

8. Conspiracy to engage in homosexuality.

A person who conspires with another to induce another person of the same sex by any means of false pretence or other fraudulent means to permit any person of the same sex to have unlawful carnal knowledge of him or her commits an offence and is liable on conviction to imprisonment for seven years.

9. Procuring homosexuality by threats

(1) A person who—

(a) by threats or intimidation procures or attempts to procure any woman or man to have any unlawful carnal knowledge with any person of the same sex commits an offence and is liable on conviction to imprisonment of seven years.

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(b) by false pretences or false representations procures any woman or man to have any unlawful carnal connection with any person of the same sex commits an offence and is liable on conviction to imprisonment of seven years.

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(2) A person shall not be convicted of an offence under this section upon the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

10. Detention with intent to commit homosexuality.

A person who detains another person with the intention to commit acts of homosexuality with him or herself or with any other person commits an offence and is liable on conviction for seven years.

11. Brothels.

(1) A person who keeps a house, room, set of rooms or place of any kind for the purposes of homosexuality commits an offence and is liable on conviction to imprisonment for seven years.

(2) A person 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 man or woman to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man or woman of the same sex whether such carnal knowledge is intended to be with any particular man or woman generally, commits a felony and is liable on conviction to imprisonment for five years.

12. Same sex marriage.

1. A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable on conviction to imprisonment for life.

2. A person or institution commits an offence if that person or institution conducts a marriage ceremony between persons of the same sex and shall on conviction be liable to imprisonment to a maximum of seven years for individuals or cancellation of licence for an institution.

13. Promotion of homosexuality.

(1) A person who –

- (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing pornographic materials for purposes of promoting homosexuality;
- (b) funds or sponsors homosexuality or other related activities;
- (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality;
- (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality and;
- (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices;
- (f) commits an offence and is liable on conviction to a fine of not more than one thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment.

(2) Where the offender is a corporate body or a business or an association or a non-governmental Organization, on conviction its certificate of registration shall be cancelled and the director or proprietor or promoter shall be liable on conviction to imprisonment for seven years.

PART IV — JURISDICTION

17. Extradition.

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

PART V — MISCELLANEOUS.

19. Regulations.

The Minister may, by statutory instrument, make regulations generally for better carrying out the provisions of this Act.

SCHEDULE

One currency point in equivalent to twenty thousand shillings.

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