



Memorandum and Comments on the Sexual Offences Bill, 2024

Prepared by

Bukedi Rural and Urban Community Initiatives (BRUCI).

Introduction

Bukedi Rural and Urban Community Initiatives (BRUCI) is a national organization that was founded with the aim of empowering rural and urban communities for self-reliance. BRUCI is an indigenous organisation headquartered in Tororo District, targeting a cross-section of beneficiaries who include vulnerable children, adolescents, youth, vulnerable adults (women and men), persons living with sickle cells, HIV, Key population, persons with disability in hard to reach and underserved communities. BRUCI uses bottom-up and holistic empowerment approaches to build community led groups that focus on individual behavior change amongst vulnerable communities for sustainable livelihood transformation. BRUCI's core programme areas include; Democracy and Human Rights; Disaster Risk Reduction and Environmental Protection; Community Health and Education; Smart Agriculture and Economic Empowerment; Resilient and Sustainable Livelihood; Research, Innovation and Capacity Building.

BRUCI's vision is: "A self-reliant, sustainable and holistically transformed Community" and mission is: "Building an empowered community through capacity building, economic empowerment, smart agriculture, linkages and networking for sustainable livelihoods and community-centered development."

BRUCI has carried out an assessment of the Sexual Offences Bill 2024. Whereas the Bill is well-intentioned and provides several good reforms for the marriage and domestic relations sector in Uganda, it has some issues that may potentially be unconstitutional and could violate human rights, especially women's rights. In contrast, others may be difficult to enforce. Below, we provide our assessment and recommendations on areas we feel need to be addressed by parliament before the Bill is passed.

Key concerns and recommendations

Clause 1: Definition of "online platforms"

The definition lists particular platforms as the only online platforms. This may not be inclusive, and more platforms could be developed in future. This might mean those not listed are not covered by the law.

Since it is difficult to list all the platforms that exist, and exclusion of the platforms suggests that they are not covered by law. The definition needs to be broad without listing the types.

Recommendation

Replace the definition of online platforms with

“on-line platform” means a computer-based system that facilitates communication between two or more persons”

Justification

For clarity

Clause 5: Sexual assault

Whereas the clause is important in as far as it provides for sexual assault without consent. The ingredients of the offense are a person coming into contact with the sexual organs of another without consent. (Under subclause (a)). However, there are situations where a person can touch another’s sexual organs for lawful purposes such as treatment, and such cases can happen when a person is unable to consent or has not consented, for example, in cases of treatment.

Recommendation

The clause should be redrafted to provide for lawful and unlawful contact, and only unlawful contact should be made a crime.

Redraft clause 5(1) to read as

A person who, without lawful excuse –

Justification

1. For clarity
2. To ensure cases such as the treatment of a person without consent of the very person can be conducted without committing a crime.

Clause 6: Indecent exposure

Whereas we understand the mischief that the law tries to cure when it comes to indecent exposure, making indecent exposure a crime may go against the freedom of expression guaranteed under Article 29 of the Constitution. Free expression goes beyond verbal communication, and making it a crime is criminalizing such a right.

The clause undermines the development of art and culture, including African cultures where such exposure can be part of beliefs and religion.

Recommendation

Remove the criminal aspect of indecent exposure and make it actionable in court. This will ensure those not happy with the exposure can go to court and get relief without the person being imprisoned for expressing themselves.

Replace the words ***“commits an offense and is liable, on conviction, to imprisonment for three years.”*** Appearing right after clause 6(1)(ii) with

“Commits a civil wrong and is liable to pay damages to the aggrieved party”

Introduce a new sub-clause to read as follows.

“in determining the damages, court shall consider the age of the person, the antecedents and nature of the injury caused”

Delete clause 6(4)

Justification

To align the Bill with Article 29 of the constitution and other developments in the areas of freedom of expression

Clause 7: Indecent communication

Whereas we appreciate the mischief under clause 7, we are of the view that communication should not be a crime. However, persons who commit indecent communication should face civil punishment and pay damages to those they injure. Criminalizing communication goes against the spirit of Article 29 of the Constitution.

Recommendation

Replace the provisions that provide for imprisonment with payment of damages to persons affected.

Justification

To align the Bill with Article 29 of the constitution

Clause 8(2) Sexual harassment

The clause provides that it is immaterial if a person consented to sexual advances. The making of consent illegal or immaterial in this provision goes against Article 31 of the Constitution, which provides that men and women of 18 years and above are free to start and found a family. It also goes against Article 29, which provides for freedom to associate. Where adults consent to a sexual act, it should not be made a crime.

Recommendation

Delete clause 8(2)

Justification

To align it to Articles 31 and 29 of the constitution.

Introduce a new clause 9 on Sextortion

Sextortion is on the rise in Uganda, and many people publish or threaten to publish people's private images so that they can be paid. Parliament should make a law to make sextorting illegal. A new clause 9 is suggested for this effect.

Recommendation

Insert a new clause 9 after clause 8 to read as follows

9. Sextortion

(1) Any person who intentionally distributes an image or video of an intimate body part or sex organ of another, publishes or distributes an image or video or graphical presentation of another while engaged in sex of some kind commits an offense and is liable on conviction to a fine not exceeding five hundred currency points or to imprisonment for a period not exceeding five years, or both.

(2) Any person who threatens to publish or distribute or publishes or distributes images, videos, or related material of a person and demands for financial or other benefits from another person commits an offense and is liable on conviction to a fine not exceeding five hundred currency points or to imprisonment for a period not exceeding five years, or both.

(3) Court may order for damages to be paid to a victim of publication, distribution, or threat to publish or share images or videos of a person under this section.

Justification

To provide for a crime of sextortion and prevent people who share or threaten to share intimate photos of others for financial or other benefits.

Introduce a new clause 10 on Voyeurism.

Voyeurism is an act where someone records or views another person's private parts or underwear without the consent of another. In Uganda, this has become common, especially during artistic performances where people record women's underwear and publish it online and in newspapers without consent of persons involved.

Recommendation

Clause 10: Unlawful recording of a person

(1) Any person who, without consent —

(a) operates equipment beneath the clothing of another person for purposes of viewing or recording the sexual organs of another;

(b) views or records sexual organs or underpants of another

in circumstances where the sexual organs or underwear would not otherwise be visible commits and is liable on conviction to a fine not exceeding five hundred currency points or to imprisonment for a period not exceeding five years, or both.

Justification

To provide for situations of unlawful recording or viewing persons

Clause 15: Incest

Whereas we understand the need to criminalize incest and related offences, it is important to appreciate the fact that such cases have a big impact on the family and could cause other social and psychological problems. For this reason, prosecution of such offenses normally requires consent by the DPP so that such considerations are made at a higher level before the case can go on.

Recommendation

Include recommendation by the DPP as a requirement for prosecution.

Justification

To avoid potential psychological and other problems and ensure cases are assessed at the highest level possible.

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