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# **KENYA NATIONAL ASSEMBLY**

**NINTH PARLIAMENT – FIFTH SESSION (2006)**

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**THE DEPARTMENTAL COMMITTEE  
ON  
ADMINISTRATION OF JUSTICE AND LEGAL  
AFFAIRS**

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**REPORT ON  
THE SEXUAL OFFENCES BILL, 2006**

Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

May, 2006

## **INTRODUCTION**

**Mr. Speaker Sir,**

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No. 151; its mandate pursuant to Standing Order 151(4) is:-

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- b) to study the programme and policy objectives of the Ministries and departments and the effectiveness for implementation;*
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);*
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) to investigate and inquire into all matters relating to all assigned Ministries and Departments as the may deem necessary, and as may be referred to them by he House or a Minister and;*
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee comprises:

- (i) Hon. Paul K. Muite, MP – Chairman
- (ii) Hon. Kenneth Marende, MP

- (iii) Hon. Jim Choge, MP
- (iv) Hon. Amina Abdalla, MP
- (v) Hon. Gideon Ndambuki, MP
- (vi) Hon. Moses Cheboi, MP
- (vii) Hon. Macharia Mukiri, MP
- (viii) Hon. Bifwoli Wakoli, MP

The Hon. Enock Kibunguchy and the Hon. Cecil Mbarire ceased being Members upon appointment as Assistant Ministers in December, 2005 while the Hon. Peter Owidi passed away in November, 2005.

**Mr. Speaker Sir,** On 4<sup>th</sup> April, 2006, the Sexual Offences Bill, 2005 was referred to this Committee after its First Reading. This Report contains the deliberations of a sub-committee which were subsequently adopted by the Committee. The Members of the sub-committee were:

- (i) Hon. Jim Choge, MP - Chairperson
- (ii) Hon. Amina Abdalla, MP
- (iii) Hon. Moses Cheboi, MP

The sub-committee held several sittings with Hon. Njoki Ndung'u, the mover of the Bill and a Mr. Gad Awuonda, Senior Parliamentary Counsel, Attorney General's Chambers.

**Mr. Speaker Sir,** the Committee unanimously agreed on the importance of the Bill which mainly seeks to amend and consolidate the law relating to sexual offences. Currently, such laws are scattered in various statutes. This, the Committee believes will provide clarity to the judiciary in prosecuting sexual offences which will in turn enhance protection of all persons from such offences.

In the recognition of the public outcry on the social menace by sexual offenders, the Committee supports the stiffer and enhanced penalties proposed by the Bill with a belief that this will deter such offences. Such penalties include life

imprisonment and longer prison terms without option of fine. For instance, the Bill provides for a minimum life imprisonment for those who deliberately transmit HIV or any other life threatening sexually transmitted diseases

**Mr. Speaker Sir,** The Committee further welcomes the proposed National policy framework to guide the implementation and administration of the Act in order to secure acceptable and uniform treatment of all sexual offences and provide civic education on the contents of the Bill.

**Mr. Speaker Sir,** We appreciate that this Bill introduces several new offences that require more clarity in definition and having studied the Bill, we have proposed some clearer definitions. Further, we have proposed several deletions where we have felt the provisions are already found elsewhere in the Law and where for purposes of clarity, this was required.

**Mr. Speaker Sir,** We appreciate that many of the provisions relating to evidences were intended to seal legal loopholes that inhibit successful prosecution of sexual offences. However, we also note that we have to safeguard the rights of the accused in line with the requirements of our constitution. We have therefore proposed some amendments to provide for this.

**Mr. Speaker Sir,** We have addressed the transitional provision and consequential amendments. We met several stakeholders and perused the Hansard record to consider concerns of Members of Parliament. Indeed, Members have raised pertinent issues which we have translated into proposed amendments.

**Mr. Speaker Sir,** finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, to lay this report on the Table of the House.

**SIGNED:.....**

**Hon. Kenneth Marende, MP**  
**Departmental Committee on Administration of Justice and**  
**Legal Affairs**

**DATE:.....**

## PROPOSED AMENDMENTS TO THE SEXUAL OFFENCES BILL, 2006

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### Long Title: Amendment proposed

1. That the Bill be amended in the long title by deleting the word "**other**" and substituting therefore the word "**unlawful**"

### Clause 2: Amendment proposed

2. That the Bill be amended in clause 2-

- (a) by deleting the definition of "**child**" and substituting therefor the following new definition-

"**child**" has the meaning assigned thereto in the Children Act;

- (b) in the definition of "**complainant**" by deleting the word "**unwilling**"

- (c) in the definition of "**indecent act**"-

- (i) by deleting the word "**willful**" and substituting therefore the word "**intentional**";

- (ii) by deleting **paragraph (a)** and substituting therefor the following new paragraph-

**(a) any contact between the genital organs of a person, his or**

**her breasts ,or buttocks with that of another person;**

(iii) by deleting **paragraph (b)**;

(b) in the definition of **"intermediary"** by

(i) deleting the word **"lawyer"** and substituting therefor the word **"guardian"**

(ii) inserting the words **"or experience"** immediately after the word **"expertise"**

**Clause 11: Amendment proposed**

3. That the Bill be amended in clause 11 by inserting a new paragraph (6) as follows-

**(6) Any person who commits an indecent act with an adult is guilty of an offence and is liable to imprisonment for a term of not less than one year or to a fine of not less the fifty thousand shillings or both.**

**Clause 16: Amendment proposed**

4. That the Bill be amended in clause 16 by inserting the word **"art"** between the words **"painting"** and **"representation"**.

**Clause 17: Amendment proposed**

5. That the Bill be amended in clause 17 by deleting the word **"or"** appearing immediately after paragraph (a) and substituting therefor the word **"and"**.

**Clause 23: Amendment proposed**

6. That the Bill be amended by deleting clause 23 and substituting therefor the following new clause-

**23. (1) Any person, who being in a position of authority or is holding a public office, who persistently makes any sexual advances or requests for sexual favours which he or she knows or has reasonable grounds to know, are unwelcome is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine not less than one hundred thousand shillings or to both .**

**(2) It shall be necessary to prove in a charge of sexual harassment that-**

**(a) the submission or rejection by the person to whom advances or request is made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;**

**(b) such advances or request have the purpose or effect of interfering with the alleged victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the public from a public office.**



**Clause 26: Amendment proposed**

7. That the Bill be amended by deleting clause 26.

**Clause 31: Amendment proposed**

8. That the Bill be amended by deleting clause 31.

**Clause 34: Amendment proposed**

9. That the Bill be amended in clause 34-

(a) in sub-clause (1)-

(i) by deleting the word "**shall**";

(ii) by deleting the word "**complainant**" appearing in paragraph (a) and substituting therefor the words "**alleged victim**".

(b) by inserting the following new paragraph (9A)-

**(9A) A court shall not convict an accused person charged with an offence under this Act solely on the uncorroborated evidence of an intermediary.**

**Clause 36: Amendment proposed**

10. That the Bill be amended by deleting clause 36.

**Clause 38: Amendment proposed**

11. That the Bill be amended by deleting clause 38.

**Clause 39: Amendment proposed**

12. That the Bill be amended in clause 39 by deleting **sub clause (4)**

**Clause 47: Amendment proposed**

13. **That the Bill be amended in clause 47:**

i) By deleting the words "**which causes penetration**" wherever they together appear.

ii) Inserting a new sub clause immediately after sub clause (4) as follows:-

**(5) This section shall not apply in respect to persons who are lawfully married to each other.**

**First schedule: Amendment proposed**

14. That the Bill be amended in the First Schedule by deleting the word "**related**" wherever it appears.

**Second Schedule: Amendment proposed**

15. That the Bill be amended in the Second Schedule-

(a) by inserting a **new paragraph (1A)** immediately after **paragraph (1)** as follows-

**(1A)The Evidence Act is amended in the proviso to section**

**124 by deleting the words "child of tender years who is the " and substituting therefor the words "alleged victim" and by deleting the words "child" wherever it appears thereafter and substituting therefor the words "alleged victim".**

(b) by deleting paragraph (8);

(c) by deleting paragraph (4);

(d) by renumbering the paragraphs appropriately.