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Approved for tabling.



SNA
28/10/15
Prof. Vind
By Hon. Florence
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PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
(THIRD SESSION - 2015)



THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE PETITION FOR INTRODUCTION OF "ANTI-HOMOSEXUALITY BILL"

**CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.**

OCTOBER, 2015

v.26

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1. Minutes of the sitting of the Committee that adopted the report
2. Attendance list of Members present during the sitting that adopted the report
3. The Petition

1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order 216(5), it is my pleasure and duty to present to the House, the Committee's Report on the petition for "Anti-Homosexuality Bill".

1.1 Committee Membership

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:-

1. The Hon. Samuel Chepkong'a, M.P. – **Chairperson**
2. The Hon. Priscilla Nyokabi, M.P. – **Vice Chairperson**
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chege, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. James Bett, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.
17. The Hon. Johana Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.
23. The Hon. Ben Momanyi Orori, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop) Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

1.2 Committee's Mandate

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being to:

- a) *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) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) *study and review all legislation referred to it;*
- d) *study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) *investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;*
- f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and*
- g) *make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

In accordance with Second Schedule of the Standing Orders, the subjects within the jurisdiction of the Committee are as follows:-

- a) Constitutional Affairs;
- b) The administration of law and justice;
- c) The Judiciary;
- d) Public prosecutions;
- e) Elections;
- f) Ethics, integrity and anti-corruption; and
- g) Human rights.

Mr. Speaker Sir,

The Petition by the Republican Liberty Party dated 9th July, 2014 is addressed to the Clerk of the National Assembly and signed by Mr. Edward Onwong'a Nyakeriga, the Party's Legal Secretary. The Petition is in form of a draft Bill and the Petitioner prays that the National Assembly admits the Petition and subsequently passes the Bill.

The Petitioner draws the attention of the National Assembly that adoption of the "Anti-Homosexuality Bill" to establish a comprehensive and consolidated

legislation will empower and strengthen the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family.

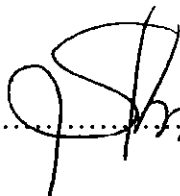
The Petition was committed to the Departmental Committee on Justice and Legal Affairs pursuant to provisions of Standing Order 227.

1.3. Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

On that note, it now my pleasant duty and privilege, on behalf of the Committee to present this report to the House

SIGNED.....



DATE.....

28th October, 2015

Hon. Samuel Chepkong'a, M.P
(Chairperson)

Departmental Committee on Justice and Legal Affairs

2.0 BACKGROUND

The Petition by the Republican Liberty Party dated 9th July, 2014 is addressed to the National Assembly and signed by Mr. Edward Onwong'a Nyakeriga, the Party's Legal Secretary. The Petition is in form of a draft Bill and the Petitioner prays that the National Assembly admits the Petition and subsequently passes the Bill.

3.0 CONSIDERATION OF THE PETITION

During its sitting held on the 21st September, 2015, the Committee considered the Petition and made the following observations and or findings:-

- a. Article 109 (5) of the Constitution provides that a Bill may be introduced by any Member or Committee of the House which right is discretionary and dependent on the views held by such Member or Committee. The petition in its current form is more of a Bill in form, rather than a petition. The petition was brought in form of a Bill, of which the Petitioner prays that Parliament do debate, as it is, and adopt it in order to establish a comprehensive and consolidated legislation.
- b. Article 45 (1) of the Constitution establishes the family as the natural and fundamental unit of society and the necessary basis of social order, worthy of recognition and protection by the State. Article 45 (2) further provides that every adult has the right to marry a person of the opposite sex, based on the free consent of the parties. These provisions adequately protect the family values that apply in our democracy.

4.0 RECOMMENDATION

Having considered the petition in line with the Constitution and the provisions of the Petitions to Parliament (Procedure) Act, and the Standing orders of the National Assembly, the Committee recommends that:-

1. The petition be dismissed. The Committee does not agree with the Petitioner's proposed legislation and views it as unnecessary because Article 45 of the Constitution adequately safeguards and protects the family values. The Petitioner is however at liberty to approach any willing Member or Committee of the House to sponsor the proposed legislation on his behalf.

.....**END**.....

APPENDIX 1

**MINUTES OF THE SIXTY SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 22ND OCTOBER, 2015
AT 10.30 A.M. AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDING**

PRESENT

Hon. Samuel Chepkonga, M.P. - **Chairperson**
Hon. Priscilla Nyokabi, M.P. - **Vice Chairperson**
Hon. Neto Agostinho, M.P.
Hon. Ben Momanyi, M.P.
Hon. Benson Mutura, M.P.
Hon. Charles Gimose, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johanna Ngeno, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Olago Aluoch, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Paul K. Bii, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Ndirangu Waihenya, M.P.

APOLOGIES:-

Hon. Njoroge Baiya, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. David Ochieng, M.P.
Hon. John Njoroge Chege, M.P.
Hon. James Bett, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Munuve Mati John, M.P.
Hon. Peter Kaluma, M.P.
Hon. William Cheptumo, M.P.
Hon. Florence Kajuju, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Sammy Koech, M.P.

SECRETARIAT

Ms. Ella Kendi - Clerk Assistant III
Mr. Ronald Walala - Legal Counsel II
Mr. Yezzel Jillo - Serjeant-at-arms

MIN No. 221/2015:-

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten in the morning with a word of prayer from himself. He informed Members that the only agenda for the meeting was consideration and adoption of reports on Petitions.

MIN No. 222/2015:-

REPORT ON THE PETITION ON THE ELECTION OF THE CHAIRPERSON OF THE AGRICULTURAL SOCIETY OF KENYA (ASK)

The Committee considered and adopted the report, the same having been proposed by Hon. Charles Gimose and seconded by Hon. Moses Cheboi. No Member dissented to the adoption.

MIN No. 223/2015:-

REPORT ON THE PETITION ON ENACTMENT OF LEGISLATION TO PROVIDE FOR THE REGISTRATION OF PROPERTIES IN KENYA

The Committee considered and adopted the report, the same having been proposed by Hon. Johanna Ng'eno, MP and seconded by Charles Gimose. No Member dissented to the adoption.

MIN No. 224/2015:-

REPORT ON THE PETITION ON REVIEW OF CRIMINAL LAWS (PENAL CODE AND CRIMINAL PROCEDURE CODE) TO ALIGN THEM WITH THE CONSTITUTION OF KENYA

The Committee considered and adopted the report, the same having been proposed by Hon. Moses Cheboi, MP and seconded by Hon. Charles Gimose. There was no dissenting voice to the adoption of the report.

MIN No. 225/2015:-

REPORT ON THE PETITION TO AMEND THE CONSTITUTION OF KENYA, 2010

The Committee considered and adopted the report, the same having been proposed by Hon. Johanna Ng'eno and seconded by Hon. Moses Cheboi. No Member dissented to the adoption.

MIN No. 226/2015:-

REPORT ON THE PETITION FOR MANDATORY VOTER REGISTRATION AND COMPULSORY VOTING

The Committee considered and adopted the report. The adoption was proposed by Hon. Agostino Neto and seconded by Hon. Muriithi Waiganjo, subject to the inclusion in the recommendations a clause that *"the proposal to issue Identity cards to persons of 16*

years and above is currently being considered by the Committee and Commission for the Implementation of the Constitution". No Member dissented to the adoption of the report.

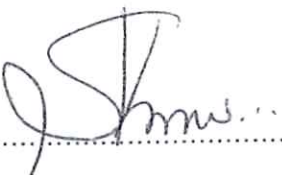
MIN No. 227/2015:- **REPORT ON THE PETITION FOR INTRODUCTION OF "ANTI-HOMOSEXUALITY BILL"**

The Committee considered adopted the report after it had been proposed by Hon. Agostino Neto and seconded by Hon. Moses Cheboi. No Member dissented to the adoption.

The Committee, at the same time, resolved to include in the recommendations, the finding that *"it's against Article 45 of the Constitution"*.

MIN No. 228/2015:- **ADJOURNMENT**

There being no other business to transact, the sitting adjourned at forty four minutes past eleven o'clock in the morning.

Signed.....
(Chairperson)

Date.....*28th October, 2015*.....

APPENDIX 2



KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

MEMBERS' ATTENDANCE

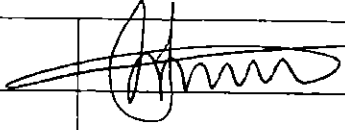

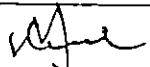
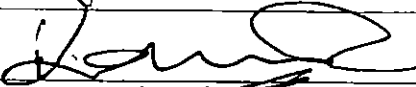

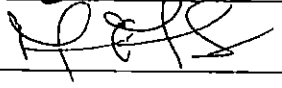

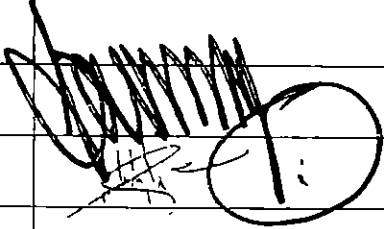
Date: 22nd October 2015

Venue: MEDIA CENTER, MAIN PARLIAMENT BUILDING

Agenda: ADOPTION OF REPORTS ON THE FOLLOWING PETITIONS:

1. ELECTION OF THE CHAIRPERSON OF THE AGRICULTURAL SOCIETY OF KENYA
2. ENACT A LEGISLATION REGARDING THE REGISTRATION OF PROPERTIES IN KENYA
3. REVIEW OF CRIMINAL LAWS (PENAL CODE AND CRIMINAL PROCEDURE CODE) TO ALIGN AND CONFORM WITH THE CONSTITUTION OF KENYA, 2010
4. AMEND THE CONSTITUTION OF KENYA, 2010
5. MANDATORY VOTER REGISTRATION AND COMPULSORY VOTING
6. LEGISLATION ON THE SUBJECT OF ANTI-HOMOSEXUALITY

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Charles Gimose	
8.	Hon. Christine Ombaka (Dr.)	
9.	Hon. David Ochieng'	
10.	Hon. Fatuma Ibrahim	
11.	Hon. Florence Kajuju	
12.	Hon. Irungu Kang'ata	
13.	Hon. James Bett	

14.	Hon. Johanna Ngeno	
15.	Hon. John Munuve	
16.	Hon. John M. Waiganjo	
17.	Hon. John Njoroge	
18.	Hon. John Olago Aluoch	
19.	Hon. Kamoti W. Mwamkale	
20.	Hon. Mohamed Abd1 Haji	
21.	Hon. Moses Chebot	
22.	Hon. Njoroge Baiya	
23.	Hon. Paul K. Bi	
24.	Hon. Peter Kaluma	
25.	Hon. Robert Mutemi (Bishop)	
26.	Hon. Sammy Koech	
27.	Hon. T.J Kajwang	
28.	Hon. Waihenya Ndirangu	
29.	Hon. William Cheptumo	

George Gazemba

For: The Clerk of the National Assembly

APPENDIX 3

Republican Liberty Party



Republican House,
Githurai 45
Mwihoko Road
P.O. Box 20148-00100
Nairobi-Kenya

0733 288 086,
0722 167 811
020 310 524
info@republicanlibertyparty.org
republicanlibertyparty.org

OUR REF: RLP/PET/2014

YOUR REF:

09/07/2014



**THE CLERK OF THE NATIONAL ASSEMBLY
PARLIAMENT BUILDING
NAIROBI - KENYA**



Dear Sir,

**RE: PUBLIC DRAFT BILL UNDER THE CONSTITUTION OF KENYA 2010
AND STANDING ORDERS OF THE NATIONAL ASSEMBLY OF KENYA**

The above together with yours dated 13th June 2014 refers.

On the same kindly find the attached Draft Bill submitted under Articles 37, 95, 109 and 119 of the Constitution of Kenya (2010) and Standing Orders Nos. 219, 221 and 223 of the National Assembly of Kenya.

We look forward for your action and response.

Yours faithfully,

**EDWARD ONWONG'A NYAKERIGA
LEGAL SECRETARY**

*J.N.
Please advise
us how we
need to facilitate
his proposed
private Bill.
Sakai
2014*

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IN THE MATTER OF A PUBLIC PETITION IN UNDER
ARTICLES 37,94,95,109 & 119 OF THE CONSTITUTION
(2010) OF KENYA

AND

IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY

PETITION

We the undersigned, **Republican Liberty Party**; registered as No. 058 of the Registered Political Parties; under the Political Parties Act (No.11 of 2011), Laws of Kenya; do hereby DRAW the attention of the House to the following:

1.THAT we do hereby introduce the "Anti-Homosexuality Bill" for your attention and debate to establish a comprehensive and consolidated 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 Kenya or any non-governmental organization inside or outside the country.

2.THAT, we hereby confirm that under the Penal Code Act (Cap 63), Laws of Kenya there is no comprehensive provision catering for anti-homosexuality and that this proposed legislation is designed to specifically fill the gaps in the provisions of the Penal Code Act (CAP 63)and other laws in Kenya.

3. THAT, we hereby confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body and we therefore propose that Parliament adopts this petition as follows:

1.1 MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish a comprehensive consolidated 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 Kenya or any non-governmental organization inside or outside the country.

This Bill aims at strengthening the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family. This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic.

The Bill further aims at providing a comprehensive and enhanced legislation to protect the cherished culture of the people of Kenya, legal, religious, and traditional family values of the people of Kenya against the attempts of

sexual rights activists seeking to impose their values of sexual promiscuity on the people of Kenya.

There is also need to protect the children and youths of Kenya who are made vulnerable to sexual abuse and deviation as a result of cultural changes, uncensored information technologies, parentless child developmental settings and increasing attempts by homosexuals to raise children in homosexual relationships through adoption, foster care, or otherwise.

2.1. Defects in existing law.

This proposed legislation is designed to fill the gaps in the provisions of other laws in Kenya e.g. the Penal Code Act (CAP 63), Laws of Kenya.

The Penal Code Act has no comprehensive provision catering for anti-homosexuality, It focuses on unnatural offences but lacks provisions for penalizing the procurement, promoting, disseminating literature and other pantographic materials concerning the offences of homosexuality hence the need for legislation to provide for charging, investigating, prosecuting, convicting and sentencing of offenders.

This legislation comes to complement and supplement the provisions of the Constitution of Kenya and the Penal Code Act (CAP 63), Laws of Kenya, by

not only criminalizing same sex marriages but also same-sex sexual acts and other related acts.

3.0. The objectives of the Bill

The objectives of the Bill are to:

- (a) provide for marriage in Kenya as a solemn institution contracted only between a man and a woman;
- (b) prohibit and penalize homosexual behavior and related practices in Kenya as they constitute a threat to the traditional family;
- (c) prohibit ratification of any international treaties, conventions, protocols, agreements and declarations which are contrary or inconsistent with the provisions of this Act;
- (d) prohibit the licensing of organizations which promote homosexuality.

3.1. **Part I of the Bill incorporating** clause 1 provides for preliminary matters relating to interpretation of the words and phrases used in the Bill.

3.2. **Part II of the Bill incorporating** clause 2 to 6 prohibits homosexuality and related practices by introducing the offences of engaging in homosexuality, and the penalties of imprisonment upon

conviction. This part also provides for protection, assistance and support for victims of homosexuality.

3.3. **Part III of the Bill incorporating** clause 7 to clause 14 creates offences and penalties for acts that promote homosexuality, failure to report the offence and impose a duty on the community to report suspected cases of homosexuality.

3.4. **Part IV of the Bill incorporating** clause 15 to clause 17 provides for the jurisdiction of Kenya Courts in case of Homosexuality, including extra territorial jurisdiction.

3.5 **Part V of the Bill incorporating** clauses 18 and 19 provides for miscellaneous provisions on International Treaties, Protocols, Declarations and conventions and the Cabinet Secretary to make regulations to give effect to the Act.

ARRANGEMENT OF CLAUSES,

PART 1- PRELIMINARY.

Clause

1. Interpretation,

PART II—PROHIBITION OF HOMOSEXUALITY,

2. The offence of homosexuality,

3. Aggravated homosexuality.

4. Attempt to commit homosexuality.

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

6. Privacy

PART III-RELATED OFFENCES AND PENALTIES.

7. Aiding and abating homosexuality.

8. Conspiracy to engage in homosexuality

9. Procuring homosexuality by threats, intimidation and coercion

10. Detention with intent to commit homosexuality.

11. Brothels

12. Same sex marriage.

13. Promotion of homosexuality.

14. Failure to disclose the offence.

PART IV – JURISDICTION

15. Jurisdiction.

16. Extra- territorial Jurisdiction.

17. Extradition.

PART V-MISCELLANEOUS PROVISIONS.

18. International treaties

19. Regulations.

Schedule

BE IT ENACTED by Parliament as follows:

PART 1-PRELIMINARY

The principal object of this Bill is to establish a comprehensive legislation to protect the traditional family by prohibiting any form of sexual relations between persons of the same sex; and the promotion or recognition of such relations in public institutions and other places with the support of the government in Kenya or outside the country.

I. 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;

"bisexual" means a person who is sexually attracted to both males and females;

"child" means a person below the age of 18 years;

"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

"gay" means a male person who engages in sexual intimacy with another person of the same sex;

"gender" means male or female,

"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;

"Lesbian" means a female who engages in sexual intimacy with another female;

"Misdemeanor" means any offence which is not a felony;

"Party" means a political party within the meaning of Political Parties Act of 2011

“RLP” means Republican Liberty Party registered under the Political Parties Act of 2011

"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, anus or romantic attraction, stimulation, sucking or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ;
- (b) any person who uses machines, contraception or products to increase, reduce or in any other manner induces the size of the penis, vagina, buttocks, breasts or other sexual organ.
- (d) 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;

“sodomy” includes anal sex, oral and bestiality.

"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—HOMOSEXUALLY AND RELATED PRACTICES

1. The offence of sodomy.

(1) A person commits the offence of sodomy 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 sodomy.
- (d) he penetrates the anus or vagina of any animal with his penis or any other sexual contraption,

- (e) he/she he or she touches any animal with the intention of committing the act of sodomy.
- (f) any person, if such person is a Kenya National, who commits an offence under this section shall be liable on Conviction to
- (g) Imprisonment for life, if such person however is of other nationality, the sentence shall be subjected to death by stoning in public.

2. The offence of homosexuality.

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

- (h) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;
- (i) he or she uses any object or sexual contraption to penetrate or stimulate sexual organ of a person of the same sex;
- (j) he or she touches another person with the intention of committing the act of homosexuality.
- (k) any person, if such a person is a Kenya National, who commits an offence under this section shall be liable on Conviction to imprisonment for life, if such person however is of other nationality, the sentence shall be subjected to death by stoning in public.

3. Aggravated homosexuality.

- (1) A person commits the offence 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 offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy or overpower him or her
 - (g) so as to thereby 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 death by public stoning.

(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 for life.

(2) A person who attempts to commit the offence of aggravated homosexuality commits an offense 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

Where a person is convicted of homosexuality or aggravated homosexuality under sections 1 and 2 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.

3. 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 and hold any information gathered/acquired in as strictly confidential.
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 and strict exclusion of the media.

Any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or

3. 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 court, commits an offence and is liable on conviction to life imprisonment.

PART - III—SETS OUT OFFENCES AND PENALTIES

7. 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 life.

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 pretense 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 life.

9. Procuring for homosexuality by: threats, intimidation and coercion.

(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, either in Kenya or elsewhere;
- (b) by false pretenses or false representations procures any woman or man to have any unlawful carnal connection with any person of the same sex, either in Kenya or elsewhere; or
- (c) A person may be convicted of an offence under this section upon the evidence of one witness only, if 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 himself and/or herself or with any other person commits an offence and is liable on conviction to imprisonment for life.

11. Brothels.

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

(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 Life Imprisonment.

12. Same sex marriage.

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.

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;

Commits an offence and is liable on conviction life 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 life

(3) Where the offender is a foreign national, on conviction its certificate of registration shall be cancelled and the director or proprietor or promoter shall be liable on conviction to imprisonment for life.

14. Failure to disclose the offence.

A person in authority, who being aware of the commission of any offence under this Act, omits to report the offence to the relevant authorities within

twenty-four (24) hours of having first had that knowledge, commits an offence and is liable on conviction to imprisonment for life.

PART IV-JURISDICTION

15. Jurisdiction.

Save for aggravated homosexuality that shall be tried by the High Court, the magistrates' courts shall have jurisdiction to try the other offences under this Act.

16. Extra-Territorial Jurisdiction.

This Act shall apply to offences committed outside Kenya where—

- (a) a person who, while being a citizen of or permanently residing in Kenya commits an act outside Kenya, which act would constitute an offence under this Act had it been committed in Kenya; or
- (b) the offence was committed partly outside and or partly in Kenya.

17. Extradition.

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

PART V- MISCELLANEOUS

18. Nullification of inconsistent international treaties, protocols, declarations and conventions where,

(1) Any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in this Act, are null and void to the extent of their inconsistency,

(2) Definitions of "sexual orientation", "sexual rights", "sexual minorities", "gender identity" shall not be used in any way to legitimize homosexuality, gender identity disorders and related practices in Kenya.

19. Regulations.

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

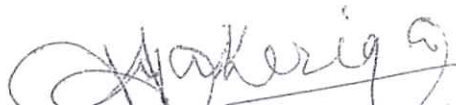
The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for from the exchequer.

NOW THEREFORE it is your humble petitioner's Pray that Parliament do:

- i) debate and adopt the hereby introduced "Anti-Homosexuality Bill" to establish a comprehensive and consolidated legislation.

- ii) empower and strengthen the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family.

DATED at NAIROBI this.....^{9th}.....day of.....July.....2014


EDWARD ONWONG' A NYAKERIGA
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(LEGAL SECRETARY)

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