

**BILLS SUPPLEMENT**

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**Bill No. 12**

*Anti-Pornography Bill*

**2011**

**THE ANTI-PORNOGRAPHY BILL, 2011**

**MEMORANDUM**

**1. Policy and principles**

This Bill seeks to create the offence of pornography which has become an insidious social problem. Pornography is defined in this Bill and it is prohibited because of the dangers it poses to individuals, families and communities. One of the dangers it poses is that it fuels sexual crimes against women and children including rape, child molestation and incest.

**2. Defects in the existing law**

The current provision regulating pornography is section 166 of the Penal Code Act, Cap.120. This section penalises trafficking in obscene publication, thus catering for obscene publications only; yet the issue of pornography transcends publications and includes communication, speech, entertainment, stage play, broadcast, music, dance, art, fashion, motion picture and audio recording. Following the increase in pornographic materials in the Ugandan mass media and the increase in nude dancing in the entertainment world, there is need to put in place a legal framework which can regulate such vices.

**3. Remedies proposed to deal with the social phenomena**

The need to put in place a law that prohibits pornography is necessitated by the dangers it poses to the moral fabric of the society. The right to entertainment and the right to broadcast or publish any material does not include the right to engage or broadcast pornographic matters or obscene publication in so far as they tend to offend or corrupt public morals. Thus, to ensure that pornography is

well handled in Uganda, it is intended to repeal and replace section 166 of the Penal Code Act, Cap.120, with a comprehensive piece of legislation prohibiting pornography in all its various forms. Thus, among the most important provisions of the Bill is the proposed establishment of the Anti-Pornography Committee, whose functions are to ensure the eradication of pornography.

#### 4. Need for introduction of the Bill

The serious defects in the law have created a great need to reform the law comprehensively to stamp out pornography in the Ugandan society.

#### 5. Provisions of the Bill

The Bill comprises five Parts. It seeks to repeal and replace section 166 of the Penal Code Act, Cap.120 and prohibits pornography in any form as described in the following paragraphs—

(a) Definition of pornography

The Bill widens the scope of what amounts to pornography by defining the expression “pornography” in clause 2 as follows—

“pomography” means any cultural practice, radio or television programme, writing, publication, advertisement, broadcast, upload on internet, display, entertainment, music, dance, picture, audio or video recording, show, exhibition or any combination of the preceding that depicts—

- (a) a person engaged in explicit sexual activities or conduct;
- (b) sexual parts of a person such as breasts, thighs, buttocks or genitalia;
- (c) erotic behaviour intended to cause sexual excitement; or
- (d) any indescient act or behaviour tending to corrupt morals,

but pornography does not include—

- (i) teaching aides and other medical or scientific apparatus approved by the minister responsible for education or health, for appropriate educational purposes in schools, institutions, health centers or the public; or
- (ii) any act or behaviour between spouses or couples performed in fulfillment of their conjugal rights and responsibilities, where such matters remain strictly private.

(b) Anti Pornography Committee

The Bill in clause 3 provides for the establishment of an Anti Pornography Committee consisting of a chairperson and six other persons appointed by the Minister.

- (c) the Bill in clause 7 provides for the functions of the Committee.

#### 6. Child pornography

The Bill in clause 14 deals with child pornography. Under that clause a person commits an offence if he or she produces or participates in the production of or traffics or publishes or broadcast or procures or imports or exports or in any way abets pornography depicting images of children. Child pornography is punishable by a penalty of a fine not exceeding seven hundred and fifty currency points or imprisonment not exceeding fifteen years or both.

Additionally, in clause 20 of the Bill the court is required after the conviction of the culprits to order the destruction of the objects or materials used in the commission of the offence.

7. Under clause 19 where an offence under the Act is committed by a body corporate, any director or secretary or partner of that body who is proved to have contributed to the offence is also deemed to have committed the offence, and is punishable in the same way as an individual who has committed the offence.

A body corporate is also liable to a special fine.

Part IV of the Bill deals with financial provisions including funds of the Committee, estimates, accounts and audits.

Part V of the Bill deals with miscellaneous matters.

Clause 24 of the Bill under this Part requires the Committee to maintain a register of persons convicted of pornography offences in a form prescribed in Schedule 3.

Clause 28 of this Part repeals section 166 of the Penal Code Act, Cap. 120, relating to trafficking in obscene publications.

HON. REV. FR. SIMON LOKODO (M.P),  
*Minister of State for Ethics and Integrity.*

THE ANTI-PORNOGRAPHY BILL, 2011

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*Clause*

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SCHEDULE 2- MEETINGS OF COMMITTEE AND OTHER MATTERS

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**A Bill for an Act****ENTITLED****THE ANTI-PORNOGRAPHY ACT, 2011**

**An Act to define and create the offence of pornography; to provide for the prohibition of pornography; to establish the Anti-Pornography Committee and prescribe its functions; and for other related matters.**

BE IT ENACTED by Parliament as follows:

## PART I—PRELIMINARY

**1. Commencement**

This Act shall come into force on a date appointed by the Minister by statutory instrument.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“authorised person” means a member of the Anti Pornography Committee or a police officer;

“broadcast” means to put out information or make information available to the public or a person through any electronic medium;

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

“Committee” means the Anti-pornography Committee established by section 3;

“currency point” has the value assigned to it in Schedule 1;

“internet-content-developer” means a person, individual or corporate, who produces and uploads or causes to be uploaded on the internet, any matter;

“Internet Service Provider (ISP)” means a person with primary access to the internet, who extends internet access to other secondary users;

“Minister” means the Minister responsible for ethics;

“pornography” means any cultural practice, radio or television programme, writing, publication, advertisement, broadcast, upload on internet, display, entertainment, music, dance, picture, audio or video recording, show, exhibition or any combination of the preceding that depicts—

- (a) a person engaged in explicit sexual activities or conduct;
- (b) sexual parts of a person such as breasts, thighs, buttocks or genitalia;
- (c) erotic behaviour intended to cause sexual excitement; or
- (d) any indescient act or behaviour tending to corrupt morals,

but pornography does not include—

- (i) teaching aides and other medical or scientific apparatus approved by the minister responsible for education or health, for appropriate educational purposes in schools, institutions, health centers or the public; or
- (ii) any act or behaviour between spouses or couples performed in fulfillment of their conjugal rights and responsibilities, where such matters remain strictly private.

“procure” means to purchase or obtain or import or being found in possession or custody of, or being found viewing in a premise, any matter prohibited by this Act, except when authorised in writing by the Committee for appropriate anti-pornography purposes such as education and sensitisation by personnel approved by the Committee;

“publish” means to put out written information or make available written information to the public or any person through any print medium;

“traffic” means to deal in or cause or permit or aid the provision or circulation of pornographic matter by way of trade or publishing or entertainment or programming or unrestricted internet access or any other means or purpose.

#### PART II—ANTI PORNOGRAPHY COMMITTEE

### 3. Anti-Pornography Committee

(1) There is established a Committee to be known as the Anti-Pornography Committee.

(2) The Committee shall consist of nine members as follows—

- (a) a chairperson;
- (b) a distinguished practicing advocate, nominated by the Uganda Law Society;
- (c) five representatives of whom—
  - (i) one shall represent media houses;
  - (ii) one shall represent publishing houses;
  - (iii) one shall represent the arts and entertainment industry;
  - (iv) one shall represent the education professionals; and
  - (v) one shall represent the health professionals.

(d) two other members of whom—

- (i) one shall represent cultural leaders; and
- (ii) one shall represent religious leaders.

(3) The members of the Committee shall be appointed by the Minister with the approval of Cabinet.

#### 4. Qualifications of Committee members.

A member of the Committee shall be a person—

- (a) of sound mind;
- (b) with high moral character and proven integrity; and
- (c) with qualifications or minimum of not less than ten years' experience in law, theology, information communication and technology, journalism, psychiatry or counseling.

#### 5. Tenure of office of members of Committee

A member of the Committee shall hold office for three years and is eligible for reappointment for one more term; except that of the first members to be appointed to the Committee, two shall be appointed to hold office for two years.

#### 6. Disqualification and removal of member of Committee

(1) A member of the Committee may be removed from office by the Minister on any of the following grounds—

- (a) inability to perform the functions of his or her office arising out of physical or mental incapacity;
- (b) misconduct or misbehaviour;
- (c) incompetence; or
- (d) if convicted of an offence involving moral turpitude.

(2) A member of the Committee may resign his or her office by notice in writing addressed to the Minister, and the resignation shall take effect from the date on which the Minister receives the notice.

#### 7. Functions of Committee

(1) The functions of the Committee are—

- (a) to take all necessary measures to ensure the early detection and prohibition of pornography;
- (b) to ensure that the perpetrators of pornography are apprehended and prosecuted;
- (c) to collect and destroy pornographic objects or materials with the assistance of the police;
- (d) to educate and sensitise the public about pornography;
- (e) to promote the rehabilitation of individuals, groups, families or communities affected by pornography;
- (f) to expedite the development or acquisition and installation of effective protective software in electronic equipment such as computers, mobile phones and televisions for the detection and suppression of pornography;
- (g) to promote appropriate educational materials against pornography in the school curriculum in consultation with the Government;
- (h) to promote and coordinate local and international collaboration in the fight against pornography in consultation with the Government.

(2) The Committee shall liaise or cooperate with other agencies of Government with similar functions to those of the Committee.

#### 8. Procedure at meetings of Committee

Schedule 2 shall have effect in respect of the procedure at meetings of the Committee.

**9. Co-option of persons**

The Committee may co-opt any person who is not a member to attend any of its meetings as an adviser and that person may speak at the meeting on any matter in relation to which his or her advice is sought, but shall not have the right to vote on any matter coming for decision before the meeting.

**10. Remuneration of members of Committee**

Members of the Committee shall be paid allowances determined by the Ministry responsible for Public Service.

**11. Powers and duties of the Committee**

(1) The Committee may, in the performance of its duties under this Act or any regulations made under this Act, at all reasonable times and without warrant—

- (a) require the production, inspection and examination of records and other necessary documentation relating to the enforcement of this Act;
- (b) carry out inquiries to ensure that this Act is complied with;
- (c) carry out periodic inspection of any establishment which imports, exports, stores, sells, distributes or uses equipment or data that is likely to give the public access to pornography;
- (d) carry out inspections as may be necessary to ensure that the provisions of this Act are complied with;
- (e) seize any, equipment, document or any other thing which it believes has been used in the commission of an offence against this Act or regulations made under this Act;
- (f) close, indefinitely, any inter-net service provider who promotes, publishes, sells or imports pornography contrary to this Act; or

- (g) cause a police officer to arrest any person whom it believes has committed an offence under this Act.

(2) The Committee may, at any time, install any equipment on land, premises or in a vehicle for the purpose of monitoring compliance with this Act.

(3) In exercising its powers under this section, a member of the Committee shall suitably identify himself or herself.

**12. Secretariat.**

(1) The Committee shall have a secretariat in the Directorate of Ethics and Integrity, which shall be headed by the Director for Ethics, who shall be the Secretary of the Committee but the Secretary to the Committee shall not be a member of the Committee.

(2) The secretary shall be responsible for—

- (a) ensuring the implementation of the recommendations and decisions of the Committee;
- (b) taking minutes of the meetings of the Committee;
- (c) keeping the records of all the transactions of the Committee; and
- (d) performing any other function that may be assigned to him or her by the Committee.

**PART III—PROHIBITION OF PORNOGRAPHY****13. Prohibition of pornography**

(1) A person shall not produce, traffic in publish, broadcast, procure, import, export or abet any form of pornography.

(2) A person who produces or participates in the production of, or traffics in, or publishes or broadcasts or procures or imports or exports or in any way abets pornography contrary to subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding ten years or both.

#### 14. Child pornography

(1) A person who produces or participates in the production of, or traffics in, or publishes or broadcasts or procures or imports or exports or in any way abets pornography depicting images of children, commits an offence and is liable on conviction to a fine not exceeding seven hundred and fifty currency points or imprisonment not exceeding fifteen years or both.

(2) For the avoidance of doubt, the definition of pornography in section 2 applies in determining the commission of the offence of child pornography.

#### 15. Court to issue warrant

(1) Where information is brought to the attention of the court that there exists in premises, an object or material containing pornography or an act or event of a pornographic nature, the court shall issue a warrant for the seizure of the object or material and for the arrest of the person promoting the material or object.

(2) An authorised person in possession of a search warrant issued by the court may enter any premises and inspect any object or material including any computer, and seize the object, material or gadget for the purpose of giving effect to this Act.

(3) A person who obstructs an authorised person in the carrying out of any function under this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both.

#### 16. Authorities to issue directives to offenders

(1) The Committee, the court or a police officer not below the rank of superintendent of police, may, in writing, direct any newspaper, publisher, broadcaster, proprietor of any business dealing in computers, telephones or other medium for transmitting electronic information or the proprietor of any place or business dealing in leisure or entertainment, bookshop owner, dealer in photography, newsprint or magazine dealer or vendor, importer or exporter or other person, to desist from dealing in pornography.

(2) A person who fails to comply with a directive issued under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both.

#### 17. Internet Service Providers (ISP)

(1) An Internet Service Provider (ISP) who, by not using or enforcing the means or procedure recommended by the Committee to control pornography, permits to be uploaded or downloaded through its service, any content of a pornographic nature, commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

(2) Where a publisher or broadcaster or internet-content-developer or dealer in telephone-related business or Internet Service Provider (ISP) commits an offence under subsection (1), the court convicting that person may, for a subsequent offence, by order, suspend the business.

(3) A person who fails to comply with an order given under subsection (2) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both.



**18. Leisure or entertainment**

(1) Where a proprietor of a place of leisure or entertainment or of a business dealing in leisure or entertainment commits a second or subsequent offence under this Act, the court convicting the offender for the second or subsequent offence may issue an order suspending or prohibiting the offender from dealing in leisure or entertainment.

(2) A person who fails to comply with an order issued under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both.

**19. Offences by body corporate**

Where an offence under this Act is committed by a body corporate—

- (a) that body corporate, is liable to a fine not exceeding double the fine prescribed in relation to the offence for an individual who commits the offence; and
- (b) a director or secretary of the body corporate or a partner in the firm who is proved to have contributed to the commission of the offence shall be taken also to have committed the offence and is liable to the penalty prescribed for an individual who commits the offence.

**20. Forfeiture and destruction of pornography**

Where a person is convicted of an offence under this Act, the court shall order the forfeiture to the state and the destruction of all materials and objects used in the commission of the offence.

## PART IV—FINANCES

**21. Funds of Committee**

(1) The funds of the Committee shall consist of monies approved by Parliament and other monies donated for the performance of the functions of the Committee.

(2) The finances of the Committee shall be budgeted for under the budget estimates of the Ministry responsible for ethics.

**22. Annual Report**

The Committee shall make an annual report to the Minister on the performance of its functions within six months after the end of each financial year.

**23. Minister to lay Annual Report before Parliament**

The Minister shall as soon as possible lay before Parliament the annual report of the Committee on its functions submitted to him or her under section 22 with any comments on it as he or she may consider necessary.

## PART V—MISCELLANEOUS

**24. Register of Pornography Offenders**

(1) The Committee shall maintain a Register of Pornography Offenders containing the name of every person convicted of an offence under this Act in the form set out in Schedule 3.

(2) The register shall include storage of files with supporting records and documents used in the prosecution that secured the conviction of the offender.

**25. Archives**

The Committee shall maintain an archive of all relevant administrative records and other documents associated with the carrying out of its functions.

**26. Power of Minister to amend Schedules**

The Minister may, by statutory instrument, with the approval of the Cabinet amend Schedules 1 and 2.

**27. Regulations**

(1) The Minister may, by statutory instrument, make regulations—

- (a) relating to the establishment of programmes aimed at educating and sensitising the public about pornography and its consequences;
- (b) to provide for the rehabilitation of persons affected by pornography;
- (c) to provide for the eradication of pornography;
- (d) to provide for a multi-sectoral approach against pornography involving Government departments, agencies, institutions and civil society organisations to develop anti-pornographic strategies; and
- (e) to provide for the better carrying in to effect, if the purposes of this Act.

(2) Regulations made under this section may provide—

- (a) in respect of a contravention of the regulations, a penalty not exceeding two thousand currency points or imprisonment not exceeding five years or both; and
- (b) that the court convicting a person under the regulations may order the forfeiture or destruction of any object or material used in the commission of the offence or connected with the offence.

**28. Repeal of section 166 of the Penal Code Act Cap.120**

Section 166 of the Penal Code Act, Cap.120, relating to traffic in obscene publications is repealed.

SCHEDULE 1

Sections 2, 26

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

## SCHEDULE 2

Section 8 and 26

## MEETINGS OF THE COMMITTEE AND OTHER MATTERS

**1. Meetings of the Committee**

(1) The Committee shall meet for the discharge of business at least four times in each year or upon a request in writing to the Chairperson by at least three members of the Committee.

(2) The Committee shall meet at such time and place as the Chairperson may appoint.

(3) The Chairperson may also call a special meeting of the Committee.

(4) The Chairperson of the Committee may convene an emergency meeting whenever he or she considers it necessary.

(5) A meeting of the Committee shall be convened by a two weeks notice in writing except that a shorter notice may be given for a special meeting.

(6) The Chairperson shall preside at all meetings of the Committee and in his or her absence, a member elected by the members present shall preside.

**2. Quorum**

The quorum at a meeting of the Committee shall be one-third of the voting members of the Committee for the transaction of ordinary business and all members for the review of a previous decision of Committee.

**3. Minutes of meetings of the Committee**

(1) The Secretary shall cause to be recorded and kept, minutes of all meetings of the Committee in a form approved by the Committee.

(2) The minutes recorded under paragraph (1) shall be submitted to the Committee for confirmation at its next meeting and when confirmed, shall be signed by the Chairperson and the Secretary in the presence of the members present at the latter meeting.

**4. Decision of the Committee**

(1) The decisions of the Committee shall be by consensus.

(2) A decision of the Committee shall be agreed upon at the meeting of the Committee.

(3) A member of the council shall have one vote; and in where there is an equality of votes, the chairperson or person presiding at the meeting shall have a casting vote.

**5. Validity of meetings not affected by vacancy, etc.**

The validity of any proceedings of the Committee shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

**6. Disclosure**

(1) Where a person is present at a meeting of the Committee at which a matter is the subject of consideration in which that person or his or her spouse or nominee is interested in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Committee directs otherwise, take part in any consideration or discussion or vote on any question relating to the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

**7. Service of documents and other notices**

A notice or other document may be served on the Committee by delivery to the office of the Executive Secretary.

**9. Committee may regulate procedure**

Except as otherwise provided under this Act, the Committee may regulate its own procedure.

