

SPECIAL ISSUE

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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2023

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CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Sexual Offences (Amendment) Bill, 2023 2189



**THE SEXUAL OFFENCES (AMENDMENT) BILL,
2023**

A Bill for

AN ACT of Parliament to amend the Sexual Offences Act, 2006

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Sexual Offences (Amendment) Act, 2023.

Short title.

2. Section 2 of the Sexual Offences Act, 2006, in this Act referred to as “the principal Act”, is amended by deleting the definition “Minister” and substituting the following new definition in its proper alphabetical sequence—

Amendment of section 2 of No. 3 of 2006.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to legal affairs;

3. Section 26 of the principal Act is amended in subsection (7) by deleting the word “Minister” appearing in paragraph (b) and substituting therefor the words, “Cabinet Secretary”.

Amendment of section 26 of No. 3 of 2006.

4. Section 35 of the principal Act is amended—

Amendment of section 35 of No. 3 of 2006.

(a) in subsection (3) by deleting the word, “Minister” appearing immediately after the expression “subsection (2)” and substituting therefor the words “Cabinet Secretary”.

(b) in subsection (5) by deleting the word “Minister” appearing immediately after the words “gazetted by the” and substituting therefor the words “Cabinet Secretary”.

5. Section 36 of the principal Act is amended—

Amendment of section 36 of No. 3 of 2006.

(a) in subsection (4) by deleting the word, “Minister” appearing immediately after the words “determined by the” and substituting therefor the words “Cabinet Secretary”.

(b) in subsection (7) by deleting the word, “Minister” appearing in paragraph (b) and substituting therefor the words, “Cabinet Secretary”.

6. Section 46 of the principal Act is amended by deleting the word, "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary".

Amendment of section 46 of No. 3 of 2006.

7. The principal Act is amended by inserting the following new section immediately after section 46 —

Insertion of new section 46A in No. 3 of 2006.

Public awareness and education on reproductive health.

46A. (1) The Cabinet Secretary shall—

- (a) promote public awareness on sexual offences through nationwide education and information campaigns; and
- (b) in consultation with the Cabinet Secretary responsible for matters relating to education, establish programs to safeguard, protect and promote the right to education of victims of sexual offences, including victims of teenage pregnancy.

8. Section 47 of the principal Act is amended by deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary".

Amendment of section 47 of No. 3 of 2006.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Sexual Offences Act, 2006 to provide for promotion of national public awareness of sexual offences. Further, the Bill mandates the Cabinet Secretary responsible for education to establish programs to safeguard, protect, and promote the right to education of victims of sexual offences, including victims of teenage pregnancies. Finally, the Bill provides for the definition of a cabinet secretary so as to align the Act with the Constitution.

Clause 1 of the Bill is the Short Title.

Clause 2 of the Bill proposes a definition of the Cabinet Secretary so as to align it with the Constitution.

Clause 3 to Clause 6 of the Bill substitutes the term “Minister” with “Cabinet Secretary” to align the Act with the Constitution.

Clause 7 of the Bill seeks to introduce a new section 46A provide for promotion of national public awareness of sexual offences. Further, the Bill requires the Cabinet Secretary Cabinet responsible for education to establish programs to safeguard, protect, and promote the right to education of victims of sexual offences, including victims of teenage pregnancies.

Clause 8 of the Bill substitutes the term “Minister” with “Cabinet Secretary” to align the Act with the Constitution.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative power or limit any fundamental rights or freedoms.

Indication of whether the Bill concerns county governments

This Bill does not affect the functions of the county governments and is therefore a Bill not concerning counties.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

DORIS DONYA ABURI,
Member of Parliament.

*Section 2 of No 3 of 2006 that is proposed to be amended—***Interpretation**

2. (1) In this Act, unless the context otherwise requires -

“act which causes penetration” means an act contemplated under this Act;

“child” has the meaning assigned thereto in the Children Act No. 8 of 2001;

“complainant” means the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse;

“consent” has the meaning assigned to it under this Act;

“DNA” means deoxyribonucleic acid, the genetic code unique to every living organism, including human beings and “DNA Test” shall be construed accordingly;

“gang” means two or more persons;

“genital organs” includes the whole or part of male or female genital organs and for purposes of this Act includes the anus;

“gang rape” deleted by Act No. 7 of 2007, Sch.;

“HIV” means the Human Immunodeficiency Virus which causes AIDS;

“HIV test” means the test which determines whether a person is infected with HIV;

“indecent act” means any unlawful intentional act which causes—

(a) any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration;

(b) exposure or display of any pornographic material to any person against his or her will;

“intermediary” means a person authorized by a court, on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counselor, guardian, children's officer or social worker;

“law enforcement officer” means any person whose duties involve law enforcement and includes but is not limited to a police officer as defined under the Police Act;

“person with mental disabilities” means a person affected by any mental disability irrespective of its cause, whether temporary or permanent, and for purposes of this Act includes a person affected by such mental disability to the extent that he or she, at the time of the alleged commission of the offence in question, was—

- (a) unable to appreciate the nature and reasonably foreseeable consequences of any act described under this Act;
- (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation;
- (c) unable to resist the commission of any such act; or
- (d) unable to communicate his or her unwillingness to participate in any such act;

“Minister” means the Minister for the time being responsible for matters relating to legal affairs and public prosecutions;

“penetration” means the partial or complete insertion of the genital organs of a person into the genital organs of another person;

“sexual offence” means any offence prescribed in this Act; and

“vulnerable person” means a child, a person with mental disabilities or an elderly person and “vulnerable witness” shall be construed accordingly.

Section 26 of No 3 of 2006 that is proposed to be amended—

Deliberate transmission of HIV or any other life threatening sexually transmitted disease

26. (1) Any person who, having actual knowledge that he or she is infected with HIV or any other life threatening sexually transmitted disease intentionally, knowingly or willfully does anything or permits the doing of anything which he or she knows or ought to reasonably know—

- (a) will infect another person with HIV or any other life threatening sexually transmitted disease;
- (b) is likely to lead to another person being infected with HIV or any other life threatening sexually transmitted disease;

(c) will infect another person with any other sexually transmitted disease, shall be guilty of an offence, whether or not he or she is married to that other person, and shall be liable upon conviction to imprisonment for a term of not less fifteen years but which may be for life.

(2) Notwithstanding the provisions of any other law, where a person is charged with committing an offence under this section, the court may direct that an appropriate sample or samples be taken from the accused person, such place and subject to such conditions as the court may direct, for the purpose of ascertaining whether or not he or she is infected with HIV or any other life threatening sexually transmitted disease.

(3) The sample or samples taken from an accused person in terms of subsection (2) shall be stored at an appropriate place until finalization of the trial.

(4) The court shall, where the accused person is convicted, order that the sample or samples be tested for HIV or any other life threatening sexually transmitted disease and where the accused person is acquitted, order that the sample or samples be destroyed.

(5) Where a court has given directions under subsection (4), any medical practitioner or designated person shall, if so requested in writing by a police officer above the rank of a constable, take an appropriate sample or samples from the accused person concerned;

(6) An appropriate sample or samples taken in terms of subsection (5)—

(a) shall consist of blood, urine or other tissue or substance as may be determined by the medical practitioner or designated person concerned, in such quantity as is reasonably necessary for the purpose of determining whether or not the accused person is infected with HIV or any other life threatening sexually transmitted disease; and

(b) in the case a blood or tissue sample, shall be taken from a part of the accused person's body selected by the medical practitioner or designated person concerned in accordance with accepted medical practice.

(7) Without prejudice to any other defence or limitation that may be available under any law, no claim shall lie and no set-off shall operate against—

(a) the State;

(b) any Minister; or

(c) any medical practitioner or designated persons, in respect of any detention, injury or loss caused by or in connection with the taking of an appropriate sample in terms of subsection (5), unless the taking was unreasonable or done in bad faith or the person who took the sample was culpably ignorant and negligent.

(8) Any person who, without reasonable excuse hinders or obstructs the taking of an appropriate sample in terms of subsection (5) shall be guilty of an offence of obstructing the cause of justice and shall on conviction be liable to imprisonment for a term of not less than five years or to a fine of not less fifty thousand shillings or to both.

(9) Where a person is convicted of any offence under this Act and it is proved that at the time of the commission of the offence, the convicted person was infected with HIV or any other life threatening sexually transmitted disease whether or not he or she was aware of his or her infection, notwithstanding any other sentence in this Act, he or she shall be liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life.

(10) For purposes of this section—

(a) the presence in a person's body of HIV antibodies or antigens, detected through an appropriate test or series of tests, shall be prima facie proof that the person concerned is infected with HIV; and

(b) if it is proved that a person was infected with HIV after committing an offence referred to in this Act, it shall be presumed, unless the contrary is shown, that he or she was infected with HIV when the offence was committed.

Section 35 of No 3 of 2006 that is proposed to be amended—

Medical treatment orders

35. (1) A court shall upon conviction of a person having committed a sexual offence and if satisfied that the convicted person is dependent on or has the propensity to misuse alcohol, any drug or is suffering from any other disorder, and may benefit from treatment, grant an order for treatment or professional counseling and such an order shall be made in addition to any sentence, including a sentence of imprisonment which is not suspended.

(2) Notwithstanding the provisions of sub-section (1), a court shall, at any time at the request of a victim of sexual offence or an intermediary, grant an order for the treatment of a victim of sexual offence.

(3) Notwithstanding the provisions of subsection (2), the Minister responsible for health shall prescribe circumstances under which a victim of a sexual offence may at any time access treatment in any public hospital or institution.

(4) The expenses incurred for the treatment or professional counseling of any person convicted of an offence under this section or a victim of a sexual offence as the case may be, shall be borne by the State.

(5) All treatment in respect of a treatment order or professional counseling granted under this Act shall be undertaken at a public hospital or institution or any other institution approved or gazetted by the Minister responsible for health.

(6) All medical records relating to treatment pursuant to subsections (1), (2), (3) and (4) shall be kept and may be used as evidence before any court with regard to any offence under this Act.

Section 36 of No 3 of 2006 that is proposed to be amended—

Evidence of medical or forensic nature

36. (1) Notwithstanding the provisions of section 26 of this Act or any other law, where a person is charged with committing an offence under this Act, the court may direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct for the purpose of forensic and other scientific testing, including a DNA test, in order to gather evidence and to ascertain whether or not the accused person committed an offence.

(2) The sample or samples taken from an accused person in terms of subsection (1) shall be stored at an appropriate place until finalization of the trial.

(3) The court shall, where the accused person is convicted, order that the sample or samples be stored in a databank for dangerous sexual offenders and where the accused person is acquitted, order that the sample or samples be destroyed.

(4) The dangerous sexual offenders databank referred to in subsection (3) shall be kept for such purpose and at such place and shall contain such particulars as may be determined by the Minister.

(5) Where a court has given directions under subsection (1), any medical practitioner or designated person shall, if so requested in writing

by a police officer above the rank of a constable, take an appropriate sample or samples from the accused person concerned.

(6) An appropriate sample or samples taken in terms of subsection (5)—

(a) shall consist of blood, urine or other tissue or substance as may be determined by the medical practitioner or designated person concerned, in such quantity as is reasonably necessary for the purpose of gathering evidence in ascertaining whether or not the accused person committed an offence or not; and

(b) in the case a blood or tissue sample, shall be taken from a part of the accused person's body selected by the medical practitioner or designated person concerned in accordance with accepted medical practice.

(7) Without prejudice to any other defence or limitation that may be available under any law, no claim shall lie and no set-off shall operate against—

(a) the State;

(b) any Minister; or

(c) any medical practitioner or designated persons, in respect of any detention, injury or loss caused by or in connection with the taking of an appropriate sample in terms of subsection (5), unless the taking was unreasonable or done in bad faith or the person who took the sample was culpably ignorant and negligent.

(8) Any person who, without reasonable excuse, hinders or obstructs the taking of an appropriate sample in terms of subsection (5) shall be guilty of an offence of obstructing the course of justice and shall on conviction be liable to imprisonment for a term of not less than five years or to a fine of not less fifty thousand shillings or to both.

the 1990s, the number of people who have been employed in the public sector has increased in all countries.

There are a number of reasons for this. First, the public sector has become an important source of employment for many people, especially in developing countries. Second, the public sector has become an important source of income for many people, especially in developing countries.

Third, the public sector has become an important source of social services for many people, especially in developing countries. Fourth, the public sector has become an important source of political power for many people, especially in developing countries.

Finally, the public sector has become an important source of economic growth for many people, especially in developing countries. This is because the public sector has become an important source of investment in infrastructure, education, and health care, which are all essential for economic growth.

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