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**SUPPLEMENT No. 13**

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**BILLS SUPPLEMENT** ★

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**Bill No. 32**

*Sexual Offences Bill*

**2019**

**THE SEXUAL OFFENCES BILL, 2019**

**EXPLANATORY MEMORANDUM**

**1. Object of the Bill.**

The object of this Bill is to enact a specific law on sexual offences for the effectual prevention of sexual violence; to enhance punishment of sexual offenders; to provide for the protection of victims during sexual offences trials; to provide for extra territorial application of the law; to repeal some provisions of the Penal Code Act, Cap. 120 and for other related matters.

**2. Defects in the existing law.**

Whereas the Penal Code Act, Cap. 120 provides for a number of sexual offences, the provisions are outdated and the ingredients constituting the offences are narrow given the fact that they do not reflect the evolving trends in social attitudes, values and sexual practices.

New forms of sexual violence and exploitation have emerged such as sex tourism, indecent communication and child marriages among others which are currently not provided for, posing a challenge while dealing with them.

The application of the Penal Code Act, Cap. 120 is also limited in as far as combating sexual violence on Ugandan citizens by Ugandan citizens and residents while outside the country

is concerned. There is need to provide for extra territorial application of the law in order to combat sexual violence on Ugandan citizens by Ugandan citizens and residents while outside the country.

It is therefore necessary that a specific law on sexual offences be enacted to provide for the effectual prevention of sexual violence.

### **3. Remedies.**

The bill therefore makes provision for sexual offences, enhanced punishment for sexual offenders, the extra territorial application of the law; and creates new offences among others.

## **PROVISIONS OF THE BILL**

The bill consists of six parts, 46 clauses and a schedule.

**PART I—PRELIMINARY** provides for the interpretation of the words and phrases used in the Bill.

**PART II—SEXUAL OFFENCES GENERALLY** consists of clauses 2 to 12 and creates the offences of; rape, aggravated rape, administering substance for purpose of committing a sexual act, sexual assault, sexual harassment, detention with sexual intent, sexual exploitation, unnatural offences, attempt to commit unnatural offences, Incest, disclosure of sexual offence and offence to make a false allegation.

**PART III—SEXUAL OFFENCES AGAINST CHILDREN** is comprised of sections 13 to 22 which provide for offences of defilement, aggravated defilement, attempted defilement, child to child sex, householder permitting defilement, supply of sexual content and material to a child, child prostitution and child sex tourism.

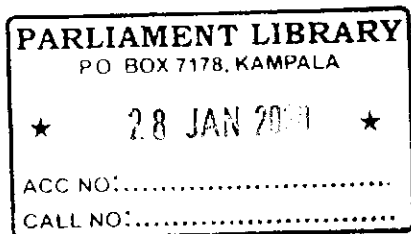
**PART IV—SPECIAL POWERS OF COURT AND JURISDICTION** consists of clauses 23 to 37 which provide for Payment of compensation to victims of defilement, Proceedings to be

held in camera, prohibition of publication of information, evidence of character and previous sexual history.

**PART V—SEX OFFENDER’S REGISTER** provides for the establishment of a sexual offenders’ register, the requirement for their registration, contents of the register and access to the register. It is comprised of clauses 28-33.

**PART VI—MISCELLANEOUS PROVISIONS** consists of clauses 34 to 46 which provide for Extra-Territorial Application, Regulations, repeals and Savings and transitional matters.

HON. AMODING MONICAH (MP),  
*District Woman Representative, Kumi.*



THE SEXUAL OFFENCES BILL, 2019

ARRANGEMENT OF CLAUSES

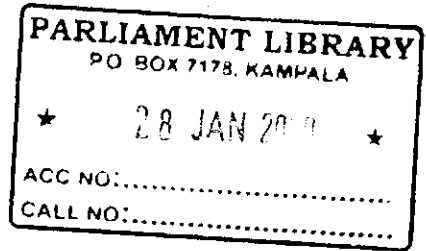
Clause

PART I—PRELIMINARY

- 1. Interpretation.

PART II—SEXUAL OFFENCES

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- 3. Aggravated rape.
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- 10. Sexual exploitation.
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- 16. Sexual offences by children.
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- 19. Child prostitution.
- 20. Child sex tourism.
- 21. Sexual act in presence of child.

22. Marriage involving child.

PART IV—COURT POWERS AND JURISDICTION

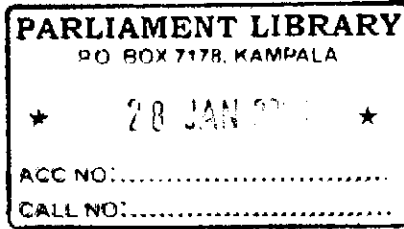
23. Payment of compensation.
24. Proceedings held in camera.
25. Prohibition of publication.
26. Evidence of character and previous sexual history.
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PART V—SEXUAL OFFENDER’S REGISTER

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35. Attempt to commit a sexual offence.
36. Consent during sexual intercourse.
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38. Joint offenders.
39. Harassment orders.
40. Extra-Territorial application.
41. Discontinuation of investigations.
42. Amicable settlement of sexual offences.
43. Failure to report sexual offence.
44. Regulations.
45. Repeal and savings.
46. Transitional provisions.



**A Bill for an Act**

**ENTITLED**

**THE SEXUAL OFFENCES ACT, 2019.**

**An Act to revise the law on sexual offences for the effectual prevention of sexual violence; to provide for enhanced punishment for sexual offenders; to provide for the protection of victims during trial of sexual offences; to provide for extra territorial application of the law on sexual offences; consequentially repeal some provisions of the Penal Code Act, Cap. 120 and for other related matters.**

**BE IT ENACTED** by Parliament as follows:

**PART I—PRELIMINARY**

**1. Interpretation**

In this Act, unless the context otherwise requires—

“attempt” means the intention to commit an offence, began to be put into execution by means adapted to its fulfillment, and manifested by an overt act, but is not executed to such an extent as to amount to an offence under this act.

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

“consent” means the voluntary, specific, informed and unambiguous indication of a person’s wish by which he or she, signifies agreement to performance of a sexual act;

“disability” means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

“gain” means a financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount; or the goodwill of any person which is or appears likely, in time, to bring financial advantage;

“Minister” means the Minister responsible for justice and constitutional affairs;

“register” means the sex offenders’ register referred to in section 28;

“serial offender” means a person with a record of a conviction for an offence under this Act;

“sexual act” means the—

- (a) penetration of a person’s sexual organ, mouth or anus by a person’s or an animal’s sexual organ or object;
- (b) contact or stimulation of a person’s sexual organ with another person’s or animal’s sexual organ, or object; or
- (c) insertion of a person’s or animal’s body part or any object into the sexual organ, anus or mouth of another person;

but does not include the penetration of person’s sexual organ, mouth or anus, contact, or stimulation of person’s sexual organ, or insertion of any object into the sexual organ, anus or mouth of another person done for sound health practices or proper medical procedure;

“sexual exploitation” means the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials or the use of a person for sexual conduct or other lascivious conduct;

“sexual organ” means a vagina or a penis;

“person in authority” means a person who is charged with the duty or responsibility for the health, welfare, or supervision of a person;

“person in trust” means a person committed into the care or charge of a person in authority;

“prostitute” means a person who, by his or her conduct regularly holds himself or herself out as available for a sexual act or sexual gratification for monetary or other gain;

“prostitution” means the practice of engaging in sexual acts or sexual gratification for monetary or other gain.

#### PART II—SEXUAL OFFENCES

### 2. Rape.

(1) A person who performs a sexual act with another person—

(a) without that other person’s consent; or

(b) incapable of consenting to the sexual act  
commits an offence and is liable on conviction, to imprisonment for life.

(2) An assertion of having obtained consent of another person shall be negated where the alleged consent was obtained by—

(a) threats;

(b) duress;

(c) undue influence;



- (d) misrepresentation; or
- (e) intimidation of any kind.

(3) In this section, a person is incapable of consenting to a sexual act if at the time of performance of the sexual act he or she was—

- (a) asleep;
- (b) unconscious;
- (c) in an altered state of consciousness due to the influence of medicine, drug, alcohol or substance that adversely affects his or her judgment; or
- (d) mentally impaired.

(4) A person who attempts to perform a sexual act in circumstances referred to in sub section (1) commits an offence, and is liable on conviction, to imprisonment not exceeding eight years.

### **3. Aggravated rape.**

(1) Where rape is committed in any of the following circumstances—

- (a) the sexual offender is infected with HIV or suffering from AIDS;
- (b) the offender is a serial offender;
- (c) the victim suffers disability;
- (d) the act was committed by two or more persons;
- (e) the act was committed in the presence of another person;
- (f) the offender is a person in authority or a person in trust; or

- (g) the victim is of advanced age,

it shall be deemed to be aggravated and the person so convicted is liable to suffer death.

(2) A person who attempts to perform a sexual act in circumstances referred to in subsection (1) commits an offence and is liable on conviction, to imprisonment not exceeding ten years.

**4. Administering substance with intent to commit a sexual act.** A person who administers or causes to be administered a substance to another person, with the intention of inducing, stupefying or overpowering that other person so as to perform a sexual act with that person commits an offence and is liable on conviction, to imprisonment for seven years.

**5. Sexual assault.**

(1) A person who unlawfully—

- (a) touches the anus, breasts, penis, buttocks, thighs or vagina of another person;
- (b) exposes or displays his or her sexual organ to another person;
- (c) exposes or displays the sexual organ of another person;
- (d) utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by another person; or
- (e) intrudes upon the privacy of a person,

with intent to insult the modesty of that other person, commits an offence and is liable on conviction, to imprisonment for a term of one year or a fine of twenty four currency points or both.

**6. Indecent communication.**

(1) A person who by whatever means transmits, transfers, sends, forwards, directs material of a sexual nature to another person without the consent of that other person commits an offence and is liable on conviction, to a fine not exceeding three hundred currency points or to imprisonment for seven years or both.

(2) In this section, material of sexual nature includes sexually suggestive conversations, texts, pictures, videos, objects or written materials.

**7. Sexual Harassment.**

A person who—

- (a) makes direct or indirect sexual advances or requests whether verbal or written to;
- (b) displays sexually suggestive pictures, objects, written materials or sexually suggestive gestures to ;
- (c) engages in unwelcome touching, patting, pinching or any other unsolicited physical contact with; or
- (d) makes sexually oriented comments, jokes, obscene expressions or offensive flirtations with ;

an employee, student, patient or other person under his or her authority knowing or having reason to believe that such conduct is not welcome or offensive, as a pre-condition for preferential treatment in employment, promotion, recommendation, academic progress, healing or other favour and that by its nature has a detrimental effect on that other person commits an offence and is liable on conviction, to a fine not exceeding two thousand currency points or to imprisonment not exceeding ten years or both.

**8. Detention with sexual intent.**

A person who unlawfully detains another person with the intention of performing a sexual act with that other person commits an offence and is liable on conviction, to imprisonment not exceeding seven years.

**9. Sexual act with person in custody.**

A person who being an officer or an employee of a detention facility—

- (a) performs a sexual act, with a person in custody of the detention facility; or
- (b) procures, authorizes, facilitates, compels or induces another person to perform a sexual act, with a person in custody of a detention facility

commits an offence and is liable on conviction, to imprisonment not exceeding ten years.

**10. Sexual exploitation.**

(1) A person who—

- (a) causes, encourages, induces, entices, incites another person to be sexually exploited; or
- (b) controls any of the activities of another person to the effect that that person is sexually exploited;

within or outside Uganda for gain for himself or herself or another person commits an offence and is liable on conviction, to imprisonment for a term of fifteen years.

(2) A victim of sexual exploitation shall not be penalized for practicing or engaging in acts constituting the sexual exploitation.

**11. Unnatural offences.**

A person who—

- (a) performs a sexual act with another person contrary to the order of nature; or
- (b) engages in a sexual act with an animal;

commits an offence and is liable on conviction, to imprisonment for ten years.

**12. Incest.**

(1) A person who performs a sexual act with another person who, to his or her knowledge, is related to him or her as a;

mother	father;
mother's daughter	father's son;
daughter	son;
father's mother	father's father;
mother's mother	mother's father;
son's daughter	son's son;
daughter's daughter	daughter's son;
sister	brother;
wife's mother	husband's father;
wife's daughter	husband's son;
father's sister	father's brother;
mother's sister	mother's brother;
brother's daughter	brother's son;
sister's daughter	sister's son;
father's brother's daughter	father's brother's son;
mother's sister's daughter	mother's sister's son;
son's wife	daughter's husband;
father's wife	mother's husband

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

### PART III—SEXUAL OFFENCES AGAINST CHILDREN

**13. Defilement.**

(1) A person who performs a sexual act with a child commits an offence and is liable on conviction, to imprisonment for eighteen years.

(2) A person who attempts to perform a sexual act with a child commits an offence and is liable on conviction, to imprisonment for fifteen years

**14. Aggravated defilement.**

(1) A person who performs a sexual act with a child and at the time of performing a sexual act, the—

- (a) child is below the age of fourteen years;
- (b) child is a person with a disability;
- (c) offender is infected with the Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS);
- (d) offender is a person in authority over the child;
- (e) offender is a serial offender; or
- (f) offender is a relative;

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

(2) A person who attempts to perform a sexual act with a child in circumstances referred to in sub-section(1) commits an offence and is liable on conviction, to imprisonment for eighteen years.

**15. Procuring defilement.**

A person, who procures a child to perform a sexual act, with any other person within or outside Uganda, commits an offence and is liable on conviction, to imprisonment for ten years.

**16. Sexual offences by children.**

(1) Where an offence under this Act is committed by a child under the age of twelve years, the matter shall be dealt with in accordance with the provisions of Part V of the Children Act, Cap. 59.

(2) Where an offence under this Act is committed by a child against another child when each is above the age of twelve years, each of the offenders shall be dealt with in accordance with the provisions of Part X of the Children Act, Cap. 59.

**17. Householder permitting defilement.**

A person who, being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly makes a child to resort to or be on such premises for the purpose of a sexual act being performed upon him or her, commits an offence and is liable on conviction, to imprisonment for five years.

**18. Supply of sexual content and material to a child.**

(1) A person who unlawfully gives, displays, distributes or supplies to a child material—

- (a) of a sexual nature;
- (b) demonstrating, depicting or illustrating a sexual act;
- (c) whose common usage is for the performance of a sexual act;
- (d) mimicking a sexual organ;

commits an offence and is liable on conviction, to imprisonment for a term of ten years.

(2) For avoidance of doubt, subsection (1) shall not apply to material given, displayed, distributed or supplied to a child as part of sex education or reproductive health as part of the curriculum of an approved institution of learning.

**19. Child prostitution.**

A person who—

- (a) knowingly permits a child to remain in any premises, for the purposes of prostitution;
- (b) procures or attempts to procure a child to become a prostitute, within or outside Uganda;
- (c) procures or attempts to procure a child to leave Uganda, with intent that he or she may become an inmate of or frequent a brothel elsewhere;

- (d) procures or attempts to procure any child to leave his or her usual place of abode in Uganda, with intent that he or she may, for the purposes of prostitution, become an inmate of or frequent a brothel;
- (e) induces a person to be a client of a child for sexual acts or for any form of sexual abuse or indecent exhibition or show;
- (f) takes advantage of his or her influence over, or relationship to a child, to encourage, entice or cause a child to engage in prostitution;
- (g) threatens, intimidates or forces a child into prostitution; or
- (h) owns, leases, rents, manages, occupies or has control of any movable or immovable property for purposes of prostitution involving children;

commits an offence and is liable on conviction, to imprisonment not exceeding ten years.

## **20. Child sex tourism.**

A person who—

- (a) makes or organizes travel arrangements for himself or herself or on behalf of another person resident within or outside Uganda, with the intention of facilitating any sexual activity with a child; or
- (b) prints or publishes, in any manner, information that is intended to promote or facilitate arrangements for sexual acts with a child;

commits an offence and is liable on conviction, to a fine of two thousand currency points or imprisonment not exceeding ten years or both.



**21. Sexual act in presence of child.**

A person who intentionally—

- (a) performs a sexual act; or
- (b) causes another to engage in a sexual act;

in the presence of a child or in a place from where he or she can be observed by a child, commits an offence and is liable on conviction, to imprisonment for ten years.

**22. Marriage involving child.**

(1) A person who—

- (a) conducts, directs, participates or abets a marriage of a child including participation in formal or informal marital rites and initiation practices with a child; or
- (b) purports to marry a child in a formal or informal ceremony of marriage or any other arrangement with or without the consent of a parent or guardian of the child;

commits an offence and is liable on conviction, to imprisonment for ten years.

(2) In this section, marriage involving a child means the union whether formal or informal between a child and another person for the purpose of living as husband or wife.

**PART IV—COURT POWERS****23. Payment of compensation.**

Where a person is convicted of an offence under this Act, court may in addition to any sentence imposed under the Act, order that the person convicted compensates the victim for any physical or psychological harm caused.

**24. Proceedings held in camera.**

(1) In proceedings under this Act, court may, upon application or on its own volition—

- (a) hold all or any part of the proceedings in camera; or
- (b) remove or direct the removal from court or court premises a person or group of persons whose presence is not necessary at such proceedings, unless the complainant and the accused otherwise request.

(2) Where the victim is a child, the court shall take into consideration and act in the best interest of the child.

**25. Prohibition of publication.**

(1) Except with leave of court, a person shall not—

- (a) reveal the name, address, or any particulars leading to the identification of the victim of a sexual offence, a witness or complainant; or
- (b) publish in print or electronic media or broadcast or include in a broadcast or programme information intended to lead to the identification of victim of a sexual offence, a witness or complainant;
- (c) take a picture of a victim of a sexual act, a witness or complainant;

(2) A person who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding twelve currency points or imprisonment for six months or both.

**26. Evidence of character and previous sexual history.**

A victim of a sexual offence shall not be cross examined on his or her previous sexual experience except with leave of court.

**27. Uncorroborated evidence of a victim.**

Nothing in this Act or any other law shall be interpreted as requiring for offences under this Act the corroboration of evidence of a victim of a sexual offence.

**PART V—SEX OFFENDERS' REGISTER**

**28. Establishment of a sex offenders' register.**

(1) There is established a sex offenders' register.

(2) The register shall be managed and maintained in electronic or other form by the Authority responsible for National Identification and Registration.

**29. Registration of sexual offenders.**

(1) A person convicted of an offence under this Act shall have his or her particulars captured in the register.

(2) Where a person is convicted of an offence under this Act, court shall within ten days of that judgment, forward particulars and a certified copy of the judgment to the Authority responsible for National Identification and Registration.

(3) The Authority responsible for National Identification and Registration shall upon receipt of the particulars and judgment referred to in sub section (2) enter the particulars of the conviction in the register.

(4) For avoidance of doubt, an appeal lodged by the convict shall not act as a bar to the registration of such convict in the register.

(5) Where a conviction is quashed or overturned, the court shall within ten days of that judgment, forward particulars and a certified copy of the judgment to the Authority responsible for National Identification and Registration for rectification of the register.

**30. Content of the register.**

The register shall contain such information as may be prescribed by the Minister by Statutory Instrument.

**31. Access to the register.**

The register shall be accessed by any person, in accordance with the prescribed procedure and conditions issued by the Minister by the Statutory Instrument.

**32. Duration of registration.**

The registration of a person in the register shall, unless the conviction is successfully appealed against, be for the natural life of the offender.

**33. Disclosure of sexual offences record.**

(1) A person who has been convicted of an offence under this Act shall, disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other vulnerable person or when offering or agreeing to take care of or supervise children or any other vulnerable person.

(2) A person who does comply with subsection (1) commits an offence and is liable on conviction, to imprisonment not exceeding seven years and termination from the said employment.

**PART VI—MISCELLANEOUS PROVISIONS****34. False sexual allegations.**

(1) A person who makes false or misleading allegations against another person to the effect that the person has committed an offence under this Act commits an offence and is liable on conviction, to imprisonment for three years.

(2) In this section, an allegation is false or misleading if at any stage of investigations or prosecution, it is proved that the alleged act did not take place.

(3) For avoidance of doubt, an acquittal for an offence under this Act does not amount to a false allegation.

**35. Attempts to commit sexual offence.**

A person who attempts to commit an offence under this Act unless otherwise stated, commits an offence and is liable on conviction, to imprisonment for seven years.

**36. Consent during sexual act.**

Notwithstanding that a person has consented to performing a sexual act with another, he or she may withdraw such consent at any time before or during the performance of the sexual act.

**37. Principal offenders.**

(1) When an offence is committed under this Act, each of the following persons is deemed to have taken part in committing the offence and may be charged as such—

- (a) a person who actually does the act or makes the omission which constitutes the offence;
- (b) a person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) a person who aids or abets another person in committing the offence;
- (d) a person who procures another to do the act or omit to do an act which constitutes the offence.

**38. Joint offenders in prosecution of common purpose.**

Where two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed as a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence.

**39. Harassment orders.**

Court may on application make a harassment order where there exists a well-founded fear that the victim may be subjected to harassment, intimidation, fear, distress, alarm or unwanted contact by the accused, agents of the accused or any person acting on behalf of the accused on such terms and conditions as the court may prescribe.

**40. Extra – Territorial Application.**

This Act shall apply to offences committed outside Uganda where—

- (1) A person who, while being a citizen of, or permanently residing in Uganda, does an act on a Ugandan outside Uganda, which act would constitute an offence had it been done in Uganda.
- (2) The offence was committed partly inside and partly outside Uganda.
- (3) A substantial proportion of commission of the offence has taken place within Uganda.

Provided that—

- (a) no proceedings shall be instituted under this section without the written consent of the Attorney General;
- (b) if the consent of the Attorney General is received under (a) proceedings may be instituted in any appropriate court and such court shall have jurisdiction to try the matter as if the offence or offences had been committed within its jurisdiction;
- (c) a person shall not be tried for an offence under this section if that person has been acquitted or convicted of the same offence in another country.

**41. Discontinuation of investigations.**

Investigation into a sexual allegation or complaint shall not be discontinued except with the written consent of the Director of Public Prosecutions.

**42. Amicable settlement of sexual offence.**

A person who enters into settlement or compromise with the person suspected to have committed a sexual offence or his or her relative commits an offence and is liable on conviction, to imprisonment for ten years.

**43. Failure to report sexual offence.**

A person being a parent, guardian, relative or person in authority or trust, who fails to report, threatens, intimidates, coerces or forces a victim of a sexual offence not to report any offence under this Act commits an offence and is liable on conviction, to imprisonment for three years.

**44. Regulations.**

The Minister may by statutory instrument make regulations for—

- (a) any matter that requires to be prescribed for;
- (b) administrative or procedural matters which are necessary to give effect to this Act; or
- (c) the code of conduct for persons registered in the register.

**45. Repeal and savings.**

Section 123, 124, 125, 128, 129, 129A 130, 133, 134, 135, 136, 137, 138, 139, 145, 146, 147, 149 and 150 of the Penal Code Act, Cap. 120 is repealed.

**46. Transitional.**

Where at the commencement of this Act, any proceedings are pending before Court for the prosecution of the offences under sections 123, 124, 125, 128, 129, 130, 133, 134, 135, 136, 137, 138, 139, 145, 146, 147, 149 and 150 of the Penal Code Act, Cap. 120 any such proceedings shall be transferred to the appropriate court if trial has not commenced.

**SCHEDULE.**

**Currency Point**

A currency point is equal to twenty thousand shillings.

