THE ANTI HOMOSEXUALITY BILL, 2009.

MEMORADUM.

1.1. The principle

The 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 Uganda 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 Uganda, legal, religious, and traditional family values of the people of Uganda against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.

There is also need to protect the children and youths of Uganda 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 Uganda e.g. the Penal Code Act Cap. 120

The Penal Code Act (Cap120) has no comprehensive provision catering for anti homosexuality. It focuses on unnatural offences under section 145 and 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 Uganda and the Penal Code Act Cap 120 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 Uganda as that contracted only between a man and a woman;
(b) prohibit and penalize homosexual behavior and related practices in Uganda 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 of 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 Uganda 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 minister to make regulations to give effect to the Act.

Schedule of the Bill gives the value of the currency point.

Hon David Bahati
MP, Ndorwa County West, kabale

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ARRANGEMENT OF CLAUSES.

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Schedule

Schedule Currency point.

A BILL FOR AN ACT

ENTITLED

THE ANTI HOMOSEXUALITY ACT, 2009.

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.

BE IT ENACTED by Parliament as follows-

PART I-PRELIMINARY.

1. 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;

"currency point" has the value assigned to it in the Schedule to this Act;

"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;

"Minister'' means the Minister responsible for ethics and integrity;

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

"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 or anus;

(b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ;
(c) the unlawful use of any object or organ by a person on another person's sexual organ or anus or mouth;
(d) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ;

"sexual organ" means a vagina, penis or any artificial sexual contraption;

"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- HOMOSEXUALITY AND RELATED PRACTICES.

2. The offence of homosexuality.

(1) A person commits the offence of homosexuality 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 homosexuality;

(2) A person who commits an offence under this section shall be liable on conviction to imprisonment for life.

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; or
(f) offender is a serial offender.
(g) 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 so as to there by enable any person to have unlawful carnal connection with any person of the same sex, commits a misdemeanor.

(2) A person who commits the offence of aggravated homosexuality shall be liable on conviction to suffer death.

(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 seven years.

(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.

(3) Where a person is convicted of homosexuality or aggravated homosexuality under sections 2 and 3 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.

(4) 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.

(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, outside the presence of the media,.

(3) Any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or 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 a fine not exceeding two hundred and fifty currency points.

PART III. RELATED OFFENCES AND PENALTIES.

7. Aiding and 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 seven years.

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 pretence 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 seven years.

9. Procuring homosexuality by threats, etc.

(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 Uganda or elsewhere*;

(b) by false pretences or false representations procures any woman or man to have any unlawful carnal connection with any person of the same sex, either in Uganda or elsewhere; or

(2) A person shall not be convicted of an offence under this section upon the evidence of one witness only, unless 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 him or herself or with any other person commits an offence and is liable on conviction to imprisonment for seven years.

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 seven years.

(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 five years.

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 to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and 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 seven years.

14. Failure to disclose the offense.

A person in authority, who being aware of the commission of any offence under this Act, omits to report the offense to the relevant authorities within twenty-four hours of having first had that knowledge, commits an offense and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding three years.

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 offenses under this Act.

16. Extra- Territorial Jurisdiction.

This Act shall apply to offences committed outside Uganda where-

(a) a person who, while being a citizen of or permanently residing in Uganda, commits an act outside Uganda, which act would constitute an offence under this Act had it been committed in Uganda; or

(b) the offence was committed partly outside and or partly in Uganda.

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.

(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 anyway to legitimize homosexuality, gender identity disorders and related practices in Uganda.

19. Regulations.

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

SCHEDULE

s.1.

One currency point is equivalent to twenty thousand shillings.