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REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2016**

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**NAIROBI, 22nd July, 2016**

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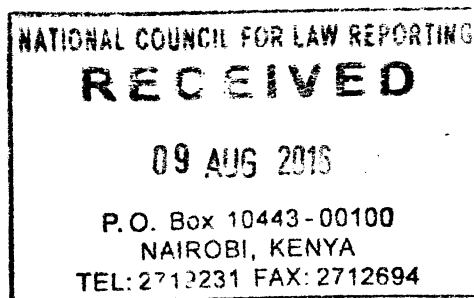
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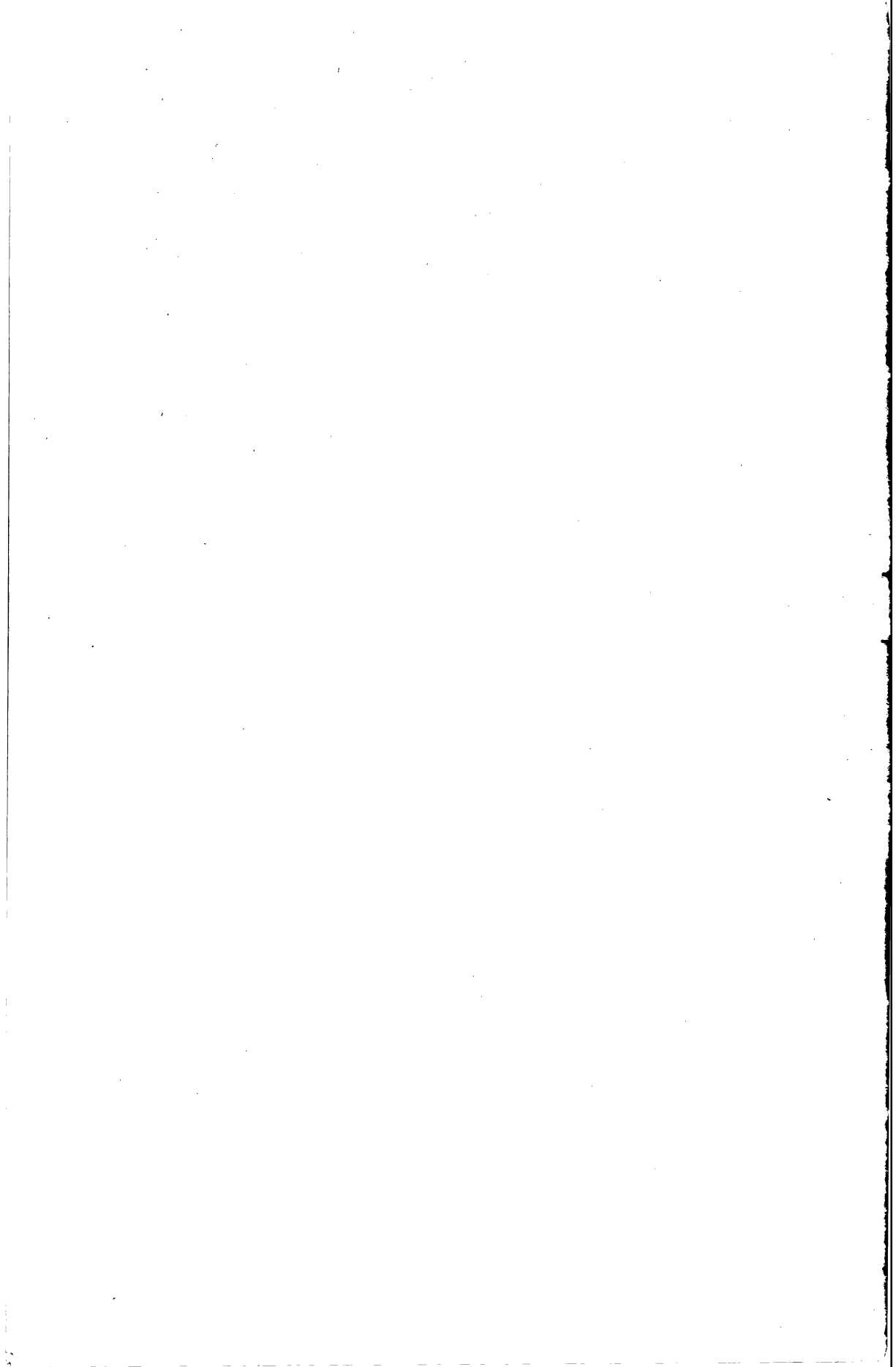
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**THE SEXUAL OFFENCES (AMENDMENT) BILL,  
2016**

**A Bill for**

**AN ACT of Parliament to amend the Sexual Offences  
Act.**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as Sexual Offences (Amendment) Act, 2016.

Short title.

**2.** The Sexual Offences Act, (in this Act referred to as “the principal Act”) is amended in section 2 by—

Amendment of  
section 2 of Cap.  
62A.

(a) deleting the definition of “indecent act” and substituting therefor the following definition—

“indecent act” includes an unlawful intentional act which causes—

(i) 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;

(ii) exposure or display of any genital organs, breasts, buttocks or pornographic material to any person against his or her will;

(b) deleting the definition of “Minister” and substituting therefor the following definition—

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

**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 Cap.  
62A.

**4.** Section 30 of the principal Act is amended by deleting the word “fifty” appearing immediately after the words “fine of not less than” and substituting therefor the words “five hundred”.

Amendment of  
section 30 of Cap.  
62A.

**5.** The principal Act is amended by inserting the following section immediately after section 30—

Insertion of new  
section in Cap.  
62A.

**30A.** (1) An employer shall confirm that a person seeking employment to a position of care or access to children or any vulnerable person has not been charged or convicted of an offence under this Act.

(2) An employer who knowingly employs a convicted sexual offender in a position of care or access to children or any vulnerable person commits an offence and is liable upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings or to both.

**6.** Section 35 of the principal Act is amended —

Amendment of  
section 35 of Cap.  
Cap. 62A.

- (a) in subsection (3) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary.”
- (b) in subsection (5) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”

**7.** Section 36 of the principal Act is amended —

Amendment of  
section 36 of Cap.  
Cap. 62A.

- (a) in subsection (4) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary.”
- (b) in subsection (6) by inserting the word “semen” immediately after the word “urine” appearing in paragraph (a).
- (c) in subsection (7) by deleting the word “Minister” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary”.

**8.** Section 37 of the principal Act is amended in subsection (1) by deleting the word “of one” appearing immediately after the word “fine” and substituting therefor the words “not exceeding five”.

Amendment of  
section 37 of Cap.  
Cap. 62A.

**9.** The principal Act is amended by inserting the following new sections immediately after section 40 —

Insertion of new  
section in Cap.  
62A.

Prohibition of plea  
bargaining.

**40A.** Any person who, in order to conceal a sexual offence,—

- (a) solicits for money, domestic animals or any other property as compensation from the suspect;

- (b) marries off the victim to the suspected offender;
- (c) prevents police officers from conducting investigations; or
- (d) distorts evidence or the scene of crime;

commits an offence and shall on conviction, be liable to imprisonment for a term of not less than five years or to a fine of not less than five hundred thousand shillings or to both.

Special units for sexual offences.

**40B.** (1) The Cabinet Secretary responsible for national security the National Police service shall ensure that— all police stations have special units to deal with sexual offences.

- (a) ensure that police officers are specifically trained in handling and investigating sexual offences;
- (b) establish one special units within the Service in each county to handle sexual offences.

(2) The special units referred in subsection (1) shall be equipped with modern equipment and facilities for carrying out investigations.

(3) All police stations shall have officers specifically trained in handling and investigating sexual offences.

Government to undertake education and promotion of public awareness.

**40C.** (1) The national and county governments shall promote public awareness on sexual offences through a comprehensive nation-wide education and information campaign conducted by the Government through the relevant Ministries, departments, authorities and other agencies.

(2) The education and information campaign referred to in subsection (1) shall focus on sexual offences and shall be carried

out in all schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Kenya.

(3) Every local authority in collaboration with the civil society and the Ministry responsible, shall conduct education and information campaigns on sexual offences within its area of jurisdiction.

**10. The principal Act is amended in section 46—**

Amendment of  
section 46 of Cap.  
Cap. 62A.

- (a) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;
- (b) by renumbering the existing section as sub-section (1);
- (c) by inserting the following new sub-sections immediately after the re-numbered sub-section (1)—

“(2) Notwithstanding the generality of sub-section (1) the National Policy Framework shall provide for—

- (a) promotion of awareness and civic education on sexual offences;
- (b) co-operation between the government and the civil society in the enforcement of the Act;

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

Insertion of new  
section in Cap.  
62A

Sex education in  
schools.

**46A.** The Ministry responsible for education shall make provision prescribe guidelines for the inclusion of sex education in school syllabuses.

**12. The principal Act is amended in section 47 by deleting the word Minister” and replacing it with the words “Cabinet Secretary”**

Amendment of  
section 47 of Cap.  
62A.

## **MEMORANDUM OF OBJECTS AND REASONS**

The primary objective of this Bill is to amend the Sexual Offences Act to expressly prohibit plea bargaining and collusion in sexual offences which help the perpetrators of sexual offences evade justice.

The Bill further proposes to create special units in all at least one police station per county police stations for to handle sexual offences. The units shall be equipped with modern equipment and facilities for timely investigations.

and all police stations shall have officers specifically trained in handling and investigating sexual offences.

The Bill provides for the national and county governments to promote public awareness on sexual offences through a comprehensive nation-wide education and information campaign conducted through the relevant Ministries, departments, authorities and other agencies.

The education and information campaign shall focus on sexual offences and shall be carried out in all schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Kenya.

Further, the Bill compels the Ministry of Education to provide education prescribe guidelines on the inclusion of sex education in the on sexual offences through the school syllabus.

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

The Bill concerns counties.

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

This Bill is a Bill concerning county governments.

Dated the 23rd June, 2016.

**FLORENCE MUTUA,**  
*Member of Parliament.*

*Section 2 of the principal Act which it is proposed to amend—*

**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 (Cap. 141); “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;

“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 an 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, counsellor, 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 the principal Act which it is proposed to amend –*

**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 and 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, at 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 30 of the principal Act which it is proposed to amend –*

**Non-disclosure of conviction of sexual offences**

30. A person who has been convicted of a sexual offence and who fails to 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 is guilty of an offence and liable upon conviction to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or to both.

*Section 35 of the principal Act which it is proposed to amend –*

**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 subsection (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 counselling 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 counselling 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 the principal Act which it is proposed to amend –*

**Evidence of medical, forensic and scientific 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 of 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,
- (d) 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.

*Section 37 of the principal Act which it is proposed to amend –*

**Keeping scene of crime secure, etc.**

37. (1) Any person who intentionally interferes with a scene of crime or any evidence relating to the commission of an offence under this Act is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than three years or to a fine of one hundred thousand shillings or to both.

(2) Interference referred to in subsection (1) includes but is not limited to—

- (a) tampering with a scene of crime;
- (b) interference or intimidation of witnesses; and
- (c) any other act or omission that would hinder or obstruct investigations or materially misrepresent any evidence.

*Section 40 of the principal Act which it is proposed to amend –*

**Attorney-General to decide whether police investigations should be discontinued**

40. The decision as to whether the prosecution or investigation by any police officer of a complaint that a sexual offence has been committed should be discontinued shall rest with the Attorney-General.

*Section 46 of the principal Act which it is proposed to amend –*

**National policy framework**

46. The Minister shall –

- (a) prepare a national policy framework to guide the implementation, and administration of this Act in order to secure acceptable and uniform treatment of all sexual related offences including treatment and care of victims of sexual offences;
- (b) review the policy framework at least once every five years; and
- (c) when required, amend the policy framework.

*Section 47 of the principal Act which it is proposed to amend –*

**Regulations**

47. The Minister may, in consultation with the Ministers for the time being responsible for matters relating to Internal Security, Prisons, Social Services, Education and Health, make regulations regarding –

- (a) any matter which is required or permitted by this Act to be prescribed by regulations;
- (b) the inter-sectoral implementation of this Act; and
- (c) any other matter which is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

