

REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE MAGISTRATES' COURTS (AMENDMENT) BILL, 2006:

INTRODUCTION:

The Magistrates' Courts (Amendment) Bill, 2006 was tabled in Parliament on the 5th December 2006.

The Committee on Legal and Parliamentary Affairs considered the Bill in accordance with the Rule 116 of the Rules of Procedure of Parliament.

METHODOLOGY:

The Committee held a retreat from 19th to 21st December at which the bill was discussed with the Uganda Law Reform Commission and the Minister of Justice and Constitutional Affairs.

The Committee also met and received views from the following:

1. The Uganda Law Society
2. The Uganda Judicial Officers Association
3. The Director of Public Prosecutions.
4. Coalition of Civil Society Organisations comprising of the following:
 - a. Action for Development (ACFODE)
 - b. Federation of Women Lawyers (FIDA)
 - c. Centre for Domestic Violence (CEDOVIP)
 - d. African Network for Prevention and Protection against Child Abuse and Neglect (ANPPCAN)
 - e. Raising Voices.

The Committee made reference to the principal law and other relevant laws. The Committee also carried out extensive discussions and deliberations on the bill.

OBJECT OF THE BILL:

This Bill is intended to amend the Magistrate's Court Act, Cap. 16 -

(1) Bail

Clause 3 seeks to rationalize the requirement that certain offences are only bailable by the High Court.

Offences under the Firearms Act

Clause 3 also seeks to amend section 75(2)(d) to require offences under the Fire Arms Act, Cap.299 to be bailable only by the High Court if they are punishable by more than ten (10) years imprisonment;

Offence of abuse of Office

Clause 3 further seeks to repeal section 75(2) (e) of Cap 16 relating to abuse of office punishable by imprisonment not exceeding seven years. When the Bill is passed, the offence should be bailable by a Magistrates Court.

(2) Abolition of Magistrate Grade III

The bill seeks to formally abolish Magistrates Grade III and delete their jurisdiction.

(3) Exclusion of public in trials of defilement where the victim of offence is a child below 12 years

The Bill further by Clause 2 amends section 40 of the principal Act to require the court when trying defilement in the case where the victim of the offence a child below twelve (12) years to consider exercising its jurisdiction under article 28(2) of the Constitution to exclude the press and the public from the proceedings.

(4) Trial in absence of accused

Clause 4 of the Bill seeks to amend section 123 (Trial of accused in his or her absence) to bring the section into line with article 28(5) of the Constitution relating to trial of an accused person in his or her absence.

(5) Enhancement of civil jurisdiction of magistrates' court

The Bill seeks to amend section 162(in Clause 6 seeks to amend section 162(1)(b) of the principal Act to increase from one million to four million eight hundred thousand shillings the fine in relation to the imprisonment of ten (10) years prescribed in that section as the jurisdiction of Magistrate Grade I on the basis of one (1) year being equivalent to twenty four (24) currency points (i.e. 480,000 shillings) i.e. according to new ratio of fines to imprisonment of two currency points being equal to one month of imprisonment.

(6) Abolition of corporal punishment

The bill also seeks to repeal section 179 of the Act relating to corporal punishment in order to comply with article 24 of the Constitution.

(7) Transitional Provisions

The Bill provides for transitional provisions in relation to pending cases affected by the enhanced jurisdiction in civil matters of the Chief Magistrate and Magistrate Grade 1.

OBSERVATIONS:

(1) Abolition of Magistrates Grade III:

The Bill, by clause 1, abolishes the Magistrate's Courts Grade III and makes consequential amendments to sections 161(1)(d), 162(1)(d), 164, 182, 204(1)(b) and (5)(b), 207(1)(d) and the First and Third Schedules and repeals the Second Schedule to the principal Act.

The abolition of Grade III Magistrates is timely since that grade has been phased out and they are no longer in existence.

(2) Exclusion of public in trials of defilement:

The Committee observed that all children need protection. It proposed that in the amendment to Section 40(1a) of the Magistrates' Courts Act the words "where the victim of the offence is a child below the age twelve years" should be deleted so that trials in camera are considered for all defilement cases, since all the victims are children.

The amendment is necessary to protect the identity of child victims of defilement, whose disclosure would otherwise be harmful to their psychological development. Trials in camera would also make it easy for child victims to give evidence in court, given the sensitive nature of sexual offences and the terminology used, which children are in many cases not comfortable to use in public.

(3) Offence of Defilement:

According to the proposed Penal Code (Amendment) Bill, the offence of defilement will be punishable by life imprisonment and is triable by a Chief Magistrate. It can therefore be bailable by a magistrate's court.

Clause 3 therefore amends section 75(2) (f) of Cap 16 to remove defilement from the offences which are bailable by the High Court

(4) Trial in absence of the accused:

According to article 28(5) of the Constitution a person may be tried in his or her absence only with his or her consent or if the person conducts himself or herself in such a way as to make it necessary for the court to make an order for him or her to be removed and for the proceedings to be conducted in his or her absence.

The amendment in Clause 4 will bring the section 123 in line with article 28(5).

(5) Abolition of corporal punishment:

Clause 6(c) seeks to repeal sections 162(3) and (4) of the principal Act relating to corporal punishment.

Clause 7 seeks to repeal 179 which provides for corporal punishment.

The Constitutional Court ruling in the case of *Kyamanywa Simon Vs Uganda Constitutional Reference No. 10 of 2000*, corporal punishment was declared to be cruel, inhuman and degrading punishment and contrary to article 24 of the Constitution.

(6) Enhanced jurisdiction of Chief Magistrates:

Clause 11 seeks to amend section 207 of Cap 16 to enhance the civil jurisdiction of the Magistrates Courts in order to decongest the High Court.

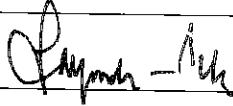
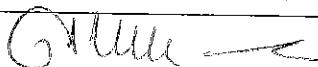
(7) Transitional Provisions:

Clause 14 contains transitional provisions to cater for the increases in the civil jurisdiction of magistrate's courts made by the amendment of section 207 of the principal Act by clause 11 of the Bill. Certain cases triable by the High Court will therefore now be triable by the appropriate magistrate's courts.

Recommendations:

The Committee recommends that subject to the proposed amendments, the bill be passed into law.

COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS
1ST SESSION 8TH PARLIAMENT

No	Name	Signature
1.	Hon. Nyombi Peter (Deputy Chairperson)	
2.	Hon. Ndeezi Alex	
3.	Hon. Asuman Kiyingi	
4.	Hon. Niwagaba Wilfred	
5.	Hon. Kyamulesire Ramathan (Col.)	
6.	Hon. Tinyefuza David (Gen)	
7.	Hon. Mpabwa Sarah (Maj.)	
8.	Hon. Akumu Mavenjina	
9.	Hon. Mugyenyi Mary	
10.	Hon. Odonga Otto	
11.	Hon. Nakawuki Susan	
12.	Hon. Lukwago Erias	
13.	Hon. Euku Simon Ross	
14.	Hon. Wacha Ben	
15.	Hon. Njuba Sam	
16.	Hon. Aleper Margaret Aachilla	
17.	Hon. Kabanda Pherry Sabano	

Proposed Amendments:

Clause 2:

Delete the words "Where the victim of the offence is a child below the age of twelve years".

Justification:

All victims of defilement are children, hence need protection.

Clause 6:

Section 162(a) substitute the words "four million eight hundred thousand shillings" with "two hundred and forty currency points"

Justification:

Instead of stipulating the amount of money in words, currency points should be used for consistency.

Clause 11:

Section 207 (1) (a) Substitute the words "fifty million shillings" with "seven hundred and fifty currency points".

Section 207(1) (b), substitute the words "twenty million shillings" with the words "four hundred currency points."

Justification:

Instead of stipulating the amount of money in words, currency points should be used for consistency.