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THE WOMEN'S LEGAL RIGHTS INITIATIVE

SIMPLIFICATION OF THE SEXUAL OFFENCES ACT 2003 - LESOTHO

2006

This publication was produced for review by the United States Agency for International Development. It was prepared by Chemonics International.

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A Task Order Under the Women in Development IQC

Contract No. GEW-I-00-02-00016-00

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Simplification of the Sexual Offences Act 2003



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FEDERATION OF WOMEN LAWYERS

SIMPLIFICATION OF THE SEXUAL OFFENCES ACT 2003 (ACT NO.3 OF 2003)

This Act is meant to consolidate and repeal all laws relating to sexual offences. Its main objectives are to combat sexual violence and to prescribe appropriate sentences for sexual offences.

1. The definition of "Sexual Act"

Direct or indirect contact with the arms, breasts, penis, buttocks, thighs or vagina of one person or any other part of the body of another person;

Exposure or display of the genital organs of one person to another person;

Insertion of any part of the body of a person or of any part of the body of an animal or object into the vagina or penis or anus of another person;

Cunnilingus fellatio or any other form of genital stimulation.

Exceptions

The abovementioned acts do not amount to sexual offences when the following take place;

Four sound health practices or other medical purposes for necessary body search by police;

For lawful purposes without putting into jeopardy the health and safety of the suspect;

When not carried out abusively or for humiliating or punishing an arrestee, suspect.

2. What is considered as a "Sexual Offence"

- Where a person commits the unlawful act with another;
- Where the persons causes another to commit the offence.

It is important to note that marriage is not a defence when it comes to sexual offences.

3. What is a "Compelled Sexual Act"

To commit the act with himself or herself;

Compels sexual act with a third person;

Causes the person to commit the act with an animate or inanimate object.

4. Inducement to allow sexual act

It is an offence to administer or apply substances to another when committing a sexual offence or to induce another to commit sex another person.

5. Conspiracy or incitement to commit sexual act

It is also an offence to conspire or aid another to commit unlawful sexual act whether it is through instigation or command.

6. Persistent sexual abuse of a child

It is a sexual offence to persistently sexually abuse a child. Persistence means two or more times, it is also an offence to fail to report persistent sex with a child.

7. Commercial sexual exploitation of children (under 18 years)

Child prostitution

Child prostitution means sex with a child for financial reward or favour or compensation;

It also includes, to;

Invite or persuade or induce a child to commit offence for financial reward, favour or compensation;

To agree to invite persuade or induce a child to commit as sexual act for reward.

To procure child for prostitution or a brothel commits an offence

To engage or to offer a child for purposes of committing sex for financial reward.

To facilitate the commission of a sexual act with a child;

As a parent, guardian or custodian to allow commission of sexual act with a child.

What is meant by "offering or receiving reward"

Paying someone to commit sex at with child;

Receiving money for the commission of the act;

Receiving money for the commission of the act;

Living on rewards for commission of rewards.

8. Sexual offences against disabled persons

It is an offence to commit a sexual act with a disabled person or in the

presence of a disabled person.

9. Matters of evidence

Age

A perpetrator is considered to have knowledge of the age of a child where he or she has actual knowledge of the age of the child or where there is a possibility that he/she knows or where the perpetrator has failed to obtain information of the child's age.

Incapacity of children below 14

In evidence there is no presumption that a child under 14 is incapable of committing sexual offence this means that the criminal capacity of a child under 14 is the same for any other offence.

Abolition of the cautionary rule

This act does away with the cautionary rule this means that the evidence of the complainant is not treated with caution, as was the case before.

Evidence of previous consistent statement

The evidence of previous consistent statements of the complainant is admissible.

Delay between commission of sexual act and laying of complaint

The court should not draw an adverse conclusion from the fact that there has been a delay between the sexual offence and the laying of the charge.

Absence of semen or vaginal fluid

In accordance with the Act the medical examination should be done at the expense of the Crown. The court is also not permitted to draw an unfavourable conclusion from the fact that there is no semen or vaginal fluid.

Evidence of psychological effects

Where it is alleged that a sexual offence has taken place evidence of psychological effects is admissible to show that the sexual act has been committed against the complainant and to show that there were coercive circumstances. This type of evidence is also admitted for the

purposes of sentence.

Court has to consider the qualification and experience of psychologist and any other evidence

Proceedings to be held in camera

In a sexual offence case cross-examination is done through the court. This means that questions are made through the judicial officer.

Evidence of sexual experience, activity or reputation

Evidence of sexual history or experience is not admissible nor is cross-examination on it permissible unless the identity of the accused is in issue this includes where the complainant is concealing the identity of the real perpetrator. This type of evidence is relevant to explain presence of semen, vaginal fluid or injury or pregnancy or to show that complainant was not a virgin.

11. Prohibition of publication of information

The identity of a complainant or accused should not be published, except where;

The publication is just and equitable;

The accused is 18 or above;

If published there is a punishment of not less than M1000 or imprisonment of not less than 3 months.

12. Rights of complainant

In bail applications

The complainant is permitted to attend bail proceedings and to present information or evidence that may be relevant to the bail hearing. The complainant is entitled to know the place date and time of first appearance of the accused in court.

At the commencement of the case the investigating officer should state

whether these rights have been provided to the complainant, the manner of informing and the date and time of informing;

If the complainant is not present, the court should inquire whether the complainant has knowledge. He or she should state where bail was granted and the conditions and the date and time of the next proceedings.

Duties of the prosecutor

The Prosecutor has the duty to consult the complainant regarding the case, to orientate the complainant of the court structure and to provide any other relevant information.

13. Compulsory HIV/AIDS test

A person charged under this act shall have his/ her blood taken for the purposes of an HIV/AIDS test and the results are to be given to accused and complainant. The costs for the test are to be borne by Crown. After the conviction the test results to be given as evidence for sentence.

It is an offence to

Hinder or obstruct the taking of the blood substances;

Disclose the tests before sentencing (is liable to imprisonment for a period not exceeding one year or a fine not exceeding M20, 000 or both.

F I D A

14. PENALTY GUIDELINE CHART

OFFENCE	PENALTY
5(4) Publishing information relating to the identity of complainant or accused.	Fine not less than M1, 000 or imprisonment for not less than 3 months or both.
30(5) Disclosing test results before sentencing.	Fine not exceeding M20, 000/ imprisonment for not more than 1 year or both.
32(a)(i) Exposure or display of genital organs.	Court may impose appropriate sentence.
(ii) Where there is coercion not referred to under Section 2.	Imprisonment for not less than 8 years
(iii) Coercion and where you cause another to commit act.	Not less than 10 years
(iv) Where the convict has HIV and did not know.	Not less than 10 years
(v) Persistent sexual abuse of a child.	Minimum imprisonment of 15 years.
(vi) Sexual offences against children Commercial Sexual Exploitation of children, Sexual Offences Against Disabled Persons	Not less than 10 years
(vii) Where the convict has HIV and knew	The death penalty
(viii) Where there is GBH or mental harm or where the complainant is under 12, is vulnerable because of disability or where there is a group or where there is use of a firearm or weapon	Not less than 15 years

OFFENCE	PENALTY
<p data-bbox="96 130 491 161">32(b) 2nd offence/conviction</p> <p data-bbox="96 194 268 225">(i) Exposure</p> <p data-bbox="96 258 517 290">(ii) Non-coercive Circumstances</p> <p data-bbox="96 323 454 354">(iii) Coercive circumstances</p> <p data-bbox="96 387 521 512">(iv) Coercive circumstances (force threats physical verbal abuse) below 12 years is unlawful</p> <ul data-bbox="146 514 502 835" style="list-style-type: none"> <li data-bbox="146 514 408 577">- No knowledge of HIV/AIDS. <li data-bbox="146 578 479 641">- Persistent child sexual abuse <li data-bbox="146 642 502 705">- Sexual offences against children <li data-bbox="146 707 439 769">- Commercial sexual exploitation <li data-bbox="146 771 502 834">- Sexual offences against the disabled 	<p data-bbox="578 194 839 225">Not less than 5 years</p> <p data-bbox="578 258 856 290">Not less than 10 years</p> <p data-bbox="578 323 856 354">Not less than 20 years</p> <p data-bbox="578 387 808 418">Life Imprisonment</p>

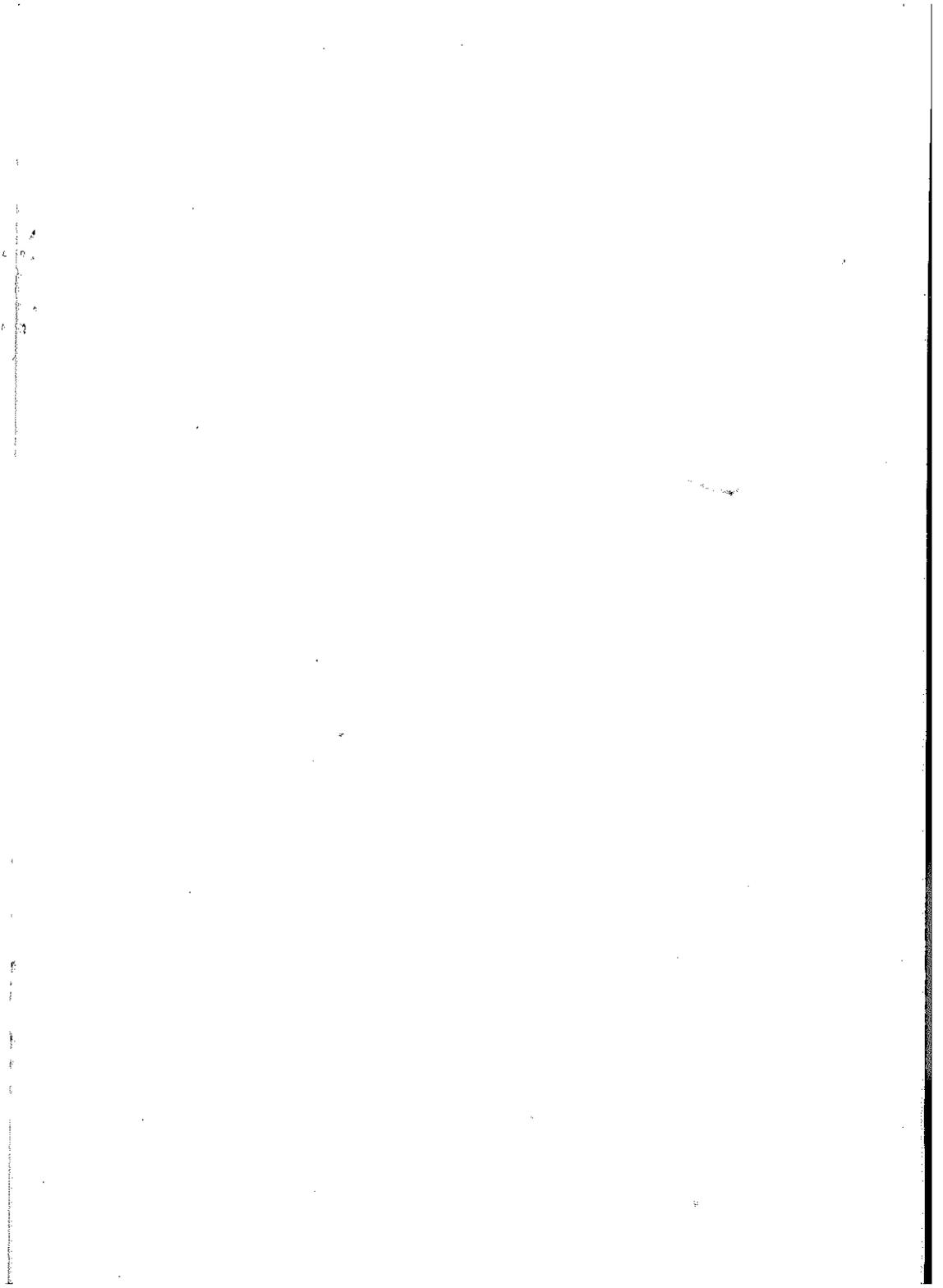
Inapplicability of minimum sentences to children

Minimum sentences not applicable to persons under 18 years. If it is a second offence for a person under 18 the minimum sentences should apply.

Section 32 (a) (vii) known HIV and AIDS and under 18 years. Inapplicability of minimum sentences rule does not apply.

Suspension of sentence

In accordance with the Act there shall be no suspension of sentence unless if it exceeds the minimum sentence.



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Supplied by: Bonolo Consulting and Suppliers
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