

**REPUBLIC OF SOUTH AFRICA**

**CRIMINAL LAW (SEXUAL  
OFFENCES AND RELATED  
MATTERS) AMENDMENT ACT**

**REPUBLIEK VAN SUID-AFRIKA**

**WYSIGINGSWET OP DIE  
STRAFREG (SEKSUELE  
MISDRYWE EN VERWANTE  
AANGELEENTHEDE)**

**No 32, 2007**

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_ Words underlined with a solid line indicate insertions in existing enactments.

## ACT

To comprehensively and extensively review and amend all aspects of the laws and the implementation of the laws relating to sexual offences, and to deal with all legal aspects of or relating to sexual offences in a single statute, by—

- **repealing the common law offence of rape and replacing it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender;**
- **repealing the common law offence of indecent assault and replacing it with a new statutory offence of sexual assault, applicable to all forms of sexual violation without consent;**
- **creating new statutory offences relating to certain compelled acts of penetration or violation;**
- **creating new statutory offences, for adults, by criminalising the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child pornography and the engaging of sexual services of an adult;**
- **repealing the common law offences of incest, bestiality and violation of a corpse, as far as such violation is of a sexual nature, and enacting corresponding new statutory offences;**
- **enacting comprehensive provisions dealing with the creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the creation of child pornography, despite some of the offences being similar to offences created in respect of adults as the creation of these offences aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse or exploitation;**
- **eliminating the differentiation drawn between the age of consent for different consensual sexual acts and providing for special provisions relating to the prosecution and adjudication of consensual sexual acts between children older than 12 years but younger than 16 years;**
- **criminalising any attempt, conspiracy or incitement to commit a sexual offence;**
- **creating a duty to report sexual offences committed with or against children or persons who are mentally disabled;**

- providing the South African Police Service with new investigative tools when investigating sexual offences or other offences involving the HIV status of the perpetrator;
- providing our courts with extra-territorial jurisdiction when hearing matters relating to sexual offences;
- providing certain services to certain victims of sexual offences, *inter alia*, to minimise or, as far as possible, eliminate secondary traumatisation, including affording a victim of certain sexual offences the right to require that the alleged perpetrator be tested for his or her HIV status and the right to receive Post Exposure Prophylaxis in certain circumstances;
- establishing and regulating a National Register for Sex Offenders;
- further regulating procedures, defences and other evidentiary matters in the prosecution and adjudication of sexual offences;
- making provision for the adoption of a national policy framework regulating all matters in this Act, including the manner in which sexual offences and related matters must be dealt with uniformly, in a co-ordinated and sensitive manner, by all Government departments and institutions and the issuing of national instructions and directives to be followed by the law enforcement agencies, the national prosecuting authority and health care practitioners to guide the implementation, enforcement and administration of this Act in order to achieve the objects of the Act;
- making interim provision relating to the trafficking in persons for sexual purposes; and
- to provide for matters connected therewith.

#### PREAMBLE

**WHEREAS** the commission of sexual offences in the Republic is of grave concern, as it has a particularly disadvantageous impact on vulnerable persons, the society as a whole and the economy;

**WHEREAS** women and children, being particularly vulnerable, are more likely to become victims of sexual offences, including participating in adult prostitution and sexual exploitation of children;

**WHEREAS** the prevalence of the commission of sexual offences in our society is primarily a social phenomenon, which is reflective of deep-seated, systemic dysfunctionality in our society, and that legal mechanisms to address this social phenomenon are limited and are reactive in nature, but nonetheless necessary;

**WHEREAS** the South African common law and statutory law do not deal adequately, effectively and in a non-discriminatory manner with many aspects relating to or associated with the commission of sexual offences, and a uniform and co-ordinated approach to the implementation of and service delivery in terms of the laws relating to sexual offences is not consistently evident in Government; and thereby which, in too many instances, fails to provide adequate and effective protection to the victims of sexual offences thereby exacerbating their plight through secondary victimisation and traumatisation;

**WHEREAS** several international legal instruments, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, 1979, and the United Nations Convention on the Rights of the Child, 1989, place obligations on the Republic towards the combating and, ultimately, eradicating of abuse and violence against women and children;

**AND WHEREAS** the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic of South Africa, including the right to equality, the right to privacy, the right to dignity, the right to freedom and security of the person, which incorporates the right to be free from all forms of violence from either public or private sources, and the rights of children and other vulnerable persons to have their best interests considered to be of paramount importance,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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8. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation
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(j) engaged in any conduct or activity characteristically associated with sexual intercourse; or  
 (k) showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any other person or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person or any other person;

“**Republic**” means the Republic of South Africa;

“**sexual act**” means an act of sexual penetration or an act of sexual violation;

“**sexual offence**” means any offence in terms of Chapters 2, 3 and 4 and sections 55 and 71(1), (2) and (6) of this Act;

“**sexual penetration**” includes any act which causes penetration to any extent whatsoever by—

(a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;

(b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or

(c) the genital organs of an animal, into or beyond the mouth of another person, and “**sexually penetrates**” has a corresponding meaning; “**sexual violation**” includes any act which causes—

(a) direct or indirect contact between the—

(i) genital organs or anus of one person or, in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal;

(ii) mouth of one person and—

(aa) the genital organs or anus of another person or, in the case of a female, her breasts;

(bb) the mouth of another person;

(cc) any other part of the body of another person, other than the genital organs or anus of that person or, in the case of a female, her breasts, which could—

(aaa) be used in an act of sexual penetration;

(bbb) cause sexual arousal or stimulation; or

(ccc) be sexually aroused or stimulated thereby; or

(dd) any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal; or

(iii) mouth of the complainant and the genital organs or anus of an animal;

(b) the masturbation of one person by another person; or

(c) the insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration, and “**sexually violates**” has a corresponding meaning; and

“**this Act**” includes any regulations made under this Act, including the regulations made under sections 39, 53 and 67.

(2) For the purposes of sections 3, 4, 5(1), 6, 7, 8(1), 8(2), 8(3), 9, 10, 12, 17(1), 17(2), 17(3)(a), 19, 20(1), 21(1), 21(2), 21(3) and 22, “**consent**” means voluntary or uncoerced agreement.

(3) Circumstances in subsection (2) in respect of which a person (“**B**”) (the complainant) does not voluntarily or without coercion agree to an act of sexual penetration, as contemplated in sections 3 and 4, or an act of sexual violation as contemplated in sections 5(1), 6 and 7 or any other act as contemplated in sections 8(1), 8(2), 8(3), 9, 10, 12, 17(1), 17(2), 17(3)(a), 19, 20(1), 21(1), 21(2), 21(3) and 22 include, but are not limited to, the following:

(a) Where B (the complainant) submits or is subjected to such a sexual act as a result of—

**Part 4: Incest, bestiality and sexual acts with corpse**

**Incest**

**12.** (1) Persons who may not lawfully marry each other on account of consanguinity, affinity or an adoptive relationship and who unlawfully and intentionally engage in an act of sexual penetration with each other, are, despite their mutual consent to engage in such act, guilty of the offence of incest.

(2) For the purposes of subsection (1)—

(a) the prohibited degrees of consanguinity (blood relationship) are the following:

(i) Ascendants and descendants in the direct line; or

(ii) collaterals, if either of them is related to their common ancestor in the first degree of descent;

(b) the prohibited degrees of affinity are relations by marriage in the ascending and descending line; and

(c) an adoptive relationship is the relationship of adoption as provided for in any other law.

(3) (a) The institution of a prosecution of a person who is a child at the time of the alleged commission of the offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions.

(b) The National Director of Public Prosecutions may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.

**Bestiality**

**13.** A person (“A”) who unlawfully and intentionally commits an act—

(a) which causes penetration to any extent whatsoever by the genital organs of—

(i) A into or beyond the mouth, genital organs or anus of an animal; or

(ii) an animal into or beyond the mouth, genital organs or anus of A; or

(b) of masturbation of an animal, unless such act is committed for scientific reasons or breeding purposes, or of masturbation with an animal, is guilty of the offence of bestiality.

**Sexual act with corpse**

**14.** A person who unlawfully and intentionally commits a sexual act with a human corpse, is guilty of the offence of committing a sexual act with a corpse.

**CHAPTER 3**

**SEXUAL OFFENCES AGAINST CHILDREN**

**Part 1: Consensual sexual acts with certain children**

**Acts of consensual sexual penetration with certain children (statutory rape)**

**15.** (1) A person (“A”) who commits an act of sexual penetration with a child (“B”) is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence: Provided that, in the event that the National Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1).

(b) The National Director of Public Prosecutions may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.