

SEXUAL OFFENCES CREATED & DEFINED BY THIS LAW

RAPE: it happens when one intentionally commits an act of sexual penetration with the other without getting their consent. “sexual penetration” includes any act which causes penetration by ;
*the genital organs of another into the other person’s genital organs, anus or mouth.
*Any part of the other person’s body, or an object into the genital organs or anus of another.

SEXUAL ASSAULT: It happens where a person unlawfully and intentionally sexually violates a complainant without their consent. It is also committed where the other person threatens to sexually violate another. “ Sexual violation” includes any act which causes direct or indirect contact between the genital organs, anus, female breast or mouth of one person, and any part of the body of the other person, animal or object. Masturbating the other person is also included.

COMPELLED SEXUAL ASSAULT: It happens when a person unlawfully and intentionally compels a third party without their consent to commit an act of sexual violation with a complainant without the complainant consent is guilty of the offence of compelled sexual assault.

COMPELLED SELF SEXUAL ASSAULT: It happens where a person unlawfully and intentionally compels a complainant without their consent to engage in masturbation, any form of arousal or stimulation of sexual nature of the female breast or sexually suggestive or lewd act is guilty of the offense of compelled Self-sexual assault.

INCEST, BESTIALITY & OFFENCES AGAINST CHILDREN

INCEST: A person 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.

BESTIALITY: Any person who engage in an act of sexual penetration or masturbation with an animal is guilty of the offence of bestiality.

STATUTORY RAPE: This is committed where an adult sexually penetrates a child aged 16 years and below. In such a case even if the child consented, such is not considered as valid consent, because the child is too young to engage in consensual sex. Where both parties are children, the charge if necessary must be authorized by the National Directorate of Public Prosecutions, who will also indicate whether the case should proceed after investigations.

OBLIGATION TO REPORT SEXUAL OFFENCES AGAINST CHILDREN OR MENTALLY DISABLED

1) A person who has knowledge that a sexual offence has been committed against a child and/or a mentally disabled person must report such knowledge immediately to the police. If the person fails to do so, they will be guilty of an offence and liable to conviction to a fine or imprisonment for a period not exceeding five years or both.

A person who makes a report in good faith shall not be liable to any civil or criminal proceedings by reason of making such report.
2) Any person who attempt, conspire with any other person, aids induces, instigate, instruct, commands, counsels or procure another person to commit a sexual offence is guilty and may be liable to conviction to the same punishment as the person actually committing that offence.



FOR MORE INFORMATION OR ASSISTANCE,
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SEXUAL OFFENCES AND THE LAW

In 2007, parliament passed a new law on rape and other forms of sexual violence. This law is called the Criminal Law (Sexual offences and related matters), Amendment Act, 32 of 2007. It recognizes that women and children are particularly vulnerable to sexual violence. It also recognizes that, before this new law was passed, survivors of sexual violence were confronted with challenges and difficulties within the criminal justice process. These challenges and difficulties have resulted in fewer women reporting rape cases and when they do report, the experience in court causes further trauma and suffering in a form of “secondary victimization”.

OBJECTIVES OF THIS LAW INCLUDES;

- * Consolidating and defining all sexual acts in to one law,
- * Making all forms of sexual abuse a crime
- * Ensuring that both men and women can use the law regarding sexual offences
- * Improving the way the criminal justice system works and ensuring that governments departments work together to protect complaints from unfair treatment or trauma
- * Making 16 years the age when both men and women can consent to having sex
- * Ensuring that rape survivors get post– exposure prophylaxis (PEP) which is a medical treatment reducing their chances of getting HIV, this is given together with the treatment preventing STI’s and pregnancy from the rape.
- * Establishing the National Register for sex offenders.

IMPORTANT INFORMATION TO SURVIVORS:

Go to the Hospital for administration of PEP to prevent transmission of HIV, STI’s and pregnancy from rape. This has to be administered within 72 hours, but works effectively within 48 hours.

Report the case at the Police Station to lodge a criminal

WHAT DOES THE CONSTITUTION SAY ABOUT SEXUAL VIOLENCE ?

Our Constitution states that the government has the responsibilities to protect, promote, respect and fulfill all the rights in the Bill of Rights. Two of the most important rights

I) Section 9: The right to Equality: which states that “everyone is equal before the law and has the right to equal benefit and protection of the law”. Women are particularly vulnerable and prone to violent abuse especially sexual violence. They suffer this violation on a number intersecting and overlapping bases namely on the account of gender, sex, poverty and age. “the constitutional court recognizes that women’s subordination through violence is detrimental to the constitutional values of equal-the right of every person to equal protection and benefit of the law” “full enjoyment of all

ii) Section 12(1) (c): The right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources. The right to freedom from violence imposes three specific duties on the state: a) To protect through the adoption of preventative measures all persons and more particularly women and children against violence b) To investigate, prosecute and punish perpetrators and c) To protect women and children against secondary trauma arising from such violence and in the course of criminal proceedings.

THE NEW SEXUAL OFFENCE ACT

The purpose of the act is to provide complainant of Sexual offences with legal protection, to introduce measures which enable the relevant organs of the state to give effect to the provisions in the Act and to work towards the complete eradication of the high incidences of sexual violence in South Africa. The act aim to achieve these objectives in the following ways :

- (i) Criminalize all forms of sexual or exploitation
- (ii) Repeal certain common laws of sexual offences
- (iii) protect complainant from secondary victimization and trauma
- (iv) Ensure effective and efficient investigation and prosecution of perpetrators, effective and non-discriminatory

investigation, prosecution and entrench accountability of government officials.

(v) Afford survivors of sexual violence the right to receive Post Exposure Prophylaxis (PEP) and establish a national register for sex offences who have been convicted of sexual offences against children and persons who are mentally disabled.

IMPORTANT DEFINITIONS

CHILD : A person under the age of 18 years or where a person 12 years or older but under the age of 16 years

COMPLAINANT: The victim / survivor of a sexual offense

MENTALLY DISABLED PERSON:

the offense was unable to appreciate the nature and reasonability foreseeable consequences of the act even if they appreciate the nature and consequences of the act, are unable to act in accordance with such appreciation , unable to resist the commission and the offense to communicate and of the offense or unable to communicate unwillingness to participate in the act

SEXUAL ACT: An act of sexual penetration or an act of sexual violation.

SEXUAL PENETRATIONS: Any act which cause penetration by: A) The genital organs of one person into or beyond the 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 organ or anus of another person, or the genital organ of an animal, into or beyond the mouth of another person

SEXUAL VIOLATION: Any act which causes the following:A) Direct or indirect contact between the genital organ or anus of a person, in the case of a female, her breast, any object including or any object resembling the genital organs or anus of a person or an animal.B) Mouth of one person and the genital organs or anus of a person, in the case of a female, breast or any other part of the body of another person which could be use in an act of sexual penetration, cause sexual arousals or stimulate or any object resembling the genital organs or anus of a person, breast or an animal. C) Mouth of a person and genital organ or anus of an animal (D) Masturbation of one person by

another person, or the insertion of any object resembling or representing the genital organs of a person or animal into or beyond the mouth of another person.

THE ACT CREATES THE FOLLOWING

RAPE AND COMPELLED RAPE

RAPE: Any person who unlawfully an act of sexual penetration with a complainant without the consent of the complainant, is guilty of the

COMPELLED RAPE: Any person who unlawfully and intentionally compels a third person without their consent to commit an act of sexual penetration with a complainant without their consent is guilty of the offense words, if A forces B to commit sexual penetration with C without the consent of both B and C, A is guilty of the compelled rape

Note that what is important about rape and compelled rape these offenses are gender neutral, which means that men are included in the definition and women can be charged for Rape.

Secondly, the definition of sexual penetration is whereas in the past, a person could be charged with the of rape only when there was a non-consensual penetration of the vagina by the penis. The new act defines sexual penetration as: any act which cause penetration by:

A) The genital organ of one person into or beyond the genital organs, anus or mouth of another person.

B) Any other part of the body of an animal, into or beyond the genital organs, mouth or anus of another person

C) The genital organs of an animal, into or beyond the mouth of another.