

ACT

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THE SEXUAL OFFENCES ACT, 2012 ARRANGEMENT OF SECTIONS

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No. 12

Sexual Offences Act

2012

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SIGNED this 9th day of October, 2012.

DR. ERNEST BAI KOROMA,
President.

LS

No. 12



2012

Sierra Leone

The Sexual Offences Act, 2012.

Short title.

Being an Act to consolidate with amendments the law relating to sexual offences.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART 1—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires—

“child” means a person under the age of 18,

“child pornography” means-

- (a) any photograph, film, video or other visual representation—
 - (i) that shows a person who is or who is depicted as being under the age of 18 and is engaged in or is depicted as engaged in sexual activity; or
 - (ii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital region of a person under the age of 18;
- (b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in sexual activity;
- (c) any written material, visual representation or audio representation that advocates, counsel or encourages sexual activity with children, irrespective of how or through what medium the representation has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation produced by or from computer graphics or by any other electronic or mechanical means;

“child prostitution” means the provision of any sexual service by a person under the age of 18 for financial or other reward, favour or compensation, whether paid to the child or some other person ;

“indecent material” means any photograph, film, video book, image or other visual representation, including data stored on a computer disc or by other electronic means, that offends against recognized standards of propriety and cultural values;

“person with mental or physical disability “ means a person affected by any mental or physical disability irrespective of its cause, whether temporary or permanent and for the purpose of this Act includes a person affected by such mental or physical 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 prescribed in 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 such act: or
- (d) unable to communicate his or her unwillingness to participate in such act,

“sexual manner” means done sexually, if a reasonable person would consider that—

- (a) whatever its circumstance or any person’s purpose in relation to it, it is because of its nature sexual; or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual;

“sexual penetration” means any act which causes the penetration to any extent of the vagina, anus or mouth of a person by the penis or any other part of the body of another person, or by an object;

“touch” or touching” includes kissing, rubbing, feeling, fondling or caressing any part of a person’s body with any part of the body or with an object.

Meaning of consent.

2. (1) For the purposes of this Act, consent means agreement by choice and with the freedom and capacity to make that choice.

(2) Circumstances in which a person does not consent to an act include—

- (a) the person submits to the act because of the use of violence or force on that person or someone else;
- (b) the person submits because of threats or intimidation against that person or someone else;
- (c) the person submits because of fear of harm to that person or to someone else;
- (d) the person submits because he or she is unlawfully detained;
- (e) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely consenting;
- (f) the person is incapable of understanding the essential nature of the act or of communicating their unwillingness to participate in the act due to mental or physical disability;
- (g) the person is mistaken about the sexual nature of the act or by the identity of the person;

(h) the accused induces the person to engage in the activity by abusing a position of trust, power or authority;

(i) the person, having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

(3) In determining whether or not a person consented to the act that forms the subject matter of the charge, the court shall have regard to the following:—

(a) the fact that a person did not say or do anything to indicate consent to a sexual act is enough to show that the act took place without that person’s consent: and

(b) a person is not to be regarded as having consented to a sexual act just because—

(i) the person did not physically resist;

(ii) the person did not sustain physical injury; or

(iii) on that or an earlier occasion the person freely agreed to engage in another sexual act with that person or some other person.

3. It is not a defence to a charge under this Act that the defendant believed the person consented to the activity that forms the subject matter of the charge where—

Belief in consent not a defence.

(a) the defendant’s belief arose from his or her—

(i) self-induced intoxication; or

(ii) recklessness or willful blindness; or

- (b) the defendant did not take reasonable steps, in the circumstances known to the defendant at the time, to ascertain whether the person was consenting.

Person under 18 cannot consent.

4. Subject to section 24, a person below the age of 18 is not capable of giving consent for the purpose of this Act, and, accordingly, it shall not be a defence to an offence under this Act to show that the child has consented to the act that forms the subject matter of the charge.

Marriage not defence to offence.

5. Subject to subsection (4) of section 9, the marriage of a defendant and the victim shall not be a defence to an offence under this Act.

PART II—SEXUAL OFFENCES GENERALLY

Rape.

6. A person who intentionally commits an act of sexual penetration with another person without the consent of that other person commits the offence of rape and is liable on conviction to a term of imprisonment not less than five years and not exceeding fifteen years.

Indecent assault.

7. A person who intentionally, without the person's consent—

- (a) touches that person in a sexual manner, or
(b) compels that person to touch the accused person in a sexual manner,

commits the offence of indecent assault and is liable on conviction to fine not exceeding Le5 million or a term of imprisonment not exceeding five years.

Causing, inciting etc. a person with mental disability to engage in sexual activity.

8. (1) A person who intentionally causes, incites, induces, threatens or deceives another person with a mental disability to engage in a sexual activity commits an offence and is liable on conviction to a term of imprisonment not less than five years and not exceeding fifteen years.

(2) In proceedings for an offence under subsection (1), where it is proved that the other person has a mental disability, the defendant is presumed to know or could reasonably be expected to know that the other person has a mental disability and as a result was not in a position to consent or communicate consent to the defendant.

9. (1) A person engaged in the care of another person with a mental disability and who intentionally engages in, causes or incites that other person to engage in a sexual activity commits an offence and is liable on conviction to a term of imprisonment not less than five years and not exceeding fifteen years.

Care worker causing or inciting person with mental disability to engage in sexual activity.

(2) In proceedings for an offence under subsection (1), where it is proved that the other person has a mental disability, the defendant is presumed to know or could reasonably be expected to know that the other person has a mental disability and as a result was not in a position to consent to engage in the sexual activity or to communicate such consent to the defendant.

(3) For the purpose of subsection (1), a person is involved in the care of another person if—

- (a) the other person is accommodated and cared for in a care home, remand home, children's home or voluntary home and the defendant is employed or has functions in the home which brings him or her or is likely to bring him or her into regular contact with the other person;
(b) the other person is a patient in a public or private hospital or clinic and the defendant is employed by or has functions in the hospital or clinic which brings him or is likely to bring him into regular contact with the other person.

(4) Marriage between the defendant and the other person shall be a defence in proceedings under subsection (1) and the onus of proof of the existence of the marriage shall be on the defendant.

Incest by a man.

10. (1) A male person who engages in or attempts to engage in sexual intercourse with a woman whom he knows to be his sister, half-sister, mother, grandmother, daughter or niece commits the offence of incest by a man and is liable on conviction to imprisonment for a term not less than five years and not exceeding fifteen years.

(2) A person commits an offence under subsection (1) notwithstanding that the relation between him and the other person is not traced through lawful wedlock.

Incest by a woman

11. (1) A female person who engages in or attempts to engage in sexual intercourse with a male person whom she knows to be her brother, half-brother, nephew, father, son or grandfather commits the offence of incest by a woman and is liable on conviction to imprisonment for a term not less than five years and not exceeding fifteen years.

(2) A person commits an offence under subsection (1) notwithstanding that the relation between her and the other person is not traced through lawful wedlock.

Defence of incest.

12. A person is not guilty of an offence under sections 10 and 11 if he or she was under restraint, duress or fear of the person with whom the defendant had the sexual intercourse, at the time the sexual intercourse occurred.

Harassment.

13. (1) A person who repeatedly makes unwanted sexual advances, repeatedly follows, pursues or accosts another person or makes persistent unwelcome communication with another person including –

- (a) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;
- (b) repeatedly making telephone calls or inducing a third person to make telephone calls to the harassed person whether or not conversation ensues;

- (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to the harassed person's residence, school or workplace; or

(d) engaging in any other menacing behaviour, commits the offence of harassment and is liable on conviction to a fine not exceeding Le10,000,000 or to a term of imprisonment not exceeding three years.

14. A person who intentionally exposes his or her genitals with the intention of letting someone other than a consenting person see them commits the offence of indecent exposure and is liable on conviction to a fine not exceeding Le10,000,000 or to a term of imprisonment not exceeding three years.

15. (1) A person who –

Voyeurism.

- (a) for the purpose of obtaining sexual gratification observes another person performing a sexual act in private without the consent of that other person, and knowing that the other person does not consent to being so observed;
- (b) for the purpose of obtaining sexual gratification operates an equipment with the intention of enabling another person observe a third person performing a private sexual act knowing the other person does not consent to his operating the equipment with that intention; or
- (c) records another person performing a sexual act in private with the intention that he with others for the purpose of obtaining sexual gratification, look at an image of the other person doing a private act knowing that the other person does not consent to his recording the act with that intention,

commits the offence of voyeurism and is liable on conviction to a fine not exceeding Le20,000,000 or to a term of imprisonment not exceeding five years.

(2) For the purpose of subsection (1), a person is performing a sexual act in private if he is in a place which, in the circumstance, would reasonably be expected to provide privacy and—

- (a) the person's genitals, buttocks or breasts are minimally covered or otherwise exposed;
- (b) the person is using a lavatory; or
- (c) the person is doing a sexual act that is not of the kind ordinarily done in public.

Bestiality.

16. A person who intentionally—

- (a) penetrates the mouth, vagina or anus of a living animal with his penis; or
- (b) causes or permits another person's vagina or anus to be penetrated by the penis of a living animal,

commits the offence of bestiality and is liable on conviction to a term of imprisonment not exceeding ten years.

Causing, inciting or controlling prostitution for gain.

17. (1) A person who intentionally—

- (a) causes or incites another person to become a prostitute; or
- (b) controls any of the activities of another person relating to the other person's prostitution,

and does so in return for or in expectation of gain for himself or a third person commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

(2) For the purposes of subsection (1) "gain" means—

- (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services including sexual services, gratuitously or at a discount; or
- (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

18. (1) A person who—

Indecent material.

- (a) makes, prints, or publishes any indecent material;
- (b) distributes, circulates or shows the indecent material;
- (c) has in his possession such indecent material, with a view to their being distributed, circulated or shown by himself or others; or
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent material or intends to do so,

commits an offence and is liable on conviction to a fine not exceeding Le20,000,000 or to imprisonment for a term not exceeding five years.

(2) For the purposes of this Act, a person is to be regarded as distributing indecent material if he parts with possession of it to or exposes or offers it for acquisition by another person.

PART III—OFFENCES INVOLVING CHILDREN

19. A person who engages in an act of sexual penetration with a child commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years. Sexual penetration of a child.

Sexual touching of child.

20. (1) A person who—

- (a) touches a child in a sexual manner; or
- (b) compels a child to touch the accused person's own body in a sexual manner,

commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

Sexual activity in child's presence.

21. A person who engages in a sexual activity with the intention of a child who is present being aware of the sexual activity, commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

Causing a child to watch sexual activity.

22. A person who intentionally causes a child to—

- (a) watch another person engaging in a sexual activity; or
- (b) look at an image of another person engaging in a sexual activity,

commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

Meeting a child for sexual purposes.

23. (1) A person who, with the intention of committing an offence under this Act and having met or communicated with a child—

- (a) intentionally meets the child with sexual intent; or
- (b) travels with the intention of meeting the child in any part of Sierra Leone,

commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

Defence of mistake as to age.

24. (1) It is a defence to a charge under sections 19, 20, 21, 22 and 23 if the defendant satisfies the court on the balance of probabilities that—

- (a) before the time of the act concerned, he or she had taken reasonable steps to find out whether the child concerned was of or over the age of 18 years;
- (b) at the time of the act concerned, he or she believed on reasonable grounds that the child was of or over the age of 18 years.

25. (1) A person who, being in a position of trust or authority towards a child—

Sexual abuse by person in trust.

- (a) engages in a sexual activity with the child;
- (b) touches the child in a sexual manner; or
- (c) invites, counsels or incites the child to touch the accused person's own body in a sexual manner,

commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

(2) For the purposes of this section, the circumstances where a defendant is in a position of trust or authority towards a child include circumstances where the accused—

- (a) is a parent, step-parent, adoptive parent or guardian of the child;
- (b) has care or custody of the child;
- (c) is the child's grandparent, aunt, uncle, sibling (including step-sibling) or first cousin;
- (d) is a school teacher and the child is his or her pupil;
- (e) is a counselor or youth worker acting in his or her professional capacity;

- (f) is employed in, or providing services in a remand centre, children's home, correctional centre or prison and is acting in the course of his or her duty in respect of the child;
- (g) is a health care professional or traditional healer and the child is his or her patient;
- (h) is a member of the police force acting in the course of his or her duty in respect of the child.

(3) Consent is not a defence to a charge under this section unless the defendant satisfies the court on the balance of probabilities that—

- (a) before the time of the act concerned, he or she had taken reasonable steps to find out whether the child concerned was of or over the age of 18; and
- (b) at the time of the act concerned, he or she believed on reasonable grounds that the child was of or over the age of 18.

Producing and distributing child pornography.

26. (1) A person who—

- (a) makes, produces, distributes, transmits, prints or publishes child pornography;
- (b) imports, exports, advertises, sells or shows child pornography; or
- (c) possesses child pornography for the purpose of distributing, publishing, exporting, selling or showing it,

commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

Possessing or accessing child pornography.

27. A person who knowingly—

- (a) possesses child pornography; or
- (b) accesses child pornography by causing child pornography to be viewed by or transmitted to himself or herself,

commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

28. A person who—

- (a) invites or causes a child to be in any way concerned in the making or production of child pornography;
- (b) procures a child for the purpose of making or producing child pornography; or
- (c) having the care or custody of a child, consents to or allows the child to be used for the production of child pornography,

Use of children for pornographic purposes.

commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

29. (1) It is a defence to a charge under sections 26 and 27 if the defendant satisfies the court on the balance of probabilities that the defendant believed, on reasonable grounds, that the child depicted in the material alleged to constitute child pornography was of or over the age of 18.

Defence.

(2) It is a defence to a charge under section 28 if the defendant satisfies the court on the balance of probabilities that—

- (a) the defendant believes on reasonable grounds, that the child depicted in the material alleged to constitute child pornography was of or over the age of 18; and
- (b) the defendant took all reasonable steps to ascertain the age of that person.

Obtaining the services of child prostitute.

- 30.** A person who—
- (a) participates as a client or is otherwise involved with a child in an act of child prostitution; or
 - (b) invites, persuades or induces a child to engage in child prostitution with him or her or any other person,
- commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

Offering, arranging or benefiting from child prostitution.

- 31.** (1) A person who—
- (a) offers, arranges or facilitates the engagement of a child in prostitution; or
 - (c) knowingly receives any financial or other reward, favour or compensation from child prostitution,

commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

Parent facilitating child prostitution.

- 32.** A parent, guardian or person with care or custody of a child who knowingly allows or facilitates in any way, the engagement of that child in an act of child prostitution commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

Defence.

- 33.** It is a defence to a charge under sections 30 and 31 if the defendant satisfies the court on the balance of probabilities that—
- (a) before the time of the act concerned, he or she had taken reasonable steps to find out whether the child concerned was of or over the age of 18; and
 - (b) at the time of the act concerned, he or she believed on reasonable grounds that the child was of or over the age of 18.

34. A person who—

- (a) makes or organizes any travel arrangements for or on behalf of any other person, whether that other person is resident within or outside Sierra Leone, with the intention of facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed;
- (b) prints or publishes, in any manner any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child;
- (c) introduces, organizes or facilitates contact with another person under the auspices of promoting tourism in any manner in order to promote conduct that would constitute a sexual offence against a child,

Organising or promoting child sex tourism.

commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.

PART IV – SENTENCING

35. In sentencing a person for any offence under this Act, the presence of any one of the following aggravating factors can permit a maximum sentence—

- (a) the defendant committed the offence in the company of another person or persons;
- (b) at the time of or immediately before or after the commission of the offence, the defendant used or threatened to use a weapon;
- (c) at the time of or immediately before or after the commission of the offence, the defendant caused bodily harm to the victim;

Aggravating factors.

- (d) the defendant confined or restrained the victim before or after the commission of the offence;
- (e) the defendant in committing the offence, abused a position of trust, authority or dependency;
- (f) the defendant is a member of the same family as the victim;
- (g) the victim is a child; or
- (h) the victim has a physical or mental disability.

Victim impact statements.

36. (1) For the purposes of determining the sentence to be imposed on a defendant under this Act, the court shall consider any statement that may have been prepared orally or in writing of a victim of the offence describing the harm done to or loss suffered by the victim arising from the commission of the offence.

(2) A statement of the victim of an offence prepared and submitted to the court in accordance with subsection (1) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender.

Compensation.

37. (1) When a person is convicted of an offence under this Act, the court may, in addition to any other punishment order the person convicted to pay the victim such sum as appears to the court to be reasonable compensation.

(2) An order under subsection (1) shall compensate the victim for-

- (a) costs of medical and psychological treatment;
- (b) costs of physical and occupational therapy and rehabilitation;
- (c) costs of necessary transportation, temporary housing and child care;

- (d) lost income;
- (e) legal practitioner's fees and other legal costs;
- (f) compensation for emotional distress, pain and suffering; and
- (g) any other losses suffered by the victim.

38. (1) When a police officer receives a complaint under this Act, the officer shall-

Police assistance after receipt of complaint.

- (a) interview the parties and witnesses to the offence;
- (b) record the complaint in detail and provide the victim with an extra copy of the complaint upon request, in a language the victim understands;
- (c) assist the victim to obtain medical treatment and a medical report whenever necessary;
- (d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim expresses concern about safety;
- (e) protect the victim to enable the victim retrieve personal belongings where applicable;
- (f) assist and advise the victim to preserve evidence; and
- (g) assist and advise the victim of his or her rights and any services which may be available.

(2) Police assistance to a victim under paragraph (c) of subsection (1) consists of issuing a medical form to the victim and where necessary sending the victim to a medical facility and obtaining a medical report.

Free medical treatment and reports.

39. A victim of a sexual offence shall be entitled to free medical treatment and a free medical report.

Special measures for vulnerable victims and witnesses.

40. (1) For the purposes of this section, a vulnerable witness means a witness who—

- (a) is under the age of 18;
- (b) has a mental disability; or
- (c) is an adult victim of an offence under this Act; and

in the opinion of the court, the quality of that witness's evidence would likely be diminished by reason of fear or distress in connection with testifying in the proceedings.

(2) Where a vulnerable witness gives evidence in proceedings under this Act, the court shall order that one or more of the following special measures be used for the giving of evidence by that witness:—

- (a) the use of a screen or other arrangement to prevent the witness from seeing the defendant;
- (b) the presence of a support person of the witness's choosing seated with the witness when he or she is giving evidence;
- (c) planned seating arrangements for people who have interest in the proceedings, including the level at which they are seated and the people in the witness's line of vision;
- (d) the adjournment of the proceedings or any part of the proceedings to chambers or some other premises;

(e) the exclusion from the court, while the witness is giving evidence, of all or any persons without a direct interest in the proceedings;

(f) permitting a video-recording of an interview of the witness to be admitted as the evidence-in-chief of the witness, if at the proceedings the witness—

- (i) identifies himself or herself and attests to the truthfulness of the contents of the recording; and
- (ii) is available for cross-examination and re-examination,

(g) directing that the witness's evidence be taken at a pre-trial hearing and that the record of the witness's evidence at that hearing be admitted as evidence at the trial.

(3) At a pre-trial hearing ordered under subsection (2)–

- (a) no person other than a person authorized by the court is to be present;
- (b) subject to the control of the presiding officer, the witness is to give his or her evidence and be examined and cross-examined;
- (c) except as provided by this section, the usual rules of evidence apply; and
- (d) the proceedings are to be recorded.

41. (1) No person shall publish or make public information that has the effect of identifying a person who is a victim of an offence under this Act. Publication.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Le10 million or to a term of imprisonment not exceeding three years.

Rules of Court Committee to make rules. **42.** The Rules of Court Committee may make rules for regulating the practice and procedure under this Act, including the application of special measures in accordance with section 40.

PART V – MISCELLANEOUS

Attempted conspiracy. **43.** A person who—
(a) attempts;
(b) conspires with any other person; or
(c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person,
to commit an offence under this Act, commits an offence and is liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.

Regulations. **44.** Subject to section 42, the Minister responsible for social welfare may by statutory make regulations to implement this Act.

Amendments Cap 31. **45.** (1) The Prevention of Cruelty to Children Act is amended by repealing sections 6, 7, 8, 9, 10, 11, 12, 13 and 15.

Passed in Parliament this 23rd day of August, in the year of our Lord two thousand and twelve.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.