

ACT

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THE SEXUAL OFFENCES ACT, 2012

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SIGNED this 9th day of October, 2012.

DR. ERNEST BAI KOROMA,
President.



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.