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CONTENTS

No.		Page
ACT		
3	Sexual Offences Act, 2003	239

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ACT NO. 3 OF 2003

SEXUAL OFFENCES ACT 2003

An Act to consolidate and repeal the laws relating to sexual offences, to combat sexual violence and to prescribe appropriate sentences for sexual offences and provide for other incidental matters.

Enacted by the Parliament of Lesotho.

PART I-PRELIMINARY

Short title and commencement

1. This Act may be cited as the Sexual Offences Act 2003 and shall come into operation on the date of its publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires-

"brothel" means any movable or immovable property where commercial sexual exploitation of a person occurs;

"child" means -

- (a) for the purposes of Part III, a person who is below the age of 16 years; and
- (b) for the purposes of Part IV, a person who is below the age of 18 years;

"coercive circumstances" include but are not limited to any circumstance where-

- (a) there is an application of force, whether explicit or implicit, direct or indirect, physical or psychological against any person or animal;
- (b) there are threats, whether verbal or through conduct, of the application of physical force to the complainant or to a person other than the complainant;

- (c) there are threats, whether verbal or through conduct, to cause harm other than bodily harm to, or to use extortion against, or public humiliation or disgrace or mental harassment, of the complainant or any person other than the complainant;
- (d) the complainant is below the age of 12 years;
- (e) the complainant is unlawfully detained;
- (f) the complainant is affected by-
 - (i) physical disability, mental incapacity, sensory disability, medical disability, intellectual disability, or other disability, whether permanent or temporary; or
 - (ii) intoxicating liquor or any drug or other substance which mentally or physically incapacitates the complainant; or
 - (iii) sleep,
to such an extent that he/she is rendered incapable of understanding the nature of the sexual act or deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;
- (g) the complainant submits to or commits the sexual act by reason of having been induced, whether verbally or through conduct, by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed is some other person;
- (h) as a result of the fraudulent misrepresentation of some fact by or any fraudulent conduct on the part of the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator, the complainant is unaware that a sexual act is committed with the perpetrator ;

- (i) a perpetrator knowing or having reasonable grounds to believe that he/she is infected with a sexually transmissible disease, the human immuno-deficiency virus or other life-threatening disease does not, before committing the sexual act, disclose to the complainant that he/she is so infected;

"commercial sexual exploitation" means, in respect of a child, engaging the services of a child, or offering such services to any person, to perform a sexual act for financial or other reward, favour or compensation to the child or to any other person;

"complainant" means, in relation to an offence of a sexual or indecent nature, a person towards or in connection with whom any such offence is alleged to have been committed, irrespective of whether or not that person has actually laid a complaint or gives evidence in the criminal proceedings in question;

"disabled person" means a person affected by any disability of a physical, intellectual, sensory, medical or mental nature or other disability irrespective of its cause, whether temporary or permanent, to the extent that a person is unable to appreciate the nature of a sexual act, or is unable to resist the commission of such an act, or is unable to communicate his unwillingness to participate in such an act;

"penis" includes a surgically constructed penis;

"Proclamation" means Women and Girls Protection Proclamation of 1949¹

"sexual act" means-

(a) direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of the body of another person; or

(b) exposure or display of the genital organs of one person to another person;

242

(c) the insertion of any part of the body of a person or of any part of the body of an animal or any object into the vagina or penis or anus of another person, or

(d) cunnilingus, fellatio or any other form of genital stimulation;

but does not include contact, exposure, insertion or genital stimulation done by a hand or any unarmful object –

(a) for sound health practices or proper medical purposes;

(b) for reasonably necessary body search by law enforcement agencies-

(i) done for lawful purposes without putting in jeopardy the health and safety of the arrestee, suspect or person being searched and

(ii) not carried out abusively or for humiliating or punishing an arrestee, suspect or any person who is being searched.

“vagina” includes a surgically constructed vagina.

PART II- SEXUAL OFFENCES

Unlawful sexual act

3. (1) For the purposes of this Act, a sexual act is prima facie unlawful if it takes place in any coercive circumstances.
- (2) A person who commits an unlawful sexual act with another person, or causes another person to commit an unlawful sexual act commits an offence.
- (3) Marriage or any other relationship shall not be a defence against a charge under this Act where it is shown that:

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- (a) the complainant spouse or partner was sick;
 - (b) the accused spouse or partner had or was reasonably suspected to have sexually transmissible disease or other life threatening disease;
 - (c) violence or threats were used to engage in a sexual act;
 - (d) there is a judicial order of restraint in respect of the accused;
 - (e) the spouses or partners are separated by an order of Court;
 - (f) one of the spouses had deserted.

Compelled sexual acts

- 4. (1) A person who compels another person-
 - (a) to engage in a sexual act with himself/herself or
 - (b) to engage in a sexual act with a third person, commits an offence.
- (2) A person who causes another person to engage in a sexual act with an animate or inanimate object commits an offence.

Inducement to allow sexual act

- 5. (1) A person who induces another person by false pretence or fraudulent means to allow another person to commit a sexual act with that other person commits an offence.
- (2) A person who induces another to submit to a sexual act through the use of his authority, status, power, privilege, or other undue influence, commits an offence.

Administering substance for purpose of committing sexual act

- 6. A person who administers, applies or causes another person, to take any substance with the intent-

244

- (a) to overpower another person in order to commit a sexual act with himself/herself or any other person; or
- (b) to induce another person to commit a sexual act with himself/herself or any other person,

commits an offence.

Conspiracy or incitement to commit sexual act

- 7. A person who conspires with another person to aid or procure the commission of, incite, instigate, command or procure another person to commit an unlawful sexual act commits an offence and is liable on conviction to the penalty to which a person convicted of actually committing that offence is liable.

PART III - SEXUAL OFFENCES AGAINST CHILDREN

Child molestation

- 8. (1) A person who commits a sexual act with a child commits an offence.
- (2) A person who invites or persuades a child to engage in a sexual act with himself/herself or another person commits an offence.
- (3) A person who fails to report an unlawful sexual act against a child commits an offence.
- (4) Notwithstanding subsection (1), it shall be a defence where a person who is below the age of 18 years commits a sexual act with a child with that child's consent.
- (5) Notwithstanding the provisions of this section –
 - (a) a child who is 16 years of age or above but below the age of 18 years ; or
 - (b) a child who is 13 years of age or above but below the age of 16 years,

who commits a sexual act with a child who is below the age of 12 years, commits an offence

Persistent sexual abuse of a child

9. (1) A person who persistently abuses a child sexually commits an offence.
- (2) A person who fails to report a sexual act referred to in subsection (1) commits an offence.
- (3) For the purposes of this section, a person shall be taken to have sexually abused a child persistently if that person has engaged in a sexual act in relation to a child on two or more occasions.

PART IV - COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

Child prostitution

10. (1) A person who commits a sexual act with a child for financial or other reward, favour or compensation to the child or to any other person commits an offence.
- (2) A person who invites, persuades or induces a child to allow himself/herself or another person to commit a sexual act with the child for financial or other reward, favour or compensation to the child or to any other person, commits an offence.
- (3) A person who agrees to the invitation, persuasion or inducement to commit a sexual act with a child for financial or other reward, favour or compensation commits an offence.

Procuration of child prostitution

11. A person who procures a child with the intent that the child becomes a prostitute or inmate of a brothel commits an offence.

Offering or engaging a child

12. A person who offers or engages a child for purposes of committing a sexual act for financial or other reward, favour or compensation commits an offence.

Facilitating or allowing commission of a sexual act

13. (1) A person who facilitates, in any way, the commission of a sexual act with a child for financial or other reward, favour or compensation commits an offence.
- (2) A parent, guardian or custodian of a child who allows the commission of sexual act with a child for financial or other reward, favour or compensation commits an offence.

Offering or receiving reward

14. (1) A person who offers any financial or other reward, favour or compensation for the commission of a sexual act with or in relation to a child commits an offence.
- (2) A person who receives any financial or other reward, favour or compensation from the commission of a sexual act with or in relation to a child commits an offence.
- (3) A person who lives wholly or in part on rewards, favours or compensation from the commission of a sexual act with or in relation to a child commits an offence.

PART V - SEXUAL OFFENCES AGAINST DISABLED PERSONS**Sexual offences against disabled persons**

15. (1) A person who commits a sexual act-
- (a) in relation to; or
- (b) in the presence of,
- a disabled person commits an offence.
- (2) A person who commits any act with the intent to invite or persuade a disabled person to allow any person to commit a sexual act in relation to that disabled person commits an offence.

PART VI - EVIDENCE**Age**

16. For the purposes of this Act, a person has knowledge of the fact that a child is below a certain age if-
- (a) the person has actual knowledge of that fact; or
 - (b) the court is satisfied that the person-
 - (i) believed that there is a reasonable possibility that the child may be below that age; and
 - (ii) failed to obtain information to confirm whether the child is below that age.

Incapacity of a child below the age of 14 years

17. (1) No presumption or rule of law to the effect that a child under the age of 14 years is incapable of committing a sexual act shall operate.
- (2) The criminal capacity of a child under the age of 14 years who is charged with an offence of a sexual nature shall be determined in the same manner as the criminal capacity of a child under the age of 14 years who is charged with any other offence.
- (3) If, in any legal proceedings, the question is whether a person has had sexual contact or has performed an act of a sexual nature with another person or is the parent or guardian of any child, such question shall be determined as a question of fact.

Abolition of cautionary rule

18. No court shall treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual nature with special caution on the basis that the accused is charged with that offence.

Evidence of previous consistent statement

19. (1) Evidence relating to a previous consistent statement by a complainant shall be admissible in criminal proceedings at which an accused is charged with an offence of a sexual nature.
- (2) No adverse inference may be drawn only from the fact that no previous consistent statement was made.

Delay between commission of sexual act and laying of complaint

20. In criminal proceedings at which an accused is charged with an offence of a sexual nature, the court shall not draw any adverse inference only from the length of the delay between the commission of the sexual act and the laying of a complaint.

Absence of semen or vaginal fluid

21. (1) Where a victim of a sexual act is referred for medical examination, the medical examination shall be done at the expense of the Crown.
- (2) The court shall not draw any adverse inference only from the fact that no semen or vaginal fluid was found on any part of the body of the complainant during an examination by a medical doctor or any other person.

Evidence of psychological effects

22. (1) Evidence of the psychological effects of a sexual act shall be admissible in criminal proceedings at which an accused is charged with a commission of a sexual act in order-
- (a) to show that the sexual act to which the charge relates is likely-
- (i) to have been committed with or in relation to the complainant; and
- (ii) to have been committed under coercive circumstances;

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- (b) to prove, for the purpose of imposing an appropriate sentence, the extent of the mental harm suffered by the complainant.
- (2) In determining the weight to be attached to evidence admitted under subsection (1), the court shall have due regard to-
 - (a) the qualification and experience of the person who has given such evidence; and
 - (b) any other evidence given at the trial.

Proceedings held in camera

- 23. (1) In criminal proceedings under this Act, the court before which such proceedings are held shall, to the extent authorised by the provisions of section 12 of the Constitution, direct that any person whose presence is not necessary at such proceedings, not be present, unless the complainant and the accused otherwise request.
- (2) Where the complainant and the accused are disagreeing under subsection (1), the court shall decide as it thinks fit.
- (3) Where the complainant is a child, the court shall take into consideration, and act in accordance with, the best interests of the child.

Cross-examination through the court

- 24. Notwithstanding the provisions of any other law to the contrary, the cross examination of any witness under the age of 18 years shall take place only through the judicial officer, who shall restate the questions put to such witness or, in the judicial officer's discretion, simplify or rephrase such questions.

Prohibition of publication of information

- 25. (1) Where a court directs under section 23 that any person or class of persons shall not be present at criminal proceedings, no person shall publish any information which may reveal the identity of a complainant or accused in the proceedings.

- (2) Subject to subsection (1), a judicial officer may authorise the publication of the information if the judicial officer is of the opinion that-
- (a) the publication is just and equitable; or
 - (b) the complainant or accused is 18 years of age or above the age of 18 years.
- (3) No person shall, at any stage from the time of the commission of the offence to the appearance of an accused in a court upon any charge or at any stage after such appearance but before the accused has pleaded to the charge, publish any information which may reveal the identity of the complainant with or in relation to whom the offence is alleged to have been committed.
- (4) A person who publishes any information in contravention of this section, commits an offence and is liable on conviction to a fine not less than M1000 or to imprisonment for a period not less than three months or both.

Evidence of sexual experience, activity or reputation

26. (1) Evidence of a complainant's sexual experience, activity or reputation with any other person other than the accused may not be admissible in criminal proceedings unless-
- (a) the identity of the accused is in issue;
 - (b) the complainant is concealing the identity of the real perpetrator;
 - (c) the evidence is relevant to explain the presence of semen, vaginal fluid, injury or pregnancy of the complainant; or
 - (d) the evidence is relevant to show that the complainant was not a virgin before the sexual act in issue.

Cross-examination of sexual experience, activity or reputation

27. Cross-examination of complainant's sexual experience, activity or reputation shall not be allowed in criminal proceedings unless-

- (a) the identity of the accused is in issue;
- (b) the complainant is concealing the identity of the real perpetrator;
- (c) the evidence is relevant to explain the presence of semen, vaginal fluid, injury or pregnancy of the complainant; or
- (d) the evidence is relevant to show that the complainant was not a virgin before the present sexual act.

PART VII . RIGHTS OF COMPLAINANT AND DUTIES OF PROSECUTOR

Rights of complainant in bail application

28. (1) A complainant shall have a right to -
- (a) attend any proceedings where the question considered is whether an accused who is in custody is to be released on bail or, if bail has been granted to the accused, whether any further condition of bail is to be imposed or whether any such condition of bail is to be amended or supplemented; and
 - (b) request the prosecutor in the proceedings to present any information or evidence to the court that may be relevant to any question under consideration by the court in the proceedings.
- (2) If an accused is in custody, the investigating officer or prosecutor shall, as soon as possible, inform the complainant of-
- (a) the place, date and time of the first appearance of the accused in court; and
 - (b) the rights of the complainant under subsection (1).
- (3) If an accused who is in custody intends to apply to the court for bail on a date or at a time subsequent to the first appearance, the

accused or the accused's legal representative shall request the investigating officer or prosecutor to inform the complainant.

- (4) The investigating officer or prosecutor shall, by way of oral evidence or affidavit state-
 - (a) whether the provisions of subsection (2) or (3) were duly complied with and, if they were not complied with, the reasons for not complying with any such provisions;
 - (b) the manner in which the complainant was informed; and
 - (c) the date and time when the complainant was informed.
- (5) The evidence given shall form part of the bail proceedings.
- (6) If a complainant is present at the proceedings at which bail is considered in respect of an accused who is in custody and the proceedings are postponed, the court shall inform the complainant of the date on and time at which such proceedings have been postponed and of the complainant's rights under subsection (1).
- (7) If a complainant is not present at the proceedings under subsection (6), the court shall enquire into the question whether the complainant had knowledge of such proceedings, and shall-
 - (a) if it is satisfied that the complainant had knowledge of the proceedings, direct that the matter be dealt with in the absence of the complainant; or
 - (b) if it is not satisfied that the complainant had knowledge of the proceedings, postpone the proceedings in order for the complainant to be present:

Provided that, if it is in the interest of justice, the matter shall be dealt with immediately.

- (8) Where the complainant referred to under subsection (7) is not present, the investigating officer in the proceedings shall inform the complainant-
 - (a) where bail was granted to the accused, of the granting of the bail and conditions of bail imposed; or

- (b) where the proceedings were postponed, of the date on and time at which the proceedings were postponed and of the complainant's rights under subsection (1).
- (9) If an accused who is in custody is released on bail, the court may add further conditions of bail to ensure that the accused does not make contact with the complainant.

Special duties of prosecutor

29. In criminal proceedings where an accused is charged with an offence of a sexual nature, the prosecutor shall consult with the complainant in the proceedings in order to-
- (a) ensure that any information relevant to the trial is obtained from the complainant, including information relevant to the question whether the accused is to be released on bail and, if the accused were so released, whether any conditions of bail are to be imposed;
 - (b) orientate the complainant with the court structure and procedures; and
 - (c) provide any information to the complainant necessary to lessen the impact of the trial on the complainant.

Compulsory Human Immunodeficiency Virus (HIV) Test

30. (1) A person charged with a sexual act involving the insertion of a sexual organ into another person's sexual organ or anus, shall have his blood substance taken by a medical practitioner within a week of the preferment of the charge.
- (2) The blood substance referred to in subsection (1) shall be tested for Human Immunodeficiency Virus infection and the results shall be disclosed by the medical practitioner to the accused and the complainant only.
- (3) The costs for the test referred to in subsection (2) shall be borne by the Crown.

- (4) Where a conviction is secured, the results of the test done pursuant to subsection (3) shall be tendered in evidence for the purposes of sentence.
- (5) Any person –
- (a) who unreasonably hinders or obstructs the taking of the blood substance; or
 - (b) who, other than the accused or victim, discloses the test results before the sentencing phase of the court proceedings, commits an offence and is liable on conviction to a fine not exceeding M20,000 or to imprisonment for a period not exceeding one year or both.

PART VIII - PENALTIES

Enforcement of penalties

31. (1) Save for the Central and Local Courts, the sentences under section 32 shall apply and be enforced by all courts unless extenuating circumstances or the proper consideration of the individual circumstances of the accused or lawful intimate relations between the perpetrator and the victim dictate otherwise.
- (2) Where the appropriate penalty is beyond the ceiling of penal powers of the trial court, it shall, after conviction, send the case to the High Court for sentence.

First and second or subsequent conviction

32. A person who is convicted of an offence of a sexual nature shall, subject to the provisions of section 31, be liable –
- (a) in a case of first conviction-
 - (i) where the offence committed is exposure or display of genital organs by one person to another, the court may impose any appropriate sentence;

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- (ii) where the offence is committed under other coercive circumstances not referred to under section 2, to imprisonment for a period of not less than eight years;
 - (iii) where the offence is committed under section 3 and the circumstances are as described in the definition of coercive circumstances in paragraph (a), (b), (d), (e), (f) or (i) of section 2, to imprisonment for a period of not less than ten years;
 - (iv) where the convicted person is infected with human immunodeficiency virus or other life-threatening disease but at the time of the commission of the offence had no knowledge or reasonable suspicion of the infection, to imprisonment for a period of not less than ten years;
 - (v) where the offence is committed under section 9, to minimum imprisonment of fifteen years;
 - (vi) where the offence is committed under Parts III, IV and V by a person who is 18 years or above, to imprisonment for a period of not less than 10 years;
 - (vii) where a person is infected with the human immunodeficiency virus and at the time of the commission of the offence the person had knowledge or reasonable suspicion of the infection, to the death penalty;
 - (viii) where-
 - (aa) the complainant has suffered grievous bodily or mental harm as a result of the offence;
 - (bb) the complainant-

256

- (A) is under the age of 12 years; or
 - (B) is by reason of disability exceptionally vulnerable;
 - (cc) the convicted person has a sexually transmissible disease and at the time of the commission of the offence was aware of the sexually transmissible disease;
 - (dd) the convicted person is one of a group of two or more persons participating as an actual perpetrator or accessory in the commission of the offence; or
 - (ee) the convicted person uses a fire arm or any other weapon or harmful instrument for the purpose of or in connection with the commission of the offence, to imprisonment for a period of not less than fifteen years;
- (b) in a case of a second or subsequent conviction, whether previously convicted of an offence under the common law or Proclamation-
- (i) where the offence committed is exposure or display of genital organs by one person to another, to imprisonment for a period of not less than five years;
 - (ii) where the offence is committed under the circumstances other than the circumstances referred to under paragraphs (b) and (c) of section 2, to imprisonment for a period of not less than 10 years;
 - (iii) where the offence in question or any other offence of which such person has previously been convicted was committed under section 2 and the circumstances are as described in the definition of coercive circumstances in paragraph

(a), (b), (d), (e), (f) or (i), to imprisonment for a period of not less than 20 years;

- (iv) where the offence in question or any other offence of which such person has previously been convicted was committed under any of the circumstances referred to under section 32 (a) (iii), (iv), (v), (vi), to imprisonment for life.

Inapplicability of minimum sentences to children

33. (1) The minimum sentences prescribed under section 32 shall not be applicable to a convicted person who was under the age of 18 years at the time of the commission of the offence and the court may in such circumstances impose any appropriate sentence.
- (2) If the conviction is second or subsequent, the minimum sentences prescribed under section 32 shall apply to a convicted person who was under the age 18 years at the time of the commission of the offence.
- (3) Notwithstanding the provisions of subsections (1) and (2), section 32(a) (vii) shall not apply to a convicted person who was under the age of 18 years at the time of the commission of the offence.

Suspension of sentence

34. (1) If a minimum sentence referred to under section 32 is applicable in respect of a convicted person, the court shall not suspend, wholly or in part, the operation of the sentence: Provided that, if the sentence imposed upon the convicted person exceeds the minimum sentence, the court may suspend, wholly or in part, the excess of that minimum sentence.

PART IX - MISCELLANEOUS**Extra-territorial jurisdiction**

35. A person who, while being a citizen or a resident of Lesotho, commits an unlawful sexual act outside Lesotho in relation to another citizen or resident of Lesotho commits an offence and is triable in the courts of Lesotho.

Savings

36. The repeal, by this Act, of the Women and Girls Protection Proclamation 1949 and common law rape shall not apply to any offence that was committed before the commencement of this Act.

Repeals

37. (1) The Women and Girls Protection Proclamation, 1949 is repealed.
(2) The offence of rape at common law is repealed.

NOTE

¹. Proclamation No.14 of 1949