



**CHILD LAW REFORM
COMMITTEE**

SEXUAL OFFENCES BILL PROPOSED MODEL LAW

*Prepared as part of the recommendations of the Child
Law Reform Committee*

SEXUAL OFFENCES BILL - PROPOSED MODEL LAW

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PURPOSE

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 —

- Defining the new statutory offence of rape applicable to all forms of sexual penetration without consent, irrespective of gender;
- Defining consent and other relevant concepts;
- Repealing the 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 provisions which perpetuate harmful gender stereotypes and legitimise unlawful sexual acts;
- 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 18 years;
- Avoiding criminalising the conduct of children, particularly in the context of sexual offences and image based offences;
- 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 and criminalizing failure to report;
- Providing the Seychelles Police Force with new investigative tools when investigating sexual offences or other offences involving the HIV status of the perpetrator;
- Providing the courts with extra-territorial jurisdiction when hearing matters relating to sexual offences;
- Providing certain services to victims of sexual offences, inter alia, to minimise or, as far as possible, eliminate secondary traumatising, 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 public 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; and

- To provide for matters connected therewith.

PREAMBLE

WHEREAS the commission of sexual offences in the Republic of Seychelles is of critical 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;

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 prevailing Seychellois statutory law does 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 traumatising;

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 of Seychelles towards the combating and, ultimately, eradicating of abuse and violence against women and children;

AND WHEREAS the Charter of Rights in the Constitution of the Republic of Seychelles, 1996, enshrines the rights of all people in the Republic of Seychelles, 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,

BE IT THEREFORE ENACTED by the National Assembly of the Republic of Seychelles, as follows: —

CHAPTER 1

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Sexual Offences Act, 2021 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Definitions and interpretation of the Act

2. In this Act, unless the context indicates otherwise —

“application” means an application under Chapter 5;

“body fluid” means any body substance which may contain HIV or any other sexually transmissible infection, but does not include saliva, tears or perspiration;

“body specimen” means any body sample which can be tested to determine the presence or absence of HIV infection;

“capture image” means to capture a moving or still image of the other person, with a camera or by any other means, in such a way that —

- (a) a recording is made of the image; or
- (b) the image is capable of being transmitted in real time, with or without retention or storage, in a physical or electronic form; or
- (c) the image is otherwise capable of being distributed.

“care-giver” means any person who resides with the person with a mental illness, or is in substantial contact with such person, and is responsible for providing care to that person and includes a relative or any other person who performs this function;

“child” means a person under the age of 18 years and “children” has a corresponding meaning;

“child pornography” means any image, however created, or any description or representation of a person by whatever means, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not;

“complainant” means the alleged victim of a sexual offence;

“consent” means agreement by choice, with freedom and capacity to make that choice; circumstances in respect of which the complainant (“B”) does not voluntarily or without coercion agree to a sexual act include, but are not limited to —

- (a) where B submits or is subjected to such a sexual act as a result of —
 - (i) the use of force or intimidation by the accused person (“A”) against B, a third person (“C”) or another person (“D”) or against the property of B, C or D; or
 - (ii) a threat of harm by A against B, C or D or against the property of B, C or D.
- (b) where there is an abuse of power or authority by A to the extent that B is inhibited from indicating A’s unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act;

- (c) where the sexual act is committed under false pretences or by fraudulent means, including where B is led to believe by A that —
 - (i) B is committing such a sexual act with a particular person who is in fact a different person; or
 - (ii) such a sexual act is something other than that act.
- (d) where B is incapable in law of appreciating the nature of the sexual act, including where B is, at the time of the commission of such sexual act is —
 - (i) asleep;
 - (ii) unconscious;
 - (iii) in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that B’s consciousness or judgement is adversely affected;
 - (iv) a child below the age of 16 years; or
 - (v) a person who is mentally disabled.

“genital organs” includes the whole or part of the male and female genital organs, and further includes surgically constructed or reconstructed genital organs;

“HIV” means the Human Immuno-deficiency Virus;

“HIV test” means any validated and medically recognised test for determining the presence or absence of HIV infection in a person;

“interested person” means any person who has a material interest in the well-being of a victim, including a spouse, same sex or heterosexual permanent life partner, parent, guardian, family member, care giver, curator, counsellor, medical practitioner, health service provider, social worker or teacher of such victim;

“intimate images” – means a moving or still image in any form that depicts —

- (a) a person engaged or apparently engaged in a sexual pose or sexual activity, or a person in a manner or context that is sexual; or
- (b) a person engaged or apparently engaged in a private act; or
- (c) all or part of an individual's genitals, pubic area, anal region, or the breasts of a female or a transgender or intersex person who identifies as a female; or
- (d) an image, in any form, that has been altered to appear to show any of the things mentioned in paragraphs (a), (b), (c).

“medical practitioner” means a person registered as a medical practitioner in terms of the Medical Practitioners and Dentists Act, 1994 and who, for purposes of Chapter 5, is authorised to take body specimens as contemplated in this Act;

“mental illness” means a mental illness as defined in the Mental Health Care Act, 2020;

“Minister” means the minister responsible for legal affairs;

“nurse” means a person registered as such in terms of the Nurses and Midwives Act, 1985, and who, for purposes of Chapter 5, is authorised to take body specimens as contemplated in this Act;

“offence”, for the purposes of Chapter 5, means any offence, other than a sexual offence, in which the HIV status of the alleged offender may be relevant for purposes of investigation or prosecution;

“operating equipment” includes enabling or securing its activation by another person without that person's knowledge;

“person who is mentally disabled” means a person affected by any mental illness, including any disorder or disability of the mind, to the extent that the person, at the time of the alleged commission of the offence in question, was —

- (a) unable to appreciate the nature and reasonably foreseeable consequences of a sexual 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 any such act; or
- (d) unable to communicate the unwillingness to participate in any such act;

“pornography” means any image, however created, or any representation or description of a person of whatever means, real or simulated, who is 18 years or older, of an explicit or sexual nature that is intended to stimulate erotic feelings, including any such image or description of such person —

- (a) engaged in an act that constitutes a sexual offence;
- (b) engaged in an act of sexual penetration;
- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation;
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs or anus of such person;
- (g) displaying any form of stimulation of a sexual nature of the female breasts;
- (h) engaged in sexually suggestive or lewd acts;
- (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- (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;

“position of trust” in relation to the accused person and the complainant include, where —

- (a) the accused looks after persons, including the complainant, detained in an institution by virtue of a Court order or under any law;
- (b) the accused looks after persons, including the complainant, who are accommodated and cared for in one of the following institutions—

- (i) a hospital;
 - (ii) an independent clinic;
 - (iii) a care home, residential care home or private hospital; or
 - (iv) a community home, voluntary home, children's home or orphanage;
- (c) the accused looks after persons who are receiving education at an educational institution (whether in the role of teacher or in another role) and the complainant is receiving, and the accused is not receiving, education at that institution;
- (d) the accused is the guardian of the complainant;
- (e) the accused is not appointed to be guardian of the complainant but is the legal or reputed husband or wife of one of the complainant's parents or guardians;
- (f) the complainant is in vocational training and the accused looks after the complainant on an individual basis; and the accused looks after the complainant on an individual basis if —
- (i) the accused is regularly involved in caring for, training or supervising the complainant; and
 - (ii) in the course of the involvement, the accused regularly has unsupervised contact with the complainant (whether face to face or by any other means);
- (g) the accused is a social worker, probation officer, coach, instructor, minister of religion, babysitter, child-minder or has a welfare position in relation to the complainant, and has regular unsupervised contact with the complainant; or
- (h) the accused looks after persons under eighteen years of age if the accused is regularly involved in caring for, training, supervising or being in sole charge of such persons;

engaged in a “private act” means —

- (a) if the person is in a state of undress, using the toilet, showering or bathing, engaged in a sexual activity of any kind not ordinarily done in public, or engaged in any other like activity; and
- (b) the circumstances are such that a reasonable person would reasonably expect to be afforded privacy;

“private parts” means —

- (a) a person’s genital area or anal area, whether bare or covered by underwear; or
- (b) the breasts of a female or transgender or intersex person who identifies as a female;

“Republic” means the Republic of Seychelles;

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

“sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual;

"sexual exploitation" means

- (a) to encourage, induce, or force a person to be used for the sexual gratification of another person;
- (b) to use a person in or deliberately exposing a person to sexual acts or pornography in view of committing an act of trafficking in person; or
- (c) to procure or allow a person to be procured for commercial sexual exploitation or in any way participate or assist in the commercial sexual exploitation of a person.

"sexual communication" means a communication where —

- (a) any part of it relates to sexual activity; or
- (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

"sexual offence" means any offence in terms of Chapters 2, 3 and 4 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

(ddd) 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

“structure” includes a vehicle, vessel, tent or temporary structure;

“victim” means any person alleging that a sexual offence has been perpetrated against him or her.

CHAPTER 2

SEXUAL OFFENCES

Part 1: Rape, compelled rape, and compelling another to witness a rape

Rape

3. Any person (“A”) who unlawfully and intentionally commits an act of sexual penetration with a complainant (“B”), without the consent of B, is guilty of the offence of rape and is liable to the punishment provided for the offence.

Compelled rape

4. Any person (“A”) who unlawfully and intentionally compels a third person (“C”), without the consent of C, to commit an act of sexual penetration with a complainant (“B”), without the consent of B, is guilty of the offence of compelled rape and is liable to the punishment provided for the offence.

Compelling another to witness a rape

5. Any person (“A”) who unlawfully and intentionally compels a third person (“C”), without the consent of C, to witness an act of sexual penetration with a complainant (“B”), without the consent of B, is guilty of compelling another to witness a rape and is liable to the punishment provided for the offence.

Part 2: Sexual assault, compelled sexual assault, compelling another to witness a compelled sexual assault, compelled self-sexual assault, and compelling another to witness a compelled self-sexual assault

Sexual assault

6. A person (“A”) who unlawfully and intentionally —

- (a) sexually violates a complainant (“B”), without the consent of B; or
- (b) inspires the belief in B that B will be sexually violated,

is guilty of the offence of sexual assault and is liable to the punishment provided for the offence.

Compelled sexual assault

7. A person (“A”) who unlawfully and intentionally compels a third person (“C”), without the consent of C, to commit an act of sexual violation with a complainant (“B”), without the consent of B, is guilty of the offence of compelled sexual assault and is liable to the punishment provided for the offence.

Compelling another to witness a compelled sexual assault

8. A person (“A”) who unlawfully and intentionally compels a third person (“C”), without the consent of C, to witness an act of compelled sexual assault with a complainant (“B”), without the consent of B, is guilty of compelling another to witness a compelled sexual assault and is liable to the punishment provided for the offence.

Compelled self-sexual assault

9. A person (“A”) who unlawfully and intentionally compels a complainant (“B”), without the consent of B, to —

- (a) engage in —
 - (i) masturbation;
 - (ii) any form of arousal or stimulation of a sexual nature of the female breasts; or
 - (iii) sexually suggestive or lewd acts, with B;
- (b) engage in any act which has or may have the effect of sexually arousing or sexually degrading B; or
- (c) cause B to penetrate in any manner whatsoever B’s own genital organs or anus,

is guilty of the offence of compelled self-sexual assault and is liable to the punishment provided for the offence.

Compelling another to witness a compelled self-sexual assault

10. A person (“A”) who unlawfully and intentionally compels a third person (“C”), without the consent of C, to witness an act of compelled self-sexual assault with a complainant (“B”), without the consent of B, is guilty of compelling another to witness a compelled self-sexual assault and is liable to the punishment provided for the offence.

Part 3: Compelling or causing another to witness sexual offences, sexual acts or self-masturbation; exposure or display of or causing exposure or display of genital organs, anus or female breasts (“flashing”) to another; exposure or display of or causing exposure or display of child pornography to another

Compelling or causing another to witness sexual offences, sexual acts or self-masturbation

11.(1) A person (“A”) who unlawfully and intentionally, whether for the sexual gratification of A or of a third person (“C”) or not, compels or causes a complainant (“B”), without the consent of B, to be in the presence of or watch A or C commit a sexual offence, is guilty of the offence of compelling or causing another to witness a sexual offence and is liable to the punishment provided for the offence.

(2) A person (“A”) who unlawfully and intentionally, whether for the sexual gratification of A or of a third person (“C”) or not, compels or causes a complainant (“B”), without the consent of B, to be in the presence of or watch —

- (a) A engaged in a sexual act with C or another person (“D”); or
- (b) C engaged in a sexual act with D,

is guilty of the offence of compelling or causing another to witness a sexual act and is liable to the punishment provided for the offence.

(3) A person (“A”) who unlawfully and intentionally, whether for the sexual gratification of A or of a third person (“C”) or not, compels or causes a complainant (“B”), without the consent of B, to be in the presence of or watch A or C engaged in an act of self-masturbation, is guilty of the offence of compelling or causing another to witness self-masturbation and is liable to the punishment provided for the offence.

Exposure or display of or causing exposure or display of genital organs, anus or female breasts to another (“flashing”)

12. (1) A person (“A”) who unlawfully and intentionally, within view or in a public place, sexually exposes or displays or causes the exposure or display of the genital organs, anus or female breasts of A or of a third person (“C”) to a complainant (“B”) is guilty of the offence of exposure or display of or causing exposure or display of genital organs, anus or female breasts to another and is liable to the punishment provided for the offence.

(2) It is not a defence to a charge for an offence against subsection (1) that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that the exposure was not sexual.

(3) It is a defence to a charge for an offence against subsection (1) that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that the exposure was not in, or within the view of, a public place.

(4) For the purposes of subsection (1), A's exposure of A's genitals may be sexual due to —

- (a) the fact that A seeks or gets sexual arousal or sexual gratification from the exposure; or
- (b) any other aspect of the exposure, including the circumstances in which it takes place and whether it is contrary to community standards of acceptable conduct.

Exposure or display of or causing exposure or display of child pornography to another

13. A person (“A”) who unlawfully and intentionally, whether for the sexual gratification of A or of a third person (“C”) or not, exposes or displays or causes the exposure or display of child pornography to a complainant (“B”), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography to another and is liable to the punishment provided for the offence.

Part 4: Voyeurism; capturing images for the purpose of sexual arousal or sexual gratification; capturing images for the purpose of humiliating, alarming or distressing another person; printing, publication of voyeuristic captured image material; non-consensual distribution of intimate images; threatening to capture or distribute intimate images; and exceptions

Voyeurism

14. A person who for the purpose of obtaining sexual arousal or sexual gratification observes a complainant (“B”) who is engaged in a private act, and does so —

- (a) without the consent of B to being observed; or
- (b) without the consent of B to being observed for that purpose; and
- (c) without reasonable belief that B consents to being observed; or
- (d) without reasonable belief that B consents to being observed for that purpose,

is guilty of the offence of voyeurism and is liable to the punishment provided for the offence.

Capturing images for the purpose of sexual arousal or sexual gratification

15. A person who for the purpose of obtaining, or enabling a third person (“C”) to obtain, sexual arousal or sexual gratification —

- (a) captures image of a complainant (“B”) who is engaged in a private act; or
- (b) captures image of B’s private parts, in circumstances in which a reasonable person would reasonably expect the person’s private parts could not be captured; or
- (c) operates or installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or C to commit an offence under subsections (a) and (b); or
- (d) constructs or adapts the fabric or any structure for the purpose of facilitating the commission of the offence under subsections (a), (b) and (c); and
- (e) does so —
 - (i) without the consent of B to the image being captured; or

- (ii) without the consent of B to the image being captured for that purpose; and
- (iii) without reasonable belief that B consent to the image being captured; or
- (iv) without reasonable belief that B consents to the image being captured for that purpose,

is guilty of the offence of capturing images for the purpose of sexual arousal or sexual gratification and is liable to the punishment provided for the offence.

Capturing images for the purpose of humiliating, alarming or distressing another person

16. A person who for the purpose of humiliating, alarming or distressing a complainant (“B”)

—

- (a) captures an image of B who is engaged in a private act; or
- (b) captures an image of B’s private parts, in circumstances in which a reasonable person would reasonably expect the person’s private parts could not be captured; or
- (c) operates or installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or a third person (“C”) to commit an offence under subsections (a) and (b); or
- (d) constructs or adapts the fabric or any structure for the purpose of facilitating the commission of the offence under subsections (a), (b) and (c); and
- (e) does so —
 - (i) without the consent of B to the image being captured; or
 - (ii) without the consent of B to the image being captured for that purpose; and
 - (iii) without reasonable belief that B consent to the image being captured; or
 - (iv) without reasonable belief that B consents to the image being captured for that purpose,

is guilty of the offence of capturing images for the purpose of humiliating, alarming or distressing another person and is liable to the punishment provided for the offence.

Printing, publication of voyeuristic captured image material

17. A person who knowing that a captured image material was obtained by the commission of an offence under section 15 or section 16 —

- (a) prints, copies, publishes, distributes, circulates, sells, advertises or makes available the recording; or
- (b) has the recording in possession for the purpose of printing, copying, publishing, distributing, circulating, selling or advertising it or making it available,

is guilty of an offence of printing, publication of voyeuristic captured image material and is liable to the punishment provided for the offence.

Non-consensual distribution of intimate images

18. A person who —

- (a) distributes an intimate image of a complainant (“B”); and
- (b) the person —
 - (i) knows that B does not consent to the distribution; or
 - (ii) is reckless about whether B consents to the distribution,

is guilty of the offence of non-consensual distribution of intimate images and is liable to the punishment provided for the offence.

Threatening to capture or distribute intimate images

19. (1) A person who —

- (a) threatens to capture or distribute an intimate image of a complainant (“B”); and
- (b) the person —
 - (i) intends B to fear that the threat would be carried out; or
 - (ii) is reckless about whether B would fear that the threat would be carried out,

is guilty of the offence of threatening to capture or distribute intimate images and is liable to the punishment provided for the offence.

(2) In a prosecution for an offence against this section —

- (a) a threat may be made by any conduct whether explicit, implicit, conditional, or unconditional; and
- (b) it is not necessary to prove that B actually feared that the threat would be carried out; and
- (c) a person may be found guilty even if carrying out the threat is impossible.

(3) In this section B does not consent to the distribution of an intimate image by the accused person only because B —

- (a) consented to the accused person distributing the image or another intimate image on another occasion; or
- (b) consented to someone else distributing the image or another intimate image; or
- (c) consented to the accused person or someone else distributing the image or another intimate image in a different way to the way the accused person distributed the image; or
- (d) distributed the image or another intimate image to someone else.

Exceptions

20. A person does not commit an offence under Part 4 where —

- (a) the conduct alleged to constitute the offence was done for a genuine medical, scientific or educational purpose; or

- (b) the conduct alleged to constitute the offence was done by a law enforcement officer for a genuine law enforcement purpose; or
- (c) for the purpose of reporting unlawful conduct to a law enforcement officer; or
- (d) the conduct alleged to constitute the offence was required by a court or otherwise reasonably necessary to be done for the purpose of legal proceeding; or
- (e) a reasonable person would consider the conduct of the accused person acceptable, having regard to each of the following (to the extent relevant) —
 - (i) the nature and content of the image;
 - (ii) the circumstances in which the image was captured or distributed;
 - (iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the person depicted in the image;
 - (iv) the degree to which the accused person’s actions affect the privacy of the person depicted in the image;
 - (v) the relationship between the accused person and the person depicted in the image.

Part 5: Preparatory offences: administering a substance with intent; committing an offence with intent to commit a sexual offence; and trespass with intent to commit a sexual offence

Administering a substance with intent

21. A person who intentionally administers a substance to, or causes a substance to be taken by a complainant (“B”) —

- (a) knowing that B does not consent; and
- (b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B,

is guilty of the offence of administering a substance with intent and is liable to the punishment provided for the offence.

Committing an offence with intent to commit a sexual offence

22. A person who commits any offence with the intention of committing a sexual offence under this Act is guilty of the offence under this section and is liable to the punishment provided for the offence.

Trespass with intent to commit a sexual offence

23. A person who —

- (a) knowingly or recklessly trespasses on any premises; and
- (b) intends to commit a relevant sexual offence on the premises,

is guilty of the offence of trespass with intent to commit a sexual offence and is liable to the punishment provided for the offence.

Part 6: Sexual Harassment: street and public/common place sexual harassment; specific environment-related sexual harassment; persistent harassment involving information and communications technology: online sexual harassment (cyber harassment)

Street and public/common place sexual harassment

24.(1) A person who in a public/common place engages in unwanted verbal, nonverbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a complainant (“B”) and/or creating an intimidating, hostile, degrading, humiliating or offensive environment, where the conduct may include but is not limited to —

- (a) catcalling, wolf-whistling, cursing, leering and intrusive gazing, taunting, pursuing, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on B’s appearance, relentless requests for personal details, statement of sexual comments and suggestions, any advances, whether verbal or physical, that is unwanted, the persistent telling of sexual jokes, use of sexual names, comments, threats and demands;
- (b) acts such as making offensive body gestures at B, public masturbation, self-groping, self-fondling and any acts self-touching by the accused person;
- (c) acts such as following, pursuing, or accosting of B, watching, besetting, approaching, or loitering outside of or near the building or place where B resides, works, carries on business, studies, or happens to be;
- (d) any touching, pinching, or brushing against the genital organs, groin, breasts, anus, buttocks, inner thighs, arms, face or any part of B's body, interfering with B’s property;
- (e) any other intimidating, degrading, humiliating or offensive conduct that has made an invasion on B’s personal space or threatens B’s sense of personal safety,

is guilty of the offence of public/common place sexual harassment and is liable to the punishment provided for the offence.

(2) Street and public/common places may include but are not limited to — alleys, roads, sidewalks, parks, beaches, buildings, schools, churches, gyms, cinemas, hospitals, restaurants, shops, public washrooms, bars, internet shops, public markets, transportation terminals, public transportation.

Specific environment-related sexual harassment

25.(1) A person who, having authority, trust, influence or moral ascendancy over the complainant (“B”) in a specific environment-related place demands, requests or otherwise requires any sexual favour from B, regardless of whether the demand, request or requirement for submission is accepted is guilty of an offence of specific environment-related sexual harassment and is liable to the punishment provided for the offence.

(2) Specific environment-related places may include but are not limited to places of work, education or training, religious or spiritual places, medical and allied health practices.

(3) A person having authority, trust, influence or moral ascendancy over B in a specific environment-related place may include but is not limited to —an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, priest, spiritual leader, medical practitioner, allied health professional or any other person who has authority, trust influence or moral ascendancy over another in a specific environment-related place.

(4) In a specific environment-related place, sexual harassment includes but is not limited to situations where —

- (a) the sexual favour is made as a condition in hiring or in the employment, re-employment or continued employment of B, or in granting B favourable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favour results in limiting, segregating or classifying B in any way that would discriminate, deprive or diminish employment opportunities or otherwise adversely affect B;
- (b) the sexual favour is made as a condition to giving of a passing grade, or granting of honours and scholarships, or payment of a student allowance or other benefits, privileges, or consideration;
- (c) the sexual favour is made as a condition to giving or refusing benefits, privileges or considerations in specific environment-related places;
- (d) the sexual advances or refusal thereof result in an intimidating, hostile or offensive environment for B.

Persistent harassment involving information and communications technology: online sexual harassment (cyber harassment)

26. A person (“A”) who, using information and communications technology in a manner that can cause unreasonable interference with the lifestyle of the complainant (“B”), persistently and repeatedly —

- (a) makes facts or intimate images of B available to a larger number of people without the consent of B;
- (b) intimidates or threatens to make facts or intimate images of B available to a larger number of people without the consent of B;
- (c) makes facts or intimate images of A available to B persistently despite B’s rejections;
- (d) contacting, or attempting to contact, either directly or indirectly, B or anyone known to them despite B’s rejections;

is guilty of the offence of persistent harassment involving information and communications technology and is liable to the punishment provided for the offence.

Part 7: Incest, bestiality and sexual acts with corpse

Incest

27.(1) A person who has sexual intercourse with another person when the person knows that the person and that other person are closely related by blood is guilty of the offence of incest and is liable to the punishment provided for the offence.

(2) A person is closely related by blood to another person if the other person is the grandmother, grandfather, mother, father, sister, brother, half-sister, half-brother, daughter, son, grand-daughter or grand-son of the person;

(3) 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 Attorney General.

Bestiality

28. 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 and is liable to the punishment provided for the offence.

Sexual act with corpse

29. 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 and is liable to the punishment provided for the offence.

CHAPTER 3

SEXUAL OFFENCES AGAINST CHILDREN

Part 1: Consent no defence, proceedings against a child, exception close in age defence — children aged 12-15, mistake of age

Obligation to report commission of a sexual offence against a child

30A. (1) (a) A person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official.

(b) A person who fails to report such knowledge as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(c) A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report

Consent no defence

30. Subject to sections 31, 32, and 33 when an accused person is charged with an offence under section 34 or section 35 in respect of a child (“B”) under the age of 16 years, it is not a defence that B consented to the activity that forms the subject-matter of the charge.

Proceedings against a child

31. (1) Proceedings for an offence under section 34 or section 35 against a child may only be instituted by or with the authorization in writing of the Attorney General.

(2) In the event that the Attorney General authorises the institution of a prosecution and

- (a) both the accused person (“A”) and the child (“B”) were 12 years or older but under the age of 16 years at the time the offence is alleged to have been committed; and
- (b) A is not in a position of trust or authority towards B, is not a person with whom B is in a relationship of dependency or is not in a relationship with B that is exploitative of the B,

both A and B must be charged under section 34 or section 35.

(3) The Attorney General may not delegate the power to decide whether a prosecution in terms of this section should be instituted or not.

Exception close in age defence — child aged 12 to 15

32. Subject to section 33(2), when an accused person is charged with an offence under section 34 or section 35 in respect of a child (“B”) who is 12 years of age or more but under the age of 16 years, it is a defence that B consented to the activity that forms the subject-matter of the charge if the accused person —

- (a) is less than two years older than B; and
- (b) is not in a position of trust towards B, is not a person with whom B is in a relationship of dependency and is not in a relationship with B that is exploitative of B.

Mistake of age

33.(1) It is not a defence to a charge under section 34 or section 35 that the accused person believed that a child (“B”) was —

- (a) 16 years of age or more; or
- (b) 18 years of age or more

at the time the offence is alleged to have been committed unless the accused person took all reasonable steps to ascertain the age of B.

(2) An accused person cannot raise a mistaken belief in the age of B in order to invoke a defence under section 32 unless the accused person took all reasonable steps to ascertain the age of B.

Part 2: Consensual sexual acts with certain children

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

34. Subject to sections 31, 32 and 33, a person (“A”) who commits an act of sexual penetration with a child (“B”) who is 12 years or older but under the age of 16 years, despite the consent of B to the commission of such an act, is guilty of the offence of having committed an act of consensual sexual penetration with a child and is liable to the punishment provided for the offence.

Acts of consensual sexual violation with certain children (statutory sexual assault)

35. Subject to 31, 32 and 33, a person (“A”) who commits an act of sexual violation with a child (“B”) who is 12 years or older but under the age of 16 years, despite the consent of B to the commission of such an act, is guilty of the offence of having committed an act of consensual sexual violation with a child and is liable to the punishment provided for the offence.

Part 3: Sexual exploitation of children; sexual grooming of children; sexual communication with children; exposure or display of or causing exposure or display of child pornography or pornography to children; and using children for pornographic purposes or benefiting from child pornography

Sexual exploitation of children

36.(1) A person (“A”) who unlawfully and intentionally engages the services of a child (“B”), with or without the consent of B, for financial or other reward, favour or compensation to B or to a third person (“C”) —

- (a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or
- (b) by committing a sexual act with B,

is, in addition to any other offence which he or she may be convicted of, guilty of the sexual exploitation of a child and is liable to the punishment provided for the offence.

(2) A person (“A”) who unlawfully and intentionally offers the services of a child (“B”) to a third person (“C”), with or without the consent of B, for financial or other reward, favour or compensation to A, B or to another person (“D”) —

- (a) for purposes of the commission of a sexual act with B by C;
- (b) by inviting, persuading or inducing B to allow C to commit a sexual act with B;

- (c) by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with B by C;
- (d) by making available, offering or engaging B for purposes of the commission of a sexual act with B by C; or
- (e) by detaining B, whether under threat, force, coercion, deception, abuse of power or authority, for purposes of the commission of a sexual act with B by C,

is guilty of an offence of being involved in the sexual exploitation of a child and is liable to the punishment provided for the offence.

(3) A person (“A”) who —

- (a) intentionally allows or knowingly permits the commission of a sexual act by a third person (“C”) with a child (“B”), with or without the consent of B, while being a primary care-giver, parent or guardian of B; or
- (b) owns, leases, rents, manages, occupies or has control of any movable or immovable property and intentionally allows or knowingly permits such movable or immovable property to be used for purposes of the commission of a sexual act with B by C, with or without the consent of B,

is guilty of the offence of furthering the sexual exploitation of a child and is liable to the punishment provided for the offence.

(4) A person (“A”) who intentionally receives financial or other reward, favour or compensation from the commission of a sexual act with a child (“B”), with or without the consent of B, by a third person (“C”), is guilty of an offence of benefiting from the sexual exploitation of a child and is liable to the punishment provided for the offence.

(5) A person (“A”) who intentionally lives wholly or in part on rewards, favours or compensation for the commission of a sexual act with a child (“B”), with or without the consent of B, by a third person (“C”), is guilty of an offence of living from the earnings of the sexual exploitation of a child and is liable to the punishment provided for the offence.

(6) A person (“A”), including a legal person, who —

- (a) makes or organises any travel arrangements for or on behalf of a third person (“C”), whether that other person is resident within or outside the borders of the Republic, with the intention of facilitating the commission of any sexual act with a child (“B”), with or without the consent of B, irrespective of whether that act is committed or not; or
- (b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual act with B,

is guilty of an offence of promoting child sex tours and is liable to the punishment provided for the offence.

Sexual grooming of children

37. (1) A person (“A”) who —

- (a) manufactures, produces, possesses, distributes or facilitates the manufacture, production or distribution of an article, which is exclusively intended to facilitate the commission of a sexual act with or by a child (“B”);
- (b) manufactures, produces, possesses, distributes or facilitates the manufacture, production or distribution of a publication or film that promotes or is intended to be used in the commission of a sexual act with or by B;
- (c) supplies, exposes or displays to a third person (“C”) —
 - (i) an article which is intended to be used in the performance of a sexual act;
 - (ii) child pornography or pornography; or
 - (iii) a publication or film,

with the intention to encourage, enable, instruct or persuade C to perform a sexual act with B; or
- (d) arranges or facilitates a meeting or communication between C and B by any means from, to or in any part of the world, with the intention that C will perform a sexual act with B,

is guilty of the offence of promoting the sexual grooming of a child and is liable to the punishment provided for the offence.

(2) A person (“A”) who —

- (a) in person or by any other means, encourages, enables, instructs or persuades a child (“B”) to commit or take part in, or watch someone else committing or taking part in a sexual act; or
- (b) communicates in person or by telephone, the internet or other means with B; or provides any computer image, video or publication to B with the intention of making it more likely that B would commit or take part in, or watch someone else committing or taking part in sexual act; or
- (c) engages in conduct with a person who has a relationship with B with the intention of making it more likely that B would commit or take part in, or watch someone else committing or taking part in a sexual act; or
- (d) supplies, exposes or displays to B —
 - (i) an article which is intended to be used in the performance of a sexual act;
 - (ii) child pornography or pornography; or
 - (iii) a publication or film,

with the intention to encourage, enable, instruct or persuade B to perform a sexual act;
- (e) commits any act with or in the presence of B or who describes the commission of any act to or in the presence of B with the intention to encourage or persuade B or to diminish or reduce any resistance or unwillingness on the part of B to —
 - (i) perform a sexual act with A or a third person (“C”);

- (ii) perform an act of self-masturbation in the presence of A or C or while A or C is watching;
 - (iii) be in the presence of or watch A or C while A or C performs a sexual act or an act of self-masturbation;
 - (iv) be exposed to child pornography or pornography;
 - (v) be used for pornographic purposes as contemplated in section 41(1); or
 - (vi) expose B's body, or parts of B's body to A or C in a manner or in circumstances which violate or offend the sexual integrity or dignity of B;
- (f) arranges or facilitates a meeting or communication with B by any means from, to or in any part of the world, with the intention that A will commit a sexual act with B;
- (g) having met or communicated with B by any means from, to or in any part of the world, invites, persuades, seduces, induces, entices or coerces B —
- (i) to travel to any part of the world in order to meet A with the intention to commit a sexual act with B; or
 - (ii) during such meeting or communication or any subsequent meeting or communication to —
 - (aa) commit a sexual act with A;
 - (bb) discuss, explain or describe the commission of a sexual act; or
 - (cc) provide A, by means of any form of communication including electronic communication, with any image, publication, depiction, description or sequence of child pornography of B or any other person; or
- (h) having met or communicated with B by any means from, to or in any part of the world, intentionally travels to meet or meets B with the intention of committing a sexual act with B,

is guilty of the offence of sexual grooming of a child and is liable to the punishment provided for the offence.

(3) It is not a defence to a prosecution for an offence against this section that the child had consented to some or all of the accused person's conduct or actions.

(4) However, it is a defence to a prosecution for an offence against this section if the accused person proves that the accused person believed on reasonable grounds that the young person was at least 16 years old.

(5) In any proceedings for an offence against this section, it is necessary to prove that the child was or was to be procured for unlawful sexual activity, but it is not necessary to specify or to prove any particular unlawful sexual activity.

(6) A reference in this section to a child includes a reference to a person who pretends to be a child if the accused believed that the person was a child. In that case, a reference in this section —

- (a) to unlawful sexual activity includes a reference to anything that would be unlawful sexual activity if the person were a child; and
- (b) to the age of the child is a reference to the age that the accused believed the person to be.

Sexual communication with a child

38. A person aged 18 or over (“A”) who intentionally communicates with a child (“B”)—

- (a) for the purpose of obtaining sexual gratification; and
- (b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and
- (c) B is under the age of 16 years and A does not reasonably believe that B is 16 years or over,

is guilty of the offence of sexual communication with a child and is liable to the punishment provided for the offence.

Sexual intercourse with a child aged 16 to 18 under special care

39.(1) A person who —

- (a) engages in sexual intercourse with a child aged 16 to 18; and
- (b) the child is under the person’s special care,

is guilty of the offence of sexual intercourse with a child aged 16 to 18 under special care and is liable to the punishment provided for the offence;

(2) Without limiting subsection (1), a child aged 16 to 18 (“B”) is under a person’s special care if —

- (a) the person is a teacher at a school, or a person with responsibility for students at a school, and B is a student at the school; or
- (b) the person is a step-parent, foster carer or legal guardian of B; or
- (c) the person provides religious instruction to B; or
- (d) the person is B’s employer; or
- (e) the person is B’s sports coach; or
- (f) the person provides professional counselling to B; or
- (g) the person is a health service provider and B is the person’s patient; or
- (h) the person is a custodial officer and B is a young detainee in the officer’s care, custody or control.

(3) Subsection (1) does not apply to a person if the person —

- (a) was married to the child aged 16 to 18 (“B”) at the time of the alleged offence;
- or

(b) is not more than 2 years older than B.

(4) It is a defence to a prosecution for an offence against subsection (1) if the accused person proves that the accused person believed on reasonable grounds that B was at least 18 years old.

Exposure or display of or causing exposure or display of child pornography or pornography to a child

40. A person (“A”) who unlawfully and intentionally exposes or displays or causes the exposure or display of —

- (a) any image, publication, depiction, description or sequence of child pornography or pornography;
- (b) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of a sexual nature of a child, which may be disturbing or harmful to, or age-inappropriate for children, as contemplated in the Film Classification Board Act, 1994, or in terms of any other legislation; or
- (c) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of pornography or an act of an explicit sexual nature of a person 18 years or older, which may be disturbing or harmful to, or age-inappropriate, for children, as contemplated in the Film Classification Board Act, 1994, or in terms of any other law,

to a child (“B”), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography or pornography to a child and is liable to the punishment provided for the offence.

Using children for or benefiting from child pornography

41. (1) A person (“A”) who unlawfully and intentionally uses a child (“B”), with or without the consent of B, whether for financial or other reward, favour or compensation to B or to a third person (“C”) or not —

- (a) for purposes of creating, making or producing;
- (b) by creating, making or producing; or
- (c) in any manner assisting to create, make or produce, any image, publication, depiction, description or sequence in any manner whatsoever of child pornography,

is guilty of the offence of using a child for child pornography and is liable to the punishment provided for the offence.

(2) Any person who knowingly and intentionally in any manner whatsoever gains financially from, or receives any favour, benefit, reward, compensation or any other advantage, as the result of the commission of any act contemplated in subsection (1), is guilty of the offence of benefiting from child pornography and is liable to the punishment provided for the offence.

Part 4: Production, distribution or possession of child pornography

Production of child pornography

42. Subject to sections 46 to 51, a person who —

- (a) captures, films, photographs, prints or otherwise makes child pornography; or
- (b) alters or manipulates any image for the purpose of making child pornography material; or
- (c) enters into any agreement or arrangement to do so,

is guilty of an offence of production of child pornography and is liable to the punishment provided for the offence.

Distribution of child pornography

43. Subject to sections 46 to 51, a person who —

- (a) sends, supplies, exhibits, transmits or communicates child pornography material to another person; or
- (b) makes child pornography available for access by another person; or
- (c) enters into any agreement or arrangement to do so,

is guilty of an offence of distribution of child pornography and is liable to the punishment provided for the offence.

Possession of child pornography

44.(1) Subject to subsections (2) and (3) and sections 46 to 51 a person who —

- (a) is knowingly and wilfully in possession or control of child pornography, or
- (b) knowingly and wilfully accesses any form of child pornography, or
- (c) enters into any agreement or arrangement to do so,

is guilty of an offence of possession of child pornography and is liable to the punishment provided for the offence.

(2) A person does not commit an offence under this section if —

- (a) the possession of the material occurred when the accused person (“A”) was under the age of 18 years; and
- (b) a reasonable person would consider the possession of the material by A as acceptable having regard to each of the following (to the extent relevant) —
 - (i) the nature and content of the material;
 - (ii) the circumstances in which the material was produced and came into the possession of A;
 - (iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the child depicted in the material;
 - (iv) the age, intellectual capacity, vulnerability or other relevant circumstances of A at the time A first came into possession of the

material and at the time that A's possession of the material first came to the attention of a police officer;

- (v) the relationship between A and the child depicted in the material.

(3) It is a defence in proceedings for offences under this section that the material concerned came into the accused person's ("A") possession unsolicited and as soon as A became aware of its nature, A took reasonable steps to get rid of it.

Syndicated Child Pornography

45. The offence under sections 42 to 44 is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another.

Proceedings against a child

46. Proceedings for an offence under sections 42 to 44 against a child may only be instituted by or with the authorization in writing of the Attorney General.

Defence of innocent production, dissemination or possession

47. It is a defence in proceedings for offences under sections 42 to 44 that the accused person did not know, and could not reasonably be expected to have known, that the accused person produced, disseminated or possessed (as the case requires) child pornography.

Defence of person producing, disseminating or possessing depictions of himself or herself

48.(1) It is a defence in proceedings for offences under sections 42 to 44 if the only person depicted in the material is the accused person.

(2) It is a defence in proceedings for offences under sections 42 to 44 if —

- (a) the production or distribution of the material occurred when the accused person was under the age of 18 years; and
- (b) the only person depicted in the material is the accused person.

(3) Material that depicts a person other than the accused person is taken, for the purposes of this section, to depict only the accused person if the material would no longer be child pornography material were the depiction of the accused person to be removed.

(4) The onus of proving under this section that material depicts the accused person and no other person lies with the accused person on the balance of probabilities.

Defence of public benefit

49.(1) It is a defence in proceedings for offences under sections 42 to 44 that the conduct engaged in by the accused person —

- (a) was of public benefit; and
- (b) did not extend beyond what was of public benefit.

(2) Conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in —

- (a) enforcing or administering the law of the Republic, or
- (b) monitoring compliance with, or investigating a contravention of, the law of the Republic, or
- (c) the administration of justice.

(3) The question of whether a person's conduct is of public benefit is a question of fact and the person's motives for engaging in the conduct are irrelevant.

Defence of law enforcement officers

50. It is a defence in proceedings for offences under sections 42 to 44 that —

- (a) the accused person was, at the time of the offence, a law enforcement officer acting in the course of his or her duties; and
- (b) the conduct of the accused person was reasonable in the circumstances for the purpose of performing that duty.

Defence of approved research

51. It is a defence in proceedings for offences under sections 42 to 44 that the conduct engaged in by the accused person was necessary for or of assistance in conducting scientific, medical or educational research.

Duty to report and preserve such evidence for purposes of investigation

52. (1) Photo developers, information technology professionals, financial institutions, persons of trust and any person who has knowledge, reasonable belief or suspicion of any form of child pornography activities shall —

- (a) report any suspected child pornography materials or transactions to the proper authorities within forty-eight (48) hours from discovery thereof; and
- (b) preserve such evidence for purposes of investigation and prosecution by relevant authorities.

(2) A person and/or entity who knowingly, wilfully and intentionally violates this provision is guilty of an offence and is liable to the punishment provided for the offence.

(3) A person and/or entity who in good faith reports such knowledge, reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.

Duties of an internet content host

53.(1) An internet content host shall —

- (a) not host any form of child pornography on its internet address;

- (b) report the presence of any form of child pornography, as well as the particulars of the person maintaining, hosting, distributing or in any manner contributing to such internet address, to the proper authorities within forty-eight (48) hours from discovery thereof; and
- (c) preserve such evidence for purposes of investigation and prosecution by relevant authorities.

(2) An internet content host shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an internet address that contains any form of child pornography.

(3) An internet content host who knowingly, wilfully and intentionally violates this provision is guilty of an offence and is liable to the punishment provided for the offence

(4) For the purposes of subsection (3) failure of the internet content host to remove any form of child pornography within forty-eight (48) hours from receiving the notice that any form of child pornography is hitting its server shall be conclusive evidence of wilful and intentional violation thereof.

CHAPTER 4

SEXUAL OFFENCES AGAINST PERSONS WHO ARE MENTALLY DISABLED

Obligation to report commission of sexual offences against persons who are mentally disabled

- 54A. (1)**
- (a) A person who has knowledge that a sexual offence has been committed against a person who mentally disabled must report such knowledge immediately to a police official.
 - (b) A person who fails to report such knowledge as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
 - (c) A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.

Sexual exploitation of a person who is mentally disabled

54.(1) A person (“A”) who unlawfully and intentionally engages the services of a complainant who is mentally disabled (“B”), for financial or other reward, favour or compensation to B or to a third person (“C”) —

- (a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or
- (b) by committing a sexual act with B,

is, in addition to any other offence which he or she may be convicted of, guilty of the sexual exploitation of a person who is mentally disabled and is liable to the punishment provided for the offence.

(2) A person (“A”) who unlawfully and intentionally offers the services of a person who is mentally disabled (“B”) to a third person (“C”), for financial or other reward, favour or compensation to A, B or to another person (“D”)—

- (a) for purposes of the commission of a sexual act with B by C;
- (b) by inviting, persuading or inducing B to allow C to commit a sexual act with B;
- (c) by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with B by C;
- (d) by making available, offering or engaging B for purposes of the commission of a sexual act with B by C; or
- (e) by detaining B, whether under threat, force, coercion, deception, abuse of power or authority, for purposes of the commission of a sexual act with B by C,

is guilty of an offence of being involved in the sexual exploitation of a person who is mentally disabled and is liable to the punishment provided for the offence.

(3) A person (“A”) who—

- (a) intentionally allows or knowingly permits the commission of a sexual act by a third person (“C”) with a person who is mentally disabled (“B”) while being a care-giver, parent, guardian, or teacher of B; or
- (b) owns, leases, rents, manages, occupies or has control of any movable or immovable property and intentionally allows or knowingly permits such movable or immovable property to be used for purposes of the commission of a sexual act with B by C,

is guilty of the offence of furthering the sexual exploitation of a person who is mentally disabled and is liable to the punishment provided for the offence.

(4) A person (“A”) who intentionally receives financial or other reward, favour or compensation from the commission of a sexual act with a person who is mentally disabled (“B”) by a third person (“C”), is guilty of an offence of benefiting from the sexual exploitation of a person who is mentally disabled and is liable to the punishment provided for the offence.

(5) A person (“A”) who intentionally lives wholly or in part on rewards, favours or compensation for the commission of a sexual act with a person who is mentally or physically disabled (“B”) by a third person (“C”), is guilty of an offence of living from the earnings of the sexual exploitation of a person who is mentally disabled and is liable to the punishment provided for the offence.

(6) A person (“A”), including a legal person, who—

- (a) makes or organises any travel arrangements for or on behalf of a third person (“C”), whether that other person is resident within or outside the borders of the Republic, with the intention of facilitating the commission of any sexual act with

a person who is mentally disabled (“B”), irrespective of whether that act is committed or not; or

- (b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual act with B,

is guilty of an offence of promoting sex tours with persons who are mentally disabled and is liable to the punishment provided for the offence.

Sexual grooming of persons who are mentally disabled

55.(1) A person (“A”) who—

- (a) supplies, exposes or displays to a third person (“C”) —
 - (i) an article which is intended to be used in the performance of a sexual act;
 - (ii) child pornography or pornography; or
 - (iii) a publication or film,

with the intention to encourage, enable, instruct or persuade C to perform a sexual act with a person who is mentally disabled (“B”); or

- (b) arranges or facilitates a meeting or communication between C and B by any means from, to or in any part of the world, with the intention that C will perform a sexual act with B,

is guilty of the offence of promoting the sexual grooming of a person who is mentally disabled and is liable to the punishment provided for the offence.

(2) A person (“A”) who—

- (a) supplies, exposes or displays to a person who is mentally disabled (“B”) —
 - (i) an article which is intended to be used in the performance of a sexual act;
 - (ii) child pornography or pornography; or
 - (iii) a publication or film,

with the intention to encourage, enable, instruct or persuade B to perform such sexual act;

- (b) commits any act with or in the presence of B or who describes the commission of any act to or in the presence of B with the intention to encourage or persuade B or to reduce or diminish any resistance or unwillingness on the part of B to —
 - (i) perform a sexual act with A or a third person (“C”);
 - (ii) perform an act of self-masturbation in the presence of A or C or while A or C is watching;
 - (iii) be in the presence of or watch A or C while A or C performs a sexual act or an act of self-masturbation;
 - (iv) be exposed to child pornography or pornography;
 - (v) be used for pornographic purposes; or

- (vi) expose his or her body, or parts of his or her body to A or C in a manner or in circumstances which violate or offend the sexual integrity or dignity of B;
- (c) arranges or facilitates a meeting or communication with B by any means from, to or in any part of the world, with the intention that A will commit a sexual act with B;
- (d) having met or communicated with B by any means from, to or in any part of the world, invites, persuades, seduces, induces, entices or coerces B —
 - (i) to travel to any part of the world in order to meet A with the intention to commit a sexual act with B; or
 - (ii) during such meeting or communication or any subsequent meeting or communication to —
 - (aa) commit a sexual act with A;
 - (bb) discuss, explain or describe the commission of a sexual act; or
 - (cc) provide A, by means of any form of communication including electronic communication, with any image, publication, depiction, description or sequence of pornography of B himself or herself or any other person; or
- (e) having met or communicated with B by any means from, to or in any part of the world, intentionally travels to meet or meets B with the intention of committing a sexual act with B,

is guilty of the offence of sexual grooming of a person who is mentally disabled and is liable to the punishment provided for the offence.

Exposing or displaying or causing the exposure or display of child pornography or pornography to a person who is mentally disabled

56. A person (“A”) who unlawfully and intentionally exposes or displays or causes the exposure or display of any image, publication, depiction, description or sequence of child pornography or pornography to a complainant who is mentally disabled (“B”), is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography or pornography to a person who is mentally disabled and is liable to the punishment provided for the offence.

Using persons who are mentally disabled for pornographic purposes or benefiting therefrom

57.(1) A person (“A”) who unlawfully and intentionally uses a complainant who is mentally disabled (“B”), whether for financial or other reward, favour or compensation to B or to a third person (“C”) or not—

- (a) for the purpose of creating, making or producing;
- (b) by creating, making or producing; or
- (c) in any manner assisting to create, make or produce,

any image, publication, depiction, description or sequence in any manner whatsoever, of pornography or child pornography, is guilty of the offence of using a person who is mentally disabled for pornographic purposes and is liable to the punishment provided for the offence.

(2) Any person who knowingly and intentionally in any manner whatsoever gains financially from, or receives any favour, benefit, reward, compensation or any other advantage, as the result of the commission of any act contemplated in subsection (1), is guilty of the offence of benefiting from using a person who is mentally disabled for pornographic purposes and is liable to the punishment provided for the offence.

Obligation to report commission of sexual offences against children or persons who are mentally disabled

58.(1) A person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a child or mentally disabled person and fails to report such knowledge immediately to a police official or the Department of Social Affairs is guilty of an offence and is liable to the punishment provided for the offence.

(2) A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.

CHAPTER 5

SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY TESTING OF ALLEGED SEX OFFENDERS FOR HIV AND OTHER SEXUALLY TRANSMITTED INFECTIONS

Part 1: Services for victims of sexual offences

Services for victims relating to Post Exposure Prophylaxis and compulsory testing of alleged sex offenders for sexually transmitted infections

59.(1) If a victim has been exposed to the risk of being infected with HIV as the result of a sexual offence having been committed against him or her, he or she may —

(a) subject to subsection (2) —

- (i) receive Post Exposure Prophylaxis for HIV infection, at a public health establishment, at State expense and in accordance with the State's prevailing treatment norms and protocols;
- (ii) be given free medical advice surrounding the administering of Post Exposure Prophylaxis prior to the administering thereof; and

(b) subject to subsection (2) apply to a magistrate for an order that the suspect be tested for HIV and other sexually transmitted infections, at State expense.

(2) Only a victim who —

- (a) lays a charge with the Seychelles Police in respect of an alleged sexual offence; or
 - (b) reports an incident in respect of an alleged sexual offence in the prescribed manner at a public health establishment, within 72 hours after the alleged sexual offence took place, may receive the services contemplated in subsection (1)(a) and make an application under section 60.
- (3) A victim contemplated in subsection (1) or an interested person must —
- (a) when or immediately after filing a complaint with the Seychelles Police in respect of the alleged sexual offence, in the prescribed manner, be informed by the police official to whom the charge is made or by a medical practitioner or a nurse to whom the incident is reported, as the case may be, of the —
 - (i) importance of obtaining Post Exposure Prophylaxis for HIV infection within 72 hours after the alleged sexual offence took place;
 - (ii) need to obtain medical advice and assistance regarding the possibility of other sexually transmitted infections or diseases; and
 - (iii) services referred to in subsection (1); and
 - (b) in the case of an application contemplated in section 57, be handed a notice containing the prescribed information regarding the compulsory HIV testing of the alleged offender and have the contents thereof explained to him or her.

Part 2: Application for compulsory testing of alleged sex offender by victim for HIV and other sexually transmitted infections

Application by victim or interested person for testing for HIV and other sexually transmitted infections of alleged sex offender

60.(1) (a) Within 90 days after the alleged commission of a sexual offence any victim or any interested person on behalf of a victim, may apply to the court, in the prescribed form, for an order that —

- (i) the alleged offender be tested for HIV and/or other sexually transmitted infections and that the results thereof be disclosed to the victim or interested person, as the case may be, and to the alleged offender; or
 - (ii) the test results in respect of the alleged offender, obtained on application by a police official as contemplated in section 59 be disclosed to the victim or interested person, as the case may be.
- (b) If the application is brought by an interested person, such application must be brought with the written consent of the victim, unless the victim is—
- (i) under the age of 14 years;
 - (ii) a person who is mentally disabled;
 - (iii) unconscious;

(iv) a person in respect of whom a guardian has been appointed in terms of an order of court; or

(v) a person whom the court is satisfied is unable to provide the required consent.

(2) (a) Every application must —

(i) state that a sexual offence was committed against the victim by the alleged offender;

(ii) confirm that the alleged offence has been reported as contemplated in section 56;

(iii) state that the victim may have been exposed to the risk of being infected with HIV as a result of the alleged sexual offence;

(iv) if it is brought by an interested person, state the nature of the relationship between the interested person and the victim, and if the interested person is not the spouse, same sex or heterosexual permanent life partner or a parent of the victim, the reason why the application is being made by such interested person; and

(v) state that less than 90 days have elapsed from the date on which it is alleged that the offence in question took place.

(b) The matters referred to in paragraph (a) must be verified by the victim or the interested person, as the case may be, by affidavit or solemn declaration.

(3) The application must be made as soon as possible after a charge has been laid, and may be made before or after an arrest has been effected.

(4) The application must be handed to the investigating officer, who must, as soon as is reasonably practicable, submit the application to the court.

Consideration of application by court and issuing of order

61.(1) The court must, as soon as is reasonably practicable, consider the application contemplated in section 60 in chambers and may call for such additional evidence as he or she deems fit, including oral evidence or evidence by affidavit, which must form part of the record of the proceedings.

(2) (a) For the purpose of the proceedings contemplated in subsection (1), the court may consider evidence by or on behalf of the alleged offender if, to do so, will not give rise to any substantial delay.

(b) Evidence contemplated in paragraph (a) may be adduced in the absence of the victim, if the court is of the opinion that it is in the best interests of the victim to do so.

(3) If the court is satisfied that there is prima facie evidence that—

- (a) a sexual offence has been committed against the victim by the alleged offender;
- (b) the victim may have been exposed to the body fluids of the alleged offender; and
- (c) no more than 90 calendar days have lapsed from the date on which it is alleged that the offence in question took place, the court must—

- (i) in the case where the alleged offender has not been tested for HIV and/or other sexually transmitted infections on application by a police official as contemplated in section 62, order that the alleged offender be tested for HIV and/or other sexually transmitted infections in accordance with the State's prevailing norms and protocols, including where necessary—

- (aa) the collection from the alleged offender of two prescribed body specimens; and

- (bb) the performance on the body specimens of one or more HIV and/or other sexually transmitted infections tests as are reasonably necessary to determine the presence or absence of infection in the alleged offender, and that the HIV and/or or other sexually transmitted diseases test results be disclosed in the prescribed manner to the victim or interested person, as the case may be, and to the alleged offender; or

- (ii) in the case where the alleged offender has already been tested for HIV and/or other sexually transmitted infections on application by a police official as contemplated in section 59, order that the test results be disclosed in the prescribed manner to the victim or interested person, as the case may be.

(4) An order referred to in subsection (3) must be made in the prescribed manner and handed to the investigating officer.

(5) The investigating officer must, as soon as is reasonably practicable, after an application has been considered —

- (a) inform the victim or interested person, as the case may be, of the outcome of the application; and

- (b) if an order has been granted in terms of subsection (3), inform the alleged offender thereof by handing to him or her a notice containing the information as prescribed and, if necessary, by explaining the contents of the notice.

Part 3: Application for compulsory testing for HIV and other sexually transmitted infections of alleged offender by investigating officer

Application by investigating officer for testing of alleged offender for HIV and other sexually transmitted infections

62.(1) An investigating officer may, subject to subsection (2), for purposes of investigating a sexual offence or offence apply in the prescribed form to the court, in chambers, for an order that—

- (a) the alleged offender be tested for HIV and/or other sexually transmitted infections; or
 - (b) the test results in respect of the alleged offender, already obtained on application by a victim or any interested person on behalf of a victim as contemplated in section 60, be made available to the investigating officer or, where applicable, to a prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings.
- (2) An application contemplated in subsection (1) must—
- (a) set out the grounds, on the strength of information taken on oath or by way of solemn declaration, in which it is alleged that a sexual offence or offence was committed by the alleged offender; and
 - (b) be made after a charge has been laid, and may be made before or after an arrest has been effected, or after conviction.
- (3) If the magistrate is satisfied that there is prima facie evidence that —
- (a) a sexual offence or offence has been committed by the offender; and
 - (b) testing for HIV and/or other sexually transmitted infections would appear to be necessary for purposes of investigating or prosecuting the offence, the magistrate must, in the case of an application contemplated in subsection (1)(a), order that the alleged offender be tested for HIV and/or other sexually transmitted infections in accordance with the State's prevailing norms and protocols, including, where necessary —
 - (i) the collection from the alleged offender of two prescribed body specimens; and
 - (ii) the performance on the body specimens of one or more tests as are reasonably necessary to determine the presence or absence of infection in the alleged offender, and that the test results be disclosed in the prescribed manner to the investigating officer or, where applicable, to a prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings and to the alleged offender, if the results have not already been made available to such offender as contemplated in section 60.

(4) An order contemplated in subsection (3) must be made in the prescribed manner and handed to the investigating officer.

(5) The investigating officer must, as soon as is reasonably practicable, after an application has been granted in terms of subsection (3), inform the alleged offender by handing to him or her a notice containing the information as prescribed and, if necessary, by explaining the contents of the notice.

Part 4: Execution of orders for compulsory HIV and/or other sexually transmitted infections testing and results of HIV and/or other sexually transmitted infections tests

Execution of order and issuing of warrant of arrest

63.(1) As soon as an order referred to in section 62 (3) or section 60 has been handed to an investigating officer —

- (a) the investigating officer must request any medical practitioner or nurse to take two prescribed body specimens from the alleged offender, and the investigating officer must make the alleged offender available or cause such person to be made available for that purpose;
- (b) the medical practitioner or nurse concerned must take two prescribed body specimens from the alleged offender;
- (c) the investigating officer must deliver the body specimens to the head of a public health establishment or to a person designated in writing by the head of such establishment;
- (d) the head of the establishment or the person referred to in paragraph (c) must —
 - (i) perform one or more tests for HIV or other sexually transmitted infections on the body specimens of the alleged offender as are reasonably necessary to determine the presence or absence of infection in the alleged offender;
 - (ii) record the results of the test in the prescribed manner;
 - (iii) provide the investigating officer with duplicate sealed records of the test results; and
 - (iv) retain one sealed record of the test results in the prescribed manner and place; and
- (e) the investigating officer must —
 - (i) in the case of an order contemplated in section 60, hand over to the victim or to the interested person, as the case may be, and to the alleged offender the sealed record of the test results and a notice containing prescribed information on the confidentiality of and how to deal with the HIV and/or other sexually transmitted infections test results, and if necessary explain the contents of the notice; or
 - (ii) in the case of an order contemplated in section 62, hand over to the alleged offender a sealed record of the test results and a notice containing prescribed information on how to deal with the test results, and if necessary explain the contents of the notice, and retain the other record

of the test results as prescribed or, where applicable, make the record of the test results available to a prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings.

(2) (a) An order made in terms of section 62 lapses if the charge is withdrawn by the prosecution at the request of the victim.

(b) Any specimens taken or results obtained prior to the lapsing of the order, if any, as contemplated in paragraph (a), must be destroyed in accordance with the Ministry of Health's prevailing norms and protocols or where relevant, in accordance with any national instructions issued by the Commissioner of Police.

(3) The court may, when or after issuing an order contemplated in section 60 or 62, issue a warrant for the arrest of the alleged offender if there is reason to believe that such offender may avoid compliance with such order or such offender has avoided compliance with such order.

Use of results of tests for HIV and other sexually transmitted infections

64. The results of a test for HIV or other sexually transmitted infections , performed in terms of an order contemplated in section 60 or 62 may only be used in the following circumstances —

(a) to inform a victim or an interested person whether or not the alleged offender in the case in question is infected with HIV or other sexually transmitted infections with the view to —

(i) reducing secondary trauma and empowering the victim to make informed medical, lifestyle and other personal decisions; or

(ii) using the test results as evidence in any ensuing civil proceedings as a result of the sexual offence in question; or

(b) to enable an investigating officer to gather information with the view of using it as evidence in criminal proceedings.

CHAPTER 6

SEXUAL OFFENCES REGISTER

Registration as a sex offender

65.(1) There shall be established a Sex Offender Register, to be maintained and administered by the Sex Offender Registry, located in the office of the Attorney-General.

(2) The Sex Offender Registry shall be supported by an administrative officer and comprise of five members —

(a) the Attorney-General (Chairperson);

(b) A representative from Social Affairs;

(c) The Registrar of the Supreme Court;

- (d) A representative from the Seychelles Prisons Services/Probation Services;
- (e) A nominated representative from an registered (non profit) civil society or organisation with experience providing support services to children and/or victims of sexual abuse.

(3) For the purposes of subsection (2) the functions of the Sex Offender Registry are:

- (a) to manage, in collaboration with the Probation Services, the supervision of sex offenders in the community in accordance with the policies of the Sex Offender Registry;
- (b) To receive and record complaints, and make recommendations, against sex offenders;
- (c) To receive and record any information relevant to the sex offender as provided for in this section;
- (d) To receive, consider and review requests for information relating to the Sex Offender Register.

(4) Where a person is sentenced to a term of imprisonment following conviction for a sexual offence in terms of this Act —

- (a) The Attorney-General shall enter that person's name in the Sex Offender Register;
- (b) The person who has been entered into the Sex Offender Register shall be informed in writing that their name has been entered into the Register and the requirements imposed on that person as provided for in this Act, and any regulations made hereunder.

(5) This Chapter shall apply to persons who have been convicted of a sexual offence whether committed before or after the commencement of this Act and whether committed in or outside the Republic;

(6) The Sex Offender Register must —

- (a) be established and maintained in the prescribed manner and format;
- (b) contain the following particulars of persons referred to in subsection (3) —
 - (i) the title, full names and surname of the person, including any known alias or nickname and, where applicable, the profession or trade of the person;
 - (ii) date of birth;
 - (iii) the photo of the person;
 - (iv) the last known physical address of the person, and any other contact details, including a postal address and telephone number where applicable;
 - (v) Details of all social media accounts, where applicable;
 - (vi) The identity number, passport number and driver's licence number of the person, where applicable;

- (vii) the sexual offence in respect of which the person has been convicted, the sentence imposed, the date and place of conviction and sentence, as well as the relevant prisoner identification number, where applicable;
 - (viii) the court in which the trial took place and the case number; and
 - (ix) any other particulars as may be prescribed by regulation.
- (c) If the conviction and sentence took place in a foreign jurisdiction, contain as far as possible the equivalent information as is contemplated in paragraph (a), as obtained from the relevant country or any other legal source.
- (7) At the time of sentencing, the sex offender shall be informed by the court that their name has been entered in the Sex Offender Register.
- (8) Subject to subsections (a) and (b), the particulars of a person —
- (a) who —
 - (i) has been sentenced for a conviction of a sexual offence to a term of imprisonment without the option of a fine for a period of at least six months but not exceeding eighteen months, whether the sentence was suspended or not, may, on application as contemplated in subsection (c), be removed from the Sex Offender Register after a period of ten years has lapsed after that person has been released from prison or the period of suspension has lapsed;
 - (ii) has been sentenced for a conviction of a sexual offence to a term of imprisonment without the option of a fine for a period of six months or less, whether the sentence was suspended or not, may, on application as contemplated in subsection (c), be removed from the Sex Offenders Register after a period of seven years has lapsed after that person has been released from prison or the period of suspension has lapsed.
 - (b) who —
 - (i) has been sentenced for a conviction of a sexual offence to a term of imprisonment, without the option of a fine for a period exceeding eighteen months, whether the sentence was suspended or not; or
 - (ii) has two or more convictions of a sexual offence

may not be removed from the Sex Offender Register.
 - (c) A person falling into the categories contemplated in subsection (a) may apply, in the prescribed manner, to the Sex Offender Registry to have his or her particulars removed from the Sex Offender Register.
 - (d) The Sex Offender Registry must, after considering the application, remove the particulars of the person contemplated in paragraph (a) from the Sex Offender Register, unless the person concerned has an investigation or a charge relating to a sexual offence pending against him or her and the relevant investigation or case has not yet been finalised, in which event the finalisation of the application

must be postponed until the Sex Offender Registry has, in the prescribed manner, received information on the outcome of the investigation or case.

- (e) The Sex Offender Registry may, at the request of a person whose particulars are included in the Sex Offender Register, remove those particulars from the Register if the Attorney-General is satisfied that the entry of those particulars in the Register was clearly in error.

(9) No person whose name is entered in the Sex Offender Register shall —

- (a) Be employed in any manner where during the course of their employment, they will be placed in a position to work with a child or in a position of authority, trust, supervision or care of a child or will gain access to a child or places where children are present or congregate; or
- (b) Be employed in any manner where during the course of their employment, they will be placed in a position to work with a person who is mentally disabled or in a position of authority, trust, supervision or care of a person who is mentally disabled or will gain access to a person who is mentally disabled or places where persons who are mentally disabled are present or congregate;
- (c) Be granted a license or be given approval to manage or operate any entity, business concern or trade in relation to the supervision over or care of a child or mentally disabled person or where children, mentally disabled persons are present or congregate; or
- (d) Become the foster parent, guardian, kinship care-giver, temporary safe care-giver or adoptive parent of a child;
- (e) Become the guardian of a person who is mentally disabled.

(10) Prohibited categories of employment listed in subsection (9) include, but are not limited to —

- (a) the person as a teacher engaged in the education of the other person; or
- (b) the person as a religious official or spiritual leader (however described) providing pastoral care or religious instruction to the other person;
- (c) the person as the other person's sports coach;
- (d) the person as a medical practitioner, nurse, psychologist, other health professional (however described), counsellor or social worker providing professional services to the other person;
- (e) the person is a member of a police force or police service, or a person employed or providing services in a correctional institution (however described), performing duties in relation to the other person
- (f) the person providing occupational, leisure, holiday, recreational or cultural activities

(11) The period of registration shall be suspended during any time in which the offender is imprisoned.

(12) A person whose name is listed in the sex offender register shall during the period of registration —

- (a) notify the Sex Offender Registry in writing in advance of any intended change of address and phone number;
- (b) notify the Sex Offender Registry before any change of employment or occupation or the commencement of new employment;
- (c) notify the Sex Offender Registry in advance of any plans to travel overseas, and shall not leave Seychelles without the written permission of the Attorney-General; and
- (d) comply with such other conditions as may be imposed on the offender by the Sex Offender Registry for the purposes of facilitating the successful reintegration of the person into the community.
- (e) A person who —
 - (i) fails, without reasonable excuse, to comply with any requirements imposed by or under this section; or
 - (ii) notifies the Sex Offender Registry, in purported compliance with those requirements, of any information which he knows to be false, is guilty of an offence and is liable on summary conviction to a fine of SCR10,000 or imprisonment for six months, or to both.

Disclosure of information and access

66.(1) No person shall, without lawful authority, disclose information contained in the Sex Offender Register established.

(2) Any person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine of SCR10,000.

(3) The Access to Information Act shall not apply in relation to the Sex Offender Register.

(4) Any person, employing or contemplating the employment of a person in a form of employment specified in sections 65 (9) and 65 (10), shall —

- (a) submit the details of all employees or the name any prospective employee to the Sex Offender Registry to determine whether any employees or prospective employees are in the Sex Offender Register;
- (b) Where a prohibited person is found to be in the employ of an employer, the employer must immediately terminate the employment of the prohibited person.

(5) Notwithstanding any other provision in this Act, the Sexual Offences Registry shall at all times ensure access, where such access is necessary to discharge a public function, to the Sex Offender Register by the following person(s) —

- (a) judicial officers;
- (b) probation officers;
- (c) children officers/social workers;
- (d) state counsels and prosecutors;
- (e) police investigators;

- (f) the prisons department;
- (g) other relevant persons or agencies which, in the opinion of the Sex Offender Registry, may require such information.

Public notification of information on sex offenders

67. The Attorney General in consultation with the Minister for Social Affairs, having regard to —

- (a) the need to protect the public, an affected group of people or an individual; and
- (b) the objective of effective management of sex offenders,

shall publish regulations governing the disclosure of information in relation to sex offenders who are considered to present a risk of significant harm to the health or safety of the public, or an affected group of people or an individual.

CHAPTER 7

GENERAL PROVISIONS

National policy framework

68.(1) The Minister must, after consultation with the public officials responsible for the safety and security of children, correctional services, social development, health, the Judiciary and the Attorney-General, adopt a national policy framework, relating to all matters dealt with in this Act, to —

- (a) ensure a uniform and co-ordinated approach by all Government departments and institutions in dealing with matters relating to sexual offences;
- (b) guide the implementation, enforcement and administration of this Act; and
- (c) enhance the delivery of service as envisaged in this Act by the development of a plan for the progressive realisation of services for victims of sexual offences within

(2) The Minister must —

- (a) within one year after the implementation of this Act, adopt and table the policy framework in the National Assembly;
- (b) publish the policy framework in the Gazette within one month after it has been presented in the National Assembly;
- (c) review the policy framework within five years after its publication in the Gazette and at least once every five years thereafter; and
- (d) amend the policy framework when required, in which case such amendments must be tabled in the National Assembly and published in the Gazette, as contemplated in paragraph (b).

Establishment of Inter-Sectoral Committee

69.(1) There is hereby established a Committee to be known as the Inter-Sectoral Committee for the Management of Sexual Offence Matters.

(2) The Committee shall consist of —

- (a) A chairperson of the Committee, to be nominated by the Minister for Social Affairs and appointed by the President;
- (b) the Commissioner of Police;
- (c) the Superintendent of Prisons;
- (d) The Attorney General;
- (e) A representative from the Ministry of Social Development/Affairs;
- (f) A representative from the Ministry of Health;
- (g) A representative from the Ministry of Education;
- (h) A representative from the Judiciary;
- (i) A representative from civil society.

(3) The members of the Committee may designate an alternate to attend a meeting of the Committee in their place.

(4) The members of the Committee shall designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson shall act as chairperson.

(5) The Committee shall meet at least twice every year and meetings shall be held at a time and place determined by the chairperson.

(6) The procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Committee and the manner in which the Committee shall conduct its affairs shall be determined by the Committee.

(7) The Committee shall report in writing on every meeting to the President within one month of such meeting

(8) The Committee shall be responsible for developing and compiling a draft national policy framework, as contemplated in section 65, which must include guidelines for —

- (a) the implementation of the priorities and strategies contained in the national policy framework;
- (b) measuring progress on the achievement of the national policy framework objectives;
- (c) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act; and
- (d) monitoring the implementation of the national policy framework and of this Act.

(9) The Committee may make recommendations to the President with regard to the amendment of the national policy framework.

National instructions and directives, regulations

70.(1) The Commissioner of Police must, in consultation with the Ministers for Social Affairs, Health and Education, the Attorney-General, the Superintendent of Prisons, issue and publish in the Gazette national instructions regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all police officers who are tasked with receiving reports of and the investigation of sexual offence cases, in order to achieve the objects of this Act as set in the Preamble, particularly those objects which have a bearing on complainants of such offences, including the following —

- (a) The manner in which the reporting of an alleged sexual offence is to be dealt with by police officers;
- (b) the manner in which sexual offence cases are to be investigated by police officials, including the circumstances in which an investigation in respect of a sexual offence may be discontinued.

(2) The Commissioner of Police must develop training courses, which must —

- (a) include training on the national instructions referred to in paragraph (a);
- (b) include social context training in respect of sexual offences; and
- (c) provide for and promote the use of uniform norms, standards and procedures, with a view to ensuring that as many police officials as possible are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.

(3) The Attorney General must, in consultation with the Inter Sectoral committee issue directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in sexual offence cases, in order to achieve the objects of this Act as set out in the Preamble, particularly those objects which have a bearing on complainants of such offences, including the following —

- (a) The manner in which sexual offence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or a prosecution stopped;
- (b) The criteria to be used and circumstances in which the prosecution must apply to court for an order that witnesses and, in particular, child complainants below the age of 16 years give evidence by means of closed circuit television, if the court does not make an order on its own initiative;
- (c) The criteria to be used and circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provided for in in this Act, in respect of witnesses and, in particular, child complainants below the age of 16 years;
- (d) The circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court;
- (e) The information to be placed before a court during sentencing, including pre-sentence reports and information on the impact of the sexual offence on the complainant; and

(4) The Attorney-General must develop training courses, which must —

- (a) include training on intersectoral directives;
- (b) include social context training in respect of sexual offences;
- (c) provide for and promote the use of uniform norms, standards and procedures, with a view to ensuring that as many prosecutors and licensed legal practitioners as possible are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.

(5) The Chief Justice of the Supreme Court and the President of the Court of Appeal must, in consultation with the Intersectoral Committee, publish rules in the Gazette, regarding all matters which are reasonable necessary or expedient for all Judicial Officers adjudicating sexual offence cases, in order to achieve the objects of this Act as set out in the Preamble and special directives provided for in this Act, particularly those which have a bearing on complainants of such offences.

(6) The Chief Justice must —

- (a) develop training courses, which must include training on all intersectoral directives and the implications for the adjudication of sexual offence cases;
- (b) issue special rules, directives and measures intended to protect child and vulnerable witnesses, in particular with respect to —
 - (i) Questioning and engaging with child and vulnerable witnesses;
 - (ii) Overseeing the questioning and cross-examination of child and vulnerable witnesses by prosecutors and legal practitioners;
 - (iii) Social context training in respect of sexual offences.
- (c) provide for and promote the use of uniform norms, standards and procedures, with a view to ensuring that all Judicial Officers are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner;
- (d) The training course must also include training for all prosecutors and licensed legal professionals, and is mandatory for all licensed legal professionals.

(7) The Minister for Health must, in consultation with the Intersectoral committee, publish in the Gazette directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all medical practitioners and any other relevant persons when dealing with sexual offence cases, in order to achieve the objects of this Act, particularly those objects which have a bearing on complainants of such offences, with particular reference, among others, to —

- (a) the administering of Post Exposure Prophylaxis;
- (b) the manner in which medical care is provided to victims of sexual offences;
- (c) the manner in which the reporting of an alleged sexual offence is to be dealt with if the offence is reported to a designated public health establishment; and
- (d) the manner in which assistance in the investigation and prosecution of sexual offences, generally, must be provided.

- (8) The Minister for Health must develop training courses, which must —
- (a) include training on the directives referred to in this Act;
 - (b) include social context training in respect of sexual offences; and
 - (c) provide for and promote the use of uniform norms, standards and procedures, with a view to ensuring that as many medical practitioners and any other relevant persons as possible are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.
- (9) The national instructions and directives by each Department or institution, contemplated in this section, must be —
- (a) submitted to the National Assembly within six months after the commencement of this section, before publication in the Gazette; and
 - (b) published in the Gazette;
 - (c) paragraph (a) applies to any new or amended national instructions or directives issued under this section with the changes required by the context.

CHAPTER 8

OPERATIONAL PROVISIONS (INVESTIGATION, PROCEDURE AT COURT)

Part 1: Investigation and confrontation

Investigation

71.(1) Where an offence under this Act is reported to the police, the police shall, in every case, record the report and conduct an investigation.

- (2) Within three months of a complaint being made under subsection (1) —
- (a) a charge shall be laid in respect of the report; or
 - (b) the file relating to the report and investigation shall be sent to the Attorney General for advice.

(3) Failure to comply with subsection (2) constitutes neglect of duty by the police officer(s) and the police officer(s) shall be liable to answer disciplinary charges in accordance with the Police Force Act.

(4) A person who wilfully and knowingly makes a false complaint to the police may, on the advice of the Attorney General, be charged for the offence of making a false complaint and is liable on summary conviction to a fine of (ten thousand) rupees or to imprisonment not exceeding three years.

Confrontation

72.(1) Where a report is made of an offence under this Act, at no point during the investigation shall the complainant be required to recount the complaint or any part of it, in the presence of the accused unless the complainant wants to do so.

(2) The complainant shall not be required to view or be in the presence of any person referred to in the complaint as having perpetrated any offence under this Act save for the purposes of an identification parade and then only —

- (a) by way of live link;
- (b) by way of a two-way mirror; or
- (c) in any other manner sensitive to the complainant's well-being.

Part 2: Procedure at Court

Exclusion of public from hearing in certain cases

73. In proceedings where the accused is charged with an offence under this Act, the presiding judge or magistrate shall order the exclusion of members of the public (including the media) from the Courtroom for the duration of the proceedings, unless the judge or magistrate is of the opinion that such an order is not necessary in the interests of the proper administration of justice to —

- (a) ensure all relevant evidence is heard;
- (b) ensure that the interests of witnesses under eighteen years of age are safeguarded in all proceedings; or
- (c) ensure the justice system participants who are involved in the proceedings are protected.

Factors to be taken into account

74. In making a determination under section 73, the Court shall take into account —

- (a) the nature of sexual offences and the consequences of public disclosure of the details of such offences on the life of the complainant in the particular case and on society's interest in encouraging the reporting of sexual offences in general;
- (b) the balance between the interests of justice in generally holding criminal proceedings in public, and the potential prejudice to the complainant's personal dignity and right of privacy in cases of sexual violence;
- (c) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (d) any other factor that the judge or magistrate considers relevant.

Persons not excluded

75. The accused, complainant, any support person and attorneys-at-law representing either party and any necessary interpreter shall not be excluded under section 73.

Reasons to be stated

76. If an accused is charged with an offence under this Act and the Court orders that the public shall not be excluded from the proceedings, the Court shall state, by reference to the circumstances of the case, the reason for making such an order.

Representations before determination

77. The Court shall, at the first Court appearance, and may at any other stage, bring section 73 to the attention of the prosecution and ask the complainant directly if the complainant wishes to give oral or written evidence on the question of whether the public should be excluded from the hearing before the judge or magistrate makes a determination.

Public excluded

78. The Court shall consider any representations on whether to make a determination under section 73 with the public excluded.

Passing of sentence in public

79. Where an order has been made under section 73 to exclude the public from the hearing the passing of sentence shall take place in public.

Behaviour and reaction of complainant

80. Where on the trial of an accused person for an offence under this Act evidence is given or a question is asked of a witness about the behaviour or reaction of the complainant during or after the alleged offence the judge shall take into account the fact that complainants of sexual offences display a wide range of responses, and that the absence of behaviour that they might expect displayed by the complainant of a sexual offence to display should not be taken as evidence that the offence charged did not take place.

Special measures directions

81. (1) At any proceedings in relation to an offence under this Act, where it is in the best interests of the complainant and unless the complainant requests that no such protection be put in place, the Court shall direct that the complainant be protected when giving evidence by one or more of the special measures, which may include, but are not limited to —

- (a) screening witness from accused;
- (b) evidence by live link;
- (c) evidence given in private;
- (d) removal of wigs and gowns;
- (e) video recorded evidence in chief;
- (f) video recorded cross-examination or re-examination;
- (g) examination of witness through intermediary;
- (h) aids to communication;
- (i) use of anatomically correct dolls.

(2) A special measures direction shall specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(3) Nothing in the Special Measure Directions is to be regarded as affecting any power of a Court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise) in relation to witnesses in proceedings for an offence under this Act.

Further provisions about directions

82. (1) Subject to subsection (2) a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either —

- (a) determined (by acquittal, conviction or otherwise); or
- (b) withdrawn or not proceeded with

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The Court may discharge or vary (or further vary) a special measures direction if it appears to the Court to be in the interests of justice to do so, and may do so either of its own motion or on an application made by a party to the proceedings, if there has been a material change of circumstances since the time when the direction was given; or if a previous application has been made under that subsection, the time when the application (or last application) was made.

Screening witness from accused

83. (1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) The screen or other arrangement must not prevent the witness from being able to see, and to be seen by the judge and/or justices; legal representatives acting in the proceedings; and any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

Evidence by live link

84. (1) A special measures direction may provide for —

- (a) the witness to give evidence by means of a live link;
- (b) a specified person to accompany the witness while the witness is giving evidence by live link; and
- (a) in determining who may accompany the witness, the court must have regard to the wishes of the witness.

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either of its own motion or on an application by a party to the proceedings, if there has been a material change of circumstances since the time when the direction was given, or if a previous application has been made under that subsection, the time when the application (or last application) was made.

Evidence given in private

85. (1) A special measures direction may provide for the exclusion from the court, during the giving of the witness's evidence, of persons specified in the direction, where it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(2) The persons who may be so excluded do not include —

- (a) the accused;
- (b) legal representatives acting in the proceeding; or
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

Removal of wigs and gowns

86. A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

Video recorded evidence in chief

87. (1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording or part of a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if —

- (a) it appears to the court that —
 - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction); and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (b) any rules of Criminal Procedure requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) Where a recording or part of a recording is admitted under this section —

- (a) the witness must be called by the party tendering it in evidence, unless —
 - (i) a special measures direction provides for the witness's evidence on cross-examination to be given in any recording admissible under section 88; or
 - (ii) the parties to the proceedings have agreed that there is no need for the witness to be available for cross-examination; and
- (b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded testimony unless it appears to the Court to be in the interests of justice to do so, and the Court may do so either of its own motion or on an application by a party to the proceedings.

(6) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Video recorded cross-examination or re-examination

88. (1) Where a special measures direction provides for a video recording to be admitted under section 87 as evidence in chief of the witness, the direction may also provide —

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) Such a recording must be made in the presence of such persons as provided for in law or the direction may provide and in the absence of the accused, but in circumstances in which —

- (a) the judge and/or justices and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or provision of law or the direction has not been complied with to the satisfaction of the court.

(4) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(5) The court may only give such a further direction if it appears to the court —

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give the further direction.

(6) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person (in a case where the accused is to be able to conduct any such cross-examination).

Examination of witness through intermediary

89.(1) A special measures direction may provide for any examination of any witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(2) The function of an intermediary is to communicate —

- (a) to the witness, questions put to the witness; and
- (b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) must take place in the presence of such persons as provided for in law or the direction may provide, but in circumstances in which the judge and/or justices and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary.

(4) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by law, that he will faithfully perform his function as intermediary.

(5) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section [Video recorded evidence in chief] if the interview was conducted through an intermediary and that person complied with subsection (4) before the interview began, and the court's approval for the purposes of this section is given before the direction is given.

(6) Chapter XI of the Penal Code with regard to perjury shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that

proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to communication

90. A special measures direction may provide for the witness, while giving evidence (whether by testimony in court or otherwise), to be provided with such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

Use of anatomically correct dolls

91. A special measures direction may provide for the use of anatomically correct dolls in the taking of evidence from a child witness.

Status of evidence given under Special Measures Direction

92. (1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.

(2) The statement shall be treated as if made by the witness in direct oral testimony in court; and accordingly —

- (a) it is admissible evidence of any fact of which such testimony from the witness would be admissible;
- (b) it is not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under sections 87 and 88 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight (if any) to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn (as to the accuracy of the statement or otherwise).

Part 3: Additional Directions

Use of live link for evidence of certain accused persons

93.(1) The court may, on the application of the accused, give a live link direction if it is satisfied —

- (a) that the conditions in subsection (2) or, as the case may be, subsection (3) are met in relation to the accused; and
- (b) that it is in the interests of justice for the accused to give evidence through a live link.

(2) Where the accused is aged under 18 when the application is made, the conditions are that—

- (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and
- (b) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(3) Where the accused has attained the age of 18 at that time, the conditions are that—

- (a) he suffers from a mental disorder (within the meaning of the Mental Health Act 2020) or otherwise has a significant impairment of intelligence and social function;
- (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
- (c) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(4) While a live link direction has effect the accused may not give oral evidence before the court in the proceedings otherwise than through a live link.

(5) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so (but this does not affect the power to give a further live link direction in relation to the accused). The court may exercise this power of its own motion or on an application by a party.

Part 4: Protection of witnesses from cross-examination or further cross-examination by accused in person

Sub-part 1: General Prohibition

Complainants in proceedings for sexual offences

94.No person charged with offences under this Act may cross-examine in person a witness who is the complainant, either —

- (a) in connection with that offence; or
- (b) in connection with any other offence with which that person is charged in the proceedings.

Child complainants and other child witnesses

95.No person charged with offences under this Act may cross-examine in person a protected complainants or other child witnesses, either —

- (a) in connection with that offence; or

- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

Sub-part 2: Prohibition imposed by court

Direction prohibiting accused from cross-examining particular witness

96.(1) This section applies where, in a case where neither of sections 94 and 95 operates to prevent an accused in proceedings from cross-examining a witness in person, where witness is not any other person who is charged with an offence in the proceedings —

- (a) the prosecutor makes an application for the court to give a direction under this section in relation to the witness; or
- (b) the court of its own motion raises the issue whether such a direction should be given.

(2) If it appears to the court —

- (a) that the quality of evidence given by the witness on cross-examination —
 - (i) is likely to be diminished if the cross-examination is conducted by the accused in person; and
 - (ii) would be likely to be improved if a direction were given under this section; and
- (b) that it would not be contrary to the interests of justice to give such a direction, the court may give a direction prohibiting the accused from cross-examining the witness in person.

(3) In determining whether subsection (2)(a) applies in the case of a witness the court must have regard, in particular, to —

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
- (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
- (c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;
- (d) any relationship (of whatever nature) between the witness and the accused;
- (e) whether any person (other than the accused) is or has at any time been charged in the proceedings with offences under this act, and (if so) whether sections 94 or 95 operate or would have operated to prevent that person from cross-examining the witness in person;
- (f) any direction under section 81 which the court has given, or proposes to give, in relation to the witness.

Further provisions about directions under sections 94 and 96

97.(1) Subject to subsection (2), a direction under section 96 has binding effect from the time it is made until the witness to whom it applies is discharged.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either —

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the time when the direction was given, or if a previous application has been made under this subsection, the time when the application (or last application) was made; or
- (b) of its own motion.

(3) The court must state in open court its reasons for —

- (a) giving; or
- (b) refusing an application for, or for the discharge of; or
- (c) discharging, a direction and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

(4) The court may —

- (a) determine uncontested applications without a hearing;
- (b) make an order for preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;
- (c) make an order for expert evidence to be given in connection with an application for, or for discharging, a direction;
- (d) make an order for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Sub-part 3: Cross-examination on behalf of accused

Defence representation for purposes of cross-examination

98.(1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of sections 94 and 96.

(2) Where it appears to the court that this section applies, it must —

- (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.

(3) If by the end of the period mentioned in subsection (2)(b) either —

- (a) the accused has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness, or
- (b) no notification has been received by the court and it appears to the court that no legal representative is to so act, the court must consider whether it is necessary

in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused.

(4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused.

CHAPTER 9

EVIDENCE

Competence of witness and capacity to be sworn

99.(1) Subject to subsection (2), at every stage in criminal proceedings under this Act all persons, whatever their age, are competent to give evidence.

(2) A person is not competent to give evidence in criminal proceedings under this Act if it appears to the Court that the person is not a person who is able to —

- (a) understand questions put to the person as a witness; and
- (b) give answers to them which can be understood.

(3) A person charged with an offence under this Act is not competent to give evidence for the prosecution in the proceedings for the offence (whether the person is the only person, or is one of two or more persons, charged with the offence).

(4) In subsection (3) the reference to a person charged with an offence under this Act does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Determining competence of witness

100.(1) Any question whether a witness in criminal proceedings under this Act is competent to give evidence in the proceedings shall be determined by the Court in accordance with this section, whether raised —

- (a) by a party to the proceedings; or
- (b) by the Court of its own motion.

(2) It is for the party calling the witness to satisfy the Court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in subsection (1) the Court shall treat the witness as having the benefit of any directions under section 81 which the Court has given, or proposes to give, in relation to the witness.

(4) Where the Court is in doubt as to whether the witness is competent, the Court may receive evidence from anyone it deems fit, including expert evidence.

(5) Where the Court considers it necessary, any questioning of the witness shall —

- (a) be conducted by the Court in the presence of the parties and any social worker or support person accompanying the witness; and
- (b) be conducted with the benefit of any special measures the Court deems necessary under sections 81 and 82.

Determining whether witness to be sworn

101.(1) Any question whether a witness in criminal proceedings under this Act may be sworn for the purpose of giving evidence on oath, shall be determined by the Court in accordance with this section, whether raised —

- (a) by a party to the proceeding; or
- (b) by the Court of its own motion.

(2) The witness may not be sworn for that purpose unless the witness has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if the witness is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced.

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the Court that on a balance of probabilities, the witness has a sufficient appreciation of the matters mentioned in subsection (2).

(5) Where the Court is in doubt as to whether the witness can be sworn, the Court may receive evidence from anyone it deems fit, including expert evidence.

(6) Any questioning of the witness (where the Court considers that necessary) shall —

- (a) be conducted by the Court in the presence of the parties and any social worker or support person accompanying the witness; and
- (b) be conducted with the benefit of any special measures the Court deems necessary under section 81 .

(7) For the purposes of this section a person is able to give intelligible testimony if the person is able to —

- (a) understand questions put to the person as a witness; and
- (b) give answers to them which can be understood.

Reception of unsworn evidence

102. (1) Subsections (2) and (3) apply to a person who is competent to give evidence in criminal proceedings under this Act, but (by virtue of section 101) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings under this Act of a person to whom this subsection applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings under this Act as if that evidence had been given on oath.

(4) A Court in criminal proceedings under this Act shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a person ("the witness") who is competent to give evidence in criminal proceedings under this Act gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe for the purposes of any statute or other law by reason only that it appears to the Court of Appeal or any other Court that the witness was a person falling within section 101 (and should accordingly have given evidence on oath).

Penalty for giving false unsworn evidence

103. (1) This section applies where a person gives unsworn evidence in criminal proceedings under section 102.

(2) If a person, as referred to in subsection (1), wilfully gives false evidence in circumstances that, had the evidence been given on oath, the person would have committed perjury, the person shall be guilty of an offence and liable on conviction to the penalty provided for the offence

Corroboration

104. No corroboration of the evidence of the complainant or the sworn or unsworn evidence of a child shall be required for a conviction of an offence under this Act.

Compellability

105. The spouse of a person charged with an offence under this Act may be called as a witness for either the prosecution or defence and without the consent of the person charged, and if so called, notwithstanding any other law, is a compellable witness.

Warning regarding delay in complaint

106. Where on the trial of an accused person for an offence under this Act evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the judge shall —

- (a) give a warning to the relevant person to the effect that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the relevant person that there may be good reasons why a victim of a sexual offence may hesitate in making or may refrain from making a complaint about the assault.

Recent complaint

107.(1) In considering whether a recent complaint was made as soon as could reasonably be expected, the Court shall consider the following factors —

- (a) the nature of sexual abuse and the stigma or humiliation often thought to go with them, and that they are commonly found difficult to report (particularly child sexual abuse);
- (b) the relationship of the victim and accused;
- (c) the particular characteristics of the person in relation to whom the abuse is alleged to have been committed; and
- (d) all other relevant circumstances.

(2) Whether the complaint was made as soon as could reasonably be expected will depend on the facts of the particular case and there is no outer time limit.

Statement of child admissible where no oral testimony

108. (1) A statement made by a child complainant in relation to an offence under this Act is admissible as evidence where the child does not give direct oral testimony at the trial.

(2) Sections 109 and 110 shall apply to the admissibility of evidence under subsection (1).

(3) Where a statement is tendered in evidence under subsection (1), the accused shall not be convicted on the basis of that evidence alone.

Admissibility of child's statement

109. (1) Without limiting any other law, where the Court is satisfied that a child is being prevented from giving evidence and where a statement is made in any written form or manner by a child or by another person on behalf of the child, that statement may be admissible in a trial as evidence of any fact of which direct oral evidence of the child would be admissible.

(2) The Court may admit into evidence the following statement made by a child —

- (a) a statement made to and written by the police;
- (b) a statement made in the form of a statutory declaration;
- (c) a statement written by the child;
- (d) a statement written by another person on behalf of a child where the child cannot write.

(3) The following provisions shall have effect in relation to any written statement of a child admissible in evidence under this section —

- (a) the statement shall state the child's age and that an adult of the child's choice was present with the child when it was made;
- (b) if the statement is written on behalf of a child, it shall be signed by both the child and the person who wrote it and it shall be dated;

- (c) if the statement is written on behalf of a child who cannot write, the person who wrote the statement shall read it to the child before the child puts the child's mark or thumb print on it and it shall be accompanied by a declaration of the person who wrote it that it was read to the child and that the child appears to understand it and the child agreed to it;
- (d) if the statement is written on behalf of a child who cannot read, the person who wrote the statement shall read it to the child before the child signs it and it shall be accompanied by a declaration of the person who wrote it that it was read to the child and the child appeared to understand it and the child agreed to it;
- (e) if the statement refers to any other document, the copy of the statement given to any other party to the proceedings shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect the document or a copy of it.

(4) The prosecution shall give a copy of the statement to the accused not less than fourteen days in advance of the prosecution tendering it into evidence.

(5) Any document or object referred to and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the witness.

(6) A child whose written statement is tendered in evidence in a trial under this section shall be treated as a person who had been examined by the Court.

Statement in documents that appear to have been prepared for purposes of criminal proceedings or Investigations

110. (1) Without limiting any other written law, where a statement, referred to in section 109, appears to the Court to have been prepared for the purposes of —

- (a) pending or contemplated criminal proceedings; or
- (b) a criminal investigation,

the statement shall not be tendered in evidence in a trial without leave of the Court, and the Court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interest of justice.

(2) In considering whether the admission of a statement under subsection (1) would be in the interest of justice, the Court shall have regard —

- (a) to the contents of the statement;
- (b) to any risk of unfairness to the accused, or if there is more than one accused to anyone of them, if it is likely that the statement can be controverted and the person making the statement does not attend to give oral evidence in the proceedings;
- (c) to any other circumstances that appear to the Court to be relevant.

(3) A written statement mentioned in this section shall be tendered in evidence by the prosecution any time before the prosecution closes its case against the accused —

- (a) if the statement is written by the child, by the prosecution submitting the statement to the Court; or
- (b) if the statement is written on behalf of a child, by calling the person who wrote the statement to put the statement into evidence.

Disallowable questions

111.(1) The court must disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the court is of the opinion that the question (referred to as a disallowable question):

- (a) is misleading or confusing; or
- (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
- (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
- (d) has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).

(2) Without limiting the matters the court may take into account for the purposes of subsection (1), it is to take into account —

- (a) any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality; and
- (b) any mental, intellectual or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject; and
- (c) the context in which the question is put, including —
 - (i) the nature of the proceeding; and
 - (ii) in a criminal proceeding — the nature of the offence to which the proceeding relates; and
 - (iii) the relationship (if any) between the witness and any other party to the proceeding.

(3) A question is not a disallowable question merely because —

- (a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statement made by the witness; or
- (b) the question requires the witness to discuss a subject that could be considered distasteful to, or private by, the witness.

(4) A party may object to a question put to a witness on the ground that it is a disallowable question.

(5) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.

(6) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

No conviction on statement alone

112. Where a statement is tendered in evidence under sections 110 and 111, the accused shall not be convicted on the basis of that evidence alone.

Restriction on evidence or questions about the complainant's sexual history

113.(1) In proceedings in respect of offences under this Act, except with the leave of the court —

- (a) no evidence may be adduced; and
- (b) no questions may be asked in cross-examination,

by or on behalf of any accused at the trial, about any sexual activity or reputation of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied —

- (a) that subsection (3) or (5) applies; and
- (b) that a refusal of leave might have the result of rendering unsafe a conclusion of the court on any relevant issue, which means an issue falling to be proved by the prosecution or defence in the trial of the accused in the case.

(3) This subsection applies if the evidence or question relates to any issue falling to be proved by the prosecution or defence in the trial of the accused in the case and either —

- (a) that issue is not an issue of consent, meaning not an issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented); or
- (b) it is an issue of consent and the sexual activity or reputation of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or
- (c) it is an issue of consent and the sexual activity or reputation of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar —

- (i) to any sexual activity or reputation of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused; or
- (ii) to any other sexual activity or reputation of the complainant which (according to such evidence) took place at or about the same time as that event, that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question —

- (a) relates to any evidence adduced by the prosecution about any sexual activity or reputation of the complainant; and
- (b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.

(6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).

(7) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence —

- (a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
- (b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

Previous allegations of sexual offences

114.(1) The defence shall not introduce evidence directly or ask questions in cross-examination suggesting that previous allegations of sexual offences by the complainant may have been false without the prior permission of the Court.

(2) The Court shall not give such permission unless -

- (a) the defence can adduce concrete evidence that the previous allegation was in fact false; and
- (b) the relevance of the evidence to the case of the accused is demonstrated to the satisfaction of the Court.

CHAPTER 10

SENTENCING

Attempt, conspiracy, incitement or inducing another person to commit sexual offence

115. A person who —

- (a) attempts as defined under the Penal Code;
- (b) conspires with any other person as defined under the Penal Code; or
- (c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person, to commit a sexual offence in terms of this Act,

is guilty of an offence and may be liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.

Aggravating factors

116. The following are aggravating factors to be taken into account by the court when sentencing —

- (a) when the offence is committed with the use of a deadly weapon or by two or more persons;
- (b) when by reason or on the occasion of the offence or attempt thereof, the complainant has become insane or suffers from a mental illness;
- (c) when by reason or on the occasion of the offence or attempt thereof, the complainant has suffered permanent physical mutilation or disability;
- (d) when the accused knew of the mental disability, emotional disorder and/or physical handicap of the complainant at the time of the commission of the crime;
- (e) when the offence is attempted and the complainant suffers bodily injury by reason or on the occasion thereof;
- (f) when the accused knew of the pregnancy of the complainant at the time of the commission of the offence;

- (g) when the complainant is under eighteen (18) years of age and the accused is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law partner of the parent of the complainant;
- (h) when the complainant is under the custody of the police or military authorities or any law enforcement or penal institution;
- (i) when the offence is committed by any member of the Seychelles People's Defence Forces or paramilitary units thereof or the Seychelles Police Force or any law enforcement agency or penal institution, when the accused took advantage of his or her position to facilitate the commission of the offence;
- (j) where there is an abuse of power or authority by the accused to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act, including but not limited to where the accused is to the victim –
 - (i) a teacher, trainer or supervisor, employer;
 - (ii) priest, religious or spiritual leader; or
 - (iii) a caregiver.
- (k) when, at the time of the commission of the sexual act, the complainant is —
 - (i) asleep;
 - (ii) unconscious;
 - (iii) in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that the complainant's consciousness or judgement is adversely affected;
- (l) when the sexual act is committed under false pretences or by fraudulent means, including where the complainant is led to believe by the accused that —
 - (i) the complainant is committing such a sexual act with a particular person who is in fact a different person; or
 - (ii) such a sexual act is something other than that act.
- (m) when the offence is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

- (n) when the offence is committed in the dwelling of the complainant;
- (o) when the offence is committed under threat of violence or harm to the victim or to a person under the victim's care, the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity of the victim (or other person physically present at the time of commission of the offence), or threat to the property of the victim;
- (p) when the complainant is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the accused before or at the time of the commission of the crime;
- (q) when the complainant is a child below seven (7) years old;
- (r) when the accused knows that he or she is afflicted with HIV, Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the complainant;
- (s) when the offence be committed with insult to the complainant on account of his or her rank, age, race or ethnicity, sex, gender identity, sexual orientation, religion, faith or spiritual beliefs; or
- (t) when the accused has previously been convicted of a sexual offence or is on the Sex Offender Register; or, when the offence involves violence or threat of violence, the accused had previously been convicted of an offence involving violence.

Victim impact statement

117. A Victim Impact Statement may be admitted to the court upon conviction and prior to sentencing –

- (a) by the complainant, detailing particulars of -
 - (i) any personal harm
 - (ii) any emotional suffering or distress
 - (iii) any harm to relationships with other persons

(iv) any economic loss or harm that arises from any matter referred to in (i)–
(iii)

(b) where the victim is a child below the age of 7 or a mentally disabled person, by a parent, guardian or caregiver, detailing particulars of the impact of injury to the complainant the complainant and other members of primary victim’s immediate family, including economic loss or harm that arises therefrom.

CHAPTER 11

PENALTIES

Section creating offence	General nature of Offence	Maximum sentence	Indicative minimum sentence for aggravated offences
3	Rape	Life	20 years imprisonment
4	Compelled rape		
5	Compelling another to witness a rape		
6	Sexual assault		
7	Compelled sexual assault		
8	Compelling another to witness a compelled sexual assault		
9	Compelled self-sexual assault		
10	Compelling another to witness a compelled self-sexual assault		

12	Exposure or display of or causing exposure or display of genital organs, anus or female breasts to another (“flashing”)		
13	Exposure or display of or causing exposure or display of child pornography to another		
14	Voyeurism		
15	Capturing images for the purpose of sexual arousal or sexual gratification		
16	Capturing images for the purpose of humiliating, alarming or distressing another person		
17	Printing, publication of voyeuristic captured image material		
18	Non-consensual distribution of intimate images		
19	Threaten to capture or distribute intimate images		
21	Administering a substance with intent		
22	Committing an offence with intent to commit a sexual offence		
23	Trespass with intent to commit a sexual offence		
24	Street and Public/Common Place Sexual Harassment		
25	Specific Environment-Related Sexual Harassment		

26	Persistent harassment involving information and communications technology: Online Sexual Harassment (Cyber Harassment)		
27	Incest		
28	Bestiality		
29	Sexual act with corpse		
34	Acts of consensual sexual penetration with certain children (statutory rape)		
35	Acts of consensual sexual violation with certain children (statutory sexual assault)		
36(1)	Sexual exploitation of a child		
36(2)	Being involved in the sexual exploitation of a child		
36(3)	Furthering the sexual exploitation of a child		
36(4)	Benefiting from the sexual exploitation of a child		
36(5)	Living from the earnings of the sexual exploitation of a child		
36(6)	Promoting child sex tours		
37(1)	Promoting the sexual grooming of a child		
37(2)	Sexual grooming of a child		
38	Sexual communication with children		

39	Sexual intercourse with a child aged 16 to 18 under special care		
40	Exposure or display of or causing exposure or display of child pornography or pornography to children		
41(1)	Using a child for child pornography		
41(2)	Benefiting from child pornography		
42	Production of child pornography		
43	Distribution of child pornography		
44	Possession of child pornography		
52	Failure to Report and preserve Evidence for Purposes of Investigation		
53	Internet Content host failure to comply with duties		
54(1)	Sexual exploitation of a person who is mentally disabled		
54(2)	Being involved in the sexual exploitation of a person who is mentally disabled		
54(3)	Furthering the sexual exploitation of a person who is mentally disabled		
54(4)	Benefiting from the sexual exploitation of a person who is mentally disabled		
54(5)	Living from the earnings of the sexual exploitation of a person who is mentally disabled		

54(6)	Promoting sex tours with persons who are mentally disabled		
55(1)	Promoting the sexual grooming of a person who is mentally disabled		
55(2)	Sexual grooming of a person who is mentally disabled		
56	Exposing or displaying or causing the exposure or display of child pornography or pornography to a person who is mentally disabled		
57(1)	Using persons who are mentally disabled for pornographic purposes		
57(2)	Benefiting from using a person who is mentally disabled for pornographic purposes		
58(1)	Failure to report commission of sexual offences against children or persons who are mentally disabled		
63	Disclosure of information in the Sex Offender Register		
100	Giving false unsworn evidence		

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