

## TITLE 9

## Chapter 9:21

PREVIOUS CHAPTER**SEXUAL OFFENCES ACT**

Acts 8/2001,22/2001.

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## ACT

To amend the criminal law in regard to sexual offences; to make further provision for the suppression of brothels and prostitution; to discourage the spread of the human immuno-deficiency virus; to repeal the Criminal Law Amendment Act [Chapter 9:05]; to amend section 51 of the Magistrates Court Act [Chapter 7:10], sections 211 and 247 of the Criminal Procedure and Evidence Act [Chapter 9:07] and section 2 of the Termination of Pregnancy Act [Chapter 15:10]; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : 17th August, 2001.]

ENACTED by the President and the Parliament of Zimbabwe.

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Sexual Offences Act [Chapter 9:21].

#### 2 Interpretation

(1) In this Act—

“brothel” means any place which is occupied or used for purposes of prostitution or for persons to visit for the purpose of having extra-marital sexual intercourse for money or reward;

“extra-marital sexual intercourse” means sexual intercourse otherwise than between husband and wife;

“HIV” means the human immuno-deficiency virus;

“keeper”, in relation to a brothel, has the meaning set out in subsection (2);

“owner”, in relation to any place, includes a person who lets or sublets or permits the occupation of the place, whether in his own right or on behalf of another person;

“place” includes any premises, enclosure, vehicle or boat or any part thereof;

“prostitute” means a person who for money or reward—

(a) habitually allows other persons to have extra-marital sexual intercourse with him or her; or

(b) solicits other persons to have extra-marital sexual intercourse with him or her;

“young person” means a boy or girl under the age of sixteen years.

(2) The following persons shall be deemed for the purposes of this Act to be keepers of a brothel—

(a) any person who manages the brothel or assists in its management;

(b) the owner of the brothel, if he uses the place as a brothel or knowingly allows it to be so used;

(c) any person who knowingly receives the whole or any part of any money taken in the brothel;

(d) any person who resides in the brothel, unless he proves that he was ignorant of the character of the place;

(e) any person found in the brothel who wilfully refuses to disclose the name and identity of the keeper or owner thereof.

## PART II

### EXTRA-MARITAL SEXUAL INTERCOURSE WITH YOUNG PERSONS AND INTELLECTUALLY HANDICAPPED PERSONS

#### 3 Extra-marital sexual intercourse or immoral or indecent act committed with young person

(1) Subject to subsection (2), any person who—

(a) has extra-marital sexual intercourse with a young person; or

(b) commits an immoral or indecent act with or upon a young person; or

(c) solicits or entices a young person to have extra-marital sexual intercourse with him or to commit an immoral or indecent act;

shall be guilty of an offence and liable, subject to section sixteen, to a fine not exceeding level ten or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(2) It shall be a defence to a charge under subsection (1) for the accused person to satisfy the court that—

(a) he was under the age of sixteen years at the time of the alleged offence; or

(b) he had reasonable cause to believe that the young person concerned was of or over the age of sixteen years at the time of the alleged offence.

4 Extra-marital sexual intercourse or immoral or indecent act committed with intellectually handicapped person

(1) In this section—

“intellectually handicapped person” means a person who is mentally disordered or intellectually handicapped, as defined in section 2 of the Mental Health Act [Chapter 15:12].

(2) Subject to subsection (3), any person who—

(a) has extra-marital sexual intercourse with an intellectually handicapped person; or

(b) commits an immoral or indecent act with an intellectually handicapped person; or

(c) solicits or entices an intellectually handicapped person to have extra-marital sexual intercourse with him or to commit an immoral or indecent act;

shall be guilty of an offence and liable, subject to section sixteen, to a fine not exceeding level ten or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(3) It shall be a defence to a charge under subsection (2) for the accused person to satisfy the court that he did not know that the person to or with whom he committed the act alleged in the charge was intellectually handicapped.

5 Prevention of sexual exploitation of young persons and intellectually handicapped persons outside Zimbabwe

(1) Any person who is a citizen of Zimbabwe or ordinarily resident therein and who does anything outside Zimbabwe to, with or against a young person or intellectually handicapped person which, if it were done in Zimbabwe, would constitute—

(a) rape, incest, sodomy or indecent assault; or

(b) a contravention of section three or four; or

(c) an attempt, conspiracy or incitement to commit an offence referred to in paragraph (a) or (b);

shall be guilty of the appropriate offence referred to in paragraph (a), (b) or (c) and liable to be sentenced accordingly.

(2) Any person who, in Zimbabwe, conspires with or incites another person to do anything outside Zimbabwe to, with or against a young person or intellectually handicapped person which, if it were done in Zimbabwe, would constitute—

(a) rape, incest, sodomy or indecent assault; or

(b) a contravention of section three;

shall be guilty of conspiracy or incitement, as the case may be, to commit the appropriate offence referred to in paragraph (a) or (b) and shall be liable to be sentenced accordingly.

(3) Subsections (1) and (2) shall apply whether or not the act which the person is alleged to have committed or which was the subject of his alleged conspiracy or incitement, as the case may be, was an offence in the place where it was committed.

6 Prevention of conspiracy or incitement abroad to exploit young persons or intellectually handicapped persons in Zimbabwe

(1) Any person who, outside Zimbabwe, conspires with or incites another person to

commit any of the following offences in Zimbabwe to, with or against a young person or intellectually handicapped person—

- (a) rape, incest, sodomy or indecent assault; or
- (b) a contravention of section three or four;

shall be guilty of conspiracy or incitement, as the case may be, to commit the appropriate offence referred to in paragraph (a) or (b) and shall be liable to be sentenced accordingly.

(2) Subsection (1) shall apply whether or not conspiracy or incitement to commit the offence concerned was an offence in the place where the alleged conspiracy or incitement took place.

7 Permitting young person to resort to place for purpose of extra-marital sexual intercourse

(1) If the owner of a place knowingly induces or allows a young person to enter or be in a place for the purpose of extra-marital sexual intercourse with another person or with other persons generally, the owner shall be guilty of an offence and—

(a) if the young person is under the age of twelve years, liable to a fine not exceeding level ten or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment;

(b) if the young person is over the age of twelve years, liable to a fine not exceeding level eight or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(2) It shall be a defence to a charge under subsection (1) for the accused person to prove that he had reasonable cause to believe that the young person was of or over the age of sixteen years.

### PART III

#### NON-CONSENSUAL SEXUAL ACTS

8 Punishment for rape or certain non-consensual acts

(1) Any person who, whether or not married to the other person, without the consent of that other person—

(a) with the male organ, penetrates any part of the other person's body; or

(b) with any object other than the male organ, penetrates the other person's genitalia or anus; or

(c) engages in fellatio or cunnilingus with the other person;

shall be guilty of an offence and liable, subject to section sixteen, to the penalties provided by law for rape.

(2) Penetration to any degree shall be sufficient for the purpose of paragraphs (a) and (b) of subsection (1).

### PART IV

#### SUPPRESSION OF PROSTITUTION

9 Brothels and pimping

(1) Any person who—

(a) is the keeper of a brothel; or

(b) knowingly lives wholly or in part on the earnings of prostitution; or

(c) solicits or importunes other persons for immoral purposes; or

(d) demands from a prostitute money in consideration of his—

(i) keeping, managing or assisting in the keeping of a brothel in which the prostitute is, or has been, living for immoral purposes; or

(ii) having solicited or importuned other persons for immoral purposes with the prostitute; or

(iii) having effected the prostitute's entry into a brothel for the purpose of prostitution; or

(iv) having brought or assisted in bringing the prostitute into Zimbabwe for immoral purposes; or

(v) present or past immoral connection with him;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(2) If, in a prosecution for an offence under paragraph (b) of subsection (1), it is proved that a person consorted or lived with or was habitually in the company of a prostitute, and has no visible means of subsistence, that person shall be deemed, unless the contrary is proved, to have been knowingly living on the earnings of prostitution.

#### 10 Detention of persons for sexual purposes

Any person who detains any other person against his or her will with the intention of contravening section three, four or eight shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

#### 11 Procuring

Any person who procures any other person—

(a) to have sexual intercourse in contravention of section three, four or eight, whether inside or outside Zimbabwe; or

(b) to become a prostitute, whether inside or outside Zimbabwe; or

(c) to leave Zimbabwe with the intent that the other person may become a prostitute; or

(d) to leave his or her usual place of residence, not being a brothel, with the intent that he or she may become an inmate of or frequent a brothel elsewhere;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

#### 12 Coercing or inducing person to have extra-marital sexual intercourse

Any person who, to enable himself or anyone else to have extra-marital sexual intercourse with another person—

(a) threatens or intimidates that other person; or

(b) applies or administers any intoxicating drug, liquor, matter or thing to that other person; or

(c) causes that other person to take any intoxicating drug, liquor, matter or thing;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

#### 13 Use of place as brothel renders lease void

(1) If any leased premises are kept or used as a brothel by or with the consent or acquiescence of the lessee, the lease shall become void with effect from the date on which the leased premises were first so used:

Provided that, if the lessor proves that he was unaware that the premises were so used, he shall be entitled to recover the rent up to the date upon which he became aware of that fact.

(2) The reference in subsection (1) to a lease includes a sublease, and “lessee” and “lessor” shall be construed accordingly.

#### 14 Summary ejectment when place is kept or used as brothel

A magistrate shall have jurisdiction, on the application of the owner or lessor of any place within the magistrate’s province which is being kept or used as a brothel, to order summary ejectment of any person who is so keeping or using the place.

### PART V

### PREVENTION OF SPREAD OF HIV

15 Deliberate transmission of HIV

(1) Any person who, having actual knowledge that he is infected with HIV, intentionally does anything or permits the doing of anything which he knows or ought reasonably to know—

- (a) will infect another person with HIV; or
- (b) is likely to lead to another person becoming infected with HIV;

shall be guilty of an offence, whether or not he is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years.

(2) It shall be a defence to a charge of contravening subsection (1) for the person charged to prove that the other person concerned—

- (a) knew that the person charged was infected with HIV; and
- (b) consented to the act in question, appreciating the nature of HIV and the possibility of his becoming infected with it.

16 Sentence for certain offences where offender is infected with HIV

Where a person is convicted of—

- (a) rape or sodomy; or
- (b) having sexual intercourse with a young person in contravention of section three; or

(c) having sexual intercourse with an intellectually handicapped person in contravention of section four; or

(d) contravening subsection (1) of section eight by committing an act referred to in paragraph (a) or (c) of that subsection;

and it is proved that, at the time of the offence, the convicted person was infected with HIV, whether or not he was aware of his infection, he shall be sentenced to imprisonment for a period not exceeding twenty years.

17 Testing of sexual offenders for HIV infection

(1) In this section—

“designated person” means a member of a class of persons designated for the purposes of this section by the Minister responsible for health;

“sexual offence” means—

- (a) rape, sodomy, incest or indecent assault; or
- (b) a contravention of section three or four; or
- (c) a contravention of subsection (1) of section eight by the commission of an act referred to in paragraph (a) or (c) of that subsection; or
- (d) a contravention of section fifteen; or
- (e) an attempt to commit an offence specified in paragraph (a), (b), (c) or

(d);

“sexual offender” means a person who has been convicted of a sexual offence.

(2) Without derogation from any other law, where a person is charged with committing a sexual offence, the court may direct that an appropriate sample or samples be taken from the sexual offender, at such place and subject to such conditions as the court may direct, for the purpose of ascertaining whether or not he is infected with HIV.

(3) The sample or samples taken from a sexual offender in terms of subsection (2) shall be stored at an appropriate place until the finalisation of the trial.

(4) The court shall, where the sexual offender is convicted, order that the sample or samples be tested for HIV and, where he is acquitted, order that the sample or samples be destroyed.

(5) Where a court has given a direction under subsection (2), any medical practitioner or designated person shall, if so requested in writing by a police officer above the rank of constable, take an appropriate sample or samples from the sexual offender concerned, and may use such force as is reasonably necessary in order to take the sample or samples:

Provided that the medical practitioner or designated person may decline to take an appropriate sample in terms of this subsection if he considers that such taking would

be prejudicial to the health or proper care or treatment of the sexual offender.

(6) An appropriate sample or samples taken in terms of subsection (5)—

(a) shall consist of blood, urine or other tissue or substance as may be determined by the medical practitioner or designated person concerned, in such quantity as is reasonably necessary for the purpose of determining whether or not the sexual offender is infected with HIV; and

(b) in the case of a blood or tissue sample, shall be taken from a part of the sexual offender's body selected by the medical practitioner or designated person concerned in accordance with accepted medical practice.

(7) Without prejudice to any other defence or limitation that may be available in terms of any law, no claim shall lie and no set-off shall operate against—

(a) the State; or

(b) any Minister; or

(c) any medical practitioner or designated person;

in respect of any detention, injury or loss caused by or in connection with the taking of an appropriate sample in terms of subsection (5), unless the taking was unreasonable or done in bad faith or the person who took the sample was culpably ignorant or negligent.

(8) Any person who, without reasonable excuse, hinders or obstructs the taking of an appropriate sample in terms of subsection (5) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

18 Presumptions regarding HIV infection

(1) For the purposes of sections fifteen and sixteen, the presence in a person's body of HIV antibodies or antigens, detected through an appropriate test, shall be prima facie proof that the person concerned is infected with HIV.

(2) For the purposes of sections fifteen and sixteen, if it is proved that a person was infected with HIV within thirty days after committing an offence referred to in those sections, it shall be presumed, unless the contrary is shown, that he was infected with HIV when he committed the offence.

19 Jurisdiction of regional magistrates

A court of a regional magistrate shall have jurisdiction to impose the penalty prescribed in section fifteen or sixteen on a person convicted of contravening that section.

PART VI

GENERAL

20 Act not to limit offences under other laws

Nothing in this Act shall be taken as limiting any offence at common law or under any other enactment.

21 Presumption regarding marriage

Whenever in any prosecution under this Act the question is in issue whether any sexual intercourse between two persons was extra-marital, the persons shall be deemed not to have been married at the time of such intercourse, unless the contrary is proved.

22 Amendment of presumption that boy under 14 incapable of sexual intercourse

(1) The irrebuttable presumption or rule of law that a boy under the age of fourteen years is incapable of sexual intercourse shall not apply in Zimbabwe in relation to boys who have reached the age of twelve years.

(2) Subsection (1) shall not affect any presumption or rule of law relating generally to the criminal capacity of children under the age of fourteen years.

23 Consent by young person no defence in certain circumstances

(1) For the purposes of this section a "sexual act" means<sup>3/4</sup>

(a) anal intercourse;

(b) engaging in fellatio;

(c) engaging in cunnilingus.

(2) A young person under the age of twelve years shall be deemed incapable of consenting to sexual intercourse or a sexual act.

(3) Where a person is charged with raping a young person who is his child, step-child or adopted child, it shall be no defence to prove that the young person consented to having sexual intercourse or a sexual act with him.

24 Repeal of Cap. 9:05

The Criminal Law Amendment Act [Chapter 9:05] is repealed.

25 Amendment of section 51 of Cap. 7:10

Section 51 of the Magistrates Court Act [Chapter 7:10] is amended—

(a) in subsection (2) by the deletion from paragraph (a) of “rape,”;

(b) by the insertion after subsection (3) of the following subsections—

“(4) Notwithstanding section fifty, the jurisdiction of a regional magistrate in respect of punishment for a sexual offence, whether on summary trial or remittal by the Attorney-General, shall be—

(a) imprisonment for a period not exceeding twenty years;

(b) a fine not exceeding twenty thousand dollars.

(5) For the purposes of subsection (4)—

“sexual offence” means—

(a) rape or sodomy; or

(b) a contravention of section 3, 4, 5, 6, 8 or 15 of the Sexual Offences

Act [Chapter 9:21]; or

(c) an attempt to commit an offence referred to in paragraph (a) or (b).”.

26 Amendment of sections 211 and 247 of Cap. 9:07

The Criminal Procedure and Evidence Act [Chapter 9:07] is amended—

(a) in section 211—

(i) by the repeal of subsection (1) and the substitution of—

“(1) Any person charged with rape may be found guilty of—

(a) assault with intent to commit rape; or

(b) indecent assault; or

(c) assault with intent to commit grievous bodily harm; or

(d) assault; or

(e) contravening section 3, 4, 8 or 15 of the Sexual Offences Act [Chapter

9:21];

if such are the facts proved.”;

(ii) in subsection (2) by the deletion of “unlawful carnal knowledge” and the substitution of “extra-marital sexual intercourse”;

(iii) by the repeal of subsection (3) and the substitution of—

“(3) Any person charged with indecent assault may be found guilty of assault or of contravening section 3, 4 or 8 of the Sexual Offences Act [Chapter 9:21] if such are the facts proved.”;

(iv) by the repeal of subsection (5) and the substitution of—

“(5) Any person charged with sodomy or assault with intent to commit sodomy may be found guilty of—

(a) indecent assault; or

(b) assault; or

(c) committing an unnatural offence; or

(d) contravening section 3, 4, 8 or 15 of the Sexual Offences Act [Chapter

9:21];

if such are the facts proved.”;

(b) in section 247 in subsection (2) by the deletion from paragraph (e) of “Criminal Law Amendment Act [Chapter 9:05]” and the substitution of “Sexual Offences Act [Chapter 9:21]”.

27 Amendment of section 2 of Cap. 15:10

Section 2 of the Termination of Pregnancy Act [Chapter 15:10] is amended in



subsection (1) by the repeal of the definition of “unlawful intercourse” and the substitution of—

““unlawful intercourse” means rape, other than rape within a marriage, incest or sexual intercourse in contravention of section 4 of the Sexual Offences Act [Chapter 9:21].”.

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