

# South Africa

## National Child Protection Legislation

### National Legislation

- **Age of Child – Under the age of 18 years**  
[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act Amendment Act, 2015](#)  
**§1 – Definitions and interpretation of the Act**  
'child' means-
  - (a) a person under the age of 18 years; or
  - (b) with reference to sections 15 and 16, a person 12 years or older but under the age of 16 years,and 'children' has a corresponding meaning.
  
- **Age of Consent – 16 years old**  
[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act Amendment Act, 2015](#)  
**§15 – Acts of consensual sexual penetration with certain children (statutory rape)**  
(1) A person ('A') who commits an act of sexual penetration with a child ('B') who is 12 years of age or older but under the age of 16 years is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child, unless A, at the time of the alleged commission of such an act, was—
  - (a) 12 years of age or older but under the age of 16 years; or
  - (b) either 16 or 17 years of age and the age difference between A and B was not more than two years.  
**§57 – Inability of children under 12 years and persons who are mentally disabled to consent to sexual acts**  
(1) Notwithstanding anything to the contrary in any law contained, a male or female person under the age of 12 years is incapable of consenting to a sexual act.  
(2) Notwithstanding anything to the contrary in any law contained, a person who is mentally disabled is incapable of consenting to a sexual act.
  
- Age of Marriage – 21 years old  
[Marriage Act of 1961](#)  
**§24 – Marriage of Minors**  
(1) No marriage officer shall solemnize a marriage between parties of whom one or both are minors unless the consent to the party or parties which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing.  
(2) For the purposes of sub-section (1) a minor does not include a person who is under the age of twenty-one years and previously contracted a valid marriage which has been dissolved by death or divorce.
  
- **Age of Criminal Responsibility – 10 years old**  
[Child Justice Act 75 of 2008](#)  
**§7 – Minimum age of criminal capacity**  
(1) A child who commits an offence while under the age of 10 years does not have criminal capacity and cannot be prosecuted for that offence, but must be dealt with in terms of section 9.

- 2) A child who is 10 years or older but under the age of 14 years and who commits an offence is presumed to lack criminal capacity, unless the State proves that he or she has criminal capacity in accordance with section 11.

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- **Extraterritoriality**

[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act 32, 2007](#)

**§61 – Extra-territorial jurisdiction**

(1) Even if the act alleged to constitute a sexual offence or other offence under this Act occurred outside the Republic, a court of the Republic, whether or not the act constitutes an offence at the place of its commission, has, subject to subsections (4) and (5), jurisdiction in respect of that offence if the person to be charged—

- (a) is a citizen of the Republic;
- (b) is ordinarily resident in the Republic;
- (c) was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic at the time the offence was committed;
- (d) is a company, incorporated or registered as such under any law, in the Republic; or
- (e) any body of persons, corporate or unincorporated, in the Republic.

(2) Subject to subsections (4) and (5), any act alleged to constitute a sexual offence or other offence under this Act and which is committed outside the Republic by a person, other than a person contemplated in subsection (1), is, whether or not the act constitutes an offence at the place of its commission, deemed to have been committed in the Republic if that—

- (a) act was committed against a person referred to in paragraphs (a) or (b) of subsection (1);
- (b) person is found in the Republic; and
- (c) person is, for any reason, not extradited by the Republic or if there is no application to extradite that person.

(3) Any offence committed in a country outside the Republic as contemplated in subsection (1) or (2), is, for purposes of determining the jurisdiction of a court to try the offence, deemed to have been committed—

- (a) at the place where the complainant is ordinarily resident; or
- (b) at the accused person's principal place of business.

(4) No prosecution may be instituted against a person in terms of this section with respect to conduct which formed the basis of an offence under this Act in respect of which such person has already been convicted or acquitted by a court of another jurisdiction.

(5) The institution of a prosecution in terms of this section must be authorised in writing by the National Director of Public Prosecutions.

[Extradition Act](#)

**§1 – Definitions**

'extraditable offence' means any offence which in terms of the law of the Republic and of the foreign State concerned is punishable with a sentence of imprisonment or other form of deprivation of liberty for a period of six months or more, but excluding any offence under military law which is not also an offence under the ordinary criminal law of the Republic and of such foreign State.

### §3 – Persons to be extradited

- (1) Any person accused or convicted of an offence included in an extradition agreement and committed within the jurisdiction of a foreign State a party to such agreement, shall, subject to the provisions of this Act, be liable to be surrendered to such State in accordance with the terms of such agreement, whether or not the offence was committed before or after the commencement of this Act or before or after the date upon which the agreement comes into operation and whether or not a court in the Republic has jurisdiction to try such person for such offence.
- (2) Any person accused or convicted of an extraditable offence committed within the jurisdiction of a foreign State which is not a party to an extradition agreement shall be liable to be surrendered to such foreign State, if the President has in writing consented to his or her being so surrendered.
- (3) Any person accused or convicted of an extraditable offence committed within the jurisdiction of a designated State shall be liable to be surrendered to such designated State, whether or not the offence was committed before or after the designation of such State and whether or not a court in the Republic has jurisdiction to try such person for such offence.

#### ▪ Dual Criminality

No information found.

#### ▪ Mandatory reporting requirements

[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act 32, 2007](#)

- §54 (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.

#### ▪ Obligations of Educational Institutions

[South African Schools Act 84 of 1996](#)

##### §3.4 – Protection from maltreatment, neglect, abuse or degradation

Every child has the right to be protected from maltreatment, neglect, abuse or degradation. All appropriate social and educational measures must be taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who acts *in loco parentis*.

[Education Laws Amendment Act No. 53, 2000](#) ([Employment of Educators Act 76 of 1998](#))

##### §17 – Serious misconduct

- (1) An educator must be dismissed if he or she is found guilty of –
  - (a) theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports;
  - (b) committing an act of sexual assault on a learner, student or other employee;
  - (c) having a sexual relationship with a learner of the school where he or she is employed;
  - (d) seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee;
  - (e) illegal possession of an intoxicating, illegal or stupefying substance; or
  - (f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).

- (2) If it is alleged that an educator committed a serious misconduct contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures provided for in Schedule 2.

▪ **Prohibition to hold certain positions**

[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act 32, 2007](#)

**§41 – Prohibition on certain types of employment by certain persons who have committed sexual offences against children and persons who are mentally disabled**

41. (1) A person who has been convicted of the commission of a sexual offence against a child or is alleged to have committed a sexual offence against a child and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter, whether committed in or outside the Republic, and whose particulars have been included in the Register, may not—

- (a) be employed to work with a child in any circumstances;
- (b) hold any position, related to his or her employment, or for any commercial benefit which in any manner places him or her in any position of authority, supervision or care of a child, or which, in any other manner, places him or her in a position of authority, supervision or care of a child or where he or she gains access to a child or places where children are present or congregate;
- (c) be granted a licence 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 where children are present or congregate; or
- (d) become the foster parent, kinship care-giver, temporary safe care-giver or adoptive parent of a child.

▪ **Employment Law**

[Basic Conditions of Employment Act](#)

**§37 – Notice of termination of employment**

1) Subject to section 38, a contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than –

- (a) one week, if the employee has been employed for six months or less;
- (b) two weeks, if the employee has been employed for more than six months but not more than one year;
- (c) four weeks, if the employee –
  - (i) has been employed for one year or more; or
  - (ii) is a farm or domestic worker who has been employed for more than six months.

2) (a) A collective agreement may not permit a notice period shorter than that required by subsection (1).

(b) Despite paragraph (a), a collective agreement may permit the notice period of four weeks required by subsection (1)(c)(i) to be reduced to not less than two weeks.

3) No agreement may require or permit an employee to give a period of notice longer than that required of the employer.

4) (a) Notice of termination of a contract of employment must be given in writing, except when it is given by an illiterate employee.

(b) If an employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the employee in an official language the employee reasonably understands.

- 5) Notice of termination of a contract of employment given by an employer must –
  - (a) not be given during any period of leave to which the employee is entitled in terms of Chapter three; and
  - (b) not run concurrently with any period of leave to which the employee is entitled in terms of chapter three, except sick leave.
- 6) Nothing in this section affects the right –
  - (a) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law; and
  - (b) of an employer or an employee to terminate a contract of employment without notice for any caused recognized by law.

▪ **Criminal Law - Defamation<sup>1</sup>**

“The law of defamation in South Africa is based on the *actio injuriarum*, a flexible remedy arising from Roman Law, which afforded the right to claim damages to a person whose personality rights had been impaired intentionally by the unlawful act of another. One of those personality rights, is the right to reputation or *fama*, and it is this aspect of personality rights that was protected by the law of defamation.

At common law, the elements of the delict of defamation are –

- (a) the wrongful and
- (b) intentional
- (c) publication of
- (d) a defamatory statement
- (e) concerning the plaintiff.”

## Sexual Offenses Against Children

### [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act 32, 2007](#)

#### **§3 – Rape**

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.

#### **§4 – Compelled Rape**

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.

#### **§5 – Sexual Assault**

(1) A person (“A”) who unlawfully and intentionally sexually violates a complainant (“B”), without the consent of B, is guilty of the offence of sexual assault.

(2) A person (“A”) who unlawfully and intentionally inspires the belief in a complainant (“B”) that B will be sexually violated, is guilty of the offence of sexual assault.

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<sup>1</sup> Constitutional Court of South Africa, Case CCT 53/01, Jun. 14, 2002, at <http://www.saflii.org/za/cases/ZACC/2002/12.rtf> (last visited Jul. 24, 2018).

### **§6 – Compelled sexual assault**

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.

### **§7 – Compelled self-sexual assault**

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 himself or herself;

(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 his or her own genital organs or anus,

is guilty of the offence of compelled self-sexual assault.

### **§12 – Incest**

(1) Persons who may not lawfully marry each other on account of consanguinity, affinity or an adoptive relationship and who unlawfully and intentionally engage in an act of sexual penetration with each other, are, despite their mutual consent to engage in such act, guilty of the offence of incest.

(2) For the purposes of subsection (1)—

(a) the prohibited degrees of consanguinity (blood relationship) are the following:

(i) Ascendants and descendants in the direct line; or

(ii) collaterals, if either of them is related to their common ancestor in the first degree of descent; (b) the prohibited degrees of affinity are relations by marriage in the ascending and descending line; and (c) an adoptive relationship is the relationship of adoption as provided for in any other law.

(3) (a) 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 National Director of Public Prosecutions.

(b) The National Director of Public Prosecutions may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.

### **§15. Acts of consensual sexual penetration with certain children (statutory rape)**

(1) A person ('A') who commits an act of sexual penetration with a child ('B') is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence: Provided that, in the event that the National Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1).

(b) The National Director of Public Prosecutions may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.

### **§16. Acts of consensual sexual violation with certain children (statutory sexual assault)**

(1) A person ('A') who commits an act of sexual violation with a child ('B') is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual violation with a child.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the relevant Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence: Provided that, in the event that the Director of Public Prosecutions concerned

authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1).  
(b) The Director of Public Prosecutions concerned may not delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.

### **§17 – Sexual exploitation of children**

(1) A person ('A') who unlawfully and intentionally engages the services of a child complainant ('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 offence of sexual exploitation of a child.

(2) A person ('A') who unlawfully and intentionally offers the services of a child complainant ('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.

(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 complainant ('B'), with or without the consent of B, while being a primary care-giver defined in section 1 of the Social Assistance Act, 2004 (Act 13 of 2004), 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.

(4) A person ('A') who intentionally receives financial or other reward, favour or compensation from the commission of a sexual act with a child complainant ('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.

(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 complainant ('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.

(6) A person ('A'), including a juristic 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 complainant ('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.

### **§18 – Sexual grooming of children**

(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.

(2) A person ('A') who-

(a) supplies, exposes or displays to a child complainant ('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;

(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 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 20 (1); 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 child 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 child.

**§19 – Exposure or display of or causing exposure or display of child pornography or pornography to children**

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 Films and Publications Act, 1996 (Act 65 of 1996), 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 Films and Publications Act, 1996, 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.

**§20 – Using children for or benefiting from child pornography**

(1) A person ('A') who unlawfully and intentionally uses a child complainant ('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.

(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.

**§21 – Compelling or causing children to witness sexual offences, sexual acts or self-masturbation**

(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 child complainant ('B'), without the consent of B, to be in the presence of or watch A or C while he, she or they commit a sexual offence, is guilty of the offence of compelling or causing a child to witness a sexual 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 child complainant ('B'), without the consent of B, to be in the presence of or watch-

- (a) A while he or she engages in a sexual act with C or another person ('D'); or
- (b) C while he or she engages in a sexual act with D, is guilty of the offence of compelling or causing a child to witness a sexual act.

(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 child complainant ('B'), without the consent of B, to be in the presence of or watch A or C while he or she engages in an act of self-masturbation, is guilty of the offence of compelling or causing a child to witness self-masturbation.

**§22 – Exposure or display of or causing of exposure or display of genital organs, anus or female breasts to children ("flashing")**

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 the genital organs, anus or female breasts of A or C to a child 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 genital organs, anus or female breasts to a child.

[Criminal Law \(Sexual Offences and Related Matters\) Amendment Act 32, 2007](#)

Chapter 6 – National Register for Sex Offenders

**§42 – Establishment of National Register for Sex Offenders and designation of Registrar of Register**

(1) A National Register for Sex Offenders containing particulars of persons convicted of any sexual offence against a child or a person who is mentally disabled or are alleged to have committed a sexual offence against a child or a person who is mentally disabled and who have been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic, must, within six months after the commencement of this Chapter, and, in accordance with the provisions of this Chapter and the regulations made thereunder, be established and maintained by the Minister.

(2) The Minister must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, as the Registrar of the National Register for Sex Offenders.

(3) The Registrar must exercise and perform his or her powers, duties and functions subject to the provisions of this Chapter and the regulations made thereunder.