



**Draft Model Legislation on the Prevention and Suppression of Sexual Violence Against Women and Children**

**5-7 September 2006**

# **Prevention and Suppression of Sexual Violence Against Women and Children Act**

## **Chapter ... of the Laws of the Republic of ...**

An Act to give effect to the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children and to make provision for an administrative framework for the implementation of the said Protocol and other related matters.

**BE IT ENACTED** by the Parliament of the Republic as follows:-

### **ARRANGEMENT OF SECTIONS**

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## **Title**

S.1. This Act may be cited as the Prevention and Suppression of Sexual Violence Against Women and Children Act.

## **PART ONE**

### **Definitions**

S.2. In this Act, unless the context otherwise requires:

- (1) “Children” shall mean every human being below the age of eighteen years, unless under the law applicable to the children, majority is attained earlier;
- (2) “Civil Society” shall mean Civil Society referred to in S. 5(1)(k) and S. 6(7)(8)(9) of this Act;
- (3) “Committee” shall mean the Committee for the Protection of Women and Children from Sexual Violence referred to in S. 5 of this Act;
- (4) “Commission” shall mean the Compensation Commission for Sexual Violence Claims referred to in S. 7 of this Act;
- (5) “Crimes Against Humanity” shall mean any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - a. Murder;
  - b. Extermination;
  - c. Enslavement;
  - d. Deportation or forcible transfer of population;
  - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - f. Torture;

- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime in international criminal law;
  - i. Enforced disappearance of women and children;
  - j. The crime of apartheid in relation to women and children;
  - k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or the physical health of women and children;
- (6) “Gender” shall mean the social relations between men and women, within the context of society;
- (7) “Genocide” shall mean any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- a. Killing members of the group;
  - b. Causing serious bodily or mental harm to members of the group;
  - c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - d. Imposing measures intended to prevent births within the group;
  - e. Forcibly transferring children of the group to another group;
- (8) “Fund” shall refer to a fund established under Section 4 for supporting and compensating victims of sexual offences as well as strengthening existing institutions and other appropriate mechanisms involved in the work of suppressing sexual violence.
- (8) “Minister” shall mean the Minister referred to in S. 4 of this Act;
- (9) “Protocol” shall mean the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children;
- (10) “Sexual” violence shall mean any act which violates the sexual autonomy and bodily integrity of women and children under international criminal law, including, but not limited to:

- a. rape;
- b. sexual assault;
- c. grievous bodily harm;
- d. assault or mutilation of female reproductive organs;
- e. sexual slavery;
- f. enforced prostitution;
- g. forced pregnancy;
- h. enforced sterilization;
- i. Harmful practices, inclusive of all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and children, such as their right to life, health, dignity, education and physical integrity, as defined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- j. Sexual exploitation or the coercion of women and children to perform domestic chores or to provide sexual comfort;
- k. Trafficking in, and smuggling of, women and children for sexual slavery or exploitation;
- l. Enslavement by the exercise of any or all of the powers attaching to the right of ownership over women and includes the exercise of such power in the course of trafficking in women and children;
- m. Forced abortions or forced pregnancies of women and girl children arising from the unlawful confinement of a woman or girl child forcibly made pregnant, with the intent of affecting the composition of the identity any population or carrying out other grave violations of international law, and as a syndrome of physical, social, and psychological humiliation, pain and suffering and subjugation of women and girls;
- n. Infection of women and children with sexually transmitted diseases, including HIV/AIDS; and.
- o. Any other act or form of sexual violence of comparable gravity;

(11) “Senior Public Official” shall refer to a Senior Public Official referred to in S. 4(3) of this Act;

(12) “Sexual violence” shall also mean gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, as defined

by the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, in General Recommendation 19;

- (13) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (14) “United Nations Agencies” shall mean mandated Agencies of the United Nations referred to in S. 6(7)(8)(9);
- (15) “War crimes” shall mean grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
- a. Wilful killing;
  - b. Torture or inhuman treatment, including biological experiments;
  - c. Wilfully causing great suffering, or serious injury to body or health;
  - d. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - e. Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - f. Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - g. Unlawful deportation or transfer or unlawful confinement;
  - h. Taking of hostages;
- (16) “Women” shall mean human beings of the female sex.

## **PART FOUR**

### **Legal Effect**

S.3 Subject to the provisions of this Act:

- (1) The Protocol shall have legal effect within, and throughout, the Republic;
- (2) The Protocol shall provide the legal means for preventing and suppressing the perpetration of sexual violence against women and children, whether in private or in public and in times of peace or situations of armed conflict;
- (3) All laws, procedures and regulations of the Republic, which apply to sexual violence against women and children, shall be construed to conform to the provisions of the Protocol;
- (4) No person shall commit any act of sexual violence against any woman or child;
- (5) Any person whosoever commits an act of sexual violence against a woman or child shall be prosecuted and, if found guilty, shall be punished in accordance with the provisions of the Protocol or under any existing law of the Republic which provides for a greater penalty than that provided for in the Protocol;
- (6) Provided that the criminal liability of any person charged with a crime of sexual violence shall, in all appropriate circumstances, be determined by reference to the interpretation of such a crime according to the prevailing principles of international criminal law;
- (7) Prosecution of crimes of sexual violence as well as any claims brought by the victims or survivors of such crimes shall not be time barred by any statute of limitation in force in the Republic.

## **PART THREE**

### **PREVENTION**

#### **Powers of the Minister**

- S.4 The Minister shall be responsible for the legal and administrative implementation of this Act. For this purpose, the Minister shall:
- (1) Prescribe by statutory instrument regulations for the implementation of this Act consistent with the Protocol;
  - (2) Ensure the protection of women and children from sexual violence in conjunction with the Committee for the Protection of Women and Children from Sexual Violence as established under S 5;
  - (3) Appoint a senior public official as Chairperson of the Committee for the Protection of Women and Children from Sexual Violence;
  - (4) Appoint members of the Compensation Commission for Sexual Violence Claims under S. 7;

- (5) Nominate suitably qualified persons from the Judiciary, Police, Social Work Units, Medical Personnel and other Units dealing with sexual violence, to receive specialised training and sensitisation from a special regional facility established under Article 6(9) of the Protocol;
- (6) Harmonise all relevant national laws and criminal procedures in accordance with the provisions of the Protocol, acting upon the advice of the Committee for the Protection of Women and Children from Sexual Violence;
- (7) Transmit, with supporting material, written requests for the arrest and surrender, from a Member State to the Republic, of a person charged with a crime of sexual violence, in accordance with the provisions of Article 6(1)(2) of the Protocol;
- (8) Receive, with supporting material, written requests for the arrest and surrender, to a Member State from the Republic, of a person accused of a crime of sexual violence, in accordance with the provisions of Article 6(1)(2) of the Protocol;
- (9) Upon receiving such a request, forthwith facilitate the arrest and surrender of an accused person to the jurisdiction of the requesting State in accordance with the provisions of Article 6(3) of the Protocol;
- (10) Ensure that persons convicted of sexual violence shall be socially corrected and rehabilitated from sexual violence against women and children whilst serving their sentences;
- (11) Ensure that the Committee receives funds allocated from the regional fund for reconstruction and development under Article 6(8) of the Protocol, for the provision of social and legal assistance, medical treatment, counselling, training, rehabilitation and reintegration of all the survivors and victims of sexual violence.

### **Committee for the Protection of Women and Children from Sexual Violence**

S.5 There is hereby established a Committee for the Protection of Women and Children from Sexual Violence.

- (1) The Committee shall consist of:
  - (a) A Chairperson of the Committee, who shall be nominated by the Minister in accordance with Article 4 (3);
  - (b) A member of the Judiciary;
  - (c) A member of the Police Force;
  - (d) A representative of the Ministry responsible for Foreign Affairs;
  - (e) A representative Ministry responsible for Home Affairs;

- (f) A representative Ministry responsible for Social Affairs, or Social Rehabilitation;
  - (g) Two representatives of the Ministry responsible for Women or Gender and Youth;
  - (h) A representative of the Ministry responsible for Legal Affairs;
  - (i) A representative of the Ministry responsible for Finance or Economic Development;
  - (j) A representative of each of the Agencies of the United Nations operating in the Republic;
  - (k) Such representatives of Women and Children’s Civil Society organizations as the Committee may decide;
  - (l) Such number of the representatives of women and children as the Committee may decide.
- (2) The Committee shall be a permanent body, which shall sit in session at least once a week.
- (3) The Chairperson shall convene and preside over the meetings of Committee at least once a week.
- (4) The Committee shall elect a Secretary who shall maintain an official record of the proceedings of the Committee.
- (5) The Committee shall elaborate and adopt such internal procedures as it may deem fit, provided that such procedures shall be conducive to the protection of women and children from sexual violence.
- (6) The Committee shall establish such specialized Sub-Committees, as it may deem expedient provided that it shall establish a Sub-Committee for women and another Sub-Committee for children.

**Functions of the Committee**

S.6 The functions of the Committee shall be to:

- (1) Coordinate the protection of women and children from sexual violence under S. 4(3);
- (2) Advise the Minister on the harmonisation of all relevant national laws and criminal procedures in accordance with the provisions of the Protocol;
- (3) Facilitate the ratification, where necessary, and the domestic implementation and mainstreaming within the Republic, of the Convention on the Elimination of All Forms of

Discrimination Against Women 1979 together with General Recommendation 19 on Violence Against Women, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003;

- (4) Secure the ratification, where necessary, and the domestic implementation and mainstreaming of the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child 1999;
- (5) Secure the implementation and mainstreaming of Security Council Resolution 1325 (2000);
- (6) Assess the protection needs of women and children and sensitize the public on the incidence of sexual violence and its detrimental consequences on the physical, mental, psychological, and health welfare of women and children;
- (7) Coordinate the protection of women and children from sexual violence between the relevant Ministries of Government, Agencies of the United Nations, the African Union, and Civil Society, throughout the Republic;
- (8) Determine and establish procedures and channels of engagement and cooperation between the organs of Government, Agencies the United Nations, the African Union, and Civil Society for the purpose of enhancing effectiveness of the protection of women and children from sexual violence;
- (9) Serve as the official focal body representing the organs of Government, Agencies of the United Nations, the African Union, and Civil Society, responsible for providing and monitoring the protection of women and children from sexual violence;
- (10) Serve as the focal point for lodging complaints of sexual violence by women and children or other interested persons or organisations, on behalf of women and children;
- (11) To present, on behalf of such complainants, claims of compensation to the Sexual Violence Compensation Claims Commission under S. 7.;
- (12) Advise and assist victims or survivors of sexual violence on the legal and medical procedures relating to their claims, treatment, counseling and rehabilitation;
- (13) Ensure that criminal procedures for the prosecution of persons charged with crimes of sexual violence shall be sensitive to the emotional state of the victims or survivors of such crimes and that such victims and survivors shall give evidence in camera, or by video links;
- (14) To monitor criminal proceedings relating to sexual violence and to ensure that in such proceedings, the victims or survivors of sexual violence shall neither be compelled nor required to give evidence in open criminal proceedings, and that the casting of aspersions on their character and integrity shall not be permitted as part of the defence of any person charged with a crime of sexual violence;
- (15) To monitor and supervise the implementation of the Protocol under this Act.

## **Commission for Compensation of Victims of Sexual Violence**

**S.7** There is hereby established a Compensation Commission for Sexual Violence Claims.

- (1) The Commission shall consist of five persons appointed by the Minister under S. 4(4) and the majority of the members shall be women.
- (2) The Minister shall appoint a Chairperson of the Commission from amongst its Members.
- (3) Members of the Commission shall be women of high integrity who shall be qualified in the fields of journalism, law, medicine, psychology, and sociology.
- (4) Members of the Commission shall enjoy security of tenure.
- (5) The Commission shall receive assessed claims for compensation from the Committee in accordance with S. 6(11) and shall determine the quantum of compensation to be paid to individual victims or survivors who lodged such claims to the Committee under S. 6(10).
- (6) The Commission shall also determine the person or organ responsible for paying such compensation in whole or in part.

## **PART TWO**

### **OFFENCES OF SEXUAL VIOLENCE AND PUNISHMENT FOR COMMITTING SUCH OFFENCES**

#### **The Offence of Sexual Violence**

S.8 A person commits an offence of sexual violence under this Act if, with intent, knowledge, recklessness, or negligence, he or she violates the sexual autonomy and bodily integrity of any woman or child, by committing, aiding or abetting the commission of any of the acts of sexual violence referred to in S. 2(10) (12) of this Act.

#### **The Offence of Sexual Violence in relation to Trafficking in Women and Children**

S.9 A person commits an offence of sexual violence under this Act if, with intent, knowledge, recklessness, or negligence, he or she aids or abets the commission, of any of the acts of trafficking in relation to such a woman or child, as defined in Article 2(13) of this Act.

#### **The Offence of Sexual Violence in relation to the Crime of Genocide.**

S. 10. A person commits an offence of sexual violence if he or she violates the sexual autonomy and bodily integrity of any woman or child by committing, or aiding or abetting the commission of

any of the acts of sexual violence in S.2(10)(12) in connection with the commission of the crime of genocide as defined in S.2(7) of this Act and the Convention on the Prevention and Punishment of the Crime of Genocide.

### **The Offence of Sexual Violence in relation to Crimes Against Humanity**

S.11 A person commits an offence of sexual violence under this Act if he or she violates the sexual autonomy and bodily integrity of any woman or child by committing, or aiding or abetting the commission of any of the acts of sexual violence in S.2(10)(12) in connection with the commission of crimes against humanity as defined in S.2(5) of this Act.

### **The offence of Sexual Violence in relation to War Crimes**

S.12 A person commits an offence of sexual violence under this Act if he or she violates the sexual autonomy and bodily integrity of any woman or child by committing, or aiding or abetting the commission of any of the acts of sexual violence in Article S.2(10)(12) in connection with the commission of war crimes as defined in S. 2(15) of this Act and the Geneva Conventions of 12 August 1949.

### **Maximum Sentence**

S.13 Any person who commits an offence under this Act shall be liable to punishment for a maximum sentence of life imprisonment without prejudice to the imposition of a more severe punishment for such a crime under any other law in force in the Republic.

## **PART FIVE**

### **Miscellaneous Final Provisions**

S.14 Nothing contained in this Act shall affect the Republic's international obligations concerning the protection of women and children.

S. 15 This Act shall come into effect on such a date as the Minister may decide.

### **Schedule 1**

Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children.