

Condensed Sexual Offences Bill

PART (1) – PRELIMINARY

Definitions section: Definitions of key words and phrases in the Bill, including

- **“Age of consent”** shall mean the age a person can legally consent to a sexual act, which is eighteen years or older.
- **“Child”** shall mean any person, whether male or female, below the age of eighteen years.
- **“Sexual act”** shall mean any act which is committed for a sexual reason, or any act involving contact with the genital organ, genital area, breast, anus, mouth or any part of a person’s body, however slight, that a reasonable person would deem sexual in nature.

Meaning of Consent: Defines consent as being whenever a person agrees to an act by choice, and have the freedom and capacity to make that choice. Includes a list of circumstances where someone is unable to consent, including if the person is below 18, intoxicated, in a coercive environment, etc.

Non-discrimination: Provisions of the law apply to all people equally.

PART (2) — SEXUAL OFFENCES AGAINST THE PERSON

Defines and criminalises:

- Rape
- Gang rape
- Sexual assault by penetration
- Sexual assault
- Causing a person to engage in a sexual activity
- Sexual slavery
- Sex tourism
- Sex trafficking
- Forced marriage
- Sexual harassment
- Administering an intoxicating substance with intent to commit a sexual offence
- Abduction for sexual purpose
- Unlawful detention for sexual purpose
- Unlawful recording, sharing or distributing sexual photographs or recordings

PART (3) – SEXUAL OFFENCES AGAINST CHILDREN

Defines and criminalises offences committed against children, including the above offences and some offences specifically relating only to children, such as:

- Causing or inciting a child to engage in a sexual activity
- Child marriage
- Meeting or grooming a child for sexual purposes

- Production, sale, distribution and possession of child pornography

PART (4) – ABUSE OF TRUST OR AUTHORITY

Makes it a separate and more serious offence to commit a sexual offence while in a position of trust or authority, eg if they are in public office, a medical practitioner, a humanitarian etc.

PART (5) – INVESTIGATIONS

Reporting and handling reports of an offence: This section of the Bill outlines the process of filing a complaint and the duties of the police and Attorney General’s office in handling, investigating and prosecuting the complaint. It includes the following provisions:

- Any delay in filing a complaint by the survivor will not be used against them;
- A complainant shall not be prosecuted or sued in civil proceedings for reporting a sexual offence unless they knew the complaint was false;
- Any medical facility can issue a medical certificate that may be used in court (not just Madina Hospital);
- A survivor does not need a police referral to get a medical certificate;
- A public official who discloses the identity of the survivor commits an offence;
- Any person who obstructs, undermines or interferes with the administration of justice under the Act commits an offence.

Protection orders: The court may grant a protection order, which mandates that the accused must legally act in a certain way, to protect the survivor, family members, witnesses, medical practitioners, lawyers or humanitarian workers related to the case.

Civilian court: If the survivor is a civilian, the case must be heard in a civilian rather than military court.

The next section relates to the rights of the survivor, witnesses and the accused. These rights should be protected by the Federal Republic of Somalia to the extent possible. Where the government does not have the resources or capacity to meet the needs of these rights-bearers, the international community should provide assistance.

Rights of the survivor and witnesses: The survivor has a right to free medical care, including counselling, and other necessary assistance. Survivors and witnesses have the right to confidentiality and privacy.

Rights of children: Children have all the rights of other survivors, as well as additional rights, including to special care and attention.

Rights of persons with a disability: Persons with a disability have all the rights of other survivors, as well as additional rights, including with regard to accommodation, education, medical treatment and care.

Rights of survivors of sex trafficking: Survivors of sex trafficking have a right to lawfully reside in Somalia, or may alternatively request assistance to be safely repatriated to the country of their lawful residence or citizenship.

Right to initiate civil action: The survivor may initiate civil proceedings to damages suffered by him or her as a result of a sexual offence.

Rights of the accused: The constitutional and human rights of the accused must be protected. If the accused cannot afford a defence lawyer, he or she should be provided with free and impartial legal aid. The accused person shall also have a right to keep his or her identity private throughout the legal process, as well as after the verdict has been passed if they are found not guilty.

Admissible evidence: This section lays out the rules relating to admissible evidence, including that:

- A medical certificate may be adduced as evidence but is not necessary to opening an investigation, prosecuting a case or convicting an offender;
- A medical certificate should outline the injuries sustained but not make a conclusion about whether or not rape has occurred;
- Any medical professional is authorised to provide a medical certificate with or without a referral from the police.
- Failure to produce forensic evidence shall not be a bar to prosecution.

Inadmissible evidence: The injured party's sexual history is inadmissible as evidence in a sexual offence case.

PART (6) – SENTENCING

Aggravating factors: aggravating factors are outlined, including if the survivor is under 11 years of age, pregnant, has a disability, is a refugee, IDP or elderly; if the perpetrator used a weapon; if the perpetrator offender is a repeat offender with previous convictions for sexual offences; etc.

Compensation order: In addition to any other punishment, the court will order a convicted person to pay the survivor adequate compensation within a reasonable amount of time.

PART (7) – SEXUAL OFFENDER'S REGISTRY

This section mandates the establishment of a Sexual Offender's Registry.

PART (8) – IMPLEMENTATION OF SEXUAL OFFENCES BILL

National framework: The Ministry shall prepare a national policy framework within six months after this Law comes into force to guide its implementation and administration.

Inter-ministerial committee: The Act establishes an Inter-Ministerial Committee for the management of matters relating to sexual offences.