

National Laws

Legislation of Interpol member states on sexual offences against children

Botswana – Botswana –Botsuana

Gaborone

The information on this page is up to date as of spring 2006

I. Ages for legal purposes

No information has been received in connection with this question.

II. Rape

'Offences Against Morality', Section 141 of the Penal Code, CAP. 08.01

'Any person who has unlawful carnal knowledge of another person, or who causes the penetration of a sexual organ or instrument, of whatever nature, into the person of another for the purposes of sexual gratification, or who causes the penetration of another person's sexual organ into his or her person, without the consent of such other person, or with such person's consent if the consent is obtained by force or means of threats or intimidation of any kind, by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married person, by personating that person's spouse, is guilty of the offence termed rape.'

'Punishment for the offence of Rape', Section 142 of the Penal Code, CAP. 08.01

(1) 'Any person who is charged with the offence of rape shall –

(i) not be entitled to be granted bail; and

(ii) subject to sub – sections (2) and (4), upon conviction be sentenced to a minimum term of 10 years imprisonment or to a maximum term of life imprisonment.

(2) Where an act of rape is attended by violence resulting in injury to the victim, the person convicted of the act of rape shall be sentenced to a minimum term of 15 years imprisonment or to a maximum term of life imprisonment with or without corporal punishments.

(3) Any person convicted of the offence of rape shall be required to undergo a Human Immune-System Virus test before he or she is sentenced by the court.

(4) Any person who is convicted under sub-section (1) or sub-section (2) and whose test for the Human Immune-System Virus test under sub-section (3) is positive shall be sentenced –

(a) to a minimum term of 15 years imprisonment or to a maximum term of life imprisonment with or without corporal punishment, where it is proved that such person was unaware of being Human Immune-System Virus positive; or

(b) to a minimum term of 20 years imprisonment or to a maximum term of life imprisonment with or without corporal punishment, where it is proved that on a balance of probabilities that such person was aware of being Human Immune-System Virus positive.

(5) Any person convicted and sentenced for the offense of rape shall not have the sentence imposed running con-currently with any other offence.

Section 150 (c) of the Penal Code

A person who applies, administers to, or causes to be taken by any other person any drug, matter or thing, with intent to stupefy and overpower so as to have unlawful carnal connection with such woman or girl, is guilty of an offence and is liable to be punished in the same manner as a person convicted under Section 149.

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

III. Other forms of child sex abuse

'Abduction of person under sixteen years (16)', Section 145 of the Penal Code, CAP. 08.01

'Any person who unlawfully takes an unmarried person under the age of sixteen (16) years out of the custody or protection of that person's father or mother having the lawful care or charge of that person, and against the will of such father or mother or other person, is guilty of an offence.'

'Indecent assaults', Section 146 of the Penal Code

'(1) Any person who unlawfully and indecently assaults any person, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, with or without corporal punishment.

(2) It shall be no defense to a charge for an indecent assault on a person under the age of sixteen (16) years to prove that the person so assaulted consented to the act of indecency unless it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen (16) or was his such charged person's spouse.'

(3) Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intrudes upon the privacy of such woman, is guilty of an offence and is liable to punishment or to a maximum term of life imprisonment.

'Defilement of person under sixteen (16) years of age', Section 147 of the Penal Code

'(1) Any person who unlawfully and carnally knows any person under the age of sixteen (16) years is guilty of an offence and on conviction shall be sentenced to a minimum term of 10 years, imprisonment or to a maximum term of life imprisonment.

(2) Any person convicted under sub-section (1) shall be required to undergo a Human Immune-System Virus test before he or she is sentenced by the court.

(3) Any person convicted under sub-section (1) and whose test for the Human Immune-System Virus under sub-section (2) is positive shall on conviction be sentenced to a –

(a) minimum term of 15 years" imprisonment and a maximum term of life imprisonment with or without corporal punishment, where it is proved that such person was unaware of being Human Immune-System Virus positive; or

(b) minimum term of 20 years" imprisonment and a maximum term of life imprisonment with or without corporal punishment, where it is proved on a balance of probabilities such person was aware of being Human Immune-System Virus positive.

(4) Any person who attempts to have unlawful carnal knowledge of any person under the age of 16 years is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years, with or without corporal punishment.

(6) It shall be a sufficient defense to any charge under this section if it appears to the court before whom the charge is brought that the person was of or above the age of sixteen (16) years or was such charged person's spouse .'

'Indecent assault on boys under fourteen (14)', Section 166 of the Penal Code

'Any person who unlawfully and indecently assaults a boy under the age of fourteen (14) is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.'

'Incest', Section 168 of the Penal Code

'(1) Any person who knowingly has carnal knowledge of another person knowing that person to be his or her grandchild, child, brother, sister, or parent, is guilty of an offence and is liable to imprisonment for a term not exceeding five years:

Provided that if it is alleged in the indictment or summons and proved that the person is under the age of sixteen (16) years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the person of whom carnal knowledge was had.

(3) If any person attempts to commit any such offence as aforesaid, that person is guilty of an offence.

(4) On the conviction before any court of any person of an offence under this section, or of an attempt to commit the same, against any person under the age of 21 years, it shall be in the power of the court to divest the offender of all authority over such person, and, if the offender is the guardian of such person, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such person during that person's minority or any less period : provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

'Incest by females', Section 169 of the Penal Code

Any female person of or above the age of sixteen years who with her consent permits her grandfather, father, brother, or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother, or son, as the case may be) is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

IV. Child prostitution

'Procuration', Section 149 of the Penal Code

'Any person who-

- a) procures or attempts to procure any girl or woman under the age of twenty-one (21) years to have unlawful carnal connection, either in Botswana or elsewhere, with any other person or persons;
- b) procures or attempts to procure any woman or girl to become, either in Botswana or elsewhere, a common prostitute;
- c) procures or attempts to procure any woman or girl to leave Botswana, with intent that she may become an inmate of or frequent a brothel elsewhere; or
- d) procures or attempts to procure any woman or girl to leave her usual place of abode in Botswana with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Botswana or elsewhere,

-is guilty of an offence, and, if a male person, not being more than 40 years of age may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to corporal punishment;

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.'

'Householder, etc., permitting defilement of person under sixteen (16) years of age on his or her premises'' Section 151 of the Penal Code

'Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any person under the age of sixteen (16) to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person, is guilty of an offence.

Provided that it shall be a sufficient defense to any charge under this section if it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the person against whom the offence was committed was of or above the age of sixteen (16) years.'

'Householder, etc., permitting defilement of person under twelve (12) years of age on his premises', Section 152 of the Penal Code

'Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any person under the age of twelve (12) years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally, is guilty of an offence and is liable to imprisonment for a term not exceeding five years;

Provided that it shall be a sufficient defense to any charge under this section of it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the person against whom the offence was committed was of or above the age of twelve (12) years.'

'Detention of females for immoral purpose', Section 153 of the Penal Code

'(1) Any person who detains an woman or girl against her will-

a) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

b) in a brothel,

-is guilty of an offence.

(2) When a woman or girl is in or upon any premises for the purpose of having any unlawful connection, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel, if, with intent to compel

or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes with her the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.'

'Power of search for detained person', Section 154 of the Penal Code

(1) If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of a person suspected of being detained or by any other person who, in the opinion of the magistrate, is acting bona fide in the interests of the person suspected of being detained, that there is reasonable cause to suspect that such person is unlawfully detained for immoral purposes by any other person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorizing a person named therein to search for, and when found, to take and detain in a place of safety the person who was detained until such person can be brought before magistrate; and the magistrate before whom the person who was detained is brought may cause such person to be delivered up to his or her parents or guardians, or otherwise dealt with as circumstances may permit and require.

(2) A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining the person who was detained to be apprehended and brought before a magistrate and proceedings to be taken for punishing such accused person according to law.

(3) A person shall be deemed to be unlawfully detained for immoral purposes if such person is so detained for the purpose of being unlawfully and carnally known by any other person, whether any particular person or generally, and

(a) either is under the age of sixteen years;

(b) if the person is over the age of sixteen years or under the age of twenty-one years, is so detained against such person's will or against the will of such person's father or mother or any person having the lawful care or charge of such person; or

(c) if such person is over the age of twenty-one years and is also detained under such person's will.

V. Child pornography

There are no particular legal provisions dealing with child pornography.

'Traffic in obscene publications', Section 178 of the Penal Code

'(1) Any person who:

a) for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, gramophone records or other contrivances for the reproduction of sound, or any other obscene objects or any other object tending to corrupt morals;

b) for any of the purposes above-mentioned imports, conveys, or exports, or causes to be imported, conveyed, or exported any such matters or things or in any manner whatsoever puts any of them in circulation;

c) carries or takes part in any business whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them publicly, or makes a business of lending any of them;

d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or

e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

-is guilty of an offence and is liable to imprisonment for a term not exceeding two years and to a fine not exceeding P200.'