

Botswana: Penal Code (Amendment) Act 5 of 1998

This Amendment modified the Penal Code Act. It increases the penalties for sexual offences and criminalises the spread of infection.

Excerpts

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Section 141. Definition of rape

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 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 pretences 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.

Section 142. Punishment for rape

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

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(ii) subject to subsections 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 punishment.

(3) Any person convicted of the offence of rape shall be required to undergo a HIV test before he is sentenced by the court.

(4) Any person who is convicted under subsection 1 or subsection 2 and whose test for the HIV under subsection 3 is positive shall be sentenced

(a) to a minimum term of 15 years' imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that such person was unaware of being HIV positive; or

(b) to a minimum term of 20 years' imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that on a balance of probabilities such person was aware of being HIV positive.

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Section 147. Defilement of person under 16 years

(1) Any person who unlawfully and carnally knows any person under the age of 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 subsection 1 shall be required to undergo a HIV test before he is sentenced by the court.

(3) Any person who is convicted under subsection 1 and whose test for the HIV under subsection (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 HIV 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 that on a balance of probabilities such person was aware of being HIV positive.

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Section 184. Spreading infection

Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of an offence.