

South Africa

## Immorality Act, 1957

Act 23 of 1957

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# South Africa

## Immorality Act, 1957

### Act 23 of 1957

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**Assented to on 3 April 1957**

**Commenced on 12 April 1957**

*[This is the version of this document as it was from 21 May 1969 to 18 June 1985.]*

*[Amended by [Immorality Amendment Act, 1967 \(Act 68 of 1967\)](#) on 1 June 1967]*

*[Amended by [Immorality Amendment Act, 1969 \(Act 57 of 1969\)](#) on 21 May 1969]*

*[English text signed by the Governor-General.]*

## ACT

**To consolidate and amend the laws relating to brothels and unlawful carnal intercourse and other acts in relation thereto.**

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

### 1. Definitions

In this Act, unless the context otherwise indicates—

"**brothel**" includes any house or place kept or used for purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or indecent purpose;

"**coloured person**" means any person other than a white person;

"**court**" means the court or jury before whom the charge is brought;

"**house**" includes a dwelling-house, building, room, out-house, shed or tent or any part thereof;

"**owner**" includes any person who lets or sub-lets or permits the occupation of any house or place whether in his own right or that of another;

"**place**" includes any field, enclosure, space, vehicle, or boat or any part thereof;

"**police officer**" means any member of any police force established under the authority of any law;

"**unlawful carnal intercourse**" means carnal intercourse otherwise than between husband and wife;

"**white person**" means any person who in appearance obviously is or who by general acceptance and repute is a white person.

### 2. Keeping a brothel

Any person who keeps a brothel shall be guilty of an offence.

### 3. Certain persons deemed to keep a brothel

The following persons shall for the purposes of section two be deemed to keep a brothel:

- (a) any person who resides in a brothel unless he or she proves that he or she was ignorant of the character of the house or place;
- (b) any person who manages or assists in the management of any brothel;
- (c) any person who knowingly receives the whole or any share of any moneys taken in a brothel;
- (d) any person who, being the tenant or occupier of any house or place, knowingly permits the same to be used as a brothel;
- (e) any person who, being the owner of any house or place, lets the same, or allows the same to be let, or to continue to be let, with the knowledge that such house or place is to be kept or used or is being kept or used as a brothel;
- (f) any woman found in a brothel who refuses to disclose the name and identity of the keeper or manager thereof;
- (g) any person whose wife keeps or resides in or manages or assists in the management of a brothel unless he proves that he was ignorant thereof or that he lives apart from her and did not receive the whole or any share of the moneys taken therein.

### 4. Onus of proof

In prosecutions under this Act the onus of proving that a house or place is to be kept or used or is being kept or used as a brothel to the knowledge of the owner shall be On the prosecution: Provided that—

- (a) if it is established to the satisfaction of the court that, having regard to the locality and accommodation, the rent to be paid or paid for the house or place is exorbitant, the onus shall be on the accused to prove that he was ignorant that such house or place is to be kept or used or was kept or used as a brothel;
- (b) proof of written notice having been given to the owner by a police officer not below the rank of sergeant or by two householders living in the vicinity of the house or place that any house or place is being kept or used as a brothel, shall be conclusive proof of knowledge on his part.

### 5. Contract to let house or place for a brothel void

Any contract to let any house or place to be kept or used as a brothel shall be null and void.

### 6. Use of house or place as a brothel avoids contract of letting

Any contract of letting and hiring of any house or place which subsequently to the making of such contract becomes a brothel shall as from the date of such event be determined and become null and void: Provided that upon proof by the owner of his ignorance that the house or place was so kept or used he shall be entitled to recover the rent up to the date upon which he became aware that the house or place was being kept or used as a brothel.

### 7. Summary ejection when a house or place is used as a brothel

The owner of any house or place kept or used as a brothel shall be entitled to apply to the magistrate of the district in which such house or place is situated for the summary ejection of any person who may be keeping or using such house or place as a brothel and such magistrate shall be entitled after enquiry to order the summary ejection of such person.

## 8. Proceedings upon complaint by householders or police that a house or place is used as a brothel

- (1) If it appears to any magistrate on sworn information laid before him by not less than two householders of good repute that any house or place in the vicinity of the dwellings of such householders is being kept or used as a brothel or on similar information upon oath laid before him by any police officer not below the rank of Sergeant, or by a welfare officer employed by the Department of Social Welfare, a local authority or a welfare organization registered under the Welfare Organizations Act, 1947 ([Act No. 40 of 1947](#)), the magistrate may—
  - (a) issue a warrant for the arrest of the person alleged to be the keeper of such brothel; or
  - (b) issue a warrant authorizing any police officer not below the rank of sergeant—
    - (i) to enter at any time and within such period as shall be stated in such warrant, such house or place for the purpose of ascertaining the name and identity of the keeper of such house or place;
    - (ii) to interrogate, and to demand the name and address of any person found in or upon such house or place; and
    - (iii) to demand, search for, and seize any account book, receipt, paper, document or thing likely to afford evidence of the commission by any person of an offence under this Act.
- (2) Any person found in or upon such house or place who, when called upon to do so by the police officer conducting the search, refuses to furnish his name and address or furnishes a name or address which is false in any material particular or refuses to disclose the name or identity of the keeper of such house or place or to produce any book, receipt, paper, document or thing which he has in his possession or custody or under his control, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred rand and in default of payment to imprisonment for a period not exceeding six months.

*[subsection (2) substituted by section 1 of [Act 68 of 1967](#)]*
- (3) The issue of a warrant under paragraph (a) of sub-section (1) shall not in any way affect the power of the magistrate to issue at any time a warrant under paragraph (a) of sub-section (1) or under any other law.

## 9. Parent or guardian procuring defilement of child or ward

- (1) Any person who being a parent or guardian of any female—
  - (a) procures or attempts to procure such female to have unlawful carnal intercourse with any person other than the procurer; or
  - (b) orders, permits, or in any way assists in bringing about, or receives any consideration for, the defilement, seduction, or prostitution of such female,shall be guilty of an offence.
- (2) The term "guardian" in this section includes any person who has in law or in fact the custody or control of the female.

## 10. Procurement

Any person who—

- (a) procures or attempts to procure any female to have unlawful carnal intercourse with any person other than the procurer or in any way assists in bringing about such intercourse; or

- (b) inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or conceals in any such house or place any female so inveigled or enticed; or
  - (c) procures or attempts to procure any female to become a common prostitute; or
  - (d) procures or attempts to procure any female to become an inmate of a brothel; or
  - (e) applies, administers to or to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable any person other than the procurer to have unlawful carnal intercourse with such female,
- shall be guilty of an offence.

## 11. Conspiracy to defile

Any person who conspires with any other person to induce any female by any false pretence or other fraudulent means to allow any male to have unlawful carnal intercourse with her, shall be guilty of an offence.

## 12. Detention for purposes of unlawful carnal intercourse

- (1) Any person who takes or detains any female against her will—
  - (a) to or in or upon any house or place with intent that she may be unlawfully carnally known by any male, whether a particular male or not; or
  - (b) to or in a brothel,shall be guilty of an offence.
- (2) Where a female is in or upon any house or place for the purpose that she may be unlawfully carnally known by any male, whether a particular male or not, or is in any brothel, she shall for the purposes of this section be deemed to have been taken thereto or to be detained therein or thereon against her will—
  - (a) if she is under the age of sixteen years; or
  - (b) if she, being of or above the age of sixteen years and under the age of twenty-one years, was taken or is detained against her will or against the will of her father or mother, or any person having the lawful care or charge of her.
- (3) Any person shall be deemed to detain a female in or upon any house or place or in a brothel if, with intent to compel or induce her to remain in or upon such house or place or in such brothel, such person withholds from her any wearing apparel or other property to the possession of which she is entitled or which has been lent or supplied to her by such person or for the purposes of prostitution; and any such female shall be justified in taking away such wearing apparel as is necessary to enable her to leave such house or place or brothel.

### 12A. Assistance for purposes of unlawful carnal intercourse

- (1) Any person who, with intent that any female, whether a particular female or not, be unlawfully carnally known by any male, performs any act or does anything or furnishes any information which is calculated or likely to enable such male to communicate with or to establish the whereabouts of or to trace any such female, shall be guilty of an offence.
- (2) No prosecution in respect of an offence under subsection (1) shall be instituted except on the written authority of the attorney-general having jurisdiction in the area concerned or of a member of his staff designated by him in writing.

*[section 12A inserted by section 2 of [Act 68 of 1967](#)]*

### 13. Abduction

- (1) Any person who takes or detains or causes to be taken or detained any unmarried male or female under the age of twenty-one years out of the custody and against the will of his or her father or mother or guardian, with intent that such person or any other person, whether a particular person or not may have unlawful carnal intercourse with such unmarried male or female, shall be guilty of an offence.
- (2) The term "guardian" in this section includes any person who has in law or in fact the custody or control of the unmarried male or female.

### 14. Sexual offences with girls under sixteen or boys under nineteen

- (1) Any male person who—
  - (a) has or attempts to have unlawful carnal intercourse with a girl under the age of sixteen years; or
  - (b) commits or attempts to commit with such a girl or with a boy under the age of nineteen years an immoral or indecent act; or
  - (c) solicits or entices such a girl or boy to the commission of an immoral or indecent act, shall be guilty of an offence.
- (2) It shall be a sufficient defence to any charge under this section if it shall be made to appear to the court—
  - (a) that the girl at the time of the commission of the offence was a prostitute, that the person so charged was at the said time under the age of twenty-one years and that it is the first occasion on which he is so charged; or
  - (b) that the person so charged was at the said time under the age of sixteen years if the offence was committed in respect of a girl; or
  - (bA) that the person so charged was at the said time under the age of nineteen years if the offence was committed in respect of a boy; or
  - (c) that the girl or person in whose charge she was, deceived the person so charged into believing that she was over the age of sixteen years at the said time.

*[section 14 substituted by section 1 of [Act 57 of 1969](#)]*

### 15. Sexual offences with female idiots or imbeciles

Any person who—

- (a) has or attempts to have unlawful carnal intercourse with any female idiot or imbecile in circumstances which do not amount to rape; or
- (b) commits or attempts to commit with such a female any immoral or indecent act; or
- (c) solicits or entices such a female to the commission of any immoral or indecent act, shall if it be proved that such person knew that such female was an idiot or imbecile, be guilty of an offence.

### 16. Sexual offences between white persons and coloured persons

- (1) (a) Any white female person who—
  - (i) has or attempts to have unlawful carnal intercourse with a coloured male person; or

- (ii) commits or attempts to commit with a coloured male person any immoral or indecent act; or
  - (iii) entices, solicits, or importunes any coloured male person to have unlawful carnal intercourse with her; or
  - (iv) entices, solicits or importunes any coloured male person to the commission of any immoral or indecent act; and
- (b) any coloured female person who—
- (i) has or attempts to have unlawful carnal intercourse with a white male person; or
  - (ii) commits or attempts to commit with a white male person any immoral or indecent act; or
  - (iii) entices, solicits, or importunes any white male person to have unlawful carnal intercourse with her; or
  - (iv) entices, solicits, or importunes any white male person to the commission of any immoral or indecent act,
- shall be guilty of an offence.
- (2) (a) Any white male person who—
- (i) has or attempts to have unlawful carnal intercourse with a coloured female person; or
  - (ii) commits or attempts to commit with a coloured female person any immoral or indecent act; or
  - (iii) entices, solicits, or importunes any coloured female person to have unlawful carnal intercourse with him; or
  - (iv) entices, solicits or importunes any coloured female person to the commission of any immoral or indecent act; and
- (b) any coloured male person who—
- (i) has or attempts to have unlawful carnal intercourse with a white female person; or
  - (ii) commits or attempts to commit with a white female person any immoral or indecent act; or
  - (iii) entices, solicits, or importunes any white female person to have unlawful carnal intercourse with him; or
  - (iv) entices, solicits, or importunes any white female person to the commission of any immoral or indecent act,
- shall be guilty of an offence.
- (3) It shall be a sufficient defence to any charge under this section if it is proved to the satisfaction of the court that the person charged at the time of the commission of the offence had reasonable cause to believe that the person with whom he or she committed the offence was a white person if the person charged is a white person, or a coloured person if the person charged is a coloured person.

## 17. Owner or occupier permitting on his premises the defilement of a female or any offence against this Act

Any person who being the owner or occupier of any house or place or having or acting or assisting in the management or control thereof knowingly permits the use of such house or place for the purpose of any offence against any provision of this Act, shall be guilty of an offence.

**18. Use of drugs, etc., for purposes of defilement of females**

Any person who applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable him to have unlawful carnal intercourse with her, shall be guilty of an offence.

**18A. Manufacture, sale or supply of article which is intended to be used to perform an unnatural sexual act**

- (1) Any person who manufactures, sells or supplies any article which is intended to be used to perform an unnatural sexual act, shall be guilty of an offence.
- (2) For the purposes of subsection (1), 'sell' includes to offer for the sale, to keep for sale or to keep in a place where goods are sold, offered or kept for sale.

*[section 18A inserted by section 2 of [Act 57 of 1969](#)]*

**19. Enticing to commission of immoral acts**

Any person who—

- (a) entices, solicits, or importunes in any public place for immoral purposes; or
  - (b) wilfully and openly exhibits himself or herself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access,
- shall be guilty of an offence.

**20. Persons living on earnings of prostitution or committing or assisting in commission of indecent acts**

- (1) Any person who—
  - (a) knowingly lives wholly or in part on the earnings of prostitution; or
  - (b) in public commits any act of indecency with another person; or
  - (c) in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any act of indecency with another person,shall be guilty of an offence.
- (2) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house is used by a female for purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earning of the prostitute, the magistrate may issue a warrant authorizing any police officer not below the rank of sergeant to enter and search the house and to arrest that person.

**20A. Acts committed between men at a party and which are calculated to stimulate sexual passion or to give sexual gratification, prohibited**

- (1) A male person who commits with another male person at a party any act which is calculated to stimulate sexual passion or to give sexual gratification, shall be guilty of an offence.
- (2) For the purposes of subsection (1) 'a party' means any occasion where more than two persons are present.
- (3) The provisions of subsection (1) do not derogate from the common law, any other provision of this Act or a provision of any other law.

*[section 20A inserted by section 3 of [Act 57 of 1969](#)]*

## 21. Presumptions

- (1) Whenever in any prosecution under this Act the question is in issue whether any carnal intercourse between a male and a female was unlawful, such male and female shall be deemed to have been unmarried at the time of such intercourse unless the accused proves the contrary.
- (2) Any person who seems in appearance obviously to be a white person or a coloured person, as the case may be, shall for the purpose of this Act be deemed to be such unless the contrary is proved.
- (3) Whenever in any prosecution under this Act a person is proved to reside in a brothel or to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, such person shall, unless he or she satisfies the court to the contrary, be deemed to be knowingly living wholly or in part on the earnings of prostitution.
- (4) Whenever in any prosecution for an offence under [section 12A](#) it is proved that the accused has performed any act or has done anything or has furnished any information, which was calculated or likely to enable any male to communicate with or to establish the whereabouts of or to trace any female who the accused had reason to believe to be a prostitute, the accused shall be presumed to have performed such act or to have done such thing or to have furnished such information, as the case may be, with intent that such female be unlawfully carnally known by such male, unless the contrary is proved.

*[subsection (4) added by section 3 of [Act 68 of 1967](#)]*

## 22. Penalties

Any person who is convicted of an offence under the provisions of this Act for which no special penalty is prescribed, shall be liable—

- (a) in the case of an offence referred to in [section 2](#) or [20\(1\)\(a\)](#), to imprisonment for a period not exceeding three years with or without a fine not exceeding six hundred rand in addition to such imprisonment, or, where it is proved that the person convicted kept a brothel and that unlawful carnal intercourse took place in such brothel to his knowledge between a white female and a coloured male or between a coloured female and a white male, for a period not exceeding seven years with or without a fine not exceeding one thousand rand in addition to such imprisonment;
- (b) in the case of an offence referred to in [section 9\(1\)](#), to imprisonment for a period not exceeding five years, or, if the female concerned is under the age of twelve years, for life;
- (c) in the case of an offence referred to in [section 10](#), to imprisonment for a period not exceeding five years, or, where it is proved that the person convicted procured or attempted to procure any white female for the purpose of having unlawful carnal intercourse with a coloured male, or any coloured female for the purpose of having unlawful carnal intercourse with a white male, for a period not exceeding seven years;
- (d) in the case of an offence referred to in [section 11](#), [12A](#) or [18](#), to imprisonment for a period not exceeding five years;
- (e) in the case of an offence referred to in [section 12\(1\)](#), [13\(1\)](#) or [16](#), to imprisonment for a period not exceeding seven years;
- (f) in the case of an offence referred to in [section 14\(1\)](#), [15](#) or [17](#), to imprisonment for a period not exceeding six years with or without a fine not exceeding one thousand rand in addition to such imprisonment;

- (g) in the case of an offence referred to in section [18A](#), [19](#), [20](#) (1) (b) or (c), or [20A](#) (1), to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*[paragraph (g) substituted by section 4 of [Act 57 of 1969](#)]*

*[section 22 substituted by section 4 of [Act 68 of 1967](#)]*

### **23. Repeal of laws**

The laws specified in the Schedule are hereby repealed to the extent set out in the fourth column of that Schedule.

### **24. Application of Act to the territory of South-West Africa**

The Governor-General may by proclamation in the *Gazette* and in the *Official Gazette* of the territory of South-West Africa, declare this Act to be in force in the said territory.

### **25. Short title**

This Act shall be called the Immorality Act, 1957.

### Schedule (Section 23)

Province or Union	No. and year of law	Short title or subject of law	Extent of repeal
Cape	<a href="#">Act No. 25 of 1893.</a>	The Criminal Law Amendment Act, 1893.	So much as is unrepealed.
"	<a href="#">Act No. 36 of 1902.</a>	The Betting Houses, Gaming Houses and Brothels Suppression Act, 1902.	Sections 22 to 36 inclusive.
Transvaal	<a href="#">Ordinance No. 46 of 1903.</a>	The Immorality Ordinance, 1903.	So much as is unrepealed.
Orange Free State	<a href="#">Ordinance No. 11 of 1903.</a>	The Suppression of Brothels and Immorality Ordinance, 1903.	So much as is unrepealed.
"	<a href="#">Act No. 19 of 1908.</a>	The Suppression of Brothels and Immorality Amendment Act, 1908.	The whole.
Natal	<a href="#">Act No. 31 of 1903.</a>	The Criminal Law Amendment Act, 1903.	The whole.
Union	<a href="#">Act No. 3 of 1916.</a>	The Girls' and Mentally Defective Women Protection Act, 1916.	The whole.
"	<a href="#">Act No. 5 of 1927.</a>	The Immorality Act, 1927.	The whole.
"	<a href="#">Act No. 21 of 1950.</a>	The Immorality Amendment Act, 1950.	The whole.
"	<a href="#">Act No. 62 of 1955.</a>	The General Law Amendment Act, 1955.	Section 15.