



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 326

2022

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 4 of 2022: Combating of Rape Amendment Act, 2022.

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**Act No. 4, 2022****COMBATING OF RAPE AMENDMENT ACT, 2022****EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[            ] Words in bold type in square brackets indicate omissions from existing provisions.

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## **ACT**

**To amend the Combating of Rape Act, 2000, so as to provide for additional coercive circumstances for rape; to amend certain minimum sentences for rape; to clarify that the minimum sentences for rape apply equally to rape under the common law, as well as attempt, conspiracy and incitement to commit rape; to provide that a court for a regional division may impose all penalties for rape; to require that a court shall not draw any inference only from the absence of semen or other bodily fluids on or within the complainant or from the absence of evidence of the rupture of the hymen; to empower the court to impose conditions upon bail relating to contact necessary to protect the complainant; to amend the Criminal Procedure Act, 1977, so as to provide for additional duties of the prosecutor towards complainants and vulnerable witnesses before the commencement of trials; to empower the minister responsible for justice to make regulations to provide for protection of complainants and to impose further duties in that regard; to amend the Combating of Immoral Practices Act, 1980, in order to remove the defence of marriage from sexual offences with a child; to amend the Correctional Services Act, 2012, in order to clarify that all forms of rape are scheduled offences; and to provide for matters incidental thereto.**

*(Signed by the President on 3 October 2022)*

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

### **Amendment of section 2 of Act No. 8 of 2000**

1. Section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000) (in this Act referred to as the principal Act) is amended by the insertion after paragraph (i) of subsection (2) of the following paragraph:

“(j) abuse of power or authority to such an extent that the person in respect of whom the sexual act is committed is inhibited from indicating his or her resistance to that act or his or her unwillingness to participate in that act.”.

### **Amendment of section 3 of Act No. 8 of 2000**

2. Section 3 of the principal Act is amended by -

(a) the substitution for subsection (1) of the following subsection:

“(1) Any person who is convicted of rape under this Act shall, subject to the provisions of subsections (2), (3) and (4), be liable -

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- (a) in the case of a first conviction -
- (i) where the rape is committed under circumstances other than the circumstances contemplated in subparagraphs (ii) and (iii), to imprisonment for a period of not less than **[five]** ten years;
  - (ii) where the rape is committed under any of the coercive circumstances referred to in paragraph (a), (b) or (e) of subsection (2) of section 2, to imprisonment for a period of not less than **[ten]** fifteen years;
  - (iii) where -
    - (aa) the complainant has suffered grievous bodily or mental harm as a result of the rape;
    - (bb) the complainant -
      - (A) is under the age of thirteen years; **[or]**
      - (B) is by reason of age exceptionally vulnerable;
      - (C) is by reason of mental or physical disability exceptionally vulnerable; or
      - (D) is for any other reason exceptionally vulnerable;
    - (cc) the complainant is under the age of eighteen years and the perpetrator is the complainant's parent, guardian or caretaker or is otherwise in a position of trust or authority over the complainant;
    - (dd) the convicted person is infected with any serious sexually-transmitted disease and at the time of the commission of the rape knows that he or she is so infected;
    - (ee) the convicted person is one of a group of two or more persons participating in the commission of the rape; or
    - (ff) the convicted person uses a firearm or any other weapon for the purpose of or in connection with the commission of the rape,
- to imprisonment for a period of not less than **[fifteen]** twenty years;

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- (b) in the case of a second or subsequent conviction (whether previously convicted of rape under the common law or under this Act) -
- (i) where the rape is committed under circumstances other than the circumstances contemplated in subparagraphs (ii) and (iii), to imprisonment for a period of not less than **[ten]** twenty years;
  - (ii) where the rape in question or any other rape of which such person has previously been convicted was committed under any of the coercive circumstances referred to in paragraph (a), (b) or (e) of subsection (2) of section 2, to imprisonment for a period of not less than **[twenty]** twenty-five years;
  - (iii) where the rape in question or any other rape of which such person has previously been convicted was committed under any of the circumstances referred to in subparagraph (iii) of paragraph (a), to imprisonment for a period of not less than **[forty-five]** thirty years;”;
- (b) the insertion of the following subsection after subsection (2):
- “(2A) For the purposes of subsection (2) -
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| <ol style="list-style-type: none"> <li>(a) the complainant’s character, sexual reputation or previous sexual conduct or experience;</li> <li>(b) an apparent lack of physical injury to the complainant apart from the rape itself;</li> <li>(c) any cultural or religious beliefs about rape or consent to sexual intercourse or other sexual acts held by the convicted person; or</li> <li>(d) any relationship between the convicted person and the complainant prior to the commission of the offence or while the offence is being committed,</li> </ol> |
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- shall not constitute substantial and compelling circumstances.”;
- (c) the insertion of the following subsection after subsection (4):
- “(5) Notwithstanding anything to the contrary contained in any other law, a court for a regional division shall have jurisdiction to impose any penalty or additional penalty provided for in this Act, even though the penalty may, either alone or together with any additional penalty imposed by the court, exceed the punitive jurisdiction of a court of a regional division.”.

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**Insertion of sections 3A and 3B in Act No. 8 of 2000**

3. The following sections are inserted after section 3 of the principal Act:

**“Minimum sentences also applicable to common law rape, attempt, conspiracy and incitement**

**3A.** The minimum penalties which shall be imposed upon any conviction of rape under section 3 shall also be imposed upon any conviction of the common law crime of rape or of attempt, conspiracy or incitement to commit rape, (whether under this Act or under the common law) and the provisions of section 3 apply with the necessary changes and for the purposes of section 3, a previous conviction for attempt, conspiracy or incitement to commit rape (whether under this Act or under the common law) shall be deemed to be a previous conviction of rape.

**Sentences not to run concurrently with other sentence**

**3B.** A sentence of imprisonment imposed in respect of a conviction for an offence under section 2 or referred to in section 3A shall, notwithstanding anything to the contrary contained in any other law, not run concurrently with any other sentences of imprisonment imposed on the convicted person in respect of such offence or with any part of such sentences, unless the presiding officer finds that the cumulative effect of the sentences running consecutively would be so harsh and unreasonable as to constitute cruel, inhuman or degrading punishment.”.

**Insertion of section 8A in Act No. 8 of 2000**

4. The following section is inserted after section 8 of the principal Act:

**“No inference to be drawn from absence of semen, other bodily fluids or fact that hymen has not been ruptured**

**8A.** In criminal proceedings at which an accused is charged with an offence of a sexual or an indecent nature, the court shall not draw any inference only from the absence of evidence of semen or other bodily fluids on or within the body of a complainant or from the absence of evidence of rupture of a complainant’s hymen.”.

**Amendment of section 9 of Act No. 8 of 2000**

5. Section 9 of the principal Act is amended by the substitution for paragraph (b) of the following paragraph:

“(b) to provide all such information to the complainant as will be necessary to lessen the impact of the trial on the complainant without being limited to ensuring that the complainant receives an orientation to court procedures and information about special arrangements for vulnerable witnesses in advance of the trial.”.

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**Amendment of section 60A of Act No. 51 of 1977 as inserted by section 12 of Act 8 of 2000**

6. Section 60A of the Criminal Procedure Act, 1977 is amended -

(a) by the substitution for subsection (3) of the following subsection:

“(3) If an accused who is in custody on a charge of rape intends to apply to the court for bail on a date or at a time of which the complainant has not been otherwise informed in terms of this section, **[the accused or his or her legal representative]** the prosecutor in the proceedings shall -

(a) where practical, inform the complainant accordingly; or

(b) request the person referred to in subsection (2) to inform the complainant accordingly, whereupon such person shall so inform the complainant.”.

(b) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

“(8) If a complainant is not present, as contemplated in subsection (7), the prosecutor in such proceedings shall inform the complainant or instruct the investigating officer or another police officer to inform the complainant, in which case the provisions of subsections (4) and (5) shall apply *mutatis mutandis* -”.

(c) by the substitution for subsection (9) of the following subsection:

“(9) The Minister may make regulations -

(a) prescribing the procedure for or any other matter relating to, notification regarding bail hearings in terms of this section, including the imposition of additional duties of police officers, prosecutors, legal practitioners representing accused persons and presiding officers;

(b) prescribing duties relating to the orientation of the complainant to court procedures and vulnerable witness provisions under section 9(b) of the Combating of Rape Act, 2000 (Act No. 8 of 2000);

(c) prescribing duties of persons or institutions that deal with complainants of rape or other offences of a sexual or indecent nature and prescribing procedures to be followed in the examination and questioning of complainants of such offences; and

(d) any other matter aimed at furthering the objects of the Combating of Rape Act, 2000 (Act No. 8 of 2000) and this section.”.

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**Amendment of section 62 of Act No. 51 of 1977 as inserted by section 13 of Act No. 8 of 2000**

7. Section 62 of the Criminal Procedure Act, 1977 is amended by the substitution for subsection (2) of the following subsection:

“(2) If an accused who is in custody on a charge of rape is released on bail, the court shall, notwithstanding the provisions of subsection (1), add such further conditions of bail as will, in the opinion of the court, ensure that the accused does not make contact with the complainant concerned: Provided that the bail conditions may allow contact if this is in the interests of the complainant, in which case the court may impose any conditions relating to such contact or any other conditions which may be necessary to protect the complainant from intimidation or harm.”.

**Amendment of section 164 of Act No. 51 of 1977 as inserted by section 2 of Act No. 24 of 2003**

8. Section 164 of the Criminal Procedure Act, 1977 is amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding anything to the contrary in this Act or any other law contained, the evidence of any witness required to be admonished in terms of the proviso to subsection (1) shall be received **[unless]** if it appears to the presiding judge or judicial officer, after an informal preliminary inquiry by such presiding judge or judicial officer as is necessary to assess the maturity of the witness, that such witness is [incapable] capable of giving intelligible testimony.”.

**Amendment of section 14 of Act No. 21 of 1980 as amended by section 2 of Act No. 7 of 2000**

9. The Combating of Immoral Practices Act, 1980 is amended by the substitution for section 14 of the following section:

**“Sexual offences with child**

**14.** Any person who -

- (a) commits or attempts to commit a sexual act with a child under the age of sixteen years; or
- (b) commits or attempts to commit an indecent or immoral act with such a child; or
- (c) solicits or entices such a child to the commission of a sexual act or an indecent or immoral act,

and who -

- (i) is more than three years older than such a child; **[and**
- (ii) **is not married to such a child (whether under the general law or customary law),]**

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shall be guilty of an offence and liable on conviction to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.”.

**Amendment of the Third Schedule of Act No. 9 of 2012**

**10.** The Third Schedule of the Correctional Services Act, 2012 is amended by the insertion after the word “Rape” of the words “, whether under the common law or under the Combating of Rape Act, 2000 (Act No. 8 of 2000)”.

**Short title and commencement**

**11.** (1) This Act is called the Combating of Rape Amendment Act, 2022, and comes into operation on a date to be determined by the Minister responsible for justice by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for different provisions of this Act.

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