



Republic of Namibia
Annotated Statutes

Combating of Immoral Practices Act 21 of 1980

(OG 4310)

came into force on date of publication: 31 October 1980

as amended by

Married Persons Equality Act 1 of 1996 (GG 1316)

brought into force on 15 July 1996 by GN 154/1996 (GG 1340)

Combating of Immoral Practices Amendment Act 7 of 2000 (GG 2325)

brought into force on 15 June 2000 by GN 141/2000 (GG 2348)

Child Care and Protection Act 3 of 2015 (GG 5744)

brought into force on 30 January 2019 by GN 4/2019 (GG 6829)

Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC)
invalidated portions of this Act on brothels and presumptions on constitutional grounds.

Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others 1998 NR 96 (HC) held that subsection 17(1) is unconstitutionally vague.

ACT

To provide for the combating of brothels, prostitution and other immoral practices and for matters connected therewith.

(Afrikaans text signed by the Administrator-General on 27 October 1980)

ARRANGEMENT OF SECTIONS

1. Definitions
2. Keeping of brothel
3. Effect of lease in relation to house or place kept or used as brothel
[The word “of” in the phrase “kept of used as a brothel” should be “or”.]
4. Proceedings upon submission of statement that house or place is used as brothel
5. Procurement
6. Assistance for purposes of unlawful carnal intercourse
7. Enticing to commission of immoral acts
8. Committing of immoral acts

Combating of Immoral Practices Act 21 of 1980

9. Permitting of offence in terms of this Act by owner or occupier of premises
10. Living on earnings of prostitution and assistance in relation to commission of immoral acts
11. Warrant to search house or place used for prostitution and to arrest persons living on earnings of prostitution
12. Presumptions
13. Detention for purposes or unlawful carnal intercourse
14. Sexual offences with youths
15. Sexual offences with female idiots or imbeciles
16. Use of certain means to stupefy or overpower female for immoral purposes
17. Manufacture, sale or supply of article intended to be used to perform unnatural sexual act
18. Repeal of laws
19. Short title

SCHEDULE

BE IT ENACTED by the National Assembly of South West Africa, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise -

“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 immoral purpose;~~

[Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC):

“Section 1(1) of the Combating of Immoral Practices Act, 1980, is declared unconstitutional only to the extent that the words ‘... or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or immoral purpose’ appear therein as part of the extended definition of ‘brothel’ and the inclusion of those words are unconstitutional, void and of no effect and are therefore struck from the definition.” **There is no section 1(1). The court order obviously meant to refer to section 1(i), which is the definition of “brothel” in the Official Gazette (where Roman numerals are used to correlate definitions in the English and Afrikaans texts which would appear in different alphabetical orders). Those Roman numerals have not been included in the annotated statutes which are published only in English.]**

“house” includes a dwelling-house, flat, building, room, out-house, shed or tent or any part thereof;

“owner” includes any person who lets or sublets or permits the occupation of any house or place whether in his own right or that of another;

“place” includes any premises, field, enclosure, space, vehicle or boat or any part thereof;

“police officer” means any member of any police force established under any law;

“sexual act” means a sexual act as defined in section 1(1) of the Combating of Rape Act, 2000;

[definition of “sexual act” inserted by Act 7 of 2000]

“unlawful carnal intercourse” means carnal intercourse between persons who are not married or who are not partners in a customary union in terms of the traditional laws and customs applied by a particular population group referred to in section 3 of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980).

Combating of Immoral Practices Act 21 of 1980

[The Representative Authorities Proclamation, AG 8 of 1980, was repealed by Article 144 of the Namibian Constitution.]

Keeping of brothel

2. (1) Any person who keeps a brothel shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three years or to such imprisonment and to a fine not exceeding three thousand rand.

(2) The following persons shall for the purposes of subsection (1) be deemed to keep a brothel, namely -

- (a) any person who lives in a brothel unless he proves that he 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 all the money or any share of the money taken in a brothel;
- (d) any person who is the tenant or occupier of any house or place and who knowingly permits it to be kept or used as a brothel;
- (e) any person who is the owner of any house or place and who lets it or allows it 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 spouse keeps or lives in or manages or assist in the management of a brothel, unless such person proves that he or she was ignorant thereof or that he or she lives apart from the said spouse and did not receive all the money or any share of the money taken therein.

[Paragraph (g) was amended by Act 1 of 1996 to be gender-neutral.]

- (3) ~~When in any prosecution in terms of this Act it is proved—~~
 - (a) ~~that any house or place is kept or used as a brothel and that, having regard to the locality and accommodation thereof, the rent to be paid or paid or being paid for the house or place concerned is exorbitant, it shall be presumed, until the contrary is proved, that the accused knew that the house or place concerned was kept or used as a brothel;~~
 - (b) ~~that a notice in writing has been given to the accused by a police officer of or above the rank of sergeant or by two householders living in the vicinity of the house or place concerned, that the house or place concerned is kept or used as a brothel, it shall be deemed that the accused knew that the house or place concerned was kept or used as a brothel.~~

[Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC) declared subsection (3) to be “unconstitutional and of no force or effect”. In the body of the judgment, the Court found sections 2(3) and 12(1) and (2) of the Act to be unconstitutional, stating that “the presumptions in sections 2(3) and 12(1) and (2) of the Act constitute an impermissible derogation of the applicant's rights to be presumed innocent”. It also held that the applicants failed to

Combating of Immoral Practices Act 21 of 1980

show standing to challenge the constitutionality of section 2(2) of the Act. However, there is some confusion regarding the order in this case in some versions of the judgement.

In the version of the judgment sourced on the NamibLII website, the court order states:

“Sections 2(3) and 12(1) and (2) of the Combating of Immoral Practices Act, 1980 are declared unconstitutional and of no force or effect.”

The judgment as it appears in the Namibian Law Reports in hard copy and in electronic form (as part of Jutastat e-publications) appears to contain a typographical error, as it states:

“Sections 2(2) and 12(1) and (2) of the Combating of Immoral Practices Act, 1980 are declared unconstitutional and of no force or effect.”

The judgment read as a whole indicates that the order clearly intended to refer to section 2(3) and *not* section 2(2).]

Effect of lease in relation to house or place kept or used as brothel

[The word “of” in the phrase “kept of used as a brothel” should be “or”.]

3. (1) Any lease to let any house or place to be kept or used as a brothel shall be null and void.

(2) Any lease to let any house or place which subsequently to the making of such lease 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.

(3) 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 ejectment of any person who keeps or uses such house or place as a brothel and such magistrate shall be entitled after such enquiry as he may deem necessary or expedient to order the summary ejectment of such person.

Proceedings upon submission of statement that house or place is used as brothel

4. (1) When an affidavit or affidavits, as the case may be, is submitted to a magistrate by any police officer of or above the rank of sergeant or by a social worker registered under section 33 of the National Welfare Act, 1965 Act 79 of 1965), or by not less than two persons of good repute being the occupiers of different houses in the vicinity concerned wherefrom it appears that a house or place is being kept or used or is presumable being kept or used as a brothel, such magistrate may -

[The citation “Act 79 of 1965” is missing an opening bracket. Section 33 of the National Welfare Act 79 of 1965 is no longer in force; social workers are now registered under the Social Work and Psychology Act 6 of 2004.]

- (a) issue a warrant for the arrest of the person alleged to be the keeper of such brothel; or
- (b) issue a warrant authorising a police officer of or above the rank of sergeant to enter, at any time within such period as shall be stated in such warrant, such house or place -
 - (i) to ascertain the name and identity of the keeper or user of such house or place;

Combating of Immoral Practices Act 21 of 1980

- (ii) to interrogate and demand the name and address of any person found in such house or upon such place;
- (iii) to demand, to search for and to seize any account book, receipt, paper, document or thing likely to afford evidence of the commission by any person of an offence in terms of this Act; and
- (iv) to make any further investigation as he may deem necessary in connection with the commission of an offence in terms of this Act.

(2) Any person found in such house or upon such place who, when called upon to do so by the police referred to in subsection (1)(b), refuses or fails to furnish his name or address or furnishes a name or address which is false or misleading in any material respect, or refuses or fails to disclose the name or identity of the keeper or user of such house or place or to produce or hand over any account book, receipt, paper, document or thing which he has in his possession or custody or under his control or to render such police officer such other assistance as such police officer may demand from him in connection with any investigation referred to in subsection (1)(b)(iv), shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months.

(3) The issue of a warrant under paragraph (b) of subsection (1) shall not in any way affect the power of a magistrate to issue, at any time, a warrant under paragraph (a) of the said subsection (1) or under any other law.

Procurement

5. Any person who -
- (a) procure 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 unlawful carnal intercourse; or
 - (b) inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or conceals any female so inveigled or enticed in a brothel; or
 - (c) procures or attempts to procure any female to become a prostitute; or
 - (d) procures or attempts to procure any female to become an inmate of a brothel; or
 - (e) 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 any person other than the procurer to have unlawful carnal intercourse with such female, shall be guilty of an offence

and liable on conviction to imprisonment for a period not exceeding five years.

[The closing words of this section are placed above as shown in the *Official Gazette*. However, it appears that the phrase "shall be guilty of an offence" should be part of the closing phrase at the left margin, preceding the words "and liable on conviction to imprisonment for a period not exceeding five years" – as in sections 7, 10 and 13 below.]

Assistance for purposes of unlawful carnal intercourse

6. Any person who, with intent that any male may have unlawful carnal intercourse with a female, whether a particular female or not, performs any act or does anything or furnishes

Combating of Immoral Practices Act 21 of 1980

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 and liable on conviction to imprisonment for a period not exceeding five years.

Enticing to commission of immoral acts

7. Any person who -
- (a) in any public street or place entices, solicits or importunes or makes any proposals to any other person for immoral purposes;
 - (b) wilfully and openly exhibits himself 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 and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Committing of immoral acts

8. Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Permitting of offence in terms of this Act by owner or occupier of premises

9. Any person who is the owner or occupier of any house or place or has or acts or assists in the management or control thereof, knowingly permits the use of such house or place for the purpose of committing any offence in terms of any provision of this Act, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years or to such imprisonment and to a fine not exceeding one thousand rand.

Living on earnings of prostitution and assistance in relation to commission of immoral acts

10. Any person who -
- (a) knowingly lives wholly or in part on the earnings of prostitution; or
 - (b) in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any immoral act with another person,

shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Warrant to search house or place used for prostitution and to arrest persons living on earnings of prostitution

11. When it appears to any magistrate on sworn information 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 earnings of prostitution,

Combating of Immoral Practices Act 21 of 1980

the magistrate may issue a warrant authorizing any police officer of or above the rank of sergeant to enter and search the house and to arrest that person.

Presumptions

~~12. (1) When in any prosecution in terms of this Act the question arises whether any carnal intercourse between a male and a female was unlawful, such intercourse shall be presumed, until the contrary is proved, to have been unlawful carnal intercourse.~~

**[Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC)
declares subsection (1) "unconstitutional and of no force or effect".]**

~~(2) When in any prosecution in terms of this Act a person is proved to live in a brothel or to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, it shall be presumed, until the contrary is proved, that such person lives wholly or in part on the earnings of prostitution.~~

**[Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC)
declares subsection (2) "unconstitutional and of no force or effect".]**

(3) When in any prosecution in terms of section 6 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 in respect of whom the accused had reason to suspect to be a prostitute, it shall be presumed, until the contrary is proved, that the accused have performed such act or have done such thing or have furnished such information, as the case may be, with intent to enable such male to have unlawful carnal intercourse with such female.

Detention for purposes or unlawful carnal intercourse

13. (1) Any person who -

- (a) takes any female to any house or place or detains her there against her will so that any male, whether a particular male or not, may have unlawful carnal intercourse with her; or
- (b) takes any female to a brothel or detains her there against her will,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years.

(2) When in any prosecution in terms of subsection (1) it is proved that a female was in any house or at any place so that any male, whether a particular male or not, could have unlawful carnal intercourse with her, or was in any brothel, it shall be deemed that she was taken or detained there against her will -

- (a) if she is under the age of sixteen years; or
- (b) if she is sixteen years or older but under the age of twenty-one years, and was taken thereto or is detained therein against her will or against the will of her father or mother or any person having the lawful care or charge of her.

Sexual offences with youths

14. Any person who -

Combating of Immoral Practices Act 21 of 1980

- (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),

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.

[section 14 substituted by Act 7 of 2000]

Sexual offences with female idiots or imbeciles

15. 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 such female was an idiot or imbecile, be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six years with or without a fine not exceeding three thousand rand in addition to such imprisonment.

Use of certain means to stupefy or overpower female for immoral purposes

16. Any person who applies, administers to, forces or causes a female or a person who has not attained the age of 18 years to take any drug, intoxicating liquor, matter or substance or administers such drug, liquor, matter or substance to such female or person with intent to stupefy or overpower that female or person to enable him or her or a third party to engage in sexual conduct with that female or person, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

[substituted with amendment markings by Act 3 of 2015;
the amendment markings are not entirely accurate]

Manufacture, sale or supply of article intended to be used to perform unnatural sexual act

17. (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 and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.~~

[*Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others* 1998 NR 96 (HC) held that subsection (1) "is so vague in its scope and application that it does not constitute

Combating of Immoral Practices Act 21 of 1980

a reasonable limitation of the applicants' freedom to carry on any trade or business required by art 21(2) and that it is for that reason unconstitutional".]

(2) For the purposes of subsection (1) "sell" includes to offer for sale, to keep for sale or to keep in a place where goods are sold or are offered or kept for sale.

Repeal of laws

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

Short title

19. This Act shall be called the Combating of Immoral Practices Act, 1980.

SCHEDULE

No. and year of law	Short title	Extent of repeal
Proclamation 27 of 1920	Police Offences Proclamation, 1920	Section 6
Proclamation 28 of 1921	Girls' and Mentally Defective Women's Protection Proclamation, 1921	The whole
Ordinance 15 of 1962	Police Offences Proclamation Amendment Ordinance, 1962	Section 4
Ordinance 18 of 1962	Girls' and Mentally Defective Women's Protection Proclamation Amendment Ordinance, 1962	The whole