

CRIMINAL LAW AND PROCEDURE

Police Offences Proclamation 27 of 1920

Summary: This Proclamation ([OG 33](#)) criminalises a miscellany of activities, primarily nuisances such as littering and swearing. One of the provisions cited in post-independence cases (section 9(1)) makes it a crime to possess housebreaking implements without lawful excuse.

Amendments: This Proclamation is amended by Ord. 3/1962 ([OG 2390](#)), Ord. 15/1962 ([OG 2409](#)), the *RSA Prohibition of Disguises Act 16 of 1969* ([RSA GG 2316](#)) and Act 21/1980 ([OG 4310](#)).

The Proclamation was applied to the Rehoboth Gebiet in modified form by Proc. 5/1937 ([OG 702](#)).

Regulations: The Proclamation makes no provision for regulations.

Cases: *S v Boois*; *S v Thomas* 1991 NR 455 (HC) (accused found not guilty of charge of riotous behaviour under this Proclamation); *S v Kamudulunge* 2007 (2) NR 608 (HC) (competent sentence for contravention of section 9(1)); *S v Nangaku & Another* 2014 (2) NR 369 (HC) (competent sentence for contravention of section 9(1)).

Finance and Audit Ordinance 1 of 1926, section 24D

Summary: Only section 24D of this Ordinance ([OG 208](#)) remains in force. This section provides that the government may pay a reward to informers whose information assists in law enforcement relating to illegal dealing in precious stones or metals. The section in question was inserted by Ord. 42 of 1952, where it was originally numbered 24*bis*. It was amended and renumbered as 24D by Ord. 28/1969 ([OG 3011](#)). The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](#)).

Amendments: The State Finance Act 1 of 1982 ([OG 4610](#)) (which was repealed by the State Finance Act 31 of 1991 ([GG 333](#))) repeals all of the Ordinance *except* sections 24D and 26A. The Tender Board of Namibia Act 16 of 1996 ([GG 1380](#)) repeals section 26A, leaving only section 24D in force.

Section 24D was inserted by Ord. 42/1952 ([OG 1732](#)), where it was originally numbered 24*bis*. It was amended and renumbered as 24D by Ord. 28/1969 ([OG 3011](#)).

Regulations: Section 24D makes no provision for regulations.

Witchcraft Suppression Proclamation 27 of 1933

Summary: This Proclamation ([OG 538](#)) attempts to suppress witchcraft by criminalising various activities.

Amendments: The Proclamation was extended to the Rehoboth Gebiet by Proc. 12/1936 ([OG 668](#)).

Regulations: The Proclamation makes no provision for regulations.

Cases: The reference to whipping in section 1 is invalidated by *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State* 1991 NR 178 (SC), even though this Proclamation is not specifically mentioned. That case made the following order: “It is declared that the imposition of

any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with Article 8 of the Namibian Constitution.”

General Law Amendment Ordinance 12 of 1956, sections 6-8

Summary: Sections 6-8 of this Ordinance ([OG 2018](#)) deal with stolen goods. (Section 4 of this Ordinance is discussed under ARMS AND AMMUNITION, and section 5 is discussed under INHERITANCE.)

Amendments: This portion of the Act is amended by Ord. 36/1965 ([OG 2642](#)).

Regulations: There is no provision for regulations in these sections.

Cases:

S v Kakulu 1990 NR 282 (HC)

S v Thomas 1990 NR 352 (HC)

S v Kamati 1991 NR 116 (HC)

S v Shikwetepo & Another 1993 NR 356 (HC)

S v Greenwood 1994 NR 1 (HC)

S v David 1994 NR 39 (HC)

S v Kapolo 1995 NR 129 (HC)

S v Gaogoseb 1995 NR 165 (HC)

S v Abraham 1997 NR 59 (HC)

S v Nakapela & Another 1997 NR 184 (HC)

S v Aixas & Another 2007 (1) NR 46 (HC)

S v Silas 2013 (3) NR 760 (HC) (correct formulation of charge)

Gomes v Prosecutor-General [2013] NAHCMD 240 (struck down the phrase “*proof of which shall be on such first-mentioned person*” in section 7(1), but was reversed on appeal in *Prosecutor-General of the Republic of Namibia v Gomes & Others* 2015 (4) NR 1035 (SC), with the effect that section 7(1) remains as it stands in the Ordinance).

Riotous Assemblies Act 17 of 1956, sections 16-18 and 19A-21, as amended in South Africa to November 1979

Summary: Most of this Act ([SA GG 5651](#)) was repealed in respect of South West Africa. The remaining sections address power to regulate the transportation of explosives and the criminal offences of incitement to public violence, conspiracy, attempted crimes, and inducement to commit crimes.

Applicability to SWA: Section 19A, inserted by Act 79 of 1976, with effect from 16 June 1976, states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended.

After the date of transfer, much of the Act was repealed by the *Intimidation Act 72 of 1982*, which was made applicable to SWA by virtue of the Security Matters Proclamation, AG 29 of 1985 ([OG 5059](#)). Other portions of the Act were repealed in South Africa by the *Internal Security Act 74 of 1982* ([RSA GG 8232](#)), which was not applicable to SWA. Therefore the Act applied to South West Africa as it stood after *Act 72 of 1982*, but before *Act 74 of 1982*.

In support of this interpretation, see *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A):

On appeal before us Mr. Gauntlett, for the appellant, accepted the Court's finding that section 29 of the General Law Amendment Act [101 of 1969] applied in South West Africa, but that the Internal Security Act [74 of 1982] did not. I agree with this. Section 29(3) of the General Law Amendment Act specifically provides that the provisions of section 29 and any amendment thereof apply also in the territory of South West Africa. No corresponding provision is found in the Internal Security Act. And it is noteworthy that sub-sections 66(1) and (2) of the Internal Security Act correspond almost word for word with sub-sections 29(1) and (2) of the General Law Amendment Act (as substituted by section 25 of the General Law Amendment Act, no. 102 of 1972) save that the latter contain a reference to South West Africa whereas the former do not. The meaning and effect of this reference will be considered later, but its absence from section 66 of the Internal Security Act is a further indication that the latter act was not intended to apply in South West Africa.

Section 3(1)(f) of the transfer proclamation excluded the term "Republic" from the provisions of section 3(1)(c) of the General Proclamation *except* where it occurs for the second and third times in section 5 of the Act. Thus, in the remainder of the Act, "Republic" continued to refer only to South Africa even after the transfer.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Unlawful Organisations Act 34 of 1960* ([SA GG 6413](#))
- *General Law Amendment Act 39 of 1961* ([SA GG 6692](#))
- *General Law Amendment Act 76 of 1962* ([RSA GG 273](#))
- *Riotous Assemblies Amendment Act 30 of 1974* ([RSA GG 3221](#)).

However, the first three of these four amending Acts applied only to sections of the Act that have since been repealed. The Act was further amended and made applicable to SWA by the *Internal Security Amendment Act 79 of 1976* ([RSA GG 5159](#)).

The Riotous Assemblies Amendment Proclamation (AG 10/1977) ([OG 3665](#)) repeals sections 4 and 19 and amends sections 1, 2, 3 and 7 (all now repealed).

After the date of transfer, the Act was amended by the *Intimidation Act 72 of 1982*, which was made applicable to SWA by virtue of the Security Matters Proclamation, AG 29 of 1985 ([OG 5059](#)) and which repealed sections 10-15.

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) ([OG 5726](#)) repeals sections 2, 6 and 7(1)(a), amends section 4 (which had already been repealed by AG 10/1977) ([OG 3665](#)), and amends sections 5 and 7(1)(b) (both now repealed).

The Public Gatherings Proclamation (AG 23/1989) ([OG 5756](#)) repeals sections 1, 3, 5, 7, 8 and 9.

Thus, the only remaining sections of the Act are sections 16, 17, 18, 19A, 20 and 21.

Regulations: There is no provision for regulations in the sections of the Act that remain in force.

Cases:

S v Campbell & Others 1990 NR 310 (HC); *Awaseb, Geinub, Lange v S*, High Court, Case No. CA 46/2003 (unreported)

S v Gariseb 2019 (2) NR 334 (SC) (section 18 applied to charge of rape under Combating of Rape Act 8 of 2000)

S v Jonas 2019 (4) NR 924 (HC) (if attempted rape had been proved, conviction would have had to be under section 18(1) of this Act and not the Combating of Rape Act 8 of 2000).

General Law Amendment Ordinance 13 of 1962, section 9

Summary: Section 9 of this Ordinance ([OG 2409](#)) sets forth the criminal offences of attempt, conspiracy and inducing another to commit an offence.

Regulations: There is no provision in this section for regulations.

Criminal Procedure Ordinance 34 of 1963, sections 300(3) and 370

Summary: Only sections 300(3) and 370 of this Ordinance ([OG 2504](#)) are still in force. Section 300(3) concerns the criminal offence of perjury. Section 370 deals with peace bonds. (These sections are the South West African counterparts of sections 319(3) and 384 of the *Criminal Procedure Act 56 of 1955* which applied to South Africa.) The other sections of the Ordinance have been repealed by the *Criminal Procedure Act 51 of 1977*.

Regulations: There is no provision for regulations in the surviving sections.

Cases: *S v Somses* 1999 NR 296 (HC) (section 300(3)); *S. v Gariseb* 2002 NR 112 (HC) (section 300(3)).

Prohibition of Disguises Act 16 of 1969, as amended in South Africa prior to Namibian independence

Summary: This Act ([RSA GG 2316](#)) sets forth penalties for being in disguise in suspicious circumstances.

Applicability to SWA: Section 3 states “This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and defined in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No. 147 of 1939 of the Republic).”

Transfer of administration to SWA: It is not clear what transfer proclamation, if any, applied to this Act. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Criminal Procedure Act 51 of 1977, as amended in South Africa to November 1979

Summary: This Act ([RSA GG 5532](#)) governs procedure in criminal proceedings. It was brought into force in both South Africa and South West Africa on 22 July 1977 by RSA Proc. R.148/1977 ([RSA GG 5654](#)). It was applied to Rehoboth insofar as it relates to matters which fell under the Legislative Authority of Rehoboth by the Criminal Procedure Act 3 of 1982 (Rehoboth) ([Official Gazette 70 of Rehoboth](#), dated 11 March 1983).

Repeals: The Act repeals the following laws in respect of SWA:

- Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920 ([OG 33](#)), in so far as it relates to the attendance by witnesses of criminal proceedings in courts in the Republic
- Criminal Procedure and Evidence Proclamation 30 of 1935 ([OG 649](#)), in so far as it applies to the Eastern Caprivi Zipfel
- Criminal Procedure Ordinance 34 of 1963 ([OG 2504](#)) and its amendments, except sections 300(3) and 370 (see the listing above in this section).

The Criminal Procedure Ordinance 34 of 1963 had already repealed the Criminal Procedure and Evidence Proclamation 30 of 1935 in general (without reference to the Eastern Caprivi Zipfel) and the Special Justice of the Peace Proclamation 25 of 1921. The Criminal Procedure and Evidence Proclamation 30 of 1935 repealed the Criminal Procedure and Evidence Proclamation 20 of 1919 ([OG 25](#)).

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. “State”, in relation to a department of State, is defined to include “the Administration of the territory”. Section 343 states “This Act shall apply also in the territory, including the Eastern Caprivi Zipfel.”

The wording of section 343 did not make amendments to the Act in South Africa automatically applicable to SWA. None of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to SWA, but they were probably applicable by virtue of the definition of “Republic” in section 1 of the Act where they were made prior to the date of transfer.

This would mean that the South African *Criminal Procedure Matters Amendment Act 79 of 1978* (which was published and came into force on 2 June 1978 and amends section 185), and *Criminal Procedure Amendment Act 56 of 1979* (which was published and came into force on 1 June 1979 and amends sections 50, 60, 75, 119, 121, 123, 124, 144, 170, 212, 217, 296, 300, 307 and Schedule 3, and inserts section 115A, Chapter 19A and section 219A) were applicable to SWA. Note that the South West African Criminal Procedure Matters Act 31 of 1985 refers to previous amendments by the *Criminal Procedure Amendment Act 56 of 1979*, lending further support to this conclusion.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. Both of the amending Acts cited above came into force before this date.

Section 3(1)(t) of the transfer proclamation (as amended) excluded the following provisions of the principal Act from the operation of section 3(1) of the General Proclamation:

- sections 77, 78 and 79 (except 79(11)): These provisions concern the capacity of the accused to understand proceedings, *i.e.* mental illness and criminal responsibility. (Section 79(11) concerns the tariff used to compensate a court psychiatrist. It is *not* excluded from the operation of section 3(1), meaning that here “Minister” was interpreted to mean Administrator-General.)
- section 106(1)(e): Under this provision, an accused may plead that he has received a free pardon from the State President under section 327(b), which is similarly excluded from the operation of section 3(1).
- section 111: This section allows the Minister to remove trials to the jurisdiction of another attorney-general.
- section 279(1)(b), (2) and (3): These provisions deal with the commutation of death sentences by the State President.
- section 323: This section concerns the ability of the Minister of Justice to refer a case where the death sentence has been imposed to the Appellate Division for consideration.
- section 325: This section concerns the State President’s power to extend mercy to any person.
- section 327: This section concerns the State President’s power to issue a pardon or substitute a verdict of the court.
- section 333: Under this provision, the Minister of Justice may refer questions to the Appellate Division on a question of law.

These powers were not transferred to the Administrator-General.

Section 3(1)(t) of the transfer proclamation also exempted the following sections from the operation of section 3(1)(c) of the General Proclamation (concerning the interpretation of the term “Republic”):

- section 3: This section establishes the Attorney-General as the prosecuting authority for the State.

section 212(4)(a): This section deals with proof of certain facts by affidavit or certificate.
section 229: This section deals with evidence of times of sunrise and sunset. ("Republic" is excluded from the operation of section 3(1)(c) only the first time it occurs here.)
section 328: This section concerns the enforceability of warrants, subpoenas, summons, etc. executed within the Republic.

Thus, "Republic" in the indicated places in these provisions retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(1)(t) of the transfer proclamation also excluded from the operation of section 3(1) of the General Proclamation all references to the "State," in relation to the authority to institute and conduct a prosecution and to make seizures.

Section 3(2)(b) of the transfer proclamation provides that the reference to the State President in section 117 of the Act "shall be construed as including a reference to the Administrator-General".

Section 1(2) of AG Proc. 24/1983 ([OG 4854](#)), which amends the transfer proclamation, states: "In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation), in respect of section 3 of the Criminal Procedure Act, 1977 (Act 51 of 1977), this proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to section 3 of the said Criminal Procedure Act, 1977."

Section 2 of AG Proc. 24/1983 ([OG 4854](#)) states: "In the application of the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), section 3 thereof shall be deemed to be amended by the substitution for the words "public service", wherever they occur, of the expression "government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980)."

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Assignment of powers: GN 55/1987 ([OG 5348](#)) contains an assignment of powers in the Act to the Minister of Justice –

Sections 3(4), 70, 79(11)(b), 145(5), 148(3)(c) and 233(2) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Criminal Procedure Matters Amendment Act 79 of 1978* ([RSA GG 6041](#))
- *Criminal Procedure Amendment Act 56 of 1979* ([RSA GG 6476](#))

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978, amends certain terminology.

The Criminal Procedure Amendment Act 15 of 1981 ([OG 4566](#)), which is brought into force by AG 31/1981 ([OG 4577](#)), amends sections 114 and 116.

The Appeals Amendment Act 29 of 1985 ([OG 5149](#)), which is brought into force by AG 19/1986 ([OG 5182](#)), amends sections 315-319 and 323.

The Criminal Procedure Matters Act 31 of 1985 ([OG 5151](#)), amends the Act substantially (affecting sections 24, 37, 42, 55, 56, 57, 60, 68A, 112, 119, 121, 145, 146, 169, 170, 188, 262, 296, 297, 300, 302, 307, Schedule 2 (Part II)).

The Criminal Procedure Amendment Act 5 of 1991 ([GG 215](#)) amends several provisions relating to bail (sections 59, 60, 61, 68, 72, 307 and Schedule 2).

The Criminal Procedure Amendment Act 26 of 1993 ([GG 755](#)) amends the Act to allow appeals by either party to the High Court and the Supreme Court (sections 310, 311, 316, 316A, 320, 321, 322).

The Combating of Rape Act 8 of 2000 ([GG 2326](#)), which was brought into force on 15 June 2000 (GN 140/2000, [GG 2348](#)), amends sections 1, 62, 153, 154 and 227 of the Act, and inserts sections 60A, 211A and 227A.

The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)), brought into force on 15 September 2001 by GN 185/2001 ([GG 2614](#)), amends section 171 and substitutes sections 172 and 173.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

The Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) substitutes section 315 and amends section 316.

The Combating of Domestic Violence Act 4 of 2003 ([GG 3002](#)), which was brought into force on 17 November 2003 by GN 234/2003 ([GG 3094](#)), amends sections 60A, 62 and 153.

The Maintenance Act 9 of 2003 ([GG 3043](#)), which was brought into force on 17 November 2003 by GN 232/2003 ([GG 3093](#)), amends section 195.

The Criminal Procedure Amendment Act 24 of 2003 ([GG 3123](#)) inserts sections 158A and 216A and amends sections 164, 166 and 212 (dealing with vulnerable witnesses and related matters).

The Criminal Procedure Amendment Act 13 of 2010 ([GG 4554](#)) amends sections 55-57, 72, 74 112, 170 and Schedule 2, substitutes sections 185 and 338, and inserts section 57A.

The Act is amended with respect to the use of various terms and cross-references by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Note: *S v Malumo & Others* 2010 (1) NR 35 (HC) states the following at para 2 in respect of section 217(1)(a): “[NB: Para (a) has been substituted by s 11 of the Criminal Procedure Amendment Act 86 of 1996, a provision which will be put into operation by proclamation.]” However, there was no such amending Act in Namibia. It appears that the quoted provision erroneously refers to the South African version of the Criminal Procedure Act, as there is a Criminal Procedure Amendment Act 86 of 1996 in South Africa which substitutes section 217(1)(a) in the South African Criminal Procedure Act 51 of 1977.

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which was brought into force on 30 January 2019 by GN 4/2019 ([GG 6829](#)), amends section 1 (to add a definition of “probation officer”), repeals sections 292, 293 and 294 and removes the words “or a whipping” from section 290(2).

Act 7/2023 ([GG 8140](#)) amends section 205 and inserts several new sections pertaining to police powers to obtain information; search and seizure of information, documents and electronic records; the use of audio-visual links or similar electronic transmissions in criminal cases; the application of certain provisions of the Electronic Transactions Act 4 of 2019 relating to data messages and computer evidence to criminal proceedings; and evidence obtained via police traps and undercover operations. This amending act was brought into force on 25 July 2023 by GN 224/2023 ([GG 8153](#)), *with the exception of* sections 158B, 159A, 159B, 159C, 159D and 250A, which are not yet in force.

The Witness Protection Act 11 of 2017 ([GG 6451](#)), which was brought into force on 20 October 2023 by GN 340/2023 ([GG 8239](#)), amends section 158A and repeals section 185.

The Combating of Rape Amendment Act 4 of 2022 ([GG 7932](#)), which has not yet been brought into force, amends sections 60A, 62 and 164.

The Combating of Domestic Violence Amendment Act 6 of 2022 ([GG 7964](#)), which has not yet been brought into force, amends sections 153 and 158A.

Note that there are two versions of GG 7964; the incorrect one misnumbers the amending Act as Act 5 of 2022 but the text is otherwise identical.

Note that Article 141(2) of the Namibian Constitution provides: “Any reference to the Attorney-General in legislation in force immediately prior to the date of Independence shall be deemed to be a reference to the Prosecutor-General, who shall exercise his or her functions in accordance with this Constitution.”

Savings: Section 344(2) of the Act contains a savings clause:

Any regulation, rule, notice, approval, authority, return, certificate, document, direction or appointment made, issued, given or granted, and any other act done under any provision of any law repealed by this Act shall, subject to the provisions of subsection (3), be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act.

The repealed Criminal Procedure Ordinance 34 of 1963 ([OG 2504](#)) also contained a savings clause in section 377(2):

Any proclamation, regulation, notice, approval, authority, return certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

The repealed Criminal Procedure and Evidence Proclamation 30 of 1935 ([OG 649](#)) contained a savings clause in section 213(4) in respect of the Criminal Procedure and Evidence Proclamation 20 of 1919 ([OG 25](#)), which it repealed:

The tariffs in force in the Territory at the commencement of this Proclamation shall, however, continued [sic] to be in force, until they are repealed, or any new tariff is prescribed under this section.

This reference to tariffs concerns witness tariffs. However, subsequent enactments on payments to witnesses have been issued, which makes this savings clause irrelevant at this stage.

The Witness Protection Act 11 of 2017 ([GG 6451](#)), which was brought into force on 20 October 2023 by GN 340/2023 ([GG 8239](#)) and which repeals section 185 of the Act, contains the following savings provisions in section 84(2):

Despite the repeal of section 185 of the Criminal Procedure Act, 1977 -

- (a) any person who has been placed under protection under the said section immediately before the commencement of this Act, remains under such placement and is deemed to have been placed under protection in terms of this Act; and
- (b) any regulation made under the said section and in force immediately prior to the commencement of this Act remains in force, except in so far as it is inconsistent with this Act, until replaced by or in terms of a regulation made under section 81.

Regulations: Regulations are authorised under the current Act by sections 185(3), 191(3) and 212(7A)(b).

Pre-independence **regulations on allowances payable to witnesses in criminal cases**, made in terms of section 191(3) of the current Act, are contained in RSA GN R.653/1980 ([RSA GG 6896](#)), as amended with effect from 1 April 1987 by SWA GN 34/1987 ([OG 5330](#)). These 1980 RSA regulations were enacted after the date of transfer (12 November 1979), but they explicitly state that they were made with the consent of the Administrator-General of SWA and shall also apply in SWA.

No other regulations which could be applicable to Namibia by virtue of the chain of savings clauses have been located. The only other pre-independence regulations located were made under the SA Criminal Procedure Act 56 of 1955, which was never applicable to SWA, and are thus irrelevant to Namibia.

No regulations have been issued under this Act since independence.

Rules: Rules made in terms of section 376(1) of the Criminal Procedure Ordinance 34 of 1963 ([OG 2504](#))⁹² are contained in GN 133/1965 ([OG 2651](#)), as corrected by GN 167/1965 ([OG 2658](#)). These rules appear to survive in terms of the chain of savings clauses. They are not included in the database, which currently covers only regulations, and not rules.

Peace officers: Persons are declared to be peace officers in RSA GN R.159/1979 ([RSA GG 6295](#)), AG GN 85/1989 ([OG 2530](#)), GN 92/2001 ([GG 2530](#)) – which is amended by GN 241/2003 ([GG 3102](#)) – and GN 74/2003 ([GG 2946](#)).⁹³

Road inspectors referred to in section 11 of the *Road Transportation Act 74 of 1977* (now replaced by the Road Traffic and Transport Act 22 of 1999 except insofar as it relates to passenger transport) are declared to be peace officers in terms of certain offences relating to road transportation in GN 219/1996 ([GG 1395](#)) and in GN 92/2001 ([GG 2530](#)).

Traffic officers appointed under section 11(1)(d) of the Road Traffic and Transport Act 22 of 1999 are declared to be peace officers in respect of certain offences in GN 206/2008 ([GG 4113](#)), as amended by GN 243/2014 ([GG 5624](#)).

Fisheries inspectors designated in terms of section 4 of the Marine Resources Act 27 of 2000 and inspectors designated under section 23 of the Inland Fisheries Resources Act 1 of 2003 are declared to be peace officers in respect of certain offences in GN 38/2014 ([GG 5438](#)).

Other notices: Compensation payable to assessors who are not in the full-time employment of the State is set by GN 271/2019 ([GG 7001](#)).

Fees: As noted above, a tariff of allowances payable to witnesses in criminal cases, in the form of regulations made in terms of section 191(3) of the Act, is contained in RSA GN R.653/1980 ([RSA GG 6896](#)), as amended with effect from April 1987 by SWA GN 34/1987 ([OG 5330](#)).⁹⁴

Fees payable to psychiatrists in terms of section 79(11) of the Act are contained in RSA GN R.1315/1980 ([RSA GG 7097](#)), as amended with effect from April 1987 by SWA GN 35/1987 ([OG 5330](#)).

These 1980 RSA notices on tariffs were enacted after the date of transfer (12 November 1979), but both explicitly state that they were made with the consent of the Administrator-General of SWA and shall also apply in SWA.

Application of law: The Police Amendment Proclamation (AG 21/1983) affects the application of section 20.

The Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended by AG 24/1983, affects the application of section 3.

Section 4 of the Protection of Fundamental Rights Act 16 of 1988 provides that the provisions of the Criminal Procedure Act 51 of 1977 shall apply in relation to the entering and searching of premises or the search, arrest and detention of persons under that section, and that any member of the South African Defence Force will be considered a peace officer under the Criminal Procedure Act for that purpose.

⁹² “The Administrator may make rules prescribing forms of complaint, summons, charges, depositions, indictments, judgments, records, convictions, warrants and recognizances and other forms to be used in any court or which may be prescribed.”

⁹³ AG 85/1989 ([OG 5818](#)) also contains a declaration of peace officers, but only with reference to an Act that is no longer in force (Conditions of Employment Act 12 of 1986).

⁹⁴ In South Africa, RSA GN R.653/1980 was repealed prior to Namibian independence by RSA GN R.526/1986 ([RSA GG 10152](#)), but this enactment was not made applicable to South West Africa.

Note that *S v Coetzee* 2011 (1) NR 359 (HC) emphasises that a record of criminal proceedings in a magistrate's court must be prepared in accordance with Chap XIII of the "Codified Instructions: Clerk of the Criminal Court" issued by the Permanent Secretary for Justice (Permanent Secretary's Administrative Circular dated 12 May 2008 re: 'Amendment of Codified Jurisdictions Justice Code: Clerk of Criminal Court', updated 19 March 2008).

Cases:

section 2:

S v NV 2017 (3) NR 700 (HC)

section 3:

Ex Parte Attorney-General In Re: The Constitutional Relationship Between the Attorney-General and the Prosecutor-General 1998 NR 282 (SC) (section 3(5) is inconsistent with the Namibian Constitution; it is superseded by Articles 87-88 of the Constitution and thus inapplicable to the relationship between the Attorney-General and the Prosecutor-General)

section 6:

S v Hausiko 1992 NR 225 (HC)

S v Fourie 2014 (4) NR 966 (HC)

Prosecutor-General of Namibia v Namoloh & Others 2020 (3) NR 839 (SC) (withdrawal under section 6(a) does not entitle accused to acquittal or impose obligation to reinstate a prosecution, and is thus not "provisional"; the person in question is no longer an "accused" under article 12(10(b) of the Constitution and is free of criminal accusation; once a charge is withdrawn under this provision, there is nothing to "stay")

Kamwi v Prosecutor-General of Namibia & Another 2021 (2) NR 477 (HC) (withdrawal under section 6(a) is provisional and not final, and applicant did not prove exceptional circumstances to justify a permanent stay of prosecution, citing test in *S v Myburgh* 2008 (2) NR 592 (SC))

section 10:

S. v Noble 2002 NR 67 (HC)

section 20:

Samco Import & Export CC & Another v Magistrate of Eenhana & Others 2009 (1) NR 290 (HC)

S v Thomas & Others 2007 (1) NR 365 (HC) (section 20 applied)

section 21:

S v Diergaardt 2000 NR 78 (HC)

Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC)

Samco Import & Export CC & Another v Magistrate of Eenhana & Others 2009 (1) NR 290 (HC)

section 22:

S v Diergaardt 2000 NR 78 (HC)

S v Thomas & Others 2007 (1) NR 365 (HC) (section 22 applied)

section 34:

S v Roux 2014 (3) NR 816 (HC)

Prosecutor-General v Miguel & Others 2017 (2) NR 381 (HC) (section 34(4) discussed at paras 23-25)

section 35:

Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)

S v Litombo 2010 (2) NR 473 (HC)

S v Candimba & Others 2013 (1) NR 70 (HC)

S v Roux 2014 (3) NR 816 (HC)

S v Miguel & Others 2018 (4) NR 946 (HC) (section 35(1))

section 37:

S v Ndikwetepo & Others 1992 NR 232 (SC)

S v Eigowab 1994 NR 192 (HC) (blood sample for blood alcohol test)

S v Malumo & Others 2006 (2) NR 629 (HC)

- S v Gomeb & Others* 2015 (4) NR 1100 (HC) (no order to draw blood samples where this would serve no purpose)
- S v Gemeng & Others* 2018 (3) NR 701 (HC) (section 37(3) covers buccal swabs for DNA testing; this is not self-incrimination since results may exonerate or incriminate accused)
- section 39:
- S v Boois; S v Thomas* 1991 NR 455 (HC)
- S v Araeb* 2006 (2) NR 569 (HC) (law on arrest discussed in connection with charge of escape from lawful custody)
- S v Ashimbanga* 2014 (1) NR 242 (HC) (law on arrest discussed in connection with charge of escape from lawful custody)
- Sheefeni v Council of the Municipality of Windhoek* 2015 (4) NR 1170 (HC)
- section 40:
- De Jager v Government of the Republic of Namibia & Another* 2006 (1) NR 198 (HC)
- S v Kazondandona* 2007 (2) NR 394 (HC)
- McNab & Others v Minister of Home Affairs & Others* 2007 (2) NR 531 (HC)
- Tjipepa v Minister of Safety and Security & Others* 2015 (4) NR 1133 (HC) (section 40(1)(b))
- Government of the Republic of Namibia v Ndjembo* 2020 (4) NR 1193 (SC) (section 40(1)(b)) (investigation before arrest is desirable, but it is not prohibited to arrest a person for the purposes of conducting further investigations if the prerequisites in section 40(1)(b) are satisfied)
- section 42:
- S v Coetzee* 1993 NR 313 (HC)
- section 43:
- Swanepoel v Minister of Home Affairs & Others* 2000 NR 93 (HC)
- section 49:
- S v William* 1992 NR 268 (HC)
- S v Coetzee* 1993 NR 313 (HC)
- S v Mwinga & Others* 1995 NR 166 (SC)
- S v Johannes* 2009 (2) NR 579 (HC)
- S v Ndamwoongela* 2018 (2) NR 422 (HC)
- section 50:
- S v Mbahapa* 1991 NR 274 (HC)
- Garces v Fouche & Others* 1997 NR 278 (HC)
- Minister of Home Affairs v Bauleth* 2004 NR 68 (HC)
- Getachew v Government of the Republic of Namibia* 2006 (2) NR 720 (HC), 2008 (1) NR 1 (SC)
- Gabriel v Minister of Safety and Security* 2010 (2) NR 648 (HC) (lawfulness or unlawfulness of original arrest is irrelevant to detention under section 50(1))
- Minister of Safety and Security v Kabotana* 2014 (2) NR 305 (SC) (right to be brought before court within 48 hours of arrest in terms of Art 11(3) of Constitution and section 50 of the Act)
- Tjipepa v Minister of Safety and Security & Others* 2015 (4) NR 1133 (HC)
- section 51:
- S v Matsuis* 1993 NR 234 (HC)
- S v Matthias* 1993 NR 420 (HC)
- section 60 (bail):
- S v Acheson* 1991 NR 1 (HC) (discussed in Nico Horn, "S v Acheson and Kleynhans: The First Test for Constitutionalism in Namibia", *UNAM Students Law Review*, Volume 1, No 1, 2013, available at www.unamlawreview.com)
- S v Aikela* 1992 NR 30 (HC)
- S v Du Plessis & Another* 1992 NR 74 (HC)
- S v Hendriks* 1992 NR 382 (HC)
- Garces v Fouche & Others* 1997 NR 278 (HC)
- S v Pineiro & Others* 1999 NR 18 (HC)
- S v Branco* 2002 (1) SACR 531 (W)

- S v Swartbooi* 2003 NR 143 (HC)
- S v Yugin & Others* 2005 NR 196 (HC)
- S v Dauseb* 2011 (1) NR 232 (HC) (placing onus on applicant to prove that he or she should be released on bail is not unconstitutional)
- S v Bayer* 2014 (2) NR 414 (HC)
- S v Moussa* 2015 (3) NR 800 (HC) (bail granted after accused in custody awaiting trial for seven years; long period of pre-trial incarceration violates constitutional rights in article 12(1); additional period in custody should have been treated as a “new fact” in most recent bail application)
- S v Barnard* 2019 (1) NR 78 (HC) (section 60 read with section 321 empowers High Court to consider bail application while criminal appeal is pending in Supreme Court)
- S v Shanghala & Others* 2022 (2) NR 536 (HC) (section 60 applied)
- section 61 (bail in respect of certain offences):
- S v Aikela* 1992 NR 30 (HC)
- S v Du Plessis & Another* 1992 NR 74 (HC)
- S v Pineiro & Others* 1999 NR 18 (HC)
- Gurirab v Government of The Republic of Namibia & Others* 2002 NR 114 (HC); 2006 (2) NR 485 (SC)
- S v Gaseb* 2007 (1) NR 310 (HC)
- S v Valombola* 2014 (4) NR 945 (HC)
- S v Miguel & Others* 2016 (3) NR 732 (HC) (meaning of “offence relating to the coinage”)
- S v Pienaar* 2017 (1) NR 149 (SC) (leave to appeal the High Court’s refusal to grant bail should have been denied because of lack of prospects of success; interests of justice in section 61 considered in light of high risk of abscondment militates against granting of bail in this case)
- S v Barnard* 2019 (1) NR 78 (HC)⁹⁵
- S v Gowaseb* 2019 (1) NR 110 (HC) (bail considered in context of prospects of success on appeal in application for condonation for late notice of appeal)
- S v Noble & Another* 2019 (2) NR 206 (HC) (consideration of bail in respect of charge of dealing in cocaine; application of the “interests of the public”; denial of bail on this basis is not an anticipatory punishment or a violation of principle of presumption of innocence)
- S v Ihambo* 2020 (3) NR 621 (HC)
- S v Queta* 2020 (3) NR 758 (HC) (permissible to utilise more than one ground in the refusal of bail)
- S v van Wyk* 2020 (4) NR 1022 (HC) (permissible to consider public interest as a general matter even when section 61 has no application as the offence is not covered by s section 61 - but unnecessary in this case given evidence of accused’s propensity to interfere with investigation and to commit further offences while out on warning; related to *Fishrot* matter)
- S v Gustavo* 2022 (3) NR 672 (HC) (bail granted in application premised on new facts; related to “Fishrot” matter); overturned on appeal in *S v Gustavo* 2022 (4) NR 1147 (SC) (section 61 read with section 65(4): judicial discretion was not properly exercised in granting bail; meaning of “interests of the public” in section 61 explicated in context of economic crimes and corruption)
- Nghipunya v Minister of Justice & Others* 2022 (4) NR 970 (HC) (re: bail in “Fishrot” matter, section 61 upheld against constitutional challenge; one dissenting judge was of the opinion that the words “in the interest of the public or the administration of justice” in section 61 are unconstitutionally vague)
- section 62:
- S v Aikela* 1992 NR 30 (HC)
- section 63:
- S v Aikela* 1992 NR 30 (HC)
- section 65:
- S v Du Plessis & Another* 1992 NR 74 (HC)

⁹⁵ Conviction and sentence were set aside on appeal in *Barnard v State* (SA 59-2018) [2020] NASC (7 May 2020).

- S v Timotheus* 1995 NR 109 (HC)
S v Gaseb 2007 (1) NR 310 (HC)
S v Valombola 2014 (4) NR 945 (HC)
S v Miguel & Others 2016 (3) NR 732 (HC) (section 65(4))
S v Ihambo 2020 (3) NR 621 (HC) (section 65(4))
S v Queta 2020 (3) NR 758 (HC) (section 65(4))
- section 67:
- S v Swartbooi* 1990 NR 389 (HC)
S v Lukume 2000 NR 115 (HC)
S v Muronga 2004 NR 134 (HC) (powers of magistrate where accused fails to appear after release on bail)
S v Paulus 2007 (2) NR 622 (HC) (no authority under this section to convict accused on bail who fails to appear in court of contempt of court)
- section 68:
- S v Aikela* 1992 NR 30 (HC)
- section 72:
- Minister of Home Affairs v Bauleth* 2004 NR 68 (HC)
- section 73:
- S v Mwambazi* 1991(2) SACR 149 (Nm)
S v Bruwer 1993(2) SACR 306 (Nm)
S v Lukas 1999 NR 394 (HC)
S v M 2006 (1) NR 156 (HC)
- section 74:
- S v Shivute & Several Other Cases* 1991 NR 433 (HC) at 439
S v Kilika & Others 1992 NR 25 (HC)
S v Lambert 1993 NR 303 (HC)
S v Lukas 1999 NR 394 (HC)
S v M 2006 (1) NR 156 (HC)
- section 77:
- S v Kleynhans* 1991 NR 22 (HC)
S v Samuel 1994 NR 51 (HC)
S v Amamub 2000 NR 207 (HC)
S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (noting that section 77(6) has been amended in South Africa by *RSA General Law Third Amendment Act 129 of 1993*, but that there is no similar amendment in Namibia)
- section 78:
- S v Shivute* 1991 NR 123 (HC)
S v Samuel 1994 NR 51 (HC)
S v Mika 2010 (2) NR 611 (HC)
S v Thomas & Another 2018 (1) NR 88 (HC) (wording of court order on evaluation under this section in context of findings in judgment does not support application for recusal)
- sections 77-78:
- S v Mika* 2010 (2) NR 611 (HC)
S v Munyama 2011 (1) NR 53 (HC) (discussed in *dicta* at 58C-F)
S v Malumo & 111 Others in re: Kamwanga 2012 (1) NR 104 (HC)
S v Tashiya 2013 (3) 637 (HC)
S v Ndengu 2014 (1) NR 42 (HC) (correct procedure for enquiry into mental capacity)
- sections 77-79:
- S v Ilukena* 2021 (3) NR 734 (SC) (procedure for referrals under these provisions)
- section 79:
- S v Hansen* 1994 NR 5 (HC)
S v Amamub 2000 NR 207 (HC)
S v Mika 2010 (2) NR 611 (HC)
S v Malumo & 111 Others in re: Kamwanga 2012 (1) NR 104 (HC)
S v Ndengu 2014 (1) NR 42 (HC) (correct procedure for enquiry into mental capacity)
S v Uirab 2016 (2) NR 543 (where accused faces serious charge which could result in a lengthy

- custodial sentence, court should exercise its discretion to require assessment of accused's mental state by two psychiatrists, as provided for in section 79(1)(b))
S v Thomas & Another 2016 (4) NR 1154 (HC) (report of clinical psychologist inadmissible under section 79; application of section 79)
- section 83:
S v Seibeb & Another; S v Eixab 1997 NR 254 (HC)
S v Gaseb & Others 2000 NR 139 (SC)
S v TN 2017 (4) NR 1069 (HC) (applying *Gaseb* tests)
S v Manale 2019 (1) NR 191 (HC)
- section 84:
S v Mariu 1991 NR 149 (HC)
S v Inatius; S v Shapanga & Two Others 1991 NR 261 (HC)
S v Nakare 1992 NR 99 (HC)
S v Ngono 2005 NR 34 (HC)
S v Katari 2006 (1) NR 205 (HC)
S v Aukemeb 2009 (1) NR 19 (HC)
S v Kapia & Others 2009 (1) NR 52 (HC)
S v PV 2016 (1) NR 77 (HC)
S v Nghixulifa & Others 2018 (4) NR 1027 (HC)
- section 85:
S v Loft-Eaton & Others (1) 1993 NR 370 (HC)
S v Ngono 2005 NR 34 (HC)
S v Kapia & Others 2009 (1) NR 52 (HC)
S v Conradie & Another 2016 (2) NR 438 (HC)
S v Nghixulifa & Others 2018 (4) NR 1027 (HC)
- section 86:
S v Claasen 1992 NR 98 (HC)
S v Petrus 1993 NR 215 (HC)
S v Kariko & Another 1998 NR 13 (HC)
- section 87:
S v Van Rooyen 1993 NR 235 (HC)
S v Kapia & Others 2009 (1) NR 52 (HC)
S v Nghixulifa & Others 2016 (2) NR 356 (HC)
- section 88:
S v Nakare 1992 NR 99 (HC)
S v Petrus 1993 NR 215 (HC)
- section 94:
S v Libongani 2015 (2) NR 555 (SC) (formulation of charge sheet when section 94 applies)
- section 105:
S v Uirab 1999 NR 327 (HC)
S v Makendano 2007 (1) NR 251 (HC)
- section 106:
S v Mushwena & Others 2004 NR 35 (HC), overruled by *S v Mushwena & Others* 2004 NR 276 (SC), which was reversed in part by *S v Likanyi* 2017 (3) NR 771 (SC); see also *S v Munuma & Others* 2016 (4) NR 954 (SC), *S v Munuma & Others* 2018 (2) NR 521 (HC) and *S v Lifumbela & Others* 2022 (1) NR 205 (SC) (paras 266-275)
S v Makendano 2007 (1) NR 251 (HC)
S v Myburgh 2008 (2) NR 592 (SC)
S v Conradie & Another 2016 (2) NR 438 (HC)
- section 110:
S v Makendano 2007 (1) NR 251 (HC)
- section 112:
S v Valedé & Others 1990 NR 81 (HC)
S v Drayer & Another 1990 NR 237 (HC)
S v Muhenje & Another; S v Ngorera 1991 NR 91 (HC)
S v Maans 1991 NR 119 (HC)

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

S v Aniseb & Another 1991 NR 203 (HC)

S v Davids 1991 NR 255 (HC)

S v Shivute & Several Other Cases 1991 NR 433 (HC)

S v Kilika & Others 1992 NR 25 (HC)

S v Hausiko 1992 NR 225 (HC)

S v Beukes 1993 NR 21 (HC)

S v Bruwer 1993 NR 219 (HC)

S v Goeieman 1993 NR 227 (HC)

S v Haimo 1993 NR 301 (HC)

S v Haufiko 1993 NR 317 (HC)

S v Namuhuya 1994 NR 57 (HC)

S v Maniping/S v Thwala 1994 NR 69 (HC)

S v Mostert 1994 NR 83 (HC)

S v Geiseb 1994 NR 175 (HC)

S v Mostert / S v de Koker 1995 NR 131 (HC)

S v Gaogoseb 1995 NR 165 (HC)

S v Kajamse; S v Gaseb & Another 2002 NR 101 (HC)

S v Isaac 2004 NR 122 (HC)

S v Kaevuarua 2004 NR 144 (HC)

S v Tjivikua 2005 NR 252 (HC)

S v Forbes & Others 2005 NR 384 (HC)

S v Thomas 2006 (1) NR 83 (HC)

S v Kauleefelwa 2006 (1) NR 102 (HC)

S v Kasanga 2006 (1) NR 348 (HC)

S v Garoeb 2006 (2) NR 500 (HC)

S v Botha 2007 (1) NR 40 (HC)

S v Aludhilu 2007 (1) NR 70 (HC)

S v Rooi 2007 (1) NR 282 (HC)

S v Hengua 2007 (2) NR 532 (HC)

S v Combo & Another 2007 (2) NR 619 (HC)

S v Kharuxab 2008 (1) NR 345 (HC)

S v Nashapi 2009 (2) NR 803 (HC)

S v Litombo 2010 (2) NR 473 (HC)

S v Undari 2010 (2) NR 695 (HC)

S v Taseb & Others 2011 (1) NR 326 (HC)

S v Mbele 2011 (1) NR 357 (HC)

S v Onesmus; S v Amuloto; S v Mweshipange 2011(2) NR 461 (HC)

(on problems arising from amendment of section 112 by Act 13/2010)

S v Kondo 2012 (2) NR 415 (HLD)

S v Tjipetekera 2013 (2) NR 587 (HC)

S v Silas 2013 (3) NR 760 (HC)

S v Kauaria 2014 (1) NR 163 (HC)

S v Pieters 2014 (3) NR 825 (HC)

S v Boois & Others 2016 (2) NR 347 (HC)

S v Gases 2016 (4) NR 980 (HC)

S v Michael 2017 (2) NR 577 (HC) (section 112(1)(a) intended for minor offences; not appropriate in respect of charge of assault GBH)

S v Swatz 2019 (1) NR 197 (HC) (inappropriate for serious drug offences, as procedure limits sentencing options to fines only)

S v Coetzee 2018(3) NR 899 (HC) (insufficient evidence of identity and content of drugs to support guilty plea)

section 113:

S v Shivute & Several Other Cases 1991 NR 433 (HC)

S v Hausiko 1992 NR 225 (HC)

- S v Haufiko* 1993 NR 317 (HC)
- S v Hoabeb* 2013 (1) NR 222 (HC) (discussed in Nico Horn, *S v Hoabeb: A Dummy's Guide on How to Avoid Justice in Namibia for Ten Years*", *Namibia Law Journal*, Volume 5, Issue 1, 2013)
- S v Maasdorp* 2015 (4) NR 1109 (HC) (in a case involving multiple counts, where accused pleaded guilty to some counts, no sentences should be imposed before conclusion of trial as section 113 can be invoked only prior to sentence)
- S v Boois & Others* 2016 (2) NR 347 (HC)
- S v Gases* 2016 (4) NR 980 (HC)
- section 114:
- S v Kauleefelwa* 2006 (1) NR 102 (HC)
- S v Undari* 2010 (2) NR 695 (HC)
- section 115:
- S v Wellington* 1990 NR 20 (HC)
- S v Tjiho (2)* 1990 NR 266 (HC)
- S v Cachimbembo* 1990 NR 290 (HC)
- S v Sanders* 1990 NR 348 (HC)
- S v Muhenje & Another; S v Ngorera* 1991 NR 91 (HC)
- S v Shivute* 1991 NR 123 (HC)
- S v Kau & Others* 1995 NR 1 (SC)
- S v Kahuimbe* 1995 NR 77 (HC)
- S v Shikongo & Others* 1999 NR 375 (SC)
- S v Tjipetekera* 2013 (2) NR 587 (HC)
- S v Ananias* 2014 (3) NR 665 (HC)
- section 116:
- S v Scott & Others* 2009 (1) NR 58 (HC)
- section 118:
- S v Wellington* 1990 NR 20 (HC)
- S v Tashiya* 2013 (3) 637 (HC)
- S v Mwalyomba* 2017 (4) NR 994 (HC)
- S v Mutota* 2020 (4) NR 981 (HC)
- section 119:
- S v Shikongo & Others* 1999 NR 375 (SC)
- S v Forbes & Others* 2005 NR 384 (HC)
- S v Kasanga* 2006 (1) NR 348 (HC)
- section 121:
- S v Kasanga* 2006 (1) NR 348 (HC)
- section 122:
- S v Shikongo & Others* 1999 NR 375 (SC)
- section 123:
- S v Petrus* 1993 NR 215 (HC)
- section 144:
- S v Kramer & Others* 1990 NR 49 (HC)
- section 151:
- S v Haikele & Others* 1992 NR 54 (HC)
- sections 155-156:
- S v Gustavo & Others* 2021 (4) NR 990 (HC)
- section 158:
- Florin v Magistrate of Swakopmund & Another* 1999 NR 253 (HC)
- S v Taapopi & Another* 2001 NR 101 (HC)
- S v Malumo & 119 Others* 2004 NR 135 (HC)
- section 159:
- S v Khumalo* 1991 NR 166 (SC)
- S v Malumo & 119 Others* 2004 NR 135 (HC)
- S v Simiyasa* 2007 (1) NR 285 (HC)
- S v Lifumbela & Others* 2022 (1) NR 205 (SC) (section 159(1)-(2) read with section 160 cannot

be invoked when accused left courtroom of own accord, at paras 51-52)

section 160:

S v Khumalo 1991 NR 166 (SC)

S v Malumo (In re Kamwi) 2014 (3) NR 771 (HC) (section 160 read with section 159)

S v Lifumbela & Others 2022 (1) NR 205 (SC) (section 160 read with section 159(1)-(2) cannot be invoked when accused left courtroom of own accord, at paras 51-52)

section 161:

S v Kapia & Others 2009 (1) NR 52 (HC)

section 162:

S v Malumo & 116 Others (No 2) 2008 (2) NR 509 (HC)

section 164:

S v Monday 2002 NR 167 (SC) (general discussion of evidence of young witnesses)

S v Boois 2004 NR 74 (HC) (deals with section 164 prior to its amendment by Criminal Procedure Amendment Act 24 of 2003)

S v Zingolo 2005 NR 349 (HC) (Court applies cautionary rule to evidence of child in rape case heard before amendment of Act on this point by Criminal Procedure Amendment Act 24 of 2003)

S v Nango 2006 (1) NR 141 (HC) (assessment of evidence of child witnesses in rape case)

S v VM 2009 (2) NR 766 (HC) (deals with section 164 prior to its amendment by Criminal Procedure Amendment Act 24 of 2003)

S v FM 2016 (3) NR (NLD) (application of amended section 164 to young child discussed in context of assessing prospects of success of appeal for purposes of application for condonation)

S v Koch 2018 (4) NR 1006 (HC) (general discussion of assessment of children's evidence in absence of requirement of corroboration); upheld on appeal in *S v Koch* 2022 (1) NR 70 (SC)

section 167:

S v Mbali 1990 NR 1 (HC)

S v Dawid 1990 NR 206 (HC)

S v van den Berg 1995 NR 23 (HC)

S v Zingolo 2005 NR 349 (HC)

S v Chanda 2005 NR 398 (HC)

S v Kakalolo 2006 (1) NR 266 (HC)

S v Malumo & Others 2007 (2) NR 443 (HC)

S v VL 2018 (1) NR 67 (HC)

section 168:

S v Acheson 1991 NR 1 (HC)

S v Nunes 2001 NR 43 (HC)

Gurirab v Government of the Republic of Namibia & Others 2002 NR 114 (HC); 2006 (2) NR 485 (SC)

S v Malumo & 119 Others 2004 NR 135 (HC)

section 170:

S v Ndakolute 2005 NR 37 (HC)

S v Babinu 2016 (3) NR 619 (HC)

section 171:

S v Acheson 1991 NR 1 (HC)

S v Lofty-Eaton & Others (2) 1993 NR 405 (HC)

section 174:

S v Campbell & Others 1990 NR 310 (HC)

S v Kooper 1995 NR 80 (HC)

S v Paulus & Another 1996 NR 374 (HC)

S v Le Roux 2000 NR 209 (HC)

S v Mushwena & Others 2004 NR 35 (HC), overruled by *S v Mushwena & Others* 2004 NR 276 (SC), which was reversed in part by *S v Likanyi* 2017 (3) NR 771 (SC); see also *S v Munuma & Others* 2016 (4) NR 954 (SC)

S v Nakale & Others 2006 (2) NR 455 (HC)

- S v Teek* 2009 (1) NR 127 (SC)
S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC)
S v Goabab & Another 2013 (3) 603 (SC)
S v Malumo & Others 2013 (3) NR 868 (HC)
S v Ananias 2014 (3) NR 665 (HC)
S v NV 2017 (3) NR 700 (HC)
S v January 2018 (1) NR 111 (HC)
S v Narimab 2019 (3) NR 689 (SC)
- section 175:
- S v Khoeinmab* 1991 NR 99 (HC)
S v Kamati 1991 NR 116 (HC)
S v Paulus & Another 2010 (2) NR 534 (HC)
- section 176:
- S v Kaipa* 1993 NR 190 (HC)
- section 179:
- S v Lukas* 1999 NR 394 (HC)
- section 182:
- S v Haita* 1993 NR 368 (HC)
- section 186:
- S v Dawid* 1990 NR 206 (HC)
S v van den Berg 1995 NR 23 (HC)
S v Zingolo 2005 NR 349 (HC)
S v Malumo & 116 Others (No 1) 2008 (2) NR 502 (HC) (discussed at 506I-507C)
S v Ndengu 2014 (1) NR 42 (HC)
- section 189:
- S v Smith* 1999 NR 182 (HC)
- section 190:
- S v Taapopi & Another* 2001 NR 101 (HC)
S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC); *S v Malumo & 116 Others* 2008 (1) NR 348 (HC); *S v Malumo & 116 Others (No 1)* 2008 (2) NR 502 (HC); *S v Malumo & 116 Others (No 4)* 2008 (2) NR 515 (HC)
- section 195:
- S v NV* 2017 (3) NR 700 (HC) (section 195(1) survives constitutional challenge)
- section 197:
- S v Appelgrein* 1995 NR 118 (HC)
- section 203:
- S v Malumo & 111 Others (2)* 2012 (1) NR 244 (HC)
- section 204:
- S v Johannes & Others* 1991 NR 122 (HC)
S v Myburgh 2008 (2) NR 592 (SC)
- section 206:
- S v Nassar* 1994 NR 233 (HC)
- section 208:
- S v Noble* 2002 NR 67 (HC)
- section 209:
- S v Eiseb & Another* 1990 NR 142 (HC)
S v Shipanga & Another 2015 (1) NR 141 (SC)
- section 211:
- S v Appelgrein* 1995 NR 118 (HC)
- section 212:
- S v Zingolo* 2005 NR 349 (HC)
S v Garoeb 2006 (2) NR 500 (HC)
S v HN 2010 (2) NR 429 (HC) (section 212 (7A)(a) applied)
S v Andima 2010 (2) NR 639 (HC) (section 212 (7A)(a) does not affect state's burden of proof of medical issue in absence of a section 220 admission)
S v Eiseb 2014 (3) NR 834 (SC)

- section 213:
S v Taapopi & Another 2001 NR 101 (HC)
- section 215:
S v Siboho & Others 1997 NR 29 (HC)
- section 217:
S v Titus 1991 NR 318 (HC)
S v Somseb 1991 NR 339 (HC)
S v Kauma 1992 NR 17 (HC)
S v Tjihorero & Another 1993 NR 398 (HC)
S v Shikunga & Another 1997 NR 156 (SC) (holding that section 217(1)(b)(ii) is unconstitutional)
S v Kukame 2007 (2) NR 815 (HC)
S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC)
S v Malumo & 116 Others (No 5) 2008 (2) NR 520 (HC)
S v Malumo & Others 2010 (1) NR 35 (HC)
S v Malumo & 111 Others 2013 (1) NR 152 (HC) (attempt to circumvent)
S v Shipanga & Another 2015 (1) NR 141 (SC)
S v Engelbrecht 2017 (3) NR 912 (SC)
- section 218:
S v Minnies & Another 1990 NR 177 (HC)
- section 219A:
S v Malumo & Others 2007 (1) NR 72 (HC)
S v Malumo & Others 2007 (2) NR 198 (HC)
S v Kukame 2007 (2) NR 815 (HC)
S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC)
S v Malumo & Others 2010 (1) NR (HC) (“The presumption in s 217(1)(b)(ii) of Act 51 of 1977 has been declared unconstitutional on the basis that it subverts the very essence of the right to a fair trial and the incidents of that right articulated in art 12(1)(a), (d) and (f) of the Constitution of Namibia.... Section 219A of Act 51 of 1977 contains a similarly worded presumption (the constitutionality of which has not yet been tested). It has been accepted by the State that the presumption contained in s 219A(1)(b) would not withstand the test of constitutionality and would follow the same route as the presumption contained in s 217(1)(b)(ii) of Act 51 of 1977.” (para 19)
S v Kapia & Others 2015 (4) NR 1094 (HC) (section 219A(1))
S v Engelbrecht 2017 (3) NR 912 (SC)
S v Britz 2018 (1) NR 97 (HC)
- section 220:
S v Kahuimbe 1995 NR 77 (HC)
S v Boois 2004 NR 74 (HC)
S v Andima 2010 (2) NR 639 (HC)
- section 221:
S v De Villiers 1992 NR 363 (HC)
S v Ningisa & Others 2013 (2) HC 504 (SC)
- section 222:
S v Taapopi & Another 2001 NR 101 (HC)
- section 224:
S v Blaauw’s Transport (Pty) Ltd & Another 2006 (2) NR 587 (HC)
- section 232:
S v Malumo & Others 2006 (2) NR 629 (HC)
- section 233:
S v Kukame 2008 (1) NR 313 (HC) (question as to whether an item admitted into evidence was a “public document” under this section)
- section 234:
S v Kukame 2008 (1) NR 313 (HC) (“official document”)
- section 235(1):
S v Malumo & 111 Others (2) 2012 (1) NR 244 (HC)

section 245:

S v Mwambazi 1990 NR 353 (HC)

S v Van Rooyen 1993 NR 235 (HC)

Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC) (section 245 declared to be in violation of right to fair trial in Art 12(1)(d) of Constitution “to the extent that the provisions of s 245 cast a mandatory legal onus on an accused person, charged with an offence of which a false representation is an element, to prove on a balance of probabilities that he or she did not know that the representation was false once the state has proved that he or she had made the false representation”)

S v Lifumbela & Others 2022 (1) NR 205 (SC) (section 235(1) at para 54)

section 256:

S v Esterhuizen & Another 1990 NR 283 (HC)

section 258:

S v Katari 2006 (1) NR 205 (HC)

section 261:

S v Ntuntu & Others 1992 NR 293 (HC)

section 262:

S v Dixon 1995 NR 115 (HC)

S v Kharuxab 2008 (1) NR 345 (HC)

section 264:

S v Aixas & Another 2007 (1) NR 46 (HC)

section 270:

S v Kuvare 1992 NR 7 (HC)

S v Seibeb & Another; S v Eixab 1997 NR 254 (HC)

S v Babiep 1999 NR 170 (HC)

section 271:

S v Johnny & Another 1992 NR 296 (HC)

section 274:

S v Maans 1991 NR 119 (HC)

section 275:

S v Arebeb 1997 NR 1 (HC)

S v Gawaseb 2007 (2) NR 600 (HC)

S v Mutota 2020 (4) NR 981 (HC)

section 276:

S v Njuluwa 2000 NR 97 (HC) (sentence may not include order that convicted person may not be paroled)

section 277:

S v Tcoeib 1991 NR 263 (HC) (See also *S v Tcoeib* 1992 NR 198 (HC) and 1999 NR 24 (SC) which deal with life imprisonment, but do not make specific reference to this section.)

section 280:

S v Ndikwetepo & Others 1993 NR 319 (SC)

S v Auala (No 2) 2008 (1) NR 240 (HC) (sentencing under section 280(2))

Alugodhi v Minister for Safety and Security & Others and Eight Similar Cases 2015 (4) NR 1021 (HC) (relationship to section 86 of the repealed Prisons Act 17 of 1998, and similar provisions of the previous *Prisons Act 8 of 1959* (section 32) and the current Correctional Service Act 9 of 2012 (section 99))

S v Gawiseb 2022 (2) NR 453 (HC) (section 280(2) discussed and applied)

section 285:

S v Eigowas 2017 (1) NR (NLD) (discussion of periodical imprisonment; “Presiding officers are encouraged to consider it more often.”)

section 286:

S v Miller 2002 NR 31 (HC)

section 287:

S v Mynhardt; S v Kuinab 1991 NR 336 (HC)

S v Mukata 2005 NR 323 (HC)

S v Tjikuvira 2015 (4) NR 1105 (HC) (meaning of “court” in section 287(2), and effect of

provision where convicted person cannot afford fine)

section 288:

S v Mukata 2005 NR 323 (HC)

section 290:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

S v Gaogoses 1994 NR 77 (HC)

S v Tjikuvira 2015 (4) NR 1105 (HC)(section 290(2))

section 292:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 293:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 294:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 295:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 297:

S v Kakulu & Another 1990 NR 282 (HC)

S v Goroseb 1990 NR 308 (HC)

S v Skrywer 1990 NR 343 (HC)

S v Oupietti; S v Boois; S v Josef & Another 1991 NR 93 (HC)

S v Simon 1991 NR 104 (HC)

S v Maans 1991 NR 119 (HC)

S v Brand & Various Other Cases 1991 NR 356 (HC)

S v Matheus 1991 NR 376 (HC)

S v Isaacks 1992 NR 265 (HC)

S v Diergaardt 1993 NR 421 (HC)

S v H 1995 NR 136 (HC)

S v Nangolo 1995 NR 209 (HC)

S v Nvula; S v Olivier 2002 NR 106 (HC)

S v Namene 2002 NR 125 (HC)

S v Petrus 2006 (1) NR 118 (HC), repeated in 2007 (1) NR 44 (HC)

S v Ngumbi & Others and A Similar Matter 2020 (4) NR 962 (HC) (section 297(1)(b) empowers a court to suspend all or part of a sentence, but not to divide a sentence into two parts with different periods and conditions of suspension)

section 300:

S v Shivikua 1991 NR 101 (HC)

S v Tjisuta 1991 NR 146 (HC)

S v Useb & Another 1994 NR 81 (HC)

S v Panduleni 1995 NR 125 (HC)

S v Hendriks 2004 NR 20 (HC)

S v Kapia & Others 2018 (3) NR 885 (HC) (paras 56-60)

section 302:

S v Shivute & Several Other Cases 1991 NR 433 (HC)

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

S v Gawanab 1997 NR 61 (HC)

S v Kamenye and Twelve Similar Cases 2019 (2) NR 486 (NLD) (discussion of requirements of records in cases sent for review under this section; the magistrate bears responsibility to ensure that the record is accurate and complete without any irrelevant documents being included; the magistrate's date of appointment should be indicated, and the record should be in accordance with **Chapters XII and XIII of the Codified Instructions;**

Clerk of the Criminal Court, paras 159-176 noting the errata pointed out in this case)

section 303:

S v Sanders 1990 NR 348 (HC)

S v Shivute & Several Other Cases 1991 NR 433 (HC)

S v Kamenye and Twelve Similar Cases 2019 (2) NR 486 (NLD) (one-week time period for submission for review emphasised)

section 304:

Booyesen v Kalokwe NO & Others 1991 NR 95 (HC)

S v Baptista 1991 NR 103 (HC)

S v Kaipa 1993 NR 190 (HC)

S v Arebeb 1997 NR 1 (HC)

S v Gawanab 1997 NR 61 (HC)

S v Katuta 2006 (1) NR 61 (HC)

S v Immanuel 2007 (1) NR 327 (HC)

S v Sakaria 2013 (2) NR 347 (HC)

S v Shiputa 2013 (3) NR 800 (NLD)

S v Puleni & Another 2021 (3) NR 611 (SC) (no power to increase sentence on automatic review where the sentence imposed was competent and lawful)

section 308:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 309:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

S v Wasserfall 1992 NR 18 (HC)

S v Arebeb 1997 NR 1 (HC)

S v Uirab 1999 NR 327 (HC)

S v Ganeb 2001 NR 294 (HC) (section 309(4)(a) read with section 305 found unconstitutional)

S v Katuta 2006 (1) NR 61 (HC)

S v Kakalolo 2006 (1) NR 266 (HC)

S v Undari 2010 (2) NR 695 (HC) (section 309(2))

S v Nakale 2011 (2) NR 599 (SC) (section 309(2))

S v Shiputa 2013 (3) NR 800 (NLD) (application of section 304 to appeals by virtue of section 309, and discussion of useful South African improvements to section 309 procedure)

section 310 (as amended by Act 26/1993):

S v van den Berg 1995 NR 23 (HC)

S v Gawanab 1997 NR 61 (HC)

S v Mujiwa 2007 (1) HR 34 (HC)

S v Nel 2015 (4) NR 1057 (HC) (court's decision not to order forfeiture of certain items under section 89(1)(d) of Nature Conservation Ordinance 4 of 1975 constitutes a decision made in favour of an accused under section 310)

Prosecutor-General v Miguel & Others 2017 (2) NR 381 (HC) (paras 10-22)

S v Haikali 2019 (3) NR 701 (SC)

section 311 (as amended by Act 26/1993):

S v Delie (2) 2001 NR 286 (SC)

section 312:

S v Bruwer 1993 NR 219 (HC)

section 316:

S v Tjiho 1991 NR 361 (HC)

S v Ngavondueza 1993 NR 360 (HC)

S v Strowitzki 1994 NR 265 (HC)

S v Strowitzki 2003 NR 145 (SC)

Mushwena & Others v Government of the Republic of Namibia & Another (2) 2004 NR 94 (HC)

S v Munuma & Others 2006 (2) NR 602 (HC); conviction and sentence set aside in *S v Munuma & Others* 2013 (4) NR 1156 (SC) on grounds that trial judge should have recused himself

- S v Nowaseb* 2007 (2) NR 640 (HC)
- S v Ningisa & Others* 2008 (2) NR 731 (HC) (leave to appeal and petition procedures held to be constitutional); see also *S v Ningisa & Others* 2013 (2) HC 504 (SC) at paras 4-6
- S v Masake & Others* 2012 (1) NR 1 (SC)
- S v Lameck & Others* 2017 (3) NR 637 (SC) (appealability of refusal of application for recusal permissible and outside section 316(1))
- S v Josea* 2020 (1) NR 248 (HC)
- section 316A:
- S v Strowitzki* 1994 NR 265 (HC)
- S v Malumo & Others* 2010 (2) NR 595 (SC) (dicta)
- S v LK* 2016 (1) NR 90 (SC) (disagrees with dicta in *S v Malumo & Others* 2010 (2) NR 595 (SC); meaning of “including” in section 316A(1))
- section 317:
- S v Malumo & Others* 2006 (1) NR 323 (HC)
- S v Myburgh* 2008 (2) NR 592 (SC) (discussed in *dicta* at 598F-ff)
- S v Malumo & Others* 2013 (3) NR 868 (HC)
- S v Lifumbela & Others* 2022 (1) NR 205 (SC) (paras 16-34)
- section 319:
- S v Khumalo* 1991 NR 166 (SC)
- S v Pineiro & Others* 1999 NR 13 (HC)
- S v Malumo & Others (In re Ndala)* 2014(3) NR 690
- section 321:
- Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC)
- S v Hendriks* 1992 NR 382 (HC)
- S v Barnard* 2019 (1) NR 78 (HC) (section 321 read with section 60 empowers High Court to consider bail application while criminal appeal is pending in Supreme Court)
- section 322:
- S v Khumalo* 1991 NR 166 (SC)
- S v Gurirab & Others* 2008 (1) NR 316 (SC) (appeal court empowered to substitute conviction on a more serious crime for conviction on a less serious crime)
- S v Lifumbela & Others* 2022 (1) NR 205 (SC) (section 322(6) applied; see para 359)
- section 324:
- S v Khumalo* 1991 NR 166 (SC)
- section 328:
- S v Acheson* 1991 NR 1 (HC)
- section 332:
- S v Nkeuene* 2010 (1) NR 301 (HC)
- Attorney-General of Namibia v Minister of Justice & Others* 2013 (3) NR 806 (SC) (section 332(5) declared to be in violation of Constitution insofar as “a servant of a corporate body is in terms of s 332(5) deemed to be guilty of an offence committed for which the corporate body is or was liable to be prosecuted, unless he or she proves on a balance of probabilities that he or she did not take part in the commission of the offence and could not have prevented it, on the grounds that they impermissibly infringe an accused’s right under art 12(1)(d) of the Constitution to be presumed innocent until proven guilty according to law and thus also an accused’s right to a fair trial in terms of art 12(1)(a) of the Constitution”)
- S v Kapia* (CC 09/2008) [2018] NAHCMD 124 (11 May 2018) (section 332(5))
- S v Nghixulifwa & Others* 2018 (4) NR 1027 (HC) (section 332(5); note that this case states at para 39 that section 332(5) “has survived the constitutional test in *Attorney-General of Namibia v Minister of Justice & Others* where the court found that s 332(5) was not unconstitutional”; in fact *Attorney-General of Namibia v Minister of Justice & Others* 2013 (3) NR 806 (SC) held (at paragraphs 74-75) that section 332(5) is unconstitutional to the extent that “a servant of a corporate body is in terms of s 332(5) deemed to be guilty of an offence committed for which the corporate body is or was liable to be prosecuted, unless he or she proves on a balance of probabilities that he or she did not

take part in the commission of the offence and could not have prevented it, on the grounds that they impermissibly infringe an accused's right under art 12(1)(d) of the Constitution to be presumed innocent until proven guilty according to law and thus also an accused's right to a fair trial in terms of art 12(1)(a) of the Constitution".)

section 335:

S v Tjiho (1) 1990 NR 242 (HC)

Criminal Procedure Amendment Act 5 of 1991 (amendments re: bail):

S v Du Plessis & Another 1992 NR 74 (HC)

S v Timotheus 1995 NR 109 (HC)

malicious prosecution:

Mahupelo v Minister of Safety and Security & Others 2017 (1) NR 275 (HC), overruled in *Minister of Safety and Security & Others v Mahupelo* 2019 (2) NR 308 (SC); see also *Mahupelo v Minister of Safety and Security & Others* 2020 (2) NR 433 (SC) (unsuccessful suit for constitutional damages for continuing malicious prosecution)

Minister of Safety and Security & Others v Makapa 2020 (1) NR 187 (SC)

Minister of Safety and Security & Others v Mutanimiye 2020 (1) NR 214 (SC)

Minister of Safety and Security & Others v Chunga 2020 (2) NR 421 (SC)

Minister of Safety and Security & Others v Kauhano 2020 (3) NR 611 (SC)

Minister of Safety and Security & Others v Mwamba 2021 (3) NR 790 (SC)

Sheehama v Ministry of Home Affairs, Immigration, Safety and Security & Others 2021 (4) NR 1067 (HC)

procedure:

S v Sheetekela & Others 2019 (2) NR 513 (SC) ((a) failure to allow cross-examination of a witness is a serious irregularity; there is no bar to cross-examination by prosecutor who has previously consulted with witness (who was originally on state witness list but was later called by defence instead); (b) multiple lawyers may take part in prosecution of a criminal case as long as they do not duplicate court work (such as by leading or cross-examining the same witness); (c) a judge in a criminal case may revisit any ruling which is not a final order or ruling before the final judgment is issued; (d) parties must be allowed to address the court prior to any rulings)

Thomas v Directorate of Legal Aid & Others 2019 (2) NR 523 (HC) (constitutional challenges relating to criminal trial must be brought before the judge seized with the criminal trial and not in the civil stream of the High Court)

sentencing:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC) (sentences involving corporal punishment unconstitutional)

S v Van Rooyen & Another 1992 NR 165 (HC) (guidelines)

S v Tcoeib 1991 NR 263 (HC); 1992 NR 198 (HC); 1999 NR 24 (SC) (life imprisonment)

S v Ndikwetepo & Others 1993 NR 319 (SC) (consecutive sentences should not produce a cumulative sentence which is totally out of proportion to the gravity of the individual offences)

S v Van Wyk 1993 NR 426 (SC) (racist motives as an aggravating factor in sentencing)

S v Khumalo & Another 194 NR 3 (HC) (factors to be taken into account)

S v Britz 1994 NR 25 (HC) (community service)

S v Redelinghuys 1995 NR 21 (HC) (concurrent sentences)

S v Mostert/S v de Koker 1995 NR 131 (HC) (composite sentences)

S v Clay 1996 NR 184 (HC) (factors to be taken into account)

S v Moses 1996 NR 387 (SC) (father's murder of daughter)

S v Arebeb 1997 NR 1 (HC) (suspended sentences)

S v Kandume 1997 NR 79 (HC) (suspended sentences)

S v Alexander 1998 NR 84 (HC) (life imprisonment)

S v Kambu 1998 NR 194 (HC) (appropriateness of fines rather than imprisonment; consecutive sentences)

S v Mouton & Another 1999 NR 215 (HC) (kidnapping)

S v Uweuseb 1999 NR 339 (HC) (court exercises discretion to allow appellant to withdraw appeal against sentence after receipt of notice that increased sentence will be also

considered by court of appeal)

S v Shapumba 1999 NR 342 (SC) (sentencing for rape in a case where another rape was committed while accused was out on bail)

S v Skrywer 2005 NR 288 (HC) (consistency in sentencing)

S v Stuurman 2005 NR 396 (HC) (weighing effect of previous convictions)

S v Katjire 2005 NR 429 (HC) (global sentences only to be imposed in exceptional circumstances)

S v Ganes 2005 NR 472 (HC) (fraud)

S v Drotsky 2005 NR 487 (HC) (housebreaking)

S v Alexander 2006 (1) NR 1 (SC) (use of concurrent sentence for associated robbery-murder to avoid “double jeopardy”)

S v Petrus 2006 (1) NR 118 (HC), repeated in 2007 (1) NR 44 (HC) (suspended sentence for property crime on condition of compensation to be encouraged, but requires enquiry into *quantum* of damages)

S v Kastoor 2006 (2) NR 450 (HC) (criticism of “impatience, frustration and anger” exhibited by magistrate, and concluding that magistrate did not approach sentencing in a “balanced way”)

S v Haufiku 2007 (1) NR 94 (HC) (condition of suspended sentence should clearly refer to offences *committed* during period of suspension)

S v Bonifatius 2007 (1) NR 115 (HC) (condition of suspended sentence should not refer to convictions *during period of suspension*, but only to commission of offence during that period)

S v Paulus 2007 (1) NR 116 (HC) (housebreaking and theft of minor amount of money)

S v Bohitile 2007 (1) NR 137 (HC) (context of domestic violence as an aggravating factor in sentencing)

S v Kasita 2007 (1) NR 190 (HC) (housebreaking and theft; court obligated to provide reasons for sentence imposed)

S v Nangolo 2007 (1) NR 304 (HC) (formulation of conditions of suspended sentence must be clear)

S v Simon 2007 (2) NR 500 (HC) (culpable homicide)

S v Witbooi & Others 2007 (2) NR 604 (HC) (sentence cannot be divided in two parts and suspended under separate conditions; procedure for bringing suspended sentence into operation)

S v Kamudulunge 2007 (2) NR 608 (HC) (formulation of conditions of suspension)

S v Imene 2007 (2) NR 770 (HC) (sentence for housebreaking and theft confirmed)

S v Auala (No 2) 2008 (1) NR 240 (HC) (sentencing for offences relating to theft of diamonds and for escaping before being locked up); *S v Auala* 2010 (1) NR 175 (SC) (lower court’s approach to sentencing confirmed on appeal)

S v Shikudute 2008 (1) NR 344 (HC) (concurrent sentences appropriate for first offender where incidents were interlinked)

S v Jason & Another 2008 (1) NR 359 (SC) (appeal of sentences imposed for murder, robbery and related offences)

S v Myburgh 2008 (2) NR 592 (SC) (fraud)

S v Akonda 2009 (1) NR 17 (HC) (counts should be taken together for sentence only in exceptional circumstances or where part of one transaction; imprecise formulation of condition of suspension)

S v Jeremani 2009 (1) NR 149 (HC) (imposition of fine which accused is unable to pay is tantamount to direct imprisonment)

S v Martin 2009 (1) NR 306 (HC) (fact that accused pleaded not guilty cannot be treated as aggravating factor in sentencing)

S v Frans 2009 (1) NR 356 (HC) (procedure for putting suspended sentence on previous conviction into operation)

S v Johannes 2009 (2) NR 579 (HC) (sentence for murder by police officer who shot and killed fleeing criminal suspect)

S v Shipena 2009 (2) NR 810 (HC) (theft, fraud and forgery by police officer)

S v Visagie 2010 (1) NR 271 (HC) (undesirability of taking counts together for purpose of

- sentence; appropriate sentence for *crimen injuria*)
- S v Mushishi* 2010 (2) NR 559 (HC) (context of domestic violence as an aggravating factor in sentencing)
- S v K* 2011 (1) NR 1 (HC) (a guilty plea is not necessarily an indication of remorse)
- S v Munyama* 2011 (1) NR 53 (HC) (general approach to sentencing and use of expert evidence on appropriate sentence)
- S v Sakaria* 2013 (2) NR 347 (HC) (sentence under-emphasised interests of society)
- S v Ningisa & Others* 2013 (2) HC 504 (SC), paras 90-98
- S v Guruseb* 2013 (3) 630 (HC) (conditions of suspension of sentence must have material connection to nature and circumstances of offence)
- S v Tjikotoke* 2014 (1) NR 38 (HC) (taking counts together for purposes of sentencing should be done only in exceptional circumstances)
- S v Ashimbanga* 2014 (1) NR 242 (HC) (appropriate sentence for escape from lawful custody)
- S v Jackson & Others* 2014 (3) NR 637 (HC) (judicial discretion to consider previous conviction which is more than 10 years old; partially concurrent sentences for two crimes arising from same incident)
- S v Kido* 2014 (3) NR 697 (HC) (concurrent sentences not appropriate for crimes that occurred three hours apart, thereby evidencing separate intentions)
- S v Shipanga & Another* 2015 (1) NR 141 (SC) (heavy sentences upheld in brutal murder, kidnapping and robbery of foreign tourists)
- S v Gariseb* 2016 (3) NR 613 (SC) (murder case; whether or not *dolus eventualis* should be treated as a mitigating circumstance depends on the circumstances of the case)
- S v Gaingob & Others* 2018 (1) NR 211 (SC) (“informal life sentences” which leave no realistic prospect of release are unconstitutional as cruel, degrading and inhuman punishment and a violation of the right to human dignity in Art 8; para 74: “[A]n effective sentence of more than 37 and a half years would mean that such offender is worse off than those sentenced to life imprisonment. Such lengthy sentences would not be appropriate and are to be discouraged. Depending upon their length and the circumstances of an offender, they may also infringe an offender’s right to dignity under Art 8.”)
- For a critique of this judgment, see Dunia Zongwe & Bernhard Tjatjara, “Strange Maths Behind the Ruling on Very Long Sentences”, *The Namibian*, 20 November 2018 (available from Legal Assistance Centre).
- S v Vos & Others* 2017 (1) NR 106 (HC) (insufficient regard by lower court to principle of uniformity in sentencing, regarding sentences for escape from prison)
- S v Shilamba* 2017 (1) NR 211 (NLD) (sentences for murder and assault GBH)
- ...violent crimes are escalating particularly in this jurisdiction, and show no signs of abating. Deterrent sentences are called for. (para 9)
- This case falls into a category where the personal circumstances of the accused must take a backseat to the other considerations such as the interest of society, general deterrence and retribution. (para 13)
- S v Muchaka* 2017 (2) NR (HC) (custodial sentence justified for petty theft of a packet of biscuits because offender repeatedly re-offended, but lower court’s sentence of 2 years imprisonment reduced and partly suspended)
- S v Mapanka* 2017 (4) NR 980 (HC) (aggravating factors cannot be assumed without evidence)
- S v ES* 2017 (4) NR 983 (HC) (being HIV positive is not a valid ground for a more lenient sentence)
- S v Schiefer* 2017 (4) NR 1073 (SC) (sentences for murder of parents altered so that more time runs concurrently due to cumulative impact of mitigating factors)
- S v Ruben* 2018 (1) NR 115 (HC) (domestic relationship between offender and victim as an aggravating factor in sentencing)
- S v Kundiatuka* 2018 (3) NR 699 (NLD) (court must ensure that accused’s relevant mitigating circumstances are placed before it in order to pass a realistic sentence)
- S v Kapia & Others* 2018 (3) NR 885 (HC) (sentencing for “white-collar” crime; role of remorse for wrongdoing versus remorse for the personal impact of the wrongdoing on the offender; expressions of remorse by personal testimony versus remorse indirectly expressed through counsel)

- S v Matlata* 2018 (4) NR 1038 (HC) (sentencing for rapes of multiple women and murder of one rape victim; expression of remorse only through legal representative; interests of society: “huge public outcry against the senseless killing of women and children in this country”)
- S v Seas* 2018 (4) NR 1050 (HC) (heavy sentence imposed for murder of 3-year-old child by mother)
- S v Boois* 2018 (4) NR 1060 (HC) (life sentence, without consideration for parole before serving 25 years, for rape-murder of visibly pregnant woman; discussion of conflict between some minimum sentences in Act and application of *S v Gaingob & Others* 2018 (1)NR 211 (SC))
- S v Awaseb* 2019 (2) NR 377 (HC) (sentencing of senior police officer who committed murder with unauthorised use of his service pistol)
- S v Absolom* 2019 (2) NR 483 (NLD) (community service as condition of suspension of sentence must specify type of work and timeline)
- S v Kamenye and Twelve Similar Cases* 2019 (2) NR 486 (NLD) (references in conditions of suspension to not being convicted of “a similar offence” are insufficiently clear; the offence should be specified)
- S v Manale* 2019 (2) NR 517 (HC) (heavy sentence justified for 147 counts of fraud taking place over long time period with no motivation other than greed, where accused violated a position of trust, and where fraud mainly disadvantaged the estates of deceased persons)
- S v Katala* (CC 5/2021) [2022] NAHCNLD 80 (2 September 2022)

There is a persistent demand for more severe sentences to be imposed on all offenders for all crimes. The apparent foundation for this demand is a steadfast belief that no punishment can be too harsh and that the more severe it is, the better it will protect society. Public expectation is not synonymous with the public interest. Although the courts must serve the interests of society and not be insensitive to or ignorant of general feelings and expectations, they may not blindly adhere to that. Remarks or submissions that public expectation equates to the public interest are inconsistent with the applicable principles of law and, therefore, of no assistance to the court.

In determining an appropriate sentence, a court should strive to accomplish and arrive at a reasonable counterbalance between these elements to ensure that one factor is not unduly accentuated at the expense of and to the exclusion of the others. The process is not merely a formula, nor is it satisfied by simply stating or mentioning the requirements. What is necessary is that the Court shall consider, try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern. This conception, as expounded by the Courts, is sound and is incompatible with anything less. (paras 22-23; footnotes omitted)

- S v Lifumbela & Others* 2022 (1) NR 205 (SC) (sentencing in Caprivi Treason Trial; overlong suspensions reduced; awaiting trial period and age of convicted offenders taking into account, as well as seriousness of offences balanced against need to facilitate reconciliation; overlong sentences with no hope of parole re-evaluated in respect of *S v Gaingob & Others* 2018 (1)NR 211 (SC); sentences thus re-visited)
- S v Guriras* 2022 (4) NR 929 (HC) (primary caregiver of child cannot be treated any differently than any other offender in respect of sentencing; hardship to dependents is unfortunate, but a mitigating factor; Art 30 of the African Charter on the Rights and Welfare of the Child cannot overcome Art 10 of Namibian Constitution on equality before the law)

youthful offenders:

- S v Shivute & Several Other Cases* 1991 NR 433 (HC) at 439
- S v Kilika & Others* 1992 NR 25 (HC)
- S v Goagoseb* 1992 NR 35 (HC)
- S v G* 1993 NR 225 (HC)
- S v Lambert* 1993 NR 303 (HC)
- S v Gaogoses* 1994 NR 77 (HC)
- S v Kukinaka* 1994 NR 82 (HC)
- S v H* 1995 NR 136 (HC)
- S v Lukas* 1999 NR 394 (HC)
- S v van der Bergh* 2003 NR 69 (HC) (importance of pre-sentencing report)
- S v Erickson* 2007 (1) NR 164 (HC) (youthfulness as a mitigating factor)

S v AS 2009 (1) NR 118 (HC) (criminal accountability of 10-year-old convicted of culpable homicide)
S v K 2011 (1) NR 1 (HC) (youthful offenders cannot hide behind their youthfulness when they commit a serious crime)
S v Gomaseb 2014 (1) NR 269 (HC) (sentence imposed on 15-year-old offender upheld; Convention on the Rights of the Child applied).
S v Jackson & Others 2014 (3) NR 637 (HC) (youthful offender was a mature person, and so his youthfulness need not play a major role in sentencing)
S v Tjikuvira 2015 (4) NR 1105 (HC) (need to enquire into accused's financial circumstances before imposing fine)
S v Tangi 2019 (2) NR 600 (NLD) (reduction of sentence of young first-time offender for theft from employer in case where bulk of stolen goods were returned; however the Court notes that a custodial sentence is appropriate in cases where the offender "bites the hand that feeds him")
S v AJ 2021 (4) NR 1033 (HC) (effective sentence of 16 years imposed on 14-year-old convicted of murder, rape, theft, violating dead human body and two counts of arson; perpetrator cannot hide behind youthfulness in commission of such horrendous crimes)

other:

S v Imene 2007 (2) NR 770 (HC) (admissibility of shoe prints as evidence)
S v Myburgh 2008 (2) NR 592 (SC) (discussion of meaning of term "released" in various sections, in contrast to "acquit" and other language; suggestion to legislature to amend Act to extend jurisdiction of magistrate's courts to order permanent stays of prosecution)
S v Haihambo 2009 (1) NR 176 (HC) (photo identification)
Akuake v Jansen van Rensburg 2009 (1) NR 403 (HC) (requirements to sustain claim of malicious criminal prosecution)
S v Andreas 2009(2) NR 473 (HC) (fact that evidence of accused is false does not necessarily lead to conviction unless state has proved its case beyond reasonable doubt)
S v Nhinda 2013 (4) NR 909 (NLD) (a working procedure should be established to require that medical reports submitted into evidence should be typed)
S v BM 2013 (4) NR 967 (HC) (discrepancy between witness statement made to police and evidence in court affects credibility of witness only where discrepancy is material and where court is satisfied that witness statement correctly reflects what witness said at that time)
S v Munuma & Others 2013 (4) NR 1156 (SC) (recusal of judge in criminal trial); applied in *S v Thomas & Another* 2018 (1) NR 88 (HC)
S v Ameb 2014 (4) NR 1134 (HC) (approach in criminal appeal re: witness credibility)
S v Unengu 2015 (3) NR 777 (HC) (treatment of single witness evidence; treatment of discrepancies between witness statements to police and testimony in court)
S v Maasdorp 2015 (4) NR 1109 (HC) (in case involving multiple charges, after guilty plea on some charges, no sentence may be imposed before conclusion of trial as court must have regard to all circumstances of case to determine suitable sentences)
S v Hangue 2016 (1) NR 258 (SC) (detailed discussion of defence of temporary non-pathological criminal incapacity due to voluntary intoxication); see also *S v Subeb* 2020 (1) NR 236 (HC)
S v Kharuchab 2017 (1) NR 116 (HC) (duplication of convictions; two separate acts with the single intent to escape from lawful custody constitute one criminal transaction; short survey of previous Namibian cases on duplication of convictions)
Prosecutor-General of Namibia v Namoloh & Others 2020 (3) NR 839 (SC) (meaning of "accused")
S v Engelbrecht 2017 (3) NR 912 (SC) (discretionary power to exclude unconstitutionally obtained evidence; informing accused of right to legal representation; criticism of police failure to adopt a clear and accurate form for police officers to use for warnings in respect of statements by accused (paras 41-42))

...a court has a discretion to allow or exclude unconstitutionally obtained evidence or evidence in conflict with a constitutional right for reasons of public

policy... No strictly exclusionary rule is adopted in exercising the court's inherent power in ensuring a fair trial. (para 28)

The law on the issue of legal representation is that an accused person under arrest depending on the facts of each case, in particular the personality and the characteristics of the particular accused.. should be comprehensively informed of his/her right to legal representation, which includes the right to apply for legal aid. Where he has made the choice to be represented before making a statement he/she must be given the opportunity to engage his/her lawyer and the interrogation or the taking down of the confession/admission should be halted until he/she has consulted with his/her lawyer and indicated that he/she still wants to make a statement. The failure to inform the accused properly of his right to consult there and then with a legal representative violates a fundamental right of the accused. (para 36)

S v Britz 2018 (1) NR 97 (HC) (assessment of alibi)

S v Munuma & Others 2018 (2) NR 521 (HC) (expert witnesses and expert evidence; para 61: "however eminent an expert may be in general, he does not constitute an expert in a particular sphere unless by special study or experience, he is qualified to express an opinion on that topic")

S v Baarman & Three Similar Cases 2018 (4) NR 1022 (HC) (where a judicial officer in a lower court becomes unavailable to continue hearing a part-heard matter, the matter may commence *de novo* before another magistrate without a High Court order to that effect)

S v Pienaar 2020 (2) NR 488 (HC) (dock identification)

S v Nowaseb 2020 (2) NR 564 (HC) (where accused's legal practitioner was not present, court should have at the very least made the docket available to the accused and ordered a final postponement to allow opportunity for meaningful cross-examination).

Commentary:

Daina Wise & Dianne Hubbard, *Children in Court: Protecting Vulnerable Witnesses*, Legal Assistance Centre, 1998.

Legal Assistance Centre, "Chapter 4: Law Reform on Vulnerable Witnesses" in Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006 (discussing the Criminal Procedure Amendment Act 24 of 2003), available [here](#)

Lovisa Indongo, "The uniqueness of the Namibian Prosecutor-General" in Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available [here](#)

SK Amoo, "The Bail Jurisprudence of Ghana, Namibia, South Africa and Zambia", *Forum on Public Policy* (2008), available [here](#)

Kaijata Kanguuchi, "*S v Teek*: A critical review and analysis", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available [here](#)

Derek Obadina, "The Right to Speedy Trial in Namibia and South Africa", 41(2) *Journal of African Law* 229-238 (2009), available [here](#)

Pamela J Schwikkard, "The evidence of sexual complainants and the demise of the 2004 Criminal Procedure Act", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available [here](#)

SK Amoo, "The jurisprudence of the rights to trial within a reasonable time in Namibia and Zambia", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available [here](#)

Jamil D Mujuzi, "The constitutionality of different types of life imprisonment suggested in the Criminal Procedure Act, 2004", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available [here](#)

Jamil D Mujuzi, "Sentencing Children to Life Imprisonment and/or to Be Detained at the President's Pleasure in Eastern and Southern Africa", 6 (2) *The International Journal of Punishment and Sentencing* (2011)

SK Amoo & Davy Y Kambinda, "Community service orders as part of judicial discretion in the criminal justice system", *Namibia Law Journal*, Volume 3, Issue 2, 2011

Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available [here](#) (Criminal Procedure Amendment Act 13 of 2010).

Ndjodi Ndeunyema, "Igniting the Plea Bargaining Discourse in Namibia: What Is It and Do We Need It?", *Namibia Law Journal*, Volume 4, Issue 2, 2012

Nico Horn, “S v Acheson and Kleynhans: The First Test for Constitutionalism in Namibia”, *UNAM Students Law Review*, Volume 1, No 1, 2013, available [here](#) (background to amendment of section 61 re: bail)

SS Terblanche, “Sentencing in Namibia: the main changes since independence”, 26 (1) *South African Journal of Criminal Justice* 21 (2013)

Clever Mapaire, Ndjodi Ndeunyema, Pilisano Masake, Festus Weyulu & Loide Shaparara, *The Law of Pre-Trial Criminal Procedure in Namibia*, Windhoek: UNAM Press, 2013

Law Reform and Development Commission, Discussion Paper on the Possible Statutory Interventions to Curb the Alarming Spate of Domestic Violence, Murder and Gender Based Violence, LRDC 33, 2014 (bail, sentencing, witness protection)

Graham Hopwood, “Encouraging the Reporting of Corruption: Principles of Whistleblower Protection”, Institute for Public Policy Research, 2016, available [here](#)

Jamil D Mujuzi, “The admissibility in Namibia of evidence obtained through human rights violations”, 16 (2) *African Human Rights Law Journal* 2016, available [here](#) and [here](#)

John Ndlovu, “Compensation orders in criminal proceedings”, *De Rebus*, 1 August 2018 (discussing sections 297 and 300 of the South African version of the Act), available [here](#)

Sisa Namandje, *The Law on Liberty, Arrest and Detention*, 2019

Legal Assistance Centre, “Use of force by law enforcement officials in Namibia”, 2019, available [here](#)

Abraham J Hammam, “Meru moto compensation orders in criminal proceedings: far-fetched or attainable?”, *Namibian Law Journal*, Volume 11, Issue 1, 2019 (sections 297 and 300 of Act)

Ndjodi Ndeunyema, “Reforming the Purposes of Sentencing to Affirm African Values in Namibia”, 63 (3) *Journal of African Law* 329-357 (2019), available [here](#)

Justice Christie Liebenberg & Ndjodi Ndeunyema, “Exploring sentencing purposes, principles and practices in Namibia”, 33 (1) *South African Journal of Criminal Justice* 23 (2020), available [here](#)

Dunia P Zongwe, “Prosecutor-General of Namibia v Namoloh and Others 2020 (3) NR 839 (SC)”, 4 (1) *SAIPAR Case Review*, May 2021, available [here](#)

Desmond Francke, “Reconsidering a restorative justice approach in criminal court proceedings”, *De Rebus*, July 2021 (discussing section 300 of the South African version of the Act), available [here](#)

See the entry for the Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES) for articles on conditions in prisons and police cells.

Combating of Immoral Practices Act 21 of 1980

Summary: This Act ([OG 4310](#)) covers the keeping of brothels, various acts related to prostitution, and various other sexual offences.

Repeals: The Act repeals the Police Offences Proclamation 27 of 1920 and the Girls’ and Mentally Defective Women’s Protection Proclamation 28 of 1921.

Amendments: The Married Persons Equality Act 1 of 1996 ([GG 1316](#)), which was brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)), amends section 2.

Act 7/2000 ([GG 2325](#)), which was brought into force on 15 June 2000 by GN 141/2000 ([GG 2348](#)), amends sections 1 and 14 (sexual offences with youths).

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which was brought into force by GN 4/2019 ([GG 6829](#)), substitutes section 16.

The Combating of Rape Amendment Act 4 of 2022 ([GG 7932](#)), which has not yet been brought into force, amends section 14.

Regulations: The Act makes no provision for regulations.

Cases:

S v Narib 1994 NR 176 (HC) (section 14)

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) (section 17(1) of the Act declared unconstitutional)

S v Le Roux 2000 NR 209 (HC) (section 14; requirement of *mens rea* in respect of age)

Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC) (constitutionality of the definition of “brothel” in section 1, and sections 2, 10 and 12 considered; portions of definition of “brothel” struck down, along with the entirety of subsections 2(3), 12(1) and 12(2))

S v J 2008 (1) NR 30 (HC) (section 14)

S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under sections 14 and 16 of Act; discussed in Kaijata Kanguuehi, “*S v Teek*: A critical review and analysis”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de); see also *S v Teek* 2019 (1) NR 215 (SC) which reinstates trial court’s acquittal after discussing credibility of children’s evidence and other factors

S v Koch 2018 (4) NR 1006 (HC) (conviction under section 14(c)); sentence imposed in *S v Koch* (CC 20/2017) [2018] NAHCMD 318 (11 October 2018) increased on appeal in *S v Koch* 2022 (1) NR 70 (SC).

Commentary:

Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006 (discussing the Combating of Immoral Practices Act Amendment Act 7 of 2000), available in detailed and summary versions [here](#)

Legal Assistance Centre, “*Whose Body Is It?*”: *Commercial Sex Work and the Law in Namibia*, 2002, available [here](#).

Protection of Fundamental Rights Act 16 of 1988

Summary: This Act ([OG 5586](#)) provides for the protection of certain fundamental rights. It was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,⁹⁶ but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Amendments: AG 14/1989 ([OG 5726](#)) repeals section 2 and amends the penalties in section 3(e).

Regulations: The Act makes no provision for regulations.

Cases: *NANSO & Others v Speaker of the National Assembly for South West Africa & Others* 1990 (1) SA 617 (SWA) (declaring sections 2(1) and 2(3) invalid in terms of the pre-independence Bill of Fundamental Rights); section 2 was subsequently repealed.

Amnesty Proclamation, AG 13 of 1989

Summary: This Proclamation ([OG 5725](#)) grants amnesty for offences committed by persons in exile, so that they may return to Namibia.

Regulations: The Proclamation makes no provision for regulations.

Application of law: The application of the Act is affected by AG GN 110/1989 ([OG 5865](#)) (which applied the amnesty to two specific individuals on the condition that they leave South West Africa

⁹⁶ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 62-ff.

immediately) and AG GN 16/1990 ([OG 5894](#)) (which applied the amnesty provisions of the Proclamation to persons “who, while they were members of the South African Police, the South West African Police, the South African Defence Force, including the South West African Territory Force, in the performance of their duties and functions in the territory have performed or failed to perform any act which amounts to a criminal offence”).

Intimidation Proclamation, AG 24 of 1989

Summary: This Proclamation ([OG 5757](#)) makes it an offence to intimidate any other person.

Repeals: The Proclamation repeals the *Intimidation Act 72 of 1982*.

Regulations: The Proclamation makes no provision for regulations.

Notices: See General Notice 143/1992 ([GG 503](#)), which refers to the Proclamation in connection with guidelines for the holding of elections.

Stock Theft Act 12 of 1990

Summary: This Act ([GG 63](#)) consolidates and amends the laws relating to the theft of stock and produce.

Repeals: The Act repeals the Stock Theft Law Amendment Ordinance 11 of 1935 ([OG 613](#)), as amended by the Stock Theft Law Amendment Act 23 of 1985 ([OG 5143](#)).⁹⁷

Amendments: Act 4/1991 ([GG 201](#)) amends sections 6, 7, 9 and 14. It also inserts section 12A and repeals section 13.

Act 19/1993 ([GG 703](#)), which was brought into force on 1 October 1993 by GN 117/1993 ([GG 725](#)), repeals section 12A and amends the penalty sections. It transfers the administration of the Act from the Minister of Justice to the Minister of Home Affairs, provides minimum sentences for certain offences, and removes the restriction on adjudication of such cases by traditional leaders.

Act 19/2004 ([GG 3351](#)) amends sections 1, 14 and 17 and substitutes section 15A. Amongst other things, this amending act provides for minimum sentences for certain offences and compensation in respect of certain offences.

The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the said Act.

Regulations: Regulations are contained in GN 113/1991 ([GG 282](#)).

Notices: Licensed auctioneers are exempted from compliance with certain provisions of the Act by GN 108/1991 ([GG 276](#)).

Cases:

S v Shikango, S v Kahavika & Another 1990 NR 3 (HC) (previous stock theft legislation)

S v Tjisuta 1991 NR 146 (HC)

⁹⁷ The Stock Theft Act 12 of 1990 does not repeal the Stock Theft Law Amendment Proclamation 15 of 1935 ([OG 629](#)), which amended Ordinance 11 of 1935, but the amending proclamation would have no independent effect.

The Stock Theft Law Amendment Ordinance 11 of 1935 ([OG 613](#)) repealed the Stock Theft Repression Proclamation 5 of 1920 ([OG 28](#)).

S v Inatius; S v Shapanga & Two Others 1991 NR 261 (HC)
S v Amujekela 1991 NR 303 (HC)
S v Shivute & Several Other Cases 1991 NR 433 (HC) at 438
S v Vekueminina & Others 1992 NR 255 (HC)
S v Soabeb & Others 1992 NR 280 (HC) (common law crime of stock theft)
S v Kamajame & Others 1993 NR 192 (HC) (common law crime of stock theft)
S v Useb & Another 1994 NR 81 (HC) (common law crime of stock theft)
S v Koortzen 1994 NR 356 (HC) (section 14)
S v Kooper 1995 NR 80 (HC)
S v Panduleni 1995 NR 125 (HC) (section 17)
S v Nangolo 1995 NR 209 (HC)
S v Vries 1998 NR 244 (HC) (dealing with the constitutionality of the minimum sentence in section 14(1)(b), and striking out the words “of not less than three years, but” from that provision)
S v Nghitukwa 2005 NR 116 (HC) (accused must be sentenced under unamended Act when it was not clearly established that theft took place after commencement of Act which amended relevant sentence)
S v Kauleefelwa 2006 (1) NR 102 (HC) (section 12-stock theft is not a crime created by the Act but a manifestation of the common-law crime of theft; *dicta* on proper application of section 14)
S v Guim & Another 2008 (1) NR 305 (HC) (importance of evidence of value of stock in sentencing)
S v Afrikaner 2008 (2) NR 424 (HC) (district magistrate’s court has no jurisdiction to impose sentences under this Act)
S v Zemburuka 2008 (2) NR 737 (HC) (sentencing under section 14 prior to 2004 amendments)
S v Scott & Others 2009 (1) NR 58 (HC) (sections 14 and 15A-procedure for transfer from district court to regional court for sentencing)
S v Undari 2010 (2) NR 695 (HC) (importance of establishing value of stock for purposes of section 14)
Daniel v Attorney-General & Others; Peter v Attorney-General & Others 2011 (1) NR 330 (HC) (portions of section 14 found unconstitutional; section 14(1)(a)(ii): strike words “for a period not less than twenty years”; section 14(1)(b): strike words “for a period not less than thirty years”; reference to “subsection (1)(a) and (b)” in section 14(2) is read down to mean “subsection (1)(a)(i)”; confirmed on appeal in *Prosecutor-General v Daniel & Others* 2017 (3) NR 837 (SC))
S v Huseb 2012 (1) NR 130 (HC) (the common-law rule that the execution of a judgment is suspended pending an appeal is not applicable to declaration of constitutional invalidity of legislation, meaning that the declarations of constitutional invalidity in the *Daniels* case were of full force and effect while that the holding of that case in respect of section 14(1)(b) was on appeal)
S v Lwishi 2012 (1) NR 325 (HC) (effect of *Daniel* holding on sentencing options and on the application of section 15A; in the absence of a mandatory minimum sentence, first offender sentenced to 10 years imprisonment)
S v Merero & Another 2013 (1) NR 25 (HC) (lack of evidence to support conviction of one accused on crime of stock theft in contravention of section 11(1)(a) because magistrate did not act to supplement inadequate cross-examination by prosecutor)
S v Silas 2013 (3) NR 760 (HC) (correct formulation of charge)
S v Tjiveze 2013 (4) NR 949 (HC) (principles to apply in respect of sentencing in light of decision in *Daniel v Attorney-General & Others; Peter v Attorney-General & Others* 2011 (1) NR 330 (HC), which was subsequently confirmed on appeal in *Prosecutor-General v Daniel & Others*) (SA 15/2011) [2017] NASC 31 (28 July 2017)
Tjipepa v Minister of Safety and Security & Others 2015 (4) NR 1133 (HC) (sections 2 and 9(1))
S v Haufiku & Others 2016 (1) NR 120 (HC) (High Court ruling in the *Daniels* case which struck down the minimum sentences in section 14(1)(a) and (b) emphasised that the decision does not suggest that the crime of stock theft is not a serious offence; the wholly-suspended sentence imposed by the trial court in this case for theft of a cow valued at N\$8000 is thus unjustified; sentence of 6 years imprisonment substituted)
S v Diergaardt 2017 (2) NR 448 (HC) (issues relating to reasonable knowledge of ownership of calf and correct approach to sentencing)
S v Diergaardt 2019 (2) NR 471 (HC) (consideration of factual dispute about ownership of cattle in question).

Commentary: Felicity !Owoses-/Goagoses, “Reading down words in a statute, the courts’ role, and the place of Parliament: The approach of the Namibian courts”, *Namibia Law Journal*, Volume 4, Issue 1, 2012.

Racial Discrimination Prohibition Act 26 of 1991

Summary: This Act ([GG 328](#)) gives effect to Article 23 of the Namibian Constitution by making certain acts of racial discrimination and apartheid criminally punishable. It covers public amenities, the provision of goods and services, transactions relating to immovable property, educational and medical institutions, employment, associations, religious services, the incitement of racial disharmony and victimisation.

Amendments: The Liquor Act 6 of 1998 ([GG 1843](#)), which was brought into force on 22 December 2001 (GN 250/2001, [GG 2670](#)), repeals section 20. Act 26/1998 amends sections 11, 14 and 17.

The Affirmative Action (Employment) Act 29 of 1998 ([GG 1962](#)), which was brought into force in relevant part on 18 November 1998 (GN 278/1998, [GG 1996](#)), amends section 7.

Regulations: The Act makes no provision for regulations.

Cases:

See *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC), which was overruled on other points by *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), for a discussion of the constitutionality of portions of this Act.

S v Smith NO & Others 1996 NR 367 (HC) rules that section 11(1) is in conflict with Article 21(1) and (2) of the Constitution and refers it back to Parliament for amendment.

See also *S v Hotel Onduri (Pty) Ltd & Another* 1993 HR 78 (HC), which concerns the previous Abolition of Racial Discrimination Act 3 of 1979.

Commentary:

Nico Horn, “Freedom of expression and hate speech in Namibia”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available [here](#)

A Nation Divided: Why do Racism and Other Forms of Discrimination still Persist after Twenty-seven Years of Namibian Independence, Office of the Ombudsman, 2017.

Related international agreements:

†*International Convention on the Elimination of All Forms of Racial Discrimination, 1966*

†*International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973.*

Extradition Act 11 of 1996

Summary: This Act ([GG 1358](#)) sets out rules and procedures for transferring persons accused of certain crimes from one country to another, as well as persons convicted of certain crimes who are still unlawfully at large. It was brought into force on 1 August 1996 by GN 199/1996 ([GG 1370](#)).

Repeals: This Act replaces the *Extradition Act 67 of 1962* ([RSA GG 264](#)).

Amendments: The Act is substantially amended by Act 19/2018 ([GG 6810](#)), which was brought into force on 15 October 2020 by GN 251/2020 ([GG 7361](#)).

Section 5 of the Act is amended by Act 2/2023 ([GG 8135](#)).

Savings: Section 26(2) of the Act contains a broad savings clause:

anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

Regulations: Regulations are authorised by section 25 of the current Act, but none have yet been promulgated. No regulations made under the repealed *Extradition Act 67 of 1962* have been located.

Notices: Countries to which extradition of persons from Namibia may be effected in terms of section 4(1)(b) of the Act are listed in Proc. 5/1997 ([GG 1534](#)), Proc. 11/1999 ([GG 2047](#)), Proc. 22/2001 ([GG 2656](#)), Proc. 8/2003 ([GG 2946](#)), Proc. 3/2006 ([GG 3614](#)), Proc. 10/2006 ([GG 3711](#)) and Proc. 21/2010 ([GG 4606](#)).

Cases:

S v Biglione 2000 NR 127 (HC)

S v Mushwena & Others 2004 NR 35 (HC), overruled by *S v Mushwena & Others* 2004 NR 276 (SC), which was reversed in part by *S v Likanyi* 2017 (3) NR 771 (SC); see also *S v Munuma & Others* 2016 (4) NR 954 (SC)

S v Koch 2006 (2) NR 513 (SC)

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC), 2010 (1) NR 328 (SC) (striking down section 21 of the Act as unconstitutional)

Ayoub v Minister of Justice & Others 2013 (2) NR 301 (SC).

Related international agreements:

SADC Protocol on Extradition, 2002.

Motor Vehicle Theft Act 12 of 1999

Summary: This Act ([GG 2150](#)) covers the theft of motor vehicles and motor vehicle parts. It was brought into force on 1 April 2000 by GN 81/2000 ([GG 2294](#)).

Amendments: Act 17/2004 ([GG 3349](#)) amends sections 1, 2, 6, 8, 9, 13, 15 and 23. The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the Act.

Regulations: Regulations are authorised by section 24 of the Act, but none have been promulgated.

Note: Section 25 of the Act refers to sections 36 and 37 of the *General Law Amendment Act 62 of 1955*. However, this *General Law Amendment Act* is not applicable to Namibia. It appears that the reference should cite sections 6 and 7 of the General Law Amendment Ordinance 12 of 1956.

Cases:

Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd & Another 2003 NR 183 (HC) (discussion in *dicta*)

S v Kaevarua 2004 NR 144 (HC) (essential elements of offence and formulation of charge under section 2)

S v Amalovu & Another 2005 NR 438 (HC) (sentencing under section 15)

S v Kambindu 2016 (4) NR 1104 (HC) (sentencing under section 15).

Combating of Rape Act 8 of 2000

Summary: This Act ([GG 2326](#)) sets forth a new definition of rape, minimum sentences for rape, new rules of evidence in rape cases, special provisions concerning bail in rape cases, and new rules concerning privacy in respect of rape cases. It was brought into force on 15 June 2000 by GN 140/2000 ([GG 2348](#)).

Regulations: The Act makes no provision for regulations.

Amendments: The Act is amended by Act 4/2022 ([GG 7932](#)), which has not yet been brought into force.

Cases: The following cases pertain to the Act –

- S v Lopez* 2003 NR 162 (HC) (marital rape case dealing with unlawful detention under section 2(2)(e); “substantial and compelling circumstances” under section 3(2))
- S v Awaseb & Two Others*, High Court, Case No. CA 46/2003 (unreported) (offence of attempted rape is a competent verdict on a charge of rape under the Act, by virtue of section 18 of *Riotous Assemblies Act 17 of 1956*)
- S v Kaanjuka* 2005 NR 201 (HC) (appropriateness of sentence)
- S v Zingolo* 2005 NR 349 (HC) (requirements for admissibility of medical evidence and cautionary rule applied to evidence of child)
- S v Gurirab* 2005 NR 510 (HC) (meaning of “substantial and compelling circumstances” in section 3(2); guidelines on explanations which must be given to unrepresented accused in respect of sentencing under the Act)
- S v Katuta* 2006 (1) NR 61 (HC) (testimony about having “sex” insufficient to prove sexual act under section 2(1)(a)), as defined by section 1)
- S v Domingo* [2005] NAHC 37 (meaning of grievous bodily or mental harm in section 3(1)(a)(iii)(aa); appropriate punishment)
- S v Nango* 2006 (1) NR 141 (HC) (incorrect application of sentencing provisions corrected on appeal; weighing of evidence of child rape victim and child witness)
- S v M* 2006 (1) NR 156 (HC) (conviction of rape of 8-year-old boy by 16-year-old boy overturned on procedural grounds)
- S v Kauzuu* 2006 (1) NR 225 (HC) (sentence of 20 years for repeated rape of 14-year-old child of girlfriend, resulting in pregnancy, reduced to 15 years on appeal to take into account certain mitigating factors and time spent in custody awaiting trial)
- S v Hoaseb* 2006 (1) NR 317 (HC) (finding that weapon mentioned in testimony was not used in furtherance of the rape, affecting applicable minimum sentence)
- S v Limbare* 2006 (2) NR 505 (HC) (role of judicial discretion in sentencing under Act, and “substantial and compelling circumstances” under section 3(2))
- S v Bezuidenhout* 2006 (2) NR 613 (HC) (effect on sentencing of previous conviction of rape which occurred many years previously and prior to enactment of statute)
- S v Karenga* 2007 (1) NR 135 (HC) (attempted rape not expressly provided for in Act, but can be charged under common law, or as a competent verdict for rape under the Act by virtue of section 256 of the Criminal Procedure Act 51 of 1977)
- S v S* 2007 (1) NR 305 (HC) (conviction involving rape of 14-year-old; alibi of accused rejected)
- S v Gaseb* 2007 (1) NR 310 (HC) (bail denied in case alleging rape of 9-year-old; court has wider discretion to refuse bail in respect of offences listed in Part IV of Schedule 2 of Act 51 of 1977, which include rape; “sexual assault of women and girls is a serious concern to all and sundry”)
- S v M* 2007 (2) NR 434 (HC) (meaning of grievous bodily or mental harm in section 3(1)(a)(iii)(aa); appropriate punishment)
- S v Handukene* 2007 (2) NR 606 (HC) (district magistrate’s court has no jurisdiction over charge of rape under Act except for plea under section 119 of Criminal Procedure Act 51 of 1977)
- S v Kukame* 2007 (2) NR 815 (HC) (rape and murder of 3-year-old; case deals with admissibility

- of confession & pointing out)
- S v J* 2008 (1) NR 30 (HC) (penetration of 8-year-old not established)
- S v Teek* 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under section 2(1)(a) of Act); see also *S v Teek* 2019 (1) NR 215 (SC) which reinstates trial court's acquittal after discussing credibility of children's evidence and other factors
- S v Swartz* NAHCMD CC 08/2010 (18 November 2011) (rape of 4-year-old by 16-year-old by means of insertion of finger in vagina; sentence of 8 years, 4 years suspended)
- S v Hengari* 2010 (2) NR 412 (HC) (offence of attempted rape is a competent verdict on a charge of rape under the Act, by virtue of section 18 of *Riotous Assemblies Act 17 of 1956*, and the sentence should be the same as those provided by section 3 for the completed crime of rape)
- S v K* 2011 (1) NR 1 (HC) (rape of 3½-month old baby: "one of the youngest if not the youngest victim ever of rape in this country"; discussion of interests of society in respect of sentencing of 17-year-old offender)
- S v BM* 2013 (4) NR 967 (HC) (traditional healer's practice of smearing herbs into genitals of complainants and then having sexual intercourse with them constitutes misrepresentation under section 2(1)(h) and is not a "sound medical practice" for purposes of the exception to the definition of "sexual act" in section 1)
- S v Lilonga* 2014 (1) 53 (NLD) (no substantial and compelling circumstances found for purposes of minimum sentence in respect of rape of 8-year-old by 21-year-old; notes that not all youthful offenders are immature, and that not all rural and uneducated offenders are unsophisticated; court also considers lasting impact on complainant)
- S v Gomaseb* 2014 (1) NR 269 (HC) (upholds sentence imposed on 15-year-old offender for rape of 5-year-old by means of insertion of finger in vagina (6 years, 3 years suspended); Convention on the Rights of the Child applied)
- S v Ndakolo* 2014 (2) NR (NLD) (sentence of 17 years imprisonment for rape of 9-year-old boy by 19-year-old confirmed; punitive, retributive and deterrent aspects of sentence outweigh personal circumstances of accused; "It is a realistic fact that the imposition of substantial custodial sentences is not the ultimate panacea for this scourge. That does not detract from the fact that the courts should play their role as part of the collective effort to eradicate this violence from society" (para 12))
- S v SS* 2014 (2) NR 399 (HC) (various procedural issues in rape trial, including explanation to unrepresented accused, formulation of charges, missing rape kit, treatment of evidence of single witness and testimony regarding J88 form)
- S v Ameb* 2014 (4) NR 1134 (HC) (conviction upheld in absence of medical evidence of rape)
- S v Kambatuku* 2014 (4) NR 1134 (HC) (conviction in rape case set aside because accused not afforded effective opportunity to exercise right to legal representation; one reason cited for ruling is seriousness of crime of rape)
- S v Kapure* 2015 (2) NR 394 (HC) (rape of an 81-year-old woman by a 29-year-old man; court's failure to comply strictly with the *Guirab* guidelines not sufficiently serious to warrant overturning of 17-year sentence imposed for rape)
- S v Libongani* 2015 (2) NR 555 (SC) (21-year-old convicted of raping 10-year-old; charge sheet could not support conviction on rape on more than one occasion; magistrate's finding of substantial and compelling circumstances unjustified, and aggravating circumstances were not considered; 12-year-sentence substituted with sentence of 17 years)
- S v Unengu* 2015 (3) NR 777 (HC) (treatment of single witness evidence; treatment of discrepancies between witness statements to police and testimony in court)
- S v Gomeb & Others* 2015 (4) NR 1100 (HC) (problems with chain of evidence in rape case)
- S v PV* 2016 (1) NR 77 (HC) (discussion of absence of free will/consent as a coercive circumstance under section 2(2))
- S v LK* 2016 (1) NR 90 (SC) (sentencing for rape of 7-year-old by 20-year-old by insertion of finger in vagina; substantial and compelling circumstances need not be exceptional, but sentence imposed must be weighed against benchmark of original minimum sentence and against fact that legislature particularly extended strong protection to persons vulnerable because of their youth; court upholds departure from minimum sentence of

- 15 years but substitutes heavier sentence (9 years, 4 years suspended) than that imposed by trial court (7 years, 4 years suspended))
- S v JB* 2016 (1) NR 114 (SC) (sentencing for rape of daughter (age not stated) by her father; time spent in custody awaiting trial cannot constitute substantial and compelling circumstance; minimum sentence of 15 years imposed on appeal)
- S v VL* 2018 (1) NR 67 (HC) (rape conviction in lower court upheld)
- S v Koch* 2018 (4) NR 1006 (HC) (acquittal on charge of rape of children due to contradictory evidence; conviction on alternative charge under section 14(c) of the Combating of Immoral Practices Act 21 of 1980); acquittal on rape charges upheld on appeal in *S v Koch* 2022 (1) NR 70 (SC)
- S v Jonas* 2019 (4) NR 924 (HC) (convictions on multiple trafficking and rape offences; however, attempted rape not present when actions in question amounted only to preparation and not an actual attempt; if attempted rape had been proved, conviction would have had to be under section 18(1) of the Riotous Assemblies Act 17 of 1956 and not the Combating of Rape Act 8 of 2000)
- S v Matlata* 2018 (4) NR 1038 (HC) (sentencing for rapes of multiple women; no “substantial and compelling circumstances” found for purposes of section 3(2) of Act)
- S v Boois* 2018 (4) NR 1060 (HC) (life sentence, without consideration for parole before serving 25 years, for rape-murder of visibly pregnant woman; section 3(4) analysed; discussion of conflict between some minimum sentences in Act and application of *S v Gaingob & Others* 2018 (1) NR 211 (SC))
- S v Gariseb* 2019 (2) NR 334 (SC) (section 1(1); “genital stimulation” applies only to stimulation of female genitals due to being listed together with cunnilingus; attempted rape is a competent verdict on a charge of rape, but not indecent assault)
- S v Paulus* (CC 3/2019) [2020] NAHCNLD 108 (17 August 2020) (“sexual act”; entry of female genital organ to opening of vagina constitutes penetration)
- S v Gawiseb* 2022 (2) NR 453 (HC) (sentences for multiple rapes committed on same night to be served concurrently to comply with *S v Gaingob & Others* 2018 (1) NR 211 (SC), and to ameliorate excessive cumulative effect).

The following cases concern the common-law crime of rape –

- S v Shapumba* 1999 NR 342 (SC) (sentencing for common-law crime of rape in a case where another rape was committed while accused was out on bail; 15 years for the one rape and 9 years for the other, to run concurrently in part for effective total of 18 years imprisonment)
- S v Katamba* 1999 NR 348 (SC) (acquittal on charge of rape of 11-year-old overturned on appeal, in conjunction with a holding that the cautionary rule in sexual cases should not be applied by Courts in Namibia)
- S v Gaseb & Others* 2000 NR 139 (SC) (multiple charges and convictions in respect of gang rape)
- S v Le Roux* 2000 NR 209 (HC) (lack of evidence of rape in context of application for discharge).

The following civil action concerns a duty of care in respect of the rape of a mentally disabled child which occurred whilst she was wrongfully allowed to spend a weekend outside her school hostel-

- Vivier NO & Another v Minister of Basic Education, Sport & Culture* 2007 (2) NR 725 (HC); 2012 (2) NR 613 (SC).

Commentary:

- LLE du Toit, FJ de Jager, A Paizes, A St Q Steen & SE van der Merwe (eds), *Commentary on the Criminal Procedure Act*, Cape Town: Juta Law, 1987 and associated bi-annual *Criminal Justice Review* (both discussed in Nico Horn, “LLE du Toit, FJ de Jager, A Paizes, A St Q Steen & SE van der Merwe, eds, *Commentary on the Criminal Procedure Act*, Cape Town: Juta Law, 1987, Loose-leaf format, 1,700 pages, ISBN 9780702119620”, *Namibia Law Journal*, Volume 5, Issue 1, 2013)
- A Kruger, *Hiemstra's Criminal Procedure*, Durban: Lexis Nexis, 2008 (discussed in Nico Horn, *Namibia Law Journal*, Volume 2, Issue 1, 2010)

Dianne Hubbard, "A Critical Discussion of the Law on Rape in Namibia", Windhoek: Namibian Institute for Social and Economic Research (NISER), University of Namibia, 1991, republished in S Bazilli (ed), *Putting Women on the Agenda*, Johannesburg: Raven Press, 1991

Dianne Hubbard, "Should a Minimum Sentence for Rape be Imposed in Namibia?", *Acta Juridica* 1994; reprinted in Christina Murray (ed), *Gender and the New South African Legal Order*, Cape Town: Juta & Co, 1994

Law Reform and Development Commission, *Report on the Law pertaining to Rape*, LRDC 4, 1997, available [here](#)

Legal Assistance Centre, *Guide to the Combating of Rape Act*, 2001, available [here](#) (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali)

Legal Assistance Centre *Guidelines for Service Providers on the Combating of Rape Act*, 2005, available [here](#)

Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006, available in detailed and summary versions [here](#)

Legal Assistance Centre, *Withdrawn: A Study of Rape Case Withdrawals*, 2009, available [here](#)

Allison De Smet & Dianne Hubbard, "Substantial and Compelling Circumstances" in *Rape Cases*, Legal Assistance Centre, 2009, available [here](#)

Laila Hassan, "Sentencing under the Combating of Rape Act, 2000: The misapplication of judicial discretion", *Namibia Law Journal*, Volume 3, Issue 1, 2011, available [here](#)

Law Reform and Development Commission, *Further Report on the Law Pertaining to Rape*, LRDC 18, 2012, available [here](#).

International Co-operation in Criminal Matters Act 9 of 2000

Summary: This Act ([GG 2327](#)) facilitates the provision of evidence and the execution of sentences in criminal cases, and the confiscation and transfer of the proceeds of crime, between Namibia and certain designated foreign states. It was brought into force on 15 September 2001 by GN 185/2001 ([GG 2614](#)).

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

Amendments: This Act is substantially amended by the Prevention of Organized Crime Act 29 of 2004 ([GG 3363](#)), which was brought into force by GN 77/2009 ([GG 4254](#)).

Schedule 1 is amended by the addition of the Federal Republic of Germany by GN 107/2005 ([GG 3491](#)), and by the addition of several other countries by GN 167/2006 ([GG 3714](#)).

The Act is also substantially amended by Act 20/2018 ([GG 6811](#)). Amongst other things, these amendments provide for a Central Authority to make and receive requests for assistance.

Act 12/2023 ([GG 8149](#)) amends sections 1 and 7A and inserts sections 26A-26D.

Regulations: Regulations for International Co-operation in Criminal Matters are contained in GN 186/2001 ([GG 2614](#)), as amended by GN 221/2023 ([GG 8150](#)).

Anti-Corruption Act 8 of 2003

Summary: This Act ([GG 3037](#)) establishes an Anti-Corruption Commission and provides for the prevention and punishment of corruption. It was brought into force on 15 April 2005 by GN 37/2005 ([GG 3411](#)).

Repeals: The Act repeals the *Prevention of Corruption Ordinance 2 of 1928* and amends Schedule 3 of the Public Service Act 13 of 1995.

Amendments: The Act is amended by Act 10/2016 ([GG 6156](#)), which substitutes sections 11 and 12 and substitutes “Director-General” for “Director” and “Deputy Director-General” for “Deputy Director” throughout. (This necessitates a corresponding amendment to Schedule 3 of the Public Service Act 13 of 1995. See section 54(2) of this Act, as amended.)

Regulations: Regulations are authorised by section 30 of the Act, but none have been promulgated. There is no savings provision for regulations made under the repealed Ordinance.

Notices: Investigating officers of the Anti-Corruption Commission, already appointed and to be appointed, are appointed as justices of the peace for all magisterial districts in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963* by GN 33/2012 ([GG 4883](#)).

Cases:

S v Nakale & Others (No 1) 2007 (2) NR 405 (HC) (conviction); *S v Nakale & Others (No 2)* 2007 (2) NR 427 (HC) (sentencing)

Prosecutor-General v Lameck & Others 2009 (2) NR 738 (HC) (sections 32-33, 42(2))

Prosecutor-General v Lameck & Others 2010 (1) NR 156 (HC) (discussion of search warrant procedure)

S v Paulus 2011 (2) NR 649 (HC) (offence created by section 35(1) requires *mens rea* in form of *dolus*)

Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) (striking down the definition of “corruptly” in section 32 as being unconstitutionally vague, leaving the term as used in other sections of the Act to be interpreted by the courts; but finding the definition of “gratification” in section 32 to be wide but not unduly vague).

Simataa v Magistrate of Windhoek & Others 2012 (2) NR 658 (HC) (sections 18, 22, 43)

S v Goabab & Another 2013 (3) 603 (SC) (following on striking down of definition of “corruptly” in section 32 on Constitutional grounds, encourages judicial development and finds that term “corruption” at its lowest threshold in the context of the public service includes “abuse of a public office or position (including the powers and resources associated with it) for personal gain” and that synonyms of “corruptly” include “immorally, wickedly, dissolutely and dishonestly”)

Hailulu v Director of the Anti-Corruption Commission & Others 2014 (1) NR 62 (HC) (sections 18, 43(1) and 28); confirmed on appeal in *Hailulu v Director, Anti-Corruption Commission & Others* 2016 (1) NR 1110 (SC) (section 18 and relationship between Commission and Prosecutor-General)

The fact that appellant has not succeeded in this appeal should not obscure the fact that it is a cause for grave concern that the Commission was found by the High Court to have advanced the cause of the Union and its members in effecting the arrest of appellant. Such conduct is deplorable and appellant is entitled to feel aggrieved by it. The Commission is established as an independent and impartial institution to prevent and punish corruption. It is an institution of national importance pursuing a goal that is central to the wellbeing of Namibia’s democracy. Its conduct must be beyond reproach. The achievement of the Commission’s goal will be imperilled if its reputation is tarnished as it has been in this case by its unlawful conduct. Appellant may of course choose to pursue civil remedies against the Commission. Such remedies, however, even if successful, will not repair the Commission’s reputation. Its reputation will only be repaired if the Commission by its conduct and the conduct of its officials demonstrates unwaveringly that it must and will always act in a manner that is independent, impartial and lawful. (para 65)

S v Lameck & Others 2017 (3) NR 637 (SC) (discussion of section 21(5) read with 26(1)(d), and sections 22(4) and 27, in context of appeal on issue of recusal)

New Force Logistics CC v Anti-Corruption Commission 2018(2) NR 375 (HC) (section 23: evidence on the application of this section must come from the officers who actually carried out the search; section 25)

[58] ... [T]he Constitution of this Republic grants suspects and accused persons certain pre and trial rights, which include the presumption of innocence, right against self-incrimination and kindred rights and freedoms. More importantly, the Legislature has, in the Anti-Corruption Act and other kindred pieces of legislation, which seem to bear on human rights and freedoms, sought to strike a balance that ensures that fundamental rights, even in the face of accusations of commission of serious crimes, are maintained and observed.

[59] It is in this regard that for instance, rights to search, seize and attach property have been subjected to stringent safeguards, including the issuance of warrants and where circumstances so demand, the carrying out of those necessary actions without a warrant, but under extreme safeguards, that seek to balance the interests of the society in arresting and dealing with crime and the rights of an individual to be treated fairly and in a just manner.

[60] It would be a sad day in this Republic, if the courts, because of the undeniable need to arrest the ubiquitous incidence of serious crime, including corruption, would close their eyes to the constitutional safeguards, thus sacrificing the rule of law and individual rights and freedoms guaranteed in the Constitution and the laws of this Republic, on the altar of bringing suspects to book, by hook or by crook. This great edifice, under which all persons in this great country seek and find refuge, might fall if that were to be the accepted approach.

[61] In this regard, the courts must hold the middle ground and ensure that where crime is suspected to have been committed, those suspected or implicated, are treated fairly and strictly in terms of the law. Where the functionaries responsible therefor fail or neglect to follow the dictates of the law that should ordinarily guide them in their actions, they should know and expect that the courts will not turn a blind eye and give priority to the arrest and prosecution of suspects, throwing the strict requirements of the law into the dustbin as it were. The courts cannot and should not be party to a law-breaking enterprise, even if it is perceived, in religious, political or social circles, to be for the common good. The end should never justify the means.

S v Lameck & Others 2018 (3) NR 902 (HC) (GN 33/2012 ([GG 4883](#)), which designates investigating officers under this Act as Commissioners of Oaths in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963* is supplementary to AG GN 128/1982 ([OG 4672](#)) which designates members of any “commission” established by law as Commissioner of Oaths under that Act; search warrants issued under section 22(4) null and void, because section 22(5)(b) requires that a specific authorised officer must be named in the warrants)

S v Lameck & Others 2019 (2) NR 368 (HC) (summons under section 18 can be issued only after an investigation into corrupt practices has been initiated; access to accounts at financial institutions must be actioned via section 27 and not section 21(5); at para 30: “To allow evidence that was unlawfully obtained (emanating from invalid summonses) would result in a gross violation of the accused persons’ fundamental rights to privacy and a fair trial, guaranteed under the Constitution.”)

S v Hanse-Himarwa 2019 (3) NR 706 (HC) (no irregularity found under section 31(1); Minister convicted of contravention of section 43(1)); see also *S v Hanse-Himarwa* (CC 05/2018) [2019] NAHCMD 260 (31 July 2019) (sentence: fine of N\$50 000 or in default of payment, 24 months imprisonment, plus a further 12 months imprisonment suspended for a period of 5 years on condition that the accused is not convicted of a contravention of section 43(1) during the period of suspension)

Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (definition of “authorised officer”; multiple warrants issued under section 22(6) in respect of overlapping time periods; warrants and search procedure considered in light of sections 22, 24(3), 25(1) and (5))

S v Aupindi & Another 2021 (4) NR 1008 (HC) (section 21 intended for obtaining information from potential witnesses, not for questioning of suspects).

Commentary:

Ellison Tjirera & Graham Hopwood, “The ACC in Action: What Does the Track Record Say?”, Institute for Public Policy Research, 2011, available [here](#)

Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available [here](#)

Frederico Links & Clement Daniels, “Protected Disclosure: Informing the Whistleblowing Debate in Namibia”, Institute for Public Policy Research, 2012, available [here](#)

Graham Hopwood, “Encouraging the Reporting of Corruption: Principles of Whistleblower Protection”, Institute for Public Policy Research, 2016, available [here](#)

Anti-Corruption Commission, “Namibia National Anti-Corruption Strategy and Action Plan 2016-2019”, available [here](#)

Max Weylandt, “The Namibian Anti-Corruption Strategy 2016-2019: An Overview and Analysis”, Institute for Public Policy Research, 2017, available [here](#)

Max Weylandt, "The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?", *Briefing Paper*, Institute for Public Policy Research, June 2017, available [here](#)

Job Shipululo Amupanda, "The Fight against Corruption in Namibia: An Appraisal of Institutional Environment and a Consideration of a Model for Civil Society Participation", *Namibia Law Journal*, Volume 11, Issue 1, 2019

Anti-Corruption Commission, "Final Draft National Anti-Corruption Strategy and Action Plan 2021-2025"

See Anti-Corruption Commission brochures available for download [here](#).

Prevention of Organised Crime Act 29 of 2004

Summary: This Act ([GG 3363](#)), often abbreviated as POCA, contains measures to combat organised crime, money laundering and criminal gang activities, and establishes a Criminal Assets Recovery Fund and a Criminal Assets Committee. It also substantially amends the International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)). It was brought into force on 5 May 2009 by GN 77/2009 ([GG 4254](#)).

Amendments: Act 10/2008 ([GG 4191](#)) amends sections 1, 11, 77 and 100, and substitutes sections 9 and 10.

The Whistleblower Protection Act 10 of 2017 ([GG 6450](#)), which has not yet been brought into force, amends section 76.

The Act is also amended by Combating of Trafficking in Persons Act 1 of 2018 ([GG 6562](#)), which was brought into force on 14 November 2019 by GN 335/2019 ([GG 7047](#)).

The Act is further amended by Act 9/2023 ([GG 8142](#)), which was brought into force on 28 July 2023 by GN 227/2023 ([GG 8157](#)).

Regulations: Regulations are contained in GN 78/2009 ([GG 4254](#)), as amended by GN 228/2023 ([GG 8157](#)).

Rules: Rules for High Court proceedings in terms of Chapters 5-6 of the Act are contained in GN 79/2009 ([GG 4254](#)).

Application of law: Persons who give statements or evidence in proceedings under this Act may be eligible for protection under the Witness Protection Act 11 of 2017 ([GG 6451](#)).

Appointments: An accounting officer for the Criminal Assets Recovery Fund is designated in GN 213/2021 ([GG 7647](#)), which repeals GN 111/2012 ([GG 4941](#)).

Related laws: See the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM) and the Financial Intelligence Act 13 of 2012 (FINANCIAL INSTITUTIONS).

Cases:

Prosecutor-General v Lameck & Others 2009 (2) NR 738 (HC) (restraint orders under sections 24-25)

Prosecutor-General v Lameck & Others 2010 (1) NR 156 (HC) (test for confirming provisional preservation order issued under section 51(2))

Ex Parte Prosecutor-General In Re: Application for a Preservation Order in Terms of S 51 of the Prevention of Organised Crime Act 29 of 2004 2012 (1) NR 146 (HC) (no legal representation by unadmitted legal practitioners in section 51 applications)

Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) (upholding constitutionality of various provisions of the Act)

Pinto v First National Bank of Namibia Ltd & Another 2013 (1) NR 175 (HC) (effect of POCA on

relationship between banker and client)

Shalli v Attorney-General & Another 2013 (3) 613 (HC) (civil forfeiture scheme in Chapter 6 upheld against challenges on three Constitutional grounds)

Prosecutor-General v Kanime 2013 (4) NR 1046 (HC) (application of test for confirming provisional preservation order issued under section 51(2))

Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC), reversed on appeal in *Prosecutor-General v Uuyuni* 2015 (3) NR 886 (SC) (sections 51 and 98; held on appeal that an *ex parte*, *in camera* proceeding in respect of a preservation of property order is not unconstitutional in terms of Art 12(1), nor in conflict with section 13 of the High Court Act; note discussion of this case in *Atlantic Ocean Management Group (Pty) Ltd v Prosecutor-General* 2019 (4) NR 1031 (SC) at paras 16-24)

Mwashekele v Prosecutor-General 2015 (2) NR 564 (HC) (sections 52 and 60)

S v Lukas (CC 15/2013) [2015] NAHCMD 124 (2 June 2015) (conviction for trafficking in persons under section 15 of Act read with section 1)

Prosecutor-General v Kennedy 2017 (1) NR 228 (HC); overturned on appeal in *Prosecutor-General v Kennedy* 2019 (3) NR 631 (SC) (vehicle was an “instrumentality” in terms of section 61(1) in offence of rape involving rape at isolated spot)

Prosecutor-General v Miguel & Others 2017 (2) NR 381 (HC) (procedural issues relating to forfeiture of property following on conviction under POCA; High Court grants stay of magistrate’s court order to return property while appeal against decision on forfeiture is pending)

Prosecutor-General v Taapopi 2017 (3) NR 627 (SC) (interpretation of “in the prescribed manner” in section 91(1); regulation 7(b) on 7-day notice period not applicable to *ex parte* application for property preservation order under section 51(2); requirements for granting property preservation order under section 51(2))

Atlantic Ocean Management Group (Pty) Ltd & Another v Prosecutor-General 2017 (4) NR 939 (HC), confirmed on appeal in *Prosecutor-General v Atlantic Ocean Management Group (Pty) Ltd & Another* 2019 (4) NR 1031 (SC) ((1) There is a right to anticipate the hearing on an *ex parte* preservation order under section 51 of the Act via rule 72(7) of the Rules of the High Court; Supreme Court notes at para 15: “The drafters of the regulations, it would appear were with respect careless in that they did not make a distinction in the applicability of the regulations between applications in terms of s 51(2) and s 91(2).” (2) In terms of section 51 of the Act, the Prosecutor-General *may* make an *ex parte* application for a preservation of property order, but the court hearing the application in terms of s 51 is obliged to ensure that the proceedings before it are fair, with due regard to the principle of *audi alteram partem* (see para 21); (3) The permissibility of a subsequent application for a preservation order after the previous one lapses will depend on the circumstances of the case; not allowed here because Prosecutor-General should have acted immediately to cancel the first preservation order upon discovering that the determination relied upon (Determination No 3 of 2016 issued under the Financial Intelligence Act 13 of 2012) had not at that stage been published in the *Government Gazette* and that the account in question was not actually blocked in terms of s 42 of the Financial Intelligence Act 13 of 2012 as the Court believed)

Prosecutor-General v Africa Autonet CC t/a Pacific Motors 2017 (4) NR 969 (HC) (costs order against Prosecutor-General after preservation order lapsed before application for rescission could be heard; notice of withdrawal should have been filed under rule 97 of High Court Rules, and costs tendered, when preservation order was allowed to lapse)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (inexplicable failure to utilise POCA in case involving foreign currency that was admittedly the proceeds of unlawful activity, noted in passing at paras 30-31)

Prosecutor-General v Kamunguma & Another 2017 (4) NR 1089 (HC), overturned on appeal in *Prosecutor-General v Kamunguma & Another* 2019 (3) NR 651 (SC) (discussion of Chapter 6 of Act and intertwined nature of preservation orders and forfeiture applications; no prejudice to respondent if affidavit of preservation application is incorporated by reference in forfeiture application; application of section 60; application of section 1 (definition of “proceeds of unlawful activities”) and section 63; forfeiture order granted)

New Africa Dimensions CC & Others v Prosecutor-General 2018 (2) NR 340 (SC) (explication of definition of “proceeds of unlawful activities” in section 1; under section 63(1)-(2), owner of

- property who wishes to avoid a forfeiture order must apply for exclusion of the property from the order and provide proof that it was acquired legally with no knowledge or reasonable suspicion that the property was the proceeds of unlawful activity)
- S v Miguel & Others* 2018 (4) NR 946 (HC) (definition of “unlawful activity” in section 1; section 2 (knowledge of a fact); section 6(d))
- S v Koch* 2018 (4) NR 1006 (HC) (conviction on charges of trafficking; definition of trafficking discussed; section 15 read with section 1 in light of *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000* to the *Convention against Transnational Organized Crime (Palermo Convention), 2000*; meaning of “harbour or receive” and “sexual exploitation” of children, which includes conduct by a perpetrator whose aim is to give sexual gratification to the person who harbours or receives a child, even if a “sexual act” is not committed); sentence imposed in *S v Koch* (CC 20/2017) [2018] NAHCMD 318 (11 October 2018) increased on appeal in *S v Koch* 2022 (1) NR 70 (SC).
- Prosecutor-General v Standard Bank Namibia Ltd & Others* 2019 (1) NR 159 (HC) (sections 4, 63, 59(1) in respect of request for forfeiture order)
- S v Manale* 2019 (1) NR 191 (HC) (fraud and money-laundering under section 6 of this Act (read with section 11) involve different actions and criminal intent; prosecution of all such offences in a single prosecution is not improper splitting of charges and does not produce duplication of convictions); *S v Manale* 2019 (2) NR 517 (HC) (sentence for 147 counts of fraud and one count of money laundering)
- S v Henock & Others* (CR 86/2019) [2019] NAHCMD 466 (11 November 2019) (Since the statute does not limit its application to serious predicate offences, the discretion on whether or not to charge under POCA lies with the Prosecutor-General; a person who has committed a predicate offence can also commit money-laundering under section 4 in connection with the proceeds of the unlawful activities; section 6 applies only to a person *other than* the person who committed the predicate offence, and prosecution of the same person under both the predicate offence and the money-laundering offence would constitute a duplication of convictions.)
- Assegaai & Others v Prosecutor-General & Others* 2020 (1) NR 25 (HC) (applicant may not bypass the procedure in section 58 of the Act for varying or rescinding a preservation order by using a subordinate statutory provision with a similar procedure – in this case, High Court Rule 103)
- Prosecutor-General v Paulo & Another* 2020 (4) NR 992 (SC) ((1) property preservation proceeding and forfeiture proceeding are part of a single two-stage intertwined process; the application for a forfeiture order is not a new proceeding as defined in rule 65(1) of the High Court rules. (2) service of process at “General Office for Service of Process (GOSP)” instead of legal practitioner’s office address is sufficient service under section 91(1) read with regulation 7); *Prosecutor-General v Paulo & Another* 2021 (2) NR 423 (HC) (sections 1 and 61; application for forfeiture order dismissed as it was not proved that the money in question was the proceeds of illegal activity, including money-laundering under sections 4 and 6 of this Act)
- S v Gustavo & Others* 2021 (4) NR 990 (HC) (racketeering as described in section 2 discussed in context of application for joinder of criminal cases).
- Prosecutor-General v China South Industry and Trading CC* 2021 (4) NR 1052 (SC) (section 52(3) notice defective due to non-compliance with section 52(5)(e), meaning that sanction in 52(6) becomes operative with the effect that the person in question is not entitled to receive notice of a forfeiture application)
- Prosecutor-General v Oliveira & Another* 2021 (4) NR 1144 (SC) (sections 51 and 91 read with regulation 7; court has discretion to dispense with prescribed requirements for provisional preservation order sought on urgent basis, as this interpretation is necessary to uphold the purpose of POCA to expeditiously preserve assets that are used to commit criminal offences or that are the proceeds of unlawful activity; brief discussion of appointment of investigating officer as *curator bonis* under section 55(1)(a) in light of remedies available under sections 58(7)(a)-(b) and 58(8)(a)(ii)).

Commentary:

Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available [here](#)
Max Weylandt, “The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?”, *Briefing Paper*, Institute for Public Policy Research, June 2017, available [here](#).

Related international agreements:

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

***Whistleblower Protection Act 10 of 2017**

Summary: This Act ([GG 6450](#)) is aimed at the protection of persons who report information to officials on improper conduct, which includes amongst other things: criminal activities; violation of the fundamental rights and freedoms protected by the Namibian Constitution; failure to comply with any law; waste, misappropriation or mismanagement of resources which affects the public interest; environmental degradation; endangerment of the health and safety of an individual or community; or the deliberate concealment of such matters. The Act establishes a Whistleblower Protection Office to investigate whistleblower disclosures and complaints of detrimental action taken against the whistleblower or someone related to or associated with the whistleblower. It also provides for a Whistleblower Protection Review Tribunal which reviews decisions of the Whistleblower Protection Office and is empowered to make determinations on whether detrimental action has been taken against a whistleblower and if so, to provide appropriate remedies. The Act will come into force on a date set by the Minister in the *Government Gazette*.

Regulations: Regulations are authorised by section 78 of the Act, but none have been issued as yet.

Commentary:

Frederico Links & Clement Daniels, “Protected Disclosure: Informing the Whistleblowing Debate in Namibia”, Institute for Public Policy Research, 2012, available [here](#) (Criminal Procedure Amendment Act 13 of 2010)

Graham Hopwood, “Encouraging the Reporting of Corruption: Principles of Whistleblower Protection”, Institute for Public Policy Research, 2016, available [here](#)

“Comment - Whistleblower Protection Bill” (submission to Parliament), Institute for Public Policy Research, 22 February 2017, available [here](#)

“The (Draft) Whistleblower Protection Bill of 2017: A Detailed Summary”, Deloitte Namibia, May 2017, available [here](#)

Jordan Lesser, “The Future of Conservation in Namibia: Making the Case for an Environmental Court and Legislative Reforms to Improve Enforcement of Wildlife Crimes”, 32 *Tulane Environmental Law Journal* 49 (2018), pages 88-90, available [here](#).

Witness Protection Act 11 of 2017

Summary: This Act ([GG 6451](#)) provides for protection measures for witnesses, and persons related to or associated with them, who face potential risk or intimidation because the witness has given evidence or a statement in connection with any of a range of legal proceedings; is a victim of a specified crime; has acted as a whistleblower; or is otherwise in need of protection. The Act also creates a Witness Protection Unit, a Witness Protection Advisory Committee and a Witness Protection Review Tribunal to establish, administer and review issues relating to the Witness Protection Programme. It was brought into force on 20 October 2023 by GN 340/2023 ([GG 8239](#)).

Regulations: Witness Protection Regulations are contained in GN 341/2023 ([GG 8239](#)).

Directives and rules: Section 80 authorises the issue of directives and staff rules but does not require that these be gazetted.

Combating of Trafficking in Persons Act 1 of 2018

Summary: This Act ([GG 6562](#)) criminalises trafficking in persons and related acts, and provides for measures to protect and assist trafficking victims. It gives effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Act was brought into force on 14 November 2019 by GN 335/2019 ([GG 7047](#)). It amends the Child Care and Protection Act 3 of 2015 and the Prevention of Organised Crime Act 29 of 2004.

Regulations: Regulations are contained in GN 336/2019 ([GG 7047](#)).

Note that Form 2 of these regulations erroneously makes reference to the “Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)” rather than the Combating of Trafficking in Persons Act 1 of 2018.

Note: See also the Prevention of Organised Crime Act 29 of 2004.

Cases: The following cases concern the provisions on trafficking in the Prevention of Organised Crime Act 29 of 2004, which have been repealed and replaced by the provisions in this Act:

S v Koch 2018 (4) NR 1006 (HC) (conviction on charges of trafficking; definition of trafficking discussed; section 15 of Prevention of Organised Crime Act 29 of 2004 read with section 1 of that Act in light of *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000* to the *Convention against Transnational Organized Crime (Palermo Convention), 2000*; meaning of “harbour or receive” and “sexual exploitation” of children, which includes conduct by a perpetrator whose aim is to give sexual gratification to the person who harbours or receives a child, even if a “sexual act” is not committed); sentence imposed in *S v Koch* (CC 20/2017) [2018] NAHCMD 318 (11 October 2018) increased on appeal in *S v Koch* 2022 (1) NR 70 (SC).

S v Jonas 2019 (4) NR 924 (HC)

S v Pretorius 2020 (4) NR 1097 (HC).

Commentary: “The Combating of Trafficking in Persons Bill”, Institute for Public Policy Research, January 2018, available [here](#).

Related international agreements:

African Charter on the Rights and Welfare of the Child (ACRWC or Children’s Charter), 1990

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

Convention on the Rights of the Child, 1989

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

Criminal Procedure Act Repeal Act 14 of 2018

Summary: This Act ([GG 6804](#)) repeals the Criminal Procedure Act 25 of 2004 ([GG 3358](#)), which was passed by Parliament but never brought into force.

COMMISSIONS

Commission of Inquiry into Legislation for the More Effective Combating of Crime in Namibia (Proc. 2/1996, [GG 1285](#)).

See also GN 75/1996 ([GG 1285](#)).

MISCELLANEOUS

Sentences of death are commuted in Proc. 13/1991 ([GG 203](#)).

Presidential pardons extended to certain categories of prisoners are announced in:

Proc. 15/1993 ([GG 642](#))

Proc. 11/1994 ([GG 836](#))

Proc. 3/1995 ([GG 1051](#))

Proc. 4/1997 ([GG 1533](#))

Proc. 1/2000 ([GG 2306](#))

Proc. 12/2003 ([GG 2956](#))

Proc. 1/2005 ([GG 3397](#))

Proc. 4/2006 ([GG 3626](#))

Proc. 6/2009 ([GG 4230](#))

Proc. 14/2010 ([GG 4552](#))

Proc. 28/2013 ([GG 5270](#))

Proc. 8/2020 ([GG 7154](#)), which was withdrawn and replaced by Proc 19/2020 ([GG 7212](#)).

SELECTED CASES

S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC) (procedure for challenging constitutionality of legislation in a criminal case)

COMMENTARY

CS Kahanovitz, "The Namibian Bill of Rights: its implications for the promotion of procedural and substantive justice in criminal cases", Part 1, *Legal Forum*, Volume 2, Issue 4, 1990 and Part 2, *Legal Forum*, Volume 3, Issue 1, 1991

Lynita Conradie, *Law for All, Volume 2: Criminal Law*, Windhoek: Namibia Institute for Democracy / Out of Africa Publishers, 2001

Legal Assistance Centre, *Baby-dumping and Infanticide, Monograph 1*, 2008, available [here](#)

Legal Assistance Centre, *Stalking: Proposed New Legislation for Namibia, Monograph 3*, 2008, available [here](#)

Law Reform and Development Commission, *Report on Adjustment of Fines*, LRDC 17, 2010, available [here](#).

INTERNATIONAL LAW

African Union Convention on Preventing and Combating Corruption, 2003

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000
Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973
International Convention against the Taking of Hostages, 1979
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005
International Convention for the Suppression of Terrorist Bombings, 1997
International Convention for the Suppression of the Financing of Terrorism, 1999
Rome Statute of the International Criminal Court, 1998
Agreement on the Privileges and Immunities of the International Criminal Court (APIC), 2002
SADC Protocol Against Corruption, 2001
SADC Protocol on Extradition, 2002
SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002
United Nations Convention Against Corruption, 2003

Commentary on related international law:

Sabine Höhn, “International justice and reconciliation in Namibia: the ICC submission and public memory”, 109 (436) *African Affairs* 471 (2010).
 Graham Hopwood, “Namibia and the UN Convention Against Corruption (UNCAC): A gap analysis on Namibia’s compliance with UNCAC”, completed by the Institute for Public Policy Research and published by the Anti-Corruption Commission and UNDP, 2014, available [here](#)
 Max Weylandt, “Asset Declarations in Parliament: Too Little, Too Late?”, Institute for Public Policy Research, October 2015, available [here](#) (UN Convention on Corruption)
 Frederico Links, “Namibia and the UN Convention against Corruption”, Institute for Public Policy Research, 2016, available [here](#)
 Max Weylandt, “Asset Declarations in Namibia”, Institute for Public Policy Research, 2016, available [here](#) (UN Convention on Corruption)
 Max Weylandt, “The Namibian Anti-Corruption Strategy 2016-2019: An Overview and Analysis”, Institute for Public Policy Research, 2017, available [here](#) (UN Convention on Corruption).

See also **ALCOHOL, DRUGS AND TOBACCO**.

See also **ARMS AND AMMUNITION**.

See also Civil Aviation Offences Act 10 of 1972 (**AVIATION**).

See also General Law Amendment Ordinance 13 of 1962, section 7 (offence of concealment of birth) (**BIRTHS AND DEATHS**).

See also Prevention of Counterfeiting of Currency Act 16 of 1965 (**CURRENCY**).

See also Combating of Domestic Violence Act 4 of 2003 (**DOMESTIC VIOLENCE**).

See also **EVIDENCE**.

See also Financial Intelligence Act 13 of 2012 on the combating of money-laundering and the financing of terrorism and proliferation (**FINANCIAL INSTITUTIONS**).

See also **GAMBLING**.

See also Trespass Ordinance 3 of 1962 (**LAND AND HOUSING**).

See also Abortion and Sterilization Act 2 of 1975 (**MEDICINE**).

See also Diamond Act 13 of 1999 (diamond-related offences) (**MINING AND MINERALS**).

See also **PUBLIC GATHERINGS**.

See also Road Traffic and Transport Act 22 of 1999 (traffic offences) (**ROADS AND ROAD TRANSPORTATION**).

See also **TERRORISM**.