

CRIMINAL LAW AND PROCEDURE

Vagrancy Proclamation 25 of 1920.

Summary: This Proclamation is directed at suppressing trespass, idleness and vagrancy.

Amendments: The Proclamation is amended by Proc. 32/1927 and Ord. 3/1962. It was extended to the Rehoboth Gebiet by Proc. 7/1939.

Police Offences Proclamation 27 of 1920.

Summary: This Proclamation criminalises a miscellany of activities, primarily nuisances such as littering and swearing.

Amendments: This Proclamation is amended by Ord. 3/1962, Ord. 15/1962, Act 21/1980 and the RSA *Prohibition of Disguises Act 16 of 1969*. It was modified and applied to the Rehoboth Gebiet by Proc. 5/1937.

Cases: *S v Boois*; *S v Thomas* 1991 NR 455 (HC); *S v Kamudulunge* 2007 (2) NR 608 (HC) (competent sentence for contravention of section 9(1)).

Finance and Audit Ordinance 1 of 1926.

Summary: Only section 24D 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.

Amendments: The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930. Act 1/1982 repeals all of the Ordinance *except* sections 24D and 26A.

The Tender Board of Namibia Act 16 of 1996 repeals section 26A, leaving only section 24D in force. Section 24D is amended by Act 14/1973 and Ord. 28/1969.

Witchcraft Suppression Proclamation 27 of 1933.

Summary: This Proclamation attempts to suppress witchcraft by criminalising various activities.

Amendments: The Proclamation was extended to the Rehoboth Gebiet by Proc. 12/1936.

Price Control Admissions of Guilt Proclamation 40 of 1944.

Summary: This Proclamation has been superseded by the *Criminal Procedure Act 51 of 1977* which deals comprehensively with all admissions of guilt. However, the Proclamation has not been technically repealed.

Amendments: The Proclamation is amended by Ord. 11/1954 and Ord. 17/1958.

Criminal Law Amendment Act 8 of 1953, as amended in South Africa to November 1979.

Summary: This Act provides special increased penalties for offences committed in the course of protests or campaigns against any law of the Republic.

Applicability to SWA: This Act was not made specifically applicable to South West Africa. However, section 8 indicates that the Act applies to South West Africa by providing special instructions for the removal of “undesirable inhabitants” of the Territory of South West Africa.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by section 73 of the *Internal Security Act 74 of 1982*, which was not applicable to South West Africa.

Amendments: The Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 25/1989) repeals sections 8 and 9 of this Act.

Cases: *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State*, 1991 NR 178 (SC) (sections 1 and 2).

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

Summary: Sections 6-8 of this Ordinance deal with stolen goods.

Amendments: This portion of the Act is amended by Ord. 36/1965.

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).

Riotous Assemblies Act 17 of 1956, as amended in South Africa to November 1979.

Summary: Most of this Act was repealed in 1982. The remaining sections give the State President power to regulate the transportation of explosives and deal with the

criminal offences of incitement to public violence, conspiracy, attempted crimes, and inducement to commit crimes.

Applicability to SWA: Section 19A, which has not been repealed, 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, as amended), dated 12 November 1979.

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. Therefore, “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA) *except* in the indicated places in section 5, where it meant only SWA.

After the date of transfer, much of the Act was repealed by the *Intimidation Act 72 of 1982*, which was applicable to SWA by virtue of AG 29/1985. Other portions of the Act were repealed in South Africa by the *Internal Security Act 74 of 1982*, 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.

Amendments: The Riotous Assemblies Amendment Proclamation (AG 10/1977) repeals sections 4 and 19 and amends sections 1, 2, 3 and 7. The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) repeals sections 2, 6 and 7(1)(a), amends section 4 (which had already been repealed by AG 10/1977), and amends section 5 and section 7(1)(b). The Public Gatherings Proclamation (AG 23/1989) 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.

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

General Law Amendment Ordinance 13 of 1962, section 9.

Summary: Section 9 of this Ordinance sets forth the criminal offences of attempt, conspiracy and inducing another to commit an offence.

Criminal Procedure Ordinance 34 of 1963.

Summary: Only sections 300(3) and 370 are still in force. Section 300(3) makes it a criminal offence to give two conflicting statements under oath. Section 370 deals with the binding over of persons to keep the peace. The other sections of the Ordinance have been repealed by the *Criminal Procedure Act 51 of 1977*. (These sections are the South West African counterparts of sections 319(3) and 384 of the *Criminal Procedure Act 55 of 1956* applicable in South Africa.)

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

Gambling Act 51 of 1965.

Summary: This Act prohibits lotteries, sports pools and games of chance.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 12 states “This Act (with the exception of section thirteen) shall apply also in the territory of South West Africa (including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory”. (The excluded section is an amendment to another Act.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Posts and Telecommunications Companies Establishment Act 17 of 1992 repeals section 13.

The application of the Act is affected by the Casinos and Gambling Houses Act 32 of 1994 and the Lotteries Act 15 of 2002. (See also the Licensing of Totalisators Ordinance 5 of 1938.)

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

Summary: This Act 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.

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

Summary: This Act governs procedure in criminal proceedings.

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, but they may have been applicable by virtue of the definition of “Republic” in section 1 of the Act. None of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to SWA.

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

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 a 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.

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

Amendments: The Criminal Procedure Amendment Act 15 of 1981, which is brought into operation by AG 31/1981, amends sections 114 and 116.

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

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

The Appeals Amendment Act 29 of 1985, which is brought into operation by AG 19/1986, amends sections 315-319 and 323.

The Criminal Procedure Matters Act 31 of 1985 amends the Act substantially (affects 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 amends several provisions relating to bail (sections 59, 60, 61, 68, 72, 307 and Schedule 2).

The Criminal Procedure Amendment Act 26 of 1993 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 amends sections 1, 60A, 62, 153, 154 and 227 of the Act, and inserts sections 211A and 227A.

The International Co-operation in Criminal Matters Act 9 of 2000 amends sections 171-173.

The Appeal Laws Amendment Act 10 of 2001 substitutes section 315 and amends section 316.

The Combating of Domestic Violence Act 4 of 2003 amends sections 60A, 62 and 153.

The Maintenance Act 9 of 2003 amends section 195.

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

Regulations: Peace officers are declared in RSA GN R.159 of 2 February 1979, AG GN 85/1989, GN 92/2001 (GG 2530) which is amended by GN 241/2003 (GG 3102) and GN 74/2003 (GG 2946). Road inspectors are declared peace officers in terms of offences relating to road transportation in GN 219/1996 (GG 1395) and in GN 92/2001 (GG 2530). See also GN 206/2008 (GG 4113), which declares traffic officers appointed under the Road Traffic and Transport Act to be peace officers in respect of certain offences.

Cases:

- 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) unconstitutional)
- section 6:
S v Hausiko 1992 NR 225 (HC)
- 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)
- 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)
- section 35:
Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)
- section 37:
S v Ndikwetepo & Others 1992 NR 232 (SC)
S v Eigowab 1994 NR 192 (HC)
S v Malumo & Others 2006 (2) NR 629 (HC)
- 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)
- 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)
- 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)
- 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)
- 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)

- 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 Swartbooi 2003 NR 143 (HC)
S v Yugin & Others 2005 NR 196 (HC)
- section 61:
- 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)
- 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)
S v Timotheus 1995 NR 109 (HC)
S v Gaseb 2007 (1) NR 310 (HC)
- 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)
- section 78:
- S v Shivute* 1991 NR 123 (HC)
S v Samuel 1994 NR 51 (HC)
- section 79:
- S v Hansen* 1994 NR 5 (HC)
S v Amamub 2000 NR 207 (HC)
- section 83:

- S v Seibeb & Another; S v Eixab* 1997 NR 254 (HC)
S v Gaseb & Others 2000 NR 139 (SC)s
- 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)
- section 85:
S v Lofty-Eaton & Others (1) 1993 NR 370 (HC)
S v Ngono 2005 NR 34 (HC)
S v Kapia & Others 2009 (1) NR 52 (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)
- section 88:
S v Nakare 1992 NR 99 (HC)
S v Petrus 1993 NR 215 (HC)
- 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), 2004 NR 276 (SC)
S v Makendano 2007 (1) NR 251 (HC)
S v Myburgh 2008 (2) NR 592 (SC)
- 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 Kaevavua 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 Aludhlu 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)

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)

section 114:

S v Kauleefelwa 2006 (1) NR 102 (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 Kahumbe 1995 NR 77 (HC)
S v Shikongo & Others 1999 NR 375 (SC)

section 116:

S v Scott & Others 2009 (1) NR 58 (HC)

section 118:

S v Wellington 1990 NR 20 (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)

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)
- section 160(3)(b):
S v Khumalo 1991 NR 166 (SC)
- 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)
- 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)
- 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)
- 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), 2004 NR 276 (SC)
S v Nakale & Others 2006 (2) NR 455 (HC)
S v Teek 2009 (1) NR 127 (SC)
- section 175:
S v Khoeinmab 1991 NR 99 (HC)
S v Kamati 1991 NR 116 (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)
 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 197:
S v Appelgrein 1995 NR 118 (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)
 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)
 section 213:
S v Taapopi & Another 2001 NR 101 (HC)
 section 215:
S v Sibihlo & 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)
 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)
 section 220:

- S v Kahumbe* 1995 NR 77 (HC)
S v Boois 2004 NR 74 (HC)
- section 221:
S v De Villiers 1992 NR 363 (HC)
- 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 245:
S v Mwambazi 1990 NR 353 (HC)
S v Van Rooyen 1993 NR 235 (HC)
- section 256:
S v Esterhuizen & Another 1990 NR 283 (HC)
- section 258:
S v Katari 2006 (1) NR 205 (HC)
- section 261:
S v Ntantu & 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)
- 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); 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))
- section 286:
S v Miller 1999 NR 31 (HC)
- section 287:
S v Mynhardt; S v Kuinab 1991 NR 336 (HC)
S v Mukata 2005 NR 323 (HC)

- 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)
- 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)
- 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)
- 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)
- section 303:
S v Sanders 1990 NR 348 (HC)
S v Shivute & Several Other Cases 1991 NR 433 (HC)
- 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)
- 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)
- 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)
- 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)
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)
- section 316A:
S v Strowitzki 1994 NR 265 (HC)
- 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)
- section 319:
S v Khumalo 1991 NR 166 (SC)
S v Pineiro & Others 1999 NR 13 (HC)
- 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)
- 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)
- section 324:
S v Khumalo 1991 NR 166 (SC)
- section 328:
S v Acheson 1991 NR 1 (HC)
- section 335:

- S v Tjiho* (1) 1990 NR 242 (HC)
- 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 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)
- 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)
- 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)
- 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).

Articles:

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 at www.lac.org.na/projects/grap/Pdf/rapefull.pdf
Kaijata Kanguuehi, “S v Teek: A critical review and analysis”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org
Sam K 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 at www.namibialawjournal.org
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 at www.namibialawjournal.org
See the entry for the Prisons Act 17 of 1998 (**PRISONS**) for articles on conditions in police cells.

Boxing and Wrestling Control Act 11 of 1980.

Summary: This Act establishes boards of control for boxing and wrestling. It was brought into operation by AG 5/1981.

Amendments: The Act was amended by Act 25/1980 and by the Married Persons Equality Act 1 of 1996 (which repeals section 13).

Combating of Immoral Practices Act 21 of 1980.

Summary: This Act covers the keeping of brothels, various acts related to prostitution, and various other sexual offences.

Amendments: The Married Persons Equality Act 1 of 1996 amends section 2. Act 7/2000, which came into force on 15 June 2000 (GN 141/2000, GG 2348), amends sections 1 and 14 (sexual offences with youths).

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 sections 1(i), 2, 10 and 12)
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).

Articles: 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 at www.lac.org.na/projects/grap/Pdf/rapefull.pdf; Legal Assistance Centre, “*Whose Body Is It?*”: *Commercial Sex Work and the Law in Namibia*, 2002, available at www.lac.org.na/projects/grap/Pdf/commsex.pdf.

Protection of Fundamental Rights Act 16 of 1988.

Summary: This Act provides for the protection of certain fundamental rights.

Amendments: AG 14/1989 repeals section 2 and amends the penalties in section 3(e).

Cases: *NANSO & Others v Speaker of the National Assembly for South West Africa & Others* 1990 (1) SA 617 (SWA) (declaring portions of the law invalid in terms of the pre-independence Bill of Fundamental Rights).

Amnesty Proclamation, AG 13 of 1989.

Summary: This Proclamation grants amnesty for offences committed by persons in exile, so that they may return to Namibia.

Amendments: The application of the Act is affected by AG GN 110/1989 and AG GN 16/1990.

Intimidation Proclamation, AG 24 of 1989.

Summary: This Proclamation makes it an offence to intimidate any other person.

Regulations: 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 consolidates and amends the laws relating to the theft of stock and produce.

Amendments: Act 4/1991 amends sections 6, 7, 9 and 14. It also inserts section 12A and repeals section 13.

Act 19/1993, which commenced on 1 October 1993 (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 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 amends section 1 of the said Act.

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

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 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).

Racial Discrimination Prohibition Act 26 of 1991.

Summary: This Act 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 repeals section 20. Act 26/1998 amends section 11, 14 and 17. The Affirmative Action (Employment) Act 29/1998 amends

section 7.

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.

Articles: Nico Horn, "Freedom of expression and hate speech in Namibia", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org.

Related international agreements:

International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (accession: 11 November 1982).

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 8 of the International Convention on the Elimination of all Forms of Racial Discrimination, 1992.*

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC).

International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 (accession: 11 November 1982).

Extradition Act 11 of 1996.

Summary: This Act provides for the extradition of persons accused or convicted of certain offences committed within the jurisdiction of certain countries. It came into force on 1 August 1996 (GN 199/1996, GG 1370), replacing the Extradition Act 67 of 1962.

Regulations: 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) and Proc. 10/2006 (GG 3711).

Cases: *S v Biglione* 2000 NR 127 (HC); *S v Mushwena & Others* 2004 NR 35 (HC), 2004 NR 276 (SC); *S v Koch* 2006 (2) NR 513 (SC); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

Related international agreements: *SADC Protocol on Extradition, 2002* (entered into force within SADC on 1 September 2006), signature: 3 October 2002, ratification: 1 February 2007 (source: SADC).

Combating of Rape Act 8 of 2000.

Summary: This Act 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 came into force on 15 June 2000 (GN 140/2000, GG 2348).

Amendments: Sections 11-18 are repealed by the Criminal Procedure Act 25 of 2004, which is not yet in force.

Cases: The following cases pertain to this 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))
- Awaseb, Geinub, Lange v S*, High Court, Case No. CA 46/2003 (unreported) (offence of attempted rape is a competent verdict on a charge of rape under 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))
- 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 harm in section 3(1)(a)(iii)(aa)) (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 Kauzu* 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).

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)

Articles:

- 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, editor, *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, editor, *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
- Legal Assistance Centre, *Guide to the Combating of Rape Act*, 2001, available at www.lac.org.na/laws/pdf/comrape.pdf (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali)
- Legal Assistance Centre *Guidelines for Service Providers on the Combating of Rape Act*, 2005, available at www.lac.org.na/grap/Pdf/rapeguidlin.pdf
- Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006, available at www.lac.org.na/projects/grap/Pdf/rapefull.pdf (full report) and www.lac.org.na/projects/grap/Pdf/rapesum.pdf (summary)
- Legal Assistance Centre, *Withdrawn: A Study of Rape Case Withdrawals*, 2009, available at www.lac.org.na/projects/grap/Pdf/RapeWithdrawn.pdf
- Allison De Smet & Dianne Hubbard, "*Substantial and Compelling Circumstances*" in *Rape Cases*, Legal Assistance Centre, 2009.

International Co-operation in Criminal Matters Act 9 of 2000.

Summary: This Act 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 came into operation on 15 September 2001 (GN 185/2001, GG 2614).

Amendments: This Act is substantially amended by the Prevention of Organized Crime Act 29 of 2004. Schedule 2 is amended by the Criminal Procedure Act 25 of 2004, which is not yet in force. Schedule 1 is amended by the addition of the Federal Republic of Germany, by GN 107/2005 (GG 3491) and several other countries in GN 167/2006 (GG 3714).

Regulations: Regulations are contained in GN 186/2001 (GG 2614).

Anti-Corruption Act 8 of 2003.

Summary: This Act establishes an Anti-Corruption Commission and provides for the prevention and punishment of corruption. It repeals the *Prevention of Corruption Ordinance 2 of 1928* and amends Schedule 3 of the Public Service Act 13 of 1995. It came into operation on 15 April 2005 (GN 37/2005, GG 3411).

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)).

Articles: *Say no way to corruption: Be patriotic!*, Windhoek: Anti-Corruption Commission (undated public education material on the law), available at www.accnamibia.org/.

Prevention of Organised Crime Act 29 of 2004.

Summary: This Act 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 substantially amends the International Co-operation in Criminal Matters Act 9 of 2000. It came into force on 5 May 2009 (GN 77/2009, GG 4254).

Amendments: Act 10/2008 amends section 1, 11, 77 and 100, and substitutes sections 9 and 10.

Application of law: The application of section 9 of the Act is affected by section 53 of the Financial Intelligence Act 3 of 2007.

Regulations: Regulations are contained in GN 78/2009 (GG 4254). Rules for High Court proceedings in terms of Chapters 5-6 of the Act are contained in GN 79/2009 (GG 4254).

Cases: *Prosecutor-General v Lameck & Others* 2009 (2) NR 738 (HC).

Criminal Procedure Act 25 of 2004.

Summary: This Act governs procedure in criminal proceedings. It replaces all that remains of the Criminal Procedure Ordinance 1963 (sections 300(3) and 370) and the *Criminal Procedure Act 51 of 1977*. It will come into force on a date set by the Minister.

Regulations: All regulations, rules, notices and other actions made in terms of the *Criminal Procedure Act 51 of 1977* survive under this Act.

Articles: “Chapter 17: Rape and the New Criminal Procedure Act 25 of 2004” in Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act, 2006*, available at www.lac.org.na/projects/grap/Pdf/rapefull.pdf; 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 at www.namibialawjournal.org.

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:

- Proclamation 15/1993 (GG 642)
- Proclamation 11/1994 (GG 836)
- Proclamation 3/1995 (GG 1051)
- Proclamation 4/1997 (GG 1533)
- Proclamation 1/2000 (GG 2306)
- Proclamation 12/2003 (GG 2956)
- Proclamation 1/2005 (GG 3397)
- Proclamation 4/2006 (GG 3626)
- Proclamation 6/2009 (GG 4230).

INTERNATIONAL LAW

Rome Statute of the International Criminal Court, 1998

(came into force internationally on 1 July 2002)

signature: 27 October 1998

ratification: 25 June 2002 (source: www.iccnw.org)

Agreement on the Privileges and Immunities of the International Criminal Court, 2002

(came into force internationally on 22 July 2004)

signature: 10 September 2002

ratification approved by Parliament: 2 July 2003 (source: Parliament)

deposit: 29 January 2004 (source: www.iccnw.org)

International Convention for the Suppression of the Financing of Terrorism, 1999

(came into force internationally on 10 April 2002)

signature: 10 November 2001; not yet ratified by Namibia

(source: <http://untreaty.un.org>)

Convention Against Transnational Organised Crime, 2000

(entered into force internationally on 29 September 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs; Parliament)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

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

(entered into force internationally on 25 December 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

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

(entered into force internationally on 28 January 2004)

signed: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Note: Namibia has not yet signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001.

United Nations Convention Against Corruption, 2003

(entered into force 14 December 2005)

signature: 9 December 2003

ratification approved by Parliament: 28 April 2004 (source: Parliament)

deposit: 3 August 2004 (source: <http://untreaty.un.org>)

African Union Convention on Preventing and Combating Corruption, 2003

(entered into force within the AU on 5 August 2006)

signature: 9 December 2003

ratification approved by Parliament: 28 April 2004 (source: Parliament); 5 August 2004 (source: www.africa-union.org)

deposit: 26 August 2004 (source: www.africa-union.org)

SADC Protocol Against Corruption, 2001

(entered into force within SADC on 6 July 2005) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 27 April 2004 (source: Parliament)

ratification: 23 June 2005 (source: SADC)

SADC Protocol on Extradition, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

SELECTED ARTICLES

Legal Assistance Centre, *Baby-dumping and Infanticide, Monograph 1*, 2008, available at www.lac.org.na/projects/grap/Pdf/mono1infant.pdf

Legal Assistance Centre, *Stalking: Proposed New Legislation for Namibia, Monograph 3*, 2008, available at www.lac.org.na/projects/grap/Pdf/mono3stalking.pdf.

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

See also **ARMS AND AMMUNITION**.

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

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 Financial Intelligence Act 3 of 2007 on the combating of money-laundering (**FINANCIAL INSTITUTIONS**).

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

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

See also *Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971* (drug-related offences) (**MEDICINE AND MEDICAL PROFESSIONS**).

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) and Motor Vehicle Theft Act 12 of 1999 (**ROADS AND ROAD TRANSPORTATION**).