

MAKING FALSE STATEMENTS AND LAYING FALSE CHARGES: THE CONSEQUENCES

**What would happen to me if I spread false rumour about someone?
If my boyfriend dumps me, can I accuse him of having beaten me to get revenge?**

If one person makes false statements about another person, this is defamation. Defamation is the unlawful, intentional publication of information which injures another person's reputation. "Publication" can mean saying something orally to others, or writing it down and showing it to others. Defamation does not require formal publication in a book or newspaper, or on radio or television.

Defamation is not a crime, but it can be the basis of a civil lawsuit between persons. If defamation has occurred, the persons responsible can be ordered to pay financial compensation for the damage to the other person's reputation.

Truth is normally a defence against a lawsuit for defamation, provided that the true statement is made in good faith and not with a malicious intent to hurt someone.

Defamation has to be balanced against the Constitutional right to freedom of speech, although even the Constitution says that this right can be limited by the law on defamation (Article 21(2)). However, public figures such as political leaders have less legal protection against defamation than other people. The law acknowledges that it is important to encourage free discussion and criticism of public figures. So it is harder for someone in a public position to win a lawsuit for defamation than it is for a person who lives a more private life.

Spreading false rumours could also lead to a criminal charge of "*crimen injuria*". This is a Latin phrase which means criminal injury. *Crimen injuria* is the unlawful, intentional and serious violation of the dignity or privacy of another person. Dignity includes a person's right to self-respect, privacy and mental tranquillity, and the right to be free from insulting, offensive, humiliating or degrading treatment as well as any invasion of privacy.

Can I accuse someone of raping me if it is false? How does the law protect people from being wrongly accused?

It is a serious crime to lay a false charge of rape or any other crime, or to give any false information to the police. A person who does this can be charged with the following crimes, depending on the circumstances:

- **perjury**, which is the unlawful and intentional making of a false statement in a court proceeding

- violation of **section 300(3) of the Criminal Procedure Ordinance 34 of 1963, which applies** which a person contradicts a statement made on oath such (as a sworn statement made to the police) with a conflicting statement made on oath (such as another sworn statement or a statement made while testifying in court)
- violation of **section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963k which covers** making a false statement in a sworn document such as a statement made to the police
- the crime of **defeating or obstructing the course of justice**. The course of justice can be obstructed in many ways – such as causing police or prosecutors authorities to waste time and energy investigating a false charge or a person who has not committed a crime, or by making up false evidence or attempting to mislead the police in any way.

In Namibia, these crimes are used in practice against persons who lay false charges, as the press clipping below illustrates.

Teenager arrested for false rape allegations

THE double-edged perils of false rape complaints were demonstrated in the High Court on Friday when a teenage girl, who retracted previous claims of having been raped, was arrested and charged with perjury.

The girl returned to the witness stand in the court room of Acting Judge Peter Shivute on Friday to tell the court that her previous testimony in the trial of Hans S. (24) had been false. She said she had accused him of raping her at the farm Sonderwater in the Rehoboth district on April 10 last year because her sister and brother-in-law had put pressure on her to do so.

S. pleaded not guilty when his trial started before Acting Judge Shivute in mid-May. The girl then testified that he had raped her. About two weeks later, she approached Public Prosecutor Marinus Scholtz with a confession that her testimony in court had been false. As a result, she was returned to the witness stand. After repeating that her previous testimony under oath had been false, S. was acquitted. **She was then arrested and charged with perjury and defeating or obstructing the course of justice...**

The Namibian, 20 June 2000

Furthermore, Namibia is like most democracies in that our criminal law is biased to protect the innocent, even if this means that a guilty person sometimes goes free. It is the state's responsibility to prove the guilt of the accused, and not the responsibility of the accused to prove that he or she is innocent. The burden of proof in all criminal cases is "beyond a reasonable doubt", which is a very high standard.

In proving a criminal case, the evidence of a single witness must be treated with great caution if there is no corroborating evidence. So to obtain a conviction, the state must present very convincing evidence. If the accused's

version of events could even possibly be the true one, then he or she will probably go free.

The constitutional right of an accused person to legal representation, the provision of state-funded legal aid and the right of appeal to a higher court are all designed to ensure that an accused person gets a fair trial.

This system means that false charges are difficult to get away with. While it can happen that an accused person will be wrongly convicted, this appears to be a very rare occurrence.

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based on information in Legal Assistance Centre,
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