



**LEGAL ASSISTANCE CENTRE**  
*Fighting for human rights in Namibia since 1988*



# *Pro* **Bono**

## **INFORMATION ABOUT NAMIBIA'S LAW**

### **Admission of Guilt Fines**

An admission of guilt fine refers to the situation where a person who has been charged with a crime that is not too serious – such as a traffic violation or a violation of the Covid-19 emergency regulations – is given the option of paying a fine without having to appear in court. By paying an admission of guilt fine, a person accepts responsibility for the wrongdoing and pays a penalty in a quick and efficient way. This mechanism prevents overloading the court system with minor cases.

But some people may be tempted to pay an admission of guilt fine so that they can be released from police custody or avoid a time-consuming and stressful criminal trial, without understanding all of the consequences. In fact, paying an admission of guilt fine may have far-reaching impacts.

Admission of guilt fines are part of Namibia's criminal process under sections 57 and 57A of the Criminal Procedure Act 51 of 1977. Suppose that you are accused of committing a crime. If a summons to appear in court is issued and the prosecutor reasonably believes that a magistrate's court would not impose a sentence of imprisonment or a fine of more than N\$6000 if you were convicted, then an admission of guilt fine may be available. (The procedure works similarly if you received a written notice to appear in court instead of a summons.)

If the prosecutor (or the police officer who issued the written notice) offer the option of an admission of guilt fine, then you can choose to admit that you are guilty of the offence by paying the stipulated amount ("the admission of guilt fine") to the clerk of the relevant magistrate's court or at any police station within that court's area of jurisdiction. If the payment is made to the police, they must submit it to the clerk of the court.

The fine cannot exceed the maximum fine that could be imposed for the underlying offence if you were convicted at trial, and it can never be more than N\$6000.

The option to pay an admission of guilt fine will require that it must be paid by a specified date, although the clerk of court has discretion to accept your payment even if it is late.

When you pay an admission of guilt fine, you must bring along the summons (or the written notice) which ordered you to appear in court and hand it in with the fine. You should be given a receipt to show that you have paid the fine.

An admission of guilt fine may also be available even if court proceedings have already begun – or if you are in custody or have been released from custody on bail or a warning – as long as you have not yet been asked to enter a plea in court (to say in court that you are guilty or not guilty).

There are also some specific provisions relating to admission of guilt fines for certain offences in specific statutes. For example, the Road Traffic and Transport Act 22 of 1999 provides that admission of guilt fines for offences under that Act can be paid by registered post rather than in person. The Liquor Act 6 of 1998 provides that people who pay admission of guilt fines for certain alcohol-related offences may be additionally required to attend an educational programme on the dangers of underage drinking.

If you pay an admission of guilt fine, the clerk of court will enter the particulars of the crime and the amount of the fine into a criminal record book for admissions of guilt. The legal effect is the same as if you were convicted and sentenced by the court for the offence in question.

The magistrate will examine the documents, and he or she has the authority to set aside the conviction or sentence if it “is not in accordance with justice”. The magistrate can direct that you should rather be prosecuted for the offence in court in the usual way.

What many people may not realise is that payment of an admission of guilt fine (if it is not set aside by the magistrate) means that you have a criminal record - which could come back to haunt you. For example, having a criminal conviction on your record might prevent you from being eligible for a visa to travel to some countries. It might also disqualify you to be employed in certain jobs or to practice certain professions.

One concern about this outcome is that admission of guilt follows a different process from a criminal conviction in a court case. In court, if you pleaded guilty to a crime, the magistrate would be required to ask you questions to make sure that you understood the elements of the crime that you were admitting to. If you pleaded not guilty, the State would be required to prove your guilt beyond reasonable doubt. These processes have safeguards that do not operate in respect of admission of guilt fines.

Another problem is that you may not be informed of the consequences of paying an admission of guilt fine before you decide to exercise that option. Of course, you would have a criminal record if you pleaded guilty in court, or if you were convicted of a crime at the end of a criminal trial, but this would probably not come as a surprise – and if you appeared in court, the presiding officer would be available to explain the procedures and answer any questions you might have.

It may be the case that admission of guilt fines are not always recorded as criminal convictions in practice, but the law treats them as convictions – and this is a matter which needs to be crystal-clear to anyone who is considering the admission of guilt option.

One source of confusion about this issue is that there are also certain offences where it may be possible to pay a fine which clearly does *not* result in a criminal record. These crimes are covered by section 341 of the Criminal Procedure Act. They include violations of local authority by-laws and certain traffic violations (such as speeding, driving without the required lights or driving a defective vehicle, driving an unregistered vehicle or driving without a licence). But these are actually *not* admission of guilt fines, because payment of these fines simply means that no prosecution will take place. (The technical term used in the Criminal Procedure Act for these fines is “Compounding of certain minor offences”.) This kind of fine is an *alternative* to a criminal case and does not constitute an admission of guilt.

In South Africa, which operates under a near-identical Criminal Procedure Act, the High Court has considered the issue of criminal records resulting from admission of guilt fines in several cases.

One example is the 2012 case of *S v Tong*, where a man who was arrested for possession of dagga paid an admission of guilt fine of R200. However, the procedure was not explained to him, and he was under the impression that the money he paid was for bail. Two years later, he applied for a visa in order to accept a job in South Korea teaching English as a second language. He was surprised to learn at that stage

that he had a criminal record linked to his identity number, even though the records of his criminal case had already been destroyed.

The High Court held that an accused must be warned of the full consequences of paying an admission of guilt fine – including the fact that this means that a conviction for the crime will appear on the accused's criminal record. It also held that magistrates who review admission of guilt fines must not confirm that the payment of the fine was in accordance with justice unless they are satisfied (a) that the consequences of paying the fine were fully explained, (b) that the accused person was given an opportunity to consider his or her decision (to ensure that the fine is not presented as merely being a way to secure release from custody), and (c) that the decision was made freely and voluntarily. Here, the court overturned Mr Tong's conviction because these safeguards were not followed.

Another South African example is the case of *S v Madhinja*, which involved a street trader who paid an admission of guilt fine for a charge of assault after a tussle with another informal vendor. He only realised that he had a criminal record when he applied for employment as an Uber driver and was asked to provide a police clearance certificate. He claimed that he was told by the police only that he must “pay and go”, with no explanation of the consequences.

The High Court pointed out that the “conviction” on Mr Madhinja's record was the automatic consequence of an administrative act performed by a clerk, with no consideration of the facts of the case, or whether the accused could be guilty of the offence in law. It noted that the entry in the criminal record book “records what is essentially an agreement between the State and the accused”, and is essentially “a waiver by an accused of his right to have his case proved beyond reasonable doubt”. The Court held that a conviction and sentence following an admission of guilt should not be treated as a conviction resulting in a permanent criminal record, and that it should not be entered into the Criminal Record System maintained by the police.

These issues have not yet been canvassed in the Namibian courts. The use of admission of guilt fines for minor crimes is not a bad practice in itself, as it can take pressure off the overloaded court system and allow individuals to avoid the inconvenience of a criminal trial for trivial offences. However, such fines should not be allowed unless the accused person is fully aware of all the consequences - including the fact that such fines result in a permanent criminal record.

This is an area where future law reform might be considered, to provide that admission of guilt fines will not result in criminal records – or at the very least to require clear and careful explanations of the impact of the procedure before such fines can be accepted.

In the meantime, if you are given the option of paying an admission of guilt fine, be sure that you know what you are doing before you “pay and go”.

*This article was made possible by support from the Hanns Seidel Foundation*