

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**COMBATING OF RAPE
AMENDMENT BILL, 2018**

(As read a First Time)

(Introduced by the Minister of Justice)

[B. X - 2018]

ensure the admissibility of previous statements by child witnesses and to ensure the protection of the accused's rights; alter the minimum sentences for rape under the Combating of Rape Act, 2000; remove the defence of marriage from sexual offences with youths under the Combating of Immoral Practices Act, 1980; repeals the Criminal Procedure Act, 2004; and to provide for matters incidental thereto.

(Introduced by the Minister of Justice)

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Amendment of section 2 of Act No. 8 of 2000

1. Section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000), is amended by –

- (a) the insertion after subsection (2)(i) of the following paragraph:

- “(j) abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act or his or her unwillingness to participate in such an act.”; and

- (b) the insertion of the following subsection after subsection (3):

- “(4) Any person who attempts to commit rape as defined in terms of this section shall be guilty of the offence of attempted rape and liable on conviction to the punishment to which a person convicted of actually committing the rape would be liable.”.

Amendment of section 3 of Act No. 8 of 2000

2. Section 3 of the Combating of Rape Act, 2000 (Act No. 8 of 2000), is amended by –

- (a) the substitution for subsection (1) of the following:

- “(1) Any person who is convicted of rape under this Act shall, subject to the provisions of subsections (2), (3) and (4), be liable-

(a) in the case of a first conviction –

(i) where the rape is committed under circumstances other than the circumstances contemplated in subparagraphs (ii) and (iii), to imprisonment for a period of not less than [**five**] ten years;

(ii) where the rape is committed under any of the coercive circumstances referred to in paragraph (a), (b) or (c) of subsection (2) of section 2, to imprisonment for a period of not less than [**ten**] fifteen years;

(iii) where-

(aa) the complainant has suffered grievous bodily or mental harm as a result of the rape;

(bb) the complainant-

(A) is under the age of thirteen years; or

(B) is by reason of age exceptionally vulnerable; or

(B) is by reason of mental or physical disability exceptionally vulnerable; or

(D) is for any other reason exceptionally vulnerable;”; and

(cc) the complainant is under the age of eighteen years and the perpetrator is the complainant’s parent, guardian or caretaker or is otherwise in a position of trust or authority over the complainant;

(dd) the convicted person is infected with any serious sexually-transmitted disease and at the time of the commission of the rape knows that he or she is so infected;

(ee) the convicted person is one of a group of two or more persons participating in the commission of the rape; or

(ff) the convicted person uses a firearm or any other weapon for the purpose of or in connection with the commission of the rape,

to imprisonment for a period of not less than [**fifteen**] twenty years;

(b) in the case of a second or subsequent conviction (whether previously convicted of rape under the common law or under this Act) –

- (i) where the rape is committed under circumstances other than the circumstances contemplated in subparagraphs (ii) and (iii), to imprisonment for a period of not less than [~~ten~~] twenty years;
- (ii) where the rape in question or any other rape of which such person has previously been convicted was committed under any of the coercive circumstances referred to in paragraph (a), (b) or (e) of subsection (2) of section 2, to imprisonment for a period of not less than [~~twenty~~] twenty-five years;
- (iii) where the rape in question or any other rape of which such person has previously been convicted was committed under any of the circumstances referred to in subparagraph (iii) of paragraph (a), to imprisonment for a period of not less than [~~forty-five~~] thirty years.”

(b) the insertion of the following subsections after subsection (4):

“(5) Notwithstanding anything to the contrary contained in any other law, a magistrate's court of a regional division shall have jurisdiction to impose any penalty or additional penalty provided for in this Act, even though the penalty may, either alone or together with any additional penalty imposed by the court, exceed the punitive jurisdiction of the court.

“(6) Regardless of anything contained in the Correctional Service Act, 2012 (Act No. 9 of 2012), a convicted person sentenced under section 2 of this Act who was 18 years of age or older at the time of the commission of the offence shall be eligible for remission or parole only after serving two-thirds of such sentence.”.

Insertion of sections 3A, 3B and 3C in Act No. 8 of 2000

3. The following sections are inserted after section 3 of the Combating of Rape Act, 2000 (Act No. 8 of 2000):

“3A. The minimum penalties which shall be imposed upon any conviction of rape under section 3 of this Act shall also be imposed upon any conviction of the common law crime of rape.

3B. When imposing a sentence in respect of a conviction for the offence of rape, the following shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence:

(a) the complainant's character, sexual reputation or previous sexual conduct or experience;

(b) an apparent lack of physical injury to the complainant apart from the rape itself;

(c) an accused person's cultural or religious beliefs about rape; or

(d) any relationship between the accused person and the complainant prior to the offence being committed.

3C. A sentence of imprisonment imposed in respect of a conviction for an offence under section 2 of this Act shall, notwithstanding anything to the contrary contained in any other law, not run concurrently with any other sentences of imprisonment imposed on the convicted person under this Act, or with any part of such sentences, unless the presiding officer finds that the cumulative effect of requiring such sentences to run consecutively would be so harsh and unreasonable as to constitute cruel, inhuman or degrading punishment.”.

Amendment of section 9 of Act No.8 of 2000

4. Section 9 of the Combating of Rape Act, 2000 (Act No. 8 of 2000) is amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) to provide all such information to the complainant as will be necessary to lessen the impact of the trial on the complainant, including without being limited to ensuring that the complainant receives an orientation to court procedures and information about special arrangements for vulnerable witnesses in advance of the trial.”.

Insertion of section 8A in Act No. 8 of

5. The following section 8A is inserted after section 8 of the Combating of Rape Act, 2000 (Act No. 8 of 2000):

“8A. In criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the absence of evidence of semen or other bodily fluids on or within the body of a complainant, or from the absence of evidence of rupture of a complainant’s hymen.”.

Insertion of section 18A in Act No. 8 of 2000

6. The following section 18A is inserted after section 18 of the Combating of Rape Act, 2000 (Act No. 8 of 2000):

“18A. (1) The minister responsible for justice may make any regulations relating to –

- (a) the procedure for notification regarding bail hearings in terms of section 60A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended by section 12 of this Act;
- (b) guidelines for orientation of the complainant to court procedures and vulnerable witness provisions under section 9(b);
- (c) guidelines for service providers who deal with rape complainants;
and
- (d) any other matter aimed at furthering the objectives of this Act.”.

Amendment of section 60A of the Criminal Procedure Act, 1977, as inserted by section 12 of Act 8 of 2000

7. Section 60A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended –

- (a) by the substitution for subsection (3) of the following subsection:

“(3) If an accused who is in custody on a charge of rape intends to apply to the court for bail on a date or at a time of which the complainant has not been otherwise informed in terms of this section, the prosecutor in the proceeding shall ensure that the complainant is informed accordingly.”;
and

- (b) by the substitution for subsection (8) of the following subsection:

- “(8) If a complainant is not present, as contemplated in subsection (7), the prosecutor in such proceedings shall inform the complainant, or ensure that the complainant is informed by the investigating officer in the case –
- (a) where bail has been granted to the accused, of the granting of bail and the conditions of bail imposed;
 - (b) where such proceedings have been postponed, of the date and time to which such proceedings have been postponed and of the complainant’s rights under subsection (1).”.

Amendment of section 62 of the Criminal Procedure Act, 1977 as inserted by section 13 of Act No. 8 of 2000

8. Section 62 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended by the substitution for subsection (2) of the following subsection:

“(2) If an accused who is in custody of a charge of rape is released on bail, the court shall, notwithstanding the provisions of subsection (1), add such further conditions of bail as will, in the opinion of the court, ensure that the accused does not make contact with the complainant concerned: Provided that the bail conditions may allow contact if this is in the interests of the complainant, in which case the court may impose any conditions on contact or any other conditions which may be necessary to protect the complainant from intimidation or harm.”.

Amendment of section 164 of the Criminal Procedure Act, 1977 as inserted by section 2(b) of Act No. 24 of 2003

9. Section 62 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended by the substitution for subsection (3) of the following subsection

“(3) Notwithstanding anything to the contrary in this Act or any other law contained, the evidence of any witness required to be admonished in terms of the proviso to subsection (1) shall be received unless it appears to the presiding judge or magistrate, on the basis of such informal preliminary questioning by the presiding judge or magistrate as is necessary to assess the child’s maturity, that **[such]** the witness is incapable of giving intelligible testimony.”.

Amendment of section 14 of the Combating of Immoral Practices Act, 1980 as inserted by section 2 of Act No. 7 of 2000

- 10.** Section 14(c)(ii) of the Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980) is deleted.

Repeal of Act No. 25 of 2004

- 11.** The Criminal Procedure Act, 2004 (Act No. 25 of 2004) is hereby repealed.

Short title and commencement date

- 12.** This Act is called the Combating of Rape Amendment Act, 2018.
-