Republic of Namibia
Annotated Statutes

Criminal Procedure Act 51 of 1977 (RSA)

(RSA GG 5532)
brought into force in South Africa and South West Africa on 22 July 1977 by RSA Proc. R.148/1977 (RSA GG 5654) (see section 343 of Act); applied to Rehoboth insofar as it relates to matters which fell under the Legislative Authority of Rehoboth, by section 1(1) of the Criminal Procedure Act 3 of 1982 (Rehoboth) (*Official Gazette 70 of Rehoboth*, dated 11 March 1983), with effect immediately prior to the date on which a government for Rehoboth came into being in terms of section 11(1) of the Rehoboth Self-Government Act 56 of 1976 (see section 1(2) of the Criminal Procedure Act 3 of 1982 (Rehoboth))

APPLICABILITY TO SOUTH WEST AFRICA: 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 South West Africa, and none of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to South West Africa. However amendments to the Act in South Africa prior to the date of transfer appear to have been applicable to South West Africa by virtue of the definition of** "Republic".

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. None of the amendments to the Act in South Africa after the date of transfer were applicable to South West Africa because none were made expressly so applicable.

Section 3(1)(t) of the transfer proclamation excluded all references to the State in the Act, in relation to the authority to institute and conduct a prosecution and to make seizures, from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of these provisions was not transferred to South West Africa prior to Namibian independence. Section 3(1)(t) of the transfer proclamation (as amended) also excluded various provisions of the Act from the operation of certain sections of AG 7 of 1977. These are noted in the annotations to individual provisions of the Act.

as amended by

Criminal Procedure Matters Amendment Act 79 of 1978 (RSA) (RSA GG 6041)
came into force on date of publication: 2 June 1978
Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)
deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)
Criminal Procedure Amendment Act 56 of 1979 (RSA) (RSA GG 6476)
came into force on date of publication: 1 June 1979
Criminal Procedure Amendment Act 15 of 1981 (OG 4566)
brought into force on 1 January 1982 by AG 31/1981 (OG 4577)
Appeals Amendment Act 29 of 1985 (OG 5149)
brought into force on 1 April 1986 by AG 19/1986 (OG 5182)
Criminal Procedure Matters Act 31 of 1985 (OG 5151)
came into force on date of publication: 18 December 1985
Criminal Procedure Amendment Act 5 of 1991 (GG 215)

came into force on date of publication: 30 May 1991

Criminal Procedure Amendment Act 26 of 1993 (GG 755)

came into force on date of publication: 9 December 1993

Combating of Rape Act 8 of 2000 (GG 2326)

brought into force on 15 June 2000 by GN 140/2000 (GG 2348)

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)

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

Appeal Laws Amendment Act 10 of 2001 (GG 2585)

came into force on date of publication: 25 July 2001

Combating of Domestic Violence Act 4 of 2003 (GG 3002)

brought into force on 17 November 2003 by GN 234/2003 (GG 3094)

Maintenance Act 9 of 2003 (GG 3043)

brought into force on 17 November 2003 by GN 232/2003 (GG 3093)

Criminal Procedure Amendment Act 24 of 2003 (GG 3123)

came into force on date of publication: 30 December 2003

Criminal Procedure Amendment Act 13 of 2010 (GG 4554)

came into force on date of publication: 30 August 2010

Correctional Service Act 9 of 2012 (GG 5008)

brought into force on 1 January 2014 by GN 330/2013 (GG 5365)

Child Care and Protection Act 3 of 2015 (GG 5744)

brought into force on 30 January 2019 by GN 4/2019 (GG 6829)

Criminal Procedure Amendment Act 7 of 2023 (GG 8140)

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**

Witness Protection Act 11 of 2017 (GG 6451)

brought into force on 20 October 2023 by GN 340/2023 (GG 8239)

Combating of Rape Amendment Act 4 of 2022 (GG 7932)

brought into force on 15 May 2024 by GN 113/2024 (GG 8365)

Combating of Domestic Violence Amendment Act 6 of 2022 (GG 7964)

brought into force on 15 May 2024 by GN 112/2024 (GG 8365)

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. GN 112/2024 erroneously refers to Act 5 of 2022 instead of Act 6 of 2022.

A number of court cases have either struck down specific provisions of the Act or affected their permissible application:

Ex Parte Attorney-General In Re: The Constitutional Relationship Between the Attorney-General and the Prosecutor-General 1998 NR 282 (SC)	section 3(5)
S v Shikunga & Another 1997 NR 156 (SC)	section 217(1)(b)(ii) unconstitutional
S v Malumo and Others 2010 (1) NR 35 (HC)	section 219A(1)(b) probably unconstitutional
Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC)	section 245 unconstitutional to a certain extent
Dausab v Minister of Justice & Others 2024 (3) NR 791 (HC)	section 269 unconstitutional & invalid; inclusion of the crime of sodomy in Schedule 1 unconstitutional & invalid
S v Ganeb 2001 NR 294 (HC)	section 309(4)(a) read with section 305 unconstitutional
Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC)	section 332(5) unconstitutional to a certain extent
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)	references to corporal punishment in sections 112, 276(1), 290(2) (subsequently deleted), 292 (subsequently deleted), 293 (subsequently deleted), 294 (subsequently deleted), 295, 302(1)(a)(iii), 308, 309(4)(b), 321(1)(a) Note that section 228(2) of the Child Care and Protection Act 3 of 2015 states that any legislative provision "authorising corporal punishment of a child by a court, including the court of a traditional leader, is repealed to the extent that it authorises such punishment".

ACT

To make provision for procedures and related matters in criminal proceedings.

(Afrikaans text signed by the State President)
(Assented to 21 April 1977)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

[The phrase above normally appears below the ARRANGEMENT OF SECTIONS.

The Act contains a number of references to the death penalty. Although these have not been amended, they would have no force or effect in light of Article 6 of the Namibian Constitution, which states "The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia."

Act 9 of 2012 amends several sections of the Act to substitute "correctional facility" for "prison" (and to similarly substitute related terms). It is not clear why the term "prison" has been retained in some provisions.]

ARRANGEMENT OF SECTIONS

Section

DEFINITIONS 1

1. Definitions

CHAPTER 1. Prosecuting Authority 2-18

2. Authority to prosecute vested in State
3. Attorney-general the prosecuting authority on behalf of State
4. Delegation, and local public prosecutor
5. Presiding judicial officer may in certain circumstances appoint prosecutor
6. Power to withdraw charge or stop prosecution
7. Private prosecution on certificate *nolle prosequi*
8. Private prosecution under statutory right
9. Security by private prosecutor
10. Private prosecution in name of private prosecutor
11. Failure of private prosecutor to appear
12. Mode of conducting private prosecution
13. Attorney-general may intervene in private prosecution
14. Costs in respect of process
15. Costs of private prosecution
16. Costs of accused in private prosecution
17. Taxation of costs

18. Prescription of right to institute prosecution

CHAPTER 2. Search Warrants, Entering of Premises, Seizure, Forfeiture and Disposal of Property Connected with Offences..... 19-36

19. Saving as to certain powers conferred by other laws
20. State may seize certain articles
21. Article to be seized under search warrant
22. Circumstances in which article may be seized without search warrant
23. Search of arrested person and seizure of article
24. Search by occupant of land
25. Power of police to enter premises in connection with State security or any offence
26. Entering of premises for purposes of obtaining evidence
26A. Powers to obtain information during investigations
26B. Power to request for information from financial or banking institution and other juristic person
27. Resistance against entry or search
27A. Failure to comply with request or grant access
28. Wrongful search an offence, and award of damages
29. Search to be conducted in decent and orderly manner
30. Disposal by police official of article after seizure
31. Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings
32. Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid
33. Article to be transferred to court for purposes of trial
34. Disposal of article after commencement of criminal proceedings
35. Forfeiture of article to State
36. Disposal of article concerned in an offence committed outside Republic

CHAPTER 3. Ascertainment of Bodily Features of Accused..... 37

37. Powers in respect of prints and bodily appearance of accused

CHAPTER 4. Methods of Securing Attendance of Accused in Court..... 38

38. Methods of securing attendance of accused in court

CHAPTER 5. Arrest..... 39-53

39. Manner and effect of arrest
40. Arrest by peace officer without warrant
41. Name and address of certain persons and power of arrest by peace officer without warrant
42. Arrest by private person without warrant
43. Warrant of arrest may be issued by magistrate or justice
44. Execution of warrants
45. Arrest on telegraphic authority
46. Non-liability for wrongful arrest
47. Private persons to assist in arrest when called upon
48. Breaking open premises for purpose of arrest
49. Use of force in effecting arrest
50. Procedure after arrest
51. Escaping and aiding escaping before incarceration, and penalties therefor
52. Saving of other powers of arrest
53. Saving of civil law rights and liability

CHAPTER 6. Summons 54-55

54. Summons as method of securing attendance of accused in magistrate's court
55. Failure of accused to appear on summons

CHAPTER 7. Written Notice to Appear in Court 56

56. Written notice as method of securing attendance of accused in magistrate's court

CHAPTER 8. Admission of Guilt Fine 57

57. Admission of guilt and payment of fine without appearance in court
57A. Admission of guilt and payment of fine after appearing in court

CHAPTER 9. Bail 58-71

58. Effect of bail
59. Bail before first appearance of accused in lower court
60. Bail after first appearance of accused in lower court
60A. Rights of complainant in bail application where accused is charged with rape
61. Bail in respect of certain offences
62. Court may add further conditions of bail
63. Amendment of conditions of bail
64. Proceedings with regard to bail and conditions to be recorded in full
65. Appeal to superior court with regard to bail
66. Failure by accused to observe condition of bail
67. Failure of accused on bail to appear
68. Cancellation of bail where accused about to abscond
68A. Cancellation of bail at request of accused
69. Payment of bail money by third person
70. Remission of bail money
71. Juvenile may be placed in place of safety in lieu of release on bail or detention in custody

CHAPTER 10. Release on Warning 72

72. Accused may be released on warning in lieu of bail

CHAPTER 11. Assistance to Accused 73-74

73. Accused entitled to assistance after arrest and at criminal proceedings
74. Parent or guardian of accused under eighteen years to attend proceedings

CHAPTER 12. Summary Trial 75-76

75. Summary trial and court of trial
76. Charge-sheet and proof of record of criminal case

CHAPTER 13. Accused: Capacity to Understand Proceedings: Mental Illness and Criminal Responsibility 77-79

77. Capacity of accused to understand proceedings
78. Mental illness or mental defect and criminal responsibility
79. Panel for purposes of enquiry and report under sections 77 and 78

CHAPTER 14. The Charge 80-104

80. Accused may examine charge
81. Joinder of charges
82. Several charges to be disposed of by same court
83. Charge where it is doubtful what offence committed
84. Essentials of charge
85. Objection to charge
86. Court may order that charge be amended
87. Court may order delivery of particulars
88. Defect in charge cured by evidence
89. Previous conviction not to be alleged in charge
90. Charge need not specify or negative exception, exemption, proviso, excuse or qualification
91. Charge need not state manner or means of act
92. Certain omissions or imperfections not to invalidate charge
93. Alibi and date of act or offence
94. Charge may allege commission of offence on divers occasions
95. Rules applicable to particular charges
96. Naming of company, firm or partnership in charge
97. Naming of joint owners of property in charge
98. Charge of murder or culpable homicide sufficient if it alleges fact of killing
99. Charge relating to document sufficient if it refers to document by name
100. Charge alleging theft may allege general deficiency
101. Charge relating to false evidence
102. Charge relating to insolvency
103. Charge alleging intent to defraud need not allege or prove such intent in respect of particular person or mention owner of property or set forth details of deceit
104. Reference in charge to objectionable matter not necessary

CHAPTER 15. The Plea 105-109

105. Accused to plead to charge
106. Pleas
107. Truth and publication for public benefit of defamatory matter to be specially pleaded
108. Issues raised by plea to be tried
109. Accused refusing to plead

CHAPTER 16. Jurisdiction 110-111

110. Accused brought before court which has no jurisdiction
111. Minister may remove trial to jurisdiction of another attorney-general

CHAPTER 17. Plea of Guilty at Summary Trial 112-114

112. Plea of guilty
113. Correction of plea of guilty
114. Committal by magistrate's court of accused for sentence by regional court after plea of guilty

CHAPTER 18. Plea of Not Guilty at Summary Trial 115-118

115. Plea of not guilty and procedure with regard to issues
115A. Committal of accused for trial by regional court
116. Committal of accused for sentence by regional court after trial in magistrate's court
117. Committal to superior court in special case
118. Non-availability of judicial officer after plea of not guilty

CHAPTER 19. Plea in Magistrate's Court on Charge Justiciable in Superior Court 119-122

119. Accused to plead in magistrate's court on instructions of attorney-general
120. Charge-sheet and proof of record
121. Plea of guilty
122. Plea of not guilty

CHAPTER 19A. Plea in Magistrate's Court on Charge to be Adjudicated in Regional Court 122A-122D

[Chapter 19A, comprising sections 122A-122D, is inserted by Act 56 of 1979.]

122A. Accused to plead in magistrate's court on charge to be tried in regional court
122B. Charge-sheet and proof of record
122C. Plea of guilty
122D. Plea of not guilty

CHAPTER 20. Preparatory Examination 123-143

123. Attorney-general may instruct that preparatory examination he held
124. Proceedings preceding holding of preparatory examination to form part of preparatory examination record
125. Attorney-general may direct that preparatory examination be conducted at a specified place
126. Procedure to be followed by magistrate at preparatory examination
127. Recalling of witnesses after conversion of trial into preparatory examination
128. Examination of prosecution witnesses at preparatory examination
129. Recording of evidence at preparatory examination and proof of record
130. Charge to be put at conclusion of evidence for prosecution
131. Accused to plead to charge
132. Procedure after plea
133. Accused may testify at preparatory examination
134. Accused may call witnesses at preparatory examination
135. Discharge of accused at conclusion of preparatory examination
136. Procedure with regard to exhibits at preparatory examination
137. Magistrate to transmit record of preparatory examination to attorney-general
138. Preparatory examination may be continued before different judicial officer
139. Attorney-general may arraign accused for sentence or trial
140. Procedure where accused arraigned for sentence
141. Procedure where accused arraigned for trial
142. Procedure where attorney-general declines to prosecute
143. Accused may inspect preparatory examination record and is entitled to copy thereof

CHAPTER 21. Trial Before Superior Court 144-149

144. Charge in superior court to be laid in an indictment
145. Trial in superior court by judge sitting with or without assessors
146. Reasons for decision by superior court in criminal trial
147. Death or incapacity of assessor
148. State President may constitute special superior court
149. Change of venue in superior court after indictment has been lodged

CHAPTER 22. Conduct of Proceedings 150-178

150. Prosecutor may address court and adduce evidence

151. Accused may address court and adduce evidence
152. Criminal proceedings to be conducted in open court
153. Circumstances in which criminal proceedings shall not take place in open court
154. Prohibition of publication of certain information relating to criminal proceedings
155. Persons implicated in same offence may be tried together
156. Persons committing separate offences at same time and place may be tried together
157. Joinder of accused and separation of trials
158. Criminal proceedings to take place in presence of accused
158A. Special arrangements for vulnerable witnesses
158B. Arrangements for witness to testify through audio-visual link
159. Circumstances in which criminal proceedings may take place in absence of accused
159A. Postponement of certain criminal proceedings through audio-visual link
159B. Requirements for audio-visual appearance by accused person
159C. Protection of communication between accused person and legal representative
159D. Technical requirements for use of audio-visual link
160. Procedure at criminal proceedings where accused is absent
161. Witness to testify viva voce
162. Witness to be examined under oath
163. Affirmation in lieu of oath
164. When unsworn or unaffirmed evidence admissible
165. Oath, affirmation or admonition may be administered by or through an interpreter
166. Cross-examination and re-examination of witnesses
167. Court may examine witness or person in attendance
168. Court may adjourn proceedings to any date
169. Court may adjourn proceedings to any place
170. Failure by accused to appear after adjournment or to remain in attendance
171. Evidence on commission
172. Parties may examine witness
173. Evidence on commission part of court record
174. Accused may be discharged at close of case for prosecution
175. Prosecution and defence may address court at conclusion of evidence
176. Judgment may be corrected
177. Court may defer final decision
178. Arrest of person committing offence in court and removal from court of person disturbing proceedings

CHAPTER 23. Witnesses..... 179-207

179. Process for securing attendance of witness
180. Service of subpoena
181. Pre-payment of witness expenses
182. Witness from correctional facility
183. Witness to keep police informed of whereabouts
184. Witness about to abscond and witness evading service of summons
185. Protection of witness **[deleted by Act 11 of 2017]**
186. Court may subpoena witness
187. Witness to attend proceedings and to remain in attendance
188. Failure by witness to attend or to remain in attendance
189. Powers of court with regard to recalcitrant witness
190. Impeachment or support of credibility of witness
191. Payment of expenses of witness
192. Every witness competent and compellable unless expressly excluded
193. Court to decide upon competency of witness
194. Incompetency due to state of mind

195. Evidence for prosecution by husband or wife of accused
196. Evidence of accused and husband or wife on behalf of accused
197. Privileges of accused when giving evidence
198. Privilege arising out of marital state
199. No witness compelled to answer question which the witness's husband or wife may decline
200. Witness not excused from answer establishing civil liability on his part
201. Privilege of legal practitioner
202. Privilege from disclosure on ground of public policy or public interest
203. Witness excused from answering incriminating question
204. Incriminating evidence by witness for prosecution
205. Magistrate may take evidence as to alleged offence
206. The law in cases not provided for
207. Saving of special provisions in other laws

CHAPTER 24. Evidence 208-253

208. Conviction may follow on evidence of single witness
209. Conviction may follow on confession by accused
210. Irrelevant evidence inadmissible
211. Evidence during criminal proceedings of previous convictions
211A. Evidence during criminal proceedings of similar offences by accused
212. Proof of certain facts by affidavit or certificate
213. Proof of written statement by consent
214. Evidence recorded at preparatory examination admissible at trial in certain circumstances
215. Evidence recorded at former trial admissible at later trial in certain circumstances
216. Hearsay evidence
216A. Admissibility of certain statements made by young children
217. Admissibility of confession by accused
218. Admissibility of facts discovered by means of inadmissible confession
219. Confession not admissible against another
219A. Admissibility of admission by accused
220. Admissions
221. Admissibility of certain trade or business records
222. Application to criminal proceedings of certain provisions of Civil Proceedings Evidence Act, 1965, relating to documentary evidence
222A. Application to criminal proceedings of certain provisions of Electronic Transactions Act, 2019, relating to data messages and computer evidence
223. Admissibility of dying declaration
224. Judicial notice of laws and other published matter
225. Evidence of prints or bodily appearance of accused
226. Evidence of no sexual intercourse between spouses admissible
227. Evidence of character
227A. Evidence of sexual conduct or experience of complainant of rape or offence of an indecent nature
228. Evidence of disputed writing
229. Evidence of times of sunrise and sunset
230. Evidence and sufficiency of evidence of appointment to public office
231. Evidence of signature of public officer
232. Article may be proved in evidence by means of photograph thereof
233. Proof of public documents
234. Proof of official documents
235. Proof of judicial proceedings
236. Proof of entries in bankers' books
237. Evidence on charge of bigamy

238. Evidence of relationship on charge of incest
239. Evidence on charge of infanticide or concealment of birth
240. Evidence on charge of receiving stolen property
241. Evidence of previous conviction on charge of receiving stolen property
242. Evidence on charge of defamation
243. Evidence of receipt of money or property and general deficiency on charge of theft
244. Evidence on charge relating to seals and stamps
245. Evidence on charge of which false representation is element
246. Presumption relating to certain documents
247. Presumptions relating to absence from Republic of certain persons
248. Presumption that accused possessed particular qualification or acted in particular capacity
249. Presumption of failure to pay tax or to furnish information relating to tax
250. Presumption of lack of authority
250A. Use of traps or undercover operations and admissibility of evidence obtained from such traps or undercover operations
251. Unstamped instrument admissible in criminal proceedings
252. The law in cases not provided for
253. Saving of special provisions in other laws

CHAPTER 25. Conversion of Trial into Enquiry 254-255

254. Court may refer juvenile accused to children's court
255. Court may order enquiry under Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971)

CHAPTER 26. Competent Verdicts 256-270

256. Attempt
257. Accessory after the fact
258. Murder and attempted murder
259. Culpable homicide
260. Robbery
261. Rape and indecent assault
262. Housebreaking with intent to commit an offence
263. Statutory offence of breaking and entering or of entering premises
264. Theft
265. Receiving stolen property knowing it to have been stolen
266. Assault with intent to do grievous bodily harm
267. Common assault
268. Statutory unlawful carnal intercourse
~~269. Sodomy~~
[This section is declared to be unconstitutional and invalid by *Dausab v Minister of Justice & Others* 2024 (3) NR 791 (HC).]
270. Offences not specified in this Chapter

CHAPTER 27. Previous Convictions 271-273

271. Previous convictions may be proved
272. Finger-print record *prima facie* evidence of conviction
273. Evidence of further particulars relating to previous conviction

CHAPTER 28. Sentence 274-299

274. Evidence on sentence
275. Sentence by judicial officer other than judicial officer who convicts

276. Nature of punishments
277. When sentence of death is a competent sentence
278. Sentence of death upon pregnant woman
279. Manner of carrying out death sentence
280. Cumulative or concurrent sentences
281. Interpretation of certain provisions in laws relating to imprisonment and fines
282. Antedating sentence of imprisonment
283. Discretion of court as to punishment
284. Minimum period of imprisonment four days
285. Periodical imprisonment
286. Declaration of certain persons as habitual criminals
287. Imprisonment in default of payment of fine
288. Recovery of fine
289. Court may enforce payment of fine
290. Manner of dealing with convicted juvenile
291. Period of supervision, custody or retention of juveniles
292. **[declared unconstitutional; deleted by Act 3 of 2015]**
293. **[declared unconstitutional; deleted by Act 3 of 2015]**
294. **[declared unconstitutional; deleted by Act 3 of 2015]**
295. **[declared unconstitutional]**
296. Committal to rehabilitation centre
297. Conditional or unconditional postponement or suspension of sentence, and caution or reprimand
298. Sentence may be corrected
299. Warrant for the execution of sentence

CHAPTER 29. Compensation and Restitution..... 300-301

300. Court may award compensation where offence causes damage to or loss of property
301. Compensation to innocent purchaser of property unlawfully obtained

CHAPTER 30. Reviews and Appeals in Cases of Criminal Proceedings in Lower Courts 302-314

302. Sentences subject to review in the ordinary course
303. Transmission of record
304. Procedure on review
305. Right of appearance on review in certain cases subject to certificate of a judge
306. Accused may set down case for argument
307. Execution of sentence not suspended unless bail granted
308. **[declared unconstitutional]**
309. Appeal from lower court by person convicted
310. Appeal from lower court by Prosecutor-General or other prosecutor
311. Appeal to Supreme Court
312. Review or appeal and failure to comply with subsection (1)(b) or (2) of section 112
313. Institution of proceedings *de novo* when conviction set aside on appeal or review
314. Obtaining presence of convicted person in lower court after setting aside of sentence or order

CHAPTER 31. Appeals in Cases of Criminal Proceedings in Superior Courts 315-324

315. Court of appeal from High Court judgments
316. Applications for condonation, for leave to appeal and for leave to lead further evidence
316A. Appeal from High Court by Prosecutor-General or other prosecutor

317. Special entry of irregularity or illegality
318. Appeal on special entry under section 317
319. Reservation of question of law
320. Report of trial judge to be furnished on appeal
321. When execution of sentence may be suspended
322. Powers of court of appeal
323. Appeal by Minister on behalf of person sentenced to death
324. Institution *of* proceedings *de novo* when conviction set aside on appeal

CHAPTER 32. Mercy and Free Pardon 325-327

325. Saving of power of State President to extend mercy
326. State President may commute sentence of death
327. Further evidence and free pardon or substitution of verdict by State President

CHAPTER 33. General Provisions 328-345

328. Force of process
329. Court process may be served or executed by police official
330. Transmission of court process by telegraph or similar communication
331. Irregular warrant or process
332. Prosecution of corporations and members of associations
333. Minister may invoke decision of Appellate Division on question of law
334. Minister may declare certain persons peace officers for specific purposes and liability for damages
335. Person who makes statement entitled to copy thereof
336. Act or omission constituting offence under two or more laws
337. Estimating age of person
338. Production of document by accused at criminal proceedings
339. Removal of accused from one prison to another for purpose of attending at criminal proceedings
340. Correctional facility list of unsentenced offenders and witnesses detained
341. Compounding of certain minor offences
342. Conviction or acquittal no bar to civil action for damages
343. Application of this Act in the territory
344. Repeal of laws
345. Short title and date of commencement

Schedule 1
(Sections 40, 42, 49)

Schedule 2

PART 1
(Section 35)

PART II
(Sections 59, 72)

PART III
(Sections 59, 72, 184, 189)

PART IV
(Sections 59, 61, 72)

Schedule 3
(Section 341)

Schedule 4
LAWS REPEALED

DEFINITIONS

Definitions

1. (1) In this Act, unless the context otherwise indicates -

"aggravating circumstances", in relation to -

(a) any offence, whether under the common law or a statutory provision, of housebreaking or attempted housebreaking with intent to commit an offence, means -

(i) the possession of a dangerous weapon; or

(ii) the commission of an assault or a threat to commit an assault,

by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence;

(b) robbery or attempted robbery, means -

(i) the wielding of a fire-arm or any other dangerous weapon;

(ii) the infliction of grievous bodily harm; or

(iii) a threat to inflict grievous bodily harm,

by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence;

"bank" means a banking institution as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965), and includes the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act 13 of 1944), and a building society as defined in section 1 of the Building Societies Act, 1965 (Act 24 of 1965);

[The Banks Act 23 of 1965 was replaced by the Banking Institutions Act 2 of 1998, which was in turn replaced by the Banking Institutions Act 13 of 2023. The Land Bank Act 13 of 1944, which was re-named the Agricultural Bank Act, has been replaced by the Agricultural Bank of Namibia Act 5 of 2003. The Building Societies Act 24 of 1965 has been replaced by the Building Societies Act 2 of 1986.]

"charge" includes an indictment and a summons;

"complainant", in relation to an offence of a sexual or indecent nature, means a person towards or in connection with whom any such offence is alleged to have been committed, irrespective of whether or not that person has actually laid a complaint or gives evidence in the criminal proceedings in question;

[definition of "complainant" inserted by Act 8 of 2000]

"criminal proceedings" includes a preparatory examination under Chapter 20;

"day" means the space of time between sunrise and sunset;

"justice" means a person who is a justice of the peace under the provisions of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963);

"law", in relation to the territory, includes a law as defined in "The Interpretation of Laws Proclamation, 1920" (Proclamation 37 of 1920 of the territory);

"local division" means a local division of the Supreme Court established under the Supreme Court Act, 1959 (Act 59 of 1959);

[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990.]

"lower court" means any court established under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944);

"magistrate" includes an additional magistrate and an assistant magistrate but not a regional magistrate;

"magistrate's court" means a court established for any district under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and includes any other court established under such provisions, other than a court for a regional division;

"Minister" means the Minister of Justice;

"night" means the space of time between sunset and sunrise;

"offence" means an act or omission punishable by law;

"peace officer" includes any magistrate, justice, police official, correctional officer as defined in section 1 of the Correctional Service Act, 2012 (Act No. 9 of 2012), and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1), any person who is a peace officer under that section;

[definition of "peace officer" amended by Act 9 of 2012]

"police official" means any member of the Force as defined in section 1 of the Police Act, 1958 (Act 7 of 1958), and any member of the Railway Police Force appointed under section 57(1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act 70 of 1957); and "police" has a corresponding meaning;

[The Police Act 7 of 1958 has been replaced by the Police Act 19 of 1990. The Railways and Harbours Control and Management Consolidation Act 70 of 1957 (RSA GG 5908) was repealed in part by the Liquor Act 6 of 1998 (GG 1843) and repealed in its entirety in South Africa by the South African Transport Services Act 65 of 1981 (RSA GG 7786), which was made expressly applicable to South West Africa by virtue of section 78. Thus, even if the Railways and Harbours Control and Management Consolidation Act 70 of 1957 had already been transferred to South West Africa, the repealing Act would have repealed it in respect of South West Africa because it was explicitly made applicable to South West Africa.]

"probation officer" means a probation officer referred to in section 1 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015);

[The definition of "probation officer" is inserted as directed by Act 3 of 2015. However, for correct alphabetical order, it should appear after the definition of "premises".]

"premises" includes land, any building or structure, or any vehicle, conveyance, ship, boat or aircraft;

"province" includes the territory;

"provincial administration" includes the Administration of the territory;

"provincial division" means a provincial division of the Supreme Court established under the Supreme Court Act, 1959 (Act 5 of 1959);

[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990.]

"regional court" means a court established for a regional division under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944);

"regional magistrate" means a magistrate appointed under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), to the court for a regional division;

"Republic" includes the territory;

"rules of court" means the rules made under section 43 of the Supreme Court Act, 1959 (Act 59 of 1959), or under section 25 of the Magistrates' Courts Act, 1944 (Act 32 of 1944);

[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990.]

"special superior court" means the special superior court constituted under section 148;

"State", in relation to a department of State, includes the Administration of the territory;

"superior court" means a provincial or local division of the Supreme Court established under the Supreme Court Act, 1959 (Act 59 of 1959);

[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990.]

"supreme court" means the Supreme Court of South Africa established under the Supreme Court Act, 1959 (Act 59 of 1959)

[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990.]

"territory" means the territory of South West Africa;

"this Act" includes the rules of court and any regulations made under this Act.

(2) Any reference in any law to an inferior court shall, unless the context of such law indicates otherwise, be construed as a reference to a lower court as defined in subsection (1).

CHAPTER 1

PROSECUTING AUTHORITY

Authority to prosecute vested in State

2. (1) The authority to institute and to conduct a prosecution in respect of any offence in relation to which any lower or superior court in the Republic exercises jurisdiction, shall vest in the State.

(2) Criminal proceedings purporting to be instituted in the name of the State in any court in the Republic, shall for all purposes be deemed to be instituted in the name of the Republic of South Africa.

Attorney-general the prosecuting authority on behalf of State

3. (1) The State President shall, subject to the laws relating to the government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980), appoint in respect of the area of jurisdiction of each provincial division an attorney-general, who, on behalf of the State and subject to the provisions of this Act -

(a) shall have authority to prosecute, in the name of the Republic in criminal proceedings in any court in the area in respect of which he has been appointed, any person in respect of any offence in regard to which any court in the said area has jurisdiction; and

(b) may perform all functions relating to the exercise of such authority.

(2) The authority conferred upon an attorney-general under subsection (1) shall include the authority to prosecute in any court any appeal arising from any criminal proceedings within the area of jurisdiction of the attorney-general concerned.

(3) The Minister may, subject to the laws relating to the government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980), in respect of each area for which an attorney-general has been appointed, appoint one or more deputy attorneys-general, who may, subject to the control and directions of the attorney-general concerned, do anything which may lawfully be done by the attorney-general.

(4) Whenever it becomes necessary that an acting attorney-general be appointed, the Minister may appoint any competent officer in the government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980) to act as attorney-general for the period for which such appointment may be necessary.

(5) An attorney-general shall exercise his authority and perform his functions under this Act or under any other law subject to the control and directions of the Minister, who may reverse any decision arrived at by an attorney-general and may himself in general or in any specific matter exercise any part of such authority and perform any of such functions.

[Subsection (5) was found unconstitutional by *Ex Parte Attorney-General In Re: The Constitutional Relationship Between the Attorney-General and the Prosecutor-General* 1998 NR 282 (SC) at page 301. However, it is not clear whether this case technically invalidates subsection (5); it holds that subsection (5) is not applicable to the relationship between the Attorney-General and the Prosecutor-General, but this conclusion appears to be based on the inconsistency between subsection (5) and the Namibian Constitution, which takes precedence:

"Section 3(5) of the Act **[referring to Act 51 of 1977]** is not the product of a Rechtsstaat and is not compatible with the Grundnorm relating to the separation of powers. It paves the way for executive domination and state despotism. It represents a denial of the cardinal values of the Constitution.

The reasons advanced above would in themselves justify the conclusion that s 3(5) of the Act should be regarded by this Court as unconstitutional. But there are other reasons why in my view s 3(5) is not applicable.

In the first place art 140(1) of the Constitution commences by stating 'subject to the provisions of this Constitution' which signifies to me that art 87 and 88 of the Constitution which provide specifically for

the powers and functions of the Attorney-General and the Prosecutor-General take precedence over the provisions of s 3(5).

In *New Modderfontein Gold Mining Company v Transvaal Provincial Administration* 1919 AD 367 at 397 the Court cites with approval the following passage from an American decision (*Gorham v Luckett*):

> 'And if this last Act professes or manifestly intends, to regulate the whole subject to which it relates, it necessarily supersedes and repeals all former Acts, so far as it differs from them in its prescriptions. The great object, then, is to ascertain the true interpretation of the last Act. That being ascertained, the necessary consequence is that the legislative intention to be deduced from it must prevail over any prior inconsistent intention to be deduced from a previous Act.'

Secondly and allied to the last point is the significant change in language between s 3(5) and arts 87 and 88. Section 3(5) of the Act expressly makes the Attorney-General subject to the directions of the minister while arts 87(a) and 88 use quite different language. Under art 87(a) the Attorney-General exercises 'the final responsibility for the office of the Prosecutor-General' while under art 88 the 'Prosecutor-General prosecutes, subject to the provisions of the Constitution, and performs all functions relating to the exercise of his powers.' Section 3(5) of the Act does not therefore apply."**]**

(6) (a) Any reference in any law to the solicitor-general or a deputy solicitor-general in respect of the area of jurisdiction of the Eastern Cape Division of the Supreme Court, shall be construed as a reference to the attorney-general and deputy attorney-general respectively appointed in respect of the area of jurisdiction of that Division.

(b) Any reference in any law of the territory to the Crown Prosecutor shall be construed as a reference to the attorney-general appointed in respect of the area of jurisdiction of the South West Africa Division of the Supreme Court.

[Section 2 of AG 24 of 1983 provides that the words "public service" throughout section 3 shall be "deemed to be amended" by being substituted by the expression "government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980)"; this change has been incorporated as an amendment to section 3.

The Government Service Act 2 of 1980, which was re-named the Public Service Act, has been replaced by the Public Service Act 13 of 1995; section 38(c) of Act 13 of 1995 provides that a reference to the government service in any other law "shall be construed" as a reference to the public service. This rule of construction has *not* been treated as an amendment to section 3.

With respect to the "Crown Prosecutor", the Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Crown in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require.]

[Section 3(1)(t) of the transfer proclamation excluded section 3 from the operation of section 3(1)(c) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which concerned the interpretation of the term "Republic". Therefore, prior to Namibian independence, in this section "Republic" retained the meaning it was given in section 1 of the Act (South Africa and the territory of South West Africa).

Section 1(2) of AG 24 of 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 24 of 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)." **This change has been incorporated as an amendment to section 3 above.]**

Delegation, and local public prosecutor

4. An attorney-general may in writing -

(a) delegate to any person, subject to the control and directions of the attorney-general, authority to conduct on behalf of the State any prosecution in criminal proceedings in any court within the area of jurisdiction of such attorney-general, or to prosecute in any court on behalf of the State any appeal arising from criminal proceedings within the area of jurisdiction of such attorney-general;

(b) appoint any officer of the State as public prosecutor to any lower court within his area of jurisdiction who shall, as the representative of the attorney-general and subject to his control and directions, institute and conduct on behalf of the State any prosecution in criminal proceedings in such lower court.

Presiding judicial officer may in certain circumstances appoint prosecutor

5. (1) If the person delegated or appointed to conduct a prosecution in criminal proceedings in any court is for any reason unable to discharge that function, or if no such person has been delegated or appointed, the judge or judicial officer presiding at such criminal proceedings may, in writing under his hand, designate any competent person to conduct such prosecution in particular criminal proceedings or in all criminal proceedings on any particular day.

(2) A person designated under subsection (1) shall in respect of the exercise of his powers and the discharge of his functions be subject to the control and directions of the attorney-general concerned.

Power to withdraw charge or stop prosecution

6. An attorney-general or any person conducting a prosecution at the instance of the State or any body or person conducting a prosecution under section 8, may -

(a) before an accused pleads to a charge, withdraw that charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge;

(b) at any time after an accused has pleaded, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of that charge: Provided that where a prosecution is conducted by a person other than an attorney-general or a body or person referred to in section 8, the prosecution shall not be stopped unless the attorney-general or any person authorized thereto by the attorney-general, whether in general or in any particular case, has consented thereto.

Private prosecution on certificate *nolle prosequi*

7. (1) In any case in which an attorney-general declines to prosecute for an alleged offence -

(a) any private person who proves some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually suffered in consequence of the commission of the said offence;

(b) a husband, if the said offence was committed in respect of his wife;

(c) the wife or child or, if there is no wife or child, any of the next of kin of any deceased person, if the death of such person is alleged to have been caused by the said offence; or

(d) the legal guardian or curator of a minor or lunatic, if the said offence was committed against his ward,

may, subject to the provisions of section 9, either in person or by a legal representative, institute and conduct a prosecution in respect of such offence in any court competent to try that offence.

(2) (a) No private prosecutor under this section shall obtain the process of any court for summoning any person to answer any charge unless such private prosecutor produces to the officer authorized by law to issue such process a certificate signed by the attorney-general that he has seen the statements or affidavits on which the charge is based and that he declines to prosecute at the instance of the State.

(b) The attorney-general shall, in any case in which he declines to prosecute, at the request of the person intending to prosecute, grant the certificate referred to in paragraph (a).

(c) A certificate issued under this subsection shall lapse unless proceedings in respect of the offence in question are instituted by the issue of the process referred to in paragraph (a) within three months of the date of the certificate.

(d) The provisions of paragraph (c) shall apply also with reference to a certificate granted before the commencement of this Act under the provisions of any law repealed by this Act, and the date of such certificate shall, for the purposes of this paragraph, be deemed to be the date of commencement of this Act.

Private prosecution under statutory right

8. (1) Any body upon which or person upon whom the right to prosecute in respect of any offence is expressly conferred by law, may institute and conduct a prosecution in respect of such offence in any court competent to try that offence.

(2) A body which or a person who intends exercising a right of prosecution under subsection (1), shall exercise such right only after consultation with the attorney-general concerned and after the attorney-general has withdrawn his right of prosecution in respect of any specified offence or any specified class or category of offences with reference to which such body or person may by law exercise such right of prosecution.

(3) An attorney-general may, under subsection (2), withdraw his right of prosecution on such conditions as he may deem fit, including a condition that the appointment by such body or person of a prosecutor to conduct the prosecution in question shall be subject to the approval of the attorney-general, and that the attorney-general may at any time exercise with reference to any such prosecution any power which he might have exercised if he had not withdrawn his right of prosecution.

Security by private prosecutor

9. (1) No private prosecutor referred to in section 7 shall take out or issue any process commencing the private prosecution unless he deposits with the magistrate's court in whose area of jurisdiction the offence was committed -

(a) the sum of one hundred rand as security that he will prosecute the charge against the accused to a conclusion without undue delay; and

(b) the amount such court may determine as security for the costs which the accused may incur in respect of his defence to the charge.

(2) The accused may, when he is called upon to plead to the charge, apply to the court hearing the charge to review the amount determined under subsection (1)(b), whereupon the court may, before the accused pleads -

(a) require the private prosecutor to deposit such additional amount as the court may determine with the magistrate's court in which the said amount was deposited; or

(b) direct that the private prosecutor enter into a recognizance, with or without sureties, in such additional amount as the court may determine.

(3) Where a private prosecutor fails to prosecute a charge against an accused to a conclusion without undue delay or where a charge is dismissed under section 11, the amount referred to in subsection (1)(a) shall be forfeited to the State.

Private prosecution in name of private prosecutor

10. (1) A private prosecution shall be instituted and conducted and all process in connection therewith issued in the name of the private prosecutor.

(2) The indictment, charge-sheet or summons, as the case may be, shall describe the private prosecutor with certainty and precision and shall, except in the case of a body referred to in section 8, be signed by such prosecutor or his legal representative.

(3) Two or more persons shall not prosecute in the same charge except where two or more persons have been injured by the same offence.

Failure of private prosecutor to appear

11. (1) If the private prosecutor does not appear on the day set down for the appearance of the accused in the magistrate's court or for the trial of the accused, the charge against the accused shall be dismissed unless the court has reason to believe that the private prosecutor was prevented from being present by circumstances beyond his control, in which event the court may adjourn the case to a later date.

(2) Where the charge is so dismissed, the accused shall forthwith be discharged from custody and may not in respect of that charge be prosecuted privately again but the attorney-general or a public prosecutor with the consent of the attorney-general may at the instance of the State prosecute the accused in respect of that charge.

Mode of conducting private prosecution

12. (1) A private prosecution shall, subject to the provisions of this Act, be proceeded with in the same manner as if it were a prosecution at the instance of the State: Provided that the person in respect of whom the private prosecution is instituted shall be brought before the court only by way of summons in the case of a lower court, or an indictment in the case of a superior court, except where he is under arrest in respect of an offence with regard to which a right of private prosecution is vested in any body or person under section 8.

(2) Where the prosecution is instituted under section 7(1) and the accused pleads guilty to the charge, the prosecution shall be continued at the instance of the State.

Attorney-general may intervene in private prosecution

13. An attorney-general or a local public prosecutor acting on the instructions of the attorney-general, may in respect of any private prosecution apply by motion to the court before which the private prosecution is pending to stop all further proceedings in the case in order that a prosecution for the offence in question may be instituted or, as the case may be, continued at the instance of the State, and the court shall make such an order.

Costs in respect of process

14. A private prosecutor, other than a prosecutor contemplated in section 8, shall in respect of any process relating to the private prosecution, pay to the clerk or, as the case may be, the registrar of the court in question, the fees prescribed under the rules of court for the service or execution of such process.

Costs of private prosecution

15. (1) The costs and expenses of a private prosecutor shall, subject to the provisions of subsection (2), be paid by the private prosecutor.

(2) The court may order a person convicted upon a private prosecution, including any person convicted under section 25(1) of the Children's Act, 1960 (Act 33 of 1960) of having conduced to the commission of an offence, to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence: Provided that the provisions of this subsection shall not apply with reference to any prosecution instituted and conducted under section 8: Provided further that where a private prosecution is instituted after the grant of a certificate by an attorney-general that he declines to prosecute and the accused is convicted, the court may order the costs and expenses of the private prosecution, including the costs of an appeal arising from such prosecution, to be paid by the State.

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

Costs of accused in private prosecution

16. (1) Where in a private prosecution, other than a prosecution contemplated in section 8, the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal, the court dismissing the charge or acquitting the accused or deciding in favour of the accused on appeal, may order the private prosecutor to pay to such accused the whole or any part of the costs and expenses incurred by him in connection with the prosecution or, as the case may be, the appeal.

(2) Where the court is of the opinion that a private prosecution was unfounded and vexatious, it shall award to the accused at his request such costs and expenses incurred by him as it may deem fit.

Taxation of costs

17. (1) The provisions of section 300(3) shall apply with reference to any order or award made under section 15 or 16 in connection with costs and expenses.

(2) Costs awarded under section 15 or 16 shall be taxed according to the scale, in civil cases, of the court which makes the award or, if the award is made by a regional court, according to the scale, in civil cases, of a magistrate's court, or, where there is more than one such scale, according to the scale determined by the court making the award.

Prescription of right to institute prosecution

18. (1) The right to institute a prosecution for any offence, other than an offence in respect of which the sentence of death may be imposed, shall, unless some other period is expressly provided by law, lapse after the expiration of a period of twenty years from the time when the offence was committed.

(2) The right to institute a prosecution for an offence in respect of which the sentence of death may be imposed, shall not be barred by lapse of time.

CHAPTER 2

SEARCH WARRANTS, ENTERING OF PREMISES, SEIZURE, FORFEITURE AND DISPOSAL OF PROPERTY CONNECTED WITH OFFENCES

Saving as to certain powers conferred by other laws

19. The provisions of this Chapter shall not derogate from any power conferred by any other law to enter any premises or to search any person, container or premises or to seize any matter, to declare any matter forfeited or to dispose of any matter.

State may seize certain articles

20. The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article) -

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

Article to be seized under search warrant

21. (1) Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued -

(a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or

(b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or upon or at any premises is required in evidence at such proceedings.

(2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorize such police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3) (a) A search warrant shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A police official executing a warrant under this section or section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.

Circumstances in which article may be seized without search warrant

22. A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20 -

(a) if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or

(b) if he on reasonable grounds believes -

(i) that a search warrant will be issued to him under paragraph (a) of section 21 (1) if he applies for such warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.

Search of arrested person and seizure of article

23. On the arrest of any person, the person making the arrest may -

(a) if he is a peace officer, search the person arrested and seize any article referred to in section 20 which is found in the possession of or in the custody or under the control of the person arrested, and where such peace officer is not a police official, he shall forthwith deliver any such article to a police official; or

(b) if he is not a peace officer, seize any article referred to in section 20 which is in the possession of or in the custody or under the control of the person arrested and shall forthwith deliver any such article to a police official.

Search by occupant of land

24. Any person who is lawfully in charge or occupation of any premises and who reasonably suspects that stolen stock or produce, as defined in any law relating to the theft of stock or produce, is on or in the premises concerned, or that any article has been placed thereon or therein or is in the custody or possession of any person upon or in such premises in contravention of any law relating to intoxicating liquor, dependence-producing drugs, arms and ammunition or explosives, may at any time, if a police official is not readily available, enter

such premises for the purpose of searching such premises and any person thereon or therein, and if any such stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police official.

[section 24 amended by Act 31 of 1985]

Power of police to enter premises in connection with State security or any offence

25. (1) If it appears to a magistrate or justice from information on oath that there are reasonable grounds for believing -

(a) that the internal security of the Republic or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which is being held or is to be held in or upon any premises within his area of jurisdiction; or

(b) that an offence has been or is being or is likely to be committed or that preparations or arrangements for the commission of any offence are being or are likely to be made in or upon any premises within his area of jurisdiction,

he may issue a warrant authorizing a police official to enter the premises in question at any reasonable time for the purpose -

(i) of carrying out such investigations and of taking such steps as such police official may consider necessary for the preservation of the internal security of the Republic or for the maintenance of law and order or for the prevention of any offence;

(ii) of searching the premises or any person in or upon the premises for any article referred to in section 20 which such police official on reasonable grounds suspects to be in or upon or at the premises or upon such person; and

(iii) of seizing any such article.

(2) A warrant under subsection (1) may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(3) A police official may without warrant act under subparagraphs (i), (ii) and (iii) of subsection (1) if he on reasonable grounds believes -

(a) that a warrant will be issued to him under paragraph (a) or (b) of subsection (1) if he applies for such warrant; and

(b) that the delay in obtaining such warrant would defeat the object thereof.

Entering of premises for purposes of obtaining evidence

26. Where a police official in the investigation of an offence or alleged offence reasonably suspects that a person who may furnish information with reference to any such offence is on any premises, such police official may without warrant enter such premises for the purpose of interrogating such person and obtaining a statement from him: Provided that such police official shall not enter any private dwelling without the consent of the occupier thereof.

Powers to obtain information during investigations

26A. (1) A police official may, by written notice, require a person or a public or private institution to disclose or provide any information, document or article including digital data relating to an investigation that may be in his or her possession or in the possession of the public or private institution.

(2) Despite the provisions of any other law, a person who is in possession of, or who has control or custody of, or within whose power it is to furnish, any information, document or article including digital data referred to in subsection (1) shall furnish an affidavit and comply with the written notice referred to in subsection (1).

[section 26A inserted by Act 7 of 2023]

Power to request for information from financial or banking institution and other juristic person

[The word "for" after the word "request" is superfluous.]

26B. The Inspector-General or a police official of or above the rank of chief inspector may, in writing, request a person in charge or an authorised person -

(a) of a financial institution as defined in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001);

(b) of a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998); or

[The Banking Institutions Act 2 of 1998 has been replaced by the Banking Institutions Act 13 of 2023.]

(c) of any other juristic person,

to disclose or provide any record, book, register, correspondence or other document, information or material relating to the affairs or the account of a customer of the financial institution, banking institution or any other juristic person, including data stored in electronic form, which may assist the Namibian police in investigating an alleged offence.

[section 26B inserted by Act 7 of 2023]

Resistance against entry or search

27. (1) A police official who may lawfully search any person or any premises or who may enter any premises under section 26, may use such force as may be reasonably necessary to overcome any resistance against such search or against entry of the premises, including the breaking of any door or window of such premises: Provided that such police official shall first audibly demand admission to the premises and notify the purpose for which he seeks to enter such premises.

(2) The proviso to subsection (1) shall not apply where the police official concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

Failure to comply with request or grant access

27A. A person who, without reasonable cause -

(a) fails to comply with a request in terms of section 26A; or

(b) obstructs or fails to grant access -

(i) to a police official conducting a search in terms of section 21, 22, 23, 25, 26 or 27; or

(ii) to a person conducting a search in terms of section 24; or

(c) fails to comply with a written notice provided for under section 26B,

commits an offence and on conviction is liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[section 27A inserted by Act 7 of 2023]

Wrongful search an offence, and award of damages

28. (1) A police official -

(a) who acts contrary to the authority of a search warrant issued under section 21 or a warrant issued under section 25(1); or

(b) who, without being authorized thereto under this Chapter -

(i) searches any person or container or premises or seizes or detains any article; or

(ii) performs any act contemplated in subparagraph (i), (ii) or (iii) of section 25 (1),

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months, and shall in addition be subject to an award under subsection (2).

(2) Where any person falsely gives information on oath under section 21(1) or 25(1) and a search warrant or, as the case may be, a warrant is issued and executed on such information, and such person is in consequence of such false information convicted of perjury, the court convicting such person may, upon the application of any person who has suffered damage in consequence of the unlawful entry, search or seizure, as the case may be, or upon the application of the prosecutor acting on the instructions of that person, award compensation in respect of such damage, whereupon the provisions of section 300 shall *mutatis mutandis* apply with reference to such award.

Search to be conducted in decent and orderly manner

29. A search of any person or premises shall be conducted with strict regard to decency and order, and a woman shall be searched by a woman only, and if no female police official is available, the search shall be made by any woman designated for the purpose by a police official.

Disposal by police official of article after seizure

30. A police official who seizes any article referred to in section 20 or to whom any such article is under the provisions of this Chapter delivered

(a) may, if the article is perishable, with due regard to the interests of the persons concerned, dispose of the article in such manner as the circumstances may require; or

(b) may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such police official, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so; or

(c) shall, if the article is not disposed of or delivered under the provisions of paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangements with regard to the custody thereof as the circumstances may require.

Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings

31. (1) (a) If no criminal proceedings are instituted in connection with any article referred to in section 30(c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.

(b) If no person may lawfully possess such article or if the police official concerned does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

(2) The person who may lawfully possess the article in question shall be notified by registered post at his last-known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the State.

Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid

32. (1) If criminal proceedings are instituted in connection with any article referred to in section 30(c) and the accused admits his guilt in accordance with the provisions of section 57, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it, whereupon the provisions of section 31(2) shall apply with reference to any such person.

(2) If no person may lawfully possess such article or if the police official concerned does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

Article to be transferred to court for purposes of trial

33. (1) If criminal proceedings are instituted in connection with any article referred to in section 30(c) and such article is required at the trial for the purposes of evidence or for the purposes of an order of court, the police official concerned shall, subject to the provisions of subsection (2) of this section, deliver such article to the clerk of the court where such criminal proceedings are instituted.

(2) If it is by reason of the nature, bulk or value of the article in question impracticable or undesirable that the article should be delivered to the clerk of the court in terms of subsection (1), the clerk of the court may require the police official concerned to retain the article in police custody or in such other custody as may be determined in terms of section 30(c).

(3) (a) The clerk of the court shall place any article received under subsection (1) in safe custody, which may include the deposit of money in an official banking account if such money is not required at the trial for the purposes of evidence.

(b) Where the trial in question is to be conducted in a court other than a court of which such clerk is the clerk of the court, such clerk of the court shall -

(i) transfer any article received under subsection (1), other than money deposited in a banking account under paragraph (a) of this subsection, to the clerk of the court or, as the case may be, the registrar of the court in which the trial is to be conducted, and such clerk or registrar of the court shall place such article in safe custody;

(ii) in the case of any article retained in police custody or in some other custody in accordance with the provisions of subsection (2) or in the case of any money deposited in a banking account under paragraph (a) of this subsection, advise the clerk or registrar of such other court of the fact of such custody or such deposit, as the case may be.

Disposal of article after commencement of criminal proceedings

34. (1) The judge or judicial officer presiding at criminal proceedings shall at the conclusion of such proceedings, but subject to the provisions of this Act or any other law under which any matter shall or may be forfeited, make an order that any article referred to in section 33 -

(a) be returned to the person from whom it was seized, if such person may lawfully possess such article; or

(b) if such person is not entitled to the article or cannot lawfully possess the article, be returned to any other person entitled thereto, if such person may lawfully possess the article; or

(c) if no person is entitled to the article or if no person may lawfully possess the article or, if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the State.

(2) The court may, for the purpose of any order under subsection (1), hear such additional evidence, whether by affidavit or orally, as it may deem fit.

(3) If the judge or judicial officer concerned does not, at the conclusion of the relevant proceedings, make an order under subsection (1), such judge or judicial officer or, if he is not available, any other judge or judicial officer of the court in question, may at any time after the conclusion of the proceedings make any such order, and for that purpose hear such additional evidence, whether by affidavit or orally, as he may deem fit.

(4) Any order made under subsection (1) or (3) may be suspended pending any appeal or review.

(5) Where the court makes an order under paragraph (a) or (b) of subsection (1), the provisions of section 31(2) shall *mutatis mutandis* apply with reference to the person in favour of whom such order is made.

(6) If the circumstances so require or if the criminal proceedings in question cannot for any reason be disposed of, the judge or judicial officer concerned may make any order referred to in paragraph (a), (b) or (c) of subsection (1) at any stage of the proceedings.

Forfeiture of article to State

35. (1) A court which convicts an accused of any offence may, without notice to any person, declare -

(a) any weapon, instrument or other article by means whereof the offence in question was committed or which was used in the commission of such offence; or

(b) if the conviction is in respect of an offence referred to in Part I of Schedule 2, any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question or for the conveyance or removal of the stolen property,

and which was seized under the provisions of this Act, forfeited to the State: Provided that such forfeiture shall not affect any right referred to in subparagraph (i) or (ii) of subsection (4)(a) if it is proved that the person who claims such right did not know that such weapon, instrument, vehicle, container or other article was being used or would be used for the purpose of or in connection with the commission of the offence in question or, as the case may be, for the conveyance or removal of the stolen property in question, or that he could not prevent such use, and that he may lawfully possess such weapon, instrument, vehicle, container or other article, as the case may be.

(2) A court which convicts an accused or which finds an accused not guilty of any offence, shall declare forfeited to the State any article seized under the provisions of this Act which is forged or counterfeit or which cannot lawfully be possessed by any person.

(3) Any weapon, instrument, vehicle, container or other article declared forfeited under the provisions of subsection (1), shall be kept for a period of thirty days with effect from the date of declaration of forfeiture or, if an application is within that period received from any person for the determination of any right referred to in subparagraph (i) or (ii) of subsection (4)(a), until a final decision in respect of any such application has been given.

(4) (a) The court in question or, if the judge or judicial officer concerned is not available, any judge or judicial officer of the court in question, may at any time within a period of three years with effect from the date of declaration of forfeiture, upon the application of any person, other than the accused, who claims that any right referred to in subparagraph (i) or (ii) of this paragraph is vested in him, inquire into and determine any such right, and if the court finds that the weapon, instrument, vehicle, container or other article in question -

(i) is the property of any such person, the court shall set aside the declaration of forfeiture and direct that the weapon, instrument, vehicle, container or other article, as the case may be, be returned to such person, or, if the State has disposed of the weapon, instrument, vehicle, container or other article in question, direct that such person be compensated by the State to the extent to which the State has been enriched by such disposal;

(ii) was sold to the accused in pursuance of a contract under which he becomes the owner of such weapon, instrument, vehicle, container or other article, as the case may be, upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of such weapon, instrument, vehicle, container or other article upon default of payment of the stipulated price or any part thereof -

(aa) the court shall direct that the weapon, instrument, vehicle, container or other article in question be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his rights under the contract to the weapon, instrument, vehicle, container or other article, but not exceeding the proceeds of the sale; or

(bb) if the State has disposed of the weapon, instrument, vehicle, container or other article in question, the court shall direct that the said seller be likewise compensated.

(b) If a determination by the court under paragraph (a) is adverse to the applicant, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

(c) When determining any rights under this subsection, the record of the criminal proceedings in which the declaration of forfeiture was made, shall form part of the relevant proceedings, and the court making the determination may hear such additional evidence, whether by affidavit or orally, as it may deem fit.

Disposal of article concerned in an offence committed outside Republic

36. (1) Where an article is seized in connection with which -

(a) an offence was committed or is on reasonable grounds suspected to have been committed in a country outside the Republic;

(b) there are reasonable grounds for believing that it will afford evidence as to the commission in a country outside the Republic of any offence or that it was used for the purpose of or in connection with such commission of any offence,

the magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that such offence is punishable in such country by death or by imprisonment for a period of twelve months or more or by a fine of five hundred rand or more, order such article to be delivered to a member of a police force established in such country who may thereupon remove it from the Republic.

(2) Whenever the article so removed from the Republic is returned to the magistrate, or whenever the magistrate refuses to order that the article be delivered as aforesaid, the article shall be returned to the person from whose possession it was taken, unless the magistrate is authorized or required by law to dispose of it otherwise.

CHAPTER 3

ASCERTAINMENT OF BODILY FEATURES OF ACCUSED

Powers in respect of prints and bodily appearance of accused

37. (1) Any police official may -

(a) take the finger-prints, palm-prints or foot-prints or may cause any such prints to be taken -

(i) of any person arrested upon any charge;

(ii) of any such person released on bail or on warning under section 72;

(iii) of any person arrested in respect of any matter referred to in paragraph (n), (o) or (p) of section 40(1);

(iv) of any person upon whom a summons has been served in respect of any offence referred to in Schedule l or any offence with reference to which the suspension, cancellation or endorsement of any licence or permit or the disqualification in respect of any licence or permit is permissible or prescribed; or

(v) of any person convicted by a court or deemed under section 57(6) to have been convicted in respect of any offence which the Minister has by notice in the *Gazette* declared to be an offence for the purposes of this subparagraph;

(b) make a person referred to in paragraph (a)(i) or (ii) available or cause such person to be made available for identification in such condition, position or apparel as the police official may determine;

(c) take such steps as he may deem necessary in order to ascertain whether the body of any person referred to in paragraph (a)(i) or (ii) has any mark, characteristic or distinguishing feature or shows any condition or appearance: Provided that no police official shall take any blood sample of the person concerned nor shall a police official make any examination of the body of the person concerned where that person is a female and the police official concerned is not a female.

[The full stop at the end of paragraph (c) should be a semicolon now that it is no longer the last paragraph in subsection (1).]

(d) take a photograph or may cause a photograph to be taken of a person referred to in paragraph (a)(i) or (ii).

[paragraph (d) inserted by Act 31 of 1985]

(2) (a) Any medical officer of any prison or any district surgeon or, if requested thereto by any police official, any registered medical practitioner or registered nurse may take such steps, including the taking of a blood sample, as may be deemed necessary in order to ascertain whether the body of any person referred to in paragraph (a)(i) or (ii) of subsection (1) has any mark, characteristic or distinguishing feature or shows any condition or appearance.

(b) If any registered medical practitioner attached to any hospital is on reasonable grounds of the opinion that the contents of the blood of any person admitted to such hospital for medical attention or treatment may be relevant at any later criminal proceedings, such medical practitioner may take a blood sample of such person or cause such sample to be taken.

(3) Any court before which criminal proceedings are pending may -

(a) in any case in which a police official is not empowered under subsection (1) to take finger-prints, palm-prints or foot-prints or to take steps in order to ascertain whether the body of any person has any mark, characteristic or distinguishing feature or shows any condition or appearance, order that such prints be taken of any accused at such proceedings or that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain whether the body of any accused at such proceedings has any mark, characteristic or distinguishing feature or shows any condition or appearance;

(b) order that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain the state of health of any accused at such proceedings.

(4) Any court which has convicted any person of any offence or which has concluded a preparatory examination against any person on any charge, or any magistrate may order that the finger-prints, palm-prints or foot-prints or a photograph of the person concerned be taken.

[Subsection (4) is substituted with amendment markings by Act 31 of 1985; not all of the changes are indicated by the amendment markings.]

(5) Finger-prints, palm-prints or foot-prints, photographs and the record of steps taken under this section, shall be destroyed if the person concerned is found not guilty at his trial or if his conviction is set aside by a superior court or if he is discharged at a preparatory examination or if no criminal proceedings with reference to which such prints or photographs were taken or such record was made are instituted against the person concerned in any court or if the prosecution declines to prosecute such person.

[subsection (5) amended by Act 31 of 1985]

CHAPTER 4

METHODS OF SECURING ATTENDANCE OF ACCUSED IN COURT

Methods of securing attendance of accused in court

38. The methods of securing the attendance of an accused in court for the purposes of his trial shall be arrest, summons, written notice and indictment in accordance with the relevant provisions of this Act.

CHAPTER 5

ARREST

Manner and effect of arrest

39. (1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.

(2) The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in

the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.

(3) The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

Arrest by peace officer without warrant

40. (1) A peace officer may without warrant arrest any person -

(a) who commits or attempts to commit any offence in his presence;

(b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;

(c) who has escaped or who attempts to escape from lawful custody;

(d) who has in his possession any implement of housebreaking and who is unable to account for such possession to the satisfaction of the peace officer;

(e) who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;

(f) who is found at any place by night in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence;

(g) who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce;

(h) who is reasonably suspected of committing or of having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition;

(i) who is found in any gambling house or at any gambling table in contravention of any law relating to the prevention or suppression of gambling or games of chance;

(j) who wilfully obstructs him in the execution of his duty;

(k) who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has been concerned in any act committed outside the Republic which, if committed in the Republic, would have been punishable as an offence, and for which he is, under any law relating to extradition or fugitive offenders, liable to be arrested or detained in custody in the Republic;

(l) who is reasonably suspected of being a prohibited immigrant in the Republic in contravention of any law regulating entry into or residence in the Republic;

(m) who is reasonably suspected of being a deserter from the South African Defence Force;

(n) who is reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;

(o) who is reasonably suspected of having failed to pay any fine or part thereof on the date fixed by order of court under this Act;

(p) who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or any law relating to prisons.

(2) If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances.

Name and address of certain persons and power of arrest by peace officer without warrant

41. (1) A peace officer may call upon any person -

(a) whom he has power to arrest;

(b) who is reasonably suspected of having committed or of having attempted to commit an offence;

(c) who, in the opinion of the peace officer, may be able to give evidence in regard to the commission or suspected commission of any offence,

to furnish such peace officer with his full name and address, and if such person fails to furnish his full name and address, the peace officer may forthwith and without warrant arrest him, or, if such person furnishes to the peace officer a name or address which the peace officer reasonably suspects to be false, the peace officer may arrest him without warrant and detain him for a period not exceeding twelve hours until such name or address has been verified.

(2) Any person who, when called upon under the provisions of subsection (1) to furnish his name and address, fails to do so or furnishes a false or incorrect name and address, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months.

Arrest by private person without warrant

42. (1) Any private person may without warrant arrest any person -

(a) who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in Schedule I;

(b) whom he reasonably believes to have committed any offence and to be escaping from and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence;

(c) whom he is by any law authorized to arrest without warrant in respect of any offence specified in that law;

(d) whom he sees engaged in an affray.

(2) Any private person who may without warrant arrest any person under subsection (1)(a) may forthwith pursue that person, and any other private person to whom the purpose of the pursuit has been made known, may join and assist therein.

(3) The owner, lawful occupier or person in charge of property on or in respect of which any person is found committing any offence, and any person authorized thereto by such owner, occupier or person in charge, may without warrant arrest the person so found.

[subsection (3) amended by Act 31 of 1985]

Warrant of arrest may be issued by magistrate or justice

43. (1) Any magistrate or justice may issue a warrant for the arrest of any person upon the written application of an attorney-general, a public prosecutor or a commissioned officer of police -

(a) which sets out the offence alleged to have been committed;

(b) which alleges that such offence was committed within the area of jurisdiction of such magistrate or, in the case of a justice, within the area of jurisdiction of the magistrate within whose district or area application is made to the justice for such warrant, or where such offence was not committed within such area of jurisdiction, which alleges that the person in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and

(c) which states that from information taken upon oath there is a reasonable suspicion that the person in respect of whom the warrant is applied for has committed the alleged offence.

(2) A warrant of arrest issued under this section shall direct that the person described in the warrant shall be arrested by a peace officer in respect of the offence set out in the warrant and that he be brought before a lower court in accordance with the provisions of section 50.

(3) A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed.

Execution of warrants

44. A warrant of arrest issued under any provision of this Act may be executed by a peace officer, and the peace officer executing such warrant shall do so in accordance with the terms thereof.

Arrest on telegraphic authority

45. (1) A telegraphic or similar written or printed communication from any magistrate, justice or peace officer stating that a warrant has been issued for the arrest of any person, shall be sufficient authority to any peace officer for the arrest and detention of that person.

(2) The provisions of section 50 shall apply with reference to an arrest effected in accordance with subsection (1).

Non-liability for wrongful arrest

46. (1) Any person who is authorized to arrest another under a warrant of arrest or a communication under section 45 and who in the reasonable belief that he is arresting such person arrests another, shall be exempt from liability in respect of such wrongful arrest.

(2) Any person who is called upon to assist in making an arrest as contemplated in subsection (1) or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorized by the warrant of arrest or the communication, shall likewise be exempt from liability in respect of such assistance or detention.

Private persons to assist in arrest when called upon

47. (1) Every male inhabitant of the Republic of an age not below sixteen and not exceeding sixty years shall, when called upon by any police official to do so, assist such police official-

(a) in arresting any person;

(b) in detaining any person so arrested.

(2) Any person who, without sufficient cause, fails to assist a police official as provided in subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months.

Breaking open premises for purpose of arrest

48. Any person who may lawfully arrest another in respect of any offence and who knows or reasonably suspects such other person to be on any premises, may, if he first audibly demands entry into such premises and notifies the purpose for which he seeks entry and fails to gain entry, break open, enter and search such premises for the purpose of effecting the arrest.

Use of force in effecting arrest

49. (1) If any person authorized under this Act to arrest or to assist in arresting another, attempts to arrest such person and such person -

(a) resists the attempt and cannot be arrested without the use of force; or

(b) flees when it is clear that an attempt to arrest him is being made, or resists such attempt and flees,

the person so authorized may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing.

(2) Where the person concerned is to be arrested for an offence referred to in Schedule 1 or is to be arrested on the ground that he is reasonably suspected of having committed such an offence, and the person authorized under this Act to arrest or to assist in arresting him cannot arrest him or prevent him from fleeing by other means than by killing him, the killing shall be deemed to be justifiable homicide.

Procedure after arrest

50. (1) A person arrested with or without warrant shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is

expressly mentioned in the warrant, and, if not released by reason that no charge is to be brought against him, be detained for a period not exceeding forty-eight hours unless he is brought before a lower court and his further detention, for the purposes of his trial, is ordered by the court upon a charge of any offence or, if such person was not arrested in respect of an offence, for the purpose of adjudication upon the cause for his arrest: Provided that if the period of forty-eight hours expires -

(a) on a day which is not a court day or on any court day after four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of the court day next succeeding;

(b) on any court day before four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of such court day;

(c) at a time when the arrested person is outside the area of jurisdiction of the lower court to which he is being brought for the purposes of further detention and he is at such time in transit from a police station or other place of detention to such court, the said period shall be deemed to expire at four o'clock in the afternoon of the court day next succeeding the day on which such arrested person is brought within the area of jurisdiction of such court.

[The full stop at the end of paragraph (c) should be a semicolon now that it is no longer the last paragraph in subsection (1).]

(d) or will expire at, or if the time at which such period is deemed to expire under paragraph (a), (b) or (c) is or will be, a time when the arrested person cannot, because of his physical illness or other physical condition, be brought before a lower court for the purposes of an order for his further detention, the court before which he would, but for the illness or other condition, have been brought for the purposes of such an order, may, upon the application of the prosecutor, which, if not made before the expiration of the period of forty-eight hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances relating to the illness or other condition are set out, supported by a certificate of a medical practitioner, order that the arrested person be detained at a place specified by the court and for such period as the court may deem necessary so that he may recuperate and be brought before the court for the purpose of an order for his further detention for the purposes of his trial.

[paragraph (d) inserted by Act 56 of 1979]

(2) A court day for the purposes of this section means a day on which the court in question normally sits as a court.

(3) Nothing in this section shall be construed as modifying the provisions of this Act or any other law whereby a person under detention may be released on bail or on warning or on a written notice to appear in court.

Escaping and aiding escaping before incarceration, and penalties therefor

51. (1) Any person who escapes or attempts to escape from custody after he has been lawfully arrested and before he has been lodged in any correctional facility, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section 91 of the Correctional Service Act, 2012 (Act No. 9 of 2012).

[subsection (1) amended by Act 9 of 2012]

(2) Any person who rescues or attempts to rescue from custody any person after he has been lawfully arrested and before he has been lodged in any correctional facility, police-cell or lock-up, or who aids such person to escape or to attempt to escape from such custody, or who harbours or conceals or assists in harbouring or concealing any person who escapes from custody after he has been lawfully arrested and before he has been lodged in any correctional facility, police cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section 83 of the Correctional Service Act, 2012 (Act No. 9 of 2012).

[subsection (2) amended by Act 9 of 2012]

(3) Notwithstanding anything to the contrary in any law contained, a lower court shall have jurisdiction to try any offence under this section and to impose any penalty prescribed in respect thereof.

**[section 51 amended by Act 9 of 2012
to substitute "correctional facility" for "prison"]**

Saving of other powers of arrest

52. No provision of this Chapter relating to arrest shall be construed as removing or diminishing any authority expressly conferred by any other law to arrest, detain or put any restraint upon any person.

Saving of civil law rights and liability

53. Subject to the provisions of sections 46 and 331, no provision of this Chapter relating to arrest shall be construed as removing or diminishing any civil right or liability of any person in respect of a wrongful or malicious arrest.

CHAPTER 6

SUMMONS

Summons as method of securing attendance of accused in magistrate's court

54. (1) Where the prosecution intends prosecuting an accused in respect of any offence and the accused is not in custody in respect of that offence and no warrant has been or is to be issued for the arrest of the accused for that offence, the prosecutor may secure the attendance of the accused for a summary trial in a lower court having jurisdiction by drawing up the relevant charge and handing such charge, together with information relating to the name and, where known and where applicable, the residential address and occupation or status of the accused, to the clerk of the court who shall -

(a) issue a summons containing the charge and the information handed to him by the prosecutor, and specifying the place, date and time for the appearance of the accused in court on such charge; and

(b) deliver such summons, together with so many copies thereof as there are accused to be summoned, to a person empowered to serve a summons in criminal proceedings.

(2) (a) Except where otherwise expressly provided by any law, the summons shall be served by a person referred to in subsection (1)(b) by delivering it to the person named therein or, if he cannot be found, by delivering it at his residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there.

(b) A return by the person who served the summons that the service thereof has been effected in terms of paragraph (a), may, upon the failure of the person concerned to attend the relevant proceedings, be handed in at such proceedings and shall be *prima facie* proof of such service.

(3) A summons under this section shall be served on an accused so that he is in possession thereof at least fourteen days (Sundays and public holidays excluded) before the date appointed for the trial.

Failure of accused to appear on summons

55. (1) An accused who is summoned under section 54 to appear at criminal proceedings and who fails to appear at the place and on the date and at the time specified in the summons or who fails to remain in attendance at such proceedings, shall be guilty of an offence and liable to the punishment prescribed under subsection (2).

(2) The court may, if satisfied from the return of service referred to in paragraph (b) of section 54(2) that the summons was served on the accused in terms of paragraph (a) of that section and that the accused has failed to appear at the place and on the date and at the time specified in the summons, or if satisfied that the accused has failed to remain in attendance at the proceedings in question, issue a warrant for the arrest of the accused and, when the accused is brought before the court, in a summary manner enquire into his or her failure so to appear or so to remain in attendance and, unless the accused satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, convict the accused of the offence referred to in subsection (1) and sentence him or her to a fine not exceeding N$2 000 or to imprisonment for a period not exceeding six months: Provided that where a warrant is issued for the arrest of an accused who has failed to appear in answer to the summons, the person executing the warrant -

(a) may, where it appears to that person that the accused received the summons in question and that the accused will appear in court in accordance with a warning under section 72; or

(b) shall, where it appears to that person that the accused did not receive the summons in question or that the accused has paid an admission of guilt fine in terms of section 57 or that there are other grounds on which it appears that the failure of the accused to appear on the summons was not due to any fault on the part of the accused, for which purpose that person may require the accused to furnish an affidavit or affirmation,

release the accused on warning under section 72 in respect of the offence of failing to appear in answer to the summons, whereupon the provisions of that section shall *mutatis mutandis* apply with reference to the said offence.

[subsection (2) amended by Act 13 of 2010]

(3) (a) If, in any case in which a warrant of arrest is issued, it was permissible for the accused in terms of section 57 to admit his or her guilt in respect of the summons on which he or she failed to appear and to pay a fine in respect thereof without appearing in court, and the accused is arrested under such warrant in the area of jurisdiction of a magistrate's court other than the magistrate's court which issued the warrant of arrest, such other magistrate's court may, notwithstanding any provision of this Act or any other law to the contrary, and if satisfied that the accused has, since the date on which he or she failed to appear on the summons in

question, admitted his or her guilt in respect of that summons and has paid a fine in respect thereof without appearing in court, in a summary manner enquire into his or her failure to appear on such summons and, unless the accused satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, convict the accused of the offence referred to in subsection (1) and sentence him or her to a fine not exceeding N$2 000 or to imprisonment for a period not exceeding six months.

[Paragraph (a) is substituted with amendment markings by Act 31 of 1985 and by Act 13 of 2010; not all of the changes made by these two amending Acts are indicated by the amendment markings.]

(b) In proceedings under paragraph (a) before such other magistrate's court, it shall be presumed, upon production in such court of the relevant warrant of arrest, that the accused failed to appear on the summons in question, unless the contrary is proved.

CHAPTER 7

WRITTEN NOTICE TO APPEAR IN COURT

Written notice as method of securing attendance of accused in magistrate's court

56. (1) If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a sentence of imprisonment only or of a fine exceeding N$6 000, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall -

(a) specify the name, the residential address and the occupation or status of the accused;

(b) call upon the accused to appear at a place and on a date and at a time specified in the written notice to answer a charge of having committed the offence in question;

(c) contain an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that the accused may pay a stipulated fine in respect thereof without appearing in court; and

(d) contain a certificate under the hand of the peace officer that he or she has handed the original of such written notice to the accused and that he or she has explained to the accused the import thereof.

[subsection (1) amended by Act 31 of 1985 and by Act 13 of 2010]

(2) If the accused is in custody, the effect of a written notice handed to him under subsection (1) shall be that he be released forthwith from custody.

(3) The peace officer shall forthwith forward a duplicate original of the written notice to the clerk of the court which has jurisdiction.

(4) The mere production to the court of the duplicate original referred to in subsection (3) shall be *prima facie* proof of the issue of the original thereof to the accused and that such original was handed to the accused.

(5) The provisions of section 55 shall *mutatis mutandis* apply with reference to a written notice handed to an accused under subsection (1).

CHAPTER 8

ADMISSION OF GUILT FINE

Admission of guilt and payment of fine without appearance in court

57. (1) Where -

(a) a summons is issued against an accused under section 54 (in this section referred to as the summons) and the public prosecutor concerned on reasonable grounds believes that a magistrate's court, on convicting the accused of the offence in question, will not impose a sentence of imprisonment only or of a fine exceeding N$6 000, and such public prosecutor endorses the summons to the effect that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a fine stipulated on the summons in respect of such offence without appearing in court; or

[paragraph (a) amended by Act 31 of 1985 and by Act 13 of 2010]

(b) a written notice under section 56 (in this section referred to as the written notice) is handed to the accused and the endorsement in terms of paragraph (c) of subsection (1) of that section purports to have been made by a peace officer,

the accused may, without appearing in court, admit his guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the magistrate's court which has jurisdiction or at any police station within the area of jurisdiction of that court or, if the summons or written notice in question is endorsed to the effect that the fine may be paid at a specified local authority, at such local authority.

(2) (a) The summons or the written notice may stipulate that the admission of guilt fine shall be paid before a date specified in the summons or written notice, as the case may be.

(b) An admission of guilt fine may be accepted by the clerk of the court concerned notwithstanding that the date referred to in paragraph (a) or the date on which the accused should have appeared in court has expired.

(3) An admission of guilt fine shall not be accepted under subsection (1) unless the accused surrenders the summons or the written notice, as the case may be, at the time of payment of the fine.

(4) No provision of this section shall be construed as preventing a public prosecutor attached to the court concerned from reducing an admission of guilt fine on good cause shown.

(5) (a) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with a determination which the magistrate of the district or area in question may from time to time make in respect of any offence or, if the magistrate has not made such a determination, in accordance with an amount determined in respect of any particular summons or any particular written notice by either a public prosecutor attached to the court of such magistrate or a police official of or above the rank of non-commissioned officer attached to a police station within the magisterial district or area in question or, in the absence of such a police official at any such police station, by the senior police official then in charge at such police station.

(b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount of N$6 000, whichever is the lesser.

[Paragraph (b) is substituted with amendment markings by Act 31 of 1985 and by Act 13 of 2010; not all of the changes made by Act 31 of 1985 are indicated by the amendment markings.]

(6) An admission of guilt fine paid at a police station or a local authority in terms of subsection (1) and the summons or, as the case may be, the written notice surrendered under subsection (3), shall, as soon as is expedient, be forwarded to the clerk of the magistrate's court which has jurisdiction, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such summons or, as the case may be, such written notice and of any summons or written notice surrendered to the clerk of the court under subsection (3), in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question.

(7) The judicial officer presiding at the court in question shall examine the documents and if it appears to him that a conviction or sentence under subsection (6) is not in accordance with justice or that any such sentence, except as provided in subsection (4), is not in accordance with a determination made by the magistrate under subsection (5) or, where the determination under that subsection has not been made by the magistrate, that the sentence is not adequate, such judicial officer may set aside the conviction and sentence and direct that the accused be prosecuted in the ordinary course, whereupon the accused may be summoned to answer such charge as the public prosecutor may deem fit to prefer: Provided that where the admission of guilt fine which has been paid exceeds the amount determined by the magistrate under subsection (5), the said judicial officer may, in lieu of setting aside the conviction and sentence in question, direct that the amount by which the said admission of guilt fine exceeds the said determination be refunded to the accused concerned.

Admission of guilt and payment of fine after appearing in court

57A. (1) If an accused who is alleged to have committed an offence has appeared in court and is -

(a) in custody awaiting trial on that charge and not on another more serious charge;

(b) released on bail under section 59 or 60; or

(c) released on warning under section 72,

the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a sentence of imprisonment only or of a fine exceeding N$6 000, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again: Provided that the provisions of this subsection shall not apply to an accused who is in custody as contemplated in paragraph (a) and in respect of whom an application for bail has been refused or bail proceedings are pending.

(2) A written notice referred to in subsection (1) shall contain -

(a) the case number;

(b) a certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered the original of such notice to the accused and that he or she explained to the accused the import thereof, and

(c) the particulars and instructions contemplated in paragraphs (a) and (b) of section 56(1).

(3) The public prosecutor shall endorse the charge sheet to the effect that written notice under this section has been issued, and that prosecutor or, if the written notice was delivered to the accused concerned by a peace officer, that peace officer shall immediately forward a duplicate original of the written notice to the clerk of the court that has jurisdiction.

(4) The provisions of sections 55, 56(2) and (4) and 57(2) to (7), inclusive, shall apply *mutatis mutandis* to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.

[section 57A inserted by Act 13 of 2010]

CHAPTER 9

BAIL

Effect of bail

58. The effect of bail granted in terms of the succeeding provisions is that an accused who is in custody shall be released from custody upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his bail, and that he shall appear at the place and on the date and at the time appointed for his trial or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned, and that the release shall, unless sooner terminated under the said provisions, endure until a verdict is given by a court in respect of the charge to which the offence in question relates, or, where sentence is not imposed forthwith after verdict and the court in question extends bail, until sentence is imposed.

Bail before first appearance of accused in lower court

59. (1) (a) An accused who is in custody in respect of any offence, other than an offence referred to in Part II, Part III or Part IV of Schedule 2 may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, if the accused deposits at a police station the sum of money determined by such police official.

[paragraph (a) amended by Act 5 of 1991]

(b) The police official referred to in paragraph (a) shall, at the time of releasing the accused on bail, complete and hand to the accused a recognizance on which a receipt shall be given for the sum of money deposited as bail and on which the offence in respect of which the bail is granted and the place, date and time of the trial of the accused are entered.

(c) The said police official shall forthwith forward a duplicate original of such recognizance to the clerk of the court which has jurisdiction.

(2) Bail granted under this section shall, if it is of force at the time of the first appearance of the accused in a lower court, but subject to the provisions of section 62, remain in force after such appearance in the same manner as bail granted by the court under section 60 at the time of such first appearance.

Bail after first appearance of accused in lower court

60. (1) Any accused who is in custody in respect of any offence may at his or her first appearance in a lower court or at any stage after such appearance, apply to such court or, if the proceedings against the accused are pending in the High Court, to that court, to be released on bail in respect of such offence, and any such court may release the accused on bail in respect of such offence on condition that the accused deposits with the clerk of the court or the registrar of the court, as the case may be, or with the officer in charge of the correctional facility where the accused is in custody or with any police official at the place where the accused is in custody, the sum of money determined by the court in question.

[Subsection (1) is substituted with amendment markings by Act 31 of 1985, Act 5 of 1991 and Act 9 of 2012; not all of the changes made by Act 31 of 1985 are indicated by the amendment markings.]

(2) The court may, on good cause shown, permit an accused to furnish a guarantee, with or without sureties, that he will pay and forfeit to the State the sum of money determined under subsection (1), or increased or reduced under section 63(1), in circumstances under which such sum, if it had been deposited, would be forfeited to the State.

[subsection (2) amended by Act 56 of 1979]

Rights of complainant in bail application where accused is charged with rape

60A. (1) A complainant of rape or a domestic violence offence shall have the right -

(a) to attend any proceedings where the question is considered whether an accused who is in custody on a charge of rape or a domestic violence offence should be released on bail or, if bail has been granted to the accused, whether any further conditions of bail should be imposed under section 62 or whether any such conditions of bail should be amended or supplemented under section 63; and

(b) to request the prosecutor in proceedings referred to in paragraph (a) to present any information or evidence to the court that might be relevant to any question under consideration by the court in such proceedings.

(2) If an accused is in custody on a charge of rape or a domestic violence offence, the person in charge of the police station or any other place where the accused is detained in terms of section 50(1), or any other person designated by such first-mentioned person, shall as soon as possible inform the complainant concerned of -

(a) the place, date and time of the first appearance of the accused in court; and

(b) the rights of the complainant under subsection (1).

(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 proceedings shall -

(a) where practical, inform the complainant accordingly; or

(b) request the person referred to in subsection (2) to inform the complainant accordingly, whereupon such person shall so inform the complainant.

[Subsection (3) is substituted with amendment markings by Act 4 of 2022. The opening phrase previously read "If an accused who is in custody on a charge of rape **or a domestic violence offence** intends to apply to the court for bail… **"; the phrase "**or a domestic violence offence**" has been removed by the substitution even though this change is not indicated by amendment markings. It is not clear that this change was intentional given that the amendment comes from the Combating of Rape Amendment Act 4 of 2022, which does not otherwise deal with domestic violence.]**

(4) The person who informs, or who is required to inform, the complainant in terms of subsection (2) or (3), as the case may be, shall prepare an affidavit stating -

(a) whether the provisions of subsection (2) or (3), as the case may be, have been duly complied with and, if they have not been so complied with, the reasons for not complying with any such provision;

(b) the manner in which the complainant has been so informed; and

(c) the date and time when the complainant has been so informed.

(5) An affidavit prepared in terms of subsection (4) shall be handed to the judge or judicial officer presiding at the proceedings at which bail is considered, and such affidavit shall form part of the record of such proceedings.

(6) If a complainant is present at proceedings at which bail is considered in respect of an accused who is in custody on a charge of rape or a domestic violence offence, and such proceedings are postponed, the court shall inform the complainant of the date and time to which such proceedings have been postponed and of the complainant's rights under subsection (1).

(7) If a complainant is not present at proceedings referred to in subsection (6), the court shall enquire into the question whether the complainant has had knowledge of such proceedings, and -

(a) shall, if it is satisfied that it is likely that the complainant has had knowledge of such proceedings, direct that the matter be dealt with in the absence of the complainant; or

(b) shall, if it is not so satisfied, postpone such proceedings in order to obtain the presence of the complainant: Provided that, if it is in the interests of justice (with due regard to the interests of the complainant) that the matter be dealt with forthwith, the matter may be dealt with in the absence of the complainant.

(8) If a complainant is not present, as contemplated in subsection (7), the prosecutor in such proceedings shall inform the complainant or instruct the investigating officer or another police officer to inform the complainant, in which case the provisions of subsections (4) and (5) shall apply *mutatis mutandis* -

[introductory phrase substituted by Act 4 of 2022]

(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).

(9) The Minister may make regulations -

(a) prescribing the procedure for or any other matter relating to, notification regarding bail hearings in terms of this section, including the imposition of additional duties of police officers, prosecutors, legal practitioners representing accused persons and presiding officers;

(b) prescribing duties relating to the orientation of the complainant to court procedures and vulnerable witness provisions under section 9(b) of the Combating of Rape Act, 2000 (Act No. 8 of 2000);

(c) prescribing duties of persons or institutions that deal with complainants of rape or other offences of a sexual or indecent nature and prescribing procedures to be followed in the examination and questioning of complainants of such offences; and

(d) any other matter aimed at furthering the objects of the Combating of Rape Act, 2000 (Act No. 8 of 2000) and this section.

[subsection (9) substituted by Act 4 of 2022]

[Section 60A is inserted by Act 8 of 2000 and amended by Act 4 of 2003 to substitute the phrase "rape or a domestic violence offence" for the word "rape" throughout.]

Bail in respect of certain offences

61. If an accused who is in custody in respect of any offence referred to in Part IV of Schedule 2 applies under section 60 to be released on bail in respect of such offence, the court may, notwithstanding that it is satisfied that it is unlikely that the accused, if released on bail, will abscond or interfere with any witness for the prosecution or with the police investigation, refuse the application for bail if in the opinion of the court, after such inquiry as it deems necessary, it is in the interest of the public or the administration of justice that the accused be retained in custody pending his or her trial.

[section 61 substituted by Act 5 of 1991]

Court may add further conditions of bail

62. (1) Any court before which a charge is pending in respect of which bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail -

(a) with regard to the reporting in person by the accused at any specified time and place to any specified person or authority;

(b) with regard to any place to which the accused is forbidden to go;

(c) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;

(d) with regard to the place at which any document may be served on him under this Act;

(e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused.

(2) If an accused who is in custody on 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 relating to such contact or any other conditions which may be necessary to protect the complainant from intimidation or harm.

[subsection (2) inserted by Act 8 of 2000 and substituted by Act 4 of 2022 to add the proviso]

(3) If an accused who is in custody on a charge of a domestic violence offence is released on bail, the court shall, notwithstanding the provisions of subsection (1), impose the following further conditions of bail, unless it finds special circumstances which would make any or all of these conditions inappropriate, which reasons must be entered in the record of the proceedings -

(a) an order prohibiting any direct or indirect contact with the victim during the pendency of the proceedings;

(b) an order prohibiting the possession of any firearm or other specified weapon; and

(c) where the accused is legally liable to maintain the complainant or any child or other dependant of the complainant, an order requiring that the accused support the complainant and child or other dependant at the same or greater level as prior to the arrest.

[subsection (3) inserted by Act 4 of 2003]

Amendment of conditions of bail

63. (1) Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined under section 59 or 60 or amend or supplement any condition imposed under section 62, whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application.

(2) If the court referred to in subsection (1) is a superior court, an application under that subsection may be made to any judge of that court if the court is not sitting at the time of the application.

Proceedings with regard to bail and conditions to be recorded in full

64. The court which considers an application for bail under section 60 or which imposes any further condition under section 62 or which, under section 63, amends the amount of bail or amends or supplements any condition, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof, or shall cause such proceedings to be recorded in full, and where such court is a magistrate's court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the

conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such conditions or any amendment or supplementation thereof.

Appeal to superior court with regard to bail

65. (1) (a) An accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.

(b) The appeal may be heard by a single judge.

(c) A local division of the Supreme Court shall have jurisdiction to hear an appeal under paragraph (a) if the area of jurisdiction of the lower court in question or any part thereof falls within the area of jurisdiction of such local division.

(2) An appeal shall not lie in respect of new facts which arise or are discovered after the decision against which the appeal is brought, unless such new facts are first placed before the magistrate or regional magistrate against whose decision the appeal is brought and such magistrate or regional magistrate gives a decision against the accused on such new facts.

(3) The accused shall serve a copy of the notice of appeal on the attorney-general and on the magistrate or, as the case may be, the regional magistrate, and the magistrate or regional magistrate shall forthwith furnish the reasons for his decision to the court or judge, as the case may be.

(4) The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.

Failure by accused to observe condition of bail

66. (1) If an accused is released on bail subject to any condition imposed under section 62, including any amendment or supplementation under section 63 of a condition of bail, and the prosecutor applies to the court before which the charge with regard to which the accused has been released on bail is pending, to lead evidence to prove that the accused has failed to comply with such condition, the court shall, if the accused is present and denies that he failed to comply with such condition or that his failure to comply with such condition was due to fault on his part, proceed to hear such evidence as the prosecutor and the accused may place before it.

(2) If the accused is not present when the prosecutor applies to the court under subsection (1), the court may issue a warrant for the arrest of the accused, and shall, when the accused appears before the court and denies that he failed to comply with the condition in question or that his failure to comply with such condition was due to fault on his part, proceed to hear such evidence as the prosecutor and the accused may place before it.

(3) If the accused admits that he failed to comply with the condition in question or if the court finds that he failed to comply with such condition, the court may, if it finds that the failure by the accused was due to fault on his part, cancel the bail and declare the bail money forfeited to the State.

(4) The proceedings and the evidence under this section shall be recorded.

Failure of accused on bail to appear

67. (1) If an accused who is released on bail -

(a) fails to appear at the place and on the date and at the time -

(i) appointed for his trial; or

(ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or

(b) fails to remain in attendance at such trial or at such proceedings,

the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State, and issue a warrant for the arrest of the accused.

(2) (a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or to remain in attendance was not due to fault on his part.

(b) If the accused satisfies the court that his failure was not due to fault on his part, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall lapse.

(c) If the accused does not appear before court within fourteen days of the issue under subsection (1) of the warrant of arrest or within such extended period as the court may on good cause determine, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall become final.

(3) The court may receive such evidence as it may consider necessary to satisfy itself that the accused has under subsection (1) failed to appear or failed to remain in attendance, and such evidence shall be recorded.

Cancellation of bail where accused about to abscond

68. (1) Any court before which a charge is pending in respect of which the accused has been released on bail may, upon information on oath that the accused is about to evade justice or is about to abscond in order to evade justice, issue a warrant for the arrest of the accused and make such order as to it may seem proper, including an order that the bail be cancelled and that the accused be committed to correctional facility until the conclusion of the relevant criminal proceedings.

(2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that he has reason to believe that an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice, issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to correctional facility, which committal shall remain of force until the conclusion of the relevant

criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.

(3) The provisions of this section shall not be construed as preventing any court or magistrate, as the case may be, to cancel the bail and commit an accused to correctional facility where the accused was released on bail in respect of any offence contemplated in section 61, if, notwithstanding that such accused is not about to evade justice or to abscond, it is in the opinion of such court or such magistrate, as the case may be, in the interest of the public or the administration of justice that the accused be placed in custody.

[subsection (3) inserted by Act 5 of 1991]

[Section 68 is amended by Act 9 of 2012 to substitute "correctional facility" for "prison". The substituted phrase, as it is used in this section, should be preceded by the article "a" to be grammatically correct.]

Cancellation of bail at request of accused

68A. Any court before which a charge is pending in respect of which the accused has been released on bail may, upon application by the accused, cancel the bail and refund the bail money if the accused is in custody on any other charge or is serving a sentence.

[section 68A inserted by Act 31 of 1985]

Payment of bail money by third person

69. (1) No provision of section 59 or 60 shall prevent the payment by any person, other than the accused, of bail money for the benefit of the accused.

(2) Bail money, whether deposited by an accused or any other person for the benefit of the accused, shall, notwithstanding that such bail money or any part thereof may have been ceded to any person, be refunded only to the accused or the depositor, as the case may be.

(3) No person shall be allowed to deposit for the benefit of an accused any bail money in terms of this section if the official concerned has reason to believe that such person, at any time before or after depositing such bail money, has been indemnified or will be indemnified by any person in any manner against loss of such bail money or that he has received or will receive any financial benefit in connection with the deposit of such bail money.

Remission of bail money

70. The Minister or any officer acting under his authority may, in his discretion, remit the whole or any part of any bail money forfeited under section 66 or 67.

Juvenile may be placed in place of safety in lieu of release on bail or detention in custody

71. If an accused under the age of eighteen years is in custody in respect of any offence, and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or court may, instead of releasing the accused on bail or detaining him in custody, place the accused in a place of safety as defined in section 1 of the Children's Act, 1960 (Act 33 of 1960), pending his appearance or further appearance before a court in respect of the offence in question or until he is otherwise dealt with in accordance with law.

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

CHAPTER 10

RELEASE ON WARNING

Accused may be released on warning in lieu of bail

72. (1) If an accused is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II, Part III or Part IV of Schedule 2 -

[introductory phrase of subsection (1) amended by Act 5 of 1991]

(a) release the accused from custody and warn the accused to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question and if so released by a court that court may at the time of the release or at any time thereafter impose any condition referred to in section 62 in connection with the release;

[Paragraph (a) is substituted with amendment markings by Act 13 of 2010; not all of the changes are indicated by the amendment markings.]

(b) in the case of an accused under the age of eighteen years who is released under paragraph (a), place the accused in the care of the person in whose custody he or she is, and warn such person to bring the accused or cause the accused to be brought before a specified court at a specified time on a specified date and to have the accused remain in attendance at the proceedings relating to the offence in question and, if a condition has been imposed in terms of paragraph (a) to ensure that the accused complies with that condition.

[Paragraph (b) is substituted with amendment markings by Act 13 of 2010; not all of the changes are indicated by the amendment markings.]

(2) (a) An accused who is released under subsection (1)(a) and who fails to appear or, as the case may be, to remain in attendance at the proceedings in accordance with a warning under that subsection, or who fails to comply with a condition imposed under subsection (1)(a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).

[paragraph (a) amended by Act 13 of 2010]

(b) Any person in whose custody an accused is placed under subsection (1)(b) and who fails in terms of a warning under that subsection to bring the accused or cause the accused to be brought before court or to have the accused remain in attendance at the proceeding, or who fails to ensure that the accused complies with a condition imposed under subsection (1)(a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).

[paragraph (b) amended by Act 13 of 2010]

(3) (a) A police official who releases an accused under subsection (1)(a) shall, at the time of releasing the accused, complete and hand to the accused and, in the case of subsection (1)(b), to the person in whose custody the accused is, a written notice on

which shall be entered the offence in respect of which the accused is being released and the court before which and the time at which and the date on which the accused shall appear.

(b) A court which releases an accused under subsection (1) shall, at the time of releasing the accused, record or cause the relevant proceedings to be recorded in full, and where such court is a magistrate's court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court and which sets out the warning relating to the court before which, the time at which and the date on which the accused is to appear or the conditions on which the accused was released, shall, on its mere production in any court in which the relevant charge is pending be prima facie proof of such warning.

[paragraph (b) amended by Act 13 of 2010]

(4) The court may, if satisfied that an accused referred to in subsection (2)(a) or a person referred to in subsection (2)(b) was duly warned in terms of paragraph (a) or, as the case may be, paragraph (b) of subsection (1), and that such accused or such person has failed to comply with such warning or to comply with a condition imposed, issue a warrant for the arrest of such accused or such person, and may, when he or she is brought before the court, in a summary manner enquire into his or her failure to comply with the warning or condition and, unless such accused or such person satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, sentence him or her to a fine not exceeding N$4 000 or to imprisonment for a period not exceeding 12 months.

[subsection (4) amended by Act 13 of 2010]

CHAPTER 11

ASSISTANCE TO ACCUSED

Accused entitled to assistance after arrest and at criminal proceedings

73. (1) An accused who is arrested, whether with or without warrant, shall, subject to any law relating to the management of correctional facilities, be entitled to the assistance of his legal adviser as from the time of his arrest.

(2) An accused shall be entitled to be represented by his legal adviser at criminal proceedings, if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.

(3) An accused who is under the age of eighteen years may be assisted by his parent or guardian at criminal proceedings, and any accused who, in the opinion of the court, requires the assistance of another person at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings.

[section 73 amended by Act 9 of 2012 to substitute "correctional facilities" for "prisons"]

Parent or guardian of accused under eighteen years to attend proceedings

74. (1) Where an accused is under the age of eighteen years, a parent or, as the case may be, the guardian of the accused shall be warned, in accordance with the provisions of subsection (2), to attend the relevant criminal proceedings.

(2) The parent or the guardian of the accused, if such parent or guardian is known to be within the magisterial district in question and can be traced without undue delay, shall, for the purposes of subsection (1), be warned to attend the proceedings in question -

(a) in any case in which the accused is arrested, by the peace officer effecting the arrest or, where the arrest is effected by a person other that a peace officer, the police official to whom the accused is handed over, and such peace officer or police official, as the case may be, shall inform the parent or guardian, as the case may be, of the place and date and time at which the accused is to appear; or

[The word "that" should be "than" in the phrase "other **that** a peace officer**".]**

(b) in the case of a summons under section 54 or a written notice under section 56, by the person serving the summons on or handing the written notice to the accused, and such person shall serve a copy of such summons or written notice on the parent or guardian, as well as a notice warning the parent or guardian to attend the proceedings in question at the place and on the date and at the time specified in the summons or written notice.

(3) A parent or guardian who has been warned in terms of subsection (2), may apply to any magistrate of the court in which the accused is to appear for exemption from the obligation to attend the proceedings in question, and if such magistrate exempts such parent or guardian, he shall do so in writing.

(4) A parent or guardian who has been warned in terms of subsection (2) and who has not under subsection (3) been exempted from the obligation to attend the relevant proceedings, or a parent or guardian who is present at criminal proceedings and who is warned by the court to remain in attendance thereat, shall remain in attendance at the relevant criminal proceedings, whether in that court or any other court, unless excused by the court before which such proceedings are pending.

(5) If a parent or guardian has not been warned under subsection (2), the court before which the relevant proceedings are pending may at any time during the proceedings direct any person to warn the parent or guardian of the accused to attend such proceedings.

(6) A parent or guardian who has been warned under subsection (2), (4) or (5) and who fails to attend the proceedings in question or, as the case may be, who fails to remain in attendance at such proceedings in accordance with the provisions of subsection (4), shall be guilty of an offence and liable to the punishment prescribed under subsection (7).

(7) The court, if satisfied from evidence placed before it that a parent or guardian has been warned to attend the proceedings in question and that such parent or guardian has failed to attend such proceedings, or that a parent or guardian has failed to remain in attendance at such proceedings, may issue a warrant for the arrest of such parent or guardian and, when he or she is brought before the court, in a summary manner enquire into his or her failure to attend or to remain in attendance, and, unless such parent or guardian satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, sentence him or her to a fine not exceeding N$4 000 or to imprisonment for a period not exceeding 12 months.

[subsection (7) amended by Act 13 of 2010]

CHAPTER 12

SUMMARY TRIAL

Summary trial and court of trial

75. (1) When an accused is to be tried in a court in respect of an offence, he shall, subject to the provisions of sections 119, 122A and 123, be tried at a summary trial in -

(a) a court which has jurisdiction, and which he appeared for the first time in respect of such offence in accordance with any method referred to in section 38;

(b) a court which has jurisdiction and to which he was referred to under subsection (2); or

(c) any other court which has jurisdiction and which has been designated by the attorney-general for the purposes of such summary trial.

(2) If an accused appears in a court which does not have jurisdiction to try the case, the accused shall at the request of the prosecutor be referred to a court having jurisdiction.

[Section 75 is substituted with amendment markings by Act 56 of 1979; not all of the changes are indicated by the amendment markings.]

Charge-sheet and proof of record of criminal case

76. (1) Unless an accused has been summoned to appear before the court, the proceedings at a summary trial in a lower court shall be commenced by lodging a charge-sheet with the clerk of the court, and, in the case of a superior court, by serving an indictment referred to in section 144 on the accused and the lodging thereof with the registrar of the court concerned.

(2) The charge-sheet shall in addition to the charge against the accused include the name and, where known and where applicable, the address and description of the accused with regard to sex, race, nationality and age.

(3) (a) The court shall keep a record of the proceedings, whether in writing or mechanical, or shall cause such record to be kept, and the charge-sheet, summons or indictment shall form part thereof.

(b) Such record may be proved in a court by the mere production thereof or of a copy thereof in terms of section 235.

(c) Where the correctness of any such record is challenged, the court in which the record is challenged may, in order to satisfy itself whether any matter was correctly recorded or not, either orally or on affidavit hear such evidence as it may deem necessary.

CHAPTER 13

ACCUSED: CAPACITY TO UNDERSTAND PROCEEDINGS: MENTAL ILLNESS AND CRIMINAL RESPONSIBILITY

Capacity of accused to understand proceedings

77. (1) If it appears to the court at any stage of criminal proceedings that the accused is by reason of mental illness or mental defect not capable of understanding the

proceedings so as to make a proper defence, the court shall direct that the matter be enquired into and be reported on in accordance with the provisions of section 79.

(2) If the finding contained in the relevant report is the unanimous finding of the persons who under section 79 enquired into the mental condition of the accused and the finding is not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.

(3) If the said finding is not unanimous or, if unanimous, is disputed by the prosecutor or the accused, the court shall determine the matter after hearing evidence, and the prosecutor and the accused may to that end present evidence to the court, including the evidence of any person who under section 79 enquired into the mental condition of the accused.

(4) Where the said finding is disputed, the party disputing the finding may subpoena and cross-examine any person who under section 79 has enquired into the mental condition of the accused.

(5) If the court finds that the accused is capable of understanding the proceedings so as to make a proper defence, the proceedings shall be continued in the ordinary way.

(6) If the court finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court shall direct that the accused be detained in a mental hospital or a prison pending the signification of the decision of the State President, and if the court so directs after the accused has pleaded to the charge, the accused shall not be entitled under section 106(4) to be acquitted or to be convicted in respect of the charge in question.

(7) Where a direction is issued under subsection (6) or (9) that the accused be detained in a mental hospital or a prison pending the signification of the decision of the State President, the accused may at any time thereafter, when he is capable of understanding the proceedings so as to make a proper defence, be prosecuted and tried for the offence in question.

(8) (a) An accused against whom a finding is made -

(i) under subsection (5) and who is convicted;

(ii) under subsection (6) and against whom the finding is not made in consequence of an allegation by the accused under subsection (1),

may appeal against such finding.

(b) Such an appeal shall be made in the same manner and subject to the same conditions as an appeal against a conviction by the court for an offence.

(9) Where an appeal against a finding under subsection (5) is allowed, the court of appeal shall set aside the conviction and sentence and direct that the person concerned be detained in a mental hospital or a prison pending the signification of the decision of the State President.

(10) Where an appeal against a finding under subsection (6) is allowed, the court of appeal shall set aside the direction issued under that subsection and remit the case to the court which made the finding, whereupon the relevant proceedings shall be continued in the ordinary way.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 77 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977,

meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

Mental illness or mental defect and criminal responsibility

78. (1) A person who commits an act which constitutes an offence and who at the time of such commission suffers from a mental illness or mental defect which makes him incapable -

(a) of appreciating the wrongfulness of his act; or

(b) of acting in accordance with an appreciation of the wrongfulness of his act,

shall not be criminally responsible for such act.

(2) If it is alleged at criminal proceedings that the accused is by reason of mental illness or mental defect not criminally responsible for the offence charged, or if it appears to the court at criminal proceedings that the accused might for such a reason not be so responsible, the court shall direct that the matter be enquired into and be reported on in accordance with the provisions of section 79.

(3) If the finding contained in the relevant report is the unanimous finding of the persons who under section 79 enquired into the relevant mental condition of the accused, and the finding is not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.

(4) If the said finding is not unanimous or, if unanimous, is disputed by the prosecutor or the accused, the court shall determine the matter after hearing evidence, and the prosecutor and the accused may to that end present evidence to the court, including the evidence of any person who under section 79 enquired into the mental condition of the accused.

(5) Where the said finding is disputed, the party disputing the finding may subpoena and cross-examine any person who under section 79 enquired into the mental condition of the accused.

(6) If the court finds that the accused committed the act in question and that he at the time of such commission was by reason of mental illness or mental defect not criminally responsible for such act, the court shall find the accused not guilty by reason of mental illness or mental defect, as the case may be, and direct that the accused be detained in a mental hospital or a correctional facility pending the signification of the decision of the State President.

(7) If the court finds that the accused at the time of the commission of the act in question was criminally responsible for the act but that his capacity to appreciate the wrongfulness of the act or to act in accordance with an appreciation of the wrongfulness of the act was diminished by reason of mental illness or mental defect, the court may take the fact of such diminished responsibility into account when sentencing the accused.

(8) (a) An accused against whom a finding is made under subsection (6) may appeal against such finding if the finding is not made in consequence of an allegation by the accused under subsection (2).

(b) Such an appeal shall be made in the same manner and subject to the same conditions as an appeal against a conviction by the court for an offence.

(9) Where an appeal against a finding under subsection (6) is allowed, the court of appeal shall set aside the finding and the direction under that subsection and remit the case to the court which made the finding, whereupon the relevant proceedings shall be continued in the ordinary course.

[section 78 amended by Act 9 of 2012 to substitute "correctional facility" for "prison"]

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 78 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

Panel for purposes of enquiry and report under sections 77 and 78

79. (1) Where a court issues a direction under section 77(1) or 78(2), the relevant enquiry shall be conducted and be reported on -

(a) where the accused is charged with an offence for which the sentence of death may not be imposed, by the medical superintendent of a mental hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court; or

(b) where the accused is charged with an offence for which the sentence of death may be imposed or where the court in any particular case so directs -

(i) by the medical superintendent of a mental hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court;

(ii) by a psychiatrist appointed by the court and who is not in the full-time service of the State; and

(iii) by a psychiatrist appointed by the accused if he so wishes.

(2) The court may for the purposes of the relevant enquiry commit the accused to a mental hospital or to any other place designated by the court, for such periods, not exceeding thirty days at a time, as the court may from time to time determine, and where an accused is in custody when he is so committed, he shall, while he is so committed, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such committal.

(3) The relevant report shall be in writing and shall be submitted in triplicate to the registrar or, as the case may be, the clerk of the court in question, who shall make a copy thereof available to the prosecutor and the accused.

(4) The report shall -

(a) include a description of the nature of the enquiry; and

(b) include a diagnosis of the mental condition of the accused; and

(c) if the enquiry is under section 77(1), include a finding as to whether the accused is capable of understanding the proceedings in question so as to make a proper defence; or

(d) if the enquiry is under section 78(2), include a finding as to the extent to which the capacity of the accused to appreciate the wrongfulness of the act in question or to act in accordance with an appreciation of the wrongfulness of that act was, at the time of the commission thereof, affected by mental illness or mental defect.

(5) If the persons conducting the relevant enquiry are not unanimous in their finding under paragraph (c) or (d) of subsection (4), such fact shall be mentioned in the report and each of such persons shall give his finding on the matter in question.

(6) Subject to the provisions of subsection (7), the contents of the report shall be admissible in evidence at criminal proceedings.

(7) A statement made by an accused at the relevant enquiry shall not be admissible in evidence against the accused at criminal proceedings, except to the extent to which it may be relevant to the determination of the mental condition of the accused, in which event such statement shall be admissible notwithstanding that it may otherwise be inadmissible.

(8) A psychiatrist appointed under subsection (1), other than a psychiatrist appointed by an accused, shall, subject to the provisions of subsection (10), be appointed from the list of psychiatrists referred to in subsection (9).

(9) The Secretary for Health shall compile and keep a list of psychiatrists who are prepared to conduct any enquiry under this section, and shall provide the registrars of the several divisions of the supreme court and all clerks of magistrates' courts with a copy thereof.

(10) Where the list compiled and kept under subsection (9) does not include a sufficient number of psychiatrists who may conveniently be appointed for any enquiry under this section, a psychiatrist may be appointed for the purposes of such enquiry notwithstanding that his name does not appear on such list.

(11) (a) A psychiatrist designated or appointed under subsection (1) by or at the request of the court to enquire into the mental condition of an accused and who is not in the full-time service of the State, shall be compensated for his services in connection with the enquiry from public funds in accordance with a tariff determined by the Minister in consultation with the Minister of Finance.

(b) A psychiatrist appointed under subsection (1)(b) by an accused to enquire into the mental condition of the accused and who is not in the full-time service of the State, shall be compensated for his services from public funds in the circumstances and in accordance with a tariff determined by the Minister in consultation with the Minister of Finance.

(12) For the purposes of this section a psychiatrist means a person registered as a psychiatrist under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974).

[Psychiatrists are now registered under the Health Professions Act 16 of 2024.]

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 79 – with the exception of subsection (11) – from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of the remaining subsections in this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

CHAPTER 14

THE CHARGE

Accused may examine charge

80. An accused may examine the charge at any stage of the relevant criminal proceedings.

Joinder of charges

81. (1) Any number of charges may be joined in the same proceedings against an accused at any time before any evidence has been led in respect of any particular charge, and where several charges are so joined, each charge shall be numbered consecutively.

(2) (a) The court may, if in its opinion it will be in the interests of justice to do so, direct that an accused be tried separately in respect of any charge joined with any other charge.

(b) An order under paragraph (a) may be made before or during a trial, and the effect thereof shall be that the charge in respect of which an accused is not then tried, shall be proceeded with in all respects as if the accused had in respect thereof been charged separately.

Several charges to be disposed of by same court

82. Where an accused is in the same proceedings charged with more than one offence, and any one charge is for any reason to be disposed of by a regional court or a superior court, all the charges shall be disposed of by the same court in the same proceedings.

Charge where it is doubtful what offence committed

83. If by reason of any uncertainty as to the facts which can be proved or if for any other reason it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with the commission of all or any of such offences, and any number of such charges may be tried at once, or the accused may be charged in the alternative with the commission of any number of such offences.

Essentials of charge

84. (1) Subject to the provisions of this Act and of any other law relating to any particular offence, a charge shall set forth the relevant offence in such manner and with such particulars as to the time and place at which the offence is alleged. to have been committed and the person, if any, against whom and the property, if any, in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) Where any of the particulars referred to in subsection (1) are unknown to the prosecutor it shall be sufficient to state that fact in the charge.

(3) In criminal proceedings the description of any statutory offence in the words of the law creating the offence, or in similar words, shall be sufficient.

Objection to charge

85. (1) An accused may, before pleading to the charge under section 106, object to the charge on the ground -

(a) that the charge does not comply with the provisions of this Act relating to the essentials of a charge;

(b) that the charge does not set out an essential element of the relevant offence;

(c) that the charge does not disclose an offence;

(d) that the charge does not contain sufficient particulars of any matter alleged in the charge; or

(e) that the accused is not correctly named or described in the charge:

Provided that the accused shall give reasonable notice to the prosecution of his intention to object to the charge and shall state the ground upon which he bases his objection: Provided further that the requirement of such notice may be waived by the attorney-general or the prosecutor, as the case may be, and the court may, on good cause shown, dispense with such notice or adjourn the trial to enable such notice to be given.

(2) (a) If the court decides that an objection under subsection (1) is well-founded, the court shall make such order relating to the amendment of the charge or the delivery of particulars as it may deem fit.

(b) Where the prosecution fails to comply with an order under paragraph (a), the court may quash the charge.

Court may order that charge be amended

86. (1) Where a charge is defective for the want of any essential averment therein, or where there appears to be any variance between any averment in a charge and the evidence adduced in proof of such averment, or where it appears that words or particulars that ought to have been inserted in the charge have been omitted therefrom, or where any words or particulars that ought to have been omitted from the charge have been inserted therein, or where there is any other error in the charge, the court may, at any time before judgment, if it considers that the making of the relevant amendment will not prejudice the accused in his defence, order that the charge, whether it discloses an offence or not, be amended, so far as it is necessary, both in that part thereof where the defect, variance, omission, insertion or error occurs and in any other part thereof which it may become necessary to amend.

(2) The amendment may be made on such terms as to an adjournment of the proceedings as the court may deem fit.

(3) Upon the amendment of the charge in accordance with the order of the court, the trial shall proceed at the appointed time upon the amended charge in the same manner and with the same consequences as if it had been originally in its amended form.

(4) The fact that a charge is not amended as provided in this section, shall not, unless the court refuses to allow the amendment, affect the validity of the proceedings thereunder.

Court may order delivery of particulars

87. (1) An accused may at any stage before any evidence in respect of any particular charge has been led, in writing request the prosecution to furnish particulars or further particulars of any matter alleged in that charge, and the court before which a charge is pending may at any time before any evidence in respect of that charge has been led, direct that

particulars or further particulars be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the proceedings in order that such particulars may be delivered.

(2) The particulars shall be delivered to the accused without charge and shall be entered in the record, and the trial shall proceed as if the charge had been amended in conformity with such particulars.

(3) In determining whether a particular is required or whether a defect in the indictment before a superior court is material to the substantial justice of the case, the court may have regard to the summary of the substantial facts under paragraph (a) of section 144(3) or, as the case may be, the record of the preparatory examination.

Defect in charge cured by evidence

88. Where a charge is defective for the want of an averment which is an essential ingredient of the relevant offence, the defect shall, unless brought to the notice of the court before judgment, be cured by evidence at the trial proving the matter which should have been averred.

Previous conviction not to be alleged in charge

89. Except where the fact of a previous conviction is an element of any offence with which an accused is charged, it shall not in any charge be alleged that an accused has previously been convicted of any offence, whether in the Republic or elsewhere.

Charge need not specify or negative exception, exemption, proviso, excuse or qualification

90. In criminal proceedings any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the law creating the offence, may be proved by the accused but need not be specified or negatived in the charge and, if so specified or negatived, need not be proved by the prosecution.

Charge need not state manner or means of act

91. A charge need not set out the manner in which or the means or instrument by which any act was done, unless the manner, means or instrument is an essential element of the relevant offence.

Certain omissions or imperfections not to invalidate charge

92. (1) A charge shall not be held defective -

(a) for want of the averment of any matter which need not be proved;

(b) because any person mentioned in the charge is designated by a name of office or other descriptive appellation instead of by his proper name;

(c) because of an omission, in any case where time is not of the essence of the offence, to state the time at which the offence was committed;

(d) because the offence is stated to have been committed on a day subsequent to the laying of the complaint or the service of the charge or on an impossible day or on a day that never happened;

(e) for want of, or imperfection in, the addition of any accused or any other person;

(f) for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury or spoil is not of the essence of the offence.

(2) If any particular day or period is alleged in any charge to be the day on which or the period during which any act or offence was committed, proof that such act or offence was committed on any other day or during any other period not more than three months before or after the day or period alleged therein shall be taken to support such allegation if time is not of the essence of the offence: Provided that -

(a) proof may be given that the act or offence in question was committed on a day or during a period more than three months before or after the day or period stated in the charge unless it is made to appear to the court before which the proceedings are pending that the accused is likely to be prejudiced thereby in his defence on the merits;

(b) if the court considers that the accused is likely to be prejudiced thereby in his defence on the merits, it shall reject such proof, and the accused shall be deemed not to have pleaded to the charge.

Alibi and date of act or offence

93. If the defence of an accused is an alibi and the court before which the proceedings are pending is of the opinion that the accused may be prejudiced in making such defence if proof is admitted that the act or offence in question was committed on a day or at a time other than the day or time stated in the charge, the court shall reject such proof notwithstanding that the day or time in question is within a period of three months before or after the day or time stated in the charge, whereupon the same consequences shall follow as are mentioned in proviso (b) of section 92(2).

Charge may allege commission of offence on divers occasions

94. Where it is alleged that an accused on divers occasions during any period committed an offence in respect of any particular person, the accused may be charged in one charge with the commission of that offence on divers occasions during a stated period.

Rules applicable to particular charges

95. (1) A charge relating to a testamentary instrument need not allege that the instrument is the property of any person.

(2) A charge relating to anything fixed in a square, street or open place or in a place dedicated to public use or ornament, or relating to anything in a public place or office or taken therefrom, need not allege that the thing in question is the property of any person.

(3) A charge relating to a document which is the evidence of title to land or of an interest in land may describe the document as being the evidence of the title of the person or of one of the persons having an interest in the land to which the document relates, and shall describe the land or any relevant part thereof in a manner sufficient to identify it.

(4) A charge relating to the theft of anything leased to the accused may describe the thing in question as the property of the person who leased it to the accused.

(5) A charge against a person in the public service for an offence committed in connection with anything which came into his possession by virtue of his employment may describe the thing in question as the property of the State.

(6) A charge relating to anything in the possession or under the control of any public officer may describe the thing in question as being in the lawful possession or under the lawful control of such officer without referring to him by name.

(7) A charge relating to movable or immovable property whereof any body corporate has by law the management, control or custody, may describe the property in question as being under the lawful management or control or in the lawful custody of the body corporate in question.

(8) If it is uncertain to which of two or more persons property in connection with which an offence has been committed belonged at the time when the offence was committed, the relevant charge may describe the property as the property of one or other of those persons, naming each of them but without specifying which of them, and it shall be sufficient at the trial to prove that at the time when the offence was committed the property belonged to one or other of those persons without proving which of them.

(9) If property alleged to have been stolen was not in the physical possession of the owner thereof at the time when the theft was committed but in the physical possession of another person who had the custody thereof on behalf of the owner, it shall be sufficient to allege in a charge for the theft of that property that it was in the lawful custody or under the lawful control of that other person.

(10) A charge relating to theft from any grave need not allege that anything in the grave is the property of any person.

(11) In a charge in which any trade mark or forged trade mark is proposed to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that such trade mark or forged trade mark is a trade mark or forged trade mark.

(12) A charge relating to housebreaking or the entering of any house or premises with intent to commit an offence, whether the charge is brought under the common law or any statute, may state either that the accused intended to commit a specified offence or that the accused intended to commit an offence to the prosecutor unknown.

Naming of company, firm or partnership in charge

96. A reference in a charge to a company, firm or partnership shall be sufficient if the reference is to the name of the company, firm or partnership.

Naming of joint owners of property in charge

97. A reference in a charge to joint owners of property shall be sufficient if the reference is to one specific owner and another owner or, as the case may be, other owners.

Charge of murder or culpable homicide sufficient if it alleges fact of killing

98. It shall be sufficient in a charge of murder to allege that the accused unlawfully and intentionally killed the deceased, and it shall be sufficient in a charge of culpable homicide to allege that the accused unlawfully killed the deceased.

Charge relating to document sufficient if it refers to document by name

99. (1) In any charge relating to the forging, uttering, stealing, destroying or concealing of, or to some other unlawful dealing with any document, it shall be sufficient to describe the document by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile thereof or otherwise describing it or stating its value.

(2) Whenever it is necessary in any case not referred to in subsection (1) to make any allegation in any charge in relation to any document, whether it consists wholly or in part of writing, print or figures, it shall be sufficient to describe the document by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof, unless the wording of the document is an element of the offence.

Charge alleging theft may allege general deficiency

100. On a charge alleging the theft of money or property by a person entrusted with the control thereof, the charge may allege a general deficiency in a stated amount, notwithstanding that such general deficiency is made up of specific sums of money or articles or of a sum of money representing the value of specific articles, the theft of which extended over a period.

Charge relating to false evidence

101. (1) A charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement or the procuring of false evidence or a false statement -

(a) need not set forth the words of the oath or the affirmation or the evidence or the statement, if it sets forth so much of the purport thereof as is material;

(b) need not allege, nor need it be established at the trial, that the false evidence or statement was material to any issue at the relevant proceedings or that it was to the prejudice of any person.

(2) A charge relating to the giving or the procuring or attempted procuring of false evidence need not allege the jurisdiction or state the nature of the authority of the court or tribunal before which or the officer before whom the false evidence was given or was intended or proposed to be given.

Charge relating to insolvency

102. A charge relating to insolvency need not set forth any debt, act of insolvency or adjudication or any other proceeding in any court, or any order made or any warrant or document issued by or under the authority of any court.

Charge alleging intent to defraud need not allege or prove such intent in respect of particular person or mention owner of property or set forth details of deceit

103. In any charge in which it is necessary to allege that the accused performed an act with an intent to defraud, it shall be sufficient to allege and to prove that the accused performed the act with intent to defraud without alleging and proving that it was the intention of the accused to defraud any particular person, and such a charge need not mention the owner of any property involved or set forth the details of any deceit.

Reference in charge to objectionable matter not necessary

104. A charge of printing, publishing, manufacturing, making or producing blasphemous, seditious, obscene or defamatory matter, or of distributing, displaying, exhibiting, selling or offering or keeping for sale any obscene book, pamphlet, newspaper or other printed or written matter, shall not be open to objection or be deemed insufficient on the ground that it does not set out the words thereof: Provided that the court may order that particulars shall be furnished by the prosecution stating what passages in such book, pamphlet, newspaper, printing or writing are relied upon in support of the charge.

CHAPTER 15

THE PLEA

Accused to plead to charge

105. The charge shall be put to the accused by the prosecutor before the trial of the accused is commenced, and the accused shall, subject to the provisions of sections 77 and 85, be required by the court forthwith to plead thereto in accordance with section 106.

Pleas

106. (1) When an accused pleads to a charge he may plead -

(a) that he is guilty of the offence charged or of any offence of which he may be convicted on the charge; or

(b) that he is not guilty; or

(c) that he has already been convicted of the offence with which he is charged; or

(d) that he has already been acquitted of the offence with which he is charged; or

(e) that he has received a free pardon under section 327(6) from the State President for the offence charged; or

[Section 3(1)(t) of the transfer proclamation (as amended) excluded paragraph (e) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this paragraph was not transferred from South Africa to South West Africa prior to Namibian independence.]

(f) that the court has no jurisdiction to try the offence; or

(g) that he has been discharged under the provisions of section 204 from prosecution for the offence charged; or

(h) that the prosecutor has no title to prosecute.

(2) Two or more pleas may be pleaded together except that a plea of guilty may not be pleaded with any other plea to the same charge.

(3) An accused shall give reasonable notice to the prosecution of his intention to plead a plea other than the plea of guilty or not guilty, and shall in such notice state the ground on which he bases his plea: Provided that the requirement of such notice may be waived by the attorney-general or the prosecutor, as the case may be, and the court may, on good cause shown, dispense with such notice or adjourn the trial to enable such notice to be given.

(4) An accused who pleads to a charge, other than a plea that the court has no jurisdiction to try the offence, or an accused on behalf of whom a plea of not guilty is entered by the court, shall, save as is otherwise expressly provided by this Act or any other law, be entitled to demand that he be acquitted or be convicted.

Truth and publication for public benefit of defamatory matter to be specially pleaded

107. A person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the matter should be published, shall plead such defence specially, and may plead it with any other plea except the plea of guilty.

Issues raised by plea to be tried

108. If an accused pleads a plea other than a plea of guilty, he shall, subject to the provisions of sections 115, 122 and 141(3), by such plea be deemed to demand that the issues raised by the plea be tried.

Accused refusing to plead

109. Where an accused in criminal proceedings refuses to plead to any charge, the court shall record a plea of not guilty on behalf of the accused, and a plea so recorded shall have the same effect as if it had been actually pleaded.

CHAPTER 16

JURISDICTION

Accused brought before court which has no jurisdiction

110. (1) Where an accused does not plead that the court has no jurisdiction and it at any stage -

(a) after the accused has pleaded a plea of guilty or of not guilty; or

(b) where the accused has pleaded any other plea and the court has determined such plea against the accused,

appears that the court in question does not have jurisdiction, the court shall for the purposes of this Act be deemed to have jurisdiction in respect of the offence in question.

(2) Where an accused pleads that the court in question has no jurisdiction and the plea is upheld, the court shall adjourn the case to the court having jurisdiction.

Minister may remove trial to jurisdiction of another attorney-general

111. (1) Where the Minister deems it in the interests of the administration of justice that an offence committed within the area of jurisdiction of one attorney-general be tried within the area of jurisdiction of another attorney-general, he may in writing direct that criminal proceedings in respect of such offence be commenced in a court at a place within the area of jurisdiction of such other attorney-general.

(2) (a) The direction of the Minister shall set out the name of the accused, the relevant offence, the place at which (if known) and the provincial division in which

the offence was committed, and the place at which the relevant criminal proceedings shall commence and the provincial division in which such place is situated.

(b) A copy of the direction shall be served on the accused, and the original thereof shall, save as is provided in subsection (4), be handed in at the court in which the proceedings are to commence.

(3) The court in which the proceedings commence shall have jurisdiction to act with regard to the offence in question as if the offence had been committed within the area of jurisdiction of such court.

(4) Where the Minister issues a direction under subsection (1) after an accused has already appeared in a court, the original of such direction shall be handed in at the relevant proceedings and attached to the record of the proceedings, and the court in question shall -

(a) where the accused is not in custody, cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time and a date and to the court in which the accused is to appear in accordance with the said direction, whereupon such time and date and court shall be deemed to be the time and date and place appointed for the trial of the accused or to which the proceedings pending against the accused are adjourned;

(b) forward a copy of the record of the proceedings to the court in which the accused is to appear, and that court shall receive such copy and continue with the proceedings against the accused as if such proceedings had commenced before it.

(5) The direction of the Minister shall be final and not subject to appeal to any court.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 111 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

CHAPTER 17

PLEA OF GUILTY AT SUMMARY TRIAL

Plea of guilty

112. (1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea -

(a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding N$6 000, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and -

(i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding N$6 000; or

(ii) deal with the accused otherwise in accordance with law;

[paragraph (a) amended by Act 31 of 1985 and substituted by Act 13 of 2010]

(b) the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding N$6 000, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether the accused admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.

[paragraph (b) amended by Act 31 of 1985 and substituted by Act 13 of 2010]

(2) If an accused or his legal adviser hands a written statement by the accused into court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the court may, in lieu of questioning the accused under subsection (1)(b), convict the accused on the strength of such statement and sentence him as provided in the said subsection if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the court may in its discretion put any question to the accused in order to clarify any matter raised in the statement.

(3) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

[The references to whipping in section 112 were cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution"**.**
However, the references to corporal punishment in this section have all been removed by subsequent amendments.]

Correction of plea of guilty

113. If the court at any stage of the proceedings under section 112 and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty or is satisfied that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.

Committal by magistrate's court of accused for sentence by regional court after plea of guilty

114. (1) If a magistrate's court, after conviction following on a plea of guilty but before sentence, is of the opinion -

(a) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court; or

(b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court,

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction.

(1)*bis* If the court has stopped the proceedings under subsection (1) and there is no regional court having jurisdiction, the attorney-general shall be deemed to have instructed that the trial be converted into a preparatory examination under section 123(b).

[subsection (1)*bis* inserted by Act 15 of 1981]

(2) Where an accused is committed under subsection (1) for sentence by a regional court, the record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court, and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(3) (a) Unless the regional court concerned -

(i) is satisfied that a plea of guilty or an admission by the accused which is material to his guilt was incorrectly recorded; or

(ii) is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence,

the court shall make a formal finding of guilty and sentence the accused.

(b) If the court is satisfied that a plea of guilty or any admission by the accused which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence or that he has no valid defence to the charge, the court shall enter a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that any admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(4) The provisions of section 112(3) shall apply with reference to the proceedings under this section.

CHAPTER 18

PLEA OF NOT GUILTY AT SUMMARY TRIAL

Plea of not guilty and procedure with regard to issues

115. (1) Where an accused at a summary trial pleads not guilty to the offence charged, the presiding judge, regional magistrate or magistrate, as the case may be, may ask him whether he wishes to make a statement indicating the basis of his defence.

(2) (a) Where the accused does not make a statement under subsection (1) or does so and it is not clear from the statement to what extent he denies or admits the issues raised by the plea, the court may question the accused in order to establish which allegations in the charge are in dispute.

(b) The court may in its discretion put any question to the accused in order to clarify any matter raised under subsection (1) or this subsection, and shall enquire from

the accused whether an allegation which is not placed in issue by the plea of not guilty, may be recorded as an admission by the accused of that allegation, and if the accused so consents, such admission shall be recorded and shall be deemed to be an admission under section 220.

(3) Where the legal adviser of an accused on behalf of the accused replies, whether in writing or orally, to any question by the court under this section, the accused shall be required by the court to declare whether he confirms such reply or not.

Committal of accused for trial by regional court

115A. (1) Where an accused pleads not guilty in a magistrate's court the court shall, subject to the provisions of section 115, at the request of the prosecutor made before any evidence is tendered, refer the accused for trial to a regional court having jurisdiction.

(2) The record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court.

[section 115A inserted by Act 56 of 1979]

Committal of accused for sentence by regional court after trial in magistrate's court

116. (1) If a magistrate's court, after conviction following on a plea of not guilty but before sentence, is of the opinion -

(a) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court; or

(b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court,

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction.

(1)*bis* If the court has stopped the proceedings under subsection (1) and there is no regional court having jurisdiction, the attorney-general shall be deemed to have instructed that the trial be converted into a preparatory examination under section 123(b).

[subsection (1)*bis* inserted by Act 15 of 1981]

(2) The record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court.

(3) (a) The regional court shall, after considering the record of the proceedings in the magistrate's court, sentence the accused, and the judgment of the magistrate's court shall stand for this purpose and be sufficient for the regional court to pass any competent sentence: Provided that if the regional magistrate is of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit such reasons, together with the record of the proceedings in the magistrate's court, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as possible, lay the same in chambers before a judge who shall have the same powers in respect

of such proceedings as if the record thereof had been laid before him under section 303.

(b) If a regional magistrate acts under the proviso to paragraph (a), he shall inform the accused accordingly and postpone the case to some future date pending the outcome of the review proceedings, and, if the accused is in custody, the regional magistrate may make such order with regard to the detention or release of the accused as he may deem fit.

Committal to superior court in special case

117. Where an accused in a lower court pleads not guilty to the offence charged against him and a ground of his defence is the alleged invalidity of a provincial ordinance or an ordinance of the Legislative Assembly of the territory or a proclamation of the State President or of the Administrator of the territory on which the charge against him is founded and upon the validity of which a magistrate's court is in terms of section 110 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), not competent to pronounce, the accused shall be committed for a summary trial before a superior court having jurisdiction.

[Section 3(2)(b) of the transfer proclamation stipulated that the reference to the State President in section 117 should be construed as including a reference to the Administrator-General (prior to Namibian independence).]

Non-availability of judicial officer after plea of not guilty

118. If the judge, regional magistrate or magistrate before whom an accused at a summary trial has pleaded not guilty is for any reason not available to continue with the trial and no evidence has been adduced yet, the trial may be continued before any other judge, regional magistrate or magistrate of the same court.

CHAPTER 19

PLEA IN MAGISTRATE'S COURT ON CHARGE JUSTICIABLE IN SUPERIOR COURT

Accused to plead in magistrate's court on instructions of attorney-general

119. When an accused appears in a magistrate's court and the alleged offence may be tried by a superior court only or is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court, the prosecutor may, notwithstanding the provisions of section 75, on the instructions of the attorney-general, whether in general or in any particular case, put the charge, as well as any other charge which shall, in terms of section 82, be disposed of in a superior court, to the accused in the magistrate's court, and the accused shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead thereto forthwith.

[section 119 amended by Act 56 of 1979 and by Act 31 of 1985]

Charge-sheet and proof of record

120. The proceedings shall be commenced by the lodging of a charge-sheet with the clerk of the court in question and the provisions of subsections (2) and (3) of section 76 shall *mutatis mutandis* apply with reference to the charge-sheet and the record of the proceedings.

Plea of guilty

121. (1) Where an accused under section 119 pleads guilty to the offence charged, the presiding magistrate shall question him in terms of the provisions of paragraph (b) of section 112(1).

(2) (a) If the magistrate is satisfied that the accused admits the allegations stated in the charge, he shall stop the proceedings.

(b) If the magistrate is not satisfied as provided in paragraph (a), he shall record in what respect he is not so satisfied and enter a plea of not guilty and deal with the matter in terms of section 122(1): Provided that an allegation with reference to which the magistrate is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

(3) If the magistrate is satisfied as provided in subsection (2)(a), he shall adjourn the proceedings pending the decision of the attorney-general who may -

(a) arraign the accused for sentence before a superior court or any other court having jurisdiction, including the magistrate's court in which the proceedings were stopped under subsection (2)(a);

(b) decline to arraign the accused for sentence before any court but arraign him for trial on any charge at a summary trial before a superior court or any other court having jurisdiction, including the magistrate's court in which the proceedings were stopped under subsection (2)(a);

(c) institute a preparatory examination against the accused.

[subsection 3 amended by Act 56 of 1979]

(4) The magistrate or any other magistrate of the magistrate's court concerned shall advise the accused of the decision of the attorney-general and, if the decision is that the accused be arraigned for sentence -

(a) in the magistrate's court concerned, dispose of the case on the charge on which the accused is arraigned; or

(b) in a regional court or superior court, adjourn the case for sentence by the regional court or superior court concerned.

(5) (a) The record of the proceedings in the magistrate's court shall, upon proof thereof in the court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused or, if the accused is arraigned in the magistrate's court in which the proceedings were stopped under subsection (2)(a), the record of such proceedings shall stand as the record of that court, and the plea of guilty and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(aA) The record of the proceedings in the magistrate's court shall, upon proof thereof in the court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such admission was incorrectly recorded.

[paragraph (aA) inserted by Act 31 of 1985]

(b) Unless the accused satisfies the court that a plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty and impose any competent sentence: Provided that the sentence of death shall not be imposed unless the guilt of the accused has been proved as if he had pleaded not guilty.

(6) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(7) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

Plea of not guilty

122. (1) Where an accused under section 119 pleads not guilty to the offence charged, the court shall act in terms of section 115 and when that section has been complied with, the magistrate shall stop the proceedings and adjourn the case pending the decision of the attorney-general.

(2) Where the proceedings have been adjourned under subsection (1), the attorney-general may -

(i) arraign the accused on any charge at a summary trial before a superior court or any other court having jurisdiction, including the magistrate's court in which the proceedings were adjourned under subsection (1); or

(ii) institute a preparatory examination against the accused,

and the attorney-general shall advise the magistrate's court concerned of his decision.

[The paragraphs in subsection (2) are labelled with Roman numerals instead of letters; Roman numerals are used only for subparagraphs elsewhere in the Act.]

(3) The magistrate, who need not be the magistrate before whom the proceedings under section 119 or 122(1) were conducted, shall advise the accused of the decision of the attorney-general, and if the decision is that the accused be arraigned -

(a) in the magistrate's court concerned, proceed with the trial from the stage at which the proceedings were adjourned under subsection (1) or, if the accused is arraigned on a charge which is different from the charge to which he has pleaded, require the accused to plead to that charge, and, if the plea to that charge is one of guilty or the plea in respect of an offence of which the accused may on such charge be convicted is one of guilty and the prosecutor accepts such plea, deal with the matter in accordance with the provisions of section 112, in which event the provisions of section 114(1) shall not apply, or, if the plea is one of not guilty, deal with the matter in accordance with the provisions of section 115 and proceed with the trial;

(b) in a regional court or a superior court, commit the accused for a summary trial before the court concerned.

(4) The record of the proceedings in the magistrate's court shall, upon proof thereof in the court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such an admission.

CHAPTER 19A

PLEA IN MAGISTRATE'S COURT ON CHARGE TO BE ADJUDICATED IN REGIONAL COURT

[Chapter 19A, comprising sections 122A-122D, is inserted by Act 56 of 1979.]

Accused to plead in magistrate's court on charge to be tried in regional court

122A. When an accused is brought before a magistrate's court under section 50(1), including an accused released on bail under section 59 or on warning by a police official under section 72, and the alleged offence may be tried by a regional court but not by a magistrate's court or the prosecutor informs the court that he is of the opinion that the alleged offence is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court but not of the jurisdiction of a regional court, the prosecutor may, notwithstanding the provisions of section 75, put the relevant charge to the accused, who shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead to the charge forthwith.

[section 122A inserted by Act 56 of 1979]

Charge-sheet and proof of record

122B. The provisions of section 120 shall *mutatis mutandis* apply with reference to the proceedings under section 122A and the record of the proceedings.

[section 122B inserted by Act 56 of 1979]

Plea of guilty

122C. (1) Where an accused under section 122A pleads guilty to the offence charged, the presiding magistrate shall question him in terms of the provisions of paragraph (b) of section 112(1).

(2) (a) If the magistrate is satisfied that the accused admits the allegations stated in the charge, he shall adjourn the case for sentence by the regional court concerned.

(b) If the magistrate is not satisfied as provided in paragraph (a), he shall record in what respect he is not so satisfied and enter a plea of not guilty and deal with the matter in terms of section 122D(1): Provided that an allegation with reference to which the magistrate is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

(3) (a) The record of the proceedings in the magistrate's court shall, upon proof thereof in the regional court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused, and the plea of guilty and any admission by the accused shall stand and form part of the record of

that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(b) Unless the accused satisfies the court that the plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty, and impose any competent sentence.

(4) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(5) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purpose of determining an appropriate sentence.

[section 122C inserted by Act 56 of 1979]

Plea of not guilty

122D. (1) Where an accused under section 122A pleads not guilty to the offence charged, the court shall act in terms of section 115 and when that section has been complied with, the magistrate shall commit the accused for a summary trial in the regional court concerned on the charge to which he has pleaded not guilty or on the charge in respect of which a plea of not guilty has been entered under section 122C(2)(b).

(2) The regional court may try the accused on the charge in respect of which he has been committed for a summary trial under subsection (1) or on any other or further charge which the prosecutor may prefer against the accused and which the court is competent to try.

(3) The record of proceedings in the magistrate's court shall, upon proof thereof in the regional court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such an admission.

[section 122D inserted by Act 56 of 1979]

CHAPTER 20

PREPARATORY EXAMINATION

Attorney-general may instruct that preparatory examination he held

123. If an attorney-general is of the opinion that it is necessary for the more effective administration of justice -

(a) that a trial in a superior court be preceded by a preparatory examination in a magistrate's court into the allegations against the accused, he may, where he does not follow the procedure under section 119, or, where he does follow it and the proceedings are adjourned under section 121(3) or 122(1) pending the decision of

the attorney-general, instruct that a preparatory examination be instituted against the accused;

[paragraph (a) amended by Act 56 of 1979]

(b) that a trial in a magistrate's court or a regional court be converted into a preparatory examination, he may at any stage of the proceedings, but before sentence is passed, instruct that the trial be converted into a preparatory examination.

Proceedings preceding holding of preparatory examination to form part of preparatory examination record

124. Where an attorney-general acts under paragraph (a) or (b) of section 123 -

(a) the record of any proceedings under section 121(1) or 122(1), or of any proceedings in the magistrate's court or regional court before the trial was converted into a preparatory examination, shall form part of the preparatory examination record;

[paragraph (a) amended by Act 56 of 1979]

(b) and the accused has pleaded to a charge, the preparatory examination shall continue on the charge to which the accused has pleaded: Provided that where evidence is led at such preparatory examination which relates to an offence, other than the offence contained in the charge to which the accused has pleaded, allegedly committed by the accused, such evidence shall not be excluded on the ground only that the evidence does not relate to the offence to which the accused has pleaded.

Attorney-general may direct that preparatory examination be conducted at a specified place

125. (1) Where an attorney-general instructs that a preparatory examination be instituted or that a trial be converted into a preparatory examination, he may, if it appears to him expedient on account of the number of accused involved or of excessive inconvenience or of possible disturbance of the public order, that the preparatory examination be held within his area of jurisdiction in a court other than the court in which the relevant proceedings were commenced, direct that the preparatory examination be instituted in such other court or, where a trial has been converted into a preparatory examination, be continued in such other court.

(2) The magistrate or regional magistrate shall, after advice of the decision of the attorney-general, advise the accused of the decision of the attorney-general and adjourn the proceedings to such other court, and thereafter forward a copy of the record of the proceedings, certified as correct by the clerk of the court to the court to which the proceedings have been adjourned.

(3) The court to which the proceedings are adjourned under subsection (2), shall receive the copy of the record referred to in that subsection, which shall then form part of the proceedings of that court, and shall proceed to conduct the preparatory examination as if it were a preparatory examination instituted in that court.

Procedure to be followed by magistrate at preparatory examination

126. Where an attorney-general instructs that a preparatory examination be held against an accused, the magistrate or regional magistrate shall, after advice of the decision of the attorney-general, advise the accused of the decision of the attorney-general and proceed in the manner hereinafter described to enquire into the charge against the accused.

Recalling of witnesses after conversion of trial into preparatory examination

127. Where an attorney-general instructs that a trial be converted into a preparatory examination, it shall not be necessary for the magistrate or regional magistrate to recall any witness who has already given evidence at the trial, but the record of the evidence thus given, certified as correct by the magistrate or regional magistrate, as the case may be, or, if such evidence was recorded in shorthand or by mechanical means, any document purporting to be a transcription of the original record of such evidence and purporting to be certified as correct under the hand of the person who transcribed it, shall have the same legal force and effect and shall be admissible in evidence in the same circumstances as the evidence given in the course of a preparatory examination: Provided that if it appears to the magistrate or regional magistrate concerned that it may be in the interests of justice to have a witness already examined recalled for further examination, then such witness shall be recalled and further examined and the evidence given by him shall be recorded in the same manner as other evidence given at a preparatory examination.

Examination of prosecution witnesses at preparatory examination

128. The prosecutor may, at a preparatory examination, call any witness in support of the charge to which the accused has pleaded or to testify in relation to any other offence allegedly committed by the accused.

Recording of evidence at preparatory examination and proof of record

129. (1) The evidence given at a preparatory examination shall be recorded, and if such evidence is recorded in shorthand or by mechanical means, a document purporting to be a transcription of the original record of such evidence and purporting to be certified as correct under the hand of the person who transcribed such evidence, shall have the same legal force and effect as such original record.

(2) The record of a preparatory examination may be proved in a court by the mere production thereof or of a copy thereof in terms of section 235.

Charge to be put at conclusion of evidence for prosecution

130. The prosecutor shall, at the conclusion of the evidence in support of the charge, put to the accused such charge or charges as may arise from the evidence and which the prosecutor may prefer against the accused.

Accused to plead to charge

131. The magistrate or regional magistrate, as the case may be, shall, subject to the provisions of sections 77 and 85, require an accused to whom a charge is put under section 130 forthwith to plead to the charge.

Procedure after plea

132. (1) (a) Where an accused who has been required under section 131 to plead to a charge to which he has not pleaded before, pleads guilty to the offence charged, the presiding judicial officer shall question him in accordance with the provisions of paragraph (b) of section 112(1).

(b) If the presiding judicial officer is not satisfied that the accused admits all the allegations in the charge, he shall record in what respect he is not so satisfied and

enter a plea of not guilty: Provided that an allegation with reference to which the said judicial officer is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

(2) Where an accused who has been required under section 131 to plead to a charge to which he has not pleaded before, pleads not guilty to the offence charged, the presiding judicial officer shall act in accordance with the provisions of section 115.

Accused may testify at preparatory examination

133. An accused may, after the provisions of section 132 have been complied with but subject to the provisions of section 151(1)(b) which shall *mutatis mutandis* apply, give evidence or make an unsworn statement in relation to a charge put to him under section 130, and the record of such evidence or statement shall be received in evidence before any court in criminal proceedings against the accused upon its mere production without further proof.

Accused may call witnesses at preparatory examination

134. An accused may call any competent witness on behalf of the defence.

Discharge of accused at conclusion of preparatory examination

135. As soon as a preparatory examination is concluded and the magistrate or regional magistrate, as the case may be, is upon the whole of the evidence of the opinion that no sufficient case has been made out to put the accused on trial upon any charge put to the accused under section 130 or upon any charge in respect of an offence of which the accused may on such charge be convicted, he may discharge the accused in respect of such charge.

Procedure with regard to exhibits at preparatory examination

136. The magistrate or regional magistrate, as the case may be, shall cause every document and every article produced or identified as an exhibit by any witness at a preparatory examination to be inventoried and labelled or otherwise marked, and shall cause such documents and articles to be kept in safe custody pending any trial following upon such preparatory examination.

Magistrate to transmit record of preparatory examination to attorney-general

137. The magistrate or regional magistrate, as the case may be; shall, at the conclusion of a preparatory examination and whether or not the accused is under section 135 discharged in respect of any charge, send a copy of the record of the preparatory examination to the attorney-general and, where the accused is not discharged in respect of all the charges put to him under section 130, adjourn the proceedings pending the decision of the attorney-general.

Preparatory examination may be continued before different judicial officer

138. A preparatory examination may at any stage be continued by a judicial officer other than the judicial officer before whom the proceedings were commenced, and, if necessary, again be continued by the judicial officer before whom the proceedings were commenced.

Attorney-general may arraign accused for sentence or trial

139. After considering the record of a preparatory examination transmitted to him under section 137, the attorney-general may -

(a) in respect of any charge to which the accused has under section 131 pleaded guilty, arraign the accused for sentence before any court having jurisdiction;

(b) arraign the accused for trial before any court having jurisdiction, whether the accused has under section 131 pleaded guilty or not guilty to any charge and whether or not he has been discharged under section 135;

(c) decline to prosecute the accused,

and the attorney-general shall advise the lower court concerned of his decision.

Procedure where accused arraigned for sentence

140. (1) Where an accused is under section 139(a) arraigned for sentence, any magistrate or regional magistrate of the court in which the preparatory examination was held shall advise the accused of the decision of the attorney-general and, if the decision is that the accused be arraigned -

(a) in the court concerned, dispose of the case on the charge on which the accused is arraigned; or

(b) in a court other than the court concerned, adjourn the case for sentence by such other court.

(2) (a) The record of the preparatory examination shall, upon proof thereof in the court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused or, if the accused is arraigned in the court in which the preparatory examination was held, the record of the preparatory examination shall stand as the record of that court, and the plea of guilty and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(b) Unless the accused satisfies the court that the plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty and impose any competent sentence: Provided that the sentence of death shall not be imposed unless the guilt of the accused has been proved as if he had pleaded not guilty.

(3) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(4) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

Procedure where accused arraigned for trial

141. (1) Where an accused is under section 139(b) arraigned for trial, a magistrate or regional magistrate of the court in which the preparatory examination was held shall advise the accused of the decision of the attorney-general and, if the accused is to be arraigned in a court other than the court concerned, commit the accused for trial by such other court.

(2) Where an accused is arraigned for trial after a preparatory examination, the case shall be dealt with in all respects as with a summary trial.

(3) The record of the preparatory examination shall, upon proof thereof in the court in which the accused is arraigned for trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such admission: Provided that the evidence adduced at such preparatory examination shall not form part of the record of the trial of the accused unless -

(a) the accused pleads guilty at his trial to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea; or

(b) the parties to the proceedings agree that any part of such evidence be admitted at the proceedings.

(4) (a) Where an accused who has been discharged under section 135 is arraigned for trial under section 139(b), the clerk of the court where the preparatory examination was held shall issue to him a written notice to that effect and stating the place, date and time for the appearance of the accused in that court for committal for trial, or, if he is to be arraigned in that court, to plead to the charge on which he is to be arraigned.

(b) The notice referred to in paragraph (a) shall be served on the accused in the manner provided for in sections 54(2) and (3) for the service of a summons in a lower court and the provisions of sections 55(1) and (2) shall *mutatis mutandis* apply with reference to such a notice.

(c) If the accused is committed for trial by another court, the court committing the accused may direct that he be detained in custody, whereupon the provisions of Chapter 9 shall apply with reference to the release of the accused on bail.

Procedure where attorney-general declines to prosecute

142. Where an attorney-general under section 139(c) declines to prosecute an accused, he shall advise the magistrate of the district in which the preparatory examination was held of his decision, and such magistrate shall forthwith have the accused released from custody or, if the accused is not in custody, advise the accused in writing of the decision of the attorney-general, whereupon no criminal proceedings shall again be instituted against the accused in respect of the charge in question.

Accused may inspect preparatory examination record and is entitled to copy thereof

143. (1) An accused who is arraigned for sentence or for trial under section 139 may, without payment, inspect the record of the preparatory examination at the time of his arraignment before the court.

(2) (a) An accused who is arraigned for sentence or for trial under section 139 shall be entitled to a copy of the record of the preparatory examination upon payment, except where a legal practitioner under the Legal Aid Act, 1969 (Act 22 of 1969), or *pro Deo* counsel is appointed to defend the accused or where the accused is not

legally represented, of a reasonable amount not exceeding twenty-five cents for each folio of seventy-two words or part thereof.

(b) The clerk of the court shall as soon as possible provide the accused or his legal adviser with a copy of the preparatory examination record in accordance with the provisions of paragraph (a).

[The Legal Aid Act 22 of 1969 has been replaced by the Legal Aid Act 29 of 1990.]

CHAPTER 21

TRIAL BEFORE SUPERIOR COURT

Charge in superior court to be laid in an indictment

144. (1) Where an attorney-general arraigns an accused for sentence or trial by a superior court, the charge shall be contained in a document called an indictment, which shall be framed in the name of the attorney-general.

[subsection (1) amended by Act 56 of 1979]

(2) The indictment shall, in addition to the charge against the accused, include the name and, where known and where applicable, the address and a description of the accused with regard to sex, race, nationality and age.

(3) (a) Where an attorney-general under section 75, 121(3)(b) or 122(2)(i) arraigns an accused for a summary trial in a superior court, the indictment shall be accompanied by a summary of the substantial facts of the case that, in the opinion of the attorney-general, are necessary to inform the accused of the allegations against him and that will not be prejudicial to the administration of justice or the security of the State, as well as a list of the names and addresses of the witnesses the attorney-general intends calling at the summary trial on behalf of the State: Provided that -

[paragraph (a) amended by Act 56 of 1979]

(i) this provision shall not be so construed that the State shall be bound by the contents of the summary;

(ii) the attorney-general may withhold the name and address of a witness if he is of the opinion that such witness may be tampered with or be intimidated or that it would be in the interest of the security of the State that the name and address of such witness be withheld;

(iii) the omission of the name or address of a witness from such list shall in no way affect the validity of the trial.

(b) Where the evidence for the State at the trial of the accused differs in a material respect from the summary referred to in paragraph (a), the trial court may, at the request of the accused and if it appears to the court that the accused might be prejudiced in his defence by reason of such difference, adjourn the trial for such period as to the court may seem adequate.

(4) (a) An indictment, together with a notice of trial referred to in the rules of court, shall, unless an accused agrees to a shorter period, be served on an accused at least

ten days (Sundays and public holidays excluded) before the date appointed for the trial -

(i) in accordance with the procedure and manner laid down by the rules of court, by handing it to him personally, or, if he cannot be found, by delivering it at his place of residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there, or, if he has been released on bail, by leaving it at the place determined under section 62 for the service of any document on him; or

(ii) by the magistrate or regional magistrate committing him to the superior court, by handing it to him.

(b) A return of the mode of service by the person who served the indictment and the notice of trial, or, if the said documents were served in court on the accused by a magistrate or regional magistrate, an endorsement to that effect on the record of proceedings, may, upon the failure of the accused to attend the proceedings in the superior court, be handed in at the proceedings and shall be *prima facie* proof of the service.

(c) The provisions of section 55(1) and (2) shall *mutatis mutandis* apply with reference to a notice of trial served on an accused in terms of this subsection.

Trial in superior court by judge sitting with or without assessors

145. (1) (a) Except as provided in section 148, an accused arraigned before a superior court shall be tried by a judge of that court sitting with or without assessors in accordance with the provisions set out hereunder.

(b) An assessor for the purposes of this section means a person who, in the opinion of the judge who presides at a trial, has experience in the administration of justice or skill in any matter which may be considered at the trial.

(2) Where an attorney-general arraigns an accused before a superior court -

(a) for trial and the accused pleads not guilty; or

(b) for sentence, or for trial and the accused pleads guilty, and a plea of not guilty is entered at the direction of the presiding judge,

the presiding judge may summon not more than two assessors to assist him at the trial: Provided that where the offence in respect of which the accused is on trial is an offence for which the sentence of death is a competent sentence, the presiding judge shall, if he is of the opinion that, in the event of a conviction and having regard to the circumstances of the case, the sentence of death may be imposed or may have to be imposed, summon two assessors to his assistance.

(3) No assessor shall hear any evidence unless he first takes an oath or, as the case may be, makes an affirmation, administered by the presiding judge, that he will, on the evidence placed before him, give a true verdict upon the issues to be tried.

(4) An assessor who takes an oath or makes an affirmation under subsection (3) shall be a member of the court: Provided that -

(a) subject to the provisions of paragraphs (b) and (c) of this proviso and of section 217(3)(b), the decision or finding of the majority of the members of the court upon

any question of fact or upon the question referred to in the said paragraph (b) shall be the decision or finding of the court, except when the presiding judge sits with only one assessor, in which case the decision or finding of the judge shall, in the case of a difference of opinion, be the decision or finding of the court;

(b) if the presiding judge is of the opinion that it would be in the interest of the administration of justice that the assessor or the assessors assisting him do not take part in any decision upon the question whether evidence of any confession or other statement made by an accused is admissible as evidence against him the judge alone shall decide upon such question, and he may for this purpose sit alone;

(c) the presiding judge alone shall decide upon any other question of law or upon any question whether any matter constitutes a question of law or a question of fact, and he may for this purpose sit alone.

[subsection (4) substituted by Act 31 of 1985]

(5) If an assessor is not in the full-time employment of the State, he shall be entitled to such compensation as the Minister, in consultation with the Minister of Finance, may determine in respect of expenses incurred by him in connection with his attendance at the trial, and in respect of his services as assessor.

Reasons for decision by superior court in criminal trial

146. A judge presiding at a criminal trial in a superior court, shall -

(a) where he decides any question of law, including any question under paragraph (c) of the proviso to section 145(4) whether any matter constitutes a question of law or a question of fact, give the reasons for his decision;

(b) whether he sits with or without assessors, give the reasons for the decision or finding of the court upon any question of fact;

(c) where he sits with assessors give the reasons for the decision or finding of the court upon the question referred to in paragraph (b) of the proviso to section 145(4);

(d) where he sits with assessors and there is a difference of opinion on any question of fact or upon the question referred to in paragraph (b) of the proviso to section 145(4), give the reasons for the decision or finding of the member of the court who is in the minority or, where the presiding judge sits with only one assessor, of such an assessor.

[Section 146 is substituted with amendment markings by Act 31 of 1985; not all of the changes are indicated by the amendment markings.]

Death or incapacity of assessor

147. (1) If an assessor dies or, in the opinion of the presiding judge, becomes unable to act as assessor at any time during a trial, the presiding judge may direct -

(a) that the trial proceed before the remaining member or members of the court; or

(b) that the trial start *de novo,* and for that purpose summon an assessor in the place of the assessor who has died or has become unable to act as assessor.

(2) Where the presiding judge acts under subsection (1)(b), the plea already recorded shall stand.

State President may constitute special superior court

148. (1) Where an attorney-general decides to arraign an accused before a superior court upon a charge which relates to the security of the State or to the maintenance of the public order, and the Minister is of the opinion that the circumstances relating to such charge are such that the interests of justice or of the public order will be better served if the accused is tried by a superior court which is specially constituted for the trial, the State President may constitute a special superior court to conduct the trial relating to such charge.

(2) (a) A special superior court may sit at any place within the area of jurisdiction of the provincial division in respect of which the attorney-general referred to in subsection (1) has been appointed, and such place and the date on which and the time at which such court shall commence its sitting, shall be determined by such attorney-general.

(b) A special superior court shall have jurisdiction to try the charge referred to in subsection (1) and to sentence the accused to any punishment which by law may be imposed in respect thereof.

(3) (a) A special superior court shall consist of three judges, who may be appointed from any provincial division.

(b) The decision or finding of the majority of the members of the court shall be the decision or finding of the court.

(c) The Minister shall designate an officer in the public service or a judge's clerk to act as registrar of a special superior court.

(4) The Minister shall cause the constitution of a special superior court, together with the names of the members thereof, the name and official address of the registrar thereof, and the date on which and the time at which and the place at which such court will commence its sitting, to be notified in the *Gazette*.

(5) Save as otherwise in this section provided, the provisions of this Act relating to a trial by a superior court shall mutatis mutandis apply with reference to the trial of an accused by a special superior court.

(6) If at any time during the trial a member of a special superior court dies or becomes unable to continue as a member of the court, the trial shall proceed before the remaining members of the court.

(7) At the conclusion of any sitting of a special superior court, the registrar of that court shall transmit the record of the proceedings of that sitting to the registrar of the provincial division in question, and such record shall thereupon become a record of that provincial division.

Change of venue in superior court after indictment has been lodged

149. (1) A superior court may, at any time after an indictment has been lodged with the registrar of that court and before the date of trial, upon application by the prosecution and after notice to the accused, or upon application by the accused after notice to the prosecution, order that the trial be held at a place within the area of jurisdiction of such court, other than the

place determined for the trial, and that it be held on a date and at a time, other than the date and time determined for the trial.

(2) If the accused is not present or represented at such an application by the prosecution or if the prosecution is not represented at such an application by the accused, the court shall direct that a copy of the order be served on the accused or, as the case may be, on the prosecution, and upon service thereof, the venue and date and time as changed shall be deemed to be the venue and date and time respectively that were originally appointed for the trial.

CHAPTER 22

CONDUCT OF PROCEEDINGS

Prosecutor may address court and adduce evidence

150. (1) The prosecutor may at any trial, before any evidence is adduced, address the court for the purpose of explaining the charge and indicating, without comment, to the court what evidence he intends adducing in support of the charge.

(2) (a) The prosecutor may then examine the witnesses for the prosecution and adduce such evidence as may be admissible to prove that the accused committed the offence referred to in the charge or that he committed an offence of which he may be convicted on the charge.

(b) Where any document may be received in evidence before any court upon its mere production, the prosecutor shall read out such document in court unless the accused is in possession of a copy of such document or dispenses with the reading out thereof.

Accused may address court and adduce evidence

151. (1) (a) If an accused is not under section 174 discharged at the close of the case for the prosecution, the court shall ask him whether he intends adducing any evidence on behalf of the defence, and if he answers in the affirmative, he may address the court for the purpose of indicating to the court, without comment, what evidence be intends adducing on behalf of the defence.

(b) The court shall also ask the accused whether he himself intends giving evidence on behalf of the defence, and -

(i) if the accused answers in the affirmative, he shall, except where the court on good cause shown allows otherwise, be called as a witness before any other witness for the defence; or

(ii) if the accused answers in the negative but decides, after other evidence has been given on behalf of the defence, to give evidence himself, the court may draw such inference from the accused's conduct as may be reasonable in the circumstances.

(2) (a) The accused may then examine any other witness for the defence and adduce such other evidence on behalf of the defence as may be admissible.

(b) Where any document may be received in evidence before any court upon its mere production and the accused wishes to place such evidence before the court, he shall

read out the relevant document in court unless the prosecutor is in possession of a copy of such document or dispenses with the reading out thereof.

Criminal proceedings to be conducted in open court

152. Except where otherwise expressly provided by this Act or any other law, criminal proceedings in any court shall take place in open court, and may take place on any day.

Circumstances in which criminal proceedings shall not take place in open court

153. (1) If it appears to any court that it would, in any criminal proceedings pending before that court, be in the interests of the security of the State or of good order or of public morals or of the administration of justice that such proceedings be held behind closed doors, it may direct that the public or any class thereof shall not be present at such proceedings or any part thereof.

(2) If it appears to any court at criminal proceedings that there is a likelihood that harm might result to any person, other than an accused, if he testifies at such proceedings, the court may direct -

(a) that such person shall testify behind closed doors and that no person shall be present when such evidence is given unless his presence is necessary in connection with such proceedings or is authorized by the court;

(b) that the identity of such person shall not be revealed or that it shall not be revealed for a period specified by the court.

(3) In criminal proceedings relating to a charge that the accused committed or attempted to commit -

(a)

[paragraph (a) deleted by Act 8 of 2000]

(b)

[paragraph (b) deleted by Act 8 of 2000]

(c) extortion or any statutory offence of demanding from any other person some advantage which was not due and, by inspiring fear in the mind of such other person, compelling him to render such advantage,

the court before which such proceedings are pending may, at the request of such other person or, if he is a minor, at the request of his parent or guardian, direct that any person whose presence is not necessary at the proceedings or any person or class of persons mentioned in the request, shall not be present at the proceedings: Provided that judgment shall be delivered and sentence shall be passed in open court if the court is of the opinion that the identity of the other person concerned would not be revealed thereby.

(3A) Notwithstanding the provisions of subsections (1), (2), (5) and (6) but subject to the provisions of subsection (3B), in criminal proceedings relating to a charge that the accused committed or attempted to commit -

(a) any sexual or indecent act towards or in connection with any complainant;

(b) any act for the purpose of procuring or furthering the commission of a sexual or indecent act towards or in connection with any complainant; or

(c) any domestic violence offence as defined in the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003),

[paragraph (c) substituted with amendment markings by Act 6 of 2022]

the court before which such proceedings are pending shall, to the extent authorised thereto by the provisos to Article 12(1)(a) and (c) of the Namibian Constitution, direct that any person whose presence is not necessary at such proceedings, shall not be present at such proceedings, unless the complainant in such proceedings, or, if he or she is a minor, his or her parent or guardian or a person *in loco parentis,* otherwise requests.

[Subsection (3A) is inserted by Act 8 of 2000 and substituted with amendment markings by Act 4 of 2003; not all of the changes are indicated by the amendment markings.]

(3B) Any person whose presence is not necessary at criminal proceedings referred to in paragraphs (a), (b) and (c) of subsection (3A), shall not be present at such proceedings while the complainant in such proceedings is giving evidence, unless such complainant, or, if he or she is a minor, his or her parent or guardian or a person *in loco parentis,* otherwise requests.

[subsection (3B) inserted by Act 8 of 2000 and amended by Act 4 of 2003]

(4) Where an accused at criminal proceedings before any court is under the age of eighteen years, no person, other than such accused, his legal representative and parent or guardian or a person *in loco parentis*, shall be present at such proceedings, unless such person's presence is necessary in connection with such proceedings or is authorized by the court.

(5) Where a witness at criminal proceedings before any court is under the age of eighteen years, the court may direct that no person, other than such witness and his parent or guardian or a person *in loco parentis*, shall be present at such proceedings, unless such person's presence is necessary in connection with such proceedings or is authorized by the court.

(6) The court may direct that no person under the age of eighteen years shall be present at criminal proceedings before the court, unless he is a witness referred to in subsection (5) and is actually giving evidence at such proceedings or his presence is authorized by the court.

(7) To the extent that the provisions of this section provide for a limitation of the fundamental right to a public hearing and to the giving of judgment in criminal proceedings in public contemplated in paragraphs (a) and (c), respectively, of Sub-Article (1) of Article 12 of the Namibian Constitution, in that they authorize the exclusion of the public from criminal proceedings or any part thereof, such limitation is enacted on authority of the said paragraphs (a) and (c).

[subsection (7) inserted by Act 8 of 2000]

Prohibition of publication of certain information relating to criminal proceedings

154. (1) Where a court under section 153(1) on any of the grounds referred to in that subsection directs that the public or any class thereof shall not be present at any proceedings or part thereof, the court may direct that no information relating to the proceedings or any part thereof held behind closed doors shall be published in any manner whatever: Provided that a direction by the court shall not prevent the publication of information relating to the name and personal particulars of the accused, the charge against him, the plea, the verdict and the sentence, unless the court is of the opinion that the publication of any part of such information

might defeat the object of its direction under section 153(1), in which event the court may direct that such part shall not be published.

(2) (a) Where a court under section 153(3) directs that any person or class of persons shall not be present at criminal proceedings, no person shall publish in any manner whatever any information which might reveal the identity of any complainant in the proceedings: Provided that the presiding judge or judicial officer may authorize the publication of such information if he or she is of the opinion that such publication would be just and equitable: Provided further that such information may be published with regard to any complainant in the proceedings if that complainant is eighteen years of age or older and has authorized the publication of such information.

(b) Where a court in terms of section 153(3A) directs that any person shall not be present at criminal proceedings or where any person is in terms of section 153(3B) not permitted to be present at criminal proceedings, no person shall publish in any manner whatever any information which might reveal the identity of any complainant in the proceedings: Provided that the presiding judge or judicial officer may authorize the publication of such information if he or she is of the opinion that such publication would be just and equitable: Provided further that such information may be published with regard to any complainant in the proceedings if that complainant is eighteen years of age or older and has authorized the publication of such information.

(c) No person shall at any stage from the time of the commission of the relevant offence to the appearance of an accused in a court upon any charge referred to in section 153(3) or 153(3A) or at any stage after such appearance but before the accused has pleaded to the charge, publish in any manner whatever any information which might reveal the identity of the complainant towards or in connection with whom such offence is alleged to have been committed.

[subsection (2) substituted by Act 8 of 2000]

(3) No person shall publish in any manner whatever any information which reveals or may reveal the identity of an accused under the age of eighteen years or of a witness at criminal proceedings who is under the age of eighteen years: Provided that the presiding judge or judicial officer may authorize the publication of so much of such information as he may deem fit if the publication thereof would in his opinion be just and equitable and in the interest of any particular person.

(4) No prohibition or direction under this section shall apply with reference to the publication in the form of a *bona fide* law report of -

(a) information for the purpose of reporting any question of law relating to the proceedings in question; or

(b) any decision or ruling given by any court on such question,

if such report does not mention the name of the person charged or of the person against whom or in connection with whom the offence in question was alleged to have been committed or of any witness at such proceedings, and does not mention the place where the offence in question was alleged to have been committed.

(5) Any person who publishes any information in contravention of this section or contrary to any direction or authority under this section or who in any manner whatever reveals

the identity of a witness in contravention of a direction under section 153(2), shall be guilty of an offence and liable on conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subsection (5) amended by Act 8 of 2000]

(6) To the extent that the provisions of this section provide for a limitation of the fundamental rights contemplated in paragraph (a) of Sub-Article (1) of Article 21 of the Namibian Constitution, in that they authorize interference with a person's freedom to publish information relating to criminal proceedings, such limitation is enacted on authority of Sub-Article (2) of the said Article.

[subsection (6) inserted by Act 8 of 2000]

Persons implicated in same offence may be tried together

155. (1) Any number of participants in the same offence may be tried together and any number of accessories after the same fact may be tried together or any number of participants in the same offence and any number of accessories after that fact may be tried together, and each such participant and each such accessory may be charged at such trial with the relevant substantive offence alleged against him.

(2) A receiver of property obtained by means of an offence shall for purposes of this section be deemed to be a participant in the offence in question.

Persons committing separate offences at same time and place may be tried together

156. Any number of persons charged in respect of separate offences committed at the same place and at the same time or at about the same time, may be charged and tried together in respect of such offences if the prosecutor informs the court that evidence admissible at the trial of one of such persons will, in his opinion, also be admissible as evidence at the trial of any other such person or such persons.

Joinder of accused and separation of trials

157. (1) An accused may be joined with any other accused in the same criminal proceedings at any time before any evidence has been led in respect of the charge in question.

(2) Where two or more persons are charged jointly, whether with the same offence or with different offences, the court may at any time during the trial, upon the application of the prosecutor or of any of the accused, direct that the trial of any one or more of the accused shall be held separately from the trial of the other accused, and the court may abstain from giving judgment in respect of any of such accused.

Criminal proceedings to take place in presence of accused

158. Except as otherwise expressly provided by this Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused.

Special arrangements for vulnerable witnesses

158A. (1) A court before whom a vulnerable witness gives evidence in criminal proceedings, may on the application of any party to such proceedings or the witness concerned, or on its own motion make an order that special arrangements be made for the giving of the evidence of that witness.

(2) "Special arrangements" means one or more of the following steps:

(a) The relocation of the trial to another location while the evidence of the vulnerable witness is being heard;

(b) the rearrangement of the furniture in a court room, or the removal from or addition of certain furniture or objects to or from the court room, or a direction that certain persons sit or stand at certain locations in the court room;

(c) notwithstanding the provisions of section 153 the granting of permission to any person (hereinafter referred to as a "support person") who is a fit person for that purpose to accompany the witness while he or she is giving evidence;

(d) the granting of permission to the witness to give evidence behind a screen or in another room which is connected to the court room by means of closed circuit television or a one way mirror or by any other device or method that complies with subsection (6);

(e) the taking of any other steps that in the opinion of the court are expedient and desirable in order to facilitate the giving of evidence by the vulnerable witness concerned.

(3) For the purposes of this section a vulnerable witness is a person -

(a) who is under the age of eighteen;

(b) against whom an offence of a sexual or indecent nature has been committed;

(c) against whom a domestic violence offence as defined in the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) has been committed;

[paragraph (c) substituted with amendment markings by Act 6 of 2022]

(d) who as a result of some mental or physical disability, the possibility of intimidation by the accused or any other person, or for any other reason will suffer undue stress while giving evidence, or who as a result of such disability, background, possibility or other reason will be unable to give full and proper evidence.

**[This paragraph should end with a semicolon
now that it is no longer the last paragraph in subsection (2).]**

(e) who is a protected person within the meaning of section 1 of the Witness Protection Act, 2017 (Act No. of 2017).

[paragraph (e) inserted by Act 11 of 2017]

(4) The support person is entitled to -

(a) stand or sit near the witness and to give such physical comfort to the witness as may be desirable;

(b) interrupt the proceedings to alert the presiding officer to the fact that the witness is experiencing undue distress:

Provided that subject to subsection (5), the support person shall not be entitled to assist the witness with the answering of a question or instruct the witness in the giving of evidence.

(5) The court may give instructions to a support person prohibiting him or her from communicating with the witness or from taking certain actions, or may instruct the support person to take such actions as the court may consider necessary.

(6) When a witness gives evidence behind a screen or in another room, the accused, his or her legal representative, the prosecutor in the case and the presiding officer shall be able to hear the witness and shall also be able to observe the witness while such witness gives evidence.

(7) When a court is considering whether an order under this section should be made, it shall also consider the following matters -

(a) the interest of the state in adducing the complete and undistorted evidence of a vulnerable witness concerned;

(b) the interests and well-being of the witness concerned;

(c) the availability of necessary equipment and locations;

(d) the interests of justice in general.

[section 158A inserted by Act 24 of 2003]

Arrangements for witness to testify through audio-visual link

158B. (1) For purposes of this section, "audio-visual link" means a live television link between the court point and the point at which a witness is located, which points are both equipped with facilities that enable the persons referred to in subsection (4)(b) and all persons present at the court point to see and hear the witness.

(2) A court may, on its own motion or on the application of a party to criminal proceedings or the concerned witness, order that the witness, in or outside Namibia, gives evidence through an audio-visual link or similar electronic transmission.

(3) A court may make an order referred to in subsection (2) only when the relevant facilities are available or obtainable and only when the court considers that the use of an audio-visual link or similar electronic transmission will -

(a) prevent unreasonable delay;

(b) save costs;

(c) be in the interest, wellbeing and safety of the witness concerned;

(d) be in the interest of the security of the State, of public safety or interest, or of administration of justice; or

(e) prevent the likelihood that prejudice or harm might result to any person if the witness testifies or is present at such criminal proceedings.

(4) In order to ensure a fair and just trial the court -

(a) may make the giving of evidence in terms of subsection (2) subject to conditions as the court may consider necessary; and

(b) shall ensure that the accused, his or her legal representative, the prosecutor in the case and the presiding officer are able to hear and see the witness while the witness gives evidence.

(5) A court order made in terms of subsection (2) shall direct the witness to attend at a time and place fixed by the court to give his or her testimony through an audio-visual link, and the court order shall direct the witness to remain in attendance at such place until the witness is excused by the court.

(6) The Minister may make regulations necessary to give effect to the provisions of this section.

[Section 158B is inserted by Act 7 of 2023, but it has not yet been brought into force.]

Circumstances in which criminal proceedings may take place in absence of accused

159. (1) If an accused at criminal proceedings conducts himself in a manner which makes the continuance of the proceedings in his presence impracticable, the court may direct that he be removed and that the proceedings continue in his absence.

(2) If two or more accused appear jointly at criminal proceedings and -

(a) the court is at any time after the commencement of the proceedings satisfied, upon application made to it by any accused in person or by his representative -

(i) that the physical condition of that accused is such that he is unable to attend the proceedings or that it is undesirable that he should attend the proceedings; or

(ii) that circumstances relating to the illness or death of a member of the family of that accused make his absence from the proceedings necessary; or

(b) any of the accused is absent from the proceedings, whether under the provisions of subsection (1) or without leave of the court,

the court, if it is of the opinion that the proceedings cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend, may -

(aa) in the case of paragraph (a), authorize the absence of the accused concerned from the proceedings for a period determined by the court and on the conditions which the court may deem fit to impose; and

(bb) direct that the proceedings be proceeded with in the absence of the accused concerned.

(3) Where an accused becomes absent from the proceedings in the circumstances referred to in subsection (2), the court may, in lieu of directing that the proceedings be proceeded with in the absence of the accused concerned, upon the application of the prosecution direct that the proceedings in respect of the absent accused be separated from the proceedings in respect of the accused who are present, and thereafter, when such accused is again in attendance, the proceedings against him shall continue from the stage at which he became

absent, and the court shall not be required to be differently constituted merely by reason of such separation.

Postponement of certain criminal proceedings through audio-visual link

159A. (1) For purposes of this section and sections 159B, 159C and 159D, unless the context indicates otherwise -

"appropriate person" means a court official or a person at the court point or remote point who is present or may be required to be present at the proceedings, including the presiding officer, the prosecutor, the legal representative for the accused person, any technical assistant, the clerk of the court, witnesses and members of the public who are entitled to be present;

"audio link" means a live telephone link between the court point and the remote point which points are both equipped with facilities that enable audio communication between an accused person and the legal practitioner for such accused person;

"audio-visual link" means a live television link between the court point and the remote point which points are both equipped with facilities that enable all the appropriate persons at the court point and the remote point to follow the proceedings by seeing and hearing all the appropriate persons;

"court point" means the courtroom or a place where the court that has jurisdiction is sitting;

"correctional facility" means a correctional facility as defined in section 1 of the Correctional Service Act, 2012 (Act No. 9 of 2012); and

"remote point' means the room or place at the designated correctional facility or police station where the accused person appearing through audio-visual link is located.

[The single quotation mark after "remote point" is replicated from the *Government Gazette*.]

(2) An accused person -

(a) who is over the age of 18 years;

(b) who is in custody in a correctional facility in respect of an offence;

(c) who has already appeared before a court;

(d) whose case has been postponed and who is in custody pending his or her trial; and

(e) who is required to appear or to be brought before a court in any subsequent proceedings, whether before, during or after the trial, or at conviction and sentence, and subject to the provisions of this section and sections 159B, 159C and 159D -

(i) for a further postponement of the case;

(ii) for consideration of release on warning in terms of section 72(1)(a), where the release on warning is not opposed by the prosecutor or where the release on warning does not require the leading of evidence; or

(iii) for consideration of release on bail in terms of section 60, 63, 307 or 321 -

(aa) where the granting of bail is not opposed by the prosecutor;

(bb) where the granting of bail does not require the leading of evidence; or

(cc) where the accused person is not required to appear or to be brought physically before the court,

may appear before court by audio-visual link and such appearance shall be considered to be a physical appearance before court, unless the court directs, in the interests of justice, that the accused appears or be brought physically before the court.

(3) Any proceedings in terms of subsection (2) shall be regarded as having been held in the presence of the accused person if, during the proceedings, that person -

(a) is held in custody in a correctional facility; and

(b) is able to follow the criminal proceedings and the court is able to see and hear the accused person by means of audio-visual link.

(4) The remote point shall be regarded as being a part of the court.

[Section 159A is inserted by Act 7 of 2023, but it has not yet been brought into force.]

Requirements for audio-visual appearance by accused person

159B. (1) An accused person appearing before a court by audiovisual link shall do so from a place at which the requirements referred to in subsections (2) and (3), and section 159D, are complied with.

(2) The Minister may, subject to the provisions of this section and after consultation with the Minister responsible for correctional facilities, designate by notice in the *Gazette*, a correctional facility which has been suitably equipped as a place where proceedings in terms of section 159A can be held.

(3) Both the court point and the remote point in the correctional facility designated in terms of subsection (2) shall be equipped with facilities that, in accordance with any requirements prescribed by regulations and any directions of the court referred to in section 159D(5), allow -

(a) private communication to take place between the accused person and a legal representative of such accused person in the proceedings at the court point; and

(b) documents to be transmitted between both points by a legal representative of an accused person and such accused person -

(i) at any time during the proceedings;

(ii) during any adjournment of the hearing in the proceedings referred to in paragraph (a); or

(iii) at any time on the day of a hearing, shortly before or after the hearing.

(4) The court shall, at every appearance of an accused person in terms of section 159A, inquire into the physical and mental well-being of the accused person and for that purpose may, where necessary, direct that the facilities referred to in section 159D be used in such a manner that enables the presiding officer to satisfy himself or herself as to the well-being of the accused

person and make such order as may be appropriate in relation to the well-being of the accused person.

[Section 159B is inserted by Act 7 of 2023, but it has not yet been brought into force.]

Protection of communication between accused person and legal representative

159C. Without limiting any other protection applying to the communication between an accused person and the legal representative for the accused person -

(a) a communication by audio link or audio-visual link between an accused person and his or her legal representative as provided for in section 159B(3); or

(b) a document transmitted between an accused person and his or her legal representative as provided for in section 159B(3),

is confidential and is inadmissible as evidence in any proceedings as if the communication took place or the document was produced while they were in the presence of each other.

[Section 159C is inserted by Act 7 of 2023, but it has not yet been brought into force.]

Technical requirements for use of audio-visual link

159D. (1) For the purposes of proceedings in terms of section 159A, the court point and the remote point shall be equipped with facilities that enable all appropriate persons -

(a) at the court point to see and hear a person appearing before the court or making a submission, or any other appropriate person at the remote point, and to follow the proceedings; and

(b) at the remote point to see and hear all appropriate persons at the court point and to follow the proceedings.

(2) Subject to subsection (3), if the court is satisfied that -

(i) there is an interruption of an audio-visual link;

(ii) an audio-visual link is of a poor quality; or

(iii) any of the facilities referred to in subsection (1) is malfunctioning,

the court may direct that the matter stands down and cause the accused person to be brought physically before the court on the same date if the court considers that it is no longer in the interests of justice to continue proceedings by way of audio-visual link.

(3) If it is not reasonably practicable to bring the accused person to court on the same day as referred to in subsection (2), the court shall, prior to the expiry of the existing court order for the detention of the accused person, postpone the proceedings in the absence of the accused person to the next court day.

(4) The Minister may make regulations necessary to give effect to the technical requirements for the facilities referred to in subsection (1).

(5) In order to ensure a fair trial, a court may give directions in a case as the court considers necessary, but such directions may not be inconsistent with any provision of this Act or any regulation made under this Act.

[Section 159D is inserted by Act 7 of 2023, but it has not yet been brought into force.]

Procedure at criminal proceedings where accused is absent

160. (1) If an accused referred to in section 159(1) or (2) again attends the proceedings in question, he may, unless he was legally represented during his absence, examine any witness who testified during his absence, and inspect the record of the proceedings or require the court to have such record read over to him.

(2) If the examination of a witness under subsection (1) takes place after the evidence on behalf of the prosecution or any co-accused has been concluded, the prosecution or such co-accused may in respect of any issue raised by the examination, lead evidence in rebuttal of evidence relating to the issue so raised

(3) (a) When the evidence on behalf of all the accused, other than an accused who is absent from the proceedings, is concluded, the court shall, subject to the provisions of paragraph (b), postpone the proceedings until such absent accused is in attendance and, if necessary, further postpone the proceedings until the evidence, if any, on behalf of that accused has been led.

(b) If it appears to the court that the presence of an absent accused cannot reasonably be obtained, the court may direct that the proceedings in respect of the accused who are present be concluded as if such proceedings had been separated from the proceedings at the stage at which the accused concerned became absent from the proceedings, and when such absent accused is again in attendance, the proceedings against him shall continue from the stage at which he became absent, and the court shall not be required to be differently constituted merely by reason of such separation.

(c) When, in the case of a trial, the evidence on behalf of all the accused has been concluded and any accused is absent when the verdict is to be delivered, the verdict may be delivered in respect of all the accused or be withheld until all the accused are present or be delivered in respect of any accused present and withheld in respect of the absent accused until he is again in attendance.

Witness to testify *viva voce*

161. (1) A witness at criminal proceedings shall, except where this Act or any other law expressly provides otherwise, give his evidence *viva voce.*

(2) In this section the expression *"viva voce"* shall, in the case of a deaf and dumb witness, be deemed to include gesture-language.

Witness to be examined under oath

162. (1) Subject to the provisions of sections 163 and 164, no person shall be examined as a witness in criminal proceedings unless he is under oath, which shall be administered by the presiding judicial officer or, in the case of a superior court, by the presiding judge or the registrar of the court, and which shall be in the following form: -

"I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God.".

(2) If any person to whom the oath is administered wishes to take the oath with uplifted hand, he shall be permitted to do so.

Affirmation in lieu of oath

163. (1) Any person who is or may be required to take the oath and -

(a) who objects to taking the oath;

(b) who objects to taking the oath in the prescribed form;

(c) who does not consider the oath in the prescribed form to be binding on his conscience; or

(d) who informs the presiding judge or, as the case may be, the presiding judicial officer, that he has no religious belief or that the taking of the oath is contrary to his religious belief,

shall make an affirmation in the following words in lieu of the oath and at the direction of the presiding judicial officer or, in the case of a superior court, the presiding judge or the registrar of the court: -

"I solemnly affirm that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth.".

(2) Such affirmation shall have the same legal force and effect as if the person making it had taken the oath.

(3) The validity of an oath duly taken by a witness shall not be affected if such witness does not on any of the grounds referred to in subsection (1) decline to take the oath.

When unsworn or unaffirmed evidence admissible

164. (1) Any person -

(a) who, from ignorance arising from defective education or other cause, is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation; and

(b) who is younger than 14 years shall be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation:

Provided that such person shall in lieu of the oath or affirmation be admonished by the presiding judge or judicial officer to speak the truth, the whole truth and nothing but the truth.

[subsection (1) amended by Act 24 of 2003]

(2) If such person wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury or any statutory offence punishable as perjury, he shall be deemed to have committed that offence, and shall, upon conviction, be liable to such punishment as is by law provided as a punishment for that offence.

(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 if it appears to the presiding judge or judicial officer, after an informal preliminary inquiry by such presiding judge or judicial officer as is necessary to assess the maturity of the witness, that such witness is capable of giving intelligible testimony.

[subsection (3) inserted by Act 24 of 2003 and substituted with amendment markings by Act 4 of 2022]

(4) A court shall not regard the evidence of a child as inherently unreliable and shall therefore not treat such evidence with special caution only because that witness is a child.

[subsection (4) inserted by Act 24 of 2003]

Oath, affirmation or admonition may be administered by or through an interpreter

165. Where the person concerned is to give his evidence through an interpreter, the oath, affirmation or admonition under section 162, 163 or 164 shall be administered by the presiding judge or judicial officer or the registrar of the court, as the case may be, through the interpreter or by the interpreter in the presence of the presiding judge or judicial officer, as the case may be.

Cross-examination and re-examination of witnesses

166. (1) An accused may cross-examine any witness called on behalf of the prosecution at criminal proceedings or any co-accused who testifies at criminal proceedings or any witness called on behalf of such co-accused at criminal proceedings, and the prosecutor may cross-examine any witness, including an accused, called on behalf of the defence at criminal proceedings, and a witness called at such proceedings on behalf of the prosecution may be re-examined by the prosecutor on any matter raised during the cross-examination of that witness, and a witness called on behalf of the defence at such proceedings may likewise be re-examined by the accused.

(2) The prosecutor and the accused may, with leave of the court, examine or cross-examine any witness called by the court at criminal proceedings.

(3) (a) If it appears to the court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the court may request the cross-examiner to disclose the relevance of any line of examination and may impose reasonable limits on that cross-examination regarding the length thereof or regarding any particular line of examination.

(b) The court may order that any submission regarding the relevancy of the cross-examination be heard in the absence of the witness.

[subsection (3) inserted by Act 24 of 2003]

(4) Notwithstanding the provisions of subsections (1) and (2) or anything to the contrary in any other law contained but subject to subsection (5), the cross-examination of any witness under the age of thirteen years shall take place only through the presiding judge or judicial officer, who shall either restate the questions put to such witness or, in his or her discretion, simplify or rephrase such questions.

[subsection (4) inserted by Act 24 of 2003]

(5) The court may allow the cross-examination of a witness referred to in subsection (3) to occur through a person other than the presiding officer if -

(a) that person has the qualifications determined by the Minister by notice in the *Gazette;* and

(b) that person is immediately available when the witness concerned gives evidence.

[Subsection (5) is inserted by Act 24 of 2003. It appears that the cross-reference in this subsection was intended to refer to subsection (4) instead of subsection (3).]

(6) If the person referred to in subsection (5) is not in the full time employ of the state, the relevant provision of section 191 shall apply to that person as if he or she is giving evidence for the party for which the witness concerned gives evidence.

[subsection (6) inserted by Act 24 of 2003]

Court may examine witness or person in attendance

167. The court may at any stage of criminal proceedings examine any person, other than an accused, who has been subpoenaed to attend such proceedings or who is in attendance at such proceedings, and may recall and re-examine any person, including an accused, already examined at the proceedings, and the court shall examine, or recall and re-examine, the person concerned if his evidence appears to the court essential to the just decision of the case.

Court may adjourn proceedings to any date

168. A court before which criminal proceedings are pending, may from time to time during such proceedings, if the court deems it necessary or expedient, adjourn the proceedings to any date on the terms which to the court may seem proper and which are not inconsistent with any provision of this Act.

Court may adjourn proceedings to any place

169. A court before which criminal proceedings are pending, may from time to time during such proceedings, if the court deems it necessary or expedient that the proceedings be continued at any place within its area of jurisdiction other than the one where the court is sitting, adjourn the proceedings to such other place, or, if the court with reference to any circumstance relevant to the proceedings deems it necessary or expedient that the proceedings be adjourned to a place other than the place at which the court is sitting, adjourn the proceedings, on the terms which to the court may seem proper, to any such place, whether within or outside the area of jurisdiction of such court, for the purpose of performing at such place any function of the court relevant to such circumstance.

[section 169 amended by Act 31 of 1985]

Failure by accused to appear after adjournment or to remain in attendance

170. (1) An accused at criminal proceedings who is not in custody and who has not been released on bail, and who fails to appear at the place and on the date and at the time to which such proceedings may be adjourned, or who fails to remain in attendance at such proceedings as so adjourned, shall be guilty of an offence and liable to the punishment prescribed under subsection (2).

[subsection (1) amended by Act 56 of 1979 and by Act 31 of 1985]

(2) The court may, if satisfied that an accused referred to in subsection (1) has failed to appear at the place and on the date and at the time to which the proceedings in question were adjourned or has failed to remain in attendance at such proceedings as so adjourned, issue a warrant for the arrest of that accused and, when he or she is brought before the court, in a summary manner enquire into his or her failure so to appear or so to remain in attendance and, unless the accused satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, convict the accused of the offence referred to in subsection (1) and sentence him or her to a fine not exceeding N$4 000 or to imprisonment for a period not exceeding 12 months.

[Subsection (2) is substituted with amendment markings by Act 31 of 1985 and by Act 13 of 2010; not all of the changes made by these two amending Acts are indicated by the amendment markings.]

Evidence on commission

171. (1) (a) Whenever criminal proceedings are pending before any court and it appears to such court on application made to it that the examination of any witness who is resident in Namibia is necessary in the interests of justice and that the attendance of such witness cannot be obtained without undue delay, expense or inconvenience, the court may dispense with such attendance and issue a commission to any magistrate.

[paragraph (a) substituted by Act 9 of 2000]

(b) The specific matter with regard to which the evidence of the witness is required, shall be set out in the relevant application, and the court may confine the examination of the witness to such matter.

(c) Where the application is made by the State, the court may, as a condition of the commission, direct that the costs of legal representation for the accused at the examination be paid by the State.

(2) (a) The magistrate to whom the commission is issued, shall proceed to the place where the witness is or shall summon the witness before him or her, and take down the evidence in the manner set out in paragraph (b).

[paragraph (a) substituted by Act 9 of 2000]

(b) The witness shall give his or her evidence upon oath or affirmation, and such evidence shall be recorded and read over to the witness, and, if he or she adheres thereto, be subscribed by him or her and the magistrate concerned.

[paragraph (b) substituted by Act 9 of 2000]

(c)

[paragraph (c) deleted by Act 9 of 2000]

Parties may examine witness

172. Any party to proceedings in which a commission is issued under section 171, may -

(a) transmit interrogatories in writing which the court issuing the commission may think relevant to the issue, and the magistrate to whom the commission is issued, shall examine the witness upon such interrogatories; or

(b) appear before such magistrate, either by a legal representative or, in the case of an accused who is not in custody or in the case of a private prosecutor, in person, and examine the witness.

[section 172 substituted by Act 9 of 2000]

Evidence on commission part of court record

173. The Magistrate shall return the evidence in question to the court which issued the commission, and such evidence shall be open to the inspection of the parties to the proceedings and shall, in so far as it is admissible as evidence in such proceedings, form part of the record of such court.

[section 173 substituted by Act 9 of 2000]

Accused may be discharged at close of case for prosecution

174. If, at the close of the case for the prosecution at any trial, the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty.

Prosecution and defence may address court at conclusion of evidence

175. (1) After all the evidence has been adduced, the prosecutor may address the court, and thereafter the accused may address the court.

(2) The prosecutor may reply on any matter of law raised by the accused in his address, and may, with leave of the court, reply on any matter of fact raised by the accused in his address.

Judgment may be corrected

176. When by mistake a wrong judgment is delivered, the court may, before or immediately after it is recorded, amend the judgment.

Court may defer final decision

177. The court may at criminal proceedings defer its reasons for any decision on any question raised at such proceedings, and the reasons so deferred shall, when given, be deemed to have been given at the time of the proceedings.

Arrest of person committing offence in court and removal from court of person disturbing proceedings

178. (1) Where an offence is committed in the presence of the court, the presiding judge or judicial officer may order the arrest of the offender.

(2) If any person, other than an accused, who is present at criminal proceedings, disturbs the peace or order of the court, the court may order that such person be removed from the court and that he be detained in custody until the rising of the court.

CHAPTER 23

WITNESSES

Process for securing attendance of witness

179. (1) (a) The prosecutor or an accused may compel the attendance of any person to give evidence or to produce any book, paper or document in criminal proceedings by taking out of the office prescribed by the rules of court the process of court for that purpose.

(b) If any police official has reasonable grounds for believing that the attendance of any person is or will be necessary to give evidence or to produce any book, paper or document in criminal proceedings in a lower court, and hands to such person a written notice calling upon him to attend such criminal proceedings on the date and at the time and place specified in the notice, to give evidence or to produce any book, paper or document, likewise specified, such person shall, for the purposes of this Act, be deemed to have been duly subpoenaed so to attend such criminal proceedings.

(2) Where an accused desires to have any witness subpoenaed, a sum of money sufficient to cover the costs of serving the subpoena shall be deposited with the prescribed officer of the court.

(3) (a) Where an accused desires to have any witness subpoenaed and he satisfies the prescribed officer of the court -

(i) that he is unable to pay the necessary costs and fees; and

(ii) that such witness is necessary and material for his defence,

such officer shall subpoena such witness.

(b) In any case where the prescribed officer of the court is not so satisfied, he shall, upon the request of the accused, refer the relevant application to the judge or judicial officer presiding over the court, who may grant or refuse the application or defer his decision until he has heard other evidence in the case.

(4) For the purposes of this section "prescribed officer of the court" means the registrar, assistant registrar, clerk of the court or any officer prescribed by the rules of court.

Service of subpoena

180. (1) A subpoena in criminal proceedings shall be served in the manner provided by the rules of court by a person empowered to serve a subpoena in criminal proceedings.

(2) A return by the person empowered to serve a subpoena in criminal proceedings, that the service thereof has been duly effected, may, upon the failure of a witness to attend the relevant proceedings, be handed in at such proceedings and shall be *prima facie* proof of such service.

Pre-payment of witness expenses

181. Where a subpoena is served on a witness at a place outside the magisterial district from which the subpoena is issued, or, in the case of a superior court, at a place outside the magisterial district in which the proceedings at which the witness is to appear are to take place, and the witness is required to travel from such place to the court in question, the necessary expenses to travel to and from such court and of sojourn at the court in question, shall on demand be paid to such witness at the time of service of the subpoena.

Witness from correctional facility

182. A inmate who is in a correctional facility shall be subpoenaed as a witness on behalf of the defence or a private prosecutor only if the court before which the prisoner is to appear as a witness authorizes that the prisoner be subpoenaed as a witness, and the court shall give such authority only if it is satisfied that the evidence in question is necessary and material for the defence or the private prosecutor, as the case may be, and that the public safety or order will not be endangered by the calling of the witness.

[Section 182 is amended by Act 9 of 2012 to substitute "correctional facility" for "prison" and to substitute "inmate" for "prisoner". The word "inmate" should be preceded by the article "an" instead of the article "a" to be grammatically correct.]

Witness to keep police informed of whereabouts

183. (1) Any person who is advised in writing by any police official that he will be required as a witness in criminal proceedings, shall, until such criminal proceedings have been finally disposed of or until he is officially advised that he will no longer be required as a witness, keep such police official informed at all times of his full residential address or any other address where he may conveniently be found.

(2) Any person who fails to comply with the provisions of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months.

Witness about to abscond and witness evading service of summons

184. (1) Whenever any person is likely to give material evidence in criminal proceedings with reference to any offence, other than an offence referred to in Part III of Schedule 2 or in the Schedule to the Internal Security Act, 1950 (Act 44 of 1950), any magistrate, regional magistrate or judge of the court before which the relevant proceedings are pending may, upon information in writing and on oath that such person is about to abscond, issue a warrant for his arrest.

[The Internal Security Act 44 of 1950 was applicable to South West Africa. The administration of this Act (with the exception of section 8) was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. After the date of transfer, all of Act 44 of 1950 (except for section 17*bis*, which provided civil and criminal immunity for describing certain persons as communists) was repealed in South Africa by the *Internal Security Act 74 of 1982* (RSA GG 8232) – which did not apply to South West Africa because it was not made expressly so applicable. Act 44 of 1950 was repealed in South West Africa in its entirety by the First Law Amendment (Abortion of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 14 of 1989 (OG 5726).]

(2) If a person referred to in subsection (1) is arrested, the magistrate, regional magistrate or judge, as the case may be, may warn him to appear at the proceedings in question at a stated place and at a stated time and on a stated date and release him on any condition referred to in paragraph (a), (b) or (e) of section 62, in which event the provisions of subsections (1), (3) and (4) of section 66 shall *mutatis mutandis* apply with reference to any such condition.

(3) (a) A person who fails to comply with a warning under subsection (2) shall be guilty of an offence and liable to the punishment contemplated in paragraph (b) of this subsection.

(b) The provisions of section 170(2) shall *mutatis mutandis* apply with reference to any person who is guilty of an offence under paragraph (a) of this subsection.

(4) Whenever any person is likely to give material evidence in criminal proceedings, any magistrate, regional magistrate or judge of the court before which the relevant proceedings are pending may, upon information in writing and on oath that such person is evading service of the relevant subpoena, issue a warrant for his arrest, whereupon the provisions of subsections (2) and (3) shall *mutatis mutandis* apply with reference to such person.

Protection of witness

185.

[Section 185 is amended by Act 79 of 1978, substituted by Act 13 of 2010 and deleted by Act 11 of 2017, which contains the following transitional provision:

"(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."**]**

Court may subpoena witness

186. The court may at any stage of criminal proceedings subpoena or cause to be subpoenaed any person as a witness at such proceedings, and the court shall so subpoena a witness or so cause a witness to be subpoenaed if the evidence of such witness appears to the court essential to the just decision of the case.

Witness to attend proceedings and to remain in attendance

187. A witness who is subpoenaed to attend criminal proceedings, shall attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at criminal proceedings, though not subpoenaed as a witness, and who is warned by the court to remain in attendance at the proceedings, shall remain in attendance at the proceedings, unless such witness or such person is excused by the court: Provided that the court may, at any time during the proceedings in question, order that any person, other than the accused, who is to be called as a witness, shall leave the court and remain absent from the proceedings until he is called, and that he shall remain in court after he has given evidence.

Failure by witness to attend or to remain in attendance

188. (1) Any person who is subpoenaed to attend criminal proceedings and who fails to attend or to remain in attendance at such proceedings, and any person who is warned by the court to remain in attendance at criminal proceedings and who fails to remain in attendance at such proceedings, and any person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at such proceedings as so adjourned, shall be guilty of an offence and liable to the punishment contemplated in subsection (2).

[subsection (1) amended by Act 31 of 1985]

(2) The provisions of section 170(2) shall *mutatis mutandis* apply with reference to any person referred to in subsection (1).

Powers of court with regard to recalcitrant witness

189. (1) If any person present at criminal proceedings is required to give evidence at such proceedings and refuses to be sworn or to make an affirmation as a witness, or, having been sworn or having made an affirmation as a witness, refuses to answer any question put to him or refuses or fails to produce any book, paper or document required to be produced by him, the court may in a summary manner enquire into such refusal or failure and, unless the person so refusing or failing has a just excuse for his refusal or failure, sentence him to imprisonment for a period not exceeding two years or, where the criminal proceedings in question relate to an offence referred to in Part III of Schedule 2 or in the Schedule to the Internal Security Act, 1950 (Act 44 of 1950), to imprisonment for a period not exceeding five years.

[The Internal Security Act 44 of 1950 was applicable to South West Africa. The administration of this Act (with the exception of section 8) was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. After the date of transfer, all of Act 44 of 1950 (except for section 17*bis*, which provided civil and criminal immunity for describing certain persons as communists) was repealed in South Africa by the *Internal Security Act 74 of 1982* (RSA GG 8232) – which did not apply to South West Africa because it was not made expressly so applicable. Act 44 of 1950 was repealed in South West Africa in its entirety by the First Law Amendment (Abortion of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 14 of 1989 (OG 5726).]

(2) After the expiration of any sentence imposed under subsection (1), the person concerned may from time to time again be dealt with under that subsection with regard to any further refusal or failure.

(3) A court may at any time on good cause shown remit any punishment or part thereof imposed by it under subsection (1).

(4) Any sentence imposed by any court under subsection (1) shall be executed and be subject to appeal in the same manner as a sentence imposed in any criminal case by such court, and shall be served before any other sentence of imprisonment imposed on the person concerned.

(5) The court may, notwithstanding any action taken under this section, at any time conclude the criminal proceedings referred to in subsection (1).

(6) No person shall be bound to produce any book, paper or document not specified in any subpoena served upon him, unless he has such book, paper or document in court.

(7) Any lower court shall have jurisdiction to sentence any person to the maximum period of imprisonment prescribed by this section.

Impeachment or support of credibility of witness

190. (1) Any party may in criminal proceedings, impeach or support the credibility of any witness called against or on behalf of such party in any manner in which and by any evidence by which the credibility of such witness might on the thirtieth day of May, 1961, have been impeached or supported by such party.

(2) Any such party who has called a witness who has given evidence in any such proceedings (whether that witness is or is not, in the opinion of the court, adverse to the party calling him), may, after such party or the court has asked the witness whether he did or did not previously make a statement with which his evidence in the said proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made have been given to the witness, prove that he previously made a statement with which such evidence is inconsistent.

Payment of expenses of witness

191. (1) Any person who attends criminal proceedings as a witness for the State shall be entitled to such allowance as may be prescribed under subsection (3): Provided that the judicial officer or the judge presiding at such proceedings may, if he thinks fit, direct that no such allowance or that only a part of such allowance shall be paid to any such witness.

(2) Subject to any regulation made under subsection (3), the judicial officer or the judge presiding at criminal proceedings may, if he thinks fit, direct that any person who has attended such proceedings as a witness for the accused, shall be paid such allowance as may be prescribed by such regulation, or such lesser allowance as such judicial officer or such judge may determine.

(3) The Minister may, in consultation with the Minister of Finance, by regulation prescribe a tariff of allowances which may be paid out of public moneys to witnesses in criminal proceedings, and may by regulation prescribe different tariffs for witnesses according to their several callings, occupations or stations in life, and according also to the distances to be travelled by such witnesses to reach the place where the proceedings in question are to take place, and may by regulation further prescribe the circumstances in which such allowances may be paid to any witness for an accused.

(4) The Minister may under subsection (3) empower any officer in the service of the State to authorize, in any case in which the payment of an allowance in accordance with the tariff prescribed may cause undue hardship or in the case of any person resident outside the Republic, the payment of an allowance in accordance with a higher tariff than the tariff prescribed.

(5) For the purposes of this section "witness" shall include any person necessarily required to accompany any witness on account of his youth, old age or infirmity.

Every witness competent and compellable unless expressly excluded

192. Every person not expressly excluded by this Act from giving evidence shall, subject to the provisions of section 206, be competent and compellable to give evidence in criminal proceedings.

Court to decide upon competency of witness

193. The court in which criminal proceedings are conducted shall decide any question concerning the competency or compellability of any witness to give evidence.

Incompetency due to state of mind

194. No person appearing or proved to be afflicted with mental illness or to be labouring under any imbecility of mind due to intoxication or drugs or the like, and who is thereby deprived of the proper use of his reason, shall be competent to give evidence while so afflicted or disabled.

Evidence for prosecution by husband or wife of accused

195. (1) The wife or husband of an accused shall not be competent to give evidence for the prosecution in criminal proceedings, but shall be competent and compellable to give evidence for the prosecution at such proceedings where the accused is charged with -

(a) any offence committed against the person of either of them or of a child of either of them;

(b) any offence under Chapter III of the Children's Act, 1960 (Act 33 of 1960), committed in respect of any child of either of them;

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

(c) any contravention of any provision of Part VIII of the Maintenance Act, 2003, or of such provision as applied by any other law;

[Paragraph (c) is amended by Act 9 of 2003. The Maintenance Act referred to is Act 9 of 2003.]

(d) bigamy;

(e) incest;

(f) abduction;

(g) any contravention of any provision of section 2, 8, 9, 10, 11, 12, 12A, 13, 17 or 20 of the Immorality Act, 1957 (Act 23 of 1957), or, in the case of the territory, of any provision of section 3 or 4 of the Girls' and Mentally Defective Women's Protection Proclamation, 1921 (Proclamation 28 of 1921), or of section 3 of the Immorality Proclamation, 1934 (Proclamation 19 of 1934);

[The Immorality Act 23 of 1957 was not applicable to South West Africa. The Girls' and Mentally Defective Women's Protection Proclamation 28 of 1921 was repealed by the Combating of Immoral Practices Act 21 of 1980. The Immorality Proclamation 19 of 1934 was repealed by the Repeal of Certain Laws Proclamation, AG 4 of 1977 (OG 3656).]

(h) perjury committed in connection with or for the purpose of any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other, or in connection with or for the purpose of criminal proceedings in respect of any offence included in this subsection;

(i) the statutory offence of making a false statement in any affidavit or any affirmed, solemn or attested declaration if it is made in connection with or for the purpose of any such proceedings as are mentioned in paragraph (h),

and shall be competent but not compellable to give evidence for the prosecution in criminal proceedings where the accused is charged with any offence against the separate property of the wife or of the husband of the accused or with any offence under section 16 of the said Immorality Act, 1957, or, in the case of the territory, section 1 or 2 of the said Immorality Proclamation, 1934.

[The Immorality Proclamation 19 of 1934 was repealed by the Repeal of Certain Laws Proclamation, AG 4 of 1977 (OG 3656).]

(2) Anything to the contrary in this Act or any other law notwithstanding, any person married in accordance with Black law or custom shall, notwithstanding the registration or other recognition under any law of such a union as a valid and binding marriage, for the purposes of the law of evidence in criminal proceedings, be deemed to be an unmarried person.

[subsection (2) amended by AG 3 of 1979]

Evidence of accused and husband or wife on behalf of accused

196. (1) An accused and the wife or husband of an accused shall be a competent witness for the defence at every stage of criminal proceedings, whether or not the accused is charged jointly with any other person: Provided that -

(a) an accused shall not be called as a witness except upon his own application;

(b) the wife or husband of an accused shall not be called as a witness for the defence except upon the application of the accused.

(2) The evidence which an accused may, upon his own application, give in his own defence at joint criminal proceedings, shall not be inadmissible against a co-accused at such proceedings by reason only that such accused is for any reason not a competent witness for the prosecution against such co-accused.

(3) An accused may not make an unsworn statement at his trial in lieu of evidence but shall, if he wishes to give evidence, do so on oath or, as the case may be, by affirmation.

Privileges of accused when giving evidence

197. An accused who gives evidence at criminal proceedings shall not be asked or required to answer any question tending to show that he has committed or has been convicted of or has been charged with any offence other than the offence with which he is charged, or that he is of bad character, unless -

(a) he or his legal representative asks any question of any witness with a view to establishing his own good character or he himself gives evidence of his own good character, or the nature or conduct of the defence is such as to involve imputation of the character of the complainant or any other witness for the prosecution;

(b) he gives evidence against any other person charged with the same offence or an offence in respect of the same facts;

(c) the proceedings against him are such as are described in section 240 or 241 and the notice under those sections has been given to him; or

(d) the proof that he has committed or has been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is charged.

Privilege arising out of marital state

198. (1) A husband shall not at criminal proceedings be compelled to disclose any communication which his wife made to him during the marriage, and a wife shall not at criminal proceedings be compelled to disclose any communication which her husband made to her during the marriage.

(2) A person whose marriage has been dissolved or annulled by a competent court, shall not at criminal proceedings be compelled to give evidence as to any fact, matter or thing which occurred during the subsistence of the marriage or putative marriage, and as to which such person could not have been compelled to give evidence if the marriage was subsisting.

No witness compelled to answer question which the witness's husband or wife may decline

199. No person shall at criminal proceedings be compelled to answer any question or to give any evidence, if the question or evidence is such that under the circumstances the husband or wife of such person, if under examination as a witness, may lawfully refuse and cannot be compelled to answer or to give it.

Witness not excused from answer establishing civil liability on his part

200. A witness in criminal proceedings may not refuse to answer any question relevant to the issue by reason only that the answer establishes or may establish a civil liability on his part.

Privilege of legal practitioner

201. No legal practitioner qualified to practise in any court, whether within the Republic or elsewhere, shall be competent, without the consent of the person concerned, to give evidence at criminal proceedings against any person by whom he is professionally employed or consulted as to any fact, matter or thing with regard to which such practitioner would not on the thirtieth day of May, 1961, by reason of such employment or consultation, have been competent to give evidence without such consent: Provided that such legal practitioner shall be competent and compellable to give evidence as to any fact, matter or thing which relates to or is connected with the commission of any offence with which the person by whom such legal practitioner is professionally employed or consulted, is charged, if such fact, matter or thing came to the knowledge of such legal practitioner before he was professionally employed or consulted with reference to the defence of the person concerned.

Privilege from disclosure on ground of public policy or public interest

202. Except as is in this Act provided and subject to the provisions of any other law, no witness in criminal proceedings shall be compellable or permitted to give evidence as to any fact, matter or thing or as to any communication made to or by such witness, if such witness would on the thirtieth day of May, 1961, not have been compellable or permitted to give evidence with regard to such fact, matter or thing or communication by reason that it should not, on the grounds of public policy or from regard to public interest, be disclosed, and that it is privileged from disclosure: Provided that any person may in criminal proceedings adduce evidence of any communication alleging the commission of an offence, if the making of that communication *prima facie* constitutes an offence, and the judge or judicial officer presiding at such proceedings may determine whether the making of such communication *prima facie* does or does not constitute an offence, and such determination shall, for the purpose of such proceedings, be final.

Witness excused from answering incriminating question

203. No witness in criminal proceedings shall, except as provided by this Act or any other law, be compelled to answer any question which he would not on the thirtieth day of May, 1961, have been compelled to answer by reason that the answer may expose him to a criminal charge.

Incriminating evidence by witness for prosecution

204. (1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor -

(a) the court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness -

(i) that he is obliged to give evidence at the proceedings in question;

(ii) that questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor;

(iii) that he will be obliged to answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the answer may incriminate him with regard to the offence so specified or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified;

(iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from prosecution with regard to the offence so specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him with regard to the offence so specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified.

(2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him -

(a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) the court shall cause such discharge to be entered on the record of the proceedings in question.

(3) The discharge referred to in subsection (2) shall be of no legal force or effect if it is given at preparatory examination proceedings and the witness concerned does not at any trial arising out of such preparatory examination, answer, in the opinion of the court, frankly and honestly all questions put to him at such trial, whether by the prosecution, the accused or the court.

(4) (a) Where a witness gives evidence under this section and is not discharged from prosecution in respect of the offence in question, such evidence shall not be admissible in evidence against him at any trial in respect of such offence or any offence in respect of which a verdict of guilty is competent upon a charge relating to such offence.

(b) The provisions of this subsection shall not apply with reference to a witness who is prosecuted for perjury arising from the giving of the evidence in question, or for a contravention of section 319(3) of the Criminal Procedure Act, 1955 (Act 56 of 1955), or, in the case of the territory, for a contravention of section 300(3) of the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963), arising likewise.

[Section 300(3) of the Criminal Procedure Ordinance 34 of 1963 remains in force in Namibia; it is the counterpart of section 319(3) of the Criminal Procedure Act 56 of 1955 in South Africa.]

Magistrate may take evidence as to alleged offence

205. (1) A magistrate may, upon the request of a public prosecutor, require the attendance before him or any other magistrate, for examination by the public prosecutor, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed, except that if such person furnishes that information to the satisfaction of the public prosecutor concerned prior to the date on which he or she is required to appear before a magistrate, he or she shall be under no further obligation to physically appear before such magistrate.

[subsection (1) substituted by Act 7 of 2023 to add the proviso]

(2) The provisions of sections 162 to 165 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall *mutatis mutandis* apply with reference to the proceedings under subsection (1).

(3) The examination of any person under subsection (1) may be conducted in private at any place designated by the magistrate.

The law in cases not provided for

206. The law as to the competency, compellability or privilege of witnesses which was in force in respect of criminal proceedings on the thirtieth day of May, 1961, shall apply in any case not expressly provided for by this Act or any other law.

Saving of special provisions in other laws

207. No provision of this Chapter shall be construed as modifying any provision of any other law whereby in any criminal proceedings referred to in such law a person is deemed a competent witness.

CHAPTER 24

EVIDENCE

Conviction may follow on evidence of single witness

208. An accused may be convicted of any offence on the single evidence of any competent witness.

Conviction may follow on confession by accused

209. An accused may be convicted of any offence on the single evidence of a confession by such accused that he committed the offence in question, if such confession is confirmed in a material respect or, where the confession is not so confirmed, if the offence is proved by evidence, other than such confession, to have been actually committed.

Irrelevant evidence inadmissible

210. No evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and which cannot conduce to prove or disprove any point or fact at issue in criminal proceedings.

Evidence during criminal proceedings of previous convictions

211. Except where otherwise expressly provided by this Act or except where the fact of a previous conviction is an element of any offence with which an accused is charged, evidence shall not be admissible at criminal proceedings in respect of any offence to prove that an accused at such proceedings had previously been convicted of any offence, whether in the Republic or elsewhere, and no accused, if called as a witness, shall be asked whether he has been so convicted.

Evidence during criminal proceedings of similar offences by accused

211A. (1) Subject to the provisions of subsection (2), in criminal proceedings at which an accused is charged with rape or an offence of an indecent nature, evidence of the commission of other similar offences by the accused shall, on application made to it, be admitted by the court at such proceedings and may be considered on any matter to which it is relevant: Provided that such evidence shall only be so admitted if it has significant probative value that is not substantially outweighed by its potential for unfair prejudice to the accused.

(2) Evidence of previous similar offences by an accused shall not be admissible solely to prove the character of the accused.

(3) The court's reasons for its decision to admit or refuse to admit evidence of previous similar offences shall be recorded, and shall form part of the record of the proceedings.

[section 211A inserted by Act 8 of 2000]

Proof of certain facts by affidavit or certificate

212. (1) Whenever in criminal proceedings the question arises whether any particular act, transaction or occurrence did or did not take place in any particular department or sub-department of the State or of a provincial administration or in any branch or office of such department or sub-department or in any particular court of law or in any particular bank, or the question arises in such proceedings whether any particular functionary in any such department, sub-department, branch or office did or did not perform any particular act or did or did not take part in any particular transaction, a document purporting to be an affidavit made by a person who in that affidavit alleges -

(a) that he is in the service of the State or a provincial administration or of the bank in question, and that he is employed in the particular department or sub-department or the particular branch or office thereof or in the particular court or bank;

(b) that -

(i) if the act, transaction or occurrence in question had taken place in such department, sub-department, branch or office or in such court or bank; or

(ii) if such functionary had performed such particular act or had taken part in such particular transaction,

it would in the ordinary course of events have come to his, the deponent's, knowledge and a record thereof, available to him, would have been kept; and

(c) that it has not come to his knowledge -

(i) that such act, transaction or occurrence took place; or

(ii) that such functionary performed such act or took part in such transaction,

and that there is no record thereof,

shall, upon its mere production at such proceedings, be *prima facie* proof that the act, transaction or occurrence in question did not take place or, as the case may be, that the functionary concerned did not perform the act in question or did not take part in the transaction in question.

(2) Whenever in criminal proceedings the question arises whether any person bearing a particular name did or did not furnish any particular officer in the service of the State or of a provincial administration with any particular information or document, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is the said officer and that no person bearing the said name furnished him with such information or document, shall, upon its mere production at such proceedings, be *prima facie* proof that the said person did not furnish the said officer with any such information or document.

(3) Whenever in criminal proceedings the question arises whether any matter has been registered under any law or whether any fact or transaction has been recorded thereunder or whether anything connected therewith has been done thereunder, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is the person upon whom the law in question confers the power or imposes the duty to register such matter or to record such fact or transaction or to do such thing connected therewith and that he has registered the matter in question or that he has recorded the fact or transaction in question or that he has done the thing connected therewith or that he has satisfied himself that the matter in question was registered or that the fact or transaction in question was recorded or that the thing connected therewith was done, shall, upon its mere production at such proceedings, be *prima facie* proof that such matter was registered or, as the case may be, that such fact or transaction was recorded or that the thing connected therewith was done.

[subsection (3) amended by Act 56 of 1979]

(4) (a) Whenever any fact established by any examination or process requiring any skill in biology, chemistry, physics, astronomy, geography, anatomy, any branch of pathology or in toxicology or in the identification of finger-prints or palm-prints, is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the State or of a provincial administration or is in the service of or is attached to the South African Institute for Medical Research or any university in the Republic or any other body designated by the State President for the purposes of this subsection by proclamation in the *Gazette,* and that he has established such fact by means of such an examination or process, shall, upon its mere production at such proceedings be *prima facie* proof of such fact: Provided that the person who may make such affidavit may, in any case in which skill is required in chemistry, anatomy or pathology, issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall *mutatis mutandis* apply with reference to such certificate.

[Section 3(1)(t) of the transfer proclamation excluded paragraph (a) from the operation of section 3(1)(c) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which concerned the interpretation of the term "Republic". Therefore, prior to Namibian independence, in this paragraph "Republic" retained the meaning it was given in section 1 of the Act (South Africa and the territory of South West Africa).]

(b) Any person who issues a certificate under paragraph (a) and who in such certificate wilfully states anything which is false, shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(5) Whenever the mass or value of precious metal or any precious stone is or may become relevant to the issue in criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is an appraiser of precious metals or precious stones; that he is in the service of the State and that the mass or value of such precious metal or such precious stone is as specified in that affidavit, shall, upon its mere production at such proceedings, be *prima facie* proof that the mass or value of such precious metal or such precious stone is as so specified.

(6) In criminal proceedings in which the finding of or action taken in connection with any particular finger-print or palm-print is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the State and that he in the performance of his official duties -

(a) found such finger-print or palm-print at or in the place or on or in the article or in the position or circumstances stated in the affidavit; or

(b) dealt with such finger-print or palm-print in the manner stated in the affidavit,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof that such finger-print or palm-print was so found or, as the case may be, was so dealt with.

(7) In criminal proceedings in which the physical condition or the identity, in or at any hospital, nursing home, ambulance or mortuary, of any deceased person or of any dead body is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges -

(a) that he is employed at or in connection with the hospital, nursing home, ambulance or mortuary in question; and

(b) that he during the performance of his official duties observed the physical characteristics or condition of the deceased person or of the dead body in question; and

(c) that while the deceased person or the dead body in question was under his care, such deceased person or such dead body had or sustained the injuries or wounds described in the affidavit, or sustained no injuries or wounds; or

(d) that he pointed out or handed over the deceased person or the dead body in question to a specified person or that he left the deceased person or the dead body in question in the care of a specified person or that the deceased person or the dead body in question was pointed out or handed over to him or left in his care by a specified person,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged.

(7A) (a) Any document purporting to be a medical record prepared by a medical practitioner who treated or observed a person who is a victim of an offence with which the accused in criminal proceedings is charged, is admissible at that proceeding and *prima facie* proof that the victim concerned suffered the injuries recorded in that document.

(b) The Minister may in consultation with the Minister responsible for Health, make regulations requiring medical practitioners to record such information as may be prescribed in such regulations, if he or she treats a person that he or she has reason to suspect is the victim of such crimes as may be prescribed in such regulations.

(c) Regulations contemplated in paragraph (b) may prescribe the manner in which medical practitioners shall deal with records produced in pursuance of the duties imposed under paragraph (b) and may also impose duties upon medical practitioners to make such records available when he or she is aware of investigations or criminal proceedings for which those records may be relevant.

[subsection (7A) inserted by Act 24 of 2003]

(8) (a) In criminal proceedings in which the receipt, custody, packing, marking, delivery or despatch of any fingerprint or palm-print, article of clothing, specimen, tissue (as defined in section 1 of the Anatomical Donations and Post-Mortem Examinations Act, 1970 (Act 24 of 1970)), or any object of whatever nature is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges -

[The analogous law to Act 24 of 1970 in Namibia is the Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977, which replaced the Post-Mortem Examination and Removal of Human Tissues Ordinance 21 of 1956.]

(i) that he is in the service of the State or is in the service of or is attached to the South African Institute for Medical Research, any university in the Republic or any body designated by the State President under subsection (4);

(ii) that he in the performance of his official duties -

(aa) received from any person, institute, State department or body specified in the affidavit, a finger-print or palm-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he packed or marked in the manner described in the affidavit;

(bb) delivered or despatched to any person, institute, State department or body specified in the affidavit, a finger-print or palm-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he packed or marked in the manner described in the affidavit;

(cc) during a period specified in the affidavit, had a finger-print or palm-print, article of clothing, specimen, tissue or object described in the affidavit in his custody in the manner described in the affidavit, which was packed or marked in the manner described in the affidavit,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged: Provided that the person who may make such affidavit in any case relating to any article of clothing, specimen or tissue, may issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall *mutatis mutandis* apply with reference to such certificate.

(b) Any person who issues a certificate under paragraph (a) and who in such certificate wilfully states anything which is false, shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(9) In criminal proceedings in which it is relevant to prove -

(a) the details of any consignment of goods delivered to the Railways Administration for conveyance to a specified consignee, a document purporting to be an affidavit made by a person who in that affidavit alleges -

(i) that he consigned the goods set out in the affidavit to a consignee specified in the affidavit;

(ii) that, on a date specified in the affidavit, he delivered such goods or caused such goods to be delivered to the Railways Administration for conveyance to such consignee, and that the consignment note referred to in such affidavit relates to such goods,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged; or

(b) that the goods referred to in paragraph (a) were received by the Railways Administration for conveyance to a specified consignee or that such goods were handled or transhipped en route by the Railways Administration, a document purporting to be an affidavit made by a person who in that affidavit alleges -

(i) that he at all relevant times was in the service of the Railways Administration in a stated capacity;

(ii) that he in the performance of his official duties received or, as the case may be, handled or transhipped the goods referred to in the consignment note referred to in paragraph (a),

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged.

(10) (a) The Minister may in respect of any measuring instrument as defined in section 1 of the Trade Metrology Act, 1973 (Act 77 of 1973), by notice in the *Gazette* prescribe the conditions and requirements which shall be complied with before any reading by such measuring instrument may be accepted in criminal proceedings as proof of the fact which it purports to prove, and if the Minister has so prescribed such conditions and requirements and upon proof that such conditions and requirements have been complied with in respect of any particular measuring instrument, the measuring instrument in question shall, for the purposes of proving the fact which it purports to prove, be accepted at criminal proceedings as proving the fact recorded by it, unless the contrary is proved.

[The Trade Metrology Act 77 of 1973 has been re-named the Metrology Act 77 of 1973.]

(b) An affidavit in which the deponent declares that the conditions and requirements referred to in paragraph (a) have been complied with in respect of the measuring instrument in question shall, upon the mere production thereof at the criminal proceedings in question, be *prima facie* proof that such conditions and requirements have been complied with.

(11) (a) The Minister may with reference to any syringe intended for the drawing of blood or any receptacle intended for the storing of blood, by notice in the *Gazette* prescribe the conditions and requirements relating to the cleanliness and sealing or manner of sealing thereof which shall be complied with before any such syringe or receptacle may be used in connection with the analysing of the blood of any person for the purposes of criminal proceedings, and if -

(i) any such syringe or receptacle is immediately before being used for the said purpose, in a sealed condition, or contained in a holder which is sealed with a seal or in a manner prescribed by the Minister; and

(ii) any such syringe, receptacle or holder bears an endorsement that the conditions and requirements prescribed by the Minister have been complied with in respect of such syringe or receptacle,

proof at criminal proceedings that the seal, as thus prescribed, of such syringe or receptacle was immediately before the use of such syringe or receptacle for the said purpose intact, shall be deemed to constitute *prima facie* proof that the syringe or the receptacle in question was then free from any substance or contamination which could materially affect the result of the analysis in question.

(b) An affidavit in which the deponent declares that he had satisfied himself before using the syringe or receptacle in question -

(i) that the syringe or receptacle was sealed as provided in paragraph (a)(i) and that the seal was intact immediately before the syringe or receptacle was used for the said purpose; and

(ii) that the syringe, receptacle or, as the case may be, the holder contained the endorsement referred to in paragraph (a)(ii),

shall, upon the mere production thereof at the proceedings in question, be *prima facie* proof that the syringe or receptacle was so sealed, that the seal was so intact and that the syringe, receptacle or holder, as the case may be, was so endorsed.

(c) Any person who for the purposes of this subsection makes or causes to be made a false endorsement on any syringe, receptacle or holder, knowing it to be false, shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(12) The court before which an affidavit or certificate is under any of the preceding provisions of this section produced as *prima facie* proof of the relevant contents thereof, may in its discretion cause the person who made the affidavit or issued the certificate to be subpoenaed to give oral evidence in the proceedings in question, or may cause written interrogatories to be submitted to such person for reply, and such interrogatories and any reply thereto purporting to be a reply from such person, shall likewise be admissible in evidence at such proceedings.

(13) No provision of this section shall affect any other law under which any certificate or other document is admissible in evidence, and the provisions of this section shall be deemed to be additional to and not in substitution of any such law.

Proof of written statement by consent

213. (1) In criminal proceedings a written statement by any person, other than an accused at such proceeding, shall, subject to the provisions of subsection (2), be admissible as evidence to the same extent as oral evidence to the same effect by such person.

(2) (a) The statement shall purport to be signed by the person who made it, and shall contain a declaration by such person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or which he did not believe to be true.

(b) If the person who makes the statement cannot read it, it shall be read to him before he signs it, and an endorsement shall be made thereon by the person who so read the statement to the effect that it was so read.

(c) A copy of the statement, together with a copy of any document referred to in the statement as an exhibit, or with such information as may be necessary in order to enable the party on whom it is served to inspect such document or a copy thereof, shall, before the date on which the document is to be tendered in evidence, be served on each of the other parties to the proceedings, and any such party may, at least two days before the commencement of the proceedings, object to the statement being tendered in evidence under this section.

(d) If a party objects under paragraph (c) that the statement in question be tendered in evidence, the statement shall not, but subject to the provisions of paragraph (e), be admissible as evidence under this section.

(e) If a party does not object under paragraph (c) or if the parties agree before or during the proceedings in question that the statement may be so tendered, the statement may, upon the mere production thereof at such proceedings, be admitted as evidence in the proceedings.

(f) When the documents referred to in paragraph (c) are served on an accused, the documents shall be accompanied by a written notification in which the accused is informed that the statement in question will be tendered in evidence at his trial in lieu of the State calling as a witness the person who made the statement but that such statement shall not without the consent of the accused be so tendered in evidence if he notifies the prosecutor concerned, at least two days before the commencement of the proceedings, that he objects to the statement so being tendered in evidence.

(3) The parties to criminal proceedings may, before or during such proceedings, agree that any written statement referred to in subsections (2)(a) and (b) which has not been served in terms of subsection (2)(c) be tendered in evidence at such proceedings, whereupon such statement may, upon the mere production thereof at such proceedings, be admitted as evidence in the proceedings.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence under this section -

(a) a party by whom or on whose behalf a copy of the statement was served, may call such person to give oral evidence;

(b) the court may, of its own motion, and shall, upon the application of any party to the proceedings in question, cause such person to be subpoenaed to give oral evidence

before the court or the court may, where the person concerned is resident outside the Republic, issue a commission in respect of such person in terms of section 171.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section, shall be treated as if it had been produced as an exhibit and identified in court by the person who made the statement

(6) Any person who makes a statement which is admitted as evidence under this section and who in such statement wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury, shall be deemed to have committed the offence of perjury and shall, upon conviction, be liable to the punishment prescribed for the offence of perjury.

Evidence recorded at preparatory examination admissible at trial in certain circumstances

214. The evidence of any witness recorded at a preparatory examination -

(a) shall be admissible in evidence on the trial of the accused following upon such preparatory examination, if it is proved to the satisfaction of the court -

(i) that the witness is dead;

(ii) that the witness is incapable of giving evidence;

(iii) that the witness is too ill to attend the trial; or

(iv) that the witness is being kept away from the trial by the means and contrivance of the accused; and

(v) that the evidence tendered is the evidence recorded before the magistrate or, as the case may be, the regional magistrate,

and if it appears from the preparatory examination record or it is proved to the satisfaction of the court that the accused or, as the case may be, the State had a full opportunity of cross-examining such witness;

(b) may, if such witness cannot, after a diligent search, be found for purposes of the trial of the accused following upon such preparatory examination, or cannot be compelled to attend such trial, in the discretion of the court, but subject to the provisions of subparagraph (v) of paragraph (a), be read as evidence at such trial, if it appears from the preparatory examination record or it is proved to the satisfaction of the court that the accused or, as the case may be, the State had a full opportunity of cross-examining such witness.

Evidence recorded at former trial admissible at later trial in certain circumstances

215. The evidence of a witness given at a former trial may, in the circumstances referred to in section 214, *mutatis mutandis* be admitted in evidence at any later trial of the same person upon the same charge.

Hearsay evidence

216. Except where this Act provides otherwise, no evidence which is of the nature of hearsay evidence shall be admissible if such evidence would have been inadmissible on the thirtieth day of May, 1961.

Admissibility of certain statements made by young children

216A. (1) Evidence of any statement made by a child younger than 14 years is admissible in order to prove any fact alleged in that statement if -

(a) the child concerned is unable to give evidence relating to any matter contained in the statement concerned; and

(b) such statement considered in the light of all the surrounding circumstances contains indications of reliability.

(2) If a child younger than 14 years gives evidence in criminal proceedings, evidence of any statement made by that child is admissible in order to prove any fact alleged in that statement if the child concerned gives evidence to the effect that he or she made that statement.

(3) Evidence of a statement contemplated in subsection (1) or (2) may be given in the form of -

(a) the playing in court of a video or audiotape of the making of the statement if the person to whom the statement concerned has been made, gives evidence in such criminal proceedings;

(b) a written record of the making of that statement if the person to whom the statement has been made gives evidence in the proceedings concerned;

(c) oral evidence relating to the making of the statement, if it is not possible to give evidence in the form contemplated in paragraph (a) or (b).

[section 216A inserted by Act 24 of 2003]

Admissibility of confession by accused

217. (1) Evidence of any confession made by any person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence: Provided -

(a) that a confession made to a peace officer, other than a magistrate or justice, or, in the case of a peace officer referred to in section 334, a confession made to such peace officer which relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or justice; and

(b) that where the confession is made to a magistrate and reduced to writing by him, or is confirmed and reduced to writing in the presence of a magistrate, the confession shall, upon the mere production thereof at the proceedings in question -

(i) be admissible in evidence against such person if it appears from the document in which the confession is contained that the confession was made by a person whose name corresponds to that of such person and in the case of a confession made to a magistrate or confirmed in the presence of a magistrate through an interpreter, if a certificate by the interpreter appears on

such document to the effect that he interpreted truly and correctly and to the best of his ability with regard to the contents of the confession and any question put to such person by the magistrate; and

[subparagraph (i) amended by Act 56 of 1979]

~~(ii) be presumed, unless the contrary is proved, to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, if it appears from the document in which the confession is contained that the confession was made freely and voluntarily by such person in his sound and sober senses and without having been unduly influenced thereto.~~

[*S v Shikunga & Another* 1997 NR 156 (SC) held that the presumption in section 217(1)(b)(ii) is unconstitutional; section 217(1)(b)(ii) is therefore invalid.]

(2) The prosecution may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under proviso (b) to subsection (1).

(3) Any confession which is under subsection (1) inadmissible in evidence against the person who made it, shall become admissible against him -

(a) if he adduces in the relevant proceedings any evidence, either directly or in cross-examining any witness, of any oral or written statement made by him either as part of or in connection with such confession; and

(b) if such evidence is, in the opinion of the judge or the judicial officer presiding at such proceedings, favourable to such person.

Admissibility of facts discovered by means of inadmissible confession

218. (1) Evidence may be admitted at criminal proceedings of any fact otherwise admissible in evidence, notwithstanding that the witness who gives evidence of such fact, discovered such fact or obtained knowledge of such fact only in consequence of information given by an accused appearing at such proceedings in any confession or statement which by law is not admissible in evidence against such accused at such proceedings, and notwithstanding that the fact was discovered or came to the knowledge of such witness against the wish or will of such accused.

(2) Evidence may be admitted at criminal proceedings that anything was pointed out by an accused appearing at such proceedings or that any fact or thing was discovered in consequence of information given by such accused, notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible in evidence against such accused at such proceedings.

Confession not admissible against another

219. No confession made by any person shall be admissible as evidence against another person.

Admissibility of admission by accused

219A. (1) Evidence of any admission made extra-judicially by any person in relation to the commission of an offence shall, if such admission does not constitute a confession of that offence and is proved to have been voluntarily made by that person, be admissible in evidence

against him at criminal proceedings relating to that offence: Provided that where the admission is made to a magistrate and reduced to writing by him or is confirmed and reduced to writing in the presence of a magistrate, the admission shall, upon the mere production at the proceedings in question of the document in which the admission is contained -

(a) be admissible in evidence against such person if it appears from such document that the admission was made by a person whose name corresponds to that of such a person and, in the case of an admission made to a magistrate or confirmed in the presence of a magistrate through an interpreter, if a certificate by the interpreter appears on such document to the effect that he interpreted truly and correctly and the best of his ability with regard to the contents of the admission and any question put to such person by the magistrate; and

(b) be presumed, unless the contrary is proved, to have been voluntarily made by such person if it appears from the document in which the admission is contained that the admission was made voluntarily by such person.

[According to *S v Malumo and Others* 2010 (1) NR 35 (HC) at paragraph 19: "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."**]**

(2) The prosecution may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under subsection (1).

[section 219A inserted by Act 56 of 1979]

Admissions

220. An accused or his legal adviser may in criminal proceedings admit any fact placed in issue at such proceedings and any such admission shall be sufficient proof of such fact.

Admissibility of certain trade or business records

221. (1) In criminal proceedings in which direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, upon production of the document, be admissible as evidence of that fact if -

(a) the document is or forms part of a record relating to any trade or business and has been compiled in the course of that trade or business, from information supplied, directly or indirectly, by persons who have or may reasonably be supposed to have personal knowledge of the matters dealt with in the information they supply; and

(b) the person who supplied the information recorded in the statement in question is dead or is outside the Republic or is unfit by reason of his physical or mental condition to attend as a witness or cannot with reasonable diligence be identified or found or cannot reasonably be expected, having regard to the time which has elapsed since he supplied the information as well as all the circumstances, to have any recollection of the matters dealt with in the information he supplied

(2) For the purpose of deciding whether or not a statement is admissible as evidence under this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is

fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner.

(3) In estimating the weight to be attached to a statement admissible as evidence under this section, regard shall be had to all the circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement, did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(4) No provision of this section shall prejudice the admissibility of any evidence which would be admissible apart from the provisions of this section.

(5) In this section -

"business" includes any public transport, public utility or similar undertaking carried on by a local authority, and the activities of the Post Office and the Railways Administration;

"document" includes any device by means of which information is recorded or stored; and

"statement" includes any representation of fact, whether made in words or otherwise.

Application to criminal proceedings of certain provisions of Civil Proceedings Evidence Act, 1965, relating to documentary evidence

222. The provisions of sections 33 to 38 inclusive, of the Civil Proceedings Evidence Act, 1965 (Act *25* of 1965), shall *mutatis mutandis* apply with reference to criminal proceedings.

Application to criminal proceedings of certain provisions of Electronic Transactions Act, 2019, relating to data messages and computer evidence

222A. The provisions of section 1 and sections 25 to 33 inclusive, of the Electronic Transactions Act, 2019 (Act No. 4 of 2019) shall *mutatis mutandis* apply with reference to criminal proceedings.

[section 222A inserted by Act 7 of 2023]

Admissibility of dying declaration

223. The declaration made by any deceased person upon the apprehension of impending death shall be admissible or inadmissible in evidence if such a declaration would have been admissible or inadmissible as evidence on the thirtieth day of May, 1961.

Judicial notice of laws and other published matter

224. Judicial notice shall in criminal proceedings be taken of -

(a) any law or any matter published in a publication which purports to be the *Gazette* or the *Official Gazette* of any province or the territory;

(b) any law which purports to be published under the superintendence or authority of the Government Printer.

Evidence of prints or bodily appearance of accused

225. (1) Whenever it is relevant at criminal proceedings to ascertain whether any finger-print, palm-print or foot-print of an accused at such proceedings corresponds to any other finger-print, palm-print or foot-print, or whether the body of such an accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the finger-prints, palm-prints or foot-prints of the accused or that the body of the accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, including evidence of the result of any blood test of the accused, shall be admissible at such proceedings.

(2) Such evidence shall not be inadmissible by reason only thereof that the finger-print, palm-print or foot-print in question was not taken or that the mark, characteristic, feature, condition or appearance in question was not ascertained in accordance with the provisions of section 37, or that it was taken or ascertained against the wish or the will of the accused concerned.

Evidence of no sexual intercourse between spouses admissible

226. For the purposes of rebutting the presumption that a child to whom a married woman has given birth is the offspring of her husband, such woman or her husband or both of them may in criminal proceedings give evidence that they had no sexual intercourse with one another during the period when the child was conceived.

Evidence of character

227. Evidence as to the character of an accused shall be admissible or inadmissible if such evidence would have been admissible or inadmissible on the thirtieth day of May, 1961.

[section 227 amended by Act 8 of 2000]

Evidence of sexual conduct or experience of complainant of rape or offence of an indecent nature

227A. (1) No evidence as to any previous sexual conduct or experience of a complainant in criminal proceedings at which an accused is charged with rape or an offence of an indecent nature, shall be adduced, and no question regarding such sexual conduct or experience shall be put to the complainant or any other witness in such proceedings, unless the court has, on application made to it, granted leave to adduce such evidence or to put such question, which leave shall only be granted if the court is satisfied that such evidence or questioning -

(a) tends to rebut evidence that was previously adduced by the prosecution; or

(b) tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or

(c) is so fundamental to the accused's defence that to exclude it would violate the constitutional rights of the accused:

Provided that such evidence or questioning has significant probative value that is not substantially outweighed by its potential prejudice to the complainant's personal dignity and right of privacy.

(2) No evidence as to the sexual reputation of a complainant in criminal proceedings at which an accused is charged with rape or an offence of an indecent nature, shall be admissible in such proceedings.

(3) Before an application for leave contemplated in subsection (1) is heard, the court may direct that the complainant in respect of whom such evidence is to be adduced or to whom any such question is to be put, shall not be present at such application proceedings.

(4) The court's reasons for its decision to grant or refuse leave under subsection (1) to adduce such evidence or to put such question shall be recorded, and shall form part of the record of the proceedings.

[section 227A inserted by Act 8 of 2000]

Evidence of disputed writing

228. Comparison at criminal proceedings of a disputed writing with any writing proved to be genuine, may be made by a witness, and such writings and the evidence of any witness with respect thereto, may be submitted as proof of the genuineness or otherwise of the writing in dispute.

Evidence of times of sunrise and sunset

229. (1) The Minister may from time to time by notice in the *Gazette* approve of tables prepared at any official observatory in the Republic of the times of sunrise and sunset on particular days at particular places in the Republic or any portion thereof, and appearing in any publication specified in the notice, and thereupon such tables shall, until the notice is withdrawn, on the mere production thereof in criminal proceedings be admissible as proof of such times.

(2) Tables in force immediately prior to the commencement of this Act by virtue of the provisions of section 26 of the General Law Amendment Act, 1952 (Act 32 of 1952), shall be deemed to be tables approved under subsection (1) of this section.

[Section 26 of the General Law Amendment Act 32 of 1952, which is repealed by this Act, was not applicable to South West Africa.]

[Section 3(1)(t) of the transfer proclamation excluded the first use of the term "Republic" in section 229 from the operation of section 3(1)(c) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which concerned the interpretation of this term. Therefore, prior to Namibian independence, that use of the term "Republic" retained the meaning it was given in section 1 of the Act (South Africa and the territory of South West Africa).]

Evidence and sufficiency of evidence of appointment to public office

230. Any evidence which, on the thirtieth day of May, 1961 -

(a) would have been admissible as proof of the appointment of any person to any public office or of the authority of any person to act as a public officer, shall be admissible in evidence in criminal proceedings;

(b) would have been deemed sufficient proof of the appointment of any person to any public office or of the authority of any person to act as a public officer, shall in criminal proceedings be deemed to be sufficient proof of such appointment or authority.

Evidence of signature of public officer

231. Any document -

(a) which purports to bear the signature of any person holding a public office; and

(b) which bears a seal or stamp purporting to be a seal or stamp of the department, office or institution to which such person is attached,

shall, upon the mere production thereof at criminal proceedings, be *prima facie* proof that such person signed such document

Article may be proved in evidence by means of photograph thereof

232. (1) Any court may in respect of any article, other than a document, which any party to criminal proceedings may wish to produce to the court as admissible evidence at such proceedings, permit such party to produce as evidence, in lieu of such article, any photograph thereof, notwithstanding that such article is available and can be produced in evidence.

(2) The court may, notwithstanding the admission under subsection (1) of the photograph of any article, on good cause require the production of the article in question.

Proof of public documents

233. (1) Whenever any book or other document is of such a public nature as to be admissible in evidence upon its mere production from proper custody, any copy thereof or extract therefrom shall be admissible in evidence at criminal proceedings if it is proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying therefor, upon payment of an amount in accordance with the tariff of fees prescribed by or under any law or, if no such tariff has been so prescribed, an amount in accordance with such tariff of fees as the Minister, in consultation with the Minister of Finance, may from time to time determine.

Proof of official documents

234. (1) It shall, at criminal proceedings, be sufficient to prove an original official document which is in the custody or under the control of any State official by virtue of his office, if a copy thereof or an extract therefrom, certified as a true copy or extract by the head of the department concerned or by any State official authorized thereto by such head, is produced in evidence at such proceedings.

(2) (a) An original official document referred to in subsection (1), other than the record of judicial proceedings, may be produced at criminal proceedings only upon the order of the attorney-general.

(b) It shall not be necessary for the head of the department concerned to appear in person to produce an original document under paragraph (a), but such document may be produced by any person authorized thereto by such head.

(3) Any official who, under subsection (1), certifies any copy or extract as true knowing that such copy or extract is false, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

Proof of judicial proceedings

235. (1) It shall, at criminal proceedings, be sufficient to prove the original record of judicial proceedings if a copy of such record, certified or purporting to be certified by the registrar or clerk of the court or other officer having the custody of the record of such judicial proceedings or by the deputy of such registrar, clerk or other officer or, in the case where judicial proceedings are taken down in shorthand or by mechanical means, by the person who transcribed such proceedings, as a true copy of such record, is produced in evidence at such criminal proceedings, and such copy shall be *prima facie* proof that any matter purporting to be recorded thereon was correctly recorded.

(2) Any person who, under subsection (1), certifies any copy as true knowing that such copy is false, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

Proof of entries in bankers' books

236. (1) The entries in the account books, including any ledger, day-book or cash-book of any bank shall, upon the mere production at criminal proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges -

(a) that he is in the service of the bank in question;

(b) that such account books are or have been the ordinary books of such bank;

(c) that the said entries have been made in the usual and ordinary course of the business of such bank; and

(d) that such account books are in the custody or under the control of such bank,

be *prima facie* proof at such proceedings of the matters, transactions and accounts recorded in such account books.

(2) Any entry in any account book referred to in subsection (1) may be proved at criminal proceedings upon the mere production at such proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges -

(a) that he is in the service of the bank in question;

(b) that he has examined the entry and the account book in question; and

(c) that a copy of such entry set out in the affidavit or in an annexure thereto is a correct copy of such entry.

(3) Any party at the proceedings in question against whom evidence is adduced in terms of this section or against whom it is intended to adduce evidence in terms of this section, may, upon the order of the court before which the proceedings are pending, inspect the original of the entry in question and any account book in which such entry appears or of which such entry forms part, and such party may make copies of such entry, and the court shall, upon the application of the party concerned, adjourn the proceedings for the purpose of such inspection or the making of such copies.

(4) No bank shall be compelled to produce any account book referred to in subsection (1) at any criminal proceedings, unless the court concerned orders that any such book be produced.

Evidence on charge of bigamy

237. (1) At criminal proceedings at which an accused is charged with bigamy, it shall, as soon as it is proved that a marriage ceremony, other than the ceremony relating to the alleged bigamous marriage, took place within the Republic between the accused and another person, be presumed, unless the contrary is proved, that the marriage was on the date of the solemnization thereof lawful and binding.

(2) At criminal proceedings at which an accused is charged with bigamy, it shall be presumed, unless the contrary is proved, that at the time of the solemnization of the alleged bigamous marriage there subsisted between the accused and another person a lawful and binding marriage -

(a) if there is produced at such proceedings, in any case in which the marriage is alleged to have been solemnized within the Republic, an extract from the marriage register which purports -

(i) to be a duplicate original or a copy of the marriage register relating to such marriage; and

(ii) to be certified as such a duplicate original or such a copy by the person having the custody of such marriage register or by a registrar of marriages;

(b) if there is produced at such proceedings, in any case in which the marriage is alleged to have been solemnized outside the Republic, a document which purports -

(i) to be an extract from a marriage register kept according to law in the country where the marriage is alleged to have been solemnized; and

(ii) to be certified as such an extract by the person having the custody of such register, if the signature of such person on the certificate is authenticated in accordance with any law of the Republic governing the authentication of documents executed outside the Republic.

(3) At criminal proceedings at which an accused is charged with bigamy, evidence -

(a) that shortly before the alleged bigamous marriage the accused had been cohabiting with the person to whom he is alleged to be lawfully married;

(b) that the accused had been treating and recognizing such person as a spouse; and

(c) of the performance of a marriage ceremony between the accused and such person,

shall, as soon as the alleged bigamous marriage, wherever solemnized, has been proved, be *prima facie* proof that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnization of the alleged bigamous marriage.

Evidence of relationship on charge of incest

238. (1) At criminal proceedings at which an accused is charged with incest -

(a) it shall be sufficient to prove that the woman or girl on whom or by whom the offence is alleged to have been committed, is reputed to be the lineal ascendant or descendant or the sister, stepmother or stepdaughter of the other party to the incest;

(b) the accused shall be presumed, unless the contrary is proved, to have had knowledge, at the time of the alleged offence, of the relationship existing between him and the other party to the incest.

(2) Whenever the fact that any lawful and binding marriage was contracted is relevant to the issue at criminal proceedings at which an accused is charged with incest, such fact may be proved *prima facie* in the manner provided in section 237 for the proof of the existence of a lawful and binding marriage of a person charged with bigamy.

Evidence on charge of infanticide or concealment of birth

239. (1) At criminal proceedings at which an accused is charged with the killing of a newly-born child, such child shall be deemed to have been born alive if the child is proved to have breathed, whether or not the child had an independent circulation, and it shall not be necessary to prove that such child was, at the time of its death, entirely separated from the body of its mother.

(2) At criminal proceedings at which an accused is charged with the concealment of the birth of a child, it shall not be necessary to prove whether the child died before or at or after birth.

Evidence on charge of receiving stolen property

240. (1) At criminal proceedings at which an accused is charged with receiving stolen property which he knew to be stolen property, evidence may be given at any stage of the proceedings that the accused was, within the period of twelve months immediately preceding the date on which he first appeared in a magistrate's court in respect of such charge, found in possession of other stolen property: Provided that no such evidence shall be given against the accused unless at least three days' notice in writing has been given to him that it is intended to adduce such evidence against him.

(2) The evidence referred to in subsection (1) may be taken into consideration for the purpose of proving that the accused knew that the property which forms the subject of the charge was stolen property.

(3) Where the accused is proved to have received the property which is the subject of the charge, from a person under the age of eighteen years, he shall be presumed to have known at the time when he received such property that it was stolen property, unless it is proved -

(a) that the accused was at that time under the age of twenty-one years; or

(b) that the accused had good cause, other than the mere statement of the person from whom he received such property, to believe, and that he did believe, that such person had the right to dispose of such property.

Evidence of previous conviction on charge of receiving stolen property

241. If at criminal proceedings at which an accused is charged with receiving stolen property which he knew to be stolen property, it is proved that such property was found in the possession of the accused, evidence may at any stage of the proceedings be given that the accused was, within the five years immediately preceding the date on which he first appeared in

a magistrate's court in respect of such charge, convicted of an offence involving fraud or dishonesty, and such evidence may be taken into consideration for the purpose of proving that the accused knew that the property found in his possession was stolen property: Provided that not less than three days' notice in writing shall be given to the accused that it is intended to adduce evidence of such previous conviction.

Evidence on charge of defamation

242. If at criminal proceedings at which an accused is charged with the unlawful publication of defamatory matter which is contained in a periodical, it is proved that such periodical or the part in which such defamatory matter is contained, was published by the accused, other writings or prints purporting to be other numbers or parts of the same periodical, previously or subsequently published, and containing a printed statement that they were published by or for the accused, shall be admissible in evidence without further proof of their publication.

Evidence of receipt of money or property and general deficiency on charge of theft

243. (1) At criminal proceedings at which an accused is charged with theft -

(a) while employed in any capacity in the service of the State, of money or of property which belonged to the State or which came into the possession of the accused by virtue of his employment;

(b) while a clerk, servant or agent, of money or of property which belonged to his employer or principal or which came into the possession of the accused on account of his employer or principal,

an entry in any book of account kept by the accused or kept under or subject to his charge or supervision, and which purports to be an entry of the receipt of money or of property, shall be proof that such money or such property was received by the accused.

(2) It shall not be necessary at proceedings referred to in subsection (1) to prove the theft by the accused of a specific sum of money or of specific goods, if -

(a) on the examination of the books of account kept or the entries made by the accused or under or subject to his charge or supervision, there is proof of a general deficiency; and

(b) the court is satisfied that the accused stole the money or goods so deficient or any part thereof.

Evidence on charge relating to seals and stamps

244. At criminal proceedings at which an accused is charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the post office in any foreign country, a despatch purporting to be from the officer administering the government of such country and transmitting to the State President any stamp, mark or impression and stating it to be a genuine stamp, mark or impression of a die-plate or other instrument provided or made or used by or under the direction of the proper authority of such country for the purpose of denoting stamp duty or postal charge, shall on its mere production at such proceedings be *prima facie* proof of the facts stated in the despatch.

Evidence on charge of which false representation is element

245. If at criminal proceedings at which an accused is charged with an offence of which a false representation is an element, it is proved that the false representation was made by the accused, he shall be deemed, unless the contrary is proved, to have made such representation knowing it to be false.

[*Attorney-General of Namibia v Minister of Justice & Others* 2013 (3) NR 806 (SC) held at paragraph 75 that the limitations imposed by section 245 "on an accused person's right to a fair trial under art 12 of the Constitution are not constitutionally authorised"**. Section 245 is** "unconstitutional 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"**.]**

Presumption relating to certain documents

246. Any document, including any book, pamphlet, letter, circular letter, list, record, placard or poster, which was at any time on premises occupied by any association of persons, incorporated or unincorporated, or in the possession or under the control of any office-bearer, officer or member of such association, and -

(a) on the face whereof a person of a name corresponding to that of an accused person appears to be a member or an office-bearer of such association, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the accused is a member or an office-bearer of such association, as the case may be;

(b) on the face whereof a person of a name corresponding to that of an accused person who is or was a member of such association, appears to be the author of such document, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the accused is the author thereof;

(c) which on the face thereof appears to be the minutes or a copy of or an extract from the minutes of a meeting of such association or of any committee thereof, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof of the holding of such meeting and of the proceedings thereat;

(d) which on the face thereof discloses any object of such association, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the said object is an object of such association.

Presumptions relating to absence from Republic of certain persons

247. Any document, including any newspaper, periodical, book, pamphlet, letter, circular letter, list, record, placard or poster, on the face whereof it appears that a person of a name corresponding to that of an accused person has at any particular time been outside the Republic or has at any particular time made any statement outside the Republic, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the accused was outside the Republic at such time or, as the case may be, that the accused made such statement outside the Republic at such time, if such document is accompanied by a certificate, purporting to have been signed by the Secretary for Foreign Affairs, to the effect that he is satisfied that such document is of foreign origin.

Presumption that accused possessed particular qualification or acted in particular capacity

248. (1) If an act or an omission constitutes an offence only when committed by a person possessing a particular qualification or quality, or vested with a particular authority or acting in a particular capacity, an accused charged with such an offence upon a charge alleging that he possessed such qualification or quality or was vested with such authority or was acting in such capacity, shall, at criminal proceedings, be deemed to have possessed such qualification or quality or to have been vested with such authority or to have been acting in such capacity at the time of the commission of the offence, unless such allegation is at any time during the criminal proceedings expressly denied by the accused or is disproved.

(2) If such allegation is denied or evidence is led to disprove it after the prosecution has closed its case, the prosecution may adduce any evidence and submit any argument in support of the allegation as if it had not closed its case.

Presumption of failure to pay tax or to furnish information relating to tax

249. When an accused is at criminal proceedings charged with any offence of which the failure to pay any tax or impost to the State, or of which the failure to furnish to any officer of the State any information relating to any tax or impost which is or may be due to the State is an element, the accused shall be deemed to have failed to pay such tax or impost or to furnish such information, unless the contrary is proved.

Presumption of lack of authority

250. (1) If a person would commit an offence if he -

(a) carried on any occupation or business;

(b) performed any act;

(c) owned or had in his possession or custody or used any article; or

(d) was present at or entered any place,

without being the holder of a licence, permit, permission or other authority or qualification (in this section referred to as the "necessary authority"), an accused shall, at criminal proceedings upon a charge that he committed such an offence, be deemed not to have been the holder of the necessary authority, unless the contrary is proved.

(2) (a) Any peace officer and, where any fee payable for the necessary authority would accrue to the State Revenue Fund or the Railway and Harbour Fund or a provincial revenue fund or the Revenue Fund of the territory, any person authorized thereto in writing by the head of the relevant department or sub-department or by the officer in charge of the relevant office, may demand the production from a person referred to in subsection (1) of the necessary authority which is appropriate.

(b) Any peace officer, other than a police official in uniform, and any person authorized under paragraph (a) shall, when demanding the necessary authority from any person, produce at the request of that person, his authority to make the demand.

(3) Any person who is the holder of the necessary authority and who fails without reasonable cause to produce forthwith such authority to the person making the demand under subsection (2) for the production thereof, or who fails without reasonable cause to submit such authority to a person and at a place and within such reasonable time as the person making the

demand may specify, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months.

Use of traps or undercover operations and admissibility of evidence obtained from such traps or undercover operations

250A. (1) A police official may -

(a) make use of a trap or engage in an undercover operation to detect, investigate or uncover the commission of an offence or to prevent the commission of an offence; and

(b) use agents, prescribed in the rules referred to under subsection (7)(a), to participate or assist in a trap or engage in an undercover operation.

(2) The evidence obtained by a police official through the use of a trap or an undercover operation is admissible if the conduct of the police official during the trap or undercover operation does not go beyond providing an opportunity, as referred to in subsection (4), to an accused person to commit an offence.

(3) Where the conduct of the police official during the trap or undercover operation goes beyond providing an opportunity to commit an offence a court may, subject to subsection (5), admit the evidence obtained through such trap or undercover operation.

(4) The court shall, in considering whether certain conduct of a police official goes beyond providing an opportunity to commit an offence, have regard to the following factors -

(a) whether the required approval referred to in subsection (7)(b) was obtained prior to the setting of a trap or the use of an undercover operation, and whether any rules referred to in subsection (7)(a), if applicable, were adhered to or to what extent the rules were adhered to;

(b) the nature of the offence under investigation, including -

(i) whether the security of the State, the safety of the public, the maintenance of public order or the national economy is seriously threatened by the offence;

(ii) the prevalence of the offence in the area in question; and

(iii) the seriousness of the offence;

(c) the availability of other techniques for the detection, investigation, uncovering or prevention of the commission of the offence in the particular circumstances of the case and in the area in question;

(d) whether a reasonable person who was in the position of the accused would have been induced into commiting an offence by the kind of conduct used by the police official;

(e) the degree of persistence and number of attempts made by the police official before the accused succumbed and committed the offence;

(f) the type of inducement used, including the degree of deceit, trickery, misrepresentation or reward;

(g) the timing of the conduct, in particular whether the police official instigated the commission of the offence or whether the police official became involved in an existing unlawful activity;

(h) whether the conduct involved an exploitation of human characteristics such as emotions, sympathy or friendship or an exploitation of the personal, professional or economic circumstances of the accused person to increase the probability of the commission of the offence;

(i) whether the police official has exploited a particular vulnerability of the accused person such as a mental handicap or a substance addiction;

(j) the proportionality between the involvement of the police official as compared to that of the accused, including an assessment of the extent of the harm caused or risked by such police official as compared to that of the accused, and the commission of any illegal acts by such police official;

(k) any threats, implied or expressed, by the police official against the accused;

(l) whether, before the trap was set or the undercover operation was used, there existed any suspicion, on reasonable grounds, that the accused had committed an offence similar to which the charge relates;

[Some additional words need to be inserted into the closing phrase to make paragraph (l) grammatically correct; for instance, it may have been intended to read "… that the accused had committed an offence similar to **the one** to which the charge relates**" or** "… that the accused had committed an offence similar to **that** to which the charge relates**".]**

(m) whether the police official acted in good or bad faith; or

(n) any other factor that the court may consider as having a bearing on the matter.

(5) If a court in criminal proceedings finds that in the setting of, or during, a trap or an undercover operation the conduct of the police official went beyond providing an opportunity to commit an offence the court may -

(a) refuse to allow such evidence to be tendered; or

(b) refuse to allow such evidence already tendered to stand,

if the evidence was obtained in an improper or unfair manner and the admission of such evidence would render the trial unfair or would otherwise be detrimental to the administration of justice.

(6) When considering the admissibility of the evidence referred to in subsection (5), the court shall weigh up the public interest against the personal interest of the accused, having regard to the following factors -

(a) the nature and seriousness of the offence, including -

(i) whether the security of the State, the safety of the public, the maintenance of public order or the national economy is seriously threatened by the offence;

(ii) whether, in the absence of the use of a trap or an undercover operation, it would be difficult to detect, investigate, uncover or prevent the commission of the offence;

(iii) whether the offence is frequently committed that special measures are required to detect, investigate or uncover or prevent the commission the offence; and

[The word "so" should be inserted before the phrase "frequently committed" to make subparagraph (iii) grammatically correct. Also, the word "of" appears to have been omitted between "commission" and "the offence".]

(iv) whether the decency or seriousness of the setting of a trap or undercover operation was justified;

(b) the extent of the effect of the trap or undercover operation on the interests of the accused person in reference to -

(i) the ease with which the interests of the accused person may have been disregarded, having regard to the circumstances under which the offence was committed; and

(ii) the prejudice to the accused person resulting from any improper or unfair conduct;

(c) the nature and seriousness of any infringement of any fundamental right contained in the Namibian Constitution;

(d) whether in the setting of, or during, the trap or the undercover operation the means used were proportional to the seriousness of the offence; and

(e) any other factor that in the court considers as having a bearing on the matter.

[The word "in" before the phrase "the court considers" is superfluous.]

(7) The Inspector-General in accordance with section 3(2)(k) of the Police Act, 1990 (Act No. 19 of 1990) -

(a) with the concurrence of the Attorney-General, shall issue general or specific rules regarding the supervision and control of traps and undercover operations; and

(b) shall require any police official to obtain written approval from a senior police official prescribed in the rules referred to in paragraph (a), which approval may be granted with conditions, whether written or not, in order to set a trap or to engage in an undercover operation.

(8) A police official or the agent referred to in subsection (1)(b), who sets or participates in a trap or an undercover operation to detect, investigate or uncover, or to obtain evidence of, or to prevent the commission of an offence -

(a) is not criminally liable in respect of any act that constitutes an offence and that relates to the trap or undercover operation if the trap or undercover operation was performed in good faith; and

(b) may not be prosecuted without the written consent of the Prosecutor-General.

(9) If at any stage of the proceedings the question arises whether evidence may be excluded under subsection (5), the burden of proof to show on a balance of probabilities that the evidence is admissible lies with the prosecution, however -

(a) the accused may furnish the grounds on which the admissibility of the evidence is challenged; or

(b) if the accused is not represented, the court shall on its own motion raise the question of the admissibility of the evidence.

(10) The issue of whether evidence may be excluded under subsection (5) may, on application by the prosecutor or the accused or by order of the court of its own motion, be adjudicated as a separate issue in dispute.

[Section 250A is inserted by Act 7 of 2023, but it has not yet been brought into force.]

Unstamped instrument admissible in criminal proceedings

251. An instrument liable to stamp duty shall not be held inadmissible at criminal proceedings on the ground only that it is not stamped as required by law.

The law in cases not provided for

252. The law as to the admissibility of evidence which was in force in respect of criminal proceedings on the thirtieth day of May, 1961, shall apply in any case not expressly provided for by this Act or any other law.

Saving of special provisions in other laws

253. No provision of this Chapter shall be construed as modifying any provision of any other law whereby in any criminal proceedings referred to in such law certain specified facts and circumstances are deemed to be evidence or a particular fact or circumstance may be proved in a manner specified therein.

CHAPTER 25

CONVERSION OF TRIAL INTO ENQUIRY

Court may refer juvenile accused to children's court

254. (1) If it appears to the court at the trial upon any charge of any accused under the age of eighteen years that he is a child in need of care as defined in section 1 of the Children's Act, 1960 (Act 33 of 1960), and that it is desirable to deal with him in terms of sections 30 and 31 of that Act, it may stop the trial and order that the accused be brought before a children's court mentioned in section 4 or *5* of that Act and that he be dealt with under the said sections 30 and 31.

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015. A "child in need of care" is equivalent to a "child in need of protective services".]

(2) If the order under subsection (1) is made after conviction, the verdict shall be of no force in relation to the person in respect of whom the order is made and shall be deemed not to have been returned.

Court may order enquiry under Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971)

255. (1) (a) If in any court during the trial of a person who is charged with an offence other than an offence in respect of which the sentence of death may be passed, it appears to the judge or judicial officer presiding at the trial that such person is probably a person as is described in section 29(1) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (in this section referred to as the said Act), the judge or judicial officer may, with the consent of the prosecutor given after consultation with a social welfare officer as defined in section l of the said Act, stop the trial and order that an enquiry be held in terms of section 30 of the said Act in respect of the person concerned by a magistrate as defined in section l of the said Act and indicated in the order.

(b) The prosecutor shall not give his consent in terms of paragraph (a) if the person concerned is a person in respect of whom the imposition of punishment of imprisonment, except the punishment referred to in subparagraph (iii) or (iv) of section 2 of the said Act, would be compulsory if he were convicted at such trial.

(2) (a) If the person concerned is in custody he shall for all purposes be deemed to have been arrested in terms of a warrant issued under section 29(1) of the said Act and shall as soon as practicable be brought before the said magistrate.

(b) If the person concerned is not in custody the said judge or judicial officer shall determine the time when and the place where the person concerned shall appear before the said magistrate, and he shall thereafter for all purposes be deemed to have been summoned in terms of section 29(1) of the said Act to appear before the said magistrate at the time and place so determined.

(3) As soon as possible after an order has been made under subsection (1) of this section, a prosecutor attached to the court of the said magistrate shall obtain a report as is mentioned in section 29(2) of the said Act.

(4) The provisions of the said Act shall *mutatis mutandis* apply in respect of a person who appears before a magistrate, as defined in section 1 of the said Act, in pursuance of an order made under subsection (1) of this section as if he were a person brought before the said magistrate in terms of section 29(1) of the said Act and as if the report obtained in terms of subsection (3) of this section were a report obtained in terms of section 29(2) of the said Act.

(5) If an order is made under subsection (1) in the course of a trial, whether before or after conviction, and a magistrate under the said Act orders that the person concerned be detained in a rehabilitation centre or registered rehabilitation centre, the proceedings at the trial shall be null and void in so far as such person is concerned.

(6) A copy of the record of the proceedings at the trial, certified or purporting to be certified by the registrar or clerk of the court or other officer having the custody of the record of such proceedings or by the deputy of such registrar, clerk or other officer or, in the case where the proceedings were taken down in shorthand or by mechanical means, by the person who transcribed the proceedings, as a true copy of such record, may be produced at the said enquiry as evidence.

(7) In applying the provisions of this section with reference to a Coloured person as defined in the Coloured Persons Rehabilitation Centres Law, 1971, of the Coloured Persons Representative Council of the Republic of South Africa (Law 1 of 1971), any reference -

(a) to a provision of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, shall, except in the case of subsection (1)(b), be construed as a

reference to a corresponding provision of the said Coloured Persons Rehabilitation Centres Law, 1971;

(b) to a "social welfare officer" and a "magistrate" shall be construed as a reference to a "social worker" and a "magistrate", respectively, as defined in the said Coloured Persons Rehabilitation Centres Law, 1971.

CHAPTER 26

COMPETENT VERDICTS

Attempt

256. If the evidence in criminal proceedings does not prove the commission of the offence charged but proves an attempt to commit that offence or an attempt to commit any other offence of which an accused may be convicted on the offence charged, the accused may be found guilty of an attempt to commit that offence or, as the case may be, such other offence.

Accessory after the fact

257. If the evidence in criminal proceedings does not prove the commission of the offence charged but proves that the accused is guilty as an accessory after that offence or any other offence of which he may be convicted on the offence charged, the accused may be found guilty as an accessory after that offence or, as the case may be, such other offence, and shall, in the absence of any punishment expressly provided by law, be liable to punishment at the discretion of the court: Provided that such punishment shall not exceed the punishment which may be imposed in respect of the offence with reference to which the accused is convicted as an accessory: Provided further that the punishment to which such accessory shall be liable shall not include the sentence of death.

Murder and attempted murder

258. If the evidence on a charge of murder or attempted murder does not prove the offence of murder or, as the case may be, attempted murder, but -

(a) the offence of culpable homicide;

(b) the offence of assault with intent to do grievous bodily harm;

(c) the offence of robbery;

(d) in a case relating to a child, the offence of exposing an infant, whether under a statute or at common law, or the offence of disposing of the body of a child, in contravention of section 113 of the General Law Amendment Act, 1935 (Act 46 of 1935), with intent to conceal the fact of its birth;

[The analogous law in Namibia is section 7 of the General Law Amendment Ordinance 13 of 1962.]

(e) the offence of common assault;

(f) the offence of public violence; or

(g) the offence of pointing a fire-arm, air-gun or air-pistol in contravention of any law,

the accused may be found guilty of the offence so proved.

Culpable homicide

259. If the evidence on a charge of culpable homicide does not prove the offence of culpable homicide, but -

(a) the offence of assault with intent to do grievous bodily harm;

(b) the offence of robbery;

(c) in a case relating to a child, the offence of exposing an infant, whether under a statute or at common law, or the offence of disposing of the body of a child, in contravention of section 113 of the General Law Amendment Act, 1935 (Act 46 of 1935), with intent to conceal the fact of its birth;

[The analogous law in Namibia is section 7 of the General Law Amendment Ordinance 13 of 1962.]

(d) the offence of common assault;

(e) the offence of public violence; or

(f) the offence of pointing a fire-arm, air-gun or air-pistol in contravention of any law,

the accused may be found guilty of the offence so proved.

Robbery

260. If the evidence on a charge of robbery or attempted robbery does not prove the offence of robbery or, as the case may be, attempted robbery, but -

(a) the offence of assault with intent to do grievous bodily harm;

(b) the offence of common assault;

(c) the offence of pointing a firearm, air-gun or air-pistol in contravention of any law;

(d) the offence of theft;

(e) the offence of receiving stolen property knowing it to have been stolen;

(f) an offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955); or

[The analogous offences in respect of South West Africa are cited in paragraph (g) below.]

(g) in the case of the territory, an offence under section 6 or 7 of the General Law Amendment Ordinance, 1956 (Ordinance 12 of 1956),

[Sections 6 and 7 of the General Law Amendment Ordinance 12 of 1956 are still in force in Namibia.]

the accused may be found guilty of the offence so proved, or, where the offence of assault with intent to do grievous bodily harm or the offence of common assault and the offence of theft are proved of both such offences.

Rape and indecent assault

261. (1) If the evidence on a charge of rape or attempted rape does not prove the offence of rape or, as the case may be, attempted rape, but -

(a) the offence of assault with intent to do grievous bodily harm;

(b) the offence of indecent assault;

(c) the offence of common assault;

(d) the offence of incest;

(e) the statutory offence of -

(i) unlawful carnal intercourse with a girl under a specified age;

(ii) committing an immoral or indecent act with such a girl; or

(iii) soliciting or enticing such a girl to the commission of an immoral or indecent act;

(f) the statutory offence of -

(i) unlawful carnal intercourse with a female idiot or imbecile;

(ii) committing an immoral or indecent act with such a female; or

(iii) soliciting or enticing such a female to the commission of an immoral or indecent act;

(g) if the accused is a coloured person as defined in the law relating to immorality between white persons and coloured persons, the statutory offence of -

(i) unlawful carnal intercourse with a white female person so defined;

(ii) committing an immoral or indecent act with such a female person; or

(iii) soliciting, enticing or importuning such a female person to have unlawful carnal intercourse or to the commission of an immoral or indecent act; or

(h) if the accused is a white person as defined in the law relating to immorality between white persons and coloured persons, the statutory offence of -

(i) unlawful carnal intercourse with a coloured female so defined;

(ii) committing an immoral or indecent act with such a female person; or

(iii) soliciting, enticing or importuning such a female person to have unlawful carnal intercourse or to the commission of an immoral or indecent act,

the accused may be found guilty of the offence so proved.

(2) If the evidence on a charge of indecent assault does not prove the offence of indecent assault but -

(a) the offence of common assault;

(b) the statutory offence of -

(i) committing an immoral or indecent act with a girl or a boy under a specified age; or

(ii) soliciting or enticing such a girl or boy to the commission of an immoral or indecent act;

(c) the statutory offence of -

(i) attempting to have unlawful carnal intercourse with a female idiot or imbecile; or

(ii) committing an immoral or indecent act with such a female;

(d) if the accused is a coloured person as defined in the law relating to immorality between white persons and coloured persons, the statutory offence of -

(i) committing an immoral or indecent act with a white female person so defined; or

(ii) soliciting, enticing or importuning such a female person to have unlawful carnal intercourse or to the commission of an immoral or indecent act; or

(e) if the accused is a white person as defined in the law relating to immorality between white persons and coloured persons, the statutory offence of -

(i) committing an immoral or indecent act with a coloured female person so defined; or

(ii) soliciting, enticing or importuning such a female person to have unlawful carnal intercourse or to the commission of an immoral or indecent act,

the accused may be found guilty of the offence so proved.

(3) In this section any reference to a coloured person or a white person shall, in the case of criminal proceedings in the territory, be construed as a reference to a non-European person or a European person, respectively.

Housebreaking with intent to commit an offence

262. (1) If the evidence on a charge of housebreaking with intent to commit an offence specified in the charge, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit the offence so specified but the offence of housebreaking with intent to commit an offence other than the offence so specified or the offence of housebreaking with intent to commit an offence unknown or the offence of malicious injury to property, the accused may be found guilty of the offence so proved.

[Subsection (1) is amended by Act 31 of 1985. This amendment also corrects the misspelling of the word "accused" in the original Act.]

(2) If the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit an offence to the prosecutor unknown but the offence of housebreaking with intent to commit a specific offence, the accused may be found guilty of the offence so proved.

Statutory offence of breaking and entering or of entering premises

263. (1) If the evidence on a charge for the statutory offence in any province of breaking and entering or of the entering of any premises with intent to commit an offence specified in the charge, does not prove the offence of breaking and entering or of entering the premises with intent to commit the offence so specified but the offence of breaking and entering or of entering the premises with intent to commit an offence other than the offence so specified or of breaking and entering or of entering the premises with intent to commit an offence unknown, the accused may be found guilty -

(a) of the offence so proved; or

(b) where it is a statutory offence within the province in question to be in or upon any dwelling, premises or enclosed area between sunset and sunrise without lawful excuse, of such offence, if such be the facts proved.

(2) If the evidence on a charge for the statutory offence in any province of breaking and entering or of the entering of any premises with intent to commit an offence to the prosecutor unknown, does not prove the offence of breaking and entering or of entering the premises with intent to commit an offence to the prosecutor unknown but the offence of breaking and entering or of entering the premises with intent to commit a specific offence, the accused may be found guilty of the offence so proved.

Theft

264. (1) If the evidence on a charge of theft does not prove the offence of theft, but -

(a) the offence of receiving stolen property knowing it to have been stolen;

(b) an offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955);

[The analogous law for South West Africa is cited in paragraph (d) below (sections 6 and 7 of Ord. 12 of 1956).]

(c) an offence under section 1 of the General Law Amendment Act, 1956 (Act 50 of 1956); or

[The analogous law for South West Africa is cited in paragraph (d) below (section 8 of Ord. 12 of 1956).]

(d) in the case of criminal proceedings in the territory, an offence under section 6, 7 or 8 of the General Law Amendment Ordinance, 1956 (Ordinance 12 of 1956),

[Sections 6, 7 and 8 of the General Law Amendment Ordinance 12 of 1956 are still in force in Namibia.]

the accused may be found guilty of the offence so proved.

(2) If a charge of theft alleges that the property referred to therein was stolen on one occasion and the evidence proves that the property was stolen on different occasions, the accused may be convicted of the theft of such property as if it had been stolen on that one occasion.

Receiving stolen property knowing it to have been stolen

265. If the evidence on a charge of receiving stolen property knowing it to have been stolen does not prove that offence, but -

(a) the offence of theft;

(b) an offence under section 37 of the General Law Amendment Act, 1955 (Act 62 of 1955); or

[The analogous law for South West Africa is cited in paragraph (c) below.]

(c) in the case of criminal proceedings in the territory, an offence under section 7 of the General Law Amendment Ordinance, 1956 (Ordinance 12 of 1956),

[Section 7 of the General Law Amendment Ordinance 12 of 1956 is still in force in Namibia.]

the accused may be found guilty of the offence so proved.

Assault with intent to do grievous bodily harm

266. If the evidence on a charge of assault with intent to do grievous bodily harm does not prove the offence of assault with intent to do grievous bodily harm but the offence of -

(a) common assault;

(b) indecent assault; or

(c) pointing a fire-arm, air-gun or air-pistol in contravention of any law,

the accused may be found guilty of the offence so proved.

Common assault

267. If the evidence on a charge of common assault proves the offence of indecent assault, the accused may be found guilty of indecent assault, or, if the evidence on such a charge does not prove the offence of common assault but the offence of pointing a fire-arm, air-gun or air-pistol in contravention of any law, the accused may be found guilty of that offence.

Statutory unlawful carnal intercourse

268. If the evidence on a charge of unlawful carnal intercourse or attempted unlawful carnal intercourse with another person in contravention of any statute does not prove that offence but -

(a) the offence of indecent assault;

(b) the offence of common assault; or

(c) the statutory offence of -

(i) committing an immoral or indecent act with such other person;

(ii) soliciting, enticing or importuning such other person to have unlawful carnal intercourse;

(iii) soliciting, enticing or importuning such other person to commit an immoral or indecent act; or

(iv) conspiring with such other person to have unlawful carnal intercourse,

the accused may be found guilty of the offence so proved.

~~**Sodomy**~~

~~**269.** If the evidence on a charge of sodomy or attempted sodomy does not prove the offence of sodomy or, as the case may be, attempted sodomy, but the offence of indecent assault or common assault, the accused may be found guilty of the offence so proved.~~

[This section is declared to be unconstitutional and invalid by *Dausab v Minister of Justice & Others* 2024 (3) NR 791 (HC), which also declared the common law crime of sodomy to be unconstitutional and invalid.]

Offences not specified in this Chapter

270. If the evidence on a charge for any offence not referred to in the preceding sections of this Chapter does not prove the commission of the offence so charged but proves the commission of an offence which by reason of the essential elements of that offence is included in the offence so charged, the accused may be found guilty of the offence so proved.

CHAPTER 27

PREVIOUS CONVICTIONS

Previous convictions may be proved

271. (1) The prosecution may, after an accused has been convicted but before sentence has been imposed upon him, produce to the court for admission or denial by the accused a record of previous convictions alleged against the accused.

(2) The court shall ask the accused whether he admits or denies any previous conviction referred to in subsection (1).

(3) If the accused denies such previous conviction, the prosecution may tender evidence that the accused was so previously convicted.

(4) If the accused admits such previous conviction or such previous conviction is proved against the accused, the court shall take such conviction into account when imposing any sentence in respect of the offence of which the accused has been convicted.

Finger-print record *prima facie* evidence of conviction

272. When a previous conviction may be proved under any provision of this Act, a record, photograph or document which relates to a finger-print and which purports to emanate from the officer commanding the South African Criminal Bureau or, in the case of any other country, from any officer having charge of the criminal records of the country in question, shall, whether or not such record, photograph or document was obtained under any law or against the wish or the will of the person concerned, be admissible in evidence at criminal proceedings upon production thereof by a police official having the custody thereof, and shall be *prima facie* proof of the facts contained therein.

Evidence of further particulars relating to previous conviction

273. Whenever any court in criminal proceedings requires particulars or further particulars or clarification of any previous conviction admitted by or proved against an accused at such proceedings -

(a) any telegram purporting to have been sent by the officer commanding the South African Criminal Bureau or by any court within the Republic; or

(b) any document purporting to be certified as correct by the officer referred to in paragraph (a) or by any registrar or clerk of any court within the Republic or by any officer in charge of any prison within the Republic,

and which purports to furnish such particulars or such clarification, shall, upon the mere production thereof at the relevant proceedings be admissible as *prima facie* proof of the facts contained therein.

CHAPTER 28

SENTENCE

Evidence on sentence

274. (1) A court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.

(2) The accused may address the court on any evidence received under subsection (1), as well as on the matter of the sentence, and thereafter the prosecution may likewise address the court.

Sentence by judicial officer other than judicial officer who convicts

275. If sentence is not passed upon an accused forthwith upon conviction in a lower court, or if, by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in a lower court or to pass sentence afresh in such court, any judicial officer of that court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be, and after consideration of the evidence recorded and in the presence of the accused, pass sentence on the accused or take such other steps as the judicial officer who is absent, could lawfully have taken in the proceedings in question if he had not been absent.

Nature of punishments

276. (1) Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely -

(a) the sentence of death;

(b) imprisonment;

(c) periodical imprisonment;

(d) declaration as an habitual criminal;

(e) committal to any institution established by law;

(f) a fine;

~~(g) a whipping~~.

[The reference to a whipping in subsection (1) was specifically cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution"**.]**

(2) Save as is otherwise expressly provided by this Act, no provision thereof shall be construed -

(a) as authorizing any court to impose any sentence other than or any sentence in excess of the sentence which that court may impose in respect of any offence; or

(b) as derogating from any authority specially conferred upon any court by any law to impose any other punishment or to impose any forfeiture in addition to any other punishment.

When sentence of death is a competent sentence

277. (1) Sentence of death may be passed by a superior court only and -

(a) shall, subject to the provisions of subsection (2), be passed upon a person convicted of murder;

(b) may be passed upon a person convicted of treason, kidnapping, child-stealing or rape;

(c) may be passed upon a person convicted of -

(i) robbery or attempted robbery; or

(ii) any offence, whether at common law or under any statute, of housebreaking or attempted housebreaking with intent to commit an offence,

if the court finds aggravating circumstances to have been present.

(2) Where a woman is convicted of the murder of her newly born child or where a person under the age of eighteen years is convicted of murder or where the court, on convicting a person of murder, is of the opinion that there are extenuating circumstances, the court may impose any sentence other than the death sentence.

Sentence of death upon pregnant woman

278. (1) When sentence of death is passed upon a woman, she may at any time after the passing of the sentence apply for an order to stay execution on the ground that she is quick with child.

(2) If such an application is made, the court shall direct that one or more duly registered medical practitioners shall examine the woman in a private place, either together or successively, to ascertain whether she is quick with child or not.

(3) If upon the report of any of them on oath it appears that the woman is quick with child, the court shall order that the execution of the sentence be stayed until she is delivered of a child or until it is no longer possible in the course of nature that she should be so delivered.

Manner of carrying out death sentence

279. (1) (a) As soon as practicable after a sentence of death has been passed, the judge who passed the sentence or any other judge of the court in question shall issue a warrant to the sheriff or his deputy for the execution of the sentence.

(b) The said warrant shall not be executed until the Minister has in writing signed by himself given notice to the sheriff or his deputy that the State President has decided not to extend mercy to the person under sentence of death.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded paragraph (b) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this paragraph was not transferred from South Africa to South West Africa prior to Namibian independence.]

(2) As soon after the receipt by the sheriff or his deputy of the notice referred to in subsection (1)(b) as fitting arrangements for the carrying out of the sentence can be made in or in the precincts of a prison appointed under section 35(1) of the Prisons Act, 1959 (Act 8 of 1959), the sheriff or a deputy sheriff shall execute the warrant issued to him under subsection (1)(a)*:* Provided that the sheriff or deputy sheriff shall not execute the said warrant if at any time the Minister by written notice under his hand notifies the sheriff or the deputy sheriff that the State President has decided to extend mercy to the person under sentence of death, and such notice shall for all purposes be deemed to be a cancellation of the said warrant.

[The Prisons Act 8 of 1959 was replaced by the Prisons Act 17 of 1998, which has been replaced in turn by the Correctional Service Act 9 of 2012.]

[Section 3(1)(t) of the transfer proclamation (as amended) excluded subsection (2) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this subsection was not transferred from South Africa to South West Africa prior to Namibian independence.]

(3) The Minister may, either generally or in any particular case, direct that any sentence of death shall be executed at a designated place appointed under section 35(1) of the said Prisons Act, 1959, which is situate within the area of jurisdiction of a court other than the court which passed such sentence, and thereupon the sheriff or his deputy appointed for the area wherein such place is situated shall act in accordance with the provisions of subsections (1) and (2).

[Section 3(1)(t) of the transfer proclamation (as amended) excluded subsection (3) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this subsection was not transferred from South Africa to South West Africa prior to Namibian independence.]

(4) The manner of execution of the sentence of death shall be that the person sentenced to death shall be hanged by the neck until he is dead.

Cumulative or concurrent sentences

280. (1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.

(2) Subject to section 99(2) of the Correctional Service Act, 2012 (Act No. 9 of 2012) punishments referred to in subsection (1), when consisting of imprisonment, commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment must run concurrently.

[subsection (2) substituted by Act 9 of 2012]

Interpretation of certain provisions in laws relating to imprisonment and fines

281. In construing any provision of any law (not being an Act of Parliament passed on or after the first day of September, 1959, or anything enacted by virtue of powers conferred by such an Act), in so far as it prescribes or confers the powers to prescribe a punishment for any offence, any reference in that law -

(a) to imprisonment with or without any form of labour, shall be construed as a reference to imprisonment only;

(b) to any period of imprisonment of less than three months which may not be exceeded in imposing or prescribing a sentence of imprisonment, shall be construed as a reference to a period of imprisonment of three months;

(c) to any fine of less than fifty rand which may not be exceeded in imposing or prescribing a fine, shall be construed as a reference to a fine of fifty rand.

Antedating sentence of imprisonment

282. Whenever any sentence of imprisonment imposed on any person on conviction for an offence is set aside on appeal or review and any other sentence of imprisonment is thereafter imposed on such person in respect of such offence, the latter sentence may, if the court imposing it is satisfied that the person concerned has served any part of the first-mentioned sentence, be antedated by the court to a specified date which shall not be earlier than the date on which such first-mentioned sentence was imposed, and thereupon such latter sentence shall be deemed to have been imposed on the date so specified.

Discretion of court as to punishment

283. (1) A person liable to a sentence of imprisonment for life or for any period, may be sentenced to imprisonment for any shorter period, and a person liable to a sentence of a fine of any amount may be sentenced to a fine of any lesser amount.

(2) The provisions of subsection (1) shall not apply with reference to any offence for which a minimum penalty is prescribed in the law creating the offence or prescribing a penalty therefor.

Minimum period of imprisonment four days

284. No person shall be sentenced by any court to imprisonment for a period of less than four days unless the sentence is that the person concerned be detained until the rising of the court.

Periodical imprisonment

285. (1) A court convicting a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment, may, in lieu of any other punishment, sentence such person to undergo in accordance with the laws relating to correctional facilities, periodical imprisonment for a period of not less than one hundred hours and not more than two thousand hours.

(2) The court which imposes a sentence of periodical imprisonment upon any person shall cause to be served upon him a notice in writing directing him to surrender himself on a date and at a time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as possible thereafter, to the officer in charge of a place so specified, whether within or outside the area of jurisdiction of the court, for the purpose of undergoing such imprisonment.

(3) A copy of the said notice shall serve as a warrant for the reception into custody of the convicted person by the said officer.

(4) Any person who -

(a) without lawful excuse, the proof whereof shall be on such person, fails to comply with a notice issued under subsection (2); or

(b) when surrendering himself for the purpose of undergoing periodical imprisonment, is under the influence of intoxicating liquor or drugs or the like; or

(c) impersonates or falsely represents himself to be a person who has been directed to surrender himself for the purpose of undergoing periodical imprisonment,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

(5) If, before the expiration of any sentence of periodical imprisonment imposed upon any person for any offence, such person is undergoing a punishment of any other form of detention imposed by any court, any magistrate before whom such person is brought, shall set aside the unexpired portion of the sentence of periodical imprisonment and, after considering the evidence recorded in respect of such offence, may impose in lieu of such unexpired portion any punishment within the limits of his jurisdiction and of any punishment prescribed by any law as a punishment for such offence.

[section 285 amended by Act 9 of 2012 to substitute "correctional facilities" for "prisons"]

Declaration of certain persons as habitual criminals

286. (1) Subject to the provisions of subsection (2), a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person habitually commits offences and that the community should be protected against him, declare him an habitual criminal, in lieu of the imposition of any other punishment for the offence or offences of which he is convicted.

(2) No person shall be declared an habitual criminal -

(a) if he is under the age of eighteen years; or

(b) for an offence in respect of which it is compulsory to impose the sentence of death; or

(c) if in the opinion of the court the offence warrants the imposition of the sentence of death or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding fifteen years.

(3) A person declared an habitual criminal shall be dealt with in accordance with the laws relating to correctional facilities.

[section 286 amended by Act 9 of 2012 to substitute "correctional facilities" for "prisons"]

Imprisonment in default of payment of fine

287. (1) Whenever a court convicts a person of any offence punishable by a fine (whether with or without any other direct or alternative punishment), it may, in imposing a fine upon such person, impose, as a punishment alternative to such fine, a sentence of imprisonment of any period within the limits of its jurisdiction: Provided that, subject to the provisions of subsection (3), the period of such alternative sentence of imprisonment shall not, either alone or together with any period of imprisonment imposed as a direct punishment, exceed the longest period of imprisonment prescribed by any law as a punishment (whether direct or alternative) for such offence.

(2) Whenever a court has imposed upon any person a fine without an alternative sentence of imprisonment and the fine is not paid in full or is not recovered in full in terms of section 288, the court which passed sentence on such person (or if that court was a circuit local division of the Supreme Court, then the provincial or local division of the Supreme Court within whose area of jurisdiction such sentence was imposed) may issue a warrant directing that he be arrested and brought before the court, which may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment in terms of subsection (1).

(3) Whenever by any law passed before the date of commencement of the General Law Amendment Act, 1935 (Act 46 of 1935), a court is empowered to impose upon a person convicted by such court of an offence, a sentence of imprisonment (whether direct or as an alternative to a fine) of a duration proportionate to the sum of a fine, that court may, notwithstanding such law, impose upon any person convicted of such offence in lieu of a sentence of imprisonment which is proportionate as aforesaid, any sentence of imprisonment within the limits of the jurisdiction of the court.

[The General Law Amendment Act 46 of 1935 was not applicable to South West Africa. Its date of commencement was its date of publication: 14 May 1935.]

Recovery of fine

288. (1) (a) Whenever a person is sentenced to pay a fine, the court passing the sentence may, in its discretion, issue a warrant addressed to the sheriff or messenger of the court authorizing him to levy the amount of the fine by attachment and sale of any movable property belonging to such person although the

sentence directs that, in default of payment of the fine, such person shall be imprisoned.

(b) The amount which may be levied shall be sufficient to cover, in addition to the fine, the costs and expenses of the warrant and of the attachment and sale thereunder.

(2) If the proceeds of the sale of the movable property are insufficient to satisfy the amount of the fine and the costs and expenses aforesaid, a superior court may issue a warrant, or, in the case of a sentence by any lower court, authorize such lower court to issue a warrant for the levy against the immovable property of such person of the amount unpaid.

(3) When a person is sentenced only to a fine or, in default of payment of the fine, imprisonment and the court issues a warrant under this section, it may suspend the execution of the sentence of imprisonment and may release the person upon his executing a bond with or without sureties as the court thinks fit, on condition that he appears before such court or some other court on the day appointed for the return of such warrant, such day being not more than fifteen days from the time of executing the bond, and in the event of the amount of the fine not being recovered, the sentence of imprisonment may be carried into execution forthwith or may be suspended as before for a further period or periods of not more than fifteen days, as the court may deem fit.

(4) In any case in which an order for the payment of money is made on non-recovery whereof imprisonment may be ordered, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in subsection (3), and in default of his doing so, may at once pass sentence of imprisonment as if the money had not been recovered.

Court may enforce payment of fine

289. Where a person is sentenced to pay a fine, whether with or without an alternative period of imprisonment, the court may in its discretion, without prejudice to any other power under this Act relating to the payment of a fine, enforce payment of the fine, whether as to the whole or any part thereof -

(a) by the seizure of money upon the person concerned;

(b) if money is due or is to become due as salary or wages from any employer of the person concerned -

(i) by from time to time ordering such employer to deduct a specified amount from the salary or wages so due and to pay over such amount to the clerk of the court in question; or

(ii) by ordering such employer to deduct from time to time a specified amount from the salary or wages so due and to pay over such amount to the clerk of the court in question.

Manner of dealing with convicted juvenile

290. (1) Any court in which a person under the age of eighteen years is convicted of any offence may, instead of imposing punishment upon him for that offence -

(a) order that he be placed under the supervision of a probation officer; or

(b) order that he be placed in the custody of any suitable person designated in the order; or

(c) deal with him both in terms of paragraphs (a) and (b); or

(d) order that he be sent to a reform school as defined in section 1 of the Children's Act, 1960 (Act 33 of 1960).

(2) Any court which sentences a person under the age of eighteen years to a fine may, in addition to imposing such punishment, deal with him in terms of paragraph (a), (b), (c) or (d) of subsection (1).

[The previous reference to a whipping in subsection (2) was declared unconstitutional by *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC) and deleted by Act 3 of 2015.]

(3) Any court in which a person of or over the age of eighteen years but under the age of twenty-one years is convicted of any offence, other than murder with reference to which -

(a) the person concerned is not a woman convicted of the murder of her newly born child; or

(b) there are, in the opinion of the court, no extenuating circumstances,

may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or that he be sent to a reform school as defined in section 1 of the Children's Act, 1960.

(4) A court which in terms of this section orders that any person be sent to a reform school, may direct that such person be kept in a place of detention or a place of safety as defined in section 1 of the Children's Act, 1960, until such time as the order can be put into effect: Provided that any such person kept in a place of safety shall be transferred to a place of detention when it appears that the order in question cannot within three weeks be put into effect.

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015. The equivalent of a "reform school" is a "child detention centre".]

Period of supervision, custody or retention of juveniles

291. (1) Any person who has been dealt with in terms of section 290 shall remain under the supervision under which or in the custody in which he was placed or in the reform school to which he was sent, or under or in the supervision, custody or reform school to which he may lawfully be transferred -

(a) if at the time of the making of the order of the court he was under the age of sixteen years, until he attains the age of eighteen years;

(b) if at the said time he was over the age of sixteen years but under the age of eighteen years, until he attains the age of twenty-one years;

(c) if at the said time he was over the age of eighteen years, until he attains the age of twenty-three years,

or, in any case, until he is discharged or released on licence in accordance with the provisions of the Children's Act, 1960 (Act 33 of 1960), before having attained the said age.

(2) After the expiration of the period of retention of a person in a reform school, he shall remain under the protection of the management of that reform school -

(a) if at the time of the making of the order of the court he was under the age of sixteen years, until he attains the age of twenty-one years;

(b) if at the said time he was over the age of sixteen years but under the age of eighteen years, until he attains the age of twenty-three years;

(c) if at the said time he was over the age of eighteen years, until he attains the age of twenty-five years,

or, in any case, until he is discharged from that protection in accordance with the provisions of the said Children's Act, 1960, before having attained the said age.

(3) The Minister to whom the administration of the provisions of the said Children's Act, 1960, has been assigned or any person acting under his authority, may, if he deems it necessary, order that any person detained in a reform school whose period of retention has expired or is about to expire, return to or remain in that reform school for such further period as he may fix and may from time to time by further order extend that period: Provided that no such order or further order shall extend the period of retention of the person concerned beyond the date of expiration of his period of protection.

(4) The expressions "period of retention" and "period of protection" in this section shall bear the meanings assigned thereto in section 1 of the said Children's Act, 1960, with reference to this section.

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015. The equivalent of a "reform school" is a "child detention centre".]

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292.

[Section 292 was declared unconstitutional by *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC) and deleted by Act 3 of 2015.]

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293.

[Section 293 was declared unconstitutional by *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC) and deleted by Act 3 of 2015.]

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294.

[Section 294 was declared unconstitutional by *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC) and deleted by Act 3 of 2015.]

~~**Limitations with regard to whipping**~~

295. ~~(1) No female and no person of or over the age of thirty years shall be sentenced by any court to the punishment of a whipping.~~

~~(2) A whipping shall not be imposed by any court if it is proved that the existence of some psychoneurotic or psychopathic condition contributed towards the commission of the offence.~~

[The references to whippings in section 295 were specifically cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution**".**
This section has not been repealed, but it has no further effect following the repeal of all other references to whipping in the Act.]

Committal to rehabilitation centre

296. (1) A court convicting any person of any offence may, in addition to or in lieu of any sentence in respect of such offence, order that the person be detained at a rehabilitation centre established under the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971), if the court is satisfied from the evidence or from any other information placed before it, which shall include the report of a probation officer, that such person is a person as is described in section 29(1) of the said Act, and such order shall for the purposes of the said Act be deemed to have been made under section 30 thereof: Provided that such order shall not be made in addition to any sentence of imprisonment (whether direct or as an alternative to a fine) unless the operation of the whole of such sentence is suspended.

[subsection (1) amended by Act 31 of 1985 to insert the proviso]

(2) In applying the provisions of this section with reference to a Coloured person as defined in the Coloured Persons Rehabilitation Centres Law, 1971, of the Coloured Persons Representative Council of the Republic of South Africa (Law 1 of 1971), any reference to a provision of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, shall be construed as a reference to a corresponding provision of the said Coloured Persons Rehabilitation Centres Law, 1971.

**[Section 296 is amended by Act 56 of 1979 to insert subsection (2).
Law 1 of 1971 was not applicable to South West Africa.]**

Conditional or unconditional postponement or suspension of sentence, and caution or reprimand

297. (1) Where a court convicts a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment, the court may in its discretion -

(a) postpone for a period not exceeding five years the passing of sentence and release the person concerned -

(i) on one or more conditions, whether as to -

(aa) compensation;

(bb) the rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss;

(cc) the rendering of some service for the benefit of the community;

(dd) submission to instruction or treatment;

(ee) submission to the supervision or control (including control over the earnings or other income of the person concerned) of a probation officer as defined in the Children's Act, 1960 (Act 33 of 1960);

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

(ff) the compulsory attendance or residence at some specified centre for a specified purpose;

(gg) good conduct;

(hh) any other matter,

and order such person to appear before the court at the expiration of the relevant period; or

(ii) unconditionally, and order such person to appear before the court, if called upon before the expiration of the relevant period; or

(b) pass sentence but order the operation of the whole or any part thereof to be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) which the court may specify in the order; or

(c) discharge the person concerned with a caution or reprimand, and such discharge shall have the effect of an acquittal, except that the conviction shall be recorded as a previous conviction.

(2) Where a court has under paragraph (a)(i) of subsection (1) postponed the passing of sentence and the court, whether differently constituted or not, is at the expiration of the relevant period satisfied that the person concerned has observed the conditions imposed under that paragraph, the court shall discharge him without passing sentence, and such discharge shall have the effect of an acquittal, except that the conviction shall be recorded as a previous conviction.

(3) Where a court has under paragraph (a)(ii) of subsection (1) unconditionally postponed the passing of sentence, and the person concerned has not at the expiration of the relevant period been called upon to appear before the court, such person shall be deemed to have been discharged with a caution under subsection (1)(c).

(4) Where a court convicts a person of an offence in respect of which any law prescribes a minimum punishment, the court may in its discretion pass sentence but order the operation of a part thereof to be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) of subsection (1).

(5) Where a court imposes a fine, the court may suspend the payment thereof -

(a) until the expiration of a period not exceeding five years; or

(b) on condition that the fine is paid over a period not exceeding five years in instalments and at intervals determined by the court.

(6) (a) A court which sentences a person to a term of imprisonment as an alternative to a fine or, if the court which has imposed such sentence was a regional court or a magistrate's court, a magistrate, may, where the fine is not paid, at any stage before

the expiration of the period of imprisonment, suspend the operation of the sentence and order the release of the person concerned on such conditions relating to the payment of the fine or such portion thereof as may still be due, as to the court or, in the case of a sentence imposed by a regional court or magistrate's court, the magistrate, may seem expedient, including a condition that the person concerned take up a specified employment and that the fine due be paid in instalments by the person concerned take up a specified employment and that the fine due be paid in instalments by the person concerned or his employer: Provided that the power conferred by this subsection shall not be exercised by a magistrate where the court which has imposed the sentence has so ordered

[The phrase "take up a specified employment and that the fine due be paid in instalments by the person concerned" **is inadvertently repeated in paragraph (a) in the substitution of subsection (6) (with amendment markings) by Act 31 of 1985.]**

(b) A court which has suspended a sentence under paragraph (a), whether differently constituted or not, or any court of equal or superior jurisdiction, or a magistrate who has suspended a sentence in terms of paragraph (a), may at any time -

(i) further suspend the operation of the sentence on any existing or additional conditions which to the court or magistrate may seem expedient; or

(ii) cancel the order of suspension and recommit the person concerned to serve the balance of the sentence.

[Subsection (6) is substituted with amendment markings by Act 31 of 1985; the amendment markings in respect of paragraph (a) are incorrect.]

(7) A court which has -

(a) postponed the passing of sentence under paragraph (a)(i) of subsection (1);

(b) suspended the operation of a sentence under subsection (1)(b) or (4); or

(c) suspended the payment of a fine under subsection (5),

whether differently constituted or not, or any court of equal or superior jurisdiction may, if satisfied that the person concerned has through circumstances beyond his control been unable to comply with any relevant condition, or for any other good and sufficient reason, further postpone the passing of sentence or further suspend the operation of a sentence or the payment of a fine, as the case may be, subject to any existing condition or such further conditions as could have been imposed at the time of such postponement or suspension.

(8) A court which has -

(a) postponed the passing of sentence under paragraph (a)(i) of subsection (1); or

(b) suspended the operation of a sentence under subsection (1)(b) or under subsection (4),

on condition that the person concerned render some service for the benefit of the community or that he submit himself to instruction or treatment or to the supervision or control of a probation officer or that he attend or reside at a specified centre for a specified purpose, may, whether or not the court is constituted differently than it was at the time of such postponement or suspension, at any time during the period of postponement or suspension on good cause shown amend any such condition or substitute any other competent condition for such condition.

(9) (a) If any condition imposed under this section is not complied with, the person concerned may upon the order of any court be arrested or detained and, where the condition in question -

(i) was imposed under paragraph (a)(i) of subsection (1), be brought before the court which postponed the passing of sentence or before any court of equal or superior jurisdiction; or

(ii) was imposed under subsection (1)(b), (4) or (5), be brought before the court which suspended the operation of the sentence or, as the case may be, the payment of the fine, or any court of equal or superior jurisdiction,

and such court, whether or not it is, in the case of a court other than a court of equal or superior jurisdiction, constituted differently than it was at the time of such postponement or suspension, may then, in the case of subparagraph (i), impose any competent sentence, which may, where the person concerned is under the age of twenty-one years, include an order under the provisions of section 290, or, in the case of subparagraph (ii), put into operation the sentence which was suspended.

(b) A person who has been called upon under paragraph (a)(ii) of subsection (1) to appear before the court may, upon the order of the court in question, be arrested and brought before that court, and such court, whether or not constituted differently than it was at the time of the postponement of sentence, may impose upon such person any competent sentence.

Sentence may be corrected

298. When by mistake a wrong sentence is passed, the court may, before or immediately after it is recorded, amend the sentence.

Warrant for the execution of sentence

299. A warrant for the execution of any sentence may be issued by the judge or judicial officer who passed the sentence or by any other judge or judicial officer of the court in question, or, in the case of a regional court, by any magistrate, and such warrant shall commit the person concerned to the correctional facility for the magisterial district in which such person is sentenced.

[section 299 amended by Act 9 of 2012 to substitute "correctional facility" for "prison"]

CHAPTER 29

COMPENSATION AND RESTITUTION

Court may award compensation where offence causes damage to or loss of property

300. (1) Where a person is convicted by a superior court, a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that -

(a) a regional court or a magistrate's court shall not make any such award if the compensation applied for exceeds R20 000 or R5 000, respectively;

[paragraph (a) amended by Act 56 of 1979 and by Act 31 of 1985]

(b) where a person is convicted under section 25(1) of the Children's Act, 1960 (Act 33 of 1960), of having conduced to the commission of an offence, the court may make the award of compensation against such person notwithstanding that the injured person has not applied for compensation.

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

(2) For the purposes of determining the amount of the compensation or the liability of the convicted person therefor, the court may refer to the evidence and the proceedings at the trial or hear further evidence either upon affidavit or orally.

(3) (a) An award made under this section -

(i) by a magistrate's court, shall have the effect of a civil judgment of that court;

(ii) by a regional court, shall have the effect of a civil judgment of the magistrate's court of the district in which the relevant trial took place.

(b) Where a superior court makes an award under this section, the registrar of the court shall forward a certified copy of the award to the clerk of the magistrate's court designated by the presiding judge or, if no such court is designated, to the clerk of the magistrate's court in whose area of jurisdiction the offence in question was committed, and thereupon such award shall have the effect of a civil judgment of that magistrate's court.

(4) Where money of the person convicted is taken from him upon his arrest, the court may order that payment be made forthwith from such money in satisfaction or on account of the award.

(5) (a) A person in whose favour an award has been made under this section may within sixty days after the date on which the award was made, in writing renounce the award by lodging with the registrar or clerk of the court in question a document of renunciation and, where applicable, by making a repayment of any moneys paid under subsection (4).

(b) Where the person concerned does not renounce an award under paragraph (a) within the period of sixty days, no person against whom the award was made shall be liable at the suit of the person concerned to any other civil proceedings in respect of the injury for which the award was made.

Compensation to innocent purchaser of property unlawfully obtained

301. Where a person is convicted of theft or of any other offence whereby he has unlawfully obtained any property, and it appears to the court on the evidence that such person sold such property or part thereof to another person who had no knowledge that the property was stolen or unlawfully obtained, the court may, on the application of such purchaser and on restitution of such property to the owner thereof, order that, out of any money of such convicted person taken from him on his arrest, a sum not exceeding the amount paid by the purchaser be returned to him.

REVIEWS AND APPEALS IN CASES OF CRIMINAL PROCEEDINGS IN LOWER COURTS

Sentences subject to review in the ordinary course

302. (1) (a) Any sentence imposed by a magistrate's court -

(i) which, in the case of imprisonment (including detention in a reform school as defined in section 1 of the Children's Act, 1960 (Act 33 of 1960)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015. The equivalent of a "reform school" is a "child detention centre".]

(ii) which, in the case of a fine, exceeds the amount of R500 if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds the amount of R1 000, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

[subparagraph (ii) amended by Act 31 of 1985]

(iii) ~~which consists of a whipping, other than a whipping imposed under section 294,~~

[The references to whippings in subparagraph (iii) were specifically cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution"**.]**

shall be subject in the ordinary course to review by a judge of the provincial division having jurisdiction.

(b) The provisions of paragraph (a) shall be suspended in respect of an accused who has appealed against a conviction or sentence and has not abandoned the appeal, and shall cease to apply with reference to such an accused when judgment is given.

(2) For the purposes of subsection (1) -

(a) each sentence on a separate charge shall be regarded as a separate sentence, and the fact that the aggregate of sentences imposed on an accused in respect of more than one charge in the same proceedings exceeds the periods or amounts referred to in that subsection, shall not render those sentences subject to review in the ordinary course;

[Paragraph (a) should end with a full stop now that it is the last paragraph in subsection (2).]

(b)

[paragraph (b) deleted by Act 31 of 1985]

(3) The provisions of subsection (1) shall only apply -

(a) with reference to a sentence which is imposed in respect of an accused who was not assisted by a legal adviser;

(b) where a fine is imposed, if a sentence of imprisonment is imposed in terms of section 287 as a punishment alternative to such fine, and such fine is not paid or if time is not given for the payment thereof before the person convicted is received into a prison: Provided that if the person convicted is at any time received into a prison by reason of his failure to pay the fine or any part thereof, the provisions of subsection (1) shall come into operation in respect of the sentence in question.

Transmission of record

303. The clerk of the court in question shall within one week after the determination of a case referred to in paragraph (a) of section 302(1) forward to the registrar of the provincial division having jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration.

[Section 303 is amended by Act 9 of 2012 to substitute "correctional facility" for "prison", but the term "prison" does not appear in this section. It is possible that the amendment in question was intended to apply to section 302.]

Procedure on review

304. (1) If, upon considering the proceedings referred to in section 303 and any further information or evidence which may, by direction of the judge, be supplied or taken by the magistrate's court in question, it appears to the judge that the proceedings are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof, and the registrar concerned shall then return the record to the magistrate's court in question.

(2) (a) If, upon considering the said proceedings, it appears to the judge that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he shall obtain from the judicial officer who presided at the trial a statement setting forth his reasons for convicting the accused and for the sentence imposed, and shall thereupon lay the record of the proceedings and the said statement before the court of the provincial division having jurisdiction for consideration by that court as a court of appeal: Provided that where the judge concerned is of the opinion that the conviction or sentence imposed is clearly not in accordance with justice and that the person convicted may be prejudiced if the record of the proceedings is not forthwith placed before the provincial division having jurisdiction, the judge may lay the record of the proceedings before that court without obtaining the statement of the judicial officer who presided at the trial.

(b) Such court may at any sitting thereof hear any evidence and for that purpose summon any person to appear and to give evidence or to produce any document or other article.

(c) Such court, whether or not it has heard evidence, may, subject to the provisions of section 312 -

(i) confirm, alter or quash the conviction, and in the event of the conviction being quashed where the accused was convicted on one of two or more alternative charges, convict the accused on the other alternative charge or on one or other of the alternative charges;

(ii) confirm, reduce, alter or set aside the sentence or any order of the magistrate's court;

(iii) set aside or correct the proceedings of the magistrate's court;

(iv) generally give such judgment or impose such sentence or make such order as the magistrate's court ought to have given, imposed or made on any matter which was before it at the trial of the case in question; or

(v) remit the case to the magistrate's court with instructions to deal with any matter in such manner as the provincial division may think fit; and

(vi) make any such order in regard to the suspension of the execution of any sentence against the person convicted or the admission of such person to bail, or, generally, in regard to any matter or thing connected with such person or the proceedings in regard to such person as to the court seems likely to promote the ends of justice.

(3) If the court desires to c have a question of law or of fact arising in any case argued, it may direct such question to be argued by the attorney-general and by such counsel as the court may appoint.

(4) If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.

Right of appearance on review in certain cases subject to certificate of a judge

305. Notwithstanding anything to the contrary in any law contained, no person who has been convicted by a lower court of an offence and is undergoing imprisonment for that or any other offence, shall be entitled to prosecute in person any proceedings for the review of the proceedings relating to such conviction unless a judge of the provincial division having jurisdiction has certified that there are reasonable grounds for review.

Accused may set down case for argument

306. (1) A magistrate's court imposing a sentence which under section 302 is subject to review, shall forthwith inform the person convicted that the record of the proceedings will be transmitted within one week, and such person may then inspect and make a copy of such record before transmission or whilst in the possession of the provincial division, and may set down the case for argument before the provincial division having jurisdiction in like manner as if the record had been returned or transmitted to such provincial division in compliance with any order made by it for the purpose of bringing in review the proceedings of a magistrate's court.

(2) Whenever a case is so set down, whether the offence in question was prosecuted at the instance of the State or at the instance of a private prosecutor, a written notice shall be

served, by or on behalf of the person convicted, upon the attorney-general at his office not less than seven days before the day appointed for the argument, setting forth the name and number of the case, the court before which it was tried, the date for which the case has been set down for argument and the grounds or reasons upon which the judgment is sought to be reversed or altered.

(3) Whether such judgment is confirmed or reversed or altered, no costs shall in respect of the proceedings on review be payable by the prosecution to the person convicted or by the person convicted to the prosecution.

Execution of sentence not suspended unless bail granted

307. (1) Subject to the provisions of section 308, the execution of any sentence shall not be suspended by the transmission of or the obligation to transmit the record for review unless the court which imposed the sentence releases the person convicted on bail.

(2) If the court releases such person on bail, the court may -

(a) if the person concerned was released on bail under section 59 or 60, extend the bail, either in the same amount or any other amount; or

(b) if such person was not so released on bail, release him or her on bail on condition that he or she deposits with the clerk of the court or with the officer in charge of the correctional facility where such person is in custody or with any police official at the place where such convicted person is in custody, the sum of money determined by the court in question; or

[paragraph (b) amended by Act 31 of 1985, Act 5 of 1991 and Act 9 of 2012]

(c) on good cause shown, permit such person to furnish a guarantee, with or without sureties, that he will pay and forfeit to the State the sum of money determined under paragraph (b), in circumstances under which such sum, if it had been deposited, would be forfeited to the State.

(3) It shall be a condition of the release of the person convicted that he shall -

(a) at a time and place specified by the court; and

(b) upon service, in the manner prescribed by the rules of court, of a written order upon him or at a place specified by the court,

surrender himself in order that effect may be given to any sentence in respect of the proceedings in question.

(4) The court may add any condition of release on bail which it may deem necessary or advisable in the interests of justice, *inter alia,* as to -

(a) the reporting in person by the person convicted at any specified time and place to any specified person or authority;

(b) any place to which such person is prohibited to go;

(c) any other matter relating to the conduct of such person.

(5) The court which considers an application for bail under this section shall record the relevant proceedings in full, including the details referred to in subsection (3) and any conditions imposed under subsection (4).

(6) The provisions of sections 63, 64, 65, 66, 67 and 68 shall *mutatis mutandis* apply with reference to the granting of bail pending review.

[subsection (6) amended by Act 56 of 1979]

~~**Whipping suspended pending review**~~

308. ~~(1) A whipping, other than a whipping imposed under section 294, shall in no case be inflicted until the relevant proceedings have been returned with the certificate referred to in section 304(1) or the provincial division in question has confirmed the sentence.~~

~~(2) If a person sentenced to receive a whipping is not also sentenced to imprisonment for such a period as shall allow time for the judge's certificate to be received before the whipping is inflicted, such person, if he has not been released on bail, shall be detained in custody until either the record of the proceedings in the case has been returned as aforesaid or the sentence has been confirmed as aforesaid.~~

[The references to whippings in section 308 were specifically cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution"**.]**

Appeal from lower court by person convicted

309. (1) (a) Any person convicted of any offence by any lower court (including a person discharged after conviction), may appeal against such conviction and against any resultant sentence or order to the provincial division having jurisdiction.

(b) Where, in the case of a regional court, a conviction takes place within the area of jurisdiction of one provincial division and any resultant sentence or order is passed or, as the case may be, is made within the area of jurisdiction of another provincial division, any appeal against such conviction or such sentence or order shall be heard by the last-mentioned provincial division.

(2) An appeal under this section shall be noted and be prosecuted within the period and in the manner prescribed by the rules of court: Provided that the provincial division having jurisdiction may in any case extend such period.

(3) The provincial division concerned shall thereupon have the powers referred to in section 304(2), and, unless the appeal is based solely upon a question of law, the provincial division shall, in addition to such powers, have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence in lieu of or in addition to such sentence: Provided that, notwithstanding that the provincial division is of the opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to such division that a failure of justice has in fact resulted from such irregularity or defect.

(4) When an appeal under this section is noted, the provisions of -

(a) ~~section 305 shall *mutatis mutandis* apply in respect of the conviction, sentence or order appealed against; and~~

[*S v Ganeb* 2001 NR 294 (HC) held that section 309(4)(a), as read with section 305, conflicts with Article 12 and Article 10 of the Constitution: "Section 309(4)(a) of the Criminal Procedure Act 51 of 1977 is declared to be in conflict with the Constitution of Namibia. Parliament is required to remedy the defect by 31 October 2002. This declaration of invalidity is suspended until the defect is remedied or the above date arrives, which ever event occurs first."**]**

(b) sections 307 and 308 shall *mutatis mutandis* apply with reference to the sentence appealed against~~, including a sentence of a whipping imposed under section 294~~.

[The reference to whipping in paragraph (b) was specifically cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution"**.]**

Appeal from lower court by Prosecutor-General or other prosecutor

310. (1) The Prosecutor-General or, if a body or a person other than the Prosecutor-General or his or her representative, was the prosecutor in the proceedings, then such other prosecutor, may appeal against any decision given in favour of an accused in a criminal case in a lower court, including -

(a) any resultant sentence imposed or order made by such court;

(b) any order made under section 85(2) by such court,

to the High Court, provided that an application for leave to appeal has been granted by a single judge of that court in chambers.

(2) (a) A written notice of an application referred to in subsection (1) shall be lodged with the registrar of the High Court by the Prosecutor-General or other prosecutor, within a period of 30 days of the decision, sentence or order of the lower court, as the case may be, or within such extended period as may on application on good cause be allowed.

(b) The notice shall state briefly the grounds for the application.

(3) The Prosecutor-General or other prosecutor shall, at least 14 days before the day appointed for the hearing of the application, cause to be served by any police official or the deputy sheriff upon the accused in person a copy of the notice, together with a written statement of the rights of the accused in terms of subsection (4): Provided that if any police official or the deputy sheriff is not able so to serve a copy of the notice, it may be served in any other manner that may on application be allowed.

(4) The accused may, within a period of 10 days of the serving of such a notice upon him or her, or within such extended period as may on application on good cause be allowed, lodge a written submission with the registrar, and the registrar shall submit it to the judge who is to hear the application, and shall send a copy thereof to the Prosecutor-General or other prosecutor.

(5) (a) Any decision of a judge under subsection (1) in respect of an application for leave to appeal referred to in that subsection, may be set aside by the Supreme Court on application made to it by the Prosecutor-General or other prosecutor or

the accused within 21 days after the decision was given, or within such extended period as may on application on good cause be allowed.

(b) Any application to the Supreme Court under paragraph (a) shall be submitted by petition addressed to the Chief Justice, and thereupon the provisions of section 316(6), (7), (8), (9) and (10) shall apply *mutatis mutandis* in respect thereof.

(6) Subject to the provisions of this section, section 309 shall apply *mutatis mutandis* with reference to an appeal in terms of subsection (1).

(7) If an application for leave to appeal referred to in subsection (1) or an application to set aside a decision referred to in subsection (5) or an appeal in terms of this section brought by the Prosecutor-General is refused or dismissed, the judge or the court, as the case may be, may order that the State pay the accused concerned the whole or any part of the costs to which such accused may have been put in opposing any such application or appeal, taxed according to the scale in civil cases of the court concerned.

(8) For the purposes of the provisions of paragraph (a) of subsection (1), any reference in that subsection to an accused shall be deemed to include a reference to any person, other than the accused, who claims that any right is vested in him or her in respect of any matter or article declared forfeited by the court as if it were a decision by that court, and such appeal may be heard either separately or jointly with an appeal against a decision as a result whereof the declaration of forfeiture was made.

[section 310 substituted by Act 26 of 1993]

Appeal to Supreme Court

311. (1) Where the High Court on appeal, whether brought by the Prosecutor-General or other prosecutor or the accused, gives a decision in favour of the Prosecutor-General or other prosecutor or the accused against whom the decision is given, as the case may be, may appeal to the Supreme Court which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from, and if the matter was brought before the High Court in terms of -

(a) section 309(1), reinstate the conviction, sentence or order of the lower court appealed from either in its original form or in such modified form as the Supreme Court may consider desirable; or

(b) section 310(1), give such decision or take such action as the High Court ought, in the opinion of the Supreme Court, to have given or taken,

including any action under section 309(3).

(2) The provisions of section 316 in respect of any application or appeal by an accused referred to in that section, shall apply *mutatis mutandis* with reference to an appeal in terms of subsection (1).

(3) If an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the Prosecutor-General is dismissed or refused, the court or judge or judges may order that the State pay the accused concerned the whole or any part of the costs to which such accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of the court concerned.

[section 311 substituted by Act 26 of 1993]

Review or appeal and failure to comply with subsection (1)(b) or (2) of section 112

312. (1) Where a conviction and sentence under section 112 are set aside on review or appeal on the ground that any provision of subsection (1)(b) or subsection (2) of that section was not complied with, or on the ground that the provisions of section 113 should have been applied, the court in question shall remit the case to the court by which the sentence was imposed and direct that court to comply with the provision in question or to act in terms of section 113, as the case may be.

[Subsection (1) is substituted with amendment markings by Act 31 of 1985; not all of the changes are indicated by the amendment markings.]

(2) When the provision referred to in subsection (1) is complied with and the judicial officer is after such compliance not satisfied as is required by section 112(1)(b) or 112(2), he shall enter a plea of not guilty whereupon the provisions of section 113 shall apply with reference to the matter.

Institution of proceedings *de novo* when conviction set aside on appeal or review

313. The provisions of section 324 shall *mutatis mutandis* apply with reference to any conviction and sentence of a lower court that are set aside on appeal or review on any ground referred to in that section.

Obtaining presence of convicted person in lower court after setting aside of sentence or order

314. (1) Where a sentence or order imposed or made by a lower court is set aside on appeal or review and the person convicted is not in custody and the court setting aside the sentence or order remits the matter to the lower court in order that a fresh sentence or order may be imposed or made, the presence before that court of the person convicted may be obtained by means of a written notice addressed to that person calling upon him to appear at a stated place and time on a stated date in order that such sentence or order may be imposed or made.

(2) The provisions of section 54(2) and 55(1) and (2) shall *mutatis mutandis* apply with reference to a written notice issued under subsection (1).

[The singular word "section" should be the plural word "sections".]

CHAPTER 31

APPEALS IN CASES OF CRIMINAL PROCEEDINGS IN SUPERIOR COURTS

Court of appeal from High Court judgments

315. (1) In respect of appeals and questions of law reserved in connection with criminal cases heard by the High Court of Namibia the court of appeal shall be the Supreme Court of Namibia.

(2) An appeal referred to in subsection (1) shall lie to the Supreme Court of Namibia only as provided in sections 316 to 319 inclusive, and not as of right

[Section 315 is substituted by Act 29 of 1985 and by Act 10 of 2001. The heading of section 4 of Act 10 of 2001 states that it is substituting section 315, but the substituted text is labelled with the section number "5" instead of the section number "315". This obvious error has been corrected here. The substituted text also omits the full stop at the end of subsection (2).]

Applications for condonation, for leave to appeal and for leave to lead further evidence

316. (1) An accused convicted of an offence before the High Court of Namibia may, within a period of fourteen days of the passing of any sentence as a result of such conviction or within such extended period as may on application (in this section referred to as an application for condonation) on good cause be allowed, apply to the judge who presided at the trial or, if that judge is not available, to any other judge of that court for leave to appeal against his or her conviction or against any sentence or order following thereon (in this section referred to as an application for leave to appeal), and an accused convicted of any offence before any such court on a plea of guilty may, within the same period, apply for leave to appeal against any sentence or any order following thereon.

[subsection (1) amended by Act 29 of 1985 and substituted by Act 10 of 2001]

(1A)

[subsection (1A) inserted by Act 29 of 1985, amended by Act 26 of 1993, and deleted by Act 10 of 2001]

(2) Every application for leave to appeal shall set forth clearly and specifically the grounds upon which the accused desires to appeal: Provided that if the accused applies verbally for such leave immediately after the passing of the sentence, he shall state such grounds and they shall be taken down in writing and form part of the record.

(3) When in any application under subsection (1) for leave to appeal it is shown by affidavit -

(a) that further evidence which would presumably be accepted as true, is available;

(b) that if accepted the evidence could reasonably lead to a different verdict or sentence; and

(c) save in exceptional cases, that there is a reasonably acceptable explanation for the failure to produce the evidence before the close of the trial,

the court hearing the application may receive that evidence and further evidence rendered necessary thereby, including evidence in rebuttal called by the prosecutor and evidence called by the court.

(4) Any evidence received in pursuance of an application under subsection (1) for leave to appeal, shall for the purposes of an appeal be deemed to be evidence taken or admitted at the trial.

(5) If an application under subsection (1) for leave to appeal is granted the registrar shall cause notice to be given accordingly to the registrar of the Supreme Court without delay, and shall cause to be transmitted to the said registrar a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the Prosecutor-General, copies, (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the Prosecutor-General and the accused to be sufficient, in which event the Supreme Court may nevertheless call for the production of the whole record.

[subsection (5) amended by Act 29 of 1985 and substituted by Act 10 of 2001]

(6) If an application under subsection (1) for condonation or leave to appeal is refused or if in any application for leave to appeal an application for leave to call further evidence is refused, the accused may, within a period of twenty-one days of such refusal, or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice submit his application for condonation or for leave to appeal or his application for leave to call further evidence, or all such applications, as the case may be, to the Appellate Division, at the same time giving written notice that this has been done to the registrar of the provincial or local division (other than a circuit court) within whose area of jurisdiction the trial took place, and of which the judge who presided at the trial was a member when he so presided, and such registrar shall forward to the Appellate Division a copy of the application or applications in question and of the reasons for refusing such application or applications.

[subsection (6) amended by Act 29 of 1985]

(7) The petition shall be considered in chambers by three judges of the Appellate Division designated by the Chief Justice.

[subsection (7) amended by Act 29 of 1985]

(8) The judges considering the petition may -

(a) call for any further information from the judge who heard the application for condonation or the application for leave to appeal or the application for leave to call further evidence, or from the judge who presided at the trial to which any such application relates;

(b) order that the application or applications in question or any of them be argued before them at a time and place appointed;

(c) whether they have acted under paragraph (a) or (b) or not -

(i) in the case of an application for condonation, grant or refuse the application and, if the application is granted, direct that an application for leave to appeal shall be made, within the period fixed by them, to the court or judge referred to in subsection (1) or, if they deem it expedient, that an application for leave to appeal shall be submitted under subsection (6) within the period fixed by them as if it had been refused by the court or judge referred to in subsection (1);

(ii) in the case of an application for leave to appeal or an application for leave to call further evidence, grant or refuse the application or, if they are of the opinion that the application for leave to call further evidence should have been granted, they may, before deciding upon the application for leave to appeal, or, in the case where the court or judge referred to in subsection (1) has granted the application for leave to appeal but has refused leave to call further evidence, set aside the refusal of the said court or judge to grant leave to call further evidence and remit the matter in order that further evidence may be received in accordance with the provisions of subsection (3); or

(d) refer the matter to the Appellate Division for consideration whether upon argument or otherwise, and that Division may thereupon deal with the matter in any manner referred to in paragraph (c).

[subsection (8) amended by Act 29 of 1985]

(9) (a) The decision of the Appellate Division or of the judges thereof considering the petition, as the case may be, to grant or refuse any application, shall be final.

(b) For the purposes of this section any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three.

[subsection (9) amended by Act 29 of 1985]

(10) Notice shall be given to the attorney-general concerned and the accused of the date fixed for the hearing of any application under this section, and of any place appointed under subsection (8) for any hearing.

Appeal from High Court by Prosecutor-General or other prosecutor

316A. (1) The Prosecutor-General or, if a body or person other than the Prosecutor-General or his or her representative, was the prosecutor in the proceedings, then such other prosecutor, may appeal against any decision given in favour of an accused in a criminal case in the High Court, including -

(a) any resultant sentence imposed or order made by such court;

(b) any order made under section 85(2) by such court,

to the Supreme Court.

(2) The provisions of section 316 in respect of an application or appeal by an accused referred to in that section, shall apply *mutatis mutandis* with reference to an appeal in terms of subsection (1).

(3) If an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the Prosecutor-General is dismissed or refused, the court or judge or judges may order that the State pay the accused concerned the whole or any part of the costs to which such accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of the court concerned.

(4) For the purposes of the provisions of paragraph (a) of subsection (1), any reference in that subsection to an accused shall be deemed to include a reference to any person, other than the accused, who claims that any right is vested in him or her in respect of any matter or article declared forfeited by the court as if it were a decision by that court, and such appeal may be heard either separately or jointly with an appeal against a decision as a result whereof the declaration of forfeiture was made.

[section 316A inserted by Act 26 of 1993]

Special entry of irregularity or illegality

317. (1) If an accused thinks that any of the proceedings in connection with or during his trial before a superior court are irregular or not according to law, he may, either during his trial or within a period of fourteen days after his conviction or within such extended period as may upon application (in this section referred to as an application for condonation) on good cause be allowed, apply for a special entry to be made on the record (in this section referred to as an application for a special entry) stating in what respect the proceedings are alleged to be irregular or not according to law, and such a special entry shall, upon such application for a special entry, be made unless the court to which or the judge to whom the application for a special entry is made is of the opinion that the application is not made *bona fide* or that it is

frivolous or absurd or that the granting of the application would be an abuse of the process of the court.

(2) Save as hereinafter provided, an application for condonation or for a special entry shall be made to the judge who presided at the trial or, if he is not available, or, if in the case of a conviction before a circuit court the said court is not sitting, to any other judge of the provincial or local division of which that judge was a member when he so presided.

(3) If the accused was convicted by a special superior court, an application for condonation or for a special entry shall be made to that court or, if that court is not sitting, to any judge who was a member of that court or, if no such judge is available, to any judge of the provincial or local division within whose area of jurisdiction the special superior court sat.

(4) The terms of a special entry shall be settled by the court which or the judge who grants the application for a special entry.

(5) If an application for condonation or for a special entry is refused, the accused may, within a period of twenty-one days of such refusal or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice, apply to the Appellate Division for condonation or for a special entry to be made on the record stating in what respect the proceedings are alleged to be irregular or not according to law, as the case may be, and thereupon the provisions of subsections (7), (8), (9) and (10) of section 316 shall *mutatis mutandis* apply.

[subsection (5) amended by Act 29 of 1985]

Appeal on special entry under section 317

318. (1) If a special entry is made on the record, the person convicted may appeal to the Appellate Division against his conviction on the ground of the irregularity or illegality stated in the special entry if, within a period of twenty-one days after entry is so made or within such extended period as may on good cause be allowed, notice of appeal has been given to the registrar of the Appellate Division and to the registrar of the provincial or local division, other than a circuit court, within whose area of jurisdiction the trial took place, and of which the judge who presided at the trial was a member when he so presided.

(2) The registrar of such provincial or local division shall forthwith after receiving such notice give notice thereof to the attorney-general and shall transmit to the registrar of the Appellate Division a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial and of the special entry: Provided that with the consent of the accused and the attorney-general, the registrar concerned may, instead of transmitting the whole record, transmit copies, one of which shall be certified, of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the Appellate Division may nevertheless call for the production of the whole record.

[section 318 amended by Act 29 of 1985]

Reservation of question of law

319. (1) If any question of law arises on the trial in a superior court of any person for any offence, that court may of its own motion or at the request either of the prosecutor or the accused reserve that question for the consideration of the Appellate Division, and thereupon the first-mentioned court shall state the question reserved and shall direct that it be specially entered in the record and that a copy thereof be transmitted to the registrar of the Appellate Division.

[subsection (1) amended by Act 29 of 1985]

(2) The grounds upon which any objection to an indictment is taken shall, for the purposes of this section, be deemed to be questions of law.

(3) The provisions of sections 317(2), (3), (4) and (5) and 318(2) shall apply *mutatis mutandis* with reference to all proceedings under this section.

Report of trial judge to be furnished on appeal

320. The judge or judges, as the case may be, of the High Court before whom a person was on trial for any offence shall, in the case of an appeal under section 316 or 316A or of an application for a special entry under section 317 or the reservation of a question of law under section 319 or an application to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his or her or their opinion upon the case or any point arising in the case, and such report, which shall form part of the record, shall without delay be forwarded by the registrar to the registrar of the court of appeal.

[Section 320 is substituted with amendment markings by Act 26 of 1993; not all of the changes are indicated by the amendment markings.]

When execution of sentence may be suspended

321. (1) The execution of the sentence of the High Court shall not be suspended by reason of any appeal or by reason of any question of law having been reserved for consideration by the court of appeal, unless -

[introductory phrase of subsection (1) amended by Act 26 of 1993]

(a) the accused is sentenced to death ~~or to a whipping~~ in which case the sentence shall not be executed until the appeal or question reserved has been heard and decided; or

[The reference to a whipping in paragraph (a) was specifically cited in *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC), which 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 art 8 of the Namibian Constitution"**.]**

(b) the superior court from which the appeal is made or by which the question is reserved thinks fit to order that the accused be released on bail or that he be treated as an unconvicted offender until the appeal or the question reserved has been heard and decided:

Provided that when the accused is ultimately sentenced to imprisonment the time during which he was so released on bail shall be excluded in computing the term for which he is so sentenced: Provided further that when the accused has been detained as an unconvicted offender, the time during which he has been so detained shall be included or excluded in computing the term for which he is ultimately sentenced, as the court of appeal may determine.

(2) If the court orders that the accused be released on bail, the provisions of sections 66, 67 and 68 and of subsections (2), (3), (4) and (5) of section 307 shall *mutatis mutandis* apply with reference to bail so granted, and any reference in -

(a) section 66 to the court which may act under that section, shall be deemed to be a reference to the superior court by which the accused was released on bail;

(b) section 67 to the court which may act under that section, shall be deemed to be a reference to the magistrate's court within whose area of jurisdiction the accused is to surrender himself in order that effect be given to any sentence in respect of the proceedings in question; and

(c) section 68 to a magistrate shall be deemed to be a reference to a judge of the superior court in question.

[section 321 amended by Act 9 of 2012 to substitute "offender" for "prisoner"]

Powers of court of appeal

322. (1) In the case of an appeal or of any question of law reserved, the court of appeal may -

[introductory phrase of subsection (1) amended by Act 26 of 1993]

(a) allow the appeal if it thinks that the judgment of the trial court should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a failure of justice; or

(b) give such judgment as ought to have been given at the trial or impose such punishment as ought to have been imposed at the trial; or

(c) make such other order as justice may require:

Provided that, notwithstanding that the court of appeal is of opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to the court of appeal that a failure of justice has in fact resulted from such irregularity or defect.

(2) Upon an appeal under section 316 or 316A against any sentence, the court of appeal may confirm the sentence or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.

[subsection (2) amended by Act 26 of 1993]

(3) Where a conviction and sentence are set aside by the court of appeal on the ground that a failure of justice has in fact resulted from the admission against the accused of evidence otherwise admissible but not properly placed before the trial court by reason of some defect in the proceedings, the court of appeal may remit the case to the trial court with instructions to deal with any matter, including the hearing of such evidence, in such manner as the court of appeal may think fit.

(4) Where the Prosecutor-General or other prosecutor has appealed or a question of law has been reserved on the application of a prosecutor in the case of an acquittal, and the court of appeal has given a decision in favour of the Prosecutor-General or such prosecutor, the court of appeal may order that such of the steps referred to in section 324 be taken as the court may direct.

[subsection (4) amended by Act 26 of 1993]

(5) The order or direction of the court of appeal shall be transmitted by the registrar of that court to the registrar of the court before which the case was tried, and such order or

direction shall be carried into effect and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

(6) The powers conferred by this section upon the court of appeal in relation to the imposition of punishments, shall include the power to impose a punishment more severe than that imposed by the court below or to impose another punishment in lieu of or in addition to such punishment.

Appeal by Minister on behalf of person sentenced to death

323. (1) If the Minister, in any case in which a person has been sentenced to death, has any doubt as to the correctness of the conviction in question, and such person has not in terms of section 316(1) applied for leave to appeal against the conviction or has not prosecuted an appeal after leave to appeal against the conviction has been granted or has not submitted an application to the Chief Justice in terms of section 316(6) for condonation or for leave to appeal against the conviction, the Minister may, on behalf and without the consent of such convicted person, refer the relevant record, together with a statement of the ground for his doubt, to the Appellate Division, whereupon that court shall consider the correctness of the conviction in the same manner as if it were considering an appeal by the convicted person against the conviction.

(2) The Minister shall cause -

(a) the attorney-general concerned to be advised of his decision to refer the matter to the Appellate Division;

(b) counsel to be appointed to argue the matter before the Appellate Division and the registrar of that court to be advised of the name of such counsel; and

(c) the registrar of the court in which the conviction occurred to transmit the requisite number of certified copies of the relevant court record and proceedings to the registrar of the Appellate Division and to furnish counsel appointed under paragraph (b) with a copy thereof.

(3) The registrar of the Appellate Division shall give notice to the attorney-general concerned and to counsel appointed under subsection (2)(b) of the date fixed for the consideration by the Appellate Division of the matter referred to it under subsection (1).

(4) The Appellate Division shall in respect of a matter referred to it under subsection (1) have the powers conferred upon it by section 322 in respect of an appeal.

[section 323 amended by Act 29 of 1985]

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 323 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

Institution of proceedings *de novo* when conviction set aside on appeal

324. Whenever a conviction and sentence are set aside by the court of appeal on the ground -

(a) that the court which convicted the accused was not competent to do so; or

(b) that the indictment on which the accused was convicted was invalid or defective in any respect; or

(c) that there has been any other technical irregularity or defect in the procedure,

proceedings in respect of the same offence to which the conviction and sentence referred may again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if the accused had not previously been arraigned, tried and convicted: Provided that no judge or assessor before whom the original trial took place shall take part in such proceedings.

[Section 12 of Act 29 of 1985 provides the following transitional provision in respect of the amendments made to the Act in respect of appeals: "No provision of this Act shall affect an appeal or any proceedings in connection therewith noted in terms of any Act or proclamation before the commencement of such provision, and any such appeal shall be continued and concluded in every respect as if this Act had not been passed."

Section 8 of Act 26 of 1993 provides the following transitional provision in respect of the amendments made to the Act in respect of appeals: "No provision of this Act shall affect an appeal or any proceedings in connection therewith noted in terms of any law before the commencement of such provision, and any such appeal shall be continued and concluded in every respect as if this Act had not been passed."**]**

CHAPTER 32

MERCY AND FREE PARDON

Saving of power of State President to extend mercy

325. Nothing in this Act shall affect the power of the State President to extend mercy to any person.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 325 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

State President may commute sentence of death

326. (1) The State President may, in any case in which he extends mercy to any person under sentence of death, without the consent of that person commute the sentence of death to any other punishment provided by law.

(2) Any such commutation shall be signified in writing to the Minister, who shall thereupon order that the person concerned be punished in the manner directed by the State President, and such order shall have the effect of a valid sentence passed by the court by which such person was convicted.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 326 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

Further evidence and free pardon or substitution of verdict by State President

327. (1) If any person convicted of any offence in any court or sentenced to death in respect of any offence, has in respect of the conviction or the sentence of death exhausted all the recognized legal procedures pertaining to appeal or review, or if such procedures are no longer available to him, and such person or his legal representative addresses the State President by way of petition, supported by relevant affidavits, stating that further evidence has since become

available which materially affects his conviction or the sentence of death imposed upon him, the State President may, if he considers that such further evidence, if true, might reasonably affect the conviction or the sentence of death, direct the Minister to refer the petition and the relevant affidavits to the court in which the conviction occurred or in which the sentence of death was imposed.

(2) The court shall receive the said affidavits as evidence and may examine and permit the examination of any witness in connection therewith, including any witness on behalf of the State, and to this end the provisions of this Act relating to witnesses shall apply as if the matter before the court were a criminal trial in that court.

(3) Unless the court directs otherwise, the presence of the convicted person or the person sentenced to death shall not be essential at the hearing of further evidence.

(4) (a) The court shall assess the value of the further evidence and advise the State President whether, and to what extent, such evidence affects the conviction or the sentence in question.

(b) The court shall not, as part of the proceedings of the court, announce its finding as to the further evidence or the effect thereof on the conviction or sentence in question.

(5) The court shall be constituted as it was when the conviction occurred or, if it cannot be so constituted, the judge-president or, as the case may be, the senior regional magistrate or magistrate of the court in question, shall direct how the court shall be constituted.

(6) (a) The State President may, upon consideration of the finding or advice of the court under subsection (4) -

(i) direct that the conviction in question be expunged from all official records by way of endorsement on such records, and the effect of such a direction and endorsement shall be that the person concerned be given a free pardon as if the conviction in question had never occurred; or

(ii) substitute for the conviction in question a conviction of lesser gravity and substitute for the punishment imposed for such conviction any other punishment provided by law; or

(iii) commute the sentence of death to any other punishment provided by law.

(b) The State President shall direct the Minister to advise the person concerned in writing of any decision taken under paragraph (a), other than a decision taken under subparagraph (iii) of that paragraph, and to publish a notice in the *Gazette* in which such decision, other than a decision taken under the said subparagraph (iii), is set out.

(7) No appeal, review or other proceedings of whatever nature shall lie in respect of -

(a) a refusal by the State President to issue a direction under subsection (1) or to act upon the finding or advice of the court under subsection (4)(a); or

(b) any aspect of the proceedings, finding or advice of the court under this section.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 327 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977,

meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

CHAPTER 33

GENERAL PROVISIONS

Force of process

328. Any warrant, subpoena, summons or other process relating to any criminal matter shall be of force throughout the Republic and may be executed anywhere within the Republic.

[Section 3(1)(t) of the transfer proclamation excluded the reference to the Republic in section 328 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that prior to Namibian independence, that term retained the meaning it was given in section 1 of the Act (South Africa and the territory of South West Africa).]

Court process may be served or executed by police official

329. Any police official shall, subject to the rules of court, be as qualified to serve or execute any subpoena or summons or other document under this Act as if he had been appointed deputy sheriff or deputy messenger or other like officer of the court.

Transmission of court process by telegraph or similar communication

330. Any document, order or other court process which under this Act or the rules of court is required to be served or executed with reference to any person, may be transmitted by telegraph or similar written or printed communication, and a copy of such telegraph or communication, served or executed in the same manner as the relevant document, order or other court process is required to be served or executed, shall be of the same force and effect as if the document, order or other court process in question had itself been served or executed.

Irregular warrant or process

331. Any person who acts under a warrant or process which is bad in law on account of a defect in the substance or form thereof shall, if he has no knowledge that such warrant or process is bad in law and whether or not such defect is apparent on the face of the warrant or process, be exempt from liability in respect of such act as if the warrant or process were good in law.

Prosecution of corporations and members of associations

332. (1) For the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law -

(a) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body; and

(b) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,

in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case

may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.

(2) In any prosecution against a corporate body, a director or servant of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he were the person accused of having committed the offence in question: Provided that -

(a) if the said person pleads guilty, other than by way of admitting guilt under section 57, the plea shall not be valid unless the corporate body authorized him to plead guilty;

(b) if at any stage of the proceedings the said person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court in question may, at the request of the prosecutor, from time to time substitute for the said person any other person who is a director or servant of the said corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;

(c) if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of property of the corporate body in terms of section 288;

(d) the citation of a director or servant of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, shall not exempt that director or servant from prosecution for that offence in terms of subsection (5).

(3) In criminal proceedings against a corporate body, any record which was made or kept by a director, servant or agent of the corporate body within the scope of his activities as such director, servant or agent, or any document which was at any time in the custody or under the control of any such director, servant or agent within the scope of his activities as such director, servant or agent, shall be admissible in evidence against the accused.

(4) For the purposes of subsection (3) any record made or kept by a director, servant or agent of a corporate body or any document which was at any time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as such director, servant or agent, unless the contrary is proved.

(5) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

[*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". **The Court stated further:** "Although the expression may well be severable, regard being had to the test for severability as endorsed by this court in the *Cultura 2000* case, the application before the court only requires of it to provide answers to the questions posed regarding the constitutionality of the impugned provisions. The terms of the referral under art 79 and the nature of the relief prayed for in the notice of motion do not require of the court to excise any phrases or provisions from the impugned sections or, for that matter, to strike any of the sections which offend the Constitution. I assume that the relief prayed for has been deliberately cast in that form to allow accused persons and institutions of state alike to take such further action, based on the determination of the issues by this court as they may be allowed or advised to take."**]**

(6) In criminal proceedings against a director or servant of a corporate body in respect of an offence -

(a) any evidence which would be or was admissible against that corporate body in a prosecution for that offence, shall be admissible against the accused;

(b) whether or not such corporate body is or was liable to prosecution for the said offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of business of that corporate body or which was at any time in the custody or under the control of any director, servant or agent of such corporate body, in his capacity as director, servant or agent, shall be *prima facie* proof of its contents and admissible in evidence against the accused, unless he is able to prove that at all material times he had no knowledge of the said document, memorandum, book or record, in so far as its contents are relevant to the offence charged, and was in no way party to the drawing up of such document or memorandum or the making of any relevant entries in such book or record.

(7) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or in endeavouring to further its interests, committed an offence, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it: Provided that if the business or affairs of the association are governed or controlled by a committee or other similar governing body, the provisions of this subsection shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

(8) In any proceedings against a member of an association of persons in respect of an offence mentioned in subsection (7) any record which was made or kept by any member or servant or agent of the association within the scope of his activities as such member, servant or agent, or any document which was at any time in the custody or under the control of any such member, servant or agent within the scope of his activities as such member, servant or agent, shall be admissible in evidence against the accused.

(9) For the purposes of subsection (8) any record made or kept by a member or servant or agent of an association, or any document which was at any time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as such member or servant or agent, unless the contrary is proved.

(10) In this section the word "director" in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons

which controls or governs that corporate body or, where there is no such body or group, who is a member of that corporate body.

(11) The provisions of this section shall be additional to and not in substitution for any other law which provides for a prosecution against corporate bodies or their directors or servants or against associations of persons or their members.

(12) Where a summons under this Act is to be served on a corporate body, it shall be served on the director or servant referred to in subsection (2) and in the manner referred to in section 54(2).

Minister may invoke decision of Appellate Division on question of law

333. Whenever the Minister has any doubt as to the correctness of any decision given by any superior court in any criminal case on a question of law, or whenever a decision in any criminal case on a question of law is given by any division of the Supreme Court which is in conflict with a decision in any criminal case on a question of law given by any other division of the Supreme Court, the Minister may submit such decision or, as the case may be, such conflicting decisions to the Appellate Division of the Supreme Court and cause the matter to be argued before that Court in order that it may determine such question of law for the future guidance of all courts.

[Section 3(1)(t) of the transfer proclamation (as amended) excluded section 333 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this section was not transferred from South Africa to South West Africa prior to Namibian independence.]

Minister may declare certain persons peace officers for specific purposes and liability for damages

334. (1) (a) The Minister may by notice in the *Gazette* declare that any person who, by virtue of his office, falls within any category defined in the notice, shall, within an area specified in the notice, be a peace officer for the purpose of exercising, with reference to any provision of this Act or any offence or any class of offences likewise specified, the powers defined in the notice.

(b) The powers referred to in paragraph (a) may include any power which is not conferred upon a peace officer by this Act.

(2) (a) No person who is a peace officer by virtue of a notice issued under subsection (1) shall exercise any power conferred upon him under that subsection unless he is at the time of exercising such power in possession of a certificate of appointment issued by his employer, which certificate shall be produced on demand.

(b) A power exercised contrary to the provisions of paragraph (a) shall have no legal force or effect.

(3) The Minister may by notice in the *Gazette* prescribe -

(a) the conditions which shall be complied with before a certificate of appointment may validly be issued under subsection (2)(a);

(b) any matter which shall appear in or on such certificate of appointment in addition to any matter which the employer may include in such certificate.

(4) Where the employer of any person who becomes a peace officer under the provisions of this section would be liable for damages arising out of any act or omission by such person in the discharge of any power conferred upon him under this section, the State shall not be liable for such damages unless the State is the employer of that person, in which event the department of State, including a provincial administration, in whose service such person is, shall be so liable.

Person who makes statement entitled to copy thereof

335. Whenever a person has in relation to any matter made to a peace officer a statement in writing or a statement which was reduced to writing, and criminal proceedings are thereafter instituted against such person in connection with that matter, the person in possession of such statement shall furnish the person who made the statement, at his request, with a copy of such statement.

Act or omission constituting offence under two or more laws

336. Where an act or an omission constitutes an offence under two or more statutory provisions or is an offence against a statutory provision and the common law, the person guilty of such act or omission shall, unless the contrary intention appears, be liable to be prosecuted and punished under either statutory provision or, as the case may be, under the statutory provision or the common law, but shall not be liable to more than one punishment for the act or omission constituting the offence.

Estimating age of person

337. If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available at the proceedings, the presiding judge or judicial officer may estimate the age of such person by his appearance or from any information which may be available, and the age so estimated shall be deemed to be the correct age of such person, unless -

(a) it is subsequently proved that the said estimate was incorrect; and

(b) the accused at such proceedings could not lawfully have been convicted of the offence with which he was charged if the correct age had been proved.

Production of document by accused at criminal proceedings

338. Where any law requires any person to produce any document at any criminal proceedings at which such person is an accused, and such person fails to produce such document at such proceedings, such person shall be guilty of an offence, and the court may in a summary manner enquire into his or her failure to produce the document and, unless such person satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, sentence him or her to any punishment provided for in such law, or, if no punishment is so provided, to a fine not exceeding N$2 000 or to imprisonment for a period not exceeding six months.

[Section 338 is substituted with amendment markings by Act 13 of 2010; not all of the changes are indicated by the amendment markings.]

Removal of accused from one prison to another for purpose of attending at criminal proceedings

339. Whenever an accused is in custody and it becomes necessary that he be removed from one correctional facility to another correctional facility for the purpose of attending his

trial, the magistrate of the district in which the accused is in custody shall issue a warrant for the removal of the accused to such other correctional facility.

[section 339 amended by Act 9 of 2012 to substitute "correctional facility" for "prison"]

Correctional facility list of unsentenced offenders and witnesses detained

340. Every officer in charge of a correctional facility within the area for which any session or circuit of any superior court is held for the trial of criminal cases shall deliver to that court at the commencement of each such session or circuit a list -

(a) of the unsentenced offenders who, at such commencement, have been detained within his correctional facility for a period of ninety days or longer; and

(b) of witnesses detained under section 184 or 185 and who, at such commencement, are being detained within his correctional facility,

and such list shall, in the case of each such offender and each such witness, specify the date of his admission to the correctional facility and the authority for his detention which shall, in the case of a witness, state whether the detention is under section 184 or 185, and shall further specify, in the case of each such offender, the cause of his detention.

[Section 340 is amended by Act 9 of 2012 to substitute "correctional facility" for "prison", "offender" and "offenders" for "prisoner" and "prisoners", respectively, and "officer in charge of a correctional facility" for "head of a prison".]

Compounding of certain minor offences

341. (1) If a person receives from any peace officer a notification in writing alleging that such person has committed, at a place and upon a date and at a time or during a period specified in the notification, any offence likewise specified, of any class mentioned in Schedule 3, and setting forth the amount of the fine which a court trying such person for such offence would probably impose upon him, such person may within thirty days after the receipt of the notification deliver or transmit the notification, together with a sum of money equal to the said amount, to the magistrate of the district or area wherein the offence is alleged to have been committed, and thereupon such person shall not be prosecuted for having committed such offence.

(2) (a) In the case of an offence, other than an offence under the common law or under the Motor Carrier Transportation Act, 1930 (Act 39 of 1930), relating to any vehicle, committed within the area of jurisdiction of a local authority, any person receiving a notification in terms of subsection (1) from a peace officer in the service of such local authority may deliver or transmit the notification, together with a sum of money equal to the amount specified in the notification, to such local authority.

[The Motor Carrier Transportation Act 39 of 1930 was repealed by the Road Transportation Act 74 of 1977, which was made applicable to South West Africa and is still in force in Namibia with respect to passenger transport. It was repealed by section 112 of the Road Traffic and Transport Act 22 of 1999, but section 112 has not been brought into force with respect to the repeal of the Road Transportation Act 74 of 1977 and its amendments insofar as these laws relate to passenger transport.]

(b) Any sum of money paid to a local authority as provided in paragraph (a) shall for the purposes of section 22 of the Financial Adjustments Act, 1932 (Act 25 of 1932), be deemed to be a fine imposed as a traffic fine.

[The Financial Adjustments Act 35 of 1932 does not appear to have been applicable to South West Africa. It was repealed in South Africa by the Finance and Financial Adjustments Act Consolidation Act 11 of 1977.]

(c) Not later than seven days after receipt of any sum of money as provided in paragraph (a), the local authority concerned shall forward to the magistrate of the district or area wherein the offence is alleged to have been committed a copy of the notification relating to the payment in question.

(d) If the magistrate finds that the amount specified in the notification exceeds the amount determined in terms of subsection (5) in respect of the offence in question, he shall notify the local authority of the amount whereby the amount specified in the notification exceeds the amount so determined and the local authority concerned shall immediately refund the amount of such excess to the person concerned.

(e) For the purposes of this subsection "local authority" means a city council, a town council, a village council, a village management board or a local board.

(3) Any money paid to a magistrate in terms of subsection (1) shall be dealt with as if it had been paid as a fine for the offence in question.

(4) The Minister may from time to time by notice in the *Gazette* add any offence to the offences mentioned in Schedule 3, or remove therefrom any offence mentioned therein.

(5) The amount to be specified in any notification issued under this section as the amount of the fine which a court would probably impose in respect of any offence, shall be determined from time to time for any particular area by the magistrate of the district or area in which such area is situated, and may differ from the admission of guilt fine determined under section 57(5)(a) for the offence in question.

Conviction or acquittal no bar to civil action for damages

342. A conviction or an acquittal in respect of any offence shall not bar a civil action for damages at the instance of any person who has suffered damages in consequence of the commission of that offence.

Application of this Act in the territory

343. This Act shall apply also in the territory, including the Eastern Caprivi Zipfel.

Repeal of laws

344. (1) Subject to the provisions of subsection (2), the laws specified in Schedule 4 are hereby repealed to the extent set out in the third column of that Schedule.

(2) 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.

(3) Notwithstanding the repeal of any law under subsection (1), criminal proceedings which have under such law at the date of commencement of this Act been commenced in any superior court, regional court or magistrate's court and in which evidence has at such date been

led in respect of the relevant charge, shall, if such proceedings have at that date not been concluded, be continued and concluded under such law as if it had not been repealed.

Short title and date of commencement

345. (1) This Act shall be called the Criminal Procedure Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette.*

(2) The State President may under subsection (1) fix different dates in respect of different provisions of this Act and may fix different dates for the commencement of any such provision in the Republic, the territory and the Eastern Caprivi Zipfel.

Schedule 1

(Sections 40, 42, 49)

Treason.
Sedition.
Murder.
Culpable homicide.
Rape.
Indecent assault.
~~Sodomy.~~
["The inclusion of the crime of sodomy in schedule 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977) is declared unconstitutional and invalid." *Dausab v Minister of Justice & Others* 2024 (3) NR 791 (HC); this case also declared the common law crime of sodomy to be unconstitutional and invalid.]
Bestiality.
Robbery.
Assault, when a dangerous wound is inflicted.
Arson.
Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
Theft, whether under the common law or a statutory provision.
Receiving stolen property knowing it to have been stolen.
Fraud.
Forgery or uttering a forged document knowing it to have been forged.
Offences relating to the coinage.
Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.
Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.
Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 2

PART 1

(Section 35)

Any offence under any law relating to the illicit possession, conveyance or supply of dependence-producing drugs or intoxicating liquor.
Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.

Breaking or entering any premises, whether under the common law or a statutory provision with intent to commit an offence.
Theft, whether under the common law or a statutory provision.

PART II

(Sections 59, 72)

[PART II amended by Act 31 of 1985]

Treason.
Sedition.
Murder.
Rape.
Robbery.
Arson.
Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds R600.
Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones in each case if the value involved in the offence exceeds R600.
Any offence under any law relating to the illicit conveyance or supply of dependence-producing drugs.
Any offence relating to the coinage.
Any conspiracy, incitement or attempt to commit any offence referred to in this Part.

PART III

(Sections 59, 72, 184, 189)

[heading of PART III amended by Act 13 of 2010]

Arson.
Murder.
Kidnapping.
Childstealing.
Robbery.
Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.
Any conspiracy, incitement or attempt to commit any offence referred to in this Part.

PART IV

(Sections 59, 61, 72)

[PART IV inserted by Act 5 of 1991]

Treason.
Sedition.
Murder.
Kidnapping.
Childstealing.
Rape.

Robbery.
Arson.
Public violence.
Bribery.
Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.
Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds R600.
Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones in each case if the value involved in the offence exceeds R600.
Any offence under any law relating to the illicit possession, conveyance or supply of dependence-producing drugs.
Any offence relating to the coinage.
Any offence under the Controlled Game Products Proclamation, 1980 (Proclamation AG. 42 of 1980).

[The Controlled Game Products Proclamation 42 of 1980 has been replaced by the Controlled Wildlife Products and Trade Act 9 of 2008.]

Any offence under the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975).
Any offence under section 22A of the Sea Fisheries Act, 1973 (Act 58 of 1973).

[The Sea Fisheries Act 58 of 1973 was replaced by the Sea Fisheries Act 29 of 1992, which was replaced in turn by the Marine Resources Act 27 of 2000.]

Any conspiracy, incitement or attempt to commit any offence referred to in this Part.

Schedule 3

(Section 341)

Any contravention of a bye-law or regulation made by or for any council, board or committee established in terms of any law for the management of the affairs of any division, city, town, borough, village or other similar community

[amended by Act 56 of 1979]

Any offence committed by -

(a) driving a vehicle at a speed exceeding a prescribed limit;
(b) driving a vehicle which does not bear prescribed lights, or any prescribed means of identification;
(c) leaving or stopping a vehicle at a place where it may not be left or stopped, or leaving a vehicle in a condition in which it may not be left;
(d) driving a vehicle at a place where and at a time when it may not be driven;
(e) driving a vehicle which is defective or any part whereof is not properly adjusted, or causing any undue noise by means of a motor vehicle;
(f) owning or driving a vehicle for which no valid licence is held;
(g) driving a motor vehicle without holding a licence to drive it.

Schedule 4

LAWS REPEALED

No. and Year of Law.	Title.	Extent of Repeal.
	REPUBLIC.	
Act 38 of 1916	Mental Disorders Act, 1916	Sections 27, 28, 29 and

		29bis.
Act 24 of 1922	South-West Africa Affairs Act, 1922	Section 2(1), so much of section 3 as is unrepealed, and sections 4, 6 and 7.
Act 22 of 1926	South-West Africa Mental Disorders Act, 1926	So much as is unrepealed.
Act 46 of 1935	General Law Amendment Act, 1935	Section 78 and so much of section 101 as is unrepealed.
Act 32 of 1944	Magistrates' Courts Act, 1944	Sections 93, *93bis* and 94 to 105 inclusive.
Act 32 of 1952	General Law Amendment Act, 1952	Section 9 and so much of section 26 as is unrepealed.
Act 40 of 1952	Magistrates' Courts Amendment Act, 1952	Sections 22 to 26 inclusive.
Act 56 of 1955	Criminal Procedure Act, 1955	The whole, except sections 319(3) and 384.
Act 62 of 1955	General Law Amendment Act, 1955	Sections 13, 24, 25 and 26.
Act 50 of 1956	General Law Amendment Act, 1956	Sections 22, 23, 24, 25, 27, 28, 29 and 31.
Act 33 of 1957	Interpretation Act, 1957	Section 9.
Act 68 of 1957	General Law Amendment Act, 1957	Section 5 in so far as it relates to criminal proceedings, and sections 40 and 45 to 59 inclusive.
Act 9 of 1958	Criminal Procedure Amendment Act, 1958	The whole.
Act 18 of 1958	Special Criminal Courts Amendment Act, 1958	The whole.
Act 16 of 1959	Criminal Law Amendment Act, 1959	Sections 3 to 8 inclusive, 10, 11 and 15 to 49 inclusive.
Act 75 of 1959	Criminal Law Further Amendment Act, 1959	Sections 3 to 6 inclusive.
Act 33 of 1960	Children's Act, 1960	Sections 98 to 102 inclusive.
Act 39 of 1961	General Law Amendment Act, 1961	Section 4.
Act 45 of 1961	Interpretation Amendment Act, 1961	Section 3.
Act 14 of 1962	Evidence Act, 1962	So much as is unrepealed.
Act 76 of 1962	General Law Amendment Act, 1962	Sections 17 and 18.
Act 93 of 1962	General Law Further Amendment Act, 1962	Sections 28 and 29.
Act 19 of 1963	Magistrates' Courts Amendment Act, 1963	Sections 16 to 20 inclusive.
Act 37 of 1963	General Law Amendment Act, 1963	Sections l, 2 and 8 to 12 inclusive.

Act 92 of 1963	Criminal Procedure Amendment Act, 1963	So much as is unrepealed.
Act 93 of 1963	General Law Further Amendment Act, 1963	Sections 10 to 15 inclusive.
Act 80 of 1964	General Law Amendment Act, 1964	Sections 12 and 22 to 30 inclusive.
Act 16 of 1965	Prevention of Counterfeiting of Currency Act, 1965	Section 10.
Act 25 of 1965	Civil Proceedings Evidence Act, 1965	The amendment of section 261 of the Criminal Procedure Act, 1955, contained in the Schedule.
Act 96 of 1965	Criminal Procedure Amendment Act, 1965	So much as is unrepealed.
Act 62 of 1966	General Law Amendment Act, 1966	Sections 7, 8 and 9.
Act 102 of 1967	General Law Amendment Act, 1967	Sections 7 to 12 inclusive.
Act 9 of 1968	Criminal Procedure Amendment Act, 1968	The whole.
Act 70 of 1968	General Law Amendment Act, 1968	Sections 31 and 37 to 41 inclusive.
Act 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	Sections 17 and 18.
Act 17 of 1969	Magistrates' Courts Amendment Act, 1969	Section 4.
Act 34 of 1969	Abolition of Juries Act, 1969	Sections 1 to 32 inclusive.
Act 101 of 1969	General Law Amendment Act, 1969	Sections 5, 6, 7, 8 and 9.
Act 53 of 1970	Magistrates' Courts Amendment Act, 1970	Section 18.
Act 92 of 1970	General Law Further Amendment Act, 1970	Sections 4 and 14.
Act 41 of 1971	Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971	Section 62.
Act 102 of 1972	General Law Amendment Act, 1972	Section 9.
Act 32 of 1974	Criminal Procedure Amendment Act, 1974	The whole.
Act 33 of 1975	Criminal Procedure Amendment Act, 1975	The whole.
Act 79 of 1976	Internal Security Amendment Act, 1976	Section 11.
	SOUTH WEST AFRICA.	
Proclamation 26 of 1920	The Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920	In so far as it relates to the attendance by witnesses of criminal proceedings in courts in the Republic.
Proclamation 30 of 1935	Criminal Procedure and Evidence Proclamation, 1935	In so far as it applies to the Eastern Caprivi Zipfel.
Proclamation 8 of 1938	Procedure and Evidence Proclamation, 1938	Section 3 in so far as it relates to criminal proceedings.

Ordinance 34 of 1963	Criminal Procedure Ordinance, 1963.....	The whole, except sections 300(3) and 370.
Ordinance 35 of 1965	Criminal Procedure Amendment Ordinance, 1965	The whole.
Ordinance 19 of 1966	Criminal Procedure Amendment Ordinance, 1966	The whole.
Ordinance 19 of 1967	Criminal Procedure Amendment Ordinance, 1967	The whole.
Ordinance 4 of 1968	General Law Amendment Ordinance, 1968.....	Sections 5 to 13 inclusive.
Ordinance 3 of 1969	Criminal Procedure Amendment Ordinance, 1969	The whole.
Ordinance 14 of 1975	Criminal Procedure Amendment Ordinance, 1975	The whole.