

# Namibia

## National Child Protection Legislation

### National Legislation

- Age of Child – **Under 18**  
[Child Care and Protection Act \(2015\)](#)  
**Art. 1 – Definitions**  
“child” means a person who has not attained the age of 18 years
  
- Age of Consent – **16 years old**  
[Combating of Immoral Practices Amendment Act of 2000](#)  
**Sect. 14 – Sexual Offenses with Youths**  
Any person who:  
(a) commits or attempts to commit a sexual act with a child under the age of sixteen years...shall be guilty of an offence and liable on conviction to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.
  
- Age of Marriage – **21 years old**  
[Child Care and Protection Act \(2015\)](#)  
**Sect. 10(10) – Age of majority**  
Despite subsection (1), a person who is under the age of 21 years requires the consent of his or her parents or guardian to enter into a marriage, unless that person has been previously married or emancipated by an order of court.
  
- Age of Criminal Responsibility – **7 years**  
[First Country Report of Namibia to the UN Committee on the Rights of the Child 1994](#)  
**40.** A child over the age of 7 can in theory be convicted of a crime in Namibia. For children between the ages of 7 and 14, however, there is a rebuttable presumption that the child is incapable of wrongdoing. This means that offenders in this age group can be convicted only if the State proves that the child knowingly intended to do wrong and understood the consequences of the wrongful act.  
  
**41.** "Juvenile offenders" are generally considered to be persons under the age of 18, and there are special provisions regarding procedures and punishment for children under this age (Criminal Procedure Act No. 51, 1977). There are also a few special provisions in the criminal law for persons over the age of 18 but under the age of 21.  
  
[Child Care and Protection Act \(2015\)](#)  
**Art. 17 – Administration of Juvenile Justice**  
4. There shall be a minimum age below, which children shall be presumed not to have the capacity to infringe the penal law.  
  
[Namibian Constitution](#)  
**Art. 15 (5) – Children’s Rights**  
No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

- **Extraterritoriality**

[Child Care and Protection Act \(2015\)](#)

**Art. 212 – Extra-territorial jurisdiction**

(1) A court of Namibia has jurisdiction in respect of an act committed outside Namibia which would have constituted an offence in terms of this Chapter had it been committed inside Namibia, regardless of whether or not the act constitutes an offence at the place of its commission, if the person to be charged –

- (a) is a citizen of Namibia;
- (b) is ordinarily resident in Namibia;
- (c) has committed the offence against a citizen of Namibia or a person who is ordinarily resident in Namibia;
- (d) is, after the commission of the offence, present in the territory of Namibia or in its territorial waters or on board of a ship or aircraft registered or required to be registered in Namibia;
- (e) is, for any reason, not extradited by Namibia or if there is no application to extradite that person; or
- (f) is a juristic person or a partnership registered in terms of any law of Namibia.

(2) A person who commits an offence contemplated in subsection (1) is liable on conviction to the penalty provided for in this Act for that offence.

(3) The minister responsible for justice must, with the concurrence of the Prosecutor General, in writing, designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence in a country outside Namibia as provided for in subsection (1), but only the High Court has jurisdiction in respect of an offence referred to in subsection (1)(d).

(4) Prosecution may not be instituted against a person in terms of this section with respect to conduct which formed the basis of an offence under this Chapter in respect of which that person had already been convicted or acquitted by a court of another jurisdiction.

[Extradition Act of 1996](#)

**Sec. 3(1) - Meaning of "extraditable offence"**

For the purposes of this Act "extraditable offence" means an act, including an act of omission, committed within the jurisdiction of a country contemplated in section 4(1) which constitutes under the laws of that country an offence punishable with imprisonment for a period of 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable with imprisonment for a period of 12 months or more.

**Sec. 4(1) - Countries to which persons may be extradited**

Subject to the provisions of this Act, the extradition of persons from Namibia may be affected to -

- (a) any country which has entered into an extradition agreement with Namibia; and
- (b) any other country, including a Commonwealth country, which has been specified by the President by proclamation in the Gazette for purposes of this Act.

- **Dual Criminality**

[Extradition Act of 1996](#)

**Sec. 6 - Prosecution of Namibian citizens for extraditable offences committed in other countries**

(1) A Namibian citizen may be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country contemplated in section 4(1), but no such prosecution shall be instituted unless -

- (a) a request for the return of that person has been made in accordance with the provisions of this Act; and
  - (b) the Prosecutor-General has in writing authorized the institution of such prosecution.
- (2) For the purpose of determining the jurisdiction in relation to proceedings under subsection (1), the conduct constituting the offence shall for all purposes connected with or consequential to the trial of such offence be deemed to have been committed within the magisterial district of Windhoek.
- (3) Notwithstanding section 2(1), the Minister may in writing authorize a magistrate to proceed under sections 10 and 12 against a Namibian citizen whose return has been requested under section 7, if in the opinion of the Minister such return is warranted due to -
- (a) the seriousness of the extraditable offence;
  - (b) the cost involved in bringing the necessary witnesses and other evidence to Namibia; or
  - (c) any other circumstances justifying extradition, provided that the Minister is satisfied that the order for such return can lawfully be made in accordance with this Act.

▪ **Mandatory reporting requirements**

[Child Care and Protection Act \(2015\)](#)

**Sec. 132 – Reporting in respect of a child who may be in need of protective services.**

(1) Despite the provisions of any other law, if a person who performs professional or official duties with respect to children, obtains during the course of performing those duties information that gives rise to a suspicion that a child is or may be in need of protective services as contemplated in section 131, that person must report such information in the prescribed form to a state-employed social worker or a member of the police.

(2) For the purpose of subsection (1), a person who performs professional or official duties with respect to children includes a school principal, teacher, medical or dental practitioner, pharmacist, school counsellor, dentist, psychologist, psychological counsellor, nurse, physiotherapist, speech therapist, occupational therapist, traditional leader, traditional health practitioner, legal practitioner, religious leader, labour inspector, social worker in private practice or employed by a child protection organisation or a member of staff at a place of safety or a facility registered under Chapter 5.

(3) Any person, other than a person referred to in subsection (2), including another child, who reasonably believes that a child is or may be in need of protective services as contemplated in section 131, may report that belief to any state-employed social worker or a member of the police.

(4) Subsection (1) applies irrespective of the fact that the information on which the belief is based is privileged information under any law, but does not apply in the case of legal professional privilege.

(5) A person referred to in subsection (1) or (3) is entitled to have his or her identity kept confidential if the report is made in good faith, unless the interests of justice require otherwise and is not subject to civil liability for making any report required or permitted in terms of this section, unless the person makes the report knowing it to be false or misleading.

(6) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

- **Obligations of Educational Institutions**

No information found.

- **Prohibition to hold certain positions**

Namibian Constitution

**Art. 47 – Disqualification of Members**

No persons may become members of the National Assembly if they:

- (a) have at any time after Independence been convicted of any offence in Namibia, or outside Namibia if such conduct would have constituted an offence within Namibia, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election; or
- (b) have at any time prior to Independence been convicted of an offence, if such conduct would have constituted an offence within Namibia after Independence, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election: provided that no person sentenced to death or imprisonment for acts committed in connection with the struggle for the independence of Namibia shall be disqualified under this Sub-Article from being elected as a member of the National Assembly.

- **Employment Law**

Labor Act (2007) – General Regulations

**Sec. 45 (2) – Meaning of unfair dismissals and unfair disciplinary actions.**

For purposes of the provisions of subsection (1), an employee shall not be regarded to have been dismissed or to have been imposed a disciplinary penalty for a valid and fair reason, if such employee is dismissed or such penalty is imposed:

- (a) by reason of the fact or because the employer concerned suspects or believes, whether or not the suspicion or belief is justified or correct, that such employee:
  - (i) has given information to the Minister, the Permanent Secretary, the Commissioner, an inspector or any other person involved in the administration of the provisions of this Act which in terms of this Act, a collective agreement or a wage order he or she is required to give or which relates to terms and conditions of his or her employment or to those of any other employee of his or her employer, or has complied with a lawful requirement of the Minister, the Permanent Secretary, the Commissioner, an inspector or any other person involved in the administration of the provisions of this Act, or has given evidence before the Labour Court, a district labour court, the Commission or any other court of law;
  - (ii) has refused or omitted to do any act which the employer required or permitted him or her to do contrary to a provision of this Act, a collective agreement or wage order;
  - (iii) belongs or has belonged to any trade union or any other organisation of employees the object of which is or was to protect or promote the interests of employees in relation to their employers, or takes or has taken part outside his or her ordinary working hours or, with the consent of the employer, during his or her ordinary working hours in the formation or lawful activities of any such union or organisation;

(b) by reason of such employee's sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status;

(c) by reason of any act performed or omission committed by such employee which is by or under any provision of this Act or any term and condition of a contract of employment or collective agreement, authorised or permitted, or the exercise of any right conferred upon such employee by or under any such provision or term and condition.

**Sec. 46 (4) – Orders of district labour courts in relation to unfair dismissals from employment, or unfair disciplinary action taken against employees.**

In considering:

(a) whether an employee has been dismissed unfairly or whether any disciplinary action has been taken unfairly against such employee, the district labour court shall have regard:

(i) to the procedure in accordance with which the employer has reached his or her decision to dismiss the employee concerned or to take such disciplinary action against such employee;

(ii) to the manner in which such procedure has been followed in comparable circumstances in respect of other employees before and after such employee has been dismissed or such disciplinary action has been taken against such employee;

(iii) to the conduct and capability of the employee concerned during the period of his or her employment;

(iv) to the extent to which the employer concerned has complied with the relevant provisions of this Act and any terms and conditions contained in the contract of employment or a collective agreement;

(b) the nature of an order to be made in the event of the district labour court finding that the employee concerned has been dismissed unfairly or that disciplinary action has been taken unfairly against such employee, the district labour court shall have regard:

(i) to the order prayed for or the relief sought by the employee;

(ii) to the circumstances in which the employee concerned has been dismissed or such disciplinary action has been taken against such employee, including the extent to which such employee has contributed to or caused his or her dismissal or disciplinary action;

(iii) to the practical enforceability of any such order.

▪ **Criminal Law - Defamation**

[Criminal Procedure Act](#)

**Art. 121 – Truth and publication for public benefit of defamatory matter to be specially pleaded**

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

**Art. 273 – Evidence on charge of defamation**

If at criminal proceedings at which an accused is charged with the unlawful publication of defamatory matter that 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, are admissible in evidence without further proof of their publication.

## Sexual Offenses Against Children

### Combating of Rape Act 2000

#### **Sec. 2 - Rape**

- (1) Any person (in this Act referred to as a perpetrator) who intentionally under coercive circumstances –
- (a) commits or continues to commit a sexual act with another person; or
  - (b) causes another person to commit a sexual act with the perpetrator or with a third person, shall be guilty of the offence of rape.
- (2) For the purposes of subsection (1) "coercive circumstances" includes, but is not limited to-
- (d) circumstances where the complainant is under the age of fourteen years and the perpetrator is more than three years older than the complainant;

### Combating of Immoral Practices Amendment Act 2000

#### **Sec. 14 - Sexual offences with youths**

Any person who-

- (a) commits or attempts to commit a sexual act with a child under the age of sixteen years; or
- (b) commits or attempts to commit an indecent or immoral act with such a child; or
- (c) solicits or entices such a child to the commission of a sexual act or an indecent or immoral act, and who-
  - (i) is more than three years older than such a child; and
  - (ii) is not married to such a child (whether under the general law or customary law)shall be guilty of an offence and liable on conviction to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

### Criminal Procedure Act

#### **Art. 291 – Rape and indecent assault**

- (1) If the evidence on a charge of rape or attempted rape, whether the charge is brought under a statute or at common law, does not prove the offence of rape or 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) committing a sexual act with a child under a specified age;
    - (ii) committing an immoral or indecent act with such a child; or
    - (iii) soliciting or enticing such a child to the commission of a sexual act or an immoral or indecent act; or
  - (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, 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 child under a specific age; or
    - (ii) soliciting or enticing such a child to the commission of a sexual act or an immoral or indecent act; or

- (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,the accused may be found guilty of the offence so proved.

**Art. 298 – Statutory offence of committing a sexual act or of unlawful carnal intercourse**

If the evidence on a charge of committing a sexual act or attempting to commit a sexual act, other than rape under a statute, or 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 that other person;
  - (ii) soliciting, enticing or importuning that other person to commit a sexual act or to have unlawful carnal intercourse;
  - (iii) soliciting, enticing or importuning that other person to commit an immoral or indecent act;or
  - (iv) conspiring with that other person to commit a sexual act or to have unlawful carnal intercourse,

the accused may be found guilty of the offence so proved.