

National Laws

Legislation of Interpol member states on sexual offences against children

Namibia – Namibie - Namibia

Windhoek

I. Ages for legal purposes

Age of simple majority

The legal age of majority is twenty-one (21) years (Age of Majority Act 57/1972).

Age of consent for sexual activity

A girl under the age of twelve (12) years can not legally consent to sexual intercourse. While the legal age of consent for a boy is seven (7) and older, even if the girl has in fact given consent for sexual intercourse, the act is considered rape.

If a girl aged between twelve (12) and sixteen (16) consents to sexual intercourse, the accused is not guilty of rape, but guilty of an offence described in Section 14.

Age of consent for marriage

Under normal circumstances, a person under the age of twenty-one (21) years can consent to marriage. But over eighteen (18) years of age in the case of a boy, and over fifteen (15) years of age in the case of a girl, they can enter into matrimony provided that both parents are consenting.

II. Rape

Definition:

'Rape consists in a male having unlawful and intentional sexual intercourse with a female without her consent.'

According to the English Law, the emphasis has been placed on the absence of valid consent to intercourse on the part of the female. The act consists in the penetration of the female's sexual organ by that of the male. The slightest penetration is sufficient and it is immaterial whether semen is emitted or whether the female becomes pregnant.

Rape can be committed only by a male against a female. Rape can be committed only if the intercourse takes place without the woman's consent. There is an arbitrary

age limit below which a girl is irrefutably presumed to be incapable of consenting to sexual intercourse. This limit is the completion of the girl's twelfth (12th) year. Intercourse with a girl under the age of twelve (12) is therefore rape, even if she has consented. And it can only be committed intentionally.

III. Other forms of child sex abuse

'Sexual offences with girls under sixteen (16) years', Section 14 of the 'Combating of Immoral Practices Act 1980'

'(1) Any male who-

- a) has or attempts to have unlawful carnal intercourse with a girl under the age of sixteen (16) years; or
- b) commits or attempts to commit with such a girl an immoral or indecent act;
- c) solicits or entices such a girl to the commission of an immoral or indecent act,

-shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six years with or without a fine not exceeding three thousand rand in addition to such imprisonment.

(2) It shall be a sufficient defence to any charge in terms of this section if it appears to the court -

- a) that the girl at the time of the commission of the offence was a prostitute, that the person so charged was at the said time under the age of twenty-one (21) years and that it is the first occasion on which he is so charged; or
- b) that the person who charged was at the said time under the age of sixteen (16) years ; and
- c) that the girl or person in whose charge she was, deceived the person so charged into believing that she was over the age of sixteen (16) years at the said time.'

The Sexual Offences Act 23 of 1957 creates a number of offences relating to sexual intercourse or sexually indecent acts, as well as related conduct, such as keeping a brothel, procuring women for the purposes of intercourse (procuration) and prostitution. Before 1988, the Act was known as the Immorality Act, renamed the 'Sexual Offences Act' in 1988. Some forms of conduct prohibited by the Act were also prohibited under the common law as particular ways of committing the crime then known as 'stuprum'. It should be borne in mind that the expression 'unlawful carnal intercourse', as employed in the Act means 'carnal intercourse otherwise than between husband and wife'.

'Indecent assault consists in unlawfully and intentionally assaulting another with the object of committing an indecency'

The crime can be committed by either a male or a female, and the same applies to the person against whom the crime is committed. Just as in rape, a girl below the age of twelve (12) years is irrefutably presumed to be incapable of consenting to an indecent assault. X must have the intention not only to assault Y but also to assault her indecently. Attempted assault is possible.

IV. Child prostitution

Generally speaking, 'procuration' is any act by which a woman (usually a young woman or girl), is procured to become a prostitute. The procurer is usually somebody who, in a variety of possible ways, such as persuasion, cunning, fraud, or even coercion, induces a girl to place her body at the disposal of men (other than the procurer). The underlying reason for the prohibition of procuration is to protect women and particularly girls (often poor and desperate to earn money), against unscrupulous exploiters of their bodies.

Any person who 'keeps' a brothel is guilty of an offence. According to the definition in the act, 'brothel' includes any house or place kept or used for purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd and indecent purpose.

V. Child pornography

No information has been received in connection with this offence.