



Republic of Namibia

**MINISTERIAL STATEMENT**

**ON THE**

**COMBATING OF RAPE AMENDMENT BILL**

**IN THE NATIONAL ASSEMBLY**

**BY**

**THE MINISTER OF JUSTICE**

**MS. YVONNE DAUSAB, MP**

**29 October 2020**

**– To be checked against delivery –**

**Honourable Speaker,  
Honourable Members,  
Members of the public,**

1. According to statistics provided by the Namibian Police Force, a total of 3 164 rape cases were reported between 2016 and 2018, with a disproportionate impact on women. The staggering number of rape cases across the country has given rise to a number of protests in different towns over the past few months. As with my previous statement on the Combating of Domestic Violence Amendment Bill, I would like to take this opportunity to update this August House on the progress of the Combating of Rape Amendment Bill.
2. The Combating of Rape Amendment Bill has been certified by the Attorney-General and will be tabled in the National Assembly when it resumes during 2021 to enable every member of this August House to meaningfully participate in the intended amendments, particularly in light of the recommendations made 2nd National Conference on Gender-Based Violence (GBV).
3. The purpose of the Bill as captured in the long title is to amend the Combating of Rape Act, 2000 (Act No. 8 of 2000) in the following ways:
4. In addition to the nine (9) grounds listed in section 2(2) of the Combating of Rape Act, 2000, the Bill provides an additional ground for coercive circumstance for rape and states that “coercive circumstances” includes, but is not limited to the abuse of power or authority to such an extent that the person in respect of whom the sexual act is committed is inhibited from indicating his or her resistance to that act or his or her unwillingness to participate in that act.”. It is important to mention that coercive circumstances need to be present in order for any person to be convicted of the crime of rape under section 2(1) of the Combating of Rape Act, 2000.
5. Another important amendment that is being introduced by the Combating of Rape Amendment Bill is the increase of the certain minimum sentences for rape. Statistics show that harsh and lengthy imprisonment sentences do not necessarily serve as deterrence for would-be offenders. However, we should ensure as lawmakers that

where an accused is convicted of rape, especially under coercive circumstances, he/she faces the full wrath of the law. As a nation, we should continue to find ways to prevent the occurrence of rape and focus on rehabilitation of convicted offenders. The sentence for a first conviction of rape under section 3(1)(a)(i) of the Combating of Rape Act, 2000 is being increased from a minimum of five to ten years and in subsection 3(1)(a)(ii), where the rape is committed under coercive circumstances, the sentence is now increased from a minimum of ten to fifteen years.

6. The Bill also recognises that exceptionally vulnerable complainants referred to in section 3(1)(a)(iii)(bb) of the Combating of Rape Act, 2000 will now include persons with mental or physical disabilities and any other reasons. Accordingly, the Bill is also increasing the sentence of perpetrators who are found guilty of rape for complainants listed under section 3(1)(a)(iii) of the Combating of Rape Act, 2000 from a minimum of fifteen to twenty years.
7. The Combating of Rape Amendment Bill clarifies that the minimum penalties which may be imposed under section 3 of the Combating of Rape Act, 2000 apply equally to rape under the common law, as well as attempt, conspiracy and incitement to commit rape.
8. In our view, and in light of the aggravating cases of rape across the country, these are appropriate penalties to demonstrate that the State takes the offence of rape seriously but also its resolve to deter offenders from committing this offence. We are cognizant of the jurisprudence set by our courts in respect of the setting of mandatory minimum sentences, especially where it amounts to being equated with “cruel, inhumane or degrading punishment”. Where the court is satisfied that substantial and compelling circumstances exist which may justify the imposition of a lesser sentence than the minimum sentences prescribed, it is still empowered in terms of section 3(2) of the Combating of Rape Act, 2000 to impose such a lesser sentence.

**Honourable Speaker,**  
**Honourable Members,**

**Members of the public,**

9. With the Combating of Rape Amendment Bill inserts section 8A which prohibits the court to draw any inference only from absence of semen, other bodily fluids on the complainant, or from the absence of evidence of rupture of a complainant's hymen. The burden of proof in criminal cases rests upon the State and requires that a case be proved beyond any reasonable doubt. This is a very onerous burden of proof, which has led to the State being unable to prove many rape cases. In light of this burden of proof it is necessary to move away from inferences to be drawn from evidence, which can easily be lost, misinterpreted or tempered with.
10. A final important amendment that I must bring to the attention of this Honourable House is that the Combating of Rape Amendment Bill also amends section 60A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) to require a prosecutor to instruct the investigating officer or another police officer to inform a complainant who was absent from bail proceedings in court, if bail has been granted to the accused, the conditions of bail imposed and if bail proceedings are postponed, to inform the complainant of the date and time of postponement. The victim-centred approach adopted in rape cases should be enhanced and we endeavour to do so through this Amendment Bill. Victim support and victim/witness friendly courts is high on the priority list of the Ministry of Justice and the Judiciary and we believe that this approach will enable our courts to be presented with the best possible evidence from which to make a judgment.
11. Given the time constraints, I do not want to rush the discussion pertaining the Combating of the Domestic Violence Amendment Bill and the Combating of Rape Amendment Bill this afternoon, but I would like to request every honourable member of this August House to meaningfully engage and contribute to these important pieces of legislation once they are before the National Assembly to demonstrate the Government's resolve that rape has no place in our communities, in our homes or anywhere else in our country.

I thank you.