



Republic of Namibia
Annotated Statutes

Abortion and Sterilization Act 2 of 1975 (RSA)

(RSA GG 4608)

came into force in South Africa and South West Africa
on date of publication: 12 March 1975
(see section 11 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 11 states that "this Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977, dated 1 December 1977. As a result, neither of the amendments made to the Act in South Africa after the date of transfer and prior to Namibian Independence – the *Abortion and Sterilization Amendment Act 38 of 1980* (RSA GG 6985) and the *Abortion and Sterilization Amendment Act 48 of 1982* (RSA GG 8107) – applied to South West Africa because neither was made expressly so applicable.

as amended by

Abortion and Sterilization Amendment

Act 18 of 1976 (RSA) (RSA GG 5034)

came into force on date of publication: 31 March 1976

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)

ACT

To define the circumstances in which an abortion may be procured on a woman or in which a person who is incapable of consenting or incompetent to consent to sterilization, may be sterilized; and to provide for incidental matters.

(English text signed by the State President)

(Assented to 28 February 1975)

ARRANGEMENT OF SECTIONS

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3. Circumstances in which abortion may be procured

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

[There are several references in this Act to the South African *Immorality Act 23 of 1957*, which was never in force in Namibia. Section 11(2) of this Act, as amended by Act 18 of 1976, provides that “any reference in this Act to section 15 of the Immorality Act, 1957 (Act No. 23 of 1957), shall be construed as including a reference to section 2 of the Girls' and Mentally Defective Women's Protection Proclamation, 1921 (Proclamation No. 28 of 1921), of the Administrator of the territory of South West Africa”. Proclamation 28 of 1921 was repealed by the Combating of Immoral Practices Act 21 of 1980.]

Definitions

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

“abortion” means the abortion of a live foetus of a woman with intent to kill such foetus;

“incest” means carnal intercourse between two persons who are related to each other and by reason of such relationship incompetent to marry each other;

“magistrate” includes an additional and an assistant magistrate;

“medical practitioner” means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Medical practitioners are now registered under the Medical and Dental Act 10 of 2004.]

“Minister” means the Minister of Health;

“prescribed” means prescribed by regulation made under this Act;

“psychiatrist” means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974;

[Psychiatrists, as medical practitioners, are now registered under the Medical and Dental Act 10 of 2004.]

“State-controlled institution” means a hospital conducted by the State (including a provincial administration), and such part of any other institution, other than such a hospital, as may be hired and controlled by a provincial administration, and a hospital maintained out of moneys provided out of the South African Development Trust Fund mentioned in section 8 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);

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[The terminology in the definition of “State-controlled institution” was amended by AG 3 of 1979. The Development Trust and Land Act 18 of 1936 was repealed by the Communal Land Reform Act 5 of 2002.]

“sterilization” means a surgical operation performed for the purpose of making the person on whom it is performed, incapable of procreation, but does not include castration;

“unlawful carnal intercourse” means rape, incest and unlawful carnal intercourse with a female idiot or imbecile in contravention of section 15 of the Immorality Act, 1957 (Act No. 23 of 1957).

Prohibition of abortion

2. No person shall procure an abortion otherwise than in accordance with the provisions of this Act.

Circumstances in which abortion may be procured

3. (1) Abortion may be procured by a medical practitioner only, and then only -
- (a) where the continued pregnancy endangers the life of the woman concerned or constitutes a serious threat to her physical health, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy so endangers the life of the woman concerned or so constitutes a serious threat to her physical health and abortion is necessary to ensure the life or physical health of the woman;
 - (b) where the continued pregnancy constitutes a serious threat to the mental health of the woman concerned, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy creates the danger of permanent damage to the woman’s mental health and abortion is necessary to ensure the mental health of the woman;
 - (c) where there exists a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will be irreparably seriously handicapped, and two other medical practitioners have certified in writing that, in their opinion, there exists, on scientific grounds, such a risk; or
 - (d) where the foetus is alleged to have been conceived in consequence of unlawful carnal intercourse, and two other medical practitioners have certified in writing -
 - (aa) in the case of alleged rape or incest, after such interrogation of the woman concerned as they or any of them may have considered necessary, that in their opinion the pregnancy is due to the alleged rape or incest, as the case may be; or
 - (bb) in the case of alleged unlawful carnal intercourse in contravention of section 15 of the Immorality Act, 1957 (Act No. 23 of 1957), that the woman concerned is an idiot or an imbecile.
- (2) (a) A medical practitioner who has issued a certificate referred to in subsection (1) shall in no way participate in or assist with the abortion in question, and such a certificate, or such certificates issued for the same purpose, shall not be valid if issued by members of the same partnership or by persons in the employ of the same employer.

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- (b) The provisions of paragraph (a) shall not apply to the performance by any person of his functions in the service of the State.
- (3) At least one of the two medical practitioners referred to in subsection (1) -
 - (a) shall have practised as a medical practitioner for four years or more since the date of his registration as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Medical practitioners are now registered under the Medical and Dental Act 10 of 2004.]

- (b) shall be a psychiatrist employed by the State, if the abortion is to be procured by virtue of the provisions of subsection (1)(b);
- (c) shall be the district surgeon concerned where the foetus is alleged to have been conceived in consequence or rape or incest.

Sterilization of persons incapable of consenting thereto

4. (1) A sterilization shall not be performed on any person, who for any reason is incapable of consenting or incompetent to consent thereto, unless -

- (a) two medical practitioners, of whom one shall be a psychiatrist, have certified in writing that the person concerned is capable of procreating children and
 - (i) is suffering from a hereditary condition of such a nature that if he or she were to procreate a child, such child would suffer from a physical or mental defect of such a nature that it would be seriously handicapped; or
 - (ii) due to a permanent mental handicap or defect is unable to comprehend the consequential implications of or bear the parental responsibility for the fruit of coitus;
- (b) the person who may in law consent to an operation beneficial to that person has granted written consent to the sterilization; and
- (c) the Minister has granted written authority for the sterilization.

(2) The person who may consent to an operation as contemplated in subsection (1)(b), is hereby authorized to grant the consent referred to therein.

(3) The provisions of this section shall not be construed as affecting the position in law of any person capable of consenting or competent to consent to an operation on himself.

Place where abortion or sterilization may take place

5. (1) An abortion may be procured and a sterilization contemplated in section 4 may be performed only at a State-controlled institution or an institution designated in writing for the purpose by the Minister in terms of subsection (2).

(2) The Minister may designate any institution for the purposes of subsection (1), and subject to such conditions and requirements as he may consider necessary or expedient for achieving the objects of this Act, and may, if in his opinion it is justified, at any time withdraw any such designation.

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(3) A decision of the Minister in terms of subsection (2) shall be final.

Approval by medical practitioner in charge of institution, and certificate by magistrate

6. (1) An abortion shall not be procured and a sterilization contemplated in section 4 shall not be performed without the written authority of -

- (a) in the case of a State-controlled institution, the medical practitioner in charge of such institution or a medical practitioner designated for the purpose by the first-mentioned medical practitioner; or
- (b) in the case of an institution designated in terms of section 5(2), a medical practitioner designated for the purpose by the person managing such institution,

granted on application to such medical practitioner in accordance with subsection (2).

(2) An application for authority in terms of subsection (1) shall be made in the prescribed form by the medical practitioner who is to procure the abortion in question or perform the sterilization in question, and shall be accompanied -

- (a) in the case of an intended abortion -
 - (i) in the circumstances contemplated in subsection (4), by the certificate referred to in that subsection;
 - (ii) by the certificate or certificates referred to in section 3 issued by two medical practitioners;
- (b) in the case of an intended sterilization, by the certificate or certificates, consent and authority referred to in section 4.

(3) If a medical practitioner has issued a certificate for the purposes of section 3(1) and he is at any time such a medical practitioner as is referred to in subsection (1) of this section, he shall not be precluded from granting any relevant authority for the purposes of the said subsection.

(4) Where the pregnancy is alleged to be the result of unlawful carnal intercourse, the abortion shall not be procured unless there is produced to the medical practitioner whose written authority is required in terms of subsection (1) a certificate, issued by a magistrate attached to the court having jurisdiction in respect of the alleged offence in question, to the effect that -

- (a) he has satisfied himself -
 - (i) that a complaint relating to the alleged unlawful carnal intercourse in question has been lodged with the Police or, if such a complaint has not been so lodged, that there is a good and acceptable reason why a complaint has not been so lodged;
 - (ii) after an examination of any relevant documents submitted to him by the Police and after such interrogation of the woman concerned or any other person as he may consider necessary, that, on a balance of probability, unlawful carnal intercourse with the woman concerned had taken place;

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- (iii) in the case of alleged incest, that the woman concerned is within the prohibited degree related to the person with whom she is alleged to have committed incest; and
- (b) in the case of alleged rape or incest, the woman concerned alleges, in an affidavit submitted to the magistrate or in a statement under oath to the magistrate, that the pregnancy is the result of that rape or incest, as the case may be.

(5) Where it is not proved that any person charged with unlawful carnal intercourse with a female idiot or imbecile in contravention of section 15 of the Immorality Act, 1957 (Act No. 23 of 1957), knew, at the time of the alleged offence, that that woman was an idiot or imbecile, but it is proved that he had carnal intercourse with her, such carnal intercourse shall for the purposes of subsection (4) nevertheless be deemed to be unlawful carnal intercourse.

(6) If an application complying with the requirements of this section is made to the appropriate medical practitioner referred to in this section, he shall grant the authority in question.

Reports

7. (1) A medical practitioner who under section 6(1) grants authority for an abortion or a sterilization, shall, within twenty-one days after the abortion or sterilization, by registered post report confidentially to the Secretary for Health the granting of such authority and at the same time submit to him a written statement in the prescribed form and setting forth-

- (a) the name, age, marital state, race and, in the case of a sterilization, the sex of the patient concerned;
- (b) the place where and the date on which the abortion was procured or the sterilization was performed, and, in the case of an abortion, the reasons therefor;
- (c) the names and qualifications of the medical practitioners and the name of the magistrate who issued the certificate or certificates in terms of section 3, 4 or 6, as the case may be;
- (d) the name of the medical practitioner who procured the abortion or performed the sterilization;
- (e) where the consent of any person other than the patient was required for the abortion or the sterilization, the name of the person who consented thereto, and the capacity in which he granted his consent.

(2) The Secretary for Health may call upon a medical practitioner required to make a report in terms of subsection (1) or a medical practitioner referred to in subsection (1)(d) to furnish such additional information as he may require.

(3) The person in charge of an institution where an operation connected with an abortion or the removal of the residue of a pregnancy is performed, shall keep or cause to be kept a record of the prescribed particulars in respect of any such operation in that institution, and shall -

- (a) when called upon to do so, make such record available, for inspection, to the Secretary for Health or a person authorized thereto by him in writing; and

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- (b) transmit to the Secretary for Health at the time prescribed the prescribed information with reference to any such operation.

Regulations

- 8.** The Minister may make regulations -
- (a) prescribing the form in which an application shall be made or an authority shall be granted in terms of section 6;
 - (b) as to the custody and disposal of certificates and reports in terms of this Act;
 - (c) as to the particulars of the records to be kept in terms of section 7(3);
 - (d) generally as to any matter in respect of which he deems it necessary or expedient to make regulations to achieve the objects of this Act.

Participation in or assistance at abortion which is not prohibited, or a sterilization

9. A medical practitioner (other than a medical practitioner referred to in section 6(1)), a nurse or any person employed in any other capacity at an institution referred to in section 5(1) shall, notwithstanding any contract or the provisions of any other law, not be obliged to participate in or assist with any abortion contemplated in section 3 or any sterilization contemplated in section 4.

Offences and penalties

- 10.** (1) Any person -
- (a) who is not a medical practitioner and procures an abortion;
 - (b) who is a medical practitioner and -
 - (i) procures an abortion without an appropriate certificate or certificates issued by two medical practitioners in terms of section 3(1)(a), (b), (c) or (d); or
 - (ii) procures an abortion or performs a sterilization -
 - (aa) at an institution other than an institution referred to in section 5; or
 - (bb) without appropriate written authority referred to in section 6(1);
 - (c) who performs a sterilization in contravention of section 4;
 - (d) who issues a false certificate for the purposes of section 3(1)(a), (b), (c) or (d) or 4(1)(a);
 - (e) who grants any written authority referred to in section 6(1) without being in possession of an appropriate certificate referred to in section 6(4),

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

- (2) Any person -

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- (a) who grants a written authority contemplated in section 6(1) on an application which does not substantially comply with the requirements of an application as prescribed;
- (b) who contravenes a provision of section 7(1) or (3);
- (c) who fails to furnish the additional information required of him under section 7(2);
- (d) who fails to comply with any provision of this Act not mentioned in this section,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred and fifty rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Application of Act in South West Africa

11. (1) Subject to the provisions of subsection (2), this Act and any amendment thereof shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.

(2) For the purposes of subsection (1), any reference in this Act to section 15 of the Immorality Act, 1957 (Act No. 23 of 1957), shall be construed as including a reference to section 2 of the Girls' and Mentally Defective Women's Protection Proclamation, 1921 (Proclamation No. 28 of 1921), of the Administrator of the territory of South West Africa.

[section 11 substituted by Act 18 of 1976]

Amendment of section 2 of Act 38 of 1909 (Transvaal), as amended by section 19 of Act 26 of 1963

12. Section 2 of the Criminal Law Amendment Act, 1909 (of the Transvaal), is hereby amended by the deletion of subsection (8).

[The cited law has no relevance to Namibia.]

Short title

13. This Act shall be called the Abortion and Sterilization Act, 1975.