

**DIRECTIONS REGARDING THE RECORDING OR FILMING OF SOUNDS OR
IMAGES OF PROCEEDINGS OR OF PERSONS INSIDE THE HIGH COURT'S
COURT ROOMS DURING SESSIONS.**

GENERAL

1. In these directions the words “recording” or “filming” shall include the capturing, recording or broadcasting (directly or relayed) of sounds or images of proceedings or of persons inside the High Court’s courtrooms during Court sessions by means of any mechanical, magnetic, electromagnetic and/or electronic device (including any voice recorder or still, video or television camera) or signal and the verbs “record” or “film” shall have a corresponding meaning.
2. Any person, including any member of the public media or any employee or agent thereof, who intends to record or film proceedings or persons inside the courtrooms of the High Court while the Court is in session must apply in writing to the Registrar of the High Court at least one court day before the commencement of such proceedings for leave to do so and no recording or filming may take place without such permission having first been obtained in writing.
3. The Registrar shall grant or refuse the application in writing after consultation with and subject to the direction of the Judge President or of the High Court Judge who will preside at the hearing or proceeding in question.
4. Unless otherwise advised in writing by the Registrar or directed by the Court immediately before the commencement of or during the hearing, permission to record or film the proceedings or persons inside the courtroom shall be subject to the following conditions:
 - (a) The devices used for recording or filming may not emit signals, sounds or light which may interfere with the recording devices of the Court’s contracted transcription services or which are audible or visible to persons other than the operator thereof or which cause a distraction to the Judge(s) presiding, the legal representatives of the parties or any other person attending the hearing. Flash photography, the use of cameras

making audible sounds when capturing or transmitting images or the use of artificial lighting (in addition to the ambient natural and installed artificial lighting) is not permitted, in the presence of the presiding judge(s).

- (b) Any device used for filming (other than cameras limited to the making of still pictures) must be mounted on a tripod (or similar stationary support) no further than 1.5 m away from either one of the side walls of the public gallery in the courtroom at least 15 minutes prior to the commencement of the hearing or proceeding in such a manner that it does not interfere with the public's view of the proceedings; must remain attended but stationary during the hearing and may only be removed after the hearing or during an adjournment thereof. The same applies to devices to be used for sound recordings of the proceedings, provided that stationary microphones may be placed and secured in the vicinity of or next to the microphones used by the contracted transcription service of the Court if the recording device to which the microphones are connected is operated outside the courtroom and the microphones and connecting cables are installed not later than 30 minutes before the commencement of the proceedings and are attended to or removed only when the Court is not in session.
- (c) Persons operating recording and filming devices should do so as discreetly as possible and, in any event, without causing a disturbance of the proceedings. Those operating cameras to capture still pictures may only do so from the public gallery and may not leave their seats during the hearing in order to take photographs inside the courtroom. Those operating other recording or filming devices must either be seated next to them or stand behind them.

4.2 Any permission granted to record or film during the hearing is subject to conditions that the person to whom permission is granted (or an employee or agent of that person) informs himself/herself/itself of these directions (a copy of which will be made available for perusal on request); ensures that the person operating the recording or filming device is aware thereof and, by his or her attendance of the recorded hearing or proceeding, accepts the conditions subject to which the permission has been granted.

4.3 Any non-compliance with the conditions may result in the immediate revocation of the permission and, in appropriate instances, in summary proceedings committing the person for contempt of Court.

TRIALS: CIVIL & CRIMINAL

1. Audio and visual recording and flash photography: Permissible upon entry of the judge(s) and introductions of counsel. Once counsel begins to address Court about the case, all flash photography to end.
2. Once witnesses begin to be called, no more photographing and recording is allowed.
3. Audio and visual recording only is permissible (no flash photography) when the parties' counsel make oral submissions at the end of the trial.
4. Audio and visual recording is permissible (no flash photography) when the judge gives judgment in the case.
5. In criminal cases, and upon conviction, no recording or photographing is allowed if evidence in aggravation or mitigation of sentence is being received.
6. On sentence, audio and visual recording (no flash photography) is allowed.
7. Recorders are required to know and comply with sections 153 and 154 of Criminal Procedure Act, 51 of 1977, as amended (copy attached)
8. Directions given by Court to section 153 and 154 of Criminal Procedure Act, 51 of 1977 should be obeyed
9. From the time of the commission of any (i) offence of extortion or a similar statutory offence;(ii) sexual offence; (iii) domestic violence offence, until the accused has pleaded, the identity of the complainant may not be disclosed.

10. After plea, if access to court proceedings is restricted in case of extortion or any similar statutory offence, the identity of the complainant may not be disclosed, except if the Court authorizes publication.
11. After plea, the identities of complainants in sexual offences and domestic violence offences may not be disclosed, except if the Court or a complainant of 18 years and older authorizes publication
12. The identities of children under the age of 18 years, either as accused or witnesses should not be disclosed.

MOTION PROCEEDINGS

- 1 It is permissible to record (audio and visual) the entire proceedings but no flash photography is allowed.

APPEALS

- 1 It is permissible to record (audio and visual) the entire proceedings but no flash photography is allowed.
- 2 In criminal appeals the same restrictions on publication as during the trial apply

CRIMINAL PROCEDURE ACT

NO. 51 OF 1977

152. Criminal proceedings to be conducted in open court.-

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.

153. Circumstances in which criminal proceedings shall not take place in open court.-

- (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) ...
 - (b) ...

Paragraphs (a) and (b) Deleted by Section 14(a) Of the Combating of Rape Act, 8/2000

- (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 purposes 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 Domestic Violence Act, 2003;

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 those 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.

(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.”

Subsections 3A and 3B inserted by section 14(b) of the Combating of Rape Act 8 of 2000 and further substituted by Section 1(c) of Act No. 4, 2003 COMBATING OF DOMESTIC VIOLENCE ACT, 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 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).”

Subsections 153(7) inserted by section 14(c) of the Combating of Rape Act 8 of 2000

154. Prohibition of publication of certain information relating to criminal proceedings.-

- (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 authorise 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 with regard to any complainant in the proceedings if that complainant is eighteen years of age or older and has authorised 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 154(2) as substituted by Section 15(a) of the Combating of Rape 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 154(5) as substituted by Section 15(b) of the Combating of Rape Act 8 of 2000

- (6) To the extent that the provision 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 154(6) as inserted by Section 15(c) of the Combating of Rape Act 8 of 2000



REPUBLIC OF NAMIBIA

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MEMORANDUM

TO: THE CHIEF REGISTRAR

FROM: THE JUDGE PRESIDENT

DATE: 13 January 2011

RE: DIRECTIVES FOR THE RECORDING AND PUBLICATION OF HIGH COURT PROCEEDINGS

1. Members of the public have a legitimate interest to be informed about proceedings taking place in the High court of Namibia.
2. I have on occasion been asked by members of the media whether recording and publishing High Court proceedings can be allowed in the public interest.
3. I see no legal impediment to allowing the recording and publication of proceedings taking place in the High Court, subject to the observance of certain rules and directives intended to protect the dignity of the Court; the administration of justice; and the constitutional rights of litigants, accused persons, victims and complainants.
4. Under cover hereof, the set of rules and directives subject to which it is permissible for interested persons to record and publish proceedings taking place in the High court of Namibia.
5. Kindly bring the rules and directives to the attention of the media and the public.