



REPUBLIC OF NAMIBIA

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Our Ref: **POCA Amendments**

COMMENTS/PROPOSED AMENDMENTS ON THE DRAFT BILL:

CRIMINAL PROCEDURE BILL

FEBRUARY 2023

#	INSTITUTION	PROVISION OF AMENDMENT BILL	COMMENT	PROPOSED AMENDMENT	RESPONSE FROM INITIATOR
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1	OPG	Section 26 (1)	Reading is unconstitutional and would not pass the constitutionality test. It is also subject to misuse. It is inconsistent with sections 21 and 22 on which this amendment is premised on.	Remove section	Section removed
2	OPG	Section 158B (3)	<p>Look at section 158 A (6) of the current CPA and follow that wording.</p> <p>The court may, in order to ensure a fair and just trial, make the giving of evidence in terms of subsection (1) and (2) subject to such conditions as it may deem necessary: Provided that the prosecutor and the accused have the right, by means of that procedure, to question a witness and to observe the reaction of that witness.</p>	Align wording with section 158A (6) of the current CPA	<p>Proposed wording incorporated as follows:</p> <p>The court may, in order to ensure a fair and just trial, make the giving of evidence in terms of subsection (1) and (2) subject to such conditions as it may deem necessary: Provided that the accused, his or her legal representative, the prosecutor in the case and the presiding officer shall be able to hear the witness and shall also be able to observe the witness while such witness gives evidence.</p>
3	OPG	Section 159A to D	Section 159A as benchmarked from SA CPA relates to other provisions set out in 159 A B C and D, amendment should consider those provisions and adapt them to our jurisdiction if decide to add them	Consider addition of 159 B C D to our amendment	Provisions added to the draft and adapted to our jurisdiction.
4	OPG	205	Prosecutors are of the opinion that this provision was copied and pasted without consideration of the context in which the SA	Section must remain as is and add following proviso:	Proviso added to the amendment draft and wording of section 205 retained.

			<p>drafted their provision. Prosecutors maintain that section 205 should remain as is however, the proviso added thereunder can be added.</p>	<p><u>Provided that if such person furnishes that information to the satisfaction of the public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before such judge, regional court magistrate or magistrate.</u></p>	
5	OPG	Section 252A (4)	<p><u>This subsection would benefit from inclusion of the AG to determine and to ensure that entrapments are made in accordance with the law instead of having such powers placed on any police official.</u></p> <p><u>A police official who sets or participates in a trap or an undercover operation to detect, investigate or uncover or to obtain evidence of or to prevent the commission of an offence, is not criminally liable in respect of any act that constitutes an offence and that relates to the trap or undercover operation if it was performed in good faith.</u></p>	<p><u>The Inspector- general in consultation with the Attorney General, may issue general or specific guidelines regarding the supervision and control of traps and undercover operations, and may require any official or his or her agent to obtain his or her written approval in order to set a trap or to engage in an undercover operation at any place within his or her area of jurisdiction, an in connection therewith to comply with his or her instructions, written or otherwise.</u></p>	<p>Wording has been changed accordingly.</p>