

Kruger, A. 2008. *Hiemstra's Criminal Procedure*. Durban: Lexis Nexis; loose-leaf and online. ISBN 978 0 409 03272 7

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Legal practitioners who practised or prosecuted in Afrikaans in the then South West Africa or South Africa in the 1970s will remember Hiemstra's commentary on the 1955 Criminal Procedure Act.¹ I was a law student at the time and my lecturer, Callie Snyman, introduced me to Hiemstra. When I started prosecuting in 1975, every prosecutor had a copy of Hiemstra's *Criminal procedure*.²

The late Etienne du Toit's commentary on the Criminal Procedure Act³ published in 1987 later became the standard work, especially in Namibia. It had some important advantages over Hiemstra. The first was that Du Toit's work was in English – the sole official language in Namibia after 1990. The second was that the loose-leaf format could be updated annually. And finally, Du Toit, the General Editor and main contributor, was a regular visitor to Namibia. Consequently, his commentary contained more references to Namibian cases than Hiemstra's.

When Hiemstra was no longer able to update his voluminous book, the task was taken over by Albert Kruger and Johan Kriegler. Their first edition appeared in 1993. Judge Hiemstra passed away in 2006.

The sixth edition of Hiemstra's tome by Kruger and Kriegler appeared in 2002. By then, it was clear that an Afrikaans edition of a book on criminal procedure was no longer a good idea in South Africa, whose Constitutional Court and Supreme Court of Appeal dealt with

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¹ No. 56 of 1955.

² Hiemstra, VG. 1967. *Suid-Afrikaanse Strafprosesreg*. Durban: Butterworth; an earlier edition was published in 1957 under the title *Strafprosesreg van Suid-Afrika*.

³ Du Toit, E, FJ de Jager, A Paizes, A STQ Skeen & S van der Merwe. 2003. *Commentary on the Criminal Procedure Act*. Cape Town: Juta; looseleaf, updated annually. Van der Merwe became General Editor after Du Toit's death.

criminal procedure almost on a daily basis, and also conducted its proceedings largely in English.

Now Hiemstra is back – and he is speaking English (and Afrikaans, if you wish to do your own translations). A Kruger, a judge in South Africa, translated the sixth edition from Afrikaans and updated it. It is now available both in loose-leaf format and online. The online edition is a useful contribution to the growing list of online legal publications by Lexis Nexis.

Namibia's Criminal Procedure Act⁴ has been amended several times by Parliament since its departure from the South African version in 1990. It no longer looks like the South African version, and there is a new Criminal Procedure Act⁵ in the offing, although it will possibly be repealed and never enacted. Since the Namibian Law Reports no longer have a place in their South African counterparts, and few South African jurists read the Namibia Law Reports, the South African commentaries on domestic laws and jurisprudence are not as useful to the Namibian legal framework as they used to be. However, Hiemstra and Du Toit remain important sources of information for those involved in criminal procedure and criminal justice. Even if Namibia eventually publishes its own commentaries, the standard commentaries will remain an important reference to the law in South Africa – to which Namibia still needs to refer on occasion because many laws inherited from that country still apply here – and the persuasive value of South African judgments, especially those of the Constitutional Court.

Kruger's commentary follows the standard approach of past editions in terms of the sections and themes of the 1977 Criminal Procedure Act. At present, the 1977 Act that Namibia follows uses the same numbering and heading system as that employed in its counterpart in South Africa,⁶ which makes the commentary an exceptionally handy tool for prosecutors, magistrates, judges and defence legal practitioners in this regard.

However, when it comes to other legislation, it can be confusing to rely on the commentary. Chapter 1, for example, deals extensively with the prosecutorial authority in South Africa.

⁴ No. 51 of 1977.

⁵ No. 25 of 2004.

⁶ Namibia followed South Africa in 1977. They have the same basic Act (No. 51 of 1977), but with different amendment histories. When Hiemstra's first edition appeared, South Africa worked with the 1955 Act; the then South West Africa had a Criminal Procedure Ordinance similar to the 1955 Act.

Not only does it discuss the South African National Prosecuting Authority Act,⁷ which operates with a prosecutorial philosophy very different from that in Namibia, as set out in *Ex Parte Attorney General: The relationship between the Attorney-General and the Prosecutor-General*;⁸ the Namibian understanding of sections 2 to 4 of the 1977 Act is also substantially different from the South African perspective of those sections since the judgment in the latter case changed these sections substantially in Namibia.

Numerous other South African laws are discussed in various sections throughout the commentary. The section on extradition, for example, needs to be read by Namibians in the light of this country's own Extradition Act,⁹ with its diametrically different approach.

Kruger has nevertheless maintained the straightforward direct approach characterised by Hiemstra's style. Where constitutional developments are discussed, Kruger remains focused on the interpretation of the Act and other legislation, applying straightforward rules to the process. One could perhaps criticise the commentary for not devoting enough attention to the dramatic changes in criminal procedure in South Africa after 1994 and the different ways in which these changes have impacted criminal procedure there.

For older legal practitioners, the lack of constitutional debate will not necessarily impact negatively on using and enjoying Kruger's direct method. Thus, Kruger's treatment of Hiemstra's *Criminal procedure* will undoubtedly find its way to the bookshelves of both older acquaintances and younger converts.

⁷ No. 32 of 1998.

⁸ 1995 (8) BCLR 1070.

⁹ No. 11 of 1996.