



Republic of Namibia
Annotated Statutes

Magistrates Act 3 of 2003

(GG 2996)

Part II brought into force on 20 June 2003; remainder of Act brought into force on 30 June 2003, with both dates being announced in GN 125/2003 (GG 3001)

as amended by

Magistrates Amendment Act 23 of 2003 (GG 3122)

came into force on date of publication: 29 December 2003

Magistrates Amendment Act 5 of 2009 (GG 4307)

came into force on date of publication: 29 July 2009

Magistrates Amendment Act 2 of 2014 (GG 5431)

came into force on date of publication: 27 March 2014

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) held that while the appointment of acting magistrates by the Magistrates Commission in terms of section 11(7) is generally constitutional, the appointment of the Chief: Lower Courts as an acting magistrate under this section is an impermissible violation of the independence of the judiciary. This issue was remedied by Act 5 of 2009.

ACT

To provide for the establishment, objects, functions and constitution of a Magistrates Commission; to provide for the establishment of a magistracy outside the Public Service; to further regulate the appointment, qualifications, remuneration and other conditions of service of, and retirement and vacation of office by, magistrates; to provide that certain conditions of service of magistrates may be prescribed by regulation; and to provide for matters in connection therewith.

(Signed by the President on 14 June 2003)

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

Section

Magistrates Act 3 of 2003

1. Definitions

**PART II
MAGISTRATES COMMISSION**

2. Establishment of Magistrates Commission
3. Objects of Commission
4. Functions of Commission
5. Constitution of Commission
- 5A. Qualification for designation and appointment as member of Commission
[section 5A inserted by Act 2 of 2014]
6. Term of office of members of Commission and filling of vacancies
7. Meetings of Commission
8. Committees of Commission
9. Remuneration and expenses of members of Commission and committees
10. Secretary and staff of Commission

**PART III
MAGISTRACY**

11. Composition of magistracy
12. Permanent establishment of magistracy
13. Appointment of magistrates on permanent establishment
14. Qualifications for appointment as magistrate
15. Balanced structuring of magistracy
16. Powers and duties of magistrates

**PART IV
CONDITIONS OF SERVICE OF MAGISTRATES**

17. Conditions of service of magistrates not otherwise provided for
18. Remuneration of magistrates
19. Transfer of magistrates
20. Retirement of magistrates
21. Dismissal and vacation of office of magistrates
22. Magistrates may not perform other paid work
23. Limitation of political activities of magistrates

**PART V
MISCONDUCT**

24. Definition of misconduct
25. Preliminary investigation of misconduct
26. Investigation of charge of misconduct and proceedings after investigation

**PART VI
GENERAL PROVISIONS**

27. Regulations
28. Penalty
29. Transitional provisions and saving
30. Construction of certain references
31. Amendment of Act No. 32 of 1944
32. Short title and commencement

Magistrates Act 3 of 2003

**SCHEDULE 1
OATH/AFFIRMATION BY MAGISTRATE**

[Schedule 1 inserted by Act 2 of 2014]

**SCHEDULE 2
LAW AMENDED**

[heading of Schedule 2 substituted by Act 2 of 2014]

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

**PART I
PRELIMINARY**

Definitions

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

“additional magistrate” means a magistrate appointed additional to the district magistrate in terms of section 11(3);

[definition of “additional magistrate” inserted by Act 2 of 2014]

“administrative division” means a division created under section 2(2) of the Magistrates’ Courts Act;

[definition of “administrative division” inserted by Act 2 of 2014]

“affirmative action” means affirmative action within the meaning of the Affirmative Action (Employment) Act, 1998 (Act No. 29 of 1998);

“association” means the association of magistrates recognised under section 4(2)(c);

[definition of “association” inserted by Act 2 of 2014]

“chairperson” means the chairperson of the Commission referred to in section 5(1)(a);

“Chief Magistrate” means a magistrate who is the head of the Magistracy referred to in section 11(1A);

[definition of “Chief: Lower Courts” deleted and definition of “Chief Magistrate” inserted by Act 5 of 2009; there should be a closing quotation mark after the term “Chief Magistrate”]

“Commission” means the Magistrates Commission established by section 2;

“committee” means a committee established by the Commission under section 8(1);

“district court” means a court created for a specific magisterial district as seat of the district magistrate under section 2(1) of the Magistrates’ Courts Act;

[definition of “district court” inserted by Act 2 of 2014]

“district division”, “district” or “subdistrict” means a district division, district or subdistrict created under section 2(1) of the Magistrates’ Courts Act;

Magistrates Act 3 of 2003

[definition of “district division”, “district” or “subdistrict” inserted by Act 2 of 2014]

“district magistrate” means a magistrate appointed under section 11(1)(e), or designated under section 11(2)(b), as a district magistrate who is the head of a district court;

[definition of “district magistrate” inserted by Act 2 of 2014]

“divisional magistrate” means a magistrate appointed under section 11(1)(c) as divisional magistrate who is the head of an administrative division;

[definition of “divisional magistrate” inserted by Act 2 of 2014]

“grade” means the hierarchical levels on which posts are created;

“legal practitioner” means a person who, in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), has been admitted and authorized to practise as a legal practitioner or is deemed to have been so admitted and authorized;

“lower court” means any court established under section 2(1) of the Magistrates’ Courts Act pursuant to Article 83 of the Namibian Constitution;

“magistracy” means the magistracy referred to in section 11(1);

“magistrate” means a magistrate appointed under this Act;

“Magistrates’ Courts Act” means the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“Minister” means the Minister responsible for justice;

“pensions law” means the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation No. AG. 56 of 1989), or any other law relating to pensions;

“permanent establishment” means the posts created for the normal and regular requirements of the magistracy;

“prescribed”, except in section 26(19), means prescribed by regulation;

“regional court magistrate” means a magistrate appointed under section 11(1)(d) as regional court magistrate;

[definition of “regional court magistrate” inserted by Act 2 of 2014]

“regional division”, “district division”, “district” and “subdistrict” mean respectively a regional division, district division, district and subdistrict created under section 2(1) of the Magistrates’ Courts Act;

“regulation” means a regulation made under this Act;

“remuneration”, except in sections 9(2) and 11(7)(c), means basic salary, allowance and any other similar benefit;

“salary scale” means a minimum and maximum salary limit attached to a specific grade;

“scale”, in relation to salary, includes a salary at a fixed amount;

Magistrates Act 3 of 2003

“seat”, in relation to a lower court, means the place where the lower court is situated;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act” includes any regulation.

PART II MAGISTRATES COMMISSION

Establishment of Magistrates Commission

2. There is established a commission, to be known as the Magistrates Commission, with the powers and duties conferred or imposed on the Commission by or under this Act or any other law.

Objects of Commission

3. The objects of the Commission are -
- (a) to ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, magistrates take place without favour or prejudice, and that the applicable laws and administrative directives in this regard are applied uniformly and correctly;
 - (b) to ensure that no influencing or victimization of magistrates takes place;
 - (c) to promote the continuous judicial education of magistrates and to make recommendations to the Minister in regard thereto;
 - (d) to ensure that properly qualified and competent persons are appointed as magistrates; and
 - (e) to advise the Minister regarding any matter which, in the opinion of the Commission, is of interest for the independence of the magistracy and the efficiency of the administration of justice in the lower courts.

Functions of Commission

4. (1) The Commission must -
- (a) prepare estimates of the expenditure of the Commission and the magistracy for inclusion in the annual or additional budget of the Ministry of Justice;
 - (b) compile or amend, after consultation with the association, a Code of Conduct to be complied with by magistrates;

[paragraph (b) amended by Act 2 of 2014;
not all of the changes are indicated by amendment markings]

- (c) receive and investigate, in the prescribed manner but subject to subsection (4), complaints from members of the public on alleged improper conduct of magistrates or alleged maladministration of justice in the lower courts;

Magistrates Act 3 of 2003

- (d) receive and investigate, in the prescribed manner, complaints and grievances of magistrates;
 - (e) carry out or cause to be carried out disciplinary investigations into alleged misconduct of magistrates;
 - (f) make recommendations to the Minister with regard to -
 - (i) the suitability of candidates for appointment as magistrates;
 - (ii) the minimum standard of qualification required for the purposes of section 14;
 - (iii) the conditions of service of magistrates, including their remuneration and retirement benefits;
 - (iv) the dismissal and retirement of magistrates; and
 - (v) any matter referred to in section 3(e); and
 - (g) perform any other function entrusted to the Commission by or under this Act or any other law.
- (2) The Commission -
- (a) may, in the prescribed manner, promote magistrates according to their performance to higher grades;
 - (b) may, subject to this Act, transfer magistrates when it is necessary in the interests of the administration of justice so to do.
 - (c) may recognise one professional association of magistrates when the Commission is satisfied with the constitution of the association and its representation and objectives.

[paragraph (c) inserted by Act 2 of 2014; paragraph (b) should now end with a semicolon]

(3) A committee may, subject to the directions and control of the Commission, perform any of the duties referred to in subsection (1)(a), (b) or (e).

(4) Nothing in subsection (1)(c) contained is to be construed as empowering the Commission to interfere with the judicial independence or the judicial functioning of a magistrate.

Constitution of Commission

5. (1) The Commission consists of -
- (a) a judge of the High Court of Namibia, designated by the Judge President, who is the chairperson;
 - (b) the Chief Magistrate;

**[paragraph (b) amended by Act 5 of 2009
to substitute "Chief Magistrate" for "Chief: Lower Courts"]**

Magistrates Act 3 of 2003

- (c) one divisional or regional court magistrate appointed by the Minister from a list of three magistrates nominated by the association from divisional or regional court magistrates, and who is not an executive member of the association;

[paragraph (c) amended by Act 2 of 2014]

- (d) one staff member of the Ministry of Justice designated by the Minister;
- (e) one suitable person designated by the Public Service Commission;
- (f) one suitable person designated by the Attorney-General; and
- (g) one teacher of law appointed by the Minister from a list of two teachers of law nominated by the Vice-Chancellor of the University of Namibia.

- (2) For the purposes of subsection (1), the Minister must -

- (a) direct in writing -

- (i) the Judge President to designate a judge of the High Court of Namibia; and
- (ii) the Public Service Commission and the Attorney-General to each designate one suitable person,

to serve as members of the Commission from a date specified in the direction; and

- (b) invite in writing -

- (i) the association to nominate in writing, within the period specified in the invitation, three magistrates who are divisional or regional court magistrates; and

[subparagraph (i) amended by Act 2 of 2014]

- (ii) the Vice-Chancellor of the University of Namibia to nominate in writing, within the period specified in the invitation, two teachers of law,

for appointment, subject to paragraphs (c) and (g), respectively, of that subsection, as members of the Commission.

(2A) If a designation or nomination referred to in subsection (2) is not received by the Minister within the period specified in the directive or invitation, the Minister may accordingly designate or appoint such person as the Minister thinks suitable, subject to section 5A.

[subsection (2A) inserted by Act 2 of 2014]

(3) The Commission must elect from among its members a deputy chairperson, who must in the absence of the chairperson perform the functions entrusted to the chairperson by or under this Act.

(4) Subject to section 7(2), a vacancy in the Commission does not affect the validity of the proceedings or decisions of the Commission.

Magistrates Act 3 of 2003

(5) The chairperson must, within 30 days after the constitution of the Commission or any change in such constitution, publish or cause to be published in the *Gazette* the names of the members of the Commission and the date or dates of commencement of their terms of office.

Qualification for designation and appointment as member of Commission

5A. A person does not qualify for designation or appointment as member of the Commission if such person -

- (a) is not a Namibian citizen or permanent resident in Namibia;
- (b) has been declared as mentally ill under any law relating to mental health;
- (c) is an unrehabilitated insolvent;
- (d) has, at any time, been convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
- (e) has been removed from an office of trust on account of misconduct;
- (f) has never been at management level in his or her profession or employment or has less than 10 years work experience; or
- (g) appears in the magistrates' courts on behalf of the State or other clients.

[section 5A inserted by Act 2 of 2014]

Term of office of members of Commission and filling of vacancies

6. (1) Except for the Chief Magistrate, who is an *ex officio* member of the Commission, each of the other members of the Commission holds, subject to subsection (4), office for a period of three years.

[subsection (1) amended by Act 5 of 2009
to substitute "Chief Magistrate" for "Chief: Lower Courts"]

(2) Any person whose period of office as a member of the Commission has expired, may be reappointed or redesignated for another term, but a member may not hold office for more than two consecutive terms.

[subsection (2) amended by Act 2 of 2014]

(3) Any designation or nomination of a member of the Commission under section 5(1) may be withdrawn by the designating or nominating authority concerned at any time after consultation with the Minister (except where the Minister is the designating authority) and the Commission if there are good reasons for doing so.

(3A) The Minister -

- (a) on the recommendation of the Commission, made after a member having been given an opportunity to be heard by the Commission; and
- (b) after consultation with the designating or nominating authority,

may on any valid reason withdraw a member from the Commission.

Magistrates Act 3 of 2003

[subsection (3A) inserted by Act 2 of 2014]

(4) A member whose designation or nomination has been withdrawn under subsection (3) or a member who has been withdrawn from the Commission under subsection (3A) ceases to hold office as from the date of such withdrawal.

[subsection (4) amended by Act 2 of 2014]

(5) If a member of the Commission for any reason ceases to hold office before the expiry of his or her term of office, another person may, having regard to section 5(1), be appointed or designated in his or her place for the remainder of the term of office of that member.

Meetings of Commission

7. (1) Meetings of the Commission must be held at the times and places determined by the chairperson or, in his or her absence, by the deputy chairperson of the Commission.

(2) A majority of the members of the Commission constitutes a quorum for a meeting of the Commission.

(3) The chairperson or, in his or her absence, the deputy chairperson of the Commission must preside at the meetings of the Commission, and if both the chairperson and the deputy chairperson are absent from, or for any other reason are unable to preside at, any meeting of the Commission, the members present thereat must elect one of their number to preside at that meeting.

(4) The decision of a majority of the members of the Commission present at a meeting of the Commission constitutes a decision of the Commission, and, in the event of an equality of votes relating to any matter, the chairperson or other member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(5) The person presiding at a meeting of the Commission must regulate the proceedings and procedure thereat, and must cause minutes to be kept of the proceedings.

(6) The Commission may transact a business of urgent nature which cannot be kept pending till the next meeting by circulating, in any manner determined by the Commission, the matter together with proposed solution, if any, among all members, and -

- (a) any resolution so circulated and approved by a majority of the members is as effective and binding as if such resolution had been passed at a meeting of the Commission;
- (b) the business so transacted and the resolution so circulated and approved must be reported and recorded in the minutes at the next meeting of the Commission.

[subsection (6) inserted by Act 2 of 2014]**Committees of Commission**

8. (1) The Commission may establish such committees as the Commission may consider necessary, consisting of -

Magistrates Act 3 of 2003

- (a) one or more members of the Commission designated by the Commission; and
- (b) one or more other persons possessing special or expert knowledge of any particular matter relating to the functions of the Commission, whom the Commission may, subject to subsection (2), appoint for that purpose and for a period determined by the Commission,

to assist and advise the Commission in the performance of any of its functions requiring special or expert knowledge.

(2) The Commission may extend the period of an appointment made by the Commission under subsection (1)(b) or withdraw such appointment at any time during the period referred to in that subsection.

(3) The Commission must designate a chairperson for every committee and, if the Commission considers it necessary, a deputy chairperson.

(4) A committee must, in accordance with the terms of reference determined by the Commission and subject to the directions of the Commission, perform such functions as the Commission may assign to the committee.

(5) On completion of the functions assigned in terms of subsection (4) to a committee, that committee must submit a written report thereon to the Commission.

(6) The Commission may at any time dissolve any committee.

(7) Section 7 applies with the necessary changes to a meeting of a committee.

Remuneration and expenses of members of Commission and committees

9. (1) A member of the Commission or a committee who is a judge or a magistrate, or who is subject to the laws governing the Public Service, may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister may determine with the concurrence of the Minister responsible for finance.

(2) A member of the Commission or a committee who is not a judge or a magistrate, or who is not subject to the laws governing the Public Service, may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, as the Minister may determine with the concurrence of the Minister responsible for finance.

Secretary and staff of Commission

10. (1) The work incidental to the performance by the Commission of its functions must be performed by staff members of the Ministry of Justice assigned to the office of the Chief Magistrate by the Permanent Secretary: Justice.

(2) The Chief Magistrate must -

- (a) designate one of the staff members referred to in subsection (1) as secretary of the Commission; and
- (b) supervise and take full control over the staff members referred to in subsection (1).

Magistrates Act 3 of 2003

[subsection (2) amended by Act 2 of 2014 to add paragraph (b);
not all of the changes are indicated by amendment markings.]

(3) A person outside the magistracy may not give any assignment to any of the staff members referred to in subsection (1) without the approval of the Chief Magistrate.

[subsection (3) inserted by Act 2 of 2014]

[section 10 amended by Act 5 of 2009 to substitute “Chief Magistrate”
for “Chief: Lower Courts” throughout]

PART III MAGISTRACY

Composition of magistracy

11. (1) There is a magistracy consisting of the following magistrates appointed permanently or on fixed-term contracts of employment or temporarily in respect of lower courts under and subject to this Act -

- (a) a magistrate appointed as Chief Magistrate;
- (b) magistrates appointed as deputy chief magistrates;
- (c) magistrates appointed as divisional magistrates;
- (d) magistrates appointed as regional court magistrates;
- (e) magistrates appointed as district magistrates; and
- (f) magistrates appointed as additional magistrates for districts and subdistricts.

(2) (a) One or more magistrates may be appointed in accordance with this Act for any regional division, district division, district or subdistrict.

(b) Where more than one magistrate is appointed for a regional division, district division, district or subdistrict, the Commission must designate one of their number as the head of that regional division, district division, district or subdistrict.

(3) The Commission must assign a magistrate to a specific regional division, district division, district or subdistrict to serve as magistrate of that regional division, district division, district or subdistrict.

(4) Despite subsection (3) -

(a) a divisional magistrate of an administrative division may at the same time also be assigned as -

(i) a divisional magistrate of another administrative division; and

(ii) a district magistrate or an additional magistrate of each district falling wholly or partly within the administrative division of which he or she is the divisional magistrate, and is for all purposes deemed to have been assigned as district or additional magistrate of each district falling wholly in his or her administrative division;

Magistrates Act 3 of 2003

- (b) a regional court magistrate may also be a magistrate of a district court, and is for the purposes of section 16(6) deemed to have been duly appointed as a magistrate for each district falling wholly or partly within the district division of which he or she is the regional court magistrate;
 - (c) a magistrate appointed for a district may at the same time be assigned by a divisional magistrate to act as additional magistrate of another district in the same administrative division;
 - (d) a magistrate who is a member of the relief component may be appointed as additional magistrate for any district in the country.
- (5) (a) Every magistrate, after appointment and before commencing with his or her functions in terms of this Act, must take an oath or make an affirmation subscribed by him or her, in the form set out in Schedule 1.
- (b) An oath or affirmation referred to in paragraph (a) must be taken or made in open court before the most senior available magistrate, who must at the foot thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.
- (6) Whenever by reason of absence or incapacity a magistrate is unable to perform the functions of his or her office, or whenever such office becomes vacant, the Commission may assign another magistrate to act in the place of the absent or incapacitated magistrate during such absence or incapacity or to act in the vacant office until the vacancy is filled.
- (7) (a) Despite section 13(1), the Commission may appoint temporarily any person who is qualified to be appointed as a magistrate under this Act to act, either generally or in a particular matter, as magistrate of a regional court or district or subdistrict court in addition to any magistrate of that regional court, district or subdistrict court.
- (b) A person appointed under paragraph (a) is appointed for such period as the Commission may determine at the time of the appointment or for the duration of a particular matter.
- (c) Despite section 18(1) and (2), the Minister, with the concurrence of the Commission and the Minister responsible for finance, may determine the remuneration and allowances, and the method of calculation of such remuneration and allowances, payable to a person appointed under paragraph (a) who is not subject to the laws governing the Public Service.
- (7A) (a) Despite section 13(1) and (2) but subject to paragraphs (b) and (c), the Commission or the Chief Magistrate or a divisional magistrate so authorized by the Commission may temporarily appoint the clerk of a magistrate's court to act as assistant magistrate of a district or subdistrict in addition to any magistrate of that district or subdistrict.
- (b) Despite section 16(1)(a) and despite section 8 of the Magistrates' Courts Act, an assistant magistrate appointed under paragraph (a) may, in the absence of a magistrate, hold a court of a district or subdistrict, but only for the purposes of -
- (i) postponing cases;

Magistrates Act 3 of 2003

- (ii) granting of unopposed bail;
 - (iii) withdrawing cases upon the request of the prosecution but before pleading;
 - (iv) authorising of warrant of arrest, execution to be held over 14 days and authorising accused persons to be held in custody;
 - (v) handling estates of deceased persons in terms of the Policy and Procedure Manual for Magistrates;
 - (vi) signing formal documents in respect of duties assigned to magistrates in respect of deaths;
 - (vii) solemnising marriages; and
 - (viii) approving applications for temporary liquor licenses.
- (c) Except when performing the functions of a magistrate as specified in paragraph (b), a clerk of the court appointed under paragraph (a) to act as assistant magistrate remains subject to -
- (i) the laws governing the Public Service; and
 - (ii) the conditions of service applicable to employees in the Public Service.

(8) The Commission may, subject to such directions as it may issue from time to time, in general or in a specific case, in writing delegate the power conferred on the Commission by subsection (6) to the Chief Magistrate.

- (9) The Chief Magistrate referred to in subsection (1)(a) -
- (a) is appointed by the Minister on the recommendation of the Commission;
 - (b) is appointed for a five year term of office;
 - (c) is eligible for reappointment at the expiry of his or her five year term of office;
 - (d) is the administrative head of the magistracy; and
 - (e) may preside over cases in any lower court.

- (10) If the Chief Magistrate fails to secure a reappointment contemplated in subsection (9) -
- (a) he or she becomes a magistrate of any designation immediately below the designation of Chief Magistrate, unless he or she decides to resign as magistrate; and
 - (b) the Commission may give him or her any assignment in the magistracy.

(11) The Chief Magistrate is assisted by deputy chief magistrates in his or her office who, in the absence of the Chief Magistrate, act as Chief Magistrate as the Commission may assign generally or in particular case.

Magistrates Act 3 of 2003

[In *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC), the High Court held that while the appointment of acting magistrates by the Magistrates Commission in terms of section 11(7) is generally constitutional, the appointment of the Chief: Lower Courts as an acting magistrate under this section is an impermissible violation of the independence of the judiciary. The High Court found that the Chief: Lower Courts is a member of the public service in the Ministry of Justice, as evidenced by the definition of this position in section 1 of the Magistrates' Courts Act 32 of 1944, and so cannot constitutionally be appointed as a temporary magistrate under section 11(7) without violating the "institutional judicial independence which inheres in the principle of separation of powers". This situation was remedied by the Magistrates Amendment Act 5 of 2009, which replaced the definition of "Chief: Lower Courts" with a new definition of "Chief Magistrate" in the Magistrates' Courts Act 32 of 1944, and added subsection 11(1A) to this Act:
 "(1A) The Chief Magistrate is the head of the Magistracy and may preside over cases in any lower court."
 This case was considered on appeal in *Alexander v Minister of Justice & Others* 2010 (1) NR 328 (SC), but the holding on the constitutionality of section 11(7) as applied to the Chief: Lower Courts was not challenged on appeal.]

Permanent establishment of magistracy

12. The Minister, in consultation with the Commission and with the concurrence of the Minister responsible for finance -

- (a) must create posts for magistrates on the permanent establishment of the magistracy and determine the number, grading, regrading, designation, redesignation or conversion of posts on such establishment; and
- (b) may create temporary posts additional to the permanent establishment when it becomes necessary to temporarily increase the number of magistrates.

[section 12 substituted by Act 1 of 2014 to add paragraph (b);
 not all of the changes are indicated by amendment markings]

Appointment of magistrates on permanent establishment

13. (1) The Minister, on the recommendation of the Commission, but subject to subsection (2), either on a permanent basis or on fixed-term contract of employment, may appoint as many magistrates as there are posts on the permanent establishment of the magistracy or in temporary posts additional to the permanent establishment.

(2) The Minister may not appoint a person as a magistrate under subsection (1), unless such person -

- (a) is -
 - (i) a Namibian citizen; or
 - (ii) a non-Namibian citizen to be appointed on a fixed-term contract of employment;
- (b) is qualified to be so appointed in terms of section 14; and
- (c) is certified by the Commission to be in all respects suitable for appointment as a magistrate.

(3) The appointment of every magistrate must be effected on such contract of employment, not being inconsistent with this Act, as the Minister may approve on the recommendation of the Commission.

Magistrates Act 3 of 2003

(4) Except where the Minister on the recommendation of the Commission otherwise approves, the appointment of every magistrate at entry level on the permanent establishment is on probation for a period of not less than six months.

(5) If the appointment of a magistrate is not confirmed after six months, the period of probation may be conditionally extended for another six months.

(6) If the appointment of a magistrate is not confirmed after the probation period or the extended probation period, the Minister, on the recommendation of the Commission, must terminate the services of the magistrate -

- (a) by giving the magistrate a notice of 30 days; or
- (b) at any time during the probation period without prior notice, if the conduct of the magistrate is unsatisfactory, but by paying the magistrate a salary of one month in lieu of such notice.

[section 13 substituted by Act 2 of 2014]

Qualifications for appointment as magistrate

14. (1) Subject to section 29(2), a person who immediately before the date of commencement of this section did not hold a substantive appointment as magistrate is not qualified to be appointed as a magistrate under this Act, unless such person has obtained a qualification in law referred to in subsection (2).

(2) The Minister, by notice in the Gazette, on the recommendation of the Commission in general or in any particular case, may recognise any qualification in law to be a qualification of a satisfactory standard of professional education for the appointment of a person as magistrate.

(3) A person who has been appointed as magistrate before the recognition of any qualification contemplated in subsection (2) his or her appointment is not affected by such qualification so recognised.

[section 14 substituted by Act 2 of 2014]

Balanced structuring of magistracy

15. Whenever the Commission is required to recommend a person for appointment as magistrate, the Commission must, as far as is practicable, have due regard to affirmative action and the need for a balanced structuring of the magistracy.

Powers and duties of magistrates

16. (1) A magistrate of a district -
- (a) may hold a court in the district court or any other lower court for the district division for which he or she holds an appointment;
 - (b) has the powers and perform the duties conferred or imposed upon magistrates by law; and

Magistrates Act 3 of 2003

(c) must exercise administrative control over and distribute the work amongst the additional magistrates of the district and subdistrict under his or her supervision.

(2) An additional magistrate -

(a) may hold a court in the district court or any other lower court as assigned by the district magistrate; and

(b) has the powers and perform the duties conferred or imposed upon magistrates by law in so far as he or she is not expressly prohibited from exercising or performing either by the Commission or by the magistrate of the district.

(3) A regional court magistrate -

(a) may hold court in the regional court;

(b) has the powers and performs the duties conferred or imposed upon regional court magistrates by law; and

(c) when presiding in a civil trial or an inquest in a district court has the powers and performs the functions imposed upon magistrates by law.

(4) A divisional magistrate -

(a) may hold court in a district court situated in his or her administrative division and may be assigned to perform relief duties in any regional court;

(b) has the powers and performs the duties conferred or imposed upon divisional magistrates by or under this Act; and

(c) has the powers and performs the duties conferred or imposed upon magistrates by law in so far as he or she is not expressly prohibited from exercising by the Commission or the Chief Magistrate.

(5) A person appointed temporarily under section 11(7) to act as a magistrate has the powers and jurisdiction and performs the duties connected with the office in which he or she is acting, for the particular case or during the time or in the circumstances for which he or she is appointed to act subject to such conditions or restrictions as the Commission when appointing him or her may impose.

(6) A magistrate may, in his or her capacity as -

(a) in the case of a regional court magistrate, a magistrate of a district in terms of section 11(4)(a)(ii); or

(b) in the case of a divisional magistrate of an administrative division, a magistrate of a district in terms of section 11(4)(b),

hold a court of any district in the division for which he or she has been appointed for the hearing of any civil matter within the jurisdiction of the district court.

(7) A district magistrate is accountable for -

Magistrates Act 3 of 2003

- (a) the efficient management and administration of his or her office and branch offices, sub-districts and periodical courts in the district for which he or she has been appointed; and
- (b) the proper administration of justice in his or her district.

(8) A divisional magistrate is accountable for the administration of justice in the regional and district courts, and exercises administrative control over the magistrates, in his or her administrative division.

(9) Magistrates may form and belong to a professional association of magistrates representing the interests of magistrates.

[section 16 amended by Act 5 of 2009 and substituted by Act 2 of 2014]

PART IV CONDITIONS OF SERVICE OF MAGISTRATES

Conditions of service of magistrates not otherwise provided for

17. (1) The conditions of service of a magistrate not otherwise provided for in this Act are as prescribed.

(2) If an employee in the Public Service is appointed as a magistrate in terms of this Act, the period of his or her service while in the Public Service must be reckoned as part of and continuous with his or her service as a magistrate in terms of this Act for the purposes of leave, pension, retirement and any other condition of service.

Remuneration of magistrates

18. (1) Subject to subsection (2), any person holding the office of magistrate must be paid a monthly remuneration in accordance with -

- (a) the salary scale; and
- (b) the rate of allowances and other pecuniary benefits, prescribed for his or her grade.

(2) The Minister, in consultation with the Commission and with the concurrence of the Minister responsible for finance, may from time to time increase the remuneration of magistrates by notice in the *Gazette*.

(3) Any remuneration payable in terms of subsection (1) must be paid from moneys appropriated by Parliament for that purpose to the Ministry of Justice.

- (4) The remuneration of a magistrate may not be reduced.
- (5) A magistrate is entitled to such additional service benefits as may be prescribed.

Transfer of magistrates

19. (1) The Commission may -

- (a) when the interests of the administration of justice so require; or

Magistrates Act 3 of 2003

(b) on valid reason, upon written request by a magistrate,

transfer a magistrate from the seat of one lower court to the seat of another lower court.

[subsection (1) substituted by Act 2 of 2014]

(1A) A magistrate so transferred under subsection (1) must be given an appropriate notice before the transfer date.

[subsection (1A) inserted by Act 2 of 2014]

(2) A magistrate who feels aggrieved by a decision of the Commission under subsection (1) to transfer him or her, may make written representations to the Commission in that regard.

(3) A transfer under subsection (1), except when made at the request of the magistrate, is at the expense of the State and the magistrate so transferred is entitled to the prescribed transfer and resettlement costs.

[subsection (3) amended by Act 2 of 2014]

Retirement of magistrates

20. (1) (a) Subject to subsection (2), a magistrate must retire on attaining the age of 65 years, and is so retired on the date on which he or she attains that age.

(b) If a magistrate attains the age of 65 years after the first day of a month, he or she is deemed to have attained that age on the first day of the following month.

(2) If it is in the interests of the administration of justice to retain the services of a magistrate beyond the age of 65 years, he or she may, with his or her consent and with the approval of the Minister be so retained for a further period determined by the Minister on the recommendation of the Commission but expiring not later than the last day of the month in which he or she attains the age of 70 years.

**[subsection (2) amended by Act 2 of 2014;
not all of the changes are indicated by amendment markings]**

(3) (a) Notwithstanding subsection (1)(a), a magistrate who immediately before the date of commencement of this section held office as such, may retire -

(i) on attaining the age of 60 years; or

(ii) with the approval of the Minister granted, subject to paragraph (d), at the request of the magistrate concerned and on the recommendation of the Commission, on attaining the age of 55 years.

(b) A magistrate who wishes to retire under paragraph (a) -

(i) on attaining the age of 60 years, must give written notification to the Commission of his or her wish to be so retired;

(ii) on attaining the age of 55 years, must address a request in writing to the Commission that he or she be so retired,

Magistrates Act 3 of 2003

at least three calendar months before the date on which he or she attains the age of 60 years or 55 years, whichever may be applicable, unless the Commission approves a shorter period in a specific case.

- (c) On receipt of a request in terms of paragraph (b)(ii), the Commission must promptly submit the request, together with the recommendation of the Commission, to the Minister.
- (d) The Minister may not grant an approval under paragraph (a)(ii) unless the Minister is satisfied that -
 - (i) sufficient reason exists for the retirement; and
 - (ii) the retirement will not be to the detriment of the magistracy.
- (e) Subsection (1)(b) applies with the necessary changes to a retirement under paragraph (a).

Dismissal and vacation of office of magistrates

21. (1) (a) The Commission may, subject to paragraph (b), suspend a magistrate from office pending an investigation under this Act into the magistrate's fitness to hold office.
- (b) The Commission may suspend a magistrate under paragraph (a) only if the Commission has reason to believe that the magistrate -
- (i) on the ground of alleged misconduct;
 - or
 - (iii) on account of incapacity to perform the duties of his or her office efficiently, is no longer fit to hold office, or may interfere or is likely to interfere with witnesses or tamper with evidence in circumstances where the magistrate is being investigated for the alleged misconduct.

[paragraph (b) amended by Act 2 of 2014; amongst other changes, the amendment deletes subparagraph (ii)]

- (c) Notwithstanding section 18(4), a magistrate suspended from office under paragraph (a) is to receive, for the duration of the suspension, no salary or such salary as may be determined by the Commission.
 - (d) The suspension of a magistrate under paragraph (a) may at any time be terminated by the Commission.
- (2) The Commission must, within seven days of the suspension under subsection (1)(a) of a magistrate, submit a written report on the matter to the Minister, stating the reason for the suspension.
- (3) If the Commission -
- (a) in terms of section 26(17)(ii) recommends to the Minister that a magistrate be dismissed on the ground of misconduct; or

Magistrates Act 3 of 2003

- (b) after an investigation, in the prescribed manner, recommends to the Minister that a magistrate be dismissed on account of-
 - (i) continued ill-health; or
 - (ii) incapacity to perform the duties of his or her office efficiently, the Minister must dismiss the magistrate from office.
 - (4) (a) A magistrate aggrieved by his or her dismissal under subsection (3) may, subject to paragraph (b), appeal against the dismissal to the High Court.
 - (b) An appeal under paragraph (a) -
 - (i) must be noted in writing within 30 days of the date of receipt of the notice of dismissal, and the notice of appeal must -
 - (aa) set out the full grounds of appeal; and
 - (bb) be served on every party to the matter; and
 - (ii) must be processed as if it were an appeal from a judgment of a magistrate's court in a civil matter, and all rules applicable to the hearing of such an appeal apply with the necessary changes to an appeal under this subsection.
- [subparagraph (ii) amended by Act 2 of 2014]**
- (c) The High Court must hear an appeal under paragraph (a) and may after considering the appeal -
 - (i) confirm the dismissal appealed against; or
 - (ii) set aside the dismissal appealed against; or
 - (iii) give such other order, including any order as to costs, as it may consider fit.
 - (d) The Minister must reinstate the magistrate concerned in his or her office if the High Court under paragraph (c)(ii) sets aside the dismissal appealed against.
 - (5) (a) The Minister may, at the written request of a magistrate and on the recommendation of the Commission, allow the magistrate to vacate his or her office -
 - (i) on account of continued ill-health; or
 - (ii) for any other reason which the Minister considers sufficient.
 - (b) A request by a magistrate under paragraph (a) must be addressed to the Commission at least three calendar months before the date on which the magistrate wishes so to vacate his or her office, unless the Commission approves a shorter period in a specific case.
 - (c) On receipt of a request in terms of paragraph (b), the Commission must promptly submit the request, together with the recommendation of the Commission, to the Minister.

Magistrates Act 3 of 2003

- (d) Where a magistrate -
- (i) is allowed to vacate his or her office under paragraph (a)(i), he or she is entitled to such pension benefits as he or she would have been entitled to under the pensions law applicable to him or her if his or her services had been terminated on the ground of continued ill-health occasioned without his or her being instrumental thereto; or
 - (ii) is allowed to vacate his or her office under paragraph (a)(ii), he or she is deemed -
 - (aa) to have been removed from office to promote efficiency for reasons other than his or her own unfitness or incapacity; or
 - (bb) to have been retired in accordance with section 20(3)(a)(i), if he or she has already attained the age of 55 years, or section 20(3)(a)(ii), if he or she has not yet attained that age,

as the Minister may direct, and he or she is entitled to such pension benefits as he or she would have been entitled to under the pensions law applicable to him or her if he or she had been so removed from office or had been so retired, according to the direction of the Minister.
- (e) Nothing in paragraph (a) contained is to be construed as preventing a magistrate from vacating his or her office without the approval of the Minister by resigning as magistrate on 30 days' notice.

[paragraph (e) amended by Act 2 of 2014]

Magistrates may not perform other paid work

22. No magistrate may, without the approval of the Commission, perform any paid work outside the duties of his or her office.

Limitation of political activities of magistrates

23. (1) A magistrate may be a member of a political party, but may not -
- (a) preside at a public political meeting or draw up or publish any writing or deliver a public speech or make a public statement with the intention to promote or prejudice the interests of any political party; or
 - (b) be an office-bearer of whatever designation of a political party.

(2) A magistrate may not accept a nomination as candidate for election as a member of the National Assembly, a regional council (as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992)) or a local authority (as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992)), and is, if he or she accepts such nomination, deemed to have resigned as magistrate with effect from the date on which he or she accepted the nomination.

(3) The provisions of this section, in so far as they provide for a limitation of the fundamental rights contemplated in Article 17(1) of the Namibian Constitution to participate in peaceful political activities, are enacted upon the authority conferred by the said Article.

Magistrates Act 3 of 2003**PART V
MISCONDUCT****Definition of misconduct**

24. (1) A magistrate commits misconduct if he or she -

[The subsection number (1) is missing in the *Government Gazette*.]

(a) is found guilty of serious offence -

[The hyphen at the end of paragraph (a) should be a semicolon, and the word "a" should precede "serious offence".]

(b) contravenes or fails to comply with a provision of this Act;

(c) is negligent or indolent in the performance of the duties of his or her office;

(d) uses intoxicants or stupefying drugs excessively resulting in his or her incapacity to perform the duties of his or her office efficiently;

(e) accepts or demands in respect of the performance of or failure to perform his or her duties any commission, fee or pecuniary or other award to which he or she is not entitled by virtue of his or her office;

(f) operates or undertakes, without the approval of the Commission, any private agency or private work in regard to any matter directly or indirectly related to the performance of the functions of his or her office or any matter directly or indirectly related to the field of operations of a magistrate, or fails to declare that a member of his or her household operates or undertakes any such private agency or private work;

(g) misappropriates or makes improper use of any property of the State;

(h) uses any property belonging to the State without the consent of the staff member having lawful control over it, or without lawful excuse;

(i) absents himself or herself from his or her office or duty without leave or valid cause;

(j) makes a false or incorrect statement, knowing it to be false or incorrect, with a view to obtain any privilege or advantage in relation to his or her official position or his or her duties or to the prejudice of the administration of justice;

(k) commits any act which brings or is likely to bring the administration of justice or the magistracy into disrepute;

(l) refuses to execute a lawful order; or

(m) contravenes or fails to comply with the code of conduct referred to in section 4(1)(b).

(2) If a magistrate is absent without leave or valid reason from his or her office or duty for a period of five consecutive working days or longer -

Magistrates Act 3 of 2003

- (a) the Chief Magistrate must accordingly inform the Commission without delay;
- (b) the magistrate is deemed to have absconded and made himself or herself guilty of misconduct.

(3) After the Commission has been informed of the absence under subsection (2) it must order a preliminary investigation in terms of section 25(1) to determine whether the magistrate must be dismissed.

- (4) If a magistrate -
 - (a) despite appropriate guidance, induction, instructions, mentoring or training provided to him or her, fails to meet the performance standard expected of a magistrate; and
 - (b) despite written warning and reasonable time given to him or her to improve his or her performance standard, fails to improve his or her performance standard,

he or she commits a misconduct due to poor work performance.

[section 24 amended by Act 2 of 2014]

Preliminary investigation of misconduct

25. (1) If the Commission has reason to believe that a magistrate has committed misconduct, the Commission must, subject to subsection (2), appoint a magistrate senior to the magistrate being charged or of equal rank or other person (hereinafter called the investigating officer) to carry out a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate.

[subsection (1) amended by Act 2 of 2014]

(2) If the Commission is satisfied that there is sufficient evidence to support a charge of misconduct against a magistrate, the Commission may charge the magistrate in accordance with section 26 with misconduct without a preliminary investigation having been carried out in terms of subsection (1).

(3) After the conclusion of a preliminary investigation in terms of subsection (1), the investigating officer must recommend to the Commission whether or not the magistrate concerned should in his or her opinion be charged, and if so, what in his or her opinion the charge in question should be.

Investigation of charge of misconduct and proceedings after investigation

26. (1) The Commission must charge a magistrate in writing with misconduct if the Commission is satisfied -

- (a) that sufficient grounds for a charge of misconduct against the magistrate have been found during a preliminary investigation carried out in terms of section 25(1); or
- (b) that, notwithstanding the fact that a preliminary investigation was not carried out as contemplated in paragraph (a), there is sufficient evidence to support a charge of misconduct against the magistrate.

Magistrates Act 3 of 2003

- (2) (a) The Commission must cause the charge to be served on the magistrate charged with misconduct, together with a statement of particulars of the alleged misconduct.
- (b) A charge referred to in paragraph (a) must -
- (i) contain or be accompanied by a direction calling upon the magistrate charged to send or deliver, within 14 days of receipt of the charge, to a person mentioned in the direction a written admission or denial of the charge and, if he or she so desires, a written explanation regarding the misconduct with which he or she is charged; and
- (ii) be served in the manner determined by the Commission.
- (3) If the magistrate charged admits the charge, he or she -
- (a) may, together with the admission, make written representations to the Commission in mitigation of punishment; and
- (b) is deemed to have been found guilty in terms of this section of misconduct as charged on the date of admitting the charge.
- (4) If the magistrate charged -
- (a) denies the charge; or
- (b) fails to comply with the direction referred to in subsection (2)(b)(i),

the Commission must, within seven days of receipt of the written denial or, in the case of a failure to comply with the direction referred to in subsection (2)(b)(i), of the lapsing of the period mentioned in that subsection, appoint a magistrate or other qualified and suitable person (hereinafter called the presiding officer) to preside at the investigation, and a magistrate or other qualified and suitable person as initiator to lead evidence.

[subsection (4) amended by Act 2 of 2014]

- (5) The presiding officer must fix the time, not being later than 21 days of the date of his or her appointment as such, and place of the investigation and must give the magistrate charged reasonable notice in writing of such time and place.
- (6) The magistrate or other person appointed in terms of subsection (4) to lead evidence may -
- (a) subpoena any person who in his or her opinion may be able to give information of material importance concerning the subject matter of the investigation, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject matter of the investigation, to appear before the presiding officer at the time and place specified in the subpoena, to be questioned or to produce such book, document or object;
- (b) retain a book, document or object referred to in paragraph (a) for the duration of the investigation;

Magistrates Act 3 of 2003

- (c) lead evidence and present arguments in support of the charge and cross-examine witnesses called by the magistrate charged.

(6A) If a person, being duly subpoenaed to give evidence or to produce any book, paper or document in his or her possession or under his or her control, which the party requiring his or her attendance desires to show in evidence -

- (a) fails, without lawful excuse, to attend or to give evidence or to produce such book, paper or document according to the subpoena; or
- (b) unless duly excused, fails to remain in attendance throughout the investigation,

the presiding officer, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his or her reasonable expenses, calculated in accordance with the tariff prescribed under section 51bis of the Magistrates' Courts Act, have been paid or offered to him or her, may -

- (i) issue a warrant of arrest of the person in order that the person may be brought up to give his or her evidence or to produce such book, paper or document according to the subpoena, and to be otherwise dealt with according to law; or
- (ii) impose upon the person a fine not exceeding N\$2 000 or imprisonment for a period not exceeding three months,

as if the investigation was a matter before the civil court, whether or not the person is otherwise subject to the jurisdiction of the court in whose jurisdiction the investigation is being conducted.

[subsection (6A) inserted by Act 2 of 2014]

(7) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law, applies with the necessary changes in relation to the examination of, or the production of any book, document or object to the presiding officer by, any person called in terms of this section as a witness.

(8) If the misconduct with which a magistrate is charged amounts to an offence of which he or she was convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the magistrate as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

- (9) At an investigation the magistrate charged has the right -
 - (a) to be personally present, to be assisted or represented by a legal practitioner, to give evidence and, either personally or through a legal practitioner -
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to examine any book, document or object produced in evidence; and

Magistrates Act 3 of 2003

- (b) notwithstanding a denial or failure by him or her referred to in subsection (4), to admit at any time during the investigation that he or she is guilty of the charge, whereupon he or she must be found guilty by the presiding officer of misconduct as charged, and subsection (11) then applies with the necessary changes in respect of the finding.

(10) At an investigation the presiding officer may, at the commencement of the proceedings or at any time thereafter, require from the magistrate charged a full explanation of his or her defence on the charge and question him or her in clarification about that.

(11) At the conclusion of the investigation, the presiding officer must make a finding on the charge and inform the magistrate charged whether he or she is guilty or not guilty of misconduct as charged and, in the case of a finding of guilty, afford that magistrate an opportunity to -

- (a) state any mitigating factors;
- (b) comment in writing on the matter.

(12) The presiding officer must, within seven days after the conclusion of the investigation, forward to the Commission -

- (a) the record of the proceedings at the investigation, including any documentary evidence adduced thereat; and
- (b) a written statement of his or her finding and his or her reasons therefor, and, in the case of a finding of guilty, the presiding officer must also -
 - (i) submit to the Commission the written comments referred to in subsection (11)(b), if any;
 - (ii) inform the Commission in writing of any aggravating or mitigating factors; and
 - (iii) make a written recommendation to the Commission as to whether the magistrate found guilty of misconduct should be -
 - (aa) cautioned or reprimanded; or
 - (bb) dismissed or called upon to resign as magistrate.

(13) The Commission must, at the written request of the magistrate charged made within seven days of the date on which he or she was informed of the finding of the presiding officer, furnish that magistrate with a copy of the record, statement, reasons and recommendation referred to in subsection (12).

(14) A magistrate found guilty of misconduct who feels aggrieved by the finding of the presiding officer may, within 14 days of receipt of a copy of the record, statement, reasons and recommendation in terms of subsection (13), make written representations to the Commission, and must, when so making representations, also transmit a copy thereof to the presiding officer.

(15) On receipt of a copy of the representations in terms of subsection (14), the presiding officer must promptly furnish the Commission with his or her comments thereon.

Magistrates Act 3 of 2003

(16) If the Commission, having regard to all the circumstances, is satisfied that a magistrate found guilty of misconduct, or who has admitted guilt in terms of subsection (3), is in fact guilty of misconduct but that the misconduct in question is not of such a nature as to detrimentally affect that magistrate's fitness to hold office, the Commission must caution or reprimand that magistrate and allow him or her to continue in office.

(17) If, after consideration of -

- (a) the record of the proceedings at the investigation (including the finding and recommendation of the presiding officer) and all comments and representations made in terms of subsection (11)(b), (14) or (15), if any, as well as all aggravating or mitigating factors; or
- (b) where applicable, any representations made under subsection (3)(a),

the Commission is satisfied that a magistrate found guilty of misconduct, or who has admitted guilt in terms of subsection (3), is in fact guilty of misconduct and that by reason of the nature of the misconduct in question that magistrate is no longer fit to hold office, the Commission must -

- (i) notify that magistrate in writing of its decision and afford him or her an opportunity to resign as magistrate within 14 days of receipt of the notice; and
- (ii) if that magistrate refuses or fails to resign within the period mentioned in paragraph (i), make a written recommendation to the Minister that the magistrate be dismissed from office in terms of section 21(3)(a) and submit, together with the recommendation, such record, comments, representations and other relevant documents to the Minister.

(18) A person subpoenaed to attend an investigation instituted in terms of this section as a witness or to produce a book, document or object is entitled to allowances as if he or she were a witness in criminal proceedings.

(19) A subpoena must be issued in the form prescribed by the Commission and must be served in the manner determined by the Commission.

(20) An investigation in terms of this section must take place in private.

(21) Any statement obtained during a preliminary investigation carried out in terms of section 25(1) which is not disputed by the magistrate charged may be admitted in evidence at the investigation instituted in terms of subsection (4).

(22) A magistrate who, while a charge of misconduct is being investigated against him or her or while the investigation is not yet completed, resigns as magistrate or assumes duty in other employment, is deemed to have been dismissed on account of misconduct with effect from the date on which he or she resigned or assumed duty in other employment.

PART VI GENERAL PROVISIONS

Regulations

27. (1) The Minister may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to magistrates:

Magistrates Act 3 of 2003

- (a) The appointment, promotion and transfer;
- (b) the recognition of appropriate qualifications and experience for the purposes of appointment and the determination of basic salary;
- (c) the procedure and manner of and criteria for evaluation and the conditions or requirements for the purposes of promotion;
- (d) salary scales and rates of allowances and other pecuniary benefits;
- (e) transfer and resettlement costs;
- (f) the powers, duties, conduct, discipline, hours of attendance, leave of absence, including leave gratuity, and pension, including contributions to a pension fund, and any other condition of service and benefits, including the occupation of official residential quarters;
- (g) the training of magistrates, including financial assistance for such training;
- (h) the provision of official transport;
- (i) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence and other allowances, may be paid;
- (j) the legal liability of a magistrate in respect of anything done or omitted under this Act or any other law and the legal liability emanating from the use of official transport;
- (k) the procedure at misconduct proceedings and the attendance of persons at such proceedings;
- (kA) the classifying of misconducts referred to in section 24 into categories of minor and serious misconducts for the purposes of sanctions and the manner of investigating such misconducts and determining them;

[paragraph (kA) inserted by Act 2 of 2014]

- (l) the circumstances under which and the conditions and manner in which a magistrate may be found to be suffering from continued ill-health or of incapacity to perform the duties of his or her office efficiently;
- (m) the procedure for dealing with complaints from members of the public on alleged improper conduct of magistrates or alleged maladministration of justice in the lower courts;
- (n) the procedure for dealing with complaints and grievances of magistrates, and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of those magistrates must be submitted;
- (o) the recognition of a professional association representing the interests of magistrates;

[paragraph (o) amended by Act 2 of 2014]

Magistrates Act 3 of 2003

- (p) the membership or conditions of membership of a particular medical aid scheme or medical aid society, and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of magistrates or their dependants to a medical aid scheme or medical aid society, may be recovered from the salaries of magistrates and paid to such medical aid scheme or medical aid society;
- (q) the contributions to and the rights, privileges and obligations of magistrates or their dependants with regard to a medical aid scheme or medical aid society;
- (r) the circumstances under which a medical examination must be required for the purposes of this Act or any other law, and the form of medical reports and certificates;
- (s) any matter which is required or permitted to be prescribed under this Act; and
- (t) in general, any matter which is not in conflict with this Act and which is reasonably necessary for the effective functioning of the Commission or the regulation of the conditions of service of magistrates or any matter in connection with the rights, powers, duties and functions of a magistrate.

(1A) The Minister, with the concurrence of the Commission, may make regulations conferring or imposing administrative powers or duties of a general nature on magistrates.

[subsection (1A) inserted by Act 2 of 2014]

(2) Any regulation under this section that results in State expenditure must be made with the concurrence of the Minister responsible for finance.

(3) No regulation made under subsection (1) may contain any provision that affects or is likely to affect the service benefits of any magistrate, as they existed immediately before the date of commencement of this section, to his or her detriment.

(4) A regulation made under subsection (1)(k), and which regulates the attendance of persons at misconduct proceedings contemplated in such a regulation, may provide that a person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and liable on conviction to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months.

Penalty

28. A person who willfully obstructs or interferes with the Commission or a committee or person appointed by the Commission to perform any function, in the performance of its, his or her functions in terms of this Act or any other law commits an offence and is liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

[section 28 amended by Act 2 of 2014]

Transitional provisions and saving

29. (1) All posts created for magistrates on the permanent establishment of the Ministry of Justice and which existed immediately before the date of commencement of section

Magistrates Act 3 of 2003

12 are, as from the said date, deemed to be posts created in terms of that section for magistrates on the permanent establishment of the magistracy.

(2) Any person who immediately before the date of commencement of section 13 held the office of magistrate is, as from the said date, deemed to have been duly appointed as a magistrate under that section, and the provisions of this Act apply to such person.

(3) The remuneration paid to a magistrate immediately before the date of commencement of section 18 is, until the date on which the first regulation contemplated in subsection (1) of that section commences, deemed to have been prescribed pursuant to that subsection.

(4) The conditions of service applicable to a person referred to in subsection (2) immediately before the date of commencement of section 17, may not be affected to his or her detriment, and no such condition of service is, after the said date, to be construed or applied in a manner which is less favourable to the person concerned than the manner in which it was construed or applied immediately before that date.

(5) Subject to this Act -

- (a) any law regarding any condition of service; or
- (b) any measure regarding powers, duties and functions; or
- (c) any arrangement regarding any administrative function,

which applied to a magistrate immediately before the date of commencement of any regulation relating to such matter, remains in force until the date on which that regulation commences.

(6) Notwithstanding the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation No. AG. 56 of 1989) -

- (a) any person referred to in subsection (2) remains a member of the Government Institutions Pension Fund referred to in section 2(b) of the said Proclamation;
- (b) any person appointed as a magistrate after the commencement of section 13 who is a member of the fund mentioned in paragraph (a), remains such a member; and
- (c) any person appointed permanently as a magistrate after the commencement of section 13 who is not a member of the fund mentioned in paragraph (a), becomes a member of that fund as from the date of appointment and must contribute thereto,

until other provision is made by regulation under section 27(1)(f).

[Act 2 of 2014 contains the following transitional provision:

“Savings

22. (1) A person appointed or designated as member of the Commission before the commencement of this Act [Act 2 of 2014 which came into force on 27 March 2014] is deemed to have been qualified for appointment or designation as member of the Commission in terms of section 5A.

(2) A non-Namibian citizen appointed as magistrate on fixed-term contract of employment before the commencement of this Act [Act 2 of 2014 which came into force on 27 March 2014] is deemed to have been appointed under section 13 and his or her appointment is valid as if subsection (2)(a)(ii) of that section had commenced on 30 June 2003.”]

Construction of certain references

Magistrates Act 3 of 2003

- 30. Any reference in any other law to -
 - (a) a chief magistrate, magistrate, additional magistrate, assistant magistrate, civil magistrate or criminal magistrate, is to be construed as a reference to a magistrate appointed under this Act;
 - (b) a regional magistrate, is to be construed as a reference to a magistrate appointed under this Act to the court of a regional division.

Amendment of Act No. 32 of 1944

31. The Magistrates' Courts Act, 1944 (Act No. 32 of 1944), is amended to the extent indicated in the third column of the Schedule.

Short title and commencement

32. (1) This Act is called the Magistrates Act, 2003, and comes into operation on a date to be fixed by the Minister by notice in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

SCHEDULE 1
OATH/AFFIRMATION BY MAGISTRATE
 (Section 11(5))

I,

(full name of magistrate)

do hereby swear/solemnly affirm that in my capacity as a magistrate I will be faithful to the Republic of Namibia, will uphold and protect the Namibian Constitution as the supreme law and the fundamental human rights and freedoms entrenched in it, and will administer justice to all persons alike in accordance with the Constitution and the law without fear, favour or prejudice.

(In the case of an oath)
So help me God!

(In the case of affirmation)
I affirm!

This oath/affirmation was taken/made before me on this.....day
of20.....

.....
(Signature of most senior available magistrate)

Magistrates Act 3 of 2003

SCHEDULE 2
(Section 31)

LAW AMENDED

No. and year of law	Short title	Extent of amendment
Act No. 32 of 1944	Magistrates' Courts Act, 1944	<p>1. The amendment of section 1 -</p> <p>(a) by the substitution for the definition of "judicial officer" of the following definition:</p> <p style="padding-left: 40px;">"judicial officer" means a magistrate appointed under the Magistrates Act, 2003;"; and</p> <p>(b) by the deletion of the definition of "magistrate".</p> <p>2. The substitution for section 8 of the following section:</p> <p style="padding-left: 40px;">"Before whom courts to be held</p> <p style="padding-left: 40px;">8. Every court held under this Act shall be presided over by a judicial officer."</p> <p>3. The repeal of sections 9, <i>9bis</i>, 10, 11 and 12.</p> <p>4. The amendment of section 66 by the deletion in paragraph (b) of subsection (2) of the words "or an additional or assistant magistrate".</p>