

ARMS AND AMMUNITION

General Law Amendment Ordinance 12 of 1956, section 4

Summary: Section 4 of this Ordinance ([OG 2018](#)) makes the possession and sale of dangerous weapons a criminal offence. (Section 5 of this Ordinance is discussed under WILLS, and sections 6-8 are discussed under CRIMINAL LAW AND PROCEDURE.)

Amendments: Section 4 was repealed in respect of Rehoboth by the Dangerous Weapons Act (Rehoboth) Act 5 of 1980 of Rehoboth ([Official Gazette 34 of Rehoboth](#), dated 24 July 1981).

Regulations: There is no provision in this section for regulations.

General Law Amendment Ordinance 13 of 1962, section 8

Summary: Section 8 of this Ordinance ([OG 2409](#)) makes pointing a firearm, air gun or air pistol a criminal offence.

Regulations: There is no provision in this section for regulations.

Tear-gas Act 16 of 1964, as amended in South Africa to November 1979

Summary: This Act ([RSA GG 738](#)) regulates the possession, manufacture and importation of tear-gas and articles which are used to release tear-gas.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 6 states “This Act shall apply also in the territory of South West Africa (including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)), and in relation to all persons in that portion of the said territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory.”

Although the wording of section 6 did not make amendments to the Act in South Africa automatically applicable to SWA, they would probably have been applicable by virtue of the definition of “Republic” in section 1. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended.

Section 3(1)(l) of the transfer proclamation excluded the references to the Republic throughout the Act from the operation of section 3(1) of the General Proclamation, meaning that Republic retained the meaning it was given in the definition section of the Act (South Africa and SWA).

There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Arms and Ammunition Act 7 of 1996

Summary: This Act ([GG 1338](#)) regulates the possession, sale, manufacture, import and export of arms and ammunition. It was brought into force on 1 April 1998 by GN 66/1998 ([GG 1830](#)), replacing the *Arms and Ammunition Act 75 of 1969*.

Amendments: The Combating of Domestic Violence Act 4 of 2003 ([GG 3002](#)), which was brought into force on 17 November 2003 (GN 234/2003, [GG 3094](#)), amends Schedule 1. The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the Act.

Regulations: Section 45(2) contains a savings clause, stating that “anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act”.

Regulations are made in terms of the current Act in GN 67/1998 ([GG 1830](#)). These regulations repeal the only pre-independence regulations that were in force at the time.²⁰

Notices: Periodic notices about the surrender of arms, ammunition or armaments have been issued but are not recorded here.

Cases: The following cases concern the present Act –

- S v Likuwa* 1999 NR 151 (HC) (examining purpose of section 29(1)(a); striking the words “of not less than 10 years, but” from section 38(2)(a) of the Act on constitutional grounds)
- S v Pieters* 2005 NR 171 (HC) (section 10)
- S v Nakangombe* 2006 (2) NR 567 (HC) (appropriate sentence under section 38; declaration of unfitness under section 10 confirmed)
- S v Hamukoto* 2007 (1) NR 364 (HC) (section 38(2)(a) provides that sentence under section 29(1)(a) may not be suspended for offender over age 18; peremptory provisions of section 10(7))
- S v Thomas & Others* 2007 (1) NR 365 (HC) (meaning of “possess”; possession through another is possible as long as parties have a common intention for control of the article)
- S v Jason & Another* 2008 (1) NR 359 (SC) (appropriate sentence under section 2)
- S v Titus* 2011 (1) NR 109 (HC) (peremptory nature of section 10(6)-(7))
- S v Nengongo* 2012 (2) NR 553 (HC) (“safe” in respect of offence of failure to safeguard firearm under section 38(1)(j), read with section 3(8) and regulation 26; “place of safety” in section 38(1)(j); appropriate sentence)
- S v Sakaria* 2013 (2) NR 347 (HC) (period of unfitness imposed under section 10 altered to run from date of release from prison in the course of an appeal against sentence)
- S v Malumo & Others (In re Ndala)* 2014 (3) NR 690 (the question of whether the Arms and Ammunition Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977)

²⁰ The 1998 regulations repeal the following regulations made in terms of the previous Act: RSA GN R.1474/1971 (RSA GG 3238), as amended by RSA GN R.1235/1973 (RSA GG 3981), RSA GN R.1028/1978 (RSA GG 6029) (erroneously referred to in GG 1830 as GN R.1023/1978) and RSA GN R.2216/1980 (RSA GG 7275).

The relevant transfer proclamation was the Executive Powers (Police) Transfer Proclamation 169 of 1980, which came into force on 1 September 1980 and applied to the *Arms and Ammunition Act 75 of 1969* with the exception of its provisions relating to the importation into or exportation out of the Republic, as defined in that Act, of arms and ammunition.

In South Africa, the repealed regulations were further amended after the date of transfer and prior to Namibian independence by GN 689/1982 (RSA GG 8149) and GN 2130/1988 (RSA GG 11553).

S v Katema 2014 (3) NR 831 (HC) (minimum sentence in section 29 applied despite having been struck down as unconstitutional in previous case 14 years previously; sentence substituted)

Henock v The Attorney General (A 172/2011) [2014] NAHCMD 366 (27 November 2014) (minimum sentence of imprisonment for importing, supplying or possessing armaments in terms of the remaining portion of section 38(2)(a) not unconstitutional).

The following cases concern the *Arms and Ammunition Act 75 of 1969* –

S v Maseka 1991 NR 249 (HC)

S v Wapota 1991 NR 353 (HC)

S v Matheus 1991 NR 376 (HC) at 382E

S v William 1992 NR 268 (HC)

S v Marungu 1993 NR 389 (HC)

S v Shini 1993 NR 393 (HC).

Commentary:

Bernhard Tjatjara, “*Guns Don’t Kill People, People Kill People: Observation in respect of the Arms and Ammunitions [sic] Act 7 of 1996*”, *Namibia Law Journal*, Volume 8, Issue 1, 2016 (comparison of criteria for obtaining a firearm licence in Namibia and other SADC countries)

Bernhard Tjatjara & Dunia P Zongwe, “Taking the Gun into the Law’s Hands: Observations in respect of the Arms and Ammunitions Act 7 of 1996”, *UNAM Law Review*, Volume 3, Issue 1, 2016, available [here](#) (comparison of criteria for obtaining a firearm licence in Namibia and other SADC countries).

NOTE

The case of *S v Velskoen* 1991 NR 325 (HC) concerns a conviction under the *Dangerous Weapons Act 71 of 1968*. However, nothing in this Act made it applicable to SWA at any stage, and the authors of the index have not been able to locate any other legislation applying it to SWA or Namibia.

INTERNATIONAL LAW

African Nuclear-Weapon-Free-Zone Treaty (Treaty of Pelindaba), 1996

****African Union Non-Aggression and Common Defence Pact, 2005**

Arms Trade Treaty (ATT), 2013

***Comprehensive Nuclear-Test-Ban Treaty, 1996**

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

Convention on Cluster Munitions, 2008

Convention on Early Notification of a Nuclear Accident, 1986

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty), 1997

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community Region, 2001

SADC Declaration Towards a Southern Africa Free of Anti-Personnel Landmines, 1997 (not legally-binding)

SADC Declaration concerning Firearms, Ammunition and other related materials, 2001 (not legally-binding)

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

Treaty on the Prohibition of Nuclear Weapons, 2017

See also **EXPLOSIVES**.