

ARMS AND AMMUNITION

General Law Amendment Ordinance 12 of 1956, section 4.

Summary: Section 4 of this Ordinance makes the possession and sale of dangerous weapons a criminal offence.

Amendments: Section 4 was repealed in respect of Rehoboth by Act 5/1980 of Rehoboth (*Rehoboth Official Gazette* 34 of 24 July 1980).

General Law Amendment Ordinance 13 of 1962, section 8.

Summary: Section 8 of this Ordinance makes the pointing of firearms a criminal offence.

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

Summary: This Act 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 may be 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, as amended), dated 12 November 1979.

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.

Arms and Ammunition Act 7 of 1996.

Summary: This Act regulates the possession, sale, manufacture, import and export of arms and ammunition. It came into force on 1 April 1998, replacing the *Arms and Ammunition Act 75 of 1969*.

Amendments: The Combating of Domestic Violence Act 4 of 2003 amends Schedule 1. The General Law Amendment Act 14 of 2005 amends section 1 of the Act.

Regulations: Regulations are made in terms of the new Act in GN 67/1998 (GG 1830). These repeal the following regulations made in terms of the previous Act: RSA GN R.1474 of 27 August 1971, RSA GN R.1235 of 20 July 1973, RSA GN R.1023 of 26 May 1978 and RSA GN No.2216 of 31 October 1980.

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).

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).

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

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

accession: 2 October 1992; effective date: 7 October 1992

(sources: US State Department, www.state.gov/www/global/arms/treaties/afrinwfvz.html)

Consortium for International Earth Science Information Network: <http://sedac.ciesin.org/>)

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

signature: 13 January 1993

ratification: 24 November 1995

Comprehensive Nuclear-Test-Ban Treaty, 1996

(not yet in force internationally as of 20 January 2005)

signature: 24 September 1996

ratification: 29 June 2001

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

signature: 4 November 1996

(source: www.africa-union.org)

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

signature: 3 December 1997

ratification: 21 September 1998

Convention on Cluster Munitions, 2008

(entered into force 1 August 2010)

signature: 3 December 2008

deposit: None recorded. (source: www.clusterconvention.org)

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

(entered into force within SADC on 8 November 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 3 July 2002 (source: Parliament)

ratification: 8 October 2004 (source: SADC)

See also **EXPLOSIVES**.