

## **‘BLACKS’**

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Many of these laws, while still technically in force, are primarily of historical interest.

### **Concessions from Natives Proclamation 8 of 1915.**

**Summary:** This Proclamation provides that concessions for mineral, trading and other rights obtained (and to be obtained) by private individuals from “coloured and native inhabitants” shall be invalid.

### **Native Reserves Trust Funds Administration Proclamation 9 of 1924.**

**Summary:** This Proclamation requires that separate Native Reserve Trust Funds be set up for each native reserve established pursuant to the Native Administration Proclamation 11 of 1922 (which is no longer in force), and governs the administration of such funds. It appears to be obsolete.

**Amendments:** The Proclamation is amended by Proc. 15/1928, Proc. 21/1936, Proc. 6/1939, Ord. 11/1954, RSA Proc. 62/1963, RSA Proc. 228/1969 and RSA Proc. 84/1977.

This Proclamation was repealed in Damaraland by the Damara Community and Regional Authorities and Paramount Chief and Headman Ordinance 2 of 1986 of the Damara Legislative Assembly (OG 5355). Repeals in respect of other areas may exist, but have not been located.

### **Native Reserves Fencing Proclamation 12 of 1926.**

**Summary:** This Proclamation provides for the recovery of the costs of fencing native reserves from the reserves’ inhabitants.

### **Native Administration Proclamation 15 of 1928.**

**Summary:** The surviving portions of this Proclamation deal with primarily with the marriage and succession of “natives”.

The Proclamation, with the exception of Chapter IV on Marriage and Succession, came into force in all of South West Africa on 1 January 1930 (GN 165 of 11 December 1929). Selected portions of Chapter IV -- section 17(6) and sections 18(3) and (9) -- were subsequently applied to the area north of the Police Zone with retroactive effect from 1 August 1950 (GN 67 of 1 April 1954).

The whole of section 18 and its accompanying regulations was made applicable to the whole of South West Africa *with the exception of* Owambo, Kavango and Caprivi by RSA Proclamation R.192 of 15 February 1974.

Thus, only sections 17(6) on marriage and sections 18(3) and 18(9) on succession apply in Owambo, Kavango and Caprivi (with effect from 1950). None of section 17

on marriage applies elsewhere, but the whole of section 18 on succession applies to the remainder of Namibia (with effect from 1974).

**Amendments:** The Proclamation is amended by Proc. 25/1937, Proc. 24/1941, Proc. 35/1943, Ord. 11/1954, Ord. 4/1955, RSA Proc. 360 of 1968, RSA Proc. 41/1973, AG 46/1978, Act 27/1985, Ord. 2/1986 (Damaras), AG 14/1989 and Act 23/1992.

The Traditional Authorities Act 17 of 1995 repeals the remaining sections of the Proclamation *with the exception of* sections 17, 18, 23, 24, 25, 26 and 27 and any regulations made in terms of those sections.

**Regulations:** Regulations relating to the “administration and distribution of native estates” in the area north of the Police Zone were issued pursuant to section 18(9) in GN 70 of 1 April 1954. These regulations were subsequently extended to the whole of South West Africa *with the exception of* Owambo, Kavango and Caprivi by RSA Proc. R.192 of 15 February 1974.

The Proclamation was affected by RSA Proc. 2/1973 (criminal jurisdiction of native commissioners).

**Comment:** This Proclamation was once supplemented by the Native Administration Proclamation 11 of 1922, which was repealed in its entirety by the Local Authorities Act 23 of 1992, effective 31 August 1992.

**Cases:** *Mofuka v Mofuka* 2001 NR 318 (HC), Namibian Supreme Court, 20 November 2003; *Berendt & Another v Stuurman & Others*, High Court Case No. (P) A 105/2003, 14 July 2003 (declares sections 18(1), (2) and (9) unconstitutional with effect as of 30 June 2005).

## **Ovamboland Affairs Proclamation 27 of 1929.**

**Summary:** This Proclamation enables the Administrator to make regulations for the government of Ovamboland, the establishment of a trust fund and the establishment of the Ovamboland Police.

**Amendments:** The Proclamation is amended by Proc. 26/1930, Proc. 34/1940, Proc. 38/1940, Proc. 15/1941, Proc. 20/1941, Proc. 2/1948, Proc. 52/1950, SA GN 1503/1957 and RSA Proc. R.1/1976.

## **Caprivi Zipfel Affairs Proclamation 27 of 1930.**

**Summary:** This Proclamation makes provision for the establishment of trust funds for any “tribe or aggregate of tribes” in the Caprivi Zipfel, and for the Administrator to make regulations for the area or particular classes of persons or “tribes or portions of tribes” in the area.

## **Okavango Native Territory Affairs Proclamation 32 of 1937.**

**Summary:** This Proclamation enables the Administrator to make regulations for the government of the Okavango Native Territory, the establishment of a trust fund and the establishment of the Okavango Native Territory Police.

**Amendments:** This Proclamation is amended by Proc. 38/1940, Proc. 26/1948 and Proc. 53/1950.

### **Native Trust Funds Proclamation 23 of 1939.**

**Summary:** This Proclamation established the “Herero Tribal Trust Fund” and authorised the Administrator-General to establish similar funds for other “tribes” or “aggregations of natives”. It did not repeal the Native Reserves Trust Funds Administration Proclamation 9 of 1924, although there is some overlap between the two. However, the 1929 Proclamation ties the funds created under it to the land, while this Proclamation relates rather to groups of people.

### ***Black Reserves (South West Africa) Act 44 of 1945.***

**Summary:** This Act authorises the dis-establishment of one area reserved for Black occupation, in exchange for the establishment of another.

**Applicability to SWA:** This Act applies specifically to South West Africa. It governed only the one particular transaction and has no ongoing applicability.

### ***South West Africa Native Affairs Administration Act 56 of 1954,***

as amended in South Africa to September 1977.

**Summary:** This Act transfers control over native affairs in South West Africa from the Administration of the Territory to the South African Minister of Plural Relations and Development. Section 4 authorises the reservation of land for the sole use and occupation of “natives”, and provides that any land so set apart shall vest in the South African Native Trust established under the *Native Trust and Land Act 18 of 1936* (which was never independently applicable to South West Africa). The Act was repealed in South Africa by Act 108/1993.

**Applicability to SWA:** This Act applies specifically to South West Africa by virtue of its subject matter. Section 1 defines “the territory” to include Walvis Bay, but Walvis Bay was removed from the jurisdiction of the Act by RSA *Proclamation R.70 of 20 April 1979*.

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977.

Section 3(2)(a) of the transfer proclamation excluded section 4 of the Act from the transfer provisions in section 3(1) of the transfer proclamation (which are similar to those in section 3(1) of the General Proclamation).

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

**Amendments:** The Native Laws Amendment Proclamation (AG 3/1979) substitutes section 3A of the Act regarding terminology referring to Blacks. The Act is also amended by AG 1/1980.

**Regulations:** RSA Proclamation R.117 of 1977 governs land set aside as townships under section 4 of this Act.

***Black Affairs Act 55 of 1959***, as amended in South Africa to 1970.

**Summary:** This Act establishes a Commission for Black Affairs, so as to facilitate the administration of black affairs. It was repealed in South Africa by Act 108/1991.

**Applicability to SWA:** Section 16A, which was inserted by Act 49/1970, provides that “sections 2, 3 and 4 and any regulation made under section 15(1)(a) shall also apply in respect of the territory of South-West Africa, including the Eastern Caprivi Zipfel”. This wording does not appear to make South African amendments automatically applicable to SWA, and none of the amending acts after Act 49/1970 were made expressly applicable to SWA. .

**Transfer of administration to SWA:** The administration of the Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977.

**Reservation of State Land for Natives Ordinance 35 of 1967.**

**Summary:** This Ordinance authorises the Administrator-General of South West Africa to set aside and reserve state land “for the sole use and occupation of natives”.

**Amendments:** This Ordinance is amended by Ord. 5/1969, Ord. 19/1971, Ord. 16/1974, Ord. 5/1975, Ord. 6/1977 and Ord. 5/1978.

***Development of Self-Government for Native Nations in South-West Africa Act 54 of 1968.***

**Summary:** This Act was intended to assist the “native nations” in South West Africa to “develop in an orderly manner to self-governing nations and independence”. It seems to remain in force in technical terms in some areas of “South West Africa”.

Section 52 of the Representative Authorities Proclamation, AG 8/1980 (as amended by AG 4/1981) provided that the Act would be repealed in Hereroland, Kaokoland, Kavango, Eastern Caprivi, Owamboland and Damaraland when representative authorities for these areas came into operation, and in other parts of the territory on a date determined by the Administrator-General by proclamation. No proclamation specifying dates for repeals in other parts of South West Africa has been located.

***Promotion of the Economic Development of National States Act 46 of 1968***, as amended in South Africa prior to Namibian independence.

**Summary:** This Act provides for the establishment of development corporations so as to carry out the economic development of homelands (“national states”).

**Applicability to SWA:** Section 32 states “This Act and any amendment thereof also apply in the territory of South-West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and mentioned in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

**Transfer of administration to SWA:** The relevant transfer proclamation is the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. However, this Act is excluded from the operation of section 3(1) of the transfer proclamation by section 3(2)(b), meaning that it was not transferred to SWA.

***Namaland Consolidation and Administration Act 79 of 1972***, as amended in South Africa to September 1977.

**Summary:** This Act sets aside an area in South West Africa for the sole use and occupation of the Nama and provides for the administration of this area.

**Applicability to SWA:** This Act obviously applies to South West Africa by virtue of its subject matter.

**Transfer of administration to SWA:** The administration of this Act is transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. There were no amendments to the Act in South Africa prior to Namibian independence.

**Amendments:** AG 39/1978 amends this Act by adding specified areas of land to Namaland. Act 15/1979 amends section 1, section 2 and Schedule 1. The Representative Authority of the Namias Proclamation (AG 35/1980) (which was repealed by the Namibian Constitution) repeals section 3, amends 6 and affects the application of Schedule 1. AG 71/1980 amends section 2 and Schedule 1. Act 4/1986 also amends section 2 and Schedule 1.

See also Native Stock Brands Proclamation 15 of 1923 and Dried Peas Control Ordinance 35 of 1957 (**AGRICULTURE**).

See also Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957 (**ALCOHOLIC BEVERAGES**).

See also Racial Discrimination Prohibition Act 26 of 1991 (**CRIMINAL LAW AND PROCEDURE**).

See also **CUSTOMARY LAW**.

See also Natives Minimum Wage Proclamation 1 of 1944 (**LABOUR**).

See also Crown Land Disposal Proclamation 13 of 1920 (reservation of land for the use of “aboriginal natives, coloured persons and Asiatics”) (**LAND**).

See also Consent to Operations on Native Minors Proclamation 37 of 1943 (**MEDICINE AND MEDICAL PROFESSIONS**).

See also *Black Authorities Service Pensions Act 6 of 1971* and *Railways and Harbours Pensions for Non-Whites Act 43 of 1974* (**PENSIONS**).