

## CENSORSHIP

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***Indecent or Obscene Photographic Matter Act 37 of 1967***, as amended in South Africa to November 1979.

**Summary:** This Act makes it an offence to possess indecent or obscene photographic matter.

**Applicability to SWA:** Section 4A states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

**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. The only amendment to the Act in South Africa after that date and prior to Namibian independence -- the *Indecent or Obscene Photographic Matter Amendment Act 72 of 1983* -- is duplicated by the SWA Indecent or Obscene Photographic Matter Amendment Act 4 of 1985.

**Amendments:** Act 4/1985 amends the Act to extend the meaning of “cinematograph film”.

**Cases:** *Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others* 1998 NR 96 (HC) (section 2(1) of the Act declared unconstitutional).

***Publications Act 42 of 1974***, as amended in South Africa prior to Namibian independence.

**Summary:** This Act establishes a Directorate of Publications and provides for the control of certain publications, objects, films and public entertainments.

**Applicability to SWA:** Section 46 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” Section 47 defines “Republic” to include “the territory of South West Africa”.

**Transfer of administration to SWA:** The Act was under the authority of “the Minister to whom the administration of this Act is from time to time assigned” rather than under any particular government department (section 47). Section 3(2) of the Executive Powers (Interior) Transfer Proclamation (AG 17/1978) specifically exempted the Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA by that transfer proclamation.

Certain powers under the Act were transferred to the Administrator-General by the Publications Proclamation (AG 43/1978). However, this Proclamation did not seem to function as a transfer proclamation. Under section 2 of AG 3/1978, the Administrator-General was given the power to amend, set aside or substitute any decision made by any committee referred to in the principal Act, by the Publications Appeal Board, or by the Directorate of Publications. However, these bodies were still in a position to

make decisions which were applicable to South West Africa if the Administrator-General did not intervene.

**Amendments:** The Publications Proclamation (AG 43/1978) amends this Act by giving the Administrator-General the power to overrule the Publications Appeal Board or any of the other committees or persons referred to in the Act.

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) amends the definition of “undesirable” in section 48 of the Act.

The Customs and Excise Act 20 of 1998 repeals section 49.

See also General Law Amendment Ordinance 22 of 1958, section 1 (which makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings) (**COURTS**).

See also *Criminal Procedure Act 51 of 1977*, section 154 (which prohibits the publication of any information which may reveal the identity of an accused or a witness in criminal proceedings who is under the age of 18, as well as the publication of information about any criminal proceedings held in closed court) (**CRIMINAL LAW AND PROCEDURE**).

See also *Protection of Information Act 84 of 1982* (which prohibits the disclosure of security-related information) (**DEFENCE**).