

CHILDREN

Children's Act 33 of 1960, as amended in South Africa to 1977-1978 (depending on the "population group" involved).

Summary: This Act regulates adoption of children. It provides for the appointment of Commissioners of Child Welfare and for the establishment of Children's Courts. It also deals with the protection of children from neglect, abuse and exploitation and provides for certain institutions for children and juveniles. It replaced the Children's Ordinance 31 of 1961.

Applicability to SWA: The Act was made applicable to Namibia by the Children's Amendment Act 74 of 1973, which came into force only on 1 January 1977, by virtue of RSA Proc. 264 of 17 December 1976 (GG 5360).

As amended, section 1 defined "Republic" to include "the territory", which is defined as "the territory of South West Africa". The additional section 93A states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel." (Act 74/1953 also made a number of other amendments, the purpose of which was to provide continuity with the repealed Children's Ordinance 31 of 1961.)

Responsibility for the administration of the Act in respect of different racial groups was delegated to different ministries by RSA Proc. 263 of 17 December 1977 (GG 5360) which also came into force on 1 January 1977 and explicitly stated that it was applicable to SWA.

Transfer of administration to SWA: Because responsibility for administering the Act lay with different South African ministries, different transfer proclamations applied.

Matters administered by the Minister of Coloured, Rehoboth and Nama Relations and by the Minister of Bantu Administration and Development were transferred to the Administrator-General by the Executive Powers Transfer Proclamation (Bantu Administration and Development; Bantu Education; Coloured Rehoboth and Nama Relations; Water), AG 3 of 1977, dated 28 September 1977. This transfer applied to the Act as it related to Bastards of Rehoboth, Coloured persons and Namas, and to Asians in schools of industries and reform schools, with the exception of Indians in reform schools.

Matters administered by the Minister of Social Welfare and Pensions were transferred to the Administrator-General by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG 11 of 1977, dated 30 November 1977.

Matters administered by the Minister of the Interior were transferred to the Administrator-General by the Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978, dated 30 March 1978. This transfer applied to the Act as it related to Chinese persons.

Matters administered by the Minister of National Education were transferred to the Administrator-General by the Executive Powers (National Education) Transfer Proclamation (AG 1/1978), dated 11 January 1978. This transfer applied to the Act as it related to schools of industries and reform schools for White persons.

Matters administered by the Minister of Indian Affairs were not transferred to SWA. This included the Act as it applied to Indians and Zanzibari Arabs, with the exception of Indians and Zanzibari Arabs in reform schools.

There was one amendment to the Act in South Africa after the date of the various transfers and prior to Namibian independence -- the *Special Courts for Blacks Abolition Act 34 of 1986* -- which was not made expressly applicable to Namibia.

Amendments: Section 29 of the Mentally Retarded Coloured, Baster and Nama Children's Training Proclamation (AG 76/1978, which is brought into operation by AG 77/1978) concerns the application of the Act in the context of mentally retarded Coloured, Baster and Nama children.

Act 7/1981 of Rehoboth made the *Children's Amendment Act 15 of 1977* (which was already applicable to other parts of SWA) applicable to Rehoboth.

Section 104 is repealed by the Prisons Act 17 of 1998.

Regulations: Different sets of regulations for Coloureds, Namas, Basters, Bantus and Whites remain in force:

Bantus

GN R1086 of 22 July 1960 (GG 6494) as amended by-
GN R 17 of 4 January 1963 (GG 412)
GN R 46 of 10 January 1964 (GG 691)
GN R 350 of 13 March 1964 (GG 744)
GN R 408 of 13 March 1970 (GG 2667)
GN R 409 of 20 March 1970 (GG 2671)
GN R1099 of 10 July 1970 (GG 2751)
GN R 683 of 30 April 1971 (GG 3083), which substitutes all of the provisions dealing with financial assistance
GN R1791 of 8 October 1971 (GG 3280)
GN R1842 of 20 October 1972 (GG 3682)
GN R2417 of 21 December 1973 (GG 4112)
GN R1000 of 14 June 1974 (GG 4301)
GN R 445 of 7 March 1975 (GG 4601)
GN R1747 of 19 September 1975 (GG 4847)
GN R1620 of 3 September 1976 (GG 5276)
GN R1798 of 9 September 1977 (GG 5733)
AG GN 42 of 17 August 1978 (OG 3810), which is a duplication of RSA GN R 1279 of 23 June 1978

Whites

GN R2433 of 10 Dec. 1976 (GG 5357) as amended by-
GN R2173 of 28 October 1977 (GG 5790).

Coloureds

GN R 69 of 21 January 1977 (GG 5384) as amended by-
GN R 1750 of 2 September 1977 (GG 5725)
AG GN 51/1978 of 28 August 1978 (OG 3815)
AG GN 59/1978 of 25 September 1978 (OG 3830)
AG GN 38/1979 of 5 June 1979 (OG 3971)
AG GN 89 of 28 September 1979 (OG 4024).

Basters

GN R 295 of 4 March 1977 (GG 5420) as amended by-
GN R 1749 of 2 September 1977 (GG 5725)
AG GN 63 of 29 September 1978 (OG 3837)
AG GN 79 of 30 November 1978 (OG 3869)
Official Notice 1, OG 1 of Rehoboth, 31 August 1979
Official Notice 7, OG 3 of Rehoboth, 28 September 1979
Official Notice 9, OG 4 of Rehoboth, 28 December 1979
Official Notice 7, OG 18 of Rehoboth, 5 December 1980
Official Notice 13, OG 43 of Rehoboth, 23 October 1981.

Namas

GN R 342 of 4 March 1977 (GG 5434) as amended by-
GN R1751 of 2 September 1977 (GG 5725)
AG GN 50 of 28 August 1978 (OG 3015)
AG GN 59/1978 of 25 September 1978 (OG 3830)
AG GN 38/1979 of 5 June 1979 (OG 3971)
AG GN 90 of 28 September 1979 (OG 4024).

Chinese

GN R 554 of 15 April 1977 (GG 5502) as amended by-
GN R2082 of 14 October 1977 (GG 5768).

The regulations which apply to Whites initially came into force on 1 January 1977 as general regulations and contain no specific reference to Whites. Thus, they would also apply to anyone not covered by one of the other sets of regulations subsequently promulgated, such as Indians or Arabs.

It should be noted that the various ethnic authorities established pursuant to AG 8/1980 were given authority over certain provisions of the Act and may have made amendments to the regulations which have not been located.

Cases: *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State*, 1991 NR 178 (SC) (sections 32, 92(1)).

Age of Majority Act 57 of 1972, as amended in South Africa to November 1979.

Summary: This Act sets the age of majority at twenty-one and provides for other related matters.

Applicability to SWA: Section 8 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. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

SELECTED CASES INVOLVING CRIMES AGAINST CHILDREN

S v Glaco 1993 NR 141 (HC)

S v Jeremia 1S993 NR 227 (HC)

MISCELLANEOUS

General Notice 250/2001 (GG 2601) proclaims 28 September as the Day of the Namibian Child “in order to re-dedicate Namibia’s commitment to her children”.

INTERNATIONAL LAW

Convention on the Rights of the Child, 1989

signature: 26 September 1990

ratification: 30 September 1990

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

(entered into force internationally on 12 February 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (source: UNICEF)

Note: Namibia’s ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

(entered into force internationally on 18 January 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (sources: Ministry of Foreign Affairs; UNICEF)

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties on 12 December 1995

(not yet in force internationally as of 15 July 2002)

ratification: 11 December 2001 (source: Ministry of Foreign Affairs)

African Charter on the Rights and Welfare of the Child, 1990

signature: 13 July 1999

ratification approved by Parliament: 23 July 2004

deposit: 26 August 2004 (source: <http://www.africa-union.org>)

ILO Convention 138 concerning Minimum Age, 1973

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999

ratification: 15 November 2000 (source: Ministry of Foreign Affairs)

Protocol to the Convention Against Transnational Organised Crime, 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (came in force internationally on 25 December 2003)

signed: 13 December 2000 (source: Ministry of Foreign Affairs)

See also *Statistics Act 66 of 1976* (collection of statistics on child economic activities) (**CENSUS AND STATISTICS**).

See also Combating of Immoral Practices Act 21 of 1980 (re: sexual offences against girls under age 16) (**CRIMINAL LAW AND PROCEDURE**).

See also Combating of Domestic Violence Act 4 of 2003 (**DOMESTIC VIOLENCE**).

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

See also **EDUCATION**.

See also Recognition of Certain Marriages Act 18 of 1991 (re: adoption of children) (**MARRIAGE AND DIVORCE**).