

# CONSTITUTION

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The pre-independence laws, while still technically in force, are primarily of historical interest.

## ***Commonwealth Relations (Temporary Provision) Act 41 of 1961.***

**Summary:** This Act provides that references to any Commonwealth country or countries in laws in force in South Africa or South West Africa immediately prior to 31 May 1961 shall not be automatically affected by the establishment of the Republic of South Africa.

**Applicability to SWA:** Section 3 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).”

## ***South West Africa Affairs Act 25 of 1969***, as amended in South Africa prior to Namibian independence.

**Summary:** This Act related to the administration of South West Africa, principally by transferring authority over a number of issues to Ministers of the relevant South African departments, by extending the power of the State President to make South African laws applicable to South West Africa, and by changing several of the financial aspects of the administration of the territory. It was repealed in South Africa by Act 108/1993 and has no current relevance to Namibia.

**Applicability to SWA:** According to sections 1 and 24, this Act applies to “the territory of South West Africa,” including the Eastern Caprivi Zipfel.

**Amendments:** The application of this Act was affected by the subsequent SWA Transfer Proclamations, which transferred administration of certain matters back to South West Africa.

The Customs and Excise Act 20 of 1998 repeals section 6.

## **National Coat of Arms of the Republic of Namibia Act 1 of 1990.**

**Summary:** This Act determines the national coat of arms for the Republic of Namibia, in accordance with Article 2(2) of the Constitution.

## **Assignment of Powers Act 4 of 1990.**

**Summary:** This Act empowers the President to establish departments and other administrative divisions and to assign the administration of certain laws to the Prime Minister or to any Minister. It also provides for the temporary performance of the functions of the Prime Minister or a Minister by another Minister.

**Regulations:** Specific assignments of powers are made in GN 61/1991 (GG 211), GN 62/1991 (GG 211), GN 98/1992 (GG 455), GN 141/1993 (GG 750), GN 277/1999 (GG 2248), Proc. 1/2002 (GG 2704) and Proc. 8/2005 (GG 3456). (See also GN 28/2002, GG 2704.)

## **Special Advisors and Regional Representatives Appointment Act 6 of 1990.**

**Summary:** This Act provides for the appointment of persons as Special Advisors to the Cabinet or Ministers. It also sets forth the powers, duties and functions of such appointees. (It originally provided for the appointment of persons as regional representatives, but this portion of the Act has been repealed.)

**Amendments:** Section 2 of the Act was repealed by the Regional Councils Act 22 of 1992 as of 30 November 1992.

**Appointments:** Regional representatives were appointed in Proc. 14/1990 (GG 75).

A Special Advisor: National Security was appointed in Proc. 7/1994 (GG 813).

Special Advisors to the President on political and economic matters are appointed in Proc. 32/1997 (GG 1759).

The appointment of a Special Advisor (Commercial Law) to the Attorney-General is renewed in Proc. 40/2004 (GG 3253), but the original appointment could not be located.

A Special Advisor to the Minister of Labour and Social Welfare is appointed in Proc. 3/2005 (GG 3433). (Note that the original Gazette was replaced by another Government Gazette 3433 with the same date; the correct version states at the top: "This Gazette replaces Gazette No. 3433 of 18 May 2005.") A Special Advisor (labour matters) to the Minister of Labour and Social Welfare is appointed in Proc. 14/2008 (GG 4022).

A Special Advisor to the Minister of Veterans Affairs is appointed in Proc. 5/2007 (GG 3785).

A Special Advisor (Commercial Lawyer) to the Minister of Justice is appointed in Proc. 13/2007 (GG 3900).

A Special Advisor to the Director-General of the National Planning Commission is appointed in Proc. 2/2009 (GG 4197).

A Special Advisor to the President on Political Matters and a Special Advisor to the Minister of Veterans' Affairs are appointed in Proc. 21/2009 (GG 4391).

A Special Advisor to the Minister of Health and Social Services is appointed in Proc. 9/2010 (GG 4468).

## **Ombudsman Act 7 of 1990.**

**Summary:** This Act defines the powers, duties and functions of the Ombudsman in accordance with Chapter 10 of the Constitution.

**Appointments:** Appointments have been made by Proc. 10/1990 (Acting Ombudsman); Proc. 16/1992 (Ombudsman); Proc. 7/1993 and Proc. 8/1993 (Deputy Ombudsman); Proc. 7/1996 (Ombudsman); Proc. 29/2003 (Acting Ombudsman) and

Proc. 39/2004 (Ombudsman).

**Articles:** John Walters, “The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman” in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at [www.kas.de/proj/home/pub/8/2/year-2009/dokument\\_id-16045/index.html](http://www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html); Katharina G Ruppel-Schlichting, “The independence of the Ombudsman in Namibia”, in Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at [www.kas.de/proj/home/pub/8/2/year-2008/dokument\\_id-15058/index.html](http://www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html).

### **National Anthem of the Republic of Namibia Act 20 of 1991.**

**Summary:** This Act sets forth the national anthem of Namibia and empowers the President to make regulations in respect of the use of the anthem.

### **Walvis Bay and Off-Shore Islands Act 1 of 1994.**

**Summary:** This Act gives effect to Article 1(4) of the Constitution by providing for the transfer of control over Walvis Bay and the off-shore islands from South Africa to Namibia. It came into force on 1 March 1994 (Proc. 6/1994, GG 806).

**Amendments:** The application of the Act is affected by Procs. 15/1994 and 16/1994 (GG 873). Act 14/1998 amends clause 1 of Part III of the Schedule to provide for the retrospective application of certain provisions of the Local Authorities Act 23 of 1992. The Road Traffic and Transport Act 22 of 1999 repeals Clause 2 of Part IV of the Schedule.

**Cases:** *Gauseib v Minister of Home Affairs* 1996 NR 90 (HC); *Municipality of Walvis Bay v Du Preez* 1999 NR 106 (LC) (section 13; Part III, sections 1(6) and 5(c)). The Act is also discussed in *dicta* in *Thloro v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 112E.

### **National Planning Commission Act 15 of 1994.**

**Summary:** This Act provides for the membership, powers, functions and personnel of the National Planning Commission referred to in Article 129(1) of the Constitution.

### **Honours System for Namibia, Proclamation 2 of 1995.**

**Summary:** This Proclamation establishes an honours system for Namibia consisting of decorations, medals and awards. It was enacted in terms of Article 32(3)(h) of the Namibian Constitution.

### **Powers, Privileges and Immunities of Parliament Act 17 of 1996.**

**Summary:** This Act provides for the right of freedom of speech and debate as well as

other powers, privileges and immunities for Parliamentarians. It also establishes a Committee of Privileges to investigate the conduct of Parliamentarians.

### **Namibian Constitution First Amendment Act 34 of 1998.**

**Summary:** This Act amends Article 134 of the Namibian Constitution to provide that the first President of Namibia may hold office for three terms.

### **Application of Laws to the Eastern Caprivi Zipfel Act 10 of 1999.**

**Summary:** This Act is necessary because section 38(5) of the South-West Africa Constitution Act 39 of 1968 (which was repealed by Article 14 of the Namibian Constitution) provided that laws applied to South West Africa after 1 November 1951 would apply in the Eastern Caprivi Zipfel only if this was expressly stated. In light of this historical exclusion, this Act gives Ministers the power to make the laws which they administer applicable to the Eastern Caprivi Zipfel by notice in the *Gazette*.

### **Declaration of State of Emergency: Caprivi, Proclamation 23 of 1999.**

**Summary:** This Proclamation declared a state of emergency in the Caprivi Region in terms of Article 26(1) of the Constitution, effective as of 2 August 1999. It was revoked on 26 August 1999 by Proc. 27/1999 and has no ongoing effect.

**Regulations:** Emergency Regulations were promulgated in Proc. 24/1999 (GG 2157). These were also revoked by Proc. 27/1999.

Lists of persons detained under the Emergency Regulations were published in GN 172/1999 (GG 2167) and GN 173/1999 (GG 2172).

It is relevant to note that the Katima Mulilo police cells (in the Caprivi Region) were declared to be a prison in terms of the Prisons Act 17 of 1998 by GN 160/1999 (GG 2163).

**Appointments:** An Advisory Board as referred to in Article 26(5)(c) of the Constitution was appointed with respect to the state of emergency by Proc. 25/1999 (GG 2159).

**Cases:** *Mazila v Minister of Home Affairs* 2000 NR 224 (HC) (applicability of the regulations to areas outside the Caprivi Region).

### **Security Commission Act 18 of 2001.**

**Summary:** This Act relates to the Security Commission established by Article 114 of the Namibian Constitution. In terms of the Constitution, the Security Commission has the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner of Prisons. The Act gives the Commission additional powers relating to internal security. The Act came into force on 2 May 2002 (GN 65/2002, GG 2734).

**Appointments:** Members of the Security Commission were appointed in terms of the Constitution by Proc. 18/1992.

**Cases:** *Government of the Republic of Namibia v Sikunda* 2002 NR 203 (SC) (Composition of the Security Commission pursuant to Article 114 of the Constitution; Security Commission as subject to Articles 18 and 12 of the Constitution)

### **Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005.**

**Summary:** This Act establishes a Commission to make recommendations to the President on the remuneration, benefits and conditions of office of Members of Parliament, members of Regional Councils and other persons whom the President declares to be public office-bearers by Proclamation. It came into operation on 3 August 2005 (Proc. 9/2005, GG 3473).

**Regulations:** Persons who hold certain offices are declared to be officer-bearers for the purposes of this Act in Proc. 6/2008 (GG 3983).

Percentage increases in the remuneration of certain office-bearers are specified in Proc. 1/2009 (GG 4192) and Proc. 6/2010 (GG 4440).

### **Namibian Constitution Second Amendment Act 7 of 2010.**

**Summary:** This Act does the following-

- amends Article 4 of the Namibian Constitution to extend the residency requirements for citizenship by marriage and naturalisation;
- amends or substitutes Articles 9, 23, 32, 47, 91, 93, 114 and Chapter 15 to alter the term “prison service” to “correctional service” and the term “Commissioner of Prisons” to “Commissioner General of Correctional Services”;
- amends Article 70 to change the term of office of members of the National Council from 6 years to 5 years;
- amends Article 82 to remove the possibility of extending the retirement age of judges by Act of Parliament and to provide that judges who are non-Namibian citizens must be appointed under a fixed-term contract of employment;
- amends Article 91 to remove corruption from the remit of the Ombudsman;
- inserts Article 94A on Anti-Corruption Measures, which makes the Anti-Corruption Commission a Constitutional body;
- substitutes Article 107 on the remuneration of members of Regional Councils; amends Article 109 on the terms of office of Management Committees of Regional Councils;
- amends Article 23 and substitutes Chapter 15 to place provisions on the defence force ahead of those on the police force.

The Act came into force on the date of its publication (GG 4480, 7 May 2010), with the exception of the amendments to Articles 70 and 109 (concerning terms of office) which come into effect on the date that the term of office of the existing members of the National Council ends.

## **CONSTITUTIONAL APPOINTMENTS**

(in chronological order)

President of the Republic of Namibia, Proc. 2/1990 (GG 8)  
First Chief of the Defence Force, Proc. 7/1990  
First Inspector-General of Police and First Commissioner of Prisons, Proc. 8/1990  
Acting Ombudsman, Proc. 10/1990  
First Delimitation Commission and the Duties thereof, Proc. 12/1990  
Chief Justice, Judge President, Judge of the High Court and Prosecutor-General, Proc. 31/1991  
Ombudsman, Proc. 16/1992  
Members of the Security Commission, Proc. 18/1992  
Deputy Ombudsman, Proc. 7/1993 and Proc. 8/1993  
Minister, Proc. 4/1994  
Deputy Ministers, Proc. 22/1994  
Various officials, Proc. 8/1995 (GG 1071), Proc. 8/1995 (GG 1071)  
Delimitation Commission, Proc. 9/1995 (GG 1089)  
Ombudsman, Proc. 7/1996  
Commissioner of Prisons, Proc. 34/1997 (GG 1765)  
Inspector-General of Police, Proc. 35/1997 (GG 1765)  
Director-General of Namibia Central Intelligence Service, Proc. 14/1999 (GG 2062)  
Ministers and Deputy Ministers, Proc. 18/1999 (GG 2088)  
Deputy-Minister of Information and Broadcasting, Proc. 31/1999 (GG 2213).  
Ministers, Deputy Ministers and Members of Parliament, Proc. 8/2000 (GG 2366)  
Minister of Lands, Resettlement and Rehabilitation, and Attorney-General, Proc. 5/2001 (GG 2501)  
Delimitation Commission, Proc. 6/2002 (GG 2855)  
Acting Prosecutor-General, Proc. 8/2002 (GG 2869)  
Extension of Term of Acting Prosecutor-General, Proc. 20/2003 (GG 3023)  
Ministers and Deputy Ministers, Proc. 28/2003 (GG 3060)  
Acting Ombudsman, Proc. 29/2003 (GG 3071)  
Extension of term of Acting Prosecutor-General, Proc. 31/2003 (GG 3101)  
Prosecutor-General, Proc. 32/2003 (GG 3101)  
Ombudsman, Proc. 39/2004 (GG 3229)  
Establishment of Ministries and Appointment of Ministers and Deputy Ministers and other officials, Proc. 4/2005 (GG 3436)  
Minister and Deputy Ministers, Proc. 6/2005 (GG 3436)  
Inspector-General of Police, Proc. 7/2005 (GG 3450)  
Deputy-Minister of Works, Acting Judges of the High Court and Judge of the Supreme Court, Proc. 20/2005 (GG 3562)  
Dissolution and establishment of Ministries and Appointment of Ministers and Deputy Ministers, Proc. 17/2008 (GG 4039)  
Transfer of National Forensic Institute of Namibia from Ministry of Home Affairs and Immigration to Ministry of Safety and Security, Proc. 18/2008 (GG 4047).  
Attorney-General in Interim, Proc. 3/2009 (GG 4202)  
Prime Minister, Deputy Prime Minister, Ministers and Deputy Ministers, Proc. 8/2010 (GG 4468).

Appointments of judges and acting judges are listed under **JUDGES**. See also appointments made in terms of the Special Advisors and Regional Representatives Appointment Act 6 of 1990 (**CONSTITUTION**), Electoral Act 24 of 1992 (**ELECTIONS**), Bank of Namibia Act 15 of 1997

**(FINANCIAL INSTITUTIONS)** and Judicial Service Commission Act 18 of 1995 (**JUDGES**).

### **CASES ON CONSTITUTIONAL APPOINTMENTS**

*Ex Parte Attorney-General: In re The Constitutional Relationship between the Attorney-General and the Prosecutor-General* 1998 NR 282 (SC)

*Ekandjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others* 2003 NR 123 (HC)

*S v Zembukura (2)* 2003 NR 200 (HC).

### **CONFERMENT OF NATIONAL HERO STATUS**

(in terms of Article 32(3)(h) of the Namibian Constitution)

The late David Moses Merero, Proc. 5/2004 (GG 3138)

The late Maxton Joseph Mutonyolome, Proc. 32/2004 (GG 3191)

The late Reverend Markus Kooper, Proc. 19/2005 (GG 3562)

The late Dr Mosé Tenaani Tjitendero, Proc. 5/2006 (GG 3628)

The late Mr Richard Kapelwa Kabajani, Proc. 10/2007 (GG 3846)

The late Honourable John Alphons Pandeni, Minister of Regional and Local Government, Housing and Rural Development, Proc. 13/2008 (GG 4019)

The late Mr Nikolaus Onverwag “Niko” Bessinger, Proc. 15/2008 (GG 4023)

The late Honourable Rev Dr. Hendrik Witbooi, Pastor and Presiding elder of the African Methodist Episcopal Church, Captain of the /Khowese Community and First Deputy Prime Minister of the Republic of Namibia, Proc. 15/2009 (GG 4363).

### **OTHER HONOURS**

(in terms of Article 32(3)(h) of the Namibian Constitution)

The late Honourable Chief Munyuku Nguvuava II, Paramount Chief of the Mbanderu community and Deputy Chairperson of the Council of Traditional Leaders (State funeral), Proc. 10/2008 (GG 4005)

The late Meekulu Mpingana-Helvi Kondombolo (State funeral), Proc. 40/2008 (GG 4177).

### **SELECTED ARTICLES**

G Naldi, *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*, Juta & Co Ltd, 1995

Gerhard Erasmus, “The Constitution: Its Impact on Namibian Statehood and Politics” in C Keulder, ed, *State, Society and Democracy: A Reader in Namibian Politics*, Konrad Adenauer Stiftung, 2000, reprinted 2010, available at [www.kas.de/proj/home/pub/8/2/year-2010/dokument\\_id-18730/index.html](http://www.kas.de/proj/home/pub/8/2/year-2010/dokument_id-18730/index.html)

M Hinz, S Amoo and D van Wyk, eds, *The Constitution at Work: 10 years of Namibian Nationhood*. Pretoria: University of South Africa, 2002.

Sam K Amoo, “The constitutional jurisprudential development in Namibia since 1985” in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at [www.kas.de/proj/home/pub/8/2/year-2009/dokument\\_id-16045/index.html](http://www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html)

Oliver C Ruppel, “The protection of children’s rights under international law from a Namibian perspective” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at [www.kas.de/proj/home/pub/8/2/year-2009/dokument\\_id-18139/index.html](http://www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html) (reviewed

by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at [www.namibialawjournal.org](http://www.namibialawjournal.org))  
Clever Mapaire, “Decoding the right to equality: A scrutiny of judiciary perspicacity over 20 years of Namibia’s existence”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at [www.namibialawjournal.org](http://www.namibialawjournal.org)  
N Horn, A Boesl and A du Pisani, eds, *Twenty years of constitutional democracy in Namibia*, Windhoek [forthcoming], 2010.

See also Bank of Namibia Act 15 of 1997 (**FINANCIAL INSTITUTIONS**).

See also Council of Traditional Leaders Act 13 of 1997 (**CUSTOMARY LAW**).

See also Namibia Central Intelligence Service Act 10 of 1997 (**DEFENCE**).

See also **JUDGES**.

See in particular Judicial Service Commission Act 18 of 1995 (**JUDGES**).

See Crown Liabilities Act 1 of 1910 (state liability) (**LAW**).

See also Members of Parliament and other Office-Bearers Pension Fund Act 20 of 1999 (**PENSIONS**).

See also **POLICE**.

See also **PRESIDENT**.

See also **PRISONS**.

See also **PUBLIC SERVICE**.

See in particular Public Service Commission Act 2 of 1990 (**PUBLIC SERVICE**).

See also **REGIONAL AND LOCAL GOVERNMENT**.