

CUSTOMARY LAW

Council of Traditional Leaders Act 13 of 1997.

Summary: This Act establishes the Council of Traditional Leaders referred to in Article 102(5) of the Namibian Constitution. It requires that any draft legislation pertaining to communal land must be laid before the Council before it is introduced in the National Assembly. It came into force on 31 March 1998 (GN 64/1998, GG 1828).

Amendments: Act 31/2000 amends sections 1, 3, 12 and 14.

Appointments: GN 150/2009 (GG 4305) appoints members of the Council.

Traditional Authorities Act 25 of 2000.

Summary: This Act provides for the election or recognition of traditional authorities and sets forth their functions, duties and powers. It replaces the Traditional Authorities Act 17 of 1995. It came into force on 17 May 2001 (GG 2532).

Regulations: Anything done under the previous law which is not inconsistent with the new law survives, in terms of section 20(3). Regulations concerning remuneration (made under the previous law) are contained in GN 246/1997 (GG 1741). Regulations made under the new law are contained in GN 94/2001 (GG 2532).

Designations of traditional leaders:

Chiefs and councillors under the previous law-

Designations of traditional authorities made under the previous law continue to be valid. Designations of traditional leaders recognised in terms of section 6(2) of the previous Act are contained in GN 65/1998 (GG 1828), as corrected by GN 98/1998 (GG 1855) and as amended by GN 99/1998 (GG 1855), GN 307/1998 (GG 2020), GN 113/1999 (GG 2130), GN 61/2001 (GG 2513), GN 63/2002 (GG 2733) and GN 64/2002 (GG 2733).

Chiefs and heads of traditional communities under current law-

Designations relating to the recognition of chiefs and heads of traditional communities in terms of section 6(2) of this Act are contained in Proc. 2/2002, Proc. 3/2002 (GG 2733) and Proc. 61/2004 (GG 3344). (Note that the original GG 3344 was replaced by a subsequent corrected version). Additional designations of chiefs are made in Proc. 9/2006 (GG 3688), Proc. 12/2008 (GG 4018), Proc. 26/2008 (GG 4090), Proc. 9/2009 (GG 4320) and Proc. 5/2010 (GG 4423). (Note that the original GG 3688 was replaced by a subsequent corrected version). The removal from office of a chief of a traditional community is recognized in Proc. 60/2004 (GG 3344).

Traditional councillors under current law-

Senior traditional councillors and traditional councillors recognised in terms of section 10(5) are announced in GN 63/2002, GN 64/2002 (GG 2733), GN 130/2004 (GG 3218), GN 267/2004 (GG 3344), GN 87/2006 (GG 3648), GN 68/2008 (GG 4018), GN 181/2008 (GG 4090), GN 115/2009 (GG 4263), GN

205/2009 (GG 4355), GN 43/2010 (GG 4441) and GN 110/2010 (GG 4490).
(Note that the original GG 3344 was replaced by a subsequent corrected version.)

Cases: *Mbanderu Traditional Authority & Another v Kahurre & Others* 2008 (1) NR 55 (SC).

Articles: Manfred O Hinz, "Traditional governance and African customary law: Comparative observations from a Namibian perspective" 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.

COMMISSIONS

Commission of Inquiry into Matters relating to Chiefs, Headmen and other Traditional and Tribal Leaders and Authorities (Proc. 3/1991, GG 176).

See also GN 32/1991 (GG 175).

SELECTED CASES

Kaputuaza & Another v Executive Committee of the Administration for the Hereros & Others 1984 (4) SA 295 (SWA)

Moraliswani v Mamili, Supreme Court of SWA, 12 June 1985 (unreported judgement).

Ndisiro v Mbanderu Community Authority & Others, 1986 (2) SA 532 (SWA).

Pack v Muundjua & Others / Tjipetekera v Muundjua & Others, 1989 (3) SA 556 (SWA).

Kakujaha v Tribal Court of Okahitua, Supreme Court of South West Africa, 20 March 1989 (unreported judgement).

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC)

S v Sipula 1994 NR 41 (HC).

S v Haulondjamba 1993 NR 103 (HC).

Makono v Nguvauva 2003 NR 138 (HC)(widow inheritance).

SELECTED ARTICLES

H Becker, *Gender Aspects of Traditional Authorities and Traditional Courts in a Democratic Society: Examples from Northern Namibia*. Windhoek: Centre for Applied Social Sciences, 1995

MO Hinz (assisted by S Joas), *Developing Customary Law: Self-Styled Laws of Namibian Communities, CASS Paper No 31*, Windhoek, Centre for Applied Social Studies, 1995

Law Reform and Development Commission, *The Ascertainment of Customary Law and the Methodological Aspects of Research into Customary Law: Proceedings of Workshop* (LRDC 2), 1995

TW Bennett, *Customary Law and the Constitution*, Law Reform and Development Commission (LRDC 3), 1996

MO Hinz, "Family law in Namibia: The challenge of customary and constitutional law" in J Eeklelaar & TN Hlapo, eds, *The changing family: Family forms and family law*, Oxford: Hart, 1998

Christiaan Keulder, "Traditional Leaders" 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

- MO Hinz (assisted by S Joas), *Customary law in Namibia: Development and Perspective*, CASS Paper No 50, eighth edition, 2003, Windhoek, Centre for Applied Social Studies, 2003
- D LeBeau, et al, *Women's Property and Inheritance Rights in Namibia*. Windhoek: Gender Training and Research Programme and University of Namibia, 2004
- H Becker, "'New Things after Independence': Gender and Traditional Authorities in Postcolonial Namibia", *Journal of Southern African Studies*, 32 (1): 29-48, 2006
- MO Hinz and JW Kwenani, "Ascertainment of Customary Law" in Manfred O Hinz and Helgard K Patemann, eds, *The Shade of New Leaves: Governance in Traditional Authority - A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006.
- OC Ruppel, ed, *Women and custom in Namibia: Cultural practice versus gender equality?*, Windhoek: Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/dokument_id-15086/index.html (reviewed by Chuma Himonga in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org).
- Manfred O Hinz, "Phase 1 of the Namibian Ascertainment of Customary Law Project to be completed soon", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org.

See also Community Courts Act 10 of 2003 (**COURTS**)

See also Native Administration Proclamation 15 of 1928 (**'BLACKS'**).

See also Communal Land Reform Act 5 of 2002 (**LAND**).