CUSTOMARY LAW


Summary: This Act (GG 1706) 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 was brought into force on 31 March 1998 by GN 64/1998 (GG 1828).

Amendments: Act 31/2000 (GG 2462) amends sections 1, 3 and 14, and substitutes section 12.

Regulations: The Act makes no provision for regulations.

Appointments: Appointments of members of the Council are announced in GN 150/2009 (GG 4305), GN 171/2014 (GG 5564) and GN 188/2017 (GG 6373). The table of chiefs, senior traditional councillors, traditional councillors and community members contained in GN 171/2014 (GG 5564) is amended by GN 188/2017 (GG 6373).


Summary: This Act (GG 2456) provides for the election or recognition of traditional authorities and sets forth their functions, duties and powers. It repeals the Traditional Authorities Act 17 of 1995 (GG 1158). It was brought into force on 17 May 2001 by GN 93/2001 (GG 2532).

Note that there are two versions of GG 2456. The correct one states at the top:
“This Gazette replace [sic] Gazette No. 2456 of 22 December 2000.”

Regulations: Anything done under the previous law which is not inconsistent with the new law survives in terms of section 20(3) of this Act.

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 authorities and their office-bearers: Traditional authorities and designations of their office-bearers under the previous law survive under this Act, in terms of section 20. Designations of traditional authorities and 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) and GN 61/2001 (GG 2513). The traditional authorities established under the previous law were as follows (in the order that appear in the amended Government Notice):

1. Kavango Traditional Authorities
   1.1 Mbuza Traditional Authority
   1.2 Sambyu Traditional Authority
   1.3 Gciiku Traditional Authority
1.4 Kwangali Traditional Authority
1.5 Mbukushu/Hambukushu Traditional Authority

2. Ovambo Traditional Authorities
2.1 Ondonga Traditional Authority
2.2 Uukwaluadhi Traditional Authority
2.3 Ongandjera Traditional Authority
2.4 Uukwambi Traditional Authority
2.5 Ombalantu Traditional Authority
2.6 Uukolonkadhi Traditional Authority
2.7 Oukwanyama Traditional Authority

3. Caprivi Traditional Authorities
3.1 Masubia Traditional Authority
3.2 Mfwe Traditional Authority
3.4 Mayeyi Traditional Authority

4. Damara Traditional Authorities
4.1 Damara Royal House Traditional Authority

5. Nama Traditional Authorities
5.1 Witbooi Traditional Authority
5.2 Bondelswart Traditional Authority
5.3 Soromaas Traditional Authority
5.4 Vaalgras Traditional Authority
5.5 Topnaar Traditional Authority
5.6 Blouwes Traditional Authority
5.7 Afrikaner Traditional Authority
5.8 Swartbooi Traditional Authority
5.9 Kai-/Kaun Traditional Authority

6. Tswana/Kalahari Traditional Authorities
6.1 Batswana Ba Namibia Traditional Authority
6.2 Bakgalagadi Traditional Authority

7. Mbanderu Traditional Authority
7.1 Mbanderu Traditional Authority

8. Herero Traditional Authorities
8.1 Kambazembi Royal House Traditional Authority
8.2 Zeraua Traditional Authority
8.3 Otjikaoko Traditional Authority
8.4 Vita Royal House Traditional Authority

9. San Traditional Authorities
9.1 !Kung Traditional Authority
9.2 Ju//hoan Traditional Authority

The following designated, or recognised the removal of, persons as chiefs or heads of traditional communities in terms of the current Act:

Proc. 2/2002 (GG 2733)
Proc. 3/2002 (GG 2733)
Proc. 60/2004 (GG 3344)
Proc. 61/2004 (GG 3344), withdrawn by Proc. 13/2017 (GG 6373)
    Note that the original GG 3344 was replaced by a subsequent corrected version.
Proc. 9/2006 (GG 3688)
    Note that the original GG 3688 was replaced by a subsequent corrected version. The corrected version states at the top: “This Gazette replace [sic]
Gazette No. 3688 of 1 September 2006”.

Proc. 12/2008 (GG 4018)
Proc. 26/2008 (GG 4090)
Proc. 9/2009 (GG 4320)
Proc. 5/2010 (GG 4423)
Proc. 16/2011 (GG 4834)
Proc. 21/2013 (GG 5235)
Proc. 23/2013 (GG 5255)
Proc. 3/2015 (GG 5681)
Proc. 27/2015 (GG 5818)
Proc. 41/2015 (GG 5914)
Proc. 4/2016 (GG 6048)
Proc. 5/2016 (GG 6072)
Proc. 10/2016 (GG 6188), withdrawn by Proc. 1/2017 (GG 6217) and withdrawn again by Proc. 15/2018 (GG 6680)
Proc. 1/2017 (GG 6217)
Proc. 13/2017 (GG 6373)
Proc. 16/2017 (GG 6384)
Proc. 12/2018 (GG 6627)
Proc. 15/2018 (GG 6680).

After the current Act came into force, GN 65/1998 was further amended by the following (which also designated various traditional authorities):

GN 63/2002 (GG 2733)
GN 64/2002 (GG 2733)
GN 68/2008 (GG 4018)
GN 181/2008 (GG 4090)

Note that this Government Notice erroneously states that GN 87/2006 (GG 3648) amends GN 65/1998. It names senior traditional councillors and traditional councillors, but does not amend GN 65/1998. This mistake is repeated in subsequent notices.

GN 115/2009 (GG 4263)
GN 205/2009 (GG 4355)
GN 43/2010 (GG 4441)
GN 110/2010 (GG 4490)
GN 242/2010 (GG 4596)
GN 33/2011 (GG 4671)
GN 149/2011 (GG 4783)
GN 199/2011 (GG 4816)
GN 86/2012 (GG 4912)
GN 133/2012 (GG 4952)
GN 185/2012 (GG 5000)
GN 283/2012 (GG 5079)
GN 96/2013 (GG 5174)
GN 195/2013 (GG 5249)
GN 317/2013 (GG 5349)
GN 335/2013 (GG 5373)
GN 71/2014 (GG 5467)
GN 119/2014 (GG 5528)
GN 32/2015 (GG 5681)
GN 97/2015 (GG 5757)
GN 171/2015 (GG 5803)
GN 271/2015 (GG 5878)
GN 1/2016 (GG 5927)
GN 138/2016 (GG 6948)
The following announced the appointments of senior traditional councillors and traditional councillors in terms of section 10(5), without amending GN 65/1998:

GN 130/2004 (GG 3218)
GN 267/2004 (GG 3344)

Note that the original GG 3344 was replaced by a subsequent corrected version.

GN 87/2006 (GG 3648).

The current list of traditional authorities (from amended GN 65/1998) is as follows, in the order that they appear in the amended Government Notice:

1. Kavango Traditional Authorities
   1.1 Mbulu Traditional Authority
   1.2 Sambyu Traditional Authority
   1.3 Gciriku Traditional Authority
   1.4 Kwangali Traditional Authority
   1.5 Mbukushu/Hambakushu Traditional Authority

2. Ovambo Traditional Authorities
   2.1 Ondonga Traditional Authority
   2.2 Uukwaludhi Traditional Authority
   2.3 Ongandjera Traditional Authority
   2.4 Uukwambii Traditional Authority
   2.5 Ombalantu Traditional Authority
   2.6 Uukolukho Traditional Authority
   2.7 Oukwanyama Traditional Authority
   2.8 Ombadja Traditional Authority

3. Caprivi Traditional Authorities
   3.1 Masubia Traditional Authority
   3.2 Mafwe Traditional Authority
   3.3 Mayeyi Traditional Authority
   3.4 Mashi Traditional Authority

4. Damara Traditional Authorities
   4.1 /Gobanin Traditional Authority
   4.2 !Oe-An Traditional Authority
   4.3 /Khomanin Traditional Authority
   4.4 /Gaio-Daman Traditional Authority
   4.5 Tsoaxudaman Traditional Authority
   4.6 #Aodaman Traditional Authority
   4.7 Dâure Daman Traditional Authority

5. Nama Traditional Authorities
   5.1 Witbooi Traditional Authorities
   5.2 Bondelswarts Traditional Authority
   5.3 /Ui-Gantes Traditional Authority
   5.4 Vaalgras Traditional Authority
5.5 Topnaar Traditional Authority
5.6 Blowes Traditional Authority
5.7 Afrikaner Traditional Authority
5.8 Swartbooi Traditional Authority
5.9 Kai-/Kaun Traditional Authority
5.10 Simon Kooper Traditional Authority
5.11 Hai-/Khaua Traditional Authority

6. Tswana/Kalahari Traditional Authorities
6.1 Batswana Namibia Traditional Authority
6.2 Bakgalagadi Traditional Authority

7. Mbanderu Traditional Authority
7.1 Mbanderu Traditional Authority

8. Herero Traditional Authorities
8.1 Kambazembi Royal House Traditional Authority
8.2 Zeraua Traditional Authority
8.3 Otjikako Traditional Authority
8.4 Vita Royal House Traditional Authority
8.5 Maharero Royal House Traditional Authority
8.6 Kakurukouje Traditional Authority

9. San Traditional Authorities
9.1 !Kung Traditional Authority
9.2 Ju’hoan Traditional Authority
9.3 Hai-/om Traditional Authority.

Cases:
Mbanderu Traditional Authority & Another v Kahuure & Others 2008 (1) NR 55 (SC)
of traditional court in terms of section 3 read together with section 1:
definitions of “member” and “traditional community”)
Kahuure & Another in re Nguvauva v Minister of Regional and Local Government and
Housing and Rural Development & Others 2013 (4) NR 932 (SC) (discusses
procedure for designation of Chief of Ovambanderu Traditional Community)
Nguvauva v Minister of Regional and Local Government and Housing and Rural
Development & Others 2015 (1) NR 220 (HC) (section 5)
Hikumwah & Others v Nelumbu & Others 2015 (4) NR 955 (HC) (traditional authority
as administrative body in terms of Act).

Commentary:
Heike Becker, “‘New Things After Independence’: Gender and Traditional Authorities
Manfred O Hinz, “Traditional governance and African customary law: Comparative
observations from a Namibian perspective” in N Horn & A Bösl (eds), Human
Rights and the Rule of Law in Namibia, Macmillan Namibia, 2008, available
at www.kas.de
Law Reform and Development Commission, Working Paper on Issues related to the
Traditional Authorities in the Ovawambo Communities, LRDC 22, 2012,
available at www.namiblii.org
Manfred O Hinz, “The Traditional Authorities Act and the ‘mushrooming’ of
traditional authorities”, Namibia Law Journal, Volume 8, Issue 1, 2016
Bernadine Bertolini, “The Rohoboth Baster land dispute – Attempt by the Rehoboth
Baster Community to regain ownership of their ancestral land”, Namibia Law
COMMISSIONS
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 Mamil, 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).
LM v JM & Others 2016 (2) NR 603 (HC) (in respect of constitutional challenge to customary law, need to tender evidence to establish customary law and to establish unconstitutionality).

COMMENTARY
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
TW Bennett, Customary Law and the Constitution, Law Reform and Development Commission, LRDC 3, 1996
Legal Assistance Centre, Proposals for Law Reform on the Recognition of Customary Marriages, 1999
D LeBeau, et al, Women’s Property and Inheritance Rights in Namibia. Windhoek: Gender Training and Research Programme and University of Namibia, 2004
MO Hinz & JW Kwenani, “Ascertainment of Customary Law” in Manfred O Hinz and Helgard K Patemann (eds), The Shade of New Leaves: Governance in Traditional Authority –


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 AND HOUSING*).