

ENVIRONMENT

Soil Conservation Act 76 of 1969, as amended in South Africa to March 1978

Summary: This Act ([RSA GG 2437](#)) covers the prevention and combating of soil erosion; the conservation, improvement and manner of use of the soil and vegetation; and the protection of water sources. It repeals the *Soil Conservation Act 45 of 1946*. The *Second Soil Conservation Amendment Act 38 of 1971* ([RSA GG 3108](#)), which amended this Act to make it applicable to South West Africa, provided for some additional repeals in respect of South West Africa: the Soil Conservation Ordinance 28 of 1952, the Soil Conservation Amendment Ordinance 20 of 1954 and the Soil Conservation Validation Ordinance 11 of 1961.

Applicability to SWA: Section 27A (inserted in 1971) states “This Act and any amendment thereof shall also apply in the territory”, which is defined in section 1 as “the territory of South-West Africa”.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated **2 March 1978**.

In South Africa, the *Forest Act 122 of 1984* ([RSA GG 9380](#)), brought into force on 27 March 1986 by RSA Proc. R.46/1986 ([RSA GG 10158](#)), repealed Part VII of the Act and the *Conservation of Agricultural Resources Act 43 of 1983* ([RSA GG 8673](#)), brought into force on 1 June 1984 by RSA Proc. R.74/1984 ([RSA GG 9238](#)), repealed the remainder. Neither of these Acts was made expressly applicable to South West Africa.

The reference to the “Minister” in section 24 of the Act (which deals with limitation of liability) was excluded from the operation of the General Proclamation, meaning that in this section “Minister” continued to refer to the South African Minister of Agriculture.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Soil Conservation Amendment Act 4 of 1971* ([RSA GG 3020](#))
- *Second Soil Conservation Amendment Act 38 of 1971* ([RSA GG 3108](#))
- *Soil Conservation Amendment Act 11 of 1973* ([RSA GG 3820](#))
- *Soil Conservation Amendment Act 21 of 1974* ([RSA GG 4212](#))
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#))
- *Soil Conservation Amendment Act 22 of 1977* ([RSA GG 5459](#)).

Certain terminology is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Section 13 is amended by the Forest Act 12 of 2001 ([GG 2667](#)).

Regulations: Pre-independence regulations have not yet been researched.

There does not appear to be a savings clause for regulations issued under the laws repealed by this Act or by the *Second Soil Conservation Amendment Act 38 of 1971* ([RSA GG 3108](#)). However, section 4 of Act 38 of 1971, which effects the repeals of the SWA legislation, contains a proviso which states that – any provision of any law so repealed shall, notwithstanding the repeal of such law, continue to apply in respect of any matter in connection with which anything has been done under any law aforesaid or in respect of anything incidental to any such matter or which may be necessary to be done in connection with any such matter, as if such law had not been so repealed.

No regulations have been issued under the Act since independence.

See the regulations promulgated under the Communal Land Reform Act 5 of 2002 ([GG 2787](#)); regulations 31 and 32 deal with the prevention of soil erosion and the protection of pastoral resources.

Application of law: Regulations 31 and 32 issued under the Communal Land Reform Act 5 of 2002 in GN 37/2003 ([GG 2926](#)) refer to the application of this Act in respect of communal areas.

Mountain Catchment Areas Act 63 of 1970

Summary: This Act ([RSA GG 2858](#)) provides for the management and conservation of land in designated mountain catchment areas.

Applicability to SWA: Section 19 states “This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” This wording did not make amendments to the Act in South Africa automatically applicable to SWA, and none of the amendments were made specifically applicable to SWA.

The Act was amended in South Africa prior to the date of transfer by the *Expropriation Act 63 of 1975* ([RSA GG 4780](#)), which was brought into force on 1 January 1977 by *RSA Proc. 273/1976* ([RSA GG 5363](#)), and by the *Mountain Catchment Areas Amendment Act 41 of 1976* ([RSA GG 5068](#)), which came into force on its date of publication: 7 April 1976.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Forestry) Transfer Proclamation (AG 16/1977), dated **1 December 1977**. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Mountain Catchment Areas Amendment Act 76 of 1981* ([RSA GG 7800](#)) – which was not made expressly applicable to SWA.

Amendments: Certain terms in the Act were amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

There have been no amendments to the Act since independence.

Regulations: Pre-independence regulations have not yet been researched. No post-independence regulations have been promulgated.

Hazardous Substances Ordinance 14 of 1974

Summary: This Ordinance ([OG 3415](#)) provides for the control of toxic substances. It covers manufacture, sale, use, disposal and dumping as well as import and export. The Health Act 21 of 1988 ([OG 5651](#)) extended this Ordinance to all of SWA.

Amendments: The Ordinance is amended by the Atomic Energy and Radiation Protection Act 5 of 2005 ([GG 3429](#)), which was brought into force in relevant part on 18 November 2011 by GN 220/2011 ([GG 4835](#)).

Regulations: Regulations are authorised by section 27 of the Act. Pre-independence regulations have not yet been researched. No post-independence regulations have been promulgated.

Nature Conservation Ordinance 4 of 1975

Summary: This Ordinance ([OG 3469](#)) covers game parks and nature reserves, the hunting and protection of wild animals (including game birds), problem animals, fish, and the protection of indigenous plants. It also establishes a Nature Conservation Board. It repeals the Nature Conservation Ordinance 31 of 1967.

Amendments: The Ordinance is amended by Ord. 4/1977 ([OG 3603](#)), Ord. 16/1980 ([OG 4166](#)), Act 27/1986 ([OG 5294](#)), Act 6/1988 ([OG 5538](#)), Act 17/1988 ([OG 5591](#)), Act 31/1990 ([GG 133](#)) (sections 20 and 26), and Act 5/1996 ([GG 1333](#)) (brought into force on 29 April 1997 by GN 78/1997, [GG 1546](#)) (conservancies).

The Ordinance is also amended by the Inland Fisheries Resources Act 1 of 2003 ([GG 2962](#)), which was brought into force on 6 June 2003 by GN 117/2003 ([GG 2992](#)) (sections 18, 65-71 and 84).

Schedule 3 is amended by GN 115/1978 ([OG 3741](#)), GN 75/1987 ([OG 5364](#)), Act 31/1990 ([GG 133](#)) and GN 18/2016 ([GG 5936](#)).

Government Notice 18 of 2016 (GG 5936) states that it is amending Schedule 3. However, it states that it is adding “African Wild Dog (*Lycaon*)” to the list of animals in subparagraph (i). There is no subparagraph (i) in Schedule 3, raising a question as to whether this amendment was perhaps intended to apply to subparagraph (i) of Schedule 4.

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. None of the changes affect the amendments to Schedule 3.

Schedule 4 is amended by GN 117/1976 ([OG 3535](#)), GN 75/1987 ([OG 5364](#)), Government Notice 90/1988 ([OG 5547](#)) and GN 131/1996 ([GG 1320](#)).

Government Notice 18 of 2016 (GG 5936) states that it is amending Schedule 3. However, it states that it is adding “African Wild Dog (*Lycaon*)” to the list of animals in subparagraph (i). There is no subparagraph (i) in Schedule 3, raising a question as to whether this amendment was perhaps intended to apply to subparagraph (i) of Schedule 4.

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. None of the changes would affect the amendments which appear to have been meant for Schedule 4.

Schedule 5 is amended by GN 117/1976 ([OG 3535](#)).

Schedule 6 is amended by Government Notice AG 77/1985 ([OG 5045](#)).

Act 3/2017 ([GG 6344](#)) amends sections 1, 17, 26, 27, 38 and 49, and substitutes section 87. These amendments, amongst other things, increase the penalties for certain wildlife crimes.

Regulations: Regulations made under the Nature Conservation Ordinance 31 of 1967 survive pursuant to section 90(2) of this Ordinance:

Any proclamation, regulation, notice, order, prohibition, authority, permit, licence, registration, approval, permission, exemption or document promulgated, issued, made, ordered, published, imposed, given or granted and any other act performed in terms of the provisions of any law repealed by subsection (1) shall, if not inconsistent with the provisions of this Ordinance, be deemed to have been promulgated, issued, made, ordered, published, imposed, given, granted or performed in terms of the corresponding provisions of this Ordinance.

Regulations that survive pursuant to this provision have not yet been comprehensively researched.⁴⁹

⁴⁹ Hunting regulations for the year 1968 are contained in GN 60/1968 (OG 2881). Hunting regulations for the year 1969 are contained in GN 59/1969 (OG 2994). Both sets of regulations were originally made in terms of section 4 of the Nature Conservation Ordinance 31 of 1967, and are now clearly obsolete.

Regulations made under this Ordinance are contained in GN 240/1976 ([OG 3556](#)). These regulations are amended as follows –

GN 256/1976 (Regs 4(1)-(2))	OG 3563
GN 112/1977 (Regs 4, 36A-E)	OG 3599
GN 248/1977 (Regs 99, 108, 146, 154)	OG 3638
GN 302/1977 (Regs 1-2)	OG 3644
GN 314/1977 (Reg 4)	OG 3647
GN 364/1977 (Regs 8,73)	OG 3659
GN 32/1978 (Regs 1-2, via amendment to GN 302/1977)	OG 3705
GN 114/1978 (Reg 1)	OG 3741
GN 190/1978 (Regs 9, 26)	OG 3798
GN 247/1978 (definitions, Chpt XII)	OG 3845
GN 10/1979 (Regs 4, 5, 6(3), 7)	OG 3894
GN 50/1979 (Regs 36, 104, 114-16, Chpt XVIIIA)	OG 3916
GN 56/1979 (Reg 103)	OG 3916
AG GN 8/1981 (Regs 1, 4)	OG 4368
AG GN 41/1982 (definitions, Chpt XIA-XIB)	OG 4609
AG GN 23/1983 (Chpt 11)	OG 4741
AG GN 49/1983 (Reg 115)	OG 4752
AG GN 61/1983 (Regs 1, 4-7)	OG 4757
AG GN 72/1984 (Reg 4)	OG 4901
AG GN 36/1985 (Reg 122)	OG 5019
GN 3/1985 (Reg 31)	OG 5064
GN 101/1985 (Reg 25A)	OG 5125
GN 121/1985 (Reg 4)	OG 5134
GN 122/1986 (Reg 125)	OG 5219
GN 242/1986 (definitions, Regs 28, 36)	OG 5297
GN 81/1987 (Reg 27)	OG 5365
GN 89/1988 (definitions, Regs 60, 101, 104, 106-111, 114-115, 117-118, 125, 147-148, Chpt XIIIA)	OG 5547
AG GN 37/1989 (Reg 128A)	OG 5733
AG GN 44/1989 (Reg 118K, Schedule C)	OG 5751
GN 152/1993 (deletes Reg 128B)	GG 765
GN 304/1996 (withdrawn by GN 83/1997)	GG 1446
GN 83/1997 (Regs 147, 148, Chapter XVII B on Conservancies and Wildlife Councils; withdraws and then replicates GN 304/1996)	GG 1554
GN 119/1997 (definitions, Regs 107, 108, 108A, 108B, 110A, 111, 114, 115(1), 118)	GG 1580
GN 59/2009 (Regs 101, 115, 118A, 118C, 122, 128B and Schedule D)	GG 4236
GN 9/2010 (definitions, Regs 114A-114D, Schedules)	GG 4416
GN 9/2010 is amended by GN 19/2016	GG 5936
<p>Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. All of the changes affect Schedule G – Record Sheet. As a quick method of verification, the <i>corrected</i> version of this form contains the heading “MEASUREMENTS AND PHOTOGRAPHS” above the line drawing of the predator; the <i>incorrect</i> version of this form contains the heading “MEASUREMENTS & PHOTOGRAPHS” at this spot. There are several other differences between the forms in the two <i>Gazettes</i>.</p>	
GN 210/2012 (definitions and Reg 36F re: Dorob National Park)	GG 5015
<p>The original regulations are erroneously cited in GN 210/2012 as being GN 240/1975 instead of GN 240/1976. GN 210/2012 also erroneously lists GN 101/1985 as being “AG GN 101/1985”. GN 210/2012 also lists GN 304/1996 as an amendment to the regulations, but note that it was withdrawn by GN 83/1997 (which GN 210/2012 fails to list).</p>	
GN 85/2017 (Reg 9A: plastic bags in game parks/nature reserves)	GG 6285
GN 94/2018 (Regs 107-108A)	GG 6605

This Notice erroneously lists GN 86/2017 amongst the previous amendments to the regulations; the correct reference is GN 85/2017. It also erroneously lists GN 85/2012 as an amendment to the regulations contained in GN 240/1976; these regulations are in fact a separate set of regulations concerning large carnivores. They are listed separately below.

GN 25/2021 (Reg 1: entry fees in respect of different game parks) [GG 7460](#)

This Notice erroneously lists GN 86/2017 amongst the previous amendments to the regulations; the correct reference is GN 85/2017.

The topics covered in the regulations include tariffs (game parks); regulations relating to game parks; swimming baths and use of boats in game parks; inland fisheries; keeping game and other wild animals in captivity; game dealers; game skins; protected plants and permits for them; regulations for cage bird societies; trophy hunting, manufacturing and dealers' licences and the export of trophies; hunting of huntable game, hunting at night and the export of game and game meat; sea bird guano; private game parks and nature reserves; succulent societies; game-proof fences, recognition and regulation of associations; and registers for coyote getters.

GN 85/2012 ([GG 4911](#)) contains **additional regulations for large carnivores** (lions, cheetahs, leopards, spotted hyenas, brown hyenas and wild dogs) in captivity.

There may be other pre-independence regulations issued under the Ordinance that have not yet been located.

Application of law: The application of the Ordinance was affected by the Provision for Control of the Import, Export and Possession of and Trading in Controlled Game Products Proclamation, AG 42/1980 ([OG 4238](#)) – which has since been repealed by the Controlled Wildlife Products and Trade Act 9 of 2008 ([GG 4190](#)).

Notices: GN 203/1973 ([OG 3356](#)) (which is amended by GN 132/1996, [GG 1320](#)) declares certain animals as problem animals.

GN 246/1977 ([OG 3638](#)) contains prohibitions on the export of processed or tanned leopard & cheetah skins.

GN 60/2009 ([GG 4236](#)) placed a moratorium on permits for the importation of large predators and alien species of wild animals into Namibia. However, this blanket prohibition was found to be outside the authority of the Act in *Erindi Ranch (Pty) Ltd v Government of the Republic of Namibia & Others* 2012 (1) NR 185 (HC) and is thus invalid.

GN 87/2019 ([GG 6892](#)) prohibits the importation into Namibia of certain large predators and alien species of wild animals, as set out in the Schedule to the notice.

Most of the other Government Notices issued in terms of the Ordinance deal with specific private game parks, conservancies, hunting seasons, honorary nature conservators or boundaries of public game parks and nature reserves. These notices have not been recorded here.

Appointments: Appointments to the Nature Conservation Board are announced in GN 192/2020 ([GG 7309](#)). (This is a retroactive announcement of appointments to the Board for a period of three years from 15 October 2018.)

Cases:

S v Ngombe 1990 NR 165 (HC)

S v Machinga 1990 NR 157 (HC) (Controlled Game Products Proclamation 42 of 1980)

Skeleton Coast Safaris v Namibia Tender Board & Others 1993 NR 288 (HC) (section 17(1))

S v Makwele 1994 NR 53 (HC) (sections 20(1) and 30(1)(a))

S v Koortzen 1994 NR 356 (HC) (sections 27(1), 38(1)(a) and 50(1))

S v Kau & Others 1995 NR 1 (SC) (sections 26(1) and 85(2))

S v Vorster 1996 NR 177 (HC) (sections 30(1)(a), 27(1) and 89)
S v Seibeb & Another; S v Eixab 1997 NR 254 (HC) (sections 27(1), 30(1)(a), 40(1)(a))
S v Maritz 2004 NR 22 (HC) (sections 30(1) and 31(1); *mens rea* in the form of *culpa* applies to the offence of hunting huntable game under section 30(1))
S v Aukemeb 2009 (1) NR 19 (HC) (formulation of charge under section 50A and appropriate sentencing)
Van Rensburg & Another v Government of the Republic of Namibia 2009 (2) NR 431 (HC) (sections 26(5), 48(1) and 81(1))
Uffindell t/a Aloe Hunting Safaris v Government of Namibia & Others 2009 (2) NR 670 (HC) (constitutionality of application of trophy hunting provisions in sections 28(1)(a), 36(1)(a) and 78(f) by private treaty rather than public auction, to applicants who were denied opportunity to participate in public auction, as a mechanism to redress their wrongful exclusion)
Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment 2010 (1) NR 1 (SC) (delegation of powers under the Act after certain expressions in the principal Act were substituted by Act 5/1996, with specific reference to decisions on permit applications made under section 49(1) of the Act)
S v Nel 2015 (4) NR 1057 (HC) (section 89(1)(d), in context of ruling on leave to appeal lower court's refusal to order forfeiture of certain items).

Commentary:

MO Hinz, *Without chiefs there would be no game: Customary law and nature conservation*, Windhoek: Out of Africa, 2003
MO Hinz, "Traditional governance and communal conservancies", *Namibia Law Journal*, Volume 3, Issue 2, 2011
Sidney L Harring & Willem Odendaal, "God stopped making land!": *Land Rights, Conflict and Law in Namibia's Caprivi Region*, Legal Assistance Centre, 2012, available [here](#)
Prisca Anyolo, "Conservancies in Namibia: Tools for sustainable development" in MO Hinz, OC Ruppel & C Mapaure (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012
Eugene Lizazi Libebe, "Namibia customary land rights and community conservancies: Towards a sustainable and integrated legal framework", *Namibia Law Journal*, Volume 10, Issue 1, 2018
Manfred O Hinz, "Conservancies and communal land rights", *Namibia Law Journal*, Volume 10, Issue 1, 2018.

Atmospheric Pollution Prevention Ordinance 11 of 1976

Summary: This Ordinance ([OG 3555](#)) provides for the prevention of air pollution. It has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.⁵⁰ The Health Act 21 of 1988 ([OG 5651](#)) made the Ordinance applicable to all of SWA.

Regulations: Regulations are authorised by several sections of the Act. Pre-independence regulations have not been researched because of the anticipated repeal.⁵¹ No post-independence regulations have been promulgated.

Notices: The entire area of Namibia, with the exception of East Caprivi, is proclaimed as a controlled area for the purposes of section 4(1)(a) of the Ordinance in GN 309/1976 ([OG 3571](#)).

⁵⁰ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 14-ff.

⁵¹ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 14-ff.

Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, as amended in South Africa to Namibian independence

Summary: This Act ([RSA GG 7427](#)) prohibits the discharge of oil from ship, tanker or off-shore installation and gives the state certain powers to prevent such pollution and to deal with the removal of oil in the event of an oil spill. It repeals the *Prevention and Combating of Pollution of the Sea by Oil Act 67 of 1971*, as amended. It was brought into force in South West Africa on 7 June 1985 by *RSA Proc. 93/1985* ([RSA GG 9774](#)).

Applicability to SWA: *RSA Proc. 93/1985* ([RSA GG 9774](#)) makes the Act “and all amendments thereof” applicable to SWA from 7 June 1985.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1989), dated 15 March 1978. However, section 3(1)(e) of the transfer proclamation excludes this Act from the operation of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Prevention and Combating of Pollution of the Sea by Oil Amendment Act 59 of 1985* (RSA) (RSA GG 9772), which was deemed to have come into force on 24 April 1985 (section 2 of Act 59 of 1985; applicable to SWA because it pre-dated the applicability of the Act to SWA)
- *Prevention and Combating of Pollution of the Sea by Oil Amendment Act 63 of 1987* (RSA) (RSA GG 10936) (applicable to SWA because the administration of the Act was excluded from transfer to SWA).

After Namibian independence, Act 24/1991 ([GG 326](#)) amends sections 1, 7, 8, 9, 12, 19, 20, 21, 27 and 30; repeals section 26; and substitutes certain expressions to make the Act consistent with an independent Namibia and to abolish the Oil Pollution Prevention Fund.

The Namibian Ports Authority Act 2 of 1994 ([GG 810](#)) amends section 21 of the Act.

Act 5/2019 ([GG 7075](#)) amends sections 1, 21 and 30.

Regulations: Regulations are authorised by section 28 of the Act. Pre-independence regulations issued under this Act have not been researched. No post-independence regulations have been promulgated.

Regulations made under the *Prevention and Combating of Pollution of the Sea by Oil Act 67 of 1971* appears to survive in terms of section 31(2):

Any notice, approval, authorization or document given, granted or issued and any other thing done under any provision of any law repealed by this Act shall, unless inconsistent with the provisions of this Act, be deemed to have been given, granted, issued or done under this Act.

Regulations that may survive pursuant to this savings clause have not yet been researched.

Game Products Trust Fund Act 7 of 1997

Summary: This Act ([GG 1686](#)) establishes a Game Products Trust Fund to support the conservation and management of wildlife resources and rural development. It also establishes a Game Products Trust Fund Board. The Act was brought into force on 1 September 1998 by GN 196/1998 ([GG 1927](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 6, 7 and 10.

Regulations: The Act makes no provision for regulations.

Forest Act 12 of 2001

Summary: This Act ([GG 2667](#)) consolidates the laws relating to the use and management of forests and forest produce, provides for the control of forest fires and creates a Forestry Council. It repeals the Preservation of Bees and Honey Proclamation 1 of 1923, the Preservation of Trees and Forests Ordinance 37 of 1952 and the *Forest Act 72 of 1968*. It was brought into force on 15 August 2002 by GN 138/2002 ([GG 2793](#)).

Amendments: Act 13/2005 ([GG 3564](#)) extends the composition of the Forestry Council, making amendments to sections 1, 2 and 4.

Regulations: There is no savings clause for regulations issued under the laws repealed by the Act.

Forest Regulations are contained in GN 170/2015 ([GG 5801](#)).

Notices: Areas declared as community forests under section 15(3) are published from time to time but have not been recorded here.

Cases: *New Force Logistics CC v Anti-Corruption Commission* 2018 (2) NR 375 (HC) (definition of “authorised officer”; section 43).

Commentary:

Ute Dieckmann & Theodor Muduva, *Namibia’s Black Gold?: Charcoal Production, Practices and Implications*, Legal Assistance Centre, 2010, available [here](#)

C Mapaure, “Trees at the Crossroads: Internal conflict of laws in the ownership of forests in the Kavango Region” in MO Hinz, OC Ruppel & C Mapaure (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012.

Environmental Investment Fund of Namibia Act 13 of 2001

Summary: This Act ([GG 2669](#)) establishes an Environmental Investment Fund of Namibia to be used to support sustainable environmental and natural resource management. It was brought into force retroactively in 2013, with effect from 1 May 2005 (GN 266/2013, [GG 5314](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 7, 9, 14 and 21 and deletes section 8.

Regulations: Regulations are authorised by section 26 of the Act, but none have yet been promulgated.

Appointments: Members of the Board of the Environmental Investment Fund of Namibia are announced in GN 4/2021 ([GG 7446](#)).

Atomic Energy and Radiation Protection Act 5 of 2005

Summary: This Act ([GG 3429](#)) provides for protection of the environment of the people in current and future generations against harmful effects of radiation, by controlling radiation sources and nuclear materials. It also establishes an Atomic Energy Board and a National Radiation Protection Authority.

Section 44 of the Act, which deals with the administration of the Act, was brought into force on 16 May 2005 (GN 50/2005, [GG 3429](#)). The Act as a whole was brought into force with effect from 16 January 2012 by GN 220/2011 ([GG 4835](#)).

Administration: The administration of the Act is assigned to the Ministry of Health and Social Services by Proc. 19/2008 ([GG 4066](#)).

Regulations: Radiation Protection and Waste Disposal Regulations are contained in GN 221/2011 ([GG 4835](#)).

Non-ionising Radiation Regulations are contained in GN 126/2020 ([GG 7228](#)).

Appointments: Members of the Atomic Energy Board of Directors are announced in GN 210/2020 ([GG 7309](#)).

Related international agreements:

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

Convention on Early Notification of a Nuclear Accident, 1986

Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980

Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005

†*Statute of the International Atomic Energy Agency (IAEA), 1956.*

Biosafety Act 7 of 2006

Summary: This Act ([GG 3763](#)) regulates genetically modified organisms and specified products derived from genetically modified organisms, and establishes a Biosafety Council. It was brought into force with effect from 1 November 2016 by GN 232/2016 ([GG 6135](#)).

Regulations: Biosafety Regulations are contained in GN 210/2016 ([GG 6116](#)). These regulations were brought into force with effect from 1 November 2016 by GN 232/2016 ([GG 6135](#)).

Notices: Certain items are designated as genetically modified organism products (GMO products) in terms of section 1(2) of the Act in GN 259/2018 ([GG 6729](#)).

Commentary: Elize Shakalela, “Subsistence Farmers Rights versus Genetically Modified Seeds: Focusing on Developing Countries”, *UNAM Law Review*, Volume 3, Issue 1, 2016, available [here](#).

Environmental Management Act 7 of 2007

Summary: This Act ([GG 3966](#)) provides a framework for decision-making on matters affecting the environment, to promote sustainable management of the environment. It provides a process for environmental assessment and control and establishes a Sustainable Development Advisory Council and provides for the appointment of an Environmental Commissioner and environmental officers. The Act was brought into force on 6 February 2012 by GN 28/2012 ([GG 4878](#)).

Regulations: Environmental Impact Assessment Regulations are contained in GN 30/2012 ([GG 4878](#)).

Notices: A list of activities that may not be undertaken without an Environmental Clearance Certificate is contained in GN 29/2012 ([GG 4878](#)) and GN 34/2016 ([GG 5962](#)).

A notice listing organs of state which are exercising functions that may affect the environment, issued in terms of section 24(1) of the Act for the purpose of Part VI of the Act, is contained in GN 249/2016 ([GG 6149](#)).

A notice listing waste disposal sites is contained in GN 282/2018 ([GG 6753](#)).

Appointments: Members of the Sustainable Development Advisory Council are announced in GN 310/2012 ([GG 5109](#)).

Cases: *Namibian Marine Phosphate (Pty) Ltd v Minister of Environment and Tourism & Others* 2019 (1) NR 90 (HC) (successful appeal against Minister's decision to set aside the decision of Environmental Commissioner to award an environmental clearance certificate; discussion of overarching statutory framework including appeal procedure in Environmental Impact Assessment Regulations; case finds that a concerned citizen has *locus standi* to appeal the decision of the Environmental Commissioner to the Minister; substantial compliance with reg 25(1) suffices where it achieves objects of the provision; the appeal at hand concerns a point of law pursuant to section 51(2)); however, Minister did not follow fair procedure by allowing one party to make written and oral submissions while limiting the other party to written submissions, so Minister's decision is set aside; appeal hearing may be recommenced *de novo* if Minister is so inclined).

Commentary:

Ministry of Environment and Tourism, *Guide to the Environmental Management Act No 7 of 2007*, 2008
B Walmsley & K Tshipala, *Handbook on Environmental Assessment Legislation in the SADC Region*,
Windhoek: Southern African Institute for Environmental Assessment, 2010.

Plant Quarantine Act 7 of 2008

Summary: This Act ([GG 4149](#)) provides for the preventing, monitoring, controlling and eradication of plant pests and regulated the movement of plants and plant products. It also provides for the certification of the phytosanitary standards of plants and plant products exported from Namibia and affects compliance with the International Plant Protection Convention of 1951. It repeals the Locust Suppression Proclamation 34 of 1923, the Agricultural Pests Ordinance 11 of 1927 and the *Agricultural Pests Act 3 of 1973*. This Act was brought into force on 1 July 2012 by GN 157/2012 ([GG 4975](#)).

Regulations: Section 23(2) states that anything done under the repealed *Agricultural Pests Act 3 of 1973* “which could have been done under a corresponding provision of this Act is deemed to have been done under that provision”. This would appear to include regulations. Pre-independence regulations have not been comprehensively researched. However, the following post-independence regulations made under the *Agricultural Pests Act 3 of 1973* would appear to survive:

Regulations relating to importation permits and the lodging of appeals are contained in GN 57/2007 ([GG 3812](#)).

In terms of the current Act, **regulations relating to import and export permits, examination of imported plants, diseases or insects and appeals** are contained in GN 158/2012 ([GG 4975](#)), as amended by GN 254/2020 ([GG 7361](#)) (which substitutes Annexure 2). These regulations do not repeal the regulations issued under the repealed *Agricultural Pests Act 3 of 1973* in GN 57/2007 ([GG 3812](#)), but it appears as though there is an overlap in subject matter.

Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017

Summary: This Act ([GG 6343](#)) regulates access to biological or genetic resources and associated traditional knowledge, and provides a mechanism for a fair and equitable benefit sharing in respect of these resources. It also establishes an Office of Biological and Genetic Resources and Associated Traditional Knowledge. It was brought into force on 1 November 2021 by GN 236/2021 ([GG 7673](#)).

Regulations: Regulations are authorised by section 23 of the Act and were issued (prior to the Act's coming into force⁵²) in GN 161/2021 ([GG 7597](#)). They appear to have come into effect at the same time as the Act.

Related international agreements:

Convention on Biological Diversity (Biodiversity Convention), 1992

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010

The Act refers to the “Nagoya Protocol”.

COMMENTARY

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Andrew Corbett & Brian TB Jones, *The legal aspects of Governance in Community-Based Natural Resources Management (CBNRM) in Namibia: DEA Research and Discussion Paper No 41*, Windhoek: Ministry of Environment and Tourism, 2000, available [here](#)

Manfred O Hinz, *Without Chiefs There Would Be No Game: Customary Law and Nature Conservation*, Windhoek: Out of Africa Publishers, 2003

Shirley Bethune, “Review of Legislation and Policies pertinent to Combating Desertification – a case study from Namibia”, 12 (2) *Review of European Community and International Environmental Law* 178 (2003)

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⁵² Note that it appears to be competent for the Ministry to publish regulations as preparation for bringing the law into force, but the regulations published in this way may *not* come into force before the relevant portion of the Act is brought into force. See section 12(3) of the Interpretation of Laws Proclamation 37 of 1920:

(3) *Where a law confers a power -*

...

(b) *to make, grant, or issue any... regulations...*

...

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any ... regulations... made... under the power shall not, unless the contrary intention appears in the law or the contrary is necessary for bringing the law into operation, come into operation until the law comes into operation.

A similar issue is discussed in *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) at paras 63-69.

- MO Hinz & OC Ruppel (eds), *Biodiversity and the ancestors: Challenges to customary and environmental law, Case studies from Namibia*, Windhoek: Namibia Scientific Society, 2008 (reviewed by Thomas Falk in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available [here](#))
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- Oliver C Ruppel & Katharina Ruppel-Schlichting (eds), *Environmental Law and Policy in Namibia; Towards Making Africa the Tree of Life (Fully Revised Fourth Edition)*, Windhoek: Hanns Seidel Foundation, 2022 (previous editions reviewed by Cord Luedemann in *Namibia Law Journal*, Volume 4, Issue 2, 2012 and by Johannes D K Kariseb in *UNAM Law Review*, Volume 2, Issue 1, 2014, available [here](#))
- See also www.environment-namibia.net.

INTERNATIONAL LAW

Global:

- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993***
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), 1989***
Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1995
- Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972***
- Convention on Biological Diversity (Biodiversity Convention), 1992***
Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973***

- Amendment to Article XI of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Bonn, 1979*
- Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997**
- Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), 1971**
- Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982*
- Amendments to Article 6 and 7 of the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1987*
- International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978**
- Annex I – Regulations for the Prevention of Pollution by Oil*
- Annex II – Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk*
- Annex III – Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form*
- Annex IV – Regulations for the Prevention of Pollution by Sewage from Ships*
- Annex V – Prevention of Pollution by Garbage from Ships*
- Annex VI – Regulations for the Prevention of Air Pollution from Ships*
- International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS), 2001**
- International Convention on Oil Pollution Preparedness, Response and Co-operation (ORPC), 1990**
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969**
- Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil (INTERVENTION PROT), 1973*
- International Plant Protection Convention, 1951, as revised in 1979 and 1997**
- International Treaty on Plant Genetic Resources for Food and Agriculture, 2001**
- Minamata Convention on Mercury, 2013**
- Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CCL PROT) 1992**
- Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (1992 Fund Convention)*
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), 1998**
- Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983**
- Protocol of the Reconvened Plenipotentiary Meeting on the Establishment of the International Centre for Genetic Engineering and Biotechnology, 1984*
- Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007*
- Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), 2001**
- United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994**
- United Nations Framework Convention on Climate Change (UNFCCC), 1992**
- Kyoto Protocol to the UN Framework Convention on Climate Change, 1997*
- *Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 2012*
- Paris Agreement, 2015*
- Vienna Convention for the Protection of the Ozone Layer, 1985**
- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Second Meeting of the Parties at London on 29 June 1990 (London Amendment)*
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Fourth Meeting of the Parties at Copenhagen on 25 November 1992 (Copenhagen Amendment)*

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Ninth Meeting of the Parties at Montreal on 17 September 1997 (Montreal Amendment)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Eleventh Meeting of the Parties at Beijing on 3 December 1999 (Beijing Amendment)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Twenty-Eighth Meeting of the Parties at Kigali from 10 to 15 October 2016 (Kigali Amendment)

Regional:

*****African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003
Agreement for the Establishment of the Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes Agreement, 2004***

Agreement for the Establishment of the Southern African Centre for Ivory Marketing (SACIM), 1991

Agreement between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the establishment of a permanent Okavango river basin water commission (OKACOM), 1994

Agreement between the Governments of the Republic of Angola, the Republic of Botswana and the Republic of Namibia on the Organizational Structure of OKACOM, 2007

Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Sengu River Commission (ORASECOM), 2000

Agreement on the Establishment of the Zambezi Watercourse Commission (ZAMCOM), 2004

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

****SADC Protocol on Environmental Management for Sustainable Development, 2014***

SADC Protocol on Forestry, 2002

SADC Protocol on Shared Watercourse Systems, 1995

Note: This Protocol has been repealed and replaced by the SADC Revised Protocol on Shared Watercourses, 2000, for the SADC member states that are parties to the Revised Protocol. The 1995 Protocol remains in force between Namibia and SADC states that are a party to it but not to the Revised Protocol.

SADC Revised Protocol on Shared Watercourses, 2000

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

Treaty on the Establishment of the Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA), 2011

See also **AGRICULTURE**.

See also **ANIMALS**.

See also Namibia Wildlife Resorts Company Act 3 of 1998 (**TOURISM**).

See also **FUEL AND ENERGY**.

See also **HEALTH**.

See also Labour Act 11 of 2007 (section 40: hazards extending beyond workplace) (**LABOUR**).

See also **LAND AND HOUSING**.

See also **MARINE AND FRESHWATER RESOURCES**.

See also **MINING AND MINERALS**.

See also Geoscience Professions Act 3 of 2012 (**SCIENCE AND SCIENTIFIC RESEARCH**).

See also **SEA AND SEASHORE**.

See also Foreign Investments Act 27 of 1990 and Controlled Wildlife Products and Trade Act 9 of 2008 (**TRADE AND INDUSTRY**).

See also **WATER**.