Crown Lands (Trespass) Proclamation 7 of 1919

**Summary:** This Proclamation (OG 24) covers trespassing, removal of vegetation and the presence of animals on “crown lands in the protectorate”. It is not included in the database of annotated statutes as it has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.\(^{179}\)

**Amendments:** This Proclamation is amended by Proc. 4/1937 (OG 701), Proc. 31/1938 (OG 770) and Proc. 18/1948 (OG 1357).

**Regulations:** The Proclamation makes no provision for regulations.

Crown Land Disposal Ordinance 57 of 1903 (Transvaal)\(^{180}\)

**Summary:** This Ordinance (available here)\(^{180}\) as corrected by the Correction of Errors Ordinance 4 of 1904 (Transvaal) (available here) and as amended by the Crown Land Disposal Amendment Ordinance 13 of 1906 (Transvaal) (available here)\(^{181}\) was applied to SWA by the Crown Land Disposal Proclamation 13 of 1920 (OG 29).

The Crown Land Disposal Proclamation 13 of 1920 (OG 29) – as amended by the Crown Land Disposal Amendment Proclamation 200 of 1950 (SA GG 4435) and amended retroactively by the Crown Land Disposal Amendment Ordinance 7 of 1951 (OG 1601) – amended the Ordinance as it applied to SWA as well as providing definitions for terms in the Ordinance as it applied to SWA.

The Crown Land Disposal Proclamation 13 of 1920 was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,\(^{182}\) but it was not included in the Repeal of Obsolete Laws Act 12 of 2022.

**Amendments:** As noted above, the Ordinance was applied to SWA as corrected by the Correction of Errors Ordinance 4 of 1904 (Transvaal) (available here) and as amended by the Crown Land Disposal Amendment Ordinance 13 of 1906 (Transvaal).

It was further amended by the Crown Land Disposal Proclamation 13 of 1920 (OG 29), and applied in light of definitions contained in that Proclamation as amended by the Crown Land Disposal Amendment Proclamation 200 of 1950 (SA GG 4435) and amended retroactively by the Crown Land Disposal Amendment Ordinance 7 of 1951 (OG 1601).

The Ordinance was also amended after it became applicable to SWA by Proc. 54/1920 (OG 41), Ord. 7/1951 (OG 1601), Ord. 36/1958 (OG 2153) and Ord. 17/1965 (OG 2634).

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\(^{180}\) The Ordinances issued by the Transvaal Provincial Government have been digitised by the Open Scholarship & Digitisation Programme, University of Pretoria, 2016.

\(^{181}\) Section 3 of the Crown Land Disposal Amendment Ordinance 13 of 1906 (Transvaal) states: “This Ordinance may be cited for all purposes as the Crown Land Disposal Amendment Ordinance 1906 and shall be read as one with the Crown Land Disposal Ordinance 1903.”


**LAND AND HOUSING-1**

1 February 2023 update
The Crown Land Disposal Proclamation 13 of 1920, along with Ord. 7/1951, was repealed in respect of Walvis Bay by RSA Proclamation 149 of 1982 (RSA GG 8344). However, see section 2 of the Walvis Bay and Off-Shore Islands Act 1 of 1994:

**Laws to be applied in Walvis Bay**
2. (1) As from the effective date -
   (a) the laws applied in Walvis Bay immediately prior to that date shall cease to be so applied, unless, and to such extent as, the application of any such law is continued by virtue of any provision of this Act;
   (b) no laws other than -
      (i) the law of Namibia; and
      (ii) such of the laws referred to in paragraph (a) of which the application is continued as contemplated in that paragraph,
   shall be applicable in Walvis Bay, but subject to subsection (2).

(2) Any law which in terms of paragraph (b) of subsection (1) applies in Walvis Bay, shall so apply subject to such amendments, additions, modifications, exceptions or conditions as are provided for in this Act, whether such amendments, additions, modifications, exceptions or conditions are made, effected or imposed to apply -
   (a) specifically in or in relation to Walvis Bay only; or
   (b) generally in Namibia as a whole.

**Regulations:** The Ordinance makes provision for regulations in section 18, but pre-independence regulations have not yet been researched.

**Land Titles Proclamation 2 of 1921**

**Summary:** This Proclamation (OG 50) makes provision for the issue of registered title to certain lands in the territory. It was extended to the Rehoboth Gebiet by Proc. 12/1930 (OG 365). The Proclamation has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission, on the grounds that it seems to have been primarily aimed at securing title to land acquired through concessions in the German colonial era and appears to have no ongoing function.183

**Amendments:** This Proclamation is amended by Proc. 14/1922 (OG 84), Proc. 1/1937 (OG 696), Proc. 6/1942 (OG 939), Proc. 3/1949 (OG 1406) and the Registration of Deeds in Rehoboth Act 93 of 1976 (RSA GG 5183).

**Regulations:** Regulations are authorised by section 8 of the Act. Pre-independence regulations will not be researched in light of the anticipated repeal of this Proclamation. No post-independence regulations have been promulgated.

**Fencing Proclamation 57 of 1921**

**Summary:** This Proclamation (OG 78) relates to the erection and maintenance of dividing fences between adjoining properties.

**Repeals:** The Proclamation does not contain any specific repeals, but provides in section 1 that –
So much of any law as is repugnant to or inconsistent with the provisions of this Proclamation shall be and is hereby repealed.

**Amendments:** This Proclamation is amended by Proc. 13/1923 (OG 110), Proc. 18/1925 (OG 177), Proc. 28/1925 (OG 180), Ord. 4/1928 (OG 279), Proc. 22/1935 (OG 639), Proc. 14/1950 (OG 1495),

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LAND AND HOUSING-2
1 February 2023 update

The Proclamation must be read together with Ord. 4/1928 (OG 279), which concerns contributions towards the costs of dividing fences. It must also be read together with Ord. 6/1957 (OG 2072) (as amended by Ord. 28/1959 (OG 2199)), which concerns jackal-proof fencing.

**Regulations:** The Proclamation makes no provision for regulations.

### Small Settlements Commonages Subdivision Proclamation 13 of 1926

**Summary:** This Proclamation (OG 205) provides for the subdivision of commonages assigned to “Small Settlements” established by the German administration. Under German colonial rule, German farmers were encouraged to settle in Namibia, and provided with incentives to this end. One strategy to advance this policy was the granting of small plots of farmland to German settlers (Kleinsiedler) in areas where rain was more abundant (in Kleinsiedlungen, or “small settlements”) When South Africa took over the Mandate for South West African in the wake of World War II, this law was a manifestation of government policy to encourage German settlers to remain in the belief that this would contribute to stability and productivity. The Proclamation is not included in the database of annotated statutes as it has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.184

**Regulations:** The Proclamation makes no provision for regulations.

### Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932

**Summary:** This Proclamation (OG 491) empowers the Administrator to set aside portions of land designated as “reserves for natives or Coloured persons” as sites for churches, schools or missions.

**Regulations:** Regulations are authorised by section 3 and contained in GN 133/1933 (OG 530).

### Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933

**Summary:** This Proclamation (OG 502) supplements the law relating to the execution of judgements in respect of immovable property, in order to provide assistance to mortgage debtors by providing for suspension periods “in view of the prevailing financial depression”. There is, however, no time limit on its application. This Proclamation was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,185 but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

**Regulations:** The Proclamation makes no provision for regulations.

Trespass Ordinance 3 of 1962

Summary: This Ordinance (OG 2390) prohibits entry or presence upon land or in buildings without permission of the owner or lawful occupier.

Amendments: The Ordinance is amended by Act 20/1985 (OG 5140).

Regulations: The Ordinance makes no provision for regulations.

Cases: S v Mynhardt; S v Kuinab 1991 NR 336 (HC); S v Williams 2007 (2) NR 399 (HC).

Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965

Summary: This Act (RSA GG 1171) concerns restrictions imposed on land by wills and similar instruments.

Repeals: The Act repeals the Removal or Modification of Restrictions on Immovable Property Proclamation 16 of 1948.

Applicability to SWA: Section 10 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and referred to in sub-section 3 of section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all immovable property in that portion of the said territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administration of the said territory.” Although amendments to the Act in South Africa would have been automatically applicable to SWA, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: Since the Act does not indicate what Minister administered the Act, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Land Tenure Act 32 of 1966, as amended in South Africa to November 1977

Summary: This Act (RSA GG 1554) establishes a Land Tenure Board and provides for the acquisition and development of land in connection with farming purposes.

Applicability to SWA: Section 10A, which was added by RSA Act 67 of 1970, states “This Act and any amendments thereof which may be made from time to time, with the exception of section 5, shall apply also in the territory”, which is defined as “the territory of South West Africa”. (Section 5 concerns the disposal of state land which is not required for or suitable for farming purposes in terms of the State Land Disposal Act 48 of 1961.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation (AG 13/1977), dated 18 November 1977. There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by the Second Community Development Amendment Act 68 of 1982 (RSA GG 8206), which was not made expressly applicable to SWA.
Section 3(2) of the General Proclamation excluded from transfer the provisions of any transferred law which “provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. This would appear to exclude from transfer the provisions of this Act relating to the Land Tenure Board.

**Amendments:** The following pre-independence South African amendments were applicable to SWA –
- Land Tenure Amendment Act 67 of 1970 *(RSA GG 2862)*
- Land Tenure Amendment Act 16 of 1972 *(RSA GG 3458)*
- Expropriation Act 63 of 1975 *(RSA GG 4780)*

**Regulations:** Regulations are authorised by section 8 of the Act. However, no pre-independence regulations have been located, and no post-independence regulations have been promulgated.

**Subdivision of Agricultural Land Act 70 of 1970** as amended in South Africa to March 1978

**Summary:** This Act *(RSA GG 2867)* controls the subdivision of agricultural land. Generally, subdivision is prohibited unless the Minister of Agriculture has given his consent.

**Applicability to SWA:** Section 14 states “This Act and any amendment thereof shall apply also in the territory of South West Africa”. Section 1 defines “agricultural land”, “executive committee” and “scheme” accordingly.

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the Subdivision of Agricultural Land Amendment Act 12 of 1979 *(RSA GG 6345)*, the Subdivision of Agricultural Land Amendment Act 18 of 1981 *(RSA GG 7447)* and the Subdivision of Agricultural Land Amendment Act 33 of 1984 *(RSA GG 9170)* – were made expressly applicable to SWA.

**Amendments:** The following pre-independence South African amendments were applicable to SWA –
- Subdivision of Agricultural Land Amendment Act 55 of 1972 *(RSA GG 3531)*
- Subdivision of Agricultural Land Amendment Act 19 of 1974 *(RSA GG 4210)*
- Subdivision of Agricultural Land Amendment Act 18 of 1977 *(RSA GG 5450)*

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).


Note that *Official Gazette 37 of Rehoboth* appears to have been misprinted as *Official Gazette 38 of Rehoboth*. Some copies bear a handwritten notation showing the correct number as *Official Gazette 37 of Rehoboth*.  

LAND AND HOUSING-5
1 February 2023 update
Regulations: Regulations are authorised by section 10 of the Act. No pre-independence regulations have been located,\(^\text{186}\) and no post-independence regulations have been promulgated.

Cases: Theron & Another v Tegethoff & Others 2001 NR 203 (HC); Tjihero & Another v Kauri & Another 2018 (3) NR 879 (SC) (no subdivision of agricultural land is possible without permission of Minister, valid for three years, which had lapsed in this case).

**Expropriation Ordinance 13 of 1978**

Summary: This Ordinance (OG 3796) deals with the expropriation of land for public purposes.

Repeals: The Ordinance repeals the Expropriation Ordinance 32 of 1967.

Note: The South African *Expropriation Act 63 of 1975*, which deals with the expropriation of land (and commenced on 1 January 1977, in terms of RSA Proc. 273 of 1976) once applied to South West Africa in respect of *expropriations by the Railway Administration under section 4*. Section 4(4) of that Act stated: "The provisions of this section, and the other provisions of this Act, in so far as they are connected with the application of this section, shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel", thus making sections 7-24 of the Act applicable to expropriations by the Railway Administration in terms of the *Railways and Harbours Control and Management (Consolidation) Act 70 of 1957* (which is no longer in force in Namibia). However, section 4 of this Act was repealed by the *National Transport Corporation Act 21 of 1987*, thus effectively ending the applicability of any part of the Act to South West Africa (which was always only via section 4). Section 139 of the *Minerals (Mining and Prospecting) Act 33 of 1992* (GG 564) confusingly purports to repeal sections 74 and 75 of the *Expropriation Act 63 of 1975*, but these sections were never applicable to Namibia.

Amendments: This Ordinance is amended by the *National Transport Corporation Act 21 of 1987* (OG 5439) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961) with effect from 1 April 1999).

Administration of Act: Proc. 8/2005 (GG 3456) assigns the administration of this Ordinance to the minister responsible for works, transport and communication.

Savings: There is no general savings clause in respect of anything done under the repealed Ordinance, only a transitional provision governing expropriation proceedings underway at the time when the 1978 Ordinance came into force.

Regulations: Regulations are authorised by section 20 of the Act, but no pre-independence regulations have been located. No post-independence regulations have been promulgated.

Application of law: The Ordinance is referenced by the *Powers of the SWA Water and Electric Corporation Act 14 of 1980* (OG 4225), which makes sections 5-18 of the Ordinance applicable to expropriations by the Corporation.

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the *Export Processing Zones Act 9 of 1995* (GG 1069), and referenced in section 16 of that Act.

Section 13 of the *Airports Company Act 25 of 1998* (GG 1958), which was brought into force on 5 February by GN 19/1999 (GG 2045), affects the application of the Ordinance with respect to that Act.

\(^{186}\) There is one set of SA regulations (RSA GN 373/1979, RSA GG 6323) that was brought into force on 1 April 1979 – which is after the date of transfer (2 March 1978) and was not made expressly applicable to SWA. These regulations do not repeal any previous regulations.
Promotion of the Density of Population in Designated Areas Act 18 of 1979

Summary: This Act (OG 4052) provides for the designation of certain areas for the promotion of population density and farming activities. It was brought into force on 1 January 1980 by AG 38/1979 (OG 4059). The underlying purpose of this law was to encourage white farmers to stay and farm in border areas by providing loans to them in terms of the Agricultural Credit Act 28 of 1966, with the aim of engaging them in reconnaissance and intelligence-gathering activities to frustrate the Namibian liberation struggle. The Act is not included in the database of annotated statutes as it has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.187


Regulations: The Act makes no provision for regulations.

Notices: A designated area is declared in terms of the Act in AG 39/1979 (OG 4062); there may have been other such designations.

Agricultural Land Act 5 of 1981 (Rehoboth)

Summary: This Act (Official Gazette 37 of Rehoboth, dated 21 August 1981) controls the subdivision of agricultural land in Rehoboth. It was brought into force on 1 September 1981 by an unnumbered notice (Official Gazette 41 of Rehoboth, dated 23 September 1981) and has not been amended. Note that Official Gazette 37 of Rehoboth appears to have been misprinted as Official Gazette 38 of Rehoboth. Some copies bear a handwritten notation showing the correct number as Official Gazette 37 of Rehoboth.


Savings: Section 22(2) provides a general savings clause:

Anything done under any provision of any law repealed by subsection (1) which is not contrary to or inconsistent with any provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

Regulations: Section 20 of this Act provides for regulations. However, pre-independence regulations issued under this Act or under the repealed Act have not yet been researched.


Squatters Proclamation, AG 21 of 1985

Summary: This Proclamation (OG 5047) provides for the removal of persons unlawfully present on land or in buildings, and for the demolition of structures which are unlawfully erected.

Sections 1, 5, 8, 14, 15, 16 and 17 of the Proclamation came into force on the date of publication (30 May 1985) by virtue of section 16 of the Proclamation. Sections 2, 3, 4, 6, 7, 9, 10 and 13 came into force in the territory of South West Africa on 15 November 1986, by virtue of section 16 of the

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Proclamation read together with AG 28/1986 (OG 5273). Sections 11 and 12 of the Proclamation do not appear to have come into force.

**Regulations:** Regulations in respect of emergency camps are authorised by section 8 of the Act, but no pre-independence regulations have been located. No post-independence regulations have been promulgated.

**Cases:** Shaanika & Others v Windhoek City Police & Others 2011 (1) NR 64 (HC), reversed on appeal in Shaanika & Others v Windhoek City Police & Others 2013 (4) NR 1106 (SC) (declaring sections 4(1) and (3) of the Proclamation unconstitutional, on the grounds that they violate Art 12 of the Constitution on the right of access to courts). See also Likuwa & Others v Council of The Municipality of Windhoek & Another 2017 (2) NR 460 (HC) (does not discuss the statute, but finds that applicants who were stopped in the process of establishing unlawful occupation do not qualify for protection of mandament van spolie; judicial statements condemning “land-grabbing” as an unacceptable form of “self-help” and calling on municipality to provide access to urban land to ameliorate the deplorable living conditions in Windhoek).

**Land Survey Act 33 of 1993**

**Summary:** This Act (GG 770) regulates the survey of land. It was brought into force on 1 June 1994 by GN 84/1994 (GG 863).

**Repeals:** The Act repeals the Land Survey Act 9 of 1927 (SA GG 1618).

**Savings:** Section 46(3) of the Act contains a broad savings clause:

Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision.

For the purpose of considering what may survive from the repealed law, note that the administration of the repealed Land Survey Act 9 of 1927 was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation, AG 13 of 1977 (OG 3669) dated 18 November 1977.

**Regulations:** Land Survey Act Regulations made under the Land Survey Act 9 of 1927 are contained in RSA GN R.1814/1962 (RSA GG 365), amended as follows:

- RSA GN R.1395/1964 (RSA GG 897)
- RSA GN R.533/1967 (RSA GG 1716)
- RSA GN R.1126/1969 (RSA GG 2468)
- RSA GN R.1033/1969 (RSA GG 2439)
- RSA GN R.1126/1969 (RSA GG 2469)
- RSA GN R.959/1972 (RSA GG 3545)
- RSA GN R.1804/1972 (RSA GG 3677)
- RSA GN R.2320/1974 (RSA GG 4540)
- RSA GN R.844/1977 (RSA GG 5549)
- RSA GN R.1445/1981 (RSA GG 7655), after the date of transfer but made explicitly applicable to SWA with the exception of regulations 3, 10, 14 and 15
- RSA GN R.2562/1981 (RSA GG 7937), after the date of transfer but made explicitly applicable to SWA
- RSA GN R.178/1983 (RSA GG 8531), after the date of transfer but made explicitly applicable to SWA
- RSA GN R.291/1984 (RSA GG 9071), after the date of transfer but made explicitly applicable to SWA with the exception of regulation 9 and regulation 10 insofar as it substitutes paragraph 15 of Annexure A of the Regulations
GN 247/1986 (OG 5302)
GN 34/1988 (OG 5503)
AG GN 68/1989 (OG 5799)
AG GN 24/1990 (OG 5914)
GN 50/1993 (GG 636)
GN 270/1996 (GG 1425)
GN 286/1999 (GG 2253). 188

However, according to a Senior Lecturer in Architecture and Spatial Sciences at the Namibia University of Science and Technology (NUST), the 1962 South African regulations are no longer used in practice and are entirely superseded by the post-independence regulations described below. Therefore, the 1962 regulations are not included in the database.

Post-independence regulations pertaining to the manner in which land surveys shall be conducted are contained in GN 58/2002 (GG 2723), which contains no repeals.

**Notices:** Official co-ordinated values to be used by land surveyors are contained in GN 107/2008 (GG 4044).

**Fees:** A tariff of fees is published in GN 249/2004 (GG 3323). (This tariff replaces the tariff contained in GN 287/1999 (GG 2253), as amended, and also the tariff contained in GN 134/2002 (GG 2778).)

A scale of fees is published in GN 286/1999 (GG 2253) as amended by GN 17/2016 (GG 5935) (which substitutes the Schedule).

**Agricultural (Commercial) Land Reform Act 6 of 1995**

**Summary:** This Act (GG 1040) provides for the acquisition of agricultural land by the Namibian government for the purposes of land reform, and for its redistribution to Namibian citizens “who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices”. It also establishes a Land Reform Advisory Commission and a Lands Tribunal.

Part VI (Restriction on Acquisition of Agricultural Land by Foreign Nationals) came into force on the date of publication, 3 March 1995 (section 81(3) of the Act). The remainder of the Act, with the exception of Parts II, III, IV and V, was brought into force on 6 December 1995 by GN 230/1995 (GG 1214). All the remaining sections were brought into force on 17 October 1996 by GN 271/1996 (GG 1426).

**Amendments:** Act 16/2000 (GG 2378) amends sections 1, 4, and 12, and inserts a new Part establishing a Land Acquisition and Development Fund and a new section 37A. It was brought into force on 29 December 2001 by GN 258/2001 (GG 2678).

Act 2/2001 (GG 2523) amends section 1, substitutes section 13B, section 18 and certain headings, inserts section 75A, amends section 76 and inserts sections 76A, 76B and 79A. It was brought into force on 29 December 2001 (GN 257/2001, GG 2678). (Note that the short title of this amending Act is amended

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188 These regulations replace those contained in SA GN 1997 of 23 November 1928. They were amended in South Africa after the date of transfer and prior to Namibian independence by the following enactments, which were not made explicitly applicable to SWA: RSA GN R.1817/1979 (RSA GG 6628), RSA GN R.1020/1985 (RSA GG 9738), RSA GN R.657/1986 (RSA GG 10185), RSA GN R.1577/1987 (RSA GG 10834), RSA GN R.1578/1987 (RSA GG 10834) as corrected by RSA GN R.2018/1987 (RSA GG 10907) and RSA GN R.829/1989 (RSA GG 11843). The South African amendments contained in RSA GN R.1445/1981 (RSA GG 7655) and in RSA GN R.291/1984 (RSA GG 9071) were made applicable to SWA in part.
by Act 13/2002.)

Act 13/2002 (GG 2875) makes substantial amendments to the Act. It was brought into force on 1 March 2003 by GN 26/2003 (GG 2925).

Act 14/2003 (GG 3096) amends sections 1, 14, 19, 20, and 78.

Act 19/2003 (GG 3116) amends sections 18 and 76. It was brought into force on 1 April 2004 by GN 56/2004 (GG 3181).


Act 1/2014 (GG 5428) amends sections 1, 17, 20 and 62, and substitutes section 9.

The Abolition of Payment by Cheque Act 16 of 2022 (GG 7995), which will be brought into force on a date set by the Minister of Finance, amends section 13C.

Regulations: Several sets of regulations have been issued under the Act.

Regulations relating to the acquisition of land by foreign nationals are contained in GN 257/1996 (GG 1411).

General regulations are contained in GN 272/1996 (GG 1426), as amended by GN 243/2001 (GG 2663) (Form 1) and GN 181/2005 (GG 3555) (Form 1). They are also apparently amended by GN 120/2014 (GG 5530) (see the note above).

Regulations on Procedure to Sublease Portion of Farming Unit are contained in GN 241/2013 (GG 5279).

Regulations relating to the exemption of certain agricultural land from section 17 of the Act are contained in GN 233/2014 (GG 5613).

Regulations on criteria to be used for expropriation of agricultural land are contained in GN 209/2016 (GG 6115).

Land Valuation and Taxation Regulations are contained in GN 285/2018 (GG 6755). These Land Valuation and Taxation Regulations repeal and replace GN 120/2007 (GG 3870), as amended by GN 210/2011 (GG 4833) and GN 185/2015 (GG 5809), which in turn replaced the initial regulations on this topic contained in GN 259/2001 (GG 2678) as amended by GN 128/2004 (GG 3214).
**Notices:** Bodies and associations are designated to appoint members to the Land Reform Commission in GN 98/1995 (GG 1090).

A *pro forma* lease agreement for farming units in terms of section 37 of the Act is contained in GN 50/1999 (GG 2075) which is withdrawn by GN 179/2009 (GG 4337).

Certain land is excluded from the definition of “agricultural land” by GN 248/2009 (GG 4403), GN 161/2012 (GG 4978), GN 228/2013 (GG 5264) and GN 123/2016 (GG 6037).

Certain agricultural land is excluded from the land tax imposed in terms of section 76 of the Act by GN 68/2015 (GG 5728).

Documents which must accompany an offer to sell agricultural land to the State are prescribed in GN 227/2016 (GG 6125).

Associations or bodies involved in agricultural affairs are designated in terms of section 4(1)(e) of the Act in GN 234/2016 (GG 6135).

Farming units offered for allotment are periodically announced in the *Government Gazette* but have not been listed here. Rates of land tax have also been omitted.

Notices concerning the rates of land tax payable by owners of agricultural land, specific valuations, valuation rolls and the sittings of specific valuation courts have not been recorded here.

**Cases:**

*Müller v Schweiger* 2005 NR 98 (HC) (summary of key provisions of Act; contract contravening section 58(1)(b) void *ab initio*); *Schweiger v Müller* 2013 (1) NR 87 (SC) (finding of illegality of contract confirmed on appeal)

*Schacht v Schweiger & Another* 2005 NR 130 (HC) (*obiter* discussion of section 58(1))

*Bahlens v Nederlof & Another* 2006 (2) NR 416 (HC) (sections 1, 58 and 59)

*Kessl v Ministry of Lands Resettlement & Others, and Two Similar Cases* 2008 (1) NR 167 (HC) *(obiter* discussion of Act’s requirements for expropriation and constitutionality of expropriation procedure; includes guidelines on correct procedure for expropriation under the Act) discussed in Cornelia Glintz, “The High Court of Namibia: Günther Kessl v Ministry of Lands and Resettlement and 2 others. case no. 27/2006 and 266/2006 - A test case for the Namibian land reform programme”, 42 (2) Verfassung und Recht in Übersee 263 (2009), available [here](#)

*Marot & Others v Cotterell* 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property by virtue of their membership but rather by agreement, and is thus void *ab initio* because of non-compliance with section 58(1)(b)); confirmed in *Marot & Others v Cotterell* 2014 (2) NR 340 (SC) (which also notes that a foreign national may not occupy or possess agricultural land for the prohibited periods without ministerial consent in terms of section 58(1)(b), no matter how the right of occupation or possession was acquired; section 58 is not contrary to art 16 of the Namibian Constitution; an indefinite period of time violates the specified time periods in section 58(1)(b)(ii))

*Strauss & Another v Laubuscagne* 2012 (2) 460 (SC) (meaning of “alienate” in section 1; contractual agreement in *fraudem legis* because simulated to circumvent Act)

*Meroro v Minister of Lands, Resettlement and Rehabilitation & Others* 2015 (2) NR 526 (SC) (section 53; assignment under section 53(1) must take place in terms of the applicable law of succession); see also *Shalukeni & Others v Damaseb & Others* 2021 (1) NR 50 (SC)

*Gunchab Farming CC & Another v Barnard & Another* 2015 (2) NR 587 (HC) (section 17 before and after amendment by Act 13/2002)

*Locke v Van der Merwe & Others* 2016 (1) NR 1 (SC) (effect of section 17(2) as amended by Act 13/2002; meaning of “until” in that provision)
Von Wiedts v Minister of Lands and Resettlement & Another 2016 (2) NR 500 (HC) (constitutionality of Act 13/2002 cannot be challenged as a collateral issue in the course of enforcement procedures)

Buchholz NO & Another v Ewert & Others 2016 (2) NR 511 (HC) (interpretation and application of section 17(1))

Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 58(1)(b); effect of section 62(1)(a) prior to its repeal; appeal dismissed in Wyss & Another NO v Hungama & Others 2018 (2) NR 596 (SC) without discussion of this Act

Kambazembi Guest Farm CC t/a Waterberg Wilderness v The Minister of Land Reform and 5 Others (A197/2015) [2016] NAHCMD 366 (17 November 2016), upheld on appeal in Kambazembi Guest Farm CC t/a Waterberg Wilderness v Minister of Lands and Resettlement & Others 2018 (3) NR 800 (SC) (unsuccessful constitutional challenge to sections 76-80 on land tax, the Land Valuation and Taxation Regulations published in GN 120/2007 (GG 2678) and related administrative actions; note that the regulations in question have since been repealed and replaced)

Du Toit v Dreyer & Others 2017 (1) NR 190 (SC) (in a case concerning costs, the Court discusses an illegal contract aimed at circumventing the Act and the consequences of that contract’s illegality)

Denker v Ameib Rhino Sanctuary (Pty) Ltd 2017 (4) NR 1173 (SC) (sections 58(1)(a) and 60)

Tjirovi v Minister for Lands and Resettlement & Others 2018 (2) NR 358 (HC) (sections 41(8A) and 41(3))

See Brink NO & Another v Erongo All Sure Insurance CC & Others 2018 (3) NR 641 (SC) (procedural matter; underlying case concerns alleged simulated transaction aimed at circumventing the provisions of this Act; no court ruling on underlying issue as yet; see another procedural ruling in the case in Brink NO v Erongo All Sure Insurance CC (I 3094/2015) [2020] NAHCMD 568 (24 November 2020))

Damaseb v Minister of Land Reform & Others 2019 (3) NR 775 (HC) (section 53; 99-year lease issued under this Act did not form part of the joint estate as it was akin to a usufruct), overturned on appeal in Shalukeni & Others v Damaseb & Others 2021 (1) NR 50 (SC) (section 53; unlike a usufruct, “a lease, as a general rule, is not terminated by the death of a party thereto, but the rights and obligations arising from the lease pass to the estate of the party who has died”; interest in the lease must thus be determined in accordance with the laws of succession, taking into account the deceased’s marriage in community of property; see paras 17-18 for summary of position upon death of lessee)

Tjihero & Another v Kauri & Another 2018 (3) NR 879 (SC) (agreement at issue fails to comply with section 17, and law provides no basis for any court to condone non-compliance with this section)

Traube Farming CC & Another v Presiding Officer of the Valuation Court & Others 2020 (1) NR 174 (HC) (challenge to rulings of Valuation Court established in terms of Land Valuation and Taxation Regulations).

Commentary:


Dr Christina Treeger, Legal analysis of farmland expropriation in Namibia, Namibia Institute for Democracy, 2004, available here

Legal Assistance Centre, Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process, 2005, available here
Willem Odendaal, *Confiscation or Compensation?: An analysis of the Namibian Commercial Agricultural Land Reform Process*, Legal Assistance Centre, 2005, available here


Cornelia Glintz, “The High Court of Namibia: Günther Kessl v Ministry of Lands and Resettlement and 2 others. case no. 27/2006 and 266/2006 - A test case for the Namibian land reform programme”, 42 (2) *Verfassung und Recht in Übersee* 263 (2009), available here


**National Housing Enterprise Act 5 of 1993**

**Summary:** This Act (GG 687) provides for the continued existence of a corporation to provide for the housing needs of the inhabitants of Namibia, changes its name from the “National Building and Investment Corporation” to the “National Housing Enterprise” and sets forth its powers, duties and functions.

**Repeals:** The Act repeals the National Building and Investment Corporation of South West Africa Proclamation, AG 60 of 1978 (OG 3824).

**Amendments:** Act 32/2000 (GG 2463), which was brought into force on 5 March 2001 by GN 37/2001 (GG 2492), amends sections 1, 4, 5, 6, 8, 9, 10, 14, 15, 18, 20, 22, 23 and 26.

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 sections 5, 6, 8 and 10. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

**Regulations:** Regulations are contained in GN 62/2001 (GG 2513).

**Application of law:** The Financial Intelligence Act 13 of 2012 (GG 5096) places certain duties on the National Housing Enterprise.

**National Housing Development Act 28 of 2000**

**Summary:** This Act (GG 2459) establishes a National Housing Advisory Committee to advise on housing programmes, and provides for Housing Revolving Funds to be established by regional and local authorities to be used for low-cost housing. It further provides for the establishment of Decentralised Build Together Committees for each region, to deal with applications for assistance from the Housing Revolving Funds. The Act was brought into force on 5 March 2001 by GN 36/2001 (GG 2492).

**Repeals:** The Act repeals the Native Housing Levy and Contributions Ordinance 22 of 1961 and the Housing Ordinance of the Administration of Coloureds 4 of 1983 (OG 4914).

**Savings:** Section 37(2) contains the following savings clause:

Any notice, regulation, authorisation, order, approval or certificate issued, made or granted, or any other...
thing done in terms of a provision of any law repealed by subsection (1) shall be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act, except in so far as may be otherwise required by this Act.

**Regulations:** Pre-independence regulations have not yet been fully researched. However, since the repealed laws were all race-based, any surviving regulations made pursuant to them could have no place in independent Namibia.

Regulations made in terms of the current law were initially contained in GN 44/2001 (GG 2492), but these were revoked by GN 57/2001 (GG 2507).

**Appointments:** The National Housing Advisory Committee is announced in GN 188/2001 (GG 2615). Committee members are appointed in GN 155/2003 (GG 3019), GN 258/2004 (GG 3334), GN 110/2006 (GG 3672), GN 34/2008 (GG 3991), GN 238/2013 (GG 5274) and GN 224/2018 (GG 6710). Alternate committee members are appointed in GN 24/2009 (GG 4216) and GN 258/2019 (GG 6983).

### Communal Land Reform Act 5 of 2002

**Summary:** This Act (GG 2787) provides for the allocation of rights in respect of communal land. It establishes Communal Land Boards and provides for the rights and powers of traditional leaders and Communal Land Boards in relation to communal land. The Act was brought into force on 1 March 2003 by GN 33/2003 (GG 2926). This is also the relevant date in respect of section 18 (on fencing), and section 28(2) and (3) (the date which begins the three-year period for application for recognition of existing customary land rights and fences). See GN 34-36/2003 (GG 2926).


**Amendments:** Act 11/2005 (GG 3550) amends section 1 and Schedule 1 of the Act. Its effect is to add and amend certain definitions, to incorporate certain portions of unalienated State land into existing communal land areas and to replace an incorrect reference in the description of the Damaraland Communal Land Area.

Proc. 9/2013 (GG 5150) and Proc. 27/2013 (GG 5264) amend Schedule 1 of the Act.

Act 13/2013 (GG 5385), which was brought into force on 1 December 2016 by GN 286/2016 (GG 6188), amends sections 1, 23, 28, 31, 44 and inserts section 17B and Part 3.

Note that GN 286/2016 is correctly numbered in the Contents section of GG 6188, but the actual Government Notice is misnumbered as GN 287/2016.

**Regulations:** There is no savings clause for regulations made in terms of the repealed laws.

General regulations are contained in GN 37/2003 (GG 2926), as amended by GN 120/2003 (GG 2994), GN 15/2014 (GG 5412), GN 100/2015 (GG 5760) and GN 159/2016 (GG 6069).\(^{191}\)

Note that *Joseph & Others v Joseph* 2020 (3) NR 689 (SC) declares regulation 35 to be *ultra vires* the provisions of the Act and thus invalid and of no force and effect.

Regulations relating to occupational land rights are contained in GN 278/2016 (GG 6177).

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\(^{191}\) These regulations repeal those contained in RSA Proclamation R.188 of 11 July 1969 (RSA GG 2486) – despite the absence of a savings clause.

LAND AND HOUSING-14

1 February 2023 update
Note that certain statements in this opinion are, with respect, confusing. The opinion notes at para 32 that “in terms of s 25(1) of the Black Administration Act, No 38 of 1927, read with s 21(1) and 48(1) of the Black Trust and Land Act, No 18 of 1936 and in terms of Government Notice R.188 of 1969, the then State President of South Africa issued certain Black Areas Land Regulations which also applied to the then South West Africa”. The authority for the Black Areas Land Regulations is misstated here.

The opinion states correctly at para 34 that pre-independence laws, survived the independence of Namibia, and notes that Article 140(4) of the Namibian Constitution provides that “any reference in such laws to the President, the Government, a Minister or other official or institution in the Republic of South Africa shall be deemed to be a reference to the President of Namibia, or to a corresponding Minister, official or institution of the Republic of Namibia…”

However, the footnote to this paragraph incorrectly implies that the Black Areas Land Regulations were still in force at the date of the judgement, by stating: “The corresponding officer to the “Bantu Affairs Commissioner’ in [regulation] 6(1) is now the Permanent Secretary in the Ministry.”

The Black Administration Act 38 of 1927 was apparently never applicable to South West Africa; the equivalent law in South West Africa was the Native Administration Proclamation 15 of 1928.

The Black Areas Land Regulations in RSA Proc. R.188 of 1969 (RSA GG 6364) were issued in terms of the Development Trust and Land Act 18 of 1936 and did indeed remain in force after Namibian independence. However, the Development Trust and Land Act 18 of 1936 was repealed in Namibia by the Communal Land Reform Act 5 of 2002 (brought into force on 1 March 2003). There was no savings clause in the Communal Land Reform Act 5 of 2002 for regulations issued under the repealed laws. Thus, the Black Areas Land Regulations ceased to have effect in Namibia in 2003.

Alteration of communal land areas: Proc. 9/2013 (GG 5150) incorporates certain unalienated state land into the existing communal land areas of Damaraland and Namaland. Proc. 27/2013 (GG 5264) incorporates certain unalienated state land into the existing communal land areas of Damaraland.

Designation of areas for leasehold: Areas are designated for leasehold for agricultural purposes as follows:

Caprivi Communal Land Board – GN 126/2007 (GG 3878)

Note that there are two Government Gazettes numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: “This Gazette replaces Government Gazette No. 3878 of 16 July 2007.”


Note that there are two Government Gazettes numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: “This Gazette replaces Government Gazette No. 3878 of 16 July 2007.”

Kavango East Communal Land Board – GN 37/2014 (GG 5433), GN 208/2017 (GG 6384)

Oshangwena Communal Land Board – GN 128/2007 (GG 3878)

Note that there are two Government Gazettes numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: “This Gazette replaces Government Gazette No. 3878 of 16 July 2007.”

Omusati Communal Land Board – GN 209/2017 (GG 6384), GN 210/2017 (GG 6384), GN 211/2017 (GG 6384)

Oshikoto Communal Land Board – GN 156/2011 (GG 4787), which is withdrawn by GN 218/2011 (GG 4834); GN 219/2011 (GG 4834), which is withdrawn by GN 227/2011 (GG 4843); GN 228/2011 (GG 4843).

Recognition of existing land rights: GN 44/2006 (GG 3591) requires all persons issued with a right to occupy communal land (other than a right under customary law) to apply for recognition of that right and the grant of a leasehold, and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date for applying for the recognition
of existing rights was extended to the end of February 2012 by GN 18/2009 (GG 4210) and then to the end of February 2014 by GN 104/2012 (GG 4929).

In terms of section 28 of the Act, GN 45/2006 (GG 3591) similarly requires all persons with existing customary land rights to apply for the recognition and registration of such rights and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date was extended to the end of February 2012 by GN 19/2009 (GG 4210), then to the end of February 2014 by GN 140/2012 (GG 4958) and then extended indefinitely by GN 19/2014 (GG 5416).

GN 19/2014 states: “Under subsection (3) of section 28 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I, further extend the period within which an application may be made for recognition of existing customary land rights in terms of subsection (2) of that section, as notified by Government Notice No. 140 of 1 June 2012, with effect from 1 March 2014 until further notice.”

Establishment of Communal Land Boards: Twelve communal land boards are established by GN 203/2003 (GG 3060), which is replaced by GN 18/2014 (GG 5416) as amended by GN 30/2021 (GG 7470), to take into account the split of the Kavango Region into two new regions (Kavango East and Kavango West) and the renaming of two regions (Caprivi to Zambezi and Karas to //Karas).

Cases:
Shingenge v Hamunyela 2004 NR 1 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns an actio rei vindictio in respect of fencing material used in a fence erected on communal land)
Uvhungu-Vhungu Farm Development CC v Minister of Agriculture, Water and Forestry 2009 (1) NR 89 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns a successful application for mandament van spolie by a party occupying communal land in terms of an agreement with government)
Hikumwah & Others v Nelumbu & Others 2015 (4) NR 955 (HC) (brief discussion of appointment in terms of section 4(1) and removals in terms of section 6(3) at paras 158-162, but issue had become moot and was therefore not decided by court); overturned on appeal in Nelumbu & Others v Hikumwah & Others 2017 (2) NR 433 (SC) without discussion of this issue
Mashahu & Others v Katima Mulilo Town Council & Others 2016 (2) NR 586 (HC) (person claiming customary land right must identify category of right under section 21; impact of establishment of local authority under section 15(2); section 28)
Kashela v Katima Mulilo Town Council & Others 2018 (4) NR 1160 (SC) (rights of occupier of communal land when tenure transferred by Government to a local authority; effect of Art 16 and Schedule 5(3) of the Namibian Constitution on communal land rights)
Naango & Others v Kalekela & Others 2017 (1) NR 66 (HC) (sections 17 and 18(a); illegal fencing of portion of communal area)
MM v VT 2017 (3) NR 743 (HC) (customary land right under section 28 is a personal right akin to a usufruct that endures for the natural life of the right-holder; no provision for joint allocation of such rights, which do not form part of joint matrimonial estate)
Chairman Ohangwena Communal Land Board NO v Wapulile 2017 (4) NR 1017 (SC) (fencing: operation of section 18 prohibiting unauthorised fences is suspended only if application for retention of pre-existing fences has been made under section 28)
Ndevahoma v Shimwooshili & Others 2019 (2) NR 394 (HC) (consideration of the provisions of the Act which relate to leasehold rights; differentiation of leasehold rights and customary land rights; application of section 35; leaseholder has no right to exclusive occupation due to the vesting of communal land in the State under section 17, and no right to institute eviction proceedings against another occupier because he is not the owner and because of the provisions on eviction in section 43; note that the case mistakenly refers to the relevant Act throughout as the “Agricultural Communal Land Reform Act 5 of 2002”); but see differing interpretation of section 43 in Joseph & Others v Joseph 2020 (3) NR 689 (SC), discussed below
Jonas v Ongwediva Town Council 2020 (1) NR 50 (SC) (section 16(1)(c) of Act inapplicable where land withdrawn from communal land area pursuant to section 4(1)(b) of Local Authorities Act 23 of 1992; discussed in application for condonation)
Joseph & Others v Joseph 2020 (3) NR 689 (SC) (section 43 does not give a chief, traditional authority or land board the sole right to evict persons from communal land; it does not eliminate the common-law vindictory action of a possessor because it does not include the word “only”; regulation 35 (contained in Government Notice 37 of 2003 as amended) is ultra vires the provisions of the Act and thus invalid and of no force and effect; section 40 of the Act is irrelevant to claims for improvements by persons who occupied communal land against the recognised holder of communal land rights over that land, with this issue falling under the common law).

Mbuto v Scholtz & Others 2022 (1) NR 58 (HC) (possession under common law gives applicant standing to bring eviction action involving communal land even if there was non-compliance with legislative framework)

Anabeb Conservancy Committee v Muharuka & Others 2022 (2) NR 492 (HC) (section 24(1))

Salambala Conservancy v Mukata & Others 2022 (3) NR 769 (HC) (section 43(2); applies holding in Joseph case discussed above)

Ministry of Agriculture, Water and Forestry & Another v Srve Investments (Pty) Ltd & Others 2022 (4) NR 1086 (SC) (section 17B not applicable to contract for management of agricultural project in communal area).

Commentary:


More Security for All – Registration of Communal Land in Namibia, DVD, 2008 (available from GIZ in English and Afrikaans)


Ministry of Lands and Resettlement, More Security for All, 2007 (a guide to communal land registration with an accompanying film)

Willem Odendaal, Elite land grabbing in Namibian communal areas and its impact on subsistence farmers’ livelihoods, Windhoek: Legal Assistance Centre, 2011, available here


Office of the Attorney-General, “Frequently Asked Legal Questions”, Volume 1, April 2015, available here (rules and procedures relating to illegal fencing discussed in section 4.2)

Office of the Attorney-General, “Frequently Asked Legal Questions”, Volume 2, May 2016, available here (section 5.1 discusses “Customary Land Rights Vis-a-Vis the Rights of a Local Authority When an Area is Proclaimed as a Town”)

Office of the Attorney-General, “Frequently Asked Legal Questions”, Volume 3, April 2017, available here (section 4.1 discusses the legal nature of a “right of leasehold” under the Act)


Manfred O Hinz, “Conservancies and communal land rights”, Namibia Law Journal, Volume 10, Issue 1, 2018

Sectional Titles Act 2 of 2009

**Summary:** This Act (GG 4259) provides for the division of buildings into sections and common property, and the acquisition of separate ownership in sections coupled with joint ownership in common property. It was brought into force on 15 December 2014 by GN 252/2014 (GG 5633).

**Repeals:** The Act repeals the Sectional Titles Act 66 of 1971.

**Regulations:** Regulations made under the repealed Act initially survived pursuant to section 61(11) of this Act, but GN 223/2014 (GG 5604) repealed all the regulations made under the previous Act and their amendments (if any).

Regulations issued under this Act are contained in GN 223/2014 (GG 5604).

**Rules:** Rules for sectional titles are contained in GN 224/2014 (GG 5604).

**Cases:** The following case deals with the Sectional Titles Act 66 of 1971 – Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees under section 40 of Act not in violation of Art 21(1)(j) or Art 18 of Constitution).

Flexible Land Tenure Act 4 of 2012

**Summary:** This Act (GG 4963) creates new forms of land title designed to be simpler and cheaper to administer than existing forms of land title, and creates mechanisms for the registration of these new forms of title, which include “starter title” and “land hold title”. The Act was brought into force on 31 May 2018 by GN 100/2018 (GG 6607).

**Regulations:** Flexible Land Tenure Regulations are contained in GN 101/2018 (GG 6607).

**Notices:** GN 102/2018 (GG 6607) establishes a Land Rights Office in Windhoek, to serve the whole of Namibia, pursuant to section 4 of the Act.

**Commentary:**
- A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia, Legal Assistance Centre, 2005, available here
- Dr Kennedy Gastorn, “Effectiveness of flexible land tenure in unplanned urban areas in the SADC region: a case study of Tanzania and experiences from Zambia and Namibia”, *SADC Law Journal* 2013 (1) (available from Juta)


Urban and Regional Planning Act 5 of 2018

Summary: This Act (GG 6631) consolidates the laws relating to urban and regional planning, and provides a legal framework for spatial planning. It establishes the Urban and Regional Planning Board, which replaces the Namibia Planning Advisory Board (NAMPAB) and the Townships Board. It also covers urban zoning and subdivision, as well as structure plans and the establishment of new townships. It was brought into force on 3 September 2020 by GN 222/2020 (GG 7327).

Repeals: The Act repeals the Town Planning Ordinance 18 of 1954, the Townships and Division of Land Ordinance 11 of 1963 and the Removal of Restrictions Ordinance 15 of 1975

The Act neglects to repeal the Townships and Division of Land Amendment Act 21 of 1998 (GG 1948) or Government Notice 63 of 1999 (GG 2083), both of which amend the Townships and Division of Land Ordinance 11 of 1963, but these amendments would have no ongoing effect on their own.

Savings: The Act contains a savings clause in section 132(2):

Unless otherwise provided in this Act, any notice, regulation, rule or authorisation, made or granted, or an appointment made or any other act done or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by section 132, must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act.

Regulations: Regulations are issued in terms of this Act in GN 223/2020 (GG 7327). These regulations repeal the following regulations:

- Town Planning Regulations issued under the Town Planning Ordinance 18 of 1954 in GN 102/1974 (GG 3400);
- Regulations relating to fees charged under the Town Planning Ordinance 18 of 1954, in GN 11/2008 (GG 3983);
- Townships Board Regulations issued under the Townships and Division of Land Ordinance 11 of 1963 in GN 165/1973 (GG 3352);
- Regulations relating to fees charged under the Township and Division of Land Ordinance 11 of 1963, in GN 10/2008 (GG 3983). 192

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192 These fees replace the ones contained in GN 88 of 2  May 2007.
The regulations issued under the current Act thus appear to be the only ones now in force. (Note that the Removal of Restrictions Ordinance 15 of 1975 made no provision for regulations.)

**Notices:** Section 132(2) of the Act provides that, unless otherwise provided in the Act, any notice, rule, authorisation, appointment or other act done under any of the repealed laws must be regarded as having been done in terms of the corresponding provision of this Act.

Notices relating to specific townships and zoning schemes have not been recorded. Notices regarding specific requests for rezoning, subdivision or consent use are also not recorded here.

**Appointments:** Members of the Urban and Regional Planning Board are announced in GN 196/2021 (GG 7636).

**Cases:** The following case concerns the Swakopmund Town Planning Amendment Scheme No 12 prepared in terms of the Town Planning Ordinance 18 of 1954, which remains in place in terms of section 133(1) of this Act –

*Village Hotel (Pty) Ltd v Chairperson of the Council for the Municipality of Swakopmund & Others* 2015 (3) NR 643 (SC).

The following cases concern the Town Planning Ordinance 18 of 1954 –

*Grobbelaar & Another v Walvis Bay Municipality & Another* 1997 NR 259 (HC)
*Municipal Council of Windhoek v Claudia Properties CC & Another* 2015 (1) NR 248 (HC)
*Auas Valley Residents Association & Others v Minister of Environment and Tourism & Others* 2022 (3) NR 758 (SC) (approved town planning scheme assumes force of law).

The following cases concern the Windhoek Town Planning Scheme prepared in terms of the Town Planning Ordinance 18 of 1954, and which remains in place in terms of section 133(1) of the Act –

*Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others* 1996 NR 213 (SC)
*Roland & Others v Chairperson of the Council of the Municipality of Windhoek & Others* 2013 (1) NR 12 (HC) (to avoid anomalies, court reading proviso to regulation 29B(1)(c) of Windhoek Building Regulations, which defines “ground storey” and so assists application of clause 21(3) of Windhoek Town Planning Scheme, to read “any adjoining pavement” instead of “the adjoining pavement”); upheld on appeal on different reasoning in *Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others* 2014 (1) NR 247 (SC) (clause 21 of Windhoek Town Planning Scheme; clause 21(3) required council to approve building plans of more than two storeys in a residential area after considering stipulated criteria, which did not take place; High Court erred in relying on Regulation 29B(1)(c) of Windhoek Building Regulations to govern meaning of clause 21(3); Reg 29B(6) of Windhoek Building Regulations not relevant)
*Municipal Council of Windhoek v Claudia Properties CC & Another* 2015 (1) NR 248 (HC)
*Gawaseb v Council of the Municipality of Windhoek* 2019 (2) NR 409 (HC) (concerning Windhoek Building Regulations issued in GN 57/1969 (OG 2992), as amended; building permit issued under regulation 10)
*Imalwa v Gawaseb* 2021 (1) NR 183 (SC) (concerning Windhoek Town Planning Scheme, (clause 20) and Windhoek Building Regulations issued in GN 57/1969 (OG 2992), as amended (regulations 9 and 10).

The following case concerns the Townships and Division of Land Ordinance 11 of 1963 –

*Erogo Regional Council v Wlotzkasbaken Home Owners Association* 2009 (1) NR 252 (SC) (discussion of township development process applied to Wlotzkasbaken)
*Auas Valley Residents Association & Others v Minister of Environment and Tourism & Others* 2022 (3) NR 758 (SC) (pre-eminence of approved town planning scheme demonstrated by sections 6(3) and 29(2)).
Alienation of State Property

A 2015 opinion of the Attorney-General outlines the authority for the procedure for alienation of state property (emphasis added):

4.1 Alienation of Government Property

4.1.1 Section 18 of the State Finance Act, 1991 (Act No. 31 of 1991), as amended, states that regardless of what is contained in any other law, property of the State, movable and immovable, shall be alienated, let, exchanged, donated or disposed of in any other way, only with the authorisation of the Treasury.

4.1.2 Section 23(1) of State Finance Act, 1991, determines that authorisation shall be granted by Treasury in writing, the authorisation must be acquired beforehand, the authorisation may be granted in respect of any specific case or by way of general direction, the authorisation may be granted on such conditions as Treasury may deem fit and the authorisation may be varied or withdrawn by Treasury at any time.

4.1.3 The procedures for the different forms of alienation of government property are set out in the Treasury Instructions, issued in terms of the section 24 of the State Finance Act, 1991.

4.1.4 Upon granting approval for the alienation of property, the Treasury shall, in terms of section 23(2) of the State Finance Act, 1991, inform the Permanent Secretary of the Ministry of Finance and the Auditor-General of all cases in respect of which it has, whether in terms of the Act or any other law, granted any authorization or approval or has issued, made or laid down any instruction, determination or condition.

4.1.5 Furthermore the Special General Power of Attorney No. 15 of 1983 granted by the then Administrator-General of South West Africa dated 04 May 1983, conferred upon the Secretary, Director, Deputy-Director, Assistant Director, Control Administrative Officer and Administrative Officer of the then Department of Civic Affairs and Manpower, with the powers to contract on behalf of Government in respect of immovable property.

Office of the Attorney-General, “Frequently Asked Legal Questions”, Volume 1, April 2015, available [here](#).

COMMISSIONS

COMMENTARY


Legal Assistance Centre, Our Land they Took: San Land Rights under Threat in Namibia, 2006, available [here](#)
Legal Assistance Centre, *A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia*, 2005, available [here](#)


Prof Nico Horn, “Eddie Mabo and Namibia: Land Reform and Pre-Colonial Land Rights”, Namibia Law Journal, Volume 10, Issue 1, 2018


Tapiwa V Warikandwa, David Kavishe and Ndageha V Asheela, “Fighting the scourge of an indolent land supply, lagging housing delivery process and exorbitant rental costs in the industrialising Namibia: A law and economics perspective”, Namibia Law Journal, Volume 10, Issue 1, 2018

Clever Mapure, “Land Reform needing more reform(s): Issues in Namibian law reform processes”, Namibia Law Journal, Volume 10, Issue 1, 2018


Tapiwa V Warikandwa, “Demolishing houses to address the ‘illegal’ occupation of land in Namibia: Reviewing the Katima Mulilo housing demolition saga”, Namibia Law Journal, Volume 10, Issue 1, 2018

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

Bernadine Bertolini, “The Rehoboth Baster land dispute – Attempt by the Rehoboth Baster Community to regain ownership of their ancestral land”, Namibia Law Journal, Volume 10, Issue 1, 2018

Christian Harris, “Indigenous Peoples Right to Land: Revisiting the envisaged Epupa/Baynes Hydroelectric Dam in Namibia’s Kunene Region”, Namibia Law Journal, Volume 10, Issue 1, 2018

Phillip M Balhao, “Review of judicial oversight in the High Court of Namibia regarding attachment and
judicial sale of immoveable property”, *Namibia Law Journal*, Volume 10, Issue 1, 2018

See also **DEEDS**.

See also *Soil Conservation Act 76 of 1969 and Mountain Catchment Areas Act 63 of 1970 (ENVIRONMENT)*.

See also **LANDLORD AND TENANT**.

See also *Formalities in Respect of Contracts of Sale of Land Act 71 of 1969 and Sale of Land on Instalments Act 72 of 1971 (PURCHASE AND SALE)*.

See also Transfer Duty Act 14 of 1993 (**REVENUE**).