

LAND

Some of these laws, while still technically in force, are primarily of historical interest.

Crown Lands (Trespass) Proclamation 7 of 1919.

Summary: This Proclamation covers trespassing, removal of vegetation and the presence of animals on “crown lands in the protectorate”.

Amendments: This Proclamation is amended by Proc. 4/1937, Proc. 31/1938 and Proc. 18/1948.

Crown Land Disposal Proclamation 13 of 1920.

Summary: This Proclamation made the Crown Land Disposal Ordinance, 1903, of the Transvaal applicable to South West Africa, and thus authorised the Administrator of South West Africa to set aside Crown Lands as reserves “for the use and benefit of aboriginal natives, coloured persons and Asiatics”, as well as for various public purposes.

Amendments: The Proclamation is amended by Proc. 54/1920, SA Proc. 200 of 1950, Ord. 7/1951, Ord. 36/1958 and Ord. 17/1965. It was repealed in respect of Walvis Bay by RSA Proclamation 149 of 20 August 1982.

Land Titles Proclamation 2 of 1921.

Summary: This Proclamation makes provision for the issue of registered title to certain lands in the territory.

Amendments: This Proclamation is amended by Proc. 14/1922, Proc. 1/1937, Proc. 6/1942, Proc. 3/1949 and the RSA *Registration of Deeds in Rehoboth Act 93 of 1976*. It was applied to the Rehoboth Gebiet by Proc. 12/1930.

Fencing Proclamation 57 of 1921.

Summary: This Proclamation relates to the erection and maintenance of dividing fences between adjoining properties.

Amendments: This Proclamation is amended by Proc. 13/1923, Proc. 18/1925, Proc. 28/1925, Ord. 4/1928, Proc. 22/1935, Proc. 14/1950, Proc. 48/1950, Ord. 44/1952, Ord. 21/1955, Ord. 6/1958, Ord. 14/1958, Ord. 34/1959, Ord. 23/1963 and Ord. 26/1965.

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

Small Settlements Commonages Subdivision Proclamation 13 of 1926.

Summary: This Proclamation provides for the subdivision of commonages assigned to “Small Settlements” established by the German administration.

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

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

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

Summary: This Proclamation amends the law relating to the execution of judgements in respect of immovable property, in order to provide assistance to mortgage debtors “in view of the prevailing financial depression”. There is, however, no time limit on its application.

Town Planning Ordinance 18 of 1954.

Summary: This Ordinance makes provision for town planning schemes. It was brought into operation by Proc. 66/1960.

Amendments: The Ordinance is amended by Ord. 13/1968, Ord. 13/1970, Ord. 11/1973, Ord. 23/1973, Ord. 10/1977 and Ord. 5/1979. It is also substantially amended by Act 27/1993, which makes it consistent with an independent Namibia. It is further amended by Act 15/2000 (sections 2, 4, 47).

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995.

Regulations: Regulations pertaining to fees are contained in GN 11/2008 (GG 3983).

Cases: *Grobbelaar & Another v Walvis Bay Municipality & Another* 1997 NR 259 (HC).

The following case concerns the Windhoek Town Planning Scheme prepared in terms of the Ordinance-

Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others 1996 NR 213 (SC).

Trespass Ordinance 3 of 1962.

Summary: This Ordinance 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.

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

Townships and Division of Land Ordinance 11 of 1963.

Summary: This ordinance relates to the establishment of townships.

Amendments: The Ordinance is amended by Ord. 36/1967, Ord. 7/1969, Ord. 2/1970, Ord. 10/1973, Ord. 17/1975, Ord. 9/1977, Act 3/1985, Act 28/1992 (which is brought into operation by GN 142/1992, GG 511), Act 21/1998 and Act 11/2000.

The schedule to the Ordinance is amended by GN 63/1999 (GG 2083).

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995.

Regulations: Township Board Regulations are contained in GN 165/1973. Regulations relating to fees are contained in GN 10/2008 (GG 3983). Notices relating to specific townships have not been recorded.

Cases: *Erongo Regional Council v Wlotzkasbaken Home Owners Association* 2009 (1) NR 252 (SC) (discussion of township development process applied to Wlotzkasbaken).

Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965, as amended in South Africa prior to Namibian independence.

Summary: This Act concerns restrictions imposed on land by wills and similar instruments.

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.”

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

Summary: This Act 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 were made expressly applicable to SWA.

Amendments: The RSA *Subdivision of Agricultural Land Amendment Act 55 of 1972* and the RSA *Subdivision of Agricultural Land Amendment Act 19 of 1974* were repealed in respect of Rehoboth by Act 5/1981 (Rehoboth).

Cases: *Theron & Another v Tegethoff & Others* 2001 NR 203 (HC).

Removal of Restrictions Ordinance 15 of 1975.

Summary: This Ordinance provides for the alteration, suspension or removal of restrictions on the usages of land.

Expropriation Act 63 of 1975, as amended in South Africa to February 1978.

Summary: This Act deals with the expropriation of land. It commenced on 1 January 1977, in terms of RSA Proc. 273 of 1976. The Act applied to SWA only in respect of expropriations by the Railway Administration.

Applicability to SWA: Section 4(4) of the Act states: “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”. Section 4 makes 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).

Applicability to SWA: The Act was originally administered by the Minister of Agriculture. The administration of this Act was apparently transferred to SWA by the Executive Powers (Community Development) Transfer Proclamation (AG 8/1978), dated 10 February 1978.

Amendments: The National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999) repeals section 4 of the Act -- which includes the section that made the Act applicable to SWA.

Section 139 of the Minerals (Mining and Prospecting) Act 33 of 1992 repeals sections 74 and 75 of the Act, although it is not clear that these sections were ever applicable to Namibia.

Expropriation Ordinance 13 of 1978.

Summary: This Ordinance deals with the expropriation of land for public purposes. It replaces the Expropriation Ordinance 32 of 1967, but makes no reference to the *Expropriation Act 63 of 1975*.

Appointments: Proc. 8/2005 (GG 3456) assigns the administration of this Ordinance

to the minister responsible for works, transport and communication.

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

It is affected by the Powers of the SWA Water and Electric Corporation Act 14 of 1980, 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.

The application of the Ordinance is also affected by section 13 of the Airports Company Act 25 of 1998 (which came into force on 5 February, GN 19/1999, GG 2045).

Promotion of the Density of Population in Designated Areas Act 18 of 1979.

Summary: This Act provides for the designation of certain areas for the promotion of population density and farming activities. It was brought into operation on 1 January 1980 by AG 38/1979.

Amendments: The Act is amended by AG 39/1979 and AG 30/1985.

Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993.

Summary: This Act provides for the establishment of a Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians, and sets forth its powers and functions. It also provides for the registration of professional land surveyors, apprentice land surveyors, technical surveyors, survey technicians and apprentice survey technicians, and regulates their qualifications and their professional conduct and practice. The Act came into force on 1 June 1994 (GN 85/1994, GG 863).

Amendments: Act 16/1995 inserts section 14A and amends section 15. Its primary purpose is to provide for the authorisation of professional land surveyors, technical surveyors and survey technicians in the public service.

Regulations: Regulations are contained in GN 216/1998 (GG 1945).

The Institute of Land Surveyors is recognised as an approved society in GN 264/1998 (GG 1982).

A tariff of fees is published in GN 287/1999 (GG 2253), as amended by GN 66/2001 (GG 2512) and GN 190/2001 (GG 2615). This is replaced by GN 134/2002 (GG 2778), replaced in turn by GN 249/2004 (GG 3323), and then by GN 231/2010 (GG 4128).

Appointments: The Council is announced in GN 62/1996 (GG 1273), which is

repeated in GN 74/1996 (GG 1284). Members of the Council are also announced in GN 36/1999 (GG 2054) and GN 68/2002 (GG 2734).

Land Survey Act 33 of 1993.

Summary: This Act regulates the survey of land. It replaces the *Land Survey Act 9 of 1927* and came into force on 1 June 1994 (GN 84/1994, GG 863).

Regulations: Regulations made under the previous legislation survive in terms of section 46(3). Such regulations are contained in RSA GN R.1814 of 1962. Not all the amendments to these regulations are listed here. Just prior to independence, the regulations were amended by AG GN 68/1989 and AG GN 24/1990.

Since independence, the regulations have been amended by GN 50/1993 (GG 636) and GN 270/1996 (GG 1425). New regulations pertaining to the manner in which land surveys shall be conducted are contained in GN 58/2002 (GG 2723). Official co-ordinated values to be used by land surveyors are contained in GN 107/2008 (GG 4044).

A scale of fees is published in GN 286/1999 (GG 2253), as amended by GN 134/2002 (GG 2778). Both of these are replaced by GN 249/2004 (GG 3323).

Agricultural (Commercial) Land Reform Act 6 of 1995.

Summary: This Act 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 3 March 1995. The remainder of the Act, with the exception of Parts II, III, IV and V, came into force on 6 December 1995 (GN 230/1995, GG 1214). These remaining sections came into force on 17 October 1996 (GN 271/1996, GG 1426).

Amendments: Act 16/2000 amends sections 1, 4, and 12, and inserts a new Part establishing a Land Acquisition and Development Fund and a new section 37A.

Act 2/2001 amends section 1, substitutes section 13B, 18 and certain headings, inserts section 75A, amends section 76 and inserts sections 76A, 76B and 79A. Both of these amending acts came into force on 29 December 2001 (GN 257-258/2001, GG 2678).

Act 13/2002 makes substantial amendments to the Act. It came into force on 1 March 2003 (GN 26/2003, GG 2925).

Act 14/2003 amends sections 1, 14, 19, 20, and 78.

Act 19/2003 amends sections 18 and 76. It came into operation on 1 April 2004 (GN 56/2004, GG 3181).

Regulations: Bodies and associations are designated to appoint members to the Land Reform Commission in GN 98/1995 (GG 1090).

The Rules of the Lands Tribunal are contained in GN 76/1996 (GG 1289).

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).

Land Valuation and Taxation Regulations are contained in GN 259/2001 (GG 2678), as amended by GN 128/2004 (GG 3214). In terms of GN 22/2002 (GG 2696), a general valuation of agricultural land in Namibia was made during the three months following 15 February 2002. These regulations were repealed and replaced by GN 120/2007 (GG 3870). GN143/2007 (GG 3887) determined that a general valuation in respect of regulation 3(1)(a) and 3(3) would take place between 1 and 31 August 2007. Notification of the completion and certification of the main valuation role is contained in GN 38/2009 (GG 4225).

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).

Farming units offered for allotment are periodically announced in the *Government Gazette* but have not been listed here.

Cases: *Müller v Schweiger* 2005 NR 98 (HC); *Schacht v Schweiger & Another* 2005 NR 130 (HC) (*obiter* discussion of section 58(1)); *Bahlsen v Nederloff & 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) (detailed discussion of Act’s requirements for expropriation and constitutionality of expropriation procedure; includes guidelines on correct procedure for expropriation under the Act).

Articles:

Sidney Haring and Willem Odendaal, “*One Day We Will All Be Equal*”: *A Socio-Legal Perspective on the Namibian Land Reform and Resettlement Process*, Legal Assistance Centre, 2002, available at www.lac.org.na/projects/lead/Pdf/oneday.pdf.

Dr Christina Treeger, *Legal analysis of farmland expropriation in Namibia*, Namibia Institute for Democracy, 2004, available at www.nid.org.na/pdf/publications/no01_04.pdf

Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, available at www.lac.org.na/projects/lead/Pdf/landwefarm.pdf

Sidney L Haring and Willem Odendaal, “*No Resettlement Available*”: *An assessment of the expropriation principle and its impact on land reform in Namibia*, Legal Assistance Centre, 2007, available at www.lac.org.na/projects/lead/Pdf/exprorep.pdf

Sidney L Haring and Willem Odendaal, *Kessl: A new Jurisprudence for Land Reform in Namibia?*, Legal Assistance Centre, 2008, available at www.lac.org.na/projects/lead/Pdf/kessl.pdf

Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na/projects/lead/Pdf/livelihoods_report_a.pdf and www.lac.org.na/projects/lead/Pdf/livelihoods_report_b.pdf.

Town and Regional Planners Act 9 of 1996.

Summary: This Act establishes a Namibian Council for Town and Regional Planners and provides for the registration and training of town and regional planners. It came into force on 20 July 1998 (GN 170/1998, GG 1909).

Amendments: Act 32/1998 (which is deemed to have come into operation on 20 July 1998) amends section 3.

Regulations: Regulations are contained in GN 126/2001 (GG 2561), as amended by GN 149/2007 (GG 3896) and GN 82/2010 (GG 4473). Minimum fees and related guidelines are set forth in GN 62/2009 (GG 4237), as amended by GN 240/2006 (GG 4391).

Appointments: Appointments to the Namibian Council for Town and Regional Planners are contained in GN 33/2000 (GG 2266), with effect from 2 November 1999.

Communal Land Reform Act 5 of 2002.

Summary: This Act 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 came into operation on 1 March 2003 (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) (GG 34-36/2003, GG 2926).

The Act repeals the *Development Trust and Land Act 18 of 1936*, the *South West Africa Native Affairs Administration Act 56 of 1954* and the *Administration of the South African Bantu Trust in South West Africa Proclamation, AG 19 of 1978*.

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.

Regulations: Regulations are contained in GN 37/2003 (GG 2926), as amended by GN 120/2003 (GG 2994). These regulations repeal those contained in RSA Proclamation R. 188 of 11 July 1969.

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

Kavango Communal Land Board - GN 98/2005 (GG 3479), GN 61/2006 (GG 3620), GN 125/2007 (GG 3878), GN 127/2007 (GG 3878) and GN 129/2007 (GG 3878)

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

Ohangwena Communal Land Board - GN 128/2007 (GG 3878).

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

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 was extended to 15 February 2012 by GN 18/2009 (GG 4210).

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 15 February 2012 by GN 19/2009 (GG 4210).

Establishment of Communal Land Boards: Twelve communal land boards are established by GN 203/2003 (GG 3060).

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).

Articles:

Wolfgang Werner, *Protection for Women in Namibia's Communal Land Reform Act: Is it Working?*, Legal Assistance Centre, 2006

Clever Mapaure, "Jurisprudential aspects of proclaiming towns in communal areas in Namibia", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org

Legal Assistance Centre, *Guide to the Communal Land Reform Act 5 of 2002*, second edition, 2009, previous edition available at www.lac.org.na/lead/Pdf/commland.pdf

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

SELECTED ARTICLES

Sam Amoo, "Towards comprehensive land tenure systems and land reform in Namibia", *South African Journal on Human Rights*, Vol 17, Part 1, 2001.

Legal Assistance Centre, *Our Land they Took: San Land Rights under Threat in Namibia*, 2006, available at www.lac.org.na/projects/lead/Pdf/landtheytook.pdf.

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 at www.lac.org.na/projects/lead/Pdf/aplaceweanttocallourown.pdf.

See also *Land Tenure Act 32 of 1966* (**AGRICULTURE**).

See also *South West Africa Native Affairs Administration Act 56 of 1954*, Reservation of State Land for Natives Ordinance 35 of 1967 (reservation of land for “natives”) and *Namaland Consolidation and Administration Act 79 of 1972* (reservation of land for Namas) (**BLACKS**’).

See also Vagrancy Proclamation 25 of 1920 (trespass) (**CRIMINAL LAW AND PROCEDURE**).

See also **DEEDS**.

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

See also **ESTATE AGENTS**.

See also **HOUSING**.

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational standards for surveyors) (**LABOUR**).

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 **REHOBOTH GEBIET**.