

## **Crown Liabilities Act 1 of 1910**

**Summary:** This Act ([SA GG 72](#)) concerns state liability.

**Applicability to SWA:** This Act was extended to South West Africa by section 1(1)(b) of the Railway Management Proclamation 70 of 1920 ([OG 46](#)). That section states:

(1) The control and management of the Railways and Harbours within the Protectorate of South West Africa and of all subsidiary undertakings connected therewith hitherto controlled and managed by the Railways and Harbours Administration of the Union of South Africa (hereinafter called the Railway Administration) shall continue to be vested in and to be exercised by the Railway Administration, and for that purpose... (b) the following acts of the Union Parliament together with any regulations now or hereafter existing thereunder shall, *mutatis mutandis* and so far as capable of application, have force and effect within the Protectorate.

One of the laws listed in paragraph (b) is the Crown Liabilities Act 1 of 1910, along with several other laws since repealed.

According to *Mwandingi v Minister of Defence* 1990 NR 363 (HC) at 377C-D (approved on appeal in *Minister of Defence v Mwandingi* 1993 NR 63 (SC) at 77C-F):

[...] the Crown Liabilities Act 1 of 1910 was extended by the Railway Management Proclamation 20 of 1920 to the territory [this is an error; the correct citation for this Proclamation is Proclamation 70 of 1920]. It is true that it was so extended for purposes of that proclamation, but the act applied in its entirety and it seems to me, once it was extended, it was accepted by our courts as also binding on all other, at that stage, departments (see *Hwedhanga v Cabinet for the Territory of South West Africa* 1988 (2) SA 746 (SWA); *Binga v Cabinet for South West Africa & Others* 1988 (3) SA 155 (A)).

The Act was repealed in South Africa by the State Liability Act 20 of 1957 ([SA GG 5850](#)), which was not made expressly applicable to South West Africa.

**Repeals:** None of the laws repealed by the Act appear to be relevant to SWA.

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

**Cases:** The Act is discussed in a dissenting opinion in *Visagie v Government of the Republic of Namibia & Others* 2017 (2) NR 488 (HC) (Geier J, paras 160-165); majority opinion confirmed on appeal in *Visagie v Government of the Republic of Namibia & Others* 2019 (1) NR 51 (SC).

*Ndemuweda v Government of the Republic of Namibia (Minister of Health and Social Services)* 2018 (2) NR 475 (HC) notes the fact that the Crown Liabilities Act 1 of 1910 “in clear terms provides that assets of the state may not be attached” for purposes of execution of a court order.

## **Administration of Justice Proclamation 21 of 1919**

**Summary:** This Proclamation ([OG 25](#)) introduced Roman Dutch law to SWA. It originally contained provisions relating to courts and legal practitioners, but these have been repealed.

**Repeals:** Section 1(1)-(2) of the Proclamation provides as follows:

(1) The Roman Dutch Law as existing and applied in the Province of the Cape of Good Hope at the date of the coming into effect of this Proclamation shall, from and after the said date, be the Common Law of the Protectorate, and all Laws within the Protectorate in conflict therewith shall, to the extent of such conflict and subject to the provisions of this Section, be repealed.

(2) Notwithstanding the provisions of paragraph (1) of this section, all Proclamations which have been issued during the Military occupation of the Protectorate and are still in force on the said date shall continue to be in force.

**Amendments:** The Proclamation is amended by Proc. 45/1920 ([OG 41](#)), Proc. 52/1921 ([OG 75](#)), Proc. 56/1921 ([OG 76](#)), Proc. 16/1930 ([OG 375](#)), Proc. 4/1933 ([OG 500](#)), Proc. 30/1935 ([OG 649](#)), Proc. 31/1935 ([OG 650](#)), Proc. 4/1936 ([OG 657](#)), Deeds Registries Proclamation 37/1939 ([OG 807](#)), Ord. 6/1955 ([OG 1899](#)), Ord. 31/1960 ([OG 2254](#)), Ord. 34/1963 ([OG 2504](#)), Ord. 13/1966 ([OG 2721](#)) (which was brought into force on 1 July 1965 by Proc. 33/1965 ([OG 2632](#))), the SA *Supreme Court Act 59 of 1959* ([SA GG 6253](#)) (which was brought into force in South Africa and South West Africa on 1 January 1960 by RSA Proc. 291/1959 ([SA GG 6334](#))), the RSA *Admission of Advocates Act 74 of 1964* ([RSA GG 839](#)) (which was brought into force in South Africa and South West Africa on 18 February 1966 by RSA Proc. R.55/1966 ([RSA GG 1375](#))), the RSA *Civil Proceedings Evidence Act 25 of 1965* ([RSA GG 1066](#)) (which was brought into force in South Africa and South West Africa on 30 June 1967 by RSA Proc. R.138/1967 ([RSA GG 1773](#))), and the Legal Practitioners Act 15 of 1995 ([GG 1141](#)) (which was brought into force on 7 September 1995 by GN 150/1995 ([GG 1148](#))).

The Rules of Court Proclamation 1 of 1920 ([OG 27](#)), which came into force on its date of publication (23 January 1920), elaborated on section 9(2) of the Proclamation with respect to the framing of Rules of Court, without actually amending the Proclamation. Section 9 has since been repealed, so Proc. 1 of 1920 is no longer of any relevance.

**Amendments:** The Proclamation is amended by Proc. 45/1920 ([OG 41](#)), Proc. 52/1921 ([OG 75](#)), Proc. 56/1921 ([OG 76](#)), Proc. 16/1930 ([OG 375](#)), Proc. 4/1933 ([OG 500](#)), Proc. 31/1935 ([OG 650](#)), Proc. 4/1936 ([OG 657](#)), Deeds Registries Proclamation 37/1939 ([OG 807](#)), Ord. 6/1955 ([OG 1899](#)), Ord. 31/1960 ([OG 2254](#)), Ord. 34/1963 ([OG 2504](#)), Ord. 13/1966 ([OG 2721](#)), the SA *Supreme Court Act 59 of 1959*, the RSA *Admission of Advocates Act 74 of 1964* ([RSA GG 839](#)), the RSA *Civil Proceedings Evidence Act 25 of 1965* ([RSA GG 1066](#)), and the Legal Practitioners Act 15 of 1995 ([GG 1141](#)).

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

**Application of law:** See section 5 of the Rehoboth Affairs Proclamation 1 of 1937 ([OG 696](#)) regarding jurisdiction over certain civil suits in the Rehoboth Gebiet.

**Cases:** *Tittel v Master of the High Court* 1921 SWA 58 and *Collisons v Kruger & Others* 1923 SWA 74 are significant early cases interpreting this Proclamation.

See also –

*R v Goseb* 1956 (2) SA 696 (SWA)

*Binga v Administrator-General, South West Africa & Others* 1984 (3) SA 949 (SWA)

*S v Redondo* 1992 NR 133 (SC).

## Interpretation of Laws Proclamation 37 of 1920

**Summary:** This Proclamation ([OG 35](#)) sets forth rules of interpretation for statutes. It is the Namibian equivalent of the South African *Interpretation Act 33 of 1957*.

**Amendments:** The Proclamation was amended by Proc. 11/1926 ([OG 205](#)), Ord. 4/1955 ([OG 1899](#)) and Ord. 19/1961 ([OG 2320](#)). It was extended to the Rehoboth Gebiet by Proc. 28/1923 ([OG 118](#)).

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

**Fees for apostilles:** Fees for the issuance of apostilles are set out in GN 104/2018 ([GG 6614](#)) and GN 58/2021 ([GG 7496](#)), in terms of section 13 of this law and as contemplated in Article 3 of the Convention Abolishing the Requirement of Legalisation of Foreign Public Documents, 1961.

**Cases:**

*DTA of Namibia & Another v SWAPO Party of Namibia & Others* 2005 NR 1 (HC); *S v Nghitukwa* 2005 NR 116 (HC)

*Gemfarm Investments v Trans Hex Group* 2009 (2) NR 477 (HC) (section 11(1)).

*Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others* 2010 (2) NR 660 (HC); overruled by *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) (addressing the meaning of section 12(3)(c) read together with the definition of “law” at paras 64-69)

*Kamahere & Others v Government of the Republic of Namibia & Others* 2016 (4) NR 919 (SC) (section 11(2)(c); reference to section 2 in concurring judgment)

*Esau & Others v Director-General: Anti-Corruption Commission & Others* 2020 (1) NR 123 (HC) (application of section 6 rule that the singular includes the plural).

**Related international agreements:**

*Hague Convention Abolishing the Requirement of Legalisation of Foreign Public Documents (Apostille Convention), 1961.*

***Justices of the Peace and Commissioners of Oaths Act 16 of 1963***, as amended in South Africa to November 1979  

**Summary:** This Act ([RSA GG 456](#)) covers the appointment, powers and duties of justices of the peace and commissioners of oaths. The *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970* ([RSA GG 2828](#)), which made the Act applicable to SWA, was brought into force on 21 July 1972 by RSA Proc. R.168/1972 ([RSA GG 3619](#)).

**Repeals:** The Act repeals the *Justices of the Peace and Oaths Act 16 of 1914*, which was its predecessor in South Africa.

The *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970* ([RSA GG 2828](#)), which made the Act applicable to SWA, repealed the SWA Commissioners of Oaths Proclamation 24 of 1928, which in turn repealed the SWA Commissioners of Oaths Proclamation 17 of 1915.

**Applicability to SWA:** Section 1 defines “Republic” to include “the territory of South West Africa”. Section 11A states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Justices of the Peace and Commissioners of Oaths Amendment Act 110 of 1984* ([RSA GG 9360](#)), the *Justices of the Peace and Commissioners of Oaths Amendment Act 36 of 1986* ([RSA GG 10198](#)) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)) – were made expressly applicable to SWA.

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

- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *Justices of the Peace and Commissioners of Oaths Amendment Act 8 of 1965* ([RSA GG 1054](#))
- *Justices of the Peace and Commissioners of Oaths Amendment Act 21 of 1967* ([RSA GG 1677](#))
- *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970* ([RSA GG 2828](#))
- *Parliamentary Service Act 33 of 1974* ([RSA GG 4374](#))

- *Second Bantu Laws Amendment Act 102 of 1978* ([RSA GG 6095](#))

Terminology in the Act was 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).

**Savings:** Section 11(4) of the Act contains a broad savings clause:

Anything done under any provision of a law repealed by sub-section (1), shall be deemed to have been done under the corresponding provision of this Act, if any.

In addition, section 4(3) of the *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970* contained a virtually-identical savings clause for the SWA enactments that were repealed when the Act was made applicable to SWA:

Anything done under any provision of a law repealed by subsection (1), shall be deemed to have been done under the corresponding provision, if any, of the principal Act.

**Regulations:** No surviving regulations issued under the repealed laws have been located. The following regulations were made prior to independence under the current Act:

**Regulations governing the Administering of an Oath or Affirmation** issued in terms of this Act are contained in RSA GN R.1258/1972 ([RSA GG 3619](#)), as amended by RSA GN R.1648/1977 ([RSA GG 5716](#)) and by RSA GN R.1428/1980 ([RSA GG 7119](#)), which was made after the date of transfer but was made expressly applicable to SWA.<sup>237</sup>

No post-independence regulations have been issued.

**Appointment of *ex officio* commissioners of oaths:** Section 11(2) of the Act, and section 4(3) of the *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970*, save appointments made under the repealed laws, along with any condition that applied in relation to any such appointments. However, appointments made prior to the date when this Act came into force in SWA (21 July 1972) and appointments made under the repealed laws have not been researched.

A list of *ex officio* Commissioners of Oaths is contained in AG GN 128/1982 ([OG 4672](#)).<sup>238</sup> No amendments to this list have been located. However, this list has been supplemented since independence as follows:

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<sup>237</sup> In South Africa, the regulations were further amended by RSA GN R.774/1982 ([RSA GG 8169](#)), which came into force on the date of publication (23 April 1982) and deleted regulation 5. However, this amendment was made after the date of transfer and was not made expressly applicable to SWA.

These regulations withdraw the regulations in RSA GN R.1206/1961 (RSA GN 136), which were issued in terms of the *Justices of the Peace and Oaths Act 16 of 1914*. The repealed 1961 regulations in turn repealed RSA Government Notices 788/1937, 22/1938, 619/1939, 1032/1947, 2893/1953 and 846/1955.

<sup>238</sup> The historical chain of such designations was as follows: A list of holders of office who are commissioners of oath was contained in RSA GN R.1257/1972 (RSA GG 3619) (which withdrew RSA GN R.1038/1967), as amended by RSA GN R.399/1974 (RSA GG 4227) and by RSA GN R.56/1975 (RSA GG 4558).

Prior to the date of transfer, RSA GN R.1429/1976 (RSA GG 5256) withdrew RSA GN R.1257/1972 and its amendments and set out a new list of *ex officio* commissioners, as corrected prior to the date of transfer by RSA GN R.1915/1976 (RSA GG 5317). (In South Africa, the list was further amended *after the date of transfer* by RSA GN R.1901/1981 (RSA GG 7775), which was not made expressly applicable to SWA.)

Then, in South Africa, RSA GN R.1429/1976 as amended was replaced after the date of transfer and prior to Namibian independence by RSA GN R.2477/1984 (RSA GG 9499), as amended/corrected by RSA GN R.1138/1986 (RSA GG 10270), RSA GN R.616/1987 (RSA GG 10672), RSA GN R.2852/1987 (RSA GG 11086), RSA GN R.1804/1988 (RSA GG 11497), RSA GN R.20/1989 (RSA GG 11658), RSA GN R.256/1989 (RSA GG 11708) and RSA GN R.400/1991 (RSA GG 13036) – but none of these were made expressly applicable to SWA, meaning that RSA GN R.1257/1972 as corrected continued to be the operative list in SWA.

Subsequently, AG GN 128/1982 *withdrew* RSA GN R.1429/1976 and replaced it with a new list of *ex officio* commissioners of oaths.

- Elected members of Regional Councils are designated as Commissioners of Oaths for the regions in which they have been elected and for the duration of their terms of office in GN 100/2000 ([GG 2312](#)).
- Investigating officers of the Anti-Corruption Commission established by the Anti-Corruption Act 8 of 2003, already appointed and to be appointed, are appointed as justices of the peace for all magisterial districts by GN 33/2012 ([GG 4883](#)).
- Certain inspectors for the Communications Regulatory Authority of Namibia are appointed as *ex officio* Commissioners of Oaths, with effect from 15 February 2016, by GN 48/2016 ([GG 5971](#)).
- Maintenance investigators are designated as *ex officio* Commissioners of Oath in the area in which they are appointed, with effect from 1 June 2020, by GN 146/2020 ([GG 7258](#)).

**Powers of certain holders of office outside the country:** GN RSA R.1872/1980 ([RSA GG 7215](#)) contains a notice issued in terms of section 8(1)(a) of the Act, declaring that the holders of certain offices outside the Republic have the powers of commissioners of oaths in the countries where they serve. This notice was issued after the date of transfer, but it states that it was issued “with the consent of the Administrator-General for the Territory of South-West Africa and shall also apply in the Territory”.<sup>239</sup> (In South Africa, this notice was amended prior to Namibian independence by RSA GN R.2828/1983 (GG 9018) and by RSA GN R.527/1985 (RSA GG 9621), but neither of these amendments was made specifically applicable to SWA.) No SWA or post-independence amendments have been located. The unamended list of offices is as follows:

#### SCHEDULE

Head of a South African diplomatic or consular mission; any office in the Administrative or the Professional Division of the Public Service, provided that the holder of such office is an officer as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957); Third Secretary or Vice-Consul in a South African diplomatic or consular mission; any office, the holder of which is an officer of the Permanent Force of the South African Defence Force; South African Honorary Consul-General, Honorary Consul, Honorary Vice-Consul or Honorary Trade Commissioner; leader or deputy leader of the South African National Antarctic Expedition; leader or deputy leader of the South African weather station on Gough Island; controlling officer in an office of the South African Railways; Attaché (Technical Services) and Senior Administrative officer of the Technical Services Division of the South African Embassy in Paris, France; the holder of an office of Science Counsellor or Science Consul of the South African Council for Scientific and Industrial Research; any person who exercises in a state to which independence has been granted by law a legal profession equivalent to that of an attorney, notary or conveyancer in the Republic.

#### Cases:

*De Roeck v Campbell & Others* (1) 1990 NR 28 (HC)

*Gonschorek & Others v Asmus & Another* 2008 (1) NR 262 (SC) (regulations in RSA GN R.1258/1972)  
*Namibia Financial Institutions Supervisory Authority v Christian & Another* 2011 (2) NR 537 (HC) at 553F-554A (regulation 7)

*Prosecutor-General v Kennedy* 2017 (1) NR 228 (HC), paras 32-33 (compliance with regulations); case upheld on appeal without discussing this issue in 2019 (3) NR 631 (SC)

*S v Lameck & Others* 2018 (3) NR 902 (HC) (GN 33/2012 ([GG 4883](#)), which designates investigating officers of the Anti-Corruption Commission as Commissioners of Oaths in terms of this Act is supplementary to AG GN 128/1982 ([OG 4672](#)) which designates members of any “commission” established by law as Commissioner of Oaths under this Act)

See also *Ngairoure v Council for the Municipality of Windhoek & Others* 2021 (2) NR 603 (HC) (technical error regarding sex of deponent in commissioning of affidavit does not render it a nullity; legal practitioners should exercise special care in serving as commissioners of oaths and should not serve as commissioners of oaths in cases where they have acted as a legal practitioner in any aspect of the case).

<sup>239</sup> This notice withdraws RSA GN R.1717/1972 ([RSA GG 3663](#)).



## Delegation of Powers Ordinance 24 of 1973

**Summary:** This Ordinance ([OG 3365](#)) addresses delegations of power by the “Executive Committee of the Whites”. It would presumably now cover delegations by the Namibian authority corresponding to this Executive Committee, in terms of Art 140(4)-(5) of the Namibian Constitution; in terms of the transitional provisions in Art 140 of the Namibian Constitution, the reference to “Executive Committee” in the Ordinance is now construed as the relevant Minister responsible for administration of a particular law.

**Repeals:** The Ordinance repeals the Delegation of Powers Ordinance 21 of 1960.

**Amendments:** The Ordinance is amended by Ord. 20/1975([OG 3498](#)). It was also amended for the purposes of the pre-independence Representative Authority for Whites by Ordinance 3 of 1982 ([Official Gazette 15 of the Representative Authority of the Whites](#)).

**Savings:** Section 6(2) of the Ordinance provides that delegations of power made under the repealed Delegation of Powers Ordinance 21 of 1960 remain valid:

Any power, authority, or function delegated to any person in terms of the ordinance repealed by subsection (1) shall be deemed to have been delegated to such person in terms of this Ordinance.

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

**Cases:** The Ordinance is discussed in *Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment* 2010 (1) NR 1 (SC):

The only statutory provision for delegations of authority referred to by counsel for respondent, was a general authority to delegate powers of the Executive Committee of the pre-independence period as contained in ss 2-6 of the Delegation of Powers Ordinance 24 of 1973 as amended by s 1 of Ord 20 of 1975. It must be noted that s 6(2) of Ord 24 of 1973 as amended contains a typical savings clause by providing:

‘Any power, authority or function delegated to any person in terms of the Ordinance repealed by s (1) shall be deemed to have been delegated to such person in terms of this Ordinance.’

...I have considered arts 140 and 141 of the Namibian Constitution, which may be regarded as serving the purpose of a savings clause dealing with the law in force at the date of Namibian independence on 21 March 1990. The said Ord 24 of 1973 as amended was never expressly repealed or amended by Act of Parliament or declared unconstitutional by a competent court and consequently remained in force in terms of art 140(1) of the Namibian Constitution.

## First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 14 of 1989

**Summary:** This Proclamation ([OG 5726](#)) repealed and amended a number of legal provisions in preparation for the elections held in terms of UN Resolution 435.

**Repeals:** In addition to amending numerous laws, the Proclamation repeals the following principal statutes in their entirety:

- Control and Treatment of Natives on Mines and Works Proclamation 3 of 1917 ([OG 14](#))
- Native Locations (Entry of Europeans) Proclamation 6 of 1919
- Natives employed on Mines and Works Proclamation 6 of 1924
- Native Labour Regulation Proclamation 6 of 1925
- Native Labour Regulation (Mines and Works) Proclamation 33 of 1929
- South West Africa Affairs Proclamation 51 of 1937
- Internal Security Act 44 of 1950
- Public Safety Act 3 of 1953
- Unlawful Organizations Act 34 of 1960

- Deportation of Undesirable Persons from South West Africa Proclamation 148 of 1962
- Terrorism Act 83 of 1967
- Security Districts Proclamation AG 9 of 1977
- Detention for the Prevention of Political Violence and Intimidation Proclamation 26 of 1978
- Amnesty Proclamation 3 of 1980
- Defence Matters in South West Africa Proclamation 131 of 1980
- Second Defence Matters in South West Africa Proclamation 198 of 1980
- Prohibition and Notification of Meetings Act 22 of 1981
- State Council for South West Africa Proclamation, AG 14 of 1983.

**Amendments:** The Proclamation is amended by the Namibian Citizenship Act 14 of 1990 ([GG 65](#)), brought into force with effect from 15 September 1990 by Proc. 13/1990 ([GG 72](#)), and by the Immigration Control Act 7 of 1993 ([GG 690](#)), which was brought into force on 29 July 1994 by GN 133/1994 ([GG 895](#)).

## Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 25 of 1989

**Summary:** This Proclamation ([OG 5758](#)) amended several legal provisions in preparation for the elections held in terms of UN Resolution 435.

**Amendments:** The Proclamation is amended by the Police Act 19 of 1990 ([GG 113](#)) and by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)).

Note that the original GG 113 was replaced by another GG 113 with the same date; the correct version states at the top: “*This Government Gazette replaces Government Gazette No. 113 of 3 December 1990.*”

## Law Reform and Development Commission Act 29 of 1991

**Summary:** This Act ([GG 331](#)) establishes a Law Reform and Development Commission. It was brought into force on 15 July 1992 by Proc. 21/1992 ([GG 439](#)).

**Amendments:** Act 4/1995 ([GG 1036](#)) amends sections 3, 5, 8 and 12. Act 2/2004 ([GG 3238](#)) amends sections 3, 6, and 8 and substitutes sections 4, 5 and 12. It was brought into force on 15 July 2004 by GN 147/2004 ([GG 3239](#)).

**Regulations:** Regulations are authorised by section 14 of the Act, but none have yet been promulgated.

**Appointments:** The appointment of a Chairperson is announced in Proc. 12/2011 ([GG 4767](#)). No previous announcements could be located, although there were several previous Chairpersons. (See, for example, GN 21/1997 ([GG 1712](#)), which refers to Mr U D Nujoma as a full-time Chairperson.) A Chairperson is announced in Proc. 34/2015 ([GG 5869](#)).

Note that there are two Proclamations numbered as Proclamation 34 of 2015, in GG 5853 and GG 5869.

Note: Article 32(3)(i) of the Namibian Constitution discusses the President’s powers of appointment, including some specific offices as well as covering the appointment of “any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President”. Article 32(8) states that all such appointments “shall be announced by the President by Proclamation in the Gazette”.

**Commentary:** Yvonne Dauseb, “The Law Reform and Development Commission: Its Role and Place in a Continuously Changing Society” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#).

## Repeal of Obsolete Laws Act 21 of 2018

**Summary:** This Act ([GG 6812](#)), which was brought into force as of 1 March 2019 by GN 32/2019 ([GG 6851](#)), repeals or amends 143 laws, including the repeal of 41 principal statutes and their amendments.

**Repeals:** The principal statutes repealed in their entirety are the following:

- Assistance Fund of South West Africa Repeal Act 13 of 1992 (which repealed the Assistance Fund of South West Africa Act 1 of 1979).
- Caprivi Zipfel Affairs Proclamation 27 of 1930
- Commissions' Powers Ordinance 6 of 1927
- Concessions from Natives Proclamation 8 of 1915
- Development Fund of South West Africa/Namibia Act 29 of 1987
- Development of Self-Government for Native Nations in South-West Africa Act 54 of 1968
- Dried Peas Control Ordinance 35 of 1957
- Exchequer and Audit Act 66 of 1975
- Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920
- Hospitals and Charitable Institutions Ordinance 16 of 1930
- Housing Levy Ordinance 18 of 1976
- Industrial Development Act 22 of 1940
- Lord's Day Observance Proclamation 54 of 1921
- Namaland Consolidation and Administration Act 79 of 1972
- Native Affairs Act 55 of 1959
- Native Reserves Fencing Proclamation 12 of 1926
- Native Reserves Trust Funds Administration Proclamation 9 of 1924
- Natives Trust Funds Proclamation 23 of 1939
- Okavango Native Territory Affairs Proclamation 32 of 1937
- Ovamboland Affairs Proclamation 27 of 1929
- Payment of Loans Proclamation 28 of 1933
- Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation 8 of 1990
- Pension Matters of Government Institutions Proclamation AG 56 of 1989
- Price Control and Preservation of Game Admissions of Guilt Proclamation 40 of 1944
- Railways and Harbours Pension Act 35 of 1971
- Railways and Harbours Pensions for Non-Whites Act 43 of 1974
- Rehoboth Gebiet Income Tax Proclamation 92 of 1961
- Reservation of State Land for Natives Ordinance 35 of 1967
- Silver Coin (Control of Importation) Proclamation 26 of 1932
- Social Pensions Ordinance 2 of 1965
- South West Africa Affairs Act 25 of 1969
- South West Africa Medical Research Council Act 19 of 1969
- South West African Meat Industry Ordinance 39 of 1955
- State Hospitals Ordinance 17 of 1966
- Teachers' Pensions Proclamation 39 of 1931
- Transfer of Powers and Duties of the State President Act 97 of 1986
- Treaty of Peace and South West Africa Mandate Act 49 of 1919
- Trespass of Donkeys Proclamation 18 of 1941
- Usury Proclamation 26 of 1921
- Vagrancy Proclamation 25 of 1920
- Venereal Diseases Prevention Proclamation 5 of 1919



## Repeal of Obsolete Laws Act 12 of 2022

**Summary:** This Act ([GG 7991](#)), repeals or amends 71 laws, including the repeal of 20 principal statutes and their amendments. It was brought into force on 15 February 2023 by GN 21/2023 ([GG 8031](#)).

**Repeals:** The principal statutes repealed in their entirety are the following:

- Census of Dwellings Proclamation 24 of 1945
- Commonwealth Relations (Temporary Provision) Act 41 of 1961
- Criminal Law Amendment Act 8 of 1953
- Crown Lands (Trespass) Proclamation 7 of 1919
- Cultural Promotion Ordinance 9 of 1980
- Ex-Volunteers Assistance Proclamation 2 of 1945
- Finance and Financial Adjustments Acts Consolidation Act 11 of 1977
- Importation of Cement Ordinance 24 of 1963
- Indecent or Obscene Photographic Matter Act 37 of 1967
- Indemnity Proclamation 8 of 1923
- Karakul Pelt Export Duty Amendment Proclamation 34 of 1939
- Land Titles Proclamation 2 of 1921
- National Supplies Procurement Act 89 of 1970
- Natives Minimum Wage Proclamation 1 of 1944
- Promotion of the Density of Population in Designated Areas Act 18 of 1979
- Promotion of the Economic Development of National States Act 46 of 1968
- Railways and Harbours Pensions Amendment Act 26 of 1941
- Railways and Harbours Special Pensions Act 36 of 1955
- Small Settlements Commonages Subdivision Proclamation 13 of 1926
- Travelling Privileges Ordinance 14 of 1980.<sup>240</sup>

**Note:** Article 147 of the Namibian Constitution repeals the following laws in their entirety:

- South-West Africa Constitution Act 39 of 1968 (RSA)
- Rehoboth Self-Government Act 56 of 1976 (RSA)
- Establishment of Office of Administrator-General for the Territory of South-West Africa Proclamation 180 of 1977 (RSA)
- Empowering of the Administrator-General for the Territory of South-West Africa to make Laws Proclamation 181 of 1977 (RSA)
- Representative Authorities Proclamation, AG 8 of 1980
- Representative Authority of the Whites Proclamation, AG 12 of 1980
- Representative Authority of the Coloureds Proclamation, AG 14 of 1980

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<sup>240</sup> The repeal of nine additional principal statutes was recommended in Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021. However, these statutes were not included in the Repeal of Obsolete Laws Act 12 of 2022:

- Acquisition of Shares in Rössing Uranium Limited Proclamation AG 31 of 1985
- Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933
- Atmospheric Pollution Prevention Ordinance 11 of 1976
- Crown Land Disposal Proclamation 13 of 1920  
(which applied the *Crown Land Disposal Ordinance 57 of 1903 (Transvaal)* to SWA)
- Protection of Fundamental Rights Act 16 of 1988
- State Repudiation (Cultura 2000) Act 32 of 1991
- Temporary Employees Pension Fund Act 75 of 1979
- War Damage Insurance and Compensation Act 85 of 1976
- Water Research Act 34 of 1971.

- Representative Authority of the Ovambos Proclamation, AG 23 of 1980
- Representative Authority of the Kavangos Proclamation, AG 26 of 1980
- Representative Authority of the Caprivians Proclamation, AG 29 of 1980
- Representative Authority of the Damaras Proclamation, AG 32 of 1980
- Representative Authority of the Namas Proclamation, AG 35 of 1980
- Representative Authority of the Tswanas Proclamation, AG 47 of 1980
- Representative Authority of the Hereros Proclamation, AG 50 of 1980
- Representative Authority Powers Transfer Proclamation, AG 8 of 1989
- Government of Rehoboth Powers Transfers Proclamation, AG 32 of 1989.

## **MISCELLANEOUS**

Administrative Directive 1/1993 (Government Notice 16/1993, [GG 583](#)) sets forth the procedures regarding proposed legislation.

## **SELECTED CASES**

*Namibian Competition Commission v Puma Energy Namibia (Pty) Ltd* 2021 (1) NR 1 (SC) provides a useful overview of some of the key rules of statutory interpretation:

[52] To understand the meaning of words in a statute, the court must understand the legislature's intent. To that end, the purpose of the statute, ie why it was enacted and how it came to be, is not just a relevant factor in deciding how to give effect to a statute's words, but is essential to determining its meaning.

[53] The modern approach to statutory interpretation requires that the words of a statute be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Thus, the court strives to construe statutory language in accordance with the object and intent of the legislation.

[54] But there are limits to purposive interpretation. Lord Scarman noted in *R v Barnett London Borough Council, Ex parte Shah* that judges may only adopt purposive interpretation if they 'can find in the statute read as a whole or in the material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy'.

[55] The courts of the UK have also held that in purposively interpreting a statute, judges must respect the 'fundamental features' of the statute. On this approach, it is important to identify the particular statutory provision being interpreted and guard against interpretations that are devised to give effect to an abstract purpose in the statute. In addition, a purposive interpretation should not render any of the provisions in the statute redundant.

[56] It must follow that the court must not through purposive interpretation contradict a provision in the statute which calls for interpretation, for doing so would be to usurp the legislative function. Purposive interpretation should not become the means by which courts undermine the sovereign will of Parliament.

[...]

[59] Parliament is presumed to legislate with full knowledge of the common law and when it enacts legislation, relevant common law principles, including that relating to interpretation of statutes, remain in force and operate in conjunction with a new statute in the absence of a clear indication to the contrary. As Du Plessis correctly writes:

'Legislation must, in other words, be interpreted in the light of the common law, must as far as possible be reconciled with related precepts of the common law and must be read to be capable of co-existing with the common law in *pari materia*.'

[...]

[68] It is correct that where the legislature has granted a main power and its purpose would be defeated without an ancillary power being implied to give effect to it, the court will imply such ancillary power as is reasonably necessary to give effect to the main power.

[69] Ancillary power is implied in a statute where it has not been expressly granted.[...].

*Radial Truss Industries (Pty) Ltd v Chairperson of the Central Procurement Board of Namibia* 2021 (3) NR 752 (HC) (an Act and its regulations may not be viewed as a single piece of legislation, and regulations cannot guide the interpretation of an Act)

## **COMMENTARY**

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- Dianne Hubbard, *Law for All, Volume 1: Introduction to Namibian Law*, Windhoek: Namibia Institute for Democracy / Out of Africa Publishers, 2001
- GW Geraldo & Isabella Skeffers, *Researching Namibian law and the Namibian legal system*, 2007, available [here](#)
- SK Amoo and I Skeffers, “The rule of law in Namibia” in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available [here](#)
- SK Amoo, *An Introduction to Namibian Law: Materials and Cases*, Windhoek: Macmillan Education Namibia, 2008 (reviewed by Steve Gray in *Namibia Law Journal*, Volume 1 Issue 2, 2009, available [here](#))
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- Felicity !Owoses-/Goagoses, “Reading down words in a statute, the courts’ role, and the place of Parliament: The approach of the Namibian courts”, *Namibia Law Journal*, Volume 4, Issue 1, 2012
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- Ministry of Justice, “The Law Making Process” (brochure), undated.

## **INTERNATIONAL LAW**

### ***Hague Convention on Abolishing the Requirement of Legalisation of Foreign Public Documents (Apostille Convention), 1961***

See Ministry of Justice, “Issuing of Apostilles by the Ministry of Justice” (brochure), undated.

See also GN 104/2018 ([GG 6614](#)) and GN 58/2021 ([GG 7496](#)) on fees for the issue of apostilles.

### ***Statute of the Hague Conference on Private International Law, 1951***

### ***SADC Protocol on Legal Affairs, 2000***

### ***SADC Protocol Against Corruption, 2001***

### ***SADC Protocol on Extradition, 2002***

### ***SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002.***

See also **COURTS**.

See also *Criminal Law and Procedure Act 51 of 1977* (**CRIMINAL LAW AND PROCEDURE**).

See also **CUSTOMARY LAW**.

See also **DAMAGES**.

See also **EVIDENCE**.

See also **JUDGES**.

See also **LEGAL PRACTITIONERS**.

See also **PRESCRIPTION**.

For additional statutes that primarily repeal other statutes, see:

- \* Amortization Fund Repeal Act 7 of 1992 (REVENUE)
- \* Criminal Procedure Act Repeal Act 14 of 2018 (CRIMINAL LAW AND PROCEDURE)
- \* Council for Health and Social Services Professions Repeal Act 3 of 2004 (HEALTH PROFESSIONS)
- \* Dairy Industry Control Ordinance Repeal Act 21 of 1982 ([OG 4731](#)) (no independent entry in NAMLEX)
- \* Diamond Taxation Proclamation Repeal Act 21 of 1995 (MINING AND MINERALS)
- \* Dog Tax Ordinance, 1927, Repeal Act 14 of 1987 ([OG 5411](#)) (no independent entry in NAMLEX)
- \* Trades and Occupational Licences Repeal Act 10 of 1995 (TRADE AND INDUSTRY).

The following such statutes have been repealed:

- \* Assistance Fund of South West Africa Repeal Act 13 of 1992, repealed by the Repeal of Obsolete Laws Act 21 of 2018 (LAW)
- \* Rehoboth Investment and Development Corporation Repeal Act 15 of 1996 ([GG 1379](#)), repealed by the Agricultural Bank of Namibia Act 5 of 2003 (AGRICULTURE).