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 One of the laws listed in paragraph (b) is the Crown Liabilities Act 1 of 1910, along with several other laws since repealed.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 of 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The Act was repealed in South Africa by the State Liability Act 20 of 1957 (SA GG 5850), which was not made expressly applicable to South West Africa.

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 It originally contained provisions relating to courts and legal practitioners, but these have been repealed.


**Application of Act:** 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).

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)); .

The meaning of section 12(3)(c) read together with the definition of ‘law’ is addressed in 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) at paras 64-69.

Justices of the Peace and Commissioners of Oaths Act 16 of 1963,

Summary: This Act covers the appointment, powers and duties of justices of the peace and commissioners of oaths.

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).

**Regulations:** Regulations governing oaths and affirmations are contained in RSA GN R.1258/1972.

**Notices:** Notices regarding holders of office who are commissioners of oath are contained in RSA GN R.1257/1972 (as amended by RSA GN R.56/1975), AG GN 128/1982 (OG 4672) and GN 100/2000 (GG 2312) (regional councillors to be Commissioners of Oaths).

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).

**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 (Reg 7).

**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.

**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).

**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.


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: 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”.

MISCELLANEOUS

SELECTED COMMENTARY


**INTERNATIONAL LAW**


*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.