

# **MINING AND MINERALS**

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## **Sperrgebiet-Delimitation Proclamation 11 of 1920.**

**Summary:** This Proclamation defines the area known as the “Sperrgebiet”.

**Amendments:** The Proclamation is amended by Proc. 35/1922.

## **The acquisition of shares in Rössing Uranium Limited and the appointment of a director, AG 31 of 1985.**

**Summary:** This Proclamation authorises the purchase of shares in Rössing Uranium Limited by the government.

## **Petroleum (Exploration and Production) Act 2 of 1991.**

**Summary:** This Act provides for the reconnaissance, exploration, production, disposal and control of petroleum. It came into force on 30 September 1992 in terms of Act 27/1992.

**Amendments:** The Act is amended by Act 27/1992 (section 72), Act 33/1992 (sections 4, 16 and 78), Act 2/1993 (section 14) and Act 24/1998 (which came into force on 1 April 1999 – GN 44/1999, GG 2075) (sections 30, 38, 41, 46, 62, 67 and insertion of a new Part XA).

**Regulations:** A petroleum field is declared in terms of section 42(1) in GN 158/1997 (GG 1622). Regulations relating to the health, safety and welfare of employees and the protection of other persons’ property, the environment and natural resources are contained in GN 190/1999 (GG 2188).

## **Minerals (Prospecting and Mining) Act 33 of 1992.**

**Summary:** This Act provides for the reconnaissance, prospecting, mining, disposal and control of minerals in Namibia. It came into force on 1 April 1994 (GN 41/1994, GG 828).

**Amendments:** Act 8/2008 amends section 114.

**Regulations:** Fees are determined in GN 42/1994 (GG 828).

Land is reserved from prospecting and mining operations in GN 86/1994 (GG 863), GN 215/1994 (GG 971), GN 53/1996 (GG 1270), GN 307/1996 (GG 1454), GN 225/1997 (GG 1730), GN 152/1998 (GG 1901), GN 92/1999 (GG 2109), GN 107/1999 (GG 2128), GN 252/2000 (GG 2426), GN 156/2003 (GG 3019) (which is withdrawn by GN 68/2005, GG 3456) and GN 41/2007 (GG 3803).

A reservation of land previously enacted under the Mines, Works and Minerals Ordinance 20 of 1968 is cancelled by GN 284/1996 (GG 1435).

The abandonment and forfeiture of mining areas under the Mines, Works and Minerals Ordinance 20 of 1968 is addressed in GN 138/1991 (GG 320), GN 139/1991 (GG 320), GN 161/1992 (GG 527) and GN 144/1993 (GG 750).

Certain semi-precious stones are declared to be high value minerals in terms of section 1(3)(b) of the Act by GN 34/1999 (GG 2054). Royalties in respect of these stones are set by GN 35/1999 (GG 2054) which is replaced by GN 248/2004 (GG 3322).

Royalties in respect of certain groups of minerals are set by GN 248/2004 (GG 3322), GN 192/2006 (GG 3733), GN 204/2006 (GG 3746) and GN 45/2009 (GG 4236).

**Application of law:** The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on persons in the business of trading minerals.

**Cases:**

*Hoffman v Maier* 1994 NR 61 (HC) (previous Mines, Works and Minerals Ordinance 20 of 1968)

*S v McDonald & Others* 2000 NR 174 (HC)

*Namibia Grape Growers and Exporters Association & Others v The Minister of Mines & Energy & Others* 2002 NR 328 (HC); 2004 NR 194 (SC)  
(upholding constitutionality of Part XV; also deals with reasonable time period for review of licence and application for declarator under section 52)

*Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another* 2005 NR 21 (SC) (discussed in case background; case holding does not pertain to this statute)

*Auas Diamond Co (Pty) Ltd v Minister of Mines and Energy* 2006 (2)NR 406 (HC)  
(renewal of an exclusive prospective licence)

*Otjozundu Mining (Pty) Ltd v Minister of Mines and Energy & Another* 2007 (2) NR 469 (HC) (section 92)

*Thloro v Minister of Home Affairs* 2008 (1) NR 97 (HC) (Act discussed in *dicta* beginning at 113G)

*S v Auala (No 1)* 2008 (1) NR 223 (HC) (contravention of section 74); *S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing for this offence)

*Tumas Granite CC v Minister of Mines and Energy & Others* 2008 (2) NR 711 (HC)  
(sections 59 and 62)

*Black Range Mining (Pty) Ltd v Minister of Mines and Energy & Another* 2009 (1) NR 140 (HC) (sections 68(c) and 69(2)(g))

*Purity Manganese (Pty) Ltd v Minister of Mines and Energy & Others; Global Industrial Development (Pty) Ltd v Minister of Mines and Energy & Another* 2009 (1) NR 277 (HC) (delay in seeking review of refusal of Exclusive Prospecting Licences).

## **Minerals Development Fund of Namibia Act 19 of 1996.**

**Summary:** This Act provides for the establishment and control of a Minerals Development Fund. It also sets up a Minerals Development Fund Control Board.

**Amendments:** The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 6, 8 and 16.

## **Diamond Act 13 of 1999.**

**Summary:** This Act regulates a wide range of matters connected with diamonds. It also establishes the Diamond Board of Namibia, the Diamond Board Fund and the Diamond Valuation Fund. This Act, which came into force on 1 April 2000 (GN 83/2000, GG 2300), replaces the Diamond Industry Protection Proclamation 17 of 1939.

**Amendments:** The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 4, 6 and 7, and substitutes section 9.

**Regulations:** Regulations are contained in GN 84/2000 (GG 2300), as amended by GN 104/2003 (GG 2984). Restricted diamond areas are declared in GN 97/2000 (GG 2306).

**Cases:** The following cases pertain to this Act-

*S v Auala (No 1)* 2008 (1) NR 223 (HC) (contravention of section 30(1)).

The following cases were decided under the previous Diamond Industry Protection Proclamation 17 of 1939:

*S v Mbali* 1990 NR 1 (HC)

*S v Kramer & Others* 1990 NR 49 (HC)

*S v Strauss* 1990 NR 71 (HC) (appropriate sentence for common-law crime of theft of diamonds)

*S v Koekemoer & Another* 1990 NR 116 (HC)

*S v Eiseb & Another* 1990 NR 142 (HC)

*S v Da Costa & Another* 1990 NR 149 (HC)

*S v Campbell & Others* 1990 NR 310 (HC)

*S v Small* 1990 NR 358 (HC)

*S v De Beer* 1990 NR 379 (HC)

*S v Du Plessis & Another* 1992 NR 74 (HC) (bail in a case where accused charged with theft of diamonds and contravention of section 28(a) of the Act)

*S v Nassar* 1994 NR 233 (HC)

*S v Nangombe* 1993 NR 178 (HC); 1994 NR 276 (SC)

*S v van der Berg* 1995 NR 23 (HC) (sections 28(b) and 35A)

*S v de Bruyn* 1999 NR 1 (HC) (lawful use of "entrapment" to gather evidence for offences in terms of section 28)

*Minister of Home Affairs, Minister Ekandjo v Van der Berg* 2008 (2) NR 548 (SC) (section 34ter).

**Articles:** Nico Horn, "Minister of Home Affairs v Van der Berg, Case No. 19/2004, Supreme Court of Namibia, delivered 12 December 2008", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at [www.namibialawjournal.org](http://www.namibialawjournal.org) (discussing case arising under Diamond Industry Protection Proclamation 17 of 1939).

### **SELECTED ARTICLES**

Legal Assistance Centre/Stanford Law School, *Striking a Better Balance; An Investigation of Mining Practices in Namibia's Protected Areas*, 2009, available at [www.lac.org.na/projects/lead/Pdf/StrikingaBetterBalance.pdf](http://www.lac.org.na/projects/lead/Pdf/StrikingaBetterBalance.pdf).

## **INTERNATIONAL LAW**

### ***SADC Protocol on Mining, 1997***

(entered into force within SADC on 10 February 2000) (source: SADC)

signature: 8 September 1997 (source: SADC)

ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

### ***Statute of African Diamonds Producers Association, 2006***

formed on 4 November 2006

ratification by Parliament, 25 April 2007 (source: Parliament)

See also Petroleum (Taxation) Act 3 of 1991 (**REVENUE**).

See also **LABOUR**.