

# MINING AND MINERALS

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## Sperrgebiet-Delimitation Proclamation 11 of 1920

**Summary:** This Proclamation ([OG 29](#)) defines the area known as the “Sperrgebiet”.

**Amendments:** The Proclamation is amended by Proc. 35/1922 ([OG 99](#)).

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

## Mines, Works and Minerals Ordinance 20 of 1968

**Summary:** This Ordinance ([OG 2897](#)) was brought into force on 1 October 1968 by Proc. 61/1968 ([OG 2926](#)). The only portions of the Ordinance that remain in force concern the appointment and powers, duties and functions of the Chief Inspector of Mines and inspectors of mines.

The Minerals (Prospecting and Mining) Act 33 of 1992 ([GG 564](#)) repeals the Ordinance *except* in so far as it relates to the appointment and powers, duties and functions of the Chief Inspector of Mines and an inspector of mines, and the safety and health of persons employed in or in connection with mines and works.

The Labour Act 6 of 1992 ([GG 388](#)), which has since been replaced by the Labour Act 11 of 2007, repealed section 93 and the whole of the Ordinance “in so far as it relates to the health and safety of workers employed in or in connection with mining and prospecting operations” with effect from 31 July 1997.<sup>127</sup>

Due to the general wording used, there may be some scope for differing interpretations of the effect of these repeals.

**Transfer proclamation:** Although the Ordinance is a South West African enactment, it was amended in South Africa. The relevant transfer proclamation is the Executive Powers (Mines) Transfer Proclamation, AG 4 of 1978, dated **30 January 1978**. All of the amendments to the Ordinance made in South Africa took place prior to that date.

**Amendments:** The Ordinance was amended by:

- RSA Proc. R.89/1969 ([RSA GG 2354](#), republished in OG 3002), which also amended the regulations issued under the Ordinance
- Deed Registries Amendment Act 3 of 1972 ([RSA GG 3404](#)), which repeals sections 96 to 100
- RSA Mines, Works and Minerals in South-West Africa Amendment Act 47 of 1972 ([RSA GG 3518](#)); section 11 of the amending Act was repealed by the Labour Act 6 of 1992
- RSA Sea Birds and Seals Protection Act 46 of 1973 ([RSA GG 3909](#)) (section 15), which amends the definition of “mineral” in section 1
- RSA General Law Amendment Act 62 of 1973 ([RSA GG 3947](#)), which amends section 95
- SWA Mines, Works and Minerals Amendment Act 26 of 1980 ([OG 4354](#))
- SWA Mines, Works and Minerals Amendment Act 4 of 1981 ([OG 4411](#))
- Petroleum (Exploration and Production) Act 2 of 1991 ([GG 178](#))

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<sup>127</sup> The Labour Act 6 of 1992, with the *exception* of Part XI on health and safety and section 116 insofar as it relates to Part XI were brought into force on 1 November 1992 by GN 134/1992 ([GG 491](#)). The remaining portions of the Act were brought into force on 31 July 1997 by GN 155/1997 ([GG 1614](#)).

- Minerals (Prospecting and Mining) Act 33 of 1992 ([GG 564](#))
- Labour Act 6 of 1992 ([GG 388](#)), which was brought into force with respect to health and safety issues on 31 July 1997 by GN 155/1997 ([GG 1614](#)).

RSA Proc. 344/1977 ([RSA GG 5819](#)) repeals the Ordinance in respect of “the port and settlement of Walvis Bay”.

**Regulations:** Regulations are contained in SWA GN 143/1968 ([OG 2927](#)). These regulations were amended by:

- SWA GN 196/1968 ([OG 2950](#))
- RSA Proc. R.89/1969 ([RSA GG 2354](#), republished in OG 3002)
- RSA GN R.817/1972 ([RSA GG 3506](#))
- RSA GN 1730/1972 ([RSA GG 3662](#)), which substitutes Form C
- SWA AG GN 179/1980 ([OG 4325](#)).

Note that these regulations have not yet been processed for inclusion in the database of annotated laws.

**Note:** The South African *Mines and Works Act 27 of 1956* (SA GG 5676) was never applicable to SWA. There is no reference to SWA or the “Territory” in the original Act or in any of the amending Acts:

- SA Act 51/1959 (SA GG 6247)
- RSA Act 46/1964 (RSA GG 807)
- RSA Act 91/1965 (RSA GG 1171)
- RSA Act 42/1968 (RSA GG 2054)
- RSA Act 40/1971 (RSA GG 3117)
- RSA Act 80/1971 (RSA GG 3197)
- RSA Act 62/1973 (RSA GG 3947)
- RSA Act 83/1977 (RSA GG 5612)
- RSA General Law Amendment Act 80 of 1971 (RSA GG 3197)
- RSA General Law Amendment Act 62 of 1973 (RSA GG 3947)
- RSA Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438)
- RSA General Law Third Amendment Act 129 of 1993 (RSA GG 14995, after Namibian independence).

## Acquisition of Shares in Rössing Uranium Limited Proclamation, AG 31 of 1985

**Summary:** This Proclamation ([OG 5060](#)) authorises the purchase of shares in Rössing Uranium Limited by the government. 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.<sup>128</sup>

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

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

**Summary:** This Act ([GG 178](#)) provides for the reconnaissance, exploration, production, disposal and control of petroleum. It came into force on 30 September 1992, in terms of section 79 as amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992 ([GG 489](#)).

<sup>128</sup> Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 10-ff.

**Amendments:** The Petroleum Matters (Amendment and Validation) Act 27 of 1992 ([GG 489](#)) amends section 79.

The Minerals (Prospecting and Mining) Act 33 of 1992 ([GG 564](#)), which was brought into force on 1 April 1994 by GN 41/1994 ([GG 828](#)), amends sections 4, 16 and 78.

Act 2/1993 ([GG 616](#)) amends section 14.

Act 11/1997 ([GG 1700](#)) amends sections 1 and 38, and inserts sections 76A and 76B.

The Petroleum Laws Amendment Act 24 of 1998 ([GG 1954](#)), which was brought into force on 1 April 1999 by GN 44/1999 ([GG 2075](#)), amends sections 30, 38, 41, 46, 62 and 67, and inserts a new Part XA.

**Regulations:** 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](#)).

**Notices:** A petroleum field is declared in terms of section 42(1) in GN 158/1997 ([GG 1622](#)).

GN 308/2020 ([GG 7402](#)), issued under section 122(1) of the Act, states that no person other than the holder of a reconnaissance licence is allowed to carry on any prospecting or mining operations in Namibia from 1 December 2020 until 31 August 2021, notwithstanding anything to the contrary in the Act or any other law.

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

**Summary:** This Act ([GG 564](#)) provides for the reconnaissance, prospecting, mining, disposal and control of minerals in Namibia. It repeals the Dealing in Unwrought Precious Metals Proclamation 5 of 1938, the *Nuclear Installations Act (Licensing and Security Systems) 43 of 1963*, the *Atomic Energy Act 90 of 1967*, the Mines, Works and Minerals Ordinance 20 of 1968, (except in so far as it relates to the appointment and powers, duties and functions of the Chief Inspector of Mines and an inspector of mines, and the safety and health of persons employed in or in connection with mines and works), the *Mines Titles Registration Proclamation R.90 of 1969* and the Mineral Rights Proclamation AG 57 of 1978 (and their amendments). It was brought into force on 1 April 1994 by GN 41/1994 ([GG 828](#)).

It should be noted that the Labour Act 6 of 1992, prior to its replacement by the Labour Act 11 of 2007, had already repealed portions of the Mines, Works and Minerals Ordinance 20 of 1968 (section 93 and the whole of the Act "in so far as it relates to the health and safety of workers employed in or in connection with mining and prospecting operations").

**Amendments:** Act 8/2008 ([GG 4189](#)) amends section 114.

**Regulations:** This Act contains no provision for regulations. Section 139(2)(f) of this Act contains a general savings clause for anything done under any provision of the Mines, Works and Minerals Ordinance 20 of 1968 (which is mostly repealed by this Act) which could have been done under a corresponding provision of this Act. However, this could not apply to regulations since regulations are not authorised by the current Act.<sup>129</sup>

**Application of law:** The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on persons in the business of trading in minerals.

**Notices:** Section 139(2)(f) of this Act contains a general savings clause for anything done under any

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<sup>129</sup> Regulations made in terms of the surviving portions of the Mines, Works and Minerals Ordinance 20 of 1968, which are still being researched, may still be in force under that Ordinance.

provision of the repealed Mines, Works and Minerals Ordinance 20 of 1968 which could have been done under a corresponding provision of this Act. The abandonment and forfeiture of mining areas under the repealed Ordinance are addressed in GN 138/1991 ([GG 320](#)), GN 139/1991 ([GG 320](#)), GN 161/1992 ([GG 527](#)) and GN 144/1993 ([GG 750](#)).

In terms of section 1(3)(b) of the current Act, certain semi-precious stones are declared to be high value minerals 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](#)).

A moratorium on prospecting and mining in respect of nuclear fuel group materials throughout Namibia is contained in GN 41/2007 ([GG 3803](#)) (discussed in *Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others* NNO 2014 (2) NR 320 (SC), which disallowed a collateral challenge to the validity of the notice).

Reservations of land from prospecting and mining operations are published from time to time but have not been recorded here. A reservation of land previously enacted under the repealed Mines, Works and Minerals Ordinance 20 of 1968 is cancelled by GN 284/1996 ([GG 1435](#)).

Notices pertaining to individual licence applications are not listed here.

**Fees and royalties:** Fees are determined with effect from 1 September 2021 in GN 179/2021 ([GG 7611](#)), which repeals GN 42/1994 ([GG 828](#)).

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](#)) (which is amended by GN 277/2012, [GG 5076](#)).

#### **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); upheld on appeal in *Auas Diamond Company (Pty) Ltd v Minister of Mines and Energy* 2017 (2) NR 418 (SC) (meaning of “person concerned” in section 48)

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

*Tlthoro 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) (effect of section 90(1) re: ownership and control in connection with charge of theft), confirmed in *S v Auala* 2010 (1) NR 175 (SC)

*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)); *Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd* 2011 (1) NR 31 (SC) (section 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)

*Rostock CC & Another v Van Biljon* 2011 (2) NR 751 (HC) (basis for interim remedy in respect of dispute regarding agreement concluded in terms of section 52 of Act)

*Tumas Granite CC v Minister of Mines and Energy & Another* 2013 (2) NR 383 (HC) (section 59(1))

*Samicor Diamond Mining (Pty) Ltd v Minister of Mines and Energy & Others* 2014 (1) NR 1 (HC) (unreasonable delay for review of administrative decision granting applications for exclusive prospecting licences)

*Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO* 2014 (2) NR 320 (SC) (GN 41/2007 and sections of the Act on exclusive prospecting licences, particularly the relationship between sections 47 and 122; section 122 consistent with art 21(1)(j) of the Namibian Constitution)

*Koujo v Minister of Mines and Energy & Others* 2018 (4) NR 1097 (HC) (functions of mining commissioner under section 4; section 44 read together with section 55; section 138 (delegation of powers) not applicable to powers vested in mining commissioner by section 44 of Act itself; section 125).

**Commentary:** Michelle R Munyanduki, “Aligning the Mining Sector with Sustainable Development: A Focus on Uranium Mining at Rössing” 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](#) (rehabilitation).

## Diamond Taxation Proclamation Repeal Act 21 of 1995

**Summary:** This Act ([GG 1224](#)) repeals the Diamond Taxation Proclamation 16 of 1941, the Diamond Taxation Amendment Ordinance 5 of 1951, and the Diamond Taxation Amendment Ordinance 22 of 1963. It is not included in the database as the only sections of the Act that remain in force action the repeals and state the short title of the Act.

**Amendments:** The Diamond Act 13 of 1999 ([GG 2205](#)) deletes sections 2 and 3.

## Minerals Development Fund of Namibia Act 19 of 1996

**Summary:** This Act ([GG 1386](#)) 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 ([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 section 6, 8 and 16.

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

## Diamond Act 13 of 1999

**Summary:** This Act ([GG 2205](#)) 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. It repeals the Diamond Industry Protection Proclamation 17 of 1939 and amends the Diamond Taxation Proclamation Repeal Act 21 of 1995 ([GG 1224](#)). It was brought into force on 1 April 2000 by GN 83/2000 ([GG 2300](#)).

**Amendments:** 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 section 1, 4, 6 and 7, and substitutes section 9.

**Regulations:** Regulations made under the repealed Diamond Industry Protection Proclamation 17 of

1939 survive pursuant to section 80(2) of this Act:

Subject to the provisions of subsection (4) [which deals with licences and permits issued under the repealed Act], anything done by virtue of a provision repealed by subsection (1) and which is permitted or required to be done in terms of a provision of this Act, shall be deemed to have been done in terms of the last-mentioned provision.

Research into regulations which may survive pursuant to this savings clause is still underway.

Regulations issued under this Act are contained in GN 84/2000 ([GG 2300](#)), as amended by GN 104/2003 ([GG 2984](#)).

Note that GN 104/2003 incorrectly indicates that it is amending the regulations in Government Notice 83 of 31 March 2000. GN 83/2000 was published in the same *Government Gazette* as the regulations, but was the preceding notice which brought the Diamond Act 13 of 1999 into force. GN 104/2003 obviously intended to amend the regulations published in GN 84/2000.

**Notices:** Restricted diamond areas are declared in GN 97/2000 ([GG 2306](#)).

**Cases:** The following cases pertain to the present Act –

*S v Auala (No 1)* 2008 (1) NR 223 (HC) (contravention of section 74, including discussion of proof of ownership for purposes of proving theft in respect of this section); *S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing for this offence); both confirmed in *S v Auala* 2010 (1) NR 175 (SC)

*S v Sankwasa* 2014 (3) NR 751 (HC) (contravention of section 74, including discussion of when suspect must be advised of right to legal representation, right to remain silent and right not to incriminate himself; legality of search of accused and propriety of admission of diamonds found into evidence).

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).

**Commentary:**

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 [here](#) (discussing case arising under Diamond Industry Protection Proclamation 17 of 1939)

Frederico Links & Clement Daniels, “Protected Disclosure: Informing the Whistleblowing Debate in Namibia”, Institute for Public Policy Research, 2012, available [here](#).

## **COMMENTARY**

- Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Striking a Better Balance; An Investigation of Mining Practices in Namibia's Protected Areas*, 2009, available [here](#)
- Hilma Shindondola-Mote, "Uranium mining in Namibia: The mystery behind 'low level radiation'", Labour Resource and Research Institute, 2009, available [here](#)
- Frederico Links, "On a Slippery Slope: Corruption and the Extractive Industries in Namibia", Institute for Public Policy Research, 2012, available [here](#)
- Graham Hopwood (ed), "Namibia's New Frontiers: Transparency and Accountability in Extractive Industry Exploration", Institute for Public Policy Research, 2013, available [here](#)
- Nico Horn, "The process of human rights protection in Namibia", 5 *Journal of Namibian Studies* 99 (2009)
- Jamey Janke & Wilhelmina Shakela, "Is the Mine Rehabilitation Legal Framework in Namibia Adequate?", *UNAM Law Review*, Volume 3, Issue 1, 2016, available [here](#)
- Max Weylandt, "Transparency in the Namibian Extractives Sector", Institute for Public Policy Research & Open Society Initiative for Southern Africa, 2017, available [here](#).

## **INTERNATIONAL LAW**

*SADC Protocol on Mining, 1997*

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

See also **LABOUR**.

See also Geoscience Professions Act 3 of 2012 (**SCIENCE AND SCIENTIFIC RESEARCH**).

See also **Concessions Modification and Mining Law Amendment Proclamation 59 of 1920 (OG 42)**. This Proclamation concerns the cancellation of grants and concessions of rights of land, mining and other rights during the German colonial period "by agreements between native chiefs or tribes in the Protectorate and the late Government of the Protectorate". No entry has been provided for this Proclamation in this database as it appears to have no ongoing effect.