



**REPUBLIC OF NAMIBIA**

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**LAW REFORM AND DEVELOPMENT COMMISSION**

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# **REPORT ON THE REPEAL OF OBSOLETE LAWS**

**LRDC 25**

**Windhoek, Namibia**

**March 2014**

**ISSN 1026-8405**

**ISBN 978-99945-0-069-7**



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# LAW REFORM AND DEVELOPMENT COMMISSION

The Namibian Law Reform and Development Commission (the LRDC) is a creature of statute established by **Section 2** of the **Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991)**.

The core mandate of the Commission is to undertake research in connection with all branches of law and to make recommendations for the reform and development thereof.

The current Commission members are –

Mr S Shanghala, Chairperson; and  
Adv J Walters, Ombudsman.

Under section 3 of the Law Reform and Development Commission Act, 1991, Commissioners are appointed by the President. Previous Commissioners ceased to hold their office when their term of office for three (3) years lapsed on November 8, 2013. They were –

Ms Dianne Hubbard;  
Mr Nixon Marcus;  
Ms Damoline Muroko;  
Ms Yvonne Dausab; and  
Mr Raywood Rukoro.

The Secretary to the Commission is Mr J.T. Namiseb who heads the Directorate of Law Reform, an organizational component in the Ministry of Justice. The Directorate of Law Reform serves as Secretariat to the Commission, assisting the Commission in the exercise of its powers and the performance of its duties and functions under the Law Reform and Development Commission Act, 1991. The Commission and Secretariat are housed on the 1st Floor, Mutual Platz Building, Post Street Mall, Windhoek.

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## **FOREWORD**

The clearing off of obsolete laws from the statute books of Namibia is a task assigned to the Law Reform and Development Commission (LRDC) by the legislature, given the chequered history of Namibia's legislative landscape. No wonder it was a number one priority when in appointing me to the office of LRDC Chairperson, H.E. the President, Dr Hifikepunye L. Pohamba urged me to *remove all those laws that were as old as he was*.

One would think therefore that this task would have been paramount and at the top of the list of the work done by the LRDC in the past, yet it has not, for reasons now known to me.

It has simply been difficult to know which legislation was operable in Namibia at what time. When an attempt to trace the history was done by the LAC, it was never complete in its historical reach and the lackadaisical manner with which even the senior members of the legal profession research the law has had the curious researcher astonished at laws being cited to have applied to Namibia which actually never were applicable. Sometimes, such *erratum* makes its way into the judgments. Anyhow, part of the difficulty has been to actually find text of legislation, time frozen in the era that they were applicable and without South African subsequent legislative enhancements and modifications.

Then once you actually find one statute, it leads you to another. More like peeling an onion – layer after layer it rewards you with more work from the dusty library books to demand a sneeze and a tear from the young law students' eyes who volunteered at the LRDC to do the running around, copying, indexing and short summaries for my reading. Well done to you again. Tangi Shikongo, Fenni Nashilundo, Festus Weyulu, Loide A. Shaparara, Ndjodi Ndeunyema, Kaurumbua Koujo, and Nambili Namhata. Well done.

It had to take a troupe of young aspiring lawyers to do the job, yet I caution, it is not a complete task. Unfortunately, as the onion kept peeling, we found more and more old laws to repeal and or look into. Therefore, we will have to be doing this exercise one more or perhaps two more times *ad general*, and never mind the industry specific legislation which we choose to ignore for better reform specifically per sector and with input from experts in those sectors.

Permit me, however, to respond to the criticism that the LRDC has been slow in doing its job and the questions as to competence and simply offer this publication, and the other volumes to ensue as our efforts to assure the populace that we will eventually do what others before us overlooked to do and urge for the support and assistance of those that come across odd statutes to report them to us for scrutiny and evaluation.

**Sakeus E. Twelityaamena Shanghala**  
**Chairman: Law Reform and Development Commission**

## 1. BACKGROUND<sup>1</sup>

1.1. One of the objects of the Law Reform and Development Commission (hereinafter 'the LRDC') is to make recommendations for the repeal of obsolete or unnecessary enactments, as per Section 6(a) of the Law Reform and Development Commission Act, 1991<sup>2</sup>. This section states that the objects of the LRDC shall be to *inter alia* undertake research in connection with, and examine all, branches of the law of the Republic of Namibia, and to make recommendations for the reform and development thereof, including the repeal of obsolete or unnecessary enactments.

1.2. The LRDC set out to fulfil its mandate in terms of Section 6(a) by identifying so called 'dead wood' laws and those laws that no longer find applicability in the Republic of Namibia today. These laws are generically known as 'Obsolete laws'.

1.3. Obsolete laws are defined as follows:<sup>3</sup>

[L]aws that have become out-dated or have been replaced with new laws and hence are no longer necessary in light of the new developments that come with our contemporary law.

1.4. The term is, therefore, applied to those laws, which have lost their efficacy, without being repealed.

1.5. These laws are anachronistic, ill-suited and anaemic to a constitutional democracy based on the rule of law that the Republic of Namibia is; however, in the absence of reformed legal instruments, these laws remain legally in force. Laws become

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<sup>1</sup> We would like to acknowledge the Legal Assistance Centre publication, *Index to the Laws of The Republic of Namibia (Namlex)*. 2010. Legal Assistance Centre: Windhoek, [ISBN: 99916-740-6-3] which served as an instrumental guide in the research of the laws contained herein.

<sup>2</sup> (Act No. 29 of 1991).

<sup>3</sup> [http://legal-dictionary.thefreedictionary.com/\\_/dict.aspx?word=obsolete](http://legal-dictionary.thefreedictionary.com/_/dict.aspx?word=obsolete) [last accessed 13 September 2012].



obsolete due to natural reasons; for example, being superseded by other laws or changed situations, or being overtaken by historical developments.<sup>4</sup>

1.6. Redundant laws, on the other hand, are those laws that are no longer needed or useful, thus superfluous. These laws can be omitted without effect since they have lost their meaning or function. Thus, the term redundant law is often used interchangeably with obsolete laws.

## **2. PURPOSE AND IMPORTANCE OF REPEALING OBSOLETE AND REDUNDANT LAWS**

2.1. Article 25(1) of the Namibian Constitution provides that;

(1) Save in so far as it may be authorized to do so by this Constitution, Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid: provided that:

[...]

(b) *Any law which was in force immediately before the date of Independence shall remain in force until amended, repealed or declared unconstitutional.* [Emphasis added.]

2.2. By virtue of the above Constitutional Article, all laws in force before Independence are applicable in the post-independence Republic of Namibia. Their status as law in the Republic of Namibia can only be revoked if expressly amended or repealed by Parliament, or declared in conflict with the Namibian Constitution by a competent Court of law.<sup>5</sup>

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<sup>4</sup>Further, it must be noted that the fact that a certain law is old does not equate to it being 'bad' law.

<sup>5</sup> See: *De Roeck v Campbell and others* (1) 1990 NR 28 (HC); *Mostert v Minister of Justice* 2002 NR 76 (HC); *S v Redondo* 1992 NR 133 (SC); *Myburgh v Commercial Bank of Namibia* 2000 NR 255 (SC).

- 2.3. Notably, many of these laws originate from the Union of South Africa/Republic of South Africa and have either been repealed or amended in present day South Africa, but remain in force in the Republic of Namibia.
- 2.4. The Republic of Namibia employs a bureaucratic system whereby line Ministries are usually responsible for the reform and development of laws which they administer. Until recently, it has been common practice for the line Ministries to operate independently from the LRDC, with reference to the repeal or amendment of the laws that are administered by them. This puts additional pressure on the efficient execution of the LRDC's mandate, as it creates a dual bureaucratic process that complicates and slows down the process of law reform.
- 2.5. Although a number of the Republic of Namibia's pre-independence statutes have been repealed by post-1990 Statutes dealing with the relevant subject matter, numerous Statutes still exist, necessitating repeal or amend by reason of being obsolete, redundant, unnecessary or out-dated. This project thus seeks to achieve an lucid, consistent, accessible and coherent statute book, with extraneous, unnecessary and constitutionally suspect laws removed, thus saving both the state and private citizens time and effort.

### **3. DEFINING THE TYPES OF STATUTES: ACT, ORDINANCES AND PROCLAMATIONS**

#### **3.1. Colonial legacy of Statutes**

- 3.1.1. Due to the fact that the legislative authority over former South West Africa vested in various organs and bodies at different points in South West Africa's history, the national statutes existent today in the Republic of Namibia are consequently termed "Acts", "Ordinances", "Proclamations" and "Administrator General Proclamations". These differences in referencing terminology do not give the laws in question any greater or lesser legal force.<sup>6</sup> Further, various laws called "transfer proclamations" transferred the administration of certain South African statutes to

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<sup>6</sup>Namlex (2010:2).

South West Africa, primarily during the period 1977 to 1979. This information is important for determining which South African amendments to the statute are applicable to the Republic of Namibia.<sup>7</sup>

### **3.2. Acts**

3.2.1 An Act of Parliament is a legal document that stipulates a specific set of legal rules, which is passed by both houses of Parliament, being the National Assembly and the National Council, respectively. Acts are generally of general application, but may, in terms of Article 66 of the Namibian Constitution, alter the common law or customary law with reference to particular parts of Namibia or particular periods.

### **3.3. Ordinances**

3.3.1 The term Ordinance is normally used to refer to a by-law passed by a municipal government such as a city, town, village, or borough, established to provide local government to a population in a defined area. However, Ordinances applicable to the Republic of Namibia were enacted during the apartheid period by the South West African Colonial Government by virtue of, *inter alia*, the South West Africa Constitution Act, of 1968.<sup>8</sup> Section 21 of that Act states that:

Subject to the provisions of this Act, the Assembly may make laws for the territory which shall be entitled ordinances.<sup>9</sup>

3.3.2. A large number of the Ordinances enacted before 1990 are outdated and deal with subject matters that are punitive, redundant or contrary to the Namibian Constitution.

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<sup>7</sup>Namlex (2010:3).

<sup>8</sup> (Act No. 39 of 1968).

<sup>9</sup> Section 22 set out the matters reserved from legislation by the Assembly and while section 23 sets out appropriation of revenue fund and imposition of taxation.

### **3.4. Proclamations**

3.4.1. A Proclamation is an official public statement relating to certain subject matters or a formal announcement that the government has acted in response to a specific situation, issued by the President or any superior government executive. In the Namibian context most proclamations were issued during apartheid by the Administrator-General of South West Africa at that time.

## **4. LEGISLATIVE POWERS OF SOUTH AFRICA OVER SOUTH WEST AFRICA**

4.1 As it has been established from the legal history of South West Africa outlined above, the legislative authority over South West Africa was not primarily vested in one legislative body. However, since 1990, law making power lies primarily with the bicameral Parliament of the Republic of Namibia, composed of the National Assembly and the National Council.<sup>10</sup>

4.2 Before 1968, the legislative power over the Territory of South West Africa vested with various legislative bodies. After the enactment of the South West African Constitution Act, 1968<sup>11</sup>, a Legislative Assembly, consisting of 18 elected members, was constituted<sup>12</sup> with the power to make ordinances for the territory of South West Africa. Section 38(1) of the Act conferred full or plenary legislative powers upon the President of South Africa, in respect of South West Africa, which were as wide as those possessed by the South African Parliament, provided that it was not repugnant to, or inconsistent with, an Act of the South African Parliament which applied to the Territory.<sup>13</sup> The Act, however, did not divest the Republic of South Africa from exercising legislative or administrative powers over South West Africa, as per section 37(1) of the South West Africa Constitution Act, 1968, which states that:

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<sup>10</sup> See generally Chapter 7 and 8 of the Namibian Constitution.

<sup>11</sup> (Act No. 39 of 1968).

<sup>12</sup> See section 11 of the South West African Constitution Act, 1968.

<sup>13</sup> See *Kauluma and Others v Cabinet for the Interim Government of South West Africa and Others* 1988 (2) SA 512 (SWA) p. 4.

Nothing in this Act contained shall be construed as in any manner abolishing, diminishing, or derogating from those full powers of administration and legislation over the territory as an integral portion of the Republic, which have hitherto been vested in the Republic.

- 4.3. By virtue of the powers vested in the State President in section 38(1) of the South West Africa Constitution Act, 1968, the State President, on 19 August 1977, promulgated Proclamation 181 of 1977, which provided as follows:

Under section 38<sup>14</sup> of the South West Africa Constitution Act, 1968 (Act 39 of 1968), I hereby empower the Administrator-General, subject to the provisions of subsection (2) of the said section 38 (1) to make laws, by proclamation in the Official Gazette of the Territory of South West Africa, for that territory; and (2) in any such law to repeal or amend any legal provision, including any Act of Parliament in so far as it relates to or applies in that territory or is connected with the administration thereof or the administration of any matter by any authority therein, save the said section 38.

- 4.4. In dissecting the above provision, as originally enacted, section 38(1) of the South West Africa Constitution Act, 1968 empowered the State President, by proclamation in the Gazette and in the Official Gazette, to make laws for South West Africa in relation to any matter in regard to which the Assembly for South West Africa could not make Ordinances. Moreover, according to section 38(2) a proclamation of the State President could not be repugnant to, or inconsistent with, an Act of the South African Parliament that applied to South West Africa. At that stage, the State President had limited non-plenary powers to legislate for South West Africa.

- 4.5. This is further fortified by the decision of the then Supreme Court of South West Africa in *Binga v Cabinet for South West Africa and Others*<sup>15</sup>, where it was held

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<sup>14</sup>As amended by s 1 of the South West Africa Constitution Amendment Act, 1977 (Act No. 95 of 1977).

<sup>15</sup> 1988 (3) SA 155 (A) at p 183G-184A.

that in the new section 38(1), as quoted above, the South African Parliament conferred on the State President full or plenary legislative powers in respect of South West Africa, which were as wide as those possessed by the South African Parliament itself, subject to the limitations imposed by the provisions of section 38(6) and (7). In *Kauluma and Others v Cabinet for the Interim Government of South West Africa and others*<sup>16</sup> it was stated in *obiter dictum* that the State President could not - by means of section 38(1)(a) - override the limitations upon his plenary legislative powers imposed by the provisions of section 38(6) and (7). The Court went on to draw an analogy between the position of the State President's legislative powers under section 38 to the plenary legislative powers possessed by provincial councils (until their demise on 1 July 1986 in terms of section 2 of the Provincial Government Act, 1986 (Act No. 69 of 1986)) within the limits imposed by the South African Parliament.<sup>17</sup>

4.6. An important development of the legislative powers of the State President took place when section 38, as amended and substituted by section 1 of the South West Africa Constitution Amendment Act, 1977<sup>18</sup>, came into operation on 1 July 1977. In promulgating Proclamation 181 of 1977, the State President acted in pursuance of the powers granted to him by the South African Parliament in section 38 of the 1968 Act. At that stage section 38 provided, in its new form, as follows:

(1) The State President may by proclamation in the Gazette make laws for the territory with a view to the eventual attainment of independence by the said territory, the administration of Walvis Bay and the regulation of any other matter and may in any such law –

(a) repeal or amend any legal provision, including this Act, except for the provisions of subsections (6) and (7) of this section, and any of the Act of Parliament in so far as it relates to or applies in

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<sup>16</sup> 1988 (2) SA 512 (SWA), p 8.

<sup>17</sup> *Kauluma v Cabinet for the Interim Government of South West Africa and Others* p 8 - 9.

<sup>18</sup> Act No. 95 of 1977.

the territory or is connected with the administration thereof or the administration of any matter by authority therein;

(b) Repeal or amend any Act of Parliament, and make different provision, to regulate any matter which, in his opinion, requires to be regulated in consequence of the repeal or amendment of any Act in term of paragraph (a).

- (2) If any authority is by law made in terms of subsection (1) empowered to make laws, a law made by any such authority by virtue of that power, shall not be in force and effect until it has been approved by the State President.
- (3) The State President may, notwithstanding anything to the contrary in any law contained but subject to the provisions of subsection (1).
- (4) by proclamation in the Gazette and in the Official Gazette, make laws for the territory known as the Eastern Caprivi Zipfel and in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No 147 of 1939 of the Republic)
- (5) A proclamation issued in terms of subsection (3) shall, subject to the provisions of sub-section (7), have effect in and for the said Eastern Caprivi Zipfel and has been passed after the first day of November, 1951.
- (6) No Act of Parliament and no ordinance of the Assembly passed on or after the first day of November, 1951, shall apply in the Eastern Caprivi Zipfel, unless it is expressly declared so to apply.
- (7) Any proclamation issued under subsection (1) shall be laid on the Tables of the Senate and of the House of Assembly within fourteen days Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session, and shall remain on the said Tables for a period of not less than twenty-eight consecutive days, and if Parliament is prorogued before the necessary twenty-eight days have elapsed, such proclamation shall again be laid on the said

Tables as aforesaid within fourteen days after the commencement of its next ensuing ordinary session and shall remain on the said Tables for a period of not less than twenty-eight consecutive days, and if Parliament is prorogued before the necessary twenty-eight days have elapsed, such proclamation shall again be laid on the said Tables as aforesaid within fourteen days after the commencement of its next ensuing ordinary session.

- (8) If the Senate and the House of Assembly by resolutions passed in the same session (being a session during which a proclamation has been laid before Parliament in terms of subsection (6) disapprove of any such proclamation or of any provision in any such proclamation, such proclamation or such provision thereof shall thereafter cease to be in force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation or of such provision thereof up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation or such provision thereof."

4.7. Further hereto, Proclamation 181 of 1977 conferred extremely wide legislative powers on the Administrator-General as he had legislative powers to make laws for South West Africa, subject to certain limitations, including the power:

[T]o repeal or amend any legal provision, including any Act of Parliament in so far as it relates to or applies in that territory or is connected with the administration thereof or the administration of any matter by any authority therein, save the said section 38.

4.8. From the provisions of the Proclamation, the State President did not purport to confer on the Administrator-General greater legislative powers than he himself had.<sup>19</sup> Moreover, the State President did not divest himself of his full or plenary

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<sup>19</sup> *Kauluma*, p.15.



legislative powers under section 38 of the Act. In substance the legislative powers conferred on the Administrator-General, subject to the limitations contained in section 38 of the Act, are as extensive as those of the South African Parliament itself. It follows that his legislative powers are full or plenary and not merely subordinate or non-plenary. The Administrator-General was thus not a mere agent or delegate (*delegatus*) of the State President without full or plenary legislative powers.<sup>20</sup>

4.9. Moreover, by conferring the plenary legislative powers on the State President, the South African Parliament did not divest itself of its supreme legislative authority in respect of South West Africa. Notwithstanding the conferment, the supreme legislative authority of the South African Parliament remained unimpaired in respect of South West Africa and could be asserted at will.<sup>21</sup> Thus, the following legislative bodies had legislative power over South West Africa in descending order of superior of authority:

1. The South African Parliament as supreme legislature.
2. The State President with full or plenary legislative powers, subject to certain limitations.
3. The Administrator-General with full or plenary legislative powers, subject to certain limitations.
4. The Legislative Assembly of South West Africa.

## **5. THE SURVIVAL OF LAWS AT THE TRANSITION OF SOUTH WEST AFRICA TO THE REPUBLIC OF NAMIBIA: ARTICLE 140 OF THE NAMIBIAN CONSTITUTION**

5.1. As shall be revealed in this Report, the majority of the laws of the discussed below were passed either by the South African Legislature before the Executive Powers

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<sup>20</sup> *Kauluma*, p 15.

<sup>21</sup> *Kauluma*, p 16.

Transfer (General Provisions) Proclamation of 1977<sup>22</sup> and applied by default to the territory of South West Africa or were promulgated by the Administrator General post-the 1977 AG Proclamation. It is generically true that an appreciable number of laws in force and effect pre-21 March 1990, were (and in some instances still are) wanting in respect of conformity to the new legal regime of constitutionalism and its supremacy. The Namibian Legislature and Judiciary have on numerous occasions made such recognitions through their actions of repealing of unconstitutional law or making declarations of unconstitutionality respectively. The potential unconstitutionality of pre-1990 laws notwithstanding, these laws were retained and of force and effect in Namibia so as to prevent the creation of a legal *lacuna*. Thus, these pre-1990 laws found applicability in Independent Namibia by virtue of the deeming provisions contained in Article 140 of the Namibian Constitution which states as follows:

- (1) Subject to the provisions of this Constitution, all laws which were in force immediately before the date of Independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court.
- (2) Any powers vested by such laws in the Government, or in a Minister or other official of the Republic of South Africa shall be deemed to vest in the Government of the Republic of Namibia or in a corresponding Minister or official of the Government of the Republic of Namibia, and all powers, duties and functions which so vested in the Government Service Commission, shall vest in the Public Service Commission referred to in Article 112 hereof.
- (3) Anything done under such laws prior to the date of Independence by the Government, or by a Minister or other official of the Republic of South Africa shall be deemed to have been done by the Government of the Republic of Namibia or by a corresponding Minister or official of the Government of the Republic of Namibia, unless such action is subsequently repudiated by an Act of Parliament, and anything so done by the Government Service

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<sup>22</sup> Legislature before the Executive Powers Transfer (General Provisions) Proclamation AG 7 of 1977.

Commission shall be deemed to have been done by the Public Service Commission referred to in Article 112 hereof, unless it is determined otherwise by an Act of Parliament.

- (4) Any reference in such laws to the President, the Government, a Minister or other official or institution in the Republic of South Africa shall be deemed to be a reference to the President of The Republic of Namibia or to a corresponding Minister, official or institution in the Republic of Namibia and any reference to the Government Service Commission or the government service, shall be construed as a reference to the Public Service Commission referred to in Article 112 hereof or the public service of The Republic of Namibia.
- (5) For the purposes of this Article the Government of the Republic of South Africa shall be deemed to include the Administration of the Administrator-General appointed by the Government of South Africa to administer of Namibia, and any reference to the Administrator-General in legislation enacted by such Administration shall be deemed to be a reference to the President of Namibia, and any reference to a Minister or official of such Administration shall be deemed to be a reference to a corresponding Minister or official of the Government of the Republic of Namibia.

5.2. Significantly, Article 140 of the Namibian Constitution came under the microscope of the Supreme Court in *Minister of Health and Social Services and 3 others v The Medical Association of Namibia and another*.<sup>23</sup> In this case, the issue of relevance before the court was whether, in terms of the Medicines and Related Substances Control Act, 1965<sup>24</sup>, the Minister of Health or the President of the Republic of Namibia (pre-1990 the Administrator-General), was the relevant authority to appoint the members of the 1965 Council, in terms of the provisions of the Act. It was stated in *obiter* by Strydom AJA, with Mainga JA and Langa AJA concurring, in the *Minister of Health and Social Services* case that Article 140 of the Namibian Constitution is the

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<sup>23</sup> *Minister of Health and Social Services and 3 others v The Medical Association of Namibia and another*. Unreported Case No.: SA13/2010, delivered on 21 June 2012, at para 55.

<sup>24</sup> Act 101 of 1965.

provision whereby Government power was transferred from the South African Government to the new Government of the Republic of Namibia at the attainment of Independence in 1990, so as to ensure a smooth transfer of such powers and not to create a hiatus in the administration of the Republic of Namibia.<sup>25</sup> Therefore, the following principles can be highlighted:<sup>26</sup>

5.2.1. Article 140(1) provides that all laws previously in force in the Republic of Namibia shall remain so until repealed or amended by an Act of Parliament or declared unconstitutional by a competent Court.

5.2.2. Article 140(2) deals with the vesting of such powers created by the existing laws. Where in such laws there is reference to the Government or a Minister or other official of the Republic of South Africa it shall be deemed to be a reference to the Government of the Republic of Namibia or a corresponding Minister or official.

5.2.3. Article 140(3) deems anything done under these laws by the Government, a Minister or other official of the Government of South Africa to have been done by the Government of the Republic of Namibia or a corresponding Minister or official.

5.3. A reading of Article 140 shows that it is a comprehensive provision to achieve a complete and full transfer of the powers vested in the South African Government to the new Government of the Republic of Namibia. To that extent the Governmental hierarchy of South Africa with a State President and Ministers and/or other officials was basically the same as that of the new Government of the Republic of Namibia with a President, Ministers and other officials so that such transfer could easily be achieved without the possibility that somewhere or somehow powers vested in some or other obscure person or institution were to be left out.

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<sup>25</sup> *Minister of Health and Social Services*, at para 55.

<sup>26</sup> *Minister of Health and Social Services*, at para 55.

5.4. However, in the post-1990 governmental hierarchy of Namibia there is no such designation as an Administrator-General.<sup>27</sup> Article 140(2), (3) and (4) clearly set out that when reference to the President or a Minister or other official of the Republic of South Africa shall be a reference to the President, a Minister or an official of the Republic of Namibia. No mention is made of the Administrator-General. This may have occurred due to the fact that Article 140(5) deals exclusively with the Administrator-General, and his administration of the Republic of Namibia, and it sets out when, in terms of enactments by such administration, references to the Administrator-General, or a Minister or other officials, must be deemed to be a reference to the President, a Minister or other officials of the Republic of Namibia. This was limited to enactments by the administration of the Administrator-General. The effect of this is that only where there are enactments of the administration of the Administrator-General, will such reference to the Administrator-General be a reference to the President of the Republic of Namibia.<sup>28</sup>

5.5. In *Minister of Health and Social Services*<sup>29</sup>, the court stated that the fact that there is no reference to the Administrator-General in Sub-articles (2), (3) and (4) of Article 140 was deliberate and not done by mistake or per *incuriam*.<sup>30</sup> As reference to the Administrator-General is to be regarded as a reference to the President of the Republic of Namibia, with regard to enactments by such administration, it follows, as a matter of necessary implication, that references in enactments by the South African Parliament to the Administrator-General, as a result of section 3(1) of AG Proclamation 7 of 1977, were done away with. This achieved the further purpose that references to the President, a Minister or other official of the Republic of South African were, in terms of the Namibian Constitution, now a reference to the President, or a corresponding Minister or official of the Government of the

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<sup>27</sup> *Minister of Health and Social Services*, at para 57.

<sup>28</sup> *Minister of Health and Social Services*, at para 58.

<sup>29</sup> *Minister of Health and Social Services*, at para 58.

<sup>30</sup> This means a decision failing to take note of existing legislation.

Republic of Namibia, without reference to the words Administrator-General.<sup>31</sup> This is given that the administration of the Administrator-General forms an important part in the political history of the Republic of Namibia and during the Administrator General's term, various enactments were promulgated.

5.6. Against the above background, the Namibian Constitution thus gave full legal recognition to laws enacted prior to enforcement; consequently, the Legislature bears the onus to repeal any laws in conflict with it.

## **6. LAWS PROPAGATING DISCRIMINATION AND PREJUDICE**

6.1. After the advent of Independence in the Republic of Namibia, and the adoption of the Namibian Constitution in 1990, all the laws of the Republic of Namibia, pre- or post-1990 were subjected to the supreme Constitution, which required all law to conform thereto.

6.2. Inevitably, a large number of the pre-1990 statutes were, and continue to be in conflict with the provisions of the Namibian Constitution, especially the Bill of Fundamental Rights as enshrined in the Chapter 3 of the Namibian Constitution. This is given that these Laws came from an area of segregation under the ideology of apartheid and racial polarization that distinguished between ethnicities, traditions and tribal origins. Article 10 (2) of the Namibian Constitution prohibits various forms of discrimination and is wide ranging in scope.

6.3. In the case of *Kauesa v Minister of Home Affairs*<sup>32</sup> the High Court of the Republic of Namibia underscored that Article 10 (2) is not restricted to non-discrimination in regard to the enumerated rights and freedoms therein, but to non-discrimination in general. Further, as the Supreme Court noted in *Müller v President of The Republic of Namibia and another*,<sup>33</sup> the purpose of Article 10 was clearly not only to prevent

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<sup>31</sup>*Minister of Health and Social Services*, at para 60.

<sup>32</sup> 1994 NR 102 HC at p 129I.

<sup>33</sup>1999 NR 190 (SC) at p 199D.

discrimination and inequality but, with regard to the Republic of Namibia's historical context, to eliminate them. The prohibition on racial discrimination in Article 10 (2) is reinforced by Article 23 (1) that specifically prohibits racial discrimination and the practice and ideology of apartheid:

“The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of the Republic of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the prorogation of such practices, may be rendered criminally liable by ordinary Courts by means of such punishment as parliament deems necessary for the purposes of expressing the revulsion of the Republic of Namibian people at such practices.”

6.4. In giving effect to Article 23 of the Namibian Constitution, Parliament promulgated the Racial Discrimination Prohibition Act, 1991 (Act No. 26 of 1991). This Act renders criminally punishable, certain acts and practices of racial discrimination and Apartheid in relation to public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services, and involving the incitement of racial disharmony and victimization.

6.5. “*Apartheid*” is an Afrikaans term for apartness, which is representative of the codification in one oppressive system of all the laws and regulations that had kept Africans in an inferior position to whites for centuries. At the time of its introduction, segregation according to race was haphazard. “Apartheid represented a consolidation into a monolithic system that was diabolical in its detail, inescapable in its reach and overwhelming in its power”.<sup>34</sup> The premise of Apartheid was that whites were superior to Africans and Coloureds, with the function of entrenching white supremacy indefinitely. Both the *International Convention on the Elimination*

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<sup>34</sup> These observations were made by Nelson Mandela in his autobiography *Long Walk to Freedom*. 1994. Little Brown and Co, p 127.

*of All Forms of Racial Discrimination of 1965*<sup>35</sup> and the *Convention on the Elimination of All Forms of Discrimination Against Women of 1979*<sup>36</sup> advocate for equality and rejects racial discrimination.

6.6. The practice of racial discrimination<sup>37</sup> is thus singled out for special attention pursuant to Article 10 (2) and Article 23 (1), with this Report seeking to identify those laws that do not meet the requirement of Constitutionality.

## **7. METHODOLOGY OBSERVED BY THE OBSOLETE LAWS PROJECT**

7.1. The LRDC, acted in terms of the powers vested by Section 6(a) of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) by initiating this project aiming to identify those laws potentially obsolete and redundant. With the finalisation of this Report, to which a draft Bill is attached, the Report will be tabled with the Minister of Justice in terms of Section 9 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991).

7.2. The LRDC consulted widely before finalizing its repeal proposals. The purpose of consulting is to secure as wide a range of views on the proposals as is practicable from all categories of persons who may be affected by the proposals. The consultation may be with central or local government, organizations, trade bodies, or any other stakeholder with a vested interest in a proposal. So far as consulting central government is concerned, any department or agency with an interest in the subject matter of the repeal proposal was invited to submit comment. Obsolete legislation often extends throughout the Republic of Namibia, and it was necessary to invite comments from several different departments.

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<sup>35</sup> Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965; entry into force 4 January 1969.

<sup>36</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women.

<sup>37</sup> Blacks' Law Dictionary gives the following two meanings to the concept of discrimination:

'1. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap. . . .  
2. Differential treatment; especially a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.'



- 7.3. The consultation process is of critical importance given the political, administrative and legal history of Namibian laws, and that the Namibian statute books are in a state of disarray. There exists much confusion as to whether a particular statute does or does not find application in Namibia. The consultation process allowed for the various stakeholders who deal with the laws on a daily basis to provide insight in the practical implications as well as to make recommendations for any repeal or amendment, as they deemed appropriate.
- 7.4. The LRDC drew up a list of statutes that are potentially obsolete by consulting the statutes, giving consideration to the content of the statute as a determinate. Thereafter, the list of statutes was circulated to various government ministries, parastatals, governmental organizations and local and regional authorities, to provide input on the laws identified and make recommendations on their obsolescence or redundancy, if any, or otherwise. These recommendations were made in the form of written submissions to the LRDC.
- 7.5. The LRDC gave careful consideration to these submissions and where relevant consolidated them into detailed recommendations. The discussions below thus give consideration to all submissions from the various stakeholders.
- 7.6. This report concludes with an annexure of the Obsolete Laws Repeal Bill, 2014.

## **8. TABLE OF LAWS DISCUSSED**

The following tabulation is of the laws that form part of the discussion regarding obsolescence or otherwise.

### **8.1. Agriculture**

- 8.1.1. Dairy Industry Act, 1961 (Act No. 30 of 1961)
- 8.1.2. Dried Peas Control Ordinance 35 of 1957
- 8.1.3. South West African Meat Industry Ordinance 39 of 1955
- 8.1.4. Tobacco Growers Protection Ordinance 2 of 1933

### **8.2. Animals**

- 8.2.1 Trespass of Donkeys Proclamation 18 of 1941

### **8.3. Blacks**

- 8.3.1. Black Affairs Act, 1959 (Act No. 55 of 1959)
- 8.3.2. Caprivi Zipfel Affairs Proclamation 27 of 1930
- 8.3.3. Concessions from Natives Proclamation 8 of 1915
- 8.3.4. Development of Self-Government for Native Nations in South-West Africa (SWA) Act, 1968 (Act No. 54 of 1968)
- 8.3.5. Namaland Consolidation and Administration Act, 1972 (Act No. 14 of 1972)
- 8.3.6. Native Reserves Fencing Proclamation 12 of 1926
- 8.3.7. Native Reserves Trust Funds Administration Proclamation 9 of 1924
- 8.3.8. Native Trust Fund Proclamation 23 of 1939
- 8.3.9. Okavango Native Territory Affairs Proclamation 32 of 1937
- 8.3.10. Ovamboland affairs Proclamation 27 of 1929
- 8.3.11. Reservation of State Land for Natives Ordinance 35 of 1967

### **8.4. Citizenship and Immigration**

- 8.4.1. Namibian Constitution Citizenship Special Conferment Act, 1991 (Act No. 14 of 1991)

## **8.5. Commissions**

- 8.5.1. Commissions' Powers Ordinance, 1927 (Ordinance 6 of 1927)

## **8.6. Constitution**

- 8.6.1. Application of Laws to the Eastern Caprivi Zipfel Act, 1999 (Act No. 10 of 1999)
- 8.6.2. Declaration of State of Emergency: Caprivi, Proclamation, 1999 (Proclamation No. 23 of 1999)
- 8.6.3. South West Africa Affairs Act, 1969 (Act No. 25 of 1969)

## **8.7. Criminal Law and Procedure**

- 8.7.1. Police Offences Proclamation, 1920 (Act No. 27 of 1920)
- 8.7.2. Price Control and Game Preservation Admissions of Guilt Proclamation, 1944 (Proclamation No. 40 of 1944)
- 8.7.3. Vagrancy Proclamation, 1920 (Proclamation No. 25 of 1920)

## **8.8. Currency**

- 8.8.1. Payment of Bank Notes Proclamation, 1933 (Proclamation No. 3 of 1933)
- 8.8.2. Silver Coin (Control of Importation) Proclamation, 1932 (Proclamation No. 26 of 1932)

## **8.9. Debtors and Creditors**

- 8.9.1. Payment of Loans Proclamation, 1933 (Proclamation No. 28 of 1933)
- 8.9.2. Usury Proclamation, 1921 (Proclamation 26 of 1921)

## **8.10. Evidence**

- 8.10.1. Fugitive Offenders and Neighbouring Territories evidence Proclamation, 1920 (Proclamation No. 26 of 1920)

## **8.11. Finance and Development**

- 8.11.1. Assistance Fund of South West Africa Repeal Act, 1992 (Act No. 13 of 1992)

- 8.11.2. Exchequer and Audit Proclamation, 1979 (Proclamation No. 85 of 1979)
- 8.11.3. Development Fund of South West Africa/Namibia Act, 1987 (Act No. 29 of 1987)
- 8.11.4. State Repudiation (Cultura 2000) Act, 1991 (Act No. 32 of 1991)
- 8.11.5. Assistance Fund of South West Africa Repeal Act, 1992 (Act No. 13 of 1992) (Repeal Law)

## **8.12. Health**

- 8.12.1. Venereal Diseases Prevention Proclamation, 1919 (Act No. 5 of 1919)

## **8.13. Hospitals**

- 8.13.1. Hospitals and Charitable Institutions Ordinance, 1930 (Ordinance 16 of 1930)
- 8.13.2. State hospitals Ordinance, 1966 (Ordinance 17 of 1966)

## **8.14. Housing**

- 8.14.1. Housing Levy Ordinance, 1976 (Ordinance 18 of 1976)

## **8.15. Income Tax**

- 8.15.1. Income Tax Ordinance, 1959 (Ordinance 13 of 1959)
- 8.15.2. Rehoboth Gebiet Income Tax Proclamation, 1961 (Proclamation No. 92 of 1961)

## **8.16. International Law**

- 8.16.1. Treaty of Peace and South West Africa Mandate Act, 1919 (Act No. 49 of 1919)

## **8.17. Labour**

- 8.17.1. Shop Hours and Shop Assistants Ordinance, (Ordinance 15 of 1939)

## **8.18. Land**

- 8.18.1. Control of Sites (Churches, Schools, and Missions) Proclamation, 1932 (Proclamation No. 31 of 1932)
- 8.18.2. Crown Land Disposal Proclamation, 1920 (Proclamation No. 13 of 1920)
- 8.18.3. Crown Lands (Trespass) Proclamation, 1919 (Proclamation No. 7 of 1919)
- 8.18.4. Promotion of the Density of Population in Designated areas Act, 1979 (Act No. 18 of 1979)
- 8.18.5. Small Settlements Commonage Subdivision Proclamation, 1926 (Proclamation No. 13 of 1926)

### **8.19. Medicine and Medical Professions**

- 8.19.1. Consent to Operations on Native Minors Proclamation, (Proclamation No. 37 of 1943)
- 8.19.2. South Africa Medical Research Council Act, 1969 (Act No. 19 of 1969)

### **8.20. Mining and Minerals**

- 8.20.1. The Acquisition of Shares in Rössing Uranium Limited and the Appointment of a Director, AG 31 of 1985

### **8.21. Pensions**

- 8.21.1. Military Pension Act, 1976 (Act No. 84 of 1976)
- 8.21.2. Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, 1999 (proclamation 8 of 1990)
- 8.21.3. Pension Matters of Government Institutions Proclamation, AG 56 of 1989
- 8.21.4. Railways and Harbours Pensions Act, 1971 (Act No. 35 of 1971)
- 8.21.5. Railways and Harbours Pensions for Non-Whites Act, 1974 (Act No. 43 of 1974)
- 8.21.6. Social Pensions Ordinance, 1965 (Ordinance 2 of 1965)
- 8.21.7. Teachers' Pension Proclamation, 1931 (Proclamation No. 39 of 1931)

### **8.22. Public Service**

- 8.22.1. Indemnity Proclamation of 1923

**8.23. Revenue**

8.23.1. Amortization Fund Repeal Act, 1992 (Act No. 7 of 1992) (Repeal Law)

**8.24. Sundays and Public Holidays**

8.24.1. Lord's Day Observance Proclamation, 1921 (Proclamation No. 54 of 1921)

8.24.2. Sunday Trading Proclamation, 1919 (Proclamation No.12 of 1919)

**8.25. Trade and Industry**

8.25.1. Industrial Development Act, 1940 (Act No. 22 of 1940)

**9. OUTLINE OF THE DISCUSSION OF STATUTES**

The discussion of statutes identified for potential repeal shall be structured as follows:

9.1. The statutory title of the law shall be stated:

9.1.1. The name of the statute as recorded in its short title section. This provides the correct citation of the law as it appears in the statute.

9.2. The legislative purpose of the law shall be stated:

9.2.1. The objective of the law as recorded in the preamble and deduced from its content is stated.

9.3. The amendments to the law shall be stated:

9.3.1. The amendments made to the law from the date of its commencement are stated and these include the repeal of certain sections within the law.

9.4. The scope of applicability of the law shall be stated:

9.4.1. This section sets out the territory and subject-matter to which the law extends. The distinction is imperative given that certain pre-independence laws were applicable strictly to South-West-Africa, Caprivi-Zipfel, the Native Reserves or the Rehoboth Gebiet.

9.5. The current status of the law shall be detailed:

9.5.1. The obsolescence, necessity, redundancy or otherwise of the statute is established.

9.6. Recommendation as to the proposed legislative reforms to be undertaken.

9.6.1. Finally, a recommendation as to the contemporary usefulness of the law is discussed. Recommendations are further made as to the extent to which the law should be repealed, amended, or retained.

9.7. The laws shall be discussed *ad seriatum*.

## **10. DISCUSSION OF LAWS**

### **1. Agriculture**

#### **1.1. Dairy Industry Act, 1961 (Act No. 30 of 1961)**

##### **1.1.1. Purpose**

1.1.1.1 To consolidate and amend the laws relating to the registration of dairy premises, the marking of dairy produce and the regulation of the dairy industry in South West Africa.

##### **1.1.2. Scope of applicability**

1.1.2.1. The portions of the law relating to margarine applied to the territory of South West Africa and has survived the transition to the Republic of Namibia by virtue of Article 140.

##### **1.1.3. Amendments**

1.1.3.1 The statute was amended by the Importation of Margarine Amendments Proclamation AG 32 1978. The Proclamation amends Section 15 of the Dairy Industry Act, 1961 (Act No. 30 of 1961), whereby it was required that a permit be obtained to import margarine into the Territory of South West Africa.

##### **1.1.4. Current status**

1.1.4.1 The Dairy Industry Act, 1961 should not be repealed, as it is, to date, the only statute regulating the dairy industry in the Republic of Namibia.

1.1.4.2 The Act fails to define 'butter', and there is no definition thereof in any other statutes given that the Dairy Industry Control Ordinance, 1963 (Ordinance 29 of 1962) has since been repealed. Other dairy products may also not have definitions.



1.1.4.3 Notably, the import and export of dairy products is provided for by the Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act, 1986 (Act No. 5 of 1986).

### **1.1.5. Recommendations**

1.1.5.1. It is recommended that the Act remain.

1.1.5.2. However, the practical implications of the Act must be investigated as a matter of necessity to ensure that the dairy industry is sufficiently and effectively regulated. Reform of the Act can be achieved by making necessary amendments, to include primary definitions of dairy products such as butter.

1.1.5.3. Moreover, the Regulations relating to the Standards of Food, Drugs and Disinfectants of 1968 make reference to the repealed Dairy Industry Control Ordinance 29 of 1962. These regulations should be amended to align to the Dairy Industry Act of 1961 which is currently in force.

1.1.5.4. Finally, it is recommended that a Dairy Industry Control Board (similar to the Meat and Karakul Boards) be established to regulate the Dairy Industry in Namibia. This can be achieved by the amendment of the Act.

## **1.2. Dried Peas Control Ordinance, 1957 (Ordinance 35 of 1957)**

### **1.2.1. Purpose**

1.2.1.1 This Ordinance was intended to control the supply, and the possession of, dried peas to and by “*natives*”, save for in the circumstances provided in the Ordinance. Sale, supply or possession of dried peas by any “*native*”, in the absence of instances provided for by the Ordinance, shall render such “*native*” guilty of an offence. The Ordinance gives power to the Administrator to make regulations, not contrary to this Ordinance, in controlling importation, sale, storage, supply or use of dried peas. The Administrator may also make such regulations in relation to the storage of registers and other records of sales of dried peas, restrictions to the quantity of dried peas and conditions for exemptions or permits for the sale, supply or possession of dried peas.

1.2.1.2. The penalty for contravening this Ordinance shall be upon conviction, a fine not exceeding one hundred pounds or imprisonment for a period not exceeding six months.

**1.2.2. Amendments**

1.2.2.1. The Ordinance has not been amended.

**1.2.3. Scope of applicability**

1.2.3.1. This Ordinance applied to the [former] Territory of South West Africa.

**1.2.4. Current status**

1.2.4.1. The pre-Independence statute survived by virtue of Article 140(3) of the Constitution. Even though the Ordinance is technically still operative, it has no application whatsoever in our current dispensation.

**1.2.5. Recommendation**

1.2.5.1. It is recommended that the Ordinance be repealed in its entirety.

**1.3. South West African Meat Industry Ordinance, 1955 (Ordinance 39 of 1955)**

**1.3.1. Purpose**

1.3.1.1. The Ordinance provides for control of the meat industry and it establishes the South West Africa Meat Corporation, defining its functions and powers for the taking over of existing meat concerns, meat canning factories, abattoirs and cold storage chambers and their management. Further, it provides for the storage of meat products for processing and consumption within South West Africa.

**1.3.2. Amendments**

1.3.2.1. The Ordinance was amended by Ordinance 7 of 1958.

### **1.3.3. Scope of applicability**

1.3.3.1. The statute applied to the [former] Territory of South West Africa.

### **1.3.4. Current status**

1.3.4.1. The statute has been superseded by the South West Africa Meat Industry Act, 1981 (Act No. 12 of 1981), which established a new meat board, setting forth its objects, powers, duties and functions.

### **1.3.5. Recommendation**

1.3.5.1. This Ordinance should be repealed.

## **1.4. Tobacco Growers Protection Ordinance, 1933 (Ordinance 2 of 1933)**

### **1.4.1. Purpose**

1.4.1.1. The purpose of the Ordinance is the provision for control of the importation and sale of tobacco used for farming purposes, as a measure of protection for the growers of tobacco in the territory. The statute prohibits the importation of 'lick and dip' tobacco without an enabling permit, and further sets out that the Secretary of South West Africa has such authority to impose conditions as deemed fit.

1.4.1.2. Finally, the Ordinance creates an offence for any person who contravenes or evades the provisions of the Ordinance or conditions attached to the permit.

### **1.4.2. Amendments**

1.4.2.1. The Ordinance is amended by the Tobacco Growers' Protection Amendment Ordinance 7 of 1933.

### **1.4.3. Scope of applicability**

1.4.3.1. The statute applied to the territory of South West Africa. It remains in force by virtue of Article 140(3) of the Namibian Constitution.

#### **1.4.4. Current status**

1.4.4.1. The Ordinance remains in force to date, and is the only law that regulates the importation and sale of tobacco in The Republic of Namibia. It must be noted that although the Tobacco Products Control Act, 2010 (Act No.1 of 2010) was enacted, this Act merely provides for measures to reduce the supply and demand of tobacco products, to prohibit the sale of tobacco to person under the age of 18 and to protect against exposure to tobacco smoke. To this end, the Act does not regulate the sale and importation of tobacco for farming purposes.

#### **1.4.5. Recommendation**

1.4.5.1. Given the Ordinances' current status, it is recommended that the law remain. Although it has lost significance with the passage of time, it still remains relevant. Further investigation should be highly considered, with the intent to reform or replace this Ordinance with an Act of Parliament, which is appropriate to the current social and economic needs and circumstances of the country. Imperatively, any law reform must address the sale, importation and exportation of tobacco and its products.

1.4.5.2. Therefore, this Ordinance should not be repealed.

## **2. Animals**

### **2.1. Trespass of Donkeys Proclamation, 1941 (Proclamation No. 18 of 1941)**

#### **2.1.1. Purpose**

2.1.1.1. This Proclamation regulates the trespassing of donkeys on private property. Section 2 of the Proclamation stipulates that it shall be lawful for the proprietor of any land in the Territory to treat as his own property any unbranded donkey, or any donkey having a brand which is not decipherable after such donkey has been trespassing on such land for a period of fourteen days.

#### **2.1.2. Amendments**

2.1.2.1. The Proclamation has no amendments.

**2.1.3. *Current status***

2.1.3.1. The Proclamation has no legal effect, despite its embodiment in law. The Animal Health Act, 2011 (Act No. 1 of 2011) functions as a replacement to this Proclamation. Section 22 of the Animal Health Act, 2011(Act No. 1 of 2011) specifically targets stray animals, and donkeys fall under the definition of animals as per the definition section of that Act.

**2.1.4. *Recommendation***

2.1.4.1. The Proclamation has no further relevance, and to the extent that there already exists a law more suited to the contemporary laws of the country, it is recommended that the Proclamation be repealed.

**3. 'Blacks'**

**3.1. Native Affairs Act, 1959 (Act No. 55 of 1959)**

**3.1.1. *Purpose***

3.1.1.1. The purpose of the Act was to consolidate the laws providing for the establishment of a Commission and of Native Councils with a view to facilitating the administration of Native Affairs. The Commission must consider any matter relating to the general conduct of the administration of Native Affairs or to legislation in so far as its effects are concerned.

**3.1.2. *Amendments***

3.1.2.1. The Act has no amendments.

**3.1.3. *Scope of applicability***

3.1.3.1. This Act applied to the Territory of South West Africa including the Eastern Caprivi Zipfel.

### **3.1.4. Current status**

3.1.4.1. The Act has no other advancing effect but forms part of our law by virtue of Article 140 of the Namibian Constitution.

### **3.1.5. Recommendation**

3.1.5.1. The Act is discriminatory in form and its application will be contrary to the aspirations of the people of the Republic of Namibia as embodied in Chapter 3 of the Constitution and more specifically Article 10, thus it must be repealed in its entirety.

## **3.2. Caprivi Zipfel Affairs Proclamation, 1930 (Proclamation No. 27 of 1930)**

### **3.2.1. Purpose**

3.2.1.1. The purpose aims to strengthen the governmental administration set up in the Caprivi Zipfel. It empowers the Administrator to make regulations for the Government of Caprivi Zipfel and also establishes a Trust Fund for the tribes in the Territory.

### **3.2.2. Amendments**

3.2.2.1. There are no amendments to the Proclamation.

### **3.2.3. Scope of applicability**

3.2.3.1. The Proclamation applies only to the Territory of the Caprivi Zipfel.

### **3.2.4. Current status**

3.2.4.1. The pre-Independence statute remains in force by virtue of Article 140(3) of the Constitution.

3.2.4.2. The Caprivi Zipfel is no longer a territory separate from greater South West Africa/ Namibia with an administrator of its own. Further, the Constitution

states that the Republic of Namibia is a unitary state by virtue of Article 1(1). Therefore, *inter alia*, this statute is potentially unconstitutional. Thus it must be repealed in its entirety.

### **3.2.5. Recommendation**

3.2.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **3.3. Concessions from Natives Proclamation, 1915 (Proclamation No. 8 of 1915)**

### **3.3.1. Purpose**

3.3.1.1. The Proclamation provides that concessions for mineral, trading and other rights obtained (and to be obtained) by private individuals from “*coloured and native inhabitants*” shall be invalid.

### **3.3.2. Scope of applicability**

3.3.2.1. The Proclamation applies to [former] German South West Africa

### **3.3.3. Current status**

3.3.3.1. The Proclamation is laden with discriminatory epithets, especially in the use of the term “*natives*”, which is contrary to Article 23 (1) and Article 10 of the Namibian Constitution.

3.3.3.2. Further, the Proclamation is superseded in its effect by the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), which regulates the acquisition of concessions by all persons.

### **3.3.4. Recommendation**

3.3.4.1. The Proclamation should be repealed in its entirety.

## **3.4. The Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968)**

### **3.4.1. Purpose**

3.4.1.1. The Act was designed to assist “native nations in the territory of South West Africa” to “develop in an orderly manner to self-governing nations and independence”. The “native nations” were identified as Damaraland, Hereroland, Kaokoland, Okavangoland, Eastern Caprivi, Ovamboland and any other land subsequently set aside for the use of native nations by the State President of South Africa. The Legislative Councils in the different “native nations” were to have legislative power over certain listed topics -- including education; welfare; clinics; business, trade and industry; roads, sanitation and water supply; the administration of justice; and labour bureaux” -- while Executive Councils in each “native nation” would have administrative power over these matters.

### **3.4.2. Amendments**

3.4.2.1. There are no amendments to the Act.

### **3.4.3. Scope of applicability**

3.4.3.1. In terms of section 1, the Act applies to the territory of South-West Africa, including the Eastern Caprivi Zipfel.

### **3.4.4. Current status**

3.4.4.1. The Act refers to the creation of native nations that are vested with legislative and executive powers and functions. However, in the contemporary constitutional set-up there is no room for native nations given that Article 1(1) of the Namibian Constitution defines the Republic of Namibia as a unitary state, which is not divided along ethnic, racial or tribal lines as the statute provides.

3.4.4.2. Moreover, the role that they played has been superseded by the provisions of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).

### **3.4.5. Recommendations**



3.4.5.1. It is recommended that the Act be repealed in its entirety as it has become obsolete and superseded by the Traditional Authority structures created by the above Act of 2000.

### **3.5. Namaland Consolidation and Administration Act, 1972 (Act No. 79 of 1972)**

#### **3.5.1. Purpose**

3.5.1.1. The purpose of the Act is to provide for the reservation and setting apart, under the name of Namaland, of a consolidated area in the Territory of South West Africa for the sole use and occupation of the Nama, for the administration of matters affecting the said Namaland and for matters incidental thereto.

#### **3.5.2. Amendments**

3.5.2.1. AG 39/1978 amends this Act by adding specified areas of land to Namaland.

3.5.2.2. Act 15/1979 amends section 1, section 2 and Schedule 1.

3.5.2.3. The Representative Authority of the Namas Proclamation (AG 35/1980) (which was repealed by the Namibian Constitution) repeals section 3, amends section 6 and affects the application of Schedule 1.

3.5.2.4. AG 71/1980 amends section 2 and Schedule 1. Act 4/1986 also amends section 2 and Schedule 1.

#### **3.5.3. Current status**

3.5.3.1. The Republic of Namibia is no longer partitioned into homelands and any person is free to reside in any part of the Republic of Namibia as they so choose; hence the purpose for which the Act was promulgated has ceased to exist. Article 21(1) (g) and (h), which provide for the right to free movement in Namibia and to reside freely in Namibia, is contravened by the Act.

#### **3.5.4. Recommendation**

3.5.4.1. The Act has no further on-going effect or purpose; it is recommended that the Act be repealed in its entirety.

### **3.6. Native Reserves Fencing Proclamation, 1926 (Proclamation No. 12 of 1926)**

#### **3.6.1. Purpose**

3.6.1.1. This Proclamation provides for the recovery of the costs of fencing “*native*” reserves from the reserves’ inhabitants.

#### **3.6.2. Amendments**

3.6.2.1. There are no amendments to this Proclamation.

#### **3.6.3. Scope of applicability**

3.6.3.1. The Proclamation is applicable to all “Native Reserves” as defined in Section 1 of Native Administration Proclamation 15 of 1928.

#### **3.6.4. Current status**

3.6.4.1. This Act is inconsistent with Article 100 of the Constitution, which provides that all natural resources belong to the State, in trust, for the community. It also does not align in its provisions with the Communal Land Reform Act, 2002 (Act No. 5 of 2002).

3.6.4.2. The majority of the provisions in this Proclamation are sufficiently covered in Section 44 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), which requires that prior permission has to be obtained from the Communal Land Reform Board for the erection of a fence around an area which is not a homestead, a house, a cattle pen, a water trough or crop field and prescribes a penalty for contravention of the section.

#### **3.6.5. Recommendations**

3.6.5.1. It is recommended that the Proclamation be repealed in its entirety.

### **3.7. Native Reserves Trust Fund Administration Proclamation, 1924 (Proclamation No. 9 of 1924)**

#### **3.7.1. Purpose**

3.7.1.1. The Proclamation aims to create separate Native Reserve Trust Funds to be set up for each “*native reserve*”, which had been established by the now repealed Native Administration Proclamation 11 of 1922. Further, the Proclamation regulates the reserves, and governs the administration of such funds.

### **3.7.2. *Amendments***

3.7.2.1. The Proclamation has been amended by:

1. Proclamation 15 of 1928.
2. Proclamation 21 of 1936.
3. Proclamation 6 of 1939.
4. Ordinance 11 of 1954.
5. The Republic of South Africa Proclamation 62 of 1963.
6. The Republic of South Africa Proclamation 228 of 1969.
7. The Republic of South Africa Proclamation 84 of 1977.

### **3.7.3. *Scope of applicability***

3.7.3.1. The Proclamation applies to the Territory of South West Africa.

### **3.7.4. *Current status***

3.7.4.1. The purpose of the Proclamation was to give effect to the Native Administration Proclamation of 11 of 1922, which is of no practical application; ergo it is redundant and obsolete. Further, the statute is potentially unconstitutional given that it allows for racial separation and perpetuates the ideology of Apartheid, which is declared unconstitutional in terms of Article 23(1).

### **3.7.5. *Recommendation***

3.7.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **3.8. Native Trust Funds Proclamation, 1939 (Proclamation No. 23 of 1939)**

### **3.8.1. *Purpose***

3.8.1.1. The Proclamation established the Herero Tribal Trust Fund and authorized the Administrator-General to establish similar funds for other “tribes” or “aggregation of natives”. It did not repeal the Native Reserves Trust Funds Administrators Proclamation 9 of 1924.

### **3.8.2. Amendments**

3.8.2.1. The Proclamation has no amendments

### **3.8.3. Scope of applicability**

3.8.3.1. The Statute applies to the entire Territory of South West Africa.

### **3.8.4. Current status**

3.8.4.1. This Proclamation violates Article 10 of the Namibian Constitution by provided for separate allocations of government funds on racial grounds, and has no continuing relevance.

### **3.8.5. Recommendation**

3.8.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **3.9. Okavango Native Territory Affairs Proclamation, 1937 (Proclamation No. 32 of 1937)**

### **3.9.1. Purpose**

3.9.1.1. The Proclamation enables the Administrator to make regulations for the Okavango Native Territory, the establishment of a Trust Fund, and the establishment of the Okavango Native Territory Police.

### **3.9.2. Amendments**

3.9.2.1. The Proclamation has no amendments.

### **3.9.3. Scope of applicability**

3.9.3.1. The Proclamation applied to the Government of the Okavango Native Territory.

#### **3.9.4. Current status**

3.9.4.1. The Okavango Native Territory is no longer a separate territory from the Independent Republic of Namibia as per Article 1(1) of the Namibian Constitution, separate legislation covering this territory is unnecessary and superfluous; ergo this Proclamation is obsolete. Article 23 (1) and Article 10 of the Constitution further prohibit the practice of racial discrimination.

#### **3.9.5. Recommendation**

3.9.5.1. It is recommended that the Proclamation be repealed in its entirety.

### **3.10. Ovamboland Affairs Proclamation, 1929 (Proclamation No. 27 of 1929)**

#### **3.10.1. Purpose**

3.10.1.1. This Proclamation was intended to set aside [former] Ovamboland as a reserve for the sole use and occupation of 'natives'. This Proclamation enables the Administrator to make regulations for the government of Ovamboland, the establishment of a trust fund and establishment of the Ovamboland Police.

#### **3.10.2. Amendments**

3.10.2.1. The Proclamation has been amended by the following:

- a) Proclamation 26 of 1930.
- b) Proclamation 34 of 1940.
- c) Proclamation 38 of 1940.
- d) Proclamation 15 of 1941.
- e) Proclamation 2 of 1948.
- f) Proclamation 52 of 1950.

#### **3.10.3. Scope of applicability**

3.10.3.1. This Proclamation was applied to the Magisterial District of Ovamboland.

### **3.10.4. Current status**

- 3.10.4.1. The pre-Independence statute remains in force by virtue of Article 140(3) of the Namibian Constitution.
- 3.10.4.2. The post-Independent Namibian state is governed as one state with laws of general application, rendering the need for specific “Ovamboland Affairs” invalid. Freedom of movement through Namibia, as well as the freedom to reside and settle in any part of Namibia, is guaranteed in Article 21 (1) (g) and (h) of the Namibian Constitution, respectively. To this end Section 1 of the Proclamation, which provides that the Ministerial district of Ovamboland is set apart for the sole use and occupation of natives, is fundamentally inconsistent with the aforementioned constitutional provisions.
- 3.10.4.3. Article 10 and 23 (1) of the Namibian Constitution further prohibit the practice of racial discrimination.
- 3.10.4.4. The alternative to the matters relating to trust funds and benefits, are sufficiently dealt with in section 18 of the Traditional Authorities Act, 2000 (Act No. 25 Of 2000), which provided that:

A traditional authority may with the consent of the members of its traditional community establish a Community Trust Fund, to be held in trust for the members of that traditional community.

- 3.10.4.5. Moreover, the Proclamation imposes fines, in accordance with foreign currencies, imposed in schillings and pounds. This practice clearly resonates from the colonial era, as such is no longer consonant with post-Independent Namibian law. In addition it is not clear whether the equivalent of the amount stated ought to be paid in Namibian Dollar(s).

### **3.10.5. Recommendation**

- 3.10.5.1. As the Proclamation has no current relevance, it is recommended that it be repealed in its entirety.

### **3.11. Reservation of State Land for Natives Ordinance, 1967 (Ordinance 35 of 1967)**

#### **3.11.1. Purpose**

3.11.1.1. This Ordinance authorizes the Administrator-General of South West Africa to set aside and reserve state land for the sole use and occupation of natives.

#### **3.11.2. Amendments**

- a. Ordinance 5/1969 amends section 1 and the Schedule to the principal Ordinance.
- b. Ordinance 19/1971 amends the Schedule to the principal Ordinance.
- c. Ordinance 16/1974 amends the Schedule to the principal Ordinance.
- d. Ordinance 5/1975 amends the Schedule to the principal Ordinance.
- e. Ordinance 6/1977 amends the Schedule to the principal Ordinance.
- f. Ordinance 5/1978 amends the Schedule to the principal Ordinance.

#### **3.11.3. Scope of applicability**

3.11.3.1. This Ordinance applies to South West Africa.

#### **3.11.4. Current status**

3.11.4.1. The pre-Independence statute remains in force by virtue of Article 140(3) of the Constitution.

3.11.4.2. The Ordinance is contrary to Article 23 and Article 10 of the Namibian Constitution, which rejects racial discrimination.

#### **3.11.5. Recommendation**

3.11.5.1. It is recommended that the Ordinance be repealed in its entirety.

## **4. Citizenship and Immigration**

#### **4.1. The Republic of Namibian Citizenship Special Conferment Act, 1991 (Act No. 14 of 1991)**

##### **4.1.1. Purpose**

4.1.1.1. This Act makes provision for the conferment of Namibian citizenship upon certain descendants of person who left the Republic of Namibia because of persecution by the colonial government which was in control of the country before 1915, if such descendant does not qualify for citizenship on any other ground.

##### **4.1.2. Scope of applicability**

4.1.2.1. The Act is applicable to the Republic of Namibia.

##### **4.1.3. Amendments**

4.1.3.1. The Act has no amendments.

##### **4.1.4. Recommendation**

4.1.4.1. The Act is recommended for repeal as it has prescribed; in that Section 2 of the Act provides that descendants of a person who is a Namibian citizen or who left Namibia due to persecutions of the colonial government shall be entitled to acquire citizenship within a period of 5 years after the commencement of this Act. The Act was affected in 1991 and ceased to have effect in 1996.

## **5. Commissions**

### **5.1. Commission's Powers Ordinance, 1927 (Ordinance 6 of 1927)**

#### **5.1.1. Purpose**

5.1.1.1. This Ordinance was intended to confer certain powers, jurisdictions and privileges upon Commissions that are appointed by the Administrator, for purposes of inquiring into matters of public concern.



- 5.1.1.2. The Ordinance confers powers of the High Court on the Commission for purposes of its inquiry, and only so far as its inquiry is concerned. These powers include the power to summon, subpoena and examine witnesses. The power further entitles the Chairman of the Commission to administer oaths, for the duration of his term in office.
- 5.1.1.3. The Ordinance provides that every witness subpoenaed by the Commission and/or called upon to produce certain documents, is under obligation or bound to obey such subpoena in observation of privileges, as entitled by the High Court of South West Africa. Failure to do the latter renders such witness guilty of an offence, and liable upon conviction, for the payment of a fine not exceeding fifty pounds, and in default of payment, to imprisonment not exceeding a period of three months with or without labour. The same punishment is afforded when a witness refuses to answer all questions put to him by the Commission fully or satisfactorily to his knowledge. Any witness, who under Oath, or after being duly sworn, gives a false testimony or evidence before the commission concerning the subject of inquiry, knowing such testimony or evidence to be false, shall be guilty of perjury and liable to be prosecuted and duly punished.
- 5.1.1.4. Any person employed to assist in, or in connection with, an inquiry by the Commission shall take an Oath of secrecy before a Magistrate, and is to preserve the secrecy of information obtained in relation to the subject matter of that inquiry. Failure to preserve secrecy without lawful excuse renders such person guilty of an offence, and liable upon conviction to a fine not exceeding fifty pounds, and in default of payment, to imprisonment with or without hard labour for a period not exceeding three months, or in discretion of the court passing sentence, such imprisonment without option of a fine.

## **5.1.2. Amendments**

- 5.1.2.1. The Ordinance was amended by Commissions' Powers Amendment Ordinance 2 of 1976 in the following respects:
- a. Section 1 of the Amendment Ordinance substituted section 1 of the principal Ordinance.

- b. Section 2 of the Amendment Ordinance substituted section 2 of the principal Ordinance.
- c. Section 3 of the Amendment Ordinance substitutes the long title of the principal Ordinance.

5.1.2.2. It was amended by the Commissions Act, 1947 (Act No. 8 of 1947), which conferred powers on Commissions appointed by the Governor-General, for purposes of investigating matters of public concern. This Act has provisions similar to those in the Commissions' Powers Ordinance 6 of 1927.

### **5.1.3. *Scope of applicability***

5.1.3.1. This Ordinance applied to the territory of South West Africa.

### **5.1.4. *Current status***

5.1.4.1. The usefulness of the Ordinance has been surpassed, in the sense that the Republic of Namibia no longer utilises Administrators or Commissions, as applied in terms of the aforementioned Ordinance.

5.1.4.2. The Ordinance has been superseded in its effect by the Commissions Act, 1947 (Act No. 8 of 1947).

### **5.1.5. *Recommendations***

5.1.5.1. It is recommended that the Ordinance be repealed in its entirety.

## **6. Constitution**

### **6.1. Application of Laws to the Eastern Caprivi Zipfel Act, 1999 (Act No. 10 of 1999)**

#### **6.1.1. Purpose**

6.1.1.1. The Act was enacted for the purpose of rendering certain pre-Independence laws applicable to the Eastern Caprivi Zipfel. Although Article 147 of the Namibian Constitution repealed section 38 (5) of the South West Africa

Constitution Act, 1968 (Act No. 39 of 1968), which declares that, unless expressly declared, no Act of Parliament of South Africa and no Ordinance of the Legislative Assembly of South West Africa passed on or after 01 November 1951 would apply to Eastern Caprivi Zipfel. The particular section still has effect by virtue of Section 11 (2) of the Interpretation Proclamation. Hence, the need for this particular Act.

### **6.1.2. Amendments**

6.1.2.1. The Act has no amendments.

### **6.1.3. Scope of applicability**

6.1.3.1. This Act was applied to the former “*native*” territory of Eastern Caprivi Zipfel.

### **6.1.4. Current status**

6.1.4.1. Seeing as the Act was promulgated in 1999, it remains applicable to the Eastern Caprivi Zipfel.

### **6.1.5. Recommendation**

6.1.5.1. This Act is necessary, to the degree that Section 11 (2) of the Interpretation Proclamation is operative, so as to allow the application of all laws to the Eastern Caprivi Zipfel. Hence it should not be repealed.

## **6.2. Declaration of State of Emergency: Caprivi, Proclamation, 1999 (Proclamation No. 23 of 1999)**

### **6.2.1. Purpose**

6.2.1.1. The purpose of the Proclamation was to declare a State of Emergency in the North-Eastern Region of Caprivi, by virtue of Article 26 (1) of the Namibian Constitution as a result of the failed secession attempt by the Caprivi Liberation Army on the 2<sup>nd</sup> of August 1999.

### **6.2.2. Amendments**

6.2.2.1. The Proclamation is amended by Proclamation 27 of 1999, which revokes the Declaration of the State of Emergency Regulations.

### **6.2.3. *Scope of applicability***

6.2.3.1. Applies to the Region of Caprivi in The Republic of Namibia as it is defined by Proclamation 6 of 3 March 1992.

### **6.2.4. *Current status***

6.2.4.1. The status was revoked by Revocation of Declaration of State of Emergency Proclamation 27 of 1999. This was administered due to the threat to the life of the Nation and Constitutional order. This no longer holds prominence with regard to the Region of Caprivi; ergo it is obsolete.

### **6.2.5. *Recommendation***

6.2.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **6.3. South West Africa Affairs Act, 1969 (Act No. 25 of 1969)**

### **6.3.1. *Purpose***

6.3.1.1. The Act gives the Governor-General of South Africa the power to set a date<sup>38</sup> after which Walvis Bay would be administered as if it were part of the mandated territory and as if inhabitants of the said port and settlement were inhabitants of the mandated territory. The Governor-General was also empowered to delegate his legislative powers for Walvis Bay to the Administrator of South West Africa for the purpose of bringing the laws of Walvis Bay into conformity with the rest of the territory. The Act further provided that no future Act passed by the Parliament of the Union of South Africa would apply to Walvis Bay, unless this was specifically stated in the law, or the law was declared to be applicable to Walvis Bay by a Proclamation of the Governor-General.

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<sup>38</sup> The relevant date was set as 1 October 1922 by SA Proclamation 145 of 1922. This Proclamation also delegated all of the Governor-General's powers to make laws for Walvis Bay to the Administrator of South West Africa.

### **6.3.2. Scope of applicability**

6.3.2.1. The Act applies to the territory of South West Africa/Namibia.

### **6.3.3. Amendments**

6.3.3.1. The Act has no amendments.

### **6.3.4. Current status**

6.3.4.1. In terms of Article 1(4) of the Namibian Constitution, Walvis Bay forms part of the territory of the Republic of Namibia. Until 1994 it still belonged to South Africa, but with the enactment of the Transfer of Walvis Bay to Namibia Act, 1993 (Act No. 203 of 1993), Walvis Bay forms part of the territory of the Republic of Namibia. Further, South Africa has confirmed this position with the promulgation of the Walvis Bay and Off-shore Islands Act, 1994 (Act 1 of 1994) of South Africa.<sup>39</sup> Given that the combined effect of the above statutes entails that Walvis Bay forms part of the Republic of Namibia, the laws applicable to the Republic of Namibia are equally applicable to Walvis Bay. Thus the Act finds no relevance today as the above Acts have superseded it.

### **6.3.5. Recommendation**

6.3.5.1. It is recommended that the Act be repealed in its entirety.

## **7. Criminal Law and Procedure**

### **7.1. Police Offences Proclamation, 1920 (Proclamation No. 27 of 1920)**

#### **7.1.1. Purpose**

7.1.1.1. The Proclamation was intended to make provision for the suppression and punishment of certain offences.

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<sup>39</sup>For the legal history of Walvis Bay, see Namlex (2010:6).

- 7.1.1.2. The offences herein relate to: municipal offences; traffic offences; the preservation of a clean environment; the control of liquor sale by those licensed to do so, to ensure that this is done within the lawful hours and in terms of other legal requirements; suppressing miscellaneous behaviour in the localities; and medical and general sanitation.
- 7.1.1.3. Government medical officers and police officers are given power to visit or inspect any premises for the purpose of ascertaining that such premises are being kept clean. Police officials of, and above, the rank of Sergeant, or any other member of the police duly authorized, may from time to time visit those premises licensed to sell liquor to ascertain such sale is done in terms of the legal requirements.

### **7.1.2. Amendments**

- 7.1.2.1. The Proclamation was modified and applied to the Gebiet area by Proclamation 5 of 1937.
- 7.1.2.2. Section 8 (12) and section 9 (3) of the Proclamation were repealed by the Trespass Ordinance 2 of 1962.
- 7.1.2.3. Police Offences Proclamation Amendment Ordinance 15 of 1962:
- a. Superscriptions occurring after sections 2, 6 and 13 of the Principal Proclamation are repealed.
  - b. Section 2 of the Amendment Ordinance repeals Sections 3, 4, 7 and 14 of the principal Proclamation.
  - c. Section 3 of the Amendment Ordinance amends Section 5 by deleting sub-section (2).
  - d. Section 4 of the Amendment Ordinance substitutes section 6 of the principal Proclamation.
  - e. Section 5 of the Amendment Ordinance amends section 11 of the principal Proclamation by deleting its sub-section (2).
  - f. Section 6 of the Amendment Ordinance amends the principal Proclamation by the substitution for the word 'Protectorate' wherever it occurs except in section 1, of the word 'Territory'.

7.1.2.4. The Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980) repeals section 6 of the principal Proclamation.

7.1.2.5. The Proclamation was amended by the Republic of South Africa Prohibition of Disguises Act, 1969 (Act No.16 of 1969).

### **7.1.3. *Scope of applicability***

7.1.3.1. This Proclamation applied to every town or village which has been, or shall, constitute a municipality, to every town or village or other place in which the Administrator shall declare it to be fixed and appointed and in Aroab, Bethani, Gobabis, Gibeon, Maltahohe, Outjo, Otjiwarongo, Rehoboth, Tsumeb and Warmbad.

7.1.3.2. The Gebiet was added to the above list by Proclamation 5 of 1937.

### **7.1.4. *Current status***

7.1.4.1. Most of the provisions have been addressed in certain local laws or regulations such as the Municipal Regulations, Traffic Regulations and Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980).

### **7.1.5. *Recommendation***

7.1.5.1. This particular statute is suitable for repeal, as the purpose for which it was enacted has been provided for in different regulations and statutes.

## **7.2. Price Control Admissions of Guilt Proclamation, 1944 (Proclamation No. 40 of 1944)**

### **7.2.1. *Purpose***

7.2.1.1. The statute deals with the fine or punishment that may be imposed upon a person who admits to committing an offence. The stipulated amount is either 50 Pounds, or the maximum fine with which such offence is punishable; whichever amount is the lesser.

### **7.2.2. Amendment**

7.2.2.1. The Proclamation has been amended by Ordinance 11 of 1954 and Ordinance 17 of 1958

### **7.2.3. Scope of applicability**

7.2.3.1. The Proclamation finds application in South West Africa/Namibia by virtue of Article 140 of the Namibian Constitution.

### **7.2.4. Current status**

7.2.4.1. As it is, the Criminal Procedure Act, 1977 (Act No. 51 of 1977) regulates the Law of application in terms of admissions of guilt fines or sentences. This is in terms of section 32 and section 57 of the Criminal Procedure Act (CPA), 1977 (Act No. 51 of 1977). The list of repealed Laws in terms of Schedule 4 of the CPA does not include this Proclamation, even though the CPA creates new laws for the regulation of admissions of guilt by offenders. Therefore, the CPA supersedes the Proclamation, making it redundant and unnecessary.

### **7.2.5. Recommendation**

7.2.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **7.3. Vagrancy Proclamation, 1920 (Proclamation No. 25 of 1920)**

### **7.3.1. Purpose**

7.3.1.1. This Proclamation is directed at suppressing trespassing, idleness and vagrancy.

### **7.3.2. Scope of applicability**

7.3.2.1. The Proclamation applies to South West Africa.

### **7.3.3. Amendments**

7.3.3.1. The Proclamation is amended by Proclamation 32/1927 and Ordinance 3/1962. It was extended to the Rehoboth Gebiet by Proclamation 7/193.



#### **7.3.4. Current status**

7.3.4.1. Being a piece of apartheid legislation, the Proclamation is framed so widely that an individual's mere presence on land albeit with justification constitutes an offence. The Local Authorities Act, 1992 (Act No. 23 of 1992) and the Trespass Ordinance 3 of 1962 make sufficient provision for the regulation of trespassing.

#### **7.3.5. Recommendation**

7.3.5.1. It is recommended that the Proclamation be repealed in its entirety.

### **8. Currency**

#### **7.3.6.1. Payment of Bank Notes Proclamation (No. 3 of 1933)**

#### **7.3.7. Purpose**

7.3.7.1. The purpose of the Proclamation was to provide for the prohibition of payment in gold to a holder of a bank note; in that a holder of a bank shall not be entitled to payment in gold.

#### **7.3.8. Scope of applicability**

7.3.8.1. The Proclamation is applicable to South West Africa.

#### **7.3.9. Amendments**

7.3.9.1. The Proclamation has no Amendments.

#### **7.3.10. Current status**

7.3.10.1. The Proclamation is recommended for repeal as the legal tender of the Republic of Namibia, in terms of Section 20 of the Bank of the Republic of Namibia Act, 1997 (Act No 15 of 1997), is note and coins and not gold. Therefore no payment can be made in gold to a holder of bank notes.

### **7.3.11. Recommendation**

7.3.11.1. This Proclamation is recommended for repeal.

## **7.4. Silver Coin (Control of Importation) Proclamation, 1932 (Proclamation No. 26 of 1932)**

### **7.4.1. Purpose**

7.4.1.1. The purpose of this Proclamation is to control the importation of silver coins and to provide that the holder of a bank note shall not be entitled to be paid in gold.

### **7.4.2. Scope of applicability**

7.4.2.1. This Proclamation applies to South West Africa.

### **7.4.3. Current status**

7.4.3.1. Although the Proclamation still applies, it has been superseded in its role and effect by the Bank of Namibia Act, 1997 (Act No. 15 of 1997) which provides that the central bank of the Republic of Namibia serves as the State's principal instrument to control money supply, currency and institutions of finance.

### **7.4.4. Amendments**

7.4.4.1. The Proclamation is amended by Proc. 33/1932, and; Payment of Bank Notes Proclamation 3 of 1933

### **7.4.5. Recommendations**

7.4.5.1. The provisions of the Proclamation have been superseded by the Bank of Namibia Act, 1997 (Act No. 15 of 1997), thus it is recommend that it be repealed in its entirety.

## **8. Debtors and Creditors**

### **8.1. Payment of Loans Proclamation, 1933 (Proclamation No. 28 of 1933)**

### **8.1.1. Purpose**

8.1.1.1. The Proclamation deals with the law relating to the payment of loans. Section 1 of the statute states that in any legal proceeding, whereby a party wishes to recover money in terms of a contract for the loan of money, the court in which the legal proceedings occurred must have no regard to the provisions contained in such a contract, whereby a term of the contract makes reference to the variation of the interest or amount of repayment on the price of gold.

### **8.1.2. Amendments**

8.1.2.1. There have been no amendments to the Proclamation.

### **8.1.3. Scope of applicability**

8.1.3.1 The law applies to South West Africa. It survived the transition of South West Africa to The Republic of Namibia by virtue of Article 140 of the Namibian Constitution.

### **8.1.4. Current status**

8.1.4.1. Although the Proclamation remains in force and has not been repealed, it is obsolete, redundant and of no practical application in the Republic of Namibia. Considering that the legal tender of the Republic of Namibia has subsequently changed to the Namibian Dollar (N\$), the needs to regulate the variance of the gold price for this purpose is no longer necessary.

### **8.1.5. Recommendation**

8.1.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **8.2. Usury Proclamation, 1921 (Proclamation No. 26 of 1921)**

### **8.2.1. Purpose**

8.2.1.1. The Proclamation provides for the limitation and disclosure of finance charges on loan and credit transactions and sets maximum rates of interest loans.

### **8.2.2. Amendments**

8.2.2.1. The Proclamation is amended by Ordinance 25 of 1965.

### **8.2.3. Current status**

8.2.3.1. Although this Proclamation has not yet been repealed, it serves no purpose as the Usury Act, 1968 (Act No. 73 of 1968) has superseded it and covers rates of interest more adequately.

### **8.2.4. Recommendation**

8.2.4.1. It is recommended the Proclamation be repealed in its entirety.

## **9. Evidence**

### **9.1. Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920 (Proclamation No. 26 of 1920)**

#### **9.1.1. Purpose**

9.1.1.1. The Proclamation was intended to provide the arrest and surrender, to the authorities of other territories in Africa, of persons residing in the territory, accused of offences punishable in courts of those territories, and to allow such persons to be compelled to testify before courts of other territories. The territories referred to in this Proclamation are those listed in its Schedule. Further, whenever a warrant or subpoena is issued by an officer of a competent court, of any of the territories mentioned in the Schedule of this Proclamation, to the Magistrate of any district in which the person referred to in the subpoena or warrant resides, such Magistrate shall have the duty to endorse on the subpoena or warrant and have such person served.

#### **9.1.2. Amendments**

- 9.1.2.1. Part I of the Proclamation is repealed by the Extradition Act, 1962 (Act No. 67 of 1962), which provides for the extradition of persons accused or convicted of certain offences.
- 9.1.2.2. The Schedule to the Proclamation has been amended by Section 13 of the Foreign Courts Evidence Act, 1962 (Act No. 80 of 1962).
- 9.1.2.3. The Proclamation is repealed in part by the Criminal Procedure Act, 1977 (Act No. 51 of 1977) in so far as it relates to the attendance by witnesses of criminal proceedings in courts in the Republic.

### **9.1.3. *Scope of applicability***

- 9.1.3.1. This Proclamation applies to the Territory of South West Africa in relation to other African Territories in the Schedule, as the Union of South Africa, including; Basutoland Bechuanaland Protectorate, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia and Swaziland. All words after South Africa were later deleted by Section 13 of the Foreign Courts Evidence Act, 1962 (Act No. 80 of 1962).

### **9.1.4. *Current status***

- 9.1.4.1. Most portions of the Proclamation have been done away with and taken over by other legislation. The Proclamation however remains operable.

### **9.1.5. *Recommendation***

- 9.1.5.1. It is recommended that this Proclamation be repealed in its entirety given that it is superseded by the Foreign Courts Evidence Act, 1995 (Act No. 2 of 1995) and the Extradition Act, 1996 (Act No. 11 of 1996) which provides for the specification through Gazetting the Countries with which Namibia has concluded extradition agreements.

## **10. Finance and Development**

### **10.1. Exchequer and Audit Proclamation, 1979 (Proclamation No. 85 of 1979)**

### **10.1.1. Purpose**

10.1.1.1. This Proclamation was intended to establish the Central Revenue account and the Post Office account, for revenue from the Directorate of Post and Telecommunications.

### **10.1.2. Amendments**

10.2.2.1. The Proclamation is amended by the Proclamation AG 35 of 1979.

### **10.1.3. Scope of applicability**

10.1.3.1. The only provision of this Proclamation applicable to the Republic of Namibia after Independence is section 3 (as amended), which establishes a Central Revenue Fund for the deposit of all revenue as defined in section 1 of the State Finance Act, 1982 (Act No. 1 of 1982), which has since been replaced by the State Finance Act, 1991 (Act No. 31 of 1991).

### **10.1.4. Current status**

10.1.4.1. The State Finance Act, 1991 (Act No. 31 of 1991) has substituted all provisions of the Proclamation, and the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992) has also dealt with the issues not covered by the State Finance Act, 1991 (Act No. 31 of 1991). The upcoming LRDC reform of the State Finance Act, 1991 will, in any event, provide for more relevant matters and provide further advancement of the management of state funds.

### **10.1.5. Recommendation**

10.1.5.1. It is recommended that the Proclamation be repealed in its entirety on the aforementioned basis.

## **10.2. State Repudiation (Cultura 2000) Act, 1991 (Act No. 32 of 1991)**

10.2.1. Purpose

10.2.1.1. To provide for the repudiation of certain actions conducted under laws in force on the date of the Independence of the Republic of Namibia, by a Minister or other Official of the Government of the Republic of South Africa, in pursuance of Article 140 (3) of the Namibian Constitution.

### **10.2.2. Amendments**

10.2.2.1. There are no amendments to the statute.

### **10.2.3. Scope of applicability**

10.2.3.1. The Statute applies to the Republic of Namibia as it was enacted in the Constitutional era Parliament by virtue of its powers under Article 44.

### **10.2.4. Current status**

10.2.4.1. In the landmark case of *Government of the Republic of Namibia and Another v Cultura*,<sup>40</sup> it was held that Article 140(3) of the Namibian Constitution contains a deeming provision coupled with power to reverse such deeming provision by an Act of Parliament, which creates a legal fiction as a substitution for the truth and the purpose of the reserving or repudiation power is to enable Parliament to enact legislation through which the position can be altered.

In *Cultura*, the Court declared that, save for section 2 (read with section 7), the Act was declared invalid. This was one in light of the fundamental freedoms and rights in terms of Article 16 (Right to Property) as well as Article 19 (Right to Culture) of the respondents. Therefore, save for section 2(1) (read with ss 1 and 7) the Act was declared unconstitutional and thus null and void.

### **10.2.5. Recommendation**

10.2.5.1. Despite the unconstitutionality of certain sections of the Act, it has become redundant and obsolete given that it is 22 years since the advent of

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<sup>40</sup>1993 NR 328 (SC) at p330C.

Independence. Therefore, the repudiation of the laws of the previous administration is no longer of necessity. This law should be repealed in its entirety.

## **11.2. Development Fund of South West Africa/Namibia Act, 1987 (Act No. 29 of 1987)**

### **11.2.1. Purpose**

11.2.1.1. The Act provides for the establishment of the Development Fund of South West Africa/Namibia as well as establishing a Control Board to manage its affairs.

### **11.2.2. Scope of applicability**

11.2.2.1. The Act applies to the Territory of South West Africa/Namibia.

### **11.2.3. Current status**

11.2.3.1. The Act is no longer of any useful application in present day Namibia; hence it is obsolete and redundant in its effect. This is given that the objects of the Act are superseded and replicated by the objects of the Development Bank of Namibia as set out in section 5 of the Development Bank of Namibia Act, 2002 (Act No. 8 of 2002).

### **11.2.4. Recommendation**

11.2.4.1. It is recommended that the Act be repealed in its entirety.

## **11.3. Assistance Fund Of South West Africa Repeal Act, 1992 (Act No. 13 of 1992)**

### **11.3.1. Purpose**

11.3.1.1. The Act repeals the Assistance Fund of South West Africa Act, 1979 (Act No.1 of 1979) and provides that all moneys in the Assistance Fund be transferred to the State Revenue Fund.



### **11.3.2. Scope of applicability**

11.3.2.1. The Act applies to the Republic of Namibian.

### **11.3.3. Current status**

11.3.3.1. Given that the Act has served its purpose, namely to repeal the aforementioned Assistance Fund of South West Africa Act, 1979 (Act No.1 of 1979), it has no further relevance.

### **11.3.4. Recommendation**

11.3.4.1. It is recommended that this Act be repealed in its entirety.

## **12. Health**

### **12.1. Venereal Diseases Prevention Proclamation, 1919 (Proclamation No. 5 of 1919)**

#### **12.1.1. Purpose**

12.1.1.1. This Proclamation authorized military magistrates to order persons infected with venereal disease to obtain medical treatment.

#### **12.1.2. Scope of applicability**

12.1.2.1. The proclamation applies to the territory of South West Africa.

#### **12.1.3. Amendments**

12.1.3.1. There have been no amendments to the Proclamation.

#### **12.1.4. Current status**

12.1.4.1. This Proclamation is of no relevance as it is not in line with the current situation, due to factors such as privacy and non-disclosure when it comes to health matters. Today, no individual is obliged to disclose his/her status in

relation to venereal diseases. Receiving medical treatment is considered an individual choice.

12.1.4.2. The Proclamation not only contravenes Article 10 of the Namibian Constitution but also derogates from Article 13 on the right to privacy. The Act will not survive the constitutional test and hence it should be repealed.

**12.1.5. Recommendation**

12.1.5.1. The Proclamation is recommended for repeal in its entirety.

## **13. Hospitals**

### **13.1. Hospitals and Charitable Institutions Ordinance, 1930 (Ordinance 16 of 1930)**

**13.1.1. Purpose**

13.1.1.1. The Ordinance was intended to provide for the establishment, maintenance and management of hospitals and charitable institutions.

13.1.1.2. The Ordinance, *inter alia*, covers issues of areas in which hospitals are to be built, the management of such property, hospital boards and committees and financial issues.

**13.1.2. Amendments**

13.1.2.1. Sub-section (1) of section 25 of the principal Ordinance was deleted by Section 1 of the Hospitals and Charitable Institutions Amendment Ordinance 10 of 1938, thereby substituted for Section 1 (1) of the Amendment Ordinance.

**13.1.3. Recommendation**

13.1.3.1 The Proclamation is recommended for repeal in its entirety.

### **13.2. Hospitals Amendment Ordinance, 1944 (Ordinance 5 of 1944)**

### **13.2.1. Purpose**

13.2.1.1 Section 1 of the principal Ordinance was amended by section 2 of the Amendment Ordinance in the insertion of definitions of “nurse”, and sister”.

Section 3 of the Amendment Ordinance also amends section 24 of the principal Ordinance by the insertion of a few words (in sub-section (1) and (4) of principal Ordinance), deletion and substitution (sub-section (5) of the principal Ordinance).

13.2.1.2. The words “manager or matron” in section 25 were deleted and substituted for by the words “medical officer, matron, manager or sister” in section 4 of Amendment Ordinance.

13.2.1.3. Section 23 (1) was amended by section 1 of the Hospitals and Charitable Institutions Amendment Ordinance 22 of 1953, by the substitution for the word “ten” for the word “twenty”.

13.2.1.4. Section 1 of the Hospitals and Charitable Institutions Amendment Ordinance 11 of 1960 amended the principal Ordinance providing a substitution for section 31 of the principal Ordinance.

13.2.1.5. The Hospitals and Charitable Institutions Amendment Ordinance 14 of 1969 amended the principal Ordinance by the addition of sub-section (3) to Section 25 of the principal Ordinance.

13.2.1.6. The Ordinance is amended by Amendments Ordinance 1 of 1934 and the Amendment Ordinance 24 of 1955.

### **13.2.2. Scope of applicability**

13.2.2.1. The Ordinance was applied to South West Africa.

### **13.2.3. Current status**

13.2.3.1. The Ordinance is still in force, although it has been superseded by subsequent legislation, especially in relation to hospitals. Most of the provisions addressed, or in this Ordinance, are addressed in the subsequent State Hospitals Ordinance 17 of 1966 and Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994).

#### **13.2.4. Recommendation**

13.2.4.1. This Ordinance has been superseded by Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994), and hence should be repealed in its entirety.

### **13.3. State Hospitals Ordinance, 1966 (Ordinance 17 of 1966)**

#### **13.3.1. Purpose of the Ordinance**

13.3.1.1. The Ordinance was intended to consolidate and amend the laws on the establishment, maintenance and administration of state hospitals; for the registration of private hospitals and form matters incidental thereto.

#### **13.3.2. Amendments**

13.3.2.1. This Ordinance is repealed by Ordinance No. 14 of 1972, with the exception of some transitional provisions.

#### **13.3.3. Scope of applicability**

13.3.3.1. This Ordinance was applicable to the Territory of South West Africa.

#### **13.3.4. Current status**

13.3.4.1. The Ordinance has ceased to be of force and effect, with the exception of the provisions relating to transitional matters (sections 10, 11, 12, 16, 17 and 18), which remain in effect.

13.3.4.2. This Ordinance has been superseded by the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994).

#### **13.3.5. Recommendation**

13.3.5.1. It is recommended that the Ordinance be repealed in its entirety.

## **14. Housing**

### **14.1. Housing Levy Ordinance, 1976 (Ordinance 18 of 1976)**

#### **14.1.1. Purpose**

14.1.1.1. The purpose of the Ordinance is to provide for the payment of levies to local authorities in respect of adult employees residing in declared housing areas. Further, the statute regulates the utilization of moneys paid to local authorities in respect of such levies.

#### **14.1.2. Scope of applicability**

14.1.2.1. The law applies to South West Africa as well as the Republic of Namibia, by virtue of article 140 of the Namibian Constitution.

#### **14.1.3. Current status**

14.1.3.1. The Ordinance has not been repealed; however it has become redundant in its effect. This is given that;

14.1.3.2. The Executive Committee that has authority, in terms of the Ordinance to declare that a housing area is no longer in existence.

14.1.3.3. The Local Authorities within which particular housing exists have the power to determine levies to be paid by the residents, and not an external body such as the said Executive Committee.

14.1.3.4. The Local Authorities Act, 1992 (Act No. 23 of 1992) has superseded the purpose and function of the Ordinance.

#### **14.1.4. Recommendations**

14.1.4.1. It is recommended that the Ordinance be repealed in its entirety.

## **15. Income Tax**

## **15.1. Income Tax Agreement Ratification Ordinance, 1959 (Ordinance No 13 of 1959)**

### **15.1.1. Purpose**

15.1.1.1. This Ordinance ratifies a double taxation treaty between South Africa and South West Africa.

### **15.1.2. Amendments**

15.1.2.1. The Ordinance is amended by Ordinance 4 of 1970 and Ordinance 7 of 1973.

### **15.1.3. applicability**

15.1.3.1. This Ordinance was applicable to South West Africa.

### **15.1.4. Current status**

15.1.4.1. Given that the Ordinance is a codification of an agreement for tax exemptions between South Africa and South West Africa. It is unnecessary to repeal or terminate the obligations under taken in the agreement. In light of the submissions from relevant stakeholders, in particular the Ministry of Finance, which expressed strong support for the Ordinance not to be repealed; the LRDC reiterates the same sentiment.

### **15.1.5. Recommendations**

15.1.5.1. In light of the aforementioned, it is strongly recommended that the Ordinance be retained.

## **15.2. The Rehoboth Gebiet Income Tax Proclamation, 1961 (Proclamation No. 92 of 1961)**

### **15.2.1. Purpose**

15.2.1.1. The purpose of the statute was to apply the Income Tax Ordinance 10 of 1961 to the territory of Rehoboth Gebiet, or simply ‘Gebiet’. This was necessitated

by the Proclamation of the Administrator 28 of 1923, whereby the Rehoboth Community was afforded the power to legislate for the territory.

### **15.2.2. *Scope of applicability***

15.2.2.1. The Proclamation applies to the Rehoboth Gebiet exclusively.

### **15.2.3. *Amendments***

15.2.3.1. There are no amendments to the Proclamation.

### **15.2.4. *Current status***

15.2.4.1. The Income Tax Ordinance 10 of 1961 was made applicable to the Rehoboth Community, and its territory, by the above Proclamation; however, the Income Tax Act, 1981 (Act No. 24 of 1981) superseded the Income Tax Ordinance 10 of 1961. Considering that the Rehoboth Gebiet no longer possesses the power to legislate itself, the Rehoboth Gebiet Income Tax Proclamation 92, of 1961 no longer finds practical application in the Republic of Namibia; ergo it is obsolete.

### **15.2.5. *Recommendation***

15.2.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **16. International Law**

### **16.1. Treaty of Peace and South West Africa Mandate Act, 1919**

#### **(Act No. 49 of 1919)**

16.1.1. Purpose

16.1.1.1. This Act gave effect to the Mandate of South West Africa, established pursuant to the Treaty of Versailles, by delegating authority for the administration of South West Africa to the Governor-General of South Africa. It was to be terminated, in terms of Section 5 of the Act, on 1 July 1920, however, it was extended by Section 2 of the Treaties of Peace Act, 1921 (Act No. 32 of 1921).

Section 36 of General Law Amendment Act, 1993 (Act No. 108 of 1993) repealed it in South Africa.

### **16.1.2. Amendments**

16.1.2.1. The Act has no amendments.

### **16.1.3. Scope of applicability**

16.1.3.1. The Proclamation applies to South West Africa.

### **16.1.4. Current status**

16.1.4.1. Since Independence in 1990, South Africa no longer maintains any jurisdiction over The Republic of Namibia; therefore the Act is obsolete. The Act has remained part of Namibian law by virtue of Article 140.

### **16.1.5. Recommendation**

16.1.5.1. It is recommended that the Act be repealed in its entirety.

## **17. Labour**

### **17.1. Shop Hours and Shop Assistants Ordinance, 1939 (Ordinance No. 15 of 1939)**

#### **17.1.1. Purpose**

17.1.1.1. The Ordinance governs shop hours and certain working conditions of shop assistants.

#### **17.1.2. Amendments**

17.1.2.1. The Ordinance has been amended by;

- a. Ordinance 4/1940.
- b. Proclamation 34/1950.
- c. Proclamation 50/1950.
- d. Ordinance 10/1952.
- e. Ordinance 5/1957.



- f. Ordinance 39/1957.
- g. Ordinance 4/1959.
- h. Act 12/1986.

### **17.1.3. Current status**

17.1.3.1. The Labour Act, 2007 (Act No. 11 of 2007) superseded this Ordinance. The Act sufficiently covers matters relating to the work hours of all employees, as well as working conditions.

### **17.1.4. Recommendation**

17.1.4.1. The Ordinance has no ongoing relevance, and hence is recommended for repeal in its entirety.

## **18. Land**

### **18.1. Control of Sites (Churches, Schools & Missions) Proclamation, 1932 (Proclamation No. 31 of 1932)**

#### 18.1.1. Purpose

18.1.1.1. The purpose of the Proclamation was directed at making provision for granting certain sites for the establishment of a church, school or mission. Permission was needed to grant access to land, set apart as reserves for “*natives*” or “*coloured*” persons, from the land belonging to the Crown.

18.1.1.2. The Act vested this power with the Administrator, who was permitted to impose conditions to his discretion. Such permission could be granted to any recognized religious denomination or educational authority to use or occupy one or more sites for the establishment of a church, school or mission.

18.1.1.3. The statute makes it an offence for any person who uses or occupies such land without permission from the Administrator. A person convicted of such an offence is liable to punishment, *inter alia*, of hard labour. Moreover, the burden of proof for establishing such permission lay upon the accused.

### **18.1.2. Amendments to Statute**

18.1.2.1. The statute has not been amended to date.

### **18.1.3. Scope of applicability**

18.1.3.1. In terms of provision 4 of the Proclamation, it applied to South West Africa including the Ombudsman and Caprivi Zipfel.

18.1.3.2. The statute survived the transition of South West Africa to the Republic of Namibia, by virtue of Article 140 of the Constitution of the Republic of Namibia.

### **18.1.4. Current status**

18.1.4.1. The statute remains in force, despite the fact that certain sections of the statute are potentially unconstitutional, given the use of racial epithets.

18.1.4.2. The statute has become obsolete for the following reasons:

18.1.4.2.1. The “Administrator” is no longer an administrator of land in the Republic of Namibia.

18.1.4.2.2. In terms of the scope of the lands covered by the Proclamation, such subdivision of land is no longer in existence and would be contrary to the right to equality in Article 10 of the Constitution.

18.1.4.2.3. The statutes’ authorization of hard labour, as a competent sentence, is contrary to Article 9 of the Constitution.

18.1.4.2.4. The statute places the burden of proof, for holding necessary permission, on the accused, which is in conflict with the presumption of innocence in Article 12 (1) (d).

18.1.4.2.5. Regulation of sites for use by churches, schools and missions is covered by the Local Authorities Acts, 1992 (Act No. 28 of 1992).

### **18.1.5. Recommendation**

18.1.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **18.2. Crown Land Disposal Proclamation, 1920 (Proclamation No. 13 of 1920)**

### **18.2.1. Purpose**

18.2.1.1. The Proclamation made the Crown Land Disposal Ordinance of 1903 of the Transvaal, in the Union of South Africa, and the Crown Land Disposal Amendment Ordinance of 1906 of the Transvaal, applicable to the protectorate of South West Africa. The said Ordinance thereby authorised the allocation of Crown Lands as reserves for the use and benefit of “*aboriginal natives*”, “*coloureds*” and “*Asiatics*”.

### **18.2.2. Amendments**

18.2.2.1. The Proclamation was amended by:

- a. Proclamation 54 of 1920,
- b. SA Proclamation 200 of 1950.
- c. Ordinance 1 of 1951.
- d. Ordinance 36 of 1958.
- e. Ordinance 17 of 1965.

18.2.2.2. It was further amended by the Crown Land Disposal Amendment Proclamation, 1920 (Proclamation No. 54 of 1920). In so far as to delete the words “Governor-General” and “Ministers”, and substitute them with “Administrator”.

18.2.2.3. It was further amended by the Crown Land Disposal Amendment Ordinance 36 of 1958, which provided that fifty per cent (50%) of all monies received from the sale of Crown Lands in a township, for which no Village Management Board has been constituted, shall be held in trust by the Administrator for a Village Management Board.

18.2.2.4. Notably, the Proclamation was repealed in respect of Walvis-Bay by the Republic of South Africa Proclamation 149 of 1982.

### **18.2.3. *Scope of applicability***

18.2.3.1. The Proclamation applied to South West Africa, to the exclusion of Caprivi Zipfel, the Rehoboth Gebiet and Walvis Bay. It survived the transition from South West Africa to the Republic of Namibia by virtue of Article 140 of the Namibian Constitution.

### **18.2.4. *Current status***

18.2.4.1. The statute remains in force, despite the fact that certain sections of the statute are potentially unconstitutional, given the use of racial epithets.

### **18.2.5. *Recommendation***

18.2.5.1. It is recommended that Proclamation should be repealed in its entirety.

## **18.3. Crown Lands (Trespass) Proclamation, 1919 (Proclamation No. 7 of 1919)**

### **18.3.1. Purpose**

18.3.1.1. The Proclamation provides for the prevention of the unauthorised trespassing on Crown Land, in the previous Protectorate of South West Africa. The Proclamation prohibits any person from loitering in or taking up, residence either temporarily or permanently without lawful cause, unless authorised by the Administrator. It further provides that the Administrator may pass regulations in respect of certain areas, and may prescribe fees payable for permits issued, and conditions under which permits may be issued.

18.3.1.2. The Proclamation authorised the Administrator to apply conditions upon which the public would be allowed access to park gardens, regulated with the aim of preventing destruction, theft and injury to trees and other vegetation, and for preserving the cleanliness and beauty of such parks.

18.3.1.3. The Proclamation authorises the Administrator to prescribe fees to the public, for the use of hot springs and public baths, as well as the exemption of persons from using such facilities, or paying such fees.

18.3.1.4. The Proclamation makes it an offence for persons to cut, injure, remove or cause damage to trees and shrubs or to de-pasture donkeys, ostriches, horses, bulls or oxen on Crown land, unless authorised by permit. It is similarly an offence to counterfeit, alter or substitute a permit, or to knowingly make use of such forged permit.

### **18.3.2. Amendments**

18.3.2.1. This Proclamation is amended by:

- a. Proclamation 4/1937.
- b. Proclamation 31/1938.
- c. Proclamation 18/1948.

### **18.3.3. Scope of applicability**

18.3.3.1. The Proclamation applies to the [former] Protectorate of South West Africa/Namibia. The Proclamation was reprinted in Government Notice 72 of 1921, pursuant to the Treaty of Peace and South West Africa Mandate Act, 1919 (Act No. 49 of 1919).

### **18.3.4. Current status**

18.3.4.1. The Local Authorities Act, 1992 (Act No. 23 of 1992) surpasses the Proclamation in the sense that it authorizes local authorities to pass by-laws to regulate acceptable access to park gardens, and other public areas, as well as to ensure that trees and other vegetation are preserved, and for preserving the cleanliness and beauty of such parks and public areas. The Traditional Authorities Act, 2000 (Act No. 25 of 2000) and Communal Land Reform Act, 2002 (Act No. 5 of 2002) give similar powers to traditional authorities.

### **18.3.5. Recommendation**

18.3.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **18.4. Promotion of the Density of Population in Designated Areas Act, 1979 (Act No. 18 of 1979)<sup>41</sup>**

### **18.4.1. Purpose**

18.4.1.1. The Act provides for the designation of certain areas for the promotion of population density and farming activities. Further, the Act seeks to invoke Section 3 (1) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966) to render assistance to persons within designated areas.

### **18.4.2. Amendments**

18.4.2.1. The Act was amended by the Administrator-General Proclamation, 1979 (Proclamation No. 39 of 1979) and the Administrator-General Proclamation, 1985 (Proclamation No. 30 of 1985).

### **18.4.3. Scope of applicability**

18.4.3.1. The Act applies to South West Africa/Namibia. Further, section 2(a)-(c) provides that the Act shall not apply in respect of land situated in a proclaimed township, land owned by the South African Development Trust, or blacks or is in trust for a black tribe or community. Further, land situated in an area to which to provisions of the Rural Coloured Area Act, 1963 (Act No. 24 of 1963).

### **18.4.4. Current status**

18.4.4.1. The Act finds no practical application in the Republic of Namibia today, as it seeks to promote, exclusively, the population density of rural areas.

18.4.4.2. Further, the Act is potentially unconstitutional on the basis that it violates Article 10 of the Namibian Constitution as it is discriminatory on the listed grounds of colour and race.

### **18.4.5. Recommendation**

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<sup>41</sup>It was brought into operation on 1 January 1980 by AG 38/1979.

18.4.5.1. It is recommended that the Act be repealed in its entirety.

## **18.5. Small Settlements Commonage Sub-Division Proclamation, 1926 (Proclamation No. 13 of 1926)**

### **18.5.1. Purpose**

18.5.1.1. The Proclamation provides for the sub-division of commonages assigned to small Settlements established in South West Africa, as well as the conditions for the allocation of such said sub-division, and other miscellaneous matters thereto. It further provides that the sub-division of, and allocation to, the commonages are to be carried out by a committee comprising of:

- a. A member of the Union of the South African Parliament;
- b. A Magistrate of the district within which the commonage is situated;
- c. A qualified land surveyor appointed by the Administrator; and
- d. Two land owners elected by the Administrator.

### **18.5.2. Scope of applicability**

18.5.2.1. The Proclamation is of applicability to South West Africa and has survived the transition to the Independent state of the Republic of Namibia by virtue of Article 140 of the Namibian Constitution.

### **18.5.3. Amendments**

18.5.3.1. There are no amendments

### **18.5.4. Current status**

18.5.4.1. The Proclamation provides for small settlements; however, section 32 of the Regional Councils Act, 1992 (Act No. 22 of 1992) now regulates this.

### **18.5.5. Recommendation**

18.5.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **19. Medicine and Medical Professions**

### **19.1. Consent to Operations on Native Minors Proclamation 37 of 1943**

#### **19.1.1 Purpose**

- 19.1.1.1. This Proclamation was intended to accede power to a Magistrate or Native Commissioner to give consent to perform surgical operations on “*native*” minors, who require immediate operative treatment in the absence of their fathers or guardians, in order to avoid fatal delays or unnecessary suffering and to prevent detriment to the future well-being of “*native*” minors.
- 19.1.1.2. The Proclamation was provided to prepare for the instance in which such parent or guardian was not readily available to give consent, and that according to a certificate by a registered medical practitioner, the performance of the surgical operation on the “*native*” minor was necessary to preserve his/her life, or prevent long-term physical injury.
- 19.1.1.3. The consent by the Magistrate or Native Commissioner was to be in writing, and given to the surgeon responsible for the forthcoming operation, and would possess the same force and effect as if it had been given by the parent or guardian.

#### **19.1.2. Amendments**

- 19.1.2.1. This Proclamation has not been amended.

#### **19.1.3. Scope of applicability**

- 19.1.3.1. This Proclamation applied to the Territory of South West Africa.

#### **19.1.4. Current status**

- 19.1.4.1. The Proclamation employs discriminatory epithets, specifically the term “*native*”, and thus it is contrary to Article 10 of the Namibian Constitution.
- 19.1.4.2. The Proclamation is not in line with current practices, in the sense that all matters in relation to a person’s status are disposed of in the High Court. The High Court serves as the upper guardian of all children, in promoting the best



interests of the child, irrespective of whether the child is “*native*” or not. Furthermore, procedures for emergency medical treatment of all children are contained in the Children’s Act, 1960 (Act No. 33 of 1960), soon to be modernised by the Child Care and Protection Bill 2012.

#### **19.1.5. Recommendation**

19.1.5.1. This Proclamation should not be repealed hereby. It should however be included in the laws to be repealed by the forthcoming Child Care and Protection Bill, 2014 which contains comprehensive procedures for medical emergencies consistent with the best interests of all children.

### **19.2. South West Africa Medical Research Council Act, 1969 (Act No. 19 of 1969)**

#### **19.2.1. Purpose**

19.2.1.1. The Act strives to provide for the promotion of research in the field of medical sciences, as well as the establishment of the South African Medical Research Council. This is done with the purpose of assisting the promotion of health for the people in the Republic of South Africa.

#### **19.2.2. Amendments**

19.2.2.1. The Executive Powers (Health) Transfer Proclamation (AG 14/1977) of 1977 transferred the administration of the Act to South West Africa.

19.2.2.2. The Act was amended by the South African Medical Research Council Amendment Act, 1982 (Act No. 47 of 1982). However, due to Transfer Proclamation 14 of 1977, which transferred the administration of the Act to South West Africa, this Amendment Act is not expressly applicable to South West Africa/Namibia.

#### **19.2.3. Scope of applicability**

19.2.3.1. The Act applied to South West Africa/Namibia by virtue of Section 1 of the Act, which defines the “Republic” as inclusive of the territory of South West Africa.

Moreover, Section 25 of the Act explicitly states that the Act shall apply to South West Africa.

192.3.2. By virtue of the Transfer Proclamation 14 of 1977, the administration of the Act was formally transferred to South West Africa/ Namibia.

#### **19.2.4. *Current status***

19.2.4.1. Currently, there exists no Medical Research Council in the Republic of Namibia. Ergo, this Act finds no relevance or application today.

#### **19.2.5. *Recommendation***

19.2.5.1. It is recommended that the Act be repealed given that its provisions are subsumed and superseded by the Research, Science and Technology Act, 2004 (Act No. 23 of 2004) so as to ensure that there is no duplicity in function and that it is practical and contemporary. Ergo, it is recommended that the Act be repealed in its entirety.

## **20. Mining and Minerals**

### **20.1. The Acquisition of Shares in Rossing Uranium Limited and the Appointment of a Director Proclamation, 1985 (Proclamation No. 31 of 1985)**

#### **20.1.1. *Purpose***

20.1.1.1. This Proclamation authorises the purchase of shares in Rossing Uranium Limited by the Government.

#### **20.1.2. *Amendments***

20.1.2.1. The Proclamation has no amendments.

#### **20.1.3. *Scope of applicability***

20.1.3.1. This Proclamation applied to the Territory of South West Africa.

#### **20.1.4. Current status**

20.1.4.1. In consideration that shares have been purchased, and Board representation has been achieved, the Act has no ongoing relevance; ergo it is obsolete. Currently, the Namibian Government has a 3 per cent shareholding and a 51 per cent majority vote when it comes to issues of national interest.<sup>42</sup>

#### **20.1.5. Recommendation**

20.1.5.1. The purpose for which the Act was promulgated has been achieved. For all other intents and purposes, the Act should be repealed.

## **21. Pension**

### **21.1. Military Pension Act, 1976 (Act No. 84 of 1976)**

#### **21.1.1. Purpose**

21.1.1.1. The purpose of the Act is to provide for the payment of pensions and gratuities to, or in respect of, certain persons in respect of incapacitation caused, or aggravated by, military service. To provide for the medical treatment of such persons, and for the consolidation of benefits which are paid in terms of the Special War Pensions Act, 1962, and section 15 (1) of Second Pension Laws Amendment Act 77 of 1974, and to provide for matters connected therein.

#### **21.1.2. Amendments**

21.1.2.1. There have been no amendments to this Act.

#### **21.1.3. Scope of applicability**

21.1.3.1. The law applied to South West Africa and remains applicable in the Republic of Namibia, by virtue of Article 140 of the Namibian Constitution.

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<sup>42</sup> Rössing Uranium Limited Working for Namibia. 2011 Report to Stakeholders: Facing challenges head-on. Available at <http://www.riotinto.com/documents/2011RULStakeholderReport.pdf> . Last accessed 31 January 2012.

#### **21.1.4. Recommendation**

21.1.4.1. Given that there is no other law to provide for military pensions in respect of incapacitation caused, or aggravated by, military service, it is recommended that the Act be retained, and not repealed.

### **21.2. Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, 1990 (Proclamation No. 8 of 1990)**

#### **21.2.1. Purpose**

21.2.1.1. This Proclamation was intended to allow pension payments to former members of the National Assembly, and other members who vacated office in Executive Authorities, due to entitlements to annuities and payments after vacating office. It also exempted such pension or payment from the Income Tax Act, 1981 (Act No. 21 1981).

#### **21.2.2. Amendments**

21.2.2.1. This Proclamation has not been amended.

#### **21.2.3. Scope of applicability**

21.2.3.1. This Proclamation applied to the Territory of South West Africa.

#### **21.2.4. Current status**

21.2.4.1. The Proclamation has no on-going application, as it is highly unlikely that anyone who qualified for gratuity payments did not claim these payments.

21.2.4.2. The law pertaining to the regulation of Government Pension Fund sufficiently deals with the matters this Proclamation sought to regulate.

#### **21.2.5. Recommendation**

21.2.5.1. It is recommended that this Proclamation be repealed in its entirety.

### **21.3. Pension Matters of Government Institutions Proclamation, 1989 (AG 56 of 1989)**

#### **21.3.1. Purpose**

21.3.1.1. The Proclamation was intended to repeal the Statutory Institutions Pensions Act 3 of 1980 and provide for pensions and other financial benefits to, or in respect of, persons employed by certain government institutions.

21.3.1.2. With the cessation of the repealed Statutory Institutions Pensions Act, 1980 the Proclamation provides that all assets, liabilities, rights and obligations of the previous fund have become those of the Government Institutions Pension Fund.

#### **21.3.2. Amendments**

21.3.2.1. The Pension Matters of Government Institutions Amendment Act, 1990 ( Act 5 of 1990) repeals Sections 3 and 4 of the Proclamation, so as to remove the right of persons to invest their accrued pension benefits in retirement annuity funds of life insurance companies.

#### **21.3.3. Scope of applicability**

21.3.3.1. Section 5 of the Proclamation provides that:

“[T]he rules of the Fund shall be binding on every employer, including the State, of persons who in terms of this Proclamation are members of the Fund or allowed by the Fund to become Members thereof.”

21.3.3.2. Section 10 (4) (c) of the Namibia Wildlife Resorts Company Act, 1998 (Act No. 3 of 1998) deals with the application of the Government Institutions Pension Fund to its employees.

#### **21.3.4. Current status**

21.3.4.1. This Proclamation deals with issues related to the termination of the Statutory Institutions Pensions Act, 1980 (Act No. 3 of 1980), which was repealed in its entirety by AG 6/1989, hence it would appear that the object of its operation has come to an end.

**21.3.5. Recommendation**

21.3.5.1. With the subsequent establishment of the Government Institutions Pension Fund, this law is no longer relevant and should be repealed.

**21.4. Railways and Harbours Pension Act, 1971 (Act No. 35 of 1971)**

**21.4.1. Purpose**

21.4.1.1. The Act was intended to provide for the payment of pensions and other retirement benefits to servants in the Administration of Railways and Harbours and for matters incidental thereto.

**21.4.2. Amendments**

21.4.2.1. This Act is amended by Act 5 of 1985.

**21.4.3. Scope of applicability**

21.4.3.1. Section 21 of the Act provides that it and any amendments therein, shall apply to the Territory of South West Africa including Eastern Caprivi Zipfel.

**21.4.4. Current status**

21.4.4.1. No funds were accumulated in the fund. It purported to establish possible accumulated funds and valid pension payments.

**21.4.5. Recommendation**

21.4.5.1. It is recommended that it be repealed in its entirety.

**21.5. Railways and Harbours Pensions for Non-Whites Act, 1974 (Act No. 43 of 1974)**

### **21.5.1. Purpose**

21.5.1.1. This Act provides for pensions and other retirement benefits to non-white employees of the Administration of Railways and Harbours.

### **21.5.2. Amendments**

21.5.2.1. The Act has no amendments.

### **21.5.3. Scope of applicability**

21.5.3.1. Section 18 of the Act provides that it and any amendments therein, shall apply to the Territory of South West Africa including Eastern Caprivi Zipfel

### **21.5.4. Current status**

21.5.4.1. This Act forms part of the Namibian law by virtue of Article 140 of the Namibian Constitution.

21.5.4.2. The use of the term “*non-whites*” is of a discriminatory nature and hence contrary to Article 10(2) and 23(1) of the Constitution.

### **21.5.5. Recommendation**

21.5.5.1. The Act has no on-going relevance, and is hence recommended for repeal in its entirety.

## **21.6. Social Pensions Ordinance, 1965 (Ordinance 2 of 1965)**

### **21.6.1. Purpose**

21.6.1.1. The purpose of the Ordinance is to consolidate and amend the laws relating to social pensions.

### **21.6.2. Amendments**

21.6.2.1. There have been no amendments to this Ordinance.

### **21.6.3. Scope of applicability**

21.6.3.1. The law applied to South West Africa and remains in force in the Republic of Namibia by virtue of article 140 of the Namibian Constitution.

### **21.6.4 Current status**

21.6.4.1. Although the Ordinance has not been repealed, it has become redundant in its effect. The National Pensions Act, 1992 (Act No. 10 of 1992) now provides for pension grants for aged, blind or disabled persons, and therefore has superseded the purpose of the Ordinance.

### **21.6.5. Recommendations**

21.6.5.1. It is recommended that the Ordinance be repealed in its entirety.

## **21.7. Teachers Pensions Proclamation, 1931 (Proclamation No. 39 of 1931)**

### **21.7.1. Purpose**

21.7.1.1. The purpose of the Proclamation is to make further provision for and incidental to, retiring pensions and other financial benefits to teachers.

### **21.7.2. Amendments**

21.7.2.1. There have been no amendments to this statute.

### **21.7.3. Scope of applicability**

21.7.3.1. The law applies to South West Africa and remains in force in the Republic of Namibia, by virtue of article 140 of the Namibian Constitution.

### **21.7.4. Current status**

21.7.4.1. The Government Institutions Pension Fund (GIPF) is a pension scheme that provides post-employment income, and related retirement benefits to Government employees and employees of other Government institutions and State-owned Enterprises, who participate in the scheme including teachers.



21.7.4.2. The scheme is registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956) and constitutes the GIPF.

### **21.7.5. Recommendations**

21.7.5.1. It is recommended that the Act be repealed as it has become obsolete in its effect.

## **22. Public Service**

### **22.1. Indemnity Proclamation, 1923 (Proclamation No. 8 of 1923)**

#### **22.1.1. Purpose**

22.1.1.1. This Proclamation was intended to indemnify all members of the public service for acts commanded, carried out, advised and/or ordered after 15 May 1922 and prior to the date on which this Proclamation took effect.

22.1.1.2. This meant that no action, indictment, or any other legal proceedings were to be brought or instituted in a court of law in the territory of South West Africa against the Administrator, any police officer or any other member of the public service in relation to measures taken for the prevention, suppression of disturbance and maintenance of good order and government of the Territory.

#### **22.1.2. Amendments**

22.1.2.1. The Proclamation has no amendments.

#### **22.1.3. Scope of applicability**

22.1.3.1. This Proclamation is applicable to the [former] Territory of South West Africa/Namibia, and remains in force by virtue of Article 140.

#### **22.1.4. Current status**

22.1.4.1. This Proclamation has no ongoing effect or contemporary application in independent Namibia.

#### **22.1.5. Recommendation**

22.1.5.1. It is recommended that this Proclamation be repealed in its entirety.

### **23. Sundays and Public Holidays**

#### **23.1. Sunday Trading Proclamation, 1919 (Proclamation No. 12 of 1919)**

##### **23.1.1. Purpose**

23.1.1.1. This Proclamation was intended to prevent unnecessary trading on Sundays. It was also intended to regulate trading on Christmas Day and Good Friday.

##### **23.1.2. Amendments**

23.1.2.1. This Proclamation has no amendments.

##### **23.1.3. Scope of applicability**

23.1.3.1. The Proclamation applies to the entire [former] Territory of South West Africa and remains in force by virtue of Article 140.

##### **23.1.4. Current status**

23.1.4.1. The Proclamation has no ongoing relevance, as trading hours have taken a dramatic shift; furthermore, the Proclamation has been superseded by local authority regulations; ergo the Proclamation is obsolete.

##### **23.1.5. Recommendations**

23.1.5.1. It is recommended that the Proclamation be repealed in its entirety.

#### **23.2. Lord's Day Observance Proclamation, 1921 (Proclamation 54 of 1921)**

##### **23.2.1. Purpose**

23.2.1.1. This Proclamation was intended to secure better observance of the Lord's Day. It regulates trading and entertainment on Sundays.

### **23.2.2. Amendments**

23.2.2.1. This Proclamation has not been amended.

### **23.2.3. Scope of applicability**

23.2.3.1. The Proclamation applies to the entire [former] Territory of South West Africa and remains in force by virtue of Article 140 of the Namibian Constitution.

### **23.2.4. Current status**

23.2.4.1. The Proclamation has no on-going application as it has been superseded by the Liquor Act, 1998 (Act No. 6 of 1998), which, in section 46(2), provides that no off-sales licensee, except the holder of a parks liquor licence, shall sell or deliver liquor on a closed day, except to another licensee. The definition of a closed day refers to a "Sunday" or a "public holiday" referred to in, or declared under, the Public Holidays Act, 1990 (Act 26 of 1990). Further, the Municipal regulations of the various Local Authorities have bylaws regulating entertainment and trading on Sundays.

### **23.2.5. Recommendation**

23.2.5.1. It is recommended that the Proclamation be repealed in its entirety.

## **24. Trade and Industry**

### **24.1. Industrial Development Act, 1940 (Act No.22 of 1940)**

#### **24.1.1. Purpose**

24.1.1.1. The Act was intended to promote the establishment of new industries and industrial undertakings, and the developments of existing industries and to provide for other incidental matters therein. The Act establishes an Industrial

Development Corporation with the purpose of promoting or assisting of companies in conducting industrial operations in the Union of South Africa.

**24.1.2. Amendments**

24.1.2.1. There are no amendments to the Act.

**24.1.3. Scope of applicability**

24.1.3.1. The Act applies to the Union of South Africa, which, at that time, included South West Africa, and remains in force by virtue of Article 140 of the Namibian Constitution.

**24.1.4. Current status**

24.1.4.1. The Development Bank of Namibia Act, 2002 (Act No. 8 of 2002), which has the same purpose and functions, has superseded this Act; ergo it is obsolete.

**24.1.5. Recommendation**

24.1.5.1. It is recommended that this Act be repealed in its entirety.

**End.**

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# ANNEXURE A

## OBSOLETE LAWS REPEAL BILL, 2014

**To provide for the repeal of certain legislation now obsolete and for matters incidental thereto.**

*(Introduced by the Minister of Justice)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia as follows:-

### *Repeal of laws*

1. The laws specified in Schedule 1 to this Act are hereby repealed.

### *Amendment of certain laws*

2. (1) The laws specified in Schedule 2 to this Act are hereby amended by the removal of the words and terminology: *Territory, Secretary for South West Africa, South West Africa, and Caprivi Zipvel.*  
  
(2) The words and terminology referred to in sub-section (1) shall respectively be substituted by the following words and terminology: Republic of Namibia, Permanent Secretary responsible for Health, Republic of Namibia, and Zambezi Region.

### *Retention of benefits*

3. The repeal under section 1 notwithstanding, all continuing benefits arising out of any law contained in the Schedule shall not be affected, and the provisions of section 11(2) of The Interpretation of Laws Proclamation, 1920 are hereby specifically incorporated into this section.

### *Short title and commencement*

4. This Act shall be called the Repeal of Obsolete Laws Act, 2014, and shall come into operation on the date of its publication in the Gazette.

## SCHEDULE 1

The laws contained in this Schedule are repealed in their entirety.

No.	Name of Act/Ordinance/Proclamation
1.	Dried Peas Control Ordinance, 1957 (Ordinance 35 of 1957)
2.	South West African Meat Industry Ordinance, 1955 (Ordinance 39 of 1955)
3.	Trespass of Donkeys Proclamation, 1941 (Proclamation No. 18 of 1941)
4.	Native Affairs Act, 1959 (Act No. 55 of 1959)
5.	Caprivi Zipvel Affairs Proclamation, 1930 (Ordinance 27 of 1930)
6.	Concessions from Natives Proclamation, 1915 (Ordinance 8 of 1915)
7.	The Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968)
8.	Namaland Consolidation and Administration Act, 1972 (Act No. 79 of 1972)
9.	Native Reserves Fencing Proclamation, 1926 (Proclamation No. 12 of 1926)
10.	Native Reserves Trust Fund Administration Proclamation, 1924 (Proclamation No. 9 of 1924)
11.	Native Trust Funds Proclamation, 1929 (Proclamation No. 23 of 1929)
12.	Okavango Native Territory Affairs Proclamation, 1937 (Proclamation No. 32 of 1937)
13.	Ovamboland Affairs Proclamation, 1929 (Proclamation No. 27 of 1929)
14.	Reservation of State Land for Natives Ordinance, 1967 (Ordinance 35 of 1967)
15.	The Republic of Namibia Citizenship Special Conferment Act, 1991 (Act No. 14 of 1991)
16.	Commission's Powers Ordinance, 1927 (Ordinance 6 of 1927)
17.	Declaration of State of Emergency: Caprivi Proclamation, 1999 (Proclamation No. 23 of 1999)
18.	South West Africa Affairs Act, 1969 (Act No. 25 of 1969)
19.	Police Offences Proclamation, 1920 (Proclamation No. 27 of 1920)
20.	Price Control Admissions of Guilt Proclamation, 1944 (Proclamation No. 40 of 1944)
21.	Vagrancy Proclamation, 1920 (Proclamation No. 25 of 1920)
22.	Silver Coin (Control of Importation) Proclamation, 1932 (Proclamation No. 26 of 1932)
23.	Payment of Loans Proclamation, 1933 (Proclamation No. 28 of 1933)
24.	Usury Proclamation, 1921 (Proclamation No. 26 of 1921)
25.	Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920 (Proclamation No. 26 of 1920)
26.	Exchequer and Audit Proclamation, 1979 (Proclamation No. 85 of 1979)
27.	State Repudiation (Cultura 2000) Act, 1991 (Act No. 32 of 1991)
28.	Development Fund of South West Africa/Namibia Act, 1987 (Act No. 29 of 1987)
29.	Assistance Fund of South West Africa Repeal Act, 1992 (Act No. 13 of 1992)
30.	Venereal Diseases Prevention Proclamation, 1919 (Proclamation No. 5 of 1919)
31.	Hospitals and Charitable Institutions Ordinance, 1930 (Ordinance 16 of 1930)
32.	Hospitals Amendment Ordinance, 1944 (Ordinance 5 of 1944)
33.	State Hospitals Ordinance, 1966 (Ordinance 17 of 1966)
34.	Housing Levy Ordinance, 1976 (Ordinance 18 of 1976)
35.	The Rehoboth Gebiet Income Tax Proclamation, 1961 (Proclamation No. 92 of 1961)
36.	Treaty of Peace and South West Africa Mandate Act, 1919 (Act No. 49 of 1919)
37.	Shop Hours and Shop Assistants Ordinance, 1939 (Ordinance 15 of 1919)

38.	Control of Sites (Churches, Schools & Missions) Proclamation, 1932 (Proclamation No. 31 of 1932)
39.	Crown Lands (Trespass) Proclamation, 1919 (Proclamation No. 7 of 1919)
40.	Crown Land Disposal Proclamation, 1920 (Proclamation No. 13 of 1920)
41.	Promotion of the Density of Population in Designated Areas Act, 1979 (Act No. 18 of 1979)
42.	Small Settlements Commonage Sub-Division Proclamation, 1926 (Proclamation No. 13 of 1926)
43.	South West Africa Medical Research Council Act, 1969 (Act No. 19 of 1969)
44.	The Acquisition of Shares in Rossing Uranium Limited and the Appointment of a Director Proclamation, 1985 (Proclamation No. 31 of 1985)
45.	Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, 1990 (Proclamation No. 8 of 1990)
46.	Pension Matters of Government Institutions Proclamation, 1989 (AG No. 56 of 1989)
47.	Railways and Harbours Pension Act, 1971 (Act No. 35 of 1971)
48.	Railways and Harbours Pensions for Non-Whites Act, 1974 (Act No. 43 of 1974)
49.	Social Pensions Ordinance, 1965 (Ordinance 2 of 1965)
50.	Teachers Pensions Proclamation, 1931 (Proclamation No. 39 of 1931)
51.	Indemnity Proclamation, 1923 (Proclamation No. 8 of 1923)
52.	Sunday Trading Proclamation, 1919 (Proclamation No. 12 of 1919)
53.	Lord's Day Observance Proclamation, 1921 (Proclamation No. 54 of 1921)
54.	Industrial Development Act, 1940 (Act No. 22 of 1940)

## SCHEDULE 2

The laws contained in this Schedule are amended as provided under section 2 of the Act.

No.	Name of Act/Ordinance/Proclamation
1.	Tobacco Growers Protection Ordinance, 1933 (Ordinance No. 2 of 1933)
2.	Application of Laws To The Eastern Caprivi Zipvel Act, 1999 (Act No. 10 of 1999)
3.	Income Tax Agreement Ratification Ordinance, 1959 (Ordinance No. 13 of 1959)
4.	Military Pension Act, 1976 (Act No. 84 of 1976)