NAMLEX INDEX TO THE LAWS OF NAMIBIA

LEGAL ASSISTANCE CENTRE 31 December 2024 update

INFORMATION CURRENT TO 31 December 2024

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UPDATES

The current issue of NAMLEX includes the following:

- laws and regulations through **Government Gazette 8553**
- cases in the Namibian Law Reports through 2024 (2)
- multilateral treaties signed, ratified or acceded to as of 1 January 2023.

Note that any text in red (other than headings for individual laws) contains a **cross-reference**. If you press "Ctrl" while clicking on this text, this will take you to the linked item in the NAMLEX document. This enables you to jump from the Index or the List of Statutes at the front of the document to the category or entry which is referenced. You can jump back to the Index or the



List of Statutes by simultaneously pressing "Alt" and the left arrow key.

If the text is <u>red</u> with underlining, it contains a **hyperlink**. If you press "Ctrl" while clicking on this text on a device with internet access, this will take you to the linked item online. This enables you to see the actual *Gazette* which is the source of the information described in the NAMLEX entry.

The Legal Assistance Centre will endeavour to update NAMLEX from time to time. While every effort has been made to ensure the accuracy of the information in NAMLEX, there are undoubtedly some errors. We appeal to NAMLEX users who become aware of any mistake or omission to alert us to this, so that an appropriate correction or addition can be included in future updates.

Please note that information on multilateral treaties has been moved to the NAMLEX APPENDIX, which is a companion document to NAMLEX.

ACKNOWLEDGEMENTS

The goal of this publication is to make the law more accessible to the public. Its starting point was the *Index to the Laws of Namibia* published by the NAMLAW Project under the direction of the late Advocate Anton Lubowski.

The Legal Assistance Centre first published Namlex in 1997, and has produced updates in 1999, 2000, 2001, 2003, 2004, 2010, 2015, 2017, 2018, 2019 (two updates), 2020 (two updates) and 2021 (one update so far).

- The initial index and the 1999 and 2000 updates were compiled by Dianne Hubbard, with the assistance of Clinton Light and Kapena Laura Tjihero.
- The 2001 update was compiled by Dianne Hubbard, with assistance from Leigh-Anne Agnew, Heather Sherdahl and Susan Taylor.
- The 2003 update was prepared by Dianne Hubbard, with assistance from Evelyn Zimba and Naomi Kisting.
- The 2004 update was prepared by Dianne Hubbard, with assistance from Hilary Blain.
- The 2010 update was prepared by Dianne Hubbard, with assistance from Romy Noeske, Elizabeth Fisher, Tessa Harris, Jessica Sun, Laila Hassan and Thom Wood.
- The 2015 update was prepared by Dianne Hubbard, with assistance from Rachel Coomer, Yolandé Engelbrecht, Grace Kapere, Romy Noeske, Joy Sworn, Michael Hazel, Tyler Holmes, Stefanie Braun, Julia Ward, Chelsea Brake, Laura Halonen, Felix Lüth and Sam Forsyth.
- The 2017 update was prepared by Dianne Hubbard, with assistance from Romy Noeske, Kaity Cooper, Aneesha Lewis, Klaus Striewe, Perri Caplan, Anèl van der Vyver, Samm Niingungo and Cecil Jossop.
- The 2018 updates were prepared by Dianne Hubbard, with assistance from Anèl van der Vyver, Samm Niingungo and Perri Caplan.

• The 2019, 2020, 2021, 2022, 2023 and 2024 updates were prepared by Dianne Hubbard, with assistance from Anèl Stegmann, Perri Caplan and Romy Noeske. Amelie Brendel assisted with the 2021 updates. In 2020, the Ministry of Justice became a co-copyright holder of Namlex.

We would like to thank the Ministry of Justice for giving us access to its library to check citations, and the Ministry of International Relations and Cooperation (previously the Ministry of Foreign Affairs) for assistance with queries on international law. We would also like to thank the following donors:

- National Democratic Institute for International Affairs, with support from US-AID (initial publication)
- US-AID (1999 update)
- Namibia's Law Reform and Development Commission (partial funding for 2010 update)
- Parliamentary Support Programme, funded by the European Union through the Konrad Adenauer Stiftung (2015 update)
- US Embassy (2017, 2018, 2019 and 2020 updates)
- Ministry of Justice (2020 updates and contributions towards previous work on the project)
- British High Commission (partial funding for first 2023 update).

We are also indebted to Sabinet (https://sabinet.co.za) for providing free access to their online database of retrospective South African *Gazettes* and for allowing us to provide access to *Gazettes* that are relevant to Namibian law on the LAC website.

TERMINOLOGY

There are laws which are termed "Acts", "Ordinances", "Proclamations" and "AG Proclamations" because legislative authority over South West Africa vested in different offices and bodies at different points in the country's history. The differences in terminology do not give the laws in question any greater or lesser legal force.

This index refers to "South West Africa" to mirror the use of that term in the laws which are discussed and to differentiate between the period before and after independence.

FORMAT

INDEX

The categories used in NAMLEX are listed in the index in boldface type. All other headings have cross-references to NAMLEX categories.

LIST OF STATUTES

This is an alphabetical list of all the statutes in force in Namibia. The category in which each statute has been placed is indicated in brackets. South African statutes inherited by Namibia at independence are indicated in italics. Laws which have come into force are shown in boldface type; laws which are not yet in force are in ordinary typeface and preceded by an asterisk.

INDIVIDUAL ENTRIES

The individual statutes in each index category are listed chronologically, starting with the oldest statute.

Title of statute: South West African and Namibian legislation appear in ordinary typeface. South African legislation is indicated in italics. The title also indicates which South African amendments to South African legislation are applicable to Namibia.

Summary: This is a brief summary of the topics covered by the statute. For post-independence statutes, the date on which the statute came into force is given if this is a date other than the date the statute was published in the *Government Gazette*.

Repeals: Any laws repealed by the statute in question are listed. Where there have been repeals, a section on **Savings** is included in cases where subsidiary enactments and other actions taken under a repealed law survive under the replacement law.

Applicability to SWA: For South African statutes there is an explanation of how the statute became applicable to Namibia.

Transfer of administration to SWA: Various laws called "transfer proclamations" transferred the administration of certain South African statutes to South West Africa, primarily during the period 1977-1979. This information is important for determining which South African amendments to the statute are applicable to Namibia. The transfer proclamations are discussed in more detail in the background document.

Amendments: Amendments to each statute are listed. The full name of the amending law is omitted where it is simply a reference to the primary legislation (eg where the Namibian Citizenship Act is amended by the Namibian Citizenship Amendment Act). The full name of the amending law is included where it is not simply a reference to the principal legislation (eg where the Agricultural Bank Act is amended by the Posts and Telecommunications Companies Establishment Act).

Regulations / Rules / Notices: These parts of the entry list regulations, rules and other subsidiary notices. Pre-independence enactments have been located with the aid of *Juta's Index to the South African Government and Provincial Gazettes* (formerly "The Windex"), 1920-1989, This reference lists the regulations and other subsidiary enactments that were in force in South Africa as of 1989 (shortly before Namibian independence), including "grandfathered" enactments that survive by virtue of savings clauses. In some cases, it was necessary to work backwards from the listed enactments to ascertain what was in force at the time when the statute in question was transferred to "South West Africa". Other subsidiary enactments were located through searches of databases of South Africa and "South West African" *Gazettes*. While every effort has been made to be as accurate and as comprehensive as possible, please note that relevant documents cannot always be located through searches of online databases due to the varying quality of the *Gazette* scans – particularly in the case of older *Gazettes*, where the printing of the original documents was not always clear.

Application of law: This section reports instances where some other law has affected the application of the statute, or restricted or exempted its application in some contexts. This section normally appears after regulations and rules, and before notices.

Appointments: Appointments to bodies established in terms of the statute are listed where these were gazetted.

Cases: Judicial decisions which relate to the statute are also included. *These listings are not comprehensive*. However, they include all Namibian cases published since independence in the Namibian Law Reports (published by the Legal Assistance Centre and Juta), as well as a few unreported cases and a few significant cases dating from before independence. Generally *not* included are unreported cases available only via www.namiblii.org or in the South African Law Reports.

Commentary: The commentary sections include selected books and articles which discuss the statute in question, as well as relevant educational materials. Most of the items listed are Namibian publications. Unpublished theses are not listed.

Other information: Additional information which may be useful has been included with some entries, such as information on related international agreements. In some instances, information on cases, commentary, international law or other issues relevant to an entire topic appears at the end of the category in question, below all of the individual entries in that category.

Government Notices and General Notices NOT catalogued: Although key notices are logged under the relevant statutes, NAMLEX does not include notices pertaining to the following:

- advertisements
- announcements of vacancies
- bulk water supply tariffs
- closures of roads or erfs
- communications licences and tariffs (Communications Regulatory Authority of Namibia)
- continuous operations under the Labour Act
- determinations by Namibian Competition Commission
- town planning schemes
- township establishment and boundaries
- farming units offered for allotment
- hunting seasons
- name changes
- petrol prices
- prohibition and proposed prohibition of use of certain merchandise marks
- proclamation of district roads
- registration or de-registrations of close corporations
- registration or de-registrations of companies
- registration of air services
- registration of trademarks
- road carrier permits
- sanction lists, freezing orders and arms embargos (terrorism)
- tenders
- total allowable catches (fish).

See individual entries for further exclusions.

ABBREVIATIONS

AG Administrator General

This refers to the Administrator-General of South West Africa. Where the term AG appears on its own in a citation, this refers to an AG Proclamation.

GG Government Gazette

Prior to Namibian independence, laws and regulations which were applicable to South West Africa were published in the *Government Gazette* of South Africa, in the *Official Gazette* of South West Africa and sometimes in both. At independence, Namibia began publication of the *Government Gazette* of the Republic of Namibia. Thus the term "Government Gazette" refers to two different publications, depending on the relevant date. The context should indicate whether the term refers to the Namibian Government Gazette or to the South African one.

There are two groups of South African *Government Gazettes*: those issued **before 31 May 1961** by the Union of South Africa (abbreviated as "SA GG"), and those issued **after 31 May 1961** by the Republic of South Africa (abbreviated as "RSA GG"). The change came about as a result of the Republic of South Africa Constitution Act 32 of 1961, which transformed South Africa into a Republic with effect from 31 May 1961 and served as South Africa's constitution until it was replaced by the Republic of South Africa Constitution Act, 1983. The differing designations are necessary because the numbering of the South African *Government Gazettes* recommenced with number 1 after 31 May 1961 when South Africa became a Republic.

GN Government Notice

"Government Notices" should not be confused with "General Notices". The abbreviation GN is used only for "Government Notice" in this index. The term "General Notice" is spelt out.

NO Nominee officio (individual acting in an official capacity)

This abbreviation sometimes appears after an individual's name in the heading of Namibian court cases. It indicates that the individual is acting in an official capacity and not personally.

OG Official Gazette of SWA

Ord. Ordinance

Proc. Proclamation

RSA Republic of South Africa

South Africa became the Republic of South Africa in 1961.

SA Union of South Africa

SWA South West Africa or South West Africa/Namibia.

NAMLEX INDEX

The categories used in NAMLEX are listed in the index in boldface type. Other topics indicate the relevant NAMLEX category for that topic in brackets. Press *Ctrl* and click on the boldface topics to jump to the listings for that category.

A

Abortion (see MEDICINE)

ACCESS TO INFORMATION

Accommodation establishments (see TOURISM)

ACCOUNTANTS AND AUDITORS

Accreditation (see WEIGHTS, MEASURES AND STANDARDS)

Administration of estates (see INHERITANCE)

ADMIRALTY LAW

Adoption (see CHILDREN)

Advocates (see LEGAL PRACTITIONERS)

Aeroplanes and aeroports (see AVIATION)

Agricultural Bank (see AGRICULTURE)

AGRICULTURE

ALCOHOL, DRUGS AND TOBACCO

Alcoholism (see HEALTH)

Aliens and citizens (see CITIZENSHIP AND IMMIGRATION)

Amnesty (see CRIMINAL LAW AND PROCEDURE)

Anatomical donations (see MEDICINE)

ANIMALS

APPROPRIATIONS

ARBITRATION

Architects (see LAND AND HOUSING PROFESSIONS)

ARCHIVES

ARMS AND AMMUNITION

Army (see DEFENCE)

Art (see CULTURE AND CULTURAL INSTITUTIONS)

Atomic energy (see ENVIRONMENT)

Attorneys (see LEGAL PRACTITIONERS)

AVIATION

B

Bankruptcy (see INSOLVENCY)

Banks (see FINANCIAL INSTITUTIONS)

Bills of exchange (see NEGOTIABLE INSTRUMENTS)

Birds (see ANIMALS)

Biological resources (see ENVIRONMENT)

BIRTHS AND DEATHS

'BLACKS'

Blind persons (see DISABILITIES; SOCIAL WELFARE)

Bonds (see FINANCIAL INSTITUTIONS; DEBTORS AND CREDITORS)

Broadcasting (see MEDIA AND COMMUNICATION)

Building societies (see FINANCIAL INSTITUTIONS)

Bursaries (see EDUCATION)

BUSINESS

C

Caprivi Zipfel (see CONSTITUTION)

Casinos (see GAMBLING)

Censorship (see MEDIA AND COMMUNICATION)

CENSUS AND STATISTICS

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CHILDREN

CHURCHES

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Citizenship (see CITIZENSHIP AND IMMIGRATION)

CITIZENSHIP AND IMMIGRATION

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CIVIL REGISTRATION

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Coat of arms (see CONSTITUTION)

Commissioners of Oaths (see LAW)

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CULTURE AND CULTURAL INSTITUTIONS

CURRENCY

CUSTOMARY LAW

CUSTOMS AND EXCISE

D

DAMAGES

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DEEDS

DEFENCE

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Dentists (see HEALTH PROFESSIONS)

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Development brigades (see LABOUR)

Diamonds (see MINING AND MINERALS)

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Disabled persons (see DISABILITIES)

DISASTERS

Diseases (see HEALTH; MENTAL HEALTH AND MENTAL DISORDERS)

Disinfectants (see HEALTH)

Divorce (see MARRIAGE AND DIVORCE)

Doctors (see HEALTH PROFESSIONS)

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Drugs (see ALCOHOL, DRUGS AND TOBACCO)

E

EDUCATION

Elderly persons (see PENSIONS; SOCIAL WELFARE)

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ELECTRICITY

Emergencies (see CONSTITUTION; DEFENCE; DISASTERS; HEALTH PROFESSIONS-emergency care practitioners and paramedics)

Employment (see LABOUR)

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ENGINEERING

ENVIRONMENT

Estate agents (see LAND AND HOUSING PROFESSIONS)

Estates (see INHERITANCE)

EVIDENCE

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Expropriation (see LAND AND HOUSING)

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F

Family (see CHILDREN; DOMESTIC VIOLENCE; MAINTENANCE; MARRIAGE AND DIVORCE)

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FINANCE AND DEVELOPMENT

FINANCIAL INSTITUTIONS

Fire brigades (see REGIONAL AND LOCAL GOVERNMENT)

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FUEL AND ENERGY

G

GAMBLING

Gender-based violence (see CRIMINAL LAW AND PROCEDURE; DOMESTIC VIOLENCE)

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Government attorney (see LEGAL PRACTITIONERS)

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H

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HEALTH PROFESSIONS

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I

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INCOME TAX

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INOUESTS

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INTELLECTUAL PROPERTY

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<u>J</u>

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LAND AND HOUSING PROFESSIONS

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LANDLORD AND TENANT

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LEGAL PRACTITIONERS

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M

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MARRIAGE AND DIVORCE

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MEDIA AND COMMUNICATION

MEDICAL AID

MEDICINE

MENTAL HEALTH AND MENTAL DISORDERS

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MINING AND MINERALS

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Mortgages (see FINANCIAL INSTITUTIONS; DEBTORS AND CREDITORS)

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N

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NATIONAL HERITAGE

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0

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PRESIDENT

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Prisons (see CORRECTIONAL FACILITIES)

Procurement (see TENDERS)

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SECURITY OFFICERS

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SOCIAL WELFARE

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Students (see EDUCATION)

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SUNDAYS AND PUBLIC HOLIDAYS

Supreme Court (see COURTS)

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\mathbf{T}

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TENDERS

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Trademarks (see INTELLECTUAL PROPERTY)

Traditional healers (see HEALTH PROFESSIONS)

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Transfer duty (see REVENUE)

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U

Usury (see DEBTORS AND CREDITORS)

V

Valuation (see LAND AND HOUSING)

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Veterinarians (see ANIMALS)

Videos (see MEDIA AND COMMUNICATION)

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W

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Witchcraft (see CRIMINAL LAW AND PROCEDURE)
Witness protection (see CRIMINAL LAW AND PROCEDURE)
Workman's compensation (see LABOUR)





Z

LIST OF STATUTES

All statutes marked with an asterisk (*) had not yet come into force at the time of the most recent update.

The applicability of the statute marked with two asterisks (**) is questionable. See the individual entry for that statute for more details.

The statutes marked with three asterisks (***) have been repealed, but with some of their provisions remaining operable as if they had not been repealed.

South African statutes are indicated in italics.

Press Ctrl+Click on the statute name to jump to the entry for that statute.

This list omits Appropriation Acts and Additional Appropriation Acts (which are listed in the section on APPROPRIATIONS), and Transfer Proclamations (which are listed in the section on TRANSFER PROCLAMATIONS).

#NAMIBIAN CONSTITUTION (CONSTITUTION)

#Namibian Constitution First Amendment Act 34 of 1998 (CONSTITUTION)

#Namibian Constitution Second Amendment Act 7 of 2010 (CONSTITUTION)

#Namibian Constitution Third Amendment Act 8 of 2014 (CONSTITUTION)

Abattoir Industry Act 54 of 1976 (AGRICULTURE)

Abattoirs Restriction Proclamation 8 of 1944 (AGRICULTURE)

Abolition of Payment by Cheque Act 16 of 2022 (NEGOTIABLE INSTRUMENTS)

Abortion and Sterilization Act 2 of 1975 (MEDICINE)

Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 (ALCOHOL, DRUGS AND TOBACCO)

Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017 (ENVIRONMENT)

*Access to Information Act 8 of 2022 (ACCESS TO INFORMATION)

Accommodation Establishments and Tourism Ordinance 20 of 1973 (TOURISM)

*Accreditation Board of Namibia Act 8 of 2005 (WEIGHTS, MEASURES AND STANDARDS)

Acquisition of shares in Rössing Uranium Limited Proclamation, AG. 31 of 1985 (MINING AND MINERALS)

Administration Employees Pension Ordinance 19 of 1959 (PENSIONS)

***Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (INHERITANCE)

Administration of Estates Act 66 of 1965 (INHERITANCE)

Administration of Justice Proclamation 21 of 1919 (LAW)

Admiralty Court Act, 1840 (ADMIRALTY LAW)

Admiralty Court Act, 1861 (ADMIRALTY LAW)

*Admiralty Jurisdiction Regulation Act 5 of 1972 (ADMIRALTY LAW)

Advertising on Roads and Ribbon Development Ordinance 30 of 1960 (ROADS AND ROAD TRANSPORTATION)

Aerodrome Ordinance 12 of 1963 (AVIATION)

Affirmative Action (Employment) Act 29 of 1998 (LABOUR)

Aged Persons Act 81 of 1967 (SOCIAL WELFARE)

Agricultural (Commercial) Land Reform Act 6 of 1995 (LAND AND HOUSING)

Agricultural Bank of Namibia Act 5 of 2003 (AGRICULTURE)

Agricultural Land Act 5 of 1981 (Rehoboth) (LAND AND HOUSING)

Agricultural Produce Export Ordinance 13 of 1928 (AGRICULTURE)

Agronomic Industry Act 20 of 1992 (AGRICULTURE)

Air Services Act 51 of 1949 (AVIATION)

Airports Company Act 25 of 1998 (AVIATION)

Aliens Act 1 of 1937, sections 1, 9 and 14 (CIVIL REGISTRATION)

Allied Health Professions Act 7 of 2004 (HEALTH PROFESSIONS)

Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933 (LAND AND HOUSING)

Amnesty Proclamation, AG. 13 of 1989 (CRIMINAL LAW AND PROCEDURE)

Amortization Fund Repeal Act 7 of 1992 (REVENUE)

Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977 (MEDICINE)

Animal Health Act 1 of 2011 (ANIMALS)

Animals Protection Act 71 of 1962 (ANIMALS)

Anti-Corruption Act 8 of 2003 (CRIMINAL LAW AND PROCEDURE)

Application of Laws to the Eastern Caprivi Zipfel Act 10 of 1999 (CONSTITUTION)

Apportionment of Damages Act 34 of 1956 (DAMAGES)

Aquaculture Act 18 of 2002 (MARINE AND FRESHWATER RESOURCES)

Arbitration Act 42 of 1965 (ARBITRATION)

Architects' and Quantity Surveyors' Act 13 of 1979 (LAND AND HOUSING PROFESSIONS)

Archives Act 12 of 1992 (ARCHIVES)

Arms and Ammunition Act 7 of 1996 (ARMS AND AMMUNITION)

Assessment of Damages Act 9 of 1969 (DAMAGES)

Assignment of Powers Act 4 of 1990 (CONSTITUTION)

Atmospheric Pollution Prevention Ordinance 11 of 1976 (ENVIRONMENT)

Atomic Energy and Radiation Protection Act 5 of 2005 (ENVIRONMENT)

Bank of Namibia Act 1 of 2020 (FINANCIAL INSTITUTIONS)

Banking Institutions Act 13 of 2023 (FINANCIAL INSTITUTIONS)

Basic Education Act 3 of 2020 (EDUCATION)

Bills of Exchange Act 22 of 2003 (NEGOTIABLE INSTRUMENTS)

Biosafety Act 7 of 2006 (ENVIRONMENT)

Births, Marriages and Deaths Registration Act 81 of 1963 (CIVIL REGISTRATION)

Black Authorities' Service Pensions Act 6 of 1971 (PENSIONS)

Black Reserves (South West Africa) Act 44 of 1945 ('BLACKS')

Blind Persons Act 26 of 1968 (SOCIAL WELFARE)

Bonemeal and Superphosphates Control Proclamation 37 of 1944 (AGRICULTURE)

Boxing and Wrestling Control Act 11 of 1980 (SPORTS)

Brewers & Distillers Licences Duty Proclamation 3 of 1924 (ALCOHOL, DRUGS AND TOBACCO)

Building Societies Act 2 of 1986 (FINANCIAL INSTITUTIONS)

Burial Place Ordinance 27 of 1966 (BIRTHS AND DEATHS)

Business and Intellectual Property Authority Act 8 of 2016 (BUSINESS)

Canned Fruit Export Marketing Act 100 of 1967 (AGRICULTURE)

Carriage by Air Act 17 of 1946 (AVIATION)

Cattle Improvement Consolidation Ordinance 14 of 1941 (AGRICULTURE)

Child Care and Protection Act 3 of 2015 (CHILDREN)

Civil Aviation Act 6 of 2016 (AVIATION)

*Civil Registration and Identification Act 13 of 2024 (CIVIL REGISTRATION)

Civil Defence Act 39 of 1966 (DISASTERS)

Civil Proceedings Evidence Act 25 of 1965 (EVIDENCE)

Close Corporations Act 26 of 1988 (BUSINESS)

Cold Storage Works and Abattoirs Proclamation 50 of 1921 (AGRICULTURE)

Colonial Courts of Admiralty Act, 1890 (ADMIRALTY LAW)

Combating of Domestic Violence Act 4 of 2003 (DOMESTIC VIOLENCE)

Combating of Immoral Practices Act 21 of 1980 (CRIMINAL LAW AND PROCEDURE)

Combating of Rape Act 8 of 2000 (CRIMINAL LAW AND PROCEDURE)

Combating of Trafficking in Persons Act 1 of 2018 (CRIMINAL LAW AND PROCEDURE)

Commissions Act 8 of 1947 (COMMISSIONS)

Communal Land Reform Act 5 of 2002 (LAND AND HOUSING)

Communications Act 8 of 2009 (MEDIA AND COMMUNICATION)

Community Courts Act 10 of 2003 (COURTS)

Companies Act 28 of 2004 (BUSINESS)

Competition Act 2 of 2003 (TRADE AND INDUSTRY)

Concessions Modification and Mining Law Amendment Proclamation 59 of 1920 (MINING AND MINERALS)

Conferment of National Honours Act 11 of 2012 (CONSTITUTION)

Conferment of Status of Founding Father of the Namibian Nation Act 16 of 2005 (PRESIDENT)

Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932 (LAND AND HOUSING)

Controlled Wildlife Products and Trade Act 9 of 2008 (TRADE AND INDUSTRY)

Conventional Penalties Act 15 of 1962 (CONTRACTS)

Co-operatives Act 23 of 1996 (CO-OPERATIVES)

Copyright and Neighbouring Rights Protection Act 6 of 1994 (INTELLECTUAL PROPERTY)

Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES)

Council for Health and Social Services Professions Repeal Act 3 of 2004 (HEALTH PROFESSIONS)

Council of Traditional Leaders Act 13 of 1997 (CUSTOMARY LAW)

Credit Agreements Act 75 of 1980 (PURCHASE AND SALE)

Crematorium Ordinance 6 of 1971 (BIRTHS AND DEATHS)

Criminal Procedure Act 51 of 1977 (CRIMINAL LAW AND PROCEDURE)

Criminal Procedure Act Repeal Act 14 of 2018 (CRIMINAL LAW AND PROCEDURE)

Criminal Procedure Ordinance 34 of 1963, sections 300(3) and 370 (CRIMINAL LAW AND PROCEDURE)

Crown Land Disposal Ordinance 57 of 1903 (Transvaal) (LAND AND HOUSING)

Crown Liabilities Act 1 of 1910 (LAW)

Cultural Institutions Act 29 of 1969 (CULTURE AND CULTURAL INSTITUTIONS)

Currency and Exchanges Act 9 of 1933 (CURRENCY)

Customs and Excise Act 20 of 1998 (CUSTOMS AND EXCISE)

Dairy Industry Act 30 of 1961 (AGRICULTURE)

Decentralisation Enabling Act 33 of 2000 (REGIONAL AND LOCAL GOVERNMENT)

Deeds Registries Act 14 of 2015 (DEEDS)

Deeds Registries Act 47 of 1937 (DEEDS)

Defence Act 1 of 2002 (DEFENCE)

Delegation of Powers Ordinance 24 of 1973 (LAW)

Demonstrations in or near Court Buildings Prohibition Act 71 of 1982 (PUBLIC GATHERINGS)

Demutualisation Levy Act 9 of 2002 (INSURANCE)

Departure from Namibia Regulation Act 34 of 1955 (CITIZENSHIP AND IMMIGRATION)

Deposit Guarantee Act 16 of 2018 (FINANCIAL INSTITUTIONS)

Development Bank of Namibia Act 8 of 2002 (FINANCE AND DEVELOPMENT)

Development Brigade Corporation Act 32 of 1992 (LABOUR)

Diamond Act 13 of 1999 (MINING AND MINERALS)

Diamond Taxation Proclamation Repeal Act 21 of 1995 (MINING AND MINERALS)

Diplomatic Privileges Act 71 of 1951 (INTERNATIONAL ISSUES)

Disaster Risk Management Act 10 of 2012 (DISASTERS)

*Dissolution of Marriages Act 10 of 2024 (MARRIAGE AND DIVORCE)

Dissolution of Marriages on Presumption of Death Act 31 of 1993 (MARRIAGE AND DIVORCE)

Divorce Laws Amendment Ordinance 18 of 1935 (MARRIAGE AND DIVORCE)

Electoral Act 5 of 2014 (ELECTIONS)

Electricity Act 4 of 2007 (ELECTRICITY)

Electronic Transactions Act 4 of 2019 (EVIDENCE)

Employees' Compensation Act 30 of 1941 (LABOUR)

Employment Services Act 8 of 2011 (LABOUR)

Enforcement of Foreign Civil Judgements Act 28 of 1994 (COURTS)

Engineering Profession Act 18 of 1986 (ENGINEERING)

Environmental Investment Fund of Namibia Act 13 of 2001 (ENVIRONMENT)

Environmental Management Act 7 of 2007 (ENVIRONMENT)

Estate Agents Act 112 of 1976 (LAND AND HOUSING PROFESSIONS)

Explosives Act 26 of 1956 (EXPLOSIVES)

Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (IMPORT AND EXPORT)

Export Levy Act 2 of 2016 (IMPORT AND EXPORT)

Export Processing Zones Act 9 of 1995 (TRADE AND INDUSTRY)

Expropriation Ordinance 13 of 1978 (LAND AND HOUSING)

Extradition Act 11 of 1996 (CRIMINAL LAW AND PROCEDURE)

Fencing Proclamation 57 of 1921 (LAND AND HOUSING)

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 (AGRICULTURE)

Finance and Audit Ordinance 1 of 1926 (CRIMINAL LAW AND PROCEDURE)

Financial Institutions (Investment of Funds) Act 39 of 1984 (FINANCIAL INSTITUTIONS)

*Financial Institutions and Markets Act 2 of 2021 (FINANCIAL INSTITUTIONS)

Financial Intelligence Act 13 of 2012 (FINANCIAL INSTITUTIONS)

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

Flexible Land Tenure Act 4 of 2012 (LAND AND HOUSING)

Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 (HEALTH)

Foreign Courts Evidence Act 2 of 1995 (EVIDENCE)

Foreign Investments Act 27 of 1990 (TRADE AND INDUSTRY)

Forest Act 12 of 2001 (ENVIRONMENT)

Formalities in respect of Contracts of Sale of Land Act 71 of 1969 (PURCHASE AND SALE)

Formalities in respect of Leases of Land Act 18 of 1969 (LANDLORD AND TENANT)

Former Presidents' Pension and Other Benefits Act 18 of 2004 (PRESIDENT)

Friendly Societies Act 25 of 1956 (SOCIAL WELFARE)

Further Administration of Justice Proclamation 38 of 1920 (COURTS)

Game Products Trust Fund Act 7 of 1997 (ENVIRONMENT)

Gaming and Entertainment Control Act 13 of 2018 (GAMBLING)

General Law Amendment Act 101 of 1969, section 29 (EVIDENCE)

General Law Amendment Ordinance 12 of 1956, section 4 (ARMS AND AMMUNITION)

General Law Amendment Ordinance 12 of 1956, section 5 (INHERITANCE)

General Law Amendment Ordinance 12 of 1956, sections 6-8 (CRIMINAL LAW AND PROCEDURE)

General Law Amendment Ordinance 13 of 1962, section 7 (BIRTHS AND DEATHS)

General Law Amendment Ordinance 13 of 1962, section 8 (ARMS AND AMMUNITION)

General Law Amendment Ordinance 13 of 1962, section 9 (CRIMINAL LAW AND PROCEDURE)

General Law Amendment Ordinance 22 of 1958, sections 1-2 (COURTS)

Geneva Conventions Act 15 of 2003 (INTERNATIONAL ISSUES)

Geoscience Professions Act 3 of 2012 (SCIENCE AND SCIENTIFIC RESEARCH)

Government Attorney Proclamation, R.161 of 1982 (LEGAL PRACTITIONERS)

Government Service Pension Act 57 of 1973 (PENSIONS)

Hazardous Substances Ordinance 14 of 1974 (ENVIRONMENT)

*Health Professions Act 16 of 2024 (HEALTH PROFESSIONS)

Heraldry Act 18 of 1962 (INTELLECTUAL PROPERTY)

High Court Act 16 of 1990 (COURTS)

Higher Education Act 26 of 2003 (EDUCATION)

Hospitals and Health Facilities Act 36 of 1994 (HOSPITALS)

Identification Act 21 of 1996 (CIVIL REGISTRATION)

Immigration Control Act 7 of 1993 (CITIZENSHIP AND IMMIGRATION)

Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965 (LAND AND HOUSING)

Import and Export Control Act 30 of 1994 (IMPORT AND EXPORT)

Income Tax Act 24 of 1981 (INCOME TAX)

Income Tax Agreement Ratification Ordinance 13 of 1959 (INCOME TAX)

Industrial Property Act 1 of 2012 (INTELLECTUAL PROPERTY)

Inland Fisheries Resources Act 1 of 2003 (MARINE AND FRESHWATER RESOURCES)

Inquests Act 6 of 1993 (INQUESTS)

Insolvency Act 24 of 1936 (INSOLVENCY)

Inspection of Financial Institutions Act 38 of 1984 (FINANCIAL INSTITUTIONS)

International Co-operation in Criminal Matters Act 9 of 2000 (CRIMINAL LAW AND PROCEDURE)

International Health Regulations Act 28 of 1974 (HEALTH)

Interpretation of Laws Proclamation 37 of 1920 (LAW)

Intestate Succession Ordinance 12 of 1946 (INHERITANCE)

Intimidation Proclamation, AG 24 of 1989 (CRIMINAL LAW AND PROCEDURE)

Judges' Pensions Act 13 of 2011 (PENSIONS)

Judges' Remuneration Act 18 of 1990 (JUDGES)

Judicial Service Commission Act 18 of 1995 (JUDGES)

Judiciary Act 11 of 2015 (JUDGES)

Justices of the Peace and Commissioners of Oaths Act 16 of 1963 (LAW)

Karakul Pelts and Wool Act 14 of 1982 (AGRICULTURE)

Karakul Sheep Farming Industry Protection Proclamation 31 of 1930 (AGRICULTURE)

Labour Act 11 of 2007 (LABOUR)

Land Survey Act 33 of 1993 (LAND AND HOUSING)

Land Tenure Act 32 of 1966 (LAND AND HOUSING)

Law Reform and Development Commission Act 29 of 1991 (LAW)

Legal Aid Act 29 of 1990 (LEGAL PRACTITIONERS)

Legal Practitioners Act 15 of 1995 (LEGAL PRACTITIONERS)

Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 (PRESCRIPTION)

Liquor Act 6 of 1998 (ALCOHOL, DRUGS AND TOBACCO)

Livestock and Livestock Products Act 12 of 1981 (AGRICULTURE)

**Livestock Improvement Act 25 of 1977 (AGRICULTURE)

Local Authorities Act 23 of 1992 (REGIONAL AND LOCAL GOVERNMENT)

Local Authorities Fire Brigade Services Act 5 of 2006 (REGIONAL AND LOCAL GOVERNMENT)

Long-term Insurance Act 5 of 1998 (INSURANCE)

Lotteries Act 13 of 2017 (GAMBLING)

Magistrates Act 3 of 2003 (COURTS)

Magistrates' Courts Act 32 of 1944 (COURTS)

Maintenance Act 9 of 2003 (MAINTENANCE)

Marine Resources Act 27 of 2000 (MARINE AND FRESHWATER RESOURCES)

Marine Traffic Act 2 of 1981 (SHIPPING)

Marketing Act 59 of 1968 (AGRICULTURE)

*Marriage Act 14 of 2024 (MARRIAGE AND DIVORCE)

Marriage Act 25 of 1961 (MARRIAGE AND DIVORCE)

Married Persons Equality Act 1 of 1996 (MARRIAGE AND DIVORCE)

Matrimonial Affairs Ordinance 25 of 1955 (MARRIAGE AND DIVORCE)

Matrimonial Causes Jurisdiction Act 22 of 1939 (MARRIAGE AND DIVORCE)

Measuring Units and National Measuring Standards Act 76 of 1973 (WEIGHTS, MEASURES AND STANDARDS)

Meat Corporation of Namibia Act 1 of 2001 (AGRICULTURE)

Medical Aid Funds Act 23 of 1995 (MEDICAL AID)

Medical and Dental Act 10 of 2004 (HEALTH PROFESSIONS)

Medical Scheme for Members of the National Assembly, Judges and other Office Bearers Act 23 of 1990 (MEDICAL AID)

Medicines and Related Substances Control Act 13 of 2003 (MEDICINE)

Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 (PENSIONS)

Members of Statutory Bodies Pension Act 94 of 1969 (PENSIONS)

Mental Health Act 18 of 1973 (MENTAL HEALTH AND MENTAL DISORDERS)

Merchandise Marks Act 17 of 1941 (INTELLECTUAL PROPERTY)

Merchant Shipping Act 57 of 1951 (SHIPPING)

*Metrology Act 5 of 2022 (WEIGHTS, MEASURES AND STANDARDS)

Metrology Act 77 of 1973 (WEIGHTS, MEASURES AND STANDARDS)

Microlending Act 7 of 2018 (FINANCIAL INSTITUTIONS)

Military Pensions Act 84 of 1976 (PENSIONS)

Minerals (Prospecting and Mining) Act 33 of 1992 (MINING AND MINERALS)

Minerals Development Fund of Namibia Act 19 of 1996 (MINING AND MINERALS)

Mines, Works and Minerals Ordinance 20 of 1968 (MINING AND MINERALS)

Moratorium Act 25 of 1963 (DEFENCE)

Moratorium on the Payment of Stamp Duty or Transfer Duty in Respect of Rationalisation Schemes Act 13 of 1993 (REVENUE)

Motor Vehicle Accident Fund Act 10 of 2007 (ROADS AND ROAD TRANSPORTATION)

Motor Vehicle Theft Act 12 of 1999 (CRIMINAL LAW AND PROCEDURE)

Mountain Catchment Areas Act 63 of 1970 (ENVIRONMENT)

Municipal Dog Tax Ordinance 13 of 1967 (ANIMALS)

Namibia Central Intelligence Service Act 10 of 1997 (DEFENCE)

*Namibia Film Commission Act 6 of 2000 (MEDIA AND COMMUNICATION)

Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (FINANCIAL INSTITUTIONS)

*Namibia Financial Institutions Supervisory Authority Act 3 of 2021 (FINANCIAL INSTITUTIONS)

Namibia Industrial Development Agency Act 16 of 2016 (TRADE AND INDUSTRY)

Namibia Institute of Pathology Act 15 of 1999 (MEDICINE)

Namibia Institute of Public Administration and Management Act 10 of 2010 (EDUCATION)

*Namibia Investment Promotion Act 9 of 2016 (TRADE AND INDUSTRY)

Namibia Library and Information Service Act 4 of 2000 (LIBRARIES)

Namibia National Reinsurance Corporation Act 22 of 1998 (INSURANCE)

Namibia Nursing Association Act 28 of 1993 (HEALTH PROFESSIONS)

Namibia Press Agency Act 3 of 1992 (MEDIA AND COMMUNICATION)

Namibia Qualifications Authority Act 29 of 1996 (EDUCATION)

Namibia Red Cross Act 16 of 1991 (SOCIAL WELFARE)

Namibia Refugees (Recognition and Control) Act 2 of 1999 (CITIZENSHIP AND IMMIGRATION)

Namibia Revenue Agency Act 12 of 2017 (REVENUE)

Namibia Special Risks Insurance Association Act 5 of 2017 (INSURANCE)

Namibia Sports Act 12 of 2003 (SPORTS)

Namibia Students Financial Assistance Fund Act 26 of 2000 (EDUCATION)

Namibia Tourism Board Act 21 of 2000 (TOURISM)

Namibia University of Science and Technology Act 7 of 2015 (EDUCATION)

Namibia Water Corporation Act 12 of 1997 (WATER)

Namibia Wildlife Resorts Company Act 3 of 1998 (TOURISM)

Namibian Broadcasting Act 9 of 1991 (MEDIA AND COMMUNICATION)

Namibian Citizenship (Second) Special Conferment Act 6 of 2015 (CITIZENSHIP AND IMMIGRATION)

Namibian Citizenship Act 14 of 1990 (CITIZENSHIP AND IMMIGRATION)

Namibian Citizenship Special Conferment Act 14 of 1991 (CITIZENSHIP AND IMMIGRATION)

Namibian College of Open Learning Act 1 of 1997 (EDUCATION)

Namibian Ports Authority Act 2 of 1994 (SHIPPING)

Namibian Time Act 9 of 2017 (WEIGHTS, MEASURES AND STANDARDS)

Namibian Transport Advisory Board Act 23 of 1991 (TRANSPORTATION)

National Art Gallery of Namibia Act 14 of 2000 (CULTURE AND CULTURAL INSTITUTIONS)

*National Arts Fund of Namibia Act 1 of 2005 (CULTURE AND CULTURAL INSTITUTIONS)

National Disability Council Act 26 of 2004 (DISABILITIES)

National Education Act 30 of 1980 (EDUCATION)

National Fishing Corporation of Namibia Act 28 of 1991 (MARINE AND FRESHWATER RESOURCES)

*National Health Act 2 of 2015 (HOSPITALS) (only section 20(1) is in force)

National Heritage Act 27 of 2004 (NATIONAL HERITAGE)

National Housing Development Act 28 of 2000 (LAND AND HOUSING)

National Housing Enterprise Act 5 of 1993 (LAND AND HOUSING)

National Pensions Act 10 of 1992 (PENSIONS)

National Planning Commission Act 2 of 2013 (CONSTITUTION)

National Road Safety Act 9 of 1972 (ROADS AND ROAD TRANSPORTATION)

National Symbols of the Republic of Namibia Act 17 of 2018 (CONSTITUTION)

National Transport Services Holding Company Act 28 of 1998 (TRANSPORTATION)

***National Vocational Training Act 18 of 1994 (EDUCATION)

National Welfare Act 79 of 1965 (SOCIAL WELFARE)

National Youth Council Act 3 of 2009 (YOUTH)

National Youth Service Act 6 of 2005 (YOUTH)

Native Administration Proclamation 15 of 1928, sections 17-18, 23-27 ('BLACKS')

Nature Conservation Ordinance 4 of 1975 (ENVIRONMENT)

Nederduitse Gereformeerde Kerk in Suidwes-Afrika (Private) Ordinance 38 of 1958 (CHURCHES)

New Era Publication Corporation Act 1 of 1992 (MEDIA AND COMMUNICATION)

Newspaper and Imprint Registration Act 63 of 1971 (MEDIA AND COMMUNICATION)

Nursing Act 8 of 2004 (HEALTH PROFESSIONS)

Ombudsman Act 7 of 1990 (CONSTITUTION)

One-Stop Border Posts Control Act 8 of 2017 (CITIZENSHIP AND IMMIGRATION)

Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (HEALTH)

Participation Bonds Act 55 of 1981 (DEBTORS AND CREDITORS)

Payment of Bank Notes Proclamation 3 of 1933 (CURRENCY)

Payment System Management Act 14 of 2023 (FINANCIAL INSTITUTIONS)

Pension Funds Act 24 of 1956 (PENSIONS)

Performing Animals Protection Act 24 of 1935 (ANIMALS)

Petroleum (Exploration and Production) Act 2 of 1991 (MINING AND MINERALS)

Petroleum (Taxation) Act 3 of 1991 (REVENUE)

Petroleum Products and Energy Act 13 of 1990 (FUEL AND ENERGY)

Pharmacy Act 9 of 2004 (HEALTH PROFESSIONS)

Plant Quarantine Act 7 of 2008 (ENVIRONMENT)

Police Act 19 of 1990 (POLICE)

Police Offences Proclamation 27 of 1920 (CRIMINAL LAW AND PROCEDURE)

Political Ordinance of 1 April 1580, articles 19-29 (INHERITANCE)

Post Office Service Act 66 of 1974 (PUBLIC SERVICE)

Posts and Telecommunications Act 19 of 1992 (MEDIA AND COMMUNICATION)

Posts and Telecommunications Companies Establishment Act 17 of 1992 (MEDIA AND COMMUNICATION)

Powers of the SWA Water and Electricity Corporation Act 14 of 1980 (ELECTRICITY)

Powers, Privileges and Immunities of Parliament Act 17 of 1996 (CONSTITUTION)

Prescribed Rate of Interest Act 55 of 1975 (DEBTORS AND CREDITORS)

Prescription Act 68 of 1969 (PRESCRIPTION)

Presidential Remuneration and Other Benefits Act 15 of 2012 (PRESIDENT)

Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (ENVIRONMENT)

Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM)

Prevention of Counterfeiting of Currency Act 16 of 1965, sections 1-4 and 12 (CURRENCY)

Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE)

Prevention of Undesirable Residue in Meat Act 21 of 1991 (AGRICULTURE)

Price Control Act 25 of 1964 (TRADE AND INDUSTRY)

Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993 (LAND AND HOUSING PROFESSIONS)

Prohibition of Disguises Act 16 of 1969 (CRIMINAL LAW AND PROCEDURE)

*Property Practitioners Act 11 of 2024 (LAND AND HOUSING PROFESSIONS)

*Property Valuers Profession Act 7 of 2012 (LAND AND HOUSING PROFESSIONS)

Protection of Fundamental Rights Act 16 of 1988 (CRIMINAL LAW AND PROCEDURE)

Protection of Information Act 84 of 1982 (DEFENCE)

Public Accountants' and Auditors' Act 51 of 1951 (ACCOUNTANTS AND AUDITORS)

Public and Environmental Health Act 1 of 2015 (HEALTH)

Public Enterprises Governance Act 1 of 2019 (BUSINESS)

Public Gatherings Proclamation, AG 23 of 1989 (PUBLIC GATHERINGS)

Public Holidays Act 26 of 1990 (SUNDAYS AND PUBLIC HOLIDAYS)

Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 (CONSTITUTION)

Public Private Partnership Act 4 of 2017 (BUSINESS)

Public Procurement Act 15 of 2015 (TENDERS)

Public Service Act 13 of 1995 (PUBLIC SERVICE)

Public Service Commission Act 2 of 1990 (PUBLIC SERVICE)

Publications Act 42 of 1974 (MEDIA AND COMMUNICATION)

Racial Discrimination Prohibition Act 26 of 1991 (CRIMINAL LAW AND PROCEDURE)

Reciprocal Enforcement of Maintenance Orders Act 3 of 1995 (MAINTENANCE)

Reciprocal Service of Civil Process Act 27 of 1994 (COURTS)

Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (ARBITRATION)

Recognition of Certain Marriages Act 18 of 1991 (MARRIAGE AND DIVORCE)

Regional Councils Act 22 of 1992 (REGIONAL AND LOCAL GOVERNMENT)

Registration of Deeds in Rehoboth Act 93 of 1976 (DEEDS)

*Regularisation of Status of Certain Residents of Namibia, their Descendants and Foreign Spouses Act 15 of 2024 (CITIZENSHIP AND IMMIGRATION)

Rents Ordinance 13 of 1977 (LANDLORD AND TENANT)

Repeal of Obsolete Laws Act 12 of 2022 (LAW)

Repeal of Obsolete Laws Act 21 of 2018 (LAW)

Research, Science and Technology Act 23 of 2004 (SCIENCE AND SCIENTIFIC RESEARCH)

Riotous Assemblies Act 17 of 1956, sections 16-18 and 19A-21 (CRIMINAL LAW AND PROCEDURE)

Road Fund Administration Act 18 of 1999 (ROADS AND ROAD TRANSPORTATION)

Road Traffic and Transport Act 22 of 1999 (ROADS AND ROAD TRANSPORTATION)

Road Transportation Act 74 of 1977 (ROADS AND ROAD TRANSPORTATION)

Roads Authority Act 17 of 1999 (ROADS AND ROAD TRANSPORTATION)

Roads Contractor Company Act 14 of 1999 (ROADS AND ROAD TRANSPORTATION)

Roads Ordinance 17 of 1972 (ROADS AND ROAD TRANSPORTATION)

Sale of Land on Instalments Act 72 of 1971 (PURCHASE AND SALE)

Sea-shore Ordinance 37 of 1958 (SEA AND SEASHORE)

Second General Law Amendment Act 94 of 1974, section 2 (EVIDENCE)

Second Hand Goods Act 23 of 1998 (TRADE AND INDUSTRY)

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

Sectional Titles Act 2 of 2009 (LAND AND HOUSING)

Security Commission Act 18 of 2001 (CONSTITUTION)

Security Enterprises and Security Officers Act 19 of 1998 (SECURITY OFFICERS)

*Seed and Seed Varieties Act 23 of 2018 (AGRICULTURE)

Shop Hours Ordinance 15 of 1939 (LABOUR)

Short-term Insurance Act 4 of 1998 (INSURANCE)

Social Security Act 34 of 1994 (SOCIAL SECURITY)

Social Work and Psychology Act 6 of 2004 (HEALTH PROFESSIONS)

Soil Conservation Act 76 of 1969 (ENVIRONMENT)

Special Advisers and Regional Governors Appointment Act 6 of 1990 (CONSTITUTION)

Sperrgebiet-Delimitation Proclamation 11 of 1920 (MINING AND MINERALS)

Squatters Proclamation, AG 21 of 1985 (LAND AND HOUSING)

Stamp Duties Act 15 of 1993 (REVENUE)

Standards Act 18 of 2005 (WEIGHTS, MEASURES AND STANDARDS)

State Finance Act 31 of 1991 (FINANCE AND DEVELOPMENT)

State Repudiation (Cultura 2000) Act 32 of 1991 (FINANCE AND DEVELOPMENT)

Statistics Act 9 of 2011 (CENSUS AND STATISTICS)

Stock Brands Act 24 of 1995 (AGRICULTURE)

Stock Exchanges Control Act 1 of 1985 (STOCKS AND SECURITIES)

Stock Theft Act 12 of 1990 (CRIMINAL LAW AND PROCEDURE)

Subdivision of Agricultural Land Act 70 of 1970 (LAND AND HOUSING)

Sugar Act 28 of 1936 (TRADE AND INDUSTRY)

Sunday Trading Proclamation 12 of 1919 (SUNDAYS AND PUBLIC HOLIDAYS)

Supreme Court Act 15 of 1990 (COURTS)

Suretyship Amendment Act 57 of 1971 (DEBTORS AND CREDITORS)

Teachers' Education Colleges Act 25 of 2003 (EDUCATION)

Tear-gas Act 16 of 1964 (ARMS AND AMMUNITION)

Temporary Employees Pension Fund Act 75 of 1979 (PENSIONS)

Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990 (SEA AND SEASHORE)

The Apostolic Faith Mission of South Africa (Private) Act 24 of 1961 (CHURCHES)

Tobacco Growers Protection Ordinance 2 of 1933 (AGRICULTURE)

Tobacco Products Control Act 1 of 2010 (ALCOHOL, DRUGS AND TOBACCO)

Town and Regional Planners Act 9 of 1996 (LAND AND HOUSING PROFESSIONS)

Trade Practices Act 76 of 1976 (TRADE AND INDUSTRY)

Trades and Occupational Licences Repeal Act 10 of 1995 (TRADE AND INDUSTRY)

Traditional Authorities Act 25 of 2000 (CUSTOMARY LAW)

Transfer Duty Act 14 of 1993 (REVENUE)

Transfer of Convicted Offenders Act 9 of 2005 (CORRECTIONAL FACILITIES)

Trespass of Animals Ordinance 16 of 1939 (ANIMALS)

Trespass Ordinance 3 of 1962 (LAND AND HOUSING)

Trust Administration Act 11 of 2023 (TRUSTS)

Trust Fund for Regional Development and Equity Provisions Act 22 of 2000 (REGIONAL AND LOCAL GOVERNMENT)

Unit Trusts Control Act 54 of 1981 (STOCKS AND SECURITIES)

University of Namibia Act 18 of 1992 (EDUCATION)

Urban and Regional Planning Act 5 of 2018 (LAND AND HOUSING)

Usury Act 73 of 1968 (DEBTORS AND CREDITORS)

Value-Added Tax Act 10 of 2000 (REVENUE)

*Vehicle Mass Act 1 of 2024 (ROADS AND ROAD TRANSPORTATION)

Veterans Act 2 of 2008 (SOCIAL WELFARE)

Veterinary and Veterinary Para-Professions Act 1 of 2013 (ANIMALS)

Vexatious Proceedings Act 3 of 1956 (COURTS)

Virtual Assets Act 10 of 2023 (NEGOTIABLE INSTRUMENTS)

Vocational Education and Training Act 1 of 2008 (EDUCATION)

Walvis Bay and Off-Shore Islands Act 1 of 1994 (CONSTITUTION)

War Damage Insurance and Compensation Act 85 of 1976 (INSURANCE)

War Graves Control and Maintenance Ordinance 2 of 1927 (NATIONAL HERITAGE)

Water Research Act 34 of 1971 (WATER)

Water Resources Management Act 11 of 2013 (WATER)

Weeds Ordinance 19 of 1957 (AGRICULTURE)

*Whistleblower Protection Act 10 of 2017 (CRIMINAL LAW AND PROCEDURE)

Wills Act 7 of 1953 (INHERITANCE)

Witchcraft Suppression Proclamation 27 of 1933 (CRIMINAL LAW AND PROCEDURE)

Witness Protection Act 11 of 2017 (CRIMINAL LAW AND PROCEDURE)

Wreck and Salvage Act 5 of 2004 (SHIPPING)

NAMLEX APPENDIX – INTERNATIONAL LAW

current to 1 January 2023

This list includes all **binding** multi-lateral international agreements **signed**, **ratified or acceded to** by Namibia. Individual agreements are cross-referenced in the Namlex entries, but detailed information on specific agreements is contained in the **Namlex Appendix on International Law**.

Some non-binding agreements are referenced in Namlex entries for information, but the references to non-binding instruments are not comprehensive. Only binding and potentially-binding international agreements are included in the list below and in the individual entries in this Namlex Appendix on International Law.

Treaties which have been ratified or acceded to by Namibia but have not yet satisfied the conditions for coming into force internationally are indicated with an **asterisk** (*). These will become binding on Namibia as soon as they come into force internationally.

Treaties which have been signed (or, in a few cases, recently approved by the National Assembly) but not yet ratified or acceded to by Namibia are indicated with a **double asterisk** (**) – keeping in mind that the process of ratification or accession is not complete until the instrument of ratification or accession is deposited. These treaties are not binding on Namibia, regardless of whether or not they are in force internationally. They are listed here because signature of an international agreement generally indicates an intention to become a party to the agreement at some future point.

Treaties which were entered into prior to Namibian independence that appear to continue to be binding on Namibia are indicated by a **cross** (†).

- * treaties signed and ratified by Namibia, which have not yet satisfied the conditions for coming into force internationally
- ** treaties signed by Namibia but not yet ratified or acceded to by Namibia
- † treaties which were entered into prior to Namibian independence but appear to continue to be binding on Namibia

African, Caribbean and Pacific (ACP) – European Union (EU) Partnership Agreement, Cotonou (Cotonou Agreement), 2000

Amendment to the Partnership Agreement, Luxembourg, 2005

Amendment to the Partnership Agreement, Ouagadougou, 2010

African Charter on Democracy, Elections and Governance, 2007

African Charter on Human and Peoples' Rights (Banjul Charter), 1981

Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003

African Charter on Statistics, 2009

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990

African Charter on the Values and Principles of Decentralisation, Local Government and Local Development,

African Charter on Values and Principles of Public Service and Administration, 2011

African Civil Aviation Commission Constitution (AFCAC), 1969

**African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003

African Maritime Transport Charter, 1993

African Nuclear-Weapon-Free-Zone Treaty (Treaty of Pelindaba), 1996

**African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA), 2019

*African Road Safety Charter, 2016

**African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009

**African Union Convention on Cross-Border Cooperation (Niamey Convention), 2014

*African Union Convention on Cyber Security and Personal Data Protection, 2014

African Union Convention on Preventing and Combating Corruption, 2003

**African Union Non-Aggression and Common Defence Pact, 2005

African Youth Charter, 2006

**Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010

Agreement between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the establishment of a Permanent Okavango River Basin Water Commission (OKACOM), 1994

Agreement between the Governments of the Republic of Angola, the Republic of Botswana and the Republic of Namibia on the Organizational Structure of OKACOM, 2007

Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Senqu River Commission (ORASECOM), 2000

*Agreement Establishing a Tripartite Free Trade Area among the Common Market For Eastern And Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC) (Tripartite Free Trade Agreement or TFTA), 2015

Agreement Establishing the African Continental Free Trade Area, 2018

Agreement Establishing the African Development Bank, 1963

Agreement Establishing the International Fund for Agricultural Development, 1976

Agreement Establishing the NORSAD Fund and the NORSAD Agency (with Statutes of the NORSAD Fund and Statutes of the NORSAD Agency), 1990

Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014

Individual components of the Marrakesh Agreement:

Marrakesh Final Act, 1994

Marrakesh Declaration, 1994

General Agreement on Tariffs and Trade, 1994

†General Agreement on Tariffs and Trade, 1947

Understanding on the Interpretation of Article II:1(b) of GATT 1994 – other duties and charges

Understanding on the Interpretation of Article XVII of GATT 1994 – state trading enterprises

Understanding on Balance-of-Payments Provisions of GATT 1994

Understanding on the Interpretation of Article XXIV of GATT 1994 – regional trade agreements

Understanding in Respect of Waivers of Obligations under GATT 1994

Understanding on the Interpretation of Article XXVIII of GATT 1994 – concession withdrawal

Marrakesh Protocol to GATT 1994

Agreement on Agriculture, 1994

Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), 1994

Agreement on Technical Barriers to Trade (TBT), 1994

Agreement on Trade Related Aspects of Investment Measures (TRIMs), 1994

Agreement on the Implementation of Article VI of GATT 1994 – anti-dumping

Agreement on Implementation of Article VII of GATT 1994 – customs valuation methods

Agreement on Preshipment Inspection (PSI), 1994

Agreement on Rules of Origin, 1994

Agreement on Import Licensing Procedures, 1994

Agreement on Subsidies and Countervailing Measures, 1994

Safeguards Agreement, 1994

Agreement on Trade Facilitation, 2014

General Agreement on Trade in Services (GATS), 1994

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

**Protocol Amending the TRIPS Agreement, 2005

Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994

Trade Policy Review Mechanism (TPRM), 1994

Agreement for a ceasefire in the Democratic Republic of the Congo (Lusaka Ceasefire Agreement), 1999

Agreement for the Establishment of the Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes, 2004

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

Agreement for the Establishment of the African Rehabilitation Institute (ARI), 1981

Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa (INFOPÊCHE), 1991

Agreement for the Establishment of the Southern African Centre for Ivory Marketing (SACIM), 1991

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009

Agreement on the Establishment of the Zambezi Watercourse Commission (ZAMCOM), 2004 Agreement relating to the International Telecommunications Satellite Organization, 1971

Amendment of Article XVII(f) of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 1995

Amendments of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 2000

Amendment of Article XII(c)(ii) of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 2007

**Agreement to Establish the South Centre, 1994

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993

Arms Trade Treaty (ATT), 2013

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944

Articles of Agreement of the International Finance Corporation (IFC), 1955

Articles of Agreement of the International Monetary Fund (IMF), 1944

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), 1989

Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1995

**Beijing Treaty on Audiovisual Performances, 2012

Benguela Current Convention, 2013

†Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised at Berlin (1908)

Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised in 1971 and amended in 1979

**WIPO Copyright Treaty (WCT), 1996

*Charter Establishing SADC Women in Science, Engineering and Technology Organisation, 2018

Charter Establishing the Centre for Coordination of Agricultural Research and Development (CCARDESA), 2010

*Charter Establishing the SADC Aviation Safety Organisation (SASO), 2015

Charter of Fundamental Social Rights in SADC, 2003

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997

Charter of the United Nations (UN), 1945

*Comprehensive Nuclear-Test-Ban Treaty, 1996

Constitution and Convention of the African Telecommunications Union, 1999, revised 2014

Constitution and Convention of the International Telecommunication Union (ITU), 1992

**Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992),

Kvoto 1994

**Instruments amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), Minneapolis 1998

**Instruments amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002), Antalya 2006

**Instrument amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998), by the Plenipotentiary Conference (Marrakesh, 2002) and by the Plenipotentiary Conference (Antalya, 2006), Guadalajara 2010

International Telecommunication Regulations, 1988

International Telecommunication Regulations, 2012

†Radio Regulations, 1979

Radio Regulations, 1995

**Regional Agreement GE06, adopted by RRC-06, relating to the planning of the digital terrestrial broadcasting service in Region 1 (parts of Region 1 situated to the west of meridian 170° E and to the north of parallel 40° S, except the territory of Mongolia) and in the Islamic Republic of Iran, in the frequency bands 174-230 MHz and 470-862 MHz, 2006

Constitution of the African Civil Aviation Commission (AFCAC), 2009 (Revised Version) †Constitution of the Food and Agriculture Organization of the United Nations (FAO), 1945 †Constitution of the International Labour Organization (ILO), 1919

*Instrument of Amendment of the ILO Constitution, 1986 Instrument of Amendment of the ILO Constitution, 1997 Constitution of the International Organization for Migration (IOM), 1953

†Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

†Constitution of the United Nations Industrial Development Organization (UNIDO), 1979

Constitution of the Universal Postal Union (UPU), 1964

Constitution of the World Health Organization (WHO), 1946

Amendments to Articles 24 and 25 of the Constitution of the World Health Organization, 1986 Amendments to Articles 24 and 25 of the Constitution of the World Health Organization, 1998

*Amendment to Article 7 of the Constitution of the World Health Organization. 1965

*Amendment to Article 74 of the Constitution of the World Health Organization, 1978

Constitutive Act of the African Union, 2000

Protocol relating to the Establishment of the Peace and Security Council of the African Union, 2002

**Protocol on Amendments to the Constitutive Act of the African Union, 2003

**Protocol on the Court of Justice of the African Union, 2003

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

Convention Establishing a Customs Co-operation Council, 1950

Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), 1985

Convention Establishing the World Intellectual Property Organization (WIPO Convention), 1967

Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970

**Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol), 2010

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Supplementary Protocol), Montreal, 1988

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 1988

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT), 1988

Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999

Convention of the African Energy Commission, 2001

Convention of the Pan-African Postal Union (PAPU), 1980

Convention of the World Meteorological Organization (WMO), 1947

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

Convention on Biological Diversity (Biodiversity Convention), 1992

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010

Convention on Cluster Munitions, 2008

Convention on Early Notification of a Nuclear Accident, 1986

Convention on International Civil Aviation (Chicago Convention), 1944

Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Russian Text], Montreal, 1977

Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (Chicago, 1944), Montreal, 1977

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 83bis], Montreal, 1980

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 3bis], Montreal, 1984

- Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 56], Montreal, 1989
- Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], Montreal, 1990
- *Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Arabic Text], Montreal, 1995
- *Protocol on the Authentic Quinquelingual Text of the Convention on International Civil Aviation, Montreal, 1995
- *Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Chinese Text], Montreal, 1998
- *Protocol on the Authentic Six-Language Text of the Convention on International Civil Aviation (Chicago, 1944), Montreal, 1998
- **Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], Montreal, 2016
- **Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 56], Montreal, 2016

Convention on International Interests in Mobile Equipment (Cape Town Treaty), 2001

Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Aircraft Protocol), 2001

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

Amendment to Article XI of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Bonn, 1979

Convention on Mutual Administrative Assistance in Tax Matters as amended by its Protocol, 2010

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963

**Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol), 2014

Convention on the Privileges and Immunities of the United Nations, 1946

Convention on Psychotropic Substances, 1971

Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, 2001

Convention on the Conservation of Antarctic Marine Living Resources, 1980

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999

Convention on the International Maritime Organization (IMO), 1948

Amendments to the Convention on the International Maritime Organization (institutionalization of the Facilitation Committee), 1991

Amendments to Articles 16, 17 and 19(b) of the Convention on the International Maritime Organization, 1993

Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972

Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997

Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980

Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty), 1997

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

Convention on the Protection of the Underwater Cultural Heritage, 2001

Convention on the Rights of Persons with Disabilities, 2006

Optional Protocol to Convention on Rights of Persons with Disabilities, 2006

Convention on the Rights of the Child, 1989

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995

- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- **Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965
- **Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention), 2010
- Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), 1971
 - Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982
 - Amendments to Article 6 and 7 of the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1987
- Convention relating to International Exhibitions (Paris Convention), 1928, as revised in 1972 and amended in 1982 and 1988
- Convention relating to the Status of Refugees, 1951

Protocol relating to the Status of Refugees (New York Protocol), 1967

- Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, 2016
- Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (hereinafter referred to as the "SACUM-UK EPA"), 2019
- Framework Agreement on the establishment of the International Solar Alliance (ISA), 2016
- Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006 Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006 Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006

- General Convention on the Privileges and Immunities of the Organisation of African Unity (OAU), 1965
 **Additional Protocol to the OAU General Convention on Privileges and Immunities, 1980
- †Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949
- †Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949

†Geneva Convention on Road Traffic, 1949

- †Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention),
- †Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949

Note: The Geneva Protocols are separate treaties that build upon all four Geneva Conventions and so are listed as separate entries: †Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977 and †Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

- **Georgetown Agreement, as revised by the 110th Session of the ACP Council of Ministers (Revised Georgetown Agreement), 2019
- Hague Agreement concerning the International Registration of Industrial Designs (Hague System), 1925, as governed by the 1999 Geneva Act
- Hague Convention Abolishing the Requirement of Legalisation of Foreign Public Documents (Apostille Convention), 1961
- Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 ILO Convention 29 concerning Forced or Compulsory Labour, 1930

Protocol of 2014 to the Forced Labour Convention, 1930

- ILO Convention 81 concerning Labour Inspection in Industry and Commerce, 1947
- ILO Convention 87 concerning the Freedom of Association and Protection of the Right to Organise, 1948
- ILO Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949
- ILO Convention 100 concerning Equal Remuneration, 1951
- ILO Convention 105 concerning the Abolition of Forced Labour, 1957
- ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, 1958
- ILO Convention 122 concerning Employment Policy, 1964

- ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973
- ILO Convention 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976
- ILO Convention 150 concerning Labour Administration: Role, Functions and Organisation, 1978
- ILO Convention 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978
- ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
- ILO Convention 188 concerning Work in the Fishing Sector, 2007
- ILO Convention 189 concerning Domestic Workers, 2011
- ILO Convention 190 concerning Violence and Harassment, 2019

Note: In this list, the numbers of the respective ILO Conventions have been placed at the front of their respective names to make searches for each of these conventions easier. Technically, the numbers appear at the end. For example, what is listed here as "ILO Convention 29 concerning Forced or Compulsory Labour, 1930" is in fact "ILO Convention concerning Forced or Compulsory Labour (No. 29), 1930".

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals (Arrangement international pour la création, à Paris, d'un Office international des epizooties), 1925

International Convention against Doping in Sport, 2005

International Convention against the Taking of Hostages, 1979

International Convention for the Conservation of Atlantic Tunas (ICCAT), 1966

Paris Protocol, 1984

Madrid Protocol, 1992

International Convention for the Control and Management of Ships' Ballast Water and Sediments (BMW), 2004

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978

Annex I – Regulations for the Prevention of Pollution by Oil

Annex II – Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk

Annex III – Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

Annex IV – Regulations for the Prevention of Pollution by Sewage from Ships

Annex V – Prevention of Pollution by Garbage from Ships

Annex VI – Regulations for the Prevention of Air Pollution from Ships

International Convention for the Safety of Life at Sea (SOLAS), 1974

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

International Convention for the Suppression of Terrorist Bombings, 1997

International Convention for the Suppression of the Financing of Terrorism, 1999

International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1952

International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS), 2001

International Convention on Load Lines (LL), 1966

Protocol of 1988 relating to the International Convention on Load Lines (LL PROT), 1966

International Convention on Maritime Search and Rescue (SAR), 1979

International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978

†International Convention on the Elimination of All Forms of Racial Discrimination, 1966

International Convention on the Harmonized Commodity Description and Coding System, 1983

International Convention on the Simplification and Harmonization of Customs Procedures, 1973, as amended in 1999 (Revised Kyoto Convention)

†International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973

International Convention on Tonnage Measurement of Ships (TONNAGE), 1969

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969

Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil (INTERVENTION PROT), 1973

International Covenant on Civil and Political Rights (ICCPR), 1966

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, 1989

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

International Plant Protection Convention, 1951, as revised in 1979 and 1997

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

Lusaka Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO), 1976

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993

Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization, 2010

Madrid Agreement concerning the International Registration of Marks (Madrid System), 1891, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and as amended in 1979

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989

**Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013

**Memorandum of Agreement between SADC Member States regarding the establishment of SADC Centre for Renewal Energy and Energy Efficiency (SACREEE), 2017

**Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI Convention), 2016

Multilateral Monetary Agreement between Eswatini, Lesotho, Namibia and South Africa (MMA), 1992 Minamata Convention on Mercury, 2013

**OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

OAU Convention on the Prevention and Combating of Terrorism, 1999

Paris Convention for the Protection of Industrial Property, 1883, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and as amended in 1979

Patent Cooperation Treaty (PCT), 1970, as amended in 1979, and as modified in 1984 and 2001

Preferential Trade Agreement Between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU), 2009

†Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977

†Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CCL PROT 1992)

Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (1992 Fund Convention)

**Revised African Maritime Transport Charter, 2010

**Revised Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Senqu River Commission (ORASECOM), 2018

Rome Statute of the International Criminal Court, 1998

Agreement on the Privileges and Immunities of the International Criminal Court (APIC), 2002

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), 1998

*SADC Agreement on Assistance in Tax Matters, 2012

SADC Mutual Defence Pact, 2003

SADC Protocol Against Corruption, 2001

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

SADC Protocol on Culture, Information and Sport, 2001

SADC Protocol on Education and Training, 1997

**SADC Protocol on Employment and Labour, 2014

SADC Protocol on Energy, 1996

*SADC Protocol on Environmental Management for Sustainable Development, 2014

SADC Protocol on Extradition, 2002

SADC Protocol on Finance and Investment, 2006

SADC Protocol on Fisheries, 2001

SADC Protocol on Forestry, 2002

SADC Protocol on Gender and Development, 2008

SADC Protocol on Health, 1999

**SADC Protocol on Industry, 2019

SADC Protocol on Legal Affairs, 2000

SADC Protocol on Mining, 1997

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

SADC Protocol on Politics, Defence and Security Co-operation, 2001

*SADC Protocol on Science, Technology and Innovation, 2008

SADC Protocol on Shared Watercourse Systems, 1995

Note: This Protocol has been repealed and replaced by the *SADC Revised Protocol on Shared Watercourses, 2000*, for the SADC member states that are parties to the Revised Protocol. The 1995 Protocol remains in force between Namibia and SADC states that are a party to it but not to the Revised Protocol.

SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community Region, 2001

SADC Protocol on the Development of Tourism, 1998

*SADC Protocol on the Facilitation of Movement of Persons, 2005

**SADC Protocol on the Inter-State Transfer of Sentenced Offenders, 2019

SADC Protocol on the Tribunal, 2000

SADC Protocol on Trade, 1996

SADC Protocol on Trade in Services, 2012

SADC Protocol on Transport, Communications and Meteorology, 1996

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

SADC Revised Protocol on Shared Watercourses, 2000

Single Convention on Narcotic Drugs, 1961

Protocol Amending the Single Convention on Narcotic Drugs, 1972

Southern African Customs Union Agreement (SACU), 2002

 $Amendments\ to\ the\ SACU\ Agreement,\ 2002,\ to\ institutionalise\ the\ SACU\ Summit,\ 2013$

Annex E to the SACU Agreement on Mutual Administrative Assistance, 2011

Statute of the Hague Conference on Private International Law, 1951

†Statute of the International Atomic Energy Agency (IAEA), 1956

Statute of the International Court of Justice (see Charter of the United Nations (UN), 1945)

Statute of the International Renewable Energy Agency (IRENA), 2009

Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983

Protocol of the Reconvened Plenipotentiary Meeting on the Establishment of the International Centre for Genetic Engineering and Biotechnology, 1984

Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007

Statutes of the International Institute for Democracy and Electoral Assistance (International IDEA), as revised in 2006

Statutes of the World Tourism Organization (UNWTO), 1970

Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), 2001

Trade, Investment, and Development Cooperative Agreement between SACU and the United States of America (TIDCA), 2008

Treaty Establishing the African Economic Community (AEC), 1991

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

Treaty for the Establishment of the African Medicines Agency, 2019

Treaty of the Southern African Development Community (SADC), 1992

Protocol to the Treaty establishing SADC on Immunities and Privileges, 1992

**Treaty of the Southern African Science Centre for Climate Change and Adaptive Land Management (SASSCAL), 2019

Treaty on the Establishment of the Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA), 2011

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

Treaty on the Prohibition of Nuclear Weapons, 2017

United Nations Convention Against Corruption, 2003

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 †United Nations Convention on the Law of the Sea (UNCLOS), 1982

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994

United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement), 1995

**Protocol on the Privileges and Immunities of the International Seabed Authority, 1998

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994

United Nations Framework Convention on Climate Change (UNFCCC), 1992

Kyoto Protocol to the UN Framework Convention on Climate Change, 1997

*Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 2012

Paris Agreement, 2015

Vienna Convention for the Protection of the Ozone Layer, 1985

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Second Meeting of the Parties at London on 29 June 1990 (London Amendment)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Fourth Meeting of the Parties at Copenhagen on 25 November 1992 (Copenhagen

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Ninth Meeting of the Parties at Montreal on 17 September 1997 (Montreal Amendment)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Eleventh Meeting of the Parties at Beijing on 3 December 1999 (Beijing Amendment)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Twenty-Eighth Meeting of the Parties at Kigali from 10 to 15 October 2016 (Kigali

Vienna Convention on Consular Relations, 1963 Vienna Convention on Diplomatic Relations, 1961 WHO Framework Convention on Tobacco Control (WHO FCTC), 2003 **WIPO Performances and Phonograms Treaty (WPPT), 1996

ACCESS TO INFORMATION

*Access to Information Act 8 of 2022 🕎 📻

Summary: This Act (<u>GG 7986</u>) provides for the right of access to information held by public and private entities, with a view to promoting transparency, accountability and good governance. It also provides for the appointment of an independent Information Commissioner and Deputy Information Commissioners. It will be brought into force on a date set by the Minister responsible for information and announced in the *Government Gazette*.

Regulations: Regulations are authorised by section 85 of the Act.

Regulations relating to Terms and Conditions of Selection Committee and Process for Appointment of Information Commissioner and Deputy Information Commissioner are contained in GN 380/2024 (GG 8530), with these regulations being issued before the law was brought into force.¹

See also *Protection of Information Act 84 of 1982* (**DEFENCE**), which makes it an offence to disclose certain information which might be prejudicial to national security or interests.

(b) to make, grant, or issue any... regulations...

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any ... regulations... made... under the power shall not, unless the contrary intention appears in the law or the contrary is necessary for bringing the law into operation, come into operation until the law comes into operation.

A similar issue is discussed in *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) at paras 63-69.

¹ Note that it appears to be competent for the Ministry to publish regulations as preparation for bringing a law into force. See section 12(3) of the Interpretation of Laws Proclamation 37 of 1920:

⁽³⁾ Where a law confers a power -

ACCOUNTANTS AND AUDITORS

Public Accountants' and Auditors' Act 51 of 1951, with some South African amendments

Summary: This Act (originally published in <u>SA GG 4663</u>) governs the registration and regulation of public accountants and auditors. It was brought into force in South Africa and South West Africa on 1 November 1951 by SA Proc. 207/1951 (<u>SA GG 4695</u>), pursuant to section 33 of the Act.

Applicability to SWA: Section 1 originally defined "Union" to include "the territory of South West Africa"; after amendment by *Act 30 of 1962*, section 1 defined "Republic" to include "the territory of South West Africa". Section 33 states "This Act shall apply also to the territory of South West Africa". Although section 33 did not make amendments to the Act in South Africa automatically applicable to South West Africa, they appear to have applied to South West Africa by virtue of the definitions of "Union" and "Republic" in section 1. This assumption is supported by the fact that the first post-independence amendments to this Act, made by Act 10 of 1994 (GG 922), cite previous amendments by *Act 47 of 1956*, *Act 30 of 1962*, *Act 68 of 1965*, *Act 53 of 1975*, *Act 80 of 1971* and *Act 9 of 1988*. However, it should be noted that three amending acts – *Act 30 of 1962*, *Act 68 of 1965*, and *Act 53 of 1975* – were made expressly applicable to South West Africa, while none of the other South African amending Acts contained any such language.

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance at the time, as indicated by government notices pertaining to the appointment of members of the Public Accountants' and Auditors' Board and the rules of that Board issued during the 1970s. See, for example, Government Notice 2085/1977 (RSA GG 5767), Government Notice 2809/1979 (RSA GG 6776) and Government Notice 625/1976 (RSA GG 5080). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

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

- Public Accountants' and Auditors' Amendment Act 47 of 1956 (SA GG 5703)
- Public Accountants' and Auditors' Amendment Act 64 of 1957 (SA GG 5901)
- Public Accountants' and Auditors' Amendment Act 30 of 1962 (RSA GG 205)
- Public Accountants' and Auditors' Amendment Act 68 of 1965 (RSA GG 1128)
- Transvaal and Natal Societies of Chartered Accountants Act 66 of 1968 (RSA GG 2116)
- General Law Amendment Act 80 of 1971 (RSA GG 3197)
- Public Accountants' and Auditors' Amendment Act 53 of 1975 (RSA GG 4753)
- Public Accountants' and Auditors' Amendment Act 91 of 1979 (RSA GG 6540)
- Public Accountants' and Auditors' Amendment Act 42 of 1982 (RSA GG 8102)
- Public Accountants' and Auditors' Amendment Act 12 of 1983 (RSA GG 8594)
- Public Accountants' and Auditors' Amendment Act 48 of 1984 (RSA GG 9161)
- Public Accountants' and Auditors' Amendment Act 51 of 1985 (RSA GG 9734)
- Public Accountants' and Auditors' Amendment Act 45 of 1986 (RSA GG 10219)
- Public Accountants' and Auditors' Amendment Act 9 of 1988 (RSA GG 11186)
- Accountants' and Auditors' and Financial Institutions Amendment Act 92 of 1988 (RSA GG 11414)
- Public Accountants' and Auditors' Amendment Act 3 of 1990 (RSA GG 12332).

Act 10/1994 (GG 922) amends sections 1, 3, 4, 5, 6, 12 and 29, and substitutes certain expressions.

Act 10/2013 (GG 5334) amends section 5.

Regulations: There is no provision authorising the promulgation of regulations in terms of this Act.

Rules: Rules Governing the Investigation and Discipline of Public Accountants and Auditors are contained in General Notice 100/2020 (GG 7152). These rules do not contain any repeals.

Rules issued under the Act prior to independence are as follows:

- Public Accountants' and Auditors' Board Rules SA GN 1896/1955 (<u>SA GG 5550</u>), as amended by RSA GN 165/1988 (RSA GG 11132)²
- Public Accountants' and Auditors' Disciplinary Rules RSA GN 158/1976 (<u>RSA GG 4980</u>), as amended by RSA GN 626/1976 (<u>RSA GG 5080</u>), RSA GN 2012/1980 (<u>RSA GG 7242</u>) and RSA GN 659/1982 (<u>RSA GG 8130</u>)³
- Public Accountants' and Auditors' Board: Rules for Special Examination in Law of Republic - RSA GN 2178/1980 (<u>RSA GG 7267</u>), as amended by RSA GN 230/1982 (<u>RSA GG 8018</u>)
- Public Accountants' and Auditors' Board Rules for Qualifying Examinations RSA GN 156/1976 (RSA GG 4980), as amended by RSA GN 352/1979 (RSA GG 6316), RSA GN 176/1983 (RSA GG 8530) and RSA GN 1858/1987 (RSA GG 10881).⁴

No repeals of any of these rules have been located, but some appear to have been superseded by the 2020 rules.

Notices: It is announced in SA GN 1826/1956 (<u>SA GG 5747</u>) that the Public Accountants' and Auditors' Board will assume responsibility for all prescribed examinations from 1 January 1957, pursuant to section 25(1) of the Act.

Fees: The following fees were prescribed prior to independence and appear to remain in force:

• Public Accountants' and Auditors' Registration Fees - RSA GN 157/1976 (<u>RSA GG 4980</u>),⁵ as amended by RSA GN 2173/1981 (<u>RSA GG 7832</u>), RSA GN 2682/1981 (<u>RSA GG 7946</u>), RSA GN 2385/1982 (<u>RSA GG 8435</u>), RSA GN 2677/1982 (<u>RSA GG 8481</u>), RSA GN 161/1984 (<u>RSA GG 9049</u>), RSA GN 1957/1984 (<u>RSA GG 9412</u>), RSA GN 900/1987 (<u>RSA GG 10715</u>), RSA GN 166/1988 (<u>RSA GG 11132</u>), RSA GN 683/1988 (<u>RSA GG 11240</u>) and RSA GN 2660/1988 (<u>RSA GG 11643</u>).⁶

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096), which places certain duties on the Public Accountants' and Auditors' Board.

Appointments: Appointments to the Public Accountants' and Auditors' Board are announced in GN 226/1995 (GG 1204), GN 3/2000 (GG 2259), GN 118/2001 (GG 2552), GN 266/2012 (GG 5069), GN 150/2013 (GG 5223), GN 232/2017 (GG 6397), GN 86/2021 (GG 7521) and GN 64/2022 (GG 7758).

Cases: Hashagen v Public Accountants' & Auditors' Board 2021 (3) NR 711 (SC) (overview of Board's powers under Act in context of administrative review of disciplinary proceeding).

² These rules repeal SA GN 418/1953.

³ These rules withdraw the rules in RSA GN 1569/1965, as amended by RSA GN R.1841/1965, RSA GN R.2008/1966 and RSA GN R.901/1970.

⁴ These rules withdraw the rules in RSA GN 1571/1965, as corrected by RSA GN 1841/1965 and as amended by RSA GN 20/1969 and RSA GN 79/1973.

⁵ These withdraw the fees contained in SA GN 3010/1951 (SA GG 4739).

⁶ RSA GN 157/1976 (<u>RSA GG 4980</u>) withdraws with effect from 1 January 1974 the fees contained in RSA GN 1924/1963 (<u>RSA GG 666</u>), as amended by RSA GN 360/1964 (<u>RSA GG 743</u>), RSA GN R.2009/1966 (<u>RSA GG 1610</u>), RSA GN R.11/1968 (<u>RSA GG 1944</u>), RSA GN R.1381/1968 (<u>RSA GG 2141</u>), RSA GN R.3810/1969 (<u>RSA GG 2569</u>), RSA GN R.2153/1970 (<u>RSA GG 2938</u>) RSA GN 2193/1970 (<u>RSA GG 2943</u>), RSA GN 2136/1973 (<u>RSA GG 4080</u>) and RSA GN 2140/1974 (<u>RSA GG 4511</u>), which would have been effective as of 1 January 1975 had the entire catalogue of fees not been withdrawn with retrospective effect from 1 January 1974.

ADMIRALTY LAW

Admiralty Court Act, 1840 (3 & 4 Vict c 65) 🕡 🙀

Summary: This Act (3 & 4 Vict c 65) concerns the jurisdiction of the High Court of Admiralty of England.

Applicability to SWA: This Act applied to South West Africa by virtue of section 2(2) of the *Colonial Courts of Admiralty Act, 1890*. (See the entry for that Act below.)

Regulations: Section 18 authorises the Judge of the High Court of Admiralty to make rules, orders, and regulations regarding the procedure in the Court, and the conduct and duties of the officers and practitioners in the Court. Subsidiary enactments that may have been issued pursuant to this authority have not been comprehensively researched, but no mention of any rules issued under this authority has been located in the admiralty law textbooks examined. (*Rules on the practice to be observed in the Vice-Admiralty Courts, 1883*, issued pursuant to the *Vice-Admiralty Courts Act 1863* and surviving in terms of the *Colonial Courts of Admiralty Act, 1890*, are available on the Namibian Superior Courts website <a href="https://example.com/hereit/her

Cases:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC)
Namibia Ports Authority v M V 'Rybak Leningrada' 1996 NR 355 (HC)
International Underwater Sampling Ltd & Another v MEP Systems Pte Ltd 2010 (2) NR 468 (HC)
MV MCP Pachna: Blue Sky Shipping Ltd & Another v Hellenic Bank Public Company Ltd 2019 (4) NR
997 (HC) (parameters of Court's jurisdiction under the Act).

Admiralty Court Act, 1861 (24 & 25 Vict. c. 10)

Summary: This Act (24 & 25 Vict. c. 10) concerns the jurisdiction of the High Court of Admiralty of England.

Applicability to SWA: This Act applied to South West Africa by virtue of section 2(2) of the *Colonial Courts of Admiralty Act, 1890.* (See the entry for that Act below.)

Regulations: The Act makes no provision for regulations.

Cases:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) Namibia Ports Authority v M V 'Rybak Leningrada' 1996 NR 355 (HC) International Underwater Sampling Ltd & Another v MEP Systems Pte Ltd 2010 (2) NR 468 (HC).

Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict c 57), as applied in the Cape of Good Hope as of 1 January 1920

Summary: This Act (<u>53 & 54 Vict c 57</u>) concerns the admiralty jurisdiction of the courts. Section 2(2) of the Act states:

The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise

such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.

It thus applies two statutes from English admiralty law – the *Admiralty Court Act 1840* and the *Admiralty Court Act 1861*.

Applicability to SWA: The Act was applied to South West Africa by virtue of the Administration of Justice Proclamation 21 of 1919.

See Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) and International Underwater Sampling Ltd & Another v MEP Systems Pte Ltd 2010 (2) NR 468 (HC), 2011 (1) NR 81 (SC).

In South Africa, the *Colonial Courts of Admiralty Act, 1890* was repealed in so far as it relates to prizes by the *Prize Jurisdiction Act 3 of 1968* (RSA GG 2000). This Act was made applicable to SWA by section 6, which states:

This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory.

However, Act 3 of 1968 never came into force in respect of South Africa or South West Africa.

The Colonial Courts of Admiralty Act, 1980 was repealed "in so far as it applies in relation to the Republic, except in so far as it relates to prize matters", by the Admiralty Jurisdiction Regulation Act 105 of 1983 – which was not made applicable to South West Africa.

Section 2(2) of the Colonial Courts of Admiralty Act, 1890 makes the Admiralty Court Act, 1840, and the Admiralty Court Act, 1861 applicable to Namibia.

See Trivett & Co, (Pty) Ltd & Others v WM Brandt's Sons & Co Ltd & Others 1975 (3) SA 423 (A) (quoted in the shaded box below). See also The Shipping Corporation of India Ltd v Evdomon Corporation & Another 1994 (1) SA 550 (A) at 559H-560C:

The next question is whether a South African Court of admiralty did have such jurisdiction prior to 1 November 1983. The jurisdiction of such a Court was governed by the Colonial Courts of Admiralty Act, 1890, a statute of the British Parliament. In terms of s 2(2) of this Act the jurisdiction of a colonial court of admiralty was stated to be '...over the like places, persons, matters, and things, as the admiralty jurisdiction of the High Court of England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty [might] exercise such iurisdiction in like manner and to as full an extent as the High Court in England...'. It has been authoritatively held that the effect of s 2(2) was that the jurisdiction of a Court of admiralty was governed by the admiralty jurisdiction of the English High Court as it existed in 1890. The sources of such jurisdiction included English statutes passed before 1890, notably the Admiralty Court Act, 1840, and the Admiralty Court Act, 1861, but not subsequent legislation. (Beaver Marine (Ptv) Ltd v Wuest 1978 (4) SA 263 (A) at 274C-D; Malilang and Others v MV Houda Pearl 1986 (2) SA 714 (A) at 722J-723B at 722J-723B. The suggestion in Joubert (ed) The Law of South Africa vol 25 para 114 note 8 that the true date was 1 July 1891 is, in my view, incorrect. According to The Yuri Maru, The Woron [1927] AC 906 (PC) at 915, the critical time was 'when the Act passed', which was 25 July 1890; and it does not seem to me that this is affected by the provision in s 16 that generally the Act was to come into force on 1 July 1891.) Furthermore, the proceedings in a Court of admiralty were regulated by the rules in force in 1890 under the Vice-Admiralty Courts Act, 1863 (see Tharros Shipping Corporation SA v Owner of the Ship 'Golden Ocean' 1972 (4) SA 316 (N) at 319A).

Regulations: Section 3 of the Act, entitled "Power of Colonial legislature as to Admiralty jurisdiction", reads as follows (emphasis added):

3. The legislature of a British possession may by any Colonial law,

- (a) **declare** any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and
- (b) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such **regulations** and with such appeal (if any) as may seem fit:

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

Declarations and regulations that may have been issued in terms of this provision have not been researched.

Rules: The 1890 Act repealed the Vice-Admiralty Courts Act 1863, but provided that the rules made under that Act would continue to apply in any British possession until revoked or varied (see section 16(3)):

See MV "Jute Express" v Owners of the Cargo Lately Laden on Board the MV "Jute Express" 1992 (3) SA 9 (A) at 19: "... in South African admiralty practice from the last century until the passing of the Act, the action was commenced by the issue of summons: see Rule 5 of the Rules made in terms of the English Vice-Admiralty Courts Act 1863 (in force in this country by virtue of the Colonial Courts of Admiralty Act 1890)."

See *Namibia Ports Authority v M V 'Rybak Leningrada'* 1996 NR 355 (HC) at 358F-G: "There is no issue between the parties that the Rules relied upon in this application are made under the 1840 and 1861 Acts named the Vice Admiralty Rules."

See *Bourgwells Ltd (Owners of MFV* Ofelia) v Shepalov & Others 1998 NR 307 (HC) at 311E-F: "...the Admiralty Proceedings Rules of South Africa do not apply in Namibia. The Rules for the Vice-Admiralty Courts in Her Majesty's Possessions Abroad, 1883, strange as it may seem, still apply."

The full text of the *Rules on the practice to be observed in the Vice-Admiralty Courts, 1883* issued pursuant to the *Vice-Admiralty Courts Act 1863* is available on the Namibian Superior Courts website <u>here</u>.

Cases:

Namibia Ports Authority v M V 'Rybak Leningrada' 1996 NR 355 (HC)

Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others 1998 NR 307 (HC), 1999 NR 410 (HC) Green Fisheries Corporation v Lubrication Specialist (Pty) Ltd 2003 NR 50 (HC) (Vice Admiralty Court Rules 29 and 30; basis for an action in rem)

International Underwater Sampling Ltd & Another v MEP Systems Pty Ltd 2010 (2) NR 468 (HC); 2011 (1) NR 81 (SC) ("necessaries" in terms of section 5 of the Admiralty Court Act 1840, section 6 of the Admiralty Court Act 1861).

MV Palenque 1: GMTC I LCC v Fund Constituted from the Sale of MV Palenque 1 & Others 2019 (4) NR 1142 (HC)

The Namibian High Court exercising its admiralty jurisdiction derives its jurisdiction from the English Statutes, namely the Admiralty Court Act of 1840, the Admiralty Court Act of 1861 and the Colonial courts of Admiralty Act of 1890. In *Freiremar v The Prosecutor General of Namibia and Others*, the court held that by virtue of s 1(i) of Proclamation 21 of 1919 all statutes which applied in the Province of Cape of Good Hope as at 1 January 1920 were made applicable to the then South West Africa. The Colonial Courts of Admiralty Act 1890 was part of the statute law of the Province of Cape of Good Hope as at 1 January 1890 and accordingly it became part of Namibia. Those English statutes are archaic and Namibia is the only country in the world that still applies the limited jurisdiction conferred by the Colonial Courts of Admiralty Act of 1890. The Colonial Courts of Admiralty Act of 1890 is archaic, outdated and belongs to the colonial era. Its heads of jurisdiction are very limited. Claims relating to or arising out of charter parties, marine insurance, container [sic], which should be dealt with under admiralty jurisdiction are excluded under the Colonial Courts of Admiralty Act of 1890. There is an urgent need for reform and updating of our maritime laws. (para 43, footnote omitted)

Prime Paradise International Ltd v Wilmington Savings Fund Society FSB & Others 2022 (2) NR 359 (SC) (Vice-Admiralty Court Rules, rule 138; Court notes at para 13 that "there is a pressing need to reform and update Namibia's outdated (and indeed antiquated) maritime laws.")

Prime Paradise International Ltd v Wilmington Savings Fund Society FSB & Others 2023 (3) NR 815 (HC) (despite the absence of any provision in Vice-Admiralty Rules or High Court Rules entitling a peregrinus plaintiff to demand security from a peregrinus defendant for the preservation costs of a vessel, High Court has inherent powers to require such security to prevent abuse of court process)

See also Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC) and Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) at 27H-28J for further discussion of admiralty law in Namibia.

Commentary: Hilton Staniland, "Theory versus policy in the reform of admiralty jurisdiction", 6 (4) *International Journal of Private Law* 418 (2013).

"Nineteenth admiralty law and jurisdiction – the whole bundle of statutory and inherent jurisdiction, common law, civilian practice and judicial precedent – was confirmed to be part and parcel of the law of the Cape and Natal by the 1890 Colonial Courts of Admiralty Act, which came into effect [in South Africa] on 1 July 1891.

Section 2(1) of the 1890 Colonial Courts of Admiralty Act 1890 provided:

Every court of law in a British possession, which is for the time being declared in pursuance of this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression "court of law" for the purposes of this section includes such Governor.

The Cape and Natal were British possessions, and their Supreme Courts had original unlimited civil jurisdiction, and so they became Colonial Courts of Admiralty...

Attempts were made to challenge the continuity of application of the 1890 Act and the law that came with it, but in 1975 the Supreme Court of Appeal in *The Waikiwi Pioneer* [1975 (3) SA 423 (SCA)] finally dispelled doubt that the Supreme Court's admiralty pedigree ran back continuously to the 1890 Act, and that it survived Union in 1910, and Republic in 1961."

John Hare, Shipping Law & Admiralty Jurisdiction in South Africa (2nd Edition), Juta, 2009 pages 14-15 (footnotes omitted)

"As was correctly found by Levy J the South African Admiralty Jurisdiction Regulation Act, Act 105 of 1983 does not apply to Namibia. However, prior to Act 105 of 1983 Admiralty Jurisdiction was exercised by South African Courts by virtue of the provisions of s 2 of the Colonial Courts of Admiralty Act 1890. (See in this regard *Trivett & Co (Pty) Ltd and Others v Wm Brandt's Sons & Co Ltd and Others* 1975 (3) SA 423 (A).) The provisions of the Colonial Courts of Admiralty Act 1890 was [sic] therefore part of the statute law of the Cape of Good Hope when by s 1(1) of Proc 21 of 1919 the law as existing and applied in that province was introduced into the then South-West Africa. (See further *R v Goseb* 1956 (2) SA 696 (SWA). *S v Redondo* 1992 NR 133 (SC) also 1993 (2) SA 528 (NmS) and The Law of Shipping and Carriage in South Africa, 3rd ed by B Bamford, p 4 footnote 27.) In cases such as *Tittel v The Master of The High Court* 1921 SWA 58 and *Krueger v Hoge* 1954 (4) SA 248 (SWA) it was decided that statutes which applied in the Cape as at 1 January 1920 also apply in South-West Africa by virtue of the provisions of Proc 21 of 1919. This was again reaffirmed in the *Redondo* case supra at 150 (NR) and 539I-540B (SA). Admiralty law as applied by the Colonial Courts of Admiralty Act, 1890, is therefore part of the Namibian law."

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) at 27H-28D (emphasis added)

"On 10 July 1974 the Natal Provincial Division, purporting to sit as a Colonial Court of Admiralty in terms of sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict. C. 27), granted, at the instance of the first respondent, an order, with costs against certain of the defendants, appointing a commissioner for the examination of such claims against the proceeds of the sale of the ship, Waikiwi Pioneer, sold by order of Court, as may be lodged with him, and for the determination of their nature and the amounts thereof, to enable the Court to decide their proper order of preference.

The application for the order was resisted on the ground that the Republic of South Africa having ceased to be a "British possession" within the meaning of that expression in sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, the several Provincial and Local Divisions of the Supreme Court of South Africa were no longer Colonial Courts of Admiralty with the jurisdiction conferred upon such Courts by the said Act, and that the order prayed for could, therefore, not properly be made by the Natal Provincial Division sitting as a Colonial Court of Admiralty under the Act of 1890. The Court *a quo* held, however, that the Colonial Courts of Admiralty Act, 1890, was a law in force in the Union of South Africa immediately prior to the commencement of the Republic of South Africa Constitution Act, 32 of 1961, and that sec. 107 of the latter Act accordingly provided for its continuation in relation to the Republic until repealed or amended by competent authority. The appellants now appeal to this Court against the order of the Court a quo.

Sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, provides as follows:

"(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression 'Court of law' for the purposes of this section includes such Governor."

The expression "British possession" is by sec. 18 (2) of the Interpretation Act, 1889 (52 and 53 Vict. C. 63) defined as:

"Any part of Her Majesty's Dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession."

The expression "unlimited civil jurisdiction" is defined by sec. 15 of the Colonial Courts of Admiralty Act, 1890, as -

"civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered".

No Court of law in South Africa has, in terms of sec. 2 (1) as read with sec. 3 (a) of the Colonial Courts of Admiralty Act, 1890, been declared to be a Colonial Court of Admiralty, but the several Divisions of the Supreme Court in South Africa became Colonial Courts of Admiralty by virtue of their having unlimited civil jurisdiction in a British possession as envisaged by the said sec. 2 (1). (Tharros Shipping Corporation S.A. v Owner of the Ship "Golden Ocean", 1972 (4) SA 316 (N) at pp. 318-319).

The jurisdiction of Colonial Courts of Admiralty are [sic] prescribed as follows by sec. 2 (2) of the Colonial Courts of Admiralty Act, 1890:

"The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations."

It is clear that the four British Colonies which in 1910 became the Union of South Africa in terms of sec. 4 of the South Africa Act, 1909 (9 Edward VII, C. 9) were British possessions within the meaning of that expression in sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, and that every court of law which in those Colonies had unlimited civil jurisdiction, became, in terms of that section, a Colonial Court of Admiralty with the jurisdiction conferred by the 1890 Act.

The Union of South Africa was clearly also a British possession within the meaning of that expression in sec. 2 (1) of the 1890 Act and it is, therefore, also clear that the several Divisions of the Supreme Court of the Union of South Africa also became Colonial Courts of Admiralty in terms of the said sec. 2 (1), for they were Courts of law which had unlimited civil jurisdiction in a British possession.

The jurisdiction exercised by them as Courts of Admiralty in the Union of South Africa being prescribed by the Act of 1890, that Act accordingly applied in the Union. It was accordingly not necessary to provide for its continuation in the Union of South Africa by sec. 135 of South Africa Act, 1909, and it probably never was the intention to do so. Sec. 135 was concerned more with the continuation of existing Colonial laws in the respective Provinces of the Union, and not with the 1890 Act which, by reason of the definition of British possession, was applicable to the whole of the Union as a single British possession.

The application in the Union of South Africa of the Colonial Courts of Admiralty Act, 1890, was recognised by sec. 6 of the Statute of Westminster, 1931 (22 Geo. 5 C. 5), as read with sec. 3 of the Status of the Union Act, 69 of 1934, and by the proviso to sec. 106 of the South Africa Act, 1909, and it was common cause that immediately prior to the commencement of the Republic of South Africa Constitution Act, 32 of 1961, the 1890 Act was in force in the Union of South Africa.

Act 32 of 1961, however, introduced important constitutional changes in South Africa which in terms of that Act became a republic and accordingly ceased to be a British possession. For its contention that the Colonial Courts of Admiralty Act, 1890, nevertheless continued to be in force in the Republic of South Africa, the respondent relied mainly upon sec. 107 of Act 32 of 1961 which reads as follows:

"Subject to the provisions of this Act, all laws which were in force in any part of the Union of South Africa, or in any territory in respect of which Parliament is competent to legislate, immediately prior to the commencement of this Act, shall continue in force until repealed or amended by the competent authority."

These are words of wide import no doubt employed to ensure the continuation in the Republic of all laws in force in the Union of South Africa immediately prior to the coming into existence of the Republic, except those expressly repealed by the Act, until such time as they are repealed or amended by the authorities competent to do so under the Act.

This would accord with the general policy of the Act of 1961 as it appears clearly from the provisions of, inter alia, secs. 24, 80, 94 and 112, namely, that, except for the fact that the Union of South Africa became a Republic in terms of the Act and therefore ceased to be a British possession, and that the Crown, or the Queen or the Governor-General was replaced by the State President, everything was to continue as before, including all statutory institutions which operated in the Union of South Africa. In terms of sec. 24 (2), for instance, the Senate and the House of Assembly, as constituted for the Parliament of the Union of South Africa, and in existence immediately prior to the coming into existence of the Republic, were deemed to have been duly constituted for the Parliament of the Republic, and any person elected or nominated as a member of the Senate or House of Assembly, and holding office immediately prior to the coming into existence of the Republic, was deemed to have been duly elected or nominated to the Senate or House of Assembly established by Act 32 of 1961. See also secs. 24 (4), 24 (5) and 24 (6) which provide, inter alia, for the disposal by the Parliament of the Republic of matters partly dealt with by the Union Parliament.

Having regard to these considerations, there can be no doubt that the Colonial Courts of Admiralty Act, 1890, which was a law in force in the Union of South Africa immediately prior to the coming into existence of the Republic, was intended by the Legislature to be included within the ambit of sec. 107 of Act 32 of 1961. The argument on behalf of the appellants that, because by Act 32 of 1961 the Union of South Africa ceased to be a British possession, the words "subject to the provisions of this Act" in sec. 107 have the effect of excluding from its ambit laws which were in force in the Union of South Africa by virtue of the fact that it was a British possession, cannot be sustained. It was precisely by reason of the constitutional changes brought about by Act 32 of 1961 that the enactment of sec. 107 thereof became necessary, and it would be strange indeed if the constitutional change of the Union of South Africa from a British possession to a republic was to have the effect of rendering sec. 107 inoperative in relation to a law which was in force in the Union of South Africa by virtue of its having been a British possession.

The more difficult question is whether, even if the Colonial Courts of Admiralty Act, 1890, continues in force in the Republic by reason of the provisions of sec. 107 of Act 32 of 1961, that Act can operate to confer upon Courts of law in the Republic the status and jurisdiction of Colonial Courts of Admiralty. It is clear that sec. 2 (1) of the 1890 Act in terms confers such status and jurisdiction only upon Courts of law in a British possession, and counsel for the respondent was constrained to concede that, unless that section of the Act as extended to the Republic by sec. 107 of Act 32 of 1961 is construed to refer to Courts of law in the Republic, it cannot be read as conferring upon such Courts the status and jurisdiction of Colonial Courts of Admiralty.

The Colonial Courts of Admiralty are the successors to the Vice-Admiralty Courts which were abolished by sec. 17 of the Colonial Courts of Admiralty Act, 1890, but subject to the provisions of that Act. The Vice-Admiralty Courts exercised the judicial functions of the Lord High Admiral by whom they were established in the United Kingdom and its dependencies. (Crooks & Co. v Agricultural Co-operative Union Ltd., 1922 AD 423). The jurisdiction exercised by the Vice-Admiralty Courts was commonly that of the High Court of Admiralty (The Yuri Maru: The Woron, 1927 A.C. 906 at p. 912), which exercised concurrent jurisdiction with Vice-Admiralty Courts abroad (The Peerless, (1860) 30 Lush. 167 E.R. 16). All Admiralty

Courts administer English Admiralty law. (*Currie v McKnight*, 1897 A.C. 97 at p. 101, and *Crooks & Co.*'s case, supra at pp. 429-430, 432 et seq.).

Having regard to these features and to the origin and historical development in general of Admiralty Courts as sketched in the judgments in *Crooks & Co*'s case, supra, and the cases cited therein, it seems clear that Colonial Courts of Admiralty were by their very nature primarily intended to operate only in British possessions. The existence of such Courts administering English Admiralty law in a foreign country, such as the Republic of South Africa, would therefore be an anachronism; an anachronism which, however, seems to be perpetuated, in part, by the Admiralty Jurisdiction Regulation Act, 5 of 1972, of the Republic of South Africa. That Act which, we are informed, has not yet come into operation, provides for the repeal of the Colonial Courts of Admiralty Act, 1890, in so far as it applies in relation to the Republic. Sec. 1 of the Act provides that:

"The powers and jurisdiction of the courts of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890 (53 and 54 Victoria, C. 27) of the United Kingdom shall, as from the commencement of this Act, and notwithstanding the repeal of that Act by this Act, vest in the provincial and local divisions of the Supreme Court of South Africa."

It follows from this, I think, that the powers and jurisdiction thus conferred upon the several Divisions of the Supreme Court will still have to be determined by reference to the Act of 1890.

In enquiring whether the Colonial Courts of Admiralty Act, 1890, applies in relation to the Republic, no regard can be had to the assumption made by Parliament in Act 5 of 1972 that it does, for, if the assumption is erroneous in law, it cannot alter the law (*Ex parte Swirsky*, 1930 T.P.D. 370 at p. 372), and, in enquiring whether the assumption is correct, the assumption itself cannot be of any assistance.

It obviously never was the intention of the British Parliament, in enacting the Colonial Courts of Admiralty Act, 1890, that the status and jurisdiction of Colonial Courts of Admiralty be conferred on Courts of law in any country other than a British possession, and it is indeed difficult, if not impossible, to apply some of the provisions of the 1890 Act, such as secs. 8 and 9, in relation to any country which is not a British possession. We are, however, not here concerned with the intention of the Parliament at Westminster in enacting the 1890 Act, but with the intention of the Parliament of the Union of South Africa in extending to the Republic the provisions of the 1890 Act by sec. 107 of Act 32 of 1961, for since South Africa ceased to be a British possession and became a Republic it is by the will of the Union Parliament, and not of the British Parliament, that the 1890 Act applies in relation to the Republic.

The 1890 Act would have ceased to apply in relation to South Africa when the Union became a Republic and ceased to be a British possession. What then was the intention of the Union Parliament in providing by sec. 107 of Act 32 of 1961 for the continuation in the Republic also of the 1890 Act?

In seeking an answer to this question, the general policy of Act 32 of 1961 cannot be overlooked. As already indicated that policy was that, subject to the specific exceptions mentioned, everything was to continue exactly as before, and that all statutory institutions which operated in the Union of South Africa immediately prior to the commencement of the Act, were to continue to operate in the Republic. If that was the intention of the Union Parliament it would be going against that intention to hold that Parliament did not intend to provide for the continued functioning in the Republic of Courts of Admiralty under the provisions of the Colonial Courts of Admiralty Act, 1890. If Parliament did not, in extending to the Republic the provisions of the Colonial Courts of Admiralty Act, 1890, contemplate the continued functioning in the Republic of Admiralty Courts under the provisions of that Act, and if the words "every court of law in a British possession" in sec. 2 (1) of that Act are to be given their literal meaning, the extension of the Act to the Republic would be meaningless and a nullity. In Salmon v Duncombe, (1886) 11 App. Cas. 627 at p. 634, Lord HOBHOUSE, in the Privy Council, said:

"It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftman's unskillfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used."

If sec. 3 of the Act 32 of 1961, which provides for the construction of pre-Republican laws, had included a provision that any reference in any law in force in the Union of South Africa immediately prior to the commencement of Act 32 of 1961 to a "British possession" shall be construed as a reference to the Republic, the matter would have been clear. It would, however, be a serious matter to hold that the extension to the Republic of the Colonial Courts of Admiralty Act, 1890, by sec. 107 of Act 32 of 1961 should be reduced to a nullity where, though the intention of the Legislature is clear, the necessity for such a provision as aforesaid was overlooked. (Cf. also R. v Vasey, (1905) 2 K.B. 748, and R. v Ettridge, (1909) 2 K.B. 24). The necessity

sometimes to modify or vary the words of a statute to give effect to the clear intention of the Legislature was referred to by DE VILLIERS, J.A., in Principal Immigration Officer v Hawabu and Another, 1936 AD 26 at p. 31, where the learned Judge of Appeal said:

"It is true that, even where the words of an Act are capable of one meaning only, there is an exceptional class of extreme cases in which courts of law have felt themselves compelled to 'modify' or 'cut down' or 'vary' the words used by the Legislature. In a sense this might be called amputation rather than interpretation. This process has been applied to statutory enactments in a few cases, such as Storm & Co. v Durban Municipality, 1925 AD 49 at p. 55; Brown v Brown, 1921 AD 484; R. v Venter, 1907 T.S. 910."

In Venter's case, supra, INNES, C.J., stated the principle thus -

"that when to give the plain words of the statute their ordinary meaning would lead to an absurdity so glaring that it could never have been contemplated by the Legislature, or where it would lead to a result contrary to the intention of the Legislature, as shown by the context or by such other considerations as the Court is justified to take into account, the Court may depart from the ordinary effect of the words to the extent necessary to remove the absurdity and to give effect to the true intention of the Legislature".

Applying these principles to the case before us, it seems to me that we are bound to construe the words "every court of law in a British possession" in sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, in its application in relation to the Republic, as a reference to "every court of law in the Republic". That being so, sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, as extended to the Republic by sec. 107 of Act 32 of 1961, does operate to confer upon the several Divisions of the Supreme Court of South Africa the status and jurisdiction of Colonial Courts of Admiralty.

For these reasons the appeal fails and is dismissed with costs, including the costs of two counsel, such costs to be paid by the appellants jointly and severally, the one paying the others to be absolved."

Trivett & Co, (Pty) Ltd & Others v WM Brandt's Sons & Co Ltd & Others 1975 (3) SA 423 (A) (emphasis added)

*Admiralty Jurisdiction Regulation Act 5 of 1972, as amended in South Africa to November 1979 🕎 🙀

Summary: This Act (RSA GG 3406) requires the High Court, when sitting as a court of admiralty, to refer to the law of England. Note that it was never brought into force in respect of either South Africa or South West Africa.

Applicability to SWA: Section 5 of this Act states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." Section 6 states "This Act shall be called the Admiralty Jurisdiction Regulation Act, 1972, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*." No such Proclamation was issued, meaning that the Act was never in force in South West Africa or in independent Namibia.

Transfer of administration to SWA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. The Act was repealed in its entirety in South Africa by the *Admiralty Jurisdiction Regulation Act 105 of 1983* (RSA GG 8891), which was not made applicable to SWA.

In terms of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, a reference to the Republic is to be construed as a reference to the territory of South West Africa. However, section 3(1)(r) of the transfer proclamation excluded sections 1 and 2 of this Act from the operation of section 3(1) of the General Proclamation. Thus, in those sections, prior to Namibian independence, "Republic" retained the meaning of the Republic of South Africa while in sections 3 and 4, "Republic" was to be construed as referring to South-West Africa.

Cases

Euromarine International of Mauren v The Ship Berg & Others 1984 (4) SA 647 (N) at 665E Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) at 28.

See also SHIPPING.

AGRICULTURE

Cold Storage Works and Abattoirs Proclamation 50 of 1921 🗐 😭



Summary: This Proclamation (originally published in OG 74) places limits on the construction and operation of cold storage works used for the export of meat.

Amendments: The Proclamation is amended by Proc. 3/1923 (OG 101) (which repeals section 5), and by the Agricultural Produce Export Ordinance 13 of 1928 (OG 283) (which repeals section 4).

Regulations: Regulations are authorised by section 8 of the Proclamation, but no regulations could be located.

Agricultural Produce Export Ordinance 13 of 1928 🕎 📻

Summary: This Ordinance (OG 283) regulates the export of agricultural produce and meat. It was brought into force on 1 April 1929 by Proc. 4/1929 (OG 309) and extended to the Rehoboth Gebiet by the Rehoboth Gebiet (Extension of Laws Proclamation 12 of 1930 (OG 365).

Regulations: Regulations are authorised by section 6 of the Ordinance. The following regulations appear to remain in force; no repeals have been located:

Regulations governing Inspection of Livestock and Meat Exported, GN 18/1929 (OG 309)

Butter and Cheese Export Regulations, GN 152/1931 (OG 441)⁷

Regulation concerning cold storage of butter and cheese intended for export, GN 38/1932 (OG 453)

Regulations governing Export of Beef to United Kingdom, GN 29/1935 (OG 598)8

Regulations governing Packing and Marking of Wool and Karakul Hair, GN 146/1942 (OG 985).9

Application of law: The Agricultural Produce Export Interpretation Proclamation 62 of 1931 (OG 441) states in full as follows:

The Administrator may, under and by virtue of the powers in him vested by section eleven of the Agricultural Produce Export Ordinance, 1928 (Ordinance No. 13 of 1928), declare any animal or other article which was or is declared to be agricultural produce under the said powers, to be no agricultural produce in regard to the export thereof to a specified country.

Notices: Subsidiary notices declaring specific products to be agricultural produce for the purposes of the Ordinance have been issued from time to time, but have not been recorded here. Levies issued under this Ordinance have also been omitted.

⁷ Regulation 1 repeals the regulations in Government Notice 148/1929 (OG 348).

⁸ Regulation 8 cancels GN 60/1933 (OG 507) and GN 14/1935 (OG 597).

⁹ Regulation 10 repeals the Regulations on Export of Wool in GN 125/1935 (OG 624), as amended by GN 14/1936 (OG 653) and GN 138/1936 (OG 683), and the Regulations governing Export of Karakul Hair in GN 172/1936 (OG 688) as amended by GN 69/1938 (OG 749). A note at the bottom of the Regulations governing Export of Karakul Hair, GN 172/1936 (OG 688) states that the previous regulations on Export of Karakul Hair in GN 160/1936 (OG 687) are ultra vires.

Karakul Sheep Farming Industry Protection Proclamation 31 of 1930 🕡 🙀

Summary: This Proclamation (originally published in OG 388) governs the export of Karakul sheep capable of breeding.

Amendments: The Proclamation is amended by Ord. 11/1938 (<u>OG 748</u>), Proc. 24/1951 (<u>OG 1600</u>) and Ord. 25/1952 (<u>OG 1690</u>).

It was extended to the Rehoboth Gebiet by Proc. 30/1963 (OG 2474).

Regulations: This Proclamation makes no provision for regulations.

Tobacco Growers Protection Ordinance 2 of 1933 🕎 🙀

Summary: This Ordinance (originally published in <u>OG 515</u>) regulates the importation and sale of tobacco used for farming purposes.

Amendments: The Ordinance is amended by Ord. 7/1933 (OG 529).

Regulations: Regulations are authorised by section 2 of the Ordinance. A single regulation is contained in GN 127/1933 (OG 529), which reads in full as follows:

Lick and dip tobacco shall be treated by being mixed with flowers of sulphur, in the proportion of one pound of sulphur to five pounds of tobacco.

Cattle Improvement Consolidation Ordinance 14 of 1941 🕎 🙀

Summary: This Ordinance (originally published in OG 898) makes provision for the establishment and regulation of "cattle improvement areas". It repeals the Cattle Improvement Ordinance 10 of 1930 as amended from time to time.

Amendments: The Ordinance is amended by Proc. 14/1941 (OG 905).

Regulations: The Ordinance explicitly repeals any regulations framed under the repealed Cattle Improvement Ordinance 10 of 1930 (section 16).

Cattle Improvement Regulations made in terms of this Ordinance are contained in GN 87/1941 (OG 904), as amended by GN 47/1943 (OG 1035).

Notices: Pre-independence notices relating to specific cattle improvement areas are not recorded here.

Abattoirs Restriction Proclamation 8 of 1944 🗐 🙀

Summary: This Proclamation (<u>OG 1097</u>) places restrictions on the types of animals which can be slaughtered in abattoirs.

Regulations: The Proclamation makes no provision for regulations.

Bonemeal and Superphosphates Control Proclamation 37 of 1944 🗐 🙀

Summary: This Proclamation (originally published in OG 1147) controls the importation, sale and supply of bonemeal, bonemeal products and superphosphates. It is still in force, but there is some overlap with the provisions of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947.*

Amendments: The Proclamation is amended by Proc. 33/1947 (OG 1322).

Regulations: The Proclamation makes no provision for regulations.

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947, as amended in South Africa to March 1978

Summary: This Act (originally published in <u>SA GG 3834</u>) governs the registration, importation, sale and use of the items listed in the title. It was originally called the *Fertilizers, Farm Feeds, Seeds and Remedies Act 36 of 1947*. However, the name was changed several times by various amendments to the Act.

Repeals: The Act repeals the Fertilizers, Farm Foods, Seeds and Pest Remedies Act 21 of 1917. The RSA Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 17 of 1972 (RSA GG 3459), which made this Act applicable to South West Africa, also repealed the SWA Fertilisers, Farm Foods, Seeds and Pest Remedies Ordinance 15 of 1930.

Applicability to SWA: Section 1, as added in 1972, defines "Republic" to include "the territory of South West Africa". Section 24, as inserted in 1972, states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated **2** March 1978.

Section 3(1)(b) of the transfer proclamation excluded section 2 of the Act (which deals with the designation of a Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies by the Minister) from the operation of section 3(1) of the General Proclamation, meaning that this section of the Act continued to be administered by the South African Minister of Agriculture.

Section 3(1)(b) of the transfer proclamation also excluded the references to the "Republic" in sections 16(1) and 16(6)(a)(i) of the Act from the operation of section 3(1) of the General Proclamation, meaning that in these sections "Republic" retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(1)(g) of the transfer proclamation exempted section 23 of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 24 of 1977* (regarding regulations) from the operation of section 3(1) of the General Proclamation.

There was only one South African amendment to the Act after the date of transfer and prior to Namibian independence – the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 4 of 1980* – which was not made expressly applicable to SWA.

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

- Fertilizers, Farm Feeds, Seeds and Remedies Amendment Act 48 of 1950 (SA GG 4422)
- Seeds Act 28 of 1961 (SA GG 6673)

- Fertilizers, Farm Feeds and Remedies Amendment Act 60 of 1970 (RSA GG 2845)
- Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 17 of 1972 (RSA GG 3459)
- Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 24 of 1977 (RSA GG 5461)

Section 15 of this amending Act, which amends section 16 of Act 36 of 1947, was brought into force in South Africa on 3 October 1980 by RSA Proc. R.189/1980 (RSA GG 7243). This date is after the date of transfer of Act 36 of 1947. Therefore, in terms of section 3(4) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, section 15 of the amending Act was not thereby brought into force in South West Africa because the proclamation in question did not contain an express statement that it was issued with the consent of the Administrator-General and applies also in the territory.

The Act was amended by the *Animal Slaughter, Meat and Animal Products Hygiene Amendment Act 13 of 1975* (RSA GG 4632). However, this Act was never brought into force in South Africa or South West Africa. The portions of the amending Act relevant to Act 36 of 1947 (section 16 and the Schedule to Act 13 of 1975) were repealed by the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 4 of 1980* (RSA GG 6907), but this repeal was not effective in respect of South West Africa because it occurred after the date of transfer and was not made expressly applicable to South West Africa.

After Namibian independence, the Medicines and Related Substances Control Act 13 of 2003 (GG 3051) amended sections 1, 3, 7, 15, 23, and 26, deleted section 7(2)(b) and amended the short title of the Act – but these amendments were all repealed by the Medicines and Related Substances Control Amendment Act 13 of 2003 (GG 3051). These amendments would have removed "stock remedies" from the Act's coverage. However, section 47 of Act 13 of 2003 was amended by the Namibian Medicines and Related Substances Control Amendment Act 8 of 2007 (GG 3968), brought into force on 1 August 2008 by GN 187/2008 (GG 4091). The amended section states in relevant part that "all amendments to the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), contained in the Schedule are repealed". Thus, it appears that the amendments to Act 36 of 1947 by Act 13 of 2003 are no longer applicable.

Regulations: Pre-independence regulations which appear to remain in force are listed below. There are no savings clauses for regulations made under the laws repealed by this Act, but several sets of pre-independence regulations were issued under this Act.

Note that section 23 of the Act, which gives the Minister power to make regulations, was *excluded* from transfer by section 3(1)(g) of the relevant transfer proclamation. Thus, regulations which came into force after the date of transfer were applicable to SWA. No repeals have been located in respect of the preindependence regulations listed below; however, they have not been added to the database of annotated laws, given that they seem to be superseded (or substantially superseded) by the post-independence regulations made under the Act.

Regulations on returns to be rendered by manufacturers of fertilizers are contained in SA GN 1522/1951 (SA GG 4636). No amendment or repeal has been located.

Regulations on returns by manufacturers and importers of farm feeds and prohibitions in connection with farm feeds of animal origin are contained in SA GN 1229/1955 (<u>SA GG 5491</u>), as amended by SA GG 643/1956 (<u>SA GG 5662</u>), which substitutes Schedule 1. No repeal has been located.

Regulations on the registration and sale of agricultural remedies are contained in SA GN 1243/1951 (SA GG 4614). No amendments or repeal has been located, but the registration of agricultural remedies is covered by the post-independence regulations discussed below.

Regulations relating to the registration and sale of stock remedies are contained in RSA GN R.857/1971 (RSA GG 3121), as amended by RSA GN R.1012/1971 (RSA GG 3153), RSA GN R.2296/1977 (RSA GG 5800) (which repeals regulation 10), RSA GN R.1679/1978 (RSA GG 6133), RSA GN R.2042/1980 (RSA GG 7243) and RSA GN R.1449/1983 (RSA GG 8783). No repeal has been located, but the registration of stock remedies is covered by the post-independence regulations discussed below.

Regulations relating to the registration, importation, manufacture, movement and sale of farm feeds and the registration of sterilizing plants are contained in RSA GN R.987/1973 (RSA GG 3927), as amended by RSA GN R.1373/1973 (RSA GG 3994), RSA GN R.1996/1974 (RSA GG 4478) (which erroneously cites RSA GN R.897/1973 as being the original regulations), RSA GN R.254/1976 (RSA GG 4984), RSA GN R.2296/1977 (RSA GG 5800), and RSA GN R.1679/1978 (RSA GG 6133). RSA GN R.2296/1977, which contains a provision repealing regulation 3 of these regulations, was repealed by RSA GN R.1449/1983 (RSA GG 8783). These regulations were *repealed except insofar as they relate to sterilizing plants* by the regulations relating to farm feeds contained in RSA GN R.1359/1980 (RSA GG 7105). These 1980 regulations post-dated the relevant date of transfer, but, in addition to the exemption from transfer of the Minister's power to make regulations (as noted above), regulation 27 of these 1980 regulations states: "These regulations are made with the consent of the Administrator-General for the Territory of South West Africa and shall also apply in the Territory." No repeal has been located, but the registration of sterilizing plants is covered by the post-independence regulations discussed below.

Regulations relating to the registration and sale of fertilizers are contained in GN R.799/1977 (RSA GG 5552), as corrected by RSA GN R.1371/1977 (RSA GG 5680), and as amended by RSA GN R.2296/1977 (RSA GG 5800) (which repeals regulation 6), RSA GN R.775/1978 (RSA GG 5996), RSA GN R.473/1980 (RSA GG 6880), RSA GN R.2042/1980 (RSA GG 7243) and RSA GN R.1449/1983 (RSA GG 8783). (RSA GN R.473/1980 erroneously refers to the original regulations as being contained in RSA GN R.779 of 20 May 1977.) No repeal has been located, but the registration of fertilizers is covered by the post-independence regulations discussed below.¹⁰

Regulations relating to farm feeds are contained in GN R.1359/1980 (<u>RSA GG 7105</u>). These 1980 regulations post-dated the relevant date of transfer, but regulation 27 states: "These regulations are made with the consent of the Administrator-General for the Territory of South West Africa and shall also apply in the Territory." These regulations are amended by RSA GN R.1420/1981 (<u>RSA GG 7655</u>) and RSA GN R.1449/1983 (<u>RSA GG 8783</u>). No repeal has been located, but the registration of farm feeds is covered by the post-independence regulations discussed below.

Regulations relating to agricultural remedies are contained in RSA GN R.2561/1981 (RSA GG 7934). Regulation 24 states that these regulations "(a) shall come into operation on 2 January 1982; and (b) shall apply in the territory of South West Africa and are, in so far as they thus apply, made with the consent of the Administrator-General of that territory". These regulations are amended by RSA GN R.1449/1983 (RSA GG 8783), which was made expressly applicable to SWA, and by RSA GN R.1637/1984 (RSA GG 9346) which does not mention SWA and so is probably not applicable to SWA given the statement in regulation 24. No repeal has been located, but the registration of agricultural remedies is covered by the post-independence regulations discussed below.

Regulations relating to the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilising plants and pest control operators, appeals and imports are

¹⁰ The regulations in RSA GN R.799/1977 replace the regulations in RSA GN R.2105/1971 (RSA GG 3314), which replace the RSA GN R.1541/1963 (RSA GG 622), which replace the regulations in SA GN 2099/1955 (SA GG 5564), which in turn replace the regulations in SA GN 1156/1948 (SA GG 3977).

contained in RSA GN R.1449/1983 (RSA GG 8783). These regulations make no specific reference to South West Africa. They are amended by RSA GN R.96/1984 (RSA GG 9035), RSA GN R.2055/1984 (RSA GG 9419) and RSA GN R.1053/1988 (RSA GG 11326). No repeal has been located, but the registration of fertilizers, farm feeds, agricultural remedies and sterilising plants (but not "stock remedies") is covered by the post-independence regulations discussed below. ¹¹

Post-independence regulations concerning the **registration of fertilizers, farm feeds, sterilizing plants and agricultural remedies** are contained in GN 112/2007 (<u>GG 3863</u>), which is amended by GN 311/2020 (<u>GG 7409</u>).

Application of law: Section 13 of the Act, which authorises exclusions of certain fertilizers, farm feeds, agricultural remedies or stock remedies from the operation of the Act, was covered by the relevant transfer proclamation.

Certain farm feeds are excluded from the operation of the Act by SA Proc. 218/1948 (SA GG 4016).

Certain remedies are excluded from the operation of the Act by SA Proc. 109/1948 (<u>SA GG 3977</u>), as amended by SA GN 111/1951 (<u>SA GG 4614</u>).

Certain fertilizers are excluded from the operation of the Act by RSA GN R.1651/1977 (SA GG 5721).¹³

Exclusions issued after the date of transfer would presumably not have applied to SWA and so are not listed here.

Notices: Some pre-independence notices made prior to the date of transfer appear to remain in force.

SA Proc. 204/1950 (<u>SA GG 4435</u>) confers upon the Secretary for Agriculture the power to prohibit by notice in the *Gazette* the acquisition, disposal or use of any Group I fertilizer, as defined in SA GN 1156/1948 (<u>SA GG 3977</u>).

SA Proc. 122/1952 (<u>SA GG 4860</u>) confers upon the Secretary for Agriculture the power to prohibit by notice in the *Gazette* the acquisition, disposal or use of farm feeds except on such conditions as he may determine.

¹¹ **Repealed regulations:** The following list of *repeals* of pre-independence regulations may be helpful, although it is not comprehensive.

[•] Regulations on returns by manufacturers and importers of farm feeds and prohibition in connection with farm feeds of animal origin were published in SA GN 630/1949 (SA GG 4137), but repealed by GN 1229/1955 (SA GG 5491).

[•] Regulations in connection with the registration and sale of fertilizers were published in RSA GN R.2105/1971 (RSA GG 3314) but *repealed* by RSA GN R.799/1977 (RSA GG 5552).

[•] Regulations pertaining to the registration, importation, manufacture, movement and sale of agricultural remedies were published in RSA GN R.538/1974 (RSA GG 4241) but *repealed* by RSA GN R.2561/1981 (RSA GG 7934).

[•] Regulations relating to appeals against decisions of the Registrar were published in RSA GN R.2296/1977 (RSA GG 5800) but *repealed* by RSA GN R.1449/1983 (RSA GG 8783).

[•] Regulations relating to the importation of fertilizers, farm feeds, agricultural remedies and stock remedies were published in RSA GN R.2042/1980 (RSA GG 7243) but *repealed* by RSA GN R.1449/1983 (RSA GG 8783).

[•] **Regulations relating to pest control operators** were published in RSA GN R.663/1983 (RSA GG 8617) but *repealed* by RSA GN R.1449/1983 (RSA GG 8783).

¹² GN 112/2007 repeals GN 202/2001 (<u>GG 2624</u>) and replaces GN 58/2007 (<u>GG 3812</u>) – which had previously repealed GN 202/2001. None of the post-independence regulations repeal any pre-independence regulations.

¹³ RSA GN R.1651/1977 repeals RSA GN R.1701 of 21 September 1973.

Section 7bis, added to the Act in 1950, gave the Minister power to prohibit by notice in the Gazette the acquisition, disposal, sale or use of certain fertilizers, farm feeds, agricultural remedies and stock remedies. A notice was issued pursuant to section 7bis of the Act in SA GN 1886/1950 (SA GG 4435), but the controls on fertilizer were lifted with respect to all fertilizers other than bonemeal by SA GG 2392/1953 (SA GG 5172). A notice was issued pursuant to section 7bis of the Act in RSA GN R.1933/1970 (RSA GG 2916) prohibiting the acquisition, disposal or use of certain farm feeds without a permit. (This notice was repealed in respect of South Africa after the date of transfer by RSA GN R.472/1980 (RSA GG 6880).)

After independence, prohibitions on certain types of farm feeds were issued in terms of section 7bis in GN 199/1998 (GG 1927) and GN 201/2003 (GG 3060).

Related laws: See GN 179/2008 (<u>GG 4088</u>) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 (<u>GG 3051</u>) to certain substances registered under this Act.

Related international agreement:

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), 1998.

Weeds Ordinance 19 of 1957 📲 🙀

Summary: This Ordinance (OG 2087) provides for the eradication of plants which are identified as "weeds" by proclamation in the *Gazette*.

Regulations: Regulations are authorised by section 7 of the Ordinance. No pre-independence regulations have been located.

Proclamations: Section 1 of the Ordinance authorises the Administrator to declare any plant to be a weed for the purposes of this Ordinance, by proclamation, throughout the Territory or in specific areas only. Only one such proclamation has been located:

Proc. 58/1966 (OG 2739) declares the following to be weeds throughout SWA with effect from 1 October 1966:

Upright starbur Acanthospermum hipspidum Burweed Xanthium spionsum.

Commentary: See "National Review of Invasive Alien Species Namibia", Ministry of Environment and Tourism, Directorate of Environmental Affairs, September 2004, available here;

Note: There is at least one unpublished secondary source cited in the commentary above¹⁴ which indicates that the South African *Weeds Act 42 of 1937* (SA GG 2443) is in force in Namibia. This South African statute was amended by SA Act 2/1939 (SA GG 2620), SA Act 32/1964 (RSA GG 781) and SA Act 74/1969 (RSA GG 2435). It was repealed in South Africa by the *Conservation of Agricultural Resources Act 43 of 1983* (RSA GG 8673), which did not apply to SWA. Neither *the Weeds Act 42 of 1937* nor any of its amendments make any direct reference to the statute's applicability in SWA, nor is there a definition of "Union" or any other term that suggests that it was applicable to SWA. If the South African *Weeds Act 42 of 1937* were in force in SWA, it would seem strange for the Weeds Ordinance 19 of 1957 to have been enacted without repealing it – particularly since the structure and wording of the two legislative enactments are very similar. On the other hand, the Weeds Ordinance 19 of 1957 does not seem to have been very active in SWA, given the fact that so few weeds have been declared as such under the Ordinance. The authors are of the view that the *Weeds Act 42 of 1937* was never in force

¹⁴ J Malan, "Discussion Document on the Regulation of Alien Invasive Species", unpublished DEA discussion paper, undated.

in Namibia – and that if it had been in force in SWA at some stage, the similar Weeds Ordinance 19 of 1957 would have repealed it by implication.

Dairy Industry Act 30 of 1961, in part, as amended in South Africa to December 1977



Summary: This Act (originally published in <u>SA GG 6673</u>) governs the registration of dairy premises, the marketing of dairy products, and the dairy industry in general. Only the portions of the Act relating to margarine apply to Namibia.

Repeals: The Act repeals the RSA Dairy Industry Act 63 of 1957 (SA GG 5894), which in turn repealed the SA Dairy Industry Act 16 of 1918 (SA GG 890). 15

Applicability to SWA: The Act was applied to SWA only in so far as it relates to margarine, as a result of amendments made to the Act by the Dairy Industry Amendment Act 7 of 1976 (RSA GG 5015), brought into force on 1 July 1976 by RSA Proc. R.103/1976 (RSA GG 5161). Section 1 as amended defines "Republic" as including the territory "in relation to margarine", and the "territory" is defined as "the territory of South West Africa, including the Eastern Caprivi Zipfel". Section 35A, inserted by Act 7 of 1976, states "This Act, and any amendment thereof which may be made from time to time, in so far as it relates to margarine or to a margarine factory, shall apply also in the territory."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated **20 December 1977.**

Section 3(1) of the transfer proclamation excluded section 13 of the Act (which deals with the sale of falsely marked dairy produce) from the operation of section 3(1) of the General Proclamation, meaning that in this section "Republic" retained the meaning it was given in the definition section of the Act.

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence - the Dairy Industry Amendment Act 37 of 1983 (RSA GG 8662) and the Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438) - which were not made expressly applicable to South West Africa.

The Act was repealed in South Africa, after Namibian independence, by the Agricultural Product Standards Act 119 of 1990 (RSA GG 12641), gazetted on 13 July 1990.

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

- Proclamation R.21 of 1961 (RSA GG 36), under the authority of section 28(1) of the Act
- Proclamation R.293 of 1964 (RSA GG 943), under the authority of section 28(1) of the Act
- Dairy Industry Amendment Act 34 of 1965 (RSA GG 1079)
- Dairy Industry Amendment Act 1 of 1969 (RSA GG 2287)
- Marketing Amendment Act 52 of 1969 (RSA GG 2384)
- Proclamation R.158 of 1970 (RSA GG 2733), under the authority of section 28(1) of the Act
- Dairy Industry Amendment Act 96 of 1971 (RSA GG 3212)
- Proclamation R.194 of 1971 (RSA GG 3238), under the authority of section 28(1) of the Act
- Dairy Industry Laws Amendment Act 32 of 1972 (RSA GG 3492)
- Dairy Industry Amendment Act 7 of 1976 (RSA GG 5015).

¹⁵ The Dairy Industry Control Ordinance 29 of 1962 (OG 2415), which repealed the Dairy Industry Ordinance 2 of 1926 (OG 208), was repealed by the Dairy Industry Control Ordinance Repeal Act 21 of 1982 (OG 4731) which contained no savings clause for subordinate legislation. The Dairy Industry Control Ordinance Repeal Act 21 of 1982 also repeals RSA Proclamation R.203/1970 and RSA Proclamation R.211/1970. The repealing Act contains no savings clause in respect of any of the laws repealed.

The Importation of Margarine Amendment Proclamation, AG 32/1978 (OG 3754), amends section 15 to prohibit the importation of margarine into South West Africa without a permit from the Administrator-General.

Section 15(3) is deleted by the Dairy Industry Amendment Act 6 of 1997 (GG 1685).

Savings: This Act contains a savings clause in section 35 for things done under the repealed RSA *Dairy Industry Act 63 of 1957* (SA GG 5894):

Any proclamation, regulation, notice, order, prohibition, authority or document issued, made, promulgated, given, granted or imposed and any other action taken under any provision of a law repealed by this Act shall, if not inconsistent with the provisions of this Act, be deemed to have been issued, made, promulgated, given, granted, imposed or taken under the corresponding provisions of this Act.

The repealed RSA *Dairy Industry Act 63 of 1957* (<u>SA GG 5894</u>) contained a savings clause in section 21(2) for anything done under the repealed SA *Dairy Industry Act 16 of 1918* (<u>SA GG 890</u>):

Any proclamation or regulation issued or made, or any other action taken or deemed to have been taken under any provision of a law repealed by sub-section (1), shall be deemed to have been issued, made or taken under the corresponding provision of this Act.

Regulations: No regulations pertaining to margarine made in terms of the repealed laws appear to remain in force. ¹⁶

Under this Act, there is one set of pre-independence regulations relating specifically to margarine, listed below. Margarine and margarine factories would also appear to fall under the general regulations on registration, inspection and sampling, noting that the definition of "dairy produce" in section 1 of the Act includes margarine. The regulation sets listed below all appear to remain in force *insofar as they may relate to margarine*.

Regulations relating to the structure, sanitation, drainage, ventilation, lighting and equipment of, the accommodation in, and the equipment, instruments, appliances and utensils to be used on premises registered in terms of the Dairy Industry Act, 1961 are contained in RSA GN R.2061/1964 (RSA GG 973) and include provisions on margarine factories.¹⁷

These regulations were not amended in South Africa prior to the date of transfer. They were amended in South Africa after the date of transfer by RSA GN R.1254/1989 (RSA GG 11954), which was not made specifically applicable to SWA.

Regulations providing for the manner of registration, and renewal of registration, of premises under the Dairy Industry Act, 1961 are contained in RSA GN R.2062/1964 (RSA GG 973), as corrected by RSA GN R.328/1965 (RSA GG 1056) and as amended by RSA GN R.176/1971 (RSA GG 2991).¹⁸

These regulations were amended in South Africa after the date of transfer by RSA GN R.1256/1989 (<u>RSA GG 11954</u>) which was not made specifically applicable to SWA.

¹⁶ Juta's Index to the South African Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at 352-353.

¹⁷ These regulations are made in substitution for the regulations contained in SA Government Notice 899 of 29 May 1931, as amended by SA Government Notice 741 of 10 June 1932, SA Government Notice 868 of 29 June 1934, SA Government Notice 92 of 16 January 1942, and SA Government Notice 1307 of 20 July 1956.

¹⁸ These regulations are made in substitution for the regulations contained in SA Government Notice 1629 of 12 December 1918 and SA Government Notice 1900 of 12 November 1924.

Regulations providing for the manner of registration, and renewal of registration, of premises under the Dairy Industry Act, 1961 (in respect of premises under section 3, which covers margarine) were contained in RSA GN R.2080/1964 (RSA GG 973). However, this notice was *cancelled* by GN. R.100/1965 (RSA GG 1011), which explained that they were inadvertently published. RSA GN R.2080/1964 was subsequently repealed in South Africa by RSA GN R.1254/1989 (RSA GG 11954), which was not made specifically applicable to SWA.

Regulations prescribing the form of an inspector's order for a prohibition under the Dairy Industry Act, 1961 are contained in RSA GN R.2063/1964 (RSA GG 973). No amendments were located.

Regulations relating to the taking of samples of dairy produce for the purpose of analysis or examination under the Dairy Industry Act, 1961 are contained in RSA GN R.2070/1964 (RSA GG 973), as amended by RSA GN R.176/1971 (RSA GG 2991).¹⁹

Regulations relating to the manufacture, composition, packing and marking of margarine are contained in RSA GN R.1716/1977 (<u>RSA GG 5725</u>), dated 2 September 1977, which was prior to the date of transfer.²⁰

These regulations were amended in South Africa only after the date of the transfer proclamation (20 December 1977), by RSA GN R.2121/1985 (RSA GG 9935), which was corrected by RSA GN R.2850/1985 (RSA GG 10048); this amendment is not made explicitly applicable to SWA. These regulations were repealed in South Africa by RSA GN 562/1990 (RSA GG 12341), dated 16 March 1990 – which was after the date of transfer and would not have been effective in SWA. No repeal in respect of SWA has been located, so these regulations appear to remain in force.

Regulations which have no applicability to margarine are not discussed here.

No Namibian regulations have been issued under this Act since independence.

Summary: This Act (originally published in <u>RSA GG 1778</u>) provides for the control and promotion of the marketing of canned fruit on export markets. It was brought into force in both South Africa and South West Africa on 16 February 1968 by RSA Proc. R.22 of 1968 (<u>RSA GG 1982</u>), read together with section 11 of the Act.

Repeals: The Act repeals the Canned Fruit and Vegetables Export Control Act 66 of 1956 (SA GG 5715). The Canned Fruit and Vegetables Export Control Act 66 of 1956 applied to South West Africa by virtue of the definition of "the Union" in section 1, which included "the territory of South-West Africa", and by virtue of section 7, which stated: "This Act shall apply also in the territory of South-West Africa." Act 66 of 1956 was amended by the Canned Fruit and Vegetables Export Control Amendment Act 83 of 1957 (SA GG 5908), the Canned Fruit and Vegetables Export Control Amendment Act 28 of 1958 (SA GG 6109) and the Canned Fruit and Vegetables Export Control Amendment Act 69 of 1959 (SA GG 6259); Act 69 of 1959 expressly made all three amending Acts applicable to South West Africa. The three amending Acts do not seem to have been repealed in South West Africa or Namibia; thus, they remain in force, but they have no independent relevance given the repeal of the principal Act which they amended.

Applicability to SWA: Section 11 of the Act originally stated: "This Act shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory."

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¹⁹ These regulations are made in substitution for the regulations contained in SA Government Notice 855 of 21 May 1924.

²⁰ These regulations are made in substitution for the regulations contained in RSA GN R.1495/1971 (RSA GG 3238), as amended by RSA GN R.2186/1972 (RSA GG 3718), RSA GN R.2100/1973 (RSA GG 4074) and RSA GN R.1132/1976 (RSA GG 5194).

Section 11 (as substituted by *Act 48 of 1971*, <u>RSA GG 3135</u>, which was brought into force on 2 August 1971 by Proc. R.168 of 1971, <u>RSA GG 3221</u>), states that "This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel".

Transfer of administration to SWA: The administration of this Act (which was the responsibility of the Minister of Economic Affairs) was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978.** The only amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Canned Fruit Export Marketing Amendment Act 15 of 1981* (RSA GG 7436) – was not made expressly applicable to SWA. The Act and its amendments were repealed in South Africa by the *Marketing Amendment Act 79 of 1987* (RSA GG 10956), which was not made expressly applicable to SWA.

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

- Canned Fruit Export Marketing Amendment Act 48 of 1971 (RSA GG 3135)
- Finance Act 111 of 1977 (RSA GG 5663).

Regulations: There is no savings clause regarding regulations made under the repealed Act. Regulations are authorised by section 10 of the current Act.

Regulations on meetings of the South African Canned Fruit Export Board were made in terms of this Act in South Africa prior to independence and prior to the date of transfer, and are contained in RSA GN R.1336/1971 (RSA GG 3224), which withdraws RSA GN R.660/1968 (RSA GG 2053). These regulations would appear to have no relevance in independent Namibia and have not been included in the database of annotated laws.

Pre-independence regulations made under the current Act have not yet been comprehensively researched.

Notices: Certain canned products are declared to be canned fruit for the purposes of the Act in RSA GN R.2230/1971 (RSA GG 3327), which withdraws RSA GN R.819/1968 (RSA GG 2072).

A notice on export licences for canned fruit, which covered both RSA and SWA, was issued in terms of section 8 of the Act in RSA GN 723/1978 (RSA GG 5981) (dated 14 April 1978, just before the date of transfer). This notice is amended in South Africa by RSA GN R.1384/1980 (RSA GG 7112), which postdates the date of transfer but makes specific mention of SWA (without discussing its applicability to SWA explicitly).²¹

Note: Canned fruit is also covered by other laws listed under AGRICULTURE.

Marketing Act 59 of 1968, as amended in South Africa to December 1977 w 🕎

Summary: This Act (originally published in <u>RSA GG 2107</u>) regulates the production and sale of agricultural products, as well as the grading and standardisation of such products. It also establishes various boards and control bodies.

Repeals: The Act repeals the *Marketing Act 26 of 1937* and its amendments.

Applicability to SWA: Section 99 of the original Act stated "The provisions of this Act, in so far as they relate to karakul pelts, shall also apply in the territory of South-West Africa." Section 99(1), as amended by *Act 78 of 1971*, states "This act and any amendments thereof shall apply also in the territory, including the Eastern Caprivi Zipfel." Section 99(2) states "Any proclamation, regulation or notice

²¹ RSA GN 723/1978 withdraws RSA GN R.1846/1975 (RSA GG 4856), which withdrew RSA GN R.1933/1971 (RSA GG 3296), which in turn withdrew RSA GN R.818/1968 (GG 2072).

issued or made under this Act prior to the commencement of the Marketing Amendment Act, 1971, and which does not apply in the territory immediately prior to such commencement, shall, subject to the provisions of this Act, not apply in the territory." In definitions inserted by *Act 78 of 1971*, "Republic" is defined to include the "territory", which is defined as "the territory of South West Africa".

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated **20 December 1977**.

The provisions of the Act that relate to the Karakul Scheme published under the Act in Proclamation R.172 of 1968 (RSA GG 2112) and the Wool Scheme published under the Act in Proc. R.155 of 1972 (RSA GG 3585) were excluded from the operation of section 3(1) of the General Proclamation, meaning that they were not transferred to SWA. However, the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977) was amended by the Karakul Scheme Amendment Proclamation AG 41 of 1978 (OG 3771), to remove the references to the Karakul Scheme from this exemption with effect from 1 July 1978.

The provisions of the Act relating to boards and control bodies relevant to these schemes were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation "those provisions of any law... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic".

None of the amending acts in South Africa after the date of transfer were made expressly applicable to SWA. The *Marketing Amendment Act 79 of 1987* (RSA GG 10956) repealed section 99 of the Act (concerning applicability to SWA) in South Africa, but this amending Act was not made expressly applicable to SWA.

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

- *Marketing Amendment Act 52 of 1969* (RSA GG 2384)
- Marketing Amendment Act 69 of 1970 (RSA GG 2864)
- Marketing Amendment Act 78 of 1971 (RSA GG 3189)
- *Marketing Amendment Act 68 of 1972* (RSA GG 3558)
- *Marketing Amendment Act 31 of 1973* (RSA GG 3860)
- *Marketing Amendment Act 73 of 1974* (RSA GG 4501)
- *Marketing Amendment Act 38 of 1975* (RSA GG 4701)
- *Marketing Amendment Act 50 of 1976* (RSA GG 5075)
- *Marketing Amendment Act 109 of 1977* (RSA GG 5661)

This Act came into force on its date of publication (20 July 1977), with the exception of section 10 of the amending Act (which amended section 28 of the Act), which came into force on 1 July 1978, after the date of transfer to South West Africa, and so was not applicable to South West Africa.

Schedule 1 of the Act was amended in South Africa after the date of transfer by RSA Proc. 119/1986 (RSA GG 10279), RSA GN 1177/1987 (RSA GG 10753), RSA GN 2579/1987 (RSA GG 11037) and RSA GN 119/1989 (RSA GG 1673) – but none of these amendments were made explicitly applicable to SWA.

The Marketing Amendment Act 19 of 1980 (OG 4293) amends section 46D.

The Meat Industry Act 12 of 1981 (OG 4506), which is now named the Livestock and Livestock Products Act 12 of 1981, repealed the Act insofar as it relates to controlled products, which it defines as being "livestock, meat or meat products".

The Karakul Pelts and Wool Act 14 of 1982 (OG 4707) repealed the Act insofar as it relates to karakul pelts or wool.

Regulations: Section 100(2) of the Act includes a savings provision in respect of regulations issued under the repealed *Marketing Act 26 of 1937* and its amendments. Regulations under this Act are authorised by section 89. Pre-independence regulations have not yet been researched.

Notices: There are many South African notices relating to specific products, including marketing schemes and maximum prices for specific products. There are also many South African notices containing various determinations by Boards with authority over specific products. None of these are recorded here.

In respect of notices issued in SWA, the **import of vegetable oil** is governed by AG 31/1979 (<u>OG 4031</u>) (as amended by AG 20/1986 (<u>OG 5182</u>)), which is issued under the authority of the principal Act).

The amended definition of "vegetable oil" is "the oil extracted from any or all of the products groundnuts, sojabeans and cotton seed and which is used for the preparation of foodstuff for human consumption."

No notices have been issued under this Act since independence.

Levies: Levies issued under the Act in South Africa are not recorded here.

In respect of levies issued in SWA, the following have been located although this list may not be comprehensive:

- AG GN 111/1980 (OG 4247) (export and slaughter of cattle, sheep, goats and pigs)
- AG GN 112/1980 (OG 4247) (karakul pelts), which is given retrospective effect from 17 July 1980 by section 2 of the SWA Marketing Amendment Act 19 of 1980 (OG 4293); this levy includes related regulations and is amended by AG GN 14/1982 (OG 4591).

No levies have been issued under this Act since independence.

Commentary: JA Groenewald, "The Agricultural Marketing Act: A Post – Mortem", *South African Journal of Economics*, 18 August 2005, available here. This article states:

The Marketing Act was unquestionably one of the most controversial pieces of economic legislation in the history of South African agriculture. It was first enacted in 1937 (act 27 of 1937) and was to profundingly affect agricultural marketing and prices of agricultural products fpor the next 59 years. The Act was amended a few times, and these amendments were consolidated in a new Act in 1968 (Act 59 of 1968); other amendments were passed in 1970, 1972, 1973, 1984 and 1987. [This list does not seem complete.] The Marketing Act was repealed [in South Africa] in 1997, following the promulgaton of the Marketing of Agricultural Products Act, Act 47 of 1996.... The act [Act 59 of 1968], being an act enabling the Minister of Agriculture to intervene in agricultural marketing, led to a system of strict regulation of marketing and pricing activities. The amendments to the Act mostly had the effect of granting the Minister of Agriculture (for some years the Minister of Agricultural Economics and Marketing) and control boards increasing regulatory powers over agricultural marketing activities.

Abattoir Industry Act 54 of 1976, as amended in South Africa to December 1977 vi

Summary: This Act (<u>RSA GG 5077</u>) covers a wide range of matters relating to abattoirs. It was brought into force in South Africa and South West Africa on 1 February 1977 by RSA Proc. R.14/1977 (<u>RSA GG 5387</u>), pursuant to section 75 of the Act.

Repeals: The Act repeals the Abattoir Commission Act 86 of 1967.

Applicability to SWA: Section 1 defines "the territory" as "the territory of South West Africa". Section 75 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated **20 December 1977.** None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Abattoir Industry Amendment Act 69 of 1982* (RSA GG 8214), the *Abattoir Industry Amendment Act 32 of 1984* (RSA GG 9169) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) – were made expressly applicable to SWA.

Section 3(2) of the transfer proclamation provided that, notwithstanding section 3(2)(b) of the General Proclamation, references to the Minister of Agriculture in sections 3(1)(c) and (e) and sections 46(j) and (l) of the Act (which deal with certain powers and functions of the Abattoir Commission and the South African Abattoir Corporation) should be construed as a reference to the Administrator-General.

Savings: Section 76(3) contains the following savings clause:

Anything done before the commencement of this Act in terms of the provisions of the Abattoir Commission Act, 1967 -

- (i) by or on behalf of such Abattoir Commission and which could have been done by the Minister in terms of the provisions of this Act, shall be deemed to have been done by the Minister in terms of the latter provisions;
- (ii) by or on behalf of the Minister and which could have been done by him in terms of the provisions of this Act, shall be deemed to have been done by the Minister in terms of the latter provisions;
- (iii) by or on behalf of such Abattoir Commission and which could have been done by the Corporation in terms of the provisions of this Act, shall be deemed to have been done by the Corporation in terms of the latter provisions.

Regulations: Regulations are authorised by section 35. General regulations are contained in RSA GN R.93/1977 (RSA GG 5387), as amended by RSA GN R.625/1977 (RSA GG 5516) and RSA GN R.1122/1977 (RSA GG 5607). These regulations appear to remain in force in Namibia;²² no regulations made under the repealed law appear to survive.²³

Application of law: RSA Proclamation R.15/1977 (<u>RSA GG 5387</u>) declares South West Africa to be a proclaimed area for purposes of the Act.

RSA Proclamation R.624/1977 (<u>RSA GG 5516</u>) determines, in terms of section 35 read with section 43(b), that Chapter I of the said Act does not apply to abattoirs where not more than eight units are slaughtered per month.

RSA Proclamation R.63/1977 (<u>RSA GG 5486</u>) also limits the application of the Act, in terms of section 42 of the Act.²⁴

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²² In South Africa, these regulations were substituted *after the date of transfer* by RSA GN R.2555/1977 (<u>RSA GG 5835</u>), dated 23 December 1977. These regulations made no reference to SWA and so were not applicable to SWA.

²³ Juta's Index to the South African Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at page 351 lists only the regulations cited in the previous footnote, which did not apply to SWA; thus, only the previous regulations which were repealed by the listed regulations appear to remain in force in respect of Namibia. ²⁴ In South Africa, this notice was amended after the date of transfer by RSA GN R.70/1980 (RSA GG 6928), which makes no mention of SWA.

**Livestock Improvement Act 25 of 1977, as amended in South Africa to March 1978

Summary: This Act (originally published in <u>RSA GG 5462</u>) provides for the development and promotion of the livestock industry and regulates breeding. It was brought into force in part in South Africa on 1 May 1979 by RSA Proc. R.80/1979 (<u>RSA GG 6416</u>), with the *exception* of portions of section 1; portions of section 9(3)(b); sections 18, 19, 20, 21, 22, 23, 30(1)(q), (r) and (s), 34(1)(k) and 36; section 30(1)(i) in so far as it relates to section 30(1)(q), (r) and (s); and portions of section 37.

There is some question as to whether the Act is in force in Namibia. The 1993 judgment of S v Lofty-Eaton & Others (1) 1993 NR 370 (HC) (dated 1 November 1993) found that the Act had never been brought into operation in South West Africa or Namibia by proclamation, as section 38 of the Act requires. This case also found that the organs and procedures mentioned in section 16 must be in place before the Act can be operational. However, the Act was amended in independent Namibia in 1993, and the Ministry continues to issue subsidiary notices under the Act as if it were in force.

Repeals: The Act repeals the *Artificial Insemination of Animals Act 23 of 1954*, the *Prohibition of Export of Ostriches Act 18 of 1963* and the *Livestock Improvement Act 64 of 1963*. It initially stated that it would repeal the *Registration of Pedigree Livestock Act 28 of 1957*, but that repeal was never brought into force. See RSA Proc. R.80/1979 (RSA GG 6416).

Applicability to SWA: Prior to the 1993 amendments to the Act, section 1 of the Act defined "Republic" to include "the territory", which was defined as "the territory of South West Africa". Section 35 stated: "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." However, section 38 stated that the Act would come into operation only on a date fixed by the State President by Proclamation in the South African *Government Gazette*.

Portions of the Act were brought into force in South Africa as of 1 May 1979 by RSA Proc. R.80/1979 (RSA GG 6416):

I hereby declare that all the provisions of the said Act except –

- (a) the definitions of "Stud Book Association" and "livestock breeders' society" in section 1;
- (b) section 9(3)(b) in so far as it relates to other animals than those of which the pedigree and performance records have been evaluated in terms of a scheme, irrespective of whether the scheme concerned was established under the said Act or not;
- (c) sections 18, 19, 20, 21, 22, 23, 30(1)(q), (r) and (s), 34(1)(k) and 36;
- (d) sections 30(1)(i) in so far as it relates to section 30(1)(q), (r) and (s); and
- (e) section 37 in so far as it relates to (i) the Registration of Pedigree Livestock Act, 1957 (Act 28 of 1957); (ii) the Registration of Pedigree, Livestock Amendment Act, 1962 (Act 27 of 1962); and (iii) the Registration of Pedigree Livestock Amendment Act, 1967 (Act 1 of 1967):

shall come into operation on 1 May 1979.

The State President was acting in terms of section 38 of the Act, which was excluded from transfer to SWA, and so had the authority to bring the Act into force with respect to SWA. However, the Proclamation which brought the Act into force in part in RSA was arguably not applicable to SWA because it occurred *after the date of transfer* and yet made no explicit reference to SWA or to the consent of the SWA Administrator-General. Section 3(4) of the General Proclamation provides as follows:

Any proclamation, regulation or rule which is issued or made after the commencement of any transfer proclamation by, or on the authority of, the State President or Minister under a law which at such commencement applies both in the territory and in the Republic, and which is published in the *Government Gazette* of the Republic, shall, notwithstanding the provisions of subsection (1) apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) shall apply.

A possible counterargument might be that the Act did not "apply" in either RSA or SWA before it was brought into force and so did not fall under section 3(4) of the General Proclamation. However, it should

be noted that the post-independence case of S v Lofty-Eaton & Others (1) 1993 NR 370 (HC) (discussed below) drew a distinction between "applying" and being "operative", and found that the Act is **not** actually in force in Namibia.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated **2** March 1978.

Section 3(1)(h) of the transfer proclamation excluded section 4(1), the references to the "Minister" in section 33, and section 38, of the Act from the operation of section 3(1)(c) of the General Proclamation. Section 3(2) of the transfer proclamation excluded the Act from the operation of section 3(1)(c) of the General Proclamation, meaning that "Republic" retained the meaning given to it in the definition section of the Act (South Africa and SWA).

The provisions of the Act relating to the Advisory Board for Animal Production were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation "those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic".

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Livestock Improvement Amendment Act 31 of 1984* (RSA GG 9168) – which was not made expressly applicable to SWA. (This amending Act does not apply to SWA despite the continuing definition of "Republic" to include SWA, due to section 3(5) of the General Proclamation, as amended.)

After independence, the Act was substantially amended by Act 25/1993 (GG 753), which establishes a Livestock Improvement Board. However, Act 25/1993 does not repeal section 38, which requires that a date for the commencement of the Act be set by a Proclamation of the State President, nor does it otherwise expressly bring the primary Act into force.

The nature of the notices issued under the Act indicates that Government believes the Act to be operative. However, we have not been able to locate any legal instrument bringing the Act into force in Namibia in light of the ruling in S v Lofty-Eaton & Others (1) 1993 NR 370 (HC).

Amendments: As noted above, in South Africa, the Act was amended after the relevant date of transfer, and prior to Namibian independence, by the *Livestock Improvement Amendment Act 31 of 1984* (RSA GG 9168) – which was not made expressly applicable to SWA. This amending Act was to be brought into force by Proclamation of the State President. It was brought into force in part as of 29 June 1984 by RSA Proc. R.107/1984 (RSA GG 9277):

Under the powers vested in me by section 23 of the Livestock Improvement Amendment Act, 1984 (Act 31 of 1984), I hereby declare that the provisions of sections 1, 3, 15, 16, 17, 18, 19, 20(h), (i), (j) and (k), 21 and 22(h) of the said Act shall come into operation on the date of publication hereof.

The remainder of the amending Act was brought into force as of 1 July 1986 by RSA Proc. R.104/1986 (RSA GG 10288):

By virtue of the powers vested in me by section 23 of the Livestock Improvement Amendment Act, 1984 (Act 31 of 1984), I hereby declare that the provisions of sections 2, 4 to 14, 20(a) to (g) and 22(a) to (g) and (i) of the said Act shall come into operation on 1 July 1986.

There is no indication that the amendments made in South Africa in terms of this amending Act were made applicable to SWA.

After Namibian independence, the Act was substantially amended by Act 25/1993 (GG 753).

Regulations: In South Africa, **regulations relating to the artificial insemination and inovulation of animals and the import and export of animals, semen, ova and eggs** were promulgated in RSA GN R.851/1979 (<u>RSA GG 6416</u>), effective as of 1 May 1979. These regulations *post-date* the relevant date

of transfer, coming into force at the same time as the Act came into force in part in South Africa. However, they were amended by RSA GN R.1753/1979 (RSA GG 6620) to add regulation 38A which states:

These regulations shall also apply in the Territory and were, in so far as they so apply, made with the consent of the Administrator-General.

Prior to independence, these regulations were amended in South Africa by RSA GN R.1753/1979 (<u>RSA GG 6620</u>), RSA GN R.580/1981 (<u>RSA GG 7494</u>), RSA GN R.516/1982 (<u>RSA GG 8111</u>), RSA GN R.568/1983 (<u>RSA GG 8604</u>) and RSA GN R.1109/1985 (<u>RSA GG 9744</u>). After independence, they were amended by GN 60/1993 (GG 653).²⁵

Notices: See AG GN 61/1979 (OG 3991), concerning kinds and breeds of animals to which the Act applies. (This notice replicates RSA GN R 850/1979 (RSA GG 6416) in all respects other than the date of coming into force.) The animals covered by the Act are as follows:

(1) animals specified in column 1 of Annexure A which are of the breeds specified in column 2 of that Annexure for the purposes of all the provisions of the Act *except* sections 14 and 15:

Annexure A	
Cattle	Dairy breeds:
	Ayrshire, Friesland, Guernsey and Jersey.
	Beef and dual purpose breeds:
	Aberdeen Angus, Afrikaner, Bonsmara, Brangus, Brahman, Brown
	Swiss, Charolais, Deutsches Rotvieh, Dexter, Drakensberger, Galloway and Hereford.
	and referoid.
	Shorthorn:
	Lincoln Red, Beef, Dairy, Weebollabolla, Limousin, North Devon,
	Pinzgauer, Red Poll, Rotbunte Schleswich Holsteiner, Santa Gertrudis,
	Simmentaler, South Devon, Sussex and Tuli.
Goats	Angora, Boerbok, British Alpine, Saanen and Toggenberger
Horses	American Quarter Horse, American Saddler, Appaloosa, Arab,
	Boerperd, Clydesdale, Connemara Pony, Partred [Partbred] Welsh
	Pony, English Halbblut, Hackney, Hackney Pony, Hafflinger
	[Haflinger], Historiese boerperd, Highland Pony, Lippizaner, Morgan
	Horse, Nooitgedacht Pony, Percheron, Shetland Pony, Shire, Suffolk,
	Trakehner, Thouroughbred [Thoroughbred] and Welsh Pony.
Sheep	Border Leicester, Corriedale, Dohne Merino, Dormer, Dorper, Dorset
	Horn, Hampshire, Ile de France, Karakoel, Lincoln Longwool, Merino,
	Merino Landsheep, S.A. Mutton Merino, Merino. Southdown, Suffolk
Diag	and Walrich.
Pigs	S.A. Landrace, Large Black, Large White and Welsh.

animals specified in Annexure B, for the purposes of all the provisions of the Act, *except* sections 7, 8, 9, 10, 11, 12, 13, 14 and 15:

Annexure B

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²⁵ In South Africa, this set of regulations was repealed and replaced, prior to the date of Namibian independence, by RSA GN R.1181/1986 (RSA GG 10288). Like the 1979 regulations, the 1986 regulations were issued in terms of section 34(1) of the Act (which was not excluded from transfer) and make no reference to SWA. Prior to Namibian independence, the 1986 regulations were corrected by RSA GN R.1441/1986 (RSA GG 10341), amended by RSA GN R.1245/1987 (RSA GG 10759), corrected by RSA GN R.1305/1987 (RSA GG 10779) and RSA GN R.1536/1987 (RSA GG 10827), and amended by RSA GN R.1602/1989 (RSA GG 12024) and by RSA GN R.2506/1989 (RSA GG 12181). However, it would seem that these regulations were not applicable to SWA because of the effect of the relevant transfer proclamation – which is reinforced by the fact that the previous set of regulations is the one which has been amended in Namibia since independence.

Poultry	Ducks, Pheasants, Geese, Fowls, Turkeys, Quails, Muscovies and Guinea-fowls.
Ostriches	
Other	Chinchillas, Hamsters, Rabbits and Nutria.

The following have been declared to be breeds of animals in Namibia (with capitalisation reproduced as it appears in the respective Government Notices):

dorper breed-GN 238/2009 (GG 4391)

Gellaper breed-GN 63/2010 (GG 4451)

indigenous goat breed-GN 220/2010 (GG 4574)

nguni breed-GN 2/2011 (GG 4645)

Damara Sheep breed-GN 68/2011 (GG 4725)

Meatmaster Breed-GN 59/2014 (GG 5455)

Draughtmaster Breed-GN 104/2015 (GG 5760)

Veldmaster Breed-GN 105/2015 (GG 5760)

Pinto Horse-GN 38/2017 (GG 6254)

Boerboel Breed-GN 83/2017 (GG 6285).

The karakoel breed was renamed swakara breed by GN 202/2011 (GG 4823).

Post-independence notices issuing certificates of incorporation to livestock breeders' societies have been issued under this Act in GN 61/2005 (GG 3439), GN 172/2006 (GG 3721), GN 144/2010 (GG 4530). GN 171/2011 (GG 4792), GN 172/2011 (GG 4792) and GN 192/2011 (GG 4808).

Cases: S v Lofty-Eaton & Others (1) 1993 NR 370 (HC).

The relevant passage is quoted here at length as it may be relevant to the applicability of other South African statutes which mention "South West Africa":

"The problem is that s 35 applied the Act to Namibia, but did not make it operative in Namibia because s 38 of the said Act provided:

- '(1) This Act shall be called the Livestock Improvement Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.
- (2) Different dates may be fixed under s (1) in respect of different provisions of this Act.'

The proclamation which put part of the said Act into operation was Proc R80 of 1979, but only in South Africa. It must be assumed that the State President deliberately did not put the Act into operation in Namibia. He could have done so by merely stating in Proc R80 of 1979 that Proc R80 of 1979 applies in the territory of South West Africa, and is made with the consent of the Administrator-General.

Even in South Africa the said Livestock Improvement Act was passed and assented to by the State President and published in Government Gazette 5462 of 23 March 1977. Part of it was, however, only put into operation in South Africa by Proc R80 of 1979 on 1 May 1979.

The question is why? Again the answer is obvious. It was provided for in the Act itself that a large number of administrative organs and the appointment of officials to carry on the day-to-day administration of the Act would be in place once it, or a relevant part of it, would come into operation. So, for example:

- (a) The Minister had to appoint 16 members to the Advisory Board in s 3 of that Act, of which two had to be officers of the Department of Agriculture and one had to be an officer of the Department of Agriculture, Economics and Marketing.
- (b) The Minister had to appoint a Registrar in terms of s 4 of that Act.
- (c) The Registrar had to invite a list of names of three persons to be submitted to him by each one of the 13 associations, Boards or companies contemplated in s 3(2)(b)(i)-(xiii).
- (d) The Minister had to appoint the executive committee of the Studbook Association and the other committees contemplated in s 3(5)(c)(i)-(iii) read with s 16(2)(b).
- (e) A register had to be prepared as contemplated in s 5 of the Act.
- (f) Notices as contemplated in s 2 and regulations contemplated in s 34 had to be prepared to be ready for promulgation before, on or shortly after the date on which the Livestock Improvement Act had come into operation.
- (g) The application forms in terms whereof one could apply for –
- (i) registration as an inseminator;
- (ii) registration of premises as an artificial insemination centre;

- (iii) a certificate for the approval of an animal to collect semen;
- (iv) the renewal of a registration of an artificial insemination centre;
- (v) the renewal of certificates in respect of animals for the collection of ova, and the like see, for example, the numerous forms and certificates contemplated in Schedules I-XVI of Government Gazette 6416, dated 27 April 1979.

It is important to note that, when a law provides for certain organs and procedures to be established without which the Act cannot be implemented properly, the Legislature usually provides that the law will only become 'operative', as distinguished from 'applicable', on a date to be determined by the President, Administrator, Minister or similar entity by proclamation or notice in the Gazette.

The Legislature that enacts an Act may even provide for bringing different parts of an Act into operation on different dates, as was the case in the Livestock Improvement Act, 1977. This last procedure should of course only be used if the various sections or parts of such an Act are severable and would not be applicable to s 16(1) and (2)(a) and (b) of the Livestock Improvement Act 1977 and its various parts.

That an Act is capable of being administered (notwithstanding the fact that it has not as yet come into operation) is furthermore explicitly envisaged in s 12(3) of the Interpretation of Laws Proclamation 37 of 1920 [OG 35], which provides as follows:

- '(3) Where a law confers a power –
- (a) to make any appointments; or
- (b) to make . . . rules, regulations or by-laws; or
- (c) to give notices; or
- (d) to prescribe forms; or
- (e) to do any other act or thing for the purpose of the law,

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any instrument . . . rules, regulations or by-laws made ... under the power shall not ... come into operation until the law comes into operation.' (My emphasis.)

See also s 14 of the equivalent South African Act 33 of 1957, and S v Manelis 1965 (1) SA 748 (A) at 753.

It is common cause between the State and defence that at the time of the alleged offences, ie in April 1993, about six years after the Act was passed, the crucial organs and procedures for receiving, considering and deciding applications for written authorisation to import, as provided for in s 16 of the said Act, had still not been established in Namibia.

Mr Small is correct in contending that the Administrator-General had the power himself to declare the Act operative in Namibia, but for that an AG proclamation expressly stating that the Act is operative from a certain date would have been necessary. I do not understand Mr Small to contend that such an AG proclamation was ever issued. [With respect, this contention appears to be incorrect. Section 3(1)(h) of the transfer proclamation excluded section 38 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the reference to the State President in section 38 was not to be construed as referring to the Administrator-General.]

In conclusion on this issue I must point out that the provision in an Act of Parliament that the date of operation is to be decided on and promulgated by an organ of the Executive may be regarded as an administrative function or as delegated legislation or a combination of both. In all instances, however, the decision to declare operative, and the declaration itself, must comply with the provisions of the enabling Act, and must in itself be reasonable and not ambiguous, particularly where it provides for criminal offences and criminal sanctions for noncompliance with the provisions of the Act.

To declare an Act operative, when essential organs or procedures for complying with the law and for avoiding a contravention and avoiding criminal sanctions are not yet established, appears to me not only to be *ultra vires* the enabling Act but in conflict with art 18 of the Namibian Constitution. See also art 21 of the Namibian Constitution; Steyn Die Uitleg van Wette 5th ed at 238-49.

Even if the State President, or the Administrator-General in this instance, declared the Act as a whole or parts of it operative at any point in time, when the organs and procedures to be set up under s 16 were not yet established, it seems to me that such declaration would in itself be *ultra vires* or unconstitutional, particularly insofar as it purported or purports to make s 16(1) and 16(2)-(8) of the said Act operative."

Notes: A "Draft Livestock Improvement Proclamation" was published for comment in General Notice 123/1989 (OG 5810), dated 26 September 1989. It would have repealed and replaced the *Livestock Improvement Act 25 of 1977*. However, this draft did not progress to a final law.

Livestock and Livestock Products Act 12 of 1981 🕎 📻

Summary: This Act (originally published in OG 4506), originally named the Meat Industry Act 12 of 1981, establishes a meat board and sets forth its objects, powers, duties and functions. It also provides for control over the grading, sale, import and export of livestock, meat and meat products, and the levies on these items. It was brought into force by AG 30/1981 (OG 4553) and applied to Rehoboth by the Meat Industry in Rehoboth Act 5 of 1986 (Rehoboth) (Official Gazette 152 of Rehoboth, dated 10 April 1987). The Act was re-named by the Livestock and Livestock Products Amendment Act 15 of 2023 (GG 8182).

Repeals: This Act repeals the Meat Trade Control Ordinance 20 of 1962 (OG 2409) and the Marketing Act 59 of 1968 in so far as it relates to controlled products (defined in this Act as "livestock, meat or meat products").

The Livestock and Livestock Products Amendment Act 15 of 2023 (GG 8182), which amends the Act, also repeals the Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986 (OG 5195).²⁶

Note that the repealing Act erroneously refers to the repealed law as the "Control of the Import and Export of Dairy Products and Dairy Product Substitutes Act".

Amendments: Prior to independence, the Act was amended by Act 3/1987 (OG 5349).

Act 21/1992 (GG 466), which was brought into force by GN 125/1992 (GG 482), amends sections 1, 2, 4, 8, 10, 12 and 21, inserts section 10A, and substitutes certain expressions and the long title to make the Act consistent with an independent Namibia and to extend the powers of inspectors in certain circumstances.

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698) which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4 and 8, and deletes sections 5, 7(1) and 15. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Livestock and Livestock Products Amendment Act 15 of 2023 (GG 8182) amends and renames the Act.

Savings: Section 26(2) of the current Act contains a savings clause that applies to certain specified acts done under the repealed Meat Trade Control Ordinance 20 of 1962 (OG 2409) and the repealed portions of the Marketing Act 59 of 1968 pertaining to the controlled products of "livestock, meat or meat

Any regulation made or any levy or prohibition imposed or any permit, exemption or certificate issued or any registration or appointment made under any provision of any law repealed by this Act or any regulation made thereunder, which could be made, imposed or issued under a corresponding provision of this Act, shall be deemed to have been made, imposed or issued under the said corresponding provision, and any reference in or in respect of any such regulation, levy, prohibition, permit, exemption, certificate, registration or appointment -

²⁶ Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC) found that Act 5 of 1986 was not impliedly repealed by Import and Export Control Act 30 of 1994 because of its specialised nature, and should be the basis for controlling the import of dairy products rather than the more general 1994 legislation; on appeal, in Minister of Trade and Industry v Matador Enterprises (Pty) Ltd 2020 (2) 362 (SC), the Supreme Court agreed that the Import and Export Control Act 30 of 1994 did not repeal Act 5 of 1986, but distinguished the two law as follows (para 49, Shivute, CJ): ...although the Dairy Products Act remains the main or primary legislation which must be invoked when regulating

the importation and exportation of dairy products, Government may invoke either of the two Acts depending on the intention or purpose of restricting or prohibiting the importation of dairy products. The Dairy Products Act only gives power to restrict or prohibit dairy products from being imported into Namibia for purposes of trade and therefore, the power conferred by this Act cannot be invoked to prohibit or restrict the importation of dairy products into Namibia for general use.

- (a) to the old board shall be construed as a reference to the board;
- (b) to any law repealed by this Act shall be construed as a reference to this Act;
- (c) to the holder of any office shall be construed as a reference to the holder of a similar office under this Act.

The repealed Meat Trade Control Ordinance 20 of 1962 (OG 2409), which in turn repealed the Meat Trade Control Ordinance 8 of 1935 (OG 613), contained a savings clause in section 10(2) which stated: Any proclamation, regulation, by-law, notice, order, prohibition, authority, approval, information or document issued, made, promulgated, given, or granted and any other action taken under the provisions of any law repealed by sub-section (1) shall, if not inconsistent with the provisions of this ordinance, be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provisions of this ordinance in respect of regulations or notices issued under the 1935 Ordinance.

The Livestock and Livestock Products Amendment Act 21 of 2023 (GG 8182) contains no savings clause with respect to the repealed Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986 (OG 5195).

Regulations: Pursuant to the chain of savings clauses, two sets of regulations issued under the Meat Trade Control Ordinance 20 of 1962 appear to remain in force:²⁷

Regulations relating to the Grading and Marking of Meat sold in certain Areas in GN 142/1968 (OG 2925), as amended by RSA GN R.3433/1969 (RSA GG 2532), RSA GN R.2061/1970 (RSA GG 2929) and RSA GN R.2217/1971 (RSA GG 3327).²⁸

Regulations made under the repealed aspects of the *Marketing Act 59 of 1968* (as it related to "livestock, meat or meat products") that may survive have not yet been researched.

The following regulations were made under the current Act:

Livestock and Livestock Products Regulations are contained in GN 381/2024 (<u>GG 8533</u>), replacing two sets of pre-independence regulations.²⁹

Notices: A notice of certain record-keeping requirements and prohibitions relating to livestock is contained in General Notice 8/1982 (OG 4613), as amended by General Notice 90/1982.

AG GN 20/1983 (OG 4735) prohibited the import and export of certain controlled products, but was withdrawn by GN 129/2004 (GG 3214).

The Meat Trade Control Regulations in GN 87/1963 (OG 2483) – as amended by GN 189/1963 (OG 2515), GN 114/1964 (OG 2573), GN 107/1966 (OG 2731), GN 197/1967 (OG 2838), RSA GN R.649/1970 (RSA GG 2689), RSA GN R.842/1971 (RSA GG 3110), RSA GN R.1859/1971 (RSA GG 3290), RSA GN R.2085/1973 (RSA GG 4074), RSA GN R.2304 of 1975 (RSA GG 4915), RSA GN R.2572/1976 (RSA GG 5368), RSA GN R.694/1977 (RSA GG 5530), AG GN 43/1978 (OG 3813), AG GN 77/1978 (OG 3864), AG GN 173/1980 (OG 4315), and AG GN 150/1982 (OG 4703) – initially remained in force, but were repealed by GN 381/2024 (GG 8533).

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²⁷ The "Meat Trade Control Regulations: Repeal of Government Notices" in GN 89/1963 (OG 2484) repeals the Meat Trade Control Regulations in GN 157/1935 as amended, the Meat Trade Control Board Regulations in GN 305/1958, and the Meat Trade Control Board Regulations in GN 183/1960 as amended, along with some related notices concerning allowances paid to members.

²⁸ These regulations replace the ones in Government Notice 126/1966 (<u>OG 2734</u>) as amended, which replaced the regulations on Grading and Marking of Meat sold in Certain Areas contained in GN 86/1963 (<u>OG 2483</u>).

²⁹ GN 381/2024 repeals (1) the Meat Trade Control Regulations in GN 87/1963 (<u>OG 2483</u>) as amended which were made under the repealed Meat Trade Control Ordinance 20 of 1962 (as detailed above) and (2) the regulations made under the current Act in AG GN 153/1981 (<u>OG 4554</u>) as amended by GN 110/1992 (<u>GG 468</u>), GN 126/1992 (<u>GG 482</u>), GN 4/2013 (<u>GG 5119</u>) and GN 289/2022 (<u>GG 7916</u>). (The amendments made to these previous regulations by GN 110/1992 and by GN 126/1992 are identical. GN 4/2013 cites only GN 126/1992 as a previous amendment, but no repeal or withdrawal of GN 110/1992 has been located. GN 289/2022 cites both GN 110/1992 and GN 126/1992 as previous amendments.)

A notice concerning record-keeping in respect of controlled products and livestock is contained in General Notice 3/1993 (GG 567).

A notification of measures to promote the interests of the meat industry in Namibia is contained in General Notice 115/2004 (GG 3214).

Prohibitions relating to abattoirs, factories and refrigeration plants of unregistered producers are addressed in General Notice 91/2006 (GG 3620).

GN 387/2024 (<u>GG 8535</u>) prohibits the import and export of certain controlled products without permits; it replaces GN 94/2007 (<u>GG 3841</u>).³⁰

Levies: Levies are periodically set in terms of the Act, but have not been included in the database. The most recent levies are contained in GN 382/2024 (GG 8534).³¹

Some pre-independence levies appear to remain in force, although they do not seem to have any ongoing effect:

GN 114/2006 (GG 3672), which is amended by GN 210/2006 (GG 3746), imposes general and special levies in respect of livestock for three specific purposes: (a) 15% of the general levy must be utilized for funding the Farm Assured Namibian (FAN) Meat Scheme, as implemented by the Meat Board of Namibia; (b) 5% of the general levy must be utilized for the provision of emergency veterinary services; (c) the special meat classification levy must be utilized for funding carcass classification services provided by the Meat Board of Namibia.

These levies as amended appear to be superseded by the more recent levies, but no repeal of GN 114/2006 has been located.

GN 119/2007 (<u>GG 3869</u>) imposes special levies on livestock producers south of the Red Line during the period 1 July 2007 to 30 May 2012, for the purpose of improving access to livestock markets by producers north of the Red Line.

These levies do not appear to have any current applicability, but no repeal has been located.

Cases: Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC); upheld on different reasoning in Minister of Trade and Industry v Matador Enterprises (Pty) Ltd 2020 (2) 362 (SC) (both judgments discuss in dicta the relationship between this Act and the more generalised Import and Export Control Act 30 of 1994).

Notes: See the related Swameat Corporation Ordinance 2 of 1986 (*Official Gazette 75 of the Representative Authority of the Whites*), which has since been repealed by the Meat Corporation of Namibia Act 1 of 2001 (GG 2522).

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³⁰ GN 94/2007 (**GG 3841**) prohibited the import and export of certain controlled products.

RSA GN 103/1970 (<u>RSA GG 2606</u>) previously contained a prohibition on the sale of meat in certain areas of SWA, unless graded and marked in a manner prescribed by regulation, replacing SWA Proc. 33/1963 (<u>OG 2483</u>). RSA GN 103/1970 was amended by RSA GN R.2166/1970 (<u>RSA GG 2938</u>), RSA GN R.2256/1972 (<u>RSA GG 3726</u>) and RSA GN R.651/1972 (<u>RSA GG 3474</u>) and then repealed by RSA GN R.1775/1975 (<u>RSA GG 4847</u>). ³¹ GN 382/2024 repeals GN 272/2010 (<u>GG 4629</u>), as amended by GN 139/2012 (<u>GG 4958</u>), GN 3/2013 (<u>GG 5119</u>), GN 51/2015 (<u>GG 5711</u>), GN 146/2015 (<u>GG 5783</u>) and GN 288/2022 (<u>GG 7916</u>).

Previous levies: GN 272/2010 withdraws GN 285/2008 (GG 4181), GN 285/2008 revokes GN 210/2006 (GG 3746). GN 210/2006 revokes GN 62/2006 (GG 3620). (GN 62/2006 is also withdrawn by GN 114/2006 (GG 3672).) GN 62/2006 withdraws GN 116/2005 (GG 3498). GN 116/2005 withdraws GN 227/1994 (GG 985). GN 227/1994 revokes GN 120/1994 (GG 875). GN 120/1994 repeals GN 93/1992 (GG 449). GN 93/1992 revokes GN 9/1992 (GG 336) and GN 4/1992. GN 4/1992 (GG 336) abolish the levies imposed by GN 198/1986 (which were also abolished by GN 9/1992). GN 9/1992 abolishes the levies imposed by GN 198/1986 (OG 5271). GN 198/1986 abolishes the levies imposed by AG GN 113/1983 (GG 4794). AG GN 113/1983 abolishes the levies imposed by AG GN 154/1981 abolishes all levies imposed by any law repealed by the Meat Industry Act.

Karakul Pelts and Wool Act 14 of 1982 🚾 📻

Summary: This Act (originally published in OG 4707) establishes a Karakul Board and regulates classification, sale, marketing, packing, and the import and export of karakul pelts and wool. The Act was brought into force by AG 30/1982 (OG 4709).

Repeals: The Act repeals the Marketing Act 59 of 1968, and any scheme in operation under that Act, "in so far as such Act or scheme relates to karakul pelts or wool".

Amendments: This Act is amended by Act 15/1986 (OG 5237) and Act 22/1986 (OG 5277).

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4 and 8, and deletes sections 5, 7(1) and 16. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 22 of the Act. Section 26(2) contains a savings clause for regulations made under the repealed portions of the Marketing Act 59 of 1968:

Any regulation made or any levy or prohibition imposed or any permit, exemption or certificate issued or any registration or appointment made under any provision of any law or scheme repealed by this Act or any regulation made thereunder, which could be made, imposed or issued under a corresponding provision of this Act, shall be deemed to have been made, imposed or issued under the said corresponding provision, and any reference in or in respect of any such regulation, levy, prohibition, permit, exemption, certificate, registration or appointment -

- to the old board shall be construed as a reference to the board; (a)
- to any law or scheme repealed by this Act shall be construed as a reference to this Act; (b)
- to the holder of any office shall be construed as a reference to the holder of a similar office (c) under this Act.

Pre-independence regulations have not yet been researched.

Notices: A levy and a special levy on wool are contained in GN 117/1991 (GG 289), replaced by GN 87/2002 (GG 2754). A levy and special levy on karakul pelts are contained in GN 40/2010 (GG 4440), ³²as corrected by GN 66/2010 (GG 4451).

Prevention of Undesirable Residue in Meat Act 21 of 1991 🕎 🔄

Summary: This Act (originally published in GG 322) controls the administration of certain products to animals which may cause undesirable residue in meat and meat products, and further regulates the marketing of meat and meat products. It was brought into force on 28 November 1994 by Proc. 29/1994 (GG 975).

Amendments: Act 11/1994 (GG 923) amends sections 1 and 2. This amending Act is deemed to have come into operation on the date of commencement of the principal Act.

Regulations: Regulations are contained in GN 219/1994 (GG 975).

Notices: Prohibited substances are listed in GN 220/1994 (GG 975), as amended and supplemented by GN 58/2011 (GG 4711) and amended by GN 278/2020 (GG 7386).

³² This notice repeals GN 60/1986, as amended, which in turn repeals AG GN 112/1980 and AG GN 15/1982.

Agronomic Industry Act 20 of 1992 🕡 🙀

Summary: This Act (originally published in <u>GG 465</u>) establishes the Namibian Agronomic Board and sets forth its powers and functions. It was brought into force on 5 October 1992 by Proc. 33/1992 (<u>GG 496</u>).

Repeals: The Act repeals the Agronomic Industry Proclamation, AG 11/1985 (OG 5017), which was brought into force by AG 12/1985 (OG 5017) and amended by Act 9/1988 (OG 5562).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1, 4, 5, 7 and 8 and deletes section 15.³³ (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 14.

Savings: Section 25(2) of this Act contains a savings provision:

Notwithstanding the provisions of subsection (1) of this section, any regulation made, levy or prohibition imposed, permit, exemption certificate or order issued or registration or appointment made under the repealed Proclamation and in force at the commencement of this Act, shall be deemed to have been made, imposed or issued, as the case may be, under this Act, and shall continue in force until it expires.

Regulations: The following regulations were made under the current Act:

Regulations relating to the **grading and classification of maize** are contained in GN 71/1994 (GG 854)

Regulations relating to the **composition and quality of pearl millet (mahangu)** products are contained in GN 97/2016 (GG 6015).

Regulations under the repealed Proclamation survive under the new Act, pursuant to the savings clause quoted above.

Regulations made under the repealed Proclamation are contained in GN 57/1986 (OG 5187).

Notices: Notices and other actions under the repealed Proclamation survive under the current Act pursuant to the savings clause quoted above:

General provisions relating to the establishment of the SWA Agronomic Board, and to the control of and levies imposed in respect of certain agronomic crops and products are contained in AG Proclamation 11 of 1985 (OG 5017). Note that these provisions were issued in terms of Proclamation 181/1977 rather than in terms of the repealed Agronomic Industry Proclamation, AG 11/1985.

GN 55/1986 (OG 5187) contains a prohibition on the sale of agronomic products obtained from the seeds of the agronomic crops wheat, maize and sunflowers without certain marking of the container.

GN 56/1986 (OG 5187) imposes a general levy on certain categories of seeds of the agronomic

³³ The State-owned Enterprises Act, which has now been replaced by the Public Enterprises Governance Act 1 of 2019, inconsistently referred to this Act as the "Agronomic Industry Act" in Schedule 1 and the "Namibian Agronomic Industry Act" in Schedule 2. The correct name is the "Agronomic Industry Act". However, the Act establishes the "Namibian Agronomic Board".

crops wheat, maize and sunflowers, and on certain products derived from these crops. It is amended by GN 102/1986 (OG 5218) and GN 144/1987 (OG 5427).

GN 58/1986 (OG 5187) concerns the import and export of certain agronomic crops and products (discussed in *Matador Enterprises (Pty) Ltd t/a National Cold Storage v Chairman of the Namibian Agronomic Board* 2010 (1) NR 212 (HC)).

The following notices were issued under the current Act:

Standards for maize products in terms of section 19(1) of the Act are contained in GN 72/1994 (GG 854).

Agronomic crops are addressed in GN 45/1993 (<u>GG 626</u>), GN 293/1996 (<u>GG 1435</u>), GN 146/2002 (<u>GG 2802</u>) and GN 109/2008 (<u>GG 4047</u>).

Controlled products levies have been announced from time to time in terms of section 18(3) of the Act. The levies currently in force are contained in the following:

- GN 147/2002 (GG 2802); Paragraph 3 of the Schedule to GN 147/2002 is amended by GN 125/2012 (GG 4947). The entire Schedule to GN 147/2002 is substituted by GN 268/2014 (GG 5645), which repeals GN 125/2012 and is amended by GN 387/2023 (GG 8267).
- GN 116/2003 (<u>GG 2990</u>), amended by GN 36/2015 (<u>GG 5681</u>) and by GN 386/2023 (GG 8267).
- GN 111/2008 (GG 4047), amended by GN 385/2023 (GG 8267).

The importation of certain products without a permit is prohibited by GN 101/2006 (GG 3661) and GN 110/2008 (GG 4047).

Appointments: General Notice 780/2023 (<u>GG 8267</u>) terminates the appointment of certain agents of the Namibian Agronomic Board and repeals General Notice 247/2014 (<u>GG 5523</u>).

Cases: Matador Enterprises (Pty) Ltd t/a National Cold Storage v Chairman of the Namibian Agronomic Board 2010 (1) NR 212 (HC).

Stock Brands Act 24 of 1995 🕎 🙀

Summary: This Act (originally published in <u>GG 1227</u>) consolidates and amends the laws relating to the branding of stock. It was brought into force on 9 April 1999 by GN 57/1999 (<u>GG 2078</u>).

Repeals: The Act repeals the Native Stock Brands Proclamation 15 of 1923 (OG 111) and the Stock Brands Ordinance 8 of 1931 (OG 425).

Amendments: Act 7/2001 (GG 2569) inserts sections 20A and 21A and amends section 22.

Regulations: There is no savings provision in respect of any regulations or notices which might have been made under the repealed laws.

Regulations made under this Act are contained in GN 73/2004 (<u>GG 3187</u>), which repeals the regulations in GN 58/1999 (<u>GG 2078</u>). Regulation 7 is amended by GN 39/2007 (<u>GG 3799</u>), GN 239/2009 (<u>GG 4391</u>) and GN 145/2015 (<u>GG 5783</u>).

Notices: GN 72/2004 (<u>GG 3187</u>) declares sheep and goats to be stock in terms of section 2. GN 345/2023 (<u>GG 8247</u>) declares domesticated pigs and poultry as stock in terms of section 2(a).

Note: The Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978 (OG 3713), which came into force on 2 March 1978, exempts the *Livestock Brands Act* 87 of 1962 from the operation of the General Proclamation – which suggests that it applied to SWA but that the administration of the Act was not transferred to SWA. However, the original Act (<u>RSA GG 284</u>) contains no reference to SWA, nor does RSA Proc. 73/1979 (<u>RSA GG 2026</u>), which brought the Act into force in South Africa and was issued *after* the date of the transfer proclamation.

Meat Corporation of Namibia Act 1 of 2001 📲 🙀

Summary: This Act (originally published in <u>GG 2522</u>) establishes the Meat Corporation of Namibia ("Meatco") to establish and manage abattoirs and other meat factories. It was brought into force on 3 May 2001 by GN 80/2001 (<u>GG 2521</u>).

Repeals: The Act repeals the Swameat Corporation Ordinance 2 of 1986 (Official Gazette 75 of the Representative Authority of the Whites).

Amendments: Act 21/2004 (GG 3353) amends sections 5 and 9 and inserts section 30A. The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1, 5, 7, 9 and 12, and substitutes section 8. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: This Act contains no authorisation for regulations. There is a savings clause in section 33(2) of the Act for anything done under a provision of the repealed Ordinance which could be done under a corresponding provision of this Act – but that could not apply to regulations.

Appointments: The Board of Directors is announced in GN 182/2001 (GG 2607).

Cases: Ngavetene & Others v Minister of Agriculture, Water and Forestry & Others 2019 (1) NR 129 (HC), partly upheld on appeal in Minister of Agriculture, Water and Forestry & Others v Ngavetene & Others 2021 (1) NR 201 (SC) (appointment of board was in violation of section 5 read with relevant provisions of the repealed Public Enterprises Governance Act 2 of 2006; the Supreme Court agreed with the High Court that the appointments were unlawful, but declined to set them aside since the Board's term of office had expired by the time the appeal was heard; two justices on the Supreme Court agreed with the High Court that the delay in challenging the appointments was not unreasonable, but one justice dissented on this point).

Agricultural Bank of Namibia Act 5 of 2003 📢 🙀

Summary: This Act (originally published in <u>GG 3003</u>) provides for the Agricultural Bank of Namibia (Agribank). It was brought into force on 15 November 2003 by GN 225/2003 (<u>GG 3092</u>).

Repeals: The Act repeals the *Agricultural Bank Act 13 of 1944* (originally named the "Land Bank Act"), the *Land and Agricultural Bank of South West Africa Proclamation R.147 of 1979* (SA GG 6600, reprinted in OG 4004) and the Rehoboth Investment and Development Corporation Repeal Act 15 of 1996 (GG 1379) – which repealed the *Rehoboth Investment and Development Corporation Act 84 of 1969*.

Note that the Agricultural Bank Amendment Act 27 of 1991 (GG 329), which amended the previous Agricultural Bank Act 13 of 1944, repealed the Agricultural Credit Act 28 of 1966 (RSA GG 1546) in respect of Namibia.

Amendments: Act 22/2004 (GG 3355) amends sections 7, 8, 16, 22 and 29 and substitutes section 10.

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, substitutes section 7, and amends sections 8, 10, 11, 16 and 17. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: This Act contains no authorisation for regulations. There is a savings clause in section 30(4) of the Act which applies to "notices", but this savings clause could not apply to regulations since the current Act contains no "corresponding provision":

Any notice made under a provision of a law repealed by this Act is deemed to have been made under a corresponding provision of this Act.

Application of law: Structures established under this Act are affected by directives issued in terms of the State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, on remuneration for chief executive officers and senior managers of state-owned enterprises and annual fees and sitting allowances for board members. (Act 2 of 2006 has been replaced by the Public Enterprises Act 1 of 2019, which contains a savings clause for directives issued under the previous statute.)

The Financial Intelligence Act 13 of 2012 (GG 5096) places certain duties on the Agricultural Bank of Namibia.

Notices: Notices made under the repealed law survive pursuant to section 30(4) of this Act, which states: Any notice made under a provision of a law repealed by this Act is deemed to have been made under a corresponding provision of this Act.

Certain activities are declared to be "activities related to agriculture" as defined in section 1 of the Act in GN 109/2006 (GG 3672).

Appointments: The re-appointment of board members is announced in GN 191/2012 (<u>GG 5005</u>). No previous appointments could be located in the *Government Gazettes*.

Note that GN 191/2012 (GG 5005) erroneously refers to the Act as the "Agribank Act".

The appointment of one board member is announced in GN 272/2021 (GG 7701). The appointment of board members is announced in GN 22/2023 (GG 8031).

Cases:

The following cases concern the current Act –

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia 2014 (2) NR 464 (SC)

Mberira v Chairperson of Board of Directors, Agricultural Bank of Namibia 2019 (4) NR 1095 (HC) (refusal of loan is administrative action reviewable under Art 18 of Namibian Constitution; character and role of Bank)

As a money lending institute, Agribank is not exactly like another commercial banking institution in the country. It has a unique character and a special role to play as a development financing institution. It acts as a financier to inter alia dispense funds for special schemes such as the affirmative action loan scheme, underwritten by government for the purpose of enabling previously disadvantaged Namibians to acquire commercial agricultural land. Although Agribank is not the primary custodian of land reform or the affirmative action loan scheme, it cannot divest itself from the fundamental role that it plays as a development partner to the relevant Ministries and the government at large. Agribank's role as a financier and as a long term credit provider at more favourable terms and conditions is thus of public interest.

The position taken by Agribank that it is not involved in addressing the national objective of unequitable land ownership of commercial farmland and that it is a bank like any other bank in Namibia, is in my view not sustainable. Furthermore, the institution is not subjected to the Banking Institutions Act 2 of 1998 [now replaced by the Banking Institutions

Act 13 of 2023] which is indicative that it is not quite the same as a commercial bank. (paras 45-46).

The following case concerns previous legislation –

Du Plessis v Government of the Republic of Namibia 1994 NR 227 (HC) (section 10 of the previous Agricultural Credit Act 28 of 1966 and section 23 of the Agricultural Bank Amendment Act 27 of 1991 (GG 329), which amended the previous Agricultural Bank Act 13 of 1944 and repealed the Agricultural Credit Act 28 of 1966).

Commentary:

- Sidney Harring & Willem Odendaal, "One Day We Will All Be Equal": A Socio-Legal Perspective on the Namibian Land Reform and Resettlement Process, Legal Assistance Centre, 2002, available here
- Legal Assistance Centre, Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process, 2005, Legal Assistance Centre, available here
- Sidney L Harring & Willem Odendaal, "No Resettlement Available": An assessment of the expropriation principle and its impact on land reform in Namibia, Legal Assistance Centre, 2007, available here
- Wolfgang Werner & Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available here.

Related international agreement:

Agreement Establishing the International Fund for Agricultural Development, 1976.

*Seed and Seed Varieties Act 23 of 2018 🕎 📻

Summary: This Act (<u>GG 6814</u>) establishes a Registrar of seed and seed varieties and provides for the registration of producers, processors and dealers of seed. It also establishes a Namibia Seed Council and a Seed Varieties Committee, a National Seed Varieties Register and a Seed Certification Service. It also covers the import and export of seed. It will be brought into force on a date set by the Minister in the *Government Gazette*.

The correct name of the Act is the "Seed and Seed Varieties Act", according to section 54(1) of the Act. However, the table of contents and the header of the *Government Gazette* erroneously refer to the "Seeds and Seeds Varieties Act" (with the word "seed" being plural instead of singular).

Regulations: Section 53 provides for regulations, but none have yet been promulgated.

COMMISSIONS

Commission of Inquiry into the Meat Industry in South West Africa (AG 1/1984).

MISCELLANEOUS

Grading standards for whole and decorticated pearl millet (mahangu) grains are published for general information for prospective buyers and sellers in General Notice 89/2000 (GG 2353).

INTERNATIONAL LAW

Charter Establishing the Centre for Coordination of Agricultural Research and Development (CCARDESA), 2010

†Constitution of the Food and Agriculture Organization of the United Nations (FAO), 1945

Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals (Arrangement international pour la création, à Paris, d'un Office international des epizooties), 1925

International Plant Protection Convention, 1951, as revised in 1979 and 1997

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983

Protocol of the Reconvened Plenipotentiary Meeting on the Establishment of the International Centre for Genetic Engineering and Biotechnology, 1984

Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007

See also ANIMALS.

See also Stock Theft Act 12 of 1990 (CRIMINAL LAW AND PROCEDURE).

See also ENVIRONMENT.

See also Labour Act 11 of 2007 (collective agreements setting minimum wages for agricultural industry) (LABOUR).

See also Agricultural (Commercial) Land Reform Act 6 of 1995 (LAND AND HOUSING).

See also Aquaculture Act 18 of 2002 and Inland Fisheries Resources Act 1 of 2003 (MARINE AND FRESHWATER RESOURCES).

See also Sugar Act 28 of 1936 (TRADE AND INDUSTRY).

ALCOHOL, DRUGS AND TOBACCO

Brewers & Distillers Licences Duty Proclamation 3 of 1924 🕎 🙀

Summary: This Proclamation (originally published in OG 127) provides for the payment of licence duties by brewers of beer and distillers of wine, brandy and spirits. It was extended to the Rehoboth Gebiet by Proc. 12/1930 (OG 365).

Repeals: The Proclamation repeals Proclamation 18 of 1915 of the Military Governor of the Protectorate of South West Africa, dated 20 October 1915 (OG 4).

Amendments: This Proclamation is amended by Ord. 9/1935 (OG 613), Ord. 14/1937 (OG 716), Ord. 1/1938 (OG 744) and the Liquor Licensing Amendment Ordinance 47 of 1952 (OG 1732). The Liquor Act 6 of 1998 (GG 1843), which was brought into force on 22 December 2001 by GN 250/2001 (GG 2670), amends sections 1, 2, 3 and 3bis.

Regulations: Regulations are authorised by section 3*bis* of the Proclamation, which was inserted in 1937 and amended by the Liquor Act 6 of 1998 (with effect from 22 December 2001). There is no savings clause for anything done under the repealed proclamation. No pre-independence regulations have been located, and no post-independence regulations have been gazetted.

Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 3118</u>), which was brought into force in both South Africa and South West Africa on 6 December 1971 by RSA Proc. R.265/1971 (<u>RSA GG 3321</u>), restricts dealings in dependence-producing drugs and establishes rehabilitation centres for treatment of people with drug problems.

Repeals: The Act repeals the *Retreats and Rehabilitation Centres Act 86 of 1963* (RSA GG 550), which does not seem to have been applicable to SWA.

The Act has been interpreted by some as repealing the Combating of Alcoholism and Anti-social Conduct Ordinance 11 of 1965. Section 63(1) of the Act states:

Subject to the provisions of subsections (2) and (3), the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963), is, except in so far as it is necessary for the administration thereof by the Minister of Coloured Affairs in terms of Proclamation No. 57 of 1964, and the Ordinance for the Prevention and Combating of Alcoholism and Anti-social Conduct, 1965 (Ordinance No. 11 of 1965), of the territory, hereby repealed.

Although the wording may seem at first glance to be somewhat ambiguous, this provision appears to mean that Act 86 of 1963 is repealed – except insofar as that Act is relevant to the administration of the other two laws cited (Proc. 57 of 1964 and Ord. 11 of 1965). This interpretation is supported by the use of the verb "is....repealed" – which indicates that the provision refers to only a single repealed law – and by the placement of commas in the provision. Thus, it appears that Act 41 of 1973 does *not* repeal the Combating of Alcoholism and Anti-social Conduct Ordinance 11 of 1965, as has been assumed in some sources.

Applicability to SWA: Section 1 defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 64 states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel." RSA Proc. R.266/1971 (RSA GG 3321) also makes specific reference to issues pertaining to applicability to the territory of South-West Africa.

Transfer of administration to SWA: Section 53 of this Act states that the State President may assign the administration of all or part of the Act to one or more South African Ministers. A race-based assignment of the administration of the Act was made by RSA Proc. R.266/1971 (RSA GG 3321), with administration being divided between the Minister of Bantu Administration and Development (for "Bantus" in South Africa or "natives" in SWA), the Minister of Indian Affairs (for "Indians"), the Minister of Coloured Affairs (for "Coloured persons") and the Minister of Social Welfare and Pensions (for all other persons).

The administration of this Act was partially transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated **28 September 1977**, as amended. This transfer proclamation applies to matters which were administered by the South African Minister of Bantu Administration and Development, and the South African Minister of Coloured, Rehoboth and Nama Relations. Section 3(2)(e) of the transfer proclamation excluded sections 12 and 50(1) of the Act from the operation of section 3(1) of the General Proclamation.

The administration of this Act was further transferred to SWA by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated **30 November 1977**, and the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**. Both of these Transfer Proclamations excluded sections 12 and 50(1) of the Act, and the reference to the "Government of the Republic" in section 50(2) of the Act, from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of the earliest transfer proclamation were made expressly applicable to SWA.

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

- RSA Proclamation R.32 of 1972 (RSA GG 3390)
- RSA Proclamation R.263 of 1972 (RSA GG 3682)
- RSA Proclamation R.155 of 1973 (<u>RSA GG 3957</u>)
- Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 80 of 1973 (RSA GG 3971)
- *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* (RSA GG 4445), which was brought into force by RSA Proc. R.52/1975 (RSA GG 4594)
- RSA Proclamation 243 of 1975 (RSA GG 4883)
- RSA Proclamation 25 of 1976 (RSA GG 4988)
- RSA Proclamation R.141 of 1976 (RSA GG 5237)
- RSA Proclamation 239 of 1976 (RSA GG 5328)
- Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 14 of 1977 (RSA GG 5446)
- Criminal Procedure Act 51 of 1977 (RSA GG 5532)
- RSA Proclamation 277 of 1977 (RSA GG 5789).

Certain terminology in the Act was amended by Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Act was also amended prior to independence by Act 25/1987 (OG 5462).

Savings: There is a savings clause in section 63(3) which provides that

any proclamation, regulation, rule, order, appointment, authorization, leave of absence or licence, issued, made, prescribed, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall... be deemed to have been issued, made, prescribed, given, granted or taken under the corresponding provision of this Act.

If this Act did in fact repeal the Combating of Alcoholism and Anti-social Conduct Ordinance 11 of 1965, the regulations made in terms of that Act would survive pursuant to this savings clause. Since it

is the view of the authors that this Ordinance has not in fact been repealed, the regulations made under that Ordinance are listed under the separate entry for that Ordinance in the section on HEALTH.

Regulations: Regulations are authorised by section 52 of the Act.

Pre-independence regulations issued in terms of this Act "in respect of White persons" are contained in RSA GN R.2166/1971 (RSA GG 3323), promulgated by the Minister of Social Welfare and Pensions and effective from 3 December 1971. These regulations are made explicitly applicable to SWA.³⁴ They are amended by RSA GN R.1812/1977 (RSA GG 5733), which was published prior to the relevant date of transfer, on 9 September 1977 and came into force on 1 October 1977, which was also prior to the relevant date of transfer (30 November 1977).³⁵

Additional regulations "in respect of Blacks" are contained in RSA Proc. R.1003/1973 (RSA GG 3927), promulgated by the Minister of Bantu Administration and Education acting on behalf of the Minister of Bantu Administration and Development in respect of Bantu, with effect from 15 June 1973. These regulations are also made explicitly applicable to SWA. The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology in the regulations.

There are no post-independence regulations under this Act.

Rules: Rules relating to the proceedings of the National Advisory Board on Rehabilitation Matters are contained in RSA GN 1261/1972 (RSA GG 3617).

Cases:

S v Cachimbembo 1990 NR 290 (HC)

S v Mariu 1991 NR 149 (HC)

S v Kuvare 1992 NR 7 (HC)

S v Kharigub & Another 1992 NR 27 (HC)

S v Van Wyk 1992 NR 267 (HC)

S v Johny & Another 1992 NR 296 (HC)

S v Maniping/S v Thwala 1994 NR 69 (HC)

S v Mteleni 1995 NR 127 (HC)

S v Mlambo 1997 NR 221 (HC)

S v Begley 2000 NR 112(HC)

S v Sibonyoni 2001 NR 22 (HC)

S v Rooi 2007 (1) NR 282 (HC)

S v Sehako 2009 (1) NR 61 (HC)

S v Iipumbu 2009 (2) NR 546 (HC)

S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC).

S v January 2018 (1) NR 111 (HC) (identification of cannabis for purposes of a charge under section 2) S v Swatz 2019 (1) NR 197 (HC) (sale of cannabis to primary school children; drug-related cases on the

increase, which shows the need for deterrent sentences)

...it is our considered opinion that there is a dire need for change in the courts' stance on drug related matters and to accord the necessary weight to the seriousness of the particular offence and its prevalence in society. To this end all possible evidence should be submitted in order to place the presiding officer in the best position to fully appreciate the offence before court and to impose an appropriate sentence. Though the personal circumstances of the accused should be accorded the necessary weight and taken into account, the nature and extent of the crime, as well as the need of society to root out the evil of drugs in its midst, should equally be given proper consideration. In doing so, sentences should reflect the determination of our courts to play their part in curbing this evil that is only aimed at destroying human lives and the more vulnerable

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³⁴ These regulations withdraw RSA GN R.479/1964, as amended by RSA GN R.1629/1967, RSA GN R.1736/1967, RSA GN R.3299/1969, and SWA GN 182/1965 (OG 2670).

³⁵ In South Africa, the regulations were further amended *after the date of transfe*r by RSA GN R. 584/1984 (RSA GG 9124). This amendment was not made explicitly applicable to SWA and so did not apply to SWA.

members of society like the youth. A clear and unequivocal message should emerge from the courts that crimes of this nature will not be tolerated any longer and sentences will henceforth be appropriately severe. (para 11)

S v Umub 2019 (1) NR 201 (HC) (in context of condonation application, court finds no prospect of success in appeal against 10-year sentence for possession of large amount of cannabis along with mandrax, after previous conviction on drug charge)

The fight against dealing in and possession of dependence and dangerous dependence producing substance must be intensified at all levels by the law enforcement agencies and the courts. It is on the increase and busy destroying our communities particularly the youth despite the heavy sentences imposed. The courts must step in and impose severe sentences, never heard of before, as we are losing the battle against drug abuse. The sentences to be imposed must be so severe to deter the appellant and would-be offenders from committing such offences. The sentence imposed in the prevailing circumstances is in my view not shockingly inappropriate but fit the prevailing circumstances. (para 12)

S v Noble & Another 2019 (2) NR 206 (HC) (consideration of bail in charge of dealing in cocaine)
S v Rooi 2019 (2) NR 479 (HC) (reclassification of methaqualone by RSA Proclamation 277 of 1977
(RSA GG 5789), which is applicable to Namibia; separate convictions under section 2(a) for possession of different two dependence-producing substances is a duplication of convictions)
S v Hanse 2020 (2) NR 499 (HC) (many reg is required for the offence of possession of dagga under

S v Hanse 2020 (2) NR 499 (HC) (mens rea is required for the offence of possession of dagga under section 2(b)).

Commissions: The National Drug Control Commission was established by Cabinet decision in 1999, to advise the government on drug policy and on the implementation of international conventions on drugs. Members of this Commission are announced in GN 202/2003 (GG 3060).

Related international agreements:

Convention on Psychotropic Substances, 1971

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996 Single Convention on Narcotic Drugs, 1961

Protocol Amending the Single Convention on Narcotic Drugs, 1972

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Liquor Act 6 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1843</u>) consolidates and amends the laws relating to the sale and supply of liquor. In addition to regulating the licensing process, the Act forbids the sale of drinks that are more than 3% alcohol to persons under 18, prohibits the supply of liquor to employees as remuneration and forbids the consumption of liquor in public places. It was brought into force on 22 December 2001 by GN 250/2001 (GG 2670).

Repeals: The Act repeals the following laws pertaining to liquor:

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957 (OG 2092)
- Chapter V, Railways and Harbours Control and Management Consolidation Act 70 of 1957 (SA GG 5908) 36
- section 22, General Law Amendment Act 102 of 1967 (RSA GG 1771)

³⁶ **Note:** Although the Liquor Act 6 of 1998 (<u>GG 1843</u>) states that it repeals Chapter V of the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* (<u>SA GG 5908</u>), research by the authors of Namlex indicates that this Act was not actually in force in Namibia at that stage. Act 70 of 1957 was repealed in South Africa by the *South African Transport Services Act 65 of 1981* (<u>RSA GG 7786</u>), which was made expressly applicable to SWA (see section 78). (*Act 65 of 1981* was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 (<u>OG 5439</u>).) Thus, it is our theory that even if the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* had already been transferred to SWA in terms of a Transfer Proclamation, the repealing Act would have repealed it in respect of SWA because it was explicitly made applicable to SWA.

- Supply and Sale of Liquor to Natives in South West Africa Proclamation (RSA Proc. R.231/1967, RSA GG 1846, reprinted in OG 2824), which were regulations issued in terms of section 22(4) and 22(5) of the General Law Amendment Act 102 of 1967
- Supply and sale of liquor to Natives in South West Africa and the Brewing and Supplying of Kaffir Beer in South West Africa (RSA Proc. 205/1968, RSA GG 2133),³⁷ which were regulations issued in terms of section 22(5) of the General Law Amendment Act 102 of 1967
- Liquor Ordinance 2 of 1969 (OG 2981) (which repealed the Liquor Licensing Proclamation 6 of 1920)
- Arrangement appertaining to the sale and supply of liquor in Walvis Bay (RSA Proc. R.21/1984, RSA GG 9096), which made the Liquor Act 87 of 1977 and "any regulation made thereunder" applicable in Walvis Bay, rather than the Liquor Ordinance 2 of 1969 of SWA, pursuant to section 38 of the South-West Africa Constitution Act 39 of 1968
- section 5, National Transport Corporation Act 21 of 1987 (OG 5439) (which was in the interim repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961), with effect from 1 April 1999).

Amendments: The Fourth Schedule of the Act is amended by GN 251/2001 (<u>GG 2670</u>) and substituted by GN 104/2006 (<u>GG 3665</u>) which contains requirements for shebeens. Act 5/2009 (<u>GG 4307</u>) substitutes the expression "Chief Magistrate" for "Chief of Lower Courts" wherever it appears.

The Civil Aviation Act 6 of 2016 (<u>GG 6047</u>), which was brought into force on 1 November 2016 by GN 260/2016 (<u>GG 6164</u>), repeals section 80 and amends section 81 (to accord with its repeal of the *Aviation Act 74 of 1962*).

The Child Care and Protection Act 3 of 2015 (<u>GG 5744</u>), which was bought into force by GN 4/2019 (<u>GG 6829</u>), substitutes section 56, repeals paragraphs 70(h) and 71(1)(s) and amends section 72.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 54.

Savings: There is a broad savings clause in section 86 of the Act that would seem to apply to regulations made under any of the laws repealed by the Act, as well as other actions taken under the repealed laws: Subject to the further provisions of this Act, anything done or deemed to have been done under or in terms of a provision of any law repealed by subsection (1), and which is capable of being done under or in terms of a provision of this Act, shall be deemed to have been done under or in terms of the last-mentioned provision.

Regulations: Liquor Regulations under the current Act are contained in GN 142/2001 (<u>GG 2575</u>), which came into force on the same date as the Act.³⁸ These regulations are amended by GN 105/2006 (<u>GG 3665</u>), GN 18/2015 (<u>GG 5668</u>) (which substitutes regulation 75) and GN 262/2024 (<u>GG 8441</u>) (which inserts regulations 12A and 12B).

For the consideration of possible surviving regulations under the repealed laws:

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957 (<u>OG 2092</u>): No regulations have been located
- Chapter V, *Railways and Harbours Control and Management Consolidation Act* 70 of 1957 (SA GG 5908): The Act contains no authorisation for regulations.
- section 22, General Law Amendment Act 102 of 1967: Two sets of race-based regulations made applicable to SWA in terms of that section were repealed by this Act; no others have been located.

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³⁷ These repealed regulations were amended by RSA Proc. 198/1972 (reprinted in <u>OG 3275</u>) and by RSA Proc. 240/1973 (reprinted in <u>OG 3357</u>).

³⁸ The Government Notice which issues these regulations repeals the regulations made under the Liquor Ordinance 2 of 1969 contained in GN 49/1969 (<u>OG 2984</u>), and all the amendments to those regulations. The regulations in GN 49/1969 in turn repealed the regulations made in terms of the Liquor Licensing Proclamation 6 of 1920 in Government Notices 22/1920, 174/1936, 134/1937 and 375/1952, as amended.

- Liquor Ordinance 2 of 1969 (OG 2981): The regulations issued under this Ordinance were repealed by the regulations made under the current Act.
- Arrangement appertaining to the sale and supply of liquor in Walvis Bay (RSA Proc. R.21/1984, RSA GG 9096), which made any regulation issued in terms of the Liquor Act 87 of 1977 applicable in Walvis Bay: These regulations have not been researched since they appear to have been superseded by this Act and its regulations which have national application in independent Namibia.
- section 5, National Transport Corporation Act 21 of 1987 (OG 5439): This section makes reference to regulations authorised by section 52 of Act 21 of 1987 regarding the supply of refreshments and intoxicating liquor by the Corporation in or on its vehicles, trains, aircraft, vessels or premises; however, since section 52 was not repealed by the current Act, the import of these references for the purpose of the savings clause is not clear.

Thus, it appears that no regulations made under any of the repealed laws survive.

Appointments: Members of Regional Liquor Licensing Committees are appointed in GN 20/2002 (<u>GG 2692</u>), GN 41/2003 (<u>GG 2933</u>), GN 77/2004 (<u>GG 3189</u>), GN 178/2004 (<u>GG 3261</u>), GN 34/2005 (<u>GG 3410</u>), GN 150/2006 (<u>GG 3699</u>), GN 153/2007 (<u>GG 3900</u>), GN 55/2008 (<u>GG 4005</u>), GN 239/2008 (<u>GG 4136</u>), GN 35/2009 (<u>GG 4225</u>), GN 136/2009 (<u>GG 4278</u>), GN 62/2010 (<u>GG 4451</u>), GN 238/2010 (<u>GG 4595</u>), GN 175/2011 (<u>GG 4792</u>), GN 271/2012 (<u>GG 5069</u>), GN 182/2013 (<u>GG 5241</u>), GN 23/2014 (<u>GG 5425</u>), GN 78/2015 (<u>GG 5738</u>), GN 112/2018 (<u>GG 6614</u>), GN 323/2022 (<u>GG 7928</u>) and GN 263/2024 (<u>GG 8441</u>).

Cases: The following cases pertain to the Liquor Act 6 of 1998 –

S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under section 71(s) of Act); see also S v Teek 2019 (1) NR 215 (SC) which reinstates trial court's acquittal after discussing credibility of children's evidence and other factors)

Orangerivierwynkelders Koöperatief Bpk & Another v Professional Support Service CC & Others 2011 (1) NR 184 (HC) (sections 18-19 discussed at 189B-191B; special costs order denied to respondents who were acting in breach of sections 2 and 49)

S v Shitana & Another 2012 (1) NR 363 (HC) (charge under section 71(1)(n) requires evidence that the liquor sold satisfies the definition of "liquor" in section 1).

The following cases pertain to the Liquor Ordinance 2 of 1969 which was replaced by the Liquor Act 6 of 1998 –

Marais v The Chairman of the Liquor Licensing Board of Namibia 1991 NR 306 (HC) Swanepoel v Marais & Others 1992 NR 1 (HC)

Weyand v Chairman, Liquor Licensing Board 1993 NR 150 (HC).

Commentary: Legal Assistance Centre, *Alcohol and Youths: Suggestions for Law Reform,* Monograph 4, Legal Assistance Centre, 2009, available here.

Tobacco Products Control Act 1 of 2010 🗐 🔄

Summary: This Act (<u>GG 4458</u>) establishes a Tobacco Products Control Committee and a Tobacco Products Control Fund and provides measures to reduce supply and demand in respect of tobacco products, to prohibit the sale of tobacco to persons under 18 and to protect against exposure to tobacco smoke. It is designed to make Namibia compliant with the World Health Organisation Framework Convention on Tobacco Control. The Act was brought into force on 1 April 2014 by GN 34/2014 (<u>GG 5430</u>).

Regulations: Regulations were published in GN 35/2014 (<u>GG 5430</u>). Certain of these regulations had a delayed commencement, in terms of Regulation 17. Regulations 2, 3, 4, 10 and 12 came into force in the case of wholesalers of tobacco products, on a date 12 months from the date of commencement of the

Act, and in the case of retailers of tobacco products, on a date 18 months from the date of commencement of the Act. Regulations 5, 6, 7, 8, 9 and 15 came into force on a date three months from the date of commencement of the Act.³⁹

Related international agreement:

WHO Framework Convention on Tobacco Control (WHO FCTC), 2003.

See also Tobacco Growers Protection Ordinance 2 of 1933 (AGRICULTURE).

See also CRIMINAL LAW AND PROCEDURE.

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (HEALTH).

See also Medicines and Related Substances Control Act 13 of 2003 (MEDICINE).

³⁹ Before these regulations were issued, proposed regulations were published in GN 209/2011 (GG 4831).

ANIMALS

Performing Animals Protection Act 24 of 1935, as amended in South Africa to November 1979

Summary: This Act (originally published in <u>SA GG 2271</u>) regulates the exhibition and training of performing animals.

Applicability to SWA: Section 11A inserted by *Act 7 of 1972*, states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: Section 11 of the Act defines "Minister" as "the Minister to whom the administration of this Act has been assigned". The administration of the Act was assigned to the Minister of Justice by SA GN 1426/1935 (<u>SA GG 2299</u>). Therefore, the administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**.

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Animals Protection Amendment Act 54 of 1983* (RSA GG 8691) and the *Animals Protection Amendment Act 20 of 1985* (RSA GG 9653) – neither of which was made expressly applicable to SWA.

The *Protection of Animals Amendment Act 7 of 1991* (RSA GG 13112) was assented to by the State President on 15 March 1991 and gazetted on 28 March 1991; there were two different proclamations bringing different portions of it into force, but both took effect after the date of Namibian independence. In any event, this amending Act was not made expressly applicable to SWA.

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

- General Law Amendment Act 62 of 1955 (SA GG 5512)
- Animals Protection Amendment Act 7 of 1972 (RSA GG 3414).

Regulations: Regulations are authorised by sections 2(d) and 7.

Prior to the date of transfer, regulations contained in RSA GN R.1914/1972 (RSA GG 3686) were issued pursuant to section 2(d) of the Act. No amendments to these regulations prior to the date of transfer have been located.⁴⁰

There are no post-independence regulations under this Act.

Application of law: Section 10 of the Act states it "shall be read as one" with the Animals Protection Act 71 of 1962.

Cases: In South Africa, sections 2 and 3 of the Act were declared unconstitutional in NSPCA v Minister of Agriculture, Forestry and Fisheries & Others 2013 (5) SA 571 (CC), to the extent that they require a magistrate to decide applications for, and issue, animal training and exhibition licences.

Commentary: David Bilchitz, "What was left unsaid: the unconstitutionality of the Performing Animals Protection Act in NSPCA v Minister of Agriculture, Forestry and Fisheries", 30 (1) South African Journal on Human Rights 2014.

⁴⁰ These regulations repeal the regulations contained in RSA GN R.1205/1961 (<u>RSA GG 136</u>), which in turn repealed the regulations contained in SA GN 432/1956 (<u>SA GG 5648</u>).

Trespass of Animals Ordinance 16 of 1939 🗐 🙀

Summary: The Ordinance (originally published in <u>OG 796</u>) regulates trespass by animals, provides for the recovery of fees and damages and establishes pounds.

Repeals: The Ordinance repeals Proclamation 5 of 1917 (OG 15), as amended;⁴¹ the Trespass of Animals (Rural Areas) Ordinance 9 of 1931 (OG 426) as well as OG 428), as amended;⁴² and the Trespass of Animals Amendment Ordinance 7 of 1938 (OG 748).

Amendments: This Ordinance is amended by Proc. 21/1943 (OG 1065) and Ord. 9/1944 (OG 1115).

Savings: Section 1 of the Ordinance provides a savings clause only for regulations:

The laws specified in the Schedule annexed hereto are hereby repealed, provided that any regulations published under the said laws shall remain in force until repealed, except in so far as such regulations may be in conflict with the provisions of this Ordinance.

However, no regulations issued under the repealed laws have been located.

Regulations: Regulations are authorised by section 75. However, no pre-independence regulations under this Ordinance have been located, and there are no post-independence regulations under this Act.

Animals Protection Act 71 of 1962, as amended in South Africa to November 1979 🕎 🙀

Summary: This Act (originally published in <u>RSA GG 271</u>) is concerned with the prevention of cruelty to animals. It was brought into force in South Africa on 1 December 1962 by RSA Proc. R.304 of 1962 (<u>RSA GG 379</u>). It came into force in South West Africa on 1 January 1973, when the amendments made by the *Animals Protection Amendment Act 7 of 1972* (<u>RSA GG 3414</u>) were brought into force by RSA Proc R.275/1972 (<u>RSA GG 3686</u>).

Repeals: Section 12 of the *Animals Protection Amendment Act 7 of 1972* (RSA GG 3414), which made this Act applicable to SWA, repeals the Prevention of Cruelty to Animals Proclamation 17 of 1919 (OG 25) and its amendments.

Applicability to SWA: Section 10A, which was inserted by the *Animals Protection Amendment Act 7 of 1972* (RSA GG 3414), states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." The Act thus became applicable to SWA when Act 7 of 1972 was brought into force on 1 January 1973 by RSA Proc R.275/1972 (RSA GG 3686).

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. None of the amendments to the Act in South Africa after that date – the *Animals Protection Amendment Act 54 of 1983* (RSA GG 8691), the *Animals Protection Amendment Act 20 of 1985* (RSA

⁴¹ This Ordinance repeals "the Ordinance of the German Governor in regard to the establishment of pounds dated the 16th June 1898 and the regulations issued thereunder on the 1st November 1898 and so much of any other law now in force in this Protectorate as is inconsistent with or repugnant to the provisions of this Proclamation".

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⁴² The Trespass of Animals (Rural Areas) Ordinance 9 of 1931 was not applicable to the trespass of animals on land situate within the district of Rehoboth, pursuant to Proc. 32/1932 (OG 491). This area was covered by the Rehoboth *Gebiet* Trespassing of Animals Proclamation 11 of 1932, as amended by the Rehoboth *Gebiet* Trespassing of Animals Amendment Proclamation 21 of 1932 and the Rehoboth *Gebiet* Trespassing of Animals Further Amendment Proclamation 9 of 1933 (OG 504). Other areas were individually exempted from the Trespass of Animals (Rural Areas) Ordinance 9 of 1931, but these exemptions are not recorded here. See also the Trespass of Animals Amendment Ordinance 7 of 1938 (OG 748).

<u>GG 9653</u>) or the *Animals Protection Second Amendment Act 84 of 1985* (<u>RSA GG 9821</u>) – were made expressly applicable to SWA.

The *Protection of Animals Amendment Act 7 of 1991* (RSA GG 13112) was assented to by the State President on 15 March 1991 and gazetted on 28 March 1991; there were two different proclamations bringing different portions of it into force, but both took effect after the date of Namibian independence. In any event, this amending Act was not made expressly applicable to SWA. It repealed section 10A which made the Act applicable to SWA, in the version of the Act in force in South Africa.

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

- Animals Protection Amendment Act 7 of 1972 (RSA GG 3414), which was brought into force on 1 January 1973 by RSA Proc R.275/1972 (RSA GG 3686)
- General Law Amendment Act 102 of 1972 (RSA GG 3610), which came into force in relevant part prior to the Animals Protection Amendment Act 7 of 1972.

Regulations: Regulations are authorised by section 10. There is no savings clause for regulations made under the repealed Proclamation. The only pre-independence regulations issued under the Act in South Africa were made after the date of transfer and were not made explicitly applicable to SWA. 43

No SWA regulations prior to independence could be located, and no post-independence regulations have been issued under this Act.

Notice: RSA GN R.1246/1972 (<u>RSA GG 3612</u>), issued in terms of section 2(3) of the Act, prohibits the killing of dogs with the intention of using their skin, meat or any other body part for commercial purposes.

Cases: Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC) (references to whipping in section 2(1) unconstitutional).

Municipal Dog Tax Ordinance 13 of 1967 🕎 📻

Summary: The Ordinance (originally published in <u>OG 2798</u>) provides for the control and taxation of the keeping of dogs within municipal areas. It came into force on 1 April 1968 (section 19).

Repeals: This Ordinance contains no repeals, However, the Dog Tax Ordinance, 1927, Repeal Act 14 of 1987 (OG 5411), which amends this Ordinance, repeals the Dog Tax Ordinance 14 of 1927 and its amendments.⁴⁴

Note also that *SA Proclamation 37 of 1940* (republished in OG 873), entitled "Eastern Caprivi Zipfel: Repeal of Laws in regard to Dog Tax", repeals the following laws in respect of the Eastern Caprivi Zipfel: the Dog Tax Ordinance 14 of 1927 and the Dog Tax (Application to Natives) Proclamation 5 of 1928.

Amendments: Ord. 41/1967 (OG 2837) amends sections 1, 4, 15 and 19 and substitutes section 2.

Ord. 12/1973 (OG 3335) substitutes the term "Executive Committee" for the word "Administrator" throughout, amends section 1 and substitutes section 16.

⁴⁴ The Dog Tax Ordinance 14 of 1927 repeals Proclamation 16 of 1921, Proclamation 6 of 1922, and Proclamation 2 of 1924.

⁴³ The regulations which post-dated the date of transfer related to the seizure of animals by an officer of a society for the prevention of cruelty to animals, and were issued in RSA GN R.468/1986 (RSA GG 10121), as corrected by RSA GN R.654/1986 (RSA GG 10185).

Ord. 8/1978 (OG 3783) substitutes sections 3 and 14 and amends sections 4 and 15. This amendment was initially brought into force by GN 305/1978 (OG 3882). However, this notice was repealed by the Postponement of the Commencement of the Municipal Dog Tax Amendment Ordinance, 1978, Ordinance 1/1979 (OG 3906), which amended section 5 of Ord. 8/1978 to provide that it would come into force on 1 January 1980. Section 5 of Ord. 8/1978 was further amended by the Municipal Dog Tax Amendment Ordinance 2/1980 (OG 4104) to provide that it would come into force on 1 January 1981.

Ord. 15/1980 (OG 4165) substitutes section 3 and amends section 15.

AG 19/1983 (OG 4842) amends section 6.

The Dog Tax Ordinance, 1927, Repeal Act 14 of 1987 (OG 5411) repeals section 17.

Act 30/1987 (OG 5478) amends sections 6, 14 and 15.

The Local Authorities Act 23 of 1992 (GG 470), which was brought into force on 31 August 1992 (GN 118/1992, GG 472), repeals section 18.

Regulations: Regulations on Municipal Dog Tax (Maximum Amount) are contained in GN 145/1980 (OG 4243). These regulations are amended by AG GN 7/1985 (OG 4992), GN 36/1986 (OG 5175) and GN 60/1987 (OG 5348).

Related regulations: Model Regulations for the Control of Dogs in Local Authority Areas, issued under section 94(2) of the Local Authorities Act 23 of 1992 read with section 15 of this Ordinance, are contained in GN 166/2008 (<u>GG 4077</u>). These regulations are listed in the database of annotated laws under the Local Authorities Act 23 of 1992.⁴⁵

Note that there is a corrected version of <u>GG 4077</u>. The correct version states at the top: "This gazette replaces Government Gazette No. 4077 of 3 July 2008."

Application of law: AG 8/1986 (OG 5168) applies sections 1-15 to all peri-urban areas to which they were not already applicable, with effect from 1 January 1986.

Animal Health Act 1 of 2011 🕎 🙀

Summary: This Act (<u>GG 4694</u>) provides for the prevention, detection and control of animal diseases and the maintenance and improvement of animal health. It was brought into force on 30 April 2013 by GN 100/2013 (<u>GG 5183</u>).

Repeals: The Act repeals the *Animal Diseases and Parasites Act 13 of 1956* (SA GG 5647), as amended, 46 including amendments made to the 1956 Act by the *Animal Diseases and Parasites Amendment Act 9 of 1973* (RSA GG 3818), which repealed the Animal Diseases and Parasites Ordinance

⁴⁵ The Government Notice that contains these regulations repeals the Regulations for the Control of Dogs in Municipal Areas issued in terms of this Ordinance and contained in GN 131/1968 (OG 2921), as amended by GN 108/1973 (OG 3335), GN 267/1973 (OG 3371), GN 33/1978 (OG 3705), GN 108/1988 (OG 5556) (this amendment, which repeals regulation 17, is not explicitly repealed by GN 166/2008), GN 119/1988 (OG 5569) and GN 159/1992 (OG 527).

⁴⁶ The *Animal Diseases and Parasites Act 13 of 1956* (SA GG 5647) was amended to apply to SWA by the *Animal Diseases and Parasites Amendment Act 9 of 1973* (RSA GG 3818) and brought into force by RSA GN R.208/1974 on 25 October 1974 (RSA GG 4462).

In South Africa, the *Animal Diseases and Parasites Act 13 of 1956* was repealed by the *Animal Diseases Act 35 of 1984* (RSA GG 9152). However, this Act was not made explicitly applicable to SWA, and did not apply automatically to SWA because the administration of the *Animal Diseases and Parasites Act 13 of 1956* was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation, AG 18 of 1977 which came into force on 20 December 1977.

34 of 1959 (OG 2199) — which in turn repealed a number of laws, including the Animal Diseases and Parasites Ordinance 14 of 1958 (OG 2150), the Removal of Livestock Proclamation 8 of 1919 (OG 24), the Consignment of Cattle Proclamation 19 of 1920 (OG 32) and the Diseases of Stock Proclamation 28 of 1920 (OG 33).

To clarify the progression of laws, the **Animal Diseases and Parasites Ordinance 14 of 1958** was replaced by the **Animal Diseases and Parasites Ordinance 34 of 1959**, 47 which remained in force **until 1974**. Then, by virtue of the *Animal Diseases and Parasites Amendment Act 9 of 1973* (RSA GG 3818) – which was brought into force by RSA GN R.208/1974 on 25 October 1974 (RSA GG 4462) – the 1959 SWA Ordinance was replaced by the **SA** *Animal Diseases and Parasites Act 13 of 1956* (SA GG 5647), as amended. The relevant transfer proclamation was the Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978 (OG 3713), which came into force on **2 March 1978** – meaning that the administration of the 1956 Act was transferred to SWA as from that date. This South African Act remained in force in independent Namibia until it was replaced by the current **Animal Health Act 1 of 2011**.

Savings: Section 37(2) of this Act contains a savings clause for regulations and other actions done in terms of the *Animal Diseases and Parasites Act 13 of 1956* which could have been done under a corresponding provision of the current Act:

Any regulation made or anything done under any provision of a law repealed by subsection (1) which is in force at the commencement of this Act and which could be made or done under a corresponding provision of this Act, is deemed to have been made or done under that corresponding provision.

Section 36(2) of the Animal Diseases and Parasites Act 13 of 1956 contains a savings clause:

Any proclamation, regulation, order and notice issued, made or given under any law repealed by subsection (1) and in force at the commencement of this Act, shall remain in force until withdrawn under this Act, and any other thing done or action taken under any provision of a law so repealed, shall be deemed to have been taken or done under the corresponding provision of this Act.

However, the 1959 Standing Regulations issued under *Act 13 of 1956* in SA GN 1684/1959 (SA GG 6297) (and now repealed in South Africa) state (in Part XII) that they come into force on 30 October 1959, and as from that date withdraw all regulations that continued in force by section 36(2) of the *Animal Diseases and Parasites Act 13 of 1956*.

Section 6(2) of the *Animal Diseases and Parasites Amendment Act 9 of 1973* - which made the South African *Animal Diseases and Parasites Act 13 of 1956* applicable to SWA - also independently contains a savings clause in respect of things done under the Animal Diseases and Parasites Ordinance 34 of 1959:

Anything done under a provision of any law repealed by subsection (1), shall be deemed to have been done under the corresponding provision of the principal Act [the *Animal Diseases and Parasites Act 13 of 1956*].

This savings clause postdates the 1959 Standing Regulations which repealed all regulations that remained in force by virtue of section 36(2) of the *Animal Diseases and Parasites Act 13 of 1956*, so the regulations made in terms of the Animal Diseases and Parasites Ordinance 34 of 1959 appear to remain in force until repealed.

Section 36(2) of the Animal Diseases and Parasites Ordinance 34 of 1959 contains a savings clause for certain things done under any of the laws it repeals:

Any proclamation, regulation, order and notice issued, made or given under any law repealed by subsection (1) and in force at the commencement of this Ordinance, shall remain in force until withdrawn under this Ordinance, and any other thing done or action taken under any provision of a law so repealed,

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⁴⁷ There is a large overlap between the Animal Diseases and Parasites Ordinance 14 of 1958 and the Animal Diseases and Parasites Ordinance 34 of 1959. The 1958 Ordinance was brought into force on 9 August 1958 by Proc. 44/1958 (OG 2158), then replaced by the 1959 Ordinance, which was deemed to have come into force on 9 August 1958 (section 37 of Ord. 34 of 1959) - thus essentially replacing the 1958 Ordinance retroactively.

shall be deemed to have been taken or done under the corresponding provision of this Ordinance.

Section 36(2) of the Animal Diseases and Parasites Ordinance 14 of 1958 contains a savings clause that is identical to the one in the Animal Diseases and Parasites Ordinance 34 of 1959 which replaced it.

Regulations: Animal Identification Regulations issued under the repealed *Animal Diseases and Parasites Act 13 of 1956* are contained in GN 29/2009 (GG 4217), as amended by GN 201/2009 (GG 4350) (Regs 3 and 16) and GN 5/2011 (GG 4645) (Regs 16, 31, new Reg 31A). These regulations and their amendments were repealed and replaced with new Animal Identification Regulations by GN 307/2017 (GG 6476) but, as explained below, the repealed regulations continue to have some ongoing relevance.

New **Animal Identification Regulations** are contained in GN 307/2017 (<u>GG 6476</u>), as amended by GN 344/2023 (<u>GG 8247</u>). These regulations repeal the previous Animal Identification Regulations contained in GN 29/2009 (<u>GG 4217</u>), as amended. However, it should be noted that regulation 8(2) of the 2017 regulations states:

Despite the repeal [of the] Animal Identification Regulations published under Government Notice No. 29 of 5 March 2009 by these regulations, the obligation[s] imposed on the owner of -

- (a) cattle by regulation 16(5);
- (b) sheep and goats by regulation 17(4); and
- (c) pigs by regulation 18(4),

of the repealed regulations to identify cattle, sheep, goats and pigs continue to have effect.

Thus, the repealed 2009 Animal Identification Regulations continue to have some ongoing relevance.

Animal Health Regulations issued under the current Act are contained in GN 358/2018 (GG 6803).⁴⁸

⁴⁸ (1) These regulations repeal the previous Animal Health Regulations contained in GN 144/2013 (<u>GG 5218</u>) (which were amended by GN 306/2016 (<u>GG 6209</u>), substituting Schedule 2) - which in turn repealed the **Standing Regulations** contained in RSA GN R.1531/1963 (<u>RSA GG 620</u>) as amended and the **General Regulations** contained in RSA GN R.1924/1974 (<u>RSA GG 4462</u>) as amended.

⁽²⁾ As a matter of historical interest, the repealed 1963 Standing Regulations contained in RSA GN R.1531/1963 (RSA GG 620) were corrected by RSA GN R.552/1964 (RSA GG 764) and amended by RSA GN R.428/1965 (<u>RSA GG 1068</u>), RSA GN R.1688/1965 (<u>RSA GG 1269</u>), RSA GN R.957/1966 (<u>RSA GG 1476</u>), RSA GN R.702/1968 (<u>RSA GG 2056</u>), RSA GN R.1116/1968 (<u>RSA GG 2109</u>), RSA GN R.1327/1968 (<u>RSA GG</u> <u>2139</u>), RSA GN R.55/1969 (<u>RSA GG 2265</u>), RSA GN R.947/1969 (<u>RSA GG 2431</u>), RSA GN R.532/1971 (<u>RSA</u> GG 3044), RSA GN R.442/1975 (RSA GG 4601), RSA GN R.1389/1975 (RSA GG 4801), RSA GN R.2028/1979 (RSA GG 6654) (made expressly applicable to SWA despite being made after the date of transfer), RSA GN R.1684/1980 (RSA GG 7177) (made expressly applicable to SWA despite being made after the date of transfer), AG GN 90/1982 (OG 4639), AG GN 179/1982 (OG 4718), GN 22/1986 (OG 5166) and GN 114/1995 (GG 1103). Additional amendments were made to these regulations in South Africa, but were not applicable to SWA: RSA GN R.1471/1981 (RSA GG 7674); RSA GN R.1222/1982, with effect from 1 July 1982 (RSA GG 8271); RSA GN R.134/1983 (RSA GG 8531); RSA GN R.1519/1985 (RSA GG 9839); and RSA GN R.2048/1985 (RSA GG 9928). The 1963 Standing Regulations were made in substitution of the regulations contained in SA GN 1684/1959 (SA GG 6297), which state (in Part XII) that they come into force on 30 October 1959, and as from that date withdraw all regulations that continued in force by section 36(2) of the Animal Diseases and Parasites Act 13 of 1956; these 1963 regulations did not repeal any SWA regulations because the underlying Animal Diseases and Parasites Act 13 of 1956 was not made applicable to SWA until 1974.

⁽³⁾ The repealed 1974 **General Regulations** contained in RSA GN R.1924/1974 (<u>RSA GG 4462</u>) were amended by AG GN 29/1981 (<u>OG 4404</u>) and GN 155/1987 (<u>OG 5431</u>). Additional amendments were made to these regulations in South Africa, but were *not applicable to SWA*: RSA GN R.1470/1981 (<u>RSA GG 7674</u>). The 1974 General Regulations repealed these regulations:

⁽a) abattoirs - regulations published in RSA Government Notice R.3227 dated 5 September 1969;

⁽b) African swine fever - regulations published in RSA GN R.1690 dated 29 October 1965;

⁽c) foot and mouth disease - regulations published in RSA GN R.1531 dated 1 September 1972

⁽d) brucellosis - regulations published in RSA GN R.2252 dated 13 December 1968;

⁽e) harbours - regulations published in RSA GN 836 dated 1 June 1962.

⁽f) rabies - regulations published in RSA GN R.956 dated 24 June 1966;

⁽g) anthrax - regulations published in RSA GN 457 dated 24 March 1961, as amended by RSA GN 433 dated 18 August 1961, RSA GN 1433 dated 20 September 1963 and RSA GN R.3473 dated 9

Pre-independence regulations that may survive pursuant to the complex series of savings clauses are still being researched.

Notices: Restricted materials in terms of section 1(2)(d) are declared in GN 177/2013 (GG 5239), which replaces GN AG 88/1982.

Protected areas for the purposes of preventing foot and mouth disease, corridor disease and bovine tuberculosis, and the classes of animals and animal products restricted from those protected areas, are declared in terms of section 20 in GN 178/2013 (GG 5239).

Animal vaccines are declared to be animal products in terms of section 1(2)(b) in GN 179/2013 (GG 5239).

Notifiable diseases in respect of particular classes of animals are declared in terms of section 1(2)(e) in GN 180/2013 (GG 5239).

A quarantine area is declared in GN 154/2015 (GG 5788), because of the presence of Foot and Mouth Disease.

A protected area is declared in GN 155/2015 (GG 5788), for preventing the spread of Foot and Mouth Disease.

Emergency restrictions prohibiting importation or entry into Namibia of live poultry, poultry products, birds, ostriches and ostrich products from South Africa and Belgium are published in GN 201/2017 (GG 6376), in response to the outbreak of Highly Pathogenic Avian Influenza (HPAI) H5N8 in poultry.

Pre-independence notices are still being researched.

Cases: The following case relates to this Act – S v Mapanka 2017 (4) NR 980 (HC) (sentencing for violation of section 25(1)(a)).

The case of S v Lofty-Eaton & Others (1) 1993 NR 370 (HC) was decided under the previous Act.

"The Red Line"

Current law: According to the current Animal Health Act 1 of 2011, the Minister may, by notice in the *Government Gazette*, declare an area of Namibia to be a protected area if the Minister considers

October 1969;

(h) wild animals - regulations published in RSA GN R.2118 dated 29 December 1967, as amended by RSA GN R.1130, dated 1 September 1972.

These 1974 General Regulations were made at the same time that the underlying *Animal Diseases and Parasites Act 13 of 1956* was made applicable to SWA (and even in the same *Gazette*), but they do not repeal any SWA regulations.

(4) The repeal of these two sets of regulations is somewhat confusing. They were both apparently repealed by Government Notice 144/2013 (GG 5218), which was issued by the Minister of Agriculture, Water and Forestry and came into force on its date of publication: 5 June 2013. The repeal of the **Standing Regulations** is clear. It appears that this Government Notice also intended to repeal the **General Regulations** in RSA GN R.1924/1974. However, GN 144/2013 incorrectly refers to the General Regulations as an amendment to the Standing Regulations contained in RSA GN R.1531/1963 (RSA GG 620). GN 144/2013 also repeals one amendment to these regulations, GN 155/1987, which it incorrectly characterises as an amendment to the Standing Regulations instead of an amendment to the General Regulations – but makes no mention of AG GN 29/1981, which also amends the General Regulations. Nevertheless, the assumption that GN 144/2013 intended to repeal both the Standing Regulations and the General Regulations in their entirety is borne out by the subject matter of the regulations promulgated in GN 144/2013.

it prudent to do so to prevent the introduction into, or the spread in, that area of disease (sections 20-ff of the Act).

Section 18 of the Act empowers the Minister, acting on the advice of the Chief Veterinary Officer, to declare any place or area to be a **quarantine area** because of the presence or suspected presence of a specified disease. Section 20 of the Act empowers the Minister, acting on the advice of the Chief Veterinary Officer, to declare any place or area to be a **protected area** "if the Minister considers it prudent to do so for the purpose of preventing the introduction into, or the spread in, that area of a disease".

In Government Notice 154/2015 (GG 5788), the Minister declared "the whole area of Namibia north of the Veterinary cordon fence" as a quarantine area on account of the presence of Foot and Mouth Disease. On the flip side, in Government Notice 155/2015 (GG 5788), the Minister declared the whole of Namibia as a protected area with the exception of the areas north of the Veterinary Cordon Fence to be a protected area. These two notices regulate the movement of animals and animal products between the two areas, with some movement being prohibited absolutely and others requiring a permit.

The "Veterinary Cordon Fence" is not defined in the Animal Health Act 1 of 2011, or in Government Notice 154/2015 or Government Notice 155/2015 – although section 21 of the Act provides general authority for fences "for the purpose of controlling animal disease".

A definition of "Veterinary Cordon Fence" appears in regulation 1 of the **Animal Health Regulations** issued under section 32 of the Act in GN 358/2018 (GG 6803).

"Veterinary Cordon Fence" means a fence that runs westwards from the Namibia-Botswana border, separating the Foot and Mouth Disease Protection Zone from the Foot and Mouth Disease Free Zone. Regulation 1 of these regulations also contains the following related definition:

"animal disease control fence" means any fence, including the Veterinary Cordon Fence, which has been constructed for the purpose of controlling or preventing animal diseases.

A slightly different definition of the term "veterinary cordon fence" can be found in GN 5/2011 (GG 4645), which amends the **Animal Identification Regulations** contained in GN 29/2009 (GG 4217), issued under section 37(2) of the Act. GN 5/2011 includes a definition for "veterinary cordon fence", without actually amending regulation 1 on definitions:

"veterinary cordon fence" means the fence which divides the veterinary buffer zone and the veterinary surveillance zone, commencing at Palgrave Point on the west coast of Namibia and running in a generally eastern direction to a point on the common border between the Republic of Namibia and the Republic of Botswana at 20 degree latitude.⁴⁹

As noted in the overview of the regulations above, the Animal Identification Regulations contained in GN 29/2009 have been repealed and replaced by new Animal Identification Regulations contained in GN 307/2017 (GG 6476).

For more information, see:

* Giorgio Miescher, "Namibia's Red Line – South Africa's imperial 'barbarian border", 2009, available <a href="https://example.com/here-name="https://example.

⁴⁹ The same definition of "veterinary cordon fence" appears in regulation 1 of the general regulations issued under section 20 the Stock Brands Act 24 of 1995, in GN 73/2004 (<u>GG 3187</u>).

Veterinary and Veterinary Para-Professions Act 1 of 2013 🕎 🙀

Summary: This Act (<u>GG 5139</u>) establishes the Namibian Veterinary Council and regulates the qualifications and registration of persons practising veterinary professions and para-professions. It was brought into force on 27 February 2014 by GN 16/2014 (<u>GG 5415</u>).

It should be noted that this law was first promulgated in GN 318/2012 as the Veterinary and Veterinary Para-Professions Act 16 of 2012 in GG 5115. However, GN 318/2012 was withdrawn by GN 32/2013 (GG 5143) on 1 March 2013. The texts of the Act in the two Gazettes are identical aside from the Act number and year. The Act was initially published in error before being signed by the President; it states at the top "(Signed by the President on?? December 2012)". It was signed by the President on 1 February 2013 and then re-published as Act 1 of 2013.

Repeals: The Act repeals the Veterinary and Para-Veterinary Professions Proclamation 14 of 1984 (<u>OG 4915</u>).

Regulations: In terms of section 75(2), regulations, notices, rules, appointments and other acts done under the previous law remain valid unless inconsistent with the new Act or explicitly set aside or repealed. However, the regulations issued under the current Act have repealed all of the surviving regulations made under the previous law.

Regulations relating to Veterinary and Veterinary Para-Professions issued in terms of the current Act are contained in GN 17/2014 (GG 5415). These regulations are amended by GN 249/2015 (GG 5865), which substitutes Table 1. (This Table, which appears at the end of the regulations, relates to regulation 18(1), but it is not an "amendment" of "section 18(1)" of the regulations as the Government Notice erroneously states.) The regulations are also amended by GN 269/2016 (GG 6171), which substitutes Table 3. GN 54/2018 (GG 6554) again substitutes Table 3, GN 97/2020 (GG 7163) again substitutes Table 1, and GN 57/2022 (GG 7751) again substitutes Table 3.

Note that the list of previous amendments to the regulations in GN 57/2002 is incomplete.

GN 218/2017 (<u>GG 6384</u>) substitutes the enacting formula contained in GN 17/2014 so as to repeal the surviving regulations made under the previous Act with effect from 27 February 2014. (The previous regulations were contained in AG GN 76/1985 (<u>OG 5042</u>), as amended by GN 96/1997 (<u>GG 1557</u>), GN 133/2002 (<u>GG 2776</u>) and GN 57/2008 (<u>GG 4005</u>).)

Rules: Rules relating to the practice of veterinary and veterinary para-professions are contained in GN 93/2016 (<u>GG 6005</u>).

Appointments: Appointments to the Namibian Veterinary Council are announced in GN 147/2014 (<u>GG 5559</u>), which also confirms the appointment of a Registrar, and in General Notice 313/2017 (<u>GG 6384</u>), General Notice 510/2020 (<u>GG 7431</u>), General Notice 96/2023 (<u>GG 8050</u>) and General Notice 298/2024 (<u>GG 8388</u>). ⁵⁰

See also AGRICULTURE.

See also Stock Theft Act 12 of 1990 (CRIMINAL LAW AND PROCEDURE).

See also MARINE AND FRESHWATER RESOURCES.

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⁵⁰ The results of elections to the Veterinary Council under the previous Act are announced in General Notice 132/1990 (<u>GG 81</u>), General Notice 130/1993 (<u>GG 657</u>), General Notice 250/1996 (<u>GG 1395</u>), General Notice 294/1999 (<u>GG 2204</u>), General Notice 380/2002 (<u>GG 2867</u>) and General Notice 443/2012 (<u>GG 5094</u>).

See also Controlled Wildlife Products and Trade Act 9 of 2008 (TRADE AND INDUSTRY).

APPROPRIATIONS

This section lists only the appropriation acts passed since independence.

Appropriation Act 11 of 1990 (GG 55)
Additional Appropriation Act 1 of 1991 (GG 168)
Appropriation Act 11 of 1991(GG 227)
Additional Appropriation Act 2 of 1992 (GG 379)
Appropriation Act 16 of 1992 (GG 445)
Additional Appropriation Act 1 of 1993 (GG 615)
Additional Appropriation Act 1 of 1993 (GG 615)

Appropriation Act 8 of 1993 (GG 691) w 🕎

Additional Appropriation Act 5 of 1994 (GG 833) w

Appropriation Act 7 of 1994 (GG 866) w

Additional Appropriation Act 8 of 1995 (GG 1054)

Appropriation Act 11 of 1995 (<u>GG 1086</u>) **[4]**

Additional Appropriation Act 28 of 1995 (GG 1233) 🕎 🙀

Appropriation Act 4 of 1996 (<u>GG 1328</u>) **4**

Additional Appropriation Act 25 of 1996 (GG 1472) w 🕎

Appropriation Act 2 of 1997 (<u>GG 1582</u>) **1**

Additional Appropriation Act 16 of 1997 (GG 1763) w 🗐 🙀

Appropriation Act 16 of 1998 (<u>GG 1893</u>) **[4]**

Additional Appropriation Act 35 of 1998 (GG 2021) w 🔄

Appropriation Act 9 of 1999 (<u>GG 2137</u>) **1**

Additional Appropriation Act 5 of 2000 (GG 2321) w 🕎

Appropriation Act 13 of 2000 (<u>GG 2375</u>) **[]**

Additional Appropriation Act 23 of 2000 (GG 2454) w 🗐 🙀

Appropriation Act 9 of 2001 (<u>GG 2572</u>) **[]**

Additional Appropriation Act 14 of 2001 (GG 2671) w

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Appropriation Act 2 of 2002 (GG 2767) w
Additional Appropriation Act 16 of 2002 (GG 2886) w
Appropriation Act 6 of 2003 (GG 3004) w
Additional Appropriation Act 17 of 2003 (GG 3114) w
Appropriation Act 1 of 2004 (GG 3224) w
Additional Appropriation Act 2 of 2005 (GG 3425) w
Appropriation Act 7 of 2005 (GG 3477) w
Appropriation Act 1 of 2006 (GG 3645) w
Additional Appropriation Act 3 of 2006 (GG 3758)
Appropriation Act 1 of 2007 (<u>GG 3</u>868) [1]
Appropriation Act 4 of 2009 (GG 4280) w
Appropriation Act 9 of 2010 (GG 4515) w w
Appropriation Act 4 of 2011 (GG 4733) w
Appropriation Act 5 of 2012 (GG 4968) w
Appropriation Act 5 of 2013 (GG 5207) w
Appropriation Act 3 of 2014 (GG 5459) w w
Appropriation Act 4 of 2015 (GG 5762), as amended by the Appropriation Amendment Act 10 of 2015
       (GG 5895) w 🗐 📻
Appropriation Act 7 of 2016 (GG 6050), as amended by the Appropriation Amendment Act 15 of 2016
       (GG 6199) w 🗐 🙀
             Note that Appropriation Act 1 of 2016 was promulgated by GN 94/2016 (GG 6006), but this
             notice was withdrawn by GN 139/2016 (GG 6049).
Appropriation Act 1 of 2017 (GG 6330), as amended by the Appropriation Amendment Act 15 of 2017
       (GG 6502) w | m
Appropriation Act 4 of 2018 (GG 6623), as amended by the Appropriation Amendment Act 15 of 2018
      (GG 6805) w | m
Appropriation Act 2 of 2019 (GG 6929), as amended by the Appropriation Amendment Act 3 of 2019
       (GG 7067) w 🗐 📻
Appropriation Act 4 of 2020 (GG 7260) as amended by the Appropriation Amendment Act 8 of 2020
       (GG 7382) w 🗐 📻
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- **Appropriation Act 1 of 2021** (GG 7550), as amended by the Appropriation Amendment Act 4 of 2021 (GG 7704)
- Appropriation Act 2 of 2022 (GG 7825), as amended by the Appropriation Amendment Act 7 of 2022 (GG 7973)

GG 7973 was reissued, but the original version and the replacement version are identical.

- Appropriation Act 1 of 2023 (GG 8084), as amended by the Appropriation Amendment Act 16 of 2023 (GG 8275)
- **Appropriation Act 3 of 2024** (GG 8363), as amended by the Appropriation Amendment Act 12 of 2024 (GG 8511)

ARBITRATION

Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 will en



Summary: This Act (RSA GG 5504) provides for the recognition and enforcement of foreign arbitral awards. It came into force in South Africa and South West Africa on its date of publication (13 April 1977); see the definition of "court" in section 1.

Applicability to SWA: Although the Act does not contain a specific provision making it applicable to SWA, "court" was defined in section 1 of the original Act as "....a court of a provincial division or local division of the Supreme Court of South Africa". At the relevant time, the South African Supreme Court Act 59 of 1959 defined "provincial division" to include "the Eastern Cape division and the Southwest Africa division". Furthermore, the First Schedule to the Supreme Court Act 59 of 1959 contained a description of the various provincial and local divisions of the Supreme Court of South Africa and their areas of jurisdiction which, at the time, included a description of the "South-West Africa Division of the Supreme Court of South Africa".

Transfer of administration to SWA: Although this Act makes no reference to any minister, because of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

In 1981 the "South-West Africa Division of the Supreme Court of South Africa" was converted into the "Supreme Court of South-West Africa" by the RSA Supreme Court of South West Africa Proclamation 222 of 1981 (RSA GG 7909), brought into force by RSA Proc. 260/1981 (RSA GG 7973). In terms of the transitional provisions contained in section 38(2) of the RSA Supreme Court of South West Africa Proclamation 222 of 1981, the reference to the "provincial or local division of the Supreme Court of South Africa" in the definition of "court" in section 1 of the Act would be construed as a reference to the Supreme Court of South West Africa:

- Unless it would in any particular case be obviously inappropriate -(2)
- any reference in any law other than the Supreme Court Act, 1959 (Act 59 of 1959), or in any (a) document; or
 - (i) to the South-West Africa division of the Supreme Court of South Africa; or
 - (ii) to any division of the said Supreme Court, which immediately prior to the commencement of this Proclamation included a reference to the said South-West Africa
 - to the High Court of South-West Africa, shall be construed as a reference or as including a reference, as the case may be, to the Supreme
- any reference to the said Supreme Court Act or any provision thereof, in any law which applies in (b) or in respect of the territory shall, in so far as it so applies, be construed as a reference or including a reference, as the case may be, to this Proclamation or any provision thereof corresponding to such first-mentioned provision.

The Supreme Court Act 15 of 1990 (GG 84) repealed the RSA South West Africa Proclamation 222 of 1981 in so far as it applied to Namibia. In terms of the transitional provisions contained in section 40 of the High Court Act 16 of 1990 (GG 85) any reference in any other law to the Supreme Court of South West Africa, including a reference to that court as construed in accordance with the provisions of section 38(2) of the RSA Supreme Court of South West Africa Proclamation 222 of 1981, is required to be construed as a reference to the High Court of Namibia. Thus, the definition of "court" in the Act should now be construed as a reference to the High Court of Namibia.

Regulations: The Act makes no provision for regulations.

Cases: Orano Demantelement S.A. v United Africa Group (Pty) Ltd (HC-MD-CIV-MOT-GEN-2021/00129) [2024] NAHCMD 305 (10 June 2024) (citing Namlex, holding that the Act is applicable in Namibia due to its definition of "court"; the court may refuse an application for recognition of a foreign arbitral award in terms of the Act if it finds that the award would be contrary to public policy).

Commentary: Steven Finizio, Danielle Morris & Katherine Drage, "Enforcing arbitral awards in Sub-Saharan Africa-Part 1", Wilmer Cutler Pickering Hale and Dorr LLP, 7 July 2015, available here. (See also Part 2 of this discussion, available here.)

Related international agreement: The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (New York Convention), 1958, which entered into force internationally on 7 June 1959, is relevant. However, Namibia is *not* a party to this Convention.

Arbitration Act 42 of 1965, as amended in South Africa prior to Namibian independence $\boxed{1}$



Summary: This Act (RSA GG 1084) provides for the settlement of disputes by arbitration tribunals.

Repeals: The Act repeals the Arbitration Proclamation 3 of 1926 in respect of SWA.

Applicability to SWA: Section 41 states "This Act and any amendment thereof shall apply also in the territory." Section 1 defines "the territory" as "the territory of South West Africa including that portion of the territory known as the 'Rehoboth Gebiet', and the Eastern Caprivi Zipfel referred to in subsection (3) of section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)".

Transfer of administration to SWA: There is no reference to any minister in the Act, so it is not clear from the face of the Act what transfer proclamation, if any, was applicable. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Cases:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 1993 NR 270 (LC) (section 30)

Nel v Kalahari Holdings (Pty) Ltd 1995 NR 244 (HC) (sections 3(1) and (6))

RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC) (sections 4(2) and 21(f))

Kasuto v Joubert & Another 2011(2) NR 399 (HC) (section 1, definition of "arbitration agreement")

Da Cunha Do Rego v Beerwinkel t/a JC Builders 2012 (2) NR 769 (SC) (application of sections 15(2) and 31)

Westcoast Fishing Properties v Gendev Fish Processors & Another 2016 (4) NR 1191 (SC) (nature of private arbitration; fairness and prejudice)

Merit Investment Eleven (Pty) Ltd v Namsov Fishing Enterprises (Pty) Ltd 2017 (2) NR 393 (SC) (section 31)

Expedite Aviation CC v Tsumeb Municipal Council & Another 2020 (4) NR 1126 (SC)

Namibia Power Corporation (Pty) Ltd v Congo Namibia (Pty) Ltd 2021 (2) NR 483 (HC) (section 6 discussed *obiter* as an option that was not utilised in the case at hand)

Van Biljon v Coleman No & Another 2021 (3) NR 699 (HC) (arbitration finding of absolution from the instance does not constitute a final award; section 33(1)(b) interpreted; section 33(4) applied).

See also LABOUR.

ARCHIVES

Archives Act 12 of 1992 🚾 📻

Summary: This Act (<u>GG 421</u>) deals with the custody, care and control of archives.

Repeals: The Act repeals the Archives Act 4 of 1987 (OG 5351), which repealed the Archives Act 6 of 1962 (RSA GG 197). 51

Savings: Section 17(2) of the Archives Act 12 of 1992 states:

Anything done in terms of a provision of the Act repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under the provision of this Act.

Regulations: The current Act makes no provision for regulations, so this savings clause does not apply to regulations made under the repealed Act or its predecessor.⁵²

Directives: Section 12 authorises the Head of Archives to issue directives on various topics "in any manner which he or she deems proper". Such directives may have been issued, but none have been published in the *Government Gazette*.

See also LIBRARIES.

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Regulations that survived the repeal of the *Archives Act 6 of 1962* appear to have remained in force under the Archives Act 4 of 1987, but do not survive under the current Act.

⁵¹ The Archives Act 4 of 1987 was brought into force on 1 October 1987 by AG Proc. 33/1987 (OG 5433). Note that the repealing Act explicitly repeals the SWA Archives Act Amendment Act 5 of 1979 (OG 4013) and the SWA Archives Amendment Act 16 of 1979 (OG 4037). However, it does not mention other South African amendments to the *Archives Act 6 of 1962* which pre-dated the relevant date of transfer or were otherwise made applicable to SWA: *Act 12/1964*, *Act 63/1969*, *Act 54/1977* and *Act 32/1979*, which was applied to SWA by SWA Act 5/1979.

⁵² The Archives Act 4 of 1987 contained a broader savings clause in section 16(2):

Any regulation, rule, directive, notice, order, prohibition, authority, delegation, agreement, approval, appointment, exemption or document promulgated, issued, made, done, published, imposed, concluded, given or granted, and any other act performed in terms of any of the Acts repealed... shall, if and in so far as it is not repugnant to the provisions of this Act, be deemed to have been promulgated, issued, made, done, published, imposed, concluded, given, granted or performed in terms of or under the corresponding or allied provisions of this Act, and shall remain in force until a competent person or authority repeals, deletes, withdraws, substitutes or otherwise cancels it

ARMS AND AMMUNITION

General Law Amendment Ordinance 12 of 1956, section 4 🕎 🙀

Summary: Section 4 of this Ordinance (<u>OG 2018</u>) makes the possession and sale of dangerous weapons a criminal offence. (Section 5 of this Ordinance is discussed under WILLS, and sections 6-8 are discussed under CRIMINAL LAW AND PROCEDURE.)

Amendments: Section 4 was repealed in respect of Rehoboth by the Dangerous Weapons Act (Rehoboth) Act 5 of 1980 of Rehoboth (*Official Gazette 34 of Rehoboth*, dated 24 July 1981).

Regulations: There is no provision in this section for regulations.

General Law Amendment Ordinance 13 of 1962, section 8 🕎 🙀

Summary: Section 8 of this Ordinance (<u>OG 2409</u>) makes pointing a firearm, air gun or air pistol a criminal offence.

Regulations: There is no provision in this section for regulations.

Tear-gas Act 16 of 1964, as amended in South Africa to November 1979 🕎 🙀

Summary: This Act (<u>RSA GG 738</u>) regulates the possession, manufacture and importation of tear-gas and articles which are used to release tear-gas.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 6 states "This Act shall apply also in the territory of South West Africa (including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)), and in relation to all persons in that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory."

Although the wording of section 6 did not make amendments to the Act in South Africa automatically applicable to SWA, they would probably have been applicable by virtue of the definition of "Republic" in section 1. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended.

Section 3(1)(l) of the transfer proclamation excluded the references to the Republic throughout the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning it was given in the definition section of the Act (South Africa and SWA).

There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Arms and Ammunition Act 7 of 1996 🗐 🙀

Summary: This Act (originally published in <u>GG 1338</u>) regulates the possession, sale, manufacture, import and export of arms and ammunition. It was brought into force on 1 April 1998 by GN 66/1998 (GG 1830).

Repeals: The Act replaces the *Arms and Ammunition Act 75 of 1969*.

Amendments: The Combating of Domestic Violence Act 4 of 2003 (<u>GG 3002</u>), which was brought into force on 17 November 2003 (GN 234/2003, <u>GG 3094</u>), amends Schedule 1. The General Law Amendment Act 14 of 2005 (<u>GG 3565</u>) amends section 1 of the Act.

Savings: Section 45(2) contains a savings clause which states that — anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.

Regulations: Regulations are made in terms of the current Act in GN 67/1998 (GG 1830). These regulations repeal the only pre-independence regulations that were in force at the time. ⁵³

Notices: Periodic notices about the surrender of arms, ammunition or armaments have been issued but are not recorded here.

Cases: The following cases concern the current Act –

S v Likuwa 1999 NR 151 (HC) (examining purpose of section 29(1)(a); striking the words "of not less than 10 years, but" from section 38(2)(a) of the Act on constitutional grounds)

S v Pieters 2005 NR 171 (HC) (section 10)

S v Nakangombe 2006 (2) NR 567 (HC) (appropriate sentence under section 38; declaration of unfitness under section 10 confirmed)

S v Hamukoto 2007 (1) NR 364 (HC) (section 38(2)(a) provides that a sentence under section 29(1)(a) may not be suspended for an offender over age 18; peremptory provisions of section 10(7))

S v Thomas & Others 2007 (1) NR 365 (HC) (meaning of "possess"; possession through another is possible as long as parties have a common intention for control of the article)

S v Jason & Another 2008 (1) NR 359 (SC) (appropriate sentence under section 2)

S v Titus 2011 (1) NR 109 (HC) (peremptory nature of section 10(6)-(7))

S v Nengongo 2012 (2) NR 553 (HC) ("safe" in respect of offence of failure to safeguard firearm under section 38(1)(j), read with section 3(8) and regulation 26; "place of safety" in section 38(1)(j); appropriate sentence)

S v Sakaria 2013 (2) NR 347 (HC) (period of unfitness imposed under section 10 altered to run from date of release from prison in the course of an appeal against sentence)

Sv Malumo & Others (In re Ndala) 2014 (3) NR 690 (the question of whether the Arms and Ammunition Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of section 319 of the Criminal Procedure Act 51 of 1977)

S v Katema 2014 (3) NR 831 (HC) (minimum sentence in section 29 applied despite having been struck down as unconstitutional 14 years previously; sentence substituted)

The relevant transfer proclamation was the Executive Powers (Police) Transfer Proclamation 169 of 1980, which came into force on 1 September 1980 and applied to the *Arms and Ammunition Act 75 of 1969* with the *exception* of its provisions relating to the importation into or exportation out of the Republic, as defined in that Act, of arms and ammunition.

In South Africa, the repealed regulations were further amended after the date of transfer and prior to Namibian independence by GN 689/1982 (RSA GG 8149) and GN 2130/1988 (RSA GG 11553).

⁵³ The 1998 regulations repeal the following regulations made in terms of the previous Act: RSA GN R.1474/1971 (RSA GG 3238), as amended by RSA GN R.1235/1973 (RSA GG 3981), RSA GN R.1028/1978 (RSA GG 6029) (erroneously referred to in GG 1830 as GN R.1023/1978) and RSA GN R.2216/1980 (RSA GG 7275).

Henock v The Attorney General (A 172/2011) [2014] NAHCMD 366 (27 November 2014) (minimum sentence of imprisonment for importing, supplying or possessing armaments in terms of the remaining portion of section 38(2)(a) not unconstitutional)

S v Claasen & Others 2020 (1) NR 266 (HC) (sections 2 and 33 applied)

S v Lichtenstrasser 2024 (1) NR 139 (HC) (no duplication in charges of theft of firearm, possession of firearm without a licence (section 2) and unauthorised supply of firearm and ammunition (section 32(1)(a)-(b)) in circumstances of this case).

The following cases concern the Arms and Ammunition Act 75 of 1969 –

S v Maseka 1991 NR 249 (HC)

S v Wapota 1991 NR 353 (HC)

S v Matheus 1991 NR 376 (HC) at 382E

S v William 1992 NR 268 (HC)

S v Marungu 1993 NR 389 (HC)

S v Shini 1993 NR 393 (HC).

Commentary:

Bernhard Tjatjara, "Guns Don't Kill People, People Kill People: Observation in respect of the Arms and Ammunitions [sic] Act 7 of 1996", Namibia Law Journal, Volume 8, Issue 1, 2016 (comparison of criteria for obtaining a firearm licence in Namibia and other SADC countries)

Bernhard Tjatjara & Dunia P Zongwe, "Taking the Gun into the Law's Hands: Observations in respect of the Arms and Ammunitions Act 7 of 1996", *UNAM Law Review*, Volume 3, Issue 1, 2016 (comparison of criteria for obtaining a firearm licence in Namibia and other SADC countries).

NOTE

The case of S v Velskoen 1991 NR 325 (HC) concerns a conviction under the Dangerous Weapons Act 71 of 1968. However, nothing in this Act made it applicable to SWA at any stage, and the authors of the index have not been able to locate any other legislation applying it to SWA or Namibia.

INTERNATIONAL LAW

African Nuclear-Weapon-Free-Zone Treaty (Treaty of Pelindaba), 1996

**African Union Non-Aggression and Common Defence Pact, 2005

Arms Trade Treaty (ATT), 2013

*Comprehensive Nuclear-Test-Ban Treaty, 1996

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

Convention on Cluster Munitions, 2008

Convention on Early Notification of a Nuclear Accident, 1986

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty), 1997

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community Region, 2001

SADC Declaration Towards a Southern Africa Free of Anti-Personnel Landmines, 1997 (not legally-binding)

SADC Declaration concerning Firearms, Ammunition and other related materials, 2001 (not legally-binding)

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

Treaty on the Prohibition of Nuclear Weapons, 2017

See also EXPLOSIVES.

AVIATION

Carriage by Air Act 17 of 1946, as amended in South Africa to March 1978 🕎 🙀

Summary: This Act (originally published in <u>SA GG 3649</u>) gives effect to the Warsaw Convention that governs international air travel. It was brought into force in respect of both South Africa and South West Africa on 22 March 1955 by SA Proc. No. 65 of 1955 (<u>SA GG 5434</u>).

Applicability to SWA: Section 1 originally stated: "In this Act, 'Union' includes the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay." It was amended by Act 5 of 1964 to remove references to the "Union" and to define "Republic" to include "any territory in respect of which Parliament is competent to legislate".

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated **15 March 1978**. There were only two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Carriage by Air Amendment Act 81 of 1979* (RSA GG 6529) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) (section 7) – neither of which was made expressly applicable to SWA.

Section 3(1)(a) of the transfer proclamation excluded section 5 of the Act (which deals with the ratification of amendments to the Warsaw Convention by the State President) from the operation of section 3(1) of the General Proclamation, meaning that the administration of this section was not transferred to SWA.

Section 3(2) of the transfer proclamation excluded the reference to "Republic" throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and specified that it should be read to include SWA as well as South Africa.

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

- Carriage by Air Amendment Act 5 of 1964 (RSA GG 728)
- RSA Proclamation R.294 of 1967 (RSA GG 1892) applies the Hague Protocol to "the Republic" from 17 December 1974
- RSA Proclamation R.93 of 1974 (RSA GG 4276) applies the Guadalajara Convention to "the Republic" from 4 April 1974

Act 14/1992 (GG 430) amends sections 1, 3, 5 and 7 and substitutes certain expressions to make the Act consistent with an independent Namibia, and to provide for the conversion of sums in francs into Namibian currency in respect of claims against carriers.

Regulations: Regulations are authorised by section 8 of the Act, but no pre-independence regulations have been located and no post-independence regulations have been promulgated.

Notices: See GN 265/1998 (<u>GG 1982</u>), which deals with the conversion of sums into francs in terms of section 3(7).

Related international agreements: The schedule to the Act, as amended, contains the *Warsaw Convention* as amended and supplemented by the Hague Protocol and the Guadalajara Convention. However, Namibia has ratified the *Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999* which supersedes the *Warsaw Convention* system. This ratification took place on 27 September 2001, according to the international depositary, the International Civil Aviation Organization (ICAO), and became binding on Namibia on 4 November 2003. Article 55 of the Montreal Convention, on the Relationship with other Warsaw Convention instruments) provides:

This Convention shall prevail over any rules which apply to international carriage by air:

- 1. between States Parties to this Convention by virtue of those States commonly being Party to –
- (a) the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);
- (b) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);
- (c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);
- (d) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955, signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);
- (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol, signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or
- 2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Air Services Act 51 of 1949, as amended in South Africa to March 1978 🕎 😜

Summary: This Act (originally published in <u>SA GG 4201</u>) provides for the licensing and control of air carriers. It was brought into force on 1 March 1950 by SA GN 24/1950 (<u>SA GG 4336</u>).

Applicability to SWA: Section 24 states "The provisions of this Act and any amendment thereof shall apply in respect of any air services provided by the Railway Administration, and shall also apply to the Territory of South West Africa", which is defined in section 1 to include "the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated **15 March 1978**. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) – which was not made expressly applicable to SWA.

Section 3(1)(b) of the transfer proclamation excluded section 2(2) of the Act (which refers to bilateral agreements between South Africa and other countries) from the operation of section 3(1) of the General Proclamation, meaning that the reference to the "Government of the Republic" in this section was not to be construed as a reference to the Administrator-General. Section 3(1)(h) of the transfer proclamation excluded section 15 of the *Air Services Amendment Act 43 of 1973* from the operation of section 3(1) of the General Proclamation.

Section 3(2) of the transfer proclamation excluded the references to the "Republic" throughout the Act from the operation of section 3(1)(c) of the General Proclamation and provided that "Republic" should be deemed to include "the territory".

 ${\bf Amendments:}\ The\ following\ pre-independence\ South\ African\ amendment\ was\ applicable\ to\ SWA-$

• Air Services Amendment Act 6 of 1964 (RSA GG 728).

Act 51 of 1959 was also amended by the *Air Services Amendment Act 43 of 1973* (RSA GG 3906). However, *Act 43 of 1973* was never brought into force in respect of South Africa or South West Africa. Therefore, the amendments contained in it are not incorporated here. *Act 43 of 1973* was repealed in

South Africa by the *Repeal of Laws Act 94 of 1981* (RSA GG 7855), which came into force on its date of publication: 28 October 1981. However, this repeal, which took place after the date of transfer, was not effective in respect of South West Africa.

The Act was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* (RSA GG 11743). In addition to being enacted after the date of transfer, the portions of *Act 9 of 1989* which amended this Act came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* (RSA GG 12364) as being 1 April 1990.

Act 6/1991 (GG 216) amends the Act substantially to make it consistent with an independent Namibia (affecting sections 1, 2, 3, 4, 7, 8, 11, 13, 16, 17, 19, 20, 22, 24 and the substitution of certain words).

The Posts and Telecommunications Companies Establishment Act 17 of 1992 (GG 447) amends section 11.

Act 31/1998 (GG 1991) amends sections 4, 9 and 11 and repeals section 10.

The Road Traffic and Transport Act 22 of 1999 (GG 2251) amends section 1.

Regulations: Civil Air Services Regulations are contained in RSA GN R.449/1964 (<u>RSA GG 752</u>),⁵⁴ as amended by the following:

- RSA GN R.1799/1967 (<u>RSA GG 1889</u>)
- GN 224/1995 (GG 1204)
- GN 59/1998 (GG 1825).

In South Africa, the regulations were also amended by RSA GN R.2210/1987 (which substitutes section 11 on fees), but this amendment was made after the date of transfer with no specific reference to SWA, and so was not applicable to SWA.

Application: RSA GN 262/1950 (RSA GG 4481) provides that, in terms of section 2(1) of the Act, subject to the provisions of subsections 2(2) and (3), no person shall use an aircraft for the provision of any air service after 1 November 1950 except under and in accordance with the terms and conditions of a licence granted to that person or deemed to have been so granted.

Visiting aircraft are excluded from the application of section 2(1) of the Act in terms of modifications set forth in GN 58/1998 (GG 1826).

Aerodrome Ordinance 12 of 1963 📲 🙀

Summary: This Ordinance (OG 2487) provides for the establishment, management and maintenance of airports.

Administration of law: Section 3(1) of the Ordinance was assigned to the administration of the Minister of Transport by GN 179/1986 (OG 5254).

After independence, in GN 98/1992 (GG 455) issued pursuant to section 3(l)(a) of the Assignment of Powers Act 4 of 1990, the President assigned the administration of the provisions of this law to the Minister of Works, Transport and Communication with effect from 17 July 1992. The assignment of administration included the administration of any provisions of the Ordinance or any regulations made under it which confer or impose powers, duties and functions on the President - but excluded any provision conferring a power which is required to be exercised by proclamation in the *Gazette* or conferring a power to enter into international agreements.

⁵⁴ These regulations repeal those contained in SA GN 427/1950 (<u>SA GG 4336</u>).

Regulations: Regulations are authorised by section 6(1) of the Ordinance. **Aerodrome Regulations** are contained in GN 35/1965 (OG 2610), as amended by GN 114/1967 (OG 2814). However, although no repeals have been located, all of these aerodrome regulations appear to have been superseded by the Civil Aviation Regulations, 2001 which regulate aerodromes comprehensively. (This was confirmed by the Namibia Civil Aviation Authority in April 2021. See the entry below for the Civil Aviation Act 6 of 2016.) Thus, the obsolete 1965 regulations have not been included in the database of annotated laws. Note that several local authorities also have local aerodrome regulations.

Airports Company Act 25 of 1998 🕡 🙀

Summary: This Act (originally published in <u>GG 1958</u>) provides for the incorporation of a company to undertake the operation, management and control of certain aerodromes in Namibia. The Act came into force on 1 November 1998 (GN 261/1998, <u>GG 1981</u>). However, by virtue of section 19(2) of the Act, sections 5-13 and sections 15-18 came into force on 5 February 1999, in terms of GN 19/1999 (<u>GG 2045</u>), on the date of transfer to the Company of the aerodromes listed in the Schedule set by the Minister in terms of section 14(1). (This date of transfer was originally set as 5 November 1998 by GN 262/1998 (<u>GG 1981</u>), but this notice was withdrawn by GN 275/1998 (<u>GG 1993</u>).)

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1-11 and 14. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 5(5), but none have yet been promulgated.

Notices: Charges set forth in GN 263/1998 (GG 1981) were withdrawn by GN 275/1998 (GG 1993).

Aerodrome and airport charges are contained in GN 20/1999 (GG 2045).

Cases:

Westair Aviation (Pty) Ltd & Others v Namibia Airports Company Ltd & Another 2001 NR 256 (HC) Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC) (overview of establishment of company under Act in introduction to case concerning tender by Namibia Airports Company); aspects of the remedy ordered in this case overturned on appeal in Namibia Airports Co Ltd v Fire Tech Systems CC & Another 2019 (2) NR 802 (SC) (regarding unlawful grant of tender, High Court's mero motu grant of relief not appropriate where such relief was not requested by the litigants or ventilated in court; breach of administrative justice normally gives rise to public law remedies rather than private law ones and does not automatically give rise to delictual liability; courts "have a discretion not to set aside administrative acts where doing so will achieve no practical purpose")

Anhui Foreign Economic Construction (Group) Corp Ltd v Minister of Works and Transport & Others 2016 (4) NR 1087 (HC) (section 9(1)(b), and relationship between section 5(2)(a) of the Airports Company Act 28 of 1998 and section 7(1)(a) of the Tender Board Act 16 of 1996; Court finds that (1) the tender to Anhui was validly awarded by the Namibia Airports Company in accordance with the Airports Company Act and the Namibia Airports Company's Procurement Procedure, and (2) Minister's directive to discontinue all activities relating to the upgrading and expansion of the Hosea Kutako International Airport, purportedly given under section 9(1)(b) of the Airports Company Act, was invalid); overturned in part by President of the Republic of Namibia & Others v Anhui Foreign Economic Construction (Group) Corp Ltd 2017 (2) NR 340 (SC) (failure to follow procedures in Tender Board Act is fatal to the validity of the purported award; requirements for acting under section 9 of the Airports Company Act 28 of 1998 were not met, so Minister's directive under that section was correctly set aside)

Four Three Five Development Companies (Pty) Ltd v Namibia Airports Company & Others 2017 (1)

NR 142 (HC) (court finds no exceptional circumstances to justify departure from doctrine that statutory remedies must be exhausted before court engages in judicial review of administrative decision; the section 12 remedies provided in the statute are immediate, cost-effective, sufficient and practical, and not undermined by the alleged unlawfulness of the initial decision since they involve independent decision-makers; for a contrasting decision on exhaustion of statutory remedies, see *Viljoen v Chairperson of the Immigration Selection Board & Another* 2017 (1) NR 132 (HC)).

Namibia Airports Co Ltd v China State Engineering Construction Corporation 2019 (3) NR 791 (HC) (new board of directors successfully brings action to have award of contract by previous board of directors set aside on grounds that it was marred by irregularities; "self-review" is permissible; delay in launching review was not egregious); upheld on appeal in China State Engineering Construction Corporation v Namibia Airports Co Ltd 2020 (2) NR 343 (SC) (delay in seeking the "self-review" was unreasonable, but is condoned because "the manner in which the award was made does not meet the most basic tenets of transparency and accountability and judicious use of public funds" and "raises serious concerns of corporate ethics as to merit censure by granting condonation for the unreasonable delay in seeking self-review" (paras 61-62)).

Civil Aviation Act 6 of 2016 🕎 😓

Summary: This Act (originally published in <u>GG 6047</u>) consolidates the laws relating to civil aviation and civil aviation offences. It establishes the Namibia Civil Aviation Authority (NCAA) and the Air Navigation Services in that Authority, and provides for a civil aviation regulatory and control framework. It implements several international aviation agreements applicable to Namibia. It also establishes the Directorate of Aircraft Accident and Incident Investigations and provides for the establishment of Namibia Register of Aircraft and the Civil Aviation Registry. It was brought into force with effect from 1 November 2016 by GN 260/2016 (GG 6164).

Repeals: The Act repeals the Aviation Act 74 of 1962 and the Civil Aviation Offences Act 10 of 1972.

Amendments: The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 26.

Regulations: Regulations made in terms of the repealed Acts survive in terms of section 236(2) of the Δct

These pre-independence regulations made in terms of the Aviation Act 74 of 1962 remain in force:

State Airport Regulations are contained in RSA GN R.1974/1963 ($\underline{\text{RSA GG 674}}$), as amended by -

RSA GN R.397/1964 (RSA GG 748)
RSA GN R.2027/1965 (RSA GG 1319)
RSA GN R.943/1967 (RSA GG 1773)
RSA GN R.1031/1970 (RSA GG 2740)
RSA GN R.2233/1970 (RSA GG 2944)
RSA GN R.331/1973 (RSA GG 3799)
RSA GN R.1258/1973 (RSA GG 3983)
RSA GN R.1564/1973 (RSA GG 4017)
RSA GN R.1677/1973 (RSA GG 4023)
RSA GN R.2443/1973 (RSA GG 4124)
RSA GN R.774/1975 (RSA GG 4674)
RSA GN R.142/1976 (RSA GG 4976)
RSA GN R.1472/1976 (RSA GG 5260)
RSA GN R.2512/1976 (RSA GG 5366)

RSA GN R.2633/1977 (RSA GG 5846) RSA GN R.441/1978 (RSA GG 5915) GN 12/1988 (OG 5487) GN 223/1995 (GG 1204) GN 235/1997 (GG 1739) GN 61/1998 (GG 1825) GN 215/1998 (GG 1942) GN 255/1998 (GG 1972).

However, although no repeal of these regulations has been located, they appear to have been superseded by the **Civil Aviation Regulations**, **2001** discussed below in this entry, which regulate airports comprehensively. (This was confirmed by the Namibia Civil Aviation Authority in April 2021.) Thus, the obsolete 1963 regulations have not been included in the database of annotated laws.

Regulations regarding the Investigation of Aircraft Accidents are contained in GN 274/2020 (GG 7383), which repealed GN 82/2000 (GG 2298), which in turn replaced RSA GN R.120 of 26 January 1973 (RSA GG 3773).

Namibian Civil Aviation Regulations, 2001 (NAM-CARS) are contained in GN 1/2001 (GG 2467). These regulations came into force on 2 March 2001. They are amended by GN 57/2006 (GG 3615), GN 201/2006 (GG 3741), GN 80/2017 (GG 6281), GN 210/2018 (GG 6696), GN 293/2018 (GG 6763) – with the provision concerning the commencement of GN 293/2018 being amended by GN 369/2018 (GG 6816), GN 409/2019 (GG 7086), GN 112/2020 (GG 7199), GN 137/2021 (GG 7567), GN 90/2022 (GG 77775) and GN 294/2022 (GG 7917) – and by GN 410/2019 (GG 7086), GN 89/2020 (GG 7157), GN 236/2020 (GG 7348), GN 55/2023 (GG 8056), SGN 178/2023 (GG 8119) and GN 11/2024 (GG 8299). Commencement dates are discussed below.

These regulations as amended repeal the *Air Navigation Regulations, 1976* contained in RSA GN R.141/1976 (RSA GG 4975), as amended; the *Rules of the Air, Air Traffic Services, Search and Rescue and Overflight Regulations, 1975*, contained in RSA GN R.1753/1975 (RSA GG 4851), as amended; the *Air Navigation Regulations, 1963* contained in RSA GN R.1779/1963 (RSA GG 650), as amended; and the Civil Aviation Security Regulations, 1996 contained in GN 181/1996 (GG 1348).⁵⁷

⁵⁶ GN 178/2023 lists GN 409/2020 as a previous amendment to the regulations, but in fact it only amends a commencement date in GN 293/2018.

(2) The Rules of the Air, Air Traffic Services, Search and Rescue and Overflight Regulations, 1975, were repealed in part by reg 91.01.14 of the initial regulations in GN 1/2001 (GG 2467) (which repealed Chapters 1, 2, 3, 4, 5, 10 and 11) and in part by reg 172.01.10 of the initial regulations in GN 1/2001 (GG 2467) (which repealed Chapters 6-9 inclusive). The rules in question consisted of only 11 chapters, so these two provisions together constituted a full repeal. (Both of these initial regulations have since been substituted.)

(3) The Air Navigation Regulations, 1976, made in terms of the Aviation Act 74 of 1962 and contained in RSA GN R.141/1976 (RSA GG 4975), as amended by RSA GN R.1283/1976 (RSA GG 5234), RSA GN R.2380/1977 (RSA GG 5804), GN 225/1995 (GG 1204), GN 60/1998 (GG 1825) and GN 1/2001 (GG 2467), initially remained in force but have since been repealed. These were supplemented by Safety Directive No. DCA 97-1, published in General Notice 223/1997 (GG 1639), effective from 1 April 1997. There were initially some partial repeals of the 1976 regulations by individual provisions of the initial Namibian Civil Aviation Regulations, 2001 contained in GN 1/2001 (GG 2467). The remaining Air Navigation Regulations, 1976 and Safety Directive No. DCA 97-1 were both repealed in their entirety by GN 89/2020 (GG 7157), which also amended the Namibian Civil Aviation Regulations, 2001.

(4) The Civil Aviation Security Regulations, 1996, made in terms of the Civil Aviation Offences Act 10 of 1972 and contained in GN 181/1996 (GG 1348), initially remained in force but were repealed by GN 293/2018 (GG 6763).

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⁵⁵ Note that the list of previous amendments to the regulations in section 1 of GN 55/2023 is incorrect.

⁵⁷(1) The **Air Navigation Regulations**, **1963** – which were amended after Namibian independence by GN 11/1988 (OG 5487) and GN 62/1998 (GG 1825) – were repealed by reg 139.01.37 of the initial regulations in GN 1/2001 (GG 2467). (That initial regulation has since been substituted.)

Note that the provision regarding the effective date of the substitution of Part 139 by GN 293/2018 (GG 6763) was amended several times. With the latest changes in GN 294/2022 (GG 7917) incorporated, the substituted Part 139 commenced as follows -

- Subpart 4 in relation to aerodromes in Category D, and Subpart 5 in relation to aerodromes in Category E, and any provision in Part 139 that refers to a Category D or E aerodrome, commenced on **31 March 2023**;
- all the other provisions of Part 139 commenced on 1 May 2020.

Note that the amendments made by GN 236/2020 (GG 7348) commence 6 months after the date of publication (publication date: 30 September 2020), making them effective from 30 March 2021, with the *exception* of Part 21: Subparts 2, 3, 5, 6 and 7 and other provisions of Part 21 that make reference to type certification, which will be brought into force on a date set by the Minister by notice in the *Government Gazette*. No such date has been set as yet.

With respect to the amendments made by GN 55/2023 (<u>GG 8056</u>), note that the substitution of Part 139: Subpart 5 by regulation 20 commences 18 months after the date of publication of GN 55/2023 (date of publication: 31 March 2023), making this substitution effective as of **31 September 2024**. (The rest of that Government Notice came into force on its date of publication.)

With respect to the amendments made by GN 178/2023 (GG 8119), note that Regulations 65.01.6 and 65.01.8 in Part 65, Regulation 66.01.12 in Part 66 and the regulations in Subpart 4 of Part 66 commence "after twelve months from the date of commencement of these regulations" (commencement date: 26 June 2023), making them effective after 26 June 2024. (The rest of that Government Notice came into force on its date of publication.)

With respect to the amendments made by GN 11/2024 (<u>GG 8299</u>), they commence "eight months after the date of publication" (date of publication: 29 January 2024), making them effective as of **29 September 2024**.

Technical standards: Standards made in terms of the repealed Acts survive in terms of section 236(2) of the Act.

The following technical standards were gazetted in terms of Regulation 11.03.5 of the Namibian Civil Aviation Regulations, 2001 (listed in chronological order):

NAM-CATS-CCL	GN 120/2002 (<u>GG 2773</u>), which states that the
Cabin Crew Licensing	standards come into force on 1 September 2002
NAM-CAT-DO	GN 50/2003 (<u>GG 2939</u>), which states that the
Design organisations for products and appliances	standards come into force on 31 March 2003
NAM-CATS-MORG	GN 51/2003 (GG 2939), which states that the
Manufacturing Organisations	standards come into force on 31 March 2003
NAM-CATS-ARM	GN 52/2003 (<u>GG 2939</u>), which states that the
Registration and marking	standards come into force on 31 March 2003
NAM-CATS-OPS 98	GN 53/2003 (<u>GG 2939</u>), which states that the
Operation of powered paragliders	standards come into force on 31 March 2003
NAM-CATS-MR	GN 54/2003 (<u>GG 2940</u>), which states that the
Medical certification	standards come into force on 31 March 2003
NAM-CATS-OPS 100	GN 55/2003 (<u>GG 2941</u>), which states that the
Operation of gyroplanes	standards come into force on 31 March 2003
NAM-CATS-OPS 102	GN 56/2003 (<u>GG 2941</u>), which states that the
Operation of free balloons and airships	standards come into force on 31 March 2003
NAM-CATS-AMO	GN 57/2003 (<u>GG 2941</u>), which states that the
Aircraft maintenance organisations	standards come into force on 31 March 2003
NAM-CATS-AH	GN 58/2003 (GG 2941), as amended by GN
Licensing and operation of aerodromes	181/2016 (<u>GG 6096</u>), which brought the
and heliports	standards into force on 1 August 2016
(now repealed)	apparently repealed by <u>NAM-CATS-Part</u>

	139-AH-2018 (NAM-CATS-AH); see note
33.13.6 G.I.T. G.D.G. 444	below
NAM-CAT-OPS 133	GN 59/2003 (<u>GG 2944</u>), which states that the
Helicopter external-load operations	standards come into force on 31 March 2003
NAM-CAT-OPS 105	GN 60/2003 (<u>GG 2944</u>), which states that the
Operation of parachutes	standards come into force on 31 March 2003
NAM-CAT-OPS 106	GN 61/2003 (GG 2944), which states that the
Operation of hang gliders	standards come into force on 31 March 2003
NAM-CAT-OPS 104	GN 62/2003 (<u>GG 2944</u>), which states that the
Operation of gliders	standards come into force on 31 March 2003
NAM-CATS-ARO	GN 63/2003 (<u>GG 2944</u>), which states that the
Aviation recreation organisations	standards come into force on 31 March 2003
NAM-CATS-AIRS	GN 64/2003 (<u>GG 2944</u>), which states that the
Aeronautical information services	standards come into force on 31 March 2003
(now repealed)	repealed by <u>174 SOS.ANSO-P-174-NC-</u>
	AMET (NAM-CATS-A-MET) and by 175
	SOS.ANSO-P-175-NC-AIS (NAM-CATS-
27116 01 77 70	AIS)
NAM-CAT-DG	GN 65/2003 (<u>GG 2944</u>), which states that the
Conveyance of dangerous goods	standards come into force on 31 March 2003
NAM-CAT-OPS 103	GN 66/2003 (<u>GG 2944</u>), which states that the
Operation of microlight aeroplanes	standards come into force on 31 March 2003
NAM-CATS-GMR	GN 67/2003 (<u>GG 2945</u>), which states that the
General maintenance rules	standards come into force on 31 March 2003
NAM-CATS-ENVIRO	GN 68/2003 (<u>GG 2945</u>), which states that the
Noise certification	standards come into force on 31 March 2003
NAM-CATS-ATO	GN 157/2003 (GG 3024), which states that the
Aircraft training organisations	standards come into force on 1 August 2003
NAM-CATS-OPS	GN 158/2003 (<u>GG 3024</u>), which states that the
Agricultural Operations	standards come into force on 1 August 2003
NAM-CATS-AR	GN 159/2003 (GG 3025), as amended by GN
Certification procedures for products and	190/2016 (<u>GG 6096</u>), which brought the
parts and aircraft worthiness	standards into force on 1 August 2016
NAM-CATS-AR	GN 160/2003 (<u>GG 3026</u>), which states that the
Air Traffic Service Personnel Licensing	standards come into force on 1 August 2003
NAM-CATS-OPS 91	GN 186/2003 (GG 3045)
General Operating and Flight Rules	as amended by GN 70/2017 (<u>GG 6273</u>)
NAM-CATS-OPS 135	GN 187/2003 (GG 3047), as amended by GN
Air Transport Operations – Small	183/2016 (<u>GG 6096</u>), which brought the
Aeroplanes	standards into force on 1 August 2016, and as
1141001	amended by GN 72/2017 (GG 6273)
	Note that the table of contents of GG 6273
	gives the wrong number for these standards
NAM-CATS-OPS 121	GN 257/2003 (GG 3112), as amended by GN
Air Transport Operations – Large	185/2016 (<u>GG 6096</u>), which brought the
Aeroplanes	standards into force on 1 August 2016, and as
1	amended by GN 71/2017 (GG 6273)
	Note that the table of contents of GG 6273
	gives the wrong number for these
	standards.
NAM-CATS-ATS	GN 9/2004 (<u>GG 3135</u>), which states that the
Airspace and Air Transport Services	standards come into force on 23 January 2004
(now repealed)	apparently repealed by NAM-CATS Part
· · · · · · · · · · · · · · · · · · ·	179 SAR (NAM-CATS-SAR) and also
	repealed on the same date by NAM-CATS
	Part 172 ATS (NAM-CATS-ATS Issue
	version 2020), as repeated in NAM-CATS
	Part 172 ATS (NAM-CATS-ATS Issue
NAM-CATS-AMEL	version 2021) GN 54/2004 (GG 3179), which states that the
	GN 54/2004 (GG 3179), which states that the standards come into force on 1 April 2004
Aircraft Maintenance Engineer	Standards come into force on 1 April 2004
Licensing	

NAM-CATS-OPS 127	GN 55/2004 (GG 3180), as amended by GN
Air Transport Operations – Helicopters	184/2016 (<u>GG 6096</u>) which brought the
711 Transport Operations Trencopters	standards into force on 1 August 2016
NAM-CATS-OPS 136	
	GN 182/2016 (<u>GG 6096</u>), which brought the
Air Transport Operations – Free	standards into force on 1 August 2016
Balloons	
NAM-CATS-FCL 65	GN 186/2016 (<u>GG 6096</u>), which brought the
Air Traffic Services Licencing -	standards into force on 1 August 2016
Proficiency in Languages used for	
Radiotelephony Communications	
NAM-CATS-FCL 63	GN 187/2016 (<u>GG 6096</u>), which brought the
Flight Crew Licencing -Proficiency in	standards into force on 1 August 2016
Languages used for Radiotelephony	
Communications	
NAM-CATS-FCL 61	GN 188/2016 (<u>GG 6096</u>), which brought the
Air Transport Operations – Designation	standards into force on 1 August 2016
of Examiners (subsequently re-issued)	re-issued in NAM-CATS-FCL 61 Reissue
NAM-CATS-FCL 61	GN 189/2016 (GG 6096), which brought the
Flight Crew Licencing – Proficiency in	standards into force on 1 August 2016
Languages used for Radiotelephony	re-issued in NAM-CATS-FCL 61 Reissue
Communications(subsequently re-issued)	

However, note that the <u>website</u> of the Namibia Civil Aviation Authority lists additional and more recent versions of <u>technical standards</u> that have not been gazetted.

Codes: The Enforcement Code of the Namibian Civil Aviation Regulations, 2001, issued in terms of Regulation 13.01.1, is contained in General Notice 28/2020 (GG 7100).

Notices: GN 296/2018 (GG 6767) identifies aviation participants and the dates on which such participants must have aviation security programmes in place.

GN 5/2021 (GG 7446) vests certain assets in the Namibia Civil Aviation Authority with effect from 31 July 2020. GN 254/2024 (GG 8428) also vests certain assets in the Namibia Civil Aviation Authority.

Designations: The Executive Committee of the United Hang Gliding Association of Namibia is named as the designated body to give effect to regulation 149.01.2(1) of the Civil Aviation Regulations, 2001 (GN 98/2005, GG 3447).

Appointments: Members and alternate members of the Board of the Namibia Civil Aviation Authority are announced in GN 261/2016 (GG 6164). Board members are also announced in GN 5/2021 (GG 7446).

Related international agreements: Several international treaties are annexed to the Act:

Schedule 1: "Convention on International Civil Aviation, signed at Chicago, on 7 December 1944 (Chicago Convention)". Note that the version of the Convention in the Schedule does not accurately reflect the amendments which have been agreed to, and not agreed to, by Namibia.

Convention on International Civil Aviation (Chicago Convention), 1944

Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Russian Text], Montreal, 1977

Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (Chicago, 1944), Montreal, 1977

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 83bis], Montreal, 1980

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 3bis], Montreal, 1984

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 56], Montreal, 1989

- Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], Montreal, 1990
- *Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Arabic Text], Montreal, 1995
- *Protocol on the Authentic Quinquelingual Text of the Convention on International Civil Aviation, Montreal, 1995
- *Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Chinese Text], Montreal, 1998
- *Protocol on the Authentic Six-Language Text of the Convention on International Civil Aviation (Chicago, 1944), Montreal, 1998
- **Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], Montreal, 2016
- **Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 56], Montreal, 2016

Note: See the entry for this Convention in the **Namlex Appendix** for a discussion of the differences between the international approach to the subsidiary documents issued in terms of the Convention and the approach embodied in the definition of this Convention in section 1 of the Act.

- Schedule 2: "International Air Services Transit Agreement signed in Chicago on 7 December 1944".

 Note that while this Convention may be part of Namibia's domestic law, Namibia is *not* a party to the Agreement in terms of international law.
- Schedule 3: "Convention on Offences and Certain Other Acts Committed on Board Aircraft, Signed at Tokyo, on 14 September 1963 (Tokyo Convention)"

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963

Schedule 4: "Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague, on 16 December 1970 (the Hague Convention 1970)"

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970

Schedule 5: "Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, on 23 September 1971 (Montreal Convention 1971)"

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Note that this Convention is generally referred to as the "Sabotage Convention", whereas the "Montreal Convention" usually refers to the "Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999". Note also that the Protocol amending this Convention is presented separately in Schedule 6.

Schedule 6: "1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971"

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Supplementary Protocol), Montreal, 1988.

COMMISSIONS

Commission of Inquiry into the Aviation Regulatory Practices of the Directorate: Civil Aviation in the Ministry of Works, Transport and Communication (Proc. 9/1997, <u>GG 1611</u>).

See also GN 153/1997 (GG 1611).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

INTERNATIONAL LAW

African Civil Aviation Commission Constitution (AFCAC), 1969

The Constitution of the African Civil Aviation Commission, 2009 (Revised Version) will upon its entry into force abrogate and supersede the original African Civil Aviation Commission Constitution, 1969 for its member states (Article 26 of the Revised Constitution). The Revised Constitution came into force provisionally on 11 May 2010 after signature by 15 AU member states, and will come into force definitively after ratification by 15 AU member states.

*Charter Establishing the SADC Aviation Safety Organisation (SASO), 2015

Constitution of the African Civil Aviation Commission (AFCAC), 2009 (Revised Version)

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Supplementary Protocol), Montreal, 1988

Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999

Convention on International Civil Aviation (Chicago Convention), 1944

Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Russian Text], Montreal, 1977

Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (Chicago, 1944), Montreal, 1977

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 83bis], Montreal, 1980

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 3bis], Montreal, 1984

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 56], Montreal, 1989

Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], Montreal, 1990

*Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Arabic Text], Montreal, 1995

*Protocol on the Authentic Quinquelingual Text of the Convention on International Civil Aviation, Montreal, 1995

*Protocol relating to an Amendment to the Convention on International Civil Aviation [Final Paragraph, Chinese Text], Montreal, 1998

*Protocol on the Authentic Six-Language Text of the Convention on International Civil Aviation (Chicago, 1944), Montreal, 1998

**Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)], Montreal, 2016

**Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 56], Montreal, 2016

Convention on International Interests in Mobile Equipment (Cape Town Treaty), 2001

Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Aircraft Protocol), 2001

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963

**Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol), 2014

**Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention), 2010

BIRTHS AND DEATHS

General Law Amendment Ordinance 13 of 1962, section 7 🕎 🙀

Summary: Section 7 of this Ordinance (<u>OG 2409</u>) makes concealment of the birth of a child a criminal offence.

Regulations: There is no provision in this section for regulations.

Burial Place Ordinance 27 of 1966 📲 🙀

Summary: This Ordinance (OG 2728) prohibits the desecration or disturbance of graves and regulates exhumation.

Regulations: The Ordinance makes no provision for regulations.

Crematorium Ordinance 6 of 1971 🗐 🔄

Summary: This Ordinance (<u>OG 3182</u>) provides for the establishment, maintenance, management, use and control of crematoria.

Regulations: Regulations relating to Crematoria and the Cremation of Human Remains are contained in GN 331/1975 (OG 3503), as amended by GN 139/1978 (OG 3755).

See also CIVIL REGISTRATION.

See also NATIONAL HERITAGE (grave sites).

'BLACKS'

Native Administration Proclamation 15 of 1928, sections 17-18 and 23-27

Summary: This Proclamation (originally published in <u>OG 284</u>) was the South West African version of the South African Bantu Administration Act 38 of 1927.

The surviving portions of this Proclamation (sections 17, 18, 23, 24, 25, 26 and 27 and any regulations made in terms of those sections) deal primarily with marriage and succession in respect of "natives".

The Proclamation, with the exception of Chapter IV on Marriage and Succession, came into force in all of South West Africa on 1 January 1930 (GN 165/1929) (OG 350). Selected portions of Chapter IV – section 17(6) and sections 18(3) and (9) – were subsequently applied to the area north of the Police Zone with retroactive effect from 1 August 1950 (GN 67/1954) (OG 1818).

The whole of section 18 and its accompanying regulations were made applicable to the whole of South West Africa with the exception of Owambo, Kavango and Caprivi by RSA Proclamation R.192/1974 (RSA GG 4164).

Thus, only sections 17(6) on marriage and sections 18(3) and 18(9) on succession apply in Owambo, Kavango and Caprivi (with effect from 1950). None of section 17 on marriage applies elsewhere, but the whole of section 18 on succession applies to the remainder of Namibia (with effect from 1974).

The overall result is as follows, regarding the provisions that remain in force:

- section 17(6) applies north of the Police Zone with effect from 1 August 1950, but section 17 is not otherwise applicable anywhere in Namibia;
- section 18(3) and (9) apply north of the Police Zone with effect from 1 August 1950, and the whole of section 18 applies everywhere in Namibia *other than* Kavango, Eastern Kavango and Caprivi with effect from 15 February 1974;
- sections 23-27 apply everywhere in Namibia with effect from 1 January 1930.

Amendments: The Proclamation is amended by Proc. 25/1937 (OG 722), Proc. 24/1941 (OG 915), Proc. 35/1943 (OG 1080), General Laws Amendment Ordinance 11 of 1954 (OG 1846), South West Africa Native Affairs Administration Ordinance 4 of 1955 (OG 1899), RSA Proc. 360/1968 (RSA GG 2227), RSA Proc. 41/1973 (RSA GG 3782), AG 46/1978 (OG 3779), Act 27/1985 (OG 5147), Damara Community and Regional Authorities and Paramount Chief and Headman Ordinance 2 of 1986 of the Damara Legislative Assembly (published in OG 5355), First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 14/1989 (OG 5726) and Act 23/1992 (OG 470).

The Native Administration Proclamation Amendment Act 27 of 1985 (OG 5147) repealed sections 7-16 and sections 19-22 of this Proclamation, as well as section 18(3)-(8) and (9)(c), with no savings provision for anything done pursuant to those sections.

The Traditional Authorities Act 17 of 1995 (<u>GG 1158</u>), which was brought into force on 31 August 1992 by GN 118/1992 (<u>GG 472</u>), repeals the remaining sections of the Proclamation *with the exception of* sections 17, 18, 23, 24, 25, 26 and 27; the repeal extends to any regulations made in terms of the repealed sections.

The Estates and Succession Amendment Act 15 of 2005 (<u>GG 3566</u>) repeals portions of section 18, but provides that "the rules of intestate succession that applied by virtue of those provisions before the date of their repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed".

The Repeal of Obsolete Laws Act 21 of 2018 (<u>GG 6812</u>), which was brought into force by GN 32/2019 (<u>GG 6851</u>), repeals the provisions in the Schedule referred to in section 26 of the Proclamation in so far as those provisions amend the Native Reserves Trust Funds Administration Proclamation No. 9 of 1924.

Regulations: The Traditional Authorities Act 17 of 1995 (GG 1158) repeals all of the provisions of the Native Administration Proclamation 15 of 1928 not previously repealed by the Native Administration Proclamation Amendment Act 27 of 1985 (OG 5147), except for sections 17, 18, 23, 24, 25, 26 and 27 "and any regulations made under any of those sections".

Regulations relating to the "administration and distribution of native estates" in the area north of the Police Zone were issued pursuant to section 18(9) in GN 70/1954 (OG 1818). These regulations were subsequently extended to the whole of South West Africa with the exception of Owambo, Kavango and Caprivi by RSA Proc. R.192/1974 (RSA GG 4164).

Application of law: The Police Zone is defined in the First Schedule to the Prohibited Areas Proclamation 26 of 1928 (OG 296), as amended by GN 105/1933 (OG 522), GN 83/1938 (OG 752), GN 126/1938 (OG 760), GN 375/1947 (OG 1331), GN 216/1950 (OG 1542), GN 255/1950 (OG 1554), GN 2/1953 (OG 1736), GN 198/1954 (OG 1854), GN 38/1959 (OG 2182) and GN 3/1961 (OG 2289), substituted by GN 222/1961 (OG 2334) and amended by GN 165/1962 (OG 2425).

The Proclamation was affected by RSA Proc. 2/1973 (RSA GG 3757) (criminal jurisdiction of native commissioners).

Comment: Proclamation 15 of 1928 was once supplemented by the Native Administration Proclamation 11 of 1922 (OG 82), which was repealed in its entirety by the Local Authorities Act 23 of 1992 (GG 470), effective 31 August 1992.

Cases:

Mofuka v Mofuka 2001 NR 318 (HC), 2003 NR 1 (SC)

Berendt & Another v Stuurman & Others 2003 NR 81 (HC) (declares sections 18(1), (2) and (9) unconstitutional with effect as of 30 June 2005; time period extended to 30 December 2005 by Government of the Republic of Namibia v The Master of the High Court & 3 Others, case no 105/2003; see Estates and Succession Amendment Act 15 of 2005)

Kavendjaa v Kaunozondungo NO & Others 2005 NR 450 (HC) (section 18 and related regulations) Nakashololo v Nakashololo 2007 (1) NR 27 (HC) (factual enquiry finds joint oral declaration to marriage officer before solemnisation of marriage, attested to by marriage officer, sufficient to make marriage in community of property in terms of section 17(6))

Valindi v Valindi & Another 2009 (2) NR 504 (HC) (factual enquiry concerning section 17(6)) EN v SN 2014 (4) NR 1193 (HC) (section 17(6))

Meroro v Minister of Lands, Resettlement and Rehabilitation & Others 2015 (2) NR 526 (SC)(discusses section 18(9) and related regulations)

Shipanga v Shipanga (I 259-2012) Shipanga v Kautwima (I 3962-2012) [2014] NAHCMD 318 (30 October 2014) (although section 17(6) is arguably unconstitutional, which is not decided in this case, a declaration of unconstitutionality would not operate retrospectively)

MN v LI & Another 2022 (1) NR 135 (SC) (application of section 17(6))

Dengeinge v Uugwanga 2023 (2) NR 348 (HC) (remark on this Proclamation in dicta at para 33:

[33] ... one cannot be oblivious of the proprietary consequences of the marriages concluded north of the police zone which, according to the provisions of the Native Administration Proclamation 15 of 1928, the default position of such marriages is that they automatically produce a proprietary regime of property being out of community of property, unless the parties had made a declaration prior to marrying that they want their property regime to be in community of property. It raises a legitimate question why such a system should continue to be maintained in modern Namibia?)

Hamupolo v Simon NO & Others 2024 (2)NR 462 (SC) (section 17(6): "at any time within one month previous to the celebration of such marriage" interpreted to mean that the relevant declaration must be made "at any time one month before the month that the solemnisation of the marriage takes place"; the purpose is to

provide black spouses with an opportunity to reflect on their intention to marry in community of property; court finds that the marriage is out of community of property since no declaration was filed under 17(6), but in community of property as between the spouses to reflect their intention).

Commentary:

Law Reform and Development Commission, Report on Uniform Consequences of Common Law Marriages (Repeal of Section 17(6) of Native Administration Proclamation, 1928 (Proclamation 15 of 1928), LRDC 11, 2003, available here

Legal Assistance Centre, Marital Property in Civil and Customary Marriages: Proposals for Law Reform, 2005, Legal Assistance Centre, available here

Legal Assistance Centre, Customary Laws on Inheritance in Namibia: Issues and questions for consideration in developing new legislation, 2005, available here.

Additional information: The history of the application of this Proclamation to persons in various parts of Namibia is complex; as one judicial opinion recently stated, "any discussion of the wider aspects of the Proclamation and the regulations made thereunder has always created more heat than light" (*Nakashololo v Nakashololo* 2007 (1) NR 27 (HC) at 28I). For this reason, some excerpts on the Proclamation's history and purpose have been included below.

The Native Administration Proclamation 15 of 1928 is modelled on South Africa's Black Administration Act 38 of 1927. The Administrator of South West Africa gave the following explanation of the Proclamation's purpose to the League of Nations:

It may be stated that to meet the position legislation is being introduced which a) will simplify procedure in native cases generally; b) will give Native Commissioners power to deal with all matrimonial cases and so cheapen and expedite proceedings. There will, of course, be a right of appeal to the High Court; c) will secure the inheritances under native law of the offspring of a marriage or alliance contracted under native custom in the event of a marriage in accordance with civil law being entered into subsequently; d) will simplify marriage procedure." (UG 31/1928: para 41)

The Native Administration Proclamation 15 of 1928, with the exception of Chapter IV on Marriage and Succession, generally came into force in all of South West Africa on 1 January 1930 (GN 165 of 11 December 1929).

Selected portions of Chapter IV – section 17(6) and sections 18(3) and (9) – were subsequently applied to the area north of the Police Zone with retroactive effect from 1 August 1950 (GN 67 of 1 April 1954).

On 1 April 1954, regulations concerning inheritance were promulgated, in terms of section 18(9) of the Proclamation, in GN 70 of 1 April 1954 (hereinafter referred to as 'Regulation GN 70'). These regulations were by their own terms applicable only "to native estates in that portion of the territory north of the Police Zone".

The Police Zone is the area south of ('within') an imaginary line drawn through Namibia. It is defined in the First Schedule to Proclamation 26 of 1928. The area north of ('outside') the Police Zone was primarily viewed as labour reserves during the early colonial period. During German colonization, there was no direct colonial rule of this area. When South Africa assumed administration of Namibia, it had no clear policy on how to deal with this area.

The whole of section 18 of the Proclamation and Regulation GN 70 was made applicable to the whole of South West Africa with the exception of Owambo, Kavango and Caprivi by RSA Proclamation R.192 of 15 February 1974.

Technically, RSA Proclamation R.192 of 15 February 1974 excludes the areas "referred to paragraphs (d), (e) and (f) of section 2(1) of the Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act 54 of 1968)".

The result was as follows:

(1) In Owambo, Kavango and Caprivi, sections 17(6) on marriage applied to marriages between Africans, and sections 18(3) and 18(9) on succession and Regulation GN 70 applied (with effect from 1950).

- (2) In all of Namibia north of the old Police Zone, section 17(6) on marriage applied to marriages between Africans (with effect from 1950).
- (3) Inside the old Police Zone, none of section 17 on marriage applied.
- (4) In all of Namibia *other than* Owambo, Kavango and Caprivi, the whole of section 18 on succession, including Regulation GN 70, applied (with effect from 1974).

The Native Administration Proclamation Amendment Act 27 of 1985 repealed sections 18(3), 18(4), 18(5), 18(7), 18(8) and 18(9)(c).

In *Berendt & Another v Stuurman & Others*, 2003 NR 81 (HC), the High Court declared sections 18(1), 18(2) and 18(9) and Regulation GN 70 to be in conflict with the Constitution.

The Estates and Succession Amendment Act 15 of 2005 (<u>GG 3566</u>) repeals subsections 18(1), 18(2), 18(9) and 18(10), but states:

Despite the repeal of the provisions referred to in subsection (1), the rules of intestate succession that applied by virtue of those provisions before the date of their repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed.

This would appear to leave the subsections in question, along with Regulation GN 70, applicable to the same persons in the same parts of Namibia as before the *Berendt* case. However, the constitutionality of the approach taken by the Estates and Succession Amendment Act 15 of 2005 is an open question.

Legal Assistance Centre, 2010

The Western concept of a civil marriage and the legal consequences thereof were foreign to the indigenous peoples of Southern Africa during the pre-colonial era. Theirs was one of (potentially) polygynous customary unions concluded without formal officiation according to the tradition of each tribe and cemented by bridewealth agreements between the families of the partners in such unions. The arrival of European colonial powers in Southern Africa and their 'mission to 'civilize' their colonies' (T W Bennett Application of Customary Law in Southern Africa (1985) at 138) had a far-reaching impact upon African customary legal systems. A choice was given to members of those indigenous groups to conclude civil marriages. The personal and proprietary consequences of those marriages were, however, not only foreign to the indigenous people but, if so contracted, had the potential to cause serious prejudice to other parties in existing customary unions.

Hence, uncoordinated attempts were made prior to 1928 to address those concerns by legislation (see J M T F Labuschagne 'Spanningsveld tussen die Psigo-Kulturele en die Juridiese: Opmerkinge oor die Vermonsregtelike gevolge van gemeenregtelike Huwelike tussen Swartes' *THRHR* (1995) 302 at 303-304). From 1 January 1929 the position was comprehensively regulated in South Africa by s 22 of the Native Administration Act, 1927. Being a mandated territory of the Republic of South Africa at the time, the legislative authorities in the then South West Africa soon followed suit with the promulgation of the Native Administration Proclamation, 1928. Section 17 dealt with 'Marriage' in almost identical terms as s 22 of Act 38 of 1927 (RSA).

However, whereas s 22 became of force and effect in South Africa from the beginning of 1929, s 17 of Proc 15 of 1928 did not. In terms of s 27 of the Proclamation, the Administrator had to fix the date on which it would commence by notice in the Gazette and he could exclude from application in such notice any specified part or provision of the Proclamation 'which shall thereupon not apply until brought into operation by a further notice'. When the Administrator brought the Proclamation into operation with effect from 1 January 1930 by Government Notice 165 of 11 December 1929, he expressly excluded Chap IV (which contains s 17). That chapter, with all the legislative intentions to protect customary unions, was never applied in Namibia. That is, except for ss 17(6) and 18(3) and (9), which were applied with effect from 1 August 1950 only to the area north of the 'Police Zone' as defined in the first schedule to the Proclamation. That area includes Ovamboland.

Section 17(6) of the Proclamation (as amended by s 6 of Act 27 of 1985) provides as follows:

'A marriage between Blacks, contracted after the commencement of this Proclamation, shall not produce the legal consequences of marriage in community of property between the spouses: Provided that in the case of a marriage contracted otherwise than during the subsistence of a customary union between the husband and any woman other than the wife it shall be competent for the intending spouses at any time within one month previous to the celebration of such marriage to declare jointly before any magistrate or marriage officer (who is hereby authorised to attest such declaration) that it is their intention and desire that community of property and of profit and loss shall result from their marriage, and thereupon such community shall result from their marriage.'

... the plaintiff did not challenge the constitutionality of s 17(6)... and did not attack the validity of GN 67 of 1954 or the retroactive effect thereof on the pleadings or in argument. Hence, those questions do not arise for decision and I shall refrain from expressing any view thereon....

The legislative intention behind the promulgation of the subsection, according to Bennett (op cit at 155) (dealing with an almost identical s 22(6) of the RSA Act), was to ensure that 'the parties to the marriage would not be caught unawares by a property system with which they would be unfamiliar'.

The effect of this section on the legal consequences of civil marriages between Blacks contracted after 31 July 1950 in the area defined as the 'Police Zone' is significant. No longer does community of property follow unless excluded – rather, the converse applies: The marriage is out of community of property, unless declared or agreed otherwise. After a careful and authoritative analysis of s 22(6) of the RSA Act, Watermeyer CJ concluded as follows in *Ex parte Minister of Native Affairs: in re Molefe v Molefe* (1946 AD 315 at 320):

'The proprietary rights of native spouses who contract a valid marriage at a time when no customary union subsists between the husband and another woman, and who do not make a declaration in terms of s 22(6) of Act 38 of 1927, will, except in so far as there is a specific statutory provision, depend upon whether or not parties have entered into any antenuptial agreement with regard to their proprietary rights after marriage. If they have entered into such an antenuptial agreement then their proprietary rights will depend upon the legal effects, whatever they may be, of such agreement. If they have not entered into any such antenuptial agreement then, since community of property, and of profit and loss, does not result from marriage, each spouse retains, subject to any statutory provision, the ownership of his or her own property, but the control of the property of the spouses vests in the husband by virtue of his marital power.'

Those remarks apply, *mutatis mutandis*, to s 17(6).

Mofuka v Mofuka 2001 NR 318 (HC) at 320B-322E

COMMENT ON

Namundjebo-Tilahun NO & Another v Northgate Properties (Pty) Ltd & Others (SA 33/2011) [2013] NASC 12 (07 October 2013)

Note that certain statements in this opinion are, with respect, confusing. The opinion notes at para 32 that "in terms of s 25(1) of the Black Administration Act, No 38 of 1927, read with s 21(1) and 48(1) of the Black Trust and Land Act, No 18 of 1936 and in terms of Government Notice R.188 of 1969, the then State President of South Africa issued certain Black Areas Land Regulations which also applied to the then South West Africa".

The *Black Administration Act 38 of 1927* was apparently never applicable to South West Africa; the equivalent law in South West Africa was the Native Administration Proclamation 15 of 1928.

The Black Areas Land Regulations in RSA Proc. R.188 of 1969 (RSA GG 6364) were issued in terms of the *Development Trust and Land Act 18 of 1936*, which was repealed in Namibia by the Communal Land Reform Act 5 of 2002 (brought into force on 1 March 2003). There was no savings clause in the Communal Land Reform Act 5 of 2002 Act 5 of 2002 for regulations issued under the repealed laws.

Black Reserves (South West Africa) Act 44 of 1945 📲 😓

Summary: This Act (<u>SA GG 3514</u>), originally called the "Native Reserves (South-West Africa) Act", authorises the disestablishment of one area reserved for Black occupation, in exchange for the establishment of another. There were no amendments to the Act in South Africa prior to Namibian independence.

Applicability to SWA: This Act applies specifically to South West Africa by virtue of its subject matter. It governed only one particular transaction.

The terminology in the Act is affected by the global changes made by the Bantu Laws Amendment Act 42 of 1964 (RSA) (RSA GG 801), read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 (RSA) (RSA GG 240) and brought into force on 1 January 1965 by RSA Proc. 339/1964 (RSA GG 967), and by section 17 of the Second Bantu Laws Amendment Act 102 of 1978 (RSA) (RSA GG 6095), which was brought into force on 1 August 1978 by RSA Proc. R.198/1978 (RSA GG 6120).

Regulations: The Act makes no provision for regulations.

See also Racial Discrimination Prohibition Act 26 of 1991 (CRIMINAL LAW AND PROCEDURE).

See also CUSTOMARY LAW.

See also *Crown Land Disposal Ordinance 57 of 1903 (Transvaal)* (reservation of land for the use of "aboriginal natives, coloured persons and Asiatics") (LAND AND HOUSING).

See also Black Authorities Service Pensions Act 6 of 1971 (PENSIONS).

BUSINESS

Close Corporations Act 26 of 1988 🕎 📻

Summary: This Act (originally published in <u>OG 5658</u>) provides for the establishment of close corporations. It was brought into force on 1 March 1994 by Proc. 9/1994 (<u>GG 820</u>).

Amendments: The Act is substantially amended by Act 8/1994 (<u>GG 891</u>), which came into force on 1 March 1994, *except for* sections 5, 14 and 30 of the amending Act which came into force on 25 July 1994 (section 31 of Act 8/1994).

The Married Persons Equality Act 1 of 1996 (<u>GG 1316</u>), brought into force on 15 July 1996 by GN 154/1996 (<u>GG 1340</u>), deletes section 32(2).

The Act is also amended by the Business and Intellectual Property Authority Act 8 of 2016 (<u>GG 6105</u>), which was brought into force with effect from 16 January 2017 by GN 293/2016 (<u>GG 6197</u>).

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 23.

Act 5/2023 (GG 8138) amends section 1 and inserts section 16A.

Regulations: No pre-independence regulations have been located. Post-independence regulations are contained in GN 43/1994 (<u>GG 829</u>). Regulation 17(1) is amended by GN 83/1994 (<u>GG 863</u>), GN 97/2006 (<u>GG 3658</u>), GN 294/2012 (<u>GG 5094</u>), GN 20/2015 (<u>GG 5668</u>) (which withdraws GN 294/2012), GN 310/2019 (<u>GG 7032</u>) and GN 27/2021 (<u>GG 7462</u>).

- (1) All of the amendments prior to 2015 affect regulation 17(1), which is substituted by GN 20/2015. GN 20/2015 withdraws one of the previous amendments to that subregulation. None of the other amendments have been withdrawn or repealed even though they are now irrelevant.
- (2) GN 310/2019 (<u>GG 7032</u>) states that the regulations were amended by Government Notice 19 of 13 February 2015. This reference is incorrect; it should refer to Government Notice 20 of 13 February 2015. (3) GN 27/2021 (<u>GG 7462</u>) states that the regulations were amended by Government Notice 19 of 13 February 2015. This reference is incorrect; it should refer to Government Notice 20 of 13 February 2015. This notice also omits to mention Government Notice 310 of 31 October 2019.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096), which places certain duties on persons carrying on certain kinds of businesses.

Notices: GN 96/2006 (<u>GG 3658</u>), as amended by GN 295/2012 (<u>GG 5094</u>), identifies professions whose members are qualified to perform the duties of an accounting officer. GN 19/2015 (<u>GG 5668</u>) identifies professions whose members are qualified to perform the duties of an accounting officer; it withdraws GN 295/2012 but makes no mention of GN 96/2006.

A public notice containing a helpful explanatory note on the registration of close corporations was published in General Notice 67/2011 (GG 4679).

Notices on the registration and deregistration of specific close corporations are not recorded here.

Related laws: The Companies Amendment Act 3 of 1989 amended the *Companies Act 61 of 1973* to provide for the conversion of close corporations into companies and vice versa; this amending Act was repealed by the Companies Act 28 of 2004.

Cases:

Oshuunda CC v Blaauw & Another 2001 NR 230 (HC) Doeseb & Others v Kheibeb & Others 2004 NR 81 (HC), 2006 (2) NR 702 (SC)

- Bahlsen v Nederloff & Another 2006 (2) NR 416 (HC)
- Norval & Others v Consolidated Sugar Investments (Namibia) (Pty) Ltd & Others 2007 (2) NR 689 (HC)
- Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC)
- Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its "alter ego")
- De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC), 2012 (1) NR (SC) (section 64(1))
- S v Kapia & Others 2009 (1) NR 52 (HC) (formulation and particularity of charges of various offences under Act)
- Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC) (effect of deregistration under section 26)
- Oberholster v Wolfaardt & Others 2010 (1) NR 293 (HC) (discussion of remedies under the Act which could have been utilised by respondents to resolve dispute brought to Court on another basis)
- Marot & Others v Cotterell 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property owned by the close corporation by virtue of their membership but rather by agreement); confirmed in Marot & Others v Cotterell 2014 (2) NR 340 (SC)
- Okorusu Flurospar (Pty) Ltd v Tanaka Trading CC & Another 2016 (2) NR 486 (HC) (section 64)
- Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 35 upheld against constitutional challenge); confirmed on appeal in Wyss & Another NO v Hungama & Others 2018 (2) NR 596 (SC) (section 35; discussion of general purpose and benefits of close corporations at paras 15-18)
- Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (section 25) Goike v Von Zelewski & Others 2017 (1) NR 260 (HC) (sections 36 and 49)
- Zhao v Erf One Eight Five Three (CC/2007/0071) Klein Windhoek Property CC & One Other Case 2017 (2) NR 478 (HC) (sections 68 and 69)
- Fischer v Seelenbinder & Another 2017 (4) NR 1214 (HC) (order under section 49 as well as common law); on the interpretation and implementation of this order, see Fischer v Seelenbinder & Another 2020 (2) NR 596 (SC) (dismissal of appeal against spoiliation order) and Fischer v Seelenbinder & Another 2021 (1) NR 35 (SC) ("retirement" versus ceasing to be a member of a close corporation; sections 44(3) and 46(a)-(b) of the Act)
- Leopard Tours Care and Camping Hire CC & Others v Dannecker 2017 (1) NR 50 (HC); Dannecker v Leopard Tours Care and Camping Hire CC & Others 2019 (1) NR 246 (SC) (section 63)
- Woermann v Kawana & Others 2020 (3) NR 899 (HC) (sections 12, 29 44(1) and 49(1))
- Swakop Uranium (Pty) Ltd v Mclaren & Another 2023 (1) NR 1 (SC) (meaning of "application" in section 64(1); approach in Teichmann Plant Hire (Pty) Ltd v Coetzee & Another [2017] NAHCMD 61 not followed).

Companies Act 28 of 2004 🕎 🙀

Summary: This Act (originally published in <u>GG 3362</u>) regulates companies comprehensively. It was brought into force on 1 November 2010 by GN 172/2010 (<u>GG 4536</u>).

Repeals: The Act repeals the Companies Act 61 of 1973, the Registration and Incorporation of Companies in South West Africa Proclamation 234 of 1978 (which functioned as a transfer proclamation for the Companies Act 61 of 1973), and sections 31 and 32 of the Married Persons Equality Act 1 of 1996.

Amendments: Act 9/2007 (<u>GG 3969</u>), which was brought into force simultaneously with the Act on 1 November 2010 by GN 237/2010 (<u>GG 4595</u>), amends section 82.

The Act is also amended by the Business and Intellectual Property Authority Act 8 of 2016 (<u>GG 6105</u>), which was brought into force with effect from 16 January 2017 by GN 293/2016 (<u>GG 6197</u>).

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends sections 56, 173, 400, 421 and Schedule 1.

Act 4/2023 (GG 8137) amends sections 1 and 108, repeals section 107 and inserts section 122A.

Savings: Section 450 of the current Act states:

Regulations made under the repealed Act [RSA Companies Act 61 of 1973] relating to the winding-up and judicial management of companies, including former rules not repealed by regulation 26 of the Regulations in terms of section 15 of the repealed Act [RSA Companies Act 61 of 1973], for the Winding-up and Judicial Management of Companies, promulgated by GN No R.2490 of 28 December 1973 and which have in terms of section 16(1) of the repealed Act [RSA Companies Act 61 of 1973] been deemed to have been made under section 15 of that Act, as they exist immediately prior to the coming into operation of this section, must notwithstanding section 451 remain in force and are deemed to be regulations made under section 13 of this Act.

Section 442 (read with Schedule 5) of the repealed RSA Companies Act 61 of 1973 (RSA GG 3972) repealed the SA Companies Act 46 of 1926 (SA GG 1562). However, section 16 of the RSA Companies Act 61 of 1973 states:

- (1) Any regulations or rules made under section 220 of the repealed Act [SA Companies Act 46 of 1926] shall be deemed to have been made under section 15 of this Act and shall remain in force until repealed by regulation.
- (2) The Third and the Fourth Schedules to the repealed Act [SA Companies Act 46 of 1926] shall, notwithstanding the repeal of that Act, remain in force and shall be deemed to be regulations made under section 15 of this Act until repealed by regulation.
- (3) Any proclamation issued under any law repealed by this Act and in force at the commencement of this Act shall remain in force until repealed by regulation.

Regulations: Companies Administrative Regulations, 2010 are contained in GN 173/2010 (GG 4536), as amended by GN 207/2016 (GG 6113) (which amends Annexure 3 by substituting Form CM 23), by GN 310/2017 (GG 6482) (which amends Regulation 40), by GN 311/2019 (GG 7032) (which substitutes Annexure 1) and by GN 294/2020 (GG 7390) (which substitutes Annexure 3, containing Forms CM 1 to CM 52).⁵⁸

The effect of the chain of savings provisions quoted above is that the following two sets of preindependence regulations appear to survive:

(1) **Regulations for the Winding-up and Judicial Management of Companies** issued in terms of the *Companies Act 61 of 1973* and contained in GN R.2490/1973 (<u>RSA GG 4128</u>) remain in force, as amended by RSA GN R.1424/1980 (<u>RSA GG 7119</u>).

With respect to amendments to these regulations, note that section 23 of the RSA Registration and Incorporation of Companies in South West Africa Proclamation 234 of 1978 (RSA GG 6166), dated 22 September 1978 (as amended by the RSA Registration and Incorporation of Companies in South West Africa Amendment Proclamation 23 of 1979 published in RSA GG 6294), states in section 23 that "the provisions of sections 3(4), 4 and 4bis of the Executive Powers Transfer (General Provisions) Proclamation, 1977, of the Administrator-General, shall apply mutatis mutandis in relation to the Act as if this Proclamation were a Transfer Proclamation referred to in that Proclamation: Provided that in such application any reference in the said provisions to section 3(1) of that Proclamation shall be deemed to be deleted". Section 3(4) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, provides that amendments to regulations made after the date of transfer in South Africa did not apply to SWA unless they explicitly stated this. All of the amendments to these regulations were after the

⁵⁸ Regulation 63 of these regulations contains the following repeals:

⁽¹⁾ The Companies Administrative Regulations, 1973, promulgated under Government Notice R,1948 of 19 October 1973, as amended by Government Notices R.2384 of 14 December 1973, R.119 of 17 January 1975, R.1665 of 10 September 1976, R.1911 of 22 October 1976, R787 of 7 May 1977, R.2044 of 7 October 1977, R.1390 and R.1391 of 30 June 1978 and Government Notice No. 13 of 12 February 1997.

⁽²⁾ The **Standing Advisory Committee Regulations, 1973**, promulgated by Government Notice R.1949 of 19 October 1973.

date of transfer. However, one set of amendments to the regulations was made explicitly applicable to SWA: RSA GN R.1424/1980 (RSA GG 7119).

The regulations were further amended in South Africa prior to Namibian independence by RSA GN R.1682/1983 (RSA GG 8828) and RSA GN R.612/1989 (RSA GG 11792). However, neither of these amendments makes any mention of SWA.

(2) Regulations ("rules") 16-23 of the Regulations for the Winding-up and Judicial Management of Companies, 1926, made under *SA Companies Act 46 of 1926* and contained in SA Government Notice 2270/1926 (SA GG 1594), remain in force.

SA Government Notice 1250/1939 (<u>SA GG 2668</u>), made in terms of section 220 of the *SA Companies Act 46 of 1926*, repealed regulation ("rule") 50. ⁵⁹

Regulation 26 of the **Regulations for the Winding-up and Judicial Management of Companies**, **1973**, made in terms of the *RSA Companies Act 61 of 1973* and contained in RSA GN R.1249/1973 (RSA GG 4128), repeals regulations ("rules") 1 to 15 and 24 to 49:

REPEAL OF REGULATIONS

26. Rules 1 to 15 inclusive and rules 24 to 49 inclusive as published in Government Notice 2270 of 1926, as amended by Government Notices 1250 of 1939 and 239 of 1953, and the fourth and fifth tables of the Third Schedule and Farms N to Q inclusive of the Fourth Schedule to the Companies Act, 1926 (Act 40 of 1926), are hereby repealed.

Repealed regulations: Other repeals to the regulations issued under the Companies Act, 1926 were made by the **Companies Administrative Regulations**, 1973, made in terms of the *Companies Act 61 of 1973*, contained in RSA GN R.1948/1973 (RSA GG 4055) — and were applicable to Namibia until they were repealed by the **Companies Administrative Regulations**, 2010 in GN 173/2010 (GG 4536) made in terms of the current Act; see regulation 37 read together with Schedule 3:

SCHEDULE 3

EXTENT OF REPEAL OF REGULATIONS, SCHEDULES TO REPEALED ACT AND PROCLAMATION

- 1. The whole of the First, Second and Third tables in the Third Schedule to the Companies Act, 1926, and Government Notices 1204 of 15 December 1961 and 848 of 5 June 1964.
- 2. The whole of the Forms A to M, inclusive, and Form R in the Fourth Schedule to the Companies Act, 1926, and Government Notices 1715 of 24 September 1926, 1749 of 28 September 1926, 2722 of 10 December 1926, 1268 of 25 August 1939, 1269 of 25 August 1939, 1051 of 30 June 1944, 2521 of 31 October 1952, 388 of 16 March 1962, 538 of 5 April 1962, 1286 of 10 August 1962, 847 of 5 June 1964, R.1855 of 11 October 1968 and R.32G8 of 1 October 1969.
 - 3. The whole of Proclamation 157 of 17 July 1953.
- 4. The whole of the Registration Regulations promulgated by Government Notice 1712 of 24 September 1926 and Government Notices 1251 of 18 August 1939, 2522 of 31 October 1952/990 of 13 May 1955,1959 of 30 November 1962 and R.1566 of 31 August 1973.

As noted above, although section 442 of the repealed *Companies Act 61 of 1973* (RSA GG 3972) repealed the *Companies Act 46 of 1926* (SA GG 1562), section 16(2) of the *Companies Act 61 of 1973* provided that the Third and the Fourth Schedules to the repealed *Companies Act 46 of 1926* remained in force and were deemed to be regulations made under section 15 of this Act until repealed by regulation. However, the **Third Schedule to the repealed** *Companies Act 46 of 1926* seems to have been entirely repealed.

Regulation 26 of the 1973 Regulations for the Winding-up and Judicial Management of Companies, issued under the RSA Companies Act 61 of 1973 and contained in RSA GN R.1249/1973 (RSA GG 4128), repeals the Fourth and Fifth tables. Regulation 37 read together with Schedule 3 of the Companies Administrative Regulations, 2010, made under the current Companies Act 28 of 2004 and contained in GN 173/2010 (GG 4536), repeals the whole of the First, Second and Third tables in the Third Schedule.

⁵⁹ SA Government Notice 1250/1939 (<u>SA GG 2668</u>) and SA Government Notice 239/1953 (<u>SA GG 4997</u>) contained other amendments, but these affect only regulations ("rules") that were specifically repealed by regulation 26 of the **Regulations for the Winding-up and Judicial Management of Companies**, 1973. No other amendments were located.

The Fourth Schedule to the repealed Companies Act 46 of 1926 also seems to have been entirely repealed.

Regulation 26 of the 1973 Regulations for the Winding-up and Judicial Management of Companies, issued under the *RSA Companies Act 61 of 1973* and contained in RSA GN R.1249/1973 (<u>RSA GG 4128</u>), repeals Forms N to Q. Regulation 37 read together with Schedule 3 of the Companies Administrative Regulations, 2010, made under the current Companies Act 28 of 2004 and contained in GN 173/2010 (<u>GG 4536</u>), repeals Forms A to M and Form R.

The net effect is that no parts of the Third and Fourth Schedules to the repealed SA Companies Act 46 of 1926 which were deemed to be regulations by section 16 of the RSA Companies Act 61 of 1973 remain in force.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096), which places certain duties on persons carrying on certain kinds of businesses.

Notices: A public notice containing a helpful explanatory note on the new legal regime was published in General Notice 67/2011 (GG 4679).

A Companies Registration Office was declared in GN 60/2014 (GG 5455).

Notices on the registration, deregistration and dissolution of specific companies are not recorded here.

Notes: The **Corporate Governance Code for Namibia (NamCode)** can be found here. This Code applies to "entities incorporated by statute or in terms of the Companies Act (2004) or registered in terms thereof and any other legislation applicable in Namibia". It became applicable beginning with financial years that started after 1 January 2014. The NamCode is based on international best practices and on the *King Code on Governance for South Africa, 2009 ("King III")*. Compliance with the NamCode is voluntary, but companies which are listed on the Namibian Stock Exchange are expected to apply the NamCode, or to explain the reasons for the areas where they are non-compliant (the "apply or explain" principle). The Board of Directors of the Namibian Stock Exchange has recommended (in the introduction to the publication containing the NamCode) that the NamCode should be applied to all Namibian entities regardless of their form of incorporation or establishment, including entities in the public, private and non-profit sectors, to achieve good governance.

Cases: The following cases were decided under the current Act –

Klein v Caremed Pharmaceuticals (Pty) Ltd 2015 (4) NR 1016 (HC) (section 349(f) read with 350(1)(c)) Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others 2013 (1) NR 157 (SC) (non-compliance with section 228 and its consequences)

Laicatti Trading Capital Inc & Others v Greencoal (Namibia) Pty (Ltd) & Another 2016 (2) NR 363 (HC) (section 349(h) and section 349(f) read with 350(1)(c))

Denker v Ameib Rhino Sanctuary (Pty) Ltd 2017 (4) NR 1173 (SC) (sections 122(1) and 140)

Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (1) 2018 (1) NR 175 (HC) (section 351(4)); Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (2) 2018 (1) NR 183 (HC) (application of section 350(1)(c) and (2) read with section 349(f); just and equitable winding up under section 349(h); provisional order for winding up); Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (3) 2018 (1) NR 193 (HC) (reconsideration and confirmation of previous ruling on compliance with section 351(4); final order for winding up); compliance with section 351(4) confirmed on appeal in Bank of Zimbabwe Ltd & Another v Bank of Namibia 2018 (4) NR 155 (SC), which also briefly discusses compliance with section 362(1)(b)

McLaren & Others NNO v Minister of Finance & Others 2018 (2) NR 509 (HC) (section 423(1): circumstances that justify invoking the commission of enquiry procedure set out in sections 423-424; applies only in involuntary winding up of a company unable to pay its debts), to obtain information from a director or officer of that company)

Van Zyl & Others v Namibian Affirmative Management and Business (Pty) Ltd & Others 2019 (1) NR 27 (HC) (section 260)

- Miller & Others NNO v Prosperity Africa Holdings (Pty) Ltd 2019 (4) NR 905 (SC) (locus standi and powers of foreign-appointed liquidator)
- Mbala & Others v One Body Apostolic Faith Church & Others 2020 (1) NR 44 (HC) (request for winding up under section 349(h) refused despite deadlock in leadership, in respect of religious organisation set up as section 21 association not for gain)
- St John's Apostolic Faith Mission Church v Business and Intellectual Property Authority & Another 2020 (2) NR 528 (HC) (section 51(1) (meaning of "undesirable") and section 52(3))
- Unistrat Property Development Five Seven Two Seven (Pty) Ltd v Chairperson of the Council for the Municipality of Windhoek & Others 2020 (2) NR 541 (HC) (section 42, which corresponds to section 35 of the previous Act, on ratification of pre-incorporation contracts after incorporation)
- Kamushinda & Others v President of the Republic of Namibia & Others 2020 (4) NR 1058 (HC) (sections 37, 72, 110, 122 and 430)
- Desert Fruit (Pty) Ltd v Olive Ridge (Pty) Ltd & Others NNO 2021 (2) NR 456 (HC) (section 260)
- Transnamib Holdings Ltd v Stocks & Stocks Leisure (Namibia) (Pty) Ltd & Others 2021 (2) NR 497 (SC) (section 260(1) and (3))
- Bruni & Others NNO v Minister of Finance & Others 2021 (2) NR 552 (SC) (sections 351(1)(f), 394, 423 and 424)
- Kamushinda & Others v Liquidators, Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation) 2024 (1) NR 277 (SC) (section 37 read with the definition of "person" in the Interpretation of Laws Proclamation 37 of 1920, and sections 72, 122 and 430)
- Orano Demantelement S.A. v United Africa Group (Pty) Ltd (HC-MD-CIV-MOT-GEN-2021/00129) [2024] NAHCMD 305 (10 June 2024) (section 350 does not apply to an arbitral award not yet recognised and enforced in terms of the applicable legislation, because in such circumstances there is no debt "due and payable").
- The following post-independence cases were decided under the previous *Companies Act 61 of 1973 Grüttemeyer NO v General Diagnostic Imaging* 1991 NR 441 (HC) (section 242(4))
- Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)
- Augusto v Socieda de Angolana de Commercio International Limitada (Sacilda) 1997 NR 213 (HC) (section 38(1))
- Da Silva Augusto v Sociedade Angolana de Commercio Internacional Limitada 1999 (2) SA 788 (NmHC) (section 38(1))
- Northbank Diamonds Ltd v FTK Holland BV & Others 2002 NR 284 (SC) (section 13)
- Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC) (section 49(1)(b))
- Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC) (section 13)
- Mahe Construction (Pty) Ltd v Seasonaire 2002 NR 398 (SC) (section 49(1)(b))
- Gases & Others v The Social Security Commission & Others 2005 NR 325 (HC) (refusal of application to stay section 417 enquiry pending outcome of challenge to constitutionality of that provision)
- JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC) (proof of sanction and registration of offer of compromise)
- Ex Parte Nednamibia Holdings Ltd 2007 (2) NR 446 (HC) (section 311)
- Moder v Farm Audiwib (Neu Schwaren) (Pty) Ltd 2007 (2) NR 6 (SC) (section 73)
- Norval & Others v Consolidated Sugar Investments (Namibia) (Pty) Ltd & Others 2007 (2) NR 689 (HC) (sections 20, 65(2) and Table B)
- Absolut Corporate Services (Pty) Ltd v Tsumeb Municipal Council & Another 2008 (1) NR 372 (HC)(section 64; production of registration number insufficient proof of existence of company; best evidence is certificate of incorporation)
- De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC) (section 424 of this Act discussed in connection with interpretation of section 64(1) of Close Corporations Act 26 of 1988)
- Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (appointment of joint liquidators; sections 367 and 381)
- Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC); Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others 2013 (1) NR 157 (SC)(section 228)
- Kaese v Schacht & Another 2010 (1) NR 199 (SC) (sections 266 and 286)

Weatherly International Plc v Bruni and Mclaren NNO & Another 2014 (1) NR 273 (SC) (section 311) Offshore Development Co (Pty) Ltd v First National Bank of Namibia Ltd 2014 (4) NR 1198 (HC) (powers of chief executive officer)

S v Kapia (CC 09/2008) [2018] NAHCMD 124 (11 May 2018) (elements and ambit of sections 424(1) and (3))

S v Kapia & Others 2018 (3) NR 885 (HC) (appropriate sentence for violation of section 424(3))

The following case contains a general discussion of the fiduciary duties of a company director, as a background to sentencing:

S v Kapia & Others 2018 (3) NR 885 (HC):

"The fiduciary duties of a director reflect a relationship of trust and loyalty between the director, the company, its members, and stakeholders. What is expected of a director is to act in good faith and always in the best interest of the company. Besides the statutory duties of a director as laid down in the Companies Act [28 of 2004], these duties overlap and inter-connect with common law duties to diligently operate with skill and care as a director, and must be adhered to at all times. In the context of this case it must be emphasised that, as a matter of principle, a director owes his or her fiduciary duties only to the company on whose board s/he serves and not to any other company or outsider. Directors must act within their powers and will personally be held accountable when exceeding the powers bestowed on them by the Act. Thus, it would be prudent for potential directors to subjectively assess their own abilities and ask themselves whether they are up to the task, before simply accepting directorship offered to them which, in the end, might cost them dearly. The accused persons before this court can attest to that." (at para 3).

Commentary:

Eliaser Ilithilwa Nekwaya, "Defences against personal liability to diligent company directors in Namibia; Does it offer adequate protection?", *Namibia Law Journal*, Volume 5, Issue 1, 2013, available here (discussing section 256)

Business and Intellectual Property Authority Act 8 of 2016 🗐 😓

Summary: This Act (GG 6105) establishes a Business and Intellectual Property Authority (BIPA), governed by a Board, which centralises the registration of business and intellectual property (industrial property and copyright) under the Close Corporations Act 26 of 1988, the Companies Act 28 of 2004, the Copyright and Neighbouring Rights Protection Act 6 of 1994 and the Industrial Property Act 1 of 2012. The Registrar of Business and Industrial Property, who is the CEO of BIPA, replaces the Registrar of Companies and the Registrar of Close Corporations as well as the Registrar of Industrial Property. It was brought into force with effect from 16 January 2017 by GN 293/2016 (GG 6197).

GG 6105 was replaced with a corrected copy, which has the same date. The replacement copy corrects a mistake in the Contents section on page 1 where the Act number was wrongly stated as 7 instead of 8. This second version of GG 6105 was then replaced with a third version, because of further unspecified errors on page 1. The correct *Gazette* is not otherwise indicated.

Regulations: Regulations are authorised by section 30 of the Act, but none have been issued as yet.

Notices: General Notice 640/2018 (<u>GG 6767</u>) announces the location and operating hours of the Registration Office of BIPA.

GN 146/2019 (GG 6932) transfers immovable property which is a State asset to BIPA, under section 31(1) of the Act, with the concurrence of the Minister responsible for finance.

Fees: Regulations relating to fees for acts and services by BIPA relating to copyright are contained in GN 309/2019 (GG 7032).

Appointments: Board members are announced in GN 252/2017 (GG 6426) and in GN 65/2022 (GG 7758).

Cases: Minister of Industrialisation, Trade and SME Development & Others v Andima & Others 2020 (1) NR 292 (HC) (discusses relationship between BIPA as established by this Act and the previous Business and Intellectual Property Authority, which was a section 21 company).

Commentary: Cislé S Jacobs, "The Intellectual Property Regime in Namibia: An Overview of the Legal, Institutional and Policy Framework" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here.

Public Private Partnership Act 4 of 2017 🗐 🙀

Summary: This Act (<u>GG 6357</u>) provides a legal framework for public private partnership projects and establishes the Public Private Partnership Committee. It was brought into force on 1 December 2018 by GN 335/2018 (<u>GG 6785</u>).

Regulations: Regulations are contained in GN 353/2018 (GG 6796).

Guidelines: Guidelines are authorised by section 40(2) of the Act. Guidelines for unsolicited proposals for public private partnership projects are contained in General Notice 151/2023 (GG 8091).

Notices: GN 336/2018 (GG 6785) provides a form for the disclosure of business and financial interests by nominees for membership on the Public Private Partnership Committee, in terms of section 8(2) of the Act.

Appointments: GN 336/2018 (<u>GG 6785</u>) announces the appointment of the Chairperson and members of the Public Private Partnership Committee. Members of the Committee are also announced in GN 108/2022 (GG 7776) and GN 175/2024 (GG 8388).

Commentary: Helena Iifo-Walenga, "A critical appraisal of the Namibia Public-Private Partnership Act No 4 of 2017", *Namibia Law Journal*, Volume 11, Issue 1, 2019.

Public Enterprises Governance Act 1 of 2019 📦 🙀

Summary: This Act (<u>GG 6907</u>) makes provision for the efficient governance of State-owned enterprises, their restructuring and the monitoring of their performance. It was brought into force on 16 December 2019 by GN 390/2019 (<u>GG 7077</u>).

Repeals: The Act replaces the Public Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was originally named the State-owned Enterprises Governance Act 2 of 2006, and was amended by Act 5/2008 (<u>GG 4146</u>) and Act 8/2015 (<u>GG 5835</u>) (which changed its name). (There were also several amendments to Schedule 1 of the repealed Act, which are listed below.)

Amendments: The Post and Telecommunications Companies Establishment Amendment Act 7 of 2020 (GG 7305), brought into force on 19 August 2024 by GN 239/2024 (GG 8420), purports to amend "Schedule 1 of the Public Enterprises Governance Act" by "the deletion of item 7". Act 7 of 2020 defines "Public Enterprises Governance Act" as "the Public Enterprises Governance Act, 2019 (Act No. 1 of

2019)". However, there is no item 7 in the unnumbered Schedule to this Act. This direction probably referred to Schedule 1 of the repealed Public Enterprises Governance Act 2 of 2006, which listed "Namibia Post and Telecom Holdings Limited" as item 9. Prior to the last substitution of this Schedule by GN 222/2018 (GG 6708) pursuant to section 47 of the repealed Act, the Schedule as substituted by GN 43/2016 (GG 5965) pursuant to section 47 of the repealed Act listed "Namibia Post and Telecom Holdings" as item 7. However, the current Public Enterprises Governance Act 1 of 2019 was brought into force on 16 December 2019 by GN 390/2019 (GG 7077), and thus was already in force when the Post and Telecommunications Companies Establishment Amendment Act 7 of 2020 (GG 7305) was passed.

Savings: Section 42(3) of this Act provides that directives issued under the repealed law will be deemed to have been issued under this Act.

Section 42(4) of this Act provides that all public enterprises listed in Schedule 1 of the repealed Act are deemed to have been declared public enterprises under section 2 of this Act. Section 42(5)-(7) addresses which of those public enterprises will be deemed to be extra-budgetary funds, non-commercial public enterprises and commercial public enterprises.

Schedule 1 of the repealed Act was amended by section 134(2) of the Communications Act 8 of 2009 (GG 4378) and substituted pursuant to section 47 of the Act by GN 142/2013 (GG 5213), GN 43/2016 (GG 5965) and GN 222/2018 (GG 6708).

Section 42(8) states:

All provisions in laws that remain applicable as contemplated in section 48(1) of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006) in spite of their amendment by section 49 of that Act, will continue to be so applicable, until they are amended in a lawful manner.⁶⁰

Regulations: Regulations are authorised by section 38 of the Act, but none have yet been promulgated. There is no savings clause for regulations, but none were issued under the repealed Act.

Notices: Directives were issued under the repealed Act in relation to remuneration for CEOs and Senior Managers and annual fees and sitting allowances for Board members in GN 174/2010 (GG 4538), as amended by GN 141/2013 (GG 5213), GN 261/2014 (GG 5644) and GN 69/2018 (GG 6572). Table 1 of that Notice is substituted by GN 134/2011 (GG 4767) and GN 141/2013 (GG 5213). Tables 2 and 3 of that Notice are substituted by GN 261/2014 (GG 5644). Tables 1, 2 and 3 are all substituted by GN 69/2018 (GG 6572).

GN 69/2018 (GG 6572), which was issued under the repealed Act, also sets a moratorium on any adjustment to the salaries and benefits of Chief Executive Officers, Senior Management Staff and Board Members of public enterprises beyond the inflation adjustments specified in that notice, pending public enterprise reform in Namibia.

The Namibia Financial Institutions Supervisory Authority (NAMFISA) and the National Fishing Corporation of Namibia Limited (FISHCOR) were **exempted** from certain provisions of the repealed Act by GN 151/2011 (GG 4787).

Note that GG 4787 erroneously uses the acronym FISCHOR.

Section 49 amends 41 statutes that apply to specific public enterprises.

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⁶⁰ Section 48(1) states: "Despite the amendment by section 49 of the laws specified in Schedule 2 to this Act and any other provision to the contrary of this Act, the provisions so amended of any such law, and the provisions of the constituent document or the memorandum of association and articles of association of any State-owned enterprise not established by statute which relate to the constitution of the board of the State-owned enterprise established by or under the law or to which such constituent document or such memorandum of association and article of association relate, the appointment of the members or alternate members, of such board, the term of office and conditions of office of such members, the filling of casual vacancies in the number of such appointed members or alternate members, the appointment of the chairperson and vice-chairperson of such board continue to be applicable until the date specified by the Minister under section 15(1)."

Appointments: Appointments of the board members of specific public enterprises are listed under the statutes establishing those public enterprises.

Appointments with reference to the repealed Act: GN 232/2008 (GG 4131) issued under the repealed Public Enterprises Governance Act 2 of 2006 determines the number and terms of board members of the Namibia Airports Company, Namibia Ports Authority, Roads Authority, Roads Contractor Company and Transnamib Holdings Company. Members of the Boards of these enterprises are announced in GN 11/2009 (GG 4210). As noted above, the appointments of board members of public enterprises established by statute are generally listed under the statutes in question.

Cases: The following cases concern the Public Enterprises Governance Act 2 of 2006 –

Road Fund Administration v Government of the Republic of Namibia & Others 2012 (1) NR 28 (HC) (court takes *prima facie* view that Government and Cabinet are not entitled to interfere with executive decisions taken by board of parastatal)

Transworld Cargo (Pty) Ltd v Air Namibia (Pty) Ltd 2014 (4) NR 932 (SC) (commercial decision of state-owned enterprise made in the ordinary course of business is not administrative action subject to administrative review)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 22(3))

Ngavetene & Others v Minister of Agriculture, Water and Forestry & Others 2019 (1) NR 129 (HC), partly upheld on appeal in Minister of Agriculture, Water and Forestry & Others v Ngavetene & Others 2021 (1) NR 201 (SC) (invalid appointment of temporary board in terms of section 6 discussed)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (statutory requirement of ministerial approval of remuneration and service benefits of management staff under section 22(3) cannot be ousted by agreement between the parties).

Commentary:

Frederico Links & Ellison Tjirera, "Nothing to Disclose: Critiquing Namibia's passive approach to conflict of interest", Institute for Public Policy Research, 2011, available here

Frederico Links & Malakia Haimbodi, "Governance Challenges in the SOE Sector", Institute for Public Policy Research, 2011, available here

Dennis U Zaire, "Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place", *Namibia Law Journal*, Volume 6, Issue 1, 2014, available here.

May Weylandt, "SOE Governance in Namibia: Will a Hybrid System Work?", Institute for Public Policy Research, 2016, available here

Ntelamo Ntelamo, A Manual on the Public Enterprises Act, Juta, 2021.

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, GG 2499)

See also GN 51/2001 (GG 2499).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority (Proc. 21/2003, GG 3031)

See also GN 172/2003 (GG 3031).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc. 38/2004, GG 3221).

See also GN 132/2004 (GG 3221).

INTERNATIONAL LAW

**Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965

SADC Declaration on Productivity, 1999 (not legally-binding)

See also Electronic Transactions Act 4 of 2019 (EVIDENCE) (electronic commerce).

See also FINANCE AND DEVELOPMENT.

See also Financial Intelligence Act 13 of 2012 (duties of Registrar of Companies and Close Corporations to combat money-laundering and the financing of terrorism and proliferation) (**FINANCIAL INSTITUTIONS**).

See also INTELLECTUAL PROPERTY.

See also LABOUR.

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 (MEDIA AND COMMUNICATION).

See also TRADE AND INDUSTRY.

CENSUS AND STATISTICS

Statistics Act 9 of 2011 w 🗐 📻

Summary: This Act (<u>GG 4777</u>) establishes the Namibia Statistics Agency and provides for the development of the National Statistics System. The Namibia Statistics Agency is charged with organising a population and housing census every ten years, amongst its many other duties. The Act also establishes the National Spatial Data Infrastructure and the Committee for Spatial Data. It was brought into force on 16 April 2012 by GN 103/2012 (<u>GG 4929</u>).

Repeals: The Act repeals the *Statistics Act 66 of 1976* (RSA GG 5123), which repealed the *Statistics Act 73 of 1957* (SA GG 5901).

The 1957 Act was not initially made applicable to SWA, but was applied to SWA (including the Eastern Caprivi Zipfel and the Rehoboth Gebiet) by the *Statistics Amendment Act 41 of 1968* (RSA GG 2052), which also inserted a provision that repealed the SWA Statistics Proclamation 51 of 1920 (OG 41) and the SWA Rehoboth Gebiet (Extension of Laws) Proclamation 12 of 1930 (OG 365). The *Statistics Amendment Act 41 of 1968* (RSA GG 2052) also amended the definition of "Republic" to include "the territory of South-West Africa"

The Statistics Act 73 of 1957 (SA GG 5901) repealed the Statistics Act 38 of 1914 (SA GG 532), which was applied to SWA by the Statistics Proclamation 51 of 1920 (OG 41).

The SWA Statistics Proclamation 51 of 1920 (OG 41) repealed "any existing law repugnant to or inconsistent with" the *Statistics Act 38 of 1914*.

Savings: Section 60(3) of the current Act contains a broad savings provision:

Unless otherwise provided in this Act, anything done under a law repealed by section 59 and which could have been done under a corresponding provision of this Act is deemed to have been done under that corresponding provision.

The Statistics Act 66 of 1976 (RSA GG 5123) contains a broad savings provision in section 22(2) that applies to things done under the Statistics Act 73 of 1957:

Anything done under any provision of a law repealed by subsection (1) and which could be done under any provision of this Act, shall be deemed to have been done under the last-mentioned provision.

The Statistics Act 73 of 1957 (SA GG 5901) provided as follows in section 16(2):

Any regulation, notice, appointment, arrangement or direction made, promulgated, entered into or given and any other action taken under any provision of a law repealed by sub-section (1), shall be deemed to have been made, promulgated, entered into, given or taken under the corresponding provision of this Act.

Section 16A of the *Statistics Act 73 of 1957*, inserted by the *Statistics Amendment Act 41 of 1968* (RSA GG 2052), contained an additional provision on savings that applied only in respect of SWA – and which specifically *excluded* regulations:

- (1) The provisions of this Act, and any amendment thereof, whether made before or after the commencement of this section, apply in the territory including the Eastern Caprivi Zipfel referred to in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of the territory.
- (2) Proclamations No. 51 of 1920 and No. 12 of 1930 of the Administrator of the territory are hereby repealed.
- (3) Anything done, *except a regulation made*, under a provision of a law applied in the territory or any portion thereof by the proclamation referred to in subsection (2), shall be deemed to have been done in respect of the territory or the portion thereof concerned under the corresponding provision of this Act. [emphasis added]

The Statistics Proclamation 51 of 1920 (OG 41), which applied the *Statistics Act 38 of 1914* to SWA, stated in section 1(2):

All existing regulations made by the Governor-General of the Union of South Africa in pursuance of the powers conferred by section ten of the aforesaid Statistics Act 1914 together with all such additional or amending regulations as may be framed from time to time thereunder shall apply mutatis mutandis to the Protectorate.

However, any regulations surviving pursuant to this savings clause – including those made under the Statistics Proclamation 51 of 1920 (OG 41) or under the Statistics Act 38 of 1914 as applied to SWA by the Statistics Proclamation 51 of 1920 - would have fallen away due to section 16A(3) of the Statistics Act 73 of 1957, which is quoted above.

The Statistics Act 38 of 1914 (SA GG 532) contained no repeals.

Regulations: Regulations are authorised under section 58 of the current Act, but no regulations have been issued under the Act.

For the purposes of considering what regulations may survive in terms of the savings clauses, the relevant transfer proclamation for the *Statistics Act 66 of 1976* is the Executive Powers (Statistics) Transfer Proclamation, AG 15 of 1977 (OG 3677), dated **1 December 1977**.

As noted above. pre-independence regulations issued under the *Statistics Act 38 of 1914* (<u>SA GG 532</u>) that was applied to SWA by the Statistics Proclamation 51 of 1920 (<u>OG 41</u>) do not appear to survive in terms of the chain of savings clauses.⁶¹

Pre-independence regulations issued under the *Statistics Act 73 of 1957* (<u>SA GG 5901</u>) surviving in terms of section 22(2) of the *Statistics Act 66 of 1976* and section 60(3) of the current Act are listed here. (Date-specific regulations with no ongoing effect have been omitted.)

RSA GN R.137/1964 (RSA GG 712) (census of social welfare organizations or institutions)⁶²

RSA GN R.138/1964 (RSA GG 712) (census of stocks of wool and mohair)⁶³

RSA GN R.139/1964 (RSA GG 712) (census of the fishing industry)⁶⁴

RSA GN R.142/1964 (RSA GG 712) (collection of statistics relating to cultural institutions)⁶⁵

RSA GN R.143/1964 (<u>RSA GG 712</u>) (the collection of statistics relating to the motor trade),⁶⁶ repealed insofar as they relate to the 1977 census of the motor trade and repair services by RSA GN R.1679/1977 (<u>RSA GG 5723</u>)

RSA GN R.144/1964 (<u>RSA GG 712</u>) (collection of statistics relating to prices of commodities and services)⁶⁷

RSA GN R.145/1964 (RSA GG 712) (collection of statistics in respect of the industrial sector), ⁶⁸ repealed by RSA GN R.200/1977 (RSA GG 5402) insofar as it relates to monthly statistics and by RSA GN R.201/1977 (RSA GG 5402) insofar as it relates to quarterly financial statistics

CENSUS AND STATISTICS-2

⁶¹ Pre-independence regulations issued under the *Statistics Act 38 of 1914* in respect of SWA that do NOT appear to survive include the following:

[•] GN 61/1962 (OG 2391) (annual statistics on the fishing industry)

[•] GN 62/1962 (OG 2391) (annual statistics on the automotive industry), as amended by GN 186/1964 (OG 2588)

[•] GN 63/1962 (OG 2391) (annual statistics on factories and productive industries)

[•] GN 64/1962 (OG 2391) (annual statistics on agriculture and forestry).

Date-specific regulations made under the Statistics Proclamation 51 of 1920 (OG 41) or the Statistics Act 38 of 1914 are not listed here.

⁶² These regulations were made in substitution for the regulations published in SA GN 138/1920.

⁶³ These regulations were made in substitution for the regulations published in SA GN 885/1942.

⁶⁴ These regulations were made in substitution for the regulations published in RSA GN 979/1961.

⁶⁵ These regulations were made in substitution for the regulations published in SA GN 1787/1917.

⁶⁶ These regulations were made in substitution for the regulations published in RSA GN 980/1961.

⁶⁷ These regulations were made in substitution for the regulations published in SA GN 799/1958.

⁶⁸ These regulations were made in substitution for the regulations published in RSA GN R.1682/1960.

- RSA GN R.146/1964 (<u>RSA GG 712</u>) (annual collection of statistics relating to factories and productive industries)⁶⁹
- RSA GN R.147/1964 (<u>RSA GG 712</u>) (collection of statistics relating to trade unions, employers' organisations. industrial councils, business, occupational, professional and other similar associations)⁷⁰
- RSA GN R.148/1964 (<u>RSA GG 712</u>) (collection of statistics relating to wages and employment)⁷¹
- RSA GN R.149/1964 (<u>RSA GG 712</u>) (collection of statistics relating to health services and funeral furnishing)⁷²
- RSA GN R.150/1964 (RSA GG 712) (collection of building statistics)⁷³
- RSA GN R.151/1964 (<u>RSA GG 712</u>) (collection of statistics on the production of prepared meat and meat-products and stocks of foodstuffs, including meat and meat products on hand or in cold storage)⁷⁴
- RSA GN R.152/1964 (RSA GG 712) (collection of statistics on accommodation establishments)⁷⁵
- RSA GN R.153/1964 (RSA GG 712) (collection of wholesale and retail trade statistics)⁷⁶
- RSA GN R.1490/1967 (<u>RSA GG 1851</u>, reprinted in <u>OG 2826</u>) (collection of building statistics from local authorities)
- RSA GN R.1491/1967 (<u>RSA GG 1851</u>, reprinted in <u>OG 2826</u>) (collection of statistics relating to dwellings and servants)⁷⁷
- RSA GN R.2092/1968 (<u>RSA GG 2214</u>) (collection of financial statistics relating to mines and works); repealed by RSA GN R.201/1977 (<u>RSA GG 5402</u>) insofar as it relates to quarterly financial statistics
- RSA GN R.968/1974 (<u>RSA GG 4301</u>) (collection of monthly work performance and quarterly financial statistics, respectively, relating to private transport of passengers and goods by road for reward); repealed by RSA GN R.201/1977 (<u>RSA GG 5402</u>) insofar as it relates to quarterly financial statistics).

Pre-independence regulations issued under the *Statistics Act 66 of 1976* (RSA GG 5123) which appear to survive in terms of section 60(3) of the current Act are listed here. (Date-specific regulations with no ongoing effect have been omitted.⁷⁸)

- RSA GN R.1138/1976 (RSA GG 5193) (monthly collection of information about building society mortgages registered or granted)
- RSA GN R.1508/1976 (RSA GG 5263) (collection of wholesale and retail trade statistics);⁷⁹ repealed by RSA GN R.201/1977 (RSA GG 5402) insofar as it relates to quarterly financial statistics
- RSA GN R.200/1977 (RSA GG 5402) (collection of monthly statistics on manufacturing)⁸⁰

⁶⁹ These regulations were made in substitution for the regulations published in SA GN 1811/1957 and SA GN 616/1950

⁷⁰ These regulations were made in substitution for the regulations published in RSA GN R.982/1961.

⁷¹ These regulations were made in substitution for the regulations published in SA GN 481/1957.

⁷² These regulations were made in substitution for the regulations published in SA GN 1452/1924.

⁷³ These regulations were made in substitution for the regulations published in SA GN 38/1948.

⁷⁴ These regulations were made in substitution for the regulations published in SA GN 1145/1939.

⁷⁵ These regulations were made in substitution for the regulations published in SA GN 420/1958.

⁷⁶ These regulations were made in substitution for the regulations published in SA GN 1171/1958.

⁷⁷ These regulations were made in substitution for the regulations published in RSA GN R.141/1964.

⁷⁸ RSA GN R.1436/1976 (<u>RSA GG 5256</u>) contains regulations governing the quorum for and the procedure at a meeting of the Statistics Advisory Council. However, since the current law does not make provision for this body, these regulations could not have been made under a provision of the current law and therefore do not survive pursuant to section 60(3) of the current Act.

RSA GN R.974/1977 (<u>RSA GG 5575</u>) contains regulations regarding censuses of businesses, professions and trades in the Bantu homelands. However, these regulations could not have been made under a provision of the current law and therefore do not survive pursuant to section 60(3) of the current Act.

⁷⁹ These regulations repeal the regulations in RSA GN R.1642/1965 (RSA GG 1265), which were in turn made in substitution for the regulations published in RSA GN R.153/1964.

⁸⁰ These regulations repeal the ones in RSA GN R.145/1964 insofar as they relate to monthly statistics.

RSA GN R.201/1977 (RSA GG 5402) (collection of quarterly financial statistics)⁸¹
RSA GN R.758/1977 (RSA GG 5537) (collection of financial statistics of companies, cooperative societies and public corporations).

The surviving regulations that are not date-specific are still being processed for the database.

Post-independence regulations issued under the *Statistics Act 66 of 1976* which appear to survive in terms of section 60(3) of the current Act are listed here. However, all of these regulations relate only to date-specific collections of statistics and so are omitted from the database:

- GN 54/1999 (<u>GG 2076</u>) (regulations on collection of statistics on child economic activities in respect of the period 1 March 1999 to 30 April 1999)
- GN 177/2004 (GG 3256) (regulations on collection of statistics on labour force activities in respect of the period 6 August 2004 to 30 September 2004)
- GN 26/2005 (GG 3393) (regulations on collection of statistics on agricultural activities in respect of the period 15 March 2005 to 30 September 2005)
- GN 235/2008 (GG 4131) (authorisation and regulations relating to labour force survey from 01 September 2008 to 04 October 2008)
- GN 146/2009 (GG 4301) (authorisation and regulations relating to statistics on business enterprises and business establishments collected from 01 August 2009 to 31 October 2009)
- GN 162/2009 (<u>GG 4314</u>) (authorisation and regulations relating to statistics on household income and expenditure collected from 15 August 2009 to 31 October 2010)
- GN 114/2010 (GG 4495) (authorisation and regulations relating to statistics on dwellings and other building structures collected from 15 May 2010 to 31 July 2011).

Post-independence regulations issued under the *Statistics Act 66 of 1976* in respect of specific censuses are listed here; these census regulations have no ongoing effect and so have been omitted from the database:

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GN 101/1991 (<u>GG 253</u>) (regulations for 1991 census)
GN 168/2001 (<u>GG 2597</u>) (regulations for 2001 census)
GN 147/2011 (<u>GG 4776</u>) (regulations for 2011 census).
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Notices: Pre-independence notices issued under the *Statistics Act 73 of 1957* which appear to survive in terms of section 60(3) of the chain of savings clauses are as follows:

SA GN 420/1958, republished in RSA 140/1964 (RSA GG 712) (authorisation to collect statistics on the wholesale, retail and motor trade, and in connection with services, including professional, catering, accommodation, entertainment, amusement, recreation, sporting and cultural institutions).

Pre-independence notices issued under the *Statistics Act 66 of 1976* which appear to survive in terms of section 60(3) of the current Act are as follows:⁸²

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RSA GN R.139/1977 (<u>RSA GG 5395</u>) (matters on which statistics may be collected)<sup>83</sup> AG GN 73/1984 (OG 4904) (authorisation to collect statistics on labour matters)
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GN 38/1986 (OG 5175) (authorisation to collect statistics on household income and expenditure)

GN 180/1987 (OG 5454) (authorisation to collect statistics on labour matters)

AG GN 10/1989 (OG 5699) (authorisation to collect statistics on the manufacturing of goods).

Post-independence notices issued under the *Statistics Act 66 of 1976* which appear to survive in terms of section 60(3) of the current Act are as follows:

GN 54/1999 (GG 2076) (authorisation to collect statistics on child economic activities)

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⁸¹ These regulations repeal the following regulations *insofar as they relate to quarterly financial statistics*: RSA GN R.145/1964, RSA GN R.2092/1968, RSA GN R.968/1974 and RSA GN R.1508/1976.

⁸² AG GN 188/1980 (OG 4338) contains an authorisation for the 1981 census but has no ongoing effect.

⁸³ This Notice repeals GN R.943 of 4 June 1976.

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GN 167/2001 (GG 2547) (dates for 2001 census)
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GN 176/2004 (GG 3256) (authorisation to collect statistics on labour force activities)

GN 25/2005 (GG 3393) (authorisation to collect statistics on agricultural activities)

GN 146/2011 (GG 4776), as extended by GN 177/2011 (GG 4796) (dates for 2011 census).

Note that many of these have no ongoing effect.

The following codes, policies, standards and other notices were issued under the current Act:

Codes:

A Code of Practice regarding professional and ethical standards applicable to statistics producers is published in General Notice 19/2015 (GG 5655).

Policies and frameworks:

A Namibia Statistics Policy is published in General Notice 18/2015 (GG 5654).

The **Data Collection, Processing and Dissemination Policy and Practice** is published in General Notice 20/2015 (GG 5656).

A National Spatial Data Infrastructure (NSDI) Policy is published in General Notice 103/2015 (GG 5684).

The Namibia Quality Assurance Framework for Statistics is published in General Notice 231/2020 (GG 7242) and the Implementation Plan for the framework is published in General Notice 232/2020 (GG 7243).

Standards:

A Data Quality Assessment Framework setting out standards which will be used for the designation of statistics as "official" statistics is published in General Notice 21/2015 (GG 5657).

A Metadata Standard on the Manner for the Capturing and Publishing of Metadata for Spatial Data and Services in Namibia is published in General Notice 405/2016 (GG 6144).

A Data Quality Standard for the Purchase, Capture, Collection, Production and Dissemination of Geospatial Data in Namibia is published in General Notice 406/2016 (GG 6145).

A Namibian Statistical Systems Standard for Measuring 'Leave No One Behind' is published in General Notice 233/2020 (GG 7244).

A Namibia National Statistics System Standard for Data and Statistics Dissemination is published in General Notice 481/2022 (GG 7897).

A Namibia National Statistics System Standard for Data and Statistical Presentation is published in General Notice 482/2022 (GG 7898).

A Namibia National Statistics System Standard for Statistical Metadata is published in General Notice 483/2022 (GG 7899).

A Namibia National Statistics System Standard for Statistical Quality Indicators is published in General Notice 484/2022 (GG 7900).

A Namibia Land Cover Classification Standard is published in General Notice 208/2023 (GG 8087).

Other notices:

A notice on the manner and specification for the capturing of spatial data, including any application for exemption from such manner or specification, is contained in General Notice 404/2016 (GG 6143).

The date for the 2023 population and housing census is set as 24 September 2023 by GN 180/2023 (GG 8122).

Appointments: Appointments to the Board of the Namibia Statistics Agency are announced in GN 174/2011 (GG 4792), GN 148/2014 (GG 5559) and GN 158/2021 (GG 7590).

COMMENTARY

- Frederico Links, Ndeshi Fikameni and Michael Hasheela, "Access Denied: Access to Information in Namibia", Institute for Public Policy Research, 2017, available here
- Karen Mohan, "Sunlight is the Best Disinfectant: Why Namibia Needs Access to Information", Institute for Public Policy Research, 2012, available <a href="https://example.com/here-public-policy-polic
- Henry Maina, "Disclosure vs Secrecy: What is the right balance?", Institute for Public Policy Research, 2012, available here
- M Dimba, "Access to Information as a Tool for Socio-economic Justice", Institute for Public Policy Research, 2012, available here
- Karen Mohan, "Access to Information: The Media and the ICT Sector", Institute for Public Policy Research, 2012, available here
- Robin Sherbourne, "Access to Information and the Namibian Economy", Institute for Public Policy Research, 2012, available here.

INTERNATIONAL LAW

African Charter on Statistics, 2009

CHILDREN

Child Care and Protection Act 3 of 2015 🕎 😜

Summary: This Act (originally published in <u>GG 5744</u>) gives effect to the rights of children as contained in the Namibian Constitution and international agreements binding on Namibia. It sets out principles relating to the best interests of children. It reduces the age majority from 21 to 18, while providing that parental consent to marry is still required up to age 21. It establishes a National Advisory Council on Children, a Children's Advocate in the Office of the Ombudsman and a Children's Fund to finance cross-cutting issues. It covers the appointment and designation of social workers, social auxiliary workers, community child care workers and probation officers, and provides for the designation of private social workers and child protection organisations for certain purposes. It also provides for children's courts and for the registration of residential child care facilities, places of care and shelters.

It provides procedures for determining the parentage of a child. It also provides for the allocation of parental responsibilities and rights in respect of children born outside marriage and children of divorced parents. It provides mechanisms for custody and guardianship of children on the death of the person having custody or guardianship. (These parts of the Act closely resemble the provisions of the Children's Status Act 6 of 2006, which was repealed and re-enacted as part of this Act to bring all related procedures in the children's court under one legislative umbrella.)

The Act covers parenting plans between persons with parental responsibilities and provides for agreements in respect of the kinship care of children.

It authorises prevention and early intervention services in relation to children and provides measures relating to children in need of protective services. It redefines foster care. It provides for the issuing of contribution orders. It covers both domestic and inter-country adoption of children, and paves the way for Namibia to adopt several key Hague Conventions on children.

It provides for additional measures for the protection of children, including issues pertaining to certain forms of child labour and measures to combat baby-dumping. It requires certain persons to be in possession of police clearance certificates to ensure that they are not unfit to work with children.

It provides for grants payable in respect of certain children and creates some new offences relating to children.

The Act was brought into force as of 30 January 2019 by GN 4/2019 (GG 6829).

Repeals: The Act repeals the *Children's Act 33 of 1960*, the *Age of Majority Act 57 of 1972* and the Children's Status Act 6 of 2006.

Amendments: The Act is amended (to remove the provisions on child trafficking) by the Combating of Trafficking in Persons Act 1 of 2018 (<u>GG 6562</u>), which was brought into force on 14 November 2019 by GN 335/2019 (<u>GG 7047</u>).

The Dissolution of Marriages Act 10 of 2024 (GG 8487), which has not yet been brought into force, will substitute section 97.

The Civil Registration and Identification Act 13 of 2024 (<u>GG 8547</u>), which has not yet been brought into force, will amend section 181 and substitute section 182.

The Marriage Act 14 of 2024 (<u>GG 8548</u>), which has not yet been brought into force, will amend sections 10 and 226.

Regulations: Section 258 contains a savings provision for regulations made in terms of the repealed laws. However, GN 5/2019 (GG 6829) repeals the Regulations Relating to Children's Status, published in GN 267/2008 (GG 4154) in terms of the Children's Status Act 6 of 2006, a number of specific regulations issued in terms of the *Children's Act 33 of 1960* and any other regulations made under the Children's Act 33 of 1960 "in respect of any matter that is regulated by these regulations or by the Regulations Relating to Children's Court Proceedings published under Government Notice No. 6 of 30 January 2019." Thus, it appears unlikely that any regulations enacted under the repealed laws remain in force.

Child Care and Protection Regulations are issued in terms of this Act by GN 5/2019 (GG 6829).

Regulations Relating to Children's Court Proceedings are issued in terms of this Act by GN 6/2019 (GG 6829).

Notices: Section 258 contains a savings provision for notices and other actions done in terms of the repealed laws.

Appointments: GN 273/2021 (<u>GG 7701</u>) announces the appointment of members of the National Advisory Council on Children.

Cases: The following cases pertain to this Act:

- MA & Others v AG 2021 (1) NR 292 (SC) (appropriate for High Court to decline jurisdiction over guardianship of child born outside marriage since Children's Court has jurisdiction as court of first instance over questions of guardianship even although it lacks jurisdiction to determine the validity of a will an issue which had fallen away in this case (see para 41); overall scheme of Act outlined at paras 34-40)
- Luehl [Lühl] v Minister of Home Affairs and Immigration 2021 (4) NR 1104 (HC) (sections 3(1), 95, 111(1)); overturned on appeal by Minister of Home Affairs and Immigration v Lühl 2023 (2) NR 429 (SC) without discussion of these sections (see more detailed discussion of case below)
- CS (born S) v CS 2021 (4) NR 1156 (HC), upheld on appeal in CJS v CS (born S) 2021 (4) NR 1208 (SC) (factors in section 3 as guide to assessing child's best interests in case involving relocation of custodian parent after divorce)
- S v Ikosa & Another 2023 (3) NR 779 (HC) (section 254(1)(a) on abuse or deliberate neglect of child) S v SIK & Another 2023 (4) NR 990 (HC) (application of best interests standard as set out in this Act to
- sentencing of an individual who has minor children or an expectant mother)
- S v RF 2023 (4) NR 1036 (NLD) (controlled disclosure of images of child pornography approved to protect privacy and dignity of the child and the public interest in charges under section 234(1)(d) read with 234(7))
- ME v AG & Another 2024 (2) NR 407 (HC) (powers given to children's court in section 47(2) include power to re-visit its own orders: "This is so because issues involved in matters relating to children may be very fluid and volatile, changing from one moment to the next. Very often, these matters are brought on urgent basis and emotions of the parties involved tend to cloud issues." [at para 67]; sections 138(1)-(2); inappropriate award of punitive costs by children's court under section 47(2)(d)).

See also the following Namibian cases on the status of children born via surrogacy to same-sex parents in South Africa:

- PL v Minister of Home Affairs and Immigration 2021 (2) NR 335 (HC) (Ministry's refusal to issue emergency travel documents to twin children of same-sex parents born via surrogacy in South Africa to one Namibian and one non-Namibian parent upheld on procedural grounds combined with deference to executive; section 95(2) of the Act on DNA tests referenced in discussion of whether or not a DNA test should be required to prove the child's genetic link to the Namibian parent; the requested travel documents were issued by the Ministry despite the judgment)⁸⁴
- Luehl [Lühl] v Minister of Home Affairs and Immigration 2021 (4) NR 1104 (HC) (question of citizenship of child born via surrogacy in South Africa to same-sex parents, one Namibian and

⁸⁴ See Werner Menges and Arlana Shikongo, "Babies can come home", *The Namibian*, 19 May 2021.

one non-Namibian (sibling of twin children in case cited above); citizenship by descent in terms of Art 4(2) of Namibian Constitution does not require biological link between parent and child, meaning that it is not in child's best interests to require DNA testing since there is no dispute about paternity; both parents are listed on the South African birth certificate which is recognised in Namibia under principle of comity; similarly-situated heterosexual parents and adoptive parents are not asked to prove biological link, pointing to discrimination against same-sex parents in violation of Constitution; African Charter on the Rights and Welfare of the Child (reference to "status" in Art 3 of the Charter includes sexual orientation); and UN Convention on the Rights of the Child (several provisions cited without being discussed in detail, with particular attention to Art 9 on separation of parent and child); overturned on appeal by *Minister of Home Affairs and Immigration v Lühl* 2023 (2) NR 429 (SC), which held that registration either inside or outside Namibia is a precondition for citizenship by descent under section 2(2) of Act and declined to discuss any other issues since there was no registration in the case at hand.

Note that the High Court case cites the South African case of *YD v LB (A)* 2009 (5) SA 479 (GNP), which concerns leave to appeal the judgment in *LB v YD* 2009 (5) SA 463 (T). It should be noted that the High Court judgment in *YD v LB (A)* was reversed on appeal by the Supreme Court of Appeal in *YD (now M) v LB* 2010 (6) SA 338 (SCA).

The following cases pertain to the *Children's Status Act 6 of 2006* –

- Frans v Paschke & Others 2007 (2) NR 520 (HC) implicitly extended the applicability of section 16 on the inheritance rights of children born outside marriage, through section 26(2), by finding the common law rule that children born outside marriage may not inherit intestate from their fathers unconstitutional with effect from 21 March 1990.
- NS v PS 2010 (2) NR 418 (HC) makes a passing mention of the Act, noting that section 5(1) allows for variation of a High Court custody order in the children's court "if circumstances have changed".
- S v S 2011 (1) NR 144 (HC) suggests that the common-law concept of putative marriage should fall into disuse since the main purpose of the concept is to mitigate harshness to any children involved, now that "the Children's Status Act essentially puts children born out of wedlock on the same legal footing with children born in wedlock" (at 148B-C); rejected as having been wrongly decided by MN v LI & Another 2022 (1) NR 135 (SC)
- Jordaan v Jordaan (A 317/2012) [2012] NAHCMD 106 (11 December 2012), deals with an *ex parte* application for interim custody under the Act which was found to be outside the Act's criteria for such an order.
- FN v SM 2012 (2) NR 709 (HC) overturned a decision not to confirm an interim protection order in terms of the Combating of Domestic Violence Act 4 of 2003, and issued a final protection order giving interim custody to the mother and access to the father; the Court made this final protection order for a duration of 12 months, to allow time for a custody proceeding under the Children's Status Act.
- LNL v LJL (I 2406/2013) [2014] NAHCMD 309 (17 October 2014) involved a dispute about the paternity of one child in divorce proceedings, on the basis that the wife had affairs. The High Court said that the Children's Status Act reiterates the common law presumption that a child born in wedlock is the child of the father married to the mother. It "assists a father of a child born in marriage only to this extent: If the mother refuses to subject a child to a paternity test, there is a presumption that she is seeking to conceal the truth concerning the parentage of that person". The Court held that the husband cannot demand paternity tests when he has not produced any evidence which contradicts the presumption that children born inside marriage are the children of the spouses.
- JM & Another v SM 2016 (1) NR 27 (HC) concerned a request for an interim variation of a divorce order on custody, pending the outcome of a custody application under the Children's Status Act. It is not clear why the parties utilised two different forums. The case found that the High Court has very broad discretion to consider any relevant information.
- Kriel v Kantak (A 268-2015) [2015] NAHCMD 242 (7 October 2015) involved a High Court application for interim custody of a child launched only three court days after a custody application was made in the children's court under the Children's Status Act. The High Court refused to entertain

- the case on the grounds that this would be usurping the lower court's function. It noted that if the lower court is not acting, the appropriate remedy is mandamus.
- QJ v EJ 2019 (2) NR 494 (HC) (factors cited in section 3 applied to determine best interests of child in custody dispute between divorcing parents).
- The following cases pertain to the Children's Act 33 of 1960 –
- Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC) (references to whipping and corporal punishment in sections 32 and 92(1) unconstitutional)
- S v Van der Bergh 2003 NR 69 (HC) (suggestion that youthful offender is a child in need of care as defined by this Act)
- Detmold & Another v Minister of Health and Social Services & Others 2004 NR 174 (HC) (section 71(2)(f) declared unconstitutional and therefore invalid)
- See also NS v RH 2011 (2) NR 486 (HC) at 526E-529B, which discusses in *dicta* the impact of *Detmold* in the absence of Namibia's accession to the Hague Convention on Inter-Country Adoption and the subsidiarity principle in Art 21(b) of the UN Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution.

Related international agreements: The following international agreements to which Namibia is party are appended to the Act –

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990 Convention on the Rights of the Child, 1989

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

This Protocol is issued under the *Convention against Transnational Organized Crime (Palermo Convention)*, 2000.

Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993

The following international agreements to which Namibia is not yet party are appended to the Act – Hague Convention on the Civil Aspects of International Child Abduction, 1980

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 2007.

Commentary:

- Legal Assistance Centre, Public Participation in Preparing A New Child Protection Law: National Consultation on the Child Care and Protection Bill, 2009, available here
- Oliver C Ruppel & Pombili L Shipila, "Adoption: Statutory and customary law aspects from a Namibian perspective" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available here
- R Coomer & D Hubbard, "A major decision: Considering the age of majority in Namibia" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available <a href="https://example.com/here/beta-bases/be
- Felicity !Owoses-/Goagoses, "Custody and guardianship of children" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available here
- Tousy Namiseb, "The Children's Status Act, 2006 (No. 6 of 2006)", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available here

- Julia Sloth-Nielsen, Lorenzo Wakefield & Nkatha Murungi, "Does the differential criterion for vesting parental rights and responsibilities of unmarried parents violate international law? A legislative and social study of three African countries", 55 (2) *Journal of African Law* 203, 2011.
- Legal Assistance Centre, Summary of Namibia's Child Care and Protection Act (Act No. 3 of 2015) (set of 23 factsheets on the Act in English, Afrikaans and Oshiwambo); available here
- Ministry of Gender Equality and Child Welfare / Legal Assistance Centre / Finnish Embassy / UNICEF Namibia, *Guide to Namibia's Child Care and Protection Act 4 of 2015* (detailed 28-chapter Guide to the Act and regulations designed to serve as a manual for service providers), available here.

MISCELLANEOUS

General Notice 250/2001 (GG 2601) proclaims 28 September as the Day of the Namibian Child "in order to re-dedicate Namibia's commitment to her children".

SELECTED CASES

- Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State 1991 NR 178 (SC) (constitutionality of corporal punishment)
- S v Koyoka 1991 NR 369 (HC) (no mutual duty of support arising in a situation where one person cared for another person when he was a child, but there was no blood relationship and no legal adoption)
- *Uirab v Minister of Basic Education*, Case No I 1257/2005 (High Court) (unreported; corporal punishment in school)
- S v Nkasi (CC 02/2010) [2010] NAHC 9 (24 March 2010) (unreported; child abuse which began as corporal punishment by parent)
- S v Jeremia 1993 NR 227 (HC) (severe sentence for child abuse)
- S v Teek 2009 (1) NR 127 (SC) (detailed discussion of credibility of evidence of children; see also Kaijata Kangueehi, "S v Teek: A critical review and analysis", Namibia Law Journal, Volume 1, Issue 2, 2009, available here); see also S v Teek 2019 (1) NR 215 (SC) (dangers of relying on uncorroborated evidence "especially of young children", due to the "imaginativeness and suggestibility of children")
- EH v D 2012 (2) NR 451 (HC) (best interests of child considered in custody dispute; considerations of urgency when children's rights involved, in contrast to commercial or kindred matters)
- Vivier NO & Another v Minister of Basic Education, Sport & Culture 2012 (2) NR 613 (SC) (extensive discussion of credibility evidence of single child witness with limited cognitive abilities)
- JT v AE 2013 (1) NR 1 (SC) (access by father to child born outside marriage considered in terms of common law with reference to Namibian Constitution and Convention on the Rights of the Child)
- Ex Parte Chingufo: In re Semente v Chingufo 2013 (2) NR 328 (HC) (patient's right to refuse treatment if sufficient mental capacity present, but requisite capacity missing in the case at hand), overturned on appeal in ES v AC 2015 (4) NR 921 (SC) (patient autonomy as a basic human right, notwithstanding children's right to be cared for by their parents; partial dissent would have found that child's right to prevent parent from abandoning child through an unnecessary death would have justified blood transfusion against parent's religious wishes)
 - See also Nico Horn, "Ex Parte Chingufo. In re E Semente; E Semente v Chingufo: Another unfortunate victory for formalist law", Namibia Law Journal, Volume 5, Issue 1, 2013, available here; Carmen C Visser, Medical treatment vis-à-vis patient's rights", Namibia Law Journal, Volume 8, Issue 1, 2016; Boniface S. Konga, "The right to refuse medical treatment on religious grounds: A critical analysis of the Supreme Court Judgment in ES v AC Case No: SA 57/2012" in Tapiwa Victor Warikandwa & John Baloro, eds, Namibia's Supreme Court at 30 Years: A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era, Konrad Adenauer Foundation, 2022, available here.
- JS & Another v Chairperson of the Internal Disciplinary Panel of the Windhoek International School & Others 2015 (2) NR 352 (SC) (child's right to legal representation in a school disciplinary hearing)

- Tjingaete v Lakay NO & Others 2015 (2) NR 431 (HC) (claim of adoption under customary law not accepted for purposes of intestate succession because of lack of proof of the customary law in question and because the Intestate Succession Ordinance recognises only formal adoptions under the relevant legislation)
- SK v SK 2018 (1) NR 268 (HC) (custody of minor children is never *res judicata* but always subject to variation on good cause shown and subject to best interests of child)
- S v Guriras 2022 (4) NR 929 (HC) (primary caregiver of child cannot be treated any differently than any other offender in respect of sentencing; hardship to dependents is unfortunate, but not a mitigating factor; Art 30 of the African Charter on the Rights and Welfare of the Child cannot overcome Art 10 of Namibian Constitution on equality before the law)
- CJV v DG (previously V) 2024 (1) NR 80 (HC) (views of child taken into account in decision on temporary custody after divorce of parents: assistance provided by Children's Advocate; principles on best interests of child in Child Care and Protection Act 3 of 2015, section 3 applied)
 - [77] I hold the view that since the dispute between the parties is about the care of the child, it is only befitting that the child, depending on his or her age, maturity and development stage, be heard on the subject that concerns him or her. Courts preach the *audi alteram partem* rule day in, day out, and it is only fair that the child whose welfare is at stake takes part in the proceedings that will determine his or her fate. Children should be afforded an opportunity to be involved in the process that affects them and determines their future. I take cognisance of the fact that a child may be influenced by one of the parents, another child or any other person, but this, in my view, should not be elevated to a bar from hearing the views and opinions of the concerned child for appropriate consideration.
 - [78] The views and opinions of the child expressed should be balanced with all other relevant factors in order to arrive at a decision that is in the best interests of the child. (at paragraphs 77-78)
- ME v AG & Another 2024 (2) NR 407 (HC) (in context of application for condonation, holds that courts should avoid strict legal formalism when best interests of a minor child are at stake).

Cases on infanticide:

S v Glaco 1993 NR 141 (HC)

S v Muzanima (1) (CC 12 of 2006) [2006] NAHC 15 (25 April 2006)

S v Shaningwa 2006 (2) NR 552 (HC)

S v Uupindi (CC 15 of 2007) [2007] NAHC 31 (20 April 2007)

S v Kaulinge (CC 14 of 2007) [2007] NAHC 30 (19 April 2007)

Akwenye v S (CA 117 of 2010) [2011] NAHC 106 (08 April 2011)

See also S v Seas 2018 (4) NR 1050 (HC) (murder of 3-year-old child by mother).

COMMENTARY

- G Naldi, "Supreme Court of Namibia declares Corporal Punishment Unconstitutional", 3 African Journal of International and Comparative Law 785 (1991)
- D LeBeau & G Spence, Towards the elimination of the worst forms of child labour in Namibia, University of Namibia, 2004
- Dr Elizabeth M Terry, Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps, Ministry of Labour and Social Welfare, 2007
- Legal Assistance Centre, Baby-dumping and Infanticide, Monograph 1, 2008, available here
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- FX Bangamwabo, "Towards the elimination of the worst forms of child labour in Namibia: The implementation and internalisation of international law relating to the worst forms of child labour", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here
- Legal Assistance Centre, Corporal Punishment: National and International Perspectives, 2010, available here

Legal Assistance Centre, Stepfamilies in Namibia: A Study of the Situation of Stepparents and Stepchildren and Recommendations for Law Reform, 2011, available here.

INTERNATIONAL LAW

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990 Convention on the Rights of the Child, 1989

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993

ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

Protocol to the Convention against Transnational Organised Crime, 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Cases on international law: NS v RH 2011 (2) NR 486 (HC) at 526E-529B (which discusses in dicta the subsidiarity principle in Art 21(b) of the Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution); JT v AE 2013 (1) NR 1 (SC) (best interests standard applied in case concerning father's access to child born outside marriage); S v Gomaseb 2014 (1) NR 269 (HC) (sentence imposed on 15-year-old offender upheld; Art 37(b) of the Convention on the Rights of the Child applied).

See also Births, Marriages, and Deaths Registration Act 81 of 1963 (CIVIL REGISTRATION).

See also Combating of Immoral Practices Act 21 of 1980 (sexual offences against children under age 16) and Combating of Rape Act 8 of 2000 (rape of children) (CRIMINAL LAW AND PROCEDURE).

See also *Criminal Procedure Act 51 of 1977* (testimony by children and juvenile offenders) (CRIMINAL LAW AND PROCEDURE).

See also Prevention of Organised Crime Act 29 of 2004 (provisions on trafficking relevant to child trafficking) (CRIMINAL LAW AND PROCEDURE).

See also Combating of Domestic Violence Act 4 of 2003 (DOMESTIC VIOLENCE).

See also **EDUCATION**.

See also Intestate Succession Ordinance 12 of 1946 (intestate succession of children) (INHERITANCE).

See also Labour Act 11 of 2007 (provisions on child labour) (LABOUR).

See also Maintenance Act 9 of 2003 (child maintenance) (MAINTENANCE).

See also Recognition of Certain Marriages Act 18 of 1991 (adoption of children) (MARRIAGE AND

DIVORCE	١
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See also YOUTH.

CHURCHES

Summary: This Ordinance (<u>OG 2153</u>) transfers the Namibian assets of the Nederduitse Gereformeerde Kerk in Suid-Afrika to the Nederduitse Gereformeerde Kerk in Suidwes-Afrika.

Regulations: The Ordinance contains no authorisation for regulations.

The Apostolic Faith Mission of South Africa (Private) Act 24 of 1961, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in SA GG 6670) makes the named church a body corporate.

Applicability to SWA: Section 8A states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in Section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)."

Amendments: Prior to Namibian independence, the Act was amended by The Apostolic Faith Mission of South Africa (Private) Amendment Act 4 of 1970 (<u>RSA GG 2645</u>), which inserted section 8A.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends the Articles of Association and the Memorandum of Association in the Schedule.

Regulations: The Act contains no authorisation for regulations aside from regulations that apply only to the Apostolic Faith Mission.

SELECTED CASES

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC)

New African Methodist Episcopal Church in the Republic of Namibia & Another v Kooper & Others 2015 (3) NR 705 (HC)

Nowases & Others v Evangelical Lutheran Church in the Republic of Namibia (ELCRN) & Others 2016 (4) NR 985 (HC).

See also Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932 (LAND AND HOUSING).

CITIZENSHIP AND IMMIGRATION

Departure from Namibia Regulation Act 34 of 1955, as amended in South Africa prior to Namibian independence w

Summary: This Act (originally published in RSA GG 5509, also published in OG 1920) regulates the departure of persons from Namibia. More specifically, it prohibits departure without a passport or a permit, or at a place other than an official border post. It also makes it an offence to assist anyone to leave the country illegally. The Ministry of Home Affairs, Safety and Security has indicated that this statute is earmarked for repeal and replacement.

Applicability to SWA: Section 1 defines "Union" to include "the territory of South West Africa". Section 10 of the original Act stated: "This Act shall apply also in the territory of South-West Africa." Section 10, as amended by Act 69 of 1962, stated: "This Act and any amendment thereof shall apply also in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel." These provisions were repealed after Namibian independence.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978. However, section 3(1)(6) of this Proclamation excluded the Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: The following pre-independence South African amendments applied to SWA –

- Commonwealth Relations Act 69 of 1962 (RSA GG 264)
- Residence in the Republic Regulation Act 23 of 1964 (RSA GG 746)
- Border Control Act 61 of 1967 (RSA GG 1745)
- Admission of Persons to and Departure from the Republic Regulation Amendment Act 38 of 1969 (RSA GG 2370)
- Departure from the Union Regulation Amendment Act 7 of 1979 (RSA GG 6340)
- Aliens and Immigration Laws Amendment Act 49 of 1984 (RSA GG 9182)
- *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438).

Act 4/1993 (GG 686), which commenced on 22 September 1994 (GN 172/1994, GG 925), amends sections 1, 2, 6, 8 and 9; inserts section 6A; repeals section 10; and substitutes certain expressions and the long title. It also substitutes section 11 to change the name of the Act (from "Departure from the Union Regulation Act").

Regulations: Pre-independence regulations have not been researched due to the anticipated repeal of the Act.

Post-independence regulations are contained in GN 136/1994 (GG 895), 85 as amended by GN 243/2013 (GG 5284) (which substitutes Regulation 2 and adds Annexure B), and by GN 7/2020 (GG 7099) (which substitutes Regulations 2 and 3, and Annexure B).

Cases:

S v Lofty-Eaton & Others (1) 1993 NR 370 (HC)

S v Malumo & Others (In re Ndala) 2014 (3) NR 690 (the question of whether this Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of section 319 of the Criminal Procedure Act 51 of 1977).

⁸⁵ These regulations repeal the ones contained in RSA GN R.827/1963.

Namibian Citizenship Act 14 of 1990 🛂 🙀

Summary: This Act (originally published in <u>GG 65</u>) regulates the acquisition and loss of Namibian citizenship in accordance with Article 4 of the Constitution. It was brought into force with effect from 15 September 1990 by Proc. 13/1990 (<u>GG 72</u>).

Repeals: The Act repeals the South African Citizenship Act 44 of 1949 and the Residence of Certain Persons in South West Africa Regulation Act 33 of 1985).

Amendments: The Immigration Control Act 7 (<u>GG 690</u>) of 1993, which was brought into force on 29 July 1994 (GN 133/1994, GG 895), amends section 29.

The Civil Registration and Identification Act 13 of 2024 (<u>GG 8547</u>), which has not yet been brought into force, will amend section 2, insert sections 2A and 2B and amend section 92; these changes all relate to citizenship nio the context of adoption.

Regulations: There is no savings clause for regulations made in terms of the repealed laws.

Regulations made in terms of the current Act are contained in GN 14/1991 (GG 154), as amended by GN 135/2018 (GG 6647) and by GN 152/2021 (GG 7583).

Cases

- Alberts v Government of Namibia & Another 1993 NR 85 (HC) (holding that the Constitution does not allow Parliament to enact legislation depriving a Namibian citizen by birth of his or her citizenship by reason of having served in the armed forces of another country; that the Act does not purport to do this; and that the Constitution may not be effectively altered by a policy decision)
- Swart v Minister of Home Affairs 1997 NR 268 (HC) (section 5; addresses the application for citizenship by naturalisation of a South African citizen resident in Namibia at the time of independence, holding that he was lawfully domiciled in Namibia for this purpose under the relevant laws on immigration, without having to obtain a permanent residence permit; also holding that his failure to apply for citizenship by registration, which he could have done within one year after independence, did not prevent an application for citizenship by naturalisation)
- Tlhoro v Minister of Home Affairs 2008 (1) NR 97 (HC) (section 5(1)(g) requiring renunciation of foreign citizenship in order to attain Namibian citizenship by naturalisation and section 26 prohibiting dual citizenship both held to be constitutional; judgment notes that section 26 must be interpreted in light of overall constitutional scheme for citizenship, meaning that citizenship by birth may not be regulated or derogated from by statutory provisions and that citizenship by descent may be regulated only by a requirement of registration)
- Minister of Home Affairs v Dickson & Another 2008 (2) NR 665 (SC)(ordinary residence for purposes of acquiring citizenship by marriage means lawful residence)
- Le Roux v Minister of Home Affairs and Immigration & Others 2011 (2) NR 606 (HC) (endorsing and applying the *Tlhoro* holding that section 26 interpreted in light of the Namibian Constitution does not apply to Namibian citizens by birth)
- Berker v Minister of Home Affairs and Immigration & Others 2012 (1) NR 354 (HC) (refers to court order made by agreement between parties confirming that application of section 26 is unconstitutional insofar as it is applied to deprive Namibians by birth or descent of their Namibian citizenship; special costs awarded against respondents, because applicant's Namibian passport was unlawfully confiscated by immigration official on grounds that she also held a German passport and because she was "treated as foreigner in her own country")
- Luehl [Lühl] v Minister of Home Affairs and Immigration 2021 (4) NR 1104 (HC) (section 2 of Act read with Art 4(2) of Namibian Constitution; no proof of biological link to parent required for citizenship by descent where person is named as parent on a valid birth certificate); overturned on appeal by Minister of Home Affairs and Immigration v Lühl 2023 (2) NR 429 (SC), which

held that registration either inside or outside Namibia is a precondition for citizenship by descent under section 2(2) of Act and declined to discuss any other issues since there was no registration in the case at hand.

See also *MW v Minister of Home Affairs* 2014 (4) NR 1108 (HC), reversed on appeal 2016 (3) NR 707 (SC) (meaning of ordinary residence in Art 4(1)(d) of Namibian Constitution)

See also *Ex parte: Mukondomi* (HC-NLD-CIV-MOT-ALP-2020/00004) [2020] NAHCNLD 89 (20 July 2020) (deals with domicile rather than citizenship, for purposes of an application for admission as a legal practitioner, but discusses in some detail the concept of a good faith marriage as referred to in Art 4(3)(a)(aa) of the Namibian Constitution).

Commentary:

Faith Chipepera & Katharina G Ruppel-Schlichting, "Namibia: Children's right to citizenship" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available here

Kaity Cooper & Dianne Hubbard, "By the Skin of its Teeth: How Namibia narrowly avoided a Constitutional crisis", Citizenship Rights in Africa Initiative blog post, 7 February 2017, available here

Leonard Tjiveze and Tapiwa Victor Warikandwa. "A critical examination of the meaning of the words 'ordinarily resident' in Article 4(1)(d) of the Namibian Constitution in relation to the acquisition of citizenship" in Tapiwa Victor Warikandwa & John Baloro, eds, *Namibia's Supreme Court at 30 Years: A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era*, Konrad Adenauer Foundation, 2022, available here.

Namibian Citizenship Special Conferment Act 14 of 1991 🕎 🙀

Summary: This Act (<u>GG 311</u>) makes provision for the conferment of Namibian citizenship upon certain descendants of persons who left Namibia because of persecution by the colonial government.

Regulations: The Act makes no provision for regulations.

Immigration Control Act 7 of 1993 📦 🖨

Summary: This Act (<u>GG 690</u>) regulates and controls the entry of persons into Namibia and their residence inside the country. It also provides for the removal from Namibia of certain immigrants. It was brought into force on 29 July 1994 by GN 133/1994 (<u>GG 895</u>). The Ministry of Home Affairs, Safety and Security has indicated that this statute is earmarked for replacement by a new law.

Repeals: The Act repeals the Aliens Control Act 30 of 1963, Aliens Registration Act 26 of 1939, Residence in the Republic Regulation Act 23 of 1964 and Admission of Persons to Namibia Regulation Act 59 of 1972, as well as most of the Aliens Act 1 of 1937.

Regulations: Regulations made in terms of the repealed legislation survive in terms of section 60(3) of this Act, but pre-independence regulations have not been comprehensively researched due to the anticipated repeal of the Act.

Immigration Regulations made in terms of the current Act are contained in GN 134/1994 (GG 895).86

⁸⁶ The Government Notice which issues these regulations repeals the regulations made under the *Aliens Act 1 of 1937* and published in RSA GN R.337/1964 (<u>RSA GG 739</u>). The repealed regulations were amended by RSA GN R.289/1964, RSA GN R.1711/1967, RSA GN R.82/1969, RSA GN R.3933/1969, RSA GN R.878/1970, RSA GN R.1350/1972 and Government Notice 100/1986 (<u>OG 5218</u>). These 1964 regulations are made in substitution for the regulations published in SA GN 161/1937, as amended.

The portions of the regulations relating to fees for various visas and permits are amended by GN 82/2008 (GG 4029).

Regulation 13 on "Contagious infections or viruses or diseases" and Regulation 24 on visa fees were substituted by GN 133/2010 (GG 4514), which also amended Annexure I of the regulations by deleting item 10.

Regulation 13 is amended to add ebola to the list of prescribed diseases by GN 145/2014 (<u>GG 5556</u>), but this amendment ignores the substitution of Regulation 13 by GN 133/2010 and does not make sense in respect of the substituted regulation.

These regulations are also amended by GN 138/2018 (<u>GG 6647</u>) (substitution of Regulation 24 on fees, substitution of Annexure H, and amendment of Annexure I).

Note that there is some contradictory overlap between regulation 24 and regulation 29 as a result of this amendment.

These regulations are further amended by GN 8/2020 (<u>GG 7099</u>) (amendment of regulation 2, insertion of regulation 2A, and insertion of Annexure AF to update ports of entry).

GN 153/2021 (GG 7583) amends regulation 24 in respect of fees.

GN 153/2021 incorrectly states that the regulations were previously amended by GN 82/2008 of 15 July 2008, whereas the date of publication of that notice was actually 15 April 2008.

The regulations are also amended by GN 327/2023 (<u>GG 8225</u>) (substitution of regulation 5 and addition of new Annexure C1).

GN 379/2024 (GG 8529) amends regulation 1 and substitutes regulation 2 and Annexure A.

GN 399/2024 (<u>GG 8538</u>) inserts regulation 30 and Annexures AG-AH. GN 399/2024 omits mention of the previous amendment in GN 379/2024.

Notices: Maximum amounts in terms of section 11(2)(a) are set in GN 135/1994 (GG 895).

Pursuant to section 40(1) of the Act, GN 318/2020 (<u>GG 7420</u>) provides an exemption from section 39(2)(h) (on prohibited immigrants) for any person whose stay in Namibia has exceeded the period stipulated in the relevant permit, subject to the condition that the person in question leaves Namibia on or before 28 February 2021.

Cases: The following cases concern the current Act –

Swart v Minister of Home Affairs 1997 NR 268 (HC) (sections 1, 2(1)(b), 22; also discusses section 1 of the previous Admission of Persons to the Republic Regulation Act 59 of 1972 and section 3(2)(b) of the previous Residence of Certain Persons in South West Africa Regulation Act 33 of 1985)

S v Ithilenga 1997 NR 239 (HC) (section 56(d))

Correia v Commanding Officer, Windhoek Prison & Another 1999 NR 48 (SC) (sections 24, 36, 39(2)(h), 41, 42(4)(b)(i))

S v Russel 1999 HR 39 (HC) (section 30(1)(a) - meaning of "employment")

Frank & Another v Chairperson of the Immigration Selection Board 1999 NR 257 (HC); 2001 NR 107 (SC) (Immigration Selection Board as an administrative body subject to Article 18 of the Constitution; interpretation of section 26(3)(e); factors relevant to decision on permanent residence); criticised in Digashu & Others v Government of the Republic of Namibia & Others 2022 (1) NR 156 (HC)

Sikunda v Government of the Republic of Namibia (3) 2001 NR 181 (HC) (section 49); Government of the Republic of Namibia v Sikunda 2002 NR 203 (SC) (section 49; Composition of the Security Commission pursuant to Article 114 of the Constitution; Security Commission as subject to

Articles 18 and 12 of the Constitution)

Lalandii (Pty) Ltd v Butshingi NLLP 2002 (2) 409 NLC (no legal obligation on potential employer to furnish letter of motivation in support of application to regularise immigration status)

Miller & Paschke v The Law Society of Namibia NLLP 2002 (2) 328 NHC (discussion of application of Act to non-Namibians married to Namibian citizens and domiciled in Namibia)

Mulopo v Minister of Home Affairs 2004 NR 164 (HC) (right to fair administrative action based on valid reasons, failure to establish right to residence based on Namibian citizenship of children and effect of failure to join Immigration Selection Board)

Zhu v Minister of Home Affairs & Another 2004 NR 170 (HC) (deportation cannot be imminent without a directive from an immigration tribunal)

S v Mushwena & Others 2004 NR 276 (SC)

Note that this case was reversed in part by S v Likanyi 2017 (3) NR 771 (SC). However, the Likanyi case does not discuss this Act.

S v Ngono 2005 NR 34 (HC) (section 12)

S v Makonde, Case No 123/2005 (appropriate sentence for contravention of section 29(5); quoted in S v Jeremani 2009 (1) NR 149 (HC)

S v Cambinda; S v Agostino; S v Carvalho 2006 (2) NR 550 (HC) (appropriate sentences for offences under Act)

S v Koch 2006 (2) NR 513 (SC) (section 47 of Act discussed in dicta at 525-26)

S v Marisa 2006 (2) NR 586 (HC) (sentence imposed under section 29(5) confirmed)

Getachew v Government of the Republic of Namibia 2006 (2) NR 720 (HC), 2008 (1) NR 1 (SC) (sections 22, 24, 35 and 42)

Minister of Home Affairs v Dickson & Another 2008 (2) NR 665 (SC) (section 22)

S v Jeremani 2009 (1) NR 149 (HC) (appropriate sentence for contravention of section 29(5))

S v Willem; S v Nkomo 2009 (1) NR 352 (HC) (formulation of charges under section 12(1) and (4))

S v Mbele 2011 (1) NR 357 (HC) (section 29(1)(a))

Berker v Minister of Home Affairs and Immigration & Others 2012 (1) NR 354 (HC) (refers to court order made by agreement between parties confirming that application of limits of entry into, and residence in, Namibia in Part V of Act to Namibian citizens is unlawful)

S v Okuani 2014 (1) NR 16 (HC) (formulation of criminal charge under section 12 of Act)

Fernandes v Minister of Home Affairs and Immigration & Another 2015 (3) NR 805 (HC) (section 27(2)(b); administrative body bound by reasons for decisions given to applicant at the relevant time, and must provide facts on which decision is based if such are not generally well known)

Namrights Inc v Nicodemus & Others 2016 (2) NR 596 (LC) (applicability of sections 24 and 27 to person with refugee status)

S v Munuma & Others 2016 (4) NR 954 (SC) (inapplicability of sections 7 and 9 to persons involuntarily deported back to Namibia)

Viljoen v Chairperson of the Immigration Selection Board & Another 2017 (1) NR 132 (HC) ((a) the words "permanently resident in Namibia" in section 26(3)(g) cannot be taken to mean the holder of a permanent residence permit; (b) a person who is domiciled in Namibia is "permanently resident in Namibia" for the purposes of that provision; (c) the Board abused its discretion in its consideration of whether the daughter in question was "able" to maintain her mother, which cannot be equated with "proof of ability to maintain". Also, where an administrative decision is unlawful and the unlawfulness is "gravely material" and has undermined the statutory remedies provided, this constitutes exceptional circumstances which justify the court in supplanting the statutory remedies, proceeding with the judicial review process and ordering the administrative body to grant the outcome sought by the applicant within a specified time period; for a contrasting decision on exhaustion of statutory remedies, see Four Three Five Development Companies (Pty) Ltd v Namibia Airports Company & Others 2017 (1) NR 142 (HC)).

Minister of Home Affairs and Immigration v Holtmann & Others 2020 (2) NR 303 (SC) (section 22(1)(d) as limited by section 22(2); interpretation of "only" in section 22(2)(b); Namibian domicile cannot be acquired while present in Namibia only on a work permit, even if the permit holder has a subjective intention to remain in the country indefinitely; any other interpretation would undermine State's power to regulate entry into and residence in Namibia); overruling Prollius v Minister of Home Affairs and Immigration & Others & One Similar Case 2018 (1) NR 118 (HC); see also Castañeda v Minister of Home Affairs and Immigration & Another 2022 (2) NR

- 313 (SC) (re-affirming *Holtzmann*)
- Ex parte: Mukondomi (HC-NLD-CIV-MOT-ALP-2020/00004) [2020] NAHCNLD 89 (20 July 2020) (sections 2(1) and 22(1); follows holding of Miller & Paschke v The Law Society of Namibia that applicants domiciled in Namibia by virtue of good faith marriage do not require permits under Act and discusses requirements of good faith marriage)
- S v Miguel & Others 2018 (4) NR 946 (HC) (sufficient evidence of contravention of section 7)
- Prosecutor-General v Paulo & Another 2021 (2) NR 423 (HC) (section 30 of Act at paras 43-54), confirmed on appeal in Prosecutor-General v Paulo & Another 2023 (2) NR 477 (SC) (section 30 of Act discussed at paras 48-50)
- Digashu & Others v Government of The Republic of Namibia and Others 2023 (2) NR 358 (SC), overturning Digashu & Others v Government of the Republic of Namibia & Others 2022 (1) NR 156 (HC) (Supreme Court: failure to recognise the foreign spouse of Namibia citizen lawfully married outside Namibia as a "spouse" for purposes of section 2(1)(c) of Act violates the constitutional rights to dignity and equality; the statements on same-sex relationships in Frank & Another v Chairperson of the Immigration Selection Board 2001 NR 107 (SC) were dicta and that case's approach to the term "spouse" is expressly disapproved here; moreover, the facts in the Frank case are distinguishable; Mainga J dissented)
- Castañeda v Minister of Home Affairs and Immigration & Another 2022 (2) NR 313 (SC) (section 38 certificate cannot confer domicile; on review, refusal of section 38 certificate set aside due to failure to inform applicant of outcome and failure to take proper steps to deport him; lack of application procedure for section 38 certificate is a lacuna in Act that should be remedied)
- Kitching & Another v Chairperson of the Immigration Selection Board & Others 2023 (1) NR 121 (HC) (the three components of section 26(3)(d) must be read disjunctively; the Board based its decision on permanent residence on unmentioned facts or assumptions, and the applicants should have been given an opportunity to make representations regarding their financial position and immovable property before the Board made a final decision)
- S v DJJ & Another 2023 (4) NR 1098 (SC) (section 27(1) discussed).

The following cases were decided under this Act's predecessor, the *Admission of Persons to the Republic Regulation Act 59 of 1972* –

Djama v Government of the Republic of Namibia 1992 NR 37 (HC) *S v Luanda & Another* 1993 NR 287 (HC).

Namibia Refugees (Recognition and Control) Act 2 of 1999 📦 😜

Summary: This Act (<u>GG 2065</u>) concerns the recognition and control of refugees in Namibia and gives effect to certain provisions of international conventions on refugees to which Namibia is party. It was brought into force on 22 September 2000 by GN 234/2000 (<u>GG 2412</u>).

Regulations: Namibia Refugees (Recognition and Control) Regulations are contained in GN 236/2000 (GG 2412), as amended by GN 156/2021 (GG 7583).

Notices: Osire was declared as a reception area for refugees and others in GN 235/2000 (GG 2412).

Cases: S v Isaac 2004 NR 122 (HC); Namrights Inc v Nicodemus & Others 2016 (2) NR 596 (LC) (section 18; UN Convention Relating to the Status of Refugees, Articles 2 and 26).

Related international agreements: The statute gives effect to certain provisions of the United Nations Convention relating to the Status of Refugees, 1951, the Protocol relating to the Status of Refugees (New York Protocol), 1967 and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969; and to provide for matters incidental thereto

The Namibia Refugees (Recognition and Control) Regulations make reference to compliance with Article 35 of the *UN Convention relating to the Status of Refugees*, 1951 and Article II of the *Protocol*

relating to the Status of Refugees (New York Protocol), 1967.

See also SADC Declaration on Refugee Protection within Southern Africa, 1998 (not legally-binding).

Namibian Citizenship (Second) Special Conferment Act 6 of 2015 🕎 🙀

Summary: This Act (GG 5775) makes provision for the conferment of Namibian citizenship upon certain descendants of persons who left Namibia because of persecution by the colonial government. It contains provisions similar to those in the Namibian Citizenship Special Conferment Act 14 of 1991 (GG 311). However, the time period covered by the 1991 Act has expired; the 2015 Act covers an additional time period.

Regulations: Regulations are authorised by section 5 of the Act, but none have yet been promulgated.

One-Stop Border Posts Control Act 8 of 2017 🕎 🖨

Summary: This Act (<u>GG 6423</u>) provides for the conclusion of agreements between Namibia and adjoining countries on the establishment and implementation of one-stop border posts which are jointly managed.

Regulations: Regulations are authorised by section 9 of the Act, but none have yet been promulgated.

*Regularisation of Status of Certain Residents of Namibia, their Descendants and Foreign Spouses Act 15 of 2024 🕎 🙀

Summary: This Act (<u>GG 8549</u>) provides a process for acquisition of Namibian citizenship by naturalisation for holders of South West Africa identification documents, many of whom would otherwise be stateless. It also makes provision for the acquisition of Namibian citizenship by descendants and foreign spouses of such persons. The Act will be brought into force on a date set by the Minister in the *Gazette*.

Regulations: Regulations are authorised by section 7 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

**African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009

**African Union Convention on Cross-Border Cooperation (Niamey Convention), 2014 Constitution of the International Organization for Migration (IOM), 1953

Convention against Transnational Organized Crime (Palermo Convention), 2000 Convention relating to the Status of Refugees, 1951

Protocol relating to the Status of Refugees (New York Protocol), 1967

**OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

*SADC Protocol on the Facilitation of Movement of Persons, 2005

Cases on international law: S v Mushwena & Others 2004 NR 276 (SC) (per minority opinion of O'Linn, AJA) refers to the "Convention relating to the Status of Refugees and Stateless Persons as Supplemented by the Protocol relating to the Status of Refugees" (confirming that Namibia acceded to

the Protocol on 17 February 1995) and the OAU Convention governing the Specific Aspects of Refugee Problems in Africa.

CIVIL REGISTRATION

Aliens Act 1 of 1937, sections 1, 9 and 14, as amended in South Africa to February 1978

Summary: This Act (originally published in <u>SA GG 2409</u>) originally governed the presence of anyone who is not a South African citizen in South Africa and South West Africa. The Immigration Control Act 7 of 1993, which was brought into force on 29 July 1994 by GN 133/1994 (<u>GG 895</u>), repealed most of this Act (sections 2-8*ter* and 10-13*bis*), along with most of its amending Acts. The only surviving sections are section 1 (definitions, as amended by various Acts), section 9 (change of name, as amended by section 12 of Proc. 15/1989) and section 14 (short title). The only substantive provision remaining in force, section 9, deals with name changes. (This is why the Act now appears in the category on "CIVIL REGISTRATION" rather than "CITIZENSHIP AND IMMIGRATION".) The remaining portions of this Act, as amended, will be repealed by the Civil Registration and Identification Act 13 of 2024 (<u>GG</u> 8547), which has not yet been brought into force.

Applicability to SWA: The definition of "Union" in section 1 included "the territory of South West Africa". Section 13*bis*, prior to its repeal by the Immigration Control Act 7 of 1993, stated "This Act and any amendment thereof shall also apply in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Immigration) Transfer Proclamation (AG 9/1978), dated **10 February 1978**. Section 3 of the transfer proclamation excluded sections 8(1) and 12(1) of the Act from the operation of section 3(1) of the General Proclamation. However, the reference to "sections 8(1) and 12(1) of the Aliens Act" in section 3 of the transfer proclamation was subsequently substituted by section 51 of the Aliens and Immigration Laws Amendment Proclamation (AG 15/1989) (OG 5728) to read "section 12(1)(b) of the Aliens Act".

The Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated **30 March 1978**, was also applicable to this Act. Section 3(2)(a) of this transfer proclamation excluded section 12(1) of the Act from the operation of section 3(1)(c) of the General Proclamation, which deals with the interpretation of the term "Republic".

The provisions of the Act relating to the Immigrant Selection Board were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation "those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic".

None of the amendments to the Act in South Africa after the date of the transfer proclamations were made expressly applicable to SWA.

Amendments: None of the South African amendments to the original Act which were applicable to South West Africa are relevant now that the only surviving substantive section of the Act is section 9. (Section 1 is still in force, but none of the surviving definitions appear in section 9.)⁸⁷

The Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 (OG 5728) amends section 9.

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⁸⁷ The South African amendments to the Act are the Aliens Amendment Act 59 of 1961 (<u>RSA GG 30</u>), the Commonwealth Relations Act 69 of 1962 (<u>RSA GG 264</u>), and the Aliens Amendment Act 7 of 1967 (<u>RSA GG 1664</u>).

The amendments made to the Act by the Namibian Citizenship Act 14 of 1990 (GG 65) are not relevant to the sole surviving substantive section.

The Immigration Control Act 7 of 1993 (<u>GG 690</u>), which was brought into force on 29 July 1994 by GN 133/1994 (<u>GG 895</u>), repealed sections 2-8*ter* and 10-13*bis* of the primary Act.

It should be noted that the amendments made to the Act in SWA and Namibia have been so extensive that hardly any of the original RSA Act remains. As noted above, the only surviving sections are sections 1, 9 and 14.

Regulations: No pre-independence or post-independence regulations relating to the surviving portions of the Act on name changes remain in force under this Act, and the authority to issue regulations under the Act, previously contained in section 11 of the Act, was repealed by the Immigration Control Act 7 of 1992.

Regulations pertaining to changes of surname under section 9 of the Act were issued as part of a larger set of regulations in RSA GN R.337/1964 (RSA GG 739), as amended. However, the 1964 regulations – which covered a range of immigration matters under the *Aliens Act 1 of 1937* in addition to surname changes – were repealed *in their entirety* by the immigration regulations contained in GN 134/1994 (GG 895), issued in terms of the Immigration Control Act 7 of 1992 (which repealed much of the *Aliens Act 1 of 1937*).⁸⁸

Note that name changes which take place in circumstances other than those described in section 9 of this Act are governed by the *Births, Marriages and Deaths Registration Act 81 of 1963*, and the regulations made pursuant to that Act. (See the entry for that law below.)

Application of law: The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) (OG 5726) affected how the definition of "alien" was to be construed, but this is of no relevance to the surviving portions of the Act.

Cases:

Swart v Minister of Home Affairs 1997 NR 268 (HC) (deals with aspects of the Act which were repealed by the Immigration Control Act 7 of 1993 (sections 1, 2 and 12(1)(a))

Müller v President of the Republic of Namibia & Another 1999 NR 190 (SC) (section 9) (critiqued in E Bonthuys, "'Deny Thy Father and Refuse Thy Name': Namibian Equality Jurisprudence and Married Women's Surnames", 117 (3) South African Law Journal 464 (2000); analysis revised by Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC))

According to *Müller*, the references to the Administrator-General in section 9 should be construed as references to the President after independence in terms of Article 140(5) of the Namibian Constitution. However, according to the subsequent case of *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another*, this interpretation should be based on Art 140(4) instead of Art 140(5).

Following on the *Müller* case, the United Nations Human Rights Committee which oversees the International Covenant on Civil and Political Rights ruled in 2002 that the different procedures for men and women with respect to the assumption of a spouse's surname upon marriage constituted unfair sex discrimination in terms of the International Covenant and gave the Namibian government 90 days to report on what has been done to rectify that problem. United Nations Human Rights Committee, *Communication No. 919/2000*, CCPR/C/74/D/919/2000, 28 June 2002. However, subsection (1) has not been amended accordingly.

2134/1943 (SA GG 3272).

⁸⁸ The repealed regulations were amended by RSA GN R.289/1964, RSA GN R.1711/1967, RSA GN R.82/1969, RSA GN R.3933/1969, RSA GN R.878/1970, RSA GN R.1350/1972 and Government Notice 100/1986 (OG 5218). The repealed regulations were made in substitution for (amongst others) the regulations published in GN 759/1937 (SA GG 2442, republished in OG 720), as amended by SA GN 1030/1938 (SA GG 2540) and SA GN

Births, Marriages and Deaths Registration Act 81 of 1963, as amended in South Africa to March 1978

Summary: This Act (originally published in <u>RSA GG 550</u>) governs the registration of births, marriages and deaths. This Act, as amended, will be repealed by the Civil Registration and Identification Act 13 of 2024 (<u>GG 8547</u>), which has not yet been brought into force.

Repeals: This Act repeals the Births, Marriages and Deaths Registration Act 17 of 1923.

Applicability to SWA: This Act was initially brought into force in South West Africa by Ord. 27/1965 (OG 2636) with effect from the date of publication of that Ordinance (21 June 1965), subject to certain rules of construction contained in Ord 27/1965. Ord 27/1965 was repealed and replaced by the *Births, Marriages and Deaths Registration Amendment Act 58 of 1970* (RSA), which was brought into force on 1 February 1972, making the Act, with the exception of sections 7A and 42(4), applicable to South West Africa through the insertion of section 51A into the Act.

Section 1, as substituted by *Act 58 of 1970*, defines "Republic" to include "the territory of South West Africa". Section 51A, inserted by *Act 58 of 1970*, states "This Act, except sections 7A and 42(4), and any amendment thereof, and any regulations made under this Act, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, and in such application the word 'Bantu' shall be construed as 'native' and any compound or derivative of 'Bantu' shall be construed as a corresponding compound or derivative of the word 'native'."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated **30 March 1978**.

Section 3(2)(c) of the transfer proclamation excluded the reference to the "Republic" throughout the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning given to it in the definition section of the Act (South Africa and SWA).

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Births, Marriages and Deaths Registration Amendment Act 35 of 1982* (RSA GG 8094) and the *Marriages, Births and Deaths Amendment Act 41 of 1986* (RSA GG 10211) – neither of which was made expressly applicable to SWA.

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

- Births, Marriages and Deaths Registration Amendment Act 17 of 1967 (RSA GG 1670)
- Births, Marriages and Deaths Registration Amendment Act 18 of 1968 (RSA GG 2023)
- Births, Marriages and Deaths Registration Amendment Act 58 of 1970 (RSA GG 2843)
- *Births, Marriages and Deaths Registration Amendment Act 51 of 1974* (RSA GG 4440).

The Act was also amended by section 1 of the Native Laws Amendment Proclamation AG. 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Certain terms are to be construed in accordance with section 1 of the References to Plural Relations and Development Act 10 of 1979 (OG 4023) (which does not technically make any amendments to the Act).

The Marriages, Births and Deaths Amendment Act 5 of 1987 (OG 5356) makes substantial amendments to this Act.

Regulations: Regulations made under this Act are contained in GN 214/1987 (OG 5480), as amended by GN 128/2001 (OG 2564), GN 214/2013 (OG 5264), GN 137/2018 (OG 6647) and GN 154/2021 (OG 7583).

Cases: MW v Minister of Home Affairs 2014 (4) NR 1108 (HC), overruled on appeal 2016 (3) NR 707 (SC) (meaning of ordinary residence in Art 4(1)(d) of Namibian Constitution, in relation to citizenship and birth registration).

Notices: Forms and certificates made pursuant to Regulation 2 of the regulations contained in GN 214/1987 (OG 5480) were announced in GN 27/2014 (GG 5425), but this notice was withdrawn by GN 49/2014 (GG 5439) and replaced by GN 52/2014 (GG 5444). GN 52/2014 is amended by GN 173/2016 (GG 6088).

GN 52/2014 (<u>GG 5444</u>) prescribes forms in terms of regulation 2(a)(iii), which it erroneously refers to as regulation 2(iii). GN 172/2016 erroneously states that it is amending the regulations contained in GN 214/1987. It also erroneously states that GN 27/2014 (<u>GG 5425</u>) amended these regulations; in fact, GN 27/2014 prescribed forms without amending the regulations, and it was withdrawn and replaced by GN 52/2014.

However, all of the regulations affected by this provision appear to have been repealed.

- (1) Regulations made under the *Births, Marriages and Deaths Registration Act 17 of 1923* were contained in SA GN 1181/1934 (SA GG 2218; re-published in OG 579), as amended by GN 873/1937 (OG 721), GN 1329/1955 (OG 1934), GN 718/1956 (OG 2017) and GN 415/1960 (OG 2257). There were, in addition, regulations relating to fees contained in RSA GN R.558/1963 (RSA GG 485; republished in OG 2482), also made in terms of *Act 17 of 1923*. These create an exception to the fees imposed for alterations of any race description in any birth, marriage or death register, stating that such a change is free of charge. Although the *Births, Marriages and Deaths Registration Act 17 of 1923* was repealed by the *Births, Marriages and Deaths Registration Act 81 of 1963*, these regulations initially survived pursuant to section 51(2) of the *Births, Marriages and Deaths Registration Act 81 of 1963*. However, these regulations do not appear to remain in force in Namibia as there was a chain of regulations which replaced them.
- (2) The 1934 regulations were substituted by regulations published in RSA GN R.86/1964 (RSA GG 703). These 1964 regulations did not explicitly repeal the 1963 regulations on exemptions relating to fees for alterations of any race description in any birth, marriage or death register, but there is an implied repeal since the 1964 regulations contain a virtually identical exemption in regulation 17(1).
- (3) The 1964 regulations were in turn substituted, along with the amendments contained in RSA GN R.819/1967 (RSA GG 1766), by regulations contained in RSA GN R.1737/1971 (RSA GG 3272) in so far as the substituted regulations "are applicable to a person who is not a Bantu".
- (4) The 1964 regulations, as amended and read with RSA GN R.1737/1971 (RSA GG 3272), were then withdrawn by RSA GN R.2385/1975 (RSA GG 4936). However, the 1975 regulations applied only "in relation to persons who are Bantu as defined in the Population Registration Act, 1950 (Act 30 of 1950), or who are natives (excluding Namas) as defined in section 25 of the Native Administration Proclamation, 1928 (South-West Africa Proclamation 15 of 1928)".
- (5) Thus, the regulations which applied to Namibia were the regulations published in RSA GN R.1737/1971 (RSA GG 3272) (for "non-Bantus"), and the regulations published in RSA GN R.2385/1975 (RSA GG 4936) (for "Bantus and natives excluding Namas") both of which were promulgated prior to the date of transfer of the Act to SWA. (It is possible that the 1964 regulations, as amended prior to the date of transfer, remained in force in respect of Namas but if so, they would have no practical relevance in post-independence Namibia.)
- (6) In Namibia, subsequent regulations were made under this Act in GN 214/1987 (OG 5480), which repealed RSA GN R.1737/1971 and RSA GN R.2385/1975.

In South Africa, the regulations contained in RSA GN R.1737/1971, as amended, were substituted by the regulations contained in RSA GN R.2206/1986 (RSA GG 10499) — which were made after the date of transfer and which were thus not applicable to SWA. Regulation 27 of these South African regulations states:

"The regulations published under Government Notice R.1737 of 1 October 1971 [RSA GG 3272], as amended by Government Notices R. 922 of 27 May 1977, R.290 of 15 February 1980, R.6 of 2 January 1981 and R.2005 of 25 September 1981, and the regulations published under Government Notice R.2385 of 19 December 1975 [RSA GG 4936], as amended by Government Notices R.850 of 16 April 1981 and R.2422 of 6 November 1981, are hereby withdrawn."

⁸⁹ Regulations made under the law repealed by this Act initially survived pursuant to section 51(2) of the Act:

Any proclamation issued or regulation made or action taken or thing done or deemed to have been issued, made, taken or done under any provision of any law repealed... shall be deemed to have been issued, made, taken or done under the corresponding provision of this Act.

Identification Act 21 of 1996 🕎 🙀

Summary: This Act (<u>GG 1447</u>) provides for a population register and for the issue of identity documents. It was brought into force on 18 May 2001 by GN 95/2001 (<u>GG 2533</u>). This Act will be repealed by the Civil Registration and Identification Act 13 of 2024 (<u>GG 8547</u>), which has not yet been brought into force.

Repeals: The Act repeals the *Identity Documents in South West Africa Act 37 of 1970* and the Identification of Persons Act 2 of 1979.

Regulations: Section 19(2) provides as follows:

Any regulation, directive, authority made or given under any provision of any law repealed by subsection (1) shall, in so far as it is not inconsistent with this Act, be deemed to have been made or given under a corresponding provision of this Act.

Pre-independence regulations have not yet been comprehensively researched, but all seem to have been repealed by the regulations made under the current Act.

Identification Regulations are contained in GN 96/2001 (<u>GG 2533</u>), as amended by GN 136/2018 (<u>GG 6647</u>), GN 22/2020 (<u>GG 7116</u>) and GN 155/2021 (<u>GG 7583</u>).⁹⁰

Note: Identity documents issued under the previous acts will continue to be valid until a date determined by the Minister of Home Affairs and announced in the *Government Gazette*.

Commentary: Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 6.1: Are you Required by Law to Carry Your Identification Document?)

*Civil Registration and Identification Act 13 of 2024 🗐 🙀

Summary: This Act (<u>GG 8547</u>) governs the registration of civil events, which include births, stillbirths, adoptions, marriages, divorces and other marital severances, deaths and name changes. It also regulates the issue of identy documents. It will be brought into force on a date set by the Minister.

Repeals: This Act repeals the *Births, Marriages and Deaths Registration Act 81 of 1963*, the Identification Act 21 of 1996, and the remaining portions of the *Aliens Act 1 of 1937* (which deal with name changes).

Savings: Section 92 of the Act contains transitional provisions, but there is no savings clause for regulations made under the repealed laws.

Regulations: Regulations are authorised by several different sections of the Act, but none have yet been promulgated.

Cases: The following case concerned the rules on name changes in the Aliens Act 1 of 1937:

Müller v President of the Republic of Namibia & Another 1999 NR 190 (SC) (section 9) (critiqued in E Bonthuys, "'Deny Thy Father and Refuse Thy Name': Namibian Equality Jurisprudence and Married Women's Surnames", 117 (3) South African Law Journal 464 (2000); analysis revised by Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC))

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⁹⁰ These regulations repeal the regulations contained in RSA GN R.749/1972 (<u>RSA GG 3486</u>) made under the Identity Documents in South West Africa Act 37 of 1970 and AG GN 13/1980 (<u>OG 4090</u>) made under the Identification of Persons Act 2 of 1979, along with all of their amendments.

According to *Müller*, the references to the Administrator-General in section 9 should be construed as references to the President after independence in terms of Article 140(5) of the Namibian Constitution. However, according to the subsequent case of *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another*, this interpretation should be based on Art 140(4) instead of Art 140(5).

Following on the *Müller* case, the United Nations Human Rights Committee which oversees the International Covenant on Civil and Political Rights ruled in 2002 that the different procedures for men and women with respect to the assumption of a spouse's surname upon marriage constituted unfair sex discrimination in terms of the International Covenant and gave the Namibian government 90 days to report on what has been done to rectify that problem. United Nations Human Rights Committee, *Communication No. 919/2000*, CCPR/C/74/D/919/2000, 28 June 2002. However, subsection (1) has not been amended accordingly.

The following case concerning birth registration was decided whtn the *Births, Marriages and Deaths Registration Act 81 of 1963* was still in force:

MW v Minister of Home Affairs 2014 (4) NR 1108 (HC), overruled on appeal 2016 (3) NR 707 (SC) (meaning of ordinary residence in Art 4(1)(d) of Namibian Constitution, in relation to citizenship and birth registration).

See also BIRTHS AND DEATHS.

See also MARRIAGE AND DIVORCE.

COMMISSIONS

Commissions Act 8 of 1947, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>SA GG 3800</u>) empowers the Governor-General (and now the State President) to appoint commissions to investigate matters of public concern.

Applicability to SWA: The Act was made applicable to South West Africa by RSA Proc. R.149/1980 (RSA GG 7199), as of 29 August 1980. Section 6A(1), as inserted by this Proclamation, states "This Act shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel." As the Act applied to South West Africa, the Administrator-General was empowered to appoint commissions in addition to the Governor-General (section 6A(2)).

Transfer of administration to SWA: The Administrator-General acquired authority to administer this Act in South West Africa by virtue of *RSA Proc. R.149/1980* (RSA GG 7199). This did not qualify as a "transfer proclamation" in terms of the General Proclamation, which defines "transfer proclamation in section 1 as "a proclamation *by the Administrator-General* by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General" (emphasis added). Therefore, the General Proclamation was not applicable to this Act. In any event, there were no amendments to the Act in South Africa after the date of *RSA Proc. R.149/1980* and prior to Namibian independence.

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

- General Law Amendment Act 80 of 1964 (RSA GG 829)
- General Law Amendment Act 102 of 1967 (RSA GG 1771)
- Commissions Amendment Proclamation, RSA Proc. R.149 of 1980 (RSA GG 7199).

Regulations: Section 1(1)(b) of the Act authorises regulations only with respect to specific commissions. Thus, regulations issued under the Act would have no general applicability or ongoing relevance.

Commissions: The following Commissions were established in terms of the Act by the SWA administration:

Commission of Inquiry into Health Services (AG Proc.19/1981) (OG 4509); Commission appointed in AG GN 113/1981)

Commission of Inquiry into Public Holidays (AG Proc. 32/1981) (OG 4562)

Commission of Inquiry into Alleged Irregularities and Misapplication of Property in Representative Authorities in, and the Central Authority of, South West Africa (AG Proc. 29/1982) (OG 4705).

Commission of Inquiry into Security Legislation in South West Africa (AG Proc. 18/1983) (OG 4836).

Commission of Inquiry into the Meat Industry in South West Africa (AG Proc. 1/1984) (OG 4857).

Commission of Inquiry into Labour Matters in South West Africa (AG Proc. 32/1987) (OG 5432).

During the election campaign which was part of the implementation of UN Resolution 435, AG Proc. 11/1989 (OG 5718) established a Commission for the Prevention and Combating of Intimidation and Election Malpractices, but this Commission did not operate in terms of the Commissions Act.

The following commissions have been established in terms of the Act since Namibian independence: Commission on Higher Education (Proc. 1/1991, <u>GG 144</u>).

See also GN 5/1991 (<u>GG 144</u>).

Commission of Inquiry into Matters relating to Chiefs, Headmen and other Traditional and Tribal Leaders and Authorities (Proc. 3/1991, GG 176).

See also GN 32/1991 (GG 175).

Commission of Inquiry into Alleged Instances of Irregularities in Respect of Property of the Central Government of Namibia (Proc. 12/1991, <u>GG 200</u>).

See also GN 57/1991 (GG 200).

Commission of Inquiry into the Procedures and Practices Applied in the Allocation and Utilisation of Existing Fishing Rights (Proc. 18/1991, GG 258).

See also GN 103/1991 (GG 258).

Commission of Inquiry into the Cause of Resistance by Certain Members of the Caprivi Community to the Appointment of Certain Senior Public Servants (Education) (Proc. 26/1991, GG 286).

See also GN 114/1991 (GG 286).

Commission of Inquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees (Proc. 1/1995, GG 1020).

See also GN 14/1995 (GG 1020), as amended by GN 55/1995 (GG 1044).

Commission of Inquiry into Legislation for the More Effective Combating of Crime in Namibia (Proc. 2/1996, GG 1285).

See also GN 75/1996 (GG 1285).

Commission of Inquiry into the Aviation Regulatory Practices of the Directorate: Civil Aviation in the Ministry of Works, Transport and Communication (Proc. 9/1997, <u>GG 1611</u>).

See also GN 153/1997 (GG 1611).

Commission on Education, Culture and Training (Proc. 13/1999, GG 2059).

See also GN 39/1999 (GG 2059).

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc 3/2001, <u>GG 2499</u>).

See also GN 51/2001 (GG 2499).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Social Security Commission (Proc. 7/2002, <u>GG 2857</u>).

See also GN 200/2002 (GG 2857) and GN 81/2003 (GG 2956).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority (Proc. 21/2003, <u>GG 3031</u>).

See also GN 172/2003 (GG 3031).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc. 38/2004, GG 3221)

See also GN 132/2004 (GG 3221)

Commission of Inquiry into Activities, Affairs, Management and Operations of Ministry of Health and Social Service (Proc. 20/2012, GG 5013)

Commission of Inquiry into Claims of Ancestral Land Rights and Restitution (Proc 5/2019, <u>GG</u> <u>6858</u>).

See also GN 59/2019 (GG 6858).

Application of law: Persons who give statements or evidence to commissions may be eligible for protection under the Witness Protection Act 11 of 2017 (<u>GG 6451</u>).

CONSTITUTION

The Namibian Constitution is not legislation in the same way as the other laws listed here, but is the Supreme Law of independent Namibia.

NAMIBIAN CONSTITUTION **W**

Summary: The Namibian Constitution (originally published in <u>GG 2</u>) is the fundamental law of independent Namibia. All other laws are subject to it. It was adopted by elected representatives of the Namibian people after Namibia's first democratic elections. It was published and came into force on the date of Independence: 21 March 1990 (Article 130 of the Namibian Constitution).

Amendments: Article 132 of the Namibian Constitution sets out the procedures for its amendment. It has been amended by the following –

- Namibian Constitution First Amendment Act 34 of 1998 (GG 2014)
- Namibian Constitution Second Amendment Act 7 of 2010 (GG 4480)
- Namibian Constitution Third Amendment Act 8 of 2014 (GG 5589).

Because of their importance, these amending Acts all have separate entries in this section.

Notes: The Legal Assistance Centre publishes a simple summary of key provisions of the Constitution in multiple languages in a booklet entitled *Know Your Constitution*.

Cases: Cases involving the Constitution are numerous and are not listed here. Where other legislation has been tested against the Constitution, those cases are listed under the entries for the statute in question. A few selected cases are cited at the end of this section.

Commentary: For commentary on constitutional issues, see the list at the end of this section.

Assignment of Powers Act 4 of 1990 🗐 🖨

Summary: This Act (<u>GG 29</u>) empowers the President to establish departments and other administrative divisions and to assign the administration of certain laws to the Prime Minister or to any Minister. It also provides for the temporary performance of the functions of the Prime Minister or a Minister by another Minister.

Notices: Specific assignments of powers are made in GN 61/1991 (<u>GG 211</u>), GN 62/1991 (<u>GG 211</u>), GN 98/1992 (<u>GG 455</u>), GN 141/1993 (<u>GG 750</u>), GN 277/1999 (<u>GG 2248</u>), Proc. 1/2002 (<u>GG 2704</u>), Proc. 8/2005 (<u>GG 3456</u>) and Proc. 6/2012 (<u>GG 4891</u>). (See also GN 28/2002, <u>GG 2704</u>.)

Regulations: The Act makes no provision for regulations.

Special Advisers and Regional Governors Appointment Act 6 of 1990 🕎 🙀

Summary: This Act (originally published in <u>GG 31</u>) provides for the appointment of persons by the President as special advisers and regional governors. It also sets forth the powers, duties and functions of such appointees. The Act was initially known as the Special Advisers and Regional Representatives Appointment Act 6 of 1990. It originally provided for the appointment of persons as regional

representatives, but this portion of the Act was repealed in 1992. The name of the Act was changed by Act 15/2010 (GG 4617), which inserted a section on the appointment of regional governors.

Amendments: Section 2 of the Act was repealed by the Regional Councils Act 22 of 1992 (<u>GG 469</u>), as of 30 November 1992.

Act 15/2010 (<u>GG 4617</u>) inserts a new section 2 to provide for regional governors, and substitutes section 3 (the short title).

Regulations: The Act makes no provision for regulations.

Appointments: Regional representatives are appointed in Proc. 14/1990 (GG 75).

The appointment of Regional Governors is announced in Proc. 1/2011 (GG 4645), Proc. 18/2013 (GG 5188) and Proc. 8/2018 (GG 6527).

Regional governors were appointed in 2015, but these appointments were not gazetted. See President announces governors", *The Namibian*, 10 April 2015 (listing the names of each governor).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

The following Special Advisers have been appointed (in chronological order):

Special Adviser: National Security – Proc. 7/1994 (GG 813)

Special Adviser: State Security – Proc. 8/1995 (GG 1071)

Special Adviser to the Minister of Health and Social Services – Proc. 8/1995 (GG 1071)

Special Adviser to the Minister of Health and Social Services: Inspection of Hospitals and Health Facilities – Proc. 8/1995 (GG 1071)

Special Advisers to the President on political and economic matters – Proc. 32/1997 (GG 1759)

Special Adviser (Commercial Law) to the Attorney-General – appointment renewed in Proc. 40/2004 (GG 3253)

The original appointment could not be located.

Special Adviser to the Minister of Labour and Social Welfare – Proc. 3/2005 (<u>GG 3433</u>)

Note that the original GG 3433 was replaced by another GG 3343 with the same date;

the correct version states at the top: "This Gazette replaces Gazette No. 3433 of 18 May 2005."

Special Adviser to the Minister of Veterans Affairs – Proc. 5/2007 (GG 3785)

Special Adviser (Commercial Lawyer) to the Minister of Justice – Proc. 13/2007 (GG 3900)

Special Adviser (labour matters) to the Minister of Labour and Social Welfare – Proc. 14/2008 (GG 4022)

Special Adviser to the Director-General of the National Planning Commission – Proc. 2/2009 (GG 4197)

Special Adviser to the President on Political Matters – Proc. 21/2009 (GG 4391)

Special Adviser to the Minister of Veterans' Affairs – Proc. 21/2009 (GG 4391)

Special Adviser to the Minister of Health and Social Services – Proc. 9/2010 (GG 4468)

Special Adviser to the Prime Minister – Proc. 8/2011 (GG 4757)

Special Adviser to the Minister of Regional and Local Government, Housing and Rural Development – Proc. 8/2011 (GG 4757)

Special Adviser to the Minister of Youth, National Service, Sport and Culture – Proc. 8/2011 (GG 4757)

Special Advisers to the Governors of each of the 13 regions – Proc. 10/2011 (GG 4757)

Special Adviser to the Minister of Justice – Proc. 13/2012 (GG 4958)

Special Adviser to the Minister of Home Affairs and Immigration – Proc. 15/2012 (GG 4996)

Special Adviser to the Minister of Finance – Proc. 11/2013 (GG 5160)

Special Adviser to the Minister of Lands and Resettlement – Proc. 19/2013 (GG 5188)

Special Adviser to the Minister of Regional and Local Government, Housing and Rural Development – Proc. 19/2013 (GG 5188)

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Special Adviser to the Minister of Health and Social Services – Proc. 26/2013 (GG 5264)
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Special Advisor to the Regional Governor of the Kharas Region – Proc. 36/2015 (GG 5869)

Special Advisor on Social and Political Issues to the Regional Governor of the Hardap Region – Proc 36/2015 (GG 5869)

Special Advisor on Social and Political Issues to the Regional Governor of the Kunene Region – Proc 36/2015 (GG 5869)

Special Advisor on Social and Political Issues to the Regional Governor of the Kunene Region [a second such adviser] – Proc 36/2015 (GG 5869)

Special Advisor to the Regional Governor of the Khomas Region – Proc. 36/2015 (GG 5869)

Special Advisor to the Regional Governor of the Otjozondjupa Region – Proc. 36/2015 (<u>GG</u> <u>5869</u>)

Special Advisor to the President: Policy Implementation and Monitoring – Proc. 36/2015 (GG 5869)

Special Advisor to the President: Press Secretary – Proc. 36/2015 (GG 5869)

Special Advisor to the President: Youth Affairs and Enterprise Development – Proc. 36/2015 (GG 5869)

Special Advisor to the President: Community Coordination and Liaison – Proc. 36/2015 (GG 5869)

Special Advisor to the President: Economic Affairs – Proc 36/2015 (GG 5869)

Special Advisor to the President: Private Sector Interface and Constitutional Affairs – Proc. 36/2015 (GG 5869)

Special Advisors to the Minister of International Relations and Cooperation and the Minister of Urban and Rural Development – Proc. 7/2017 (GG 6333)

Special Advisor to the Governor of the Ohangwena Region – Proc. 8/2017 (GG 6333)

Special Advisors to the Minister of Defence and the Prime Minister – Proc. 7/2018 (<u>GG 6527</u>) Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Special Advisors to the Governors of Hardap and ||Karas Regions – Proc. 17/2018 (GG 6767)

Special Advisor: Health and Social Services in the Office of the Vice President – Proc. 2/2019 (GG 6824)

Special Advisor to Minister of Poverty Eradication and Social Welfare - Proc. 7/2019 (GG 6868)

Special Advisor on Veterans Affairs to the Vice President (with effect from 1 November 2019 until 20 March 2020) - Proc. 61/2019 (GG 7069)

Special Adviser to the Minister of Agriculture, Water and Land Reform (with effect from 12 July 2020 to 11 July 2023) - Proc. 30/2020 (GG 7258)

Special Adviser to the President on Economic Matters (with effect from 1 September 2020) – Proc. 53/2020 (GG 7349)

Special Adviser to the Prime Minister, Proc. 9/2022 (GG 7805)

Special Adviser to the Vice President, Proc. 10/2022 (GG 7805)

Special Advisor to the President on Youth Matters and Enterprise Development, Proc. 11/2022 (GG 7805).

Note that some Gazettes refer to Special "Advisors" rather than "Advisers". The Act uses the spelling "Advisers".

NOTE: Section 1 of the Act authorises the appointment by the President of Special Advisers "to the President, the Cabinet or any Minister designated by the President", stating that this may be done "from time to time by proclamation in the *Gazette*".

However, not all of the appointments of Special Advisers seem to have been gazetted. For example, a tender advertisement in <u>GG 1519</u> refers to equipment for a Special Adviser to the Minister of Justice, although no such appointment had been gazetted by that date. Proc. 14/2000 in <u>GG 2434</u> refers to a Special Adviser to the Ministry of Justice and a Special Adviser to the Attorney-General (in connection with pension fund coverage), but these appointments were not previously gazetted. The same is true with respect to the Special Advisers referred to in Proc. 17/2001 in <u>GG 2607</u> and Proc. 33/2004 in <u>GG 3198</u> (in connection with pension fund coverage). As another example, <u>GG 4725</u> refers to the appointment of a Special Adviser on Social and Political Issues for the Erongo

Region (in discussing a vacancy) which is not gazetted (although this position may fall outside the parameters of the Act altogether).

The apparent failure to announce all appointments under the Act in the *Gazette* as section 1 requires also appears to raise a Constitutional issue. Article 32(3)(i) of the Namibian Constitution discusses the President's powers of appointment of persons to specific offices as well as covering the appointment of "any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President". Article 32(8) states that all such appointments "shall be announced by the President by Proclamation in the Gazette".

Commentary: Nangula Shejavali, "Regional Governors: The Good, The Bad and The Ugly; Do the Benefits of Appointment by the President Outweigh the Loss of Democratic Representation?", Institute for Public Policy Research, 2015, available here.

Ombudsman Act 7 of 1990 🚾 🔄

Summary: This Act (<u>GG 32</u>) defines the powers, duties and functions of the Ombudsman in accordance with Chapter 10 of the Constitution.

Regulations: The Act makes no provision for regulations.

Appointments: Appointments have been made by Proc. 10/1990 (Acting Ombudsman); Proc. 16/1992 (Ombudsman); Proc. 7/1993 and Proc. 8/1993 (Deputy Ombudsman); Proc. 7/1996 (Ombudsman); Proc. 29/2003 (Acting Ombudsman) and Proc. 39/2004 (Ombudsman).

Notes: Regulations 5(7)(d), 5(8)(d), 10 and 13 of the Regulations relating to Conditions of Service of Judges contained in Proc. 28/2015 (<u>GG 5834</u>) are applied with the necessary changes to the Ombudsman with effect from 23 September 2015 by Proc. 45/2019 (GG 7049).

Cases: Prosecutor-General v Ombudsman & Another 2020 (2) NR 408 (HC) (court rejected the attempt of the Ombudsman to represent an individual in a criminal appeal on the theory that the individual's right to a fair trial was infringed and that he was thus an "aggrieved person" as defined in Art 25(2) of the Namibian Constitution; opinion discusses Arts 25(2), 91 and 92 of the Constitution, read with Art 93 on the meaning of "official", and sections 3-4 of the Act, in particular section 3(6)).

We are not aware of a case where the two constitutionally-established persons ... have ever contested a dispute between them before this court. To our knowledge this is the first time ever that the Prosecutor-General and the Ombudsman are in a duel before this court.

In a constitutional state, such as Namibia, this is a development to be welcomed, rather than deprecated because it bears resonance with the foundational principles of the rule of law and legality. It is also consonant with the concept of good constitutional citizenship, which requires that any contested legal territory, even by Constitution-established bodies, is to be resolved by the courts, in the exercise of their constitutional mandate. (paras 1-2; footnote omitted)

...we have arrived at the conclusion that the Ombudsman's assertion that he is entitled to challenge decisions by judicial officers if he considers such decisions to be unfair and an infringement of a person's right to a fair trial has no foundation in law and is liable to be rejected.

Our finding that the Ombudsman is not allowed to render assistance to persons who challenge the decision of a judicial officer, whether a Judge or a Magistrate, in our view, accords with the principle of separation of powers. This is because in terms of the Constitution the Ombudsman is independent and subject only to the Constitution and the law. Similarly, the courts are independent and are only subject to the Constitution and the law. Article 80 of the Constitution vests the courts with power to adjudicate all civil disputes and criminal prosecutions, which may involve the 'interpretation, implementation and upholding of the Constitution and the fundamental rights and freedoms guaranteed under the Constitution'. (paras 50-51; footnotes omitted).

Commentary:

- John Walters, "The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman" in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, available here
- Katharina G Ruppel-Schlichting, "The independence of the Ombudsman in Namibia" in Nico Horn & Anton Bösl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available here
- OC Ruppel & KG Ruppel-Schlichting, "Between formal and informal justice? The mandate of the Ombudsman in Namibia" in MO Hinz (ed) in cooperation with C Mapaure, *In search of justice and peace: Traditional and informal justice systems in Africa*, Windhoek: Namibia Scientific Society, 2010
- John C Mubangizi, "The South African Public Protector, the Ugandan Inspector-General of Government and the Namibian Ombudsman: a comparative review of their roles in good governance and human rights protection" 45 (3) *The Comparative and International Law Journal of Southern Africa* 304 (2012).

Walvis Bay and Off-Shore Islands Act 1 of 1994 🕡 🙀

Summary: This Act (originally published in <u>GG 805</u>) gives effect to Article 1(4) of the Constitution by providing for the transfer of control over Walvis Bay and the off-shore islands from South Africa to Namibia. It was brought into force on 1 March 1994 by Proc. 6/1994 (<u>GG 806</u>).

Amendments: The application of the Act is affected by Procs. 15/1994 and 16/1994 (<u>GG 873</u>). Act 14/1998 (<u>GG 1884</u>) amends clause 1 of Part III of the Schedule to provide for the retrospective application of certain provisions of the Local Authorities Act 23 of 1992 (<u>GG 470</u>). The Road Traffic and Transport Act 22 of 1999 (<u>GG 2251</u>) repeals Clause 2 of Part IV of the Schedule.

Regulations: The Act makes no provision for regulations.

Cases: Gauiseb v Minister of Home Affairs 1996 NR 90 (HC); Municipality of Walvis Bay v Du Preez 1999 NR 106 (LC) (section 13; Part III, sections 1(6) and 5(c)). The Act is also discussed in dicta in Tlhoro v Minister of Home Affairs 2008 (1) NR 97 (HC) beginning at 112E.

Powers, Privileges and Immunities of Parliament Act 17 of 1996 🕎 😜

Summary: This Act (<u>GG 1382</u>) provides for the right of freedom of speech and debate as well as other powers, privileges and immunities for Parliamentarians. It also establishes a Committee of Privileges to investigate the conduct of Parliamentarians.

Regulations: The Act makes no provision for regulations.

Cases: Swartbooi & Another v Speaker of The National Assembly: Katjavivi 2021 (3) NR 652 (SC), overruling Swartbooi & Another v Speaker of the National Assembly HC-MD-CIV-MOT-GEN-2020/00149 [2021] NAHCMD 207 (06 May 2021) ("legislature's control over its own proceedings, an incident of the separation of powers, is however subject to the Constitution, with the courts having the constitutional obligation to ensure that its powers are exercised in accordance with the Constitution" (para 22); Speaker's role under Standing Rules re: conduct of members does not include taking disciplinary action but is rather to maintain order in the House; rule 124 on power in unforeseen circumstances cannot be authority for indefinite suspension because powers of suspension are provided for elsewhere in the Rules; section 21 of Act does not oust Court's power to determine constitutionality and legality, but means that Parliamentary control of own affairs is not an administrative action for purposes of Art 18 of Constitution; section 21 by its own terms does not apply to actions taken by

Speaker but rather to "Parliament" as defined in the Act; the indefinite suspensions of individual MPs were outside of the Speaker's powers and thus unlawful).

Commentary:

Frederico Links & Ellison Tjirera, "Nothing to Disclose: Critiquing Namibia's passive approach to conflict of interest", Institute for Public Policy Research, 2011, available here

Ellison Tjirera, "Asset Disclosure in Namibia: The Need for Reform and Enforcement", Institute for Public Policy Research, 2012, available here

Max Weylandt, "Asset Declarations in Parliament: Too Little, Too Late?", Institute for Public Policy Research, October 2015, available here

Max Weylandt, "Asset Declarations in Namibia", Institute for Public Policy Research, 2016, available here (UN Convention on Corruption).

Namibian Constitution First Amendment Act 34 of 1998 🗐 🔄

Summary: This Act (<u>GG 2014</u>) amends Article 134 of the Namibian Constitution to provide that the first President of Namibia may hold office for three terms. It came into force on its date of publication: 24 December 1998.

Application of Laws to the Eastern Caprivi Zipfel Act 10 of 1999 🕎 🙀

Summary: This Act (<u>GG 2139</u>) is necessary because section 38(5) of the South-West Africa Constitution Act 39 of 1968 (which was repealed by Article 147 of the Namibian Constitution) provided that laws applied to South West Africa after 1 November 1951 would apply in the Eastern Caprivi Zipfel only if this was expressly stated. In light of this historical exclusion, this Act gives Ministers the power to make the laws which they administer applicable to the Eastern Caprivi Zipfel by notice in the *Gazette*.

Regulations: The Act makes no provision for regulations. Section 1(2) provides that notices issued to make specific laws applicable to the Eastern Caprivi Zipfel "may prescribe such measures or conditions as the Minister may regard necessary" to provide for the smooth application of such laws in the Eastern Caprivi Zipfel.

Notices: Only one notice issued under this Act has been located; GN 4/2000 (<u>GG 2259</u>) was issued in terms of this Act to apply the Accommodation Establishments and Tourism Ordinance 20 of 1973 to the Eastern Caprivi Zipfel.

Security Commission Act 18 of 2001 🕎 😜

Summary: This Act (<u>GG 2676</u>) relates to the Security Commission established by Article 114 of the Namibian Constitution. In terms of the Constitution, the Security Commission has the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner of Prisons (now the Commissioner General of Correctional Services). The Act gives the Commission additional powers relating to internal security. The Act was brought into force on 2 May 2002 by GN 65/2002 (<u>GG 2734</u>).

Regulations: The Act makes no provision for regulations.

Appointments: Members of the Security Commission were appointed in terms of the Constitution by Proc. 18/1992 and Proc. 20/2010 (GG 4595).

Cases: Government of the Republic of Namibia v Sikunda 2002 NR 203 (SC) (Composition of the Security Commission pursuant to Article 114 of the Constitution; Security Commission as subject to Articles 18 and 12 of the Constitution).

Related laws: The Security Commission is given certain responsibilities under the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014.

Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 🖷 🔄

Summary: This Act (<u>GG 3426</u>) establishes a Commission to make recommendations to the President on the remuneration, benefits and conditions of office of Members of Parliament, members of Regional Councils and other persons whom the President declares to be public office-bearers by Proclamation. It was brought into force on 3 August 2005 by Proc. 9/2005 (<u>GG 3473</u>).

Regulations: Section 11 gives the President authority to make regulations under this law. Regulations relating to transport benefits for public office-bearers are contained in Proc. 12/2021 (GG 7476), as amended by Proc. 12/2022 (GG 7805).

Notices: Section 8 of the Act authorises proclamations by the President determining remuneration and benefits, and section 1 authorises proclamations by the President declaring any person to be a public office-bearer. The Proclamations listed below were issued pursuant to these provisions.

Persons who hold certain offices are declared to be officer-bearers for the purposes of this Act in Proc. 6/2008 (GG 3983) (a Special Adviser appointed in terms of the Special Advisers and Regional Representatives Appointment Act 6 of 1990, the Auditor-General, members of the Public Service Commission, the Secretary to the Cabinet, the Inspector-General of Police, the Chief of the Defence Force and the Commissioner of Prisons), Proc. 29/2015 (GG 5838) (a specific individual serving as Chairperson of Electoral Commission of Namibia), Proc. 30/2015 (GG 5838) (the Vice-President), and Proc. 34/2020 (GG 7271) (a specific individual holding office as Secretary to the Cabinet). Certain such declarations (Secretary to the Cabinet, Inspector-General of Police, Chief of the Defence Force and Commissioner of Prisons) are withdrawn by Proc. 16/2013 (GG 5188). Additional officer-bearers are identified in the Schedule to Proc. 12/2021 (GG 7476):

Deputy Prime Minister Speaker: National Assembly Chairperson: National Council Deputy Speaker: National Assembly Vice Chairperson: National Council

Ministers

Attorney-General
Director-General: NCIS

Director-General: National Planning Commission

Deputy Ministers

Leader of Official Opposition

Regional Governors

Chairperson: Regional Council

Chairperson: Public Service Commission

Special Advisors: Presidential Special Advisors: Ministerial.

However, this Schedule was amended by Proc. 12/2022 (GG 7805) to read as follows:

Deputy Prime Minister Speaker: National Assembly Chairperson: National Council Deputy Speaker: National Assembly Vice Chairperson: National Council

Ministers

Attorney-General Director-General: NCIS

Director-General: National Planning Commission.

Proc 20/2024 (<u>GG 8375</u>) additionally declares the Chairperson of the Electoral Commission of Namibia to be a public office-bearer for the purposes of this Act.

Percentage increases in the remuneration of certain office-bearers are specified in terms of section 8 in Proc. 1/2009 (GG 4192), Proc. 6/2010 (GG 4440), Proc. 5/2013 (GG 5134), Proc. 19/2014 (GG 5554) – which also re-aligns the salaries of various office-bearers with specified GRN Levels and Paterson Grades – and Proc. 2/2016 (GG 5997).

Percentage increases in housing benefits are specified in terms of section 8 in Proc. 22/2013 (GG 5241).

As noted above, transport benefits for public office-bearers are set out in the form of regulations in Proc. 12/2021 (<u>GG 7476</u>), as amended by Proc. 12/2022 (<u>GG 7805</u>).

The remuneration of the Vice-President is determined pursuant to section 8 in Proc. 32/2015 (<u>GG 5838</u>), set at 10 per cent above the remuneration payable to the Prime Minister.

No underlying statements of remuneration or benefits were located in the *Government Gazette*, but information on actual amounts of remuneration and payments in respect of various benefits is contained in Public Office-Bearers Commission, *Preliminary First Review Report 2012*, available here. Another detailed report by the Public Office-Bearers Commission was expected to be published in 2022.

The remuneration and benefits of certain public office-bearers are set out pursuant to section 8 in Proc. 4/2017 (GG 6259), which also sets the remuneration of the President and the Vice-President and the pension of the first former President and former President pursuant to Article 32(8) of the Namibian Constitution.

A determination of additional benefits for the leader of the official opposition, made in terms of section 8 of the Act, is contained in Proc. 13/2021 (GG 7476).

Proc. 34/2023 (GG 8272) determines that all the medical costs of the Prime Minister will be wholly covered by the State.

Commentary: Public Office-Bearers Commission, *Preliminary First Review Report 2012*, available <u>here</u>.

Namibian Constitution Second Amendment Act 7 of 2010 🗐 🙀

Summary: This Act (<u>GG 4480</u>) does the following-

- amends Article 4 of the Namibian Constitution to extend the residency requirements for citizenship by marriage and naturalisation;
- amends or substitutes Articles 9, 23, 32, 47, 91, 93, 114 and Chapter 15 to alter the term "prison service" to "correctional service" and the term "Commissioner of Prisons" to "Commissioner General of Correctional Service";
- amends Article 70 to change the term of office of members of the National Council from 6 years to 5 years;
- amends Article 82 to remove the possibility of extending the retirement age of judges by Act of Parliament and to provide that judges who are non-Namibian citizens must be appointed under a fixed-term contract of employment;

- amends Article 91 to remove corruption from the remit of the Ombudsman;
- inserts Article 94A on Anti-Corruption Measures, which makes the Anti-Corruption Commission a Constitutional body;
- substitutes Article 107 on the remuneration of members of Regional Councils; amends Article 109 on the terms of office of Management Committees of Regional Councils;
- amends Article 23 and substitutes Chapter 15 to place provisions on the defence force ahead of those on the police force.

This amending Act came into force on the date of its publication: 7 May 2010, with the exception of the amendments to Articles 70 and 109 (concerning terms of office) which came into effect at the end of the term of office of the members of the National Council in office at the time of its passage.

Note: There is some uncertainty about the effective date for the amendments to Articles 70 and 109. Article 70(1) of the Namibian Constitution, as it stood prior to amendment by this Act stated that members of the National Council "shall hold their seats for six (6) years from the date of their election". This is somewhat inconsistent with 26(2) of the Regional Councils Act 22 of 1992, which states that a regional council member elected to the National Council "shall become a member of the National Council... with effect from the date following the date on which the period of office of the existing members expires". There are also different methods for counting "years".

Conferment of National Honours Act 11 of 2012 🕎 🙀

Summary: This Act (<u>GG 5071</u>) establishes a National Honours Advisory Committee to advise the President in exercising his or her discretion to confer honours on Namibian citizens, residents or friends, during the recipient's lifetime or posthumously, as contemplated in Article 32(3)(h) of the Constitution. It also covers the revocation of honours, but provides that the honour of a State Funeral or interment at National Heroes Acre may not be revoked after the event in question has taken place. The Act was brought into force on 15 July 2013 by GN 181/2013 (<u>GG 5241</u>).

Regulations: Conferment of National Honours Regulations are contained in GN 336/2013 (GG 5375).

Conferment of National Honours: Proclamations conferring national honours are issued in terms of the Constitution. These are listed below, at the end of this section.

National Planning Commission Act 2 of 2013 🕎 🙀

Summary: This Act (<u>GG 5178</u>) provides for the membership, powers, functions and personnel of the National Planning Commission referred to in Article 129(1) of the Constitution. It repeals the National Planning Commission Act 15 of 1994 (<u>GG 929</u>), and provides that all references to the 1994 Act in any law must be construed as a reference to this Act.

Regulations and notices: Anything done under the previous law which could have been done under this Act survives pursuant to section 16(2). However, no regulations appear to have been issued under the previous statute and, in any event, this Act makes no provision for regulations.

Appointments: Appointments done under the previous law which could have been done under this Act survive. Appointments under this Act are announced in Proc. 14/2017 (GG 6374).

Namibian Constitution Third Amendment Act 8 of 2014 🗐 🙀

Summary: This Act (GG 5589) does the following-

- creates the post of Vice-President, provides for the Presidency and provides a hierarchy of succession;
- provides a procedure for run-offs for the post of President;
- creates a Parliamentary Service Commission and provides that Parliamentary staff need not be members of the public service;
- increases the size of the National Assembly, in respect of both members selected through the party list system and Presidential appointees;
- amends the quorum requirements for the National Assembly;
- increases the size of the National Council and provides for a Secretary of the National Council;
- alters the review powers of the National Council in relation to bills on taxes and appropriations;
- amends the quorum requirements for the National Council;
- makes the Judiciary an independent organ of the state in terms of both finance and administration;
- provides for a Deputy-Chief Justice and Deputy Judges-President;
- provides for the Magistrates Commission and other lower court commissions;
- provides for tribunals to investigate misconduct of judicial officers, the Prosecutor-General and the Ombudsman;
- changes the composition of the Judicial Service Commission;
- changes the title of the Director and Deputy Director of the Anti-Corruption Commission to Director-General and Deputy Director-General respectively;
- inserts an Article on the Electoral Commission of Namibia and an Article creating the Boundaries Delimitation and Demarcation Commission to substitute for the Delimitation Commission;
- provides for Regional Governors and their powers and functions;
- clarifies the advisory functions of the Public Service Commission;
- establishes the Intelligence Service, provides for the Head of the Intelligence Service and outlines his or her functions, provides for the Presidential appointment of this Head and makes this Head a member of the Security Commission;
- introduces terminology referring to the Minister responsible for finance;
- provides for multiple Deputy-Governors of the Central Bank and amends the functions of the Central Bank:
- provides for the National Planning Commission within the Presidency;
- substitutes Schedule 2;
- amends Schedule 4 to provide for the resolution of ties by lot.

The Act came into force on the date of its publication: 13 October 2014, with the following exceptions:

- Sections 1, 2(a), (b) and (d), 4(a) and (b), 5, 6, 7, 8, 9, 41 and 43 came into force after the expiry of the term of office of the President in office at the time the Act was passed;
- Sections 4(d), 10, 12 and 44 came into force after the expiry of the term of office of the members of the National Assembly in office at the time the Act was passed;
- Sections 14 and 18 came into force after the expiry of the term of office of the members of the National Council in office at the time the Act was passed.

Note: The references to provisions coming into force "after the expiry" of certain terms of office do not provide precise commencement dates for the provisions in question. The intention may have been rather for the provisions in question to come into force "upon the expiry" or "on the date of expiry" of these terms of office. Article 29(1)(a) of the Namibian Constitution states: "The President's term of office shall be five (5) years unless he or she dies or resigns before the expiry of the said term or is removed from office." Article 50 of the Namibian Constitution provides that every National Assembly "shall

continue for a maximum period of five (5) years", thus allowing for some flexibility. Article 70(1) of the Namibian Constitution, after its amendment in 2010, states that "Members of the National Council shall hold their seats for five (5) years from the date of their election...". This is somewhat inconsistent with 26(2) of the Regional Councils Act 22 of 1992, which states that a regional council member elected to the National Council "shall become a member of the National Council... with effect from the date following the date on which the period of office of the existing members expires". There are also different methods for counting "years".

National Symbols of the Republic of Namibia Act 17 of 2018 🗐 🔛

Summary: This Act (<u>GG 6807</u>) determines the national coat of arms, national anthem, national seal and presidential standard for the Republic of Namibia pursuant to the Namibian Constitution. It also sets forth rules for the use and display of the various national symbols.

Repeals: The Act repeals the National Coat of Arms of the Republic of Namibia Act 1 of 1990 and the National Anthem of the Republic of Namibia Act 20 of 1991.

Regulations: Regulations are authorised by section 7, but none have yet been promulgated. There is no savings clause for regulations that may have been issued under the repealed laws.

Notices: Logos are approved in terms of section 6(5) of the Act as follows:

- Financial Intelligence Centre, Office of the Judiciary (E-Justice) and Namibia Training Authority Proc. 38/2019 (GG 7029)
- Office of the President Proc. 62/2019 (<u>GG 7069</u>).

Commentary: Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 1.4 discusses the status of translations of the National Anthem).

CONSTITUTIONAL APPOINTMENTS AND ACTIONS (in chronological order)

President of the Republic of Namibia, Proc. 2/1990 (GG 8)

First Chief of the Defence Force, Proc. 7/1990 (GG 45)

First Inspector-General of Police and First Commissioner of Prisons, Proc. 8/1990 (GG 46)

Acting Ombudsman, Proc. 10/1990 (GG 52)

First Delimitation Commission and the Duties thereof, Proc. 12/1990 (GG 69)

Prosecutor-General, Proc. 31/1991 (GG 304)

Ombudsman, Proc. 16/1992 (GG 415)

Members of the Security Commission, Proc. 18/1992 (GG 432)

Deputy Ombudsman, Proc. 7/1993 (GG 582) and Proc. 8/1993 (GG 597)

Minister, Proc. 4/1994 (GG 791)

Deputy Ministers, Proc. 22/1994 (<u>GG 913</u>)

Various officials, Proc. 8/1995 (GG 1071)

Delimitation Commission, Proc. 9/1995 (GG 1089)

Ombudsman, Proc. 7/1996 (GG 1468)

Commissioner of Prisons, Proc. 34/1997 (GG 1765)

Inspector-General of Police, Proc. 35/1997 (GG 1765)

Delimitation Commission, Proc. 9/1998 (GG 1855)

Director-General of Namibia Central Intelligence Service, Proc. 14/1999 (GG 2062)

Ministers and Deputy Ministers, Proc. 18/1999 (GG 2088)

Deputy-Minister of Information and Broadcasting, Proc. 31/1999 (GG 2213).

Ministers, Deputy Ministers and Members of Parliament, Proc. 8/2000 (GG 2366)

Minister of Lands, Resettlement and Rehabilitation, and Attorney-General, Proc. 5/2001 (GG 2501)

Delimitation Commission, Proc. 6/2002 (GG 2855)

Acting Prosecutor-General, Proc. 8/2002 (GG 2869)

Extension of Term of Acting Prosecutor-General, Proc. 20/2003 (GG 3023)

Ministers and Deputy Ministers, Proc. 28/2003 (GG 3060)

Acting Ombudsman, Proc. 29/2003 (GG 3071)

Extension of term of Acting Prosecutor-General, Proc. 31/2003 (GG 3101)

Prosecutor-General, Proc. 32/2003 (GG 3101)

Ombudsman, Proc. 39/2004 (GG 3229)

Establishment of Ministries and Appointment of Ministers and Deputy Ministers and other officials, Proc. 4/2005 (GG 3436)

Minister and Deputy Ministers, Proc. 6/2005 (GG 3436)

Inspector-General of Police, Proc. 7/2005 (GG 3450)

Deputy-Minister of Works, Proc. 20/2005 (GG 3562)

Dissolution and establishment of Ministries and Appointment of Ministers and Deputy Ministers, Proc. 17/2008 (GG 4039)

Transfer of National Forensic Institute of Namibia from Ministry of Home Affairs and Immigration to Ministry of Safety and Security, Proc. 18/2008 (GG 4047)

Attorney-General in Interim, Proc. 3/2009 (GG 4202)

Prime Minister, Deputy Prime Minister, Ministers and Deputy Ministers, Proc. 8/2010 (GG 4468)

Deputy Ministers, Proc. 5/2011 (GG 4669)

Chief of Defence Force, Proc. 16/2012 (GG 4996)

Delimitation Commission, Proc. 1/2013 (GG 5119)

Prime Minister, Ministers and Deputy Ministers, Proc. 3/2013 (GG 5126)

Minister and Deputy Minister, Proc. 7/2013 (GG 5143)

Chief of Defence Force, Proc. 1/2014 (GG 5387)

Commissioner-General of Correctional Service, Proc. 4/2014 (GG 5407)

Establishment of Ministries and Appointment of Ministers, Deputy-Ministers and other Office Bearers, Proc. 34/2015 (GG 5869)

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

Establishment and Dissolution of Ministries, Appointment of Ministers, Deputy-Ministers and Other Office Bearers, Proc. 18/2017 (GG 6387) (which withdraws Proc. 34/2015)

Vice-President, Ministers, Deputy Ministers, Attorney-General, Director-General of the National Planning Commission, Proc. 13/2018 (GG 6645)

Member of National Assembly and Minister of Health and Social Services, Proc. 1/2019 (GG 6824).

Establishment and dissolution of Ministries, Proc. 10/2020 (<u>GG 7167</u>), withdrawn and replaced by Proc. 18/2021 (<u>GG 7505</u>)

Vice-President, Prime Minister, Deputy Prime Minister, Ministers, Deputy Ministers, Attorney-General, Director-General of the National Planning Commission and Director-General of the Namibia Central Intelligence Service, Proc. 11/2020 (GG 7167), withdrawn and replaced by Proc. 15/2020 (GG 7193) but then amended by Proc. 30/2021 (GG 7551).

It appears that Prov. 30/2021 should have stated that it was amending Proc. 15/2020.

Direction of Special Session for Sitting of National Assembly under Article 62(1)(c) of Namibian Constitution for purposes of Appointing Director-General and Deputy Director-General of Anti-Corruption Commission and Approving Nomination of Applicants for Appointment as Chairperson and Members of Electoral Commission, Proc. 38/2021 (GG 7586), as amended by Proc. 39/2021 (GG 7587) and by Proc. 40/2021 (GG 7588)

See *Popular Democratic Movement Namibia v Katjavivi* (HC-MD-CIV-MOT-GEN-2021/00305) [2021] NAHCMD 385 (31 August 2021), where an urgent application challenging the validity of this Proclamation was dismissed for lack of urgency.

Secretary to Cabinet, Proc. 8/2022 (GG 7805)

Dissolution and establishment of Ministry, and appointment of Minister and Deputy Minister. Proc. 29/2022 (GG 7965)

Boundaries Delimitation and Demarcation Commission, Proc. 17/2024 (GG 8365).

Appointments of judges and acting judges, and extensions of the retirement ages of judges, are listed under **JUDGES**. Appointments of members of the Judicial Service Commission are listed under the Judicial Service Commission Act 18 of 1995 (**JUDGES**). Appointments relating to specific statutory institutions are listed under the entries for those statutes. See also appointments made in terms of the Special Advisors and Regional Governors Appointment Act 6 of 1990 (**CONSTITUTION**) and the Electoral Act 5 of 2014 (**ELECTIONS**).

SELECTED CASES

Cases on constitutional challenges to legislation:

- Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) at para 58 (importance of identifying impugned provisions precisely and substantiating attack on them), reiterated in Shalli v Attorney-General & Another 2013 (3) 613 (HC) at para 6
- S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC) at paras 14-18 (undesirable to raise attack on Constitutional validity of legislation for first time on appeal)
- Prosecutor-General v Shilengudwa & Others 2023 (4) NR 1041 (HC) (when a court finds that a legislative provision is constitutionally invalid, an appeal against that judgment does *not* suspend the declaration of invalidity while the appeal is pending; following S v Huseb 2012 (1) NR 130 (HC)).

Cases on constitutional appointments:

- Ex Parte Attorney-General: In re The Constitutional Relationship between the Attorney-General and the Prosecutor-General 1998 NR 282 (SC) (discussed in Derek Ade Obadina, "A Critique of Judicial Performance: Ex parte Attorney General, Namibia: In re the Constitutional Relationship between the Attorney General and the Prosecutor-General", Journal of African Law, Vol. 40, No. 1, pages 106-114 (1996), available <a href="https://example.com/heres/her
- Ekandjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC) (amendment to Legal Practitioners Act 15 of 1995 allowing Attorney-General to issue certificates to prosecutors and magistrates with 5 years' experience as a substitute for practical legal training does not interfere with independence of a Prosecutor-General appointed after being issued with such a certificate; it was not proved that this was ad hominem legislation, or that the Attorney-General introduced the amendment in order to qualify a favoured candidate for appointment as Prosecutor-General)
- S v Zemburuka (2) 2003 NR 200 (HC) (President's power to appoint Acting Prosecutor-General) Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) (nothing in Constitution makes it impermissible for Attorney-General and Minister of Justice to be the same person).

Cases on secrecy:

- Director-General of the Namibian Central Intelligence Service v Haufiku 2019 (2) NR 556 (SC) (matters claimed to be secret due to national security are not beyond judicial scrutiny)
- Attorney-General & Another v Gondwana Collection Ltd & Others 2022 (1) NR 38 (HC) (no blanket confidentiality for documents relating to Cabinet meetings and resolutions; disclosure for purposes of court case depends on balancing of harm to administration of justice resulting from non-disclosure against injury to public interests resulting from disclosure).

Cases on separation of powers in statutory regimes:

- Mostert v The Minister of Justice 2002 NR 76 (HC); upheld in part on appeal in Mostert v The Minister of Justice 2003 NR 11 (SC)
- Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (appealed on other grounds in 2010 (1) NR 328 (SC))
- Minister of Justice v Magistrates' Commission & Another 2012 (2) NR 743 (SC).

Cases on separation of powers re: member of executive bringing legislation into force

Itula & Others v Minister of Urban & Rural Development & Others 2020 (1) NR 86 (SC) (selective implementation is not permitted; see para 70: "The legislature may delegate subordinate legislative powers (to regulate) to the executive and to put legislation into operation but the legislature cannot devolve upon the executive any entitlement to select statutory sub-provisions to implement.")

Kruger v Minister of Finance of the Republic of Namibia & Others 2020 (4) NR 913 (HC) (paras 102-106, citing Itula & Others v Minister of Urban & Rural Development & Others 2020 (1) NR 86 (SC)); overturned in part on other grounds in Minister of Finance of the Republic of Namibia NO & Others v Kruger & Another 2022 (3) NR 785 (SC).

Cases on separation of powers re: court's lack of power to stay legislation without a finding of unconstitutionality

Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others 2018 (4) NR 1133 (HC) (certain provisions of the Act, the 2017 regulations and GN 333-338/2017 stayed pending the outcome of constitutional challenges); Minister of Finance & Another v Hollard Insurance Co of Namibia Ltd & Others 2019 (3) NR 605 (SC) (leave to appeal the stay granted; problems with separation of powers raised in discussion of prospects of success on appeal); Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others 2020 (1) NR 60 (SC) (stay overturned; para 87: "a duly enacted law must be complied with, until it is set aside in terms of the Constitution").

Cases on transitional provisions in Article 140:

These cases are particularly relevant to the interpretation of statutes inherited from South Africa or the South West African Administration.

S v Tcoeib 1999 NR 24 (SC)

Müller & Another v President of the Republic of Namibia & Another 1999 NR 190 (SC)

Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC).

HONOURS SYSTEM

Proclamation 2 of 1995 (GG 1048) establishes an honours system for Namibia consisting of order and medals, in terms of Article 32(3)(h) of the Namibian Constitution.

CONFERMENT OF NATIONAL HERO STATUS

(in terms of Article 32 of the Namibian Constitution)

The late David Moses Meroro, Proc. 5/2004 (GG 3138)

The late Maxton Joseph Mutongolume, Proc. 32/2004 (GG 3191)

The late Reverend Markus Kooper, Proc. 19/2005 (GG 3562)

The late Dr Mosé Tenaani Tjitendero, Proc. 5/2006 (GG 3628)

The late Mr Richard Kapelwa Kabajani, Proc. 10/2007 (GG 3846)

The late Honourable John Alphons Pandeni, Minister of Regional and Local Government, Housing and Rural Development, Proc. 13/2008 (GG 4019)

The late Mr Nikolaus Onverwag "Niko" Bessinger, Proc. 15/2008 (GG 4023)

The late Honourable Rev Dr Hendrik Witbooi, Pastor and Presiding Elder of the African Methodist Episcopal Church, Captain of the /Khowese Community and First Deputy Prime Minister of the Republic of Namibia, Proc. 15/2009 (GG 4363).

The late Mr Peter Tsheehama, Proc. 18/2010 (GG 4578)

The late Mr John Otto Nankudhu, Proc. 7/2011 (GG 4746)

The late Reverend Bartholomeus Karuaera, Proc. 31/2013 (GG 5307)

The late Comrade Frederick Mwala Matongo, Proc. 34/2013 (GG 5335)

The late Comrade Eneas Peter Nanyemba "Ndilimani", Proc. 16/2014 (GG 5545)

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The late Comrade Putuse Leonora Deywili-Appolus "Meekulu", Proc. 16/2014 (GG 5545)
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The late Comrade Linekela Hailundu Kalenga, Proc. 16/2014 (GG 5545)

The late Comrade Walde Homateni Timoteus Kalwenja, Proc. 16/2014 (GG 5545)

The late Comrade Isak Ndeshitiwta Shikongo "Pondo", Proc. 16/2014 (GG 5545)

The late Comrade Natalia Ndahambelela Shikangala Mavulu, Proc. 16/2014 (GG 5545)

The late Comrade Augustus Hafeni Sakaria Nghaamwa "McNamara", Proc. 16/2014 (GG 5545)

The late Comrade Lameck Ithete "Kagwaanduka", Proc. 17/2014 (GG 5548)

The late Comrade Simon Hafeni "Mzee" Kaukungwa, Proc. 27/2014 (GG 5567)

The late Comrade Simeon Linekela "Kambo" Shixungileni, Proc. 34/2014 (GG 5590)

The late Gerson Hitjevi Veii, Proc. 2/2015 (GG 5674)

The late Hidipo Livius Hamutenya, Proc. 8/2016 (GG 6147)

The late Andimba Toivo ya Toivo, Proc. 11/2017 (GG 6338)

The late Dr Theo-Ben Gurirab, Proc. 14/2018 (GG 6654)

The late Petrus "Ekanda" Nangolo Iilonga, Proc. 19/2018 (GG 6797)

The late Dr Nickey Iyambo, Proc. 15/2019 (GG 6918)

The late President of the Republic of Namibia Dr. Hage Gottfried Geingob, Proc. 6/2024 (GG 8309)

The late Ida Jimmy !Ha-Eiros, Proc. 13/2024 (GG 8351).

CONFERMENT OF OTHER HONOURS

(in terms of Article 32 of the Namibian Constitution)

The late Honourable Chief Munyuku Nguvauva II, Paramount Chief of the Mbanderu community and Deputy Chairperson of the Council of Traditional Leaders, Proc. 10/2008 (GG 4005)

The late Meekulu Mpingana-Helvi Kondombolo, Proc. 40/2008 (GG 4177)

The late Dr Abraham Iyambo, Proc. 4/2013 (GG 5129)

The late Comrade Nelson Rolihlahla Mandela, former President of the Republic of South Africa, Proc. 35/2013 (GG 5361)

The late Honourable Chief Kuaima Riruako, Proc. 11/2014 (GG 5492)

The late Comrade Aaron Mushimba, Proc. 26/2014 (GG 5567)

The late Fidel Alejandro Castro Ruz, Proc. 11/2016 (GG 6189)

The late Reverend Junias Vaino Kaapanda, Proc. 12/2016 (GG 6205)

The late Honourable Nangolo Leonard Mukwiilongo, Proc. 6/2017 (GG 6323)

The late retired Brigadier-General Erasmus Kayambu Amupolo, Proc. 15/2017 (GG 6382)

The late Angelika Kazetjindire Muharukua, Proc. 24/2017 (accorded the status of "heroine") (GG 6446)

The late Rosalia Annette Ndilinasho Nghidinwa, Proc. 2/2018 (GG 6516)

The late Isak Ashinkono "Nangata" Shoome, Proc. 3/2018 (GG 6516)

The late Nora Schimming-Chase, Proc. 9/2018 (GG 6547)

The late Comrade Auguste Mukwahepo "Immanuel", Proc. 11/2018 (GG 6520)

The late Reverend Hosea Nampala, Proc. 16/2018 (GG 6722)

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HISTORICAL NOTE

There have been five declarations of a state of emergency under Article 26(1) of the Constitution.

- 1) The Declaration of State of Emergency: Caprivi, Proclamation 23 of 1999 (GG 2156) declared a state of emergency in the Caprivi Region with effect from 2 August 1999, after a **secession attempt** in that region. Emergency Regulations were promulgated in Proc. 24/1999 (GG 2157). An Advisory Board as referred to in Article 26(5)(c) of the Constitution was appointed with respect to the state of emergency by Proc. 25/1999 (GG 2159). The declaration and the regulations were both revoked on 26 August 1999 by Proc. 27/1999 (GG 2176). Lists of persons detained under the Emergency Regulations were published in GN 172/1999 (GG 2167) and GN 173/1999 (GG 2172). It is relevant to note that the Katima Mulilo police cells (in the Caprivi Region) were declared to be a prison by GN 160/1999 (GG 2163). The case of *Mazila v Minister of Home Affairs* 2000 NR 224 (HC) discussed the applicability of the Emergency Regulations to areas outside the Caprivi Region.
- 2) The Declaration of State of Emergency: National Disaster (Drought) Proclamation 5/2016 (<u>GG 6056</u>) declared a state of emergency in all regions of Namibia on account of the persisting national disaster of **drought**, with effect from the date of publication of the Proclamation (28 June 2016).
- 3) The Declaration of State of Emergency: National Disaster (Drought) Proclamation 14/2019 (GG 6900) declared a state of emergency in all regions of Namibia on account of the persisting national disaster of **drought**, with effect from 6 May 2019.
- 4) The Declaration of State of Emergency: National Disaster (COVID-19) Proclamation 7/2020 (GG 7148) declared a state of emergency in the whole of Namibia on account of the outbreak of the Coronavirus disease (COVID-19), with effect from 17 March 2020. This state of emergency involved a number of regulations and directives. See the box below for details.
- 5) The Declaration of State of Emergency: National Disaster (Drought) Proclamation 18/2024 (<u>GG 8370</u>) declared a state of emergency in all regions of Namibia on account of the persisting national disaster of **drought**, with effect from 22 May 2024.

THE COVID-19 STATE OF EMERGENCY AND FOLLOW-UP MEASURES

<u>Declaration of state of emergency</u>: The Declaration of State of Emergency: National Disaster (COVID-19) Proclamation 7/2020 (<u>GG 7148</u>) declared a state of emergency in the whole of Namibia on account of the outbreak of the Coronavirus disease (COVID -19), with effect from 17 March 2020. This Proclamation was approved by a resolution of the National Assembly as required by Article 26 of the Namibian Constitution (see, for example, "<u>Parliament blesses state of emergency</u>", *The Namibian*, 20 March 2020).

Emergency regulations for the whole of Namibia: The first "Stage 1" State of Emergency – COVID-19 Regulations were issued on 23 March 2020 in Proclamation 9/2020 (GG 7159) and amended on 18 April 2020 by Proclamation 13/2020 (GG 7180). The lockdown period covered by these regulations was initially stated in Proclamation 9/2020 to be from 14:00 on 28 March 2020 until 23:59 on 17 April 2020, then amended by Proclamation 13/2020 to continue from 23:59 on 17 April

2020 to 23:59 on 4 May 2020. The amending Proclamation also made numerous substantive changes. This first set of emergency regulations expired at the end of lockdown on 4 May 2020.

The initial regulations were replaced with new "Stage 2" State of Emergency – COVID-19 Regulations issued on 4 May 2020 in Proclamation 17/2020 (GG 7203). These regulations covered the period from 23:59 on 4 May 2020 to 23:59 on 1 June 2020. Regulation 7(4) is interpreted in Nantinda & Another v Minister of Safety and Security & Others 2022 (3) NR 883 (HC).

The "Stage 2" regulations were amended on 1 June 2020 by Proclamation 21/2020 (GG 7225) for application to "Stage 3". These amended regulations covered the period from 23:59 on 1 June 2020 to 23:59 on 28 June 2020. This amendment of the national Stage 3 regulations also took into account the return of the local authority of Walvis Bay to Stage 1. The national "Stage 3" regulations were further amended on 8 June 2020 by Proclamation 25/2020 (GG 7235), to take account of the fact that the whole of the Erongo Region had returned to Stage 1, and again amended on 22 June 2020 by Proclamation 27/2020 (GG 7251) when the Erongo Region migrated from Stage 1 to Stage 3.

On 28 June 2020, **Stage 4: State of Emergency - Covid-19 Regulations** were issued in Proclamation 28/2020 (GG 7255). These regulations were initially intended to apply to the whole of Namibia for the period from 00:00 on 29 June 2020 to 24:00 on 17 September 2020, with some exceptions pertaining to the Erongo Region.

However, these initial Stage 4 regulations were repealed before their anticipated date of expiry, on 14 July 2020, by Proclamation 33/2020 (GG 7270) which issued a replacement set of Stage 4: State of Emergency - Covid-19 Regulations. This second set of Stage 4 regulations applied to the whole of Namibia from the time of publication on 14 July 2020 to 24:00 on 17 September 2020, with some exceptions pertaining to the Erongo Region. This second set of Stage 4 regulations was initially virtually identical to the first set of Stage 4 regulations which it repealed. The second set of Stage 4 regulations was amended on 24 July 2020 by Proclamation 40/2020 (GG 7284). This amendment substituted regulation 2 (application of regulations), regulation 7 (restrictions relating to liquor) and regulation 12 (restrictions relating to transportation of goods and persons). The second set of Stage 4 regulations was further amended on 3 August 2020 by Proclamation 44/2020 (GG 7295). This amendment substituted regulation 4 (schools, higher education institutions and other educational institutions) and regulation 6 (gatherings; to reduce the maximum gathering size from 250 to 100), and amended regulation 8 (with respect to certain sports events).

The second set of Stage 4 regulations was repealed (along with its amendments) before its anticipated date of expiry by Proclamation 46/2020 (GG 7307), which issued new Stage 3: State of Emergency – Covid-19 Regulations after the entire country was moved from Stage 4 to Stage 3 on 13 August 2020 in light of the dramatic increase in Covid-19 cases. These regulations applied to the entire country from their publication on 13 August 2020 to 24:00 on 29 August 2020, with some individual regulations being applicable only to the restricted areas of (a) Arandis, Swakopmund and Walvis Bay and (b) Windhoek, Rehoboth and Okahandja.

These regulations were repealed and replaced by a second set of **Stage 3: State of Emergency** – **Covid-19 Regulations** in Proclamation 48/2020 (<u>GG 7320</u>). These regulations applied to the entire country from 00:00 on 30 August 2020 to 24:00 on 12 September 2020. Some of these Stage 3 regulations applied only to the restricted areas of Windhoek, Rehoboth and Okahandja. Regulation 4 of these regulations (on the resumption of face-to-face learning) was substituted on 6 September 2020 by Proclamation 49/2020 (<u>GG 7329</u>).

These regulations were replaced upon their expiry by a third set of **Stage 3: State of Emergency** – **Covid-19 Regulations** in Proclamation 50/2020 (<u>GG 7332</u>). Most of these regulations applied to the entire country from 00:00 on 13 September 2020 to 24:00 on 17 September 2020, while a few regulations applied only to the restricted areas of Windhoek, Rehoboth and Okahandja.

Emergency regulations for Erongo Region and specific areas within that region: On 29 May 2020, the Walvis Bay Local Authority Area was returned to Stage 1. New Stage 1: State of Emergency - Covid-19 Regulations: Walvis Bay Local Authority Area were issued for Walvis Bay in Proclamation 20/2020 (GG 7222), as amended on 4 June 2020 by Proclamation 23/2020 (GG 7229). The initial period of lockdown for Walvis Bay was from the publication of Proclamation 20/2020 on 29 May 2020 to 23:59 on 4 June 2020, then amended by Proclamation 23/2020 to be from 24:00 on 29 May 2020 until 23:59 on 8 June 2020. The national "Stage 3" regulations were amended to take account of the situation of Walvis Bay (along with other amendments relating to the national movement from Stage 2 to Stage 3) on 1 June 2020 by Proclamation 21/2020 (GG 7225).

The Walvis Bay regulations were repealed by Proclamation 24/2020 (GG 7234), which issued Stage 1: State of Emergency - Covid-19 Regulations: Erongo Region returning the whole of the Erongo Region (including Walvis Bay) to Stage 1 from 00:00 on 9 June 2020 to 24:00 on 22 June 2020. The national "Stage 3" regulations were accordingly amended on 8 June 2020 by Proclamation 25/2020 (GG 7235) to take account of the fact that the whole of the Erongo Region had returned to Stage 1.

The Erongo Region was moved from Stage 1 to Stage 3, from 00:00 on 23 June 2020 to 24:00 on 6 July 2020. **Stage 3: State of Emergency - Covid-19 Regulations: Erongo Region** were issued for the Erongo Region in Proclamation 26 of 2020 (GG 7250), with some specific Stage 3 restrictions for that region due to the particularly high incidence of Covid-19 cases there. Some individual regulations applied only to the "restricted area" in Erongo Region, which essentially covers Arandis, Swakopmund and Walvis Bay, where the incidence of Covid-19 was highest. The national "Stage 3" regulations were accordingly amended on 22 June 2020 by Proclamation 27/2020 (GG 7251).

A new set of **Stage 3: State of Emergency - COVID-19 Regulations: Erongo Region** was issued on 6 July 2020 in Proclamation 32/2020 (<u>GG 7264</u>), to replace the expiring set of Stage 3 regulations for the Erongo Region. This new set of Stage 3 Erongo regulations was intended to apply to the Erongo Region from 00:00 on 7 July 2020 to 24:00 on 3 August 2020. (Some individual regulations applied only to the "restricted area" in Erongo Region, which essentially covered Arandis, Swakopmund and Walvis Bay.)

This second set of Stage 3 Erongo Region regulations was repealed and replaced on 22 July 2020, before its intended date of expiry, by a third set of **Stage 3: State of Emergency - COVID-19 Regulations: Erongo Region** contained in Proclamation 39/2020 (GG 7283). This third set of Stage 3: Erongo Region regulations initially applied to the Erongo Region from 00:00 on 22 July 2020 to 24:00 on 3 August 2020, but was **amended** on 3 August 2020 by Proclamation 43/2020 (GG 7294) to apply to the Erongo Region (as amended) from 00:00 on 4 August 2020 to 24:00 on 31 August 2020. The amendments also changed the provisions on education. (Some individual regulations applied only to the "restricted area" in Erongo Region, which essentially covers Arandis, Swakopmund and Walvis Bay.)

The third set of Stage 3 Erongo Region regulations (along with its amendments) was repealed before its anticipated date of expiry by Proclamation 46/2020 (GG 7307), which issued new Stage 3: State of Emergency – Covid-19 Regulations after the entire country was moved from Stage 4 to Stage 3 on 13 August 2020 in light of the dramatic increase in Covid-19 cases. Some of the new Stage 3 regulations applied only to the restricted areas of (a) Arandis, Swakopmund and Walvis Bay and (b) Windhoek, Rehoboth and Okahandia.

<u>Suspension of certain laws</u>: Article 26(5)(b) of the Namibian Constitution empowers the President "to suspend the operation of any rule of the common law or statute or any fundamental right or freedom protected by this Constitution, for such period and subject to such conditions as are reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency", subject to Article 24 of the Constitution on non-derogable rights. The listed Proclamations were issued pursuant to that power. Note that some provisions in these Proclamations applied only to specific time periods and/or specific areas, while others applied nationally throughout the State of Emergency.

- State of Emergency Covid-19: Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations: Namibian Constitution, Proc. 16/2020 (GG 7194) ["Stage 1" Suspension Regulations].
- State of Emergency Covid-19: Further Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations: Namibian Constitution, Proc. 18/2020 (GG 7204) ["Stage 2" Further Suspension Regulations], amended on 1 June 2020 by Proclamation 22/2020 (GG 7226) ["Stage 3" Further Suspension Regulations].
- State of Emergency Covid-19: Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations, Proclamation 36/2020 (GG 7275). Many of these regulations apply to the "restricted area" and/or the "specified period" referred to in the Stage 3: State of Emergency Regulations: Erongo Region. The specified period was initially from 00:00 on 7 July 2020 to 24:00 on 3 August 2020, but was extended by Proclamation 43/2020 (GG 7294) to 24:00 on 31 August 2020. The "restricted area" was essentially the local authority areas of Arandis, Swakopmund and Walvis Bay. However, some of the regulations applied throughout Namibia but only for limited time periods specified in these individual regulations, while some of the regulations applied generally throughout Namibia during the entire State of Emergency.

Portions of the "Stage 1" Suspension Regulations issued in Proclamation 16/2020 (reg 19(1)(a), (b) and (c), (2), (4), (6) and (8), and reg 25 in part) and the "Stage 2" Further Suspension Regulations issued in Proclamation 18/2020 (reg 12(1)(a)and (b), (2), and (5), and reg 16 in part) were declared unconstitutional and invalid by the High Court in *Namibian Employers' Federation & Others v President of the Republic of Namibia & Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020).

This decision was appealed to the Supreme Court, which issued its decision on 2 September 2022. The Supreme Court upheld the holding of the High Court on this aspect of the regulations, although it based its findings on different reasoning. The Supreme Court, unlike the High Court, found that "in an appropriate case, an implied power is to be read into Art 26(5)(b) to address the consequences of the situation that has given rise to a [state of emergency]". (paras 100-101) However, the Supreme Court found that regulation 19 of the suspension regulations was not "reasonably justifiable" because it failed to give consideration to "the adverse consequences that the suspension regulations would have on employers' financial viability". (para 137; test of rationality set out in para 118, application of test to facts in paras 119-141) The Supreme Court also held that the regulation fails to pass the lower test of "rationality" because of the "disproportionate harm occasioned to employers" that ultimately had negative impacts on employees, and because it failed to take into account the practical impossibility of some employers to meet the financial obligations imposed. (paras 142-146) Thus, the order of the High Court striking down portions of regulation 19 and related aspects of the "Stage 1" Suspension Regulations was upheld. *President of the Republic of Namibia & Others v Namibia Employers Federation & Others* 2022 (3) NR 825 (SC)

<u>Directives</u>: Both the initial Stage 1 regulations (reg 14) and the subsequent Stage 2 and Stage 3 regulations (reg 15) provided that the President may authorise a minister to issue directives that supplement or explain any of the regulations, or assist with their enforcement – with these directives having the force of law if approved by the Attorney-General and published in the *Government Gazette*. The following directives were gazetted:

- Directions relating to **judicial proceedings** issued by the Chief Justice in terms of regulation 13(1) of the State of Emergency Covid-19 Regulations, GN 90/2020 (GG 7160), as amended by GN 111/2020 (GG 7198)
- Note that GN 111/2020 erroneously states that it is amending GN 19/2020 instead of GN 90/2020.
- Directive relating to Regional Councils and Local Authority Councils: State of Emergency -Covid-19 Regulations, GN 104/2020 (GG 7183)
- Directive relating to visiting hours of inmates, delivery of food items to inmates and issuing of permits to offenders and persons accompanying offenders during period of lockdown: State of Emergency Covid-19 Regulations, GN 105/2020 (GG 7184)

- Directives relating to registered business entities and operational matters for retail traders and other businesses: State of Emergency Covid-19 Regulations, GN 106/2020 (GG 7185)
- **Health Directives** relating to Covid-19: State of Emergency Covid-19 Regulations, GN 107/2020 (GG 7189)
- Directives relating to **environment, forestry and tourism**: State of Emergency Covid-19 Regulations, GN 108/2020 (GG 7190), repealed by GN 123/2020 (GG 7224)
- Directives relating to **open markets and informal trading** during period of lockdown: State of Emergency Covid-19 Regulations, GN 109/2020 (GG 7191)
- **Labour Directives** relating to Covid-19: State of Emergency Covid-19 Regulations, GN 110/2020 (GG 7195)
- Directives relating to **Works and Transport**: State of Emergency Covid-19 Regulations, GN 113/2020 (GG 7200)
- Directives Relating to **Fishing Industry**: Stage 2: State of Emergency Covid-19 Regulations, GN 119/2020 (GG 7213)
- Directive Relating to **Child Protection Response** during COVID-19: State of Emergency Covid-19 Regulations, GN 120/2020 (GG 7214)
- Directive Relating to **Sale of Liquor**: Stage 2: State of Emergency Covid-19 Regulations [amended to be applicable to Stage 3], GN 129/2020 (<u>GG 7236</u>)

The High Court in *Namibian Employers' Federation & Others v President of the Republic of Namibia & Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020) found the provisions authorising such directives (reg 14 of Proc. 9/2020 and reg 15 of Proc. 17/2020) to be unconstitutional and invalid delegations of power.

This decision was appealed to the Supreme Court, which issued its decision on 2 September 2022. The Supreme Court overruled the High Court on this point. The Government asserted that the challenge was premature, given that the President had not made any delegations regarding directives at the time of the challenge. The Supreme Court held that "where the repository of a power places limits on the delegated legislative power and makes it subject to his or her prior approval, such a delegation would not be *ultra vires*. There is no reason to assume that the President would not have adopted such a safeguard and therefore it was premature for the employers to challenge the impugned regulations when they did. Accordingly, the High Court's declaration of unconstitutionality of regs 14 and 15 was a misdirection and liable to be set aside." (para 93) *President of the Republic of Namibia & Others v Namibia Employers Federation & Others* 2022 (3) NR 825 (SC). Thus, the directives issued in terms of those provisions remain valid.

Health regulations: Health regulations were issued in Proclamation 47/2020 (GG 7318).

Related documents:

- Bank of Namibia: "Determination on policy changes in response to economic and financial stability challenges, following the fallout of the Covid-19 Pandemic (BID-33)" (issued in terms of the Banking Institutions Act 2 of 1998, which has since been replaced by the Banking Institutions Act 13 of 2023), General Notice 127/2020 (GG 7166), which was repealed by the "Determination on policy changes in response to economic and financial stability challenges as a result of the Covid-19 Pandemic (BID-33)", General Notice 590/2021 (GG 7665), replaced in turn by General Notice 668/2022 (GG 7957) and then by General Notice 162/2023 (GG 8061)
- Namibia Financial Institutions Supervisory Authority: Covid-19 Pandemic: Declaration of undesirable practice (issued in terms of section 4(9) of the Medical Aid Funds Act 23 of 1995), General Notice 129/2020 (GG 7169)
- State of Emergency Covid-19: **Finance Regulations** (relating to section 9(2) of the State Finance Act 31 of 1991), Proc. 14/2020 (**GG** 7182)
- **Alcohol-based Hand Sanitisers Regulations** (issued in terms of the Standards Act 18 of 2005), GN 114/2020 (GG 7201), as amended by GN 250/2021 (GG 7687).

End of state of emergency: The state of emergency expired at midnight on 17 September 2020. The government did not seek to extend the period of emergency, instead electing to deal with Covid-19 through the Public and Environmental Health Act 1 of 2015, which was brought into force on 17 September 2020 by GN 230/2020 (GG 7338).

An initial set of **Public Health Covid-19 General Regulations** was issued in terms of that Act in GN 233/2020 (GG 7342), as amended by GN 235/2020 (GG 7346). These regulations were applicable from 00:00 on 24 September 2020 to 24:00 on 21 October 2020 (regulation 2(2)).

- They were then amended by GN 256/2020 (GG 7367) and made applicable as amended from 00:00 on 22 October 2020 to 24:00 on 30 November 2020 (regulation 2(2) as amended).
- They were further amended by GN 309/2020 (GG 7404) and made applicable as amended from 1 December 2020 to 24:00 on 25 January 2021 (regulation 2(2) as amended).
- This version of the regulations was superseded by further amendments made by GN 319/2020 (GG 7421), with these amended regulations made applicable with effect from 00:00 on 17 December 2020 to 24:00 on 30 December 2020 (regulation 2(2) as amended).
- This version of the regulations was superseded by amendments made by GN 326/2020 (GG 7429), with these amended regulations made applicable from 00:00 on 24 December 2020 to 24:00 on 13 January 2021 (regulation 2(2) as amended).
- The regulations were then amended by GN 1/2021 (<u>GG 7436</u>) and made applicable as amended from 00:00 on 14 January 2021 to 24:00 on 3 February 2021 (regulation 2(2) as amended).
- They were further amended by GN 9/2021 (<u>GG 7451</u>) and made applicable as amended from 00:00 on 4 February 2021 to 24:00 on 24 February 2021 (regulation 2(2) as amended).
- The regulations were again amended by GN 29/2021 (GG 7467) and made applicable as amended from 00:00 on 25 February 2021 to 24:00 on 31 March 2021 (regulation 2(2) as amended). GN 29/2021 was amended by GN 35/2021 (GG 7472) to change the Government Notice number from 9, as it incorrectly appeared, to 29.
- The regulations were next amended by GN 54/2021 (GG 7495) and made applicable as amended from 00:00 on 1 April 2021 to 24:00 on 30 April 2021 (regulation 2(2) as amended).

The amended set of Public Health Covid-19 General Regulations was then replaced by a new set of similar **Public Health Covid-19 General Regulations** contained in Government Notice 91/2021 (GG 7522), with the new regulations being applicable from 00:00 on 1 May 2021 to 31 May 2021 (regulation 2(2)).

- These regulations were amended by GN 108/2021 (GG 7544) and made applicable as amended from 00:00 on 1 June 2021 to 24:00 on 30 June 2021 (regulation 2(2) as amended).
- These regulations were further amended by GN 128/2021 (GG 7554) and made applicable as amended from 00:00 on 17 June 2021 to 24:00 on 30 June 2021 (regulation 2(2) as amended).
- These regulations were further amended by GN 138/2021 (GG 7568) and made applicable as amended from 00:00 on 1 July 2021 to 24:00 on 15 July 2021 (regulation 2(2) as amended). They were then further amended by GN 144/2021 (GG 7576), with no change to the dates of applicability.
- These regulations were further amended by GN 151/2021 (GG 7581) and made applicable as amended from 00:00 on 16 July 2021 to 24:00 on 31 July 2021 (regulation 2(2) as amended).
- These regulations were further amended by GN 160/2021 (GG 7593) and made applicable as amended from 00:00 on 1 August 2021 to 24:00 on 14 August 2021 (regulation 2(2) as amended).
- These regulations were further amended by GN 175/2021 (GG 7604), and made applicable as amended from 00:00 on 15 August 2021 to 24:00 on 15 September 2021 (regulation 2(2) as amended), and then amended by GN 176/2021 (GG 7624) with no change to the dates of applicability.
- These regulations were further amended by GN 205/2021 (GG 7637) and made applicable as amended from 00:00 on 16 August 2021 to 24:00 on 15 October 2021 (regulation 2(2) as amended).
- These regulations were further amended by GN 232/2021 (GG 7662) and made applicable as amended from 00:00 on 16 October 2021 to 24:00 on 15 November 2021 (regulation 2(2) as amended), then amended by GN 246/2021 (GG 7680) with no change to the dates of applicability.

- These regulations were further amended by GN 249/2021 (GG 7686) and made applicable as amended from 00:00 on 16 November 2021 to 24:00 on 15 December 2021 (regulation 2(2) as amended).
- These regulations were further amended by GN 281/2021 (GG 7703) and made applicable as amended from 00:00 on 16 December 2021 to 24:00 on 15 January 2022 (regulation 2(2) as amended).
- These regulations were further amended by GN 7/2022 (GG 7726) and made applicable as amended from 00:00 on 16 January 2022 to 24:00 on 15 February 2022 (regulation 2(2) as amended).
- These regulations were further amended by GN 56/2022 (GG 7748) and made applicable as amended from 00:00 on 16 February 2022 to 24:00 on 15 March 2022 (regulation 2(2) as amended).
- These regulations were further amended by GN 85/2022 (GG 7765) and made applicable as amended from 00:00 on 16 March 2022 to 24:00 on 15 April 2022 (regulation 2(2) as amended).
- These regulations were further amended by GN 121/2022 (GG 7788) and made applicable as amended from 00:00 on 16 April 2022 to 24:00 on 15 May 2022 (regulation 2(2) as amended). The dates of applicability of this version of the regulations were extended by GN 145/2022 (GG 7808), to apply from 00:00 on 16 May 2022 to 24:00 on 15 June 2022 (regulation 2(2) as amended), without any other amendments.
- These regulations were further amended by GN 172/2022 (GG 7829) and made applicable as amended from 00:00 on 16 June 2022 to 24:00 on 15 July 2022 (regulation 2(2) as amended).
- These regulations were further amended by GN 210/2022 (GG 7855) and made applicable as amended from 00:00 on 16 July 2022 to 24:00 on 15 January 2023 (regulation 2(2) as amended). However, they were almost immediately amended again by GN 211/2022 (GG 7857) and made applicable as amended from 17:00 on 16 July 2022 to 24:00 on 15 January 2023 (regulation 2(2) as amended). They expired on 15 January 2023 and were not extended or replaced.

Vaccines: GN 39/2021 (GG 7479) exempts specified COVID-19 vaccines, subject to certain conditions, from section 18(1) of the Medicines and Related Substances Control Act 13 of 2003 which prohibits the sale of unregistered medicines. The exempted vaccines are Sinopharm Vero Cell (People's Republic of China), Sputnik V (Russian Federation), Johnson & Johnson Ad26.COV2.S (USA), Bharat Biotech COVAXIN (India), AstraZeneca AZD1222 (Republic of South Korea) and Moderna mRNA-1273 (USA). The conditions of exemption are that the importer must have an import licence issued by the Namibia Medicines Regulatory Council under section 31(5)(c) of the Act for the vaccines in question, that the vaccines' labelling and package insert must be written or translated into English.

Procurement during the State of Emergency: In 2021, the Auditor-General produced a "Special Report of the Auditor-General on the Response to COVID-19 by the Government of the Republic of Namibia during the State of Emergency Period March-June 2020 for the Financial Year ended 31 March 2020 and First Quarter of the Financial Year 2020-2021". This report, which focuses on compliance with the Public Procurement Act 15 of 2025 during the State of Emergency, was tabled in the National Assembly on 28 September 2021. A summary of the report is contained in the *Procurement Tracker Namibia*, IPPR, Issue No. 16, April 2022, available here.

Related cases: Standard Bank Namibia Ltd v A-Z Investments Holdings (Pty) Ltd & Another 2022 (1) NR 197 (HC) (at paras 20-21: impact of pandemic does not constitute impossibility of contractual performance in this instance, but in general must be assessed on the particular facts of each case; "pandemic cannot be loosely used as a shield to deprive creditors of what they are rightly entitled to").

Commentary: Note that *Namibia Law Journal*, Volume 12, Issue 1, 2020/2021 (available <u>here</u>), contains several articles relating to COVID-19.

See also CORRECTIONAL FACILITIES.

See also Anti-Corruption Act 8 of 2003 (CRIMINAL LAW AND PROCEDURE).

See also Racial Discrimination Prohibition Act 26 of 1991 (CRIMINAL LAW AND PROCEDURE).

See also Bank of Namibia Act 1 of 2020 (FINANCIAL INSTITUTIONS).

See also Council of Traditional Leaders Act 13 of 1997 (CUSTOMARY LAW).

See also Namibia Central Intelligence Service Act 10 of 1997 (**DEFENCE**).

See also JUDGES.

See in particular Judicial Service Commission Act 18 of 1995 (JUDGES).

See Crown Liabilities Act 1 of 1910 (state liability) (LAW).

See also Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 (PENSIONS).

See also **POLICE**.

See also **PRESIDENT**.

See also **PUBLIC SERVICE**.

See in particular Public Service Commission Act 2 of 1990 (PUBLIC SERVICE).

See also REGIONAL AND LOCAL GOVERNMENT.

CONTRACTS

Conventional Penalties Act 15 of 1962, as amended in South Africa to November 1979

Summary: This Act (originally published in <u>RSA GG 202</u>) alters the pre-existing common law by providing for the enforceability of penalty stipulations in breaches of contract.

Applicability to SWA: Section 6 of the Act states "This Act shall apply also in the territory of South West Africa." This wording does not seem to make South African amendments to the Act automatically applicable to South West Africa. However, the only amendment to the Act in South Africa prior to Namibian independence is contained in section 18(1) of the *General Law Amendment Act 102 of 1967* (RSA GG 1771), and it is made expressly applicable to South West Africa by section 18(2) of that Act.

Transfer of administration to SWA: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* (RSA GG 17129).) In any event, there were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: As indicated above, the following pre-independence South African amendment was applicable to SWA -

• General Law Amendment Act 102 of 1967 (RSA GG 1771).

Regulations: The Act makes no provision for regulations.

Cases: Barotti Furniture (Pty) Ltd v Moodley 1996 NR 295 (HC).

CO-OPERATIVES

Co-operatives Act 23 of 1996 🕎 🙀

Summary: This Act (GG 1467) regulates the formation, registration and winding-up of co-operatives.

Repeals: The Act repeals the Co-operative Societies Ordinance 15 of 1946 (OG 1262), as amended, which in turn repealed the SWA Co-operation Proclamation 19 of 1922 (OG 87) as amended. 92

Regulations: Regulations made in terms of the previous Co-operatives Societies Ordinance 15 of 1946 survive pursuant to section 110(2) of this Act, which states:

Anything done under a provision of the repealed Ordinance which may be done under a provision of this Act shall be deemed to have been done under the last-mentioned provision.

Model co-operatives regulations issued under the repealed Co-operative Societies Ordinance 15 of 1946 are contained in SWA GN 313/1946 (OG 1277), as amended by RSA GN 1866/1975 (RSA GG 4860) (which substitutes Schedule L), and RSA GN 1948/1976 (RSA GG 5316) (which substitutes Schedule K).

The previous SWA Co-operation Proclamation 19 of 1922 (OG 87) made no provision for regulations other than the model co-operatives regulations which are contained in the Schedule to the Proclamation, and there is no savings clause for regulations attached to that Proclamation Act in Co-operative Societies Ordinance 15 of 1946.

Regulations are authorised by section 107 of the current Act, but none have been promulgated.

Notices: Notices relating to the establishment and winding up of particular co-operatives have not been recorded here.

Fees: Fees for registration and provisional registration of co-operatives are set in GN 66/1997 (GG 1537).

Commentary: Division of Cooperative Development, Ministry of Agriculture, Water and Rural Development, *Book 1-Cooperatives in Namibia: Introduction, Book 2-Guide to the Namibian Cooperatives Act, Book 3-Guide to the Model By-laws for Namibian Cooperatives*, undated.

⁹¹ The Co-operative Societies Ordinance 15 of 1946 was amended by RSA Proc. R.124/1969 (<u>RSA GG 2398</u>), SWA Act 7/1980 (<u>OG 4182</u>), SWA Act 6/1982 (<u>OG 4619</u>) and the *RSA Companies Amendments Act 90 of 1969* <u>RSA GG 2474</u>).

The corresponding South African law was the Co-operative Societies Act 29 of 1939 (<u>SA GG 2654</u>), which was not directly applicable to SWA but allowed some SWA farmers and co-operatives to participate in some aspects of co-operatives set up under the South African Act.

⁹² The SWA Co-operation Proclamation 19 of 1922 was amended by Proc. 32/1924, Ord. 5/1932, Proc. 14/1934 and Ord. 4/1943.

CORRECTIONAL FACILITIES

Transfer of Convicted Offenders Act 9 of 2005 🚾 🙀

Summary: This Act (originally published in <u>GG 3495</u>) makes provision for the transfer of sentenced offenders between Namibia and foreign States. It was brought into force on 28 July 2006 by GN 116/2006 (GG 3674).

Amendments: The Act is amended with respect to the use of various terms by the Correctional Service Act 9 of 2012 (<u>GG 5008</u>), which was brought into force on 1 January 2014 by GN 330/2013 (<u>GG 5365</u>).

Regulations: Regulations are contained in GN 117/2006 (GG 3674).

Notices: GN 309/2012 (<u>GG 5109</u>) announces the ratification of an agreement on the transfer of sentenced offenders between **Zambia** and Namibia, in terms of section 20(3) of the Act. (The text of the agreement is not included in the notice.)

According to the Ministry of Safety and Security, the National Assembly ratified this bilateral agreement on 9 October 2012 and notified Zambia of the ratification on 23 January 2013. On 11 November 2015, Namibia received notification from Zambia that they had fulfilled their domestic procedures in respect of the agreement. The agreement then entered into force on 12 December 2015 (in terms of Article 20(1) of the Agreement).

GN 277/2020 (GG 7386) announces the ratification of an agreement on the transfer of sentenced offenders between **Russia** and Namibia, in terms of section 20(3) of the Act. (The text of the agreement is *not* included in the notice.)

GN 277/2020 gives notice "that the National Assembly has, on 17 June 2020, ratified the Agreement on the Transfer of Sentenced Offenders between the Republic of Namibia and the Russian Federation" entered into under section 20(1) of the Act.

GN 337/2022 (GG 7942) announces the ratification of an agreement on the transfer of sentenced offenders between **Angola** and Namibia, in terms of section 20(3) of the Act. (The text of the agreement is included in the Schedule to the notice.)

GN 337/2022 gives notice "that the National Assembly has, on 30 November 2021, ratified the Transfer of Sentenced Offenders or Persons Deprived of Liberty between the Republic of Namibia and the Republic of Angola" entered into under section 20(1) of the Act.

GN 392/2022 (GG 7971) announces the ratification of an agreement on the transfer of sentenced offenders between **Botswana** and Namibia, in terms of section 20(3) of the Act. (The text of the agreement is included in the Schedule to the notice.)

GN 392/2022 gives notice that "the National Assembly has, on 1 November 2022, ratified the Agreement on Transfer of Sentenced Persons entered into by and between the Government of the Republic of Namibia and the Government of the Republic of Botswana" entered into under section 20(1) of the Act.

GN 289/2024 (GG 8461) announces the ratification of an agreement on the transfer of sentenced offenders between Cuba and Namibia, in terms of section 20(3) of the Act. (The notice states that the text of the agreement is included in the Schedule to the notice, but there is no such Schedule.)

GN 289/2024 states that "the National Assembly has, on 6 August 2024, ratified the Agreement on Transfer of Sentenced Persons entered into under subsection (1) of that section by and between the Government of the Republic of Namibia and the Government of the Republic of Cuba". Note that a previous version of GG 8461 contained erroneous notice numbers.

Related international agreements:

**SADC Protocol on the Inter-State Transfer of Sentenced Offenders, 2019.

Correctional Service Act 9 of 2012 will approximately

Summary: This Act (originally published in <u>GG 5008</u>) provides for the establishment of the Namibian Correctional Service and correctional facilities (previously known as prisons). It also covers health care services and hygiene for incarcerated offenders, discipline and rehabilitation programmes for incarcerated offenders, and rules for searches and seizures in correctional facilities. It establishes the National Release Board and provides for parole, remission and pardons. It was brought into force on 1 January 2014 by GN 330/2013 (<u>GG 5365</u>).

Repeals: The Act repeals the Prisons Act 17 of 1998, which replaced the *Prisons Act 8 of 1959* (which was applicable to SWA) and which in turn repealed the *Prisons and Reformatories Act 13 of 1911* (<u>SA</u> GG 111).

Amendments: The Combating of Rape Amendment Act 4 of 2022 (<u>GG 7932</u>), which was brought into force by GN 113/2024 (<u>GG 8365</u>), amends the Third Schedule.

Savings: Regulations made under the repealed Prisons Act 17 of 1998 appeared to survive in terms of section 134(3) of the current Act:

Anything done under any provision of any law repealed by subsection (1) and which could be done under a provision of this Act is deemed to have been done under this Act.

However, as noted below, the regulations made under the Prisons Act 17 of 1998 have been repealed by regulations made under the current Act.

Regulations under the *Prisons Act 8 of 1959* repealed by the Prisons Act 17 of 1998 appeared to have survived pursuant to the general wording of section 127(2) of the Prisons Act 17 of 1998:

Anything done under any provision of any law repealed by subsection (1) and which could be done under a provision of this Act shall be deemed to have been done under the last-mentioned provision.

Regulations under the *Prisons and Reformatories Act 13 of 1911* repealed by the *Prisons Act 8 of 1959* appear to have survived pursuant to the general wording of section 95(b) of the *Prisons Act 8 of 1959*:

The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule: Provided that notwithstanding the repeal of the said laws –

(b) every proclamation, regulation, rule, or order issued, made or given under any such law shall, in the area in which it was in force immediately prior to the commencement of this Act and so far as it is not inconsistent with the provisions thereof, continue in force until rescinded under this Act by the proper authority.

Because there is a chain of savings clauses which stretch back to that Act, it may be relevant to note its applicability to SWA. Section 96 of the *Prisons Act 8 of 1959* stated:

The State President may, by proclamation in the Gazette and subject to such conditions, modifications, exceptions and additions as he may specify in such proclamation, apply the provisions of this Act and of any amendments thereof to the territory of South West Africa including that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory and also that portion of the said territory known as the 'Eastern Caprivi Zipfel' referred to in section 38 of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968), and he may in the like manner amend or repeal any such proclamation.

The *Prisons Act 8 of 1959* was initially applied to South West Africa by *SA Proclamation 271 of 1959* (SA GG 6320), as amended by *RSA Proclamation 63 of 1963* (RSA GG 470) and *RSA Proclamation 314 of 1964* (RSA GG 955). This Proclamation was subsequently replaced by *RSA Proclamation R.130 of 1969* (RSA GG 2406), as amended by *RSA Proclamation R.211 of 1977* (RSA GG 5733). These Proclamations made several amendments to the Act as it applied to SWA. Although these South African proclamations functioned in some respects as transfer proclamations, the administration of this Act was also transferred to SWA by the Executive Powers (Prisons) Transfer Proclamation (AG 6/1977, as amended), dated **13 October 1977**. This transfer proclamation predates the General Proclamation regarding transfers (AG 7/1977, as amended).

However, according to the Namibian Supreme Court in Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) at para [38], there was "no savings provision in respect of the regulations promulgated under the 1959 Act or orders issued under reg 148 [of those regulations] in s 127 of the 1998 Act". The Court does not discuss the reasoning behind this interpretation, other than to state:

When the minister made regulations under s 124 of the 1998 Act on 8 November 2001 [referring to the regulations contained in GN 266/2001 (GG 2643), as amended by GN 34/2009 (GG 4223) and GN 134/2009 (GG 4272)], those regulations did not repeal the regulations made under the 1959 Act, further demonstrating that those regulations had been repealed by s 127 of the 1998 Act.

This would mean that no regulations made under the predecessors to the 1998 Act would survive – and the regulations made under the 1998 Act have been repealed.

Regulations: Namibian Correctional Service Regulations, made under the current Act, are contained in GN 331/2013 (GG 5365).⁹³

Notes: (1) Regulation 274 was set aside by Mwilima v Minister of Home Affairs, Immigration and Safety and Security & Others 2022 (4) NR 933 (HC) as being ultra vires section 109 of the Act read with section 132. (2) Minister of Safety and Security & Others v Kennedy & Another (SA 69-2020) 2023 NASC (18 July 2023) finds regulation 257 on solitary confinement inconsistent with Articles 7 and 11 of the Namibian Constitution and therefore invalid, but suspends this holding for 18 months from the date of the order to allow the Legislature and the Executive an opportunity to correct the defect.

Establishment of prisons: Several new prisons were established under the Prisons Act 17 of 1998 by GN 201/1998 (GG 1927), and the Katima Mulilo police cells were declared to be a prison under that Act by GN 160/1999 (GG 2163).

In terms of section 15(1) of this Act, GN 228/2020 (GG 7333) establishes the Windhoek Female Correctional Facility in Khomas Region and the (Okatyali Correctional Facility in Oshana Region.

Four correctional facilities were renamed by GN 109/2022 (GG 7776), which repeals GN 201/1998 (GG <u>1927</u>).

Presidential pardons: While the Prisons Act 17 of 1998 was in force, Presidential pardons were issued in terms of the Namibian Constitution to certain categories of prisoners in Proc. 15/1993 (GG 642), Proc. 11/1994 (GG 836), Proc. 3/1995 (GG 1051), Proc. 4/1997 (GG 1533), Proc. 1/2000 (GG 2306), Proc. 12/2003 (GG 2956), Proc. 1/2005 (GG 3397), Proc. 4/2006 (GG 3626), Proc. 6/2009 (GG 4230), Proc. 14/2010 (GG 4552) and Proc. 28/2013 (GG 5270).

After this Act came into force, Presidential pardons were issued in terms of the Namibian Constitution to certain categories of prisoners in Proc. 8/2020 (GG 7154), which was withdrawn and replaced by Proc 19/2020 (GG 7212), and in Proc. 14/2024 (GG 8359).

Notices listing the names of the persons covered by some of these pardons have not been listed here.

Cases: The following cases relate to this Act –

Lomboleni & 10 Other Appeal Cases v The State & Others 2016 (1) NR 22 (NLD) (discussion of official duties in section 3(3) in context of inability of prisons to account for whereabouts of prisoners seeking to prosecute appeals)

Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (section 133(3))

Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (effect of successive repeals of previous legislation on regulations and orders issued under previous

⁹³ These regulations repeal the regulations contained in GN 266/2001 (GG 2643), as amended by GN 34/2009 (GG 4223) and GN 134/2009 (GG 4272). The repealed 2001 regulations issued in terms of the Prisons Act 17 of 1998 do not contain any repeals.

Acts, in respect of eligibility for parole in respect of life imprisonment; section 117 and Regulation 281 of the Namibian Correctional Service Regulations, 2013 apply to persons sentenced under the Prisons Act 17 of 1998, but not under the *Prisons Act 8 of 1959*; persons sentenced under the *Prisons Act 8 of 1959* continue to be governed by the right to parole acquired under that Act))

See also Shigwedha & Others v Commissioner General Namibian Correctional Service: Hamunyela & Others 2020 (4) NR 984 (HC) and Chika & Others v Commissioner General Raphael Amunyela: Namibia Correctional Facility & Others 2022 (2) NR 467 (HC), discussed below.

- Matengu v Minister of Safety and Security & Others 2017 (2) NR 569 (HC) (section 74)
- S v Matlata 2018 (4) NR 1038 (HC) (section 99 applied to sentences on multiple counts in same case; no need to apply ruling on sentences that effectively exceed life imprisonment in S v Gaingob & Others 2018 (1) NR 211 (SC))
- Elia v Minister of Safety and Security & Others 2019 (1) NR (HC) (section 133; no provision for condonation in section 133(4))
- Akatama v Commissioner-General: Hamunyela & Others 2019 (2) NR 538 (NLD) (sections 105(1)(a) and 106 govern release on parole, and court may not unnecessarily usurp these powers where no decision on parole has yet been made; offender who has served more than half of his sentence is not automatically entitled to release on parole, but has only become qualified to be a candidate for possible parole)
- Kennedy & Another v Minister of Safety and Security & Others 2020 (3) NR 731 (HC); Minister of Safety and Security & Others v Kennedy & Another 2023 (3) NR 597 (SC) (Supreme Court: (1) definition of "offender" in section 1 to include persons awaiting trial is unconstitutional; (2) section 103 of the Act on solitary confinement is unconstitutional, along with regulation 257 in the Namibian Correctional Service Regulations contained in GN 331/2013 (GG 5365), citing the United Nations Minimum Standards for the Treatment of Prisoners (the "Nelson Mandela Rules"); (4) the blanket policy of policy of not allowing contact visits to awaiting-trial inmates is unconstitutional; (5) the practice of transporting inmates in police vans with their hands handcuffed at the back while the vehicle is moving, where the vehicle lacks safety features to prevent physical harm to the inmates, is unconstitutional (6) the declarations of unconstitutionality of provisions in the Act and regulations is suspended for a period of 18 months from the date of the order to allow the Legislature and the Executive an opportunity to correct the identified defects; (6) the High Court holding that portions of section 103(3) and the entirety of section 132(1)(t) were unconstitutional and must be severed fall away by agreement between the parties since the High Court did not put these issues to the parties prior to determining them)
- Van Wyk v Namibia Correctional Service Commissioner General: Raphael Hamunyela & Others 2020 (3) NR 864 (HC) (effect of non-compliance with section 133(4) notice requirement)
- Shigwedha & Others v Commissioner General Namibian Correctional Service: Hamunyela & Others 2020 (4) NR 984 (HC) (relevant law on parole is the Prisons Act 17 of 1998 in force at time of sentencing; sections 95 and 97 of that Act must be read together; since no rights to parole accrued under the previous law, the current Act applies)

See also *Chika & Others v Commissioner General Raphael Amunyela: Namibia Correctional Facility & Others* 2022 (2) NR 467 (HC), discussed below.

- Kahimise v Commissioner-General of Correctional Service & Others 2021 (1) NR 78 (HC) (interpretation of sections 51(13), 52(1) and 58(7); application of section 133(3); regulation 68(1) of Namibian Correctional Service Regulations)
- Amadhila v Government of the Republic of Namibia & Others (HC-MD-CIV-ACT-DEL-2019/00602 [2021] NAHCMD 428 (24 September 2021) (prescription period in section 133(3) of the Act, which is similar to those in section 33 of the Public Service Act 13 of 1995 and section 39(1) of the Police Act, upheld against constitutional challenge despite absence of discretionary waiver such as that found in the Police Act, being reasonably connected to a legitimate governmental objective without unreasonable rigidity and inflexibility that violate right to equality before the law or right of access to the courts)
- Chika & Others v Commissioner General Raphael Amunyela: Namibia Correctional Facility & Others 2022 (2) NR 467 (HC) ((1) on the question of which Act applies to an application for parole,

- the applicable law is the one in force on the date of sentence; (2) interpretation of section 97(8) of Prisons Act 17 of 1998; (3) differentiation between categories of offenders under section 114 of the Correctional Service Act 9 of 2012 on basis of the seriousness of crimes committed is not unconstitutional)
- Minister of Safety and Security & Others v Avelinu 2022 (2) NR 608 (SC) (discusses High Court holding that section 133(4) places an absolute prohibition on institution of legal proceedings in absence of required notice, but this issue was not part of the appeal before the court)
- Mwilima v Minister of Home Affairs, Immigration and Safety and Security & Others 2022 (4) NR 933 (HC) (regulation 274 of the Namibian Correctional Service Regulations set aside as being ultra vires section 109 of the Act read with section 132); see also Mwilima v Minister of Home Affairs, Immigration and Safety and Security & Others 2023 (4) NR 975 (HC) and Mwilima v Minister of Home Affairs, Immigration and Safety and Security & Others 2024 (2) NR 546 (SC) discussed below
- Mwaala v Nghikomenwa 2022 (4) NR 1209 (SC) (discussion, without deciding, of whether compliance with notice requirement under section 133(4) brings case within ambit of prescription period in section 133(3) and (in concurring opinion) in respect of applicability of section 133 whether there can be a distinction between "acting within the scope and course" of employment and acting "in pursuance" of Act)
- Van Schalkwyk v Minister of Home Affairs, Immigration, Safety and Security & Others 2023 (2) NR 440 (HC) (section 79)
- Lenga v Commissioner General Namibian Correctional Service & Others 2023 (3) NR 622 (HC) (provision for reinstituting disciplinary enquiry under section 51(15) and 54(14) is not unconstitutional double jeopardy where previous acquittal was on a technical irregularity and not decided on the merits of the case)
- Mwilima v Minister of Home Affairs, Immigration and Safety and Security & Others 2023 (4) NR 975 (HC) (the insertion of a comma after the word "dangerous" has rendered the meaning of s. 109(a) absurd; the clear intent of the legislature was to make provision for the release of an offender who suffers from a dangerous infectious disease or a dangerous contagious disease; this aspect of the High Court holding was overruled in Mwilima v Minister of Home Affairs, Immigration and Safety and Security & Others 2024 (2) NR 546 (SC), which found that the phrase "dangerous, infectious or contagious disease" in s 109(a) is clear and requires no interpretation, but held that the word "or" between paragraphs (a) and (b) of s. 109 should be read to mean "and" to avoid an absurd result)

It is a notorious fact that occasionally the Legislature unfortunately uses the words 'and' and 'or' in legislation inaccurately and law reports are littered with dicta in which one of those words was held to be the equivalent of the other. Whether or not the words are used inaccurately depends on the context and subject matter of the provision. It would appear to be the position that the disjunctive 'or' between the two paragraphs in s 109 was used inaccurately." (para 54, footnotes omitted).

[...]

It follows that in considering whether or not to recommend an offender's release on medical grounds, additional to determining whether the offender is suffering from a dangerous, infectious or contagious disease, it is required of the medical officer to further enquire and determine whether or not the continued incarceration in the circumstances will be detrimental to the offender's health." (para 56).

Samukuta v Minister of Safety and Security & Others 2023 (4) NR 1155 (HC) (when prescription period starts running for purposes of section 133).

The following cases relate to the Prisons Act 17 of 1998, which was repealed by this Act – *S v Babiep* 1999 NR 170 (HC) (meaning of "prison", section 54, section 75(1))

- S v Njuluwa 2000 NR 97 (HC) (it would derogate from the statutory powers conferred by sections 92, 95-98 if judicial officers were allowed to order that convicted persons may not be paroled)
- Kennedy & Others v Minister of Prisons and Correctional Services 2008 (2) NR 631 (HC) (legal duty of care of members of Namibian Prison Services; discussion of reasonable force under section 30(1) at 654G-I)
- Alugodhi v Minister for Safety and Security & Others and Eight Similar Cases 2015 (4) NR 1021 (HC) (relationship between section 86 and section 280 of Criminal Procedure Act 51 of 1977, with

- reference to similar provisions of the previous *Prisons Act 8 of 1959* (section 32) and the current Act (section 99))
- Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (interpretation of 2010 directive of Prime Minister on organisational structure)
- Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (section 126; absence of provision for parole in respect of life imprisonment; section 117 and Regulation 281 of the Namibian Correctional Service Regulations, 2013 apply to persons sentenced under the Prisons Act 17 of 1998).

The following cases relate to the *Prisons Act 8 of 1959*, which was repealed by the Prisons Act 17 of 1998 –

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC) (sections 36, 37, 48(1), 54(2), 56(3) and Regulation 100 of the Prison Regulations)

S v Haruseb 1991 NR 155 (HC) (section 48(1)(a))

S v Mbahapa 1991 NR 274 (HC) (section 48(1)(a))

S v Vihajo & Others 1993 NR 233 (HC) (section 48(1)(a))

S v Matsuis 1993 NR 234 (HC) (section 48(1)(a))

S v Matthias 1993 NR 420 (HC) (section 48(1)(a))

Namunjepo & Others v Commanding Officer, Windhoek Prison & Another 1999 NR 271 (SC) (section 80 and Regulation 102) (discussed in L Gaum, "The use of mechanical restraints by correctional services in South Africa and Namibia: Namunjepo v Commanding officer, Windhoek Prison 6 BCLR 671 (NmS) (2000)", African Human Rights Law Journal, Volume 2, Issue 1, 2002)

S v Linyando 1999 NR 300 (HC) (section 48(2) read together with section 32(2))

Amakali v Minister of Prisons and Correctional Services 2000 NR 221 (HC) (section 48)

Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (section 90; Prison Order 43.7.4.7 issued under Regulation 148 of the Prison Regulations, 1965 contained in GN R.2080 of 31 December 1965; persons sentenced under the *Prisons Act 8 of 1959* continue to be governed by the right to parole acquired under that Act).

Commentary:

- SH Bukurura & JW Nyoka, "The Namibian Prison Service and the Constitution: Lessons and experiences, 1990-2000", 34 (1) *De Jure* 96 (2001)
- SH Bukurura, "Prison Overcrowding in Namibia: The Problem and Suggested Solutions", 16 (1) *Acta Criminologica* 82 (2003)
- "Prisons In Namibia: Report of The Special Rapporteur on Prisons And Conditions of Detention in Africa, adopted by the African Commission on Human and Peoples' Rights at the 33rd Ordinary Session, 15-29 May 2003", available here
- SK Amoo & Davy Y Kambinda, "Community service orders as part of judicial discretion in the criminal justice system", *Namibia Law Journal*, Volume 3, Issue 2, 2011
- Clever Mapaure & Raphael T Hamunyela, "Once jailed, wait for fuzzy mercy: A critical legal analysis of the blurred prison and parole laws of Namibia", *Namibia Law Journal*, Volume 4, Issue 2, 2012, available here
- Chuks Okpaluba, "State liability for acts and omissions of police and prison officers: recent developments in Namibia" 46 (2) *The Comparative and International Law Journal of Southern Africa* 184 (2013)
- Law Reform and Development Commission, Discussion Paper on the Possible Statutory Interventions to Curb the Alarming Spate of Domestic Violence, Murder and Gender Based Violence, LRDC 33, 2014 (parole)
- Obonye Jonas & Tshepiso Ndzinge-Makhamisa, "Anti-retroviral drugs for foreign inmates in Botswana: *Tapela & Anor v Attorney-General & Others*", *Namibia Law Journal*, Volume 6, Issue 2, 2014, available here
- Legal Assistance Centre, "Use of force by law enforcement officials in Namibia", 2019, available here.

Conditions in police cells: The Correctional Service Act defines "correctional facility" to include, for certain purposes, every place used as a police cell or lock-up. *McNab & Others v Minister of Home Affairs & Others* 2007 (2) NR 531 (HC) at 548C-ff found that conditions in the holding cells in which

the plaintiffs were detained were inhuman and degrading and therefore a violation of the constitutional right to human dignity. See also:

- Adv JR Walters, "Follow-up Report on Conditions Prevailing at Police Cells in Namibia", Office of the Ombudsman, 2008, available here
- "Report of the Standing Committee on Foreign Affairs, Defence And Security on Visits to Police Stations, Police Cells, Prisons, Border Posts and Military Installations", National Assembly, 2006
- Adv JR Walters, "Special Report on Conditions Prevailing at Police Cells throughout Namibia", Windhoek: Office of the Ombudsman, 2006
- Oliver C Ruppel and Angelique L Groenewald, "Conditions of Police Cells in Namibia, Human Rights and Documentation Centre", University of Namibia, undated, available here and here.

APPOINTMENTS

Appointment of First Commissioner of Prisons, Proc. 19/1990 Appointment of Commissioner of Prisons, Proc. 34/1997 (<u>GG 1765</u>) Commissioner-General of Correctional Service, Proc. 4/2014 (<u>GG 5407</u>).

COMMENTARY

Legal Assistance Centre / University of Wyoming College of Law, *Struggle to Survive: A Report on HIV/AIDS and Prisoners' Rights in Namibia*, 2008, available here
Legal Assistance Centre, *Understanding Prisoners' Rights*, undated pamphlet, available here.

See also Security Commission Act 18 of 2001 (CONSTITUTION).

See also **DISASTERS** (involvement of uniformed forces in disaster situations).

COURTS

Further Administration of Justice Proclamation 38 of 1920 🗐 🙀

Summary: This Proclamation (originally published in <u>OG 35</u>) provides for the procedure of circuit courts of the High Court. All that remains in force of this Proclamation are sections 1, 7, 11 and 13-15.

Amendments: Proc. 30/1935 (OG 649) amends sections 3 and 11 and repeals section 10. The SA Supreme Court Act 59 of 1959 (SA GG 6253) repeals sections 2-6, 8, 9 and 12. The RSA Civil Proceedings Evidence Act 25 of 1965 (RSA GG 1066) amends section 11.

Regulations: Section 13 of the Proclamation authorises regulations "as to the method of transport of the Judge of the High Court of South-West Africa and the scales of transport, travelling and subsistence allowances when he is travelling on duty or is absent on duty from his place of residence". Preindependence regulations have not been researched, as they would now be obsolete.

Magistrates' Courts Act 32 of 1944, as amended in South Africa to November 1979 🕎 🙀

Summary: This Act (originally published in <u>SA GG 3346</u>) sets out the civil and criminal jurisdiction of magistrates' courts, as well as matters relating to procedure in magistrates' courts.

Repeals: The Act repeals the *Magistrates' Courts Act 32 of 1917*, as amended, with the exception of the Second Schedule. The Second Schedule of this previous Act contained Rules of the Magistrates' Courts intended to operate temporarily until they were replaced by new rules. The Second Schedule (as amended) was replaced by the rules in SA Government Notice 814/1945 (SA GG 3487), which were replaced (as amended) by rule 69 of the current Rules of Court (originally published in RSA GN R.1108 of 21 June 1968).⁹⁴

Applicability to SWA: Section 1, as amended by *Act 53 of 1970*, defines "territory" as "the territory of South West Africa", and "province" and "Republic" are both defined to include the territory. Section 115A, inserted by *Act 53 of 1970*, states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Section 3(1)(d) of the transfer proclamation excluded all references to "Republic" in the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning it was given in the definition section of the Act (South Africa and SWA).

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

- Magistrates' Courts Amendment Act 40 of 1952 (SA GG 4873)
- Magistrates' Courts Amendment Act 14 of 1954 (SA GG 5254)
- General Law Amendment Act 62 of 1955 (SA GG 5512)
- General Law Amendment Act 50 of 1956 (SA GG 5703)
- General Law Amendment Act 68 of 1957 (SA GG 5894)
- Criminal Law Amendment Act 16 of 1959 (SA GG 6195)

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⁹⁴ Rule 69 repeals Government Notices 814/1945, 362/1948, 1154/1954, 1212/1954, 918/1955, 802/1958, 2014/1959, and 1313/1964.

- Criminal Law Further Amendment Act 75 of 1959 (SA GG 6262)
- General Law Further Amendment Act 93 of 1962 (RSA GG 284)
- Magistrates' Courts Amendment Act 19 of 1963 (RSA GG 456)
- General Law Amendment Act 37 of 1963 (RSA GG 488)
- General Law Further Amendment Act 93 of 1963 (RSA GG 555)
- Bantu Laws Amendment Act 42 of 1964 (RSA GG 801)
 read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 (RSA GG 240)
- General Law Amendment Act 80 of 1964 (RSA GG 829)
- Magistrates' Courts Amendment Act 48 of 1965 (RSA GG 1102)
- Magistrates' Courts Amendment Act 8 of 1967 (RSA GG 1664)
- General Law Amendment Act 70 of 1968 (RSA GG 2106)
- Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969 (RSA GG 2315)
- Magistrates' Courts Amendment Act 17 of 1969 (RSA GG 2317)
- General Law Amendment Act 101 of 1969 (RSA GG 2464)
- General Law Amendment Act 17 of 1970 (RSA GG 2655)
- Magistrates' Courts Amendment Act 53 of 1970 (RSA GG 2826)
- General Law Amendment Act 80 of 1971 (RSA GG 3197)
- General Law Amendment Act 102 of 1972 (RSA GG 3610)
- General Law Amendment Act 29 of 1974 (RSA GG 4220)
- Second General Law Amendment Act 94 of 1974 (RSA GG 4510)
- Magistrate's Courts Amendment Act 63 of 1976 (RSA GG 5120)
- Criminal Procedure Act 51 of 1977 (RSA GG 5532)
- Lower Courts Amendment Act 91 of 1977 (<u>RSA GG 5621</u>).

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 14/1981 (OG 4565), which is brought into force by AG Proc. 33/1981 (OG 4577), amends section 92.

Act 11/1985 (OG 5108) amends the Act substantially.

The Appeals Amendment Act 29 of 1985 (OG 5149), which is brought into force by AG 19/1986 (OG 5182), amends sections 1 and 83.

Act 9/1990 (GG 43) amends sections 1 and 10 of the Act (with regard to the administration of the Act and the qualifications for the appointment of judicial officers).

The Attorneys Amendment Act 17 of 1991 (GG 314) substituted section 21, with effect from 29 September 1989; this amending Act was repealed in its entirety by the Legal Practitioners Act 15 of 1995.

The Married Persons Equality Act 1 of 1996 (GG 1316), brought into force on 15 July 1996 by GN 154/1996 (GG 1340), amends section 5 and deletes section 111(4).

Act 9/1997 (GG 1696), which was brought into force on 3 November 1997 by GN 220/1997 (GG 1722), increases the limits on the jurisdiction of magistrates' courts, by altering sections 29, 46, 50, 65I, 74 and 92. In terms of these amendments, the basic limit for civil actions is N\$25 000. For criminal actions, a magistrates' court may impose a sentence of up to five years or a fine of up to N\$20 000, and a regional magistrates' court may impose a sentence of up to 20 years and a fine of up to N\$100 000.

Act 1/1999 (GG 2058) amends the minimum qualifications for regional magistrates, gives regional courts jurisdiction for murder trials, and repeals the provisions relating to imprisonment for failure to

satisfy an order of court to pay a judgement debt (affecting sections 9, 12, 65A, 65C, 65D, 65E, 65F, 65G, 65H, 65J, 65K, 65L, 89, 106, 106A, 106B and 109).

The Magistrates Act 3 of 2003 (<u>GG 2996</u>) (the relevant portion of which was brought into force on 30 June 2003 by GN 125/2003, <u>GG 3001</u>) amends sections 1 and 66, substitutes section 8 and repeals sections 9, 9bis, 10, 11 and 12.

Act 6/2009 (GG 4308) amends the composition of the Rules Board in section 25.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 68.

Act 18/2023 (GG 8281), which has not yet been brought into force, amends sections 1, 25, 29, 46, 65E and 66 and inserts section 66A.

The Dissolution of Marriages Act 10 of 2024 (GG 8487), which has not yet been brought into force, will amend sections 1, 2, 25, 28 and 46, and insert sections 8A and 29A.

Application to Rehoboth Gebiet: Amendments to the Act were applied to Rehoboth insofar as they related to matters which fell under the Legislative Authority of Rehoboth by the Magistrates' Courts Amendment Act 5 of 1982 (Rehoboth) (*Official Gazette 79 of Rehoboth*, dated 7 October 1983):

- 1. (1) Any amendment of the Magistrates' Courts Act, 1944 (Act 32 of 1944), in so far as that amendment relates to any matter in respect of which the Legislative Authority of Rehoboth is empowered to make laws and which was made for or also for the territory of South West Africa excluding Rehoboth after the commencement of the Rehoboth Self-Government Act, 1976 (Act 56 of 1976), shall, subject to the provisions of subsection (2), also apply in Rehoboth.
- (2) For the purposes of sections 13 and 15 of the last-mentioned Act subsection (1) of this section shall be deemed to have been in operation immediately prior to the date on which a government for Rehoboth came into being in terms of section 11 (1) of that Act.

Note that the date that appears on *Official Gazette 79 of Rehoboth* is 7 October 1983, even though the Act which it publishes is dated 1982.

Regulations: The Act makes no provision for regulations. However, section 22 of *Act 53 of 1970* (which made this Act applicable to SWA) repealed section 3 of the South-West Africa Affairs Act, 1922 (Act No. 24 of 1922) "in so far as it relates to the attendance of witnesses in any civil action in any magistrate's court in the territory of South-West Africa", and the SWA Magistrate's Courts Ordinance 29 of 1963 (OG 2499). Section 22(3) of *Act 53 of 1970* included a savings clause:

Any regulation, rule, notice, approval, authority, return, certificate, document or appointment made, issued or given, and any other act done under any provision of any law repealed by this Act, shall be deemed to have been made, issued, given or done under the corresponding provision of the principal Act.

However, since the Act makes no provision for regulations, it does not seem possible that any preindependence regulations made under the repealed laws could survive pursuant to this savings clause.

Rules: The Rules of Court are contained in RSA GN R.1108 of 21 June 1968 (RSA GG 2103), 95 as amended by -

RSA GN R.3002 of 25 July 1969 (RSA GG 2490)

RSA GN R.490 of 26 March 1970 (RSA GG 2674)

RSA GN R.947 of 2 June 1972 (RSA GG 3538)

RSA GN R.1115 of 28 June 1974 (RSA GG 4319)

(as corrected by RSA GN R.1285 of 19 July 1974 (<u>RSA GG 4338</u>))

RSA GN R.689 of 23 April 1976 (<u>RSA GG 5093</u>)

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⁹⁵ Rule 69 repeals Government Notices 814 of 18 May 1945, 362 of 13 February 1948, 1154 of 11 June 1954, 1212 of 18 June 1954, 918 of 6 May 1955, 802 of 13 June 1958, 2014 of 4 December 1959, and 1313 of 28 August 1964.

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RSA GN R.261 of 25 February 1977 (<u>RSA GG 5412</u>)
RSA GN R.2221 of 28 October 1977 (<u>RSA GG 5790</u>)
RSA GN R.327 of 24 February 1978 (<u>RSA GG 5888</u>)
RSA GN R.2222 of 10 November 1978 (<u>RSA GG 6208</u>)
RSA GN R.1449 of 29 June 1979 (<u>RSA GG 6551</u>)
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As noted above, the administration of the Magistrates' Courts Act 32 of 1944 was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated **12 November 1979**. However, several subsequent amendments to the Magistrates' Courts - Rules of Court were made expressly applicable to South West Africa.

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RSA GN R.1314 of 27 June 1980 (RSA GG 7097)
RSA GN R.1800 of 28 August 1981 (RSA GG 7741)
RSA GN R.1139 of 11 June 1982 (RSA GG 8242)
RSA GN R.1689 of 29 July 1983 (RSA GG 8828)
as corrected by RSA GN R.1946 of 9 September 1983 (RSA GG 8879)
RSA GN R.1338 of 29 June 1984 (RSA GG 9276)<sup>96</sup>
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The following amendments to the Rules of Court were made in SWA prior to Namibian independence:

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GN 148/1985 of 31 December 1985 (OG 5157)
AG GN 58/1989 of 15 August 1989 (OG 5774)
AG GN 86/1989 of 15 October 1989 (OG 5822)
AG GN 122/1989 of 1 December 1989 (OG 5873)
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The following amendments to the Rules of Court were made after Namibian independence:

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GN 178/1992 (<u>GG 537</u>)
GN 43/1997 (<u>GG 1513</u>)
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GN 43/1997 erroneously lists RSA GN R.409/1970 as a previous amendment to the Rules. The correct reference is R.490/1970.

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GN 75/2000 (<u>GG 2284</u>)
GN 200/2007 (<u>GG 3930</u>)
GN 294/2018 (<u>GG 6765</u>)
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Notes:

(1) GN 294/2018 lists RSA GN R.1752/1970 (<u>RSA GG 2890</u>), as a previous amendment to the Rules of Court. However, this is not an amendment to the rules, but a separate Tariff of Allowances Payable to Witnesses in Civil Cases.

(2) GN 294/2018 also lists RSA GN R.1194/1979 (RSA GG 6489) as a previous amendment to the Rules of Court. However, this is not an amendment to the rules, but a list of the classes of officers or employees in the service of the State who shall be competent under section 15(4) of the Act to serve any process of the court or any other document in a case in which a prosecution takes place for an offence in terms of specified laws listed in that Notice.

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RSA GN R.1994 of 7 September 1984 (<u>RSA GG 9413</u>)
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as corrected by RSA GN R.2083 of 21 September 1984 (RSA GG 9429)

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RSA GN R.391 of 7 March 1986 (RSA GG 10114)
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⁹⁶ The following amendments were made to the Rules of Court in South Africa after the date of transfer and prior to the date of Namibian independence, but none of them were made expressly applicable to SWA:

RSA GN R.2165 of 2 October 1987 (RSA GG 10958)

RSA GN R.1451 of 22 July 1988 (RSA GG 11428)

RSA GN R.1765 of 26 August 1988 (RSA GG 11492)

RSA GN R.211 of 10 February 1989 (RSA GG 11694)

RSA GN R.607 of 2 October 1989 (RSA GG 11792)

RSA GN R.2629 of 1 December 1989 (RSA GG 12205)

RSA GN R.186 of 2 February 1990 (RSA GG 12276).

- (3) In addition, GN 294/2018 lists RSA GN R.652/1980 (RSA GG 6896) as a previous amendment to the Rules of Court. However, this is not an amendment to the rules, but a separate tariff of witness fees in civil cases, which was issued in South Africa after the relevant transfer date, but specifically states in item 9 that it is applicable to SWA. (This tariff withdraws RSA GN R.1752 dated 16 October 1970.)
- (4) GN 294/2018 also lists SWA GN 36/1987 (OG 5330) as a previous amendment to the Rules of Court. However, this is not an amendment to the rules, but an amendment to the Tariff of Allowances Payable to Witnesses in Civil Cases contained in RSA GN R.652/1980 (RSA GG 6896).

The Magistrate's Court Rules (Rehoboth) Amendment Proclamation, AG 29/1979, applies the amendments to the Magistrate's Court Rules contained in RSA GN R.2222/1978 to the Rehoboth Gebiet.

Notices: Officers competent to perform **service of process** in terms of section 15(4) are designated in AG GN 84/1989 (OG 5818).

GN 22/1994 (<u>GG 799</u>) creates **district divisions**, appoints places for holding courts within each division and specifies the seat of the magistracy for each division. It is amended by GN 21/1999 (<u>GG 2046</u>), GN 176/2000 (<u>GG 2374</u>), GN 93/2002 (<u>GG 2755</u>), GN 82/2018 (<u>GG 6586</u>), GN 42/2021 (<u>GG 7482</u>), GN 5/2022 (<u>GG 7723</u>), GN 29/2023 (<u>GG 8040</u>), GN 309/2024 (<u>GG 8494</u>) and GN 323/2024 (<u>GG 8500</u>).

- (1) GN 43/2021 (<u>GG 7482</u>) includes a list of previous amendments to GN 22/1994 that is partly incorrect: GN 122/1997 (<u>GG 1585</u>), GN 177/2000 (<u>GG 2374</u>) and GN 94/2002 (<u>GG 2755</u>) amend GN **23**/1994 (<u>GG 799</u>) and not GN 22/1994 (<u>GG 799</u>).
- (2) GN 5/2022 (GG 7723) also includes a list of previous amendments to GN 22/1994 that is partly incorrect: GN 122/1997 (GG 1585), GN 177/2000 (GG 2374) and GN 94/2002 (GG 2755) amend GN 23/1994 (GG 799) and not GN 22/1994 (GG 799). In addition, GN 92/2002 (GG 2755) designates Ngoma as a place for holding a court in the district of Katima Mulilo but does not amend GN 22/1994; the corresponding amendment to GN 22/1994 is made by GN 93/2022 (GG 2755).
- GN 23/1994 (GG 799) re-defines the local limits of districts and establishes their names, establishes a court for each district, appoints places for the holding of a court for each district, and specifies the seat of magistracy where there is more than one court in the district. It is amended by GN 122/1997 (GG 1585), GN 22/1999 (GG 2046), GN 177/2000 (GG 2374), GN 94/2002 (GG 2755), GN 61/2014 (GG 5455), GN 30/2023 (GG 8040), GN 310/2024 (GG 8494) and GN 324/2024 (GG 8500).
 - (1) GN 61/2014 ($\underline{GG\ 5455}$) states that GN 23/1994 was also amended by GN 26/1994 ($\underline{GG\ 803}$) and GN 21/1999 ($\underline{GG\ 2046}$), but this is incorrect. GN 61/2014 also fails to list the amendment made by GN 94/2002.
 - (2) GN 61/2014 (GG 5455) essentially directs the swapping of the names "Du Plessis" and "Talismanis". However, the directions as written would not change the original notice. It is assumed that the references to "substitution of X for Y" have been accidentally reversed.
 - (3) GN 5/2022 (GG 7723) creates the Aranos District Court and amends GN 22/1994 accordingly, but no corresponding amendment to GN 23/1994 has been located, nor any annexure defining the local limits of the district.

GN 249/1997 (GG 1741) makes no amendments to previous Government Notices, but appoints Hochfeld, within the district of Okahandja, as a place for the holding of a court for that district and prescribes the local limits of the district of Okahandja as the local limits within which that court exercises jurisdiction. (Consequential amendments to GN 22/1994 (GG 799) are made by GN 21/1999 (GG 2046).)

GN 92/2002 (GG 2755) appoints Ngoma within the district of Katima Mulilo and the district division Rundu, as a place for the holding of a court for that district and district division, and prescribes the local limits within which that court exercises jurisdiction. (Consequential amendments to GN 22/1994 (GN 799) are made by GN 93/2002 (GG 2755).)

Note: Note that *S v Coetzee* 2011 (1) NR 359 (HC) emphasises that a record of criminal proceedings in the magistrates' court must be prepared in accordance with Chap XIII of the **Codified Instructions:**

Clerk of the Criminal Court issued by the Permanent Secretary for Justice (Permanent Secretary's Administrative Circular dated 12 May 2008 re: "Amendment of Codified Jurisdictions Justice Code: Clerk of Criminal Court", updated 19 March 2008).

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003 (GG 3020), GN 189/2012 (GG 5005) and GN 70/2020 (GG 7142).

Cases:

generally:

S v Myburgh 2008 (2) NR 592 (SC) (suggestion to legislature to amend Act to extend jurisdiction of magistrate's courts, especially regional magistrate's courts, to order permanent stays of prosecution in appropriate criminal cases).

section 1:

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) ("judicial officer" and "Chief: Lower Courts"); appealed on other grounds in 2010 (1) NR 328 (SC)

section 9:

S v Kauma 1992 NR 17 (HC)

Mostert v The Minister of Justice 2002 NR 76 (HC); upheld on appeal on this point in Mostert v The Minister of Justice 2003 NR 11 (SC) (declaring section 9 of the Act (on appointment of judicial officers) unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrates Act 3 of 2003)

section 10:

Mostert v The Minister of Justice 2003 NR 11 (SC) (declaring section 10 of the Act (on qualifications of judicial officers) unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)

section 12:

Garces v Fouche & Others 1997 NR 278 (HC) (section 12(1))

section 14:

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (deputy messengers appointed pursuant to section 14(2)(b) fail to prove that they are employees in terms of labour law)

section 19:

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (provisions of section 19 on deputy messengers mean that if they are not employees they must be agents)

section 65A-ff:

Julius v Commanding Officer, Windhoek Prison & Others; Nel v Commanding Officer, Windhoek Prison & Others 1996 NR 390 (HC) (declaring unconstitutional sections 65F, 65G, 65H and 65L and parts of sections 65A, 65K and 65J concerning imprisonment for civil debt)

section 66:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC) Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (section 66(1)(a) is unconstitutional insofar as it permits the sale in execution of immovable property without judicial oversight, but remains in force until 31 August 2019 to give Parliament opportunity to correct its defects)

section 83:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

section 89:

Sv Handukene 2007 (2) NR 606 (HC) (section 89(1); lack of jurisdiction of district magistrate's court over common-law crime of rape applies equally to charge of rape under Combating of Rape Act 8 of 2000)

section 92:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC) (the reference to whipping is unconstitutional)

S v Mapanka 2017 (4) NR 980 (HC) (section 92(1)(b))

section 106:

S v Muronga 2004 NR 134 (HC)

- S v Ndakolute 2005 NR 37 (HC)
- S v Paulus 2007 (2) NR 622 (HC) (no provision for summary enquiry)
- S v Iyambula: In re Haipumbu 2018 (1) NR 1154 (NLD) (applies only to disobeying court order or summons, and only after substantive and fair criminal trial)

section 108 (contempt of court):

- S v Amujekela 1991 NR 303 (HC)
- S v Ndihalwa 1997 NR 98 (HC)
- *S v Hekandjo* 1998 NR 142 (HC)
- S v Paaie 2006 (1) NR 250 (HC)
- S v Cloete 2006 (2) NR 430 (HC)
- S v Paulus 2007 (2) NR 622 (HC) (non-appearance in court not covered)
- S v Shikesho 2007 (2) NR 625 (HC) (summary conviction under this section inappropriate when accused under influence of alcohol and unable to comprehend proceedings)
- S v Iyambula: In re Haipumbu 2018 (1) NR 1154 (NLD) (applies only to conduct that takes place while court is sitting)
- S v Shimmy 2024 (1) NR 251 (HC) (accused dressed in shorts and jersey; intent and knowledge of unlawfulness not proved).

Cases on Magistrate's Court Rules:

Rule 7:

Duntrust (Pty) Ltd v H Sedlacek t/a GM Refrigeration 2005 NR 174 (HC)

Rule 9:

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (rule 9(3)(e))

Rule 12:

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (rule 12(1)(a) declared invalid on constitutional grounds)

Rule 17:

Olivier v Kaizemi 2005 NR 290 (HC)

Tsabo v Gobabis Municipality NLLP 2003 (4) 25 NLC

Rule 22:

Leweis v Sampoio 2000 NR 186 (SC)

Rule 36:

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC) (rule 36(d))

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (rule 36 declared unconstitutional but remains in force until 31 August 2019 to give Rules Board opportunity to correct the defect)

Rule 43:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC) Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (rule 43 declared unconstitutional but remains in force until 31 August 2019 to give Rules Board opportunity to correct the defect)

Rule 49:

Leweis v Sampoio 2000 NR 186 (SC)

Brand v Swart 2002 NR 63 (HC)

Rule 51:

Mostert v First National Bank of Namibia Ltd & Another 2000 NR 54 (HC)

LTS v GPS & Others 2017 (2) NR 412 (HC)

Rule 55:

ME v AG & Another 2024 (2) NR 407 (HC) (rule 55(5) and (7))

Rule 55A:

Olivier v Kaizemi 2005 NR 290 (HC)

Rule 59:

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC) (rule 59(6))

Rule 62:

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (application of rule to district labour

court matter; reversed on other grounds in *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC))

Rule 66:

- *S v Hoadums* 1990 NR 259 (HC)
- S v Veiko 1994 NR 79 (HC)

Rule 67:

- S v Wellington 1990 NR 20 (HC) (rule 67(1))
- S v Gey van Pittius & Another 1990 NR 35 (HC) (rule 67(1))
- S v Tases 2003 NR 103 (HC) (rule 67(3))
- S v Kakololo 2004 NR 7 (HC) (rule 67(1))
- S v Andima 2010 (2) NR 639 (HC) (rule 67(1))
- S v Kavari 2011(2) NR 403 (HC) (rule 67(1))
- S v Beyer 2014 (4) NR 1041 (HC) (rule 67(1))
- S v Ameb 2014 (4) NR 1134 (HC) (rule 67(1))
- S v Kapure 2015 (2) NR 394 (HC) (rule 67(1))
- S v PV 2016 (1) NR 77 (HC) (rule 67(1); "clearly and specifically")
- *S v Miguel & Others* 2018 (4) NR 946 (HC)
- S v Kalimbo 2020 (1) NR 255 (HC).

Commentary:

Francois X Bangamwabo & Clever Mapaure, "The constitutionality or otherwise of section 66(1) of the Magistrates' Courts Act, 1944 (No. 32 of 1944)", *Namibia Law Journal*, Volume 2, Issue 1, 2010, available here

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 6.2: Determining the Jurisdiction of the Magistrates' Courts in an Agreement).

Vexatious Proceedings Act 3 of 1956 🗐 📻

Summary: This Act (SA GG 5632) places restrictions on frivolous legal proceedings.

Applicability to SWA: Section 3 states "This Act shall apply also in the territory of South West Africa", and section 1 defines "court" accordingly. The wording of section 3 did not make South African amendments automatically applicable to South West Africa. However, in any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer proclamation: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated **12 November 1979**. Regardless of whether or not there was a transfer of administration, the wording of the Act did not make South African amendments automatically applicable to South West Africa – and, in any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Cases: Namibia Financial Institutions Supervisory Authority v Christian & Another 2011 (2) NR 537 (HC).

General Law Amendment Ordinance 22 of 1958, sections 1-2 🕎 🙀

Summary: Section 1 of this Ordinance (originally published in OG 2152) makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings. Section 2 of this Act (now obsolete) recognises the official title of "landdros".

Amendments: Section 1(1) is amended by Ord. 13/1962 (OG 2409), to change the relevant age to 18. Section 2(2) is deleted by the Magistrate's Courts Ordinance 29 of 1963 (OG 2499), which was brought into force on 21 May 1665 by SWA Proc. 32/1965 (OG 2632).

Regulations: There is no provision for regulations in these sections.

Supreme Court Act 15 of 1990 🕎 🙀

Summary: This Act (originally published in <u>GG 84</u>) provides for the jurisdiction of the Supreme Court of Namibia in accordance with Article 79 of the Namibian Constitution.

Repeals: The Act repeals the Supreme Court Act 59 of 1959, the Supreme Court of South West Africa Proclamation 222 of 1981 and sections 3, 4 and 5 of the Appeals Amendment Act 29 of 1985 (OG 5149).

Amendments: The Judicial Service Commission Act 18 of 1995 (<u>GG 1195</u>), brought into force on 20 November 1995 by GN 220/1995 (<u>GG 1197</u>), amends section 9. The Appeal Laws Amendment Act 10 of 2001 (<u>GG 2585</u>) amends section 14. Act 4/2002 (<u>GG 2771</u>) amends section 8.

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Rules: The **Rules of the Supreme Court** are contained in GN 249/2017 (<u>GG 6425</u>), which withdraws GN 221/2017 (<u>GG 6392</u>). GN 249/2017 provides that the new rules come into operation on 15 November 2017.⁹⁷

The current rules were initially amended by GN 214/2022 (GG 7865), which amends rules 1, 7, 17 and 25; substitutes rule 20; and inserts rules 3A, 20A, 20B and Annexure C. However, GN 256/2022 (GG 7885), which comes into force with effect from 15 November 2022, withdraws GN 214/2022; it amends rules 1, 7, 17, 20 and 25; and inserts rules 3A, 20A, 20B and Annexure C.

Rules relating to Presidential Election Challenges are contained in GN 118/2015 (GG 5761).

Cases:

generally:

S v Arubertus 2011 (1) NR 157 (SC) (appeal by right of High Court's dismissal of application for condonation of late filing of appeal in criminal case, due to "lacuna in law", resulting in an "undesirable state of affairs where appeals against the dismissal of application for condonation have to be considered by this court without the benefit of the filter system provided for by the petition procedure intended to weed out unmeritorious appeals")

S v Likanyi 2017 (3) NR 771 (SC) (procedure for seeking reversal of Supreme Court judgment pursuant to Art 81 of the Namibian Constitution)

I cannot stress too strongly that the Supreme Court will, as a general rule, not entertain any attempt (relying on art 81) to reopen a case previously adjudicated and determined just because subsequently we think it may have been wrongly decided. In addition, no litigant may as of right come to this court to reopen its prior decision in terms of art 81. The Chief Justice will, upon a representation made, consider the matter and only if satisfied that exceptional circumstances exist having regard to all circumstances - including the imperative to safeguard finality to litigation - afford leave for the matter to be argued and give directions as to how it will be heard. It is unnecessary to set out what would constitute exceptional circumstances as the jurisprudence in that respect should be developed over time. Each case will be

⁹⁷ GN 221/2017 had repealed the previous rules contained in GN 56/1990 (<u>GG 86</u>), as amended by GN 80/2003 (<u>GG 2949</u>) and GN 119/2003 (<u>GG 2994</u>).

considered on its own facts and circumstances and the power will be invoked only exceptionally.

Until a procedure is authoritatively determined by the Chief Justice under s 37 of the Supreme Court Act, the procedure to be adopted will be the following. A party seeking to invoke the exceptional jurisdiction under art 81 may make representations to the Chief Justice, clearly setting out the factual and legal bases for the grievance. If the Chief Justice is satisfied that a good basis exists to invoke the jurisdiction, he will give directions as to how the matter should proceed with due regard to the rights of all affected parties. (paras 58-59)

Fischer v Seelenbinder & Another 2021 (1) NR 35 (SC) (warning legal practitioners to remain dispassionate instead of becoming personally involved in the disputes of their clients)

In this regard, counsel should remain robed in the court regalia and must avoid the temptation, beneath those robes, to be adorned in the shimmering robes of anguish and bitterness their clients are dressed in. (paras 39-40)

Ex Parte Judge-President of the High Court (Attorney-General of Namibia intervening): In Re Kazekondjo & Others v Minister of Safety and Security & Others 2022 (1) NR 1 (SC) (discussion of general criteria for making settlement agreement into court order)

Olivier v Oosthuizen & Another 2022 (3) NR 642 (SC) (discussion of abuse of court process to advance personal vendettas in magistrate's court and High Court)

Kamwi v Law Society of Namibia & Two Similar Cases 2023 (4) NR 925 (SC) ("cumulative effect of glaring, flagrant and inexplicable non-compliances with the rules of court" justifies the refusal of condonation without considering the merits)

section 6:

S v Strowitzki 2003 NR 145 (SC) (sections 6 and 16(1))

section 7:

Wirtz v Orford & Another 2005 NR 175 (SC), approved in Dresselhaus Transport CC v Government of the Republic of Namibia 2005 NR 214 (SC) at 252D

section 12:

Somaeb v Chief Justice & Another 2018 (2) NR 468 (HC)

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC), approved in Dresselhaus Transport CC v Government of the Republic of Namibia 2005 NR 214 (SC) at 252D

section 14:

S v Koch 2006 (2) NR 513 (SC) (section 14(1))

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

S v Malumo & Others 2010 (2) NR 595 (SC)

//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC) (section 14(1))

S v Masake & Others 2012 (1) NR 1 (SC)

see Shetu Trading CC v Chair, Tender Board of Namibia & Others 2012 (1) NR 162 (SC) (addressing the meaning of the phrase "judgment or order" in section 18 of the High Court Act 16 of 1990, which is relevant to the meaning of the same phrase in this section)

Permanent Secretary of the Judiciary v Somaeb & Another 2018 (3) NR 657 (SC) (section 14(7)(a))

Namdeb Diamond Corporation (Pty) Ltd v Coetzee 2018 (3) NR 737 (SC) (section 14(1) is qualified by section 18(2)(a) of High Court Act 16 of 1990, and application for appeal in terms of 14(1) must follow procedure in section 14(6))

Agricultural Bank of Namibia Ltd v Gaya 2023 (3) NR 747 (SC) (Art 79(3) of Constitution requiring appeals to be heard by a quorum of three judges is not applicable to section 14(7)(a) which concerns an application for summary dismissal of an appeal on the narrow grounds that it is frivolous, vexatious or without merit, as a mechanism for preventing abuse of court process; includes discussion of what amounts to abuse of court process and meaning of "vexatious" for this purpose)

Temptations Fashion CC & Another v J Henning Properties (Pty) Ltd & Another: In re J Henning Properties (Pty) Ltd & Another v Temptations Fashion CC & Another 2024 (1) NR 267 (SC) (section 14(7))

section 15:

Schroeder & Another v Solomon & 48 Others 2011 (1) NR 20 (SC)

Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC)

Ohorongo Cement (Pty) Ltd v Jack's Trading CC & Others & A Similar Matter 2020 (2) NR 571 (SC)

section 16:

S v Bushebi 1998 NR 239 (SC)

S v Strowitzki 2003 NR 145 (SC) (section 16(1))

Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC)

Schroeder & Another v Solomon & 48 Others 2009 (1) NR 1 (SC), 2011 (1) NR 20 (SC)

S v Malumo & Others 2010 (2) NR 595 (SC)

Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC)

S v Masake & Others 2012 (1) NR 1 (SC)

Makapuli & Another v Swabou Investment (Ptv) Ltd & Another 2013 (1) NR 238 (SC)

Standard Bank of Namibia Ltd v Atlantic Meat Market 2014 (4) NR 1158 (SC)

S v Likanyi 2017 (3) NR 771 (SC)

Somaeb v Chief Justice & Another 2018 (2) NR 468 (HC); Permanent Secretary of the Judiciary v Somaeb & Another 2018 (3) NR 657 (SC)

Bank Windhoek Ltd v Mofuka & Another 2018 (2) NR 503 (SC)

S v Haikali 2019 (3) NR 701 (SC)

Ex Parte Judge-President of the High Court (Attorney-General of Namibia intervening): In Re Kazekondjo & Others v Minister of Safety and Security & Others 2022 (1) NR 1 (SC) (judicial decision to withhold from public settlement agreement made into court order is a reviewable irregularity for purposes of section 16)

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Another 2022 (2) NR 325 (SC)

S v Likoro 2022 (2) NR 443 (SC) (section 16 jurisdiction applied mero motu)

Mbumbo & Another v Amadhila & Others 2022 (3) NR 866 (SC) (section 16 applied)

Minister of Agriculture, Water and Land Reform & Others v Amapanda & Others 2024 (2) NR 476 (SC)

section 17:

Schroeder & Another v Solomon & 48 Others 2011 (1) NR 20 (SC)

Kamwi v Law Society of Namibia 2011 (1) NR 196 (SC)

Teek v President of the Republic of Namibia & Others 2015 (1) NR 58 (SC)

section 18:

Elifas & Others v Asino & Others 2020 (4) NR 1030 (SC) (section 18(1) and (3))

section 19:

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC) (section 19(a))

section 20:

S v Malumo & Others 2010 (2) NR 595 (SC)

Minister of Agriculture, Water and Land Reform & Others v Amapanda & Others 2024 (2) NR 476 (SC).

Cases on Supreme Court Rules (2017) in GN 249/2017 (<u>GG 6425</u>): generally:

Somaeb v Standard Bank Namibia Ltd 2017 (1) NR 248 (SC) at para 22 ("Rules of court cannot be applied selectively in the sense that they are bound to be complied with only by a certain group of persons engaged in litigation in our courts.")

Minister of Health and Social Services v Amakali 2019 (1) NR 262 (SC) (condonation for non-compliance with rules; overview of requirements at paras 17-19)

Sun Square Hotel (Pty) Ltd v Southern Sun Africa & Another 2020 (1) NR 19 (SC) (duty of legal practitioner to acquaint himself or herself with the rules of court)

Joseph & Others v Joseph 2020 (3) NR 689 (SC) (decisive factor in considering condonation is the great public importance of the interpretation of the statutory provision in question)

Prosecutor-General v Paulo & Another 2020 (4) NR 992 (SC) (key factors re: condonation of

non-compliance with rules are (1) application for condonation must be submitted as soon as the delay has come to notice, unless there is a reasonable, accurate and acceptable explanation for not doing so); (2) main matter must have prospects of success in fact and law, although prospects of success need not be considered if non-compliance is glaring, flagrant and without reasonable explanation; see para 20 on purpose of court rules and procedures)

De Klerk v Penderis & Others 2023 (1) NR 177 (SC) (no condonation; failure to comply with rules 8(2)(c), 14(2), 17(1)-(2), 18(3), 19(1), and 21(1); punitive costs awarded for multiple instances of non-compliance compounded by lack of forthrightness in explanations and failure to address prospects of success in appeal)

De Wet v Klein 2023 (4) NR 1166 (SC) (confirming long-standing position that order for absolution from the instance is appealable by right; condonation refused in case where attorney wrongly advised client otherwise, and failed to seek leave to appeal based on the erroneous view that the order in question was interlocutory in nature)

Kamushinda & Others v Liquidators, Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation) 2024 (1) NR 277 (SC) (disapproval of excessively lengthy answering affidavit, at paras 55-56)

Rule 3A:

Kamushinda & Others v Liquidators, Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation) 2024 (1) NR 277 (SC) (rule 3A(4))

Rule 5:

Somaeb v Standard Bank Namibia Ltd 2017 (1) NR 248 (SC) (rule 5(4)(b) and (5)) Prosecutor-General v Kennedy 2019 (3) NR 631 (SC)

Rule 7:

Fischer v Seelenbinder & Another 2021 (1) NR 35 (SC)

Kandando v Medical and Dental Council of Namibia & Another 2020 (2) NR 450 (SC) (non-compliance with rule 7(1))

Baard & Another v Serengetti Tourism (Pty) Ltd t/a Etosha Mountain Lodge 2021 (1) NR 17 (SC) (rule 7(3)(c))

Newpoint Electronic Solutions (Pty) Ltd v Permanent Secretary, Office of the Prime Minister & Another 2022 (4) NR 1051 (SC) (non-compliance with rule 7(1))

President of the Republic of Namibia & Others v Shivute 2024 (2) NR 561 (SC) (rule 7(3))

Schneiders & Another v Van der Merwe & Another 2024 (2) NR 585 (SC) (rule 7(1) applies from date judgment is pronounced, not from date when reasons given)

Rule 8:

Somaeb v Standard Bank Namibia Ltd 2017 (1) NR 248 (SC) (rule 8(3))

Metropolitan Bank of Zimbabwe Ltd & Another v Bank of Namibia 2018 (4) NR 155 (SC) (rule 8(2)(b) counted from date when reasons for order provided, where there are reasons)

MA & Others v AG 2021 (1) NR 292 (SC) (critical discussion of non-compliance with rule 8(2)) Teek & Another v Walters & Another 2021 (3) NR 622 (SC) (rules 8(1)-(2) applied)

Shikongo & Another v Lee's Investments (Pty) Ltd 2022 (4) NR 1171 (SC) (non-compliance with rule 8(2))

WP Transport (Pty) Ltd v G4s Namibia (Pty) Ltd & Another and A Similar Case 2023 (1) NR 9 (SC) (rule 8(1); where record is so incomplete as to make hearing of appeal impossible, attorneys not entitled to charge a fee for perusal of the record and advocates for appellant not entitled to charge a fee for preparation)

Minister of Safety and Security v Naomab 2024 (1) NR 125 (SC) (responsibility to ensure compilation of complete appeal record cannot be left entirely in the hands of the recording company)

Solsquare Energy (Pty) Ltd v Lühl 2022 (3) NR 899 (SC)

Rule 11:

Expedite Aviation CC v Tsumeb Municipal Council & Another 2020 (4) NR 1126 (SC) (rule 11(10) and (11))

Imalwa v Gaweseb 2021 (1) NR 183 (SC) (rule 11(8))

Council of the City of Windhoek v Brandt 2023 (4) NR 1070 (SC) (rules 11(1)(h) and 11(4)(b))

Minister of Safety and Security v Naomab 2024 (1) NR 125 (SC) (lodging a defective record amounts to non-compliance with rule 11(4)(b); failure to comply with letter and spirit of rule 11(10) and uncooperative conduct in this regard reflected in costs order)

Rule 14:

Dannecker v Leopard Tours Care and Camping Hire CC & Others 2019 (1) NR 246 (SC) (rule 14(2))

Kandando v Medical and Dental Council of Namibia & Another 2020 (2) NR 450 (SC) (non-compliance)

Municipal Council of Windhoek v Pioneerspark Dam Investment CC 2021 (3) NR 670 (SC) (comment on rule 14(2) read together with section 18 of the High Court Act in para 14)

Shikongo & Another v Lee's Investments (Pty) Ltd 2022 (4) NR 1171 (SC) (non-compliance with rule 14(3))

Kamwi v Law Society of Namibia & Two Similar Cases 2023 (4) NR 925 (SC) (application for release from the obligation to provide security for costs of an appeal under rule 8 does not absolve an appellant from the rule 14 requirement to provide the record of proceedings timeously)

Kamushinda & Others v Liquidators, Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation) 2024 (1) NR 277 (SC)

Rule 17:

Metropolitan Bank of Zimbabwe Ltd & Another v Bank of Namibia 2018 (4) NR 155 (SC) (rule 17(1) should say "not later than 21 days" instead of "not more than 21 days" and is applied in practice in this way; this provision was amended in 2022)

Gariseb v Ultimate Safaris (Pty) Ltd 2020 (3) NR 786 (SC) (rule 17(1))

Expedite Aviation CC v Tsumeb Municipal Council & Another 2020 (4) NR 1126 (SC) (rule 17(7)(k))

De Sousa v Alexia Properties CC 2021 (3) NR 686 (SC) (rule 17(2))

Council of the City of Windhoek v Brandt 2023 (4) NR 1070 (SC) (rule 17(7)(c))

Hamupolo v Simon NO & Others 2024 (2)NR 462 (SC) (rule 17(1)-(2))

Rule 21:

Prosecutor-General v Paulo & Another 2020 (4) NR 992 (SC) (condonation of non-compliance with rule 21(1))

Rule 25(3):

Itula & Others v Minister of Urban and Rural Development & Others 2021 (3) NR 746 (SC) (para 16: The rules should be amended to address the anomaly between the tariffs in the High Court Rules and the Supreme Court Rules.)

Cases on Supreme Court Rules (1990) in GN 56/1990 (<u>GG 86</u>): generally:

S v Strowitzki 2003 NR 145 (SC) (potential conflict with Constitution raised but not decided, at 156F-157A)

Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC) (duty of practitioners to ensure that record is complete and compliant with rules of court discussed at 445F-ff)

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC) (general disregard for court rules) Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2013 (4) NR (SC) (condonation for breach of multiple rules of court refused; lackadaisical inattention to rules criticised, holding that such disregard for rules could not be condoned regardless of prospects of success on the merits of the case)

Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC) (concern about use of condonation applications; applications for condonation "not there for the asking or a mere formality"; unnecessary to deal with prospects for success on merits in view of absence of application for reinstatement of lapsed appeal coupled with "flagrant non-compliance with the rules of court")

Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC) (failure to observe the rules of court, particularly rules 5(1) and 8(1) "has become a menace")

Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC) ("There are times... where this court has held that it will not consider the prospects of success in determining the

application because the non-compliance with the rules has been 'glaring', 'flagrant' and 'inexplicable'." at para 5, citing *Beukes & Another v SWABOU & Others* [2010] NASC 14 (5 November 2010) at para 20 and *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) at para 10)

Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation) & Others 2014 (1) NR 234 (SC) (court should be understanding of difficulties faced by lay litigants, but non-compliance with rules by lay litigant cannot be condoned where it would render proceedings unfair or unduly prolonged; Registrar should not enrol case for hearing if appeal is deemed to be withdrawn, unless there is a proper application for condonation and reinstatement and record is in proper order)

Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC) (conflating Namibian court rules with those of other jurisdictions)

Katjaimo v Katjaimo & Others 2015 (2) NR 340 (SC) (instructing counsel awarded to pay costs out of his own pocket because of "negligence and remissness" which cannot be attributed to the litigant; general caution about compliance with rules of court)

Sufficient warning has been given by this court that the non-compliance with its rules is hampering the work of the court. The rules of this court, regrettably, are often more honoured in the breach than in the observance. That is intolerable. The excuse that a practitioner did not understand the rules can no longer be allowed to pass without greater scrutiny. The time is fast approaching when this court will shut the door to a litigant for the unreasonable non-observance of the rules by his or her legal practitioner. After all, such a litigant may not be without recourse as he or she would in appropriate instances be able to institute a damages claim against the errant legal practitioner for their negligence under the Acquilian action.... We hope that the cautionary observations made in this judgment will be taken seriously by all legal practitioners who practise in the Supreme Court. A legal practitioner has a duty to read the decided cases that emanate from the courts (both reported and unreported) and not simply grope around in the dark as seems to have become the norm for some legal practitioners, if judged by the explanations offered under oath in support of the condonation applications that come before the court. (paras 34-35)

Balzer v Vries 2015 (2) NR 547 (SC) (condonation in respect of non-compliance with rules 8(3) and 5(5) refused; at para 33: "appellant has acted with defiance with regard to an order of the High Court and has frustrated the due process of law and thus undermined the rule of law upon which the Constitution is premised")

Rule 3:

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC) Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (application of rule 3(6) versus rule 8 on security for costs)

Rule 5:

Wirtz v Orford & Another 2005 NR 175 (SC)

Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)

Gurirab v Government of the Republic of Namibia & Others 2006 (2) NR 485 (SC)

Vahekeni v Vahekeni 2008 (1) NR 125 (SC)

Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC)

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC)

Strauss & Another v Laubuscagne 2012 (2) 460 (SC)

Rally for Democracy and Progress & Others v Electoral Commission & Others 2013 (2) NR 390 (HC)

Cargo Dynamics Pharmaceuticals (Pty) Ltd v Minister of Health and Social Services & Another 2013 (2) NR 552 (SC)

Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)

Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)

Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC)

Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation)& Others 2014 (1) NR 234 (SC)

Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others 2014 (1) NR 247 (SC)

Weatherly International Plc v Bruni and Mclaren NNO & Another 2014 (1) NR 273 (SC)

Nghikofa v Classic Engines CC 2013 (3) 659 (HC); see also Nghikofa v Classic Engines CC 2014 (2) NR 314 (SC)

Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC)

Fish Orange Mining Consortium (Pty) Ltd v !Goaseb & Others 2014 (2) NR 385 (SC)

Factcrown Ltd v Namibia Broadcasting Corporation 2014 (2) NR 447 (SC)

Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)

Katjaimo v Katjaimo & Others 2015 (2) NR 340 (SC)

Disciplinary Committee for Legal Practitioners v Murorua & Another 2016 (2) NR 374 (SC) (condonation refused for Disciplinary Committee's non-compliance with rule 5(1))

Rule 8:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC) (rule 8(2)-(3) must be read subject to section 18(5) of the High Court Act 16 of 1990)

Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC) (meaning of "government" in rule 8(5))

Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others 2013 (1) NR 157 (SC) (condonation of non-compliance with rule 8(3))

Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)

Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation)& Others 2014 (1) NR 234 (SC)

Fish Orange Mining Consortium (Pty) Ltd v !Goaseb & Others 2014 (2) NR 385 (SC)

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia 2014 (2) NR 464 (SC)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (application of rule 8 versus rule 3(6) on security for costs)

Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (SC)

Sun Square Hotel (Pty) Ltd v Southern Sun Africa & Another 2020 (1) NR 19 (SC)

Jonas v Ongwediva Town Council 2020 (1) NR 50 (SC)

Rule 11:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Rule 13:

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported) (discussion of contradictions of rule and need for amendment)

Rule 14:

Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (effect of section 92(1) of Legal Practitioners Act 15 of 1995 on this rule)

Rule 18:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC) (general disregard for court rules as factor in condonation)

Rally for Democracy and Progress & Others v Electoral Commission & Others 2013 (2) NR 390 (HC).

Commentary:

Raymond Heathcote, "Section 16 of the Supreme Court Act", Namibia Law Journal, Volume 1, Issue 1, 2009, available here (discussing Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) and Schroeder & Another v Solomon & Another 2009 (1) NR 1 (SC))

Petrus T Damaseb, *The Supreme Court of Namibia: Law, Procedure and Practice*, Juta, 2021 (reviewed by Mohamed Paleker, *South African Law Journal*, Volume 139, Issue 3, pages 717-723)

Tapiwa Victor Warikandwa & John Baloro, eds, *Namibia's Supreme Court at 30 Years: "A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era*, Konrad Adenauer Foundation, 2022, available here.

High Court Act 16 of 1990 📲 ਦ

Summary: This Act (originally published in <u>GG 85</u>) provides for the jurisdiction of the High Court of Namibia in accordance with Article 80 of the Namibian Constitution.

Amendments: Section 93 of the Legal Practitioners Act 15 of 1995 (<u>GG 1141</u>), brought into force on 7 September 1995 by GN 150/1995 (<u>GG 1148</u>), amends section 3.

The Judicial Service Commission Act 18 of 1995 (<u>GG 1195</u>), brought into force on 20 November 1995 by GN 220/1995 (<u>GG 1197</u>), also amends section 3.

The International Co-operation in Criminal Matters Act 9 of 2000 (<u>GG 2327</u>), brought into force on 15 September 2001 by GN 185/2001 (<u>GG 2614</u>), amends section 29.

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

The Appeal Laws Amendment Act 10 of 2001 (GG 2585) amends sections 16 and 18. Act 3/2002 (GG 2770) amends section 8.

Goseb & Others v Minister of Regional and Local Government and Housing & Others 2011 (1) NR 224 (HC) erroneously states in para 10 at 227C that the Appeals Law Amendment Act 10 of 2001 "substituted s 2 of the High Court Act 16 of 1990". The provision quoted by the High Court is actually section 18(2), which was substituted by the amending Act in question.

Act 14/2011 (GG 4863) inserts sections 2A and 4A and substitutes section 4, to provide for the creation of local divisions of the High Court.

Act 12/2013 (GG 5384), which was brought into force on 4 February 2014 by GN 10/2014 (GG 5397), amends section 39.

Act 2/2024 (GG 8350), which has not yet been brought into force, will amend section 1, insert section 35A on "Restriction on sale in execution of immovable property" and amend section 39 and some global terminology.

The Dissolution of Marriages Act 10 of 2024 (<u>GG 8487</u>), which has not yet been brought into force, will amend sections 1, 18 and 39, and substitute section 16.

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Rules: Section 40(1) of this Act states: "Any appointment or rules made or tariff prescribed in respect of allowances to witnesses, or deemed to have been made or prescribed, and any security given or anything done in connection with or by virtue of any such appointment under the Supreme Court of South West Africa Proclamation, 1981, shall be deemed to have been made, prescribed or done under the corresponding provisions of this Act." This refers to the Supreme Court of South West Africa Proclamation 222 of 1981 which was repealed by the Supreme Court Act 15 of 1990. However, pre-independence rules have not been researched.

Rules of the High Court are contained in GN 4/2014 (<u>GG 5392</u>), effective from 16 April 2014. These rules are supplemented by rules on administrative breaks and an administrative recess in GN 118/2014 (<u>GG 5526</u>), with effect from 1 January 2015. (The Government Notice is titled "Amendment of High Court Rules" but does not actually amend the rules.) The rules are amended by GN 227/2014 (<u>GG 5608</u>), which repeals rule 78.

Rules for High Court proceedings in terms of Chapters 5-6 of the Prevention of Organised Crime Act 29 of 2004 are issued in terms of that Act, in GN 79/2009 (GG 4254).

Notices: Practice Directions are issued in terms of the 2014 Rules of the High Court in GN 67/2014 (GG 5461), which repeals all previous High Court Practice Directions and their amendments. They are amended by GN 10/2017 (GG 6227), which is deemed to have come into operation on 1 January 2017, and by GN 362/2019 (GG 7065), with effect from 1 February 2020.

Sittings of the court and court terms are addressed in GN 60/1990 (GG 90), GN 189/2000 (GG 2386) and GN 221/2002 (GG 2879) – but these were all repealed by GN 4/2014 (although GN 4/2014 erroneously refers to GN 60/1999 instead of GN 60/1990).

A local division of the High Court, to be known as the Northern Local Division, is established by Proc. 5/2012 (GG 4891). The seat and area of jurisdiction of this division are set forth in GN 70/2012 (GG 4391), which makes reference to the Magisterial District Division: Oshakati in GN 22/1994 (GG 799).

Cases:

section 2:

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (section 2 read together with section 16; relationship to section 18(1) of Labour Act 6 of 1992)

S v Barnard 2019 (1) NR 78 (HC) (inherent jurisdiction under section 2 empowers High Court to consider bail application while criminal appeal is pending in Supreme Court)

section 4:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC) section 13:

Wirtz v Orford & Another 2005 NR 175 (SC)

Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC), reversed on appeal Prosecutor-General v Uuyuni 2015 (3) NR 886 (SC) (held on appeal that an ex parte proceeding in respect of preservation of property order under section 51 of the Prevention of Organised Crime Act 29 of 2004 is not in conflict with section 13 of the High Court Act)

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC)

Ex Parte Judge-President of the High Court (Attorney-General of Namibia intervening): In Re Kazekondjo & Others v Minister of Safety and Security & Others 2022 (1) NR 1 (SC) (judicial decision to withhold from public access a settlement agreement made into a court order violates section 13 read with art 12(1) of Namibian Constitution since none of the exceptions set out in that Article were present)

section 16:

⁹⁸ The 2014 Rules repeal GN 59/1990 (<u>GG 90</u>), GN 60/1990 (erroneously referred to as GN 60/1999), GN 187/1992 (<u>GG 549</u>), GN 148/1993 (<u>GG 757</u>), GN 81/1996 (<u>GG 1293</u>), GN 221/1997 (<u>GG 1727</u>), GN 69/1998 (<u>GG 1829</u>), GN 189/2000 (<u>GG 2386</u>), GN 221/2002 (<u>GG 2879</u>), GN 141/2006 (<u>GG 3690</u>), GN 6/2008 (<u>GG 3983</u>), GN 253/2010 (<u>GG 4614</u>) and GN 57/2011 (<u>GG 4709</u>).

Previous rules of the High Court were contained in GN 59/1990 (<u>GG 90</u>), as amended by GN 187/1992 (<u>GG 549</u>), GN 148/1993 (<u>GG 757</u>), GN 81/1996 (<u>GG 1293</u>), GN 182/1996 (<u>GG 1350</u>), GN 221/1997 (<u>GG 1727</u>), GN 69/1998 (<u>GG 1829</u>), GN 141/2006 (<u>GG 3690</u>), GN 6/2008 (<u>GG 3983</u>), GN 253/2010 (<u>GG 4614</u>) and GN 57/2011 (<u>GG 4709</u>) (which contains numbering errors corrected by GN 67/2011 (<u>GG 4725</u>)).

GN 182/1996 and GN 67/2011 were not repealed by GN 4/2014, although this appears to have been an oversight since they have no relevance after the repeal of the previous High Court rules which they amended.

S v Campbell & Others 1990 NR 310 (HC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC) (discussion of section 16(d) in dicta)

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC)

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (section 2 read together with section 16; relationship to section 18(1) of Labour Act 6 of 1992)

Daniel v Attorney-General & Others; Peter v Attorney-General & Others 2011 (1) NR 336 (HC)

DM v SM 2014 (4) NR 1074 (HC) (exercise of discretion to grant declaratory order under section 16(d))

International University of Management v Torbitt & Others 2015 (3) NR 698 (LC) (application of section 16(d)); overturned on appeal on other grounds in Torbitt & Others v International University of Management 2017 (2) NR 323 (SC)

New African Methodist Episcopal Church in the Republic of Namibia & Another v Kooper & Others 2015 (3) NR 705 (HC) (relevant to application of section 16(d), although this section is not explicitly cited)

Kennedy & Another v Minister of Safety and Security & Others 2020 (3) NR 731 (HC) (section 16 discussed briefly in paras 16-18)

Confederation of Namibian Fishing Associations & Others v Environmental Commissioner Teofilus Nghitila & Others 2021 (3) NR 817 (HC) (section 16(d); declaratory relief in general discussed at paras 21-25)

Nauyoma v Government of the Republic of Namibia & Another 2023 (1) NR 201 (HC) (no right was established for court to protect by means of declaratory order as required by this section)

section 18:

S v Strowitzki 1994 NR 265 (HC) (section 18(2)(a)(i))

S v Delie (1) 2001 NR 181 (HC); S v Delie (2) 2001 NR 286 (SC)

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported) (whether the decision of a judge in chambers in terms of rule 48 constitutes a judgment or order under section 18)

Namibia Grape Growers and Exporters Association & Others v The Ministry of Mines and Energy & Others 2004 NR 194 (SC) (appeal against order for costs in terms of section 18(3))

Beukes v Peace Trust NLLP 2004 (4) 102 NLC (attributes of a judgement or order which is appealable under section 18(3))

Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC)

Wirtz v Orford & Another 2005 NR 175 (SC)

Meat Processors (Ptv) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)

Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC) (section 18(3))

S v Koch 2006 (2) NR 513 (SC) (section 18(1) discussed in dicta at 520-22)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC)

Handl v Handl 2008 (2) NR 489 (SC)

Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC)

Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (meaning of "interlocutory order")

Knouwds NO (in his capacity as provisional liquidator of Avid Investment Corporation (Pty) Ltd) v Josea & Another 2010 (2) NR 754 (SC)

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

- //Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC)
- Shetu Trading CC v Chair, Tender Board of Namibia & Others 2012 (1) NR 162 (SC)
- Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal Labour Court decision required under this section when Court refused condonation in appeal against arbitration award in terms of Labour Act 11 of 2007 after considering merits of case in that context)
- Balzer v Vries 2015 (2) NR 547 (SC) (section 18(3))
- Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another 2015 (4) NR 1161 (SC) (leave required under section 18(3) to appeal order of Labour Court under section 117(1)(e) of Labour Act 11 of 2007)
- Leopard Tours Care and Camping Hire CC & Others v Dannecker 2017 (1) NR 50 (HC) (refusal of application for absolution from the instance is an interlocutory order contemplated in section 18(3) and not appealable as of right) ⁹⁹
- Di Savino v Nedbank Namibia Ltd 2017 (3) NR 880 (SC) (meaning of "interlocutory" in section 18(3))
- Arandis Power (Pty) Ltd v President of the Republic of Namibia & Others 2018 (2) NR 567 (SC) (discussion and application of Di Savino v Nedbank Namibia Ltd 2017 (3) NR 880 (SC))
- Government of the Republic of Namibia v Fillipus 2018 (2) NR 581 (SC) (discussion and application of Di Savino v Nedbank Namibia Ltd 2017 (3) NR 880 (SC); interpretation of interlocutory orders in section 18(3))
- Namdeb Diamond Corporation (Pty) Ltd v Coetzee 2018 (3) NR 737 (SC) (section 18(2)(a) qualifies section 14(1) of Supreme Court Act 15 of 1990, and High Court order striking application for leave to appeal from the roll constitutes an order of the High Court sitting as a court of appeal and thus requires leave to appeal under section 18(2)(a))
- Municipal Council of Windhoek v Pioneerspark Dam Investment CC 2021 (3) NR 670 (SC) (section 18 and security, at paras 13-14)
- First National Bank of Namibia Ltd v Nghishidivali & Another 2021 (4) NR 1125 (SC) (requirements for appeal under section 18(3) in respect of grant of condonation)
- Prime Paradise International Ltd v Wilmington Savings Fund Society FSB & Others 2022 (2) NR 359 (SC) (section 18(3))
- Marmorwerke Karibib (Pty) Ltd v Transnamib Holdings Ltd 2022 (3) NR 629 (SC) (section 18(3))
- Desert Fruit (Pty) Ltd v Smith & Others 2023 (3) NR 674 (SC) (Labour Court is acting as a court of first instance in respect of appeal from or review of arbitration under section 89 of the Labour Act 11 of 2007, meaning that section 18(2) is not applicable regarding appeal of Labour Court decision to Supreme Court noting at para 44 that "this court had previously accepted the position [on appeals under section 89 of the Labour Act] to be to the contrary but without the point ever being argued and determined")
- Central Technical Supplies (Pty) Ltd v Paragon Investment (Pty) Ltd JV China Huayun Group & Others 2024 (1) NR 254 (SC) (default judgment by High Court cannot be appealed to Supreme Court under section 18(1); party must approach High Court to request rescission of judgment (and appeal if rescission is refused), or to request leave to appeal)

section 19:

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC) (section 19(1))

MFV Kapitan Solyanik Ukrainian-Cyprus Insurance Co & Another v Namack International (Pty) Ltd 1999 (2) SA 926 (NmHC) (section 19(1))

S v Katuta 2006 (1) NR 61 (HC) (section 19(1)(b))

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)

S v Shiputa 2013 (3) NR 800 (NLD)

section 20:

S v Gawanab 1997 NR 61 (HC)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (section

⁹⁹ See *Dannecker v Leopard Tours Care and Camping Hire CC & Others* 2019 (1) NR 246 (SC) for final outcome of case.

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20 as applied *mutatis mutandis* by section 111, Labour Act 6 of 1992)

S v Handukene 2007 (2) NR 606 (HC) (section 20(1)(a))

Katjivikua v The Magistrate: Magisterial District of Gobabis & Another 2012 (1) NR 150 (HC) Minister of Home Affairs & Others v Hellens & Another 2024 (2) NR 301 (SC) (section 20(1)(a)); see also S v DJJ & Another 2023 (4) NR 1098 (SC)

section 23:

Marigold Hotel Developer (Pty) Ltd v Acting Deputy Sheriff, Windhoek & Another 2023 (4) NR 1027 (SC)

section 24:

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) section 30:

Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC) (Registrar's powers to tax a lay-litigant's bill of costs in terms of general duties under section 30(1))

sections 30-31:

Esterhuizen v Chief Registrar of the High Court and Supreme Court & Others 2011(1) NR 125 (HC) (contractual appointment of acting deputy-sheriff and power to suspend)

section 36(c):

Southern Engineering & Another v Council of the Municipality of Windhoek 2011 (2) NR 385 (SC)

generally:

Myburgh Transport v Botha t/a SA Truck Bodies 1991 NR 170 (SC) (principles applicable to postponements)

Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC) test for distinguishing interlocutory versus final orders)

S v Myburgh 2008 (2) NR 592 (SC) (High Court as only "competent court" for purposes of Article 25 of Constitution)

Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (inherent jurisdiction of High Court to alter own interlocutory order)

S v Malumo & Others (In re Ndala) 2014 (3) NR 690 (the question of whether the High Court Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of section 319 of the Criminal Procedure Act 51 of 1977)

Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (SC) (application of test for distinguishing interlocutory versus final orders)

Ndemuweda v Government of the Republic of Namibia (Minister of Health and Social Services) 2018 (2) NR 475 (HC) (duty of all persons, including organs of state, to comply with court orders; however, contempt of court requires "deliberate and mala fide" disregard of a court order, which was not present here; court urges the Minister of Finance "to investigate means on how the state's obligations to pay monetary awards emanating from court orders can be funded from sources other than operational budgets of the ministries")

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (High Court has inherent jurisdiction to enforce an order of another court where that court lacks power to do so)

JN v EN 2020 (3) NR 823 (HC) (a settlement agreement cannot confer jurisdiction on the court that it would not otherwise have, even when the agreement is made into an order of court); JN v EN & Others 2022 (3) NR 657 (HC) (duties & responsibilities of receivers)

Ex Parte Judge-President of the High Court (Attorney-General of Namibia intervening): In Re Kazekondjo & Others v Minister of Safety and Security & Others 2022 (1) NR 1 (SC) (discussion of general criteria for making settlement agreement into court order)

Digashu & Others v Government of the Republic of Namibia & Others 2022 (1) NR 156 (HC) (extensive discussion and application of stare decisis doctrine)

judicial case management:

Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation 2012 (2) NR 671 (SC) (abuse of process; purposes and objectives of judicial case management)

- Markus v Telecom Namibia 2014 (3) NR 658 (HC) (finality of orders made in judicial case management)
- Nedbank Namibia Ltd v Tile and Sanitary Ware CC & Others 2015 (1) NR 240 (HC) (judicial case management and interlocutory proceedings which may delay final determination of case)
- Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC) (objectives reiterated as context for application of court rules)
- Mingeli v Oshakati Premier Electric (Pty) Ltd 2015 (3) NR 688 (HC) (effects of judicial case management discussed at para 16)
- Mukata v Appolus 2015 (3) NR 695 (HC) (failure to raise issue of non-compliance with rule 32(9)-(10) in 2014 High Court Rules at judicial case management conference results in denial of order for costs to successful applicant).
- JI v HI 2017 (2) NR 595 (HC) (discussion of appropriate sanction where defendant and legal practitioner failed to attend pre-trial conference or to comply with rule 14(3)(b))

While it is generally held that a litigant cannot be excused for the failure of adequate representation by his/her legal practitioner, I am of the considered opinion that this stance should be tempered with mercy in this jurisdiction as the majority of the population is not entirely legally literate and they, therefore, give all their trust to their legal practitioners and have no clue as to the competency or otherwise of such legal practitioners. It will therefore be unjust to willy-nilly condemn and punish them at the slightest opportunity. (para 10)

- Arangies & Another v Unitrans Namibia (Pty) Ltd & Another 2018 (3) NR 869 (SC) (purpose of judicial case management and generally acceptable grounds for altering pre-trial orders)
- Lee's Investments (Pty) Ltd v Shikongo & Another 2019 (1) NR 298 (HC) (oral application for variation of pre-trial order on day of trial; general discussion of late amendments in paras 17-20)¹⁰⁰
- Mwoombola v Simaata & Others 2020 (1) NR 113 (LC) (judicial case management procedure discussed in paras 7-10)
- Mwaala v Nghikomenwa 2022 (4) NR 1209 (SC) (parties bound by procedure agreed on in judicial case management)

Cases on High Court Rules (2014), which came into effect on 16 April 2014: generally:

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC)

Practitioners should move along with the latest developments and should avoid clinging on to the repealed rules, notwithstanding how used they were to them... Especial care and attention should therefore be taken to ensure the proper citation of the rules in terms of which relief is sought in the papers. I shall, for present purposes, however, overlook the citation of the wrong rule and pay regard to the correct rule. The court may not always adopt this position as the new rules would be expected to have taken root in the minds of all practitioners in this jurisdiction by now." (para 4)

- Blaauw's Transport (Pty) Ltd v Auto Truck & Coach CC & Another 2016 (1) NR 132 (HC) (principles guiding condonation)
- HKL v MML 2016 (2) NR 518 (SC) (lack of good faith in application for condonation discussed at paras 40-41)
- Jackson v Shuudifonya 2017 (1) NR 155 (NLD) (errors in respect of rules made by unrepresented parties)
- Prosecutor-General v Paulo & Another 2017 (1) NR 178 (HC) (para 16: practice of legal practitioners filing affidavits dealing with factual issues on behalf of their clients, instead of having the client depose to the evidence, should be discouraged; legal practitioner should not be in a position to have to become a witness, and should not

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¹⁰⁰ In the hard copy version of the Namibian Law Reports, the defendant's name in the case title is spelt as "Shikongu"; in the text of the case and in the versions of the case on the Namibia Superior Courts website, the name is "Shikongo". It has thus been corrected to appear as "Shikongo" here. See also *Shikongo & Another v Lee's Investments (Pty) Ltd* 2022 (4) NR 1171 (SC) (appeal struck from roll for non-compliance with rules of court).

associate himself with the client's cause)

National Fishing Corporation of Namibia v African Selection Fishing (Namibia) (Pty) Ltd & Others 2022 (4) NR 951 (HC) (in the absence of statutes, rules of court or common law provision for trial court to receive evidence via video link, court has inherent power to do so on application on good cause shown, where this is in the interest of justice and will not unfairly prejudice any other party; this technique should be limited to countries where extradition to Namibia is possible, to provide for enforcement in regard to contempt of court or perjury; however, the court did not find that a case had been made for testimony via video link on the facts of this application)

Rule 1:

Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (rule 1(2)-(3) as guide to interpretation of new High Court Rules)

Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) (rule 1(3) as guide to interpretation of other rules)

Namibia Media Holdings (Pty) Ltd & Another v Lombaard & Another 2022 (3) NR 682 (SC) (rule 1(4) read with rules 17 and 27(3)(a))

Rule 5:

Maletzky v The President of the Republic of Namibia & Others 2016 (2) NR 420 (HC) (rule 5 does not amend the common law right to freedom of contract and to pursue a cessation but is a procedural mechanism aimed at promoting the just and expeditious business of the court; rule 5(4) is not unconstitutional discrimination as it applies to all persons and is intended to protect the public from charlatans who masquerade as legal practitioners)

Rule 8:

Moolman & Another v Jeandre Development CC 2016 (2) NR 322 (SC) (compliance with rule 8(3)(

[...] The overall purpose of the subrule had been unequivocally served. The rules of this court are to be understood conceptually and contextually. What [the legal practitioner] suggests should have occurred is plainly pointless. This point taking can only be described as an exercise in sterile formalism which is to be deprecated. It is an attempt in vain to elevate form over substance and serves only to result in the incurrence of unnecessary costs and wastage of the time of this court. (paras 11-12)

Clear Enterprises (Pty) Ltd v Minister of Finances & Others 2019 (2) NR 578 (HC) (rule 8(9)) Esterhuizen v Karlsruh Number One Farming CC 2020 (1) NR 148 (HC) (rule 8(2); citation of wrong subrule regarding service does not render the service a nullity)

Rule 11:

Elgin Brown & Hamer Namibia (Pty) Ltd v Hydrodive Offshore International Ltd 2017 (3) NR 752 (HC) (rule 11(1)(a))

Heritage Health Medical Aid Fund v Registrar of Medical Aid Funds & Others 2022 (4) NR 1127 (SC) (rule 11(1)(h) and (10))

Rule 14:

JI v HI 2017 (2) NR 595 (HC) (rule 14(3)(b))

Rule 15:

Futeni Collection (Pty) Ltd v De Duine (Pty) Ltd 2015 (3) NR 829 (HC)

Standard Bank Namibia Ltd v Shipila & Others 2018 (3) NR 849 (SC), overturning Standard Bank Namibia Ltd v Shipila (First National Bank Namibia Ltd & Others intervening; the Ombudsman as amicus curiae) 2016 (2) NR 476 (HC) (Supreme Court: in the case of foreclosure under a registered bond, where creditor moves for default judgment under rule 15(3), rule 15(3) is sufficient to provide for the necessary judicial oversight; see related discussion of purpose of rule 108 in this case)

Rule 16:

Gibeon Village Council v Development Bank of Namibia & Others 2022 (4) NR 1011 (SC) (rule 16 is not the only route to set aside a default judgment; rule 103(1)(a) or common law can also be utilised)

Rule 19:

PH v SH 2015 (2) NR 519 (HC) (rule 19(1))

- Rule 20 (Protective costs orders in cases of public interest):
 - Minister of Agriculture, Water and Land Reform & Others v Amapanda & Others 2024 (2) NR 476 (SC) (rule 20(1)(c) and results of failure to comply with that requirement); a protective costs order was subsequently secured¹⁰¹

Rule 28:

- South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC)
- Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (rule 28 applies to discovery generally; relation of new High Court Rule 28 to old High Court Rule 35(12) and distinction between old rule 35(1) and new rule 28(1))
- Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (rule 28(1), read with rule 70(3), subject to rule 66(1)(b))

Donatus v Ministry of Health and Social Welfare 2016 (2) NR 532 (HC)

Diekmann v Free Press of Namibia (Pty) Ltd & Others 2023 (2) NR 578 (HC) (rule 28(8))

Rule 32:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (rule 32(9)-(11))

Mukata v Appolus 2015 (3) NR 695 (HC) (rule 32(9)-(10))

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (rule 32(9)-(10))

Blaauw's Transport (Pty) Ltd v Auto Truck & Coach CC & Another 2016 (1) NR 132 (HC) (rule 32(9)-(10))

CV v JV 2016 (1) NR 214 (HC) (rule 32(9)-(10) applies to interlocutory matters under rule 61 and must be complied with)

Kondjeni Nkandi Architects & Another v Namibian Airports Company Ltd 2016 (1) NR 223 (HC)

KJ v CJ 2016 (4) NR 1204 (HC) (rule 32(9)-(10))

Leopard Tours Care and Camping Hire CC & Others v Dannecker 2017 (1) NR 50 (HC) (refusal of application for absolution from the instance is an interlocutory order which is subject to the cost restrictions in rule 32(11))¹⁰²

Uvanga v Steenkamp & Others 2017 (1) NR 59 (HC) (dismissal of a special plea alleging lack of *locus standi* is not an interlocutory matter, being a peremptory plea as opposed to a dilatory plea, so the cost restrictions in rule 32(11) are not applicable)

Tjoklits Investments CC v Aquarius Investments No. 191 CC (I 1569/2013) [2018] NAHCMD 322 (15 October 2018) (meaning of rule 32(11); implications of term "successful" at paras 6-8)

Bank Windhoek Ltd v Benlin Investment CC 2017 (2) NR 403 (HC) (requirements of compliance with rule 32(9) and (10); compliance required for all interlocutory applications)

Wise v Shikuami NO & Another 2017 (2) NR 614 (HC) (rule 32(11))

Husselmann & Others v Saem & Others 2017 (3) NR 761 (HC) (rule 32(9) and (10) discussed, but without a finding on their applicability to a matter concerning non-joinder)

Bertolini v Ehlers & Another 2017 (4) NR 1035 (HC) (rule 32(11))

IBB Military Equipment & Accessory Supplies CC v Namibia Airports Co 2017 (4) NR 1194 (HC) (rule 32(9) and (10))

New Force Logistics CC v Anti-Corruption Commission 2018 (2) NR 375 (HC) (rule 32(9) and (10))

Spangenberg v Kloppers 2018 (2) NR 494 (HC) (rule 32(11))

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (rule 32(9) and (10), paras 44-45)

Uutoni v Freedom Square Investments Twenty-Four CC t/a Oshakati Fish Shop 2018 (3) NR 752 (NLD) (rule 32(9) & (10); para 9: "the introduction of the case management system

Werner Menges, "Amupanda secures no-costs order in redline legal battle", *The Namibian*, 30 October 2024.

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 $^{^{102}}$ See *Dannecker v Leopard Tours Care and Camping Hire CC & Others* 2019 (1) NR 246 (SC) for final outcome of case.

has placed wide judicial discretional powers on the managing judge in the furtherance of the speedy and inexpensive resolution of cases", including exercise of discretion in finding that adequate steps were taken in terms of these subrules)

National Fishing Corporation of Namibia v African Selection Fishing (Namibia) (Pty) Ltd & Others 2022 (4) NR 951 (HC) (rule 32(11) applied)

Law Society of Namibia v Mukondo & Others 2023 (2) NR 328 (HC) (rule 32(9)-(10) not applicable to Law Society's application for extension of legal practitioner's suspension and appointment of a *curator bonis*, which are not interlocutory applications)

Diekmann v Free Press of Namibia (Pty) Ltd & Others 2023 (2) NR 578 (HC) (rule 32(11) applied; no exceptional circumstances found)

Rule 36:

Arangies & Another v Unitrans Namibia (Pty) Ltd & Another 2018 (3) NR 869 (SC) (rule 36(1) application considered)

Rule 37:

Attorney-General v Gondwana Collection Ltd & Others 2023 (2) NR 297 (SC), overruling Attorney-General & Another v Gondwana Collection Ltd & Others 2022 (1) NR 38 (HC) (subpoenae duces tecum not available in action proceedings where answering affidavit not yet filed and before pleadings closed and triable dispute of fact established; discussion of need for restraint in compelling disclosure of Cabinet documents and deliberations at paras 54, 57-58)

Rule 38:

HB v MB 2022 (4) NR 1099 (HC) (alternative dispute resolution under this rule is for matters currently pending before court and not intended to assist parties who cannot afford the mediation agreed to in a divorce settlement)

Rule 40:

Auto Tech Truck and Coach CC v Fanny's Motor Repairs and Investment CC & Another 2015 (4) NR 1190 (HC) (application for leave to join third party refused)

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC)

United Africa Group (Pty) Ltd v Uramin Inc & Others 2017 (4) NR 1145 (HC)

Rule 41:

De Beers Marine Namibia (Pty) Ltd v Loubser 2017 (1) NR 20 (SC)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (rule 41(2) discussed at paras 39-43)

Rule 42:

Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC) (aspects of the remedy ordered in this case overturned on appeal in Namibia Airports Co Ltd v Fire Tech Systems CC & Another 2019 (2) NR 802 (SC))

Council of the Itireleng Village Community v Madi 2017 (4) NR 1127 (SC) (application of rule to voluntary association)

Marigold Hotel Developer (Pty) Ltd v Acting Deputy Sheriff, Windhoek & Another 2023 (4) NR 1027 (SC)

Rule 45:

Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) (rule 45(5))

Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others 2016 (3) NR 893 (HC) (rule 45(7))

Skorpion Mining Company (Pty) Ltd v Road Fund Administration 2016 (3) NR 864 (HC) (rule 45(9)), overturned on appeal on other grounds in Road Fund Administration v Skorpion Mining Company (Pty) Ltd 2018 (3) NR 829 (SC)

Brink NO & Another v Erongo All Sure Insurance CC & Others 2018 (3) NR 641 (SC) (rule 45(5))

Woermann v Kawana & Others 2020 (3) NR 899 (HC) (rule 45(5))

Rule 46:

Maritz v Louw NO & Others 2018 (4) NR 1000 (HC) (rule 46 applied to special plea)

Rule 50:

Bertolini v Ehlers & Another 2017 (4) NR 1035 (HC)

Rule 52:

Skorpion Mining Company (Pty) Ltd v Road Fund Administration 2016 (3) NR 864 (HC), overturned on appeal on other grounds in Road Fund Administration v Skorpion Mining Company (Pty) Ltd 2018 (3) NR 829 (SC)

United Africa Group (Pty) Ltd v Uramin Inc & Others 2017 (4) NR 1145 (HC)

Municipal Council of Windhoek v Pioneerspark Dam Investment CC 2021 (3) NR 670 (SC) (approach to amendments to pleadings after introduction of judicial case management, citing guiding principles set out by full bench of High Court in IA Bell Equipment Company (Namibia) (Pty) Ltd v Roadstone Quarries CC (I 601-2013 & I 4084-2010) [2014] NAHCMD 306 (17 October 2014))

Marmorwerke Karibib (Pty) Ltd v Transnamib Holdings Ltd 2022 (3) NR 629 (SC) (application to amend under rule 52 does not trigger rule 32 process in absence of a valid objection)

Rule 53:

Donatus v Ministry of Health and Social Welfare 2016 (2) NR 532 (HC)

Minister of Health and Social Services v Amakali 2019 (1) NR 262 (SC)

Tsumeb Mall (Pty) Ltd v Hallie Investment Number Two Hundred and Twenty-Two CC t/a Spur & Another 2019 (3) NR 734 (HC) (section 53(2)(b) applied)

Rule 54:

Tsumeb Mall (Pty) Ltd v Hallie Investment Number Two Hundred and Twenty-Two CC t/a Spur & Another 2019 (3) NR 734 (HC) (rule 54(1))

Koujo v Minister of Mines and Energy & Others 2020 (3) NR 809 (SC) (rule 54(3))

Rule 55:

Schütz v Pirker & Another 2015 (1) NR 231 (HC)

Kashe v Veterans Board & Others 2020 (4) NR 1165 (HC)

Rule 56:

Schütz v Pirker & Another 2015 (1) NR 231 (HC)

SV v HV 2018 (2) NR 460 (HC)

Tsumeb Mall (Pty) Ltd v Hallie Investment Number Two Hundred and Twenty-Two CC t/a Spur & Another 2019 (3) NR 734 (HC) (para 30: "the application for relief from sanctions referred to under rule 56 applies in respect of a failure to comply with a rule or court order referred to under rule 54 and does not apply to sanctions imposed under rule 53")

Rule 57:

Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others 2016 (3) NR 893 (HC)

Woermann v Kawana & Others 2020 (3) NR 899 (HC)

AM v Minister of Home Affairs, Immigration, Safety and Security 2022 (3) NR 778 (HC) (rule 57(1) applied to failure to disclose capacity of adult assisting minor child)

Rule 59:

Martucci & Others v Colcellini & Another 2016 (3) NR 658 (HC)

Martucci & Others v Mountain View Game Lodge (Pty) Ltd 2016 (3) NR 658 (HC)

Rule 60:

Mukata v Appolus 2015 (3) NR 695 (HC) (rule 60(11))

Scientific Society Swakopmund v Geleteria Pia CC & Another 2020 (1) NR 288 (HC) (rule 60(5))

Gariseb v Ultimate Safaris (Pty) Ltd 2020 (3) NR 786 (SC) (rule 60(1)(b): "liquidated amount in money"; rule 60(11)(a) on special costs applied)

Bruni & Another v Yatsua Investments CC & Others 2021 (1) NR 116 (HC) (rule 60(5)(b) applied)

Standard Bank Namibia Ltd v A-Z Investments Holdings (Pty) Ltd & Another 2022 (1) NR 197 (HC) (rule 60(1)-(2) and (5) applied)

Rule 61:

CV v JV 2016 (1) NR 214 (rule 32(9)-(10) applies to interlocutory matters under rule 61 and must be complied with; elements of rule 61 application)

IBB Military Equipment & Accessory Supplies CC v Namibia Airports Co 2017 (4) NR 1194 (HC) (rule 61 versus rule 76 for purposes of review proceedings)

Namibia Financial Exchange (Pty) Ltd v Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority and Registrar of Stock Exchanges & Another 2019 (3) NR 859 (SC) (decision upholding rule 61 objection is appealable; appealability depends on effect of order; here the decision at issue was not simply procedural as it denied the applicant's common law right "to make an election among procedural avenues open to it as a litigant")

Koujo v Minister of Mines and Energy & Others 2020 (3) NR 809 (SC)

Rule 62:

Standard Bank Namibia Ltd v Pohamba 2023 (4) NR 1013 (HC) (rule 62(2) is mandatory and is designed to ensure that a defendant who signs a consent to judgment understands its import)

Rule 63:

Joseph & Others v Joseph 2020 (3) NR 689 (SC) (rule 63(6) discussed at para 54)

Standic BV v Petroholland Holding (Pty) Ltd & Others 2022 (4) NR 1021 (SC) (rule 63(2))

Green Consulting Engineers CC t/a Emcon Consulting Group v Minister of Works and Transport & Four Similar Matters 2023 (3) NR 725 (SC)

Rule 64:

Akwenye v Amadhila 2018 (4) NR 1090 (HC)

Rule 65:

Schütz v Pirker & Another 2015 (1) NR 231 (HC)

Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (rules 65 and 76 compared; review of administrative decision should be brought in terms of rule 76)

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC) (rule 65(1) read with rules 70(1) and 73(3))

United Africa Group (Pty) Ltd v Uramin Inc & Others 2017 (4) NR 1145 (HC) (rule 65(2))

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (paras 37-43)

Schkade v Gregory NO & Others 2018 (4) NR 986 (HC) (rule 65 versus rule 76; rule 65(7))

Musweu v Chairperson of the Appeal Tribunal & Others 2019 (3) NR 748 (HC) (rule 65 versus rule 76)

Namibia Financial Exchange (Pty) Ltd v Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority and Registrar of Stock Exchanges & Another 2019 (3) NR 859 (SC)) (rule 65 versus rule 76)

Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (rule 65 versus rule 76)

Prosecutor-General v Paulo & Another 2020 (4) NR 992 (SC) (under the Prevention of Organised Crime Act 29 of 2004, a property preservation proceeding and a forfeiture proceeding are part of a single two-stage intertwined process, meaning that the application for a forfeiture order is not a new proceeding as defined in rule 65(1) of the High Court Rules and so does not require that the notice of motion be supported by an affidavit pursuant to this rule)

President of the Republic of Namibia & Others v Shivute 2024 (2) NR 561 (SC) (rule 65 v rule 76)

Rule 66:

Municipal Council of Gobabis v Smith t/a Bertie Smith Contractor Services 2015 (1) NR 299 (HC) (rule 66(1)(c))

Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (rule 28(1), read with rule 70(3), subject to rule 66(1)(b))

See *Prosecutor-General v Paulo & Another* 2017 (1) NR 178 (HC) (rule 66(4); principles governing late filing of confirmatory affidavits articulated and applied)

Mpasi NO & Another v Master of the High Court & Others 2018 (4) NR 909 (SC) (rule 66(1)(c)) Schütte & Another v Schütte & Others 2020 (4) NR 1008 (HC) (rule 66(1)(c) as appropriate avenue for raising legal issues, as opposed to affidavit by party's legal representative)

Prosecutor-General v Gustavo & Others 2023 (4) NR 913 (HC) (in the "Fishrot" matter: court exercises its discretion under rule 66(2) to permit Prosecutor-General to file

supplementary affidavits containing an update on the extradition process and rule-compliant information on the extraction and translation of emails previously provided)

Rule 67:

Konrad v Ndapanda 2019 (2) NR 301 (SC)

Elifas & Others v Asino & Others 2020 (4) NR 1030 (SC) (ruling under rule 67(1)(a) not appealable, even if High Court granted leave to appeal)

Desert Fruit (Pty) Ltd v Olive Ridge (Pty) Ltd & Others NNO 2021 (2) NR 456 (HC) (rule 67(1)) Akpabio v Minister of Justice & Another 2023 (3) NR 641 (SC) (rule 67(1) on referral to oral evidence must be applied in light of objectives in rule 1(3)(d) and rule 1(4)(e), pursuant to rule 1(2))

Minister of Agriculture, Water and Land Reform & Others v Amapanda & Others 2024 (2) NR 476 (SC) (rule 67(2))

Rule 70:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (rule 70(3))

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (relation of new High Court rule 70(3) to old High Court rule 35(13); rule 70(3) applies rule 28 to discovery in motion proceedings but only where exceptional circumstances exist and where the requirements of rule 28(1) are satisfied)

Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (rule 28(1), read with rule 70(3), subject to rule 66(1)(b))

Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others 2018 (4) NR 1133 (HC) (rule 70(4))

Rule 71:

Mwoombola v Simaata & Others 2020 (1) NR 113 (LC)

Rule 72:

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC)

Rule 73:

Premier Construction CC v Chairperson of the Tender Committee of the Namibia Power Corp Board of Directors 2014 (4) NR 1002 (HC) (rule 73(3))

Maletzky & Others v Electoral Commission & Others 2015 (2) NR 571 (HC) (rule 73(3))

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC) (rule 73(4))

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (rule 73(4))

Nowases & Others v Evangelical Lutheran Church in the Republic of Namibia ELCRN) & Others 2016 (4) NR 985 (HC) (rule 73(4))

China Harbour Engineering Co LTD v Erongo Quarry and Civil Works (Pty) Ltd & Another 2016 (4) NR 1078 (HC) (claim of spoliation is inherently urgent)

Mugimu v Minister of Finance & Others 2017 (3) NR 670 (HC)

New Force Logistics CC v Anti-Corruption Commission 2018 (2) NR 375 (HC) (impact of festive season on delays in bringing an application considered in course of ruling on urgency)

Bank Windhoek Ltd v Mofuka & Another 2018 (2) NR 503 (SC)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (paras 32-36)

Van Zyl & Others v Namibian Affirmative Management and Business (Pty) Ltd & Others 2019 (1) NR 27 (HC) (rule 73(3))

Assegaai & Others v Prosecutor-General & Others 2020 (1) NR 25 (HC)

Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (impact of incarceration, freezing of bank accounts and festive season on delay in bringing urgent application; "An element of urgency must always attach to alleged violations of fundamental rights and freedoms, especially to life, liberty and property." (para 20))

Stocks & Stocks Leisure (Namibia) (Pty) Ltd v Swakopmund Station Hotel (Pty) Ltd t/a The Swakopmund Station Hotel and Entertainment Centre & Others 2020 (4) NR 1117 (HC) (rule 73(3))

Penderis & Others v De Klerk & Others 2021 (1) NR 152 (HC) (rule 73(4) applied)

- Makili & Others v Council of the Municipality of Gobabis & Others 2021 (4) NR 1074 (HC) (rule 73(4) applied; no urgency found)
- Ncumcara Community Forest Management Committee & Others v Environmental Commissioner & Others 2022 (3) NR 737 (HC) (failure to plead requirements of rule 73(4)(a) or (b))

Rule 75:

Uvanga v Steenkamp & Others 2017 (1) NR 59 (HC) (dicta on proper role of taxing officer in stating a case in terms of rule 75)

Rule 76:

- South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC)
- Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (rules 65 and 76 compared; review of administrative decision should be brought in terms of rule 76)
- Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC); aspects of the remedy ordered in this case overturned on appeal in Namibia Airports Co Ltd v Fire Tech Systems CC & Another 2019 (2) NR 802 (SC)
- Chairperson of the Tender Board of Namibia v Pamo Trading Enterprises CC & Another 2017 (1) NR 1 (SC) (theoretical use of review application and rule 76 to gain early discovery of record of administrative decision-making process)
- Nelumbu & Others v Hikumwah & Others 2017 (2) NR 433 (SC) (discussion of how this rule could be used to aid review proceedings)
- IBB Military Equipment & Accessory Supplies CC v Namibia Airports Co 2017 (4) NR 1194 (HC) (rule 76 versus rule 61 for purposes of review proceedings)
- Schkade v Gregory NO & Others 2018 (4) NR 986 (HC) (rule 76 versus rule 65)
- *Musweu v Chairperson of the Appeal Tribunal & Others* 2019 (3) NR 748 (HC) (rule 76 versus rule 65)
- Namibia Financial Exchange (Pty) Ltd v Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority and Registrar of Stock Exchanges & Another 2019 (3) NR 859 (SC) (rule 76 versus rule 65, and compared to previous rule 53(1); rule 76 exists for the benefit of the applicant, and it is not required for a review to proceed under rule 76)
- Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (rule 76 versus rule 65)
- Hangula v Minister of Mines and Energy & Another 2020 (4) NR 1204 (HC) (rule 76(3): meaning of "decision")
- Minister of Finance v Hollard Insurance Company Namibia & Others 2021 (2) NR 524 (SC) (rule 76(6), (7) and (8); High Court ruling on rule 76 was interlocutory in nature and not appealable)
- Tumas Granite CC & Another v Minister of Mines and Energy & Others 2023 (1) NR 163 (HC) (ambit of rule 76 compared to rule 28; concept of relevance is "more expansive in review proceedings than in action proceedings")
- President of the Republic of Namibia & Others v Shivute 2024 (2) NR 561 (SC) (rule 76 v rule 65)

Rule 90:

GR v ER 2018 (2) NR 589 (HC)

AS v MS 2020 (1) NR 257 (HC)

Rules 92-93 (witness statements):

- Josea v Ahrens & Another 2015 (4) NR 1200 (HC) (exposition of intent of new rules on witness statements and suggested format for such statements)
- Conrad v Dohrmann & Another 2018 (2) NR 535 (HC) (paras 118-120: improper for defendant's lawyer to put portions of plaintiff's witness statement to defendant immediately after defendant finished reading his witness statement into the record pursuant to rule 93(3))

Rule 93:

Botes v McLean & Others 2019 (4) NR 1070 (HC); overturned on appeal on other grounds in McLean & Others v Botes (SA 54-2019) [2022] NASC (17 May 2022)

Rule 97:

Prosecutor-General v Africa Autonet CC t/a Pacific Motors 2017 (4) NR 969 (HC) (notice of withdrawal should have been filed under this rule when preservation order was allowed to lapse under the Prevention of Organised Crime Act 29 of 2004)

Bertolini v Ehlers & Another 2017 (4) NR 1035 (HC)

GR v ER 2019 (1) NR 46 (HC) (rule 97(3); costs in matrimonial proceedings may take into account inequality of parties' respective financial means and best interests of parties' minor children)

Akwenye & Another v Akwenye & Another 2019 (2) NR 446 (HC) (rule 97(4) applied)

Kamushinda & Others v President of the Republic of Namibia & Others 2020 (4) NR 1058 (HC) (rule 97(1))

Kashe v Veterans Board & Others 2020 (4) NR 1165 (HC)

Rule 100:

Fish Orange Mining Consortium (Pty) Ltd v Goaseb 2018 (3) NR 632 (HC) (rule governing applications for absolution from the instance quoted, but court notes that the rule does not set out principles for decision which must be found in case law, quoting principles summarised in Ramirez v Frans & Others (I 933/2013) [2016] NAHCM 376 (25 November 2016))

Rule 103:

PH v SH 2015 (2) NR 519 (HC) (rule 103(1)(a))

Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (rule 103(1)(a); consideration of meaning of "absence of any party")

Imbili v Nepela & Another 2017 (1) NR 96 (HC) (rule 103(1)(a) read with rule 26(4)-(5); court may rescind or vary an order or judgment in terms of rule 103(1)(a) if court file and record show that such order or judgment was obtained without adherence to the prescribed procedure)

Spangenberg v Kloppers 2018 (2) NR 494 (HC)

Assegaai & Others v Prosecutor-General & Others 2020 (1) NR 25 (HC) (rule 103 may not be used as a basis for an application to vary or rescind a preservation order made under the Prevention of Organised Crime Act 29 of 2004, because Act 29 of 2004 provides a specific statutory procedure for this)

Esterhuizen v Karlsruh Number One Farming CC 2020 (1) NR 148 (HC)

Attorney-General & Another v Gondwana Collection Ltd & Others 2022 (1) NR 38 (HC) (rule not applicable to issue of subpoenas; person subpoenaed can lodge objections to compliance if they so wish, but there is no requirement that they be allowed an opportunity to object in advance of issue of subpoena)

Gibeon Village Council v Development Bank of Namibia & Others 2022 (4) NR 1011 (SC) (rule 103(1)(a) can be applied to set aside a default judgment)

Naluno v Nanghala 2023 (4) NR 933 (SC) (rescission of order granting absolution was erroneous because it failed to specify a basis for the rescission anchored in law)

Rule 108:

Futeni Collection (Pty) Ltd v De Duine (Pty) Ltd 2015 (3) NR 829 (HC)

Standard Bank Namibia Ltd v Shipila & Others 2018 (3) NR 849 (SC), overturning Standard Bank Namibia Ltd v Shipila (First National Bank Namibia Ltd & Others intervening; the Ombudsman as amicus curiae) 2016 (2) NR 476 (HC) (Supreme Court: rule 108 is procedural in nature and may not be read to take away the substantive right of a judgment creditor to foreclosure; in the case of foreclosure under a registered bond, where creditor moves for default judgement under rule 15(3), rule 15(3) is sufficient to provide for the necessary judicial oversight; primary purpose of rule 108 is to give debtor an opportunity to oppose an application for an order declaring the property in question executable, and thus substantial compliance with Form 24 referenced in rule 108(2)(a) is sufficient; if rule 108 is properly read in context, it is not ultra vires the Act, the common law or the Constitution)

First National Bank of Namibia Ltd v Musheti 2018 (1) NR 144 (HC) (rule 108(1)(b)) Bank Windhoek Ltd v Gariseb & Another 2020 (2) NR 552 (HC) (rule 108(1)(b) and (2)(b)) Kisilipile & Another v First National Bank of Namibia Ltd 2021 (4) NR 921 (SC) (nature of

judicial oversight under rule 108, especially with reference to unrepresented parties)

Paulus v Development Bank of Namibia Ltd & Another 2023 (3) NR 841 (SC) (duty to conduct effective enquiry under rule 108, applying Kisilipile & Another v First National Bank of Namibia Ltd 2021 (4) NR 921 (SC) and Standard Bank Namibia Ltd v Shipila & Others 2018 (3) NR 849 (SC))

Rule 109:

Harris v Old Mutual Life Assurance Co (Namibia) Ltd & Others 2023 (3) NR 688 (SC) (rules 109-110 were conceived in the interests of the judgment debtor and the judgment creditor and were drafted insofar as they relate to bondholders or local or regional authorities to ensure protection of their rights "as a pre-emptive measure" (at paras 46, 50))

Rule 110:

Beukes & Another v First National Bank Ltd & Others 2018 (3) NR 737 (HC) (rule 110(9))

Agricultural Bank of Namibia v Ntema & Another 2023 (1) NR 221 (HC) (rule 110(10)-(11): rule 110(11) appears to accidentally omit the phrase "after due notice to the purchaser" which appears in its predecessor rule 49(11); a deputy-sheriff is not an "aggrieved creditor" in terms of rule 110(11); recommendation that reports under rule 110(10) should be in the form of affidavits and personally served on the purchaser as the "default position")

Harris v Old Mutual Life Assurance Co (Namibia) Ltd & Others 2023 (3) NR 688 (SC) (rule 110(4) is peremptory and non-compliance results in a nullity; rules 109-110 were conceived in the interests of the judgment debtor and the judgment creditor and were drafted insofar as they relate to bondholders or local or regional authorities to ensure protection of their rights "as a pre-emptive measure" (at paras 46, 50)).

Rule 113:

Marigold Hotel Developer (Pty) Ltd v Acting Deputy Sheriff, Windhoek & Another 2023 (4) NR 1027 (SC)

Rule 115:

Namibia Water Corporation Ltd v Tjipangandjara 2023 (4) NR 1175 (SC) (correct procedure for seeking leave to appeal)

Rule 121:

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (rule 121(2))

Wirtz & Others v Van Wyk & Another 2021 (4) NR 1069 (HC) (rule 121(2) does not suspend taxation of costs when appeal is pending, but the successful party may not execute upon the taxed bill until the appeal has been determined)

Rule 125:

Kamwi v Standard Bank Namibia Ltd 2020 (4) NR 1038 (SC) (rule 125(12); lay litigant who is not an admitted legal practitioner is not entitled to costs for legal professional services; costs limited to disbursements)

Rule 128:

Esterhuizen v Karlsruh Number One Farming CC 2020 (1) NR 148 (HC)

Rule 130:

Conrad v Dohrmann & Another 2018 (2) NR 535 (HC) (paras 121-ff)

Rule 131:

Prosecutor-General v Kennedy 2017 (1) NR 228 (HC), para 34 (non-compliance with rule 131(1)(h) on page numbers in pleadings condoned)

Rule 138:

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (rule 138 to be read intertextually with rule 3(6) and rule 70(3))

Wise v Shikuami NO & Another 2017 (2) NR 614 (HC) (paras 25-ff)

other:

Mingeli v Oshakati Premier Electric (Pty) Ltd 2015 (3) NR 688 (HC) (guidelines for transfer of cases from one division to another in terms of Practice Directive 47)

United Africa Group (Pty) ltd v Uramin Inc & Others 2019 (1) NR 276 (SC) ("A litigant is thus not necessarily responsible for a case not proceeding on the day set down for hearing

merely because such a litigant applied for a postponement. In certain circumstances a litigant could be forced to apply for a postponement as a result of the conduct of an opposing party. The general rule [that the applicant for the granting of an indulgence should bear the costs of the application] only applies to the applicant who was at fault or is in default.")

First National Bank of Namibia Ltd v Beukes & Another 2020 (4) NR 1161 (HC) (taxation of costs: costs include those related to execution of judgment and VAT on disbursements)

Beukes & Another v President of the Republic of Namibia & Others 2021 (2) NR 442 (HC) (practice of citing legal practitioners as parties in cases merely because they represent clients on those cases is a "vile practice" that interferes with the right to legal representation and the right of legal practitioners to practise their profession; it may in future be considered as an abuse of court process warranting punitive costs).

Cases on previous High Court Rules (1990) in GN 59/1990 (<u>GG 90</u>): generally:

Swanepoel v Marais & Others 1992 NR 1 (HC)

Adriaans v McNamara 1993 NR 188 (HC)

Johnston v Indigo Sky Gems (Pty) Ltd 1997 NR 239 (HC)

Ark Trading v Meredien Financial Services (Pty) Ltd 1999 NR 230 (HC) (discussion of importance of complying with rules of court)

Van Zyl & Another v Smit & Another 2007 (1) NR 314 (HC) (Practice Directives)

Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (Practice Directives)

Windhoek Truck and Bakkie CC v Greensquare Investments 106 CC 2011 (1) NR 150 (HC) (wilful disregard for rules undermines administration of justice and may attract exemplary costs order)

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in Telecom Namibia Ltd v Nangolo & Others 2015 (2) NR 510 (SC)

S v Sakaria 2013 (2) NR 347 (HC) (rule of practice preventing appellant seeking to reduce criminal sentence on appeal from withdrawing such appeal upon receipt of notice of court's meru moto intention to increase sentence)

Martin v Diroyal Motors Namibia (Pty) Ltd t/a Novel Ford & Others 2013 (2) NR 463 (HC) (court's common law discretion in respect of joinder)

S v Ashimbanga 2014 (1) NR 242 (HC) (layperson's failure to set out grounds of criminal appeal properly should be approached with leniency where state is not materially prejudiced in its ability to present opposing argument)

Rule 2:

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC)(rule 2(2))

Rule 3:

Rally for Democracy and Progress & Others v Electoral Commission of Namibia & Others 2010 (2) NR 487 (SC)

Rule 4:

Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board 2008 (2) NR 427 (HC)

RH v NS 2014(3) NR (HC) (rule 4(1)(b))

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (rule 4(5)(c))

Rule 5:

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC) (rule 5(4)(a) does not require board resolution to be lodged with power of attorney signed by authorised official employed by company in question)

Rule 6:

Vaatz v Law Society of Namibia 1990 NR 332 (HC) (rule 6(15))

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Cultura 2000 v Government of the Republic of Namibia 1992 NR 110 (HC) (rule 6(15))
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Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) (rule 6(11))

Mahamat v First National Bank of Namibia Ltd 1995 NR 199 (HC) (rule 6(1))

Transnamib v Essjay Ventures Limited 1996 NR 188 (HC) (rule 6(4) and (5))

Coin Security Namibia (Pty) Ltd v Jacobs & Another 1996 NR 279 (HC) (rule 6(5))

Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC) (rule 6(4), (5) and (11))

RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC) (rule 6(12))

Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC) (rule 6(12))

Bergmann v Commercial Bank of Namibia Ltd & Another 2001 NR 48 (HC) (rule 6(12))

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC) (rule 6(5))

Gariseb v Bayerl 2003 NR 118 (HC) (rule 6(11))

Doeseb & Others v Kheibeb & Others 2004 NR 81 (HC) (ex parte order in the form of an Anton Pillar)

Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (in labour law context) (rule 6(12))

Congress of Democrats & Others v Electoral Commission 2005 NR 44 (HC) (rule 6(12))

Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC) (rule 6(1) and (15))

Sheehama v Inspector–General, Namibian Police 2006 (1) NR 106 (HC) (rule 6(12))

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC) (rule 6(12))

Knouwds NO v Josea & Another 2007 (2) NR 792 (HC) (rule 6(5))

Ondjava Construction CC & Others v Haw Retailers 2008 (1) NR 45 (HC) (rule 6(5))

Vahekeni v Vahekeni 2008 (1) NR 125 (SC) (rule 6(6))

Shixwameni & Others v Congress of Democrats & Others 2008 (1) NR 134 (HC) (rule 6(5))

Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC) (rule 6(5))

Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (rule 6(12))

Minister of Agriculture, Water and Forestry v O'Linn 2008 (2) NR 792 (SC) (rule 6(5))

Oshakati Tower (Pty) Ltd v Executive Properties CC & Others 2009 (1) NR 99 (HC) (deals with rule 6(5)(g) although this rule is not expressly cited in the case; also rule 6(15))

Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (rule 6(5))

La Rochelle (Pty) Ltd & Others v Nathaniel-Koch & Others 2010 (1) NR 260 (HC) (interpretation of rule 6(12) in previous proceedings before the Court in the same case)

Labour Supply Chain Namibia (Pty) Ltd v Awaseb 2010 (1) NR 322 (HC) (rule 6(12))

Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (rule 6(12))

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC) (rule 6(11) and (12) read with practice direction 26 issued on 2 March 2009)

Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others 2012 (1) NR 331 (HC) (rule 6(12) read with Consolidated Practice Directions No E/8)

EH v D 2012 (2) NR 451 (HC) (rule 6(15); considerations of urgency when children's rights involved, in contrast to commercial or kindred matters)

Jack's Trading CC v Minister of Finance & Another 2013 (2) NR 480 (HC) (rule 6(12))

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC) (rule 6(12))

New Era Investment (Pty) Ltd v Roads Authority & Others 2014 (2) NR 596 (HC) (rule 6(12)); upheld on appeal in New Era Investment (Pty) Ltd v Roads Authority & Others 2017 (4) NR 1160 (SC) without discussion of this rule

Standard Bank of Namibia Ltd v Atlantic Meat Market 2014 (4) NR 1158 (SC) (rule 6(12)) Independence Catering (Ptv) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085

(HC) (rule 6(12))

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (rule 6(8); also references para 27(3)(c) of consolidated practice directives issued on 2 March 2009)

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC) (rule 6(1))

Rule 7:

Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)

Rule 8:

Zhou v Hong 2006 (1) NR 84 (HC) (rule 8(3))

Rule 10:

The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (rule 10(1))

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC)

Rule 11:

Kandjii v Awaseb & Others 2014 (4) NR 1103 (HC)

Rule 12:

Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)

Namibia Insurance Association v Government of Namibia 2001 NR 1 (HC)

The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Kahuure & Another in re Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others 2013 (4) NR 932 (SC)

Rule 14:

Parents' Committee of Namibia & Others v Nujoma & Others 1990 (1) SA 873 (SWA)

Meridien Financial Services (Pty) Ltd v Ark Trading 1998 NR 48 (HC), confirmed in Ark Trading v Meredien Financial Services (Pty) Ltd 1999 NR 230 (HC)

Rule 15:

RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC)

The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC)

Rule 16:

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its "alter ego")

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (rule 16(5))

Rule 17:

Veldman & Another v Bester 2011 (2) NR 581 (HC) (rule 17(2)(b))

Rule 18:

Hipandulwa v Kamupunya 1993 NR 254 (HC)

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others; Hofmeister v Basson & Others 1999 NR 206 (HC)

Namibia Beverages v Amupolo 1999 NR 303 (HC)

Makono v Nguvauva 2003 NR 138 (HC)

Coastal Fish Traders (Ptv) Ltd v Wilson & Another 2006 (2) NR 573 (HC)

Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC)

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

Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC)

Hangula v Motor Vehicle Accident Fund 2013 (2) NR 358 (HC)

China Henan International Cooperation (Pty) Ltd v De Klerk & Another 2014 (2) NR 517 (HC) Namene v Khomas Regional Council 2016 (3) NR 701 (SC) (rule 18(6))

Rule 20:

Namibia Beverages v Amupolo 1999 NR 303 (HC) (rule 20(2))

Rule 21:

Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC) (rule 21(3))

Kaese v Schacht & Another 2010 (1) NR 199 (SC) (read together with rule 22(3), requires that further particulars must be expressly denied or expressly not admitted) (rule 21(2)(a))

Rule 22:

Makono v Nguvauva 2003 NR 138 (HC) (rule 22(3))

Kaese v Schacht & Another 2010 (1) NR 199 (SC) (rule 22(3) read together with rule 21(2)(a), requires that further particulars must be expressly denied or expressly not admitted)

Rule 23:

Gauiseb v Minister of Home Affairs 1996 NR 90 (HC)

Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)

Bronkhorst v De Villiers; Van Zyl v De Villiers 2012 (1) NR 137 (HC)

Roads Contractor Co Ltd v Lemur Investments No 26 CC & Others 2013 (4) NR 954 (HC)

Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2014 (2) NR 425 (HC)

Rule 25:

Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC) (rule 25(1))

Rule 26:

Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)

Bronkhorst v De Villiers; Van Zyl v De Villiers 2012 (1) NR 137 (HC)

Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC)

Rule 27:

Adriaans v McNamara 1993 NR 188 (HC)

Xoagub v Shipena 1993 NR 215 (HC)

Transnamib v Essjay Ventures Limited 1996 NR 188 (HC)

Rothe v Asmus & Another 1996 NR 406 (HC)

S v Nakapela & Another 1997 NR 184 (HC)

Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC)

Johnston v Indigo Sky Gems (Pty) Ltd 1997 NR 239 (HC)

Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC)

The Nation (Pty) Ltd. v Meyer NLLP 2002 (2) 55 NHC

Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)

Dimensions Properties v Municipal Council of Windhoek 2007 (1) NR 288

China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC) (rule 27(3): a procedural irregularity which constitutes a nullity cannot be condoned)

Solomon v De Klerk 2009 (1) NR 77 (HC)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) (conflict between rule 27 and rule 30 discussed)

Rule 28:

South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419 (HC) Phincon Enterprises (Pty) Ltd v Dos Santos 2012 (1) NR 352 (HC)

Rule 29:

Rothe v Asmus & Another 1996 NR 406 (HC)

Meyer v Deputy Sheriff, Windhoek & Others 1999 NR 146 (HC)

Commercial Bank of Namibia v Grobler 2002 NR 24 (HC)

Andreas v La Cock & Another 2006 (2) NR 472 (HC)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) at 724A-E

HP v FP 2014 (3) NR 701 (HC)

Rule 30:

Ark Trading v Meredien Financial Services Namibian (Pty) Ltd 1999 NR 230 (HC)

Gariseb v Bayerl 2003 NR 118 (HC)

Wirtz v Orford & Another 2005 NR 175 (SC)

Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC)

China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)

Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2008 (1) NR 45 (HC)

Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board 2008 (2) NR 427 (HC)

Christian t/a Hope Financial Services v Chairman of Namibia Financial Institutions Supervisory Authority & Others 2009 (1) NR 22 (HC) (discussion of rule 30 applications in passing)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC); Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation 2012 (2) NR 671 (SC)

Goseb & Others v Minister of Regional and Local Government and Housing & Others 2011 (1) NR 224 (HC) (Full Bench resolves conflicting precedent by ruling that it is not a prerequisite for an applicant to give notice in terms of rule 30(5) before bringing a rule 30(1) application)

//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC)

Veldman & Another v Bester 2011 (2) NR 581 (HC)

Maletzky v Gaseb & Another 2014 (3) NR 645 (HC)

Maletzky v Minister of Justice & Others 2014 (4) NR 956 (HC)

Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC)

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC)

Rule 31:

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC) (rule 31(2))

Adriaans v McNamara 1993 NR 188 (HC) (rule 31(2))

Xoagub v Shipena 1993 NR 215 (HC) (rule 31(2))

Hipandulwa v Kamupunya 1993 NR 254 (HC) (rule 31(2))

Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC) (rule 31(2))

Mutjavikua v Mutual & Federal Insurance Company Ltd 1998 NR 57 (HC) (rule 31(2))

Maia v Total Namibia 1998 NR 303 (HC) (rule 31(2))

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC) (rule 31(2))

Mhungu v Commercial Bank of Namibia Ltd NLLP 2002 (2) 299 HC (rule 31(2))

Namcon CC v Tula's Plumbing CC 2005 NR 39 (HC) (rule 31(2))

China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC) (rule 31(2))

Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC) (rule 31(2)) Hange & Others v Orman 2014 (4) NR 971 (HC) (rule 31(2))

Christian t/a Hope Financial Services v Namibia Financial Institutions Supervisory Authority 2019 (4) NR 1109 (SC) (rule 31(2)(a) and (4))

Beukes & Another v President of the Republic of Namibia & Others 2021 (2) NR 442 (HC) (application to declare rule 31(5)(a) unconstitutional dismissed because that rule was already repealed by the new 2014 rules)

Rule 32:

Commercial Bank of Namibia Ltd v Trans Continental Trading (Namibia) & Others 1991 NR 135 (HC)

Standard Bank of Namibia Ltd v Veldsman 1993 NR 391 (HC)

Kühn v Levey & Another 1996 NR 362 (HC)

Kramp v Rostami 1998 NR 79 (HC)

Kelnic Construction (Pty) Ltd v Cadilu Fishing (Pty) Ltd 1998 NR 198 (HC)

Namibia Petroleum (Pty) Ltd v Vermaak 1998 NR 155 (HC)

Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)

Bierman NO v Combrink 2006 (2) NR 447 (HC)

Namibia Breweries Limited v Serrao 2007 (1) NR 49 (HC)

Kamwi v Ministry of Finance 2007 (1) NR 167 (HC)

Ritz Reise (Pty) Ltd v Air Namibia (Pty) Ltd 2007 (1) NR 222 (HC)

Namibia Airports Company Ltd v Conradie 2007 (1) NR 375 (HC)

Mauno Haindongo t/a Omawa Wholesalers v African Experience (Pty) Ltd 2006 (1) NR 56 (HC)

Gamikaub (Pty) Ltd v Schweiger 2008 (2) NR 464 (SC)

Easy Life Management (Cape)(Pty) Ltd & Another v Easy Fit Cupboards Windhoek CC & Others 2008 (2) NR 686 (HC)

Mbambus v Motor Vehicle Accident Fund 2011 (1) NR 238 (HC)

Di Savino v Nedbank Namibia Ltd 2012 (2) NR 507 (SC)

Amunyela v Arovin Property Developers (Pty) Ltd 2012 (2) NR 757 (HC)

Brandt t/a Chris Brandt Attorneys v Windhoek Truck & Bakkie CC & Others 2013 (1) 295 (HC)

Rule 33:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC)

Van As & Another v Prosecutor-General 2000 NR 271 (HC)

Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC) (discussion of rule 33(4) in context of consideration of prospects of success on merits in condonation application)

Mbambus v Motor Vehicle Accident Fund 2015(3) NR 605 (SC)

Paschke v Frans 2015 (3) NR 668 (SC)

Rule 34:

Prior t/a Pro Security v Jacobs t/a Southern Engineering 2007 (2) NR 564 (HC) (rule 34(10))

Rule 35:

South African Sugar Association v Namibia Sugar Distributors (Pty) Ltd 1999 NR 241 (HC)

Waltraut Fritzsche t/a Reit Safari v Telecom Namibia Ltd 2000 NR 201 (HC)

Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)

Kanyama v Cupido 2007 (1) NR 216 (HC)

Kauaaka & Others v St Phillips Faith Healing Church 2007 (1) NR 276 (HC)

Marco Fishing (Pty) Ltd v Government of the Republic of Namibia & Others 2008 (2) NR 742 (HC)

Rule 37:

De Waal v De Waal 2011 (2) NR 645

Hubner v Krieger 2012 (1) NR 191 (HC)

De Beers Marine Namibia (Pty) Ltd v Lange NO & Others 2014 (2) NR 437 (HC)

Scania Finance SA (Pty) Ltd v Aggressive Transport CC & Another 2014 (2) NR 489 (HC)

Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC)

Rule 38:

Gabrielsen v Crown Security CC 2011 (1) NR 121 (HC) (appeal on issue of vicarious liability dismissed in Crown Security CC v Gabrielsen 2015 (4) NR 907 (SC)) (rule 38(2))

Rule 39:

Christian v Metropolitan Life Namibia & Another 2007 (1) NR 255 (HC) (exception to rule that party seeking postponement is responsible for wasted costs)

Rule 40:

Aluminium City CC v Scandia Kitchens & Joinery (Pty) Ltd 2007 (2) 494 (HC) (rule 40(6))

Rule 41:

De Beers Marine Namibia (Pty) Ltd v Lange NO & Others 2014 (2) NR 437 (HC) (section 85(2))

Rule 42:

Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC)

Prosperita Glass CC t/a Mr Glass v Pretorius t/a Ben Pretorius Building Contractor 2008 (1) NR 368 (HC)

National Housing Enterprise v Beukes & Others 2009 (1) NR 82 (LC)

Rule 43:

Eger v Eger 1997 NR 126 (HC)

Dreyer v Dreyer 2007 (2) NR 553 (HC)

Handl v Handl 2008 (2) NR 489 (SC)

RH v NS 2010 (2) NR 584 (HC)

Rule 44:

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC)

Sylvie McTeer Properties v Kuhn & Others 2005 NR 519 (HC)

Schacht v Schweiger 2007 (1) NR 62 (HC)

Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC)

De Villiers v Axiz Namibia (Pty) Ltd 2009 (1) NR 40 (HC), 2012 (1) NR (SC)

Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening) 2013 (2) NR 491 (HC)¹⁰³

Strauss & Another v Witt & Another 2014 (1) NR 213 (HC)

China Henan International Cooperation (Pty) Ltd v De Klerk & Another 2014 (2) NR 517 (HC)

Kamwi v Standard Bank Namibia Ltd & Others 2015 (3) NR 678 (SC)

Labuschagne v Scania Finance Southern Africa (Pty) Ltd & Others 2015 (4) NR 1153 (SC) (rule 44(1)(a))

Sylvie McTeer Properties v Kuhn & Others 2017 (3) NR 929 (SC) (rule 44(1)(a) discussed in passing, but not directly applicable in this case)

Rule 45:

Appolus v Shipanga & Others 1992 NR 273 (HC)

Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC)

Deputy Sheriff of Gobabis v Eiman & Another 1999 NR 310 (HC)

Jantjies v Jantjies & Another 2001 NR 26 (HC)

Bank Windhoek Ltd v Kusch 2003 NR 67 (HC)

Rule 46:

Mbutu v Esterhuizen NO & Others 2012 (1) NR 177 (HC)

Katjiuanjo v Willemse & Others 2013 (3) NR 850 (HC)

Rule 47:

Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)

Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC)

Hepute & Others v Minister of Mines and Energy & Another 2007 (1) NR 124 (HC), 2008 (2) NR 399 (SC)

Oehl NO v Nolte & Others 2013 (3) NR 643 (HC)

Schütz v Pirker & Another 2015 (1) NR 231 (HC)

Rule 48:

Vaatz v Law Society of Namibia 1993 NR 465 (HC)

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported) (whether the decision of a judge in chambers in terms of rule 48 constitutes a judgment or order under section 18)

Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)

Rule 49:

Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)

Maia v Total Namibia 1998 NR 303 (HC)

Louw v Chairperson of the District Labour Court, Windhoek & Others 2001 NR 197 (HC) (rule 49(13) declared unconstitutional)

Deputy Sheriff for Caprivi Region v Mboozi 2005 NR 172 (HC)

Vaatz: In re Schweiger v Gamikaub (Ptv) Ltd 2006 (1) NR 161 (HC)

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC) (powers of court after granting judgment under rule 49(11))

Rule 51:

S v Tjiho 1991 NR 361 (HC)

Rule 53:

Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others 1991 NR 417 (HC)

¹⁰³ The subsequent proceedings in *Ohorongo Cement (Pty) Ltd v Jack's Trading CC & Others & A Similar Matter* 2020 (2) NR 571 (SC) do not mention Rule 44.

Krüger v Transnamib Ltd (Air Namibia) & Others 1996 NR 168 (SC)

S v Gawanab 1997 NR 61 (HC)

Disposable Medical Products v Tender Board of Namibia 1997 NR 129 (HC)

Aonin Fishing (Pty) Ltd & Another v Minister of Fisheries and Marine Resources 1998 NR 147 (HC)

Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others 2006 (1) NR 275 (HC)

Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC)

Mbanderu Traditional Authority & Another v Kahuure & Others 2008 (1) NR 55 (SC)

Purity Manganese (Pty) Ltd v Minister of Mines and Energy & Others; Global Industrial Development (Pty) Ltd v Minister of Mines and Energy & Another 2009 (1) NR 277 (HC)

Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment 2010 (1) NR 1 (SC) (judicial debate on when the Court is entitled to substitute its own judgment for that of the official in question during a review proceeding)

Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2011 (2) NR 437 (HC); appeal struck from roll in Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2013 (4) NR (SC)

Erf Sixty-Six, Vogelstrand (Pty) Ltd v Council of the Municipality of Swakopmund & Others 2012 (1) NR 393 (HC) (cost implications of failure to inform respondent of intention to withdraw rule 53 review application)

Mobile Telecommunications Ltd v Namibia Communications Commission & Others 2012 (2) NR 421 (HC) (costs implications of dilatory conduct in respect of rule 53)

New Era Investment (Pty) Ltd v Roads Authority 2014 (2) NR 596 (HC); upheld on appeal in New Era Investment (Pty) Ltd v Roads Authority & Others 2017 (4) NR 1160 (SC) without discussion of this rule

Rule 54:

Pietersen-Diergaardt v Fischer 2008 (1) NR 307 (HC) (condonation of breaches of this rule) Rule 56:

Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC)

Rule 58:

Katuematima v Tjaveandja & Others 1996 NR 339 (HC)

Deputy-Sheriff of Tsumeb v Koch & Another 2011 (1) NR 202 (HC)

Rule 60:

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)

Zhou v Hong 2006 (1) NR 84 (HC)

S v Malumo & 116 Others (No 3) 2008 (2) NR 512 (HC)

Rule 62:

Motor Vehicle Accident Fund v Gerber 2004 NR 119 (HC) (rule 62(4))

Rule 63:

Kramp v Rostrami 1998 NR 79 (HC)

Ekandjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC)

Zhou v Hong 2006 (1) NR 84 (HC)

La Rochelle (Pty) Ltd & Others v Nathaniel-Koch & Others 2010 (1) NR 260 (HC)

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (rule 63(4))

Rule 69:

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC) (rule 69(3)) Rule 70:

Vaatz v Law Society of Namibia 1993 NR 465 (HC)

Hameva & Another v Minister of Home Affairs, Namibia 1996 NR 380 (SC)

Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)

Nate Ndauendapo & Associates v Aussenkehr Farms (Pty) Ltd & Others 2007 (1) NR 162 (HC)

- Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC) (rule 70 read with tariff of fees prescribed by Sixth Schedule in GN 141/2006)
- Hollard Insurance Company of Namibia Ltd v De Neyschen t/a Gecko Guest House 2014 (3) NR 860 (HC)

Fourth Schedule:

Mbutu v Esterhuizen NO & Others 2012 (1) NR 177 (HC) (Item 5(c)(xiv))

other:

- Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC) (costs in an urgent application where parties agreed not to proceed; application of rule that a party should at the earliest opportunity take all steps to end litigation or curtail costs associated with it)
- Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC) (meaning of "costs" in a costs order and issue of what costs can be awarded to a lay litigant)
- Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (Practice Directives 1/2002 and 1/2007; whether Practice Directives generally binding on lay litigants discussed in *dicta* at 771)
- Hailulu v Anti-Corruption Commission 2011 (1) NR 363 (HC) (punitive costs in respect of postponement; responsibility of litigant for remiss conduct of litigant's legal practitioner)
- Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2011 (2) NR 437 (HC) (Consolidated Practice Directives 2009: Practice Directive 37); appeal struck from roll in Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2013 (4) NR (SC)
- Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another 2013 (4) NR 1036 (HC) (Consolidated Practice Directives 2009: Practice Directive 37) (discussed in JD Kennedy Kariseb, "Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another A tenet of 'judicial nationalism'?", UNAM Law Review, Volume 2, Issue 2, 2015 and JD Kennedy Kariseb, "Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another", Namibia Law Journal, Volume 8, Issue 1, 2016)
- Maletzky v Minister of Justice & Others 2014 (4) NR 956 (HC) (duty of lay litigants to comply with Practice Directives)
- Kamwi v Standard Bank Namibia Ltd & Others 2015 (3) NR 678 (SC) (meaning of "disbursements" in costs award in favour of lay litigant).

Commentary:

- Phillip M Balhao, "Review of judicial oversight in the High Court of Namibia regarding attachment and judicial sale of immoveable property", *Namibia Law Journal*, Volume 10, Issue 1, 2018
- Petrus T Damaseb, "Court-connected Mediation in the High Court of Namibia", *Namibia Law Journal*, Volume 11, Issue 1, 2019
- Petrus T Damaseb, "Fact Finding and Judgement Writing in High Court Civil Cases: A Namibian Perspective", *Namibia Law Journal*, Volume 11, Issue 1, 2019
- Petrus T Damaseb, Court-Managed Civil Procedure of the High Court of Namibia: Law, Procedure and Practice, Juta, 2020.

Reciprocal Service of Civil Process Act 27 of 1994 🕎 😜

Summary: This Act (<u>GG 977</u>) provides for the reciprocal service of process in civil matters in Namibia and in designated countries.

Regulations: The Act makes no provision for regulations.

Notices: The Republic of South Africa is declared to be a designated country in terms of section 2(1) of

Enforcement of Foreign Civil Judgements Act 28 of 1994 🕎 🙀

Summary: This Act (originally published in <u>GG 978</u>) provides that civil judgements granted in designated countries may be enforced in magistrates' courts in Namibia.

Repeals: The Act repeals the *Reciprocal Enforcement of Civil Judgements Act 9 of 1966*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 (<u>GG 2327</u>) amends section 1.

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Notices: The Republic of South Africa is declared to be a designated country in terms of section 2(a) of the Act by GN 112/1995 (<u>GG 1095</u>).

Community Courts Act 10 of 2003 🕎 🙀

Summary: This Act (<u>GG 3044</u>) provides for the recognition and establishment of community courts and the application of customary law by these courts. It sets the jurisdiction and procedure of community courts and provides an appeal procedure. It was brought into force on 17 November 2003 by GN 236/2003 (<u>GG 3095</u>).

Repeals: The Act repeals the following:

- Rehoboth Community: Confirmation of Agreement Proclamation 28 of 1923 (OG 118)
- Civil and Criminal Jurisdiction Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies, Territory of South West Africa Proclamation R.348 of 1967 (<u>RSA GG 1925</u>), as amended by Proc. R.222/1969 (<u>RSA GG 2504</u>), Proc. R.304 of 1972 (<u>RSA GG 3726</u>) and Proc. R.241 of 1973 (<u>RSA GG 4059</u>)
- Jurisdiction of Chiefs, Chief Tribal Councillors (Ngambelas), Tribal Councillors (Kuta Members),
 Tribal Councils (Kutas), Headmen of Wards (Silalo Indunas) and Representatives of Chiefs Eastern Capri Zipfel Proclamation R.320 of 1970 (RSA GG 2944)
- Proclamation to provide for the establishment of a Nama Council, Tribal Authorities and Village Management Boards in Namaland, Proclamation 160 of 1975
- Jurisdiction of Traditional Authorities in Hereroland in respect of Civil and Criminal Amendment Proclamation, AG 70 of 1980 (OG 4342)
- Native Administration Proclamation Amendment Act 27 of 1985 (OG 5147) (which substituted section 3(1) of the Native Administration Proclamation 15 of 1928)
- **Damara** Community and Regional Authorities and Paramount Chief and Headmen Ordinance 2 of 1986 (OG 5262)
- Tswana Chief and Headmen Ordinance 3 of 1986 (OG 5269).

Savings: Section 33(2) contains a savings clause that states:

Anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

Regulations: Regulations issued under the current Act are contained in GN 237/2003 (<u>GG 3095</u>), as amended by GN 280/2018 (<u>GG 6753</u>), GN 269/2022 (<u>GG 7904</u>) and GN 154/2023 (<u>GG 8100</u>).

Note that GN 269/2022 states that the 2003 regulations were amended by GN 97/2001, which is obviously in error. GN 97/2001 (GG 2538) contains amendments to 2001 regulations issued under the Road Traffic and Transport Act 22 of 1999.

Regulations made in terms of the repealed laws that may have survived have not yet been researched.

Notices: The period for application for recognition as community court is set as 17 November 2003-31 March 2004 in GN 238/2003 (GG 3095), extended to 31 December 2004 by GN 52/2004 (GG 3176), further extended to 31 March 2013 by GN 237/2012 (GG 5038), and further extended from 31 March 2013 to 31 March 2025 by GN 143/2022 (GG 7805).

Establishment of community courts: Community courts are established as follows (presented in alphabetical order without taking orthographic marks into account) -

/Aman-GN 102/2011 (<u>GG 4750</u>), as amended by GN 146/2012 (<u>GG 4966</u>), GN 153/2020 (<u>GG 7271</u>) and GN 32/2024 (<u>GG 8329</u>)

≠Aodaman-GN 103/2011 (<u>GG 4750</u>), as amended by GN 64/2013 (<u>GG 5150</u>), GN 235/2015 (<u>GG 5853</u>) and GN 365/2022 (<u>GG 7966</u>)

Bakgalagadi-GN 113/2009 (GG 4262), as amended by GN 186/2014 (GG 5580)

Bondelswartz-GN 86/2009 (<u>GG 4262</u>), as amended by GN 234/2013 (<u>GG 5272</u>) and by GN 160/2015 (<u>GG 5795</u>)

Note that the name of the court is misspelt in the list of contents of GG 4262.

Dâure-Daman-GN 230/2015 (GG 5848), as amended by GN 260/2024 (GG 8438)

Fransfontein-GN 106/2009 (<u>GG 4262</u>), as amended by GN 140/2018 (<u>GG 6649</u>) and by GN 407/2022 (GN 7979)

/Gaio-Daman-GN 114/2009 (<u>GG 4262</u>), replaced by GN 52/2010 (<u>GG 4450</u>), as amended by GN 70/2021 (<u>GG 7506</u>); see also GN 259/2016 (<u>GG 6164</u>)

GN 259/2016 (GG 6164) erroneously states that it is amending GN 114/2010; it applies to the /Gaio-Daman Customary Court, but its import is unclear.

Gciriku-GN 90/2009 (GG 4262), as amended by GN 206/2013 (GG 5256)

Note that the title of GN 206/2009 and the Schedule correctly state that GN 206/2009 amends GN 90/2009, but the text incorrectly states that it amends "Government Notice 60 of 20 May 2009". (GN 60/2009 was issued on 1 April 2009 and is a moratorium on import of large predators and alien species of wild animals issued under the Nature Conservation Ordinance, 1975.)

/Gobanin-GN 91/2009 (GG 4262)

Hai-//oms-GN 87/2009 (GG 4262)

/Haramüb-GN 59/2011 (GG 4712)

Kai-/Khauben-GN 92/2009 (<u>GG 4262</u>), as amended by GN 315/2018 (<u>GG 6784</u>), GN 313/2019 (<u>GG 7034</u>), GN 151/2020 (<u>GG 7271</u>) and GN 179/2023 (<u>GG 8122</u>)

Kakuru-Kouye-GN 79/2013 (<u>GG 5161</u>), as amended by GN 8/2014 (<u>GG 5397</u>) and by GN 314/2019 (<u>GG 7034</u>)

Kambazembi-GN 93/2009 (<u>GG 4262</u>), as amended by GN 265/2014 (<u>GG 5644</u>) - which is amended by GN 227/2015 (GG 5848) - and by GN 295/2022 (GG 7917)

Note that GN 227/2015 erroneously states at one place that it is amending GN 95/2009.

!Khowesen-GN 104/2009 (<u>GG 4262</u>), as amended by GN 375/2019 (<u>GG 7069</u>), GN 158/2024 (<u>GG 8379</u>) (which changes the name "!Khobesen" to "!Khowesen") and GN 176/2024 (<u>GG 8388</u>)

/Khomanin Hagos-GN 94/2009 (<u>GG 4262</u>), as amended by GN 260/2012 (<u>GG 5061</u>) and GN 189/2014 (<u>GG 5580</u>)

King Morwe II-GN 89/2009 (<u>GG 4262</u>), as amended by 239/2021 (<u>GG 7673</u>), GN 144/2022 (<u>GG 7805</u>) and GN 179/2022 (<u>GG 7841</u>)

!Kung-GN 173/2015 (GG 5806)

Linyanti-GN 105/2009 (<u>GG 4262</u>), as amended by GN 261/2012 (<u>GG 5061</u>), GN 255/2018 (<u>GG 6724</u>), GN 42/2019 (<u>GG 6856</u>) and GN 167 (<u>GG 7601</u>)

Note that the list of contents for GG 6724 and the heading of GN 255/2018 both

erroneously state that GN 255/2018 amends GN 56/2010, but the text of GN 255/2018 correctly states that it amends GN 105/2009. The same is true of the list of contents for GG 6856 and the heading of GN 42/2019.

- Mafwe-GN 95/2009 (<u>GG 4262</u>), as amended by GN 208/2013 (<u>GG 5256</u>), GN 236/2015 (<u>GG 5853</u>), GN 313/2018 (<u>GG 6784</u>), GN 314/2018 (<u>GG 6784</u>), GN 249/2022 (<u>GG 7878</u>) and GN 250/2022 (<u>GG 7878</u>)
- Maharero-GN 96/2009 (<u>GG 4262</u>), as amended by GN 108/2014 (<u>GG 5523</u>), GN 264/2014 (<u>GG 5644</u>) and GN 311/2017 (<u>GG 6482</u>); GN 376/2019 (<u>GG 7069</u>) appears to amend GN 264/2014 (<u>GG 5644</u>)

Note that GN 376/2019 states that it amends GN 264 of 11 December 2013. There is no such notice. GN 264/2013 was published on 4 October 2013 and concerns another topic. No *Gazette* was published on 11 December 2013. GN 376/2019 probably intended to refer to GN 264/2014, which was published on 31 December 2014.

- Masubia-GN 97/2009 (<u>GG 4262</u>), as amended by GN 274/2013 (<u>GG 5316</u>) which is amended by GN 117/2017 (<u>GG 6309</u>), GN 313/2017 (<u>GG 6482</u>) and GN 198/2018 (<u>GG 6694</u>) and by GN 188/2014 (<u>GG 5580</u>), GN 31/2015 (<u>GG 5681</u>), GN 20/2017 (<u>GG 6238</u>), GN 120/2021 (<u>GG 7553</u>), GN 408/2022 (<u>GN 7979</u>) and GN 343/2023 (<u>GG 8247</u>)
- Mayeyi-GN 103/2009 (<u>GG 4262</u>), as amended by GN 262/2012 (<u>GG 5061</u>), GN 64/2019 (<u>GG 6868</u>) and GN 367/2022 (<u>GG 7966</u>)

Note that the heading of GN 64/2019 states that it amends GN 262/2012, but the text of the notice states that it amends GN 103/2009, as amended by GN 262/2012.

Mbukushu-GN 98/2009 (GG 4262)

Note that the name of the court is misspelt in the list of contents of <u>GG 4262</u>.

Mbunza-GN 107/2009 (<u>GG 4262</u>), as amended by GN 146/2013 (<u>GG 5221</u>), which is amended by GN 71/2021 (<u>GG 7506</u>)

Nami-Daman-GN 168/2023 (GG 8112)

!Oe≠Gân-GN 60/2011 (<u>GG 4712</u>), as amended by GN 78/2013 (<u>GG 5161</u>), GN 275/2013 (<u>GG 5316</u>), GN 187/2014 (<u>GG 5580</u>) (as amended by GN 260/2020 (<u>GG 7373</u>)) and GN 362/2024 (<u>GG 8520</u>)

Note that the name of the court is misspelt in the list of contents of \underline{GG} 4712, and throughout \underline{GG} 5316 and \underline{GG} 5580.

Okalongo-GN 112/2009 (GG 4262)

Ombadja-GN 53/2010 (<u>GG 4450</u>), as amended by GN 259/2012 (<u>GG 5061</u>) – which is amended by GN 91/2017 (<u>GG 6285</u>), which is in turn amended by GN 52/2022 (<u>GG 7747</u>) – and by GN 254/2018 (<u>GG 6724</u>)

Note that GN 254/2018 indicates that GN 53/2010 was previously amended by GN 259/2012 and by GN 91/2017, but GN 91/2017 actually amended the amending notice, GN 259/2012.

Ombalantu-GN 109/2009 (<u>GG 4262</u>), replaced by GN 54/2010 (<u>GG 4450</u>), as amended by GN 101/2011 (<u>GG 4750</u>) and by GN 377/2019 (<u>GG 7069</u>)

Note that the list of contents for GG 4750 erroneously states that GN 101/2011 amends GN 54/2011, but the text of GN 101/2011 correctly states that it amends GN 54/2010.

Ondonga-GN 99/2009 (GG 4262), replaced by GN 56/2010 (GG 4450), as amended by GN 77/2013 (GG 5161) – which is amended by GN 161/2014 (GG 5559) as amended by GN 182/2022 (GG 7841) and by GN 95/2020 (GG 7163) – and by GN 162/2014 (GG 5559) – which is amended by GN 96/2020 (GG 7163), GN 94/2020 (GG 7163) and GN 226/2020 (GG 7333) – and by GN 181/2022 (GG 7841) and GN 157/2024 (GG 8379). See also GN 4/2003 (GG 8006), which states that it amends GN 99/2009, which was withdrawn and replaced by GN 56/2010; GN 4/2003 may have been intended to further amend GN 56/2010.

Note that the name of the court is misspelt in the list of contents of <u>GG 4262</u> and <u>GG 5161</u>.

- Ongandjera-GN 100/2009 (<u>GG 4262</u>), replaced by GN 55/2010 (<u>GG 4450</u>), as amended by GN 148/2013 (<u>GG 5221</u>) which is amended by GN 26/2014 (<u>GG 5425</u>) and by GN 63/2019 (<u>GG 6868</u>) and by GN 166/2021 (<u>GG 7601</u>).
- Otjikaoko-GN 111/2009 (<u>GG 4262</u>), as amended by GN 96/2011 (<u>GG 4747</u>) (which is amended by GN 312/2017 (<u>GG 6482</u>)) GN 234/2015 (<u>GG 5853</u>) (which is amended by GN

86/2018 (<u>GG 6595</u>) and by GN 55/2022 (<u>GG 7747</u>)), GN 442/2022 (<u>GG 7996</u>) and GN 260/2024 (<u>GG 8438</u>)

Otjimana (Eiseb Block Traditional Community)-GN 240/2021 (GG 7673)

Oukwanyama-GN 101/2009 (<u>GG 4262</u>), replaced by GN 57/2010 (<u>GG 4450</u>), as amended by GN 258/2012 (<u>GG 5061</u>) – which is amended by GN 237/2014 (<u>GG 5613</u>) and by GN 152/2020 (<u>GG 7271</u>) – and by GN 180/2022 (<u>GG 7841</u>)

GN 237/2014 (GG 5613) contains an amendment in respect of assessors-designate and judges of a community court, but it is not clear what is being amended. The heading of GN 237/2014 states that it amends "Government Notice No. 101 of 20 May 2009 relating to the recognition of the Oukwayama [sic] Customary Court". However, GN 101/2009 was withdrawn by GN 57/2010 (GG 4450). The text of GN 237/2014 states that it amends "Government Notice. 95 of 20 May 2009 as set out in the Schedule"; GN 95/2009 pertains to the Mafwe Community Court. The Schedule of GN 237/2014 states that it amends "Government Notice No. 285 of 15 October 2012"; however, this appears to be a typographical error and was probably meant to refer to GN 258/2012, issued on 15 October 2012, which relates to the Oukwanyama Community Court. It would appear that the amendment in GN 237/2014 was intended to apply to the Oukwanyama Community Court.

Ovambanderu-GN 281/2015 (<u>GG 5892</u>), as amended by GN 295/2019 (<u>GG 7020</u>) and by GN 366/2022 (<u>GG 7966</u>)

Note that the text of GN 295/2019 states that it amends GN 105/2009, while the title and the Schedule correctly state that it amends GN 281/2015.

Shambyu-GN 108/2009 (<u>GG 4262</u>), as amended by GN 97/2013 (<u>GG 5175</u>) and by GN 207/2013 (<u>GG 5256</u>)

The title and the Schedule of GN 97/2013 state that GN 97/2013 amends GN 108/2009 relating to the Shambyu Customary Court, but the introductory text indicates that it amends GN 60/2009. The cited publication date of 20 May 2009 matches GN 108/2009. (GN 60/2009 is a moratorium on import of large predators and alien species of wild animals issued under the Nature Conservation Ordinance, 1975.)

- Tsoaxudaman-GN 60/2010 (<u>GG 4450</u>), as amended by GN 76/2013 (<u>GG 5161</u>), GN 98/2021 (<u>GG 7534</u>), GN 119/2021 (<u>GG 7553</u>) and GN 168/2021 (<u>GG 7601</u>)
- Ukwangali-GN 98/2013 (GG 5175), as amended by GN 16/2018 (GG 6524)

Note that the name of the community court is "Ukwangali" in GN 98/2013 and "Uukwangali" in GN 16/2018.

Uukolonkadhi-GN 58/2010 (<u>GG 4450</u>), as corrected by GN 321/2023 (<u>GG 8223</u>) and as amended by GN 113/2012 (<u>GG 4941</u>) – which is amended by GN 229/2015 (<u>GG 5848</u>) and by GN 182/2019 (<u>GG 6952</u>) – and by GN 404/2022 (<u>GN 7979</u>), GN 405/2022 (<u>GN 7979</u>) and GN 406/2022 (<u>GN 7979</u>)

Note that GN 113/2012, GN 404/2022. GN 405/2022 and GN 406/2022 all state that they are amending GN 59/2010, but they must have intended to refer to GN 58/2010 which concerns the Uukolonkadhi Community Court; GN 59/2010 concerns the Uukwambi Community Court.

- Uukwaluudhi-GN 110/2009 (<u>GG 4262</u>), as amended by GN 290/2012 (<u>GG 5094</u>), GN 147/2013 (<u>GG 5221</u>), GN 246/2022 (<u>GG 7878</u>), GN 247/2022 (<u>GG 7878</u>) and GN 248/2022 (<u>GG 7878</u>)
- Uukwambi-GN 102/2009 (<u>GG 4262</u>), replaced by GN 59/2010 (<u>GG 4450</u>), as amended by GN 227/2020 (<u>GG 7333</u>) and by GN 359/2022 (<u>GG 7955</u>)
- Vita-Thom Royal House-GN 88/2009 (<u>GG 4262</u>), as amended by GN 114/2012 (<u>GG 4941</u>), GN 30/2015 (<u>GG 5681</u>), GN 228/2015 (<u>GG 5848</u>) and GN 121/2021 (<u>GG 7553</u>)
- !Xoo-GN 145/2013 (<u>GG 5221</u>), as amended by GN 116/2017 (<u>GG 6309</u>), GN 175/2020 (<u>GG 7290</u>) and GN 90/2023 (<u>GG 8066</u>)
- Zeraeua-GN 61/2010 (<u>GG 4450</u>), as amended by GN 7/2014 (<u>GG 5397</u>) which is amended by GN 65/2019 (<u>GG 6868</u>) and GN 53/2022 (<u>GG 7747</u>) and by GN 54/2022 (<u>GG 7747</u>) (which corrects the spelling of "Zeraeua") and GN 178/2022 (<u>GG 7841</u>).

These notices also designate areas of jurisdiction and appoint assessors and justices.

Cases:

Muteka v Leopold (CR4-2016) [2015] NAHCNLD 63 (29 July 2016) (review of appeal proceedings in magistrate's court in terms of section 27(1)(a) of Act; appeal proceedings set aside because of failure of magistrate's court to appoint two assessors as required by the Act)

LM v JM & Others 2016 (2) NR 603 (HC) (enforcement of order of community court)

Sv Mutero (CC 04/2020) [2021] NAHCNLD 97 (27 October 2021) (a community court is a creature of statute and is a civil court having civil jurisdiction, since section 22 on substantive orders that such courts can issue mentions only orders for compensation, damages, restitution, or specific performance according to customary law).

Commentary:

N Horn, "Criminal or Civil Procedure? The Possibility of a Plea of *Autrefois* in the Namibian Community Courts Act" in Manfred O Hinz & Helgard K Patemann (eds), *The Shade of New Leaves: Governance in Traditional Authority – A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006

N Horn, "Community Courts In Namibia: Life or Death For Customary Law?" in MO Hinz, *In Search of Justice and Peace: Traditional and Informal Justice Systems in Africa*, Windhoek: Namibia Scientific Society, 2009

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 6.3: Jurisdiction in Terms of the Traditional Authorities Act, 2000 (Act No. 25 of 2000), and the Community Courts Act, 2003 (Act No. 10 of 2003)).

Magistrates Act 3 of 2003 🕎 👨

Summary: This Act (originally published in <u>GG 2996</u>) provides for the establishment of a Magistrates Commission and establishes a magistracy outside the Public Service. Part II of the Act was brought into force on 20 June 2003, and the remainder of the Act was brought into force on 30 June 2003. Both dates were announced in GN 125/2003 (GG 3001).

Amendments: Act 23/2003 (<u>GG 3122</u>) amends section 11 of the Act. Act 5/2009 (<u>GG 4307</u>) amends sections 1 and 11, and substitutes the expression "Chief Magistrate" for "Chief: Lower Courts" and "Chief of lower courts".

Act 2/2014 (<u>GG 5431</u>) amends sections 1, 4, 5, 6, 7, 10, 12, 19, 20, 21, 25, 26 and 27 substitutes sections 11, 13, 14, 16, 24 and 28, and inserts section 5A and Schedule 1.

Regulations: Regulations regarding Magistrates, which came into force on 30 June 2003, are contained in GN 130/2003 (GG 3007), as amended by GN 200/2015 (GG 5828) (which inserted Part VA on misconduct).

Notices: The remuneration of magistrates is increased by GN 44/2009 (<u>GG 4236</u>), GN 297/2012 (<u>GG 5094</u>), GN 236/2014 (<u>GG 5613</u>), GN 96/2016 (<u>GG 6008</u>), GN 202/2017 (<u>GG 6377</u>) and GN 155/2023 (<u>GG 8101</u>).

A Code of Conduct for Magistrates is contained in GN 190/2010 (GG 4551). This Code was issued by the Magistrates Commission in terms of section 4(1)(b) of the Act, after consultation with the Judges' and Magistrates' Association of Namibia.

Certain degrees or equivalent qualifications in law are recognised as being satisfactory qualifications for appointment of a person as a magistrate in GN 166/2015 (<u>GG 5795</u>) as amended by GN 237/2021 (<u>GG 7673</u>), and in GN 268/2022 (<u>GG 7904</u>), GN 14/2023 (<u>GG 8021</u>) and GN 31/2024 (<u>GG 8329</u>). Note that there are two versions of GG 8021. However, GN 14/2023 is identical in both versions.

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003

(<u>GG 3020</u>), GN 155/2009 (<u>GG 4310</u>), GN 54/2011 (<u>GG 4701</u>), GN 189/2012 (<u>GG 5005</u>), GN 165/2015 (<u>GG 5795</u>), GN 151/2018 (<u>GG 6660</u>), GN 70/2020 (<u>GG 7142</u>), GN 225/2020 (<u>GG 7333</u>), GN 157/2021 (<u>GG 7590</u>), General Notice 52/2022 (<u>GG 7747</u>), GN 89/2023 (<u>GG 8066</u>) and GN 208/2024 (<u>GG 8402</u>). A designation of the chairperson of the Commission is announced in GN 41/2021 (<u>GG 7482</u>).

Cases:

- Mostert v Minister of Justice 2003 NR 11 (SC) (magistrates are not part of the Public Service and are not governed by the Public Service Act 13 of 1995; legislation must be introduced to regulate the magistracy, which resulted in this Act)
- Mostert & Another v The Magistrates' Commission & Another 2005 NR 491 (HC) (consideration of whether composition of Magistrates Commission in terms of section 5 undermines independence of magistracy)
- Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (section 11(7); appointment of acting magistrates by Magistrates Commission is generally constitutional, but appointment of Chief: Lower Courts who is a public servant as acting magistrate is an impermissible violation of independence of judiciary); appealed on other grounds in 2010 (1) NR 328 (SC); remedied by amendments made by Act 5 of 2009)
- Alexander v Minister of Justice & Others 2010 (1) NR 328 (SC), para 19 (Minister's designation of magistrate to conduct extradition enquiry under Extradition Act 11 of 1996 does not interfere with independence of magistrates under this Act)
- Minister of Justice v Magistrates' Commission & Another 2012 (2) NR 743 (SC) (role of Minister of Justice and Magistrates' Commission in respect of disciplinary proceedings under sections 3, 13(1), 21(3)(a) and 26(17)(ii), in light of constitutional principle of separation of powers; Minister must follow Commission's recommendation for dismissal under section 21(3))
- Le Roux v Minister of Justice & Others 2015 (1) NR 131 (HC) (appeal of dismissal provided for in section 21(4) does not exclude review; written reasons need not be provided at time of decision on misconduct, but must be provided to Magistrates Commission within seven days of conclusion of investigation in terms of in terms of section 26(12))
- Ndeitunga v Kavaongelwa 2016 (3) NR 622 (HC) (defamation case with discussion of Act's provisions on misconduct at paragraphs 10-15)
- The Act is discussed in a dissenting opinion in *Visagie v Government of the Republic of Namibia & Others* 2017 (2) NR 488 (HC) (Geier J, paras 166-176); majority opinion confirmed on appeal in *Visagie v Government of the Republic of Namibia & Others* 2019 (1) NR 51 (SC).
- S v Stewe and Three Similar Matters 2019 (2) NR 359 (SC) (sections 11(3), 14); meru moto recusal falling short of requirements for recusal).
- Bampton v Magistrates' Commission & Another 2020 (3) NR 328 (HC) (three avenues for investigating misconduct: (1) section 25 of the Act-preliminary investigation followed by formal charge of misconduct; (2) section 26(1)(b) of the Act-direct investigation of formal charge of misconduct, (3) regulation 21-acting on written complaint from member of public; Commission has the power to initiate an investigation if it believes that a magistrate has committed an act of misconduct, without a public complaint; meaning of "may not" in section 26(14)-(15) and regulation 28(1) is mandatory and not discretionary; point 11(1) in the Code of Conduct for Magistrates (erroneously referred to as a "regulation" in the judgment) depends on creating a reasonable apprehension of bias in the mind of a reasonable observer and does not require a showing of prejudice suffered by anyone; duty of magistrates to familiarise themselves with the relevant Code of Conduct; dismissal of magistrate on basis that she is not a fit and proper person to occupy the office is confirmed)
- Chief Magistrate: Philanda Christiaan & Others v Chief Regional Officer: //Kharas Regional Council & Others 2023 (3) NR 755 (HC) (Magistrates Commission does not have power or authority to attempt to review and set aside a decision of a magistrate, as this would interfere with the judicial independence guaranteed by section 4(4); the Commission has only the power to institute disciplinary proceedings).

UNIFORM RULES OF COURT

The **Uniform Rules of Court** are no longer applicable in Namibia. However, cases concerning these rules may contain information which is useful for the interpretation of other court rules and so are listed here:

Rule 6(11):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Rule 6(12)(b):

Salt & Another v Smith 1990 NR 87 (HC)

Rule 31(2)(b):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Krauer & Another v Metzger (2) 1990 NR 135 (HC)

Maia v Total Namibia (Pty) Ltd 1990 NR 216 (HC)

SOS-Kinderdorf International v Effie Lentin Architects 1990 NR 300 (HC)

Argos Fishing Company Ltd v Friopesca SA 1991 NR 106 (HC)

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC)

Rule 45(1):

Namib Building Society v Du Plessis 1990 NR 161 (HC)

Rule 53:

Federal Convention of Namibia v Speaker, National Assembly of Namibia & Others 1991 NR 69 (HC)

Booysen v Kalokwe NO & Others 1991 NR 95 (HC)

Rule 63:

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

SELECTED CASES

- S v Heita 1992 NR 403 (HC) (Article 78(2) of the Constitution "makes it absolutely clear that the independent Court is subject only to the Constitution and the law. This simply means that it is also not subject to the dictates of political parties, even if that party is the majority party. Similarly it is not subject to any other pressure group.")
- National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC) (superior court may in exceptional circumstances intervene in uncompleted proceedings before a lower court to prevent or obviate a grave injustice, but only where the matter is before the superior court in an appeal or review application; inherent jurisdiction of a superior court is limited to matters which are before that court and not matters which are before a lower court)
- EK v BK 2017 (2) NR 474 (HC) (duties of legal practitioners and courts in connection with hierarchy of courts; duty of legal practitioners to clients is secondary to their duty to the court)
- Visagie v Government of the Republic of Namibia & Others 2017 (2) NR 488 (HC) (no State liability for breach of fundamental rights by judicial officer); confirmed on appeal in Visagie v Government of the Republic of Namibia & Others 2019 (1) NR 51 (SC)
- S v SSH 2017 (3) NR 871 (SC) (test for recusal of presiding officer; whether recusal is appropriate after accused appears in court in prison attire depends on the facts of case and was not justified here) There are two circumstances in which a judge must recuse himself or herself. The first is where the judge is actually biased or has a clear conflict of interest and the second is where a reasonable person, in possession of the facts, would harbour a reasonable apprehension that the judge is biased. The protection of the constitutional principle of judicial impartiality imposes on the judge the duty to recuse if a reasonable person would have a reasonable apprehension that the judge is biased. (para 18)
- Minister of Finance & Another v Hollard Insurance Co of Namibia Ltd & Others 2019 (3) NR 605 (SC) (test for recusal and duty of disclosure in marginal cases)
- Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (undesirability of citing judicial officers as parties in absence of allegations of bias, malice, fraud or similar, and need for judicial officers who are cited to have independent legal representation "to shield the independence of the judiciary from undue attacks and vicissitudes"

(para 48))

- Teachers Union of Namibia v Namibia National Teachers Union & Others 2020 (2) NR 516 (SC) (approach to contempt of court in civil proceedings set out in Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) is a sound one that should be followed by Namibian courts; see para 11)
- Gariseb v Ultimate Safaris (Pty) Ltd 2020 (3) NR 786 (SC) (legal practitioner's duty to cite authority for and against client's position; see para 12)

COMMENTARY

- Law Reform and Development Commission, *Report on Small Claims Courts*, LRDC 6, 1997, available here
- Nico Horn & Anton Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Education, 2008, available here
- Nico Horn & Anton Bösl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available here
- Dennis U Zaire & Holger Haibach, "The Midgard Process", *Namibia Law Journal*, Volume 4, Issue 1, 2012, available here
- Legal Assistance Centre, Access to Justice in Namibia: Proposals for Improving Public Access to Courts, 2012, available here

Access to Justice as a Human Right, Paper No 1

Locus standi: Standing to Bring a Legal Action, Paper No 2

Costs and Contingency Fees, Paper No 3

Amicus Curiae Participation, Paper No 4

- Nico Horn, "S v Hoabeb: A Dummy's Guide on How to Avoid Justice in Namibia for Ten Years", Namibia Law Journal, Volume 5, Issue 1, 2013, available here
- Diane R Hazel, "Litigating with class: Considering a potential framework for class actions in Namibia", *Namibia Law Journal*, Volume 6, Issue 1, 2014, available here
- Jaime Smit, "Every story has three versions yours, mine and the truth: The admissibility of polygraph tests in court", *Namibia Law Journal*, Volume 6, Issue 2, 2014, available here
- Law Reform and Development Commission, *Locus Standi Discussion Paper*, LRDC 27, 2014, available here
- Sam Amoo, "The relevance of comparative jurisprudence in the Namibian legal system" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available here
- Nico Horn, "Transformative Constitutionalism: A Post-Modern Approach to Constitutional Adjudication in Namibia" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available here
- Nico Horn, Interpreting the Interpreters (The Namibian Constitution in the Courts), Konrad Adenauer Stiftung, 2017
- Wilhelmina N Shakela, "Transforming the Judiciary: The Adoption of e-Justice in Namibia" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here.

INTERNATIONAL LAW

Statute of the International Court of Justice (see Charter of the United Nations (UN), 1945) SADC Protocol on the Tribunal, 2000 **SADC Protocol on the Tribunal, 2014

Commentary on SADC Tribunal:

- Oliver C Ruppel & Francois X Bangamwabo, "The SADC Tribunal: a legal analysis of its mandate and role in regional integration" in Anton Bösl & Trudi Hartzenberg (eds), *Monitoring Regional Integration in Southern Africa Yearbook 2008*, Konrad Adenauer Stiftung, available here
- Karin Klazen, "Towards a Southern African Development Community: The SADC Tribunal and its recent cases", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here
- PN Ndlovu, "Campbell v Republic of Zimbabwe: A moment of truth for the SADC Tribunal", SADC Law Journal, Volume 1, 2011, available here
- W Scholtz, "Review of the role, functions and terms of reference of the SADC Tribunal", *SADC Law Journal*, Volume 1, 2011, available here
- A Afadameh-Adeyemi, "Barry Gondo & 8 Others v The Republic of Zimbabwe, SADC (T) 05/2008", SADC Law Journal, Volume 1, 2011, available here
- O Adeleke, "Revisiting locus standi and the grounds for jurisdiction of the SADC Tribunal in United Republic of Tanzania v Cimexpan (Mauritius) Ltd, Cimexpan (Zanzibar) Ltd & Ajaye Jogoo, SADC (T) 01/2009", SADC Law Journal, Volume 1, 2011, available here
- Gerhard Erasmus, "What future now for the SADC Tribunal? A plea for a constructive response to regional needs", *Namibia Law Journal*, Volume 4, Issue 2, 2012, available here
- Lukas Knott, "How to Reboot the SADC Tribunal: A European Perspective", SADC *Law Journal*, Volume 2 (2), 2012, available here
- Dennis U Zaire & Kathrin Schneider, "The SADC Tribunal: Exclusive access?", *Namibia Law Journal*, Volume 5, Issue 1, 2013, available here.

See also ADMIRALTY LAW.

See also *Criminal Procedure Act 51 of 1977* and Extradition Act 11 of 1996 (**CRIMINAL LAW AND PROCEDURE**).

See also EVIDENCE.

See also JUDGES.

See also Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933 (execution of judgements in respect of immovable property) (LAND AND HOUSING).

See also LAW.

See also LEGAL PRACTITIONERS.

CRIMINAL LAW AND PROCEDURE

Police Offences Proclamation 27 of 1920 📲 🙀

Summary: This Proclamation (originally published in OG 33) criminalises a miscellary of activities, primarily nuisances such as littering and swearing. One of the provisions cited in post-independence cases (section 9(1)) makes it a crime to possess housebreaking implements without lawful excuse.

Amendments: This Proclamation is amended by Ord. 3/1962 (OG 2390), Ord. 15/1962 (OG 2409), the RSA *Prohibition of Disguises Act 16 of 1969* (RSA GG 2316) and Act 21/1980 (OG 4310).

The Proclamation was applied to the Rehoboth Gebiet in modified form by Proc. 5/1937 (OG 702).

Regulations: The Proclamation makes no provision for regulations.

Cases: S v Boois; S v Thomas 1991 NR 455 (HC) (accused found not guilty of charge of riotous behaviour under this Proclamation); S v Kamudulunge 2007 (2) NR 608 (HC) (competent sentence for contravention of section 9(1)); S v Nangaku & Another 2014 (2) NR 369 (HC) (competent sentence for contravention of section 9(1)).

Finance and Audit Ordinance 1 of 1926, section 24D 📲 🙀

Summary: Only section 24D of this Ordinance (originally published in OG 208) remains in force. This section provides that the government may pay a reward to informers whose information assists in law enforcement relating to illegal dealing in precious stones or metals. The section in question was inserted by Ord. 42 of 1952, where it was originally numbered 24*bis*. It was amended and renumbered as 24D by Ord. 28/1969 (OG 3011). The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930 (OG 365).

Amendments: The State Finance Act 1 of 1982 (<u>OG 4610</u>) (which was repealed by the State Finance Act 31 of 1991 (<u>GG 333</u>)) repeals all of the Ordinance *except* sections 24D and 26A. The Tender Board of Namibia Act 16 of 1996 (<u>GG 1380</u>) repeals section 26A, leaving only section 24D in force.

Section 24D was inserted by Ord. 42/1952 (OG 1732), where it was originally numbered 24bis. It was amended and renumbered as 24D by Ord. 28/1969 (OG 3011).

Regulations: Section 24D makes no provision for regulations.

Witchcraft Suppression Proclamation 27 of 1933 🕎 🙀

Summary: This Proclamation (OG 538) attempts to suppress witchcraft by criminalising various activities. It was extended to the Rehoboth Gebiet by Proc. 12/1936 (OG 668).

Regulations: The Proclamation makes no provision for regulations.

Cases: The reference to whipping in section 1 is invalidated by Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State 1991 NR 178 (SC), even though this Proclamation is not specifically mentioned. That case made the following order: "It is declared that the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with Article 8 of the Namibian Constitution."

Although not involving this statute, see *Neis v Kasume & Others* 2024 (1) NR 59 (SC) on undue influence in relationship between client and alleged traditional healer/"prophet"/"witchdoctor".

General Law Amendment Ordinance 12 of 1956, sections 6-8 🕎 🙀

Summary: Sections 6-8 of this Ordinance (originally published in <u>OG 2018</u>) deal with stolen goods. (Section 4 of this Ordinance is discussed under ARMS AND AMMUNITION, and section 5 is discussed under INHERITANCE.)

Amendments: This portion of the Act is amended by Ord. 36/1965 (OG 2642).

Regulations: There is no provision for regulations in these sections.

Cases:

S v Kakulu 1990 NR 282 (HC)

S v Thomas 1990 NR 352 (HC)

S v Kamati 1991 NR 116 (HC)

S v Shikwetepo & Another 1993 NR 356 (HC)

S v Greenwood 1994 NR 1 (HC)

S v David 1994 NR 39 (HC)

S v Kapolo 1995 NR 129 (HC)

S v Gaogoseb 1995 NR 165 (HC)

S v Abraham 1997 NR 59 (HC)

S v Nakapela & Another 1997 NR 184 (HC)

S v Aixas & Another 2007 (1) NR 46 (HC)

S v Silas 2013 (3) NR 760 (HC) (correct formulation of charge)

Gomes v Prosecutor-General [2013] NAHCMD 240 (struck down the phrase "proof of which shall be on such first-mentioned person" in section 7(1), but was reversed on appeal in Prosecutor-General of the Republic of Namibia v Gomes & Others 2015 (4) NR 1035 (SC), with the effect that section 7(1) remains as it stands in the Ordinance).

Riotous Assemblies Act 17 of 1956, sections 16-18 and 19A-21, as amended in South Africa to November 1979

Summary: Most of this Act (originally published in <u>SA GG 5651</u>) was repealed in respect of South West Africa. The remaining sections address power to regulate the transportation of explosives and the criminal offences of incitement to public violence, conspiracy, attempted crimes, and inducement to commit crimes.

Applicability to SWA: Section 19A, inserted by Act 79 of 1976, with effect from 16 June 1976, states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended.

After the date of transfer, much of the Act was repealed by the *Intimidation Act 72 of 1982*, which was made applicable to SWA by virtue of the Security Matters Proclamation, AG 29 of 1985 (OG 5059). Other portions of the Act were repealed in South Africa by the *Internal Security Act 74 of 1982* (RSA GG 8232), which was not applicable to SWA. Therefore the Act applied to South West Africa as it stood after *Act 72 of 1982*, but before *Act 74 of 1982*.

In support of this interpretation, see *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A):

On appeal before us Mr. Gauntlett, for the appellant, accepted the Court's finding that section 29 of the General Law Amendment Act [101 of 1969] applied in South West Africa, but that the Internal Security Act [74 of 1982] did not. I agree with this. Section 29(3) of the General Law Amendment Act specifically provides that the provisions of section 29 and any amendment thereof apply also in the territory of South West Africa. No corresponding provision is found in the Internal Security Act. And it is noteworthy that sub-sections 66(1) and (2) of the Internal Security Act correspond almost word for word with sub-sections 29(1) and (2) of the General Law Amendment Act (as substituted by section 25 of the General Law Amendment Act, no. 102 of 1972) save that the latter contain a reference to South West Africa whereas the former do not. The meaning and effect of this reference will be considered later, but its absence from section 66 of the Internal Security Act is a further indication that the latter act was not intended to apply in South West Africa.

Section 3(1)(f) of the transfer proclamation excluded the term "Republic" from the provisions of section 3(1)(c) of the General Proclamation *except* where it occurs for the second and third times in section 5 of the Act. Thus, in the remainder of the Act, "Republic" continued to refer only to South Africa even after the transfer.

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

- *Unlawful Organisations Act 34 of 1960* (SA GG 6413)
- General Law Amendment Act 39 of 1961 (SA GG 6692)
- General Law Amendment Act 76 of 1962 (RSA GG 273)
- Riotous Assemblies Amendment Act 30 of 1974 (RSA GG 3221).

However, the first three of these four amending Acts applied only to sections of the Act that have since been repealed. The Act was further amended and made applicable to SWA by the *Internal Security Amendment Act 79 of 1976* (RSA GG 5159).

The Riotous Assemblies Amendment Proclamation (AG 10/1977) (OG 3665) repeals sections 4 and 19 and amends sections 1, 2, 3 and 7 (all now repealed).

After the date of transfer, the Act was amended by the *Intimidation Act 72 of 1982*, which was made applicable to SWA by virtue of the Security Matters Proclamation, AG 29 of 1985 (OG 5059) and which repealed sections 10-15.

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) (OG 5726) repeals sections 2, 6 and 7(1)(a), amends section 4 (which had already been repealed by AG 10/1977) (OG 3665), and amends sections 5 and 7(1)(b) (both now repealed).

The Public Gatherings Proclamation (AG 23/1989) (OG 5756) repeals sections 1, 3, 5, 7, 8 and 9.

Thus, the only remaining sections of the Act are sections 16, 17, 18, 19A, 20 and 21.

Regulations: There is no provision for regulations in the sections of the Act that remain in force.

Cases:

- S v Campbell & Others 1990 NR 310 (HC); Awaseb, Geinub, Lange v S, High Court, Case No. CA 46/2003 (unreported)
- S v Gariseb 2019 (2) NR 334 (SC) (section 18 applied to charge of rape under Combating of Rape Act 8 of 2000)
- S v Jonas 2019 (4) NR 924 (HC) (if attempted rape had been proved, conviction would have had to be under section 18(1) of this Act and not the Combating of Rape Act 8 of 2000).

General Law Amendment Ordinance 13 of 1962, section 9 🖷 🖶

Summary: Section 9 of this Ordinance (<u>OG 2409</u>) sets forth the criminal offences of attempt, conspiracy and inducing another to commit an offence.

Regulations: There is no provision in this section for regulations.

Criminal Procedure Ordinance 34 of 1963, sections 300(3) and 370 🕎 🙀

Summary: Only sections 300(3) and 370 of this Ordinance (OG 2504) are still in force. Section 300(3) concerns the criminal offence of perjury. Section 370 deals with peace bonds. (These sections are the South West African counterparts of sections 319(3) and 384 of the *Criminal Procedure Act 56 of 1955* which applied to South Africa.) The other sections of the Ordinance have been repealed by the *Criminal Procedure Act 51 of 1977*.

Repeals: The Ordinance repeals the Special Justices of the Peace Proclamation 25 of 1921 (OG 63) as amended and the Criminal Procedure and Evidence Proclamation 30 of 1935 (OG 649) as amended.

Regulations: There is no provision for regulations in the surviving sections.

Cases: Sv Somses 1999 NR 296 (HC) (section 300(3)); S. v Gariseb 2002 NR 112 (HC) (section 300(3)).

Prohibition of Disguises Act 16 of 1969, as amended in South Africa prior to Namibian independence are represented in South Africa prior to Namibian

Summary: This Act (<u>RSA GG 2316</u>) sets forth penalties for being in disguise in suspicious circumstances.

Applicability to SWA: Section 3 states "This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and defined in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No. 147 of 1939 of the Republic)."

Transfer of administration to SWA: It is not clear what transfer proclamation, if any, applied to this Act. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Criminal Procedure Act 51 of 1977, as amended in South Africa to November 1979

Summary: This Act (originally published in <u>RSA GG 5532</u>) governs procedure in criminal proceedings. It was brought into force in both South Africa and South West Africa on 22 July 1977 by RSA Proc. R.148/1977 (<u>RSA GG 5654</u>). It was applied to Rehoboth insofar as it relates to matters which fell under the Legislative Authority of Rehoboth by the Criminal Procedure Act 3 of 1982 (Rehoboth) (<u>Official Gazette 70 of Rehoboth</u>, dated 11 March 1983).

Repeals: The Act repeals the following laws in respect of SWA:

• Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920 (OG 33), in so far as it relates to the attendance by witnesses of criminal proceedings in courts in the Republic

- Criminal Procedure and Evidence Proclamation 30 of 1935 (OG 649), in so far as it applies to the Eastern Caprivi Zipfel
- Criminal Procedure Ordinance 34 of 1963 (OG 2504) and its amendments, except sections 300(3) and 370 (see the listing above in this section).

The Criminal Procedure Ordinance 34 of 1963 had already repealed the Criminal Procedure and Evidence Proclamation 30 of 1935 in general (without reference to the Eastern Caprivi Zipfel) and the Special Justice of the Peace Proclamation 25 of 1921. The Criminal Procedure and Evidence Proclamation 30 of 1935 repealed the Criminal Procedure and Evidence Proclamation 20 of 1919 (OG 25).

Applicability to SWA: Section 1 defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". "State", in relation to a department of State, is defined to include "the Administration of the territory". Section 343 states "This Act shall apply also in the territory, including the Eastern Caprivi Zipfel."

The wording of section 343 did not make amendments to the Act in South Africa automatically applicable to SWA. None of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to SWA, but they were probably applicable by virtue of the definition of "Republic" in section 1 of the Act where they were made prior to the date of transfer.

This would mean that the South African Criminal Procedure Matters Amendment Act 79 of 1978 (which was published and came into force on 2 June 1978 and amends section 185), and Criminal Procedure Amendment Act 56 of 1979 (which was published and came into force on 1 June 1979 and amends sections 50, 60, 75, 119, 121, 123, 124, 144, 170, 212, 217, 296, 300, 307 and Schedule 3, and inserts section 115A, Chapter 19A and section 219A) were applicable to SWA. Note that the South West African Criminal Procedure Matters Act 31 of 1985 refers to previous amendments by the Criminal Procedure Amendment Act 56 of 1979, lending further support to this conclusion.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. Both of the amending Acts cited above came into force before this date.

Section 3(1)(t) of the transfer proclamation (as amended) excluded the following provisions of the principal Act from the operation of section 3(1) of the General Proclamation:

- sections 77, 78 and 79 (except 79(11)): These provisions concern the capacity of the accused to understand proceedings, *i.e.* mental illness and criminal responsibility. (Section 79(11) concerns the tariff used to compensate a court psychiatrist. It is *not* excluded from the operation of section 3(1), meaning that here "Minister" was interpreted to mean Administrator-General.)
- section 106(1)(e): Under this provision, an accused may plead that he has received a free pardon from the State President under section 327(b), which is similarly excluded from the operation of section 3(1).
- section 111: This section allows the Minister to remove trials to the jurisdiction of another attorney-general.
- section 279(1)(b), (2) and (3): These provisions deal with the commutation of death sentences by the State President.
- section 323: This section concerns the ability of the Minister of Justice to refer a case where the death sentence has been imposed to the Appellate Division for consideration.
- section 325: This section concerns the State President's power to extend mercy to any person.
- section 327: This section concerns the State President's power to issue a pardon or substitute a verdict of the court.
- section 333: Under this provision, the Minister of Justice may refer questions to the Appellate Division on a question of law.

These powers were not transferred to the Administrator-General.

Section 3(1)(t) of the transfer proclamation also exempted the following sections from the operation of section 3(1)(c) of the General Proclamation (concerning the interpretation of the term "Republic"):

section 3: This section establishes the Attorney-General as the prosecuting authority for the State.

section 212(4)(a): This section deals with proof of certain facts by affidavit or certificate.

section 229: This section deals with evidence of times of sunrise and sunset. ("Republic" is excluded from the operation of section 3(1)(c) only the first time it occurs here.)

section 328: This section concerns the enforceability of warrants, subpoenas, summons, etc. executed within the Republic.

Thus, "Republic" in the indicated places in these provisions retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(1)(t) of the transfer proclamation also excluded from the operation of section 3(1) of the General Proclamation all references to the "State," in relation to the authority to institute and conduct a prosecution and to make seizures.

Section 3(2)(b) of the transfer proclamation provides that the reference to the State President in section 117 of the Act "shall be construed as including a reference to the Administrator-General".

Section 1(2) of AG Proc. 24/1983 (OG 4854), which amends the transfer proclamation, states: "In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation), in respect of section 3 of the Criminal Procedure Act, 1977 (Act 51 of 1977), this proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to section 3 of the said Criminal Procedure Act, 1977."

Section 2 of AG Proc. 24/1983 (OG 4854) states: "In the application of the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), section 3 thereof shall be deemed to be amended by the substitution for the words "public service", wherever they occur, of the expression "government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980)."

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Assignment of powers: GN 55/1987 (OG 5348) contains an assignment of powers in the Act to the Minister of Justice –

Sections 3(4), 70, 79(11)(b), 145(5), 148(3)(c) and 233(2) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

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

- Criminal Procedure Matters Amendment Act 79 of 1978 (RSA GG 6041)
- Criminal Procedure Amendment Act 56 of 1979 (RSA GG 6476)

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978, amends certain terminology.

The Criminal Procedure Amendment Act 15 of 1981 (OG 4566), which is brought into force by AG 31/1981 (OG 4577), amends sections 114 and 116.

The Appeals Amendment Act 29 of 1985 (OG 5149), which is brought into force by AG 19/1986 (OG 5182), amends sections 315-319 and 323.

The Criminal Procedure Matters Act 31 of 1985 (OG 5151), amends the Act substantially (affecting sections 24, 37, 42, 55, 56, 57, 60, 68A, 112, 119, 121, 145, 146, 169, 170, 188, 262, 296, 297, 300, 302, 307, Schedule 2 (Part II)).

The Criminal Procedure Amendment Act 5 of 1991 (<u>GG 215</u>) amends several provisions relating to bail (sections 59, 60, 61, 68, 72, 307 and Schedule 2).

The Criminal Procedure Amendment Act 26 of 1993 (GG 755) amends the Act to allow appeals by either party to the High Court and the Supreme Court (sections 310, 311, 316, 316A, 320, 321, 322).

The Combating of Rape Act 8 of 2000 (GG 2326), which was brought into force on 15 June 2000 (GN 140/2000, GG 2348), amends sections 1, 62, 153, 154 and 227 of the Act, and inserts sections 60A, 211A and 227A.

The International Co-operation in Criminal Matters Act 9 of 2000 (GG 2327), brought into force on 15 September 2001 by GN 185/2001 (GG 2614), amends section 171 and substitutes sections 172 and 173. Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

The Appeal Laws Amendment Act 10 of 2001 (GG 2585) substitutes section 315 and amends section 316.

The Combating of Domestic Violence Act 4 of 2003 (<u>GG 3002</u>), which was brought into force on 17 November 2003 by GN 234/2003 (<u>GG 3094</u>), amends sections 60A, 62 and 153.

The Maintenance Act 9 of 2003 (<u>GG 3043</u>), which was brought into force on 17 November 2003 by GN 232/2003 (<u>GG 3093</u>), amends section 195.

The Criminal Procedure Amendment Act 24 of 2003 (<u>GG 3123</u>) inserts sections 158A and 216A and amends sections 164, 166 and 212 (dealing with vulnerable witnesses and related matters).

The Criminal Procedure Amendment Act 13 of 2010 (<u>GG 4554</u>) amends sections 55-57, 72, 74 112, 170 and Schedule 2, substitutes sections 185 and 338, and inserts section 57A.

The Act is amended with respect to the use of various terms and cross-references by the Correctional Service Act 9 of 2012 (GG 5008), which was brought into force on 1 January 2014 by GN 330/2013 (GG 5365).

Note: S v Malumo & Others 2010 (1) NR 35 (HC) states the following at para 2 in respect of section 217(1)(a): "[NB: Para (a) has been substituted by s 11 of the Criminal Procedure Amendment Act 86 of 1996, a provision which will be put into operation by proclamation.]" However, there was no such amending Act in Namibia. It appears that the quoted provision erroneously refers to the South African version of the Criminal Procedure Act, as there is a Criminal Procedure Amendment Act 86 of 1996 in South Africa which substitutes section 217(1)(a) in the South African Criminal Procedure Act 51 of 1977.

The Child Care and Protection Act 3 of 2015 (<u>GG 5744</u>), which was brought into force on 30 January 2019 by GN 4/2019 (<u>GG 6829</u>), amends section 1 (to add a definition of "probation officer"), repeals sections 292, 293 and 294 and removes the words "or a whipping" from section 290(2).

Act 7/2023 (GG 8140) amends section 205 and inserts several new sections pertaining to police powers to obtain information; search and seizure of information, documents and electronic records; the use of audio-visual links or similar electronic transmissions in criminal cases; the application of certain provisions of the Electronic Transactions Act 4 of 2019 relating to data messages and computer evidence to criminal proceedings; and evidence obtained via police traps and undercover operations. This amending act was brought into force on 25 July 2023 by GN 224/2023 (GG 8153), with the exception of sections 158B, 159A, 159B, 159C, 159D and 250A, which are not yet in force.

The Witness Protection Act 11 of 2017 (<u>GG 6451</u>), which was brought into force on 20 October 2023 by GN 340/2023 (<u>GG 8239</u>), amends section 158A and repeals section 185.

The Combating of Rape Amendment Act 4 of 2022 (<u>GG 7932</u>), which was brought into force by GN 113/2024 (<u>GG 8365</u>), amends sections 60A, 62 and 164.

The Combating of Domestic Violence Amendment Act 6 of 2022 (<u>GG 7964</u>), which was brought into force by GN 112/2024 (<u>GG 8365</u>), amends sections 153 and 158A.

Note that there are two versions of GG 7964; the incorrect one misnumbers the amending Act as Act 5 of 2022 but the text is otherwise identical. GN 112/2024 erroneously refers to Act 5 of 2022 instead of Act 6 of 2022.

Note that Article 141(2) of the Namibian Constitution provides: "Any reference to the Attorney-General in legislation in force immediately prior to the date of Independence shall be deemed to be a reference to the Prosecutor-General, who shall exercise his or her functions in accordance with this Constitution."

Savings: Section 344(2) of the Act contains a savings clause:

Any regulation, rule, notice, approval, authority, return, certificate, document, direction or appointment made, issued, given or granted, and any other act done under any provision of any law repealed by this Act shall, subject to the provisions of subsection (3), be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act.

The repealed Criminal Procedure Ordinance 34 of 1963 (OG 2504) also contained a savings clause in section 377(2):

Any proclamation, regulation, notice, approval, authority, return certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

The repealed Criminal Procedure and Evidence Proclamation 30 of 1935 OG 649) contained a savings clause in section 213(4) in respect of the Criminal Procedure and Evidence Proclamation 20 of 1919 (OG 25). which it repealed:

The tariffs in force in the Territory at the commencement of this Proclamation shall, however, continued [sic] to be in force, until they are repealed, or any new tariff is prescribed under this section.

This reference to tariffs concerns witness tariffs. However, subsequent enactments on payments to witnesses have been issued, which makes this savings clause irrelevant at this stage.

The Witness Protection Act 11 of 2017 (<u>GG 6451</u>), which was brought into force on 20 October 2023 by GN 340/2023 (<u>GG 8239</u>) and which repeals section 185 of the Act, contains the following savings provisions in section 84(2):

Despite the repeal of section 185 of the Criminal Procedure Act, 1977 -

- (a) any person who has been placed under protection under the said section immediately before the commencement of this Act, remains under such placement and is deemed to have been placed under protection in terms of this Act; and
- (b) any regulation made under the said section and in force immediately prior to the commencement of this Act remains in force, except in so far as it is inconsistent with this Act, until replaced by or in terms of a regulation made under section 81.

Regulations: Regulations are authorised under the current Act by sections 185(3), 191(3) and 212(7A)(b).

Pre-independence **regulations on allowances payable to witnesses in criminal cases**, made in terms of section 191(3) of the current Act, are contained in RSA GN R.653/1980 (<u>RSA GG 6896</u>), as amended with effect from 1 April 1987 by SWA GN 34/1987 (<u>OG 5330</u>). These 1980 RSA regulations were enacted after the date of transfer (12 November 1979), but they explicitly state that they were made with the consent of the Administrator-General of SWA and shall also apply in SWA.

No other regulations which could be applicable to Namibia by virtue of the chain of savings clauses have been located. The only other pre-independence regulations located were made under the SA Criminal Procedure Act 56 of 1955, which was never applicable to SWA, and are thus irrelevant to

Namibia.

No regulations have been issued under this Act since independence.

Rules: Rules made in terms of section 376(1) of the Criminal Procedure Ordinance 34 of 1963 (OG 2504)¹⁰⁴ are contained in GN 133/1965 (OG 2651), as corrected by GN 167/1965 (OG 2658). These rules appear to survive in terms of the chain of savings clauses. They are not included in the database, which currently covers regulations but not rules.

Peace officers: Persons are declared to be peace officers in RSA GN R.159/1979 (<u>RSA GG 6295</u>), AG GN 85/1989 (<u>OG 2530</u>), GN 92/2001 (<u>GG 2530</u>) – which is amended by GN 241/2003 (<u>GG 3102</u>) – and GN 74/2003 (<u>GG 2946</u>).¹⁰⁵

Road inspectors referred to in section 11 of the *Road Transportation Act 74 of 1977* (now replaced by the Road Traffic and Transport Act 22 of 1999 except insofar as it relates to passenger transport) are declared to be peace officers in terms of certain offences relating to road transportation in GN 219/1996 (GG 1395) and in GN 92/2001 (GG 2530).

Traffic officers appointed under section 11(1)(d) of the Road Traffic and Transport Act 22 of 1999 are declared to be peace officers in respect of certain offences in GN 206/2008 (GG 4113), as amended by GN 243/2014 (GG 5624).

Fisheries inspectors designated in terms of section 4 of the Marine Resources Act 27 of 2000 and inspectors designated under section 23 of the Inland Fisheries Resources Act 1 of 2003 are declared to be peace officers in respect of certain offences in GN 38/2014 (GG 5438).

Other notices: Compensation payable to assessors who are not in the full-time employment of the State is set by GN 271/2019 (<u>GG 7001</u>).

Fees: As noted above, a tariff of allowances payable to witnesses in criminal cases, in the form of regulations made in terms of section 191(3) of the Act, is contained in RSA GN R.653/1980 (RSA GG 6896), as amended with effect from April 1987 by SWA GN 34/1987 (OG 5330). 106

Fees payable to psychiatrists in terms of section 79(11) of the Act are contained in RSA GN R.1315/1980 (RSA GG 7097), as amended with effect from April 1987 by SWA GN 35/1987 (OG 5330).

These 1980 RSA notices on tariffs were enacted after the date of transfer (12 November 1979), but both explicitly state that they were made with the consent of the Administrator-General of SWA and shall also apply in SWA.

Application of law: The Police Amendment Proclamation (AG 21/1983) affects the application of section 20.

The Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended by AG 24/1983, affects the application of section 3.

Section 4 of the Protection of Fundamental Rights Act 16 of 1988 provides that the provisions of the Criminal Procedure Act 51 of 1977 shall apply in relation to the entering and searching of premises or the search, arrest and detention of persons under that section, and that any member of the South African

¹⁰⁴ "The Administrator may make rules prescribing forms of complaint, summons, charges, depositions, indictments, judgments, records, convictions, warrants and recognizances and other forms to be used in any court or which may be prescribed."

¹⁰⁵ AG 85/1989 (OG 5818) also contains a declaration of peace officers, but only with reference to an Act that is no longer in force (Conditions of Employment Act 12 of 1986).

¹⁰⁶ In South Africa, RSA GN R.653/1980 was repealed prior to Namibian independence by RSA GN R.526/1986 (RSA GG 10152), but this enactment was not made applicable to South West Africa.

Defence Force will be considered a peace officer under the Criminal Procedure Act for that purpose.

Note that *S v Coetzee* 2011 (1) NR 359 (HC) emphasises that a record of criminal proceedings in a magistrate's court must be prepared in accordance with Chap XIII of the "Codified Instructions: Clerk of the Criminal Court" issued by the Permanent Secretary for Justice (Permanent Secretary's Administrative Circular dated 12 May 2008 re: 'Amendment of Codified Jurisdictions Justice Code: Clerk of Criminal Court', updated 19 March 2008).

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Cases:
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section 2:

S v NV 2017 (3) NR 700 (HC)

section 3:

Ex Parte Attorney-General In Re: The Constitutional Relationship Between the Attorney-General and the Prosecutor-General 1998 NR 282 (SC) (section 3(5) is inconsistent with the Namibian Constitution; it is superseded by Articles 87-88 of the Constitution and thus inapplicable to the relationship between the Attorney-General and the Prosecutor-General)

section 6:

S v Hausiko 1992 NR 225 (HC)

S v Fourie 2014 (4) NR 966 (HC)

Prosecutor-General of Namibia v Namoloh & Others 2020 (3) NR 839 (SC) (withdrawal under section 6(a) does not entitle accused to acquittal or impose obligation to reinstate a prosecution, and is thus not "provisional"; the person in question is no longer an "accused" under article 12(10(b) of the Constitution and is free of criminal accusation; once a charge is withdrawn under this provision, there is nothing to "stay")

Kamwi v Prosecutor-General of Namibia & Another 2021 (2) NR 477 (HC) (withdrawal under section 6(a) is provisional and not final, and applicant did not prove exceptional circumstances to justify a permanent stay of prosecution, citing test in S v Myburgh 2008 (2) NR 592 (SC))

section 10:

S. v Noble 2002 NR 67 (HC)

section 20:

Samco Import & Export CC & Another v Magistrate of Eenhana & Others 2009 (1) NR 290 (HC)

S v Thomas & Others 2007 (1) NR 365 (HC) (section 20 applied)

section 21:

S v Diergaardt 2000 NR 78 (HC)

Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC)

Samco Import & Export CC & Another v Magistrate of Eenhana & Others 2009 (1) NR 290 (HC)

section 22:

S v Diergaardt 2000 NR 78 (HC)

S v Thomas & Others 2007 (1) NR 365 (HC) (section 22 applied)

section 34:

S v Roux 2014 (3) NR 816 (HC)

Prosecutor-General v Miguel & Others 2017 (2) NR 381 (HC) (section 34(4) discussed at paras 23-25)

section 35:

Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)

S v Litombo 2010 (2) NR 473 (HC)

S v Candimba & Others 2013 (1) NR 70 (HC)

S v Roux 2014 (3) NR 816 (HC)

S v Miguel & Others 2018 (4) NR 946 (HC) (section 35(1))

section 37:

S v Ndikwetepo & Others 1992 NR 232 (SC)

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S v Eigowab 1994 NR 192 (HC) (blood sample for blood alcohol test)
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- S v Malumo & Others 2006 (2) NR 629 (HC)
- S v Gomeb & Others 2015 (4) NR 1100 (HC) (no order to draw blood samples where this would serve no purpose)
- S v Gemeng & Others 2018 (3) NR 701 (HC) (section 37(3) covers buccal swabs for DNA testing; this is not self-incrimination since results may exonerate or incriminate accused)

section 39:

S v Boois; S v Thomas 1991 NR 455 (HC)

S v Araeb 2006 (2) NR 569 (HC) (law on arrest discussed in connection with charge of escape from lawful custody)

S v Ashimbanga 2014 (1) NR 242 (HC) (law on arrest discussed in connection with charge of escape from lawful custody)

Sheefeni v Council of the Municipality of Windhoek 2015 (4) NR 1170 (HC) $\,$

section 40:

De Jager v Government of the Republic of Namibia & Another 2006 (1) NR 198 (HC)

S v Kazondandona 2007 (2) NR 394 (HC)

McNab & Others v Minister of Home Affairs & Others 2007 (2) NR 531 (HC)

Tjipepa v Minister of Safety and Security & Others 2015 (4) NR 1133 (HC) (section 40(1)(b))

Government of the Republic of Namibia v Ndjembo 2020 (4) NR 1193 (SC) (section 40(1)(b)) (investigation before arrest is desirable, but it is not prohibited to arrest a person for the purposes of conducting further investigations if the prerequisites in section 40(1)(b) are satisfied)

Minister of Safety and Security v Naomab 2024 (1) NR 125 (SC) (section 49(1)(b) arrest powers discussed at paras 39-ff; dicta on what constitutes an arrest: "deprivation of personal liberty does not have to be absolute and if the person is not in control of his movements at will, he would be under arrest" (at para 41))

section 42:

S v Coetzee 1993 NR 313 (HC)

section 43:

Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC)

section 49:

S v William 1992 NR 268 (HC)

S v Coetzee 1993 NR 313 (HC)

S v Mwinga & Others 1995 NR 166 (SC)

S v Johannes 2009 (2) NR 579 (HC)

S v Ndamwoongela 2018 (2) NR 422 (HC)

section 50:

S v Mbahapa 1991 NR 274 (HC)

Garces v Fouche & Others 1997 NR 278 (HC)

Minister of Home Affairs v Bauleth 2004 NR 68 (HC)

Getachew v Government of the Republic of Namibia 2006 (2) NR 720 (HC), 2008 (1) NR 1 (SC)

Gabriel v Minister of Safety and Security 2010 (2) NR 648 (HC) (lawfulness or unlawfulness of original arrest is irrelevant to detention under section 50(1))

Minister of Safety and Security v Kabotana 2014 (2) NR 305 (SC) (right to be brought before court within 48 hours of arrest in terms of Art 11(3) of Constitution and section 50 of the Act)

Tjipepa v Minister of Safety and Security & Others 2015 (4) NR 1133 (HC)

section 51:

S v Matsuis 1993 NR 234 (HC)

S v Matthias 1993 NR 420 (HC)

section 60 (bail):

S v Acheson 1991 NR 1 (HC) (discussed in Nico Horn, "S v Acheson and Kleynhans: The First Test for Constitutionalism in Namibia", UNAM Students Law Review, Volume 1, No 1, 2013, available at www.unamlawreview.com)

- S v Aikela 1992 NR 30 (HC)
- S v Du Plessis & Another 1992 NR 74 (HC)
- S v Hendriks 1992 NR 382 (HC)
- Garces v Fouche & Others 1997 NR 278 (HC)
- S v Pineiro & Others 1999 NR 18 (HC)
- S v Branco 2002 (1) SACR 531 (W)
- S v Swartbooi 2003 NR 143 (HC)
- S v Yugin & Others 2005 NR 196 (HC)
- S v Dauseb 2011 (1) NR 232 (HC) (placing onus on applicant to prove that he or she should be released on bail is not unconstitutional)
- S v Bayer 2014 (2) NR 414 (HC)
- S v Moussa 2015 (3) NR 800 (HC) (bail granted after accused in custody awaiting trial for seven years; long period of pre-trial incarceration violates constitutional rights in article 12(1); additional period in custody should have been treated as a "new fact" in most recent bail application)
- S v Barnard 2019 (1) NR 78 (HC) (section 60 read with section 321 empowers High Court to consider bail application while criminal appeal is pending in Supreme Court)
- S v Shanghala & Others 2022 (2) NR 536 (HC) (section 60 applied)
- section 61 (bail in respect of certain offences):
 - S v Aikela 1992 NR 30 (HC)
 - S v Du Plessis & Another 1992 NR 74 (HC)
 - *S v Pineiro & Others* 1999 NR 18 (HC)
 - Gurirab v Government of The Republic of Namibia & Others 2002 NR 114 (HC); 2006 (2) NR 485 (SC)
 - S v Gaseb 2007 (1) NR 310 (HC)
 - S v Valombola 2014 (4) NR 945 (HC)
 - S v Miguel & Others 2016 (3) NR 732 (HC) (meaning of "offence relating to the coinage")
 - Sv Pienaar 2017 (1) NR 149 (SC) (leave to appeal the High Court's refusal to grant bail should have been denied because of lack of prospects of success; interests of justice in section 61 considered in light of high risk of abscondment militates against granting of bail in this case)
 - S v Barnard 2019 (1) NR 78 (HC)¹⁰⁷
 - S v Gowaseb 2019 (1) NR 110 (HC) (bail considered in context of prospects of success on appeal in application for condonation for late notice of appeal)
 - S v Noble & Another 2019 (2) NR 206 (HC) (consideration of bail in respect of charge of dealing in cocaine; application of the "interests of the public"; denial of bail on this basis is not an anticipatory punishment or a violation of principle of presumption of innocence)
 - *S v Ihambo* 2020 (3) NR 621 (HC)
 - S v Queta 2020 (3) NR 758 (HC) (permissible to utilise more than one ground in the refusal of bail)
 - S v van Wyk 2020 (4) NR 1022 (HC) (permissible to consider public interest as a general matter even when section 61 has no application as the offence is not covered by s section 61 but unnecessary in this case given evidence of accused's propensity to interfere with investigation and to commit further offences while out on warning; related to Fishrot matter)
 - S v Gustavo 2022 (4) NR 1147 (SC), overturning S v Gustavo 2022 (3) NR 672 (HC) (Supreme Court: discussion of section 61 read with section 65(4) re: bail in case related to "Fishrot" matter; judicial discretion was not properly exercised in granting bail; meaning of "interests of the public" in section 61 explicated in context of economic crimes and corruption)
 - Nghipunya v Minister of Justice & Others 2022 (4) NR 970 (HC) (re: bail in "Fishrot" matter, section 61 upheld against constitutional challenge; one dissenting judge was of the opinion that the words "in the interest of the public or the administration of justice" in section 61 are unconstitutionally vague)

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¹⁰⁷ Conviction and sentence were set aside on appeal in *Barnard v State* (SA 59-2018) [2020] NASC (7 May 2020).

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S v Egerer 2023 (2) NR 542 (HC)
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S v Kennedy 2024 (1) NR 99 (HC) (re-application for bail on basis of new facts after lengthy incarceration where much of the delay is due to constitutional challenges by accused; court finds that it is not in the public interest or the interests of the administration of justice to grant bail)

section 62:

S v Aikela 1992 NR 30 (HC)

section 63:

S v Aikela 1992 NR 30 (HC)

section 65:

- S v Du Plessis & Another 1992 NR 74 (HC)
- *S v Timotheus* 1995 NR 109 (HC)
- S v Gaseb 2007 (1) NR 310 (HC)
- S v Valombola 2014 (4) NR 945 (HC)
- S v Miguel & Others 2016 (3) NR 732 (HC) (section 65(4))
- S v Ihambo 2020 (3) NR 621 (HC) (section 65(4))
- S v Queta 2020 (3) NR 758 (HC) (section 65(4))
- S v Egerer 2023 (2) NR 542 (HC) (section 65(4))

section 67:

- S v Swartbooi 1990 NR 389 (HC)
- S v Lukume 2000 NR 115 (HC)
- S v Muronga 2004 NR 134 (HC) (powers of magistrate where accused fails to appear after release on bail)
- S v Paulus 2007 (2) NR 622 (HC) (no authority under this section to convict accused on bail who fails to appear in court of contempt of court)

section 68:

S v Aikela 1992 NR 30 (HC)

section 72:

Minister of Home Affairs v Bauleth 2004 NR 68 (HC)

section 73:

- S v Mwambazi 1991(2) SACR 149 (Nm)
- S v Bruwer 1993(2) SACR 306 (Nm)
- S v Lukas 1999 NR 394 (HC)
- *S v M* 2006 (1) NR 156 (HC)

section 74:

- S v Shivute & Several Other Cases 1991 NR 433 (HC) at 439
- S v Kilika & Others 1992 NR 25 (HC)
- S v Lambert 1993 NR 303 (HC)
- S v Lukas 1999 NR 394 (HC)
- *S v M* 2006 (1) NR 156 (HC)

section 77:

- S v Kleynhans 1991 NR 22 (HC)
- S v Samuel 1994 NR 51 (HC)
- S v Amamub 2000 NR 207 (HC)
- S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (noting that section 77(6) has been amended in South Africa by RSA General Law Third Amendment Act 129 of 1993, but that there is no similar amendment in Namibia)

section 78:

- *S v Shivute* 1991 NR 123 (HC)
- S v Samuel 1994 NR 51 (HC)
- *S v Mika* 2010 (2) NR 611 (HC)
- S v Thomas & Another 2018 (1) NR 88 (HC) (wording of court order on evaluation under this section in context of findings in judgment does not support application for recusal)

sections 77-78:

- S v Mika 2010 (2) NR 611 (HC)
- S v Munyama 2011 (1) NR 53 (HC) (discussed in dicta at 58C-F)

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S v Malumo & 111 Others in re: Kamwanga 2012 (1) NR 104 (HC)
       S v Tashiva 2013 (3) 637 (HC)
       S v Ndengu 2014 (1) NR 42 (HC) (correct procedure for enquiry into mental capacity)
sections 77-79:
       S v Ilukena 2021 (3) NR 734 (SC) (procedure for referrals under these provisions)
section 79:
       S v Hansen 1994 NR 5 (HC)
       S v Amamub 2000 NR 207 (HC)
       S v Mika 2010 (2) NR 611 (HC)
       S v Malumo & 111 Others in re: Kamwanga 2012 (1) NR 104 (HC)
       S v Ndengu 2014 (1) NR 42 (HC) (correct procedure for enquiry into mental capacity)
       S v Uirab 2016 (2) NR 543 (where accused faces serious charge which could result in a lengthy
               custodial sentence, court should exercise its discretion to require assessment of
               accused's mental state by two psychiatrists, as provided for in section 79(1)(b))
       S v Thomas & Another 2016 (4) NR 1154 (HC) (report of clinical psychologist inadmissible
               under section 79; application of section 79)
section 83:
       S v Seibeb & Another; S v Eixab 1997 NR 254 (HC)
       S v Gaseb & Others 2000 NR 139 (SC)
       S v TN 2017 (4) NR 1069 (HC) (applying Gaseb tests)
       S v Manale 2019 (1) NR 191 (HC)
section 84:
       S v Mariu 1991 NR 149 (HC)
       S v Inatius; S v Shapanga & Two Others 1991 NR 261 (HC)
       S v Nakare 1992 NR 99 (HC)
       S v Ngono 2005 NR 34 (HC)
       S v Katari 2006 (1) NR 205 (HC)
       S v Aukemeb 2009 (1) NR 19 (HC)
       S v Kapia & Others 2009 (1) NR 52 (HC)
       S v PV 2016 (1) NR 77 (HC)
       S v Nghixulifa & Others 2018 (4) NR 1027 (HC)
section 85:
       S v Lofty-Eaton & Others (1) 1993 NR 370 (HC)
       S v Ngono 2005 NR 34 (HC)
       S v Kapia & Others 2009 (1) NR 52 (HC)
       S v Conradie & Another 2016 (2) NR 438 (HC)
       S v Nghixulifa & Others 2018 (4) NR 1027 (HC)
section 86:
       S v Claasen 1992 NR 98 (HC)
       S v Petrus 1993 NR 215 (HC)
       S v Kariko & Another 1998 NR 13 (HC)
section 87:
       S v Van Rooven 1993 NR 235 (HC)
       S v Kapia & Others 2009 (1) NR 52 (HC)
       S v Nghixulifa & Others 2016 (2) NR 356 (HC)
section 88:
       S v Nakare 1992 NR 99 (HC)
       S v Petrus 1993 NR 215 (HC)
section 94:
       S v Libongani 2015 (2) NR 555 (SC) (formulation of charge sheet when section 94 applies)
section 105:
       S v Uirab 1999 NR 327 (HC)
       S v Makendano 2007 (1) NR 251 (HC)
section 106:
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S v Mushwena & Others 2004 NR 35 (HC), overruled by S v Mushwena & Others 2004 NR 276

(SC), which was reversed in part by S v Likanyi 2017 (3) NR 771 (SC); see also

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S v Munuma & Others 2016 (4) NR 954 (SC), S v Munuma & Others 2018 (2) NR 521
       (HC) and S v Lifumbela & Others 2022 (1) NR 205 (SC) (paras 266-275)
S v Makendano 2007 (1) NR 251 (HC)
S v Myburgh 2008 (2) NR 592 (SC)
S v Conradie & Another 2016 (2) NR 438 (HC)
S v Makendano 2007 (1) NR 251 (HC)
S v Valede & Others 1990 NR 81 (HC)
S v Drayer & Another 1990 NR 237 (HC)
S v Muhenje & Another; S v Ngorera 1991 NR 91 (HC)
S v Maans 1991 NR 119 (HC)
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR
       178 (SC)
S v Aniseb & Another 1991 NR 203 (HC)
S v Davids 1991 NR 255 (HC)
S v Shivute & Several Other Cases 1991 NR 433 (HC)
S v Kilika & Others 1992 NR 25 (HC)
S v Hausiko 1992 NR 225 (HC)
S v Beukes 1993 NR 21 (HC)
S v Bruwer 1993 NR 219 (HC)
S v Goeieman 1993 NR 227 (HC)
S v Haimo 1993 NR 301 (HC)
S v Haufiko 1993 NR 317 (HC)
S v Namuhuya 1994 NR 57 (HC)
S v Maniping/S v Thwala 1994 NR 69 (HC)
S v Mostert 1994 NR 83 (HC)
S v Geiseb 1994 NR 175 (HC)
S v Mostert / S v de Koker 1995 NR 131 (HC)
S v Gaogoseb 1995 NR 165 (HC)
S v Kajamse; S v Gaseb & Another 2002 NR 101 (HC)
S v Isaac 2004 NR 122 (HC)
S v Kaevarua 2004 NR 144 (HC)
S v Tjivikua 2005 NR 252 (HC)
S v Forbes & Others 2005 NR 384 (HC)
S v Thomas 2006 (1) NR 83 (HC)
S v Kauleefelwa 2006 (1) NR 102 (HC)
S v Kasanga 2006 (1) NR 348 (HC)
S v Garoeb 2006 (2) NR 500 (HC)
S v Botha 2007 (1) NR 40 (HC)
S v Aludhilu 2007 (1) NR 70 (HC)
S v Rooi 2007 (1) NR 282 (HC)
S v Hengua 2007 (2) NR 532 (HC)
S v Combo & Another 2007 (2) NR 619 (HC)
S v Kharuxab 2008 (1) NR 345 (HC)
S v Nashapi 2009 (2) NR 803 (HC)
S v Litombo 2010 (2) NR 473 (HC)
S v Undari 2010 (2) NR 695 (HC)
S v Taseb & Others 2011 (1) NR 326 (HC)
S v Mbele 2011 (1) NR 357 (HC)
S v Onesmus; S v Amuloto; S v Mweshipange 2011(2) NR 461 (HC)
       (on problems arising from amendment of section 112 by Act 13/2010)
S v Kondo 2012 (2) NR 415 (HLD)
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section 110:

section 112:

S v Tjipetekera 2013 (2) NR 587 (HC) S v Silas 2013 (3) NR 760 (HC) S v Kauaria 2014 (1) NR 163 (HC)

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S v Pieters 2014 (3) NR 825 (HC)
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- S v Boois & Others 2016 (2) NR 347 (HC)
- S v Gases 2016 (4) NR 980 (HC)
- S v Michael 2017 (2) NR 577 (HC) (section 112(1)(a) intended for minor offences; not appropriate in respect of charge of assault GBH)
- S v Swatz 2019 (1) NR 197 (HC) (inappropriate for serious drug offences, as procedure limits sentencing options to fines only)
- S v Coetzee 20189(3) NR 899 (HC) (insufficient evidence of identity and content of drugs to support guilty plea)
- S v DJJ & Another 2023 (4) NR 1098 (SC) (summary of procedure in plea proceedings under sections 112-115); see also Minister of Home Affairs & Others v Hellens & Another 2024 (2) NR 301 (SC) (section 20(1)(a))

section 113:

- S v Shivute & Several Other Cases 1991 NR 433 (HC)
- S v Hausiko 1992 NR 225 (HC)
- S v Haufiko 1993 NR 317 (HC)
- S v Hoabeb 2013 (1) NR 222 (HC) (discussed in Nico Horn, S v Hoabeb: A Dummy's Guide on How to Avoid Justice in Namibia for Ten Years", Namibia Law Journal, Volume 5, Issue 1, 2013, available here)
- S v Maasdorp 2015 (4) NR 1109 (HC) (in a case involving multiple counts, where accused pleaded guilty to some counts, no sentences should be imposed before conclusion of trial as section 113 can be invoked only prior to sentence)
- S v Boois & Others 2016 (2) NR 347 (HC)
- S v Gases 2016 (4) NR 980 (HC)

section 114:

- S v Kauleefelwa 2006 (1) NR 102 (HC)
- S v Undari 2010 (2) NR 695 (HC)

section 115:

- S v Wellington 1990 NR 20 (HC)
- S v Tjiho (2) 1990 NR 266 (HC)
- S v Cachimbembo 1990 NR 290 (HC)
- S v Sanders 1990 NR 348 (HC)
- S v Muhenje & Another; S v Ngorera 1991 NR 91 (HC)
- S v Shivute 1991 NR 123 (HC)
- S v Kau & Others 1995 NR 1 (SC)
- *S v Kahuimbe* 1995 NR 77 (HC)
- S v Shikongo & Others 1999 NR 375 (SC)
- *S v Tjipetekera* 2013 (2) NR 587 (HC)
- S v Ananias 2014 (3) NR 665 (HC)

section 116:

S v Scott & Others 2009 (1) NR 58 (HC)

section 118:

- S v Wellington 1990 NR 20 (HC)
- *S v Tashiya* 2013 (3) 637 (HC)
- S v Mwalyomba 2017 (4) NR 994 (HC)
- S v Mutota 2020 (4) NR 981 (HC)

section 119:

- S v Shikongo & Others 1999 NR 375 (SC)
- S v Forbes & Others 2005 NR 384 (HC)
- S v Kasanga 2006 (1) NR 348 (HC)

section 121:

S v Kasanga 2006 (1) NR 348 (HC)

section 122:

S v Shikongo & Others 1999 NR 375 (SC)

section 123:

S v Petrus 1993 NR 215 (HC)

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section 144:
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S v Kramer & Others 1990 NR 49 (HC)

section 151:

S v Haikele & Others 1992 NR 54 (HC)

sections 155-156:

S v Gustavo & Others 2021 (4) NR 990 (HC)

section 158:

Florin v Magistrate of Swakopmund & Another 1999 NR 253 (HC)

S v Taapopi & Another 2001 NR 101 (HC)

S v Malumo & 119 Others 2004 NR 135 (HC)

section 158A:

S v Kaupitwa & Others 2024 (1) NR 185 (NLD) (use of anatomically-correct dolls by vulnerable witness)

section 159:

- S v Khumalo 1991 NR 166 (SC)
- S v Malumo & 119 Others 2004 NR 135 (HC)
- S v Simiyasa 2007 (1) NR 285 (HC)
- S v Lifumbela & Others 2022 (1) NR 205 (SC) (section 159(1)-(2) read with section 160 cannot be invoked when accused left courtroom of own accord, at paras 51-52)

section 160:

- S v Khumalo 1991 NR 166 (SC)
- S v Malumo (In re Kamwi) 2014 (3) NR 771 (HC) (section 160 read with section 159)
- S v Lifumbela & Others 2022 (1) NR 205 (SC) (section 160 read with section 159(1)-(2) cannot be invoked when accused left courtroom of own accord, at paras 51-52)

section 161:

S v Kapia & Others 2009 (1) NR 52 (HC)

section 162:

S v Malumo & 116 Others (No 2) 2008 (2) NR 509 (HC)

section 164:

- S v Monday 2002 NR 167 (SC) (general discussion of evidence of young witnesses)
- S v Boois 2004 NR 74 (HC) (deals with section 164 prior to its amendment by Criminal Procedure Amendment Act 24 of 2003)
- S v Zingolo 2005 NR 349 (HC) (Court applies cautionary rule to evidence of child in rape case heard before amendment of Act on this point by Criminal Procedure Amendment Act 24 of 2003)
- S v Nango 2006 (1) NR 141 (HC) (assessment of evidence of child witnesses in rape case)
- S v VM 2009 (2) NR 766 (HC) (deals with section 164 prior to its amendment by Criminal Procedure Amendment Act 24 of 2003)
- S v FM 2016 (3) NR (NLD) (application of amended section 164 to young child discussed in context of assessing prospects of success of appeal for purposes of application for condonation)
- S v Koch 2018 (4) NR 1006 (HC) (general discussion of assessment of children's evidence in absence of requirement of corroboration); upheld on appeal in S v Koch 2022 (1) NR 70 (SC)

section 167:

- S v Mbali 1990 NR 1 (HC)
- S v Dawid 1990 NR 206 (HC)
- S v van den Berg 1995 NR 23 (HC)
- S v Zingolo 2005 NR 349 (HC)
- S v Chanda 2005 NR 398 (HC)
- S v Kakalolo 2006 (1) NR 266 (HC)
- S v Malumo & Others 2007 (2) NR 443 (HC)
- S v VL 2018 (1) NR 67 (HC)

section 168:

- *S v Acheson* 1991 NR 1 (HC)
- S v Nunes 2001 NR 43 (HC)

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Gurirab v Government of the Republic of Namibia & Others 2002 NR 114 (HC); 2006 (2) NR
               485 (SC)
       S v Malumo & 119 Others 2004 NR 135 (HC)
section 170:
       S v Ndakolute 2005 NR 37 (HC)
       S v Babinu 2016 (3) NR 619 (HC)
section 171:
       S v Acheson 1991 NR 1 (HC)
       S v Lofty-Eaton & Others (2) 1993 NR 405 (HC)
section 174:
       S v Campbell & Others 1990 NR 310 (HC)
       S v Kooper 1995 NR 80 (HC)
       S v Paulus & Another 1996 NR 374 (HC)
       S v Le Roux 2000 NR 209 (HC)
       S v Mushwena & Others 2004 NR 35 (HC), overruled by S v Mushwena & Others 2004 NR 276
               (SC), which was reversed in part by S v Likanyi 2017 (3) NR 771 (SC); see also
               S v Munuma & Others 2016 (4) NR 954 (SC)
       S v Nakale & Others 2006 (2) NR 455 (HC)
       S v Teek 2009 (1) NR 127 (SC)
       S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC)
       S v Goabab & Another 2013 (3) 603 (SC)
       S v Malumo & Others 2013 (3) NR 868 (HC)
       S v Ananias 2014 (3) NR 665 (HC)
       S v NV 2017 (3) NR 700 (HC)
       S v January 2018 (1) NR 111 (HC)
       S v Narimab 2019 (3) NR 689 (SC)
section 175:
       S v Khoeinmab 1991 NR 99 (HC)
       S v Kamati 1991 NR 116 (HC)
       S v Paulus & Another 2010 (2) NR 534 (HC)
section 176:
       S v Kaipa 1993 NR 190 (HC)
section 179:
       S v Lukas 1999 NR 394 (HC)
section 182:
       S v Haita 1993 NR 368 (HC)
section 186:
       S v Dawid 1990 NR 206 (HC)
       S v van den Berg 1995 NR 23 (HC)
       S v Zingolo 2005 NR 349 (HC)
       S v Malumo & 116 Others (No 1) 2008 (2) NR 502 (HC) (discussed at 506I-507C)
       S v Ndengu 2014 (1) NR 42 (HC)
section 189:
       S v Smith 1999 NR 182 (HC)
section 190:
       S v Taapopi & Another 2001 NR 101 (HC)
       S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC); S v Malumo & 116 Others 2008 (1)
               NR 348 (HC); S v Malumo & 116 Others (No 1) 2008 (2) NR 502 (HC); S v Malumo &
               116 Others (No 4) 2008 (2) NR 515 (HC)
section 195:
       S v NV 2017 (3) NR 700 (HC) (section 195(1) survives constitutional challenge)
section 197:
       S v Appelgrein 1995 NR 118 (HC)
section 203:
       S v Malumo & 111 Others (2) 2012 (1) NR 244 (HC)
section 204:
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S v Johannes & Others 1991 NR 122 (HC)
       S v Myburgh 2008 (2) NR 592 (SC)
section 206:
       S v Nassar 1994 NR 233 (HC)
section 208:
       S v Noble 2002 NR 67 (HC)
section 209:
       S v Eiseb & Another 1990 NR 142 (HC)
       S v Shipanga & Another 2015 (1) NR 141 (SC)
section 211:
       S v Appelgrein 1995 NR 118 (HC)
section 212:
       S v Zingolo 2005 NR 349 (HC)
       S v Garoeb 2006 (2) NR 500 (HC)
       S v HN 2010 (2) NR 429 (HC) (section 212 (7A)(a) applied)
       S v Andima 2010 (2) NR 639 (HC) (section 212 (7A)(a) does not affect state's burden of proof
               of medical issue in absence of a section 220 admission)
       S v Eiseb 2014 (3) NR 834 (SC)
section 213:
       S v Taapopi & Another 2001 NR 101 (HC)
section 215:
       S v Sibiho & Others 1997 NR 29 (HC)
section 217:
       S v Titus 1991 NR 318 (HC)
       S v Somseb 1991 NR 339 (HC)
       S v Kauma 1992 NR 17 (HC)
       S v Tjihorero & Another 1993 NR 398 (HC)
       S v Shikunga & Another 1997 NR 156 (SC) (holding that section 217(1)(b)(ii) is
               unconstitutional)
       S v Kukame 2007 (2) NR 815 (HC)
       S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC)
       S v Malumo & 116 Others (No 5) 2008 (2) NR 520 (HC)
       S v Malumo & Others 2010 (1) NR 35 (HC)
       S v Malumo & 111 Others 2013 (1) NR 152 (HC) (attempt to circumvent)
       S v Shipanga & Another 2015 (1) NR 141 (SC)
       S v Engelbrecht 2017 (3) NR 912 (SC)
       S v Lichtenstrasser 2024 (1) NR 139 (HC)
section 218:
       S v Minnies & Another 1990 NR 177 (HC)
section 219A:
       S v Malumo & Others 2007 (1) NR 72 (HC)
       S v Malumo & Others 2007 (2) NR 198 (HC)
       S v Kukame 2007 (2) NR 815 (HC)
       S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC)
       Sv Malumo & Others 2010 (1) NR (HC) ("The presumption in s 217(1)(b)(ii) of Act 51 of 1977
               has been declared unconstitutional on the basis that it subverts the very essence of the
               right to a fair trial and the incidents of that right articulated in art 12(1)(a), (d) and (f)
               of the Constitution of Namibia.... Section 219A of Act 51 of 1977 contains a similarly
               worded presumption (the constitutionality of which has not yet been tested). It has been
               accepted by the State that the presumption contained in s 219A(1)(b) would not
               withstand the test of constitutionality and would follow the same route as the
               presumption contained in s 217(1)(b)(ii) of Act 51 of 1977." (para 19)
       S v Kapia & Others 2015 (4) NR 1094 (HC) (section 219A(1))
       S v Engelbrecht 2017 (3) NR 912 (SC)
       S v Britz 2018 (1) NR 97 (HC)
section 220:
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S v Kahuimbe 1995 NR 77 (HC)
       S v Boois 2004 NR 74 (HC)
       S v Andima 2010 (2) NR 639 (HC)
section 221:
       S v De Villiers 1992 NR 363 (HC)
       S v Ningisa & Others 2013 (2) HC 504 (SC)
section 222:
       S v Taapopi & Another 2001 NR 101 (HC)
section 224:
       S v Blaauw's Transport (Pty) Ltd & Another 2006 (2) NR 587 (HC)
section 232:
       S v Malumo & Others 2006 (2) NR 629 (HC)
section 233:
       S v Kukame 2008 (1) NR 313 (HC) (question as to whether an item admitted into evidence was
               a "public document" under this section)
section 234:
       S v Kukame 2008 (1) NR 313 (HC) ("official document")
section 235(1):
       S v Malumo & 111 Others (2) 2012 (1) NR 244 (HC)
section 245:
       S v Mwambazi 1990 NR 353 (HC)
       S v Van Rooven 1993 NR 235 (HC)
       Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC) (section 245
               declared to be in violation of right to fair trial in Art 12(1)(d) of Constitution "to the
               extent that the provisions of s 245 cast a mandatory legal onus on an accused person,
               charged with an offence of which a false representation is an element, to prove on a
               balance of probabilities that he or she did not know that the representation was false
               once the state has proved that he or she had made the false representation")
       S v Lifumbela & Others 2022 (1) NR 205 (SC) (section 235(1) at para 54)
section 256:
       S v Esterhuizen & Another 1990 NR 283 (HC)
section 258:
       S v Katari 2006 (1) NR 205 (HC)
section 261:
       S v Ntantu & Others 1992 NR 293 (HC)
section 262:
       S v Dixon 1995 NR 115 (HC)
       S v Kharuxab 2008 (1) NR 345 (HC)
section 264:
       S v Aixas & Another 2007 (1) NR 46 (HC)
section 270:
       S v Kuvare 1992 NR 7 (HC)
       S v Seibeb & Another; S v Eixab 1997 NR 254 (HC)
       S v Babiep 1999 NR 170 (HC)
section 271:
       S v Johny & Another 1992 NR 296 (HC)
section 274:
       S v Maans 1991 NR 119 (HC)
section 275:
       S v Arebeb 1997 NR 1 (HC)
       S v Gawaseb 2007 (2) NR 600 (HC)
       S v Mutota 2020 (4) NR 981 (HC)
section 276:
       S v Njuluwa 2000 NR 97 (HC) (sentence may not include order that convicted person may not
               be paroled)
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section 277:

S v Tcoeib 1991 NR 263 (HC) (See also S v Tcoeib 1992 NR 198 (HC) and 1999 NR 24 (SC) which deal with life imprisonment, but do not make specific reference to this section.)

section 280:

S v Ndikwetepo & Others 1993 NR 319 (SC)

S v Auala (No 2) 2008 (1) NR 240 (HC) (sentencing under section 280(2))

Alugodhi v Minister for Safety and Security & Others and Eight Similar Cases 2015 (4) NR 1021 (HC) (relationship to section 86 of the repealed Prisons Act 17 of 1998, and similar provisions of the previous *Prisons Act 8 of 1959* (section 32) and the current Correctional Service Act 9 of 2012 (section 99))

S v Gawiseb 2022 (2) NR 453 (HC) (section 280(2) discussed and applied)

section 285:

S v Eigowas 2017 (1) NR (NLD) (discussion of periodical imprisonment; "Presiding officers are encouraged to consider it more often.")

section 286:

S v Miller 2002 NR 31 (HC)

section 287:

S v Mynhardt; S v Kuinab 1991 NR 336 (HC)

S v Mukata 2005 NR 323 (HC)

S v Tjikuvira 2015 (4) NR 1105 (HC) (meaning of "court" in section 287(2), and effect of provision where convicted person cannot afford fine)

section 288:

S v Mukata 2005 NR 323 (HC)

section 290:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

S v Gaogoses 1994 NR 77 (HC)

S v Tjikuvira 2015 (4) NR 1105 (HC)(section 290(2))

section 292:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 293:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 294:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 295:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 297:

S v Kakulu & Another 1990 NR 282 (HC)

S v Goroseb 1990 NR 308 (HC)

S v Skrywer 1990 NR 343 (HC)

S v Oupieti; S v Boois; S v Josef & Another 1991 NR 93 (HC)

S v Simon 1991 NR 104 (HC)

S v Maans 1991 NR 119 (HC)

S v Brand & Various Other Cases 1991 NR 356 (HC)

S v Matheus 1991 NR 376 (HC)

S v Isaacks 1992 NR 265 (HC)

S v Diergaardt 1993 NR 421 (HC)

S v H 1995 NR 136 (HC)

S v Nangolo 1995 NR 209 (HC)

S v Nvula; S v Olivier 2002 NR 106 (HC)

S v Namene 2002 NR 125 (HC)

S v Petrus 2006 (1) NR 118 (HC), repeated in 2007 (1) NR 44 (HC)

Sv Ngumbi & Others and A Similar Matter 2020 (4) NR 962 (HC) (section 297(1)(b) empowers

a court to suspend all or part of a sentence, but not to divide a sentence into two parts with different periods and conditions of suspension)

section 300:

- S v Shivikua 1991 NR 101 (HC)
- S v Tjisuta 1991 NR 146 (HC)
- S v Useb & Another 1994 NR 81 (HC)
- S v Panduleni 1995 NR 125 (HC)
- *S v Hendriks* 2004 NR 20 (HC)
- S v Kapia & Others 2018 (3) NR 885 (HC) (paras 56-60)

section 302:

- S v Shivute & Several Other Cases 1991 NR 433 (HC)
- Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- S v Gawanab 1997 NR 61 (HC)
- S v Kamenye and Twelve Similar Cases 2019 (2) NR 486 (NLD) (discussion of requirements of records in cases sent for review under this section; the magistrate bears responsibility to ensure that the record is accurate and complete without any irrelevant documents being included; the magistrate's date of appointment should be indicated, and the record should be in accordance with Chapters XII and XIII of the Codified Instructions; Clerk of the Criminal Court, paras 159-176 noting the errata pointed out in this case)

section 303:

- S v Sanders 1990 NR 348 (HC)
- S v Shivute & Several Other Cases 1991 NR 433 (HC)
- S v Kamenye and Twelve Similar Cases 2019 (2) NR 486 (NLD) (one-week time period for submission for review emphasised)

section 304:

- Booysen v Kalokwe NO & Others 1991 NR 95 (HC)
- S v Baptista 1991 NR 103 (HC)
- S v Kaipa 1993 NR 190 (HC)
- S v Arebeb 1997 NR 1 (HC)
- S v Gawanab 1997 NR 61 (HC)
- S v Katuta 2006 (1) NR 61 (HC)
- S v Immanuel 2007 (1) NR 327 (HC) S v Sakaria 2013 (2) NR 347 (HC)
- S v Shiputa 2013 (3) NR 800 (NLD)
- Sv Puleni & Another 2021 (3) NR 611 (SC) (no power to increase sentence on automatic review where the sentence imposed was competent and lawful)

section 308:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

section 309:

- Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- S v Wasserfall 1992 NR 18 (HC)
- S v Arebeb 1997 NR 1 (HC)
- S v Uirab 1999 NR 327 (HC)
- S v Ganeb 2001 NR 294 (HC) (section 309(4)(a) read with section 305 found unconstitutional)
- S v Katuta 2006 (1) NR 61 (HC)
- S v Kakalolo 2006 (1) NR 266 (HC)
- S v Undari 2010 (2) NR 695 (HC) (section 309(2))
- S v Nakale 2011 (2) NR 599 (SC) (section 309(2))
- S v Shiputa 2013 (3) NR 800 (NLD) (application of section 304 to appeals by virtue of section 309, and discussion of useful South African improvements to section 309 procedure)
- section 310 (as amended by Act 26/1993):
 - S v van den Berg 1995 NR 23 (HC)
 - S v Gawanab 1997 NR 61 (HC)

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S v Mujiwa 2007 (1) HR 34 (HC)
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S v Nel 2015 (4) NR 1057 (HC) (court's decision not to order forfeiture of certain items under section 89(1)(d) of Nature Conservation Ordinance 4 of 1975 constitutes a decision made in favour of an accused under section 310)

Prosecutor-General v Miguel & Others 2017 (2) NR 381 (HC) (paras 10-22)

S v Haikali 2019 (3) NR 701 (SC)

section 311 (as amended by Act 26/1993):

S v Delie (2) 2001 NR 286 (SC)

section 312:

S v Bruwer 1993 NR 219 (HC)

section 316:

S v Tjiho 1991 NR 361 (HC)

S v Ngavonduueza 1993 NR 360 (HC)

S v Strowitzki 1994 NR 265 (HC)

S v Strowitzki 2003 NR 145 (SC)

Mushwena & Others v Government of the Republic of Namibia & Another (2) 2004 NR 94 (HC)

S v Munuma & Others 2006 (2) NR 602 (HC); conviction and sentence set aside in S v Munuma & Others 2013 (4) NR 1156 (SC) on grounds that trial judge should have recused himself

S v Nowaseb 2007 (2) NR 640 (HC)

S v Ningisa & Others 2008 (2) NR 731 (HC) (leave to appeal and petition procedures held to be constitutional); see also S v Ningisa & Others 2013 (2) HC 504 (SC) at paras 4-6

S v Masake & Others 2012 (1) NR 1 (SC)

S v Lameck & Others 2017 (3) NR 637 (SC) (appealability of refusal of application for recusal permissible and outside section 316(1))

S v Josea 2020 (1) NR 248 (HC)

section 316A:

S v Strowitzki 1994 NR 265 (HC)

S v Malumo & Others 2010 (2) NR 595 (SC) (dicta)

S v LK 2016 (1) NR 90 (SC) (disagrees with dicta in S v Malumo & Others 2010 (2) NR 595 (SC); meaning of "including" in section 316A(1))

section 317:

S v Malumo & Others 2006 (1) NR 323 (HC)

S v Myburgh 2008 (2) NR 592 (SC) (discussed in dicta at 598F-ff)

S v Malumo & Others 2013 (3) NR 868 (HC)

S v Lifumbela & Others 2022 (1) NR 205 (SC) (paras 16-34)

section 319:

S v Khumalo 1991 NR 166 (SC)

S v Pineiro & Others 1999 NR 13 (HC)

S v Malumo & Others (In re Ndala) 2014(3) NR 690

section 321:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)

S v Hendriks 1992 NR 382 (HC)

S v Barnard 2019 (1) NR 78 (HC) (section 321 read with section 60 empowers High Court to consider bail application while criminal appeal is pending in Supreme Court)

section 322:

S v Khumalo 1991 NR 166 (SC)

S v Gurirab & Others 2008 (1) NR 316 (SC) (appeal court empowered to substitute conviction on a more serious crime for conviction on a less serious crime)

S v Lifumbela & Others 2022 (1) NR 205 (SC) (section 322(6) applied; see para 359)

section 324:

S v Khumalo 1991 NR 166 (SC)

section 328:

S v Acheson 1991 NR 1 (HC)

section 332:

S v Nkeuene 2010 (1) NR 301 (HC)

Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC) (section 332(5) declared to be in violation of Constitution insofar as "a servant of a corporate body is in terms of s 332(5) deemed to be guilty of an offence committed for which the corporate body is or was liable to be prosecuted, unless he or she proves on a balance of probabilities that he or she did not take part in the commission of the offence and could not have prevented it, on the grounds that they impermissibly infringe an accused's right under art 12(1)(d) of the Constitution to be presumed innocent until proven guilty according to law and thus also an accused's right to a fair trial in terms of art 12(1)(a) of the Constitution")

S v Kapia (CC 09/2008) [2018] NAHCMD 124 (11 May 2018) (section 332(5))

S v Nghixulifwa & Others 2018 (4) NR 1027 (HC) (section 332(5); note that this case states at para 39 that section 332(5) "has survived the constitutional test in Attorney-General of Namibia v Minister of Justice & Others where the court found that s 332(5) was not unconstitutional"; in fact Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC) held (at paragraphs 74-75) that section 332(5) is unconstitutional to the extent that "a servant of a corporate body is in terms of s 332(5) deemed to be guilty of an offence committed for which the corporate body is or was liable to be prosecuted, unless he or she proves on a balance of probabilities that he or she did not take part in the commission of the offence and could not have prevented it, on the grounds that they impermissibly infringe an accused's right under art 12(1)(d) of the Constitution to be presumed innocent until proven guilty according to law and thus also an accused's right to a fair trial in terms of art 12(1)(a) of the Constitution".)

section 335:

S v Tjiho (1) 1990 NR 242 (HC)

Criminal Procedure Amendment Act 5 of 1991 (amendments re: bail):

S v Du Plessis & Another 1992 NR 74 (HC)

S v Timotheus 1995 NR 109 (HC)

malicious prosecution:

Mahupelo v Minister of Safety and Security & Others 2017 (1) NR 275 (HC), overruled in Minister of Safety and Security & Others v Mahupelo 2019 (2) NR 308 (SC); see also Mahupelo v Minister of Safety and Security & Others 2020 (2) NR 433 (SC) (unsuccessful suit for constitutional damages for continuing malicious prosecution)

Minister of Safety and Security & Others v Makapa 2020 (1) NR 187 (SC)

Minister of Safety and Security & Others v Mutanimiye 2020 (1) NR 214 (SC)

Minister of Safety and Security & Others v Chunga 2020 (2) NR 421 (SC)

Minister of Safety and Security & Others v Kauhano 2020 (3) NR 611 (SC)

Minister of Safety and Security & Others v Mwamba 2021 (3) NR 790 (SC)

Sheehama v Ministry of Home Affairs, Immigration, Safety and Security & Others 2021 (4) NR 1067 (HC)

procedure:

S v Sheetekela & Others 2019 (2) NR 513 (SC) ((a) failure to allow cross-examination of a witness is a serious irregularity; there is no bar to cross-examination by prosecutor who has previously consulted with witness (who was originally on state witness list but was later called by defence instead); (b) multiple lawyers may take part in prosecution of a criminal case as long as they do not duplicate court work (such as by leading or cross-examining the same witness); (c) a judge in a criminal case may revisit any ruling which is not a final order or ruling before the final judgment is issued; (d) parties must be allowed to address the court prior to any rulings)

Thomas v Directorate of Legal Aid & Others 2019 (2) NR 523 (HC) (constitutional challenges relating to criminal trial must be brought before the judge seized with the criminal trial and not in the civil stream of the High Court)

sentencing:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC) (sentences involving corporal punishment unconstitutional)

S v Van Rooyen & Another 1992 NR 165 (HC) (guidelines)

- S v Tcoeib 1991 NR 263 (HC); 1992 NR 198 (HC); 1999 NR 24 (SC) (life imprisonment)
- S v Ndikwetepo & Others 1993 NR 319 (SC) (consecutive sentences should not produce a cumulative sentence which is totally out of proportion to the gravity of the individual offences)
- S v Van Wyk 1993 NR 426 (SC) (racist motives as an aggravating factor in sentencing)
- S v Khumalo & Another 194 NR 3 (HC) (factors to be taken into account)
- S v Britz 1994 NR 25 (HC) (community service)
- S v Redelinghuys 1995 NR 21 (HC) (concurrent sentences)
- S v Mostert/S v de Koker 1995 NR 131 (HC) (composite sentences)
- S v Clav 1996 NR 184 (HC) (factors to be taken into account)
- S v Moses 1996 NR 387 (SC) (father's murder of daughter)
- S v Arebeb 1997 NR 1 (HC) (suspended sentences)
- S v Kandume 1997 NR 79 (HC) (suspended sentences)
- S v Alexander 1998 NR 84 (HC) (life imprisonment)
- S v Kambu 1998 NR 194 (HC) (appropriateness of fines rather than imprisonment; consecutive sentences)
- S v Mouton & Another 1999 NR 215 (HC) (kidnapping)
- S v Uweuseb 1999 NR 339 (HC) (court exercises discretion to allow appellant to withdraw appeal against sentence after receipt of notice that increased sentence will be also considered by court of appeal)
- S v Shapumba 1999 NR 342 (SC) (sentencing for rape in a case where another rape was committed while accused was out on bail)
- S v Skrywer 2005 NR 288 (HC) (consistency in sentencing)
- S v Stuurman 2005 NR 396 (HC) (weighing effect of previous convictions)
- S v Katjire 2005 NR 429 (HC) (global sentences only to be imposed in exceptional circumstances)
- S v Ganes 2005 NR 472 (HC) (fraud)
- S v Drotsky 2005 NR 487 (HC) (housebreaking)
- S v Alexander 2006 (1) NR 1 (SC) (use of concurrent sentence for associated robbery-murder to avoid "double jeopardy")
- S v Petrus 2006 (1) NR 118 (HC), repeated in 2007 (1) NR 44 (HC) (suspended sentence for property crime on condition of compensation to be encouraged, but requires enquiry into *quantum* of damages)
- S v Kastoor 2006 (2) NR 450 (HC) (criticism of "impatience, frustration and anger" exhibited by magistrate, and concluding that magistrate did not approach sentencing in a "balanced way")
- S v Haufiku 2007 (1) NR 94 (HC) (condition of suspended sentence should clearly refer to offences committed during period of suspension)
- S v Bonifatius 2007 (1) NR 115 (HC) (condition of suspended sentence should not refer to convictions during period of suspension, but only to commission of offence during that period)
- S v Paulus 2007 (1) NR 116 (HC) (housebreaking and theft of minor amount of money)
- S v Bohitile 2007 (1) NR 137 (HC) (context of domestic violence as an aggravating factor in sentencing)
- S v Kasita 2007 (1) NR 190 (HC) (housebreaking and theft; court obligated to provide reasons for sentence imposed)
- S v Nangolo 2007 (1) NR 304 (HC) (formulation of conditions of suspended sentence must be clear)
- S v Simon 2007 (2) NR 500 (HC) (culpable homicide)
- S v Witbooi & Others 2007 (2) NR 604 (HC) (sentence cannot be divided in two parts and suspended under separate conditions; procedure for bringing suspended sentence into operation)
- S v Kamudulunge 2007 (2) NR 608 (HC) (formulation of conditions of suspension)
- S v Imene 2007 (2) NR 770 (HC) (sentence for housebreaking and theft confirmed)
- S v Auala (No 2) 2008 (1) NR 240 (HC) (sentencing for offences relating to theft of diamonds and for escaping before being locked up); S v Auala 2010 (1) NR 175 (SC) (lower

- court's approach to sentencing confirmed on appeal)
- S v Shikudute 2008 (1) NR 344 (HC) (concurrent sentences appropriate for first offender where incidents were interlinked)
- S v Jason & Another 2008 (1) NR 359 (SC) (appeal of sentences imposed for murder, robbery and related offences)
- S v Myburgh 2008 (2) NR 592 (SC) (fraud)
- S v Akonda 2009 (1) NR 17 (HC) (counts should be taken together for sentence only in exceptional circumstances or where part of one transaction; imprecise formulation of condition of suspension)
- S v Jeremani 2009 (1) NR 149 (HC) (imposition of fine which accused is unable to pay is tantamount to direct imprisonment)
- S v Martin 2009 (1) NR 306 (HC) (fact that accused pleaded not guilty cannot be treated as aggravating factor in sentencing)
- S v Frans 2009 (1) NR 356 (HC) (procedure for putting suspended sentence on previous conviction into operation)
- S v Johannes 2009 (2) NR 579 (HC) (sentence for murder by police officer who shot and killed fleeing criminal suspect)
- S v Shipena 2009 (2) NR 810 (HC) (theft, fraud and forgery by police officer)
- S v Visagie 2010 (1) NR 271 (HC) (undesirability of taking counts together for purpose of sentence; appropriate sentence for *crimen injuria*)
- S v Mushishi 2010 (2) NR 559 (HC) (context of domestic violence as an aggravating factor in sentencing)
- S v K 2011 (1) NR 1 (HC) (a guilty plea is not necessarily an indication of remorse)
- S v Munyama 2011 (1) NR 53 (HC) (general approach to sentencing and use of expert evidence on appropriate sentence)
- S v Sakaria 2013 (2) NR 347 (HC) (sentence under-emphasised interests of society)
- S v Ningisa & Others 2013 (2) HC 504 (SC), paras 90-98
- S v Guruseb 2013 (3) 630 (HC) (conditions of suspension of sentence must have material connection to nature and circumstances of offence)
- S v Tjikotoke 2014 (1) NR 38 (HC) (taking counts together for purposes of sentencing should be done only in exceptional circumstances)
- S v Ashimbanga 2014 (1) NR 242 (HC) (appropriate sentence for escape from lawful custody)
- S v Jackson & Others 2014 (3) NR 637 (HC) (judicial discretion to consider previous conviction which is more than 10 years old; partially concurrent sentences for two crimes arising from same incident)
- S v Kido 2014 (3) NR 697 (HC) (concurrent sentences not appropriate for crimes that occurred three hours apart, thereby evidencing separate intentions)
- S v Shipanga & Another 2015 (1) NR 141 (SC) (heavy sentences upheld in brutal murder, kidnapping and robbery of foreign tourists)
- S v Gariseb 2016 (3) NR 613 (SC) (murder case; whether or not dolus eventualis should be treated as a mitigating circumstance depends on the circumstances of the case)
- Sv Gaingob & Others 2018 (1) NR 211 (SC) ("informal life sentences" which leave no realistic prospect of release are unconstitutional as cruel, degrading and inhuman punishment and a violation of the right to human dignity in Art 8; para 74: "[A]an effective sentence of more than 37 and a half years would mean that such offender is worse off than those sentenced to life imprisonment. Such lengthy sentences would not be appropriate and are to be discouraged. Depending upon their length and the circumstances of an offender, they may also infringe an offender's right to dignity under Art 8.")
 - See Dunia Zongwe & Bernhard Tjatjara, "Strange Maths Behind the Ruling on Very Long Sentences", *The Namibian*, 20 November 2018 (available from Legal Assistance Centre); Lotta N Ambunda-Nashilundo & Gita K Keshava, "Not all 'hope is lost': Understanding the effect of the Gaingob judgment on the Trial Court's sentencing discretion" in Tapiwa Victor Warikandwa & John Baloro, eds, *Namibia's Supreme Court at 30 Years: "A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era*, Konrad Adenauer Foundation, 2022, available here.

For cases on the application of Gaingob see:

- S v Matlata 2018 (4) NR 1038 (HC)
- S v Boois 2018 (4) NR 1060 (HC)
- S v Lifumbela & Others 2022 (1) NR 205 (SC)
- S v Gawiseb 2022 (2) NR 453 (HC)
- S v Neromba 2023 (3) NR 826 (HC)
- Bezuidenhoudt v S (CC 04/2005) [2023] NAHCMD 669 (19 October 2023)
- *S v Lichtenstrasser* 2024 (2) NR 530 (HC).
- S v Vos & Others 2017 (1) NR 106 (HC) (insufficient regard by lower court to principle of uniformity in sentencing, regarding sentences for escape from prison)
- S v Shilamba 2017 (1) NR 211 (NLD) (sentences for murder and assault GBH)
 - ...violent crimes are escalating particularly in this jurisdiction, and show no signs of abating. Deterrent sentences are called for. (para 9)

This case falls into a category where the personal circumstances of the accused must take a backseat to the other considerations such as the interest of society, general deterrence and retribution. (para 13)

- Sv Muchaka 2017 (2) NR (HC) (custodial sentence justified for petty theft of a packet of biscuits because offender repeatedly re-offended, but lower court's sentence of 2 years imprisonment reduced and partly suspended)
- S v Mapanka 2017 (4) NR 980 (HC) (aggravating factors cannot be assumed without evidence) S v ES 2017 (4) NR 983 (HC) (being HIV positive is not a valid ground for a more lenient
- sentence)
- S v Schiefer 2017 (4) NR 1073 (SC) (sentences for murder of parents altered so that more time runs concurrently due to cumulative impact of mitigating factors)
- S v Ruben 2018 (1) NR 115 (HC) (domestic relationship between offender and victim as an aggravating factor in sentencing)
- S v *Kundiatuka* 2018 (3) NR 699 (NLD) (court must ensure that accused's relevant mitigating circumstances are placed before it in order to pass a realistic sentence)
- Sv Kapia & Others 2018 (3) NR 885 (HC) (sentencing for "white-collar" crime; role of remorse for wrongdoing versus remorse for the personal impact of the wrongdoing on the offender; expressions of remorse by personal testimony versus remorse indirectly expressed through counsel)
- S v Matlata 2018 (4) NR 1038 (HC) (sentencing for rapes of multiple women and murder of one rape victim; expression of remorse only through legal representative; interests of society: "huge public outcry against the senseless killing of women and children in this country")
- S v Seas 2018 (4) NR 1050 (HC) (heavy sentence imposed for murder of 3-year-old child by mother)
- S v Boois 2018 (4) NR 1060 (HC) (life sentence, without consideration for parole before serving 25 years, for rape-murder of visibly pregnant woman; discussion of conflict between some minimum sentences in Act and application of S v Gaingob & Others 2018 (1) NR 211 (SC))
- S v Awaseb 2019 (2) NR 377 (HC) (sentencing of senior police officer who committed murder with unauthorised use of his service pistol)
- S v Absolom 2019 (2) NR 483 (NLD) (community service as condition of suspension of sentence must specify type of work and timeline)
- S v Kamenye and Twelve Similar Cases 2019 (2) NR 486 (NLD) (references in conditions of suspension to not being convicted of "a similar offence" are insufficiently clear; the offence should be specified)
- S v Manale 2019 (2) NR 517 (HC) (heavy sentence justified for 147 counts of fraud taking place over long time period with no motivation other than greed, where accused violated a position of trust, and where fraud mainly disadvantaged the estates of deceased persons)
- S v Katale (CC 5/2021) [2022] NAHCNLD 80 (2 September 2022)
 - There is a persistent demand for more severe sentences to be imposed on all offenders for all crimes. The apparent foundation for this demand is a steadfast belief that no punishment can be too harsh and that the more severe it is, the better it will protect society. Public expectation is not synonymous with the public interest. Although the courts must serve the interests of society

and not be insensitive to or ignorant of general feelings and expectations, they may not blindly adhere to that. Remarks or submissions that public expectation equates to the public interest are inconsistent with the applicable principles of law and, therefore, of no assistance to the court.

In determining an appropriate sentence, a court should strive to accomplish and arrive at a reasonable counterbalance between these elements to ensure that one factor is not unduly accentuated at the expense of and to the exclusion of the others. The process is not merely a formula, nor is it satisfied by simply stating or mentioning the requirements. What is necessary is that the Court shall consider, try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern. This conception, as expounded by the Courts, is sound and is incompatible with anything less. (paras 22-23; footnotes omitted)

- S v Lifumbela & Others 2022 (1) NR 205 (SC) (sentencing in Caprivi Treason Trial; overlong supensions reduced; awaiting trial period and age of convicted offenders taking into account, as well as seriousness of offences balanced against need to facilitate reconciliation; overlong sentences with no hope of parole re-evaluated in respect of S v Gaingob & Others 2018 (1) NR 211 (SC); sentences thus re-visited)
- S v Guriras 2022 (4) NR 929 (HC) (primary caregiver of child cannot be treated any differently than any other offender in respect of sentencing; hardship to dependents is unfortunate, but not a mitigating factor; Art 30 of the African Charter on the Rights and Welfare of the Child cannot overcome Art 10 of Namibian Constitution on equality before the law)
- S v Thomas & Another 2023 (4) NR 945 (HC) (effect of pre-trial incarceration on sentence must not allow an accused to benefit from his own "deliberate and wilful disruption or delay in" the court proceedings)
- S v SIK & Another 2023 (4) NR 990 (HC) ("a Namibian court which sets about sentencing an individual who has minor children or an expectant mother has a duty to inquire into and to give effect to the best interests of the child as demanded by the circumstances of the case", referring to the best interests standard as set out in the Child Care and Protection Act 3 of 2015)
- *S v Lichtenstrasser* 2024 (2) NR 530 (HC) (when life sentence is appropriate) youthful offenders:
 - S v Shivute & Several Other Cases 1991 NR 433 (HC) at 439
 - S v Kilika & Others 1992 NR 25 (HC)
 - S v Goagoseb 1992 NR 35 (HC)
 - S v G 1993 NR 225 (HC)
 - S v Lambert 1993 NR 303 (HC)
 - S v Gaogoses 1994 NR 77 (HC)
 - S v Kukinaka 1994 NR 82 (HC)
 - S v H 1995 NR 136 (HC)
 - S v Lukas 1999 NR 394 (HC)
 - S v van der Bergh 2003 NR 69 (HC) (importance of pre-sentencing report)
 - S v Erickson 2007 (1) NR 164 (HC) (youthfulness as a mitigating factor)
 - S v AS 2009 (1) NR 118 (HC) (criminal accountability of 10-year-old convicted of culpable homicide)
 - S v K 2011 (1) NR 1 (HC) (youthful offenders cannot hide behind their youthfulness when they commit a serious crime)
 - S v Gomaseb 2014 (1) NR 269 (HC) (sentence imposed on 15-year-old offender upheld; Convention on the Rights of the Child applied).
 - S v Jackson & Others 2014 (3) NR 637 (HC) (youthful offender was a mature person, and so his youthfulness need not play a major role in sentencing)
 - S v Tjikuvira 2015 (4) NR 1105 (HC) (need to enquire into accused's financial circumstances before imposing fine)
 - S v Tangi 2019 (2) NR 600 (NLD) (reduction of sentence of young first-time offender for theft from employer in case where bulk of stolen goods were returned; however the Court notes that a custodial sentence is appropriate in cases where the offender "bites the hand that feeds him")

S v AJ 2021 (4) NR 1033 (HC) (effective sentence of 16 years imposed on 14-year-old convicted of murder, rape, theft, violating dead human body and two counts of arson; perpetrator cannot hide behind youthfulness in commission of such horrendous crimes)

other:

- S v Imene 2007 (2) NR 770 (HC) (admissibility of shoe prints as evidence)
- S v Myburgh 2008 (2) NR 592 (SC) (discussion of meaning of term "released" in various sections, in contrast to "acquit" and other language; suggestion to legislature to amend Act to extend jurisdiction of magistrate's courts to order permanent stays of prosecution)
- S v Haihambo 2009 (1) NR 176 (HC) (photo identification)
- Akuake v Jansen van Rensburg 2009 (1) NR 403 (HC) (requirements to sustain claim of malicious criminal prosecution)
- S v Andreas 2009(2) NR 473 (HC) (fact that evidence of accused is false does not necessarily lead to conviction unless state has proved its case beyond reasonable doubt)
- S v Nhinda 2013 (4) NR 909 (NLD) (a working procedure should be established to require that medical reports submitted into evidence should be typed)
- S v BM 2013 (4) NR 967 (HC) (discrepancy between witness statement made to police and evidence in court affects credibility of witness only where discrepancy is material and where court is satisfied that witness statement correctly reflects what witness said at that time)
- S v Munuma & Others 2013 (4) NR 1156 (SC) (recusal of judge in criminal trial); applied in S v Thomas & Another 2018 (1) NR 88 (HC)
- S v Ameb 2014 (4) NR 1134 (HC) (approach in criminal appeal re: witness credibility)
- S v Unengu 2015 (3) NR 777 (HC) (treatment of single witness evidence; treatment of discrepancies between witness statements to police and testimony in court)
- S v Maasdorp 2015 (4) NR 1109 (HC) (in case involving multiple charges, after guilty plea on some charges, no sentence may be imposed before conclusion of trial as court must have regard to all circumstances of case to determine suitable sentences)
- S v Hangue 2016 (1) NR 258 (SC) (detailed discussion of defence of temporary non-pathological criminal incapacity due to voluntary intoxication); see also S v Subeb 2020 (1) NR 236 (HC)
- S v Kharuchab 2017 (1) NR 116 (HC) (duplication of convictions; two separate acts with the single intent to escape from lawful custody constitute one criminal transaction; short survey of previous Namibian cases on duplication of convictions)
- Prosecutor-General of Namibia v Namoloh & Others 2020 (3) NR 839 (SC) (meaning of "accused")
- S v Engelbrecht 2017 (3) NR 912 (SC) (discretionary power to exclude unconstitutionally obtained evidence; informing accused of right to legal representation; criticism of police failure to adopt a clear and accurate form for police officers to use for warnings in respect of statements by accused (paras 41-42))
 - ...a court has a discretion to allow or exclude unconstitutionally obtained evidence or evidence in conflict with a constitutional right for reasons of public policy... No strictly exclusionary rule is adopted in exercising the court's inherent power in ensuring a fair trial. (para 28)

The law on the issue of legal representation is that an accused person under arrest depending on the facts of each case, in particular the personality and the characteristics of the particular accused.. should be comprehensively informed of his/her right to legal representation, which includes the right to apply for legal aid. Where he has made the choice to be represented before making a statement he/she must be given the opportunity to engage his/her lawyer and the interrogation or the taking down of the confession/admission should be halted until he/she has consulted with his/her lawyer and indicated that he/she still wants to make a statement. The failure to inform the accused properly of his right to consult there and then with a legal representative violates a fundamental right of the accused. (para 36)

- S v Britz 2018 (1) NR 97 (HC) (assessment of alibi)
- S v Munuma & Others 2018 (2) NR 521 (HC) (expert witnesses and expert evidence; para 61: "however eminent an expert may be in general, he does not constitute an expert in a

- particular sphere unless by special study or experience, he is qualified to express an opinion on that topic")
- S v Baarman & Three Similar Cases 2018 (4) NR 1022 (HC) (where a judicial officer in a lower court becomes unavailable to continue hearing a part-heard matter, the matter may commence *de novo* before another magistrate without a High Court order to that effect)
- S v Pienaar 2020 (2) NR 488 (HC) (dock identification)
- S v Nowaseb 2020 (2) NR 564 (HC) (where accused's legal practitioner was not present, court should have at the very least made the docket available to the accused and ordered a final postponement to allow opportunity for meaningful cross-examination)
- S v Krylov & Another 2023 (1) NR 229 (HC) (discussion of witness statements and statements given to police by children)
- SH & Another v Minister of Home Affairs, Immigration, Safety and Security 2023 (3) NR 735 (NLD) (meaning of "arrest" for purposes of Act discussed briefly at para 73, in civil claim for damages in respect of unlawfully detained minor).

Commentary:

- Daina Wise & Dianne Hubbard, *Children in Court: Protecting Vulnerable Witnesses*, Legal Assistance Centre, 1998.
- Legal Assistance Centre, "Chapter 4: Law Reform on Vulnerable Witnesses" in Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006 (discussing the Criminal Procedure Amendment Act 24 of 2003), available here
- Lovisa Indongo, "The uniqueness of the Namibian Prosecutor-General" in Nico Horn & Anton Boesl, The Independence of the Judiciary in Namibia, Konrad Adenauer Stiftung, 2008, available here
- SK Amoo, "The Bail Jurisprudence of Ghana, Namibia, South Africa and Zambia", *Forum on Public Policy* (2008), available here
- Kaijata Kangueehi, "S v Teek: A critical review and analysis", Namibia Law Journal, Volume 1, Issue 2, 2009, available here
- Derek Obadina, "The Right to Speedy Trial in Namibia and South Africa", 41(2) *Journal of African Law* 229-238 (2009), available here
- Pamela J Schwikkard, "The evidence of sexual complainants and the demise of the 2004 Criminal Procedure Act", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available here
- SK Amoo, "The jurisprudence of the rights to trial within a reasonable time in Namibia and Zambia", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here
- Jamil D Mujuzi, "The constitutionality of different types of life imprisonment suggested in the Criminal Procedure Act, 2004", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here">here
- Jamil D Mujuzi, "Sentencing Children to Life Imprisonment and/or to Be Detained at the President's Pleasure in Eastern and Southern Africa", 6 (2) *The International Journal of Punishment and Sentencing* (2011)
- SK Amoo & Davy Y Kambinda, "Community service orders as part of judicial discretion in the criminal justice system", *Namibia Law Journal*, Volume 3, Issue 2, 2011
- Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available here (Criminal Procedure Amendment Act 13 of 2010).
- Ndjodi Ndeunyema, "Igniting the Plea Bargaining Discourse in Namibia: What Is It and Do We Need It?", *Namibia Law Journal*, Volume 4, Issue 2, 2012, available here
- Nico Horn, "S v Acheson and Kleynhans: The First Test for Constitutionalism in Namibia", *UNAM Students Law Review*, Volume 1, No 1, 2013, available here (background to amendment of section 61 re: bail)
- SS Terblanche, "Sentencing in Namibia: the main changes since independence", 26 (1) *South African Journal of Criminal Justice* 21 (2013)
- Clever Mapaure, Ndjodi Ndeunyema, Pilisano Masake, Festus Weyulu & Loide Shaparara, *The Law of Pre-Trial Criminal Procedure in Namibia*, Windhoek: UNAM Press, 2013
- Law Reform and Development Commission, Discussion Paper on the Possible Statutory Interventions to Curb the Alarming Spate of Domestic Violence, Murder and Gender Based Violence, LRDC 33, 2014 (bail, sentencing, witness protection)

- Graham Hopwood, "Encouraging the Reporting of Corruption: Principles of Whistleblower Protection", Institute for Public Policy Research, 2016, available here
- Jamil D Mujuzi, "The admissibility in Namibia of evidence obtained through human rights violations", 16 (2) *African Human Rights Law Journal* 2016, available here and here
- John Ndlovu, "Compensation orders in criminal proceedings", *De Rebus*, 1 August 2018 (discussing sections 297 and 300 of the South African version of the Act), available here

Sisa Namandje, The Law on Liberty, Arrest and Detention, 2019

Legal Assistance Centre, "Use of force by law enforcement officials in Namibia", 2019, available here Abraham J Hammam, "Meru moto compensation orders in criminal proceedings: far-fetched or attainable?", Namibia Law Journal, Volume 11, Issue 1, 2019 (sections 297 and 300 of Act)

Ndjodi Ndeunyema, "Reforming the Purposes of Sentencing to Affirm African Values in Namibia", 63 (3) *Journal of African Law* 329-357 (2019), available here

Justice Christie Liebenberg & Ndjodi Ndeunyema, "Exploring sentencing purposes, principles and practices in Namibia", 33 (1) *South African Journal of Criminal Justice* 23 (2020), available here

Dunia P Zongwe, "Prosecutor-General of Namibia v Namoloh and Others 2020 (3) NR 839 (SC)", 4 (1) *SAIPAR Case Review*, May 2021, available here

Desmond Francke, "Reconsidering a restorative justice approach in criminal court proceedings", *De Rebus*, July 2021 (discussing section 300 of the South African version of the Act), available here

See the entry for the Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES) for articles on conditions in prisons and police cells.

Combating of Immoral Practices Act 21 of 1980 🕎 🙀

Summary: This Act (originally published in <u>OG 4310</u>) covers the keeping of brothels, various acts related to prostitution, and various other sexual offences.

Repeals: The Act repeals the Police Offences Proclamation 27 of 1920 and the Girls' and Mentally Defective Women's Protection Proclamation 28 of 1921.

Amendments: The Married Persons Equality Act 1 of 1996 (<u>GG 1316</u>), which was brought into force on 15 July 1996 by GN 154/1996 (<u>GG 1340</u>), amends section 2.

Act 7/2000 (GG 2325), which was brought into force on 15 June 2000 by GN 141/2000 (GG 2348), amends sections 1 and 14 (sexual offences with youths).

The Child Care and Protection Act 3 of 2015 (<u>GG 5744</u>), which was brought into force by GN 4/2019 (<u>GG 6829</u>), substitutes section 16.

The Combating of Rape Amendment Act 4 of 2022 (<u>GG 7932</u>), which was brought into force by GN 113/2024 (<u>GG 8365</u>), amends section 14.

Regulations: The Act makes no provision for regulations.

Cases:

S v Narib 1994 NR 176 (HC) (section 14)

Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others 1998 NR 96 (HC) (section 17(1) of the Act declared unconstitutional)

S v Le Roux 2000 NR 209 (HC) (section 14; requirement of mens rea in respect of age)

Hendricks & Others v Attorney General, Namibia & Others 2002 NR 353 (HC) (constitutionality of the definition of "brothel" in section 1, and sections 2, 10 and 12 considered; portions of definition of "brothel" struck down, along with the entirety of subsections 2(3), 12(1) and 12(2))

S v J 2008 (1) NR 30 (HC) (section 14)

- S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under sections 14 and 16 of Act; discussed in Kaijata Kangueehi, "S v Teek: A critical review and analysis", Namibia Law Journal, Volume 1, Issue 2, 2009, available here); see also S v Teek 2019 (1) NR 215 (SC) which reinstates trial court's acquittal after discussing credibility of children's evidence and other factors
- S v Koch 2018 (4) NR 1006 (HC) (conviction under section 14(c)); sentence imposed in S v Koch (CC 20/2017) [2018] NAHCMD 318 (11 October 2018) increased on appeal in S v Koch 2022 (1) NR 70 (SC).

Commentary:

Legal Assistance Centre, Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act, 2006 (discussing the Combating of Immoral Practices Act Amendment Act 7 of 2000), available in detailed and summary versions here

Legal Assistance Centre, "Whose Body Is It?": Commercial Sex Work and the Law in Namibia, 2002, available here.

Protection of Fundamental Rights Act 16 of 1988 🕎 🔄

Summary: This Act (originally published in OG 5586) provides for the protection of certain fundamental rights. It was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021, ¹⁰⁸ but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Amendments: AG 14/1989 (OG 5726) repeals section 2 and amends the penalties in section 3(e).

Regulations: The Act makes no provision for regulations.

Cases: NANSO & Others v Speaker of the National Assembly for South West Africa & Others 1990 (1) SA 617 (SWA) (declaring sections 2(1) and 2(3) invalid in terms of the pre-independence Bill of Fundamental Rights); section 2 was subsequently repealed.

Amnesty Proclamation, AG 13 of 1989 🕎 🙀

Summary: This Proclamation (OG 5725) grants amnesty for offences committed by persons in exile, so that they may return to Namibia.

Regulations: The Proclamation makes no provision for regulations.

Application of law: The application of the Act is affected by AG GN 110/1989 (OG 5865) (which applied the amnesty to two specific individuals on the condition that they leave South West Africa immediately) and AG GN 16/1990 (OG 5894) (which applied the amnesty provisions of the Proclamation to persons "who, while they were members of the South African Police, the South West African Police, the South African Defence Force, including the South West African Territory Force, in the performance of their duties and functions in the territory have performed or failed to perform any act which amounts to a criminal offence").

¹⁰⁸ Law Reform and Development Commission, Report on Repeal of Obsolete Laws: Phase 2 (LRDC 42), March 2021, pages 62-ff.

Intimidation Proclamation, AG 24 of 1989 🗐 🔄

Summary: This Proclamation (OG 5757) makes it an offence to intimidate any other person.

Repeals: The Proclamation repeals the *Intimidation Act* 72 of 1982.

Regulations: The Proclamation makes no provision for regulations.

Notices: See General Notice 143/1992 (<u>GG 503</u>), which refers to the Proclamation in connection with guidelines for the holding of elections.

Stock Theft Act 12 of 1990 🕎 🙀

Summary: This Act (originally published in <u>GG 63</u>) consolidates and amends the laws relating to the theft of stock and produce.

Repeals: The Act repeals the Stock Theft Law Amendment Ordinance 11 of 1935 (OG 613), as amended by the Stock Theft Law Amendment Act 23 of 1985 (OG 5143). 109

Amendments: Act 4/1991 (<u>GG 201</u>) amends sections 6, 7, 9 and 14. It also inserts section 12A and repeals section 13.

Act 19/1993 (GG 703), which was brought into force on 1 October 1993 by GN 117/1993 (GG 725), repeals section 12A and amends the penalty sections. It transfers the administration of the Act from the Minister of Justice to the Minister of Home Affairs, provides minimum sentences for certain offences, and removes the restriction on adjudication of such cases by traditional leaders.

Act 19/2004 (GG 3351) amends sections 1, 14 and 17 and substitutes section 15A. Amongst other things, this amending act provides for minimum sentences for certain offences and compensation in respect of certain offences.

The General Law Amendment Act 14 of 2005 (GG 3565) amends section 1 of the said Act.

Regulations: Regulations are contained in GN 113/1991 (GG 282).

Notices: Licensed auctioneers are exempted from compliance with certain provisions of the Act by GN 108/1991 (GG 276).

Cases:

S v Shikango, S v Kahavika & Another 1990 NR 3 (HC) (previous stock theft legislation)

S v Tjisuta 1991 NR 146 (HC)

S v Inatius; S v Shapanga & Two Others 1991 NR 261 (HC)

S v Amujekela 1991 NR 303 (HC)

S v Shivute & Several Other Cases 1991 NR 433 (HC) at 438

S v Vekueminina & Others 1992 NR 255 (HC)

S v Soabeb & Others 1992 NR 280 (HC) (common law crime of stock theft)

S v Kamajame & Others 1993 NR 192 (HC) (common law crime of stock theft)

S v Useb & Another 1994 NR 81 (HC) (common law crime of stock theft)

¹⁰⁹ The Stock Theft Act 12 of 1990 does not repeal the Stock Theft Law Amendment Proclamation 15 of 1935 (OG 629), which amended Ordinance 11 of 1935, but the amending proclamation would have no independent effect.

The Stock Theft Law Amendment Ordinance 11 of 1935 (OG 613) repealed the Stock Theft Repression Proclamation 5 of 1920 (OG 28).

- S v Koortzen 1994 NR 356 (HC) (section 14)
- S v Kooper 1995 NR 80 (HC)
- S v Panduleni 1995 NR 125 (HC) (section 17)
- S v Nangolo 1995 NR 209 (HC)
- S v Vries 1998 NR 244 (HC) (dealing with the constitutionality of the minimum sentence in section 14(1)(b), and striking out the words "of not less than three years, but" from that provision)
- S v Nghitukwa 2005 NR 116 (HC) (accused must be sentenced under unamended Act when it was not clearly established that theft took place after commencement of Act which amended relevant sentence)
- S v Kauleefelwa 2006 (1) NR 102 (HC) (section 12-stock theft is not a crime created by the Act but a manifestation of the common-law crime of theft; dicta on proper application of section 14)
- S v Guim & Another 2008 (1) NR 305 (HC) (importance of evidence of value of stock in sentencing)
- S v Afrikaner 2008 (2) NR 424 (HC) (district magistrate's court has no jurisdiction to impose sentences under this Act)
- S v Zemburuka 2008 (2) NR 737 (HC) (sentencing under section 14 prior to 2004 amendments)
- S v Scott & Others 2009 (1) NR 58 (HC) (sections 14 and 15A-procedure for transfer from district court to regional court for sentencing)
- S v Undari 2010 (2) NR 695 (HC) (importance of establishing value of stock for purposes of section 14) Daniel v Attorney-General & Others; Peter v Attorney-General & Others 2011 (1) NR 330 (HC) (portions of section 14 found unconstitutional; section 14(1)(a)(ii): strike words "for a period not less than twenty years"; section 14(1)(b): strike words "for a period not less than thirty years"; reference to "subsection (1)(a) and (b)" in section 14(2) is read down to mean "subsection (1)(a)(i)"); confirmed on appeal in Prosecutor-General v Daniel & Others 2017 (3) NR 837 (SC)
- S v Huseb 2012 (1) NR 130 (HC) (the common-law rule that the execution of a judgment is suspended pending an appeal is not applicable to declaration of constitutional invalidity of legislation, meaning that the declarations of constitutional invalidity in the *Daniels* case were of full force and effect while that the holding of that case in respect of section 14(1)(b) was on appeal)
- S v Lwishi 2012 (1) NR 325 (HC) (effect of Daniel holding on sentencing options and on the application of section 15A; in the absence of a mandatory minimum sentence, first offender sentenced to 10 years imprisonment)
- S v Merero & Another 2013 (1) NR 25 (HC) (lack of evidence to support conviction of one accused on crime of stock theft in contravention of section 11(1)(a) because magistrate did not act to supplement inadequate cross-examination by prosecutor)
- S v Silas 2013 (3) NR 760 (HC) (correct formulation of charge)
- S v Tjiveze 2013 (4) NR 949 (HC) (principles to apply in respect of sentencing in light of decision in Daniel v Attorney-General & Others; Peter v Attorney-General & Others 2011 (1) NR 330 (HC), which was subsequently confirmed on appeal in Prosecutor-General v Daniel & Others) (SA 15/2011) [2017] NASC 31 (28 July 2017)
- Tjipepa v Minister of Safety and Security & Others 2015 (4) NR 1133 (HC) (sections 2 and 9(1))
- S v Haufiku & Others 2016 (1) NR 120 (HC) (High Court ruling in the Daniels case which struck down the minimum sentences in section 14(1)(a) and (b) emphasised that the decision does not suggest that the crime of stock theft is not a serious offence; the wholly-suspended sentence imposed by the trial court in this case for theft of a cow valued at N\$8000 is thus unjustified; sentence of 6 years imprisonment substituted)
- S v Diergaardt 2017 (2) NR 448 (HC) (issues relating to reasonable knowledge of ownership of calf and correct approach to sentencing)
- S v Diergaardt 2019 (2) NR 471 (HC) (consideration of factual dispute about ownership of cattle in question).

Commentary: Felicity !Owoses-/Goagoses, "Reading down words in a statute, the courts' role, and the place of Parliament: The approach of the Namibian courts", *Namibia Law Journal*, Volume 4, Issue 1, 2012, available here.

Racial Discrimination Prohibition Act 26 of 1991 🕎 📴

Summary: This Act (originally published in <u>GG 328</u>) gives effect to Article 23 of the Namibian Constitution by making certain acts of racial discrimination and apartheid criminally punishable. It covers public amenities, the provision of goods and services, transactions relating to immovable property, educational and medical institutions, employment, associations, religious services, the incitement of racial disharmony and victimisation.

Amendments: The Liquor Act 6 of 1998 (<u>GG 1843</u>), which was brought into force on 22 December 2001 (GN 250/2001, <u>GG 2670</u>), repeals section 20. Act 26/1998 amends sections 11, 14 and 17.

The Affirmative Action (Employment) Act 29 of 1998 (GG 1962), which was brought into force in relevant part on 18 November 1998 (GN 278/1998, GG 1996), amends section 7.

Regulations: The Act makes no provision for regulations.

Cases:

See *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC), which was overruled on other points by *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), for a discussion of the constitutionality of portions of this Act.

S v Smith NO & Others 1996 NR 367 (HC) rules that section 11(1) is in conflict with Article 21(1) and (2) of the Constitution and refers it back to Parliament for amendment.

See also S v Hotel Onduri (Pty) Ltd & Another 1993 HR 78 (HC), which concerns the previous Abolition of Racial Discrimination Act 3 of 1979.

Commentary:

Nico Horn, "Freedom of expression and hate speech in Namibia", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available here

A Nation Divided: Why do Racism and Other Forms of Discrimination still Persist after Twenty-seven Years of Namibian Independence, Office of the Ombudsman, 2017.

Related international agreements:

†International Convention on the Elimination of All Forms of Racial Discrimination, 1966 †International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973.

Extradition Act 11 of 1996 📲 🙀

Summary: This Act (originally published in <u>GG 1358</u>) sets out rules and procedures for transferring persons accused of certain crimes from one country to another, as well as persons convicted of certain crimes who are still unlawfully at large. It was brought into force on 1 August 1996 by GN 199/1996 (<u>GG 1370</u>).

Repeals: This Act replaces the Extradition Act 67 of 1962 (RSA GG 264).

Amendments: The Act is substantially amended by Act 19/2018 (<u>GG 6810</u>), which was brought into force on 15 October 2020 by GN 251/2020 (<u>GG 7361</u>).

Section 5 of the Act is amended by Act 2/2023 (GG 8135).

Savings: Section 26(2) of the Act contains a broad savings clause:

anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

Regulations: Regulations are authorised by section 25 of the current Act, but none have yet been promulgated. No regulations made under the repealed *Extradition Act 67 of 1962* have been located.

Notices: Countries to which extradition of persons from Namibia may be effected in terms of section 4(1)(b) of the Act are listed in Proc. 5/1997 (<u>GG 1534</u>), Proc. 11/1999 (<u>GG 2047</u>), Proc. 22/2001 (<u>GG 2656</u>), Proc. 8/2003 (<u>GG 2946</u>), Proc. 3/2006 (<u>GG 3614</u>), Proc. 10/2006 (<u>GG 3711</u>) and Proc. 21/2010 (<u>GG 4606</u>).

Cases:

S v Biglione 2000 NR 127 (HC)

S v Mushwena & Others 2004 NR 35 (HC), overruled by S v Mushwena & Others 2004 NR 276 (SC), which was reversed in part by S v Likanyi 2017 (3) NR 771 (SC); see also S v Munuma & Others 2016 (4) NR 954 (SC)

S v Koch 2006 (2) NR 513 (SC)

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC), 2010 (1) NR 328 (SC) (striking down section 21 of the Act as unconstitutional)

Ayoub v Minister of Justice & Others 2013 (2) NR 301 (SC).

Related international agreements:

SADC Protocol on Extradition, 2002.

Motor Vehicle Theft Act 12 of 1999 💶 🙀

Summary: This Act (originally published in <u>GG 2150</u>) covers the theft of motor vehicles and motor vehicle parts. It was brought into force on 1 April 2000 by GN 81/2000 (<u>GG 2294</u>).

Amendments: Act 17/2004 (<u>GG 3349</u>) amends sections 1, 2, 6, 8, 9, 13, 15 and 23. The General Law Amendment Act 14 of 2005 (<u>GG 3565</u>) amends section 1 of the Act.

Regulations: Regulations are authorised by section 24 of the Act, but none have been promulgated.

Note: Section 25 of the Act refers to sections 36 and 37 of the *General Law Amendment Act 62 of 1955*. However, this *General Law Amendment Act* is not applicable to Namibia. It appears that the reference should cite sections 6 and 7 of the General Law Amendment Ordinance 12 of 1956.

Cases:

Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd & Another 2003 NR 183 (HC) (discussion in dicta)

S v Kaevarua 2004 NR 144 (HC) (essential elements of offence and formulation of charge under section 2)

S v Amalovu & Another 2005 NR 438 (HC) (sentencing under section 15)

S v Kambindu 2016 (4) NR 1104 (HC) (sentencing under section 15).

Combating of Rape Act 8 of 2000 🕎 🙀

Summary: This Act (originally published in <u>GG 2326</u>) sets forth a new definition of rape, minimum sentences for rape, new rules of evidence in rape cases, special provisions concerning bail in rape cases, and new rules concerning privacy in respect of rape cases. It was brought into force on 15 June 2000 by GN 140/2000 (<u>GG 2348</u>).

Regulations: The Act makes no provision for regulations.

Amendments: The Act is amended by Act 4/2022 (<u>GG 7932</u>), which has not yet been brought into force.

- **Cases:** The following cases pertain to the Act –
- S v Lopez 2003 NR 162 (HC) (marital rape case dealing with unlawful detention under section 2(2)(e); "substantial and compelling circumstances" under section 3(2))
- S v Awaseb & Two Others, High Court, Case No. CA 46/2003 (unreported) (offence of attempted rape is a competent verdict on a charge of rape under the Act, by virtue of section 18 of Riotous Assemblies Act 17 of 1956)
- S v Kaanjuka 2005 NR 201 (HC) (appropriateness of sentence)
- S v Zingolo 2005 NR 349 (HC) (requirements for admissibility of medical evidence and cautionary rule applied to evidence of child)
- Sv Gurirab 2005 NR 510 (HC) (meaning of "substantial and compelling circumstances" in section 3(2); guidelines on explanations which must be given to unrepresented accused in respect of sentencing under the Act)
- S v Katuta 2006 (1) NR 61 (HC) (testimony about having "sex" insufficient to prove sexual act under section 2(1)(a)), as defined by section 1)
- S v Domingo [2005] NAHC 37 (meaning of grievous bodily or mental harm in section 3(1)(a)(iii)(aa); appropriate punishment)
- S v Nango 2006 (1) NR 141 (HC) (incorrect application of sentencing provisions corrected on appeal; weighing of evidence of child rape victim and child witness)
- S v M 2006 (1) NR 156 (HC) (conviction of rape of 8-year-old boy by 16-year-old boy overturned on procedural grounds)
- S v Kauzuu 2006 (1) NR 225 (HC) (sentence of 20 years for repeated rape of 14-year-old child of girlfriend, resulting in pregnancy, reduced to 15 years on appeal to take into account certain mitigating factors and time spent in custody awaiting trial)
- S v Hoaseb 2006 (1) NR 317 (HC) (finding that weapon mentioned in testimony was not used in furtherance of the rape, affecting applicable minimum sentence)
- S v Limbare 2006 (2) NR 505 (HC) (role of judicial discretion in sentencing under Act, and "substantial and compelling circumstances" under section 3(2))
- S v Bezuidenhout 2006 (2) NR 613 (HC) (effect on sentencing of previous conviction of rape which occurred many years previously and prior to enactment of statute)
- Sv Karenga 2007 (1) NR 135 (HC) (attempted rape not expressly provided for in Act, but can be charged under common law, or as a competent verdict for rape under the Act by virtue of section 256 of the Criminal Procedure Act 51 of 1977)
- S v S 2007 (1) NR 305 (HC) (conviction involving rape of 14-year-old; alibi of accused rejected)
- S v Gaseb 2007 (1) NR 310 (HC) (bail denied in case alleging rape of 9-year-old; court has wider discretion to refuse bail in respect of offences listed in Part IV of Schedule 2 of Act 51 of 1977, which include rape; "sexual assault of women and girls is a serious concern to all and sundry")
- S v M 2007 (2) NR 434 (HC) (meaning of grievous bodily or mental harm in section 3(1)(a)(iii)(aa); appropriate punishment)
- S v Handukene 2007 (2) NR 606 (HC) (district magistrate's court has no jurisdiction over charge of rape under Act except for plea under section 119 of Criminal Procedure Act 51 of 1977)
- S v Kukame 2007 (2) NR 815 (HC) (rape and murder of 3-year-old; case deals with admissibility of confession & pointing out)
- S v J 2008 (1) NR 30 (HC) (penetration of 8-year-old not established)
- S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under section 2(1)(a) of Act); see also S v Teek 2019 (1) NR 215 (SC) which reinstates trial court's acquittal after discussing credibility of children's evidence and other factors
- S v Swartz NAHCMD CC 08/2010 (18 November 2011) (rape of 4-year-old by 16-year-old by means of insertion of finger in vagina; sentence of 8 years, 4 years suspended)
- S v Hengari 2010 (2) NR 412 (HC) (offence of attempted rape is a competent verdict on a charge of rape under the Act, by virtue of section 18 of Riotous Assemblies Act 17 of 1956, and the sentence should be the same as those provided by section 3 for the completed crime of rape)
- S v K 2011 (1) NR 1 (HC) (rape of 3½-month old baby: "one of the youngest if not the youngest victim ever of rape in this country"; discussion of interests of society in respect of sentencing of 17-

- year-old offender)
- S v BM 2013 (4) NR 967 (HC) (traditional healer's practice of smearing herbs into genitals of complainants and then having sexual intercourse with them constitutes misrepresentation under section 2(1)(h) and is not a "sound medical practice" for purposes of the exception to the definition of "sexual act" in section 1)
- S v Iilonga 2014 (1) 53 (NLD) (no substantial and compelling circumstances found for purposes of minimum sentence in respect of rape of 8-year-old by 21-year-old; notes that not all youthful offenders are immature, and that not all rural and uneducated offenders are unsophisticated; court also considers lasting impact on complainant)
- S v Gomaseb 2014 (1) NR 269 (HC) (upholds sentence imposed on 15-year-old offender for rape of 5-year-old by means of insertion of finger in vagina (6 years, 3 years suspended); Convention on the Rights of the Child applied)
- S v Ndakolo 2014 (2) NR (NLD) (sentence of 17 years imprisonment for rape of 9-year-old boy by 19-year-old confirmed; punitive, retributive and deterrent aspects of sentence outweigh personal circumstances of accused; "It is a realistic fact that the imposition of substantial custodial sentences is not the ultimate panacea for this scourge. That does not detract from the fact that the courts should play their role as part of the collective effort to eradicate this violence from society" (para 12))
- S v SS 2014 (2) NR 399 (HC) (various procedural issues in rape trial, including explanation to unrepresented accused, formulation of charges, missing rape kit, treatment of evidence of single witness and testimony regarding J88 form)
- S v Ameb 2014 (4) NR 1134 (HC) (conviction upheld in absence of medical evidence of rape)
- S v Kambatuku 2014 (4) NR 1134 (HC) (conviction in rape case set aside because accused not afforded effective opportunity to exercise right to legal representation; one reason cited for ruling is seriousness of crime of rape)
- S v Kapure 2015 (2) NR 394 (HC) (rape of an 81-year-old woman by a 29-year-old man; court's failure to comply strictly with the *Guirab* guidelines not sufficiently serious to warrant overturning of 17-year sentence imposed for rape)
- S v Libongani 2015 (2) NR 555 (SC) (21-year-old convicted of raping 10-year-old; charge sheet could not support conviction on rape on more than one occasion; magistrate's finding of substantial and compelling circumstances unjustified, and aggravating circumstances were not considered; 12-year-sentence substituted with sentence of 17 years)
- S v Unengu 2015 (3) NR 777 (HC) (treatment of single witness evidence; treatment of discrepancies between witness statements to police and testimony in court)
- S v Gomeb & Others 2015 (4) NR 1100 (HC) (problems with chain of evidence in rape case)
- S v PV 2016 (1) NR 77 (HC) (discussion of absence of free will/consent as a coercive circumstance under section 2(2))
- Sv LK 2016 (1) NR 90 (SC) (sentencing for rape of 7-year-old by 20-year-old by insertion of finger in vagina; substantial and compelling circumstances need not be exceptional, but sentence imposed must be weighed against benchmark of original minimum sentence and against fact that legislature particularly extended strong protection to persons vulnerable because of their youth; court upholds departure from minimum sentence of 15 years but substitutes heavier sentence (9 years, 4 years suspended) than that imposed by trial court (7 years, 4 years suspended))
- S v JB 2016 (1) NR 114 (SC) (sentencing for rape of daughter (age not stated) by her father; time spent in custody awaiting trial cannot constitute substantial and compelling circumstance; minimum sentence of 15 years imposed on appeal)
- S v VL 2018 (1) NR 67 (HC) (rape conviction in lower court upheld)
- S v Koch 2018 (4) NR 1006 (HC) (acquittal on charge of rape of children due to contradictory evidence; conviction on alternative charge under section 14(c) of the Combating of Immoral Practices Act 21 of 1980); acquittal on rape charges upheld on appeal in S v Koch 2022 (1) NR 70 (SC)
- S v Jonas 2019 (4) NR 924 (HC) (convictions on multiple trafficking and rape offences; however, attempted rape not present when actions in question amounted only to preparation and not an actual attempt; if attempted rape had been proved, conviction would have had to be under section 18(1) of the Riotous Assemblies Act 17 of 1956 and not the Combating of Rape Act 8 of 2000)

- S v Matlata 2018 (4) NR 1038 (HC) (sentencing for rapes of multiple women; no "substantial and compelling circumstances" found for purposes of section 3(2) of Act)
- S v Boois 2018 (4) NR 1060 (HC) (life sentence, without consideration for parole before serving 25 years, for rape-murder of visibly pregnant woman; section 3(4) analysed; discussion of conflict between some minimum sentences in Act and application of S v Gaingob & Others 2018 (1) NR 211 (SC))
- S v Gariseb 2019 (2) NR 334 (SC) (section 1(1); "genital stimulation" applies only to stimulation of female genitals due to being listed together with cunnilingus; attempted rape is a competent verdict on a charge of rape, but not indecent assault)
- Sv Paulus (CC 3/2019) [2020] NAHCNLD 108 (17 August 2020) ("sexual act"; entry of female genital organ to opening of vagina constitutes penetration)
- S v Gawiseb 2022 (2) NR 453 (HC) (sentences for multiple rapes committed on same night to be served concurrently to comply with S v Gaingob & Others 2018 (1) NR 211 (SC), and to ameliorate excessive cumulative effect)
- Veira v Prosecutor-General & Others 2023 (1) NR 62 (HC) ((1) the open-ended list of coercive circumstances in section 2(2) is not unconstitutionally vague, with a discussion of the difference between the word "including" and the phrase "including but not limited to"; (2) the open-ended nature of this list has not impeded the accused's constitutional right to prepare for trial and formulate a defence, in light of the many procedural safeguards that protect against vague or unspecified charges; (3) the accused has no standing to challenge section 2(2)(f) as he has not been charged under that provision)
- S v Krylov & Another 2023 (1) NR 229 (HC) ("coercive circumstances" covers scheme to exploit minor children for sex over several months, even though some of the children were over the age of 14 cited in the Act)
- S v Haufiku 2023 (3) NR 701 (SC) ("substantial and compelling circumstances" under section 3(2); failure to lead specific evidence on lasting psychological impact of rape is not relevant as baseline assumption is that rape produces a lasting psychological impact; fact that two acts of rape occurred on same evening is not a substantial and compelling circumstance because the two acts were separated in time and because this factor, if relevant, is more appropriate to consideration of whether any portion of sentence should run concurrently; offender's youthfulness and long period of pre-trial incarceration are deserving of consideration, but cannot outweigh the gravity of his conduct; Supreme Court finds no substantial and compelling circumstances in this case; at paras 12-13 (footnotes omitted):

The law: what are substantial and compelling circumstances?

- [12] Namibia's courts have adopted the test for substantial and compelling circumstances as enunciated in the leading South African case of *S v Malgas* [2001 (2) SA 1222 (SCA)]. *Malgas* has been consistently applied in South Africa and approved by the Constitutional Court in, for example, *S v Dodo* [2001 (3) SA 382 (CC)].
- [13] Substantial and compelling circumstances constitute facts and circumstances concerning the crime, its impact on society, in particular on the victim, and the personal circumstances of the perpetrator which, viewed cumulatively and in their totality, make the imposition of the mandatory minimum sentence disproportionate and unjust. In assessing whether that test has been met, a sentencing court should place in the scale all the factors traditionally taken into account in mitigation or aggravation of sentence but bearing in mind that the legislature's chosen standardised response to the crime of rape should not be departed from for flimsy reasons such as sympathy for the perpetrator. It must be borne in mind that, apart from it being an obnoxious offence deserving severe punishment in its own right, the legislature has identified certain types of conduct under which rape is committed (coercive circumstances) as deserving of standardised severity. These include where 'the complainant has suffered grievous bodily or mental harm as a result of the rape' or where 'the convicted person uses a firearm or any other weapon for the purpose of or in connection with the commission of the rape'.).
- Bezuidenhoudt v S (CC 04/2005) [2023] NAHCMD 669 (19 October 2023) ("S v Gaingob does not apply to statutory prescribed mandatory minimum sentences" (para 10); "Unless and until a competent court declares as unconstitutional and sets aside the mandatory minimum sentence regime under the Combating of Rape Act", the mandatory minimum sentences in the Act remain

in place (para 12).110

See also S v Neromba (CC 12/2022B) [2023] NAHCMD 483 (8 August 2023) at para 27 on this issue.

The following cases concern the common-law crime of rape –

S v Shapumba 1999 NR 342 (SC) (sentencing for common-law crime of rape in a case where another rape was committed while accused was out on bail; 15 years for the one rape and 9 years for the other, to run concurrently in part for effective total of 18 years imprisonment; at 343J-344C:

The crime of rape, being an unlawful and forceful invasion of the body and privacy of a woman, mostly with the purpose to satisfy sexual urge of the offender, can, except in the most exceptional circumstances, not contain mitigating factors which could explain the commission of the crime and diminish the moral blameworthiness of the offender. Whereas there is very little that can mitigate the commission of the crime of rape there are certain specific factors which would further aggravate and contribute towards the seriousness of the crime and the consequent punishment thereof. Examples of these are the rape of young children, the amount of force used before, during or after the commission of the crime, the use of weapons to overcome any resistance by means also of threats of violence, rape committed by more than one person on the victim, the fact whether the rapist is a repeat offender, etc. These factors, or a combination thereof, resulted in heavy punishments imposed by the Courts,)

S v Katamba 1999 NR 348 (SC) (acquittal on charge of rape of 11-year-old overturned on appeal, in conjunction with a holding that the cautionary rule in sexual cases should not be applied by Courts in Namibia)

S v Gaseb & Others 2000 NR 139 (SC) (multiple charges and convictions in respect of gang rape)

S v Le Roux 2000 NR 209 (HC) (lack of evidence of rape in context of application for discharge)

S v Kaupitwa & Others 2024 (1) NR 185 (NLD) (use of anatomically-correct dolls by vulnerable witness in respect of charges of rape).

The following civil action concerns a duty of care in respect of the rape of a mentally disabled child which occurred whilst she was wrongfully allowed to spend a weekend outside her school hostel-Vivier NO & Another v Minister of Basic Education, Sport & Culture 2007 (2) NR 725 (HC); 2012 (2) NR 613 (SC).

Commentary:

LLE du Toit, FJ de Jager, A Paizes, A St Q Steen & SE van der Merwe (eds), Commentary on the Criminal Procedure Act, Cape Town: Juta Law, 1987 and associated bi-annual Criminal Justice Review (both discussed in Nico Horn, "LLE du Toit, FJ de Jager, A Paizes, A St Q Steen & SE van der Merwe, eds, Commentary on the Criminal Procedure Act, Cape Town: Juta Law, 1987, Loose-leaf format, 1,700 pages, ISBN 9780702119620", Namibia Law Journal, Volume 5, Issue 1, 2013, available here)

A Kruger, *Hiemstra's Criminal Procedure*, Durban: Lexis Nexis, 2008 (discussed in Nico Horn, *Namibia Law Journal*, Volume 2, Issue 1, 2010, available here)

Dianne Hubbard, "A Critical Discussion of the Law on Rape in Namibia", Windhoek: Namibian Institute for Social and Economic Research (NISER), University of Namibia, 1991, republished in S Bazilli (ed), *Putting Women on the Agenda*, Johannesburg: Raven Press, 1991

Dianne Hubbard, "Should a Minimum Sentence for Rape be Imposed in Namibia?", *Acta Juridica* 1994; reprinted in Christina Murray (ed), *Gender and the New South African Legal Order*, Cape Town: Juta & Co, 1994

Law Reform and Development Commission, *Report on the Law pertaining to Rape*, LRDC 4, 1997, available here

Legal Assistance Centre, *Guide to the Combating of Rape Act*, 2001, available here (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali)

Legal Assistance Centre Guidelines for Service Providers on the Combating of Rape Act, 2005, available here

Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006, available in detailed and summary versions here

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¹¹⁰ See a press report on this case: "Heavy jail terms for rape stay part of law", *The Namibian*, 24 October 2023.

Legal Assistance Centre, *Withdrawn: A Study of Rape Case Withdrawals*, 2009, available here
Allison De Smet & Dianne Hubbard, "Substantial and Compelling Circumstances" in Rape Cases, Legal Assistance Centre, 2009, available here

Laila Hassan, "Sentencing under the Combating of Rape Act, 2000: The misapplication of judicial discretion", *Namibia Law Journal*, Volume 3, Issue 1, 2011, available here

Law Reform and Development Commission, *Further Report on the Law Pertaining to Rape*, LRDC 18, 2012, available here.

International Co-operation in Criminal Matters Act 9 of 2000 🗐 🙀



Summary: This Act (originally published in <u>GG 2327</u>) facilitates the provision of evidence and the execution of sentences in criminal cases, and the confiscation and transfer of the proceeds of crime, between Namibia and certain designated foreign states. It was brought into force on 15 September 2001 by GN 185/2001 (GG 2614).

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

Amendments: This Act is substantially amended by the Prevention of Organized Crime Act 29 of 2004 (<u>GG 3363</u>), which was brought into force by GN 77/2009 (<u>GG 4254</u>).

Schedule 1 is amended by the addition of the Federal Republic of Germany by GN 107/2005 (<u>GG 3491</u>), and by the addition of several other countries by GN 167/2006 (<u>GG 3714</u>).

The Act is also substantially amended by Act 20/2018 (GG 6811). Amongst other things, these amendments provide for a Central Authority to make and receive requests for assistance.

Act 12/2023 (GG 8149) amends sections 1 and 7A and inserts sections 26A-26D.

Regulations: Regulations for International Co-operation in Criminal Matters are contained in GN 186/2001 (GG 2614), as amended by GN 221/2023 (GG 8150).

Anti-Corruption Act 8 of 2003 🗐 🙀

Summary: This Act (originally published in <u>GG 3037</u>) establishes an Anti-Corruption Commission and provides for the prevention and punishment of corruption. It was brought into force on 15 April 2005 by GN 37/2005 (<u>GG 3411</u>).

Repeals: The Act repeals the *Prevention of Corruption Ordinance 2 of 1928* and amends Schedule 3 of the Public Service Act 13 of 1995.

Amendments: The Act is amended by Act 10/2016 (<u>GG 6156</u>), which substitutes sections 11 and 12 and substitutes "Director-General" for "Director" and "Deputy Director-General" for "Deputy Director" throughout. (This necessitates a corresponding amendment to Schedule 3 of the Public Service Act 13 of 1995. See section 54(2) of this Act, as amended.)

Regulations: Regulations are authorised by section 30 of the Act, but none have been promulgated. There is no savings provision for regulations made under the repealed Ordinance.

Notices: Investigating officers of the Anti-Corruption Commission, already appointed and to be appointed, are appointed as justices of the peace for all magisterial districts in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963* by GN 33/2012 (GG 4883).

Cases:

S v Nakale & Others (No 1) 2007 (2) NR 405 (HC) (conviction); S v Nakale & Others (No 2) 2007 (2) NR 427 (HC) (sentencing)

Prosecutor-General v Lameck & Others 2009 (2) NR 738 (HC) (sections 32-33, 42(2))

Prosecutor-General v Lameck & Others 2010 (1) NR 156 (HC) (discussion of search warrant procedure) S v Paulus 2011 (2) NR 649 (HC) (offence created by section 35(1) requires mens rea in form of dolus) Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) (striking down the definition of "corruptly" in section 32 as being unconstitutionally vague, leaving the term as used in other sections of the Act to be interpreted by the courts; but finding the definition of "gratification" in section 32 to be wide but not unduly vague).

Simataa v Magistrate of Windhoek & Others 2012 (2) NR 658 (HC) (sections 18, 22, 43)

- S v Goabab & Another 2013 (3) 603 (SC) (following on striking down of definition of "corruptly" in section 32 on Constitutional grounds, encourages judicial development and finds that term "corruption" at its lowest threshold in the context of the public service includes "abuse of a public office or position (including the powers and resources associated with it) for personal gain" and that synonyms of "corruptly" include "immorally, wickedly, dissolutely and dishonestly")
- Hailulu v Director of the Anti-Corruption Commission & Others 2014 (1) NR 62 (HC) (sections 18, 43(1) and 28); confirmed on appeal in Hailulu v Director, Anti-Corruption Commission & Others 2016 (1) NR 1110 (SC) (section 18 and relationship between Commission and Prosecutor-General)

The fact that appellant has not succeeded in this appeal should not obscure the fact that it is a cause for grave concern that the Commission was found by the High Court to have advanced the cause of the Union and its members in effecting the arrest of appellant. Such conduct is deplorable and appellant is entitled to feel aggrieved by it. The Commission is established as an independent and impartial institution to prevent and punish corruption. It is an institution of national importance pursuing a goal that is central to the wellbeing of Namibia's democracy. Its conduct must be beyond reproach. The achievement of the Commission's goal will be imperilled if its reputation is tarnished as it has been in this case by its unlawful conduct. Appellant may of course choose to pursue civil remedies against the Commission. Such remedies, however, even if successful, will not repair the Commission's reputation. Its reputation will only be repaired if the Commission by its conduct and the conduct of its officials demonstrates unwaveringly that it must and will always act in a manner that is independent, impartial and lawful. (para 65)

- Sv Lameck & Others 2017 (3) NR 637 (SC) (discussion of section 21(5) read with 26(1)(d), and sections 22(4) and 27, in context of appeal on issue of recusal)
- New Force Logistics CC v Anti-Corruption Commission 2018(2) NR 375 (HC) (section 23: evidence on the application of this section must come from the officers who actually carried out the search; section 25)
 - [58] ... [T]he Constitution of this Republic grants suspects and accused persons certain pre and trial rights, which include the presumption of innocence, right against self-incrimination and kindred rights and freedoms. More importantly, the Legislature has, in the Anti-Corruption Act and other kindred pieces of legislation, which seem to bear on human rights and freedoms, sought to strike a balance that ensures that fundamental rights, even in the face of accusations of commission of serious crimes, are maintained and observed.
 - [59] It is in this regard that for instance, rights to search, seize and attach property have been subjected to stringent safeguards, including the issuance of warrants and where circumstances so demand, the carrying out of those necessary actions without a warrant, but under extreme safeguards, that seek to balance the interests of the society in arresting and dealing with crime and the rights of an individual to be treated fairly and in a just manner.
 - [60] It would be a sad day in this Republic, if the courts, because of the undeniable need to arrest the ubiquitous incidence of serious crime, including corruption, would close their eyes to the constitutional safeguards, thus sacrificing the rule of law and individual rights and freedoms guaranteed in the Constitution and the laws of this Republic, on the altar of bringing suspects to book, by hook or by crook. This great edifice, under which all persons in this great country seek and find refuge, might fall if that were to be the accepted approach.
 - [61] In this regard, the courts must hold the middle ground and ensure that where crime is suspected to have been committed, those suspected or implicated, are treated fairly and strictly in terms of the law. Where the functionaries responsible therefor fail or neglect to follow the dictates of the law that should ordinarily guide them in their actions, they should know and

- expect that the courts will not turn a blind eye and give priority to the arrest and prosecution of suspects, throwing the strict requirements of the law into the dustbin as it were. The courts cannot and should not be party to a law-breaking enterprise, even if it is perceived, in religious, political or social circles, to be for the common good. The end should never justify the means.
- S v Lameck & Others 2018 (3) NR 902 (HC) (GN 33/2012 (GG 4883), which designates investigating officers under this Act as Commissioners of Oaths in terms of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 is supplementary to AG GN 128/1982 (OG 4672) which designates members of any "commission" established by law as Commissioner of Oaths under that Act; search warrants issued under section 22(4) null and void, because section 22(5)(b) requires that a specific authorised officer must be named in the warrants)
- S v Lameck & Others 2019 (2) NR 368 (HC) (summons under section 18 can be issued only after an investigation into corrupt practices has been initiated; access to accounts at financial institutions must be actioned via section 27 and not section 21(5); at para 30: "To allow evidence that was unlawfully obtained (emanating from invalid summonses) would result in a gross violation of the accused persons' fundamental rights to privacy and a fair trial, guaranteed under the Constitution.")
- S v Hanse-Himarwa 2019 (3) NR 706 (HC) (no irregularity found under section 31(1); Minister convicted of contravention of section 43(1)); see also S v Hanse-Himarwa (CC 05/2018) [2019] NAHCMD 260 (31 July 2019) (sentence: fine of N\$50 000 or in default of payment, 24 months imprisonment, plus a further 12 months imprisonment suspended for a period of 5 years on condition that the accused is not convicted of a contravention of section 43(1) during the period of suspension)
- Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (definition of "authorised officer"; multiple warrants issued under section 22(6) in respect of overlapping time periods; warrants and search procedure considered in light of sections 22, 24(3), 25(1) and (5))
- S v Aupindi & Another 2021 (4) NR 1008 (HC) (section 21 intended for obtaining information from potential witnesses, not for questioning of suspects).

Commentary:

- Ellison Tjirera & Graham Hopwood, "The ACC in Action: What Does the Track Record Say?", Institute for Public Policy Research, 2011, available here
- Frederico Links & Clement Daniels, "Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia", Institute for Public Policy Research, 2011, available here
- Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available here
- Graham Hopwood, "Encouraging the Reporting of Corruption: Principles of Whistleblower Protection", Institute for Public Policy Research, 2016, available here
- Anti-Corruption Commission, "Namibia National Anti-Corruption Strategy and Action Plan 2016-2019", available here
- Max Weylandt, "The Namibian Anti-Corruption Strategy 2016-2019: An Overview and Analysis", Institute for Public Policy Research, 2017, available <a href="https://example.com/here-public-policy-new-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-policy-public-p
- Max Weylandt, "The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?", *Briefing Paper,* Institute for Public Policy Research, June 2017, available here
- Job Shipululo Amupanda, "The Fight against Corruption in Namibia: An Appraisal of Institutional Environment and a Consideration of a Model for Civil Society Participation", *Namibia Law Journal*, Volume 11, Issue 1, 2019
- Anti-Corruption Commission, "Final Draft National Anti-Corruption Strategy and Action Plan 2021-2025"
- See Anti-Corruption Commission brochures available for download here.

Prevention of Organised Crime Act 29 of 2004 🗐 🙀

Summary: This Act (originally published in <u>GG 3363</u>), often abbreviated as POCA, contains measures to combat organised crime, money laundering and criminal gang activities, and establishes a Criminal Assets Recovery Fund and a Criminal Assets Committee. It also substantially amends the International Co-operation in Criminal Matters Act 9 of 2000 (<u>GG 2327</u>). It was brought into force on 5 May 2009 by GN 77/2009 (<u>GG 4254</u>).

Amendments: Act 10/2008 (<u>GG 4191</u>) amends sections 1, 11, 77 and 100, and substitutes sections 9 and 10.

The Whistleblower Protection Act 10 of 2017 (<u>GG 6450</u>), which has not yet been brought into force, amends section 76.

The Act is also amended by the Combating of Trafficking in Persons Act 1 of 2018 (<u>GG 6562</u>), which was brought into force on 14 November 2019 by GN 335/2019 (<u>GG 7047</u>).

The Act is further amended by Act 9/2023 (GG 8142), which was brought into force on 28 July 2023 by GN 227/2023 (GG 8157).

Regulations: Regulations are contained in GN 78/2009 (<u>GG 4254</u>), as amended by GN 228/2023 (<u>GG 8157</u>).

Rules: Rules for High Court proceedings in terms of Chapters 5-6 of the Act are contained in GN 79/2009 (GG 4254).

Application of law: Persons who give statements or evidence in proceedings under this Act may be eligible for protection under the Witness Protection Act 11 of 2017 (<u>GG 6451</u>).

Appointments: An accounting officer for the Criminal Assets Recovery Fund is designated in GN 213/2021 (GG 7647), which repeals GN 111/2012 (GG 4941).

Related laws: See the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM) and the Financial Intelligence Act 13 of 2012 (FINANCIAL INSTITUTIONS).

Cases:

Prosecutor-General v Lameck & Others 2009 (2) NR 738 (HC) (restraint orders under sections 24-25)

Prosecutor-General v Lameck & Others 2010 (1) NR 156 (HC) (test for confirming provisional preservation order issued under section 51(2))

Ex Parte Prosecutor-General In Re: Application for a Preservation Order in Terms of S 51 of the Prevention of Organised Crime Act 29 of 2004 2012 (1) NR 146 (HC) (no legal representation by unadmitted legal practitioners in section 51 applications)

Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) (upholding constitutionality of various provisions of the Act)

Pinto v First National Bank of Namibia Ltd & Another 2013 (1) NR 175 (HC) (effect of POCA on relationship between banker and client)

Shalli v Attorney-Ĝeneral & Another 2013 (3) 613 (HC) (civil forfeiture scheme in Chapter 6 upheld against challenges on three Constitutional grounds)

Prosecutor-General v Kanime 2013 (4) NR 1046 (HC) (application of test for confirming provisional preservation order issued under section 51(2))

Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC), reversed on appeal in Prosecutor-General v Uuyuni 2015 (3) NR 886 (SC) (sections 51 and 98; held on appeal that an ex parte, in camera proceeding in respect of a preservation of property order is not unconstitutional in terms of Art 12(1), nor in conflict with section 13 of the High Court Act; note discussion of this case in Atlantic Ocean Management Group (Pty) Ltd v Prosecutor-General 2019 (4) NR 1031 (SC) at

paras 16-24)

- Mwashekele v Prosecutor-General 2015 (2) NR 564 (HC) (sections 52 and 60)
- S v Lukas (CC 15/2013) [2015] NAHCMD 124 (2 June 2015) (conviction for trafficking in persons under section 15 of Act read with section 1)
- Prosecutor-General v Kennedy 2019 (3) NR 631 (SC), overturning Prosecutor-General v Kennedy 2017 (1) NR 228 (HC) (Supreme Court: vehicle was an "instrumentality" in terms of section 61(1) in offence of rape involving rape at isolated spot)
- Prosecutor-General v Miguel & Others 2017 (2) NR 381 (HC) (procedural issues relating to forfeiture of property following on conviction under POCA; High Court grants stay of magistrate's court order to return property while appeal against decision on forfeiture is pending)
- Prosecutor-General v Taapopi 2017 (3) NR 627 (SC) (interpretation of "in the prescribed manner" in section 91(1): regulation 7(b) on 7-day notice period not applicable to *ex parte* application for property preservation order under section 51(2); requirements for granting property preservation order under section 51(2))
- Atlantic Ocean Management Group (Pty) Ltd & Another v Prosecutor-General 2017 (4) NR 939 (HC), confirmed on appeal in Prosecutor-General v Atlantic Ocean Management Group (Pty) Ltd & Another 2019 (4) NR 1031 (SC) ((1) There is a right to anticipate the hearing on an ex parte preservation order under section 51 of the Act via rule 72(7) of the Rules of the High Court; Supreme Court notes at para 15: "The drafters of the regulations, it would appear were with respect careless in that they did not make a distinction in the applicability of the regulations between applications in terms of s 51(2) and s 91(2)." (2) In terms of section 51 of the Act, the Prosecutor-General may make an ex parte application for a preservation of property order, but the court hearing the application in terms of s 51 is obliged to ensure that the proceedings before it are fair, with due regard to the principle of audi alteram partem (see para 21); (3) The permissibility of a subsequent application for a preservation order after the previous one lapses will depend on the circumstances of the case; not allowed here because Prosecutor-General should have acted immediately to cancel the first preservation order upon discovering that the determination relied upon (Determination No 3 of 2016 issued under the Financial Intelligence Act 13 of 2012) had not at that stage been published in the Government Gazette and that the account in question was not actually blocked in terms of s 42 of the Financial Intelligence Act 13 of 2012 as the Court believed)
- Prosecutor-General v Africa Autonet CC t/a Pacific Motors 2017 (4) NR 969 (HC) (costs order against Prosecutor-General after preservation order lapsed before application for rescission could be heard; notice of withdrawal should have been filed under rule 97 of High Court Rules, and costs tendered, when preservation order was allowed to lapse)
- Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (inexplicable failure to utilise POCA in case involving foreign currency that was admittedly the proceeds of unlawful activity, noted in passing at paras 30-31)
- Prosecutor-General v Kamunguma & Another 2019 (3) NR 651 (SC), overturning Prosecutor-General v Kamunguma & Another 2017 (4) NR 1089 (HC) (Supreme Court: discussion of Chapter 6 of Act and intertwined nature of preservation orders and forfeiture applications; no prejudice to respondent if affidavit of preservation application is incorporated by reference in forfeiture application; application of section 60; application of section 1 (definition of "proceeds of unlawful activities") and section 63; forfeiture order granted)
- New Africa Dimensions CC & Others v Prosecutor-General 2018 (2) NR 340 (SC) (explication of definition of "proceeds of unlawful activities" in section 1; under section 63(1)-(2), owner of property who wishes to avoid a forfeiture order must apply for exclusion of the property from the order and provide proof that it was acquired legally with no knowledge or reasonable suspicion that the property was the proceeds of unlawful activity)
- S v Miguel & Others 2018 (4) NR 946 (HC) (definition of "unlawful activity" in section 1; section 2 (knowledge of a fact); section 6(d))
- S v Koch 2018 (4) NR 1006 (HC) (conviction on charges of trafficking; definition of trafficking discussed; section 15 read with section 1 in light of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 to the Convention against Transnational Organized Crime (Palermo Convention), 2000; meaning of "harbour or receive" and "sexual exploitation" of children, which includes conduct by a perpetrator whose aim is to

- give sexual gratification to the person who harbours or receives a child, even if a "sexual act" is not committed); sentence imposed in *S v Koch* (CC 20/2017) [2018] NAHCMD 318 (11 October 2018) increased on appeal in *S v Koch* 2022 (1) NR 70 (SC).
- Prosecutor-General v Standard Bank Namibia Ltd & Others 2019 (1) NR 159 (HC) (sections 4, 63, 59(1) in respect of request for forfeiture order)
- S v Manale 2019 (1) NR 191 (HC) (fraud and money-laundering under section 6 of this Act (read with section 11) involve different actions and criminal intent; prosecution of all such offences in a single prosecution is not improper splitting of charges and does not produce duplication of convictions); S v Manale 2019 (2) NR 517 (HC) (sentence for 147 counts of fraud and one count of money laundering)
- S v Henock & Others (CR 86/2019) [2019] NAHCMD 466 (11 November 2019) (Since the statute does not limit its application to serious predicate offences, the discretion on whether or not to charge under POCA lies with the Prosecutor-General; a person who has committed a predicate offence can also commit money-laundering under section 4 in connection with the proceeds of the unlawful activities; section 6 applies only to a person other than the person who committed the predicate offence, and prosecution of the same person under both the predicate offence and the money-laundering offence would constitute a duplication of convictions.)
- Assegaai & Others v Prosecutor-General & Others 2020 (1) NR 25 (HC) (applicant may not bypass the procedure in section 58 of the Act for varying or rescinding a preservation order by using a subordinate statutory provision with a similar procedure in this case, High Court Rule 103)
- Prosecutor-General v Paulo & Another 2020 (4) NR 992 (SC) ((1) property preservation proceeding and forfeiture proceeding are part of a single two-stage intertwined process; the application for a forfeiture order is not a new proceeding as defined in rule 65(1) of the High Court rules. (2) service of process at "General Office for Service of Process (GOSP)" instead of legal practitioner's office address is sufficient service under section 91(1) read with regulation 7); Prosecutor-General v Paulo & Another 2021 (2) NR 423 (HC) (sections 1 and 61; application for forfeiture order dismissed as it was not proved that the money in question was the proceeds of illegal activity, including money-laundering under sections 4 and 6 of this Act), confirmed on appeal in Prosecutor-General v Paulo & Another 2023 (2) NR 477 (SC) (section 59)
- Sv Gustavo & Others 2021 (4) NR 990 (HC) (racketeering as described in section 2 discussed in context of application for joinder of criminal cases; concerns "Fishrot" matter)
- Prosecutor-General v China South Industry and Trading CC 2021 (4) NR 1052 (SC) (section 52(3) notice defective due to non-compliance with section 52(5)(e), meaning that sanction in 52(6) becomes operative with the effect that the person in question is not entitled to receive notice of a forfeiture application)
- Prosecutor-General v Oliveira & Another 2021 (4) NR 1144 (SC) (sections 51 and 91 read with regulation 7; court has discretion to dispense with prescribed requirements for provisional preservation order sought on urgent basis, as this interpretation is necessary to uphold the purpose of POCA to expeditiously preserve assets that are used to commit criminal offences or that are the proceeds of unlawful activity; brief discussion of appointment of investigating officer as curator bonis under section 55(1)(a) in light of remedies available under sections 58(7)(a)-(b) and 58(8)(a)(ii))
- S v Krylov & Another 2023 (1) NR 229 (HC) (driving the victims constitutes "transporting" them for purposes of trafficking)
- Prosecutor-General v Gustavo & Others 2023 (2) NR 444 (HC) (after a general discussion of the purposes of confiscation and restraint orders under the Act and a summary of the criminal allegations in the "Fishrot" matter, holding that section 83 is a tool to empower the police to investigate offences under the Act and does not restrict or prescribe the powers of the Prosecutor-General to institute and conduct proceedings under chapters 5 and 6 of the Act); McLaren NO & Another v Prosecutor-General: In re Prosecutor-General v Gustavo & Others 2024 (1) NR 232 (HC) (release of curators administering property under restraint order and appointment of substitute curators; sections 29(1)(a) and (c), 29(3)(c) and 92)
- Shilengudwa & Another v Prosecutor-General & Others 2023 (3) NR 866 (HC) (definition of "proceeds of unlawful activities" is an unconstitutional infringement of Art 16 to the extent that it includes property mingled with property that is the proceeds of lawful activities; the provision in question also lacks the safeguard provided by Art 12(4) of the Palermo Convention; portion of definition

struck out to remedy this problem); see also *Prosecutor-General* v *Shilengudwa & Others* 2023 (4) NR 1041 (HC) (when a court finds that a a legislative provision is constitutionally invalid, an appeal against that judgment does *not* suspend the declaration of invalidity while the appeal is pending; following *S v Huseb* 2012 (1) NR 130 (HC))

Hatuikulipi v Prosecutor-General & Others 2023 (4) NR 900 (HC) (in connection with the "Fishrot" matter: upholding constitutionality of s.24(1)(a)(ii) and 25(2) of the Act regarding court's power to impose restraint order, which is civil in nature, if "there are reasonable grounds for believing" that a confiscation order may be made against the defendant at the conclusion of the criminal trial; no violation of criminal presumption of innocence; also holding that (1) the discretion given to the P-G in respect of restraint orders is guided discretion and thus not unconstitutionally broad; (2) it is permissible for the basis for the limitation of constitutional rights to be expressed in the statute's long title; (3) section 24 must be read with section 25, which allows for the exclusion of some assets to prevent hardship; (4) the word "must" in the chapeau of s.25(2) must be read in line with the overall intention of the law and does not take away the court's judicial discretion)

Commentary:

Frederico Links & Clement Daniels, "Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia", Institute for Public Policy Research, 2011, available here

Max Weylandt, "The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?", *Briefing Paper,* Institute for Public Policy Research, June 2017, available here.

Related international agreements:

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

*Whistleblower Protection Act 10 of 2017 🕎 🙀

Summary: This Act (GG 6450) is aimed at the protection of persons who report information to officials on improper conduct, which includes amongst other things: criminal activities; violation of the fundamental rights and freedoms protected by the Namibian Constitution; failure to comply with any law; waste, misappropriation or mismanagement of resources which affects the public interest; environmental degradation; endangerment of the health and safety of an individual or community; or the deliberate concealment of such matters. The Act establishes a Whistleblower Protection Office to investigate whistleblower disclosures and complaints of detrimental action taken against the whistleblower or someone related to or associated with the whistleblower. It also provides for a Whistleblower Protection Review Tribunal which reviews decisions of the Whistleblower Protection Office and is empowered to make determinations on whether detrimental action has been taken against a whistleblower and if so, to provide appropriate remedies. The Act will come into force on a date set by the Minister in the *Government Gazette*.

Regulations: Regulations are authorised by section 78 of the Act, but none have been issued as yet.

Commentary:

Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available here (Criminal Procedure Amendment Act 13 of 2010)

Graham Hopwood, "Encouraging the Reporting of Corruption: Principles of Whistleblower Protection", Institute for Public Policy Research, 2016, available here

"Comment - Whistleblower Protection Bill" (submission to Parliament), Institute for Public Policy Research, 22 February 2017, available here

"The (Draft) Whistleblower Protection Bill of 2017: A Detailed Summary", Deloitte Namibia, May 2017, available here

Jordan Lesser, "The Future of Conservation in Namibia: Making the Case for an Environmental Court and Legislative Reforms to Improve Enforcement of Wildlife Crimes", 32 *Tulane Environmental Law Journal* 49 (2018), pages 88-90, available here.

Witness Protection Act 11 of 2017 📲 🙀

Summary: This Act (<u>GG 6451</u>) provides for protection measures for witnesses, and persons related to or associated with them, who face potential risk or intimidation because the witness has given evidence or a statement in connection with any of a range of legal proceedings; is a victim of a specified crime; has acted as a whistleblower; or is otherwise in need of protection. The Act also creates a Witness Protection Unit, a Witness Protection Advisory Committee and a Witness Protection Review Tribunal to establish, administer and review issues relating to the Witness Protection Programme. It was brought into force on 20 October 2023 by GN 340/2023 (<u>GG 8239</u>).

Regulations: Witness Protection Regulations are contained in GN 341/2023 (GG 8239).

Directives and rules: Section 80 authorises the issue of directives and staff rules but does not require that these be gazetted.

Combating of Trafficking in Persons Act 1 of 2018 🕎 🙀

Summary: This Act (<u>GG 6562</u>) criminalises trafficking in persons and related acts, and provides for measures to protect and assist trafficking victims. It gives effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Act was brought into force on 14 November 2019 by GN 335/2019 (<u>GG 7047</u>). It amends the Child Care and Protection Act 3 of 2015 and the Prevention of Organised Crime Act 29 of 2004.

Regulations: Regulations are contained in GN 336/2019 (GG 7047).

Note that Form 2 of these regulations erroneously makes reference to the "Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)" rather than the Combating of Trafficking in Persons Act 1 of 2018.

Note: See also the Prevention of Organised Crime Act 29 of 2004.

Cases: The following cases concern the provisions on trafficking in the Prevention of Organised Crime Act 29 of 2004, which have been repealed and replaced by the provisions in this Act:

S v Koch 2018 (4) NR 1006 (HC) (conviction on charges of trafficking; definition of trafficking discussed; section 15 of Prevention of Organised Crime Act 29 of 2004 read with section 1 of that Act in light of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 to the Convention against Transnational Organized Crime (Palermo Convention), 2000; meaning of "harbour or receive" and "sexual exploitation" of children, which includes conduct by a perpetrator whose aim is to give sexual gratification to the person who harbours or receives a child, even if a "sexual act" is not committed); sentence imposed in S v Koch (CC 20/2017) [2018] NAHCMD 318 (11 October 2018) increased on appeal in S v Koch 2022 (1) NR 70 (SC).

S v Jonas 2019 (4) NR 924 (HC)

S v Pretorius 2020 (4) NR 1097 (HC)

S v Krylov & Another 2023 (1) NR 229 (HC) (driving the victims is "transporting" them for purposes of trafficking)

S v Kaupitwa & Others 2024 (1) NR 185 (NLD) (acquittal on charges of trafficking for purposes of sexual exploitation).

Commentary: "The Combating of Trafficking in Persons Bill", Institute for Public Policy Research, January 2018, available here.

Related international agreements:

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990 Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

Convention on the Rights of the Child, 1989

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

Criminal Procedure Act Repeal Act 14 of 2018 🕎 🙀

Summary: This Act (<u>GG 6804</u>) repeals the Criminal Procedure Act 25 of 2004 (<u>GG 3358</u>), which was passed by Parliament but never brought into force.

COMMISSIONS

Commission of Inquiry into Legislation for the More Effective Combating of Crime in Namibia (Proc. 2/1996, <u>GG 1285</u>).

See also GN 75/1996 (GG 1285).

MISCELLANEOUS

Sentences of death are commuted in Proc. 13/1991 (GG 203).

Presidential pardons extended to certain categories of prisoners are announced in:

Proc. 15/1993 (GG 642)

Proc. 11/1994 (GG 836)

Proc. 3/1995 (GG 1051)

Proc. 4/1997 (GG 1533)

Proc. 1/2000 (GG 2306)

Proc. 12/2003 (GG 2956)

Proc. 1/2005 (<u>GG 3397</u>)

Proc. 4/2006 (GG 3626)

Proc. 6/2009 (<u>GG 4230</u>)

Proc. 14/2010 (<u>GG 4552</u>)

Proc. 28/2013 (GG 5270)

Proc. 8/2020 (<u>GG 7154</u>), which was withdrawn and replaced by Proc 19/2020 (<u>GG 7212</u>).

SELECTED CASES

S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC) (procedure for challenging constitutionality of legislation in a criminal case)

COMMENTARY

CS Kahanovitz, "The Namibian Bill of Rights: its implications for the promotion of procedural and substantive justice in criminal cases", Part 1, *Legal Forum*, Volume 2, Issue 4, 1990 and Part 2, *Legal Forum*, Volume 3, Issue 1, 1991

Lynita Conradie, Law for All, Volume 2: Criminal Law, Windhoek: Namibia Institute for Democracy / Out of Africa Publishers, 2001

Legal Assistance Centre, Baby-dumping and Infanticide, Monograph 1, 2008, available here

Legal Assistance Centre, Stalking: Proposed New Legislation for Namibia, Monograph 3, 2008, available here

Law Reform and Development Commission, *Report on Adjustment of Fines*, LRDC 17, 2010, available here.

INTERNATIONAL LAW

African Union Convention on Preventing and Combating Corruption, 2003

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

International Convention against the Taking of Hostages, 1979

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

International Convention for the Suppression of Terrorist Bombings, 1997

International Convention for the Suppression of the Financing of Terrorism, 1999

Rome Statute of the International Criminal Court, 1998

Agreement on the Privileges and Immunities of the International Criminal Court (APIC), 2002

SADC Protocol Against Corruption, 2001

SADC Protocol on Extradition, 2002

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

United Nations Convention Against Corruption, 2003

Commentary on related international law:

Sabine Höhn, "International justice and reconciliation in Namibia: the ICC submission and public memory", 109 (436) *African Affairs* 471 (2010).

Graham Hopwood, "Namibia and the UN Convention Against Corruption (UNCAC): A gap analysis on Namibia's compliance with UNCAC", completed by the Institute for Public Policy Research and published by the Anti-Corruption Commission and UNDP, 2014, available here

Max Weylandt, "Asset Declarations in Parliament: Too Little, Too Late?", Institute for Public Policy Research, October 2015, available here (UN Convention on Corruption)

Frederico Links, "Namibia and the UN Convention against Corruption", Institute for Public Policy Research, 2016, available here

Max Weylandt, "Asset Declarations in Namibia", Institute for Public Policy Research, 2016, available here (UN Convention on Corruption)

Max Weylandt, "The Namibian Anti-Corruption Strategy 2016-2019: An Overview and Analysis", Institute for Public Policy Research, 2017, available here (UN Convention on Corruption).

See also ALCOHOL, DRUGS AND TOBACCO.

See also ARMS AND AMMUNITION.

See also Civil Aviation Offences Act 10 of 1972 (AVIATION).

See also General Law Amendment Ordinance 13 of 1962, section 7 (offence of concealment of birth) (BIRTHS AND DEATHS).

See also Prevention of Counterfeiting of Currency Act 16 of 1965 (CURRENCY).

See also Combating of Domestic Violence Act 4 of 2003 (DOMESTIC VIOLENCE).

See also EVIDENCE.

See also Financial Intelligence Act 13 of 2012 on the combating of money-laundering and the financing of terrorism and proliferation (FINANCIAL INSTITUTIONS).

See also GAMBLING.

See also Trespass Ordinance 3 of 1962 (LAND AND HOUSING).

See also Abortion and Sterilization Act 2 of 1975 (MEDICINE).

See also Diamond Act 13 of 1999 (diamond-related offences) (MINING AND MINERALS).

See also PUBLIC GATHERINGS.

See also Road Traffic and Transport Act 22 of 1999 (traffic offences) (ROADS AND ROAD TRANSPORTATION).

See also TERRORISM.

CULTURE AND CULTURAL INSTITUTIONS

Cultural Institutions Act 29 of 1969, as amended in South Africa to January 1978 🕎 📻





Summary: This Act (originally published in RSA GG 2344) provides for the payment of government subsidies to cultural institutions.

Repeals: The Act repeals the State-aided Institutions Act 23 of 1931, as amended.

Applicability to SWA: Section 18 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (National Education) Transfer Proclamation (AG 1/1978), dated 11 January 1978. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the Cultural and Education Laws Amendment Act 11 of 1981 (RSA GG 4524) and the Education and Culture Laws Amendment Act 28 of 1983 (RSA GG 8628) - neither of which was made expressly applicable to SWA.

Section 3(2)(d) of the transfer proclamation excluded section 16 of the Act from the operation of section 3(1) of the General Proclamation.

Amendments: The following pre-independence South African amendment was applicable to SWA –

Cultural Institutions Amendment Act 93 of 1974 (RSA GG 4524).

Savings: Regulations are authorised by section 15 of the Act, and section 17(2) contains a savings clause that applies to regulations issued under the repealed State-aided Institutions Act 23 of 1931:

Any regulation made or, subject to the provisions of this Act, any other thing done under a provision of a law repealed by subsection (1), shall be deemed to have been made or done under the corresponding provision of this Act.

Regulations: Regulations were issued under this Act prior to Namibian independence in RSA GN R.1671/1978 (RSA GG 6133), as amended prior to Namibian independence by RSA GN R.162/1988 (RSA GN 11133). However, these regulations were initially issued on 18 August 1978, after the date of transfer, and thus would not have been applicable to SWA.

This means that the set of regulations repealed in South Africa by RSA GN R.1671/1978 (see regulation 32) would have remained in force in SWA. These previous regulations are contained in RSA GN R.1168/1969 (RSA GG 2483), as corrected by RSA GN R.3469/1969 (RSA GG 2538), and as amended by RSA GN R.853/1970 (RSA GG 2721).111

No regulations have been issued under this Act since Namibian independence, meaning that the 1978 regulations remain in force.

Notices: In South Africa, RSA Proc. R.162/1969 (RSA GG 2439) assigned the general administration of the Act to the Minister of National Education. (Other South African notices concerning the Act's administration – RSA Proc. R.259/1980 (RSA GG 7335) and RSA GN R.2807/1985 (RSA GG 10041) - post-dated the date of transfer and did not mention SWA specifically.)

¹¹¹ RSA GN R.1168/1969 states that these regulations substitute for the regulations made in terms of section 7 of the State-aided Institutions Act 23 of 1931, as extended by section 17(2) of the current Act.

National Art Gallery of Namibia Act 14 of 2000 🕡 🙀

Summary: This Act (originally published in <u>GG 2376</u>) establishes the National Art Gallery of Namibia and provides for its objects. It was brought into force on 10 September 2001 by GN 177/2001 (<u>GG 2603</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, substitutes section 5 and deletes section 7. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 23 of the Act, but none have yet been promulgated.

Notices: GN 178/2001 (<u>GG 2603</u>) sets 10 September 2001 as the date on which the National Art Gallery of Namibia must assume responsibility over the Government collection.

*National Arts Fund of Namibia Act 1 of 2005

Summary: This Act (<u>GG 3424</u>) establishes the National Arts Fund and a Council to control and manage the Fund. It is not yet in force.

Regulations: Regulations are authorised by section 20 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

†Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 Convention on the Protection of the Underwater Cultural Heritage, 2001 SADC Protocol on Culture, Information and Sport, 2001

See also CUSTOMARY LAW.

See also State Repudiation (Cultura 2000) Act 32 of 1991 (FINANCE AND DEVELOPMENT).

See also NATIONAL HERITAGE.

See also Financial Intelligence Act 13 of 2012 (duties of persons or entities trading in art) (**FINANCIAL INSTITUTIONS**).

CURRENCY

Payment of Bank Notes Proclamation 3 of 1933 📲 🙀

Summary: This Proclamation (OG 498) provides that the holder of a bank note shall not be entitled to be paid in gold. It is probably obsolete since it applies to bank notes issued under the Banks Proclamation 29 of 1930, which is no longer in force.

Regulations: The Proclamation makes no provision for regulations.

Currency and Exchanges Act 9 of 1933, section 9, in part, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>SA GG 2098</u>) regulates legal tender, currency, exchange and banking. The only section applicable to Namibia is section 9 which authorises the making of regulations on these matters.

Applicability to SWA: Section 9 of the Act was made applicable to SWA by the addition of subsection 9(6) by *Act 36 of 1950* (SA GG 4413), with effect from 23 June 1950, which states that "the provisions of this section shall apply also to the Territory of South-West Africa". The wording of this provision did not seem to make South African amendments to section 9 automatically applicable to SWA after section 9 was applied to SWA in 1950.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. No Minister is mentioned in the Act. In any event, since the wording of section 9(6) does not make amendments to the Act automatically applicable to South West Africa, the issue of transfer would not affect the content of the Act.

Amendments: Prior to and contemporaneous with section 9 being applied to SWA, it was amended in South Africa by the following –

- Finance Act 27 of 1940 (SA GG 2762)
- Finance Act 43 of 1941 (<u>SA GG 2911</u>)
- Finance Act 36 of 1950 (SA GG 4413).

Regulations: There is no savings provision in the *Currency and Exchanges Act 9 of 1933*. The following pre-independence regulations issued in terms of the sole remaining section of the Act remain in force and have been amended since independence.

Exchange Control Regulations, 1961 are contained in RSA GN R.1111/1961 (RSA GG 123, republished in OG 2355), as amended by -

RSA GN R.872/1966 (RSA GG 1458)
RSA GN R.1647/1966 (RSA GG 1570)
RSA GN R.650/1968 (RSA GG 2048)
RSA GN R.355/1976 (RSA GG 4996)
RSA GN R.357/1981 (RSA GG 4915)
RSA GN R.357/1985 (RSA GG 7415)
RSA Proc R.157/1985 (RSA GG 10054)
RSA GN R.2868/1985 (RSA GG 10730)
RSA GN R.1416/1987 (RSA GG 10803)
RSA GN R.224/1988 (RSA GG 11140)
RSA GN R.881/1988 (RSA GG 11287)
RSA GN R.1472/1988 (RSA GG 11434)

GN 111/1995 (<u>GG 1095</u>) GN 135/2004 (<u>GG 3232</u>) GN 126/2011 (<u>GG 4767</u>).¹¹²

Government Notices 111/1995, 135/2004 and 126/2011 all list RSA GN R.2610/1984 (RSA GG 9513) as an amendment to the regulations, but RSA GN R.2610/1984 only deletes "the Exchange Control Regulations-General Exemption *in terms of* regulation 3(1)(c), published under Government Notice R.1555 of 15 August 1975". ¹¹³

The following regulations, which were also made in terms of the surviving section 9, also appear to remain in force; no repeals have been located. However, none of them appear to have any relevance to independent Namibia and so they have not been included in the database of annotated laws. (Although these regulations were all issued pursuant to section 9 of the Act, several of them refer to other financial laws which are no longer in force in Namibia or concern specific time frames that have long since passed.)¹¹⁴

Regulations to provide for the participation of the Union in the International Monetary Fund and the International Bank for Reconstruction and Development, contained in SA GN 2561/1945 (SA GG 3583).

Regulations on the temporary modification of reserve requirements for commercial banks, contained in SA GN 1754/1949 (SA GG 4225).

Regulations relating to the revaluation of the gold reserves held by the South African Reserve Bank, contained in SA Proc. 337/1949 (SA GG 4308)

Regulations relating to the devaluation of the South African pound on a specific date (19 September 1949), contained in SA Proc. 227/1949 (SA GG 4239).

Regulations concerning the collection of information required for the purposes of the compilation of official statements of the Union's international balance of payments and its international investment position, contained in SA GN 702/1956 (SA GG 5663; republished in OG 2019).

Regulations conferring powers on the SA Reserve Bank to prescribe maximum rate of interest on certain deposits, contained in RSA Proc. 47/1965 (RSA GG 1055).

Notices issued pursuant to this Proclamation are not recorded here.

Regulations giving the South African Reserve Bank power to make orders and rules relating to matters which affect or have any bearing upon credit extension by banking institutions contained in RSA Proc. R.184/1967 (RSA GG 1809).

Orders and rules issued pursuant to these regulations and which remained unrepealed prior to Namibian independence include those contained in RSA GN 2730/1986 (RSA GG 10559), RSA GN 46/1987 (RSA GG 10565), RSA GN 430/1987 (RSA GG 10620) and RSA GN R.1468/1988 (RSA GG 11428).

However, this exemption was deleted by RSA GN R.2610/1984 (RSA GG 9513).

¹¹² These regulations withdraw the ones published in SA GN 2800/1951 (SA GG 4721), SA GN 797/1958, SA GN 194/1959, and RSA GN 84/1961 – which in turn withdraw the regulations published in SA GN 163/1948, as amended by SA GN 2085/1948, SA GN 377/1949 and SA GN 2067/1949 and the following SA Government Notices: 164/1948, 564/1948, 2227/1948, 2853/1948, 2761/1949, 1870/1950, 101/1951, 203/1951, and 2234/1951.

¹¹³ Note that RSA GN R.1555/1975 (<u>RSA GG 4816</u>) contained the following exemption under Regulation 3 of the Exchange Control Regulations, 1961:

[&]quot;...the Treasury hereby exempts any person from the obligation to obtain, as a prerequisite to the institution of any court action in connection with a transaction mentioned in subregulation (1)(c), permission to make a payment to or in favour, or on behalf of a person resident outside the Republic. or place any sum to the credit of such person."

These regulations and enactments are listed as remaining in force in *Juta's Index to the South African Government and Provincial Gazettes* (formerly "The Windex"), 1920-1989 at 179-180.

Regulations authorising the Registrar of Financial Institutions to prescribe maximum rates of interest on certain debentures and loans, contained in RSA Proc. R.88/1972 (RSA GG 3451).

Notices issued pursuant to this Proclamation are not recorded here.

Regulations on a new parity for the rand and a new statutory gold price, contained in RSA Proc. R.280/1972 (RSA GG 3692).

Regulations prohibiting gold and foreign exchange transactions and transactions in stocks and shares between 28 August 1985 and 1 September 1985, contained in RSA Proc. 150/1985 (RSA GG 9916).

Regulations relating to the payment of foreign creditors from 2 September 1985 until 31 December 1985, and to banking institutions with foreign subsidiaries, contained in RSA Proc R.157/1985 (RSA GG 9926), as amended by RSA Government Notice R.2305/1985 (RSA GG 9969)

These regulations also amend the Exchange Control Regulations, 1981.

Regulations relating to the payment of foreign creditors from 1 April 1986 until 30 June 1987, and to banking institutions with foreign subsidiaries, contained in RSA GN R.603/1986 (RSA GG 10166), as amended prior to Namibian independence by RSA GN R.1078/1986 (RSA GG 10258) and by RSA GN R.1190/1987 (RSA GG 10757).

Rules: Orders and Rules under the Exchange Control Regulations are contained in RSA GN R.1112/1961 (RSA GG 123, republished in OG 2355) as amended prior to Namibian independence by –

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RSA GN R.1212/1961 (RSA GG 136)
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RSA GN R.512/1962 (RSA GG 213)

RSA GN R.1208/1962 (RSA GG 299)

RSA GN R.1607/1963 (RSA GG 635, reprinted in OG 2514)

RSA GN R.691/1963 (RSA GG 497)

RSA GN R.1222/1963 (RSA GG 575)

RSA GN R.1223/1963 (RSA GG 575)

RSA GN R.1604/1963 (<u>RSA GG 635</u>)

RSA GN R.1922/1963 (RSA GG 671)

RSA GN R.940/1964 (RSA GG 835)

RSA GN R.1181/1965 (RSA GG 1201)

RSA GN R.1778/1965 (RSA GG 1278)

RSA GN R.1961/1965 (<u>RSA GG 1300</u>)

RSA GN R.2038/1966 (RSA GG 1619)

RSA GN R.85/1967 (RSA GG 1639)

RSA GN R.230/1967 (RSA GG 1668)

RSA GN R.987/1968 (<u>RSA GG 2086</u>)

RSA GN R.1238/1968 (<u>RSA GG 2131</u>)

RSA GN R.1793/1968 (RSA GG 2179)

RSA GN R.801/1969 (RSA GG 2398)

RSA GN R.1012/1969 (RSA GG 2439)

RSA GN R.3114/1969 (RSA GG 2504)

RSA GN R.1264/1970 (<u>RSA GG 2767</u>)

RSA GN R.2205/1970 (<u>RSA GG 2944</u>)

RSA GN R.309/1971 (<u>RSA GG 3008</u>)

RSA GN R.1011/1971 (<u>RSA GG 3153</u>)

¹¹⁵ These regulations were further amended in South Africa after the date of Namibian independence. They repeal the regulations contained in RSA GN R.2868/1985 (<u>RSA GG 10054</u>), as amended by RSA GN R.1078/1986 (<u>RSA GG 10258</u>) and by RSA GN R.1190 of 1987(<u>RSA GG 10757</u>).

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RSA GN R.1974/1971 (RSA GG 3300)
RSA GN R.1976/1971 (RSA GG 3300)
RSA GN R.2314/1971 (RSA GG 3340)
RSA GN R.253/1972 (RSA GG 3390)
RSA GN R.423/1972 (<u>RSA GG 3</u>425)
RSA GN R.580/1972 (RSA GG 3467), as corrected by RSA GN R.736/1972 (RSA GG 3484)
RSA GN R.678/1972 (RSA GG 3478)
RSA GN R.936/1972 (RSA GG 3538)
RSA GN R.1339/1972 (RSA GG 3625)
RSA GN R.1767/1972 (RSA GG 3670)
RSA GN R.166/1973 (RSA GG 3780)
RSA GN R.299/1973 (RSA GG 3793)
RSA GN R.2231/1973 (RSA GG 4091)
RSA GN R.1601/1974 (RSA GG 4383)
RSA GN R.83/1975 (RSA GG 4558)
RSA GN R.787/1976 (RSA GG 5114)
RSA GN R.1480/1976 (RSA GG 5256), which gives effect to the withdrawal of Botswana from
        the Rand Monetary Area as of 23 August 1976
RSA GN R.2029/1976 (RSA GG 5324)
RSA GN R.12/1977 (RSA GG 5372)
RSA GN R.937/1978 (RSA GG 6003)
RSA GN R.1867/1978 (RSA GG 6154)
RSA GN R.1492/1979 (RSA GG 6562)
RSA GN R.2286/1979 (RSA GG 6699)
RSA GN R.2404/1979 (RSA GG 6710)
RSA GN R.32/1980 (RSA GG 6801)
RSA GN R.2332/1981 (RSA GG 7867)
RSA GN R.2410/1981 (RSA GG 7903)
RSA GN R.1060/1982 (RSA GG 8226)
RSA GN R.1165/1982 (RSA GG 8257)
RSA GN R.1602/1982 (RSA GG 8320)
RSA GN R.1822/1982 (RSA GG 8351)
RSA GN R.2323/1982 (RSA GG 8428)
RSA GN R.561/1983 (RSA GG 8604)
RSA GN R.944/1983 (RSA GG 8694)
RSA GN R.2241/1983 (RSA GG 8929)
RSA GN R.506/1984 (RSA GG 9129)
RSA GN R.755/1984 (RSA GG 9175)
RSA GN R.2596/1984 (RSA GG 9513)
RSA GN R.1640/1985 (RSA GG 9870)
RSA GN R.616/1986 (RSA GG 10173)
RSA GN R.1223/1986 (RSA GG 10283)
        Note that some of the subsequent Gazettes list RSA GN R.1222/1986 as a previous amendment.
        No amendment with this reference could be located, so it may be a typo for RSA GN
        R.1223/1986.
RSA GN R.2642/1986 (RSA GG 10546)
RSA GN R.75/1987 (RSA GG 10575) which replaces RSA GN R.2642/1986 (RSA GG 10546)
        and which is amended by RSA GN R.443/1987 (RSA GG 10621)
RSA GN R.926/1987 (RSA GG 10716)
RSA GN R.1400/1987 (RSA GG 10790)
RSA GN R.2217/1987 (RSA GG 10970)
RSA GN R.2218/1987 (RSA GG 10970)
RSA GN R.2238/1987 (RSA GG 10970)
RSA GN R.2349/1987 (RSA GG 10988)
RSA GN R.748/1989 (RSA GG 11833)
RSA GN R.904/1989 (RSA GG 11863), as amended by RSA GN R.1233/1989 (RSA GG 11954)
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RSA GN R.2187/1989 (RSA GG 12131)
RSA GN R.266/1990 (RSA GG 12293), as amended by RSA GN 556/1990 (RSA GG 12339)
RSA GN R.227/1990 (RSA GG 12293)
RSA GN 569/1990 (RSA GG 12339)
RSA GN R.656/1990, dated 21 March 1990 (RSA GG 12374)
GN 4/1990 (GG 24)
GN 20/1990 (GG 49)
GN 49/1990 (GG 76)
GN 52/1991 (GG 196)
GN 218/1996 (GG 1387)
GN 19/2005 (GG 3386)
General Notice 251/2007 (GG 3900)
General Notice 254/2009 (GG 4364)
GN 251/2007 (GG 3900)
GN 254/2009 (GG 4364)
General Notice 335/2010 (GG 4632)
General Notice 443/2013 (GG 5344)
General Notice 95/2014 (GG 5454)
General Notice 558/2015 (GG 5892)
General Notice 361/2016 (GG 6118)
General Notice 75/2018 (GG 6538).
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Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096).

Notices: Authorised dealers in foreign exchange are appointed in General Notice 335/2010 (<u>GG 4632</u>), General Notice 443/2013 (<u>GG 5344</u>), General Notice 95/2014 (<u>GG 5454</u>), General Notice 558/2015 (<u>GG 5892</u>), General Notice 361/2016 (<u>GG 6118</u>) and General Notice 75/2018 (<u>GG 6538</u>). As indicated above, these notices also amend the Orders and Rules issued under the Exchange Control Regulations, 1961.

Specific forfeiture notices issued under the Exchange Control Regulations are not recorded here.

Cases:

Ruch v Ferrari 1993 NR 103 (HC), 1994 NR 287 (SC)

Samco Import & Export CC & Another v Magistrate of Eenhana & Others 2009 (1) NR 290 (HC) (Exchange Control Regulations)

S v Mfuka 2013 (4) NR 965 (HC) (Exchange Control Regulations)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (Exchange Control Regulations discussed at paras 25-31)

Prosecutor-General v Paulo & Another 2021 (2) NR 423 (HC) (Exchange Control Regulations discussed at paras 31-42); confirmed on appeal in Prosecutor-General v Paulo & Another 2023 (2) NR 477 (SC) (Exchange Control Regulations discussed at paras 23-25 and 35-47)

Vincent & Tiffany Construction CC v Deputy Governor of the Bank of Namibia & Others 2023 (1) NR 40 (HC) (confirming applicability of Exchange Control Regulations to Namibia, and the absence of any transfer of administration of this law to SWA prior to Namibian independence; authority to act as decision-maker under section 9(5)(a) of the Act and regulations 22A and 22B, read with regulation 22E).

Prevention of Counterfeiting of Currency Act 16 of 1965, sections 1-4 and 12, as amended in South Africa prior to Namibian independence

Summary: This Act (RSA GG 1060) sets forth various offences relating to counterfeiting.

Applicability to SWA: Section 11 states "Sections one to four, inclusive, and section twelve, and any amendment thereof, shall apply also in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel and referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the 'Rehoboth Gebiet' which is defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of that territory." (Those sections which do not apply to SWA are all amendments to other acts.)

Transfer of administration to SWA: It is not clear what transfer proclamation, if any, applied to this Act. However, the sections applicable to South West Africa were not amended in South Africa prior to Namibian independence.

Regulations: The portions of this Act in force in Namibia make no provision for regulations.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096).

Related international agreements: South Africa became a party to the International Convention for the Suppression of Counterfeiting Currency on 28 August 1967, after the termination of its mandate over South West Africa in 1966. South Africa was not a predecessor state to Namibia, but an illegal occupying power as from that date, thus making it impossible for it to bind Namibia. The UN Institute for Namibia made a few exceptions to this approach for "general conventions of a humanitarian character", on the basis of the 1971 advisory opinion of the International Court of Justice – but this Convention was not amongst them. There is, in any case, no indication that South Africa made any attempt to expressly extend the treaty to South West Africa (ie, no declaration and no note under "territorial application"). Accordingly, Namibia does not appear to be a party to the International Convention for the Suppression of Counterfeiting Currency.

NOTES AND COINS

issued in terms of the Bank of Namibia Act 8 of 1990 (GG 42) Proclamation 19/1993 (<u>GG 682</u>) (repealed by Act 11/2004)

General Notice 339/1996 (GG 1452) General Notice 8/2000 (GG 2258) General Notice 108/2012 (GG 4936).

COMMEMORATIVE NOTES AND COINS

(issued in terms of the Bank of Namibia Act 8 of 1990)

General Notice 74/1995 (GG 1057)

General Notice 125/1995 (GG 1083)

General Notice 91/1996 (GG 1308)

General Notice 54/1999 (GG 2067)

General Notice 7/2000 (GG 2258)

General Notice 166/2010 (GG 4520).

See also Bank of Namibia Act 1 of 2020 (FINANCIAL INSTITUTIONS).

CUSTOMARY LAW

Council of Traditional Leaders Act 13 of 1997 📲 🙀

Summary: This Act (originally published in <u>GG 1706</u>) establishes the Council of Traditional Leaders referred to in Article 102(5) of the Namibian Constitution. It requires that any draft legislation pertaining to communal land must be laid before the Council before it is introduced in the National Assembly. It was brought into force on 31 March 1998 by GN 64/1998 (GG 1828).

Amendments: Act 31/2000 (GG 2462) amends sections 1, 3 and 14, and substitutes section 12.

Regulations: The Act makes no provision for regulations.

Appointments: Appointments of members of the Council are announced in GN 150/2009 (<u>GG 4305</u>), GN 171/2014 (<u>GG 5564</u>), GN 188/2017 (<u>GG 6373</u>) GN 20/2020 (<u>GG 7115</u>), GN 216/2022 (<u>GG 7869</u>), GN 291/2022 (<u>GG 7917</u>) and GN 191/2023 (<u>GG 8130</u>).

The Schedule to GN 171/2014 (<u>GG 5564</u>) is amended by GN 188/2017 (<u>GG 6373</u>). The Schedule to GN 20/2020 (GG 7115) is amended by GN 216/2022 (GG 7869) and by GN 291/2022 (GG 7917).

Traditional Authorities Act 25 of 2000 📲 🥌

Summary: This Act (<u>GG 2456</u>) provides for the election or recognition of traditional authorities and sets forth their functions, duties and powers. It was brought into force on 17 May 2001 by GN 93/2001 (<u>GG 2532</u>).

Note that there are two versions of GG 2456. The correct one states at the top: "This Gazette replace [sic] Gazette No. 2456 of 22 December 2000."

Repeals: The Act repeals the Traditional Authorities Act 17 of 1995 (<u>GG 1158</u>), which repealed all remaining provisions of the Native Administration Proclamation 15 of 1928 with the exception of sections 17, 18, 23, 24, 25, 26 and 27. 116

Savings Anything done under the Traditional Authorities Act 17 of 1995 which is not inconsistent with the current Act survives in terms of section 20(3) of the current Act, which states:

Anything done under a provision of a law repealed by subsection (1) shall, in so far as it is not inconsistent with any provision of this Act, be deemed to have been done under the corresponding or related provision, if any, of this Act.

No regulations survive from the provisions of the Native Administration Proclamation 15 of 1928 repealed by the Traditional Authorities Act 17 of 1995; section 16 of the Traditional Authorities Act 17 of 1995 states:

Except for sections 17, 18, 23, 24, 25,26 and 27 of the Native Administration Proclamation, 1928, (Proclamation No. 15 of 1928), and any regulations made under any of those sections, the rest of the provisions of that Proclamation including regulations made under those provisions, are hereby repealed.

Regulations: Regulations concerning remuneration (made under the previous law) are contained in GN 246/1997 (GG 1741).

Regulations made under the new law are contained in GN 94/2001 (GG 2532).

¹¹⁶ Sections 7-16, 19-22, and 18(3)-(8) and (9)(c) of this Proclamation had been previously repealed by the Native Administration Proclamation Amendment Act 27 of 1985 (OG 5147).

Designations of traditional authorities and their office-bearers: Traditional authorities and designations of their office-bearers under the previous law survive under this Act, in terms of section 20.

Designations of traditional authorities and traditional leaders recognised in terms of section 6(2) of the previous Act are contained in GN 65/1998 (<u>GG 1828</u>), as corrected by GN 98/1998 (<u>GG 1855</u>) and as amended by GN 99/1998 (<u>GG 1855</u>), GN 307/1998 (<u>GG 2020</u>), GN 113/1999 (<u>GG 2130</u>) and GN 61/2001 (<u>GG 2513</u>). The traditional authorities established under the previous law were as follows (in the order that they appear in the amended Government Notice):

1. Kavango Traditional Authorities

- 1.1 Mbunza Traditional Authority
- 1.2 Sambyu Traditional Authority
- 1.3 Gciriku Traditional Authority
- 1.4 Kwangali Traditional Authority
- 1.5 Mbukushu/Hambukushu Traditional Authority

2. Ovambo Traditional Authorities

- 2.1 Ondonga Traditional Authority
- 2.2 Uukwaluudhi Traditional Authority
- 2.3 Ongandjera Traditional Authority
- 2.4 Uukwambi Traditional Authority
- 2.5 Ombalantu Traditional Authority
- 2.6 Uukolonkadhi Traditional Authority
- 2.7 Oukwanyama Traditional Authority

3. Caprivi Traditional Authorities

- 3.1 Masubia Traditional Authority
- 3.2 Mafwe Traditional Authority
- 3.3 Mayeyi Traditional Authority

Regarding numbering, 3.3 was skipped in GN 65/1998, and the Mayeyi Traditional Authority was listed as 3.4. This was corrected in the revised list in GN 307/1998 (GG 2020), and the Mayeyi Traditional Authority is listed as 3.3 in all subsequent lists.

4. Damara Traditional Authorities

4.1 Damara Royal House Traditional Authority

5. Nama Traditional Authorities

- 5.1 Witbooi Traditional Authority
- 5.2 Bondelswart Traditional Authority
- 5.3 Soromaas Traditional Authority
- 5.4 Vaalgras Traditional Authority
- 5.5 Topnaar Traditional Authority
- 5.6 Blouwes Traditional Authority
- 5.7 Afrikaner Traditional Authority
- 5.8 Swartbooi Traditional Authority
- 5.9 Kai-//Kaun Traditional Authority

6. Tswana/Kalahari Traditional Authorities

- 6.1 Batswana Ba Namibia Traditional Authority
- 6.2 Bakgalagadi Traditional Authority

7. Mbanderu Traditional Authority

7.1 Mbanderu Traditional Authority

8. Herero Traditional Authorities

- 8.1 Kambazembi Royal House Traditional Authority
- 8.2 Zeraua Traditional Authority
- 8.3 Otjikaoko Traditional Authority
- 8.4 Vita Royal House Traditional Authority

9. San Traditional Authorities

- 9.1 !Kung Traditional Authority
- 9.2 Ju//hoan Traditional Authority

The following designated, or recognised the removal of, persons as chiefs or heads of traditional communities in terms of the current Act:

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Proc. 2/2002 (GG 2733)
Proc. 3/2002 (GG 2733)
Proc. 60/2004 (GG 3344)
Proc. 61/2004 (GG 3344), withdrawn by Proc. 13/2017 (GG 6373)
       Note that the original GG 3344 was replaced by a subsequent corrected version.
Proc. 9/2006 (GG 3688)
       Note that the original GG 3688 was replaced by a subsequent corrected version. The corrected
       version states at the top: "This Gazette replace [sic] Gazette No. 3688 of 1 September 2006".
Proc. 12/2008 (GG 4018)
Proc. 26/2008 (GG 4090)
Proc. 9/2009 (GG 4320)
Proc. 5/2010 (GG 4423)
Proc. 16/2011 (GG 4834)
Proc. 21/2013 (GG 5235)
Proc. 23/2013 (GG 5255)
Proc. 3/2015 (GG 5681)
Proc. 27/2015 (GG 5818)
Proc. 41/2015 (GG 5914)
Proc. 4/2016 (GG 6048)
Proc. 5/2016 (GG 6072)
Proc. 10/2016 (GG 6188), withdrawn by Proc. 1/2017 (GG 6217) and withdrawn again by
       Proc. 15/2018 (GG 6680)
Proc. 1/2017 (GG 6217)
Proc. 13/2017 (GG 6373)
Proc. 16/2017 (GG 6384)
Proc. 12/2018 (GG 6627)
Proc. 15/2018 (GG 6680)
Proc. 28/2019 (GG 6965)
Proc. 29/2019 (GG 6965)
Proc. 31/2019 (GG 6973) (set aside by Witbooi & Others v Minister of Urban and Rural
       Development & Others 2022 (2) NR 383 (HC))
Proc. 32/2019 (GG 6996)
Proc. 37/2019 (GG 7020)
Proc. 48/2021 (GG 7673)
Proc. 2/2022 (GG 7785)
Proc. 4/2023 (GG 8014)
Proc. 31/2023 (GG 8253).
```

After the current Act came into force, **GN 65/1998 was further amended by the following** (which also designated various traditional authorities):

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GN 63/2002 (<u>GG 2733</u>)
GN 64/2002 (<u>GG 2733</u>)
GN 68/2008 (<u>GG 4018</u>)
GN 181/2008 (<u>GG 4090</u>)
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Note that this Government Notice erroneously states that GN 87/2006 (GG 3648) amends GN 65/1998. It names senior traditional councillors and traditional councillors, but does not amend GN 65/1998. This mistake is repeated in subsequent notices.

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GN 115/2009 (<u>GG 4263</u>)
GN 205/2009 (<u>GG 4355</u>)
GN 43/2010 (<u>GG 4441</u>)
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GN 110/2010 (<u>GG 4490</u>)
GN 242/2010 (<u>GG 4596</u>)
GN 33/2011 (<u>GG 4671</u>)
```

Schedule II(a) states that Item 5 of the index is amended by the substitution of "5.3 "!Aman Traditional Authority" for subitem "5.3 Soromans Traditional Authority". There appears to be an error in respect of the subitem that is being omitted, which should have referred to "5.3 /Ui
#gantes Traditional Authority".

```
GN 149/2011 (GG 4783)
GN 199/2011 (GG 4816)
GN 86/2012 (GG 4912)
GN 133/2012 (GG 4952)
GN 185/2012 (GG 5000)
GN 283/2012 (GG 5079)
GN 96/2013 (GG 5174)
GN 195/2013 (GG 5249)
GN 317/2013 (GG 5349)
GN 335/2013 (GG 5373)
GN 71/2014 (GG 5467)
GN 119/2014 (GG 5528)
GN 32/2015 (GG 5681)
GN 97/2015 (GG 5757)
GN 171/2015 (GG 5803)
GN 271/2015 (GG 5878)
GN 1/2016 (GG 5927)
GN 138/2016 (GG 6048)
GN 268/2016 (GG 6166)
GN 6/2017 (GG 6222)
GN 147/2017 (GG 6329)
GN 169/2017 (GG 6356)
GN 280/2017 (GG 6445)
GN 35/2018 (GG 6528)
GN 129/2018 (GG 6637)
GN 223/2018 (GG 6709)
GN 304/2018 (GG 6778)
GN 94/2019 (GG 6903)
GN 260/2019 (GG 6996)
GN 21/2020 (GG 7115)
GN 130/2020 (GG 7238)
GN 149/2020 (GG 7266)
GN 272/2020 (GG 7378)
GN 325/2020 (GG 7428)
GN 95/2021 (GG 7529).
```

Note that some of the notices contain errors in respect of the numbers referenced for various traditional authorities in the list of traditional authorities in GN 65/1998, as amended. The list that appears below contains the correct numbering, based on the most recent full list of traditional authorities (GN 181/2008, GG 4090) and specific amendments to the traditional authorities on that list. (Some of the notices address only the designation of individuals as chiefs or heads of traditional authorities and do not amend the underlying list of traditional authorities.)

```
GN 183/2021 (GG 7618)
GN 234/2021 (GG 7667)
GN 21/2022 (GG 7746)
GN 120/2022 (GG 7786)
GN 177/2022 (GG 7838)
GN 349/2022 (GG 7948)
GN 18/2023 (GG 8021).
```

Note that there are two versions of GG 8021. The correct version lists the Minister who issued GN 18/2023 as "E Uutoni" rather than "U. Eutoni" as it appears in the incorrect version.

```
GN 153/2023 (GG 8099)
GN 353/2023 (GG 8253)
GN 14/2024 (GG 8306)
GN 143/2024 (GG 8375)
GN 245/2024 (GG 8427)
GN 329/2024 (GG 8506).
```

Note that this Government Notice erroneously states that GN 87/2006 (<u>GG 3648</u>), GN 267/2004 (<u>GG 3344</u>) and GN 87/2006 (<u>GG 3648</u>) all amend GN 65/1998. These three notices name senior traditional councillors and traditional councillors, but do not amend GN 65/1998.

The following announced the appointments of senior traditional councillors and traditional councillors in terms of section 10(5), without amending GN 65/1998:

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GN 130/2004 (GG 3218)
GN 267/2004 (GG 3344)
Note that the original GG 3344 was replaced by a subsequent corrected version.
GN 87/2006 (GG 3648).
```

Proc. 21/2024 (GG 8375) recognises the **removal from office** of Hendrik Ismael Witbooi as chief of the Witbooi (/Khowese) traditional community in accordance with the Supreme Court judgment in *Witbooi & Others v Witbooi & Others* 2023 (4) NR 1120 (SC); it is amended by Proc. 25/2024 (GG 8402).

Proc. 31/2024 (GG 8477) recognises the **removal from office** of Eugen Siwombe Kudumo as chief (hompa) of the Uukwangali Traditional Authority in accordance with the High Court judgment in *Ngondo v The Minister of Urban and Rural Development* (HC-MD-CIV-MOT-REV- 2017/00199) [2019] NAHCMD 158 (6 March 2019), confirmed in *Uukwangali Traditional Authority and Another v Minister of Urban and Rural Development and Others* (SA 9 of 2019) 2020 NASDC 51 (6 November 2020).

Note that there are two versions of GG 8477; the incorrect one has a discrepancy between the notice numbering in the list of contents and the notice numbering in the text of the *Gazette*. This Proclamation is identical in both versions.

The current list of traditional authorities (from amended GN 65/1998) is as follows, in the order that they appear in the amended Government Notice:

1. Kavango Traditional Authorities

- 1.1 Mbunza Traditional Authority
- 1.2 Sambyu Traditional Authority
- 1.3 Gciriku Traditional Authority
- 1.4 Kwangali Traditional Authority
- 1.5 Mbukushu/Hambakushu Traditional Authority

2. Ovambo Traditional Authorities

- 2.1 Ondonga Traditional Authority
- 2.2 Uukwaludhi Traditional Authority
- 2.3 Ongandjera Traditional Authority
- 2.4 Uukwambi Traditional Authority
- 2.5 Ombalantu Traditional Authority
- 2.6 Uukolonkhadi Traditional Authority
- 2.7 Oukwanyama Traditional Authority
- 2.8 Ombadja Traditional Authority

3. Caprivi Traditional Authorities

- 3.1 Masubia Traditional Authority
- 3.2 Mafwe Traditional Authority
- 3.3 Mayeyi Traditional Authority
- 3.4 Mashi Traditional Authority

4. Damara Traditional Authorities

- 4.1 /Gobanin Traditional Authority
- 4.2 !Oe-≠gân Traditional Authority
- 4.3 /Khomanin Traditional Authority
- 4.4 /Gaio-Daman Traditional Authority
- 4.5 Tsoaxudaman Traditional Authority
- 4.6 ≠Aodaman Traditional Authority
- 4.7 Dâure Daman Traditional Authority
- 4.8 Nami-Daman Traditional Authority

5. Nama Traditional Authorities

- 5.1 Witbooi Traditional Authorities
- 5.2 Bondelswarts Traditional Authority
- 5.3 !Aman Traditional Authority
- 5.4 Vaalgras Traditional Authority
- 5.5 Topnaar Traditional Authority
- 5.6 Blowes Traditional Authority
- 5.7 Afrikaner Traditional Authority
- 5.8 Swartbooi Traditional Authority
- 5.9 Kai-//Kaun Traditional Authority
- 5.10 !Kar'Khoe //Aes Traditional Authority
- 5.11 /Hai /Khaua Traditional Authority

6. Tswana/Kalahari Traditional Authorities

- 6.1 Batswana Traditional Authority
- 6.2 Bakgalagadi Traditional Authority

7. Mbanderu Traditional Authority

7.1 Mbanderu Traditional Authority

8. Herero Traditional Authorities

- 8.1 Kambazembi Royal House Traditional Authority
- 8.2 Zeraua Traditional Authority
- 8.3 Otjikako Traditional Authority
- 8.4 Vita Royal House Traditional Authority
- 8.5 Maharero Royal House Traditional Authority
- 8.6 Kakurukouje Traditional Authority
- 8.7 Ovaherero Traditional Authority
- 8.8 Kapika Traditional Authority
- 8.9 Hoveka Traditional Authority

9. San Traditional Authorities

- 9.1 !Kung Traditional Authority
- 9.2 Ju/'hoan Traditional Authority
- 9.3 Hai-//om Traditional Authority
- 9.4 ≠Kao//'Aesi Traditional Authority
- 9.5 !Xoo Traditional Authority.

The relevant *Government Gazettes* use various inconsistent names and spellings for many of the traditional authorities. Except in the case of specific amendments to the names, they appear above as in the *Government Gazette* that last provided the full list (GN 181/2008, <u>GG 4090</u>).

Cases:

Mbanderu Traditional Authority & Another v Kahuure & Others 2008 (1) NR 55 (SC)

Adcock v Mbambo (A 87/2010) [2012] NAHCMD 35 (24 October 2012) (jurisdiction of traditional court in terms of section 3 read together with section 1: definitions of "member" and "traditional community")

Kahuure & Another in re Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others 2013 (4) NR 932 (SC) (discusses procedure for designation of Chief of Ovambanderu Traditional Community)

- Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others 2015 (1) NR 220 (HC) (section 5)
- Hikumwah & Others v Nelumbu & Others 2015 (4) NR 955 (HC) (traditional authority as administrative body in terms of Act; disciplinary procedure in respect of traditional councillors did not follow procedural fairness); overturned on appeal, on basis of facts pleaded, in Nelumbu & Others v Hikumwah & Others 2017 (2) NR 433 (SC)
- Council of the Itireleng Village Community v Madi 2017 (4) NR 1127 (SC) (no locus standi of headman appointed under Act in respect of voluntary association made up of members of community)
- Kapika v Kapika & Others 2020 (3) NR 707 (SC), overturning Kapika v Minister of Urban and Rural Development & Others 2018 (2) NR 432 (HC) (sections 4, 5, 6, 8 and 12)
- Witbooi & Others v Minister of Urban and Rural Development & Others 2022 (2) NR 383 (HC) (section 4 discussed; distinction between traditional authority and traditional council for purposes of section 5(1)(a)), upheld on appeal in Witbooi & Others v Witbooi & Others 2023 (4) NR 1120 (SC) decided on grounds that Minister was functus officio and that the dispute on succession had been referred to an investigating committee which directed the community to hold an election if the royal family could not resolve the dispute within a specified time period; however, in agreement with High Court reasoning on distinction between authority and council; also noting that issue of whether distinction between patrineal and matrilineal descent is an unconstitutional violation of gender equality was not ripe for determination and also unnecessary to decide since matter can be decided on administrative law grounds)
- Tsumib & Others v Government of the Republic of Namibia & Others 2022 (2) NR 558 (SC) (sections 3 and 16: traditional authority does not have exclusive competence to pursue claims relating to the relevant ethnic group, especially against the Government which pays the traditional authority's litigation costs, but the individual applicants in this case do not have *locus standi* to sue as representatives of the community)
- Minister of Urban and Rural Development & Others v Haindaka & Another 2023 (2) NR 559 (SC), overturning Haindaka v Minister of Urban and Rural Development & Others 2019 (4) NR 951 (HC) (succession dispute between two clans; sections 4, 5, 6, 9 and 12)
- Ngondo v The Minister of Urban and Rural Development (HC-MD-CIV-MOT-REV- 2017/00199) [2019] NAHCMD 158 (6 March 2019), confirmed on appeal in *Uukwangali Traditional Authority and Another v Minister of Urban and Rural Development and Others* (SA 9 of 2019) 2020 NASDC 51 (6 November 2020).

Commentary:

- Heike Becker, "'New Things After Independence': Gender and Traditional Authorities in Postcolonial Namibia", 32 (1) *Journal of Southern African Studies* 29 (2006)
- Manfred O Hinz, "Traditional governance and African customary law: Comparative observations from a Namibian perspective" in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, available here
- Law Reform and Development Commission, Working Paper on Issues related to the Traditional Authorities in the Ovawambo Communities, LRDC 22, 2012, available here
- Manfred O Hinz, "The Traditional Authorities Act and the 'mushrooming' of traditional authorities", *Namibia Law Journal*, Volume 8, Issue 1, 2016
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 6.3: "Jurisdiction in Terms of the Traditional Authorities Act, 2000 (Act No. 25 of 2000), and the Community Courts Act, 2003 (Act No. 10 of 2003)")
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 5.3 discusses the use of traditional titles (definition of "chief" in section 1 read with section 11)
- Bernadine Bertolini, "The Rehoboth Baster land dispute Attempt by the Rehoboth Baster Community to regain ownership of their ancestral land", *Namibia Law Journal*, Volume 10, Issue 1, 2018.

COMMISSIONS

Commission of Inquiry into Matters relating to Chiefs, Headmen and other Traditional and Tribal Leaders and Authorities (Proc. 3/1991, GG 176)

See also GN 32/1991 (GG 175).

SELECTED CASES

Kaputuaza & Another v Executive Committee of the Administration for the Hereros & Others 1984 (4) SA 295 (SWA)

Moraliswani v Mamili, Supreme Court of SWA, 12 June 1985 (unreported judgement).

Ndisiro v Mbanderu Community Authority & Others, 1986 (2) SA 532 (SWA).

Pack v Muundjua & Others / Tjipetekera v Muundjua & Others, 1989 (3) SA 556 (SWA).

Kakujaha v Tribal Court of Okahitua, Supreme Court of South West Africa, 20 March 1989 (unreported judgement).

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC)

S v Sipula 1994 NR 41 (HC).

S v Haulondjamba 1993 NR 103 (HC).

Makono v Nguvauva 2003 NR 138 (HC) (widow inheritance)

LM v JM & Others 2016 (2) NR 603 (HC) (in respect of constitutional challenge to customary law, need to tender evidence to establish customary law and to establish unconstitutionality)

Witbooi & Others v Minister of Urban and Rural Development & Others 2022 (2) NR 383 (HC) (customary law favouring members of patrilineal line over members of matrilineal line for chieftainship would violate Art 10(2) of the Namibian Constitution).

COMMENTARY

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- MO Hinz (assisted by S Joas), Developing Customary Law: Self-Stated Laws of Namibian Communities, CASS Paper No 31, Windhoek, Centre for Applied Social Studies, 1995
- Law Reform and Development Commission, *The Ascertainment of Customary Law and the Methodological Aspects of Research into Customary Law: Proceedings of Workshop*, LRDC 2, 1995
- TW Bennett, *Customary Law and the Constitution*, Law Reform and Development Commission, LRDC 3, 1996
- MO Hinz, "Family law in Namibia: The challenge of customary and constitutional law" in J Eeklelaar & TN Hlapo (eds), *The changing family: Family forms and family law,* Oxford: Hart, 1998
- Legal Assistance Centre, *Proposals for Law Reform on the Recognition of Customary Marriages*, 1999 Christiaan Keulder, "Traditional Leaders" in C Keulder (ed), *State, Society and Democracy; A Reader in Namibian Politics*, Konrad Adenauer Stiftung, 2000, reprinted 2010, available <a href="https://example.com/herealth/herealt
- MO Hinz (assisted by S Joas), Customary law in Namibia: Development and Perspective, CASS Paper No 50, eighth edition, 2003, Windhoek, Centre for Applied Social Studies, 2003
- D LeBeau, et al, *Women's Property and Inheritance Rights in Namibia*. Windhoek: Gender Training and Research Programme and University of Namibia, 2004
- Law Reform and Development Commission, *Report on Customary Law Marriages*, LRDC 12, 2004, available here
- H Becker, "New Things after Independence': Gender and Traditional Authorities in Postcolonial Namibia", *Journal of Southern African Studies*, 32 (1): 29-48, 2006
- MO Hinz & JW Kwenani, "Ascertainment of Customary Law" in Manfred O Hinz and Helgard K Patemann (eds), *The Shade of New Leaves: Governance in Traditional Authority A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006.

- OC Ruppel (ed), Women and custom in Namibia: Cultural practice versus gender equality?, Konrad Adenauer Stiftung, 2008, available here (reviewed by Chuma Himonga in Namibia Law Journal, Volume 1, Issue 1, 2009, available here).
- Manfred O Hinz, "Phase 1 of the Namibian Ascertainment of Customary Law Project to be completed soon", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available here
- OC Ruppel, "Women's rights and customary law in Namibia" 3 (2) *Journal of African and International Law* 259 (2010).
- Manfred O Hinz (ed), assisted by Ndateelela E Namwoonde, *Customary Law Ascertained, Volume 1:*The Customary Law of the Owambo, Kavango and Caprivi Communities of Namibia,
 Windhoek: Namibia Scientific Society in association with the Human Rights and
 Documentation Centre, Faculty of Law, University of Namibia, 2010 (reviewed by Nico Horn
 in Namibia Law Journal, Volume 3, Issue 1, 2011, available here)
- Manfred O Hinz (ed), assisted by Alexander Gairiseb, Customary Law Ascertained, Volume 2: The Customary Law of the Bakgalagari, Batswana and Damara Communities of Namibia, Windhoek: UNAM Press, 2013
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- Manfred O Hinz, "The ascertainment of Namibian customary law completed: What has been done and what lies ahead" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available here
- Manfred O Hinz, "Customary Law Ascertained project completed?", *Namibia Law Journal*, Volume 11, Issue 1, 2019.

See also Community Courts Act 10 of 2003 (COURTS).

See also Native Administration Proclamation 15 of 1928 ('BLACKS').

See also Communal Land Reform Act 5 of 2002 (LAND AND HOUSING).

CUSTOMS AND EXCISE

Customs and Excise Act 20 of 1998 🕎 🔄

Summary: This Act (originally published in <u>GG 1900</u>) covers the levying, imposition, payment and collection of customs and excise duties, as well as a surcharge a fuel levy. It also prohibits and controls the import, export and manufacture of certain goods. It was brought into force on 1 August 1998 by GN 186/1998 (GG 1918).

Repeals: This Act repeals the *Customs and Excise Act 91 of 1964* (RSA GG 866), which replaced the *Customs Act 55 of 1955* and the *Excise Act 62 of 1956*.

Amendments: The Act is substantially amended by Act 17/2016 (<u>GG 6203</u>), which was brought into force on 31 March 2017 by GN 74/2017 (<u>GG 6277</u>).

The abbreviations and symbols used in the Schedules are substituted by GN 390/2024 (GG 8342).

Schedule 1 is amended by GN 208/1998 (GG 1943), GN 209/1998 (GG 1943), GN 71/1999 (GG 2092), GN 93/2000 (GG 2305), GN 187/2000 (GG 2386) (which also implements Article 6 of the Customs Union Agreement, 1969), GN 116/2001 (GG 2548) (which deals with the SADC Protocol on Trade and has only come into force in part), GN 13/2002 (GG 2688), GN 61/2004 (GG 3181) (as amended by GN 145/2004 (GG 3237)), GN 115/2004 (GG 3207), GN 116/2004 (GG 3207), GN 146/2007 (GG 3896), GN 213/2013 (GG 5264), GN 246/2013 (GG 5286), GN 307/2013 (GG 5344), GN 198/2014 (GG 5590), GN 66/2015 (GG 5724), GN 100/2016 (GG 6019), GN 101/2016 (GG 6019), GN 219/2016 (GG 6125), GN 230/2016 (GG 6132), GN 300/2016 (GG 6198), GN 93/2017 (GG 6289), GN 302/2017 (GG 6472) GN 77/2018 (GG 6574), GN 156/2018 (GG 6666), GN 133/2019 (GG 6917) (with effect from the tabling of the relevant taxation proposal in the National Assembly), GN 225/2019 (GG 6967), GN 226/2019 (GG 6967) (with effect from the date that the notice is tabled in the National Assembly), GN 131/2020 (GG 7239), GN 132/2020 (GG 7239) (with effect from the tabling of the relevant taxation proposal in the National Assembly), GN 47/2021 (GG 7483) (with effect from 1 January 2021; repeals GN 300/2016), GN 79/2021 (GG 7507) (with effect "on the date of the tabling of the applicable taxation proposal in the National Assembly"), GN 18/2022 (GG 7743) (with effect from 1 January 2022), GN 215/2022 (GG 7868) ("with retrospective effect from 4 May 2022 to 3 August 2022"), GN 317/2022 (GG 7922) (with effect from 23 February 2022), GN 152/2023 (GG 8092) (with effect from 22 February 2023), GN 27/2024 (GG 8327) (with effect from 22 February 2024), GN 390/2024 (GG 8342) (which amends the General Notes to Schedule 1) and GN 391/2024 (GG 8343) (which substitutes Partt 1 of Schedule 1).

GN 116/2001 (GG 2548) states that the amendments set out in its Schedule come into operation on the date of publication of the notice, with the exception of the rates of duty specified in the SADC column of the notice. Those rates of duty will come into operation on a date determined by notice in the *Gazette*. No such notice has been located.

GN 213/2013 (<u>GG 5264</u>) temporarily withdraws a levy imposed by GN 61/2004 (<u>GG 3181</u>), and GN 198/2014 (<u>GG 5590</u>) re-instates it.

Schedule 1 was also amended by GN 14/2002 (<u>GG 2688</u>). However, this Government Notice was to be brought into force by notice in the *Gazette* and no such notice has been located.

Schedule 1 was also amended by GN 61/2007 (<u>GG 3817</u>), which relates to the implementation of the Customs Union Agreement 2002, but GN 61/2007 was withdrawn by GN 97/2008 (<u>GG 4038</u>).

GN 307/2013 (GG 5344) cites GN 147/2007 as a previous amendment, but this should be GN 146/2007.

Schedule 2 is amended by GN 297/2019 (<u>GG 7022</u>), GN 298/2019 (<u>GG 7022</u>), GN 134/2020 (<u>GG 7239</u>) GN 48/2024 (<u>GG 8342</u>) (with retrospective effect from 28 July 2023) and GN 49/2024 (<u>GG 8342</u>) (with retrospective effect from 28 July 2023).

Schedule 3 is amended by GN 18/2022 (GG 7743) (with effect from 1 January 2022).

Schedule 4 is amended by GN 18/2022 (GG 7743) (with effect from 1 January 2022).

Schedule 5 is amended by GN 93/2000 (<u>GG 2305</u>) and by GN 18/2022 (<u>GG 7743</u>) (with effect from 1 January 2022).

Schedule 6 is amended by GN 133/2020 (<u>GG 7239</u>) and by GN 18/2022 (<u>GG 7743</u>) (with effect from 1 January 2022).

Savings: Section 131(2) of the Act states:

Anything done or purporting to have been done under a provision of any law specified in Schedule 9 and which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.

This would appear to apply to regulations and rules.

Section 121(2) of the Customs and Excise Act 91 of 1964 states:

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

This also would appear to apply to both regulations and rules.

Regulations: Regulations made under the repealed laws survive in terms of the chain of savings clauses quoted above. For the purposes of considering surviving regulations, note that there appears to have been no transfer of administration of the *Customs and Excise Act 91 of 1964* (which fell under the Minister of Finance, Department of Customs and Excise) from RSA to SWA.

General Regulations were issued in terms of section 120 of the *Customs and Excise Act 91 of 1964*, in RSA GN R.1770/1973 (RSA GG 4040, reprinted in OG 3354), as amended by:

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RSA GN R.2051/1973 (<u>RSA GG 4067</u>, republished in <u>OG 3359</u>)
RSA GN R.1918/1974 (RSA GG 4460, republished in OG 3430)
RSA GN R.1988/1974 (RSA GG 4478, republished in OG 3433)
RSA GN R.2046/1974 (RSA GG 4491, republished in OG 3433)
RSA GN R.2099/1974 (RSA GG 4495, republished in OG 3437)
RSA GN R.279/1975 (RSA GG 4586, republished in OG 3452)
RSA GN R.366/1975 (RSA GG 4598, republished in OG 3454)
RSA GN R.469/1975 (<u>RSA GG 4614</u>, republished in <u>OG 3457</u>)
RSA GN R.815/1975 (RSA GG 4682, republished in OG 3465)
RSA GN R.968/1975 (RSA GG 4710, republished in OG 3467)
RSA GN R.1088/1975 (<u>RSA GG 4733</u>, republished in <u>OG 3468</u>)
RSA GN R.1148/1975 (RSA GG 4741, republished in OG 3741)
RSA GN R.1560/1975 (<u>RSA GG 4816</u>, republished in <u>OG 3484</u>)
RSA GN R.621/1976 (<u>RSA GG 5081</u>, republished in <u>OG 3535</u>)
RSA GN R.861/1976 (<u>RSA GG 5135</u>, republished in <u>OG 3541</u>)
RSA GN R.903/1976 (<u>RSA GG 5141</u>, republished in OG 3542)
RSA GN R.1218/1976 (<u>RSA GG 5215</u>, republished in <u>OG 3551</u>)
RSA GN R.2567/1976 (<u>RSA GG 5368</u>, republished in <u>OG 3590</u>)
RSA GN R.2568/1976 (RSA GG 5368, republished in OG 3590)
RSA GN R.129/1977 (<u>RSA GG 5395</u>, republished in <u>OG 3</u>594)
RSA GN R.693/1977 (RSA GG 5530, republished in OG 3621)
RSA GN R.905/1977 (<u>RSA GG 5565</u>, republished in <u>OG 3632</u>)
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RSA GN R.2310/1977 (RSA GG 5800, republished in OG 3671)
RSA GN R.2630/1977 (RSA GG 5846, republished in OG 3688)
RSA GN R.146/1978 (RSA GG 5863)
      RSA GNR.146/1978 reproduces the amendments in RSA GN R.2630/1977.
RSA GN R.307/1978 (RSA GG 5888, republished in OG 3716)
RSA GN R.923/1978 (RSA GG 6003, republished in OG 3748)
RSA GN R.1362/1978 (RSA GG 6106, republished in OG 3788)
RSA GN R.1409/1978 (RSA GG 6110, republished in OG 3789)
RSA GN R.766/1979 (RSA GG 6405)
RSA GN R.2293/1979 (RSA GG 6699)
RSA GN R.2294/1979 (RSA GG 6699)
RSA GN R.2461/1979 (RSA GG 6716)
RSA GN R.2683/1979 (RSA GG 6753)
RSA GN R.2684/1979 (RSA GG 6753)
RSA GN R.2889/1979 (RSA GG 6794)
RSA GN R.112/1980 (RSA GG 6815)
RSA GN R.417/1980 (RSA GG 6874)
RSA GN R.2253/1980 (RSA GG 7275)
RSA GN R.186/1981 (RSA GG 7393)
RSA GN R.579/1981 (RSA GG 7494)
RSA GN R.889/1981 (RSA GG 7558)
RSA GN R.2635/1981(RSA GG 7947)
RSA GN R.2770/1982 (RSA GG 8489)
RSA GN R.1202/1983 (RSA GG 8748)
RSA GN R.1356/1983 (RSA GG 8783)
RSA GN R.1525/1983 (RSA GG 8800)
RSA GN R.2167/1983 (RSA GG 8919)
RSA GN R.2168/1983 (RSA GG 8919)
RSA GN R.629/1984 (RSA GG 9142)
RSA GN R.768/1984 (RSA GG 9188)
RSA GN R.929/1984 (RSA GG 9219)
RSA GN R.1242/1984 (RSA GG 9269)
RSA GN R.1665/1984 (RSA GG 9367)
RSA GN R.1958/1984 (RSA GG 9413)
RSA GN R.2131/1984 (RSA GG 9437)
RSA GN R.2264/1984 (RSA GG 9463)
RSA GN R.58/1985 (RSA GG 9548)
RSA GN R.494/1985 (RSA GG 9615)
RSA GN R.1012/1985 (RSA GG 9738)
RSA GN R.2442/1985 (RSA GG 9986)
RSA GN R.1795/1986 (RSA GG 10403)
RSA GN R.2518/1986 (RSA GG 10537)
RSA GN R.2519/1986 (RSA GG 10537)
RSA GN R.2094/1987 (RSA GG 10931)
RSA GN R.184/1989 (RSA GG 11690)
      Afrikaans version of text corrected by RSA GN R.402/1989 (RSA GG 11729)
RSA GN R.1410/1989 (RSA GG 11992)
RSA GN R.1692/1989 (RSA GG 12044)
RSA GN.1774/1989 (RSA GG 12054)
RSA GN R.2339/1989 (RSA GG 12163)
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RSA GN R.2826/1989 (RSA GG 12225).

The Government Notice which publishes these regulations notes that they are made in substitution for the regulations published in RSA GN R.555/1966 (RSA GG 1421).¹¹⁷

Regulations concerning Export Processing Zones were issued in terms of section 120 of the *Customs and Excise Act 91 of 1964* and are contained in GN 87/1996 (GG 1298).

Rules: Rules are authorised by section 130(2) of this Act. Rules made under the repealed laws survive in terms of the chain of savings clauses quoted above.

Rules designating places of entry, authorised roads, routes and related matters were issued under the RSA *Customs and Excise Act 91 of 1964* and are contained in RSA GN R.2117/1964 (<u>RSA GG 980</u>), substituted by RSA GN R.556/1966 (<u>RSA GG 1421</u>) and by RSA GN R.1771/1973 (<u>RSA GG 4040</u>), ¹¹⁸ as amended by:

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RSA GN R.2183/1973 (RSA GG 4086; republished in OG 3374)
RSA GN R.2363/1973 (RSA GG 4103; republished in OG 3374)
RSA GN R.334/1974 (<u>RSA GG 4201</u>; republished in <u>OG 3389</u>)
RSA GN R.1106/1974 (RSA GG 4319; republished in OG 3408)
RSA GN R.1241/1974 (RSA GG 4338; republished in OG 3416)
RSA GN R.1269/1974 (RSA GG 4343; republished in OG 3417)
RSA GN R.1270/1974 (RSA GG 4343; republished in OG 3417)
RSA GN R.1273/1974 (RSA GG 4343; republished in OG 3417)
RSA GN R.1820/1974 (RSA GG 4428; republished in OG 3430)
RSA GN R.1821/1974 (RSA GG 4428; republished in OG 3430)
RSA GN R.1923/1974 (RSA GG 4460; republished in OG 3430)
RSA GN R.2357/1974 (RSA GG 4540; republished in OG 3444)
RSA GN R.1504/1975 (RSA GG 4810; republished in OG 3484)
RSA GN R.1713/1975 (<u>RSA GG 4841</u>; republished in <u>OG</u> 3491)
RSA GN R.2054/1975 (RSA GG 4884; republished in OG 3505)
RSA GN R.2241/1975 (<u>RSA GG 4911</u>; republished in <u>OG 3508</u>)
RSA GN R.342/1976 (<u>RSA GG 4996</u>; republished in <u>OG 3523</u>)
RSA GN R.622/1976 (RSA GG 5081; republished in OG 3535)
RSA GN R.1266/1976 (RSA GG 5231; republished in OG 3551)
RSA GN R.2410/1976 (RSA GG 5352; republished in OG 3586)
RSA GG R.1562/1977 (RSA GG 5710; republished in OG 3643)
RSA GG R.2309/1977 (RSA GG 5800; republished in OG 3671)
RSA GG R.1361/1978 (RSA GG 6106; republished in OG 3788)
RSA GG R.1410/1978 (RSA GG 6110; republished in OG 3789)
RSA GG R.1718/1979 (RSA GG 6613)
RSA GG R.2829/1979 (RSA GG 6789)
RSA GG R.2830/1979 (RSA GG 6789)
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¹¹⁷ **RSA GN R.555/1966** repeals the regulations in RSA GN R.2116/1964 (<u>RSA GG 980</u>), as amended by RSA GN R.369/1965 (<u>RSA GG 1062</u>). **RSA GN R.2116/1964** repeals the regulations in RSA GN R.190/1961 (<u>RSA GG 34</u>), RSA GN R.1001/1961 (<u>RSA GG 115</u>) and RSA GN R.1002/1961 (<u>RSA GG 115</u>), together with any Government Notices which amended these Notices. **RSA GN R.1009/1961** (RSA GG 114) repeals SA GN 218/1956 as amended, SA GN 224/1956 as amended, SA GN 225/1956 (SA GG 5631; OG 1967) as amended and SA GN 226/1956 as amended. **RSA GN R.1010/1961** (RSA GG 114) repeals SA GN 230/1956 as amended, and SA GN 231/1956 as amended. **RSA GN R.190/1961** revokes all previous regulations issued under any of the laws repealed by the SA *Excise Act 62 of 1956* (regulation 2). According to *Juta's Index to the South African*

Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at 249-251, the regulations in RSA GN R.1770/1973 as amended are the only ones that remained in force as of 1989.

118 These rules are in substitution of the rules published in RSA GN R.556 of 13 April 1966, as amended.

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RSA GG R.135/1980 (RSA GG 6823)
RSA GG R.331/1980 (RSA GG 6862)
RSA GG R.1047/1980 (RSA GG 7024)
RSA GG R.2225/1980 (RSA GG 7275)
RSA GG R.2538/1980 (RSA GG 7328)
RSA GG R.31/1981 (RSA GG 7356)
RSA GG R.140/1981 (RSA GG 7387)
RSA GG R.578/1981 (RSA GG 7494)
RSA GG R.1861/1981 (RSA GG 7755)
RSA GG R.2388/1981(RSA GG 7867)
RSA GG R.2426/1981 (RSA GG 7903)
RSA GG R.2519/1981 (RSA GG 7925)
RSA GG R.424/1982 (RSA GG 8062)
RSA GG R.645/1982 (RSA GG 8131)
RSA GG R.1521/1982 (RSA GG 8312)
RSA GG R.2822/1982 (RSA GG 8496)
RSA GG R.1960/1983 (RSA GG 8879)
RSA GG R.2347/1983 (RSA GG 8947)
RSA GG R.11/1984 (RSA GG 9024)
RSA GG R.2460/1984 (RSA GG 9490)
RSA GG R.171/1985 (RSA GG 9575)
RSA GG R.172/1985 (RSA GG 9575)
RSA GG R.1219/1985 (RSA GG 9775)
RSA GG R.1688/1985 (RSA GG 9880)
RSA GG R.1094/1986 (RSA GG 10262)
RSA GG R.1794/1986 (RSA GG 10403)
RSA GG R.1107/1987 (RSA GG 10746)
RSA GG R.2095/1987 (RSA GG 10931)
RSA GG R.2467/1987 (RSA GG 11021)
RSA GG R.1906/1988 (RSA GG 11512)
RSA GN R.1907/1988 (RSA GG 11512)
GN 222/2002 (GG 2879)
GN 403/2022 (GG 7978)
GN 27/2023 (GG 8039).
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In terms of this Act, rules concerning the visa arrangement between Namibia and the USA for exports of textiles and clothing from Namibia to the USA are contained in GN 225/2001 (GG 2642), which was subsequently replaced by GN 231/2001 (GG 2653). GN 37/2004 (GG 3158) amends GN 231/2001 and is deemed to come into effect on 1 August 2003.

Application of law: The Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>) gives certain powers to customs and excise officers.

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (<u>GG 6486</u>), which was brought into force with effect from 6 April 2021 by GN 55/2021 (<u>GG 7496</u>).

Notices: Notification of taxation proposals for additional duties in respect of the importation of certain pasta products is contained in GN 70/2008 (<u>GG 4022</u>).

Notification of taxation proposals for additional duties in respect of the importation of certain categories of milk is contained in GN 71/2008 (GG 4022). *

Notification of taxation proposals for additional duties in respect of a range of products is contained in GN 165/2008 (GG 4075).

Notification of taxation proposals for additional duties in respect of the importation of Portland cement is contained in GN 208/2012 (GG 5015).

A previous notification of taxation proposals for additional duties in respect of the importation of Portland cement was issued by the Minister, but this notice was declared invalid by *Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC) on the grounds that it was not properly issued in accordance with section 65 of the Act because it was not promulgated in the *Government Gazette* before being tabled in the National Assembly.

In an interlocutory application by Jack's Trading CC to give effect to the Court order issued in this case while an appeal against that judgment by the Ministry of Finance was pending, an intervening party (Ohorongo Cement) sought rescission of the judgment. This application for rescission was considered in *Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC), where the Court discussed additional factual information about the notice, submitted to the Court by the Minister of Finance. According to this second case (2013 (2) NR 491 (HC)), the Minister signed a notice dated 27 July 2012 on the proposed cement duties and forwarded it to the Directorate Legal Drafting for promulgation in the *Government Gazette*. The legal drafters advised the Minister that the effective date in the notice should have been 18 April 2012, which was the date when the taxation proposal was tabled in the National Assembly. The Notice was amended by the Directorate Legal Drafting and promulgated in the *Government Gazette* on 15 August 2012, with a commencement date of 18 April 2012. The second notice was dated 18 July 2012, which the Court found odd since the Minister stated in an affidavit that the advice on the need to amend the first notice came only after this notice was signed on 27 July 2012 and delivered to the legal drafters for promulgation.

The notice which was attacked in the case *Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC) was the first one, which was signed by the Minister but never promulgated. However, even though judgment was reserved in this case on 15 August 2012 and delivered on 31 August 2012, the Court was never informed of the second notice, which was published in the *Government Gazette* on 15 August 2012. Nevertheless, the application for rescission was denied on the grounds that there was no error in the court's judgment on the basis of the facts placed before it at the time (*Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC)).

It should be noted that the reasoning applied by the Court to the first notice would be equally applicable to the second notice, which was promulgated *after* being tabled in the National Assembly instead of *prior* to such tabling as section 65 of the Act requires; "the wording of s 65 construed as a whole requires that the promulgation of the notice is to precede the tabling of the proposal" (2013 (2) NR 480 (HC) at para 28).

It should also be noted that the second case (2013 (2) NR 491 (HC) at para 12) states that the second notice appeared in the *Government Gazette* of 15 August 2012 as Government Notice 298 of 2012. Government Notice 298 of 2012 in fact appeared on 14 December 2012 and was the promulgation of the Prevention and Combating of Terrorist Activities Act 12 of 2012. However, the relevant notice on Portland cement appears as Government Notice 208 of 2012 in *Government Gazette* 5015 dated 15 August 2012.

The Supreme Court subsequently came to a different conclusion about the procedure for issuing a notice to amend a Schedule under this Act in 2020, in the appeal judgment *Ohorongo Cement (Pty) Ltd v Jack's Trading CC & Others & A Similar Matter* 2020 (2) NR 571 (SC). (The long delay between the High Court case and the Supreme Court case was occasioned by the incapacity of one of the Supreme Court judges.) The Supreme Court found that section 65 contemplates two distinct procedures in terms of which a rate of duty may be imposed by the Minister of Finance: (1) Section 65(1) authorises a duty imposed by means of tabling in the National Assembly, with the result that the duty becomes payable from the date it is tabled unless it is rejected by the National Assembly (subject to the requirements of section 65(2)); (2) Section 65(8) authorises a duty imposed by promulgation of a notice in the *Government Gazette* that amends a schedule, imposes a new duty or amends an existing duty, subject to the requirement that this notice must be tabled before the National Assembly within 21 days after being promulgated, or after the next ordinary session of the Assembly commences if the notice was promulgated when the Assembly was not in session. If the National Assembly is unhappy with the regulations in question, it can pass a resolution within 28 days from the tabling of the notice which terminates, varies or suspends the operation of the new duty – but the new duty imposed by regulations promulgated in a

notice takes effect immediately upon promulgation, and any subsequent rejection of it by the National Assembly does not have retrospective effect. This second procedure does not concern a *proposal* for the introduction of a new duty, but rather informs the National Assembly of a duty that has already been imposed by regulations issued by means of a Government Notice. Section 65(1) and (8) thus set out two different processes for introducing duties or levies, and the Minister has discretion to act in terms of either of these provisions. The Supreme Court found that the High Court erred in reading these two provisions together and concluding that 65(8) prescribes procedures that must be followed for the introduction of a duty in terms of section 65(1). The notice gazetted on 15 August 2012 was intended to give notice to the public that a taxation proposal had been tabled in the National Assembly in terms of section 65(1); this taxation proposal did not have to be gazetted to be effective, since it became law once tabled in the National Assembly.

An environmental duty on certain goods and on carbon dioxide (CO²) emissions of specified vehicles is imposed by GN 100/2016 (GG 6019).

Cases:

S v Lofty-Eaton & Others (1) 1993 NR 370 (HC) (with reference to Customs and Excise Act 91 of 1964) S v Kramash 1998 NR 186 (HC) (section 14(1))

Konga Clearing Agencies CC v Minister of Finance 2011 (2) NR 623 (absence of locus standi of clearing agent, with reference to sections 108-110)

Jack's Trading CC v Minister of Finance & Another 2013 (2) NR 480 (HC), Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening) 2013 (2) NR 491 (HC) (section 65); High Court order overturned in Ohorongo Cement (Pty) Ltd v Jack's Trading CC & Others & A Similar Matter 2020 (2) NR 571 (SC) on the grounds that the High Court should have considered the application to intervene by Ohorongo Cement before making the settlement agreement between the parties into a court order, and that the settlement agreement violates sections 41(1)(a)-(b) and 51(2)(a)-(c) of the Act

Woker Freight Services (Pty) Ltd v Commissioner for Customs and Excise & Others 2015 (1) NR 206 (HC) (sections 18(2), 41(6) and 73)

Woker Freight Services (Pty) Ltd v Commissioner for Customs and Excise & Others 2016 (2) NR 450 (SC) (sections 1 ("importer" and "exporter"), 17, 18 and 110).

S v Faria & Others 2017 (4) NR 1086 (NLD) (forfeiture under section 91 is required upon conviction under section 14; no discretion on part of trial court in this regard).

COMMENTARY

R Kirk & M Stern, "The New Southern African Customs Union Agreement", Africa Region Working Paper Series No. 57, World Bank, June 2003, available here

"About SACU; History of SACU", 2007, available here

Oliver C Ruppel, "SACU 100: Reflections on the world's oldest customs union", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here

See also the yearbooks entitled *Monitoring Regional Integration in Southern Africa*, Windhoek: Trade Law Centre for Southern Africa / Konrad Adenauer Stiftung, annual editions from 2005 available here.

INTERNATIONAL LAW

**Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010

Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014

Convention Establishing a Customs Co-operation Council, 1950

Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006

- Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006
- Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006
- Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006

International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention), 1973, as amended 1999

International Convention on the Harmonized Commodity Description and Coding System, 1983

See also IMPORT AND EXPORT.

DAMAGES

Apportionment of Damages Act 34 of 1956, as amended in South Africa to November 1979

Summary: This Act (originally published in <u>SA GG 5689</u>) apportions damages in cases of contributory negligence or joint or several liability.

Applicability to SWA: Section 6 originally stated: "This Act shall apply also in the territory of South-West Africa." After amendment by *Act 58 of 1971*, section 6 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* (RSA GG 17129).) There was only one South African amending act after the date of transfer – the *Matrimonial Property Act 88 of 1984* (RSA GG 9322) – which was not made expressly applicable to SWA.

Amendments: Assuming that the justice transfer proclamation was indeed applicable, the only SA amendment which applied to South West Africa was the *Apportionment of Damages Amendment Act 58 of 1971* (RSA GG 3150).

Regulations: The Act makes no provision for regulations.

Application of law: Section 37 of the Motor Vehicle Accident Fund Act 10 of 2007 (<u>GG 3970</u>) affects the application of this Act.

Cases:

Beukes v Mutual & Federal Insurance 1990 NR 105 (HC)

Johannes v South West Transport (Pty) Ltd 1992 NR 358 (HC), confirmed on other points on appeal to a full bench in 1994(1) SA 200 (Nm)

FS v Minister of Safety and Security 2009 (2) NR 417 (SC)

Kamushinda & Others v Liquidators, Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation) 2024 (1) NR 277 (SC) (not necessary to join all wrongdoers in an action).

Assessment of Damages Act 9 of 1969, as amended in South Africa to November 1979

Summary: This Act (<u>RSA GG 2305</u>) amends the law regarding assessment of damages for loss of support as a result of a person's death.

Transfer proclamation: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Application of law: Section 37 of the Motor Vehicle Accident Fund Act 10 of 2007 affects the application of this Act.

See also Crown Liabilities Act 1 of 1910 (state liability) (LAW).

DEBTORS AND CREDITORS

Usury Act 73 of 1968, as amended in South Africa prior to Namibian independence will provide the south Africa prior to Namibian independence will be south Africa prior to Namibian independence



Summary: This Act (originally published in RSA GG 2119) provides for the limitation and disclosure of finance charges on loan and credit transactions and sets maximum rates of interest for loans. It was originally called the "Limitation and Disclosure of Finance Charges Act", but the name was changed to "Usury Act" by the Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986. It was brought into force in South Africa and South West Africa on 1 April 1969 by RSA Proc. 366/1968 (RSA GG 2235) in terms of section 19 of the Act.

Repeals: The Act repeals the *Usury Act 37 of 1926* as amended.

Applicability to SWA: Section 1, as amended by Act 62 of 1974, defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 19(1), which was in the original Act, states "The provisions of this Act and any amendment thereof shall apply also in the territory of South West Africa, including the area known as the Eastern Caprivi Zipfel and referred to in section 3(3) of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all persons in that portion of the territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923, of the Administration of the said territory."

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance, as indicated by various government notices issued under the Act. See, for example, Government Notice R.2019/1974 (RSA GG 4475) and Government Notice R.2457/1982 (RSA GG 8446). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

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

- Limitation and Disclosure of Finance Charges Amendment Act 76 of 1970 (RSA GG 2873)
- *Limitation and Disclosure of Finance Charges Amendment Act 62 of 1974* (RSA GG 4457)
- Limitation and Disclosure of Finance Charges Amendment Act 90 of 1980 (RSA GG 7143)
- Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986 (RSA GG 10216)
- *Usury Amendment Act 62 of 1987* (RSA GG 10929)
- Usury Amendment Act 100 of 1988 (RSA GG 11528)
- Usury Amendment Act 91 of 1989 (RSA GG 11943).

The Act was also amended in South Africa by the *Usury Amendment Act 67 of 1990* (RSA GG 12566), but this amendment came into force only on 29 June 1990 (its date of publication), which was after the date of Namibian independence.

After independence, section 15(e) of the Act was repealed by Act 1/2000 (GG 2269).

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (GG 2529), which was brought into force on 14 May 2001 by GN 85/2001 (GG 2528), amends section 1.

Act 6/2018 (GG 6663), which was brought into force on 15 October 2018 by GN 260/2018 (GG 6736), amends section 1 and inserts section 2C.

Act 6/2018 states that it amends section 2 by the insertion of section 2C, but section 2C appears to be intended for insertion as an independent section; the Act already contains independent sections 2A and 2B.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends sections 1-3 and 10.

Regulations: Regulations are authorised by section 16 of the Act. There is no savings clause for regulations issued under the repealed Act. The following pre-independence regulations issued under the current Act remain in force (although they may have been superseded by subsequent enactments):¹¹⁹

Regulations contemplated in sections 2(1), (2) and (3), 3A(2)(a) and 15(g) are contained in RSA GN R.943/1988 (RSA GG 11303). They were amended by RSA GN R.1304/1988 (RSA GG 11382), a notice on finance charges, which repeals regulations 1-3. The remaining regulations in this set were still in force at the time of Namibian independence. 120

No post-independence regulations have been promulgated.

Notices on finance charges: Maximum annual finance charge rates are announced in government notices from time to time, with each one typically withdrawing or repealing the previous one. See, since independence, GN 97/1992 (<u>GG 455</u>), GN 39/1993 (<u>GG 617</u>), GN 27/1994 (<u>GG 807</u>), GN 47/1995 (<u>GG 1037</u>), GN 97/1995 (<u>GG 1090</u>), GN 154/1995 (<u>GG 1151</u>), GN 126/1997 (<u>GG 1590</u>), GN 6/2000 (<u>GG 2259</u>), GN 135/2002 (<u>GG 2782</u>), General Notice 196/2004 (<u>GG 3266</u>) and General Notice 572/2018 (<u>GG 6736</u>).

Maximum finance charge rates for microlending transactions are determined in General Notice 571/2018 (GG 6736).

Notices on exemptions: RSA GN R.251/1983 (<u>RSA GG 8543</u>) designates estate agents who are holders of fidelity fund certificates in terms of section 16 of the *Estate Agents Act 112 of 1986* as an exempted category of persons under section 2(11)(b) of the Usury Act, on condition that they may stipulate for, demand or receive payment from a borrower only for services rendered to such borrower in connection with a money lending transaction in terms of section 2(11)(b) of the Usury Act (which was referred to in this notice under its previous name, the *Limitation and Disclosure of Finance Charges Act 73 of 1968*).

RSA GN 2262/1988 (<u>RSA GG 11563</u>), as amended by RSA GN 1697/1989 (<u>RSA GG 12040</u>), exempts certain leasing and credit transactions from the provisions of the Act.

RSA GN 1418/1989 (<u>RSA GG 11987</u>) exempts certain money lending transactions from the provisions of section 4 of the Act.

Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (3) are contained in RSA GN R.141/1987 (RSA GG 10587), but are repealed in their entirety by RSA GN R.2634/1987 (RSA GG 11045).

Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (3) are contained in RSA GN R.2634/1987 (RSA GG 11045), but all of the substantive provisions of these regulations are repealed by RSA GN R.630/1988 (RSA GG 11221). (The only two remaining regulations concern the effective date and the repeals.)

Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (1) are contained in RSA GN R.630/1988 (RSA GG 11221), but all of the substantive provisions of these regulations are repealed by RSA GN R.943/1988 (RSA GG 11303). (The only two remaining regulations concern the effective date and the repeals.)

120 The remaining regulations in this set were repealed in South Africa after Namibian independence by RSA GN 1489/1992 (RSA GG 13998).

¹¹⁹ **Repealed regulations: Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (3), 3A(2)(a) and 15(g)** are contained in RSA GN R.2566/1986 (RSA GG 10537) (operational with effect from 5 December 1986), as amended by RSA GN R.141/1987 (RSA GG 10587) (which repeals regulations 1, 2, 3 and 4 with effect from 23 January 1987) and RSA GN R.943/1988 (RSA GG 11303) (which repeals regulations 5 and 6 with effect from 5 May 1988). The net effect of these repeals is to remove all of the substantive provisions of these regulations. (The only two remaining regulations concerned the effective date and the repeals, and they were repealed by RSA GN R.943/1988 (RSA GG 11303).) The 1986 regulations repealed the ones published in RSA Government Notices R.1671 of 8 August 1986 and R.2131 of 9 October 1986.)

Certain exemptions relating to micro loan transactions are set forth in GN 34/2000 (<u>GG 2267</u>), which is replaced by GN 136/2002 (<u>GG 2782</u>), replaced in turn by GN 189/2004 (<u>GG 3266</u>). However, GN 189/2004 was repealed by GN 262/2018 (<u>GG 6736</u>) when the Microlending Act 7 of 2018 came into force.

Cases: Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others 2006 (1) NR 275 (HC); substantive issues upheld on appeal in Permanent Secretary in the Ministry of Finance & Others v OLGN Finance CC 2020 (2) NR 465 (SC) (section 15A of Act; applicability of finance charges in GN 135/2002 (GG 2782) and procedure for cancellation of status as microlender in GN 136/2002 (GG 2782); decision to deregister a party as a microlender and decision to revoke a payroll deduction facility are both administrative actions for the purposes of Art 18 of the Namibian Constitution).

See also dicta in WS Trading and Investment CC & Others v Capx Finance Namibia (Pty) Ltd 2021 (3) NR 694 (SC) at para 21 (footnotes omitted):

[21] One aspect remains and calls for comment. The exorbitant interest charged on the loan was raised in the papers but correctly not persisted with. The capital attracted interest at 3% per month and in the event of default, a further 1,5% per month became payable. Interest was thus charged at the extremely high rate of 4,5% per month. This interest regime as set out in the agreement surprisingly does not fall foul of the Usury Act 12 because the loaned sum is in excess of threshold amount of N\$500 000 provided for in s 15(g) of the Usury Act read with the regulations [RSA GN R.943/1988 as amended]. This means interest at an effective annual rate of 54% is not impermissible under statute and is thus payable in terms of the agreement. The legislature may well consider extending the threshold or improving the protective provisions of the Usury Act to protect consumers from such an extremely high rate of interest [citing LLD thesis *Towards Responsible Lending in Namibian Consumer Credit Law: A Comparative Investigation* by Ndatega Victoria Asheela (November 2017)]. The threshold amount was last increased by regulation in 1988 and has since been left untouched despite the significant decline in the value of money since then.

Suretyship Amendment Act 57 of 1971 📲 🙀

Summary: This Act (originally published in <u>RSA GG 3149</u>) repeals the common law rules which previously protected women from the consequences of suretyship.

Applicability to SWA: Section 4 states "This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." This wording would not have made amendments to the Act in South Africa automatically applicable to SWA, but there were in any event no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. In any event, the issue of transfer is not relevant to the content of the Act since there were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Bills of Exchange Act 22 of 2003 (<u>GG 3121</u>) repeals the reference to the Bills of Exchange Act 34 of 1964 in the Schedule to the Act.

Regulations: The Act makes no provision for regulations.

Prescribed Rate of Interest Act 55 of 1975, as amended in South Africa prior to Namibian independence are represented in South Africa prior to Namibian independence

Summary: This Act (<u>RSA GG 4755</u>) prescribes the calculation of interest on debts in certain circumstances and provides for payment of interest on certain judgment debts. It was brought into force

in South Africa and South West Africa on 16 July 1976 by RSA Proc. R.126/1976 (RSA GG 5215), in terms of section 4 of the Act.

Applicability to SWA: Section 4 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: It is not clear whether the administration of this Act was transferred to SWA. Section 1(2) of the Act gives the Minister of Justice power to prescribe rates of interest, suggesting that the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended, may have been applicable. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Participation Bonds Act 55 of 1981, as amended in South Africa prior to Namibian independence are

Summary: This Act (originally published in <u>RSA GG 7761</u>) provides for the rights of participants in certain mortgage bonds. It repeals the *Participation Bonds Act 48 of 1964*, as amended. This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Applicability to SWA: Section 16 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: This Act post-dated the transfer proclamations.

Amendments: The following pre-independence South African amendment was applicable to SWA –

• Financial Institutions Amendment Act 51 of 1988 (RSA GG 11313).

Regulations: The Act makes no provision for regulations.

The Act contains a savings clause in section 17(2) which states:

Anything done or deemed to have been done under any provision of a law repealed by subsection (1), and which could be done under a provision of this Act, shall be deemed to have been done under the last-mentioned provision.

However, this could not apply to regulations since they are not authorised by the current Act.

See also FINANCIAL INSTITUTIONS.

DEEDS

Deeds Registries Act 47 of 1937, as amended in South Africa to November 1979 w 🕎

Summary: This Act (originally published in <u>SA GG 2443</u>) regulates the registration of deeds. It will be repealed by the Deeds Registries Act 14 of 2015 (<u>GG 5913</u>) when that Act comes into force.

Repeals: This Act replaced the Deeds Registry Proclamation 37 of 1939 as amended in SWA, subject to section 16(2) of the *Deeds Registries Amendment Act 3 of 1972* (<u>RSA GG 3404</u>), which made this Act applicable to SWA:

- **16.** (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.
 - (2) The provisions of this Act
 - shall not apply to the registration in the Mining Titles Office at Windhoek of documents relating to rights granted or acquired under the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968), of the territory of South-West Africa, or any other law relating to mines or minerals and for the registration of which in the deeds registry mentioned in section 1 of the Deeds Registry Proclamation, 1939 (Proclamation No. 37 of 1939), of that Territory or in the said Mining Titles Office provision is made in that Proclamation or in the State President's Mining Titles Registration Proclamation, 1969 (Proclamation No. R.90 of 1969) or in any other law;
 - (b) shall not affect any power, function or duty of the Registrar of Mining Titles appointed in terms of the said Mining Titles Registration Proclamation, 1969,

and the provisions of the said Mining Titles Registration Proclamation, 1969, shall be administered as if this Act had not been enacted.

(3) This section shall also apply in the Eastern Caprivi Zipfel.

The RSA Mining Titles Registration Proclamation R.90 of 1969 and most of the Mines, Works and Minerals Ordinance 20 of 1968 were repealed in respect of Namibia by the Minerals (Prospecting and Mining) Act 33 of 1992 (GG 564), which remains in force.

Applicability to SWA: Section 102A states: "This Act and any amendment thereof, save sections 70 to 74bis, inclusive, and sections 84 and 85, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, but excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976." Section 102 defines "Government," "provincial administration," "Republic," "State," and "Territory" accordingly.

The excluded sections listed in section 102A relate to mineral rights and prospecting contracts. Note that section 16 of the *Deeds Registries Amendment Act 3 of 1972*, which makes the principal Act applicable to South West Africa, repeals the Deeds Registry Proclamation 37 of 1939 with the exception of its applicability to certain mining titles.

Transfer of administration to SWA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated **12 November 1979.** Section 3(1)(b) of that Proclamation as originally enacted excluded section 2, section 103(2) and the references to the Republic in the Act from the operation of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 (the "General Proclamation"). Section 2(a)(i) of the original transfer proclamation provided that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32 of 1985 (OG 5060) – which was deemed to have come into force on 1 June 1984 and which amended both the Executive Powers (Justice) Transfer Proclamation and the *Deeds Registries Act 47 of 1937* – states in section 1(2): "In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation) in respect of sections

2, 9, 45, 45bis, 48 and 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), this Proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to sections 2, 9, 45, 45bis, 48 and 102 of the said Deeds Registries Act, 1937". All of the sections of the *Deeds Registries Act* 47 of 1937 cited in AG 32 of 1985 were amended by that Proclamation.

Section 3(1)(b) of the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, as amended by AG 32 of 1985, excluded section 103(2), all the references to the Republic and all the references to the State in the Act from the operation of section 3(1) of the General Proclamation – meaning that prior to independence these terms retained the meaning given to them in section 102 of the Act (both South Africa and South West Africa). Section 2(a)(i) of the transfer proclamation as amended continued to provide that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

Section 2, which provides for the appointment of registrars, was initially excluded from the operation of section 3(1) of the General Proclamation, but this exclusion was removed by AG 32 of 1985, which also substituted section 2 in its entirety. The provisions of the Act relating to the Deeds Registry Regulation Board were initially excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation "those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic". However, section 9 of the Act – which pertains to this Board – was explicitly transferred to South West Africa by AG 32 of 1985, which also amended the provisions of section 9 on the constitution of the Board. The purpose of citing other specific sections of the Act in AG 32 of 1985, after the administration of the Act as a whole had already been transferred to South West Africa, is not clear.

None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Deeds Registries Amendment Act 44 of 1980* (RSA GG 6991), the *Deeds Registries Amendment Act 27 of 1982* (RSA GG 8079), the *Deeds Registries Amendment Act 62 of 1984* (RSA GG 9241), the *Matrimonial Property Act 88 of 1984* (RSA GG 9322), the *Black Communities Development Amendment Act 74 of 1986* (RSA GG 10333), the *Deeds Registries Amendment Act 75 of 1987* (RSA GG 10952), the *Marriage and Matrimonial Property Law Amendment Act 3 of 1988* (RSA GG 11171) and the *Deeds Registries Amendment Act 24 of 1989* (RSA GG 11777) – were applicable to South West Africa because none were made expressly so applicable.

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

- Deeds Registries Amendment Act 15 of 1953 (SA GG 5120)
- Matrimonial Affairs Act 37 of 1953 (SA GG 5170)
- General Law Amendment Act 50 of 1956 (SA GG 5703)
- Deeds Registries Amendment Act 43 of 1957 (SA GG 5887)
- Deeds Registries Amendment Act 43 of 1962 (RSA GG 236)
- General Law Amendment Act 80 of 1964 (RSA GG 829)
- Deeds Registries Amendment Act 87 of 1965 (RSA GG 1163)
- *Mining Titles Registration Act 16 of 1967* (RSA GG 1670)
- Deeds Registries Amendment Act 61 of 1969 (RSA GG 2412)
- Deeds Registries Amendment Act 3 of 1972 (RSA GG 3404)
- Land Survey Amendment Act 71 of 1972 (RSA GG 3561)
- General Law Amendment Act 62 of 1973 (RSA GG 3947)
- General Law Amendment Act 29 of 1974 (RSA GG 4220)
- General Law Amendment Act 57 of 1975 (RSA GG 4760)
- Expropriation Act 63 of 1975 (<u>RSA GG 4780</u>)
- Registration of Deeds in Rehoboth Act 93 of 1976 (RSA GG 5183)
- Deeds Registries Amendment Act 41 of 1977 (RSA GG 5505)

• Deeds Registries Amendment Act 92 of 1978 (<u>RSA GG 6074</u>).

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32/1985 (OG 5060), amends sections 2, 9, 45, 45bis, 48 and 102 of the Act.

Act 26/1985 (OG 5146), which is brought into force by AG 21/1986 (OG 5184), makes substantial amendments to the Act.

Act 2/1996 (GG 1323), which was brought into force on 15 July 1996 by GN 155/1996 (GG 1340), amends several sections of the Act, inserts section 45ter, repeals section 94 and substitutes certain expressions.

Act 22/1996 (GG 1465) amends sections 17 and 45ter of the Act, as well as the short title of the Deeds Registries Amendment Act 2 of 1996 (which initially gave itself the short title of the "Deeds Registries Amendment Act, 1995" instead of the "Deeds Registries Amendment Act, 1996").

Regulations: Regulations are authorised by section 10 of the Act, which (as amended) states in subsection (7):

The regulations made under the Registration of Deeds Proclamation, 1939 (Proclamation 37 of 1939), of Namibia, and in force at the commencement of the Deeds Registries Amendment Act, 1972, shall be deemed to have been made under this section in respect of the deeds registry at Windhoek.

Pre-independence regulations have not been comprehensively researched.

However, a comprehensive new set of regulations was promulgated in GN 180/1996 (<u>GG 1343</u>), as corrected by GN 193/1996 (<u>GG 1361</u>) and by GN 312/1996 (<u>GG 1457</u>) and amended by GN 36/2004 (<u>GG 3155</u>), GN 77/2007 (<u>GG 3824</u>) (Annexure I), GN 137/2009 (<u>GG 4278</u>) (Regulation 8) and GN 408/2019 (<u>GG 7085</u>) (Annexures I and II).

The Government Notice which issues the 1996 regulations repeals the regulations published in RSA GN 225/1964, RSA GN 207/1967, RSA GN R.437/1973, RSA GN R.2578/1978, RSA GN R.127/1979, AG GN 110/1982 ($\underline{OG\ 4655}$), AG GN 48/1983 ($\underline{OG\ 4750}$) and AG GN 48/1986 ($\underline{OG\ 5184}$).

Cases:

Vaatz v Registrar of Deeds, Namibia: In re Grootfontein Municipality; Vaatz v Registrar of Deeds, Namibia: In re Nöckel's Estate 1993 NR 171 (HC)

Vaatz v Law Society of Namibia & Others 1996 NR 272 (HC)

Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC)

Grobler v Commercial Bank of Namibia Ltd 2010 (1) NR 313 (SC) (discusses section 16, as amended by the RSA General Law Amendment Act 80 of 1964)

Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees not ultra vires section 10(1)(c) of Act and not in violation of Art 21(1)(j) or Art 18 of Constitution)

Kashela v Katima Mulilo Town Council & Others 2018 (4) NR 1160 (SC) (rights envisaged by Schedule 5(3) of the Constitution do not require registration under this Act to have legal force)

Tjihero & Another v Kauri & Another 2018 (3) NR 879 (SC) (an agreement does not confer ownership of immovable property until property is formally transferred via this Act, although it may confer a right to institute action to compel such registration)

Ex Parte Van Der Merwe & Another 2021 (2) NR 464 (HC) (sections 1(a), 17(6), 87, 102 and 102A, read together with Articles 66 and 140(1) and (3) of the Namibian Constitution, have the result that an ante-nuptial contract registered in South Africa prior to independence is deemed to have been registered in Namibia and is full force and effect in Namibia; for purposes of section 17(6) of the Act, the legal consequences of such a marriage are not governed by the law of any country other than Namibia).

River View Estate CC & Others v DTA of Namibia 2022 (3) NR 715 (SC) (section 97(1) is directive and not peremptory)

Satar v Clayton & Others 2023 (2) NR 469 (HC) (does not cite Act specifically, but holds ownership of immovable property does not pass if the underlying agreement is tainted by fraud, or any other means that vitiates consent, and there is no real intention to transfer ownership)

Harris v Old Mutual Life Assurance Co (Namibia) Ltd & Others 2023 (3) NR 688 (SC) (sections 13(1) and 102).

Registration of Deeds in Rehoboth Act 93 of 1976, as amended in South Africa to September 1977 w

Summary: This Act (originally published in RSA GG 5183) makes special provision for the registration of deeds in the Rehoboth Gebiet. It will be repealed by the Deeds Registries Act 14 of 2015 (GG 5913) when that Act comes into force.

Applicability to SWA: This Act applies specifically to the Rehoboth Gebiet, as described in section 6 of the Rehoboth Self-Government Act 56 of 1976.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977), dated 28 September 1977. There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: Act 8/1981 of the Kaptein's Council and Legislative Council of Rehoboth (Official Gazette of Rehoboth No. 55, dated 7 April 1982) amends section 10 by inserting subsection (3)bis.

Act 35/1994 (GG 995) amends sections 1, 13, 48, 49 and 52.

Act 8/1996 (GG 1352), which was brought into force on 15 July 1996 by GN 184/1996 (GG 1353), amends sections 1 (definition of "owner") and 10 (registration of property in the name of married persons) and inserts section 10bis (endorsement of deeds forming part of joint estate of marriage).

Regulations: Pre-independence regulations have not been comprehensively researched. However, regulations are contained in RSA GN R.2372/1976 (RSA GG 5347), as amended by AG GN 28/1978 (OG 3785) and GN 75/2007 (GG 3824).

These regulations were initially repealed by the regulations contained in GN 83/2021 (GG 7514), but the repealing regulations were set aside by an order in the case Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218), meaning that the regulations remain in force.

Cases:

Eksteen v Registrar of Deeds for Rehoboth & Others 1994 NR 217 (HC) (section 10(3))

Beukes & Others v Engelbrecht & Others 2005 NR 305 (HC (section 53)

Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218).

*Deeds Registries Act 14 of 2015 🕎 📻

Summary: This Act (GG 5913) regulates the registration of deeds. It was initially brought into force on 23 April 2021 by GN 81/2021 (GG 7514). However, GN 81/2021 was set aside by the High Court in the case Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218), along with GN 83/2021 (GG 7514) which contained the regulations made in terms of the Act.

A problem with the commencement date of the regulations led to this decision. According to section 93(2) of the Act, any regulations issued in terms of section 93 may not commence less than 30 days after their publication in the *Government Gazette* – but the regulations in question were purportedly brought into force together with the Act *on the same day* that the regulations were published in the *Gazette*. The court order thus set aside GN 83/2021 (GG 7514) containing the regulations with immediate effect. Accepting the argument that the Act could not be implemented in the absence of its accompanying regulations, the court order also set aside GN 81/2021 (GG 7514) which had brought the Act into force.

The court order further stated that the laws set to be repealed by this Act – the *Deeds Registries Act 47* of 1937 and the regulations made under that Act, and the *Registration of Deeds in Rehoboth Act 93 of 1976* and the regulations made under that Act – remain in force as the operative laws, and ordered the Minster to publish a notice in the *Government Gazette* stating that, with effect from 23 April 2021, any action or decision taken pursuant to the Deeds Registries Act 14 of 2015 and its regulations is deemed to have been done under the corresponding provisions of these two Acts and their regulations.

GN 131/2021 (GG 7561) was published to comply with this order:

Pursuant to a court order granted in the matter Bank Windhoek Limited v. The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218), I give notice that with effect from 23 April 2021, anything that was done pursuant to the Deeds Registries' Act, 2015 (Act No. 14 of 2015) and the regulations published under Government Notice No. 83 of 2021 of 23 April 2021, is deemed to have been done under a corresponding provision of the Deeds Registries Act, and the regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the regulations applicable thereunder, as the case may be.

C. HG SCHLETTWEIN MINISTER OF AGRICULTURE, WATER AND LAND REFORM Windhoek, 17 June 2021

Repeals: The Act repeals the *Deeds Registries Act 47 of 1937* (which replaced the Deeds Registry Proclamation 37 of 1939 in SWA) and the *Registration of Deeds in Rehoboth Act 93 of 1976*.

Regulations: Regulations issued under the two Acts which are to be repealed will survive in theory in terms of section 95(11). (There is no longer chain of surviving regulations to consider: The *Deeds Registries Act 47 of 1937* had no savings clause for regulations made in terms of the one law it repealed, and the *Registration of Deeds in Rehoboth Act 93 of 1976* did not repeal any prior laws in their entirety.)

All prior regulations which still survived appear to have been repealed by new regulations issued in GN 81/2021 (GG 7514), which came into force on the same date as the current Act, ¹²¹ but these regulations were set aside by the court order in *Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218) which is discussed above.

Notices: GN 82/2021 (<u>GG 7514</u>), issued in terms of section 2 of the Act, establishes two deeds registries: (a) the Rehoboth registry situated in the town of Rehoboth whose area of jurisdiction is

(2) Regulations were issued under the *Registration of Deeds in Rehoboth Act 93 of 1976* in RSA GN R.2372/1976 (RSA GG 5347), as amended by AG GN 28/1978 (OG 3785) and GN 75/2007 (OG 3824). GN 81/2021 (OG 7514), which contains the regulations issued under the current Act, repeals all of these.

DEEDS-5

 $^{^{121}}$ (1) Regulations were issued under the *Deeds Registries Act 47 of 1937* in GN 180/1996 (<u>GG 1343</u>), as corrected by GN 193/1996 (<u>GG 1361</u>) and by GN 312/1996 (<u>GG 1457</u>) and as amended by GN 36/2004 (<u>GG 3155</u>), GN 77/2007 (<u>GG 3824</u>) (Annexure I), GN 137/2009 (<u>GG 4278</u>) (Regulation 8) and GN 408/2019 (<u>GG 7085</u>) (Annexures I and II). GN 81/2021 (<u>GG 7514</u>), which contains the regulations issued under the current Act, repeals GN 180/1996 and "all amendments thereof", which it lists as being the regulations published under GN 36/2004, GN 77/2007 and GN 408/2019. It omits to list GN 137/2009, but this amendment even if not repealed would have no further effect.

GN 180/1996 repealed the regulations published in RSA GN 225/1964, RSA GN 207/1967, RSA GN R.437/1973, RSA GN R.2578/1978, RSA GN R.127/1979, AG GN 110/1982, AG GN 48/1983 and AG GN 48/1986.

described in the Schedule to GN 82/2021; and

(b) the deeds registry of Namibia situated in Windhoek whose area of jurisdiction is the whole of Namibia *except* the area mentioned in paragraph (a).

GN 131/2021 (GG 7561) contains the following "Notice to Comply with a Court Order":

Pursuant to a court order granted in the matter Bank Windhoek Limited v. The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218), I give notice that with effect from 23 April 2021, anything that was done pursuant to the Deeds Registries' Act, 2015 (Act No. 14 of 2015) and the regulations published under Government Notice No. 83 of 2021 of 23 April 2021, is deemed to have been done under a corresponding provision of the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the regulations applicable thereunder, as the case may be.

Cases: Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218), which included the following provisions in the court order:

- 2. The First Respondent's decision to commence the Deeds Registries Regulations published in the Government Gazette No. 7514 of 23 April 2021 under Government Notice No. 83 is hereby set aside with immediate effect.
- 3. The First Respondent's decision to commence the Deeds Registries Act, 2015 (Act No. 14 of 2015) published in Government Gazette No. 7514 of 23 April 2021, under Government Notice No. 81 is hereby set aside with immediate effect.
- 4. It is declared that the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the Regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the Regulations applicable thereunder, shall be of full force and effect, with effect from 23 April 2021.
- 5. The First Respondent is ordered, not later than 1 July 2021, to cause to be published a notice in the Government Gazette to the effect that, with effect from 23 April 2021, any action or decision of the respondents pursuant to the Deeds Registries Act, 2015 (Act No. 14 of 2015) and the Regulations made thereunder is deemed to have been done under the corresponding provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the Regulations applicable thereunder as well as the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the Regulations applicable thereunder.

These cases concern the Deeds Registries Act 47 of 1937 –

Vaatz v Registrar of Deeds, Namibia: In re Grootfontein Municipality; Vaatz v Registrar of Deeds, Namibia: In re Nöckel's Estate 1993 NR 171 (HC)

Vaatz v Law Society of Namibia & Others 1996 NR 272 (HC)

Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC)

Grobler v Commercial Bank of Namibia Ltd 2010 (1) NR 313 (SC) (discusses section 16, as amended by the RSA General Law Amendment Act 80 of 1964)

Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees not ultra vires section 10(1)(c) of Act and not in violation of Art 21(1)(j) or Art 18 of Constitution).

These cases concern the *Registration of Deeds in Rehoboth Act 93 of 1976* – *Eksteen v Registrar of Deeds for Rehoboth & Others* 1994 NR 217 (HC) (section 10(3)) *Beukes & Others v Engelbrecht & Others* 2005 NR 305 (HC (section 53).

See also LAND AND HOUSING.

See also Formalities in Respect of Contracts of Sale of Land Act 71 of 1969 and Sale of Land on Instalments Act 72 of 1971 (PURCHASE AND SALE).

DEFENCE

Moratorium Act 25 of 1963 \overline 🙀

Summary: This Act (<u>RSA GG 468</u>) provides for moratoriums on contractual debts, prescription of civil legal remedies and similar matters for persons fulfilling their military service requirements. It has no practical effect in Namibia as it applies only to persons conscripted into military service.

Repeals: The Act repeals the Moratorium Act 53 of 1962.

Applicability to SWA: Section 7 states "This Act shall also apply in the territory of South West Africa." This wording did not make amendments to the Act in South Africa automatically applicable to SWA, and none of the amending acts in South Africa prior to Namibian independence were made specifically applicable to SWA.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa.

Regulations: The Act makes no provision for regulations.

Protection of Information Act 84 of 1982 📢 🙀

Summary: This Act (originally published in <u>RSA GG 8248</u>) makes it an offence to disclose certain information that might be prejudicial to national security or interests.

Repeals: The Act repeals the *Official Secrets Act 16 of 1956* and its amendments.

Applicability to SWA: The Security Matters Proclamation (AG 29/1985) (OG 5059) makes the Act applicable to SWA, with some amendments, with effect from 15 June 1985.

Transfer of administration to SWA: The Security Matters Proclamation (AG 29/1985) (OG 5059) meets the definition of a "transfer proclamation" in section 1 of the Transfer (General Provisions) Proclamation, AG 7 of 1977 – "a proclamation by the Administrator-General" by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General" (emphasis added). There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Security Matters Proclamation (AG 29/1985) (OG 5059) makes some amendments to the Act.

Section 45 of the National Intelligence Act 19 of 1987 (OG 5423) amends section 1 of the Act (definition of "security matter"). Act 19 of 1987 is repealed by the Namibia Central Intelligence Service Act 10 of 1997 (GG 1699), which also amends section 1 of this Act (definition of "security matter").

Regulations: The Act makes no provision for regulations.

Cases: Director-General, Namibia Central Intelligence Service & Another v Haufiku & Others 2018 (3) NR 757 (HC), upheld on appeal in Director-General of the Namibian Central Intelligence Service v Haufiku 2019 (2) NR 556 (SC) (section 4(1) of this Act read together with the Namibia Central Intelligence Service Act 10 of 1997).

Namibia Central Intelligence Service Act 10 of 1997 🕡 🙀

Summary: This Act (<u>GG 1699</u>) establishes a Namibia Central Intelligence Service. One matter of general interest is that a judicial direction is required in terms of the Act for the interception or monitoring of communications and the search of premises. The Act was brought into force on 5 June 1998 by Proc. 12/1998 (<u>GG 1876</u>).

Repeals: The Act repeals the National Intelligence Act 19 of 1987 (OG 5423).

Savings: Section 37(2) contains a broad savings clause:

Anything done under the National Intelligence Act, and which could have been done under a provision of this Act, shall be deemed to have been done under a corresponding provision of this Act.

Regulations: Regulations made under the current Act are contained in GN 118/1998 (GG 1876).

No regulations made under the repealed Act have been located.

Notices: GN 41/1989 (OG 5684), issued in terms of the repealed National Intelligence Act 19 of 1987, prohibits access to the "Remainder of Consolidated Erf 32, Klein Windhoek Township", known as the "Berg Hotel", by all persons other than those referred to in section 12 of the National Intelligence Act 19 of 1987 or those who have authority to enter that property from the Secretary or someone acting under his or her authority.

In terms of the current Act, access to certain premises under the control of the Namibia Central Intelligence Service is prohibited by GN 133/2005 (GG 3517) and Proc. 8/2007 (GG 3803).

GN 178/2005 (GG 3553) contains directives relating to proceedings before a judge of the High Court under sections 19 and 25.

Appointments: The Director-General of the Namibia Central Intelligence Service is appointed in Proc. 14/1999 (GG 2062).

Cases: Director-General, Namibia Central Intelligence Service & Another v Haufiku & Others 2018 (3) NR 757 (HC), upheld on appeal in Director-General of the Namibian Central Intelligence Service v Haufiku 2019 (2) NR 556 (SC) (this Act read together with section 4(1) of the Protection of Information Act 84 of 1982); President of the Republic of Namibia & Others v Shivute 2024 (2) NR 561 (SC) (reg 11(13)).

Defence Act 1 of 2002 🚾 🔄

Summary: This Act (originally published in <u>GG 2749</u>) regulates the Namibian Defence Force, which was established under the previous *Defence Act 44 of 1957* and continues to exist under this Act. This Act was brought into force on 15 July 2002 by GN 109/2002 (<u>GG 2765</u>).

Repeals: This Act repeals the *Defence Act 44 of 1957* (SA GG 5889), as amended, which replaced the *South Africa Defence Act 13 of 1912*.

Amendments: Schedule 1 is amended by the Correctional Service Act 9 of 2012 (<u>GG 5008</u>), which was brought into force on 1 January 2014 by GN 330/2013 (<u>GG 5365</u>).

Savings: Section 94 of the current Act contains a savings clause in respect of the repealed *Defence Act* 44 of 1957:

Any regulation or notice issued or appointment made or anything done under a provision of any law repealed by subsection (1), and which could have been issued, made or done under a provision of this Act, is deemed to have been issued, made or done under the corresponding provision of this Act, and is in so far as it relates to any force, auxiliary services or medical service established or any training or service provided for under any such repealed law, to be construed as if it were related to the corresponding force, auxiliary services, medical service or training established or provided for under this Act.

Section 152(2) of the *Defence Act 44 of 1957* similarly contained a savings clause in respect of the *South Africa Defence Act 13 of 1912* which it repealed:

Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by sub-section (1), shall be deemed to have been issued, made or done under the corresponding provisions of this Act, and shall in so far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law, be construed as if it related to the corresponding force, reserve, service or training established or provided for under this Act.

For the purposes of understanding what regulations survive under the repealed laws, it should be noted that the Defence Matters in South West Africa Proclamation, RSA Proc. 131/1980 (RSA GG 7166), dated 1 August 1980, as amended by SWA Proc. AG 5/1985 (OG 5003) and by RSA Proc. 204/1986 (RSA GG 10501) - as corrected by RSA GN 2445/1986 (RSA GN 10529) - functioned as a transfer proclamation for certain portions of the SA *Defence Act 44 of 1957*: Chapters IV, V, VII, VIII and IX as applied to the South West African Territory Force. 122 Regulations were authorised by section 87 in Chapter IX (administration transferred for some purposes, but apparently not the power to make regulations). Emergency regulations in time of war were authorised by section 103 in Chapter X (which was not transferred at all). Regulations pertaining to decorations and medals were authorised by section 136 in Chapter XIII (which was to be transferred by proclamation). 123

Paragraph 2(3) of the Defence Matters in South West Africa Proclamation concerned how regulations made after the transfer were to be construed:

In so far as a regulation by which anything is prescribed which is required to be prescribed in terms of or in connection with a provision of the Defence Act mentioned in subsection (2) [which listed the provisions being transferred], is inconsistent with the relevant provision as construed in terms of that subsection, such regulation shall be construed as if the reference to that provision in subsection (2) included a reference to such regulation.

In other words, regulations made under the Act were to be construed as the Act was to be construed in terms of the Defence Matters in South West Africa Proclamation.

Regulations: The following regulations were issued under the current Act:

The Second Defence Matters in South West Africa Proclamation, RSA Proclamation 198/1980 (<u>RSA GG 7259</u>), dated 17 October 1980, extended liability for military service under the *Defence Act 44 of 1957* to SWA.

123 Paragraph 2(1) of the Defence Matters in South West Africa Proclamation states: "The provisions of this section relating to Chapter VIII of the Defence Act or any provision of that Chapter, shall come into operation on a date

to be fixed by the Administrator-General by proclamation in the Official Gazette of the Territory."

DEFENCE-3

Paragraph 2(1) of the Defence Matters in South West Africa Proclamation states: "Subject to the provisions of this Proclamation, the administration of the provisions of the Defence Act contained in Chapters IV, V, VII, VIII and IX thereof shall be carried on by the Administrator-General in and in respect of the Territory in so far as those provisions apply or relate to or in respect of (a) any unit or member of the South West African Territory Force by virtue of the fact that such unit or member is a unit or a member of the South African Defence Force, including the Citizen Force or commandos of the South African Defence Force; (b) the training as cadets of persons who are scholars or students at a school or other educational institution in the Territory; (c) the registration and enrolment as contemplated in the said Chapter VIII of persons who are required to or may apply for such registration or enrolment in terms of the provisions contained in that Chapter and are resident in the Territory, and the allotment as so contemplated of such persons to any unit of the Citizen Force or the commandos forming part of the South West African Territory Force."

AG GN 105/1980 (OG 4237) established the South West African Territory Force.

Regulations relating to the Namibian Defence Force are contained in GN 189/2010 (<u>GG</u> 4547), ¹²⁴ which replaced the regulations in GN 138/2005 (<u>GG 3525</u>). ¹²⁵

Research on pre-independence regulations that may survive as a result of the chain of savings clauses is not yet complete.

Rules: Rules relating to the Military Discipline Code are contained in GN 223/2008 (GG 4114).

Notices: GN 193/1995 (GG 1179) and GN 46/1999 (GG 2075) designate certain areas for training purposes.

Warrants: Pre-independence warrants pertaining to specific medals and decorations are not listed here.

Cases:

Mwandingi v Minister of Defence of Namibia 1995 NR 91 (HC) concerns the Security Districts Proclamation (AG 9/1977), which has been repealed (focusing on the concept of "reasonable suspicion").

S v Mushwena & Others 2004 NR 276 (SC) discusses section 95 of the Act in dicta at 423-424 (per Mtambanengwe AJA) and 393-34 (per O'Linn, AJA, minority judgment).

¹²⁴ The Government Notice that issued the regulations made under the current Act, GN 189/2010 (GG 4547), repeals the following regulations issued in terms of the RSA Defence Act 44 of 1957: RSA GN R.1739 of 30 October 1964; RSA GN R.1223 of 20 August 1965; RSA GN R.276 of 25 February 1966; RSA GN R.1204 of 5 August 1966; RSA GN R.25 of 6 January 1967; RSA GN R.719 of 19 May 1967; RSA GN R.1252 of 18 August 1967; RSA GN R.605 of 19 April 1968; RSA GN R.1322 of 2 August 1968; RSA GN R.1867 of 18 October 1968; RSA GN R.2334 of 20 December 1968; RSA GN R.122 of 31 January 1969; RSA GN R.203 of 13 February 1970; RSA GN R.331 of 27 February 1970; RSA GN R.1981 of 13 November 1970; RSA GN R.1983 of 13 November 1970; RSA GN R.36 of 8 January 1971; RSA GN R.169 of 12 February 1971; RSA GN R.270 and R.274 of 26 February 1971 [R.274 of 26 February 1971 had in fact already been repealed by GN 138/2005 (GG 3525)]; RSA GN R.1724 of 1 October 1971; RSA GN R.2108 of 26 November 1971; RSA GN R.2110 of 26 November 1971; RSA GN R.2211 of 1 December 1972; RSA GN R.2213 of 10 December 1972 [which should refer to GN R.2213 of 10 December 1971, which had already been repealed by GN 138/2005 (GG 3525]); RSA GN R.261 of 23 February 1973; RSA GN R.1394 of 10 August 1973; RSA GN R.2360 of 14 December 1973; RSA GN R.507 of 29 March 1974; RSA GN R.678 of 26 April 1974; RSA GN R.1365 of 9 August 1974; RSA GN R.439 of 7 March 1975; RSA GN R.918 of 9 May 1975; RSA GN R.2194 of 19 December 1975 [this repeal is in error; it probably duplicates the following repeal of RSA GN R.2394 of 19 December 1975]; RSA GN R.2394 of 19 December 1975; RSA GN R.314 of 27 February 1976; RSA GN R.347 of 5 March 1976; RSA GN R.623 of 9 April 1976; RSA GN RSA GN R.1387 of 13 August 1976; RSA GN R.341 of 24 February 1978; RSA GN R.572 of 23 March 1978; RSA GN R.832 of 21 April 1978; RSA GN R.2775 of 7 December 1979; RSA GN R.493 of 14 March 1980; RSA GN R.494 of 14 March 1980; RSA GN R.1298 of 20 June 1980; RSA GN R.1299 of 20 June 1980; RSA GN R.1300 of 20 June 1980; RSA GN R.1174 of 29 May 1981; RSA GN R.325 of 24 February 1984; RSA GN R.2772 of 13 December 1985 and RSA GN R.91 of 17 January 1986; RSA GN R.415 of 7 March 1986; RSA GN R.2203 of 24 October 1986; RSA GN R.1708 of 26 August 1988; Namibian GN 241/1994 (GG 1002) and Government Notice 138/2005 (GG 3525) - which, as noted in the text of this entry, repealed RSA GN R.274 of 26 February 1971 and RSA GN R.2213 of 10 December 1971, as amended.

It appears that the list of repeals may have omitted RSA GN R.2360 of 14 December 1973, which amended Reg 19(1) in Chapter II, but the underlying regulation is repealed so the failure to repeal this amendment has no practical effect.

The list also appears to have omitted RSA GN R.2222 of 15 October 1982 (RSA GG 8416), which substituted **Chapter XI – Performance of Police Functions by Military Police Officials**, but this chapter was in any event substituted by RSA GN R.91 of 17 January 1986, which was repealed by GN 189/2010.

Note that the list of repeals does not deleted **Chapter XVI** – **Regulations relating to the Attachment of members of Citizen Force to other employers outside Defence Force for Training Service and Experience** of the **General Regulations for the SA Defence Force and the Reserve**, which was initially enacted by RSA GN R.2222 of 15 October 1982 (<u>RSA GG 8416</u>). Another chapter with the same name was subsequently issued in RSA GN R.2527/1988 (<u>RSA GG 11617</u>), but without repealing the previous one. *This is the only Chapter that appears to remain in force*.

¹²⁵ GN 138/2005 (<u>GG 3525</u>) repealed RSA Government Notices R.274/1971 (<u>RSA GG 3002</u>) and R.2213/1971 (<u>RSA GG 3327</u>), as amended.

Note that this case was reversed in part by S v Likanyi 2017 (3) NR 771 (SC); see also S v Munuma & Others 2016 (4) NR 954 (SC). However, these subsequent rulings do not discuss this Act.

S v Myburgh 2008 (2) NR 592 (SC) discusses the language of section 103ter(4)-(5) as these provisions stood prior to Namibian independence in *dicta* at 615F-G

Keya v Chief of the Defence Force & Others 2013 (3) NR 770 (SC) (unreasonable delay in instituting review proceedings in respect of decision taken under section 23(2))

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (section 14(1)).

Commentary: Legal Assistance Centre, "Use of force by law enforcement officials in Namibia", 2019, available here.

APPOINTMENTS

Appointment of First Chief of Defence Force, Proc. 7/1990 (GG 45)

Chief of Defence Force, Proc. 16/2012 (GG 4996) Chief of Defence Force, Proc. 1/2014 (GG 5387).

INTERNATIONAL LAW

These four conventions are often referred to as the "Geneva Conventions".

†Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949

†Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949

†Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949

†Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949

These two Protocols supplement the "Geneva Conventions".

†Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977

†Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Rome Statute of the International Criminal Court, 1998

Agreement on the Privileges and Immunities of the International Criminal Court (APIC), 2002 SADC Protocol on Politics, Defence and Security Co-operation, 2001

SADC Mutual Defence Pact, 2003

See also Security Commission Act 18 of 2001 (CONSTITUTION).

See also **DISASTERS** (civil defence and involvement of uniformed forces in disaster situations).

DISASTERS

Civil Defence Act 39 of 1966, as amended in South Africa to 1977 🕎 🙀

Summary: This Act (<u>RSA GG 1567</u>) provides for a Directorate of Civil Defence in the public service and deals with emergency powers. It was repealed in its entirety in South Africa by the *Civil Protection Act 67 of 1977* (<u>RSA GG 5555</u>), which was not made expressly applicable to SWA.

Despite the fact that this Act was amended in post-independence Namibia, it appears that it may have been superseded by the Civil Defence Proclamation AG 54 of 1978 (OG 3805) or by the Civil Defence Ordinance 3 of 1979 (OG 3917), which was amended by the Civil Defence Amendment Act 19 of 1986 (OG 5251). This supposition is supported by SWA GN 116/1987 (OG 5406), as amended by SWA GN 179/1988 (OG 5627), which transferred the administration of certain provisions of these two laws, first to the Minister of Local Authorities and Civic Affairs, later amended to refer to the Minister of Finance and Governmental Affairs, without mentioning this Act.

Further support for this theory lies in the fact that the RSA regulations issued under the *Civil Defence Act 39 of 1966* cover the same subject matter as some of those issued under subsequent SWA civil defence laws that have now been repealed.¹²⁶

Perhaps the *Civil Defence Act 39 of 1966* was understood to have been repealed in respect of SWA by the *Civil Protection Act 67 of 1977* (<u>RSA GG 5555</u>), even though the 1977 Act was not made expressly applicable to SWA and was also not referenced in the 1978 or 1979 SWA legislation.

Furthermore, even if the *Civil Defence Act 39 of 1966* is still technically in force, it appears to have been superseded by the Disaster Risk Management Act 10 of 2012 (<u>GG 5029</u>).

Applicability to SWA: Section 19 originally stated: "This Act and any amendments thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)."

However, section 19 was substituted by the RSA Civil Defence Amendment Act 69 of 1967 (RSA GG 1754), to give the State President of South Africa authority to make the Act and its amendments applicable to SWA. Section 19(1) as amended states:

The State President may by proclamation in the *Gazette* declare any of or all the provisions of this Act and of any amendment thereof to be *mutatis mutandis* applicable in the territory of South-West Africa (including the Eastern Caprivi Zipfel referred to in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)), and in relation to all persons in that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of the said territory.

• Civil Defence Regulations, 1981 are contained in AG GN 9/1981 (OG 4383). These regulations have not been included in the database as they appear to have been superseded by the Disaster Risk Management Regulations contained in GG 349/2013 (GG 5380).

Both the Civil Defence Proclamation AG 54 of 1978 and the Civil Defence Ordinance 3 of 1979 were repealed by the Disaster Risk Management Act 10 of 2012 (GG 5029). Neither of the SWA enactments contains any repeals.

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¹²⁶ The following regulations were issued in terms of the Civil Defence Proclamation, AG. 54 of 1978:

Regulations made under the Civil Defence Proclamation, 1978 are contained in AG GN 70/1980 (OG 4188). However, these have not been included in the database as they appear to conflict with provisions of the Disaster Risk Management Act 10 of 2012 (see section 25 in particular).

Civil Defence Regulations relating to Compensation for Physical Injuries, Death and Disability, AG GN 3/1981 (OG 4363). These regulations have not been included in the database as they appear to have been superseded by the Disaster Risk Management Regulations contained in GG 349/2013 (GG 5380).

The following regulations were issued in terms of the Civil Defence Ordinance 3 of 1979:

The Act was then again made applicable to South West Africa by the RSA Application of the Provisions of the Civil Defence Act, 1966 (Act 39 of 1966), to the Territory of South-West Africa Proclamation, RSA Proc. 205/1969 (RSA GG 2495), subject to certain interpretations and conditions specified in the Proclamation. This Proclamation stated:

Under the powers vested in me by section 19 of the Civil Defence Act, 1966 (Act 39 of 1966), I hereby declare that, subject to the provisions of the Schedule to this Proclamation, all the provisions of the said Act shall apply *mutatis mutandis* in the territory of South-West Africa [including the Eastern Caprivi Zipfel referred to in section 38(5) of the South-West Africa Constitution Act, 1968 (Act 39 of 1968)], and in relation to all persons in that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation 28 of 1923 of the Administrator of the said territory, with effect from the first day of April 1969.

[words in square brackets appear in the *Gazette*]

The *Civil Protection Act 67 of 1977* (RSA GG 5555), which repealed the statute in South Africa, was not made expressly applicable to South West Africa.

Transfer proclamation: The Administrator-General acquired authority to administer this Act in South West Africa by virtue of *RSA Proc. 205 of 1969* (RSA GG 2495). This did not qualify as a "transfer proclamation" in terms of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which defines "transfer proclamation" in section 1 as "a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General" (emphasis added). Therefore, the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, was not applicable to this Act

Amendments: There were no amendments to the Act in South Africa prior to the amendment to section 19 (regarding the method of applicability to SWA) by the *Civil Defence Amendment Act 69 of 1967* (RSA GG 1754).

After the amendment to section 19, the Act was amended in South Africa prior to Namibian independence by the *Defence Amendment Act* 85 of 1967 (RSA GG 1776), the *Civil Defence Amendment Act* 5 of 1969 (RSA GG 2301) and the *Defence Further Amendment Act* 83 of 1974 (RSA GG 4508). However, section 19 as amended made amendments to the Act in South Africa applicable to South West Africa only if they were declared to be so applicable by proclamation, and no such proclamations could be located.

The Defence Act 1 of 2002 (GG 2749) repeals sections 20, 21 and 22.

Regulations: Regulations are authorised by section 18 of the Act. The following regulations were issued under the Act prior to independence, but have not been included in the database for the reasons stated below:

Regulations relating to Categories of Persons who are not competent to perform Functions provided for by a Provincial Ordinance in connection with Civil Defence are contained in RSA GN 638/1978 (RSA GG 5962), as amended by RSA GN 356/1979 (RSA GG 6317), RSA GN 1819/1980 (RSA GG 7200) and RSA GN 2687/1984 (RSA GG 9520). These regulations have not been included in the database since Namibia does not have provincial ordinances.

Civil Defence Regulations relating to Compensation for Physical Injuries, Death and Disability, RSA GN R.2461/1978 (RSA GG 6244), as amended by RSA GN R.2142/1986 (RSA GG 10488). These regulations have not been included in the database; although they have not been explicitly repealed, they appear to have been replaced by regulations on the same topic issued under the Civil Defence Proclamation, AG. 54 of 1978 and surviving under the Disaster Risk Management Act 10 of 2012, and then again by the Disaster Risk Management Regulations issued directly under the Disaster Risk Management Act 10 of 2012 in GG 349/2013 (GG 5380). (See the entry for that Act below.)

No post-independence regulations have been promulgated under this Act.

Disaster Risk Management Act 10 of 2012 🗐 🙀

Summary: This Act (<u>GG 5029</u>) establishes institutions for disaster risk management in Namibia, as well as a National Disaster Fund. It provides for an integrated and coordinated approach to disaster management which includes prevention, mitigation measures, emergency preparedness, disaster response and post-disaster recovery. It also covers the involvement of Namibia's uniformed forces in disaster situations. It repeals the Civil Defence Proclamation AG 54 of 1978 (<u>OG 3805</u>) and the Civil Defence Ordinance 3 of 1979 (<u>OG 3917</u>), which was amended by the Civil Defence Amendment Act 19 of 1986 (<u>OG 5251</u>). The Act was brought into force on 31 December 2013 by GN 348/2013 (<u>GG 5380</u>).

The 1986 amendments to the Civil Defence Ordinance 3 of 1979 were not repealed, but they would have no independent relevance.

Savings: Regulations, rules and codes of conduct made under the repealed laws remain valid until repealed, in terms of section 59(2):

The repeal referred to in subsection (1) does not affect anything done in terms of the repealed law and any such thing, including any regulation, rule or code of conduct made in terms of the repealed law remains valid until repealed.

Regulations: Disaster Risk Management Regulations made under this Act are contained in GG 349/2013 (GG 5380). These regulations do not repeal any of the surviving regulations made under previous legislation, even though there appears to be significant overlap.

The following regulations were issued in terms of the Civil Defence Proclamation, AG. 54 of 1978:

Regulations made under the Civil Defence Proclamation, 1978 are contained in AG GN 70/1980 (OG 4188). However, these appear to conflict with provisions of the Disaster Risk Management Act 10 of 2012 (see section 25 in particular).

Civil Defence Regulations relating to Compensation for Physical Injuries, Death and Disability, AG GN 3/1981 (OG 4363). These regulations appear to have been superseded by the Disaster Risk Management Regulations contained in GG 349/2013 (GG 5380).

The following regulations were issued in terms of the Civil Defence Ordinance 3 of 1979:

Civil Defence Regulations, 1981 are contained in AG GN 9/1981 (OG 4383). These regulations appear to have been superseded by the Disaster Risk Management Regulations contained in GG 349/2013 (GG 5380).

Notices: Proc.18/2024 (<u>GG 8370</u>) declared a state of emergency with effect from 22 May 2024 "on account of the persisting national disaster of drought that exists in all the regions of the Republic of Namibia". This Proclamation cites Article 26(1) of the Namibian Constitution, read together with section 30(3) of this Act.

Proc. 14/2019 (<u>GG 6900</u>) declared a state of emergency with effect from 6 May 2019 "on account of the persisting national disaster of drought that exists in all the regions of the Republic of Namibia". This Proclamation cites Article 26(1) of the Namibian Constitution, read together with section 30(3) of this Act.

In contrast, a previous declaration of a state of emergency on account of drought, in Proclamation 5 of 2016 (GG 6056), made no mention of this Act.

Appointments: The members of the National Disaster Risk Management Committee are announced in GN 149/2016 (<u>GG 6062</u>), with retroactive effect from 22 October 2015. The members of the Khomas Regional Disaster Risk Management Committee are announced in General Notice 449/2021 (<u>GG 7619</u>).

Related international agreements: There are no current international treaties regarding natural disasters. However, guidelines for model national laws on natural disasters have been developed by the International Federation of Red Cross/Red Crescent Societies with support from the UN. Information on these guidelines is available at www.atha.se/thematic-areas/international-disaster-response-law.

See also Local Authorities Fire Brigade Services Act 5 of 2006 (REGIONAL AND LOCAL GOVERNMENT).

DISABILITIES

National Disability Council Act 26 of 2004 🗐 🙀

Summary: This Act (originally published in <u>GG 3360</u>) establishes a National Disability Council and provides for its functions and powers. The Schedule to the Act contains the National Policy on Disability. The Act was brought into force on 30 October 2009 by GN 211/2009 (<u>GG 4371</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 5 and 7. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 23 of the Act, but none have yet been promulgated.

Appointments: Appointments of members of the National Disability Council of Namibia are announced in GN 356/2023 (GG 8257).

SELECTED CASES

Visser v Minister of Finance & Others (I 3178/2007) [2014] NAHCMD 321 (29 October 2014) (Constitutional challenge to MVA scheme on grounds of discrimination on the basis of disability; disability not "social status" for purposes of Art 10(2) of Namibian Constitution) (discussed in Y Dauseb and K Pinkosky, "Visser v Minister of Finance: A Missed Opportunity to Clarify the Equality Provision within a Namibian Disability Rights Paradigm" in Dunia P Zongwe & Yvonne Dauseb, eds, The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry, Ministry of Justice, LRDC: 2017, available at https://namiblii.org/system/files/other/Irdc-25-years/Irdc-25-years.pdf); upheld on appeal in Visser v Minister of Finance & Others 2017 (2) NR 359 (SC) (there is no unfair discrimination under the law, since caps on compensation are applied in the same way to all, so no need to reach issue of whether "social status" in Art 10 of Constitution includes disability)

As pointed out above, the special features relevant to disabled persons are taken cognisance of when his/her claim for damages is assessed. Insofar as the disabled person's claim falls within the caps it is paid out in full. Whether a driver, eg unlawfully or negligently drives over the leg of a blind person or a person with full sight they are equally placed when it comes to a claim against the Fund. There is simply no question of the unequal being treated equally or equal persons being treated unequally. Similarly situated persons are treated similarly. There is simply no discrimination when it comes to claimants against the Fund. They are entitled to claim the damages in common law which take into account all the individual idiosyncrasies of such claimants as far as the amount of damages is concerned. Insofar as the damages exceed the cap they are entitled to the cap and, insofar as it does not, they are entitled to compensation equal to their damages. There is no positive obligation on the state to do more than this even if the disability amounts to a social status. Without such obligation they are, like all other affected persons, only entitled to equal treatment which, as indicated above, is what the Act and regulations provide for.

It is thus irrelevant whether disability amounts to "social status" for even if it does, there is no basis for the submission that the Act and/or the regulations treat equally positioned persons differently or conversely treat persons unequally positioned equally. In fact, in view of what is stated above equally positioned persons are treated equally and the issue of differentiation does not even arise. Never mind discrimination in its pejorative sense. (paras 26-27).

COMMENTARY

South African Journal of Human Rights, Volume 30, Issue 2, 2014 (special issue on disability).

INTERNATIONAL LAW

Agreement for the Establishment of the African Rehabilitation Institute (ARI), 1981 Convention on the Rights of Persons with Disabilities, 2006

**Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013

See also Child Care and Protection Act 3 of 2015 (grants and other protections for children with disabilities) (CHILDREN).

See also *Employees' Compensation Act 30 of 1941*, Affirmative Action (Employment) Act 29 of 1998 and Labour Act 11 of 2007 (section 5) (**LABOUR**).

See also MENTAL HEALTH AND MENTAL DISORDERS.

See also National Pensions Act 10 of 1992 (pensions for blind persons and persons with other disabilities) (PENSIONS).

See also **SOCIAL WELFARE**.

DOMESTIC VIOLENCE

Combating of Domestic Violence Act 4 of 2003 🖷 🖶

Summary: This Act (originally published in <u>GG 3002</u>) provides for the issuing of protection orders by magistrates' courts in domestic violence cases, deals with matters relating to domestic violence offences and provides for police duties in respect of domestic violence. It was brought into force on 17 November 2003 by GN 234/2003 (GG 3094).

The initial publication of <u>GG 3002</u>, dated 24 June 2003, contained an inaccurate version of the law which failed to incorporate the amendments made on the floor of the National Assembly. The correct Gazette bears the same number and date but contains a notation at the top stating "*This Gazette replaces Gazette No. 3002 of 24 June 2003*".

Amendments: Section 14 is amended by the Child Care and Protection Act 3 of 2015 (<u>GG 5744</u>), which was brought into force by GN 4/2019 (<u>GG 6829</u>).

The Act is amended by Act 6/2022 (GG 7964), which was brought into force by GN 112/2024 (GG 8365).

Note that there are two versions of GG 7964; the incorrect one misnumbers the amending Act as Act 5/2022 but the text is otherwise identical. GN 112/2024 erroneously refers to Act 5 of 2022 instead of Act 6 of 2022.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 14.

Regulations: Regulations are contained in GN 235/2003 (GG 3094).

Cases:

- Valindi v Valindi & Another 2009 (2) NR 504 (HC) (divorce case which discusses a protection order application and the resulting protection order at 518G-ff)
- LS v MB 2010 (2) NR 655 (HC) (applicants must show reasons why an application for a protection order should be heard on an *ex parte* basis; High Court as upper guardian of minor children has inherent jurisdiction to stay interim protection order relating to minor child pending return date)
- Katjivikua v The Magistrate: Magisterial District of Gobabis & Another 2012 (1) NR 150 (HC) (interim protection order reviewable under inherent powers of High Court and section 20 of High Court Act 16 of 1990 and set aside on basis of procedural irregularities)
- FN v SM 2012 (2) NR 709 (HC) (excessive violence applied to children for the purpose of discipline found to constitute domestic violence and justified final protection order and re-assessment of abusive parent's custody of children; duty of clerk of court to notify Ministry of Gender Equality and Child Welfare of protection orders involving children)
- Sv EZ 2014 (1) NR 18 (HC) (failure to pay maintenance is a form of economic abuse; a factor to consider in sentencing under the Maintenance Act 9 of 2003)
- LTS v GPS & Others 2017 (2) NR 412 (HC) (application of section 18(3))
- RW v AW 2023 (2) NR 554 (HC) (order for restitution of conjugal rights inappropriate where protection order is in place prohibiting husband from contact with wife or approaching her residence; final divorce order issued, but no order for access made pending investigation by a social worker in terms of sections 42 and 139 of the Child Care and Protection Act 3 of 2015 due to allegations that minor child was threatened with physical harm)
- S v Haingura 2023 (3) NR 834 (HC) (application of section 25 on complainant's submission in respect of sentence).

Commentary:

Dianne Hubbard & Daina Wise, *Domestic Violence: Proposals For Law Reform*, Windhoek: Legal Assistance Centre, 1998; summary prepared in 2000 available here

- Law Reform and Development Commission, *Report on Domestic Violence*, LRDC 10, 2000, available here
- Legal Assistance Centre, *Guide to the Combating of Domestic Violence Act*, 2005, available <u>here</u> (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab)

SELECTED CASES

S v Bohitile 2007 (1) NR 137 (HC) (context of domestic violence as an aggravating factor in sentencing) S v Kanguro 2011 (2) NR 616 (HC) (effect of diminished capacity on sentence in case of 1-year-old child killed by mother who had long-standing history of epilepsy and attempted suicide at the same time)

S v Ruben 2018 (1) NR 115 (HC) (domestic relationship between offender and victim as an aggravating factor in sentencing)

Violence against women has reached a crisis point. It is continuing unabated despite the harsh sentences that the courts impose. Society is crying out for the courts to impose severe sentences against those who commit crimes against women and children. (para 7)

S v Neromba 2023 (3) NR 826 (HC) (sentence for heinous murder of wife by 60-year-old, in light of S v Gaingob & Others 2018 (1) NR 211 (SC) which disallows sentences that remove all hope of release)

Murder is now commonplace in our society, especially by men against women and the sentences the courts impose must be severe. Lenient sentences are out of place in the current climate of society violence. The extent of severity will of course depend on the particular circumstances of each case. (para 26)

S v Haingura 2023 (3) NR 834 (HC) (sentence for brutal murder of 57-year-old woman by her 23-year-old nephew)

The spectre of violence by men against women and children looms large in our society and murder has become the currency for resolution of interpersonal disputes. More so in domestic settings. [...] The courts must display society's revulsion for this menace. The sentences the courts impose although blended with mercy must be severe so as to reflect an appropriate measure of retribution. [...] (para 21)

S v Abusema 2023 (4) NR 1190 (HC) (22-year sentence for murder in context of domestic relationship) Violent crimes have become endemic in our society which should indeed be discouraged through the imposition of appropriate sentences by our courts... Taking into account that society is up in arms against the escalation of domestic violence, this court is of the view that deterrence, as an objective of punishment, should be necessary under the circumstances of this particular case, and it will also serve as a warning to would-be offenders. (paras 36-37)

Cases on infanticide:

S v Glaco 1993 NR 141 (HC)

S v Muzanima (1) (CC 12 of 2006) [2006] NAHC 15 (25 April 2006)

S v Shaningwa 2006 (2) NR 552 (HC)

S v Uupindi (CC 15 of 2007) [2007] NAHC 31 (20 April 2007)

S v Kaulinge (CC 14 of 2007) [2007] NAHC 30 (19 April 2007)

Akwenye v S (CA 117 of 2010) [2011] NAHC 106 (08 April 2011)

See also S v Seas 2018 (4) NR 1050 (HC) (murder of 3-year-old child by mother).

COMMENTARY

Dianne Hubbard & Daina Wise, *Domestic Violence: Proposals for Law Reform,* Legal Assistance Centre, 1998, summary prepared in 2000 available here

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Law Reform and Development Commission, Report on Domestic Violence, LRDC 10, 2000

- Legal Assistance Centre, *Guide to the Combating of Domestic Violence Act*, 2005, available <u>here</u> (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab)
- Legal Assistance Centre, Guidelines for Service Providers on the Combating of Domestic Violence Act, 2005, available here
- Legal Assistance Centre, Baby-dumping and Infanticide, Monograph 1, 2008, available here
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EDUCATION

National Education Act 30 of 1980 📲 🙀

Summary: The remaining portions of this Act (originally published in <u>OG 4358</u>) relate only to agricultural colleges providing tertiary education. It was brought into force on 1 April 1981 by AG 6/1981 (<u>OG 4430</u>).

Note that the National Education Act was *not* originally applicable to "education which is, under any law, provided by, or subject to the control of, any representative authority" (section 2).

Repeals: The Act repeals the *Black Education Act 47 of 1953*, originally named the "Bantu Education Act", "and all amendments thereof, as administered by the Department under the direction and control of the Administrator-General immediately prior to the commencement of this Act", and the Examination Board of South West Africa Act 6 of 1979.

It should be noted that the Representative Authority of the Hereros enacted the Education Ordinance 3 of 1986 (OG 5269) repealed the *Black Education Act 47 of 1953* insofar as that law and its amendments were "applicable to Hereros". 127

There may have been other similar repeals by other representative authorities; this issue has not yet been fully researched.

Amendments: The Act is amended by AG 39/1984 (<u>OG 4983</u>), which repeals sections 13-24, deletes section 25(6) and amends other sections by the substitution of expressions. (AG 39/1980 was repealed by the Public Service Act 13 of 1995 (<u>GG 1121</u>)).

The Act is also amended by Act 12/1988 (OG 5579).

The Act is repealed by the Education Act 16 of 2001 (GG 2673), brought into force on 28 October 2002 (GN 186/2002, GG 2841) insofar as it applies to schools and education other than tertiary education. This repeal is amended by the Higher Education Act 26 of 2003 to be effective except in so far as the Act "applies to teachers' education colleges and agricultural colleges providing tertiary education".

The Act is repealed by the Teachers' Education Colleges Act 25 of 2003 (<u>GG 3124</u>, brought into force on 1 April 2005 by GN 18/2005, <u>GG 3386</u>) insofar as it applies to teachers' education colleges.

Thus, it remains in force only insofar as it applies to agricultural colleges providing tertiary education.

Savings: Section 38(2) contains a savings clause which states:

Anything done under any provision of any law repealed by subsection (1) which is not contrary to or inconsistent with any provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

Regulations: Regulations were issued under this Act in AG GN 33/1981 (OG 4431). These regulations provided as follows:

The regulations made under section 28 of the Government Service Act, 1980 (Act 2 of 1980), and published by Government Notice No. AG. 28 of 1981, and the directions given under section 6(1)(a)(i)

Ordinance."

EDUCATION-1

¹²⁷ The Education Ordinance enacted by the Authority of the Hereros contained the following savings clause in section 81(2): "Any regulation, determination, instruction, notice, direction, command or exemption made, done, promulgated, issued, given or granted and any other act performed in terms of the provisions of any Law repealed by subsection (1) shall, if not inconsistent with the provisions of this Ordinance, be deemed to have been made, done, promulgated, issued, given, granted or performed in terms of the corresponding provisions of this

of the said Government Service Act, 1980, shall, in so far as it relates to matters mentioned in section 34(1)(g) of the National Education Act, 1980 (Act 30 of 1980), apply *mutatis mutandis* in relation to teachers appointed under the said National Education Act, 1980, to posts constituting part of or being additional to the teaching establishments of government schools or to posts constituting part of the teaching establishments of government-aided schools.

The Government Service Act 2 of 1980, later re-named the Public Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995. Certain regulations under Act 2 of 1980 survive under Act 13 of 1995 in terms of a savings clause in Act 13 of 1995, but appear to have been superseded by regulations issued under Act 13 of 1995. See the NAMLEX entry for the Public Service Act 13 of 1995 for more information.

All of the pre-independence regulations made under this Act have been repealed:

- Regulations regarding school committees at government schools were contained in AG GN 73/1982 (OG 4631), as amended by GN 162/1986 (OG 5248), but were repealed by GN 187/2002 (GG 2841)
- Regulations regarding control of school funds at government schools were contained in AG GN 74/1982 (OG 4631), but were repealed by GN 187/2002 (GG 2841)
- Regulations regarding pupils in government schools are contained in GN 215/1987 (OG 5483), but were repealed by GN 187/2002 (GG 2841).

Regulations issued under the laws repealed by this Act which may survive have not yet been researched.

Notices: In GN 153/1986 (OG 5241), as amended by GN 135/1988 (OG 5587), the Cabinet assigns to the Minister of National Education and the Central Personnel Institution the administration of certain provisions of certain laws that entrust certain powers, duties or functions to the Cabinet. The ones relevant to this law are as follows:

- 1. Sections 5(2)(a); 5(3)(a)(ii) and (iii); 5(3)(b)(i) and (ii); 6(1); 6(3); 6(4); 7(3); 7(4); 7A(2), 7A(3); 7A(4)(a) and (c); 8(1); 8(3); 8(4); 9(3); 9(4); 9(5)(a); 9(5)(b)(i) to (iii); 9(6)(a); 10(1); 10(2); 10(3); 10(4); 11(1); 11(4); 12(1); 25(1); 25(2); 25(5); 26(3); 26(4)(a)(i) and (iv); 26(4)(b); 26(5)(a) and (c); 26(9)(a) and (b); 29(1bis)(a); 29(2)(b); 29(3); 29(4); 29(5); 29(7); 30 and 35(1) of the National Education Act, 1980 (Act 30 of 1980).
- 2. Regulations 5(1) and 9(1)(1) of the Regulations made under the National Education Act, 1980, regarding School Committees at Government Schools, and promulgated by Government Notice AG. 73 of 1982 of 15 May 1982.

University of Namibia Act 18 of 1992 🕡 🙀

Summary: This Act (originally published in <u>GG 460</u>) establishes the University of Namibia and provides for the administration and control of its affairs. It was brought into force on 31 August 1992 by GN 109/1992 (GG 462).

Repeals: This Act repeals the Academy Act 9 of 1985, which in turn replaced the Academy for Tertiary Education Act 13 of 1980.

Amendments: Sections 26-28 are amended by the Polytechnic of Namibia Act 33 of 1994 (contained in (<u>GG 991</u>) and brought into force on 15 December 1994 by GN 241/1994, <u>GG 1000</u>) and repealed by the Namibia University of Science and Technology Act 7 of 2015 (<u>GG 5827</u>), brought into force on 16 November 2015 by GN 254/2015 (<u>GG 5876</u>).

Regulations: There is no savings clause in respect of any regulations which may have been made under the chain of repealed laws. Section 25 of the Act gives the Council power to make "statutes and regulations", but none have been gazetted.

***National Vocational Training Act 18 of 1994, repealed but with some provisions remaining operable

Summary: This Act (originally published in <u>GG 933</u>) regulated the training of apprentices and vocational trainees; established a Vocational Training Board and trade advisory committees; provided for the establishment of vocational standards and training schemes and the designation of trades; provided for the establishment of a National Trade Testing and Certification Centre; provided for the training and certification of apprentices and the registration of vocational training centres; and established a Vocational Training Fund. Parts I-VII and IX-XI were brought into force on 1 September 1996 and Part VIII on 1 January 1997 by GN 233/1996 (GG 1399).

This Act is **repealed in its entirety** by the Vocational Education and Training Act 1 of 2008 (<u>GG 4042</u>), which was brought into force on 2 June 2008 by GN 126/2008 (<u>GG 4053</u>). However, **certain portions of this Act remain operational despite the repeal**. Section 49(12) of Act 1/2008 provides that sections 17-28 inclusive of this Act remain in force as if it had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*. Section 49(15) similarly provides that section 32(1)-(2) of this Act remains in force as if this Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*. No such notices have yet been issued.

Section 49(13) of Act 1 of 2008 provides that the National Trade Testing and Certification Centre established under section 30 of this Act continues to exist and to perform its functions as if this Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*, except that the Board of the Namibia Training Authority established by Act 1 of 2008 must perform the functions of the Vocational Training Board in respect of the National Trade Testing and Certification Centre until that date.

Repeals: The Act repeals the Apprenticeship Ordinance 12 of 1938 (OG 748) and its amendments, and RSA Proclamation R.69/1975 (RSA GG 4614) relating to the establishment of the Labour Promotion Fund, as amended by the SWA Labour Promotion Fund Amendment Act 10 of 1981 (OG 4502).

Amendments: Act 10/1996 (GG 1357) amends sections 1, 5, 14, 29 and 54.

Savings: Section 53(2) of this Act contains a broad savings clause:

Any rule, regulation, notice or certificate made, published, served or issued or any other steps taken or any other thing done in terms of a provision of a law repealed by subsection (1) shall, in so far as it is not inconsistent with any provision, of this Act, be deemed to have been made, published, served, issued or done in terms of the corresponding or allied provision of this Act.

Trade designations made under the laws repealed by this Act survive pursuant to section 53(3) of this Act:

Any trade designated in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a trade designated in terms of the provisions of this Act.

Regulations: Post-independence regulations made in terms of section 52 of this Act are contained in GN 234/1996 (GG 1399). (Section 52 of the Act is no longer in force, but regulations made under this Act survive in terms of the Vocational Education and Training Act 1 of 2008. See the entry for that Act below.)

The 1996 regulations made under this Act repeal the regulations made under the Apprenticeship Ordinance 12 of 1938 (without citing any specific references). The other repealed law, RSA Proclamation R.69/1975 (RSA GG 4614), contains no authorisation for regulations. Thus, no regulations made under this Act or any of the laws repealed by this Act now survive.

Notices: Certain vocational standards are approved in terms of section 13(3) of this Act in GN 9/1997 (GG 1489) and GN 190/2000 (GG 2387).

Trade designations: Trade designations made under the laws repealed by this Act survive pursuant to section 53(3) of this Act (quoted above). Trades are designated in RSA GN R.2473/1973 (RSA GG 4125) (issued in terms of the Apprenticeship Ordinance 12 of 1938), as amended by GN R.2193/1974 (RSA GG 4512), GN R.2136/1976 (RSA GG 5332), GN R.1926/1977 (RSA GG 5746), GN 19/1986 (OG 5162), GN 196/1988 (OG 5644), GN 197/1988 (OG 5644), GN 35/1989 (OG 5684) and AG GN 27/1990 (OG 5917) and as further amended in terms of section 14(1)(b) of this Act by GN 10/1997 (GG 1489). Additional trades are designated in terms of the Apprenticeship Ordinance 12 of 1938 by GN 20/1986 (OG 5162), which also sets conditions for apprenticeships in these trades. *Note that the pre-independence designations and amendments to designations listed here may not be comprehensive*.

An additional trade is designated in GN 192/2000 (GG 2387), which is issued in terms of section 14(1)(a) of this Act.

Namibia Qualifications Authority Act 29 of 1996 📲 🙀

Summary: This Act (originally published in <u>GG 1476</u>) establishes a Namibia Qualifications Authority (NQA) which deals with matters relating to occupational standards for any occupation, job, post or position in any career structure, as well as appropriate curriculum standards. It was brought into force on 1 June 1998 by Proc. 11/1998 (<u>GG 1861</u>), and the administration of the Act was assigned to the Ministry of Higher Education, Vocational Training Science and Technology, by Proc. 11/1998 (<u>GG 1861</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 5, 6, 10 and 11. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Vocational Education and Training Act 1 of 2008 (<u>GG 4042</u>), which was brought into force on 2 June 2008 by GN 126/2008 (<u>GG 4053</u>), amends sections 5 and 15.

Regulations: Regulations for the accreditation of persons, institutions or organisations are contained in GN 124/2006 (GG 3684).

Regulations setting up the National Qualifications Framework for Namibia are contained in GN 125/2006 (GG 3685).

Regulations relating to the evaluation of qualifications are contained in GN 182/2007 (GG 3914).

Notices: National Professional Standards for teachers are approved pursuant to section 3(c) in General Notice 356/2006 (GG 3739).

Specific qualifications and unit standards are registered from time to time pursuant to the National Qualifications Framework but have not been recorded here.

Accreditations of specific courses, and accreditations and expansions of scope pertaining to specific institutions, are published from time to time but have not been recorded here.

Appointments: The appointment of board members of the Namibia Qualifications Authority are announced in GN 390/2022 (GG 7966).

Namibian College of Open Learning Act 1 of 1997 🚾 🙀

Summary: This Act (originally published in <u>GG 1570</u>) establishes the Namibian College of Open Learning (NAMCOL) which aims to broaden access to education by providing alternatives to school-based education. It was brought into force on 25 September 1997 by Proc. 15/1997 (<u>GG 1682</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 7, 8, 14 and 20. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

Notices: The administration of the Act is assigned to the Minister of Basic Education and Culture by Proc. 15/1997 (<u>GG 1682</u>).

Namibia Students Financial Assistance Fund Act 26 of 2000 🕡 🙀

Summary: This Act (originally published in <u>GG 2457</u>) establishes a fund (NSFAF) to facilitate study and research by students at approved institutions of higher education. It was brought into force on 15 May 2002 by GN 72/2002 (GG 2738).

Amendments: Act 7/2014 (<u>GG 5588</u>), which is not yet in force, amends sections 1, 3, 6, 7, 9, 12, 13 and 15, substitutes sections 2, 10, 17 and 20, inserts sections 1A, 18A, 18B, 18C and 18D and deletes certain words throughout. The amending Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations are contained in GN 246/2001 (GG 2664).

Notices: Institutions of higher education set out in the Schedule in respect of which students can qualify for financial assistance are listed in GN 278/2019 (GG 7009).

Appointments: Members of the Board of the Namibia Students Financial Assistance Fund are announced in GN 317/2018 (GG 6784), GN 210/2019 (GG 6965) and GN 277/2019 (GG 7009).

Cases: Koopman v Acting Chief Executive Officer: Namibia Students Financial Assistance Fund & Others 2023 (4) NR 1142 (SC) (sections 6(2)(a) and 9(5)(b)).

Teachers' Education Colleges Act 25 of 2003 🕎 🙀

Summary: This Act (originally published in <u>GG 3124</u>) provides for the establishment of teachers' education colleges for the education and training of students and serving teachers, in order to enable them to obtain the necessary qualifications or to better such qualifications. It was brought into force on 1 April 2005 by GN 18/2005 (<u>GG 3386</u>).

Repeals: The Act repeals the National Education Act 30 of 1980 (OG 4358) in so far as it applies to teachers' education colleges.

Amendments: The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 36.

Regulations: Regulations are authorised by section 44 of the Act, but none have yet been promulgated.

Regulations pertaining to teachers' education colleges issued under the National Education Act 30 of 1980, if any, could survive in terms of section 45(3) of this Act:

Anything done or purporting to have been done under a provision of any law repealed by subsection (1) and which can be done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.

Regulations that may survive pursuant to this provision have not yet been researched.

Higher Education Act 26 of 2003 🕎 🙀

Summary: This Act (originally published in <u>GG 3125</u>) regulates higher education, provides for the establishment of a National Council for Higher Education, provides for the registration of private higher education institutions, provides for funding of public higher education institutions, and provides for the establishment of a panel of enquiry into the affairs of higher education. It was brought into force on 1 March 2005 by GN 17/2005 (<u>GG 3386</u>).

Amendments: Sections 1 and 7 are amended by the Vocational Education and Training Act 1 of 2008 (GG 4042), which was brought into force on 2 June 2008 (GN 126/2008, GG 4053).

Savings This Act does not repeal any laws, but section 47(1) provides that any institution which was established or registered under the National Education Act 30 of 1980 and maintained by virtue of the provisions of section 83 of the Education Act 16 of 2001 [which has been replaced by the Basic Education Act 3 of 2020], and which existed or was registered immediately before the commencement of this Act, is deemed a higher education institution under this Act. Accordingly, regulations pertaining to higher education issued under the National Education Act 30 of 1980 survive in terms of section 47(2) of this Act:

Anything done or purporting to have been done under a provision of the National Education Act, 1980, before the commencement of this Act and which can be done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.

Regulations: Regulations for the registration of private higher education institutions are contained in GN 160/2009 (GG 4312).

Regulations that may survive pursuant to the provision quoted in the section of this entry on savings have not yet been researched.

Notices: Notices of the registration of individual private higher education institutions have not been recorded here.

Appointments: Members of the National Council for Higher Education are announced in GN 5/2006 (GG 3573) and GN 10/2009 (GG 4210).

Vocational Education and Training Act 1 of 2008 🗐 🙀

Summary: This Act (<u>GG 4042</u>) regulates vocational education and training and provides for its funding. It establishes a Namibia Training Authority and a National Training Fund. It also provides for inspectors and quality system auditors. It was brought into force on 2 June 2008 by GN 126/2008 (<u>GG 4053</u>).

Repeals: This Act repeals the National Vocational Training Act 18 of 1994 (which has its own entry above), which in turn repealed the Apprenticeship Ordinance 12 of 1938 (OG 748) and its amendments, and RSA Proclamation R.69/1975 (RSA GG 4614) relating to the establishment of the Labour Promotion Fund, as amended by the SWA Labour Promotion Fund Amendment Act 10 of 1981 (OG

4502).

However, section 49(12) provides that **sections 17-28 inclusive** of the National Vocational Training Act 18 of 1994 *remain in force as if that Act had not been repealed*, until a date determined by the Minister by notice in the *Government Gazette*. Section 49(15) similarly provides that **section 32(1)-(2)** of the previous Act *remains in force as if that Act had not been repealed*, until a date determined by the Minister by notice in the *Government Gazette*. No such notices have yet been issued.

Note also that the National Trade Testing and Certification Centre established under section 30 of the National Vocational Training Act 18 of 1994 continues to perform its functions as if that Act had not been repealed, as well as the functions of the Vocational Training Board under the current Act, until a date determined by the Minister by notice in the *Government Gazette*. No such notice has yet been issued.

Savings: Regulations made or surviving under the previous National Vocational Training Act 18 of 1994 survive in terms of section 49(6) of this Act:

Any regulation made, any direction, order or directive issued, any request made or any requirement prescribed and any other thing done or purported to have been done under a provision of a law repealed by section 48 and which could be made, issued, prescribed or done under a corresponding provision of this Act, is deemed to have been made, issued, prescribed or done under that provision.

Regulations made under the laws repealed by the National Vocational Training Act 18 of 1994 – the Apprenticeship Ordinance 12 of 1938 (OG 748) and RSA Proclamation R.69/1975 (RSA GG 4614) – remain in force pursuant to section 53(2) of that Act:

Any rule, regulation, notice or certificate made, published, served or issued or any other steps taken or any other thing done in terms of a provision of a law repealed by subsection (1) shall, in so far as it is not inconsistent with any provision, of this Act, be deemed to have been made, published, served, issued or done in terms of the corresponding or allied provision of this Act.

Trade designations made under the laws repealed by the National Vocational Training Act 18 of 1994 survived pursuant to section 53(3) of that Act:

Any trade designated in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a trade designated in terms of the provisions of this Act.

Regulations: Regulations made under the current Act are as follows:

Regulations for Registration of Vocational Education and Training Providers are contained in GN 300/2012 (GG 5099).

Regulations relating to Use of Vocational and Training Levies for Funding Vocational Education and Training Programmes and Projects and for Providing Technical and Financial Assistance are contained in GN 5/2014 (GG 5395), as amended by GN 66/2021 (GG 7498).

Regulations relating to assessment and certification of Namibia Qualifications Framework Awards within Vocational Education and Training System of Namibia are contained in GN 318/2023 (GG 8221).

Surviving regulations made under the National Vocational Training Act 18 of 1994 are as follows:

Regulations made under the National Vocational Training Act, 1994, are contained in GN 234/1996 (GG 1399) and remain in force.

There are no surviving regulations made under the laws repealed by the National Vocational Training Act 18 of 1994 – the Apprenticeship Ordinance 12 of 1938 (OG 748) and RSA Proclamation R.69/1975 (RSA GG 4614):

All regulations made under the Apprenticeship Ordinance 12 of 1938 are repealed (without citing any specific references) by the regulations made under the National Vocational Training Act, 1994 contained in GN 234/1996 (GG 1399).

RSA Proclamation R.69/1975 (RSA GG 4614) contained no authorisation for regulations.

Notices: Registrations of individual vocational training institutions are announced in General Notice 178/2015 (GG 5738).

Notices, registrations and other directives made under the repealed laws survive pursuant to the savings clauses quoted above.

These include the **vocational standards** approved in terms of section 13(3) of the National Vocational Training Act 18 of 1994 in GN 9/1997 (GG 1489) and GN 190/2000 (GG 2387).

Designations of trades: Trades are designated in RSA GN R.2473/1973 (RSA GG 4125) (issued in terms of the Apprenticeship Ordinance 12 of 1938), as amended by GN R.2193/1974 (RSA GG 4512), GN R.2136/1976 (RSA GG 5332), GN R.1926/1977 (RSA GG 5746), GN 19/1986 (OG 5162), GN 196/1988 (OG 5644), GN 197/1988 (OG 5644), GN 35/1989 (OG 5684) and AG GN 27/1990 (OG 5917) and as further amended in terms of section 14(1)(b) of this Act by GN 10/1997 (GG 1489). Additional trades are designated in terms of the Apprenticeship Ordinance 12 of 1938 by GN 20/1986 (OG 5162), which also sets conditions for apprenticeships in these trades. *Note that the pre-independence designations and the amendments to these designations listed here may not be comprehensive.*

An additional trade is designated in GN 192/2000 (GG 2387), which was issued in terms of section 14(1)(a) of the National Vocational Training Act 18 of 1994.

Levy: In terms of the current law, a **vocational education and training levy on employers** is imposed in terms of GN 67/2021 (<u>GG 7498</u>). ¹²⁸ This levy is included in the database because it is of widespread interest.

Appointments: The Vocational Training Board appointed under the previous law continues to exist until the Board of the Namibia Training Authority is appointed under the Act.

Cases: Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 23(a)).

Namibia Institute of Public Administration and Management Act 10 of 2010

Summary: This Act (<u>GG 4521</u>) establishes the Namibia Institute of Public Administration and Management (NIPAM) and its Governing Council. It was brought into force on 1 October 2010 by GN 218/2010 (<u>GG 4574</u>).

Regulations: Regulations are authorised by section 42 of the Act, but none have yet been promulgated.

Commentary: Dennis U Zaire, "Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place", *Namibia Law Journal*, Volume 6, Issue 1, 2014, available here.

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¹²⁸ An intention to impose a levy on employers was announced in GN 84/2013 (<u>GG 5171</u>). This levy was initially imposed by GN 6/2014 (<u>GG 5395</u>), which is amended by GN 248/2016 (<u>GG 6149</u>) and by GN 290/2018 (<u>GG 6760</u>). GN 67/2021 (<u>GG 7498</u>) repeals GN 6/2014 and its amendments.

Namibia University of Science and Technology Act 7 of 2015 🚾 🙀

Summary: This Act (<u>GG 5827</u>) transforms the Polytechnic of Namibia into the Namibia University of Science and Technology (NUST). It was brought into force on 16 November 2015 by GN 254/2015 (<u>GG 5876</u>).

Repeals: The Act repeals the Polytechnic of Namibia Act 33 of 1994 (GG 991).

Regulations: There is no savings clause in respect of regulations made under the repealed Act. Section 35 of the Act gives the Council power to make "statutes and regulations", but none have been gazetted.

Notices: In terms of section 7(2)(c)(iv) of the Act, GN 67/2016 (GG 5990) designates certain institutions, associations and bodies as representing the interests of key industries or sectors in the Namibian economy.

Commentary: Law Reform and Development Commission, *Discussion Paper on the Transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology*, LRDC 30, 2014.

Basic Education Act 3 of 2020 🕎 🙀

Summary: This Act (GG 7257) regulates free and compulsory basic education for both public and private schools. It sets guiding principles, norms and standards on basic education while highlighting learners' rights to education. This Act was brought into force, with the exception of section 14, on 5 October 2023 by GN 329/2023 (GG 8229).

Repeals: The Act repeals the Education Act 16 of 2001 (GG 2673). (It does not repeal the amendments to the Education Act – section 46 of the Higher Education Act 26 of 2003 (GG 3125) and the Education Amendment Act 14 of 2017 (GG 6501) – but they would have no independent effect without the underlying Act.)

The Education Act 16 of 2001 (GG 2673), which was brought into force on 28 October 2002 by GN 186/2002 (GG 2841) and is repealed by this Act, in turn repealed the following laws:

- Education Ordinance 27 of 1962 (<u>OG 2413</u>), which repealed the previous Education Proclamation 16 of 1926 (except for except Chapter IX on Pensions)
- Black Special Education Act 24 of 1964
- Coloured Persons in South West Africa Education Act 63 of 1972
- Basters of Rehoboth Education Act 85 of 1972
- Namas in South West Africa Education Act 86 of 1972
- Education Ordinance 21 of 1975 (OG 3499), brought into force on 1 January 1976 by AG Proc. 1/1976 (OG 3509) which repealed the Education Ordinance 27 of 1962 "insofar as it related to whites" and which contains a savings clause in section 108(2) for "any regulation, determination, instruction, notice, direction, command or exemption" made under a repealed law that is not inconsistent with the Ordinance
- Mentally Retarded Coloured, Baster and Nama Children's Training Proclamation, AG 76 of 1978 (OG 3859)
- National Education Act 30 of 1980 (OG 4358), brought into force on 1 April 1981 by AG Proc. 6/1981 (OG 4430) insofar as it applies to schools and education other than tertiary education.

Savings: Section 127(6) of the current Act states:

Unless otherwise provided in this Act, anything done under any law repealed by this Act, and which could have been done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.

Section 127 also contains deeming provisions for the creation of various institutions established under the previous Act.

Section 81(5) of the repealed Education Act 16 of 2001 also contained a broad savings provision: Unless otherwise provided in this Act, anything done under any law repealed by this Act, and which could have been done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.

Section 118(2) of the repealed Education Ordinance 27 of 1962 contained a savings clause for regulations made under the laws it repeals:

Any regulation which, on the date of commencement of this Ordinance. is in operation in terms of any law which is repealed by this Ordinance shall continue .to be in operation in so for as it is not repugnant to or inconsistent with the provisions of this Ordinance and may at .any time be repealed or amended in terms of this Ordinance.

Regulations: The following regulations have been made under the current Act:

Basic Education Regulations are contained in GN 331/2023 (GG 8229), which repeals Parts I to VI of the regulations contained in GN 187/2002 (GG 2841), and repeals GN 15/2004 (GG 3144), which added Part VII to the 2002 regulations. Thus, the cumulative effect of these repeals appears to be the repeal of the previous set of regulations in its entirety.

Note: Part VII of these repealed regulations contained a Code of Conduct for the Teaching Service. Section 111 of the current Act requires the Minister to prescribe a code of conduct for the Teaching Service which determines the professional conduct for teachers and the procedure to be followed in case of misconduct – but that Code has not yet been prescribed.

Research into pre-independence regulations that may survive pursuant to the chain of savings clauses has not yet been completed.

Notices: General Rules of Conduct for Learners are issued in terms of the current Act in GN 330/2023 (<u>GG 8229</u>), which repeals the General Rules of Conduct for Learners at State Schools contained in GN 189/2002 (<u>GG 2841</u>).

The following notices made under the Education Act 16 of 2001 appear to survive in terms of section 127 of the current Act:

Categories of State-Aided Private Schools in respect of section 49 of the Education Act 16 of 2001 are set out in GN 188/2002 (GG 2841).

Minimum requirements and standards pertaining to the Namibia Senior Secondary Certificate are contained in GN 228/2009 (GG 4383).

Certain institutions are registered as private higher education institutions in GN 116/2016 (GG 6024), which is amended by GN 176/2018 (GG 6680).

Rules relating to the minimum requirements and minimum standards for National Examinations for Junior Secondary Certificate (Grade 10) and National Senior Secondary Certificate (Grade 12) are contained in GN 143/2016 (GG 6053).

Cases: Cases decided with reference to the Education Act 16 of 2001 are as follows -

Uv Minister of Education, Sports and Culture & Another 2006 (1) NR 168 (HC) (award of damages in respect of corporal punishment in violation of section 56(1) of Act; statute is not explicitly mentioned in case)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (sections 16-17; employment of principal)

Dixon v Government of the Republic of Namibia (Ministry of Education) & Another 2011(1) NR 111

(HC) (section 79)

S v Van Zyl & Others 2016 (4) NR 1000 (HC) (section 56: "...in addition to being applicable to public schools the provisions of s 56(1) are also applicable to private schools"; "The effect of s 56 is that no amount of consent either from the parents or from the learner himself can nullify or invalidate the prohibition contained in s 56(1).").

COMMISSIONS

Commission on Higher Education, Proc. 1/1991.

See also GN 5/1991 (GG 144).

Commission of Inquiry into the Cause of Resistance by Certain Members of the Caprivi Community to the Appointment of Certain Senior Public Servants (Education), Proc. 26/1991 (GG 286).

See also GN 114/1991 (GG 286).

Commission on Education, Culture and Training. Proc. 13/1999 (GG 2059).

See also GN 39/1999 (GG 2059).

COMMENTARY

P Wainaina and L Katjita, "The provision of compulsory free primary education in Namibia (1990-2000): The juggling act" in M Hinz, S Amoo and D Van Wyk (eds), *The Constitution at Work: Ten Years of Namibian Nationhood*, Windhoek: UNAM Publishers, 2000

Sacky Shanghala, "Analysis of legislation, governance and management of education in Namibia", *Namibia Law Journal*, Volume 3, Issue 2, 2011

Linea PK Nuugwedha, "Enforceability of the constitutionally entrenched right to compulsory free primary education", *Namibia Law Journal*, Volume 3, Issue 2, 2011.

INTERNATIONAL LAW

†Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

SADC Protocol on Education and Training, 1997

See also **ARCHIVES**.

See also Namibia Qualifications Authority Act 29 of 1996 (curriculum standards and training programmes for achieving occupational standards) (EDUCATION).

See also Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932 (LAND AND HOUSING).

See also LIBRARIES.

See also Research, Science and Technology Act 23 of 2004 (which has a broad definition of research) (SCIENCE AND SCIENTIFIC RESEARCH).

ELECTIONS

Electoral Act 5 of 2014 🖳 📻

Summary: This Act (originally published in <u>GG 5583</u>) governs elections for the office of President, the National Assembly, regional councils and local authority councils. It provides for the establishment of an Electoral Commission, for the registration of voters and political parties, for the funding of political parties and for the conduct of elections and referenda. It also establishes electoral tribunals and an Electoral Court. The Act, with the exception of section 97(3) and (4) (which require verifiable paper trails for voting machines), was brought into force on 17 October 2014 by GN 208/2014 (<u>GG 5593</u>). The remaining provisions were brought into force on 21 March 2020 by GN 85/2020 (<u>GG 7149</u>). (See the 2020 *Itula* case discussed below concerning these provisions.)

Repeals: The Act repeals the Electoral Act 24 of 1992 (GG 471). as amended.

The Electoral Act 24 of 1992 (<u>GG 471</u>) repealed a number of pre-independence enactments, including the following (with their amendments):

- Referendum Ordinance 3 of 1977 (OG 3600)
- Registration of Voters (Constituent Assembly) Proclamation, AG 37 of 1978 (OG 3768)
- Constituent Assembly and Election Proclamation, AG 63 of 1978 (OG 3826)
- Voters' lists for Legislative Authorities Proclamation, AG 22 of 1980 (OG 4192)
- Divisional Elections Proclamation, AG 46 of 1980 (OG 4248)
- Party List Elections Proclamation, AG 54 of 1980 (OG 4263)
- Commission for the Prevention and Combating of Intimidation and Election Malpractices Proclamation, AG 11 of 1989 (OG 5718)
- Registration of Voters (Constituent Assembly) Proclamation, AG 19 of 1989 (OG 5740)
- Registration of Political Organizations (Constituent Assembly) Proclamation, AG 43 of 1989 (OG 5794)
- Election (Constituent Assembly) Proclamation, AG 49 of 1989 (OG 5820)
- Constituent Assembly Proclamation, AG 62 of 1989 (OG 5854). 129

The Divisional Elections Proclamation, AG 46 of 1980 (OG 4248) made certain provisions of the South African *Electoral Act 45 of 1979*, with certain modifications and excluding the regulations made or deemed to be made under that Act, applicable to SWA for the purpose of certain specified elections but the *Electoral Act 45 of 1979* was not made generally applicable to SWA and thus did not need to be repealed.

Amendments: Act 17/2023 (GG 8279) amends section 25. Act 8/2024 (GG 8470) amends section 77.

Savings: Section 208(b) of this Act provides that –

any notice, regulation, authorisation, order or certificate issued, made or granted or any other thing done" in terms of any law repealed or amended by the Act, "except in so far as may be otherwise required by this Act, is deemed to have been issued, made, granted or done under the corresponding provision of this Act.

The Electoral Act 24 of 1992 contained no savings clause for regulations or other subsidiary enactments issued under any of the laws it repealed. 130

¹²⁹ It also repealed some enactments relating to specific elections. The list of repeals includes the "Rehoboth Self-Government Proclamation", AG 2 of 1980 - but this is actually the "Rehoboth Self-Government *Amendment* Proclamation", AG 2 of 1980 (OG 4068), which is an amendment to the *Rehoboth Self-Government Act 56 of 1976* that was repealed by Article 147 of the Namibian Constitution.

¹³⁰ Section 132(2) of the Electoral Act 24 of 1992 provided: "Notwithstanding the repeal of the Registration of Voters (Constituent Assembly) Proclamation, 1989 (Proclamation AG. 19 of 1989), the Registration of Political Organizations (Constituent Assembly) Proclamation, 1989 (Proclamation AG. 43 of 1989), the Election

Regulations: The following regulations were issued in terms of the current Act:

Regulations relating to Registration of Voters, Political Parties, Associations or Organisations are contained in GN 186/2024 (<u>GG 8391</u>), which repeals the regulations on the same topic contained in GN 71/2015 (<u>GG 5735</u>).¹³¹

Regulations relating to Nomination of Candidates for Elections are contained in GN 223/2015 (GG 5847), which repeals the regulations contained in GN 141/1992 (GG 504), as amended by GN 149/1992 (GG 513), GN 196/1994 (GG 956) and GN 271/1998 (GG 1985).

Regulations relating to Authorisation Voting and Announcement of Results of Elections are contained in GN 252/2015 (GG 5873), which repeals the regulations contained in GN 152/1992 (GG 518), as amended by GN 205/1994 (GG 965).

Regulations relating to Declaration of Assets and Liabilities of Political Parties and Disclosure of Foreign and Domestic Financing of Political Parties, Organisations, Members or Other Persons are contained in GN 357/2019 (GG 7053).

Regulations for the conduct of elections are contained in GN 328/2024 (<u>GG 8505</u>), replacing the regulations contained in GN 297/2020 (<u>GG 7396</u>).

Note that the 2024 regulations were published only two weeks before the date of the 2024 general election.

The following regulations made under the previous Electoral Act 24 of 1992 remain in force:

Regulations relating to Use of Voting Machines at Elections are contained in GN 117/2014 (GG 5524), as amended by GN 209/2014 (GG 5593) and GN 299/2019 (GG 7023).

Rules: Rules, Codes of Conduct and guidelines made under the previous Electoral Act 24 of 1992 which remain in force pursuant to section 208(b) of the current Act are as follows:

A Code of Conduct Governing Persons Accredited to Provide Voter Education for or in Respect of Elections is contained in General Notice 241/2009 (GG 4352).

A Code of Conduct Governing Accredited Observers and Persons Appointed by Accredited Observers is contained in General Notice 242/2009 (GG 4352).

Those issued in terms of the 2014 Act are as follows:

Rules for the Electoral Court are contained in GN 228/2014 (GG 5608).

Rules for the Electoral Tribunal are contained in GN 191/2018 (GG 6684).

A Code of Conduct for Election Agents and Counting Agents is published in GN 69/2015 (GG 5729).

A Code of Conduct for Political Parties and Political Organisations is published in GN 257/2024 (GG 8434), replacing the "Guidelines for the conduct of political activity by political

¹³¹ GN 71/2015 in turn repeals THE regulations on this topic made under the previous Act and `published in GN 147/2003 (<u>GG 3014</u>), as amended by GN 149/2003 (<u>GG 3018</u>).

ELECTIONS-2

⁽Constituent Assembly) Proclamation, 1989 (Proclamation AG. 49 of 1989), the Election (Constituent Assembly) Amendment Proclamation, 1989 (Proclamation AG. 59 of 1989), and the Constituent Assembly Proclamation, 1989 (Proclamation AG. 62 of 1989), by subsection (1) of this section, the provisions of those laws shall continue to be of force and effect in relation to the National Assembly until the first general election of members of the said National Assembly takes place after the commencement of this Act."

parties" issued under the previous Act in General Notice 143/1992 (GG 503).

See also **Rules of the Supreme Court relating to Presidential Election Challenges,** issued in terms of section 37 of the Supreme Court Act 15 of 1990, read with section 172(3) of the Electoral Act 5 of 2014, in GN 118/2015 (GG 5761).

Notices: Notices made under the previous Electoral Act 24 of 1992 which remain in force pursuant to section 208(b) of the current Act, are as follows:

GN 172/1992 (GG 530) states that the **Directorate of Elections** will resort under the Office of the Prime Minister.

It was announced in GN 116/2014 (GG 5524), pursuant to section 79B of the 1992 Act, that the Electoral Commission has adopted **voting by way of voting machines** for all Presidential, National Assembly, regional council and local authority area elections. (However, this notice was withdrawn by GN 63/2020 (GG 7133), following on the 2020 *Itula* case discussed below.)

A notice announcing that the **Namibia Economic Freedom Fighters** applied for registration as a political party appears in GN 144/2014 (<u>GG 5555</u>).

Notices issued in terms of the 2014 Act are as follows:

The **formula for funding of political parties represented in Parliament**, the percentage of unspent money that may be retained by political parties at the end of each financial year and ancillary matters are set out in GN 89/2015 (<u>GG 5750</u>), as amended by GN 352/2019 (<u>GG 7050</u>) and by GN 275/2020 (<u>GG 7385</u>), which repeals GN 352/2019 (<u>GG 7050</u>).

GN 272/2015 (GG 5879) contains a notice of an intended change in the symbol of the political party Rally for Democracy and Progress (RDP).

GN 319/2017 (GG 6487) contains a notice of an intended change of name, abbreviated name and symbol for the political party DTA of Namibia. The proposed new name is Popular Democratic Movement (PDM).

A notice announcing that the **Landless People's Movement** applied for registration as a political party appears in GN 340/2018 (GG 6791).

A notice announcing that **National Empowerment Fighting Corruption** applied for registration as a political party appears in GN 361/2019 (GG 7063).

Regional court magistrates are designated as **electoral tribunals** and district magistrates as **presiding officers** in GN 298/2024 (<u>GG 8477</u>), which repeals GN 318/2019 (<u>GG 7034</u>), which withdrew GN 56/2014 (<u>GG 5449</u>), which in turn withdrew GN 260/1998 (<u>GG 1976</u>).

Note that there are two versions of GG 8477; the incorrect one has a discrepancy between the notice numbering in the list of contents and the notice numbering in the text of the *Gazette*.

GN 63/2020 (GG 7133) repealed GN 116/2014 (issued under the 1992 Act) and announced that in terms of section 97(2) of the 2014 Act, the Electoral Commission of Namibia has decided that no elections in any constituency or regional council or local authority will be held by voting machines. (This change followed on the 2020 *Itula* case discussed below.)

A notice announcing that the **Rehoboth Independent Town Management Association** (**RITMA**) applied for registration as an organisation appears in GN 183/2020 (<u>GG 7299</u>).

A notice announcing that the Omaruru Community Development Organisation (OCDO)

applied for registration as an organisation appears in GN 184/2020 (GG 7299).

A notice announcing that the **Affirmative Repositioning (AR)** applied for registration as an organisation appears in GN 187/2020 (<u>GG 7306</u>).

A notice announcing that the **Rundu Urban Community's Association (RUCA)** applied for registration as an organisation appears in GN 188/2020 (GG 7306).

A notice announcing that the **Affirmative Repositioning Swakopmund (AR Swakopmund)** applied for registration as an organisation appears in GN 212/2020 (<u>GG 7313</u>).

A notice announcing that the **Affirmative Repositioning Walvis Bay (AR Walvis Bay)** applied for registration as an organisation appears in GN 213/2020 (GG 7313).

A notice announcing that the **Independent Patriots for Change (IPC)** applied for registration as a political party appears in GN 214/2020 (GG 7313).

A notice announcing that the **Affirmative Repositioning Otavi (AR Otavi)** applied for registration as an organisation appears in GN 257/2020 (GG 7372).

A notice announcing that the **Promised Land Residents Association (PLARA)** applied for registration as an organisation appears in GN 258/2020 (GG 7372)

A notice announcing that the **Khorixas Constituency Residents Association** applied for registration as an organisation appears in GN 12/2021 (GG 7455).

GN 128/2022 (GG 7792) contains a notice of an intended **change of symbol** for the political party **Republican Party of Namibia**.

GN 319/2022 (GG 7925) contains a notice of an intended **change of symbol** for the registered organisation **Rundu Urban Community's Association**.

A notice announcing that the **Body of Christ Party** applied for registration as a political party appears in GN 352/2020 (<u>GG 7952</u>).

A notice announcing that **A Right to Shelter Foundation of Namibia (A-RTS-N)** applied for registration as an organisation appears in GN 42/2023 (<u>GG 8047</u>).

GN 54/2023 (GG 8051) contains a notice of an intended **change of symbol** for the registered organisation **Joint Walvis Bay Residents Association**.

GN 132/2023 (GG 8080) contains a notice of an intended **change of symbol** for the political party **United People's Movement**.

GN 376/2023 (GG 8261) contains a notice of an intended **change of symbol** for the political party **National Democractic Party**.

A notice announcing that **Omuthiya People's Association (O.P.A.)** applied for registration as an organisation appears in GN 2/2024 (<u>GG 8292</u>).

GN 28/2024 (GG 8328) contains a notice of an intended change of name, abbreviated name and distinctive symbol for the registered organisation Affirmative Repositioning, to become the June16 Movement.

A notice announcing that the **Action Democratic Movement (ADM)** applied for registration as a political party appears in GN 62/2024 (<u>GG 8348</u>).

A notice announcing that **Affirmative Repositioning (AR)** applied for registration as a political party appears in GN 110/2024 (<u>GG 8362</u>).

A notice announcing that the **United Namibians Party (UNP)** applied for registration as a political party appears in GN 219/2024 (GG 8410).

A notice announcing that the **Okakarara Residents Association Fighting for Development (ORAFD)** applied for registration as an organisation appears in GN 322/2024 (<u>GG 8496</u>).

GN 322/2024 (<u>GG 8498</u>) contains a notice of an intended **change of symbol** for the registered organisation **Okahandja Rate Payers' Association**.

Declarations of assets and liabilities: Notices of declarations of assets and liabilities in terms of section 139(3) of the Act have been announced as follows -

GN 2/2022 (GG 7719) - Independent Patriots for Change

- GN 196/2022 (GG 7846) 12 political parties/organisations (Affirmative Repositioning, All People's Party, Joint Walvis Bay Residents Association, Landless People's Movement, Monitor Action Group, National Empowerment Fighting Corruption, Omaruru Community Development Organisation, Promised Land Residents Association, Rundu Concerned Citizens Association, SWAPO Party of Namibia, United Democratic Front of Namibia and United People's Movement)
- GN 109/2024 (GG 8361) 20 political parties/organisations (Affirmative Repositioning, All People's Party, Body of Christ Party, Independent Patriots for Change, Joint Walvis Bay Residents Association, Landless People's Movement, Monitor Action Group, Namibia Economic Freedom Fighters, National Democratic Party of Namibia, National Empowerment Fighting Corruption, National Unity Democratic Organisation, Okahandja Rate Payers Association, Omaruru Community Development Organisation, Promised Land Residents Association, Republican Party, Rundu Concerned Citizen Association, Rundu Urban Community's Association, Swakopmund Residents Association, SWAPO Party of Namibia, United People's Movement)
- GN 185/2024 (GG 8390) 13 political parties/organisations (A Right to Shelter Foundation, Christian Democratic Voice, Congress of Democrats, Gobabis Residents Association, Rally for Democracy and Progress, Rehoboth Independent Town Management Association, Republican Party of Namibia, Landless People's Movement, National Patriotic Front of Namibia, Popular Democratic Movement, SWANU of Namibia, United Democratic Front of Namibia, Workers Revolutionary Party).

Appointments: Persons in office who were appointed under the previous Act remain in office under the new Act. All appointments under both the previous Act and this Act are listed here for historical interest:

An initial Director of Elections and an Electoral Commission are appointed in Proc. 44/1992 (GG 509).

An Acting Director of Elections is appointed in Proc. 16/1993 (<u>GG 648</u>), and a Director of Elections in Proc. 24/1993 (<u>GG 727</u>), as amended by Proc. 26/1993 (<u>GG 750</u>). A Director of Elections is appointed in Proc. 23/2003 (<u>GG 3035</u>), Proc. 28/2008 (<u>GG 4093</u>) and Proc. 29/2013 (<u>GG 5274</u>).

Members of the Electoral Commission are announced in Proc. 15/1999 (<u>GG 2070</u>), Proc. 10/2000 (<u>GG 2391</u>), Proc. 37/2004 (<u>GG 3219</u>), Proc. 10/2005 (<u>GG 3485</u>), Proc. 7/2007 (<u>GG 3789</u>), Proc. 16/2007 (<u>GG 3928</u>), Proc. 14/2011 (<u>GG 4787</u>), Proc. 8/2013 (<u>GG 5143</u>), Proc. 7/2016 (<u>GG 6125</u>), Proc. 6/2019 (<u>GG 6865</u>), Proc. 42/2014 (<u>GG 7628</u>), Proc 21/2022 (<u>GG 7869</u>) and Proc. 11/2024 (<u>GG 8341</u>).

Members of the Selection Committee are appointed in GN 109/2000 (GG 2313), GN 229/2001

(<u>GG 2647</u>), GN 64/2005 (<u>GG 3440</u>), GN 165/2006 (<u>GG 3714</u>), GN 55/2011 (<u>GG 4702</u>) and GN 134/2012 (<u>GG 4954</u>).

The appointment of coordinators and assistant coordinators is announced in GN 217/2010 (GG 4571).

The appointment of a Chief Electoral and Referenda Officer is announced in GN 142/2018 (GG 6649).

The appointment of a Chief Electoral Officer is announced in GN 256/2023 (GG 8177).

Cases: The following cases concern the current Act:

- Maletzky & Others v Electoral Commission & Others 2015 (2) NR 571 (HC) (section 209(2) and GN 208/2014; empowering a member of executive branch to decide when portions of an Act come into force is not an unconstitutional violation of the separation of powers; evidence placed before court in respect of electronic voting machines in motion proceeding insufficient to support allegation of violation of constitutional right to vote; other claims put forward fall within jurisdiction of Electoral Court rather than High Court)
- Itula & Others v Minister of Urban & Rural Development & Others 2020 (1) NR 86 (SC) (unconstitutional to bring section 97 of the Act regarding electronic voting machines into force without subsections (3) and (4) concerning paper trails; GN 208/2014 is invalid with effect from 21 March 2020 unless Minister withdraws it before that date, but the Court refused to set aside the 2019 Presidential election on this basis)
- Tjirare v Chairperson of the Electoral Commission of Namibia 2020 (3) NR 627 (HC); upheld on appeal in Popular Democratic Movement & Others v Chairperson of the Electoral Commission of Namibia & Others and a Similar Case 2022 (3) NR 615 (SC) (section 170(2); sections 77-78 read with section 110(4) and relevant provisions of the Constitution: a political party may not change an election list subsequent to the election)
- Electoral Commission of Namibia v Swapo Party of Namibia & Others 2021 (1) NR 227 (HC) (sections 12, 115, and 64 of the Act; ballots cast and elections held in Koes, Aroab, and Stampriet local authorities and Mariental Rural Constituency of Hardap Regional Council declared invalid and set aside; ECN to re-run these polls and to contribute to costs of the re-run for the political parties affected)
 - [62] We have made an observation which is worth recording. As much as the commission can approach the court to rectify material irregularities, it remains the duty of the commission to ensure that its election officers are properly trained in order to ensure credible, free and fair elections. It is incumbent on the commission to have mechanisms in place to assess the transfer of election knowledge and skill to the election officers, and be satisfied that the men and women who are ultimately tasked to conduct elections on which our democracy starts and rests are well equipped to serve the election process. We cannot imagine the chaos that may consequentially follow if the voters come to the realisation that some election officers are found to be wanting in the process of conducting elections. The commission will not be approached with kid gloves if it turns out that its election officers are either not properly trained, assessed or examined to the extent that they may compromise the elections.
- Itula & Others v Minister of Urban and Rural Development & Others 2021 (3) NR 746 (SC) (section 172; rule 16 of the Rules of the Supreme Court relating to Presidential Election Challenges in GN 118/2015 (GG 5761))

The following cases were decided under the Electoral Act 24 of 1992:

Garoeb & Others v President of the Republic of Namibia & Others 1992 NR 342 (HC)

DTA of Namibia & Another v SWAPO Party of Namibia & Others 2005 NR 1 (HC)

Congress of Democrats & Others v Electoral Commission 2005 NR 44 (HC)

Rally for Democracy and Progress & Others v Electoral Commission of Namibia & Others 2009 (2)

NR 793 (HC), 2010 (2) NR 487 (SC), 2013 (2) NR 390 (HC) and 2013 (3) NR 664 (SC)

Republican Party of Namibia & Another v Electoral Commission of Namibia & Others 2010 (1) NR 73 (HC).

Commentary:

- Joram K Rukambe, "Electoral Reform in Namibia: Challenges and Constraints", 2 (1) *Journal of African Elections* 141, 2003.
- "Media and Elections A Question of Access", Institute for Public Policy Research, 2009, available here
- Transparency International, "Promoting Transparency and Accountability of Political Finance in the SADC Region: Comparative analysis and findings from Mozambique, Namibia, South Africa, Zambia and Zimbabwe", 2010, available here
- G. Tötemeyer, "Namibia's Constitution, Democracy and the election process" in N Horn, A Bösl & A du Pisani (eds), *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, Konrad Adenauer Stiftung, 2010, available here
- Nico Horn, "Rally for Democracy and Progress & Seventeen Others v Electoral Commission of Namibia & Nine Others, unreported judgment of the Supreme Court of Namibia", Namibia Law Journal, Volume 3, Issue 1, 2011, available here
- Nico Horn, "Rally for Democracy and Progress & Others v The Electoral Commission of Namibia & Others A victory for the positivist approach", Namibia Law Journal, Volume 3, Issue 2, 2011
- Nico Horn, "Becoming Fred Rodell: Predicting the result of the Second Supreme Court Appeal on the 2009 Election", *Namibia Law Journal*, Volume 4, Issue 2, 2012, available here
- G K H Tötemeyer, *Revision and Reform of the Namibian Electoral Act, (Act No. 24 of 1991)*, LRDC 19, Law Reform and Development Commission, 2012, available here
- Gerhard Tötemeyer, "Revision and Reform of an Electoral Act in a Democratic Environment: The Namibian Case", 12 (3) *Journal of African Elections* 170, 2013
- "Reforming Namibia's Electoral Law", Institute for Public Policy Research, 2013, available here "Ready for 50/50?", Institute for Public Policy Research, 2013, available here
- "The Good and the Bad of Tendered Ballots", Institute for Public Policy Research, 2013, available here "Celebrating 25 Years of Democratic Elections 1989-2014", newspaper supplement, available here
- Law Reform and Development Commission, Report on the Revision and Reform of the Namibian Electoral Framework, LRDC 31, 2014
- "Electronic Voting Machines", Institute for Public Policy Research, 2014, available here
- Amanda Clayton, "Namibia at a Crossroads: 50/50 and the Way Forward", Institute for Public Policy Research, 2014, available here
- Nangula Shejavali, "A Thorn in the Flesh for Gender Equality", Institute for Public Policy Research, 2015, available here
- Max Weylandt, "Parliament Perspective Party Funding", Institute for Public Policy Research, 2016, available here
- Herbert Weiland, "Elections in Namibia: Lynchpins and catalysts for democratic development?" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available here
- Ndjodi NL Ndeunyema, "The constitutionalisation of the Electoral Commission of Namibia, the appointment of Commissioners, and the erosion of constitutional democracy" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available here
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 5.5 discusses political party funding)
- Frederico Links, "Fake News and Namibian Elections", Institute for Public Policy Research, 2019, available here
- Dennis U Zaire, "The Supreme Court of Namibia and election disputes: Maintaining the *Status Quo* 30 Years on!" in Tapiwa Victor Warikandwa & John Baloro, eds, *Namibia's Supreme Court at 30 Years: A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era*, Konrad Adenauer Foundation, 2022, available here
- "Long-standing compliance issues cloud political party finance", *Perspectives on Parliament*, Issue 19, Institute for Public Policy Research, February 2023.

Related international agreements:

African Charter on Democracy, Elections and Governance, 2007

Statutes of the International Institute for Democracy and Electoral Assistance (International IDEA), as revised in 2006

See also SADC Parliamentary Forum, *Norms and Standards for Elections in the SADC Region*, adopted by the SADC Parliamentary Forum Plenary Assembly on 25 March 2001, available at www.eisa.org.za/PDF/sadcpf.pdf.

As a matter of historical interest, the amendments to the Electoral Act 24 of 1992, which has been replaced by the Electoral Act 5 of 2014, were as follows:

Electoral Act 24 of 1992 (originally published in GG 471)

The Act was substantially amended by Act 23/1994 (GG 957).

The definition of "party list" was amended by section 3 of the **Local Authorities Amendment Act 3 of 1997** (GG 1584), to conform with the amendment of the Local Authorities Act 23 of 1992 (GG 470) to defer the change from election on a party list system to election on a ward basis until after the second local elections.

Act 30/1998 (GG 1984), amended sections 1, 3, 5, 9, 11, 20, 21, 25, 26, 62, 68, 74, 76 and 93 and substitutes certain expressions. Act 11/1999 (GG 2141) amended Act 30/1998. Act 30/1998 came into force, in terms of section 16 of Act 30/1998 as amended by section 5 of Act 11/1999, on 13 July 1999 (the date of publication of Act 11/1999 in GG 2141), with the exception of sections 10 and 11 of Act 30/1998 which were deemed by section 16 of Act 30/1998, as amended by section 5 of Act 11/1999, to have come into operation on 1 October 1998.

Act 19/1999 (GG 2237) amended sections 28A, 51, 87, 87A, 88 and 89 of the Act.

Act 20/2002 (GG 2890) amended section 15 (pertaining to the period for the second general registration of voters) and is deemed to have come into force on 23 October 2002.

Act 7/2003 (GG 3013), which was brought into force on 8 July 2003 by GN 146/2003 (GG 3014), made substantial amendments.

Act 4/2006 (GG 3759) amended sections 49 and 69 of the Act.

The Act was substantially amended by **Act 7/2009** (GG 4322), which came into force on the date of publication (14 August 2009), with the exception of new section 79B (concerning voting machines) which was brought into force on 14 March 2014 by GN 24/2014 (GG 5425).

Act 11/2010 (GG 4542) amended section 7 of the Act to extend the term of office of certain members of the Electoral Commission. It applied only to those members whose term of office was set to expire on 31 July 2010, extending their tenure until 30 June 2011.

Act 8/2012 (GG 4983) inserted section 28B to provide for the use of a digital voter registration system.

Act 9/2013 (GG 5277) amended section 15 to extend the deadline for the third general registration of voters.

Several of the amending Acts were discussed in *Rally for Democracy and Progress & Others v Electoral Commission & Others* 2013 (2) NR 390 (HC) at para 202-ff.

RELATED MATTERS

Establishment of the First Delimitation Commission, Proc. 12/1990 (<u>GG 69</u>) Appointment of Delimitation Commission, Proc. 9/1995 (<u>GG 1089</u>)

Appointment of Delimitation Commission, Proc. 9/1998 (GG 1855)
Appointment of Delimitation Commission, Proc. 6/2002 (GG 2855)
Appointment of Delimitation Commission, Proc. 1/2013 (GG 5119)
Appointment of Boundaries Delimitation and Demarcation Commission, Proc. 17/2024 (GG 8365).

KEY DOCUMENTS FOR SPECIFIC ELECTIONS

In terms of Articles 133-134 of the Namibian Constitution, the Constituent Assembly elected prior to Namibian Independence constituted the first National Assembly of Namibia, with its term of office deemed to have begun from the date of Independence. The first President of Namibia was the person elected to that office by the Constituent Assembly by a simple majority of all its members, with his term of office deemed to have begun from the date of Independence.

First local and regional elections, 1992

polling dates local elections: Proc. 38/1992 (<u>GG 502</u>)
polling dates regional elections: Proc. 39/1992 (<u>GG 502</u>)
regional candidates: GN 155/1992 (<u>GG 521</u>), GN 156/1992 (<u>GG 526</u>), GN 180/1992 (<u>GG 539</u>)
local authority candidates: GN 157/1992 (<u>GG 528</u>), as amended by GN 183/1992 (<u>GG 544</u>)
results-regional councils: GN 153/1992 (<u>GG 519</u>), GN 184/1992 (<u>GG 545</u>) as amended by GN 29/1993 (<u>GG 601</u>)
results-local authority councils: GN 185/1992 (<u>GG 547</u>)

New local authority, 1994 (Walvis Bay)

A local authority was established for Walvis Bay by Proc. 16/1994 (<u>GG 873</u>), as amended by Proc. 17/1994 (<u>GG 893</u>). See *Municipality of Walvis Bay v Du Preez* 1999 NR 106 (LC), for a discussion of the validity of this election. list of political parties and candidates: GN 144/1994 (<u>GG 905</u>)

results: GN 157/1994 (GG 915)

Local election, 1993 (Aroab)

The first local government election was postponed in respect of Aroab, being held only in February 1993 (Proc. 48/1992, <u>GG 558</u>). According to the Director of Elections, this postponement was necessary because the election officer for Aroab was injured in a car accident. Kapena L Tjihero, Doufi Namalambo and Dianne Hubbard, *Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections*, Legal Assistance Centre, 1998, footnote 56 (<u>www.lac.org.na</u>).

candidates: GN 9/1993 (<u>GG 572</u>) results: GN 27/1993 (<u>GG 601</u>)

Regional by-elections, 1993-1994

Keetmanshoop Rural Constituency, Karas Region candidates: GN 10/1993 (GG 572) results: GN 28/1993 (GG 601)

Olukunda Constituency, Oshikoto Region results: GN 11/1993 (GG 572)

Kabe Constituency, Caprivi Region candidates: GN 58/1993 (GG 651) results: GN 65/1993 (GG 666)

Omupundja Constituency, Oshana Region results: GN 226/1994 (GG 985).

General election, 1994 (President and National Assembly)

polling dates: Proc. 27/1994 (GG 956)
lists of candidates for President: GN 216/1994 (GG 973)
lists of candidates for National Assembly: GN 217/1994 (GG 973), as amended by GN 238/1994 (GG 998)
results-President: GN 242/1994 (GG 1003), as corrected by GN 13/1995 (h)

results-National Assembly: GN 243/1994 (GG 1003)

Regional by-elections, 1995-1997

Gobabis Constituency, Omaheke Region candidates: GN 79/1995 (GG 1082) results: GN 115/1995 (GG 1102)

Okongo Constituency, Ohangwena Region results: GN 212/1995 (GG 1191)

Katima Mulilo Constituency, Caprivi Region candidates: GN 258/1996 (GG 1412)

results: GN 295/1996 (GG 1437)

Ompundja Constituency, Oshana Region

results: GN 180/1997 (GG 1674) Kapako Constituency, Okavango Region results: GN 44/1998 (GG 1811).

Second local authority elections, 1998

polling dates: Proc. 17/1997 (<u>GG 1698</u>), revoked by Proc. 25/1997 (<u>GG 1733</u>); Proc. 29/1997 (<u>GG 1748</u>)

lists of political parties and candidates: GN 6/1998 (GG 1788)

results: GN 35/1998 (GG 1805)

Second regional elections, 1999

polling date: Proc. 17/1998 (GG 1970), replaced by Proc. 18/1998 (GG 1974)

list of candidates and elected members: GN 279/1998 (GG 1998)

results: GN 42/1999 (GG 2069), as amended by GN 189/1999 (GG 2185)

General election, 1999 (President and National Assembly)

polling dates: Proc. 29/1999 (GG 2199)

lists of candidates for President: GN 254/1999 (GG 2233)

lists of candidates for National Assembly: GN 255/1999 (GG 2233)

results-President: GN 22/2000 (GG 2261)

results-National Assembly: GN 23/2000 (GG 2261)

Local authority election, 2001

The members of the Rehoboth Town Council were removed from office by GN 68/2001 (<u>GG 2516</u>), pursuant to section 92 of the Local Authorities Act 23 of 1992; their powers were transferred to the Minister of Regional and Local Government and Housing and a date set for the election of a new council.

Rehoboth:

candidates: GN 140/2001 (<u>GG 2574</u>) results: GN 187/2001 (<u>GG 2615</u>)

Regional by-elections, 1999-2004

Wanaheda Constituency, Khomas Region

candidates: GN 102/1999 (GG 2120)

results: not published

Walvis Bay Urban Constituency, Erongo Region

candidates: GN 102/1999 (GG 2120)

results: not published

Gobabis Constituency, Omaheke Region

candidates: GN 120/2000 (<u>GG 2334</u>)

results: GN 184/2000 (GG 2382)

Rundu Urban Constituency, Kavango Region candidates: GN 285/2000 (GG 2449)

results: GN 14/2001 (GG 2473).

Kapako Constituency, Kavango Region

candidates: GN 83/2001 (GG 2525) results: GN 141/2001 (GG 2574) Karibib Constituency, Erongo Region candidates: GN 242/2001 (GG 2658) results: GN 11/2002 (GG 2684) Oshikango Constituency, Ohangwena Region candidates: GN 242/2001 (GG 2658) results: GN 11/2002 (GG 2684) Rehoboth Urban West Constituency, Hardap Region candidates: GN 49/2003 (GG 2938) results: GN 98/2003 (<u>GG 2974</u>) Kapako Constituency, Kavango Region: candidates: GN 108/2003 (GG 2989) results: not published Oshikango Constituency, Ohangwena Region: candidates: not published results: not published Windhoek West Constituency, Khomas Region candidates: GN 198/2003 (GG 3058) results: GN 228/2003 (GG 3092) Grootfontein Constituency, Otjozondjupa Region candidates: GN 10/2004 (GG 3137) results: GN 43/2004 (GG 3166) Tsumeb Constituency, Oshikoto Region candidates: GN 44/2004 (GG 3166) results: GN 107/2004 (GG 3203)

The following regional by-elections were all held on 14 May 2004, on the same date as the General Elections for local authorities. However, the results were not published together with the local authority results and no separate publication of results for these by-elections has been located.

Otjinene Constituency, Omaheke Region
candidates: GN 94/2004 (GG 3201)
results: not published

Okakarara Constituency, Otjozondjupa Region
candidates: GN 95/2004 (GG 3201)
results: not published

Aminuis Constituency; Omaheke Region
candidates: GN 96/2004 (GG 3201)
results: not published

Tsumkwe Constituency; Otjozondjupa Region
candidates: GN 97/2004 (GG 3201)
results: not published

Omatako Constituency; Otjozondjupa Region
candidates: GN 98/2004 (GG 3201)
results: not published

Third local authority elections, 2004

polling date: Proc. 18/2004 (<u>GG 3173</u>); GN 99/2004 (<u>GG 3201</u>) lists of political parties and candidates: GN 100/2004 (<u>GG 3202</u>) results: GN 190/2004 (<u>GG 3268</u>)

General election, 2004 (President and National Assembly)

polling dates President: Proc. 43/2004 (<u>GG 3280</u>) polling dates National Assembly: Proc. 44/2004 (<u>GG 3280</u>)

list of candidates for President: GN 237/2004 (GG 3316) party lists for National Assembly: GN 238/2004 (GG 3316)

results-President: GN 3/2005 (GG 3366)

results-National Assembly: GN 4/2005 (<u>GG 3366</u>); another set of results for the same election reporting slightly different figures is published in GN 31/2005 (<u>GG 3399</u>) without any reference to the previous Government Notice.

Third regional elections, 2004

polling date: Proc. 47/2004 (<u>GG 3292</u>) list of candidates: GN 252/2004 (<u>GG 3329</u>)

results: GN 5/2005 (GG 3366)

New local authorities, 2005 (Oshikuku, Okahao and Ruacana)

Oshikuku was established as a local authority by GN 234/2004 (GG 3313).

Okahao was established as a local authority by GN 233/2004 (GG 3313).

Ruacana was established as a local authority by GN 70/2005 (GN 3456).

list of political parties and candidates: GN 159/2005 (GG 3540)

results: GN 50/2006 (GG 3592).

New local authority, 2007 (Nkurenkuru)

Nkurenkuru was established as a local authority by GN 155/2006 (GG 3699).

list of political parties and candidates: GN 56/2007 (GG 3810), which revokes GN 22/2007 (GG

<u>3790</u>)

results: GN 74/2007 (GG 3821)

New local authority, 2008 (Omuthiya)

Omuthiya was established as a local authority by GN 4/2008 (GG 3974).

list of candidates: GN 226/2008 (GG 4118), which withdraws GN 42/2008

results: GN 89/2008 (GG 4013); GN 251/2008 (GG 4141)

Regional by-elections, 2007-2010

Rundu Rural West Constituency, Kavango Region

candidates: GN 228/2007 (GG 3958)

results: GN 14/2008 (GG 3983)

Eenhana Constituency, Ohangwena Region

candidates: GN 58/2008 (GG 4006)

results: not published

Tobias Hainyeko Constituency, Khomas Region

candidates: GN 252/2008 (GG 4141)

results: GN 271/2008 (GG 4170)

Okahandja Constituency, Otjozondjupa Region

candidates: GN 16/2010 (GG 4425)

results: GN 44/2010 (GG 4442).

General election, 2009 (President and National Assembly)

polling dates President and National Assembly: Proc. 12/2009 (GG 4348)

list of candidates for President: GN 222/2009 (GG 4375)

party lists for National Assembly: GN 224/2009 (GG 4375)

results-President: GN 246/2009 (GG 4397)

results-National Assembly: GN 247/2009 (GG 4397)

Fourth local authority and regional elections, 2010

polling date: Proc. 16/2010 (GG 4571)

lists of political parties and candidates (local authority councils): GN 245/2010 (GG 4597)

lists of candidates (regional councils): GN 246/2010 (GG 4597)

results-regional councils: GN 267/2010 (GG 4627)

New local authority, 2012 (Oranjemund)

Oranjemund was established as a local authority by GN 130/2011 (GG 4767).

list of political parties and candidates: GN 72/2012 (GG 4892), as amended by GN 83/2012

(GG 4902)

results: GN 99/2012 (GG 4926)

Regional by-elections, 2012-2015

Sibbinda Constituency, Caprivi Region

candidates: GN 226/2012 (GG 5026)

results: GN 246/2012 (GG 5048)

Tsumkwe Constituency, Otjozondjupa Region

candidates: GN 263/2012 (GG 5066)

results: GN 287/2012 (GG 5088)

Grootfontein Constituency, Otjozondjupa Region

candidates: GN 121/2013 (GG 5189)

results: GN 163/2013 (GG 5224)

Ohangwena Constituency, Ohangwena Region

candidates: GN 99/2014 (GG 5512)

results: GN 169/2014 (GG 5562)

Endola Constituency, Ohangwena Region

candidates: GN 218/2014 (GG 5600)

results: GN 246/2014 (GG 5626)

Windhoek-West Constituency, Khomas Region

candidates: GN 221/2014 (GG 5600)

results: GN 247/2014 (GG 5626)

Swakopmund Constituency, Erongo Region

candidates: GN 70/2015 (GG 5730)

results: GN 120/2015 (GG 5764)

Onyaanya Constituency, Oshikoto Region

candidate/result: GN 122/2015 (GG 5764)

Otjiwarongo Constituency, Otjozondjupa Region

candidates: GN 121/2015 (<u>GG 5764</u>)

results: GN 184/2015 (<u>GG 5808</u>)

Otavi Constituency, Otjozondjupa Region

candidates/results: GN 207/2015 (GG 5830)

New local authority, 2014 (Bukalo)

Bukalo was established as a local authority by GN 225/2013 (GN 5264).

list of political parties and candidates: GN 123/2014 (GG 5532)

results: GN 170/2014 (GG 5562)

New local authority, 2014 (Otjinene)

Otjinene was established as a local authority by GN 6/2011 (GG 4649).

list of political parties and candidates: GN 133/2014 (GG 5538)

results: GN 175/2014 (GG 5573)

General election, 2014 (President and National Assembly)

polling date President and National Assembly: Proc. 31/2014 (GG 5587)

list of candidates for President: GN 230/2014 (GG 5609)

registered political parties and party lists for National Assembly: GN 232/2014 (GG 5609), as

amended by GN 239/2014 (GG 5617)

results-President: GN 259/2014 (GG 5641)

results-National Assembly: GN 260/2014 (GG 5641)

Fifth regional and local authority elections, 2015

polling date: Proc. 33/2015 (GG 5846)

lists of political parties and candidates (local authority councils): GN 274/2015 (GG 5880)

lists of candidates (regional councils): GN 275/2015 (GG 5880)

results-regional councils: GN 317/2015 (<u>GG 5916</u>) results-local authority councils: GN 318/2015 (<u>GG 5916</u>)

Regional by-elections, 2015-2020

Eengodi Constituency, Oshikoto Region

results: GN 296/2017 (GG 6471)

Ncuncuni Constituency, Kavango-West Region

candidates: GN 44/2018 (<u>GG 6544</u>)

results: GN 91/2018 (GG 6600)

Ondangwa Urban Constituency, Oshana Region

candidates: GN 126/2019 (GG 6909)

results: GN 193/2019 (GG 6952)

Oshakati East Constituency, Oshana Region

candidates: GN 204/2019 (GG 6961)

results: GN 276/2019 (<u>GG 7008</u>)

Oshikuku Constituency, Omusati Region

results: GN 398/2019 (<u>GG 7081</u>)

General election, 2019 (President and National Assembly)

polling date President and National Assembly: Proc. 33/2019 (GG 7008)

list of candidates for President: GN 329/2019 (GG 7040)

registered political parties and party lists for National Assembly: GN 331/2019

(<u>GG 7041</u>)

results-President: GN 50/2020 (GG 7126)

results-National Assembly: initially published in GN 51/2020 (GG 7126), which was withdrawn and replaced by GN 86/2020 (GG 7149), which is amended by GN 168/2022 (GG 7826) pursuant to the appeal judgment in *Popular Democratic Movement & Others v Chairperson of the Electoral Commission of Namibia & Others and a Similar Case* 2022 (3) NR 615 (SC)

Regional by-elections, 2019-2020

Khomasdal Constituency, Khomas Region

candidates: GN 404/2019 (GG 7081)

results: GN 46/2020 (GG 7126)

Gobabis Constituency, Omaheke Region

candidates: GN 406/2019 (GG 7081)

results: GN 47/2020 (GG 7126)

Walvis Bay Urban Constituency, Erongo Region

candidates: GN 407/2019 (GG 7081)

results: GN 48/2020 (GG 7126)

Keetmanshoop Urban Constituency, //Kharas Region

candidates: GN 405/2019 (GG 7081)

results: GN 49/2020 (GG 7126)

Otjiwarongo Constituency, Otjozondjupa Region

candidates: GN 42/2020 (GG 7119)

results: GN 87/2020 (GG 7155)

Opuwu Rural Constituency, Kunene Region

candidates: GN 41/2020 (<u>GG 7119</u>)

results: GN 88/2020 (GG 7155)

Fifth regional and local authority elections, 2020

polling dates: GN 291/2020 (<u>GG 7388</u>), GN 292/2020 (<u>GG 7388</u>) lists of candidates (regional councils): GN 293/2020 (<u>GG 7389</u>) results-regional councils: GN 219/2021 (<u>GG 7654</u>)

The initial regional elections were held on 25 November 2020.

- The election in *Hardap Regional Council: Mariental Rural Constituency* was declared invalid and a re-run required by *Electoral Commission of Namibia v SWAPO Party of Namibia & Others* 2021 (1) NR 227 (HC); this re-run took place on 26 February 2021.
- The announcement of the election results in *Kavango East Regional Council: Ndonga Linea Constituency* was declared null and void and a recount required by *All Peoples' Party v Electoral Commission of Namibia* (EC 2/2021) [2021] NAHCMD 414 (13 September 2021).

results-local authority councils: GN 65/2021 (GG 7497)

The initial local authority elections were held on 25 November 2020.

• The local authority elections in the Koes, Aroab and Stampriet Local Authorities were ruled invalid in *Electoral Commission of Namibia v SWAPO Party of Namibia & Others* 2021 (1) NR 227 (HC), with the result that they had to be re-run; this re-run took place on 26 February 2021.

Regional by-elections, 2021-2023

Kunene Regional Council: Opuwo Rural Constituency

candidates: GN 130/2021 (<u>GG 7557</u>) results: GN 162/2021 (<u>GG 7599</u>)

Zambezi Regional Council: Katima Mulilo Urban Constituency

candidates: GN 163/2021 (<u>GG 7599</u>) results: GN 215/2021 (<u>GG 7650</u>)

Kavango West Regional Council: Ncamagoro Constituency

candidates: GN 252/2021 (<u>GG 7690</u>) results: GN 17/2022 (<u>GG 7741</u>)

Erongo Regional Council: Swakopmund Constituency

candidates: GN 200/2022 (<u>GG 7852</u>) results: GN 276/2022 (<u>GG 7907</u>)

Khomas Regional Council: Moses //Garoeb Constituency

candidates: GN 394/2022 (<u>GG 7972</u>) results: GN 8/2023 (<u>GG 8017</u>)

Oshana Regional Council: Okaku Constituency candidates: GN 40/2023 (GG 8043) results: GN 102/2023 (GG 8072)

//Kharas Regional Council: Keetmanshoop Rural Constituency

candidates: GN 134/2023 (<u>GG 8080</u>) results: GN 177/2023 (<u>GG 8117</u>).

General election, 2024 (President and National Assembly)

polling date President and National Assembly: Proc. 28/2024 (<u>GG 8454</u>), as amended by Proc. 34/2024 (<u>GG 8519</u>) (extending the polling date in respect of certain polling stations)

list of candidates for President: GN 326/2024 (GG 8504)

registered political parties and party lists for National Assembly: GN 327/2024 (GG 8504), as amended by GN 361/2024 (GG 8516)

results-President: not yet gazetted

results-National Assembly: not yet gazetted

INTERNATIONAL LAW

African Charter on Democracy, Elections and Governance, 2007

Statutes of the International Institute for Democracy and Electoral Assistance (International IDEA), as revised in 2006

See also Intimidation Proclamation, AG 24 of 1989, in connection with General Notice 143/1992, which contains certain guidelines for the holding of elections (CRIMINAL LAW AND PROCEDURE).

See also REGIONAL AND LOCAL GOVERNMENT.

ELECTRICITY

Powers of the SWA Water and Electricity Corporation Act 14 of 1980 🕎 🙀



Summary: This Act (OG 4225) gives certain powers to the SWA Water and Electricity Corporation (Pty) Ltd, subject to the approval of the Minister of Mines and Energy. (This corporation is now known as "NamPower".)

Regulations: The Act makes no provision for regulations.

Application of law: Namibia Power Corporation (Pty) Ltd was deemed to be a company registered in terms of Chapter IV of the Companies Act 61 of 1973 (which has since been replaced by the Companies Act 28 of 2004) by Proc. 7/1998 (GG 1849).

The application of the Act is also affected by the State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Cases: Arandis Power (Pty) Ltd v President of the Republic of Namibia & Others 2018 (2) NR 567 (SC) discusses Nampower's tender and procurement policy.

Electricity Act 4 of 2007 🕎 🛜

Summary: This Act (GG 3922) provides for the establishment and functions of the Electricity Control Board. It was brought into force on 15 November 2007 by GN 201/2007 (GG 3933).

Repeals: The Act repeals the Electricity Act 2 of 2000 (GG 2270), which in turn replaced the Electric Power Proclamation 4 of 1922.

Savings: Regulations and other acts done in terms of the repealed Electricity Act 2 of 2000 survive by virtue of section 46(3) of this Act:

Unless otherwise provided in this Act, anything done or made under the repealed law, and which could have been done or made under a corresponding provision of this Act, is deemed to have been done or made under that corresponding provision.

The Electricity Act 2 of 2000 did not contain a saving clause for any acts done under the Electric Power Proclamation 4 of 1922, which it repealed.

Regulations: The Electricity Regulations: Administrative issued under the Electricity Act 2 of 2000 and contained in GN 168/2000 (GG 2371) continued to operate initially, but were repealed by GN 13/2011 (GG 4652).

The Electricity Regulations: Administrative made in terms of this Act are contained in GN 13/2011 (GG 4652), as amended by GN 158/2020 (GG 7282).

Rules and codes: The Namibian Electricity Safety Code is contained in GN 200/2011 (GG 4821), as amended by GN 234/2012 (GG 5033).

Economic Rules are contained in General Notice 46/2016 (GG 5949).

Technical Rules are contained in General Notice 47/2016 (GG 5950).

Net Metering Rules are contained in General Notice 471/2016 (GG 6173).

A Distribution Grid Code is contained in General Notice 560/2018 (GG 6730).

A Transmission Grid Code is contained in General Notice 561/2018 (GG 6731).

Rules relating to the Redistribution and Resale of Electricity are contained in General Notice 480/2021 (GG 7625).

Modified Single Buyer Market Rules are contained in General Notice 736/2022 (GG 7983).

Notices: A levy on electricity supplied by NamPower is imposed by GN 80/2019 (<u>GG 6884</u>). The levies issued previously in terms of this Act and its predecessor have all been repealed.

Cases: Namibia Power Corporation (Pty) Ltd v Congo Namibia (Pty) Ltd 2021 (2) NR 483 (HC) (section 17(10(e)).

ENGINEERING

Engineering Profession Act 18 of 1986 🕎 🙀

Summary: This Act (originally published in OG 5244) regulates the engineering profession. It was brought into force by AG 1/1987 (OG 5313) and AG 5/1989 (OG 5687).

Repeals: The Act repeals the *Professional Engineers' Act 81 of 1968* (originally published in <u>RSA GG</u> 2119), with the repeal being effective as of 1 February 1987. ¹³²

Amendments: Act 25/1991 (<u>GG 327</u>) amends sections 1, 2, 3, 11, 12, 16, and 26 and substitutes certain words and expressions and the long title.

GN 22/2004 (GG 3154) amends Schedule II to the Act. General Notice 563/2015 (GG 5903) substitutes Part A and Part B of Schedule II.

Savings: Regulations, fees and reservations of work made in terms of the *Professional Engineers' Act 81 of 1968* survive under this Act pursuant to section 29(2):

Any regulation made or any fees prescribed or any kind of work prescribed as reserved for professional engineers under any provision of any law repealed by this Act, which could be made or prescribed in terms of a corresponding provision of this Act, shall be deemed to have been made or prescribed in terms of such corresponding provision, and any reference in any such regulation or in respect of any fees or kind of work so prescribed -

- (a) to any council as defined in any such law, shall be deemed to be a reference to the council;
- (b) to any law repealed by this Act, shall be deemed to be a reference to this Act;
- (c) to the Minister of Public Works or the Minister, shall be deemed to be a reference to the Minister;
- (d) to any provision of any law repealed by this Act, shall be deemed to be a reference to the corresponding provision of this Act;
- (e) to any register, shall be deemed to be a reference to the corresponding register referred to in this Act;
- (f) to a registrar, shall be deemed to be a reference to the registrar;
- (g) to the Republic, shall be deemed to be a reference to Namibia.

In respect of these savings, it should be noted that the *Professional Engineers' Act 81 of 1968* was transferred to SWA by the Executive Powers (Public Works) Transfer Proclamation, AG 16 of 1978 (OG 3720), which came into force on 30 March 1978 – which excluded from transfer sections 11-17 of that Act (all of which concern advisory committees).

Regulations: The following regulations made in terms of the *Professional Engineers' Act 81 of 1968* appear to survive under this Act survive pursuant to section 29(2) of this Act:

Regulations in terms of the Professional Engineers' Act, 1968 (Act 81 of 1968) are contained in RSA GN R.380/1969 (RSA GG 2298, reprinted in OG 2988), as corrected by RSA GN R.2039/1969 (RSA GG 2488) (Afrikaans text only), and as amended by RSA GN R.344/1971 (RSA GG 3014), RSA GN R.534/1973 (RSA GG 3843) and RSA GN R.1871/1973 (RSA GG 4048). (RSA GG 3014)

¹³² In South Africa, this Act was repealed after the date of Namibian independence by the Engineering Profession of South Africa 114 of 1990 (RSA GG 12636).

¹³³ In South Africa, these regulations were replaced after the date of transfer by regulations in RSA GN R.1527/1981 (RSA GG 7663), as amended by RSA GN R.1782/1981, RSA GN R.2199/1981 and RSA GN R.37/1985.

Additional regulations on the Board of Control for Professional Technologists (Engineering) were issued in South Africa after the date of transfer in RSA GN R.2543/1984 (RSA GG 9507). These regulations were repealed in turn by Regulations on the Board of Control for Professional Technologists (Engineering) in RSA GN R.1262/1986 (RSA GG 10297), as amended by RSA GN R.1537/1986 and RSA GN R.2039/1988.

These regulations were issued under the current Act:

Regulations concerning registration and annual registration fees are contained in GN 161/1987 (OG 5434), as amended by General Notice 192/1989 (OG 5861), GN 71/1998 (GG 1829), General Notice 336/1999 (GG 2229) as amended by General Notice 365/1999 (GG 2248), General Notice 117/2002 (GG 2759), General Notice 87/2003 (GG 2974) and General Notice 60/2005 (GG 3402).

Regulations on the tariff of consulting fees are contained in GN 24/1993 (<u>GG 593</u>), as amended by GN 14/1998 (<u>GG 1796</u>), GN 157/2002 (<u>GG 2810</u>), GN 49/2006 (<u>GG 3591</u>), GN 199/2006 (<u>GG 3738</u>), GN 205/2007 (<u>GG 3933</u>), GN 265/2008 (<u>GG 4153</u>), GN 42/2010 (<u>GG 4440</u>), GN 206/2012 (<u>GG 5014</u>) and GN 239/2013 (<u>GG 5274</u>).

Rules: Council rules are contained in GN 91/1988 (OG 5550).

Notices: The savings clause quoted above applies only to regulations, fees and reservation of work. The following notice on reservation of work appears to survive in terms of the savings clause:

RSA GN R.3063/1969 (RSA GG 2500), issued in terms of section 7(6) of the Professional Engineers' Act 81 of 1968, prescribes certain kinds of work reserved for professional engineers in connection with projects, undertakings or services of an agricultural, chemical, civil, electrical, mechanical, mining or metallurgical engineering nature.

Other types of notices made under the repealed laws do not generally appear to survive under the current Act. However, GN 159/1987 (OG 5434) states that the South West African Engineering Council has determined that the recognition as professional engineers' institutes granted in terms of section 7(3)(a) of the Professional Engineers Act 81 of 1968 to the Engineering Professions Association of South West Africa/Namibia and the South West African Association of Consulting Engineers, published in AG GN 60/1978 (OG 3833), shall be deemed to have been granted under section 7(1)(i) of the Engineering Profession Act 18 of 1986.

The following notices were issued under this Act:

Remuneration and allowances payable to Council members are addressed in GN 160/1987 (OG 5434).

Exemptions from the provisions of sections 11, 12, 13, 16 and 17 in respect of work for the Millennium Challenge Account are contained in GN 13/2009 (GG 4210).

Lists of registered members, and cancellations and reinstatements of registrants, are published from time to time, but these have not been recorded here.

Fees: Annual registration fees and **consulting fees** are set out in the form of regulations issued under this Act, as listed above. These regulations do not repeal any previous notices on fees issued under the repealed legislation, but would clearly supersede them.

Notices of proposed amendments of tariffs of consulting fees have not been recorded.

There is a notice issued in terms of the Professional Engineers Act 81 of 1968 concerning examination

Additional regulations on the Board of Control for Engineering Technicians were issued in South Africa after the date of transfer in RSA GN R.1500/1983 (RSA GG 8800) as amended by RSA GN R.345/1984 (RSA GG 9097). These regulations were replaced in turn by regulations on the Board of Control for Engineering Technicians in RSA GN R.1261/1986 (RSA GG 10297), as amended by RSA GN R.1536/1986, RSA GN R.1607/1987 (RSA GG 10837) and RSA GN R.1865/1988 (RSA GG 11504).

fees, but it was issued after the date of transfer, 134 and no prior notices on this topic were located.

Appointments: Members of the Engineering Council are appointed in GN 16/1990 (<u>GG 33</u>), GN 148/1992 (<u>GG 512</u>), GN 32/1993 (<u>GG 605</u>), GN 153/1994 (<u>GG 913</u>), GN 27/1996 (<u>GG 1255</u>), GN 72/1989 (<u>GG 1829</u>), GN 276/1999 (<u>GG 2248</u>), General Notice 20/2004 (<u>GG 3154</u>), GN 93/2006 (<u>GG 3658</u>), GN 186/2007 (<u>GG 3919</u>), GN 240/2012 (<u>GG 5038</u>), GN 318/2013 (<u>GG 5351</u>) and GN 312/2019 (<u>GG 7034</u>).

Cases: Fischer Seelenbinder Associates CC v Steelforce CC 2010 (2) NR 684 (HC).

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (EDUCATION).

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¹³⁴ RSA GN R.1524/1981 (RSA GG 7663), which was replaced in South Africa by RSA GN R.876/1988 (RSA GG 11289) after the Engineering Profession Act 18 of 1986 came into force in SWA.

ENVIRONMENT

Soil Conservation Act 76 of 1969, as amended in South Africa to March 1978 🕎 📴



Summary: This Act (originally published in RSA GG 2437) covers the prevention and combating of soil erosion; the conservation, improvement and manner of use of the soil and vegetation; and the protection of water sources.

In South Africa, the Forest Act 122 of 1984 (RSA GG 9380), brought into force on 27 March 1986 by RSA Proc. R.46/1986 (RSA GG 10158), repealed Part VII of the Act and the Conservation of Agricultural Resources Act 43 of 1983 (RSA GG 8673), brought into force on 1 June 1984 by RSA Proc. R.74/1984 (RSA GG 9238), repealed the remainder. Neither of these Acts – which both post-dated the date of transfer – was made expressly applicable to South West Africa.

Repeals: The Act repeals the Soil Conservation Act 45 of 1946. The Second Soil Conservation Amendment Act 38 of 1971 (RSA GG 3108), which amended this Act to make it applicable to South West Africa, provided for some additional repeals in respect of South West Africa: the Soil Conservation Ordinance 28 of 1952, the Soil Conservation Amendment Ordinance 20 of 1954 and the Soil Conservation Validation Ordinance 11 of 1961.

Applicability to SWA: Section 27A (inserted in 1971) states "This Act and any amendment thereof shall also apply in the territory", which is defined in section 1 as "the territory of South-West Africa".

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

The reference to the "Minister" in section 24 of the Act (which deals with limitation of liability) was excluded from the operation of the General Proclamation, meaning that in this section "Minister" continued to refer to the South African Minister of Agriculture.

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

- Soil Conservation Amendment Act 4 of 1971 (RSA GG 3020)
- Second Soil Conservation Amendment Act 38 of 1971 (RSA GG 3108)
- Soil Conservation Amendment Act 11 of 1973 (RSA GG 3820)
- Soil Conservation Amendment Act 21 of 1974 (RSA GG 4212)
- Expropriation Act 63 of 1975 (RSA GG 4780)
- Soil Conservation Amendment Act 22 of 1977 (RSA GG 5459).

Certain terminology is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Section 13 is amended by the Forest Act 12 of 2001 (GG 2667).

Savings: There does not appear to be a savings clause for regulations issued under the laws repealed by this Act or by the Second Soil Conservation Amendment Act 38 of 1971 (RSA GG 3108).

However, section 4 of Act 38 of 1971, which effects the repeals of the SWA legislation, contains a proviso which states that –

any provision of any law so repealed shall, notwithstanding the repeal of such law, continue to apply in respect of any matter in connection with which anything has been done under any law aforesaid or in respect of anything incidental to any such matter or which may be necessary to be done in connection with any such matter, as if such law had not been so repealed.

This seems to be a transitional provision to cover matters which were in process at the time of the repeals.

Regulations: The following pre-independence regulations appear to be the only ones that remain in force:

Soil Conservation Regulations in RSA GN R.494/1970 (RSA GG 2674).

Regulations on Fire Protection Committees in RSA GN R.1396/1970 (<u>RSA GG 2786</u>). Although no repeal of these regulations has been located, they appear to have been superseded by the virtually identical **Regulations on Fire Protection Committees** contained in RSA GN R.2121/1970 (<u>RSA GG 4081</u>). ¹³⁵

No regulations have been issued under the Act since independence. However, see the regulations promulgated under the Communal Land Reform Act 5 of 2002 (GG 2787); regulations 31 and 32 deal with the prevention of soil erosion and the protection of pastoral resources.

Notices: General provisions in pursuance of the objects of the Act are set out in RSA GN R.495/1970 (RSA GG 2674).

Application of law: Regulations 31 and 32 issued under the Communal Land Reform Act 5 of 2002 in GN 37/2003 (GG 2926) refer to the application of this Act in respect of communal areas.

Mountain Catchment Areas Act 63 of 1970 📲 🙀

Summary: This Act (originally published in <u>RSA GG 2858</u>) provides for the management and conservation of land in designated mountain catchment areas.

Applicability to SWA: Section 19 states "This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." This wording did not make amendments to the Act in South Africa automatically applicable to SWA, and none of the amendments were made specifically applicable to SWA.

The Act was amended in South Africa prior to the date of transfer by the *Expropriation Act 63 of 1975* (RSA GG 4780), which was brought into force on 1 January 1977 by RSA Proc. 273/1976 (RSA GG 5363), and by the *Mountain Catchment Areas Amendment Act 41 of 1976* (RSA GG 5068), which came into force on its date of publication: 7 April 1976.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Forestry) Transfer Proclamation (AG 16/1977), dated **1 December 1977**. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Mountain Catchment Areas Amendment Act 76 of 1981* (RSA GG 7800) – which was not made expressly applicable to SWA.

Amendments: Certain terms in the Act were amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (<u>OG 3898</u>), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

There have been no amendments to the Act since independence.

¹³⁵ These regulations were amended in South Africa after the date of transfer by RSA GN R.217/1983 (RSA GG 8536), which was not made applicable to SWA.

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Regulations: Regulations are authorised by section 13 of the Act. Pre-independence regulations are contained in RSA GG R.1606/1971 (<u>RSA GG 3255</u>), as amended by RSA GN 1260/1976 (<u>RSA GG 5230</u>). No post-independence regulations have been promulgated.

Hazardous Substances Ordinance 14 of 1974 🗐 🙀

Summary: This Ordinance (originally published in OG 3415) provides for the control of toxic substances. It covers manufacture, sale, use, disposal and dumping as well as import and export. The Health Act 21 of 1988 (OG 5651) extended this Ordinance to all of SWA.

Amendments: The Ordinance is amended by the Atomic Energy and Radiation Protection Act 5 of 2005 (GG 3429), which was brought into force in relevant part on 18 November 2011 by GN 220/2011 (GG 4835).

Regulations: Regulations are authorised by section 27 of the Act. Pre-independence regulations concerning the control of Group I-Hazardous Substances are contained in GN 99/1979 (OG 3980), as corrected by GN 173/1979 (OG 4012). No post-independence regulations have been promulgated.

Notices: GN 99/1979 (OG 3980) declares certain substances and mixtures of substances to be Group I-hazardous substances in terms of the provisions of section 3(1)(a) of the Ordinance, read with section 3(3)(b).

Nature Conservation Ordinance 4 of 1975 🕎 🙀

Summary: This Ordinance (originally published in <u>OG 3469</u>) covers game parks and nature reserves, the hunting and protection of wild animals (including game birds), problem animals, fish, and the protection of indigenous plants. It also establishes a Nature Conservation Board.

Repeals: The Ordinance repeals the Extermination of Vermin Ordinance 6 of 1935 (originally the "Extermination of Wild Dogs Ordinance 6 of 1935", referring to *Lycaon pictus*) (OG 606) and the Nature Conservation Ordinance 31 of 1967 (OG 2815), which repealed several previous laws including the following:

- Protection of Welwitschia Plant Proclamation 10 of 1916 (OG 11)
- Wild Birds Export Prohibition Proclamation 12 of 1924 (OG 135)
- Python and Leguan Export Prohibition Ordinance 17 of 1928 (OG 283)
- Ostrich Skins Export Ordinance 2 of 1929 (OG 313)
- Wild Animals Export Control Ordinance 6 of 1929 (OG 330)
- Parrots and Parrakeets Importation Prohibition Proclamation 10 of 1930
- Flora and Fauna Protection Ordinance 19 of 1937 (sections 1,5, 9 and 10)¹³⁷
- Game Preservation Ordinance 11 of 1951 (OG 1604)
- Game Parks, Nature Parks and Private Game Reserves Ordinance 18 of 1958 (OG 2152).

Amendments: The Ordinance is amended by Ord. 4/1977 (OG 3603), Ord. 16/1980 (OG 4166), Act 27/1986 (OG 5294), Act 6/1988 (OG 5538), Act 17/1988 (OG 5591), Act 31/1990 (GG 133) (sections 20 and 26), and Act 5/1996 (GG 1333) (brought into force on 29 April 1997 by GN 78/1997, GG 1546)

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¹³⁶ These regulations repeal the regulations contained in RSA GN R.1396 of 28 August 1970.

¹³⁷ Sections 2, 3, 4, 6, 7 and 8 of the Flora and Fauna Protection Ordinance 19 of 1937 had already been repealed by the Game Preservation Ordinance 11 of 1951 (OG 1604). The Flora and Fauna Protection Ordinance 19 of 1937 was additionally repealed "in so far as it is still in force in Eastern Caprivi" by the Nature Conservation Ordinance 4 of 1975 (OG 3469).

(conservancies).

The Ordinance is also amended by the Inland Fisheries Resources Act 1 of 2003 (<u>GG 2962</u>), which was brought into force on 6 June 2003 by GN 117/2003 (<u>GG 2992</u>) (sections 18, 65-71 and 84).

Schedule 3 is amended by GN 115/1978 (OG 3741), GN 75/1987 (OG 5364), Act 31/1990 (OG 133) and GN 18/2016 (OG 5936).

Government Notice 18 of 2016 (GG 5936) states that it is amending Schedule 3. However, it states that it is adding "African Wild Dog (Lycaon)" to the list of animals in subparagraph (i). There is no subparagraph (i) in Schedule 3, raising a question as to whether this amendment was perhaps intended to apply to subparagraph (i) of Schedule 4.

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. None of the changes affect the amendments to Schedule 3.

Schedule 4 is amended by GN 117/1976 (OG 3535), GN 75/1987 (OG 5364), Government Notice 90/1988 (OG 5547) and GN 131/1996 (OG 1320).

Government Notice 18 of 2016 (GG 5936) states that it is amending Schedule 3. However, it states that it is adding "African Wild Dog (Lycaon)" to the list of animals in subparagraph (i). There is no subparagraph (i) in Schedule 3, raising a question as to whether this amendment was perhaps intended to apply to subparagraph (i) of Schedule 4.

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. None of the changes would affect the amendments which appear to have been meant for Schedule 4.

Schedule 5 is amended by GN 117/1976 (OG 3535).

Schedule 6 is amended by Government Notice AG 77/1985 (OG 5045).

Act 3/2017 (GG 6344) amends sections 1, 17, 26, 27, 38 and 49, and substitutes section 87. These amendments, amongst other things, increase the penalties for certain wildlife crimes.

Note that a portion of section 83(1) is declared unconstitutional and "pro non scripto" ("as though it had not been written") in N/a'an Ku Sê Foundation v Minister of Environment, Forestry and Tourism & Others 2023 (1) NR 213 (HC).

Savings: There is a savings clause for enactments under the repealed Nature Conservation Ordinance 31 of 1967 in section 90(2) of this Ordinance:

Any proclamation, regulation, notice, order, prohibition, authority, permit, licence, registration, approval, permission, exemption or document promulgated, issued, made, ordered, published, imposed, given or granted and any other act performed in terms of the provisions of any law repealed by subsection (1) shall, if not inconsistent with the provisions of this Ordinance, be deemed to have been promulgated, issued, made, ordered, published, imposed, given, granted or performed in terms of the corresponding provisions of this Ordinance.

There is also a savings clause for enactments under the various laws repealed by the Nature Conservation Ordinance 31 of 1967 in section 77(2) of that Ordinance:

Any proclamation, regulation, notice, order, prohibition, authority, permission, permit, licence or document issued, made, promulgated, imposed, given or granted and any other action taken under the provisions of any law repealed by sub-section (1) shall, if not inconsistent with the provisions of this ordinance, be deemed to have been issued, made, promulgated, imposed, given, granted, taken or performed under the corresponding provisions of this ordinance.

Regulations: Regulations made under this Ordinance are contained in GN 240/1976 (OG 3556). 138

¹³⁸ These regulations repeal the regulations promulgated in GN 51/1968 (<u>OG 2869</u>), GN 186/1968 (<u>OG 2943</u>, which seems to extend the regulations in GN 51/1968 by adding Chapter 2: General regulations relating to game

These regulations are amended as follows –	
GN 256/1976 (Regs 4(1)-(2))	OG 3563
GN 112/1977 (Regs 4, 36A-E)	OG 3599
GN 248/1977 (Regs 99, 108, 146, 154)	OG 3638
GN 302/1977 (Regs 1-2)	OG 3644
GN 314/1977 (Reg 4)	OG 3647
GN 364/1977 (Regs 8,73)	OG 3659
GN 32/1978 (Regs 1-2, via amendment to GN 302/1977)	OG 3705
GN 114/1978 (Reg 1)	OG 3741
GN 190/1978 (Regs 9, 26)	OG 3798
GN 247/1978 (definitions, Chpt XII)	OG 3845
GN 10/1979 (Regs 4, 5, 6(3), 7)	OG 3894
GN 50/1979 (Regs 36, 104, 114-16, Chpt XVIIA)	OG 3916
GN 56/1979 (Reg 103)	OG 3916
AG GN 8/1981 (Regs 1, 4)	OG 4368
AG GN 41/1982 (definitions, Chpt XIA-XIB)	OG 4609
AG GN 23/1983 (Chpt 11)	OG 4741
AG GN 49/1983 (Reg 115)	OG 4752
AG GN 61/1983 (Regs 1, 4-7)	OG 4757
AG GN 72/1984 (Reg 4)	OG 4901
AG GN 36/1985 (Reg 122)	OG 5019
GN 3/1985 (Reg 31)	OG 5064
GN 101/1985 (Reg 25A)	OG 5125
GN 121/1985 (Reg 4)	OG 5134
GN 122/1986 (Reg 125)	OG 5219
GN 242/1986 (definitions, Regs 28, 36)	OG 5297
GN 81/1987 (Reg 27)	OG 5365
GN 89/1988 (definitions, Regs 60, 101, 104, 106-111, 114-115, 117-118,	
125, 147-148, Chpt XIIA)	OG 5547
AG GN 37/1989 (Reg 128A)	OG 5733
AG GN 44/1989 (Reg 118K, Schedule C)	OG 5751
GN 152/1993 (deletes Reg 128B)	GG 765
GN 304/1996 (withdrawn by GN 83/1997)	<u>GG 1446</u>
GN 83/1997 (Regs 147, 148, Chapter XVII B on Conservancies	
and Wildlife Councils; withdraws and then replicates GN 304/1996)	<u>GG 1554</u>
GN 119/1997 (definitions, Regs 107, 108, 108A, 108B, 110A, 111, 114,	
115(1), 118)	<u>GG 1580</u>
GN 59/2009 (Regs 101, 115, 118A, 118C, 122, 128B and Schedule D)	<u>GG 4236</u>
GN 9/2010 (definitions, Regs 114A-114D, Schedules)	<u>GG 4416</u>
GN 9/2010 is amended by GN 19/2016	<u>GG 5936</u>

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. All of the changes affect Schedule G – Record Sheet. As a quick method of verification, the *corrected* version of this form contains the heading "MEASUREMENTS AND PHOTOGRAPHS" above the line drawing of the predator; the *incorrect* version of this form contains the heading "MEASUREMENTS

parks), GN 7/1969 (OG 2952, Chapter 11: Proclamation of Private Game and Nature Reserves i), GN 52/1971 (OG 3165, Chapter 13: Registration of Caged Bird Societies), GN 53/1971 (OG 3165, amendments to the regulations in GN 186/1968) and GN 39/1974 (OG 3379, amendments to the regulations in GN 186/1968).

The regulations in GN 51/1968 (<u>OG 2869</u>) were also amended by the following, which were not explicitly repealed but would have no independent relevance: GN 126/1969 (<u>OG 3029</u>), GN 9/1970 (<u>OG 3047</u>), GN 22/1971 (<u>OG 3143</u>), GN 62/1971 (<u>OG 3178</u>), GN 141/1971 (<u>OG 3208</u>), GN 191/1972 (<u>OG 3292</u>), GN 167/1973 (<u>OG 3352</u>), and GN 137/1975 (<u>OG 3468</u>).

The regulations in GN 186/1968 (OG 2943) were also amended by the following, which were not explicitly repealed but would have no independent relevance: GN 71/1970 (OG 3084), GN 62/1971 (OG 3178), GN 21/1972 (OG 3229), GN 168/1973 (OG 3352).

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& PHOTOGRAPHS" at this spot. There are several other differences between the forms in the two *Gazettes*.

GN 210/2012 (definitions and Reg 36F re: Dorob National Park)

GG 5015

The original regulations are erroneously cited in GN 210/2012 as being GN 240/1975 instead of GN 240/1976. GN 210/2012 also erroneously lists GN 101/1985 as being "AG GN 101/1985". GN 210/2012 also lists GN 304/1996 as an amendment to the regulations, but note that it was withdrawn by GN 83/1997 (which GN 210/2012 fails to list).

GN 85/2017 (Reg 9A: plastic bags in game parks/nature reserves)

<u>GG 6285</u>

GN 94/2018 (Regs 107-108A)

GG 6605

This Notice erroneously lists GN 86/2017 amongst the previous amendments to the regulations; the correct reference is GN 85/2017. It also erroneously lists GN 85/2012 as an amendment to the regulations contained in GN 240/1976; these regulations are in fact a separate set of regulations concerning large carnivores. They are listed separately below.

GN 25/2021 (Reg 1: entry fees in respect of different game parks)

GG 7460

This Notice erroneously lists GN 86/2017 amongst the previous amendments to the regulations; the correct reference is GN 85/2017.

The topics covered in the regulations include tariffs (game parks); regulations relating to game parks; swimming baths and use of boats in game parks; inland fisheries; keeping game and other wild animals in captivity; game dealers; game skins; protected plants and permits for them; regulations for cage bird societies; trophy hunting, manufacturing and dealers' licences and the export of trophies; hunting of huntable game, hunting at night and the export of game and game meat; sea bird guano; private game parks and nature reserves; succulent societies; game-proof fences, recognition and regulation of associations; and registers for coyote getters.

GN 85/2012 (GG 4911) contains additional regulations for large carnivores (lions, cheetahs, leopards, spotted hyenas, brown hyenas and wild dogs) in captivity. These regulations are repealed and replaced by regulations relating to the keeping of large carnivores in captivity, contained in GN 278/2022 (GG 7912).

The only surviving regulations made under the repealed Ordinance and which have been located are hunting regulations that applied only to specific hunting seasons and so are now clearly obsolete.¹³⁹

Regulations made under the various laws repealed by the Nature Conservation Ordinance 31 of 1967 that may survive pursuant to the chain of savings clauses quoted above have not yet been researched.

Application of law: The application of the Ordinance was affected by the Provision for Control of the Import, Export and Possession of and Trading in Controlled Game Products Proclamation, AG 42/1980 (OG 4238) – which has since been repealed by the Controlled Wildlife Products and Trade Act 9 of 2008 (GG 4190).

Notices: GN 203/1973 (OG 3356) (which is amended by GN 132/1996, GG 1320) declares certain animals as problem animals.

GN 246/1977 (OG 3638) contains prohibitions on the export of processed or tanned leopard & cheetah skins.

GN 60/2009 (GG 4236) placed a moratorium on permits for the importation of large predators and alien species of wild animals into Namibia. However, this blanket prohibition was found to be outside the authority of the Act in *Erindi Ranch (Pty) Ltd v Government of the Republic of Namibia & Others* 2012 (1) NR 185 (HC) and is thus invalid.

¹³⁹ Hunting regulations for the year 1968 are contained in GN 60/1968 (OG 2881). Hunting regulations for the year 1969 are contained in GN 59/1969 (OG 2994). Hunting regulations for the year 1971 are contained in GN 41/1971 (OG 3155). All of these sets of regulations, originally made in terms of the Nature Conservation Ordinance 31 of 1967, are now clearly obsolete.

GN 87/2019 (<u>GG 6892</u>) prohibits the importation into Namibia of certain large predators and alien species of wild animals, as set out in the Schedule to the notice.

GN 357/2024 (<u>GG 8507</u>) prohibits the export of live white rhinoceros (*Ceratotherium simum simum*) outside its natural distribution range for breeding purposes except under certain conditions.

Other Government Notices issued in terms of the Ordinance deal with specific private game parks, conservancies, hunting seasons, specific declarations of problem animals, nature conservators and honorary nature conservators, registration of associations or boundaries of public game parks and nature reserves. These notices have not been recorded here.

Appointments: Appointments to the Nature Conservation Board are announced in GN 192/2020 (GG 7309). (This is a retroactive announcement of appointments to the Board for a period of three years from 15 October 2018.)

Cases:

S v Ngombe 1990 NR 165 (HC)

S v Machinga 1990 NR 157 (HC) (Controlled Game Products Proclamation 42 of 1980)

Skeleton Coast Safaris v Namibia Tender Board & Others 1993 NR 288 (HC) (section 17(1))

S v Makwele 1994 NR 53 (HC) (sections 20(1) and 30(1)(a))

S v Koortzen 1994 NR 356 (HC) (sections 27(1), 38(1)(a) and 50(1))

S v Kau & Others 1995 NR 1 (SC) (sections 26(1) and 85(2))

S v Vorster 1996 NR 177 (HC) (sections 30(1)(a), 27(1) and 89)

S v Seibeb & Another; S v Eixab 1997 NR 254 (HC) (sections 27(1), 30(1)(a), 40(1)(a))

S v Maritz 2004 NR 22 (HC) (sections 30(1) and 31(1); mens rea in the form of culpa applies to the offence of hunting huntable game under section 30(1))

Sv Aukemeb 2009 (1) NR 19 (HC) (formulation of charge under section 50A and appropriate sentencing) Van Rensburg & Another v Government of the Republic of Namibia 2009 (2) NR 431 (HC) (sections 26(5), 48(1) and 81(1))

- Uffindell t/a Aloe Hunting Safaris v Government of Namibia & Others 2009 (2) NR 670 (HC) (constitutionality of application of trophy hunting provisions in sections 28(1)(a), 36(1)(a) and 78(f) by private treaty rather than public auction, to applicants who were denied opportunity to participate in public auction, as a mechanism to redress their wrongful exclusion)
- Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment 2010 (1) NR 1 (SC) (delegation of powers under the Act after certain expressions in the principal Act were substituted by Act 5/1996, with specific reference to decisions on permit applications made under section 49(1) of the Act)
- S v Nel 2015 (4) NR 1057 (HC) (section 89(1)(d), in context of ruling on leave to appeal lower court's refusal to order forfeiture of certain items)
- S v Howoseb & Another 2021 (4) NR 1024 (HC) (section 30 as amended in 2017 to increase penalties; forfeiture under section 89(1)(d); seriousness of offence of illegal hunting)
- Anabeb Conservancy Committee v Muharuka & Others 2022 (2) NR 492 (HC) (general discussion of background to communal conservancies under section 24A; conservancy is a *universitas* with power and *locus standi* to apply for eviction of unlawful occupiers of conservancy)
- Salambala Conservancy v Mukata & Others 2022 (3) NR 769 (HC) (communal conservancy section 24A is a *universitas* with power and *locus standi* to apply for eviction of unlawful occupiers of conservancy)
- N/a'an Ku Sê Foundation v Minister of Environment, Forestry and Tourism & Others 2023 (1) NR 213 (HC) (portion of section 83(1) declared unconstitutional, and shortcomings of Ordinance and accompanying regulations highlighted, particularly with respect to application of definitions of "game" and "protected game" to birds and regulations 17-81 which appear "in a vacuum and without connection to the Ordinance"; to avoid absurdity, the Court finds that the Ordinance and regulations do not apply to the unique situation in the case before it, involving the keeping care and transport of certain birds by an animal sanctuary, while emphasising that "this is not a general construction"; at para 30: "In my view, the Ordinance is archaic, in need of reform, and

a blunt instrument. It simply is not designed to cater for the modern notion of animal sanctuaries and saving and caring for wild animals or birds that are under duress or endangered.")

Commentary:

- MO Hinz, Without chiefs there would be no game: Customary law and nature conservation, Windhoek: Out of Africa, 2003
- MO Hinz, "Traditional governance and communal conservancies", *Namibia Law Journal*, Volume 3, Issue 2, 2011
- Sidney L Harring & Willem Odendaal, "God stopped making land!": Land Rights, Conflict and Law in Namibia's Caprivi Region, Legal Assistance Centre, 2012, available here
- Prisca Anyolo, "Conservancies in Namibia: Tools for sustainable development" in MO Hinz, OC Ruppel & C Mapaure (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012
- Eugene Lizazi Libebe, "Namibia customary land rights and community conservancies: Towards a sustainable and integrated legal framework", *Namibia Law Journal*, Volume 10, Issue 1, 2018
- Manfred O Hinz, "Conservancies and communal land rights", *Namibia Law Journal*, Volume 10, Issue 1, 2018.

Atmospheric Pollution Prevention Ordinance 11 of 1976 🗐 🙀

Summary: This Ordinance (OG 3555) provides for the prevention of air pollution. It was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021, ¹⁴⁰ but was not included in the Repeal of Obsolete Laws Act 12 of 2022. The Health Act 21 of 1988 (OG 5651) made the Ordinance applicable to all of SWA.

Regulations: Regulations are authorised by several sections of the Act. No post-independence regulations have been promulgated.

Only one set of pre-independence regulations has been located: Regulations concerning the form of an application for a registration certificate or provisional registration certificate and the form of the registration certificate and provisional registration certificate are contained in GN 310/1976 (OG 3571).

Notices: The entire area of Namibia, with the exception of East Caprivi, is proclaimed as a controlled area for the purposes of section 4(1)(a) of the Ordinance in GN 309/1976 (OG 3571).

Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, as amended in South Africa to Namibian independence

Summary: This Act (originally published in <u>RSA GG 7427</u>) prohibits the discharge of oil from ship, tanker or off-shore installation and gives the state certain powers to prevent such pollution and to deal with the removal of oil in the event of an oil spill. It was brought into force in South West Africa on 7 June 1985 by *RSA Proc. 93/1985* (RSA GG 9774).

Repeals: The Act repeals the *Prevention and Combating of Pollution of the Sea by Oil Act 67 of 1971,* as amended.

Applicability to SWA: RSA Proc. 93/1985 (RSA GG 9774) makes the Act "and all amendments thereof" applicable to SWA from 7 June 1985.

¹⁴⁰ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 14-ff.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1989), dated 15 March 1978. However, section 3(1)(e) of the transfer proclamation excludes this Act from the operation of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

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

- Prevention and Combating of Pollution of the Sea by Oil Amendment Act 59 of 1985 (RSA) (RSA GG 9772), which was deemed to have come into force on 24 April 1985 (section 2 of Act 59 of 1985; applicable to SWA because it pre-dated the applicability of the Act to SWA)
- Prevention and Combating of Pollution of the Sea by Oil Amendment Act 63 of 1987 (RSA) (RSA GG 10936) (applicable to SWA because the administration of the Act was excluded from transfer to SWA).

After Namibian independence, Act 24/1991 (<u>GG 326</u>) amends sections 1, 7, 8, 9, 12, 19, 20, 21, 27 and 30; repeals section 26; and substitutes certain expressions to make the Act consistent with an independent Namibia and to abolish the Oil Pollution Prevention Fund.

The Namibian Ports Authority Act 2 of 1994 (GG 810) amends section 21 of the Act.

Act 5/2019 (GG 7075) amends sections 1, 21 and 30.

Savings: Regulations made under the *Prevention and Combating of Pollution of the Sea by Oil Act 67 of 1971* appear to survive in terms of section 31(2):

Any notice, approval, authorization or document given, granted or issued and any other thing done under any provision of any law repealed by this Act shall, unless inconsistent with the provisions of this Act, be deemed to have been given, granted, issued or done under this Act.

Regulations: Regulations are authorised by section 28 of the Act. No post-independence regulations have been promulgated. Pre-independence regulations made in terms of this Act are contained in RSA GN R.1276/1984, but they have not yet been processed for the database.

Regulations made under the repealed law that may survive pursuant to the savings clause quoted above have not yet been researched.

Game Products Trust Fund Act 7 of 1997 🗐 😜

Summary: This Act (originally published in <u>GG 1686</u>) establishes a Game Products Trust Fund to support the conservation and management of wildlife resources and rural development. It also establishes a Game Products Trust Fund Board. The Act was brought into force on 1 September 1998 by GN 196/1998 (<u>GG 1927</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 5, 6, 7 and 10. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Forest Act 12 of 2001 **[12]**

Summary: This Act (originally published in <u>GG 2667</u>) consolidates the laws relating to the use and management of forests and forest produce, provides for the control of forest fires and creates a Forestry Council. It was brought into force on 15 August 2002 by GN 138/2002 (<u>GG 2793</u>).

Repeals: The Act repeals the Preservation of Bees and Honey Proclamation 1 of 1923, the Preservation of Trees and Forests Ordinance 37 of 1952 and the *Forest Act 72 of 1968*.

Amendments: Act 13/2005 (<u>GG 3564</u>) extends the composition of the Forestry Council, making amendments to sections 1, 2 and 4.

Regulations: Forest Regulations issued under the Act are contained in GN 170/2015 (GG 5801). There is no savings clause for regulations issued under the laws repealed by the Act.

Notices: Areas declared as community forests under section 15(3) are published from time to time but have not been recorded here.

Cases: New Force Logistics CC v Anti-Corruption Commission 2018 (2) NR 375 (HC) (definition of "authorised officer"; section 43).

Commentary:

C Mapaure, "Trees at the Crossroads: Internal conflict of laws in the ownership of forests in the Kavango Region" in MO Hinz, OC Ruppel & C Mapaure (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012

Alex Benkenstein, Simeon Hengari & Werner Mbongo, *Community Forests in Namibia: Ensuring Sustainable Local-level Forest Management*, South African Institute of International Affairs, 2014, available here.

Environmental Investment Fund of Namibia Act 13 of 2001 🔄 🔄

Summary: This Act (originally published in <u>GG 2669</u>) establishes an Environmental Investment Fund of Namibia to be used to support sustainable environmental and natural resource management. It was brought into force retroactively in 2013, with effect from 1 May 2005 (GN 266/2013, <u>GG 5314</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 7, 9, 14 and 21 and deletes section 8. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 26 of the Act, but none have yet been promulgated.

Appointments: Members of the Board of the Environmental Investment Fund of Namibia are announced in GN 4/2021 (GG 7446).

Atomic Energy and Radiation Protection Act 5 of 2005 🕎 🙀

Summary: This Act (<u>GG 3429</u>) provides for protection of the environment of the people in current and future generations against harmful effects of radiation, by controlling radiation sources and nuclear

materials. It also establishes an Atomic Energy Board and a National Radiation Protection Authority. Section 44 of the Act, which deals with the administration of the Act, was brought into force on 16 May 2005 (GN 50/2005, GG 3429). The Act as a whole was brought into force with effect from 16 January 2012 by GN 220/2011 (GG 4835).

Administration: The administration of the Act is assigned to the Ministry of Health and Social Services by Proc. 19/2008 (GG 4066).

Regulations: Radiation Protection and Waste Disposal Regulations are contained in GN 221/2011 (GG 4835).

Non-ionising Radiation Regulations are contained in GN 126/2020 (GG 7228).

Appointments: Members of the Atomic Energy Board of Directors are announced in GN 210/2020 (GG 7309).

Related international agreements:

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986 Convention on Early Notification of a Nuclear Accident, 1986

Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980

Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005

†Statute of the International Atomic Energy Agency (IAEA), 1956.

Biosafety Act 7 of 2006 🕎 👨

Summary: This Act (<u>GG 3763</u>) regulates genetically modified organisms and specified products derived from genetically modified organisms, and establishes a Biosafety Council. It was brought into force with effect from 1 November 2016 by GN 232/2016 (<u>GG 6135</u>).

Regulations: Biosafety Regulations are contained in GN 210/2016 (<u>GG 6116</u>). These regulations were brought into force with effect from 1 November 2016 by GN 232/2016 (<u>GG 6135</u>).

Notices: Certain items are designated as genetically modified organism products (GMO products) in terms of section 1(2) of the Act in GN 259/2018 (GG 6729), which is repealed and replaced by GN 267/2022 (GG 7903).

Commentary: Elize Shakalela, "Subsistence Farmers Rights versus Genetically Modified Seeds: Focusing on Developing Countries", *UNAM Law Review*, Volume 3, Issue 1, 2016.

Environmental Management Act 7 of 2007 🕎 🙀

Summary: This Act (GG 3966) provides a framework for decision-making on matters affecting the environment, to promote sustainable management of the environment. It provides a process for environmental assessment and control and establishes a Sustainable Development Advisory Council and provides for the appointment of an Environmental Commissioner and environmental officers. The Act was brought into force on 6 February 2012 by GN 28/2012 (GG 4878).

Regulations: Environmental Impact Assessment Regulations are contained in GN 30/2012 (GG 4878).

Notices: A list of activities that may not be undertaken without an Environmental Clearance Certificate is contained in GN 29/2012 (GG 4878).

A notice listing organs of state which are exercising functions that may affect the environment, issued in terms of section 24(1) of the Act for the purpose of Part VI of the Act, is contained in GN 249/2016 (GG 6149).

Notices listing waste disposal sites are contained in GN 282/2018 (GG 6753) and in GN 73/2024 (GG 8357).

A declaration of waste deposal sites is contained in GN 324/2023 (GG 8223).

Appointments: Members of the Sustainable Development Advisory Council are announced in GN 310/2012 (GG 5109), GN 34/2016 (GG 5962) and GN 260/2023 (GG 8177).

Cases:

Namibian Marine Phosphate (Pty) Ltd v Minister of Environment and Tourism & Others 2019 (1) NR 90 (HC) (successful appeal against Minister's decision to set aside the decision of Environmental Commissioner to award an environmental clearance certificate; discussion of overarching statutory framework including appeal procedure in Environmental Impact Assessment Regulations; case finds that a concerned citizen has locus standi to appeal the decision of the Environmental Commissioner to the Minister; substantial compliance with reg 25(1) suffices where it achieves objects of the provision; the appeal at hand concerns a point of law pursuant to section 51(2)); however, Minister did not follow fair procedure by allowing one party to make written and oral submissions while limiting the other party to written submissions, so Minister's decision is set aside; appeal hearing may be recommenced de novo if Minister is so inclined)

Confederation of Namibian Fishing Associations & Others v Environmental Commissioner Teofilus Nghitila & Others 2021 (3) NR 817 (HC) (locus standi under Namibian Constitution on environmental issues; delay in instituting legal action considered in context of awaiting outcome of Environmental Impact Assessment; sections 27 and 57: draft report insufficient to satisfy requirement for an Environmental Impact Assessment Report; interpretation of "listed activity" under sections 27, 29 and GN 29/2012 (GG 4878); holder of mining licence not entitled to undertake a "listed activity" without an Environmental Clearance Certificate)

Ncumcara Community Forest Management Committee & Others v Environmental Commissioner & Others 2022 (3) NR 737 (HC) (discussion of sections 50 and 56(6); internal remedies under Act should be exhausted before approaching court for review, or else there should have been a request for a mandamus to compel the Minister to make a decision under the Act)

Auas Valley Residents Association & Others v Minister of Environment and Tourism & Others 2022 (3) NR 758 (SC) (environmental clearance certificate cannot sanction a development that violates an approved town planning scheme).

Commentary:

Ministry of Environment and Tourism, *Guide to the Environmental Management Act No 7 of 2007*, 2008 B Walmsley & K Tshipala, *Handbook on Environmental Assessment Legislation in the SADC Region*, Windhoek: Southern African Institute for Environmental Assessment, 2010.

Plant Quarantine Act 7 of 2008 🗐🙀

Summary: This Act (<u>GG 4149</u>) provides for the preventing, monitoring, controlling and eradication of plant pests and regulates the movement of plants and plant products. It also provides for the certification of the phytosanitary standards of plants and plant products exported from Namibia and affects compliance with the International Plant Protection Convention of 1951. It was brought into force on 1 July 2012 by GN 157/2012 (<u>GG 4975</u>).

Repeals: The Act repeals the Locust Suppression Proclamation 34 of 1923 (OG 121), the Agricultural Pests Ordinance 11 of 1927 and the *Agricultural Pests Act 3 of 1973* (RSA GG 3803) as amended. 141

Savings: Section 23(2) states that anything done under the repealed *Agricultural Pests Act 3 of 1973* "which could have been done under a corresponding provision of this Act is deemed to have been done under that provision". This would appear to include regulations. However, note that there is no savings clause for anything done under any of the *other* repealed laws.

As background to considering what may have survived, note that the *Agricultural Pests Act 3 of 1973* applied to SWA by virtue of the definition of "Republic" in section 1 to include "the territory of South West Africa", and by virtue of section 36 which stated, "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated **2 March 1978**.

Section 3(1)(g) of the transfer proclamation excluded the reference to the "Minister" in section 15 of the Act (which concerns the payment of compensation) from the operation of section 3(1) of the General Proclamation, meaning that in this section "Minister" continued to refer to the South African Minister of Agriculture.

Section 3(2) of the transfer proclamation excluded all references to the "Republic" in the Act from the operation of section 3(1)(c) of the General Proclamation, meaning that "Republic" retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(3) of the transfer proclamation excluded section 32 of the Act (which deals with appeals to the Minister) from the operation of section 4(1) of the General Proclamation, meaning that the Administrator-General was not authorised to delegate the powers transferred to him pursuant to this section of the Act.

The Agricultural Pests Act 3 of 1973 repealed the Orchards and Cultivated Plants Cleansing Act 26 of 1947 (SA GG 3829) and the Agricultural Pests Act 42 of 1957 (SA GG 5887) as amended - neither of which applied to SWA. Section 35(2) of the 1973 Act stated:

Any proclamation, regulation, notice, order, direction, authority, permit, certificate, permission or exemption issued, made, promulgated, given or granted or any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

However, since the repealed laws did not apply in SWA, it appears that none of the savings referred to would be relevant to SWA.

Regulations: In terms of the current Act, **Regulations relating to Issuing of Import Permits, Examination of Imported Plants, Diseases or Insects, and Lodging of Appeals** are contained in GN 158/2012 (GG 4975), as amended by GN 254/2020 (GG 7361) (which substitutes Annexure 2).

The following pre-independence regulations made under the *Agricultural Pests Act 3 of 1973* prior to the date of transfer appear to survive under the current Act:

Regulations relating to the Destroying of Locusts in AG GN 30/1989 (OG 5714).

Regulations relating to the Issuing of Importation Permits, the Examination of Imported Plants, Plant Diseases or Insects and the Lodging of Appeals are contained in GN 57/2007

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¹⁴¹ The Agricultural Pests Act 3 of 1973 was repealed in South Africa by the Agricultural Pests Act 36 of 1983, which was not made applicable to SWA.

(<u>GG 3812</u>). However, these regulations are not included in the database because, although they have not been repealed, they appear to be superseded by the similar 2012 regulations listed above.

Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017 🕶 🔄

Summary: This Act (<u>GG 6343</u>) regulates access to biological or genetic resources and associated traditional knowledge, and provides a mechanism for a fair and equitable benefit sharing in respect of these resources. It also establishes an Office of Biological and Genetic Resources and Associated Traditional Knowledge. It was brought into force on 1 November 2021 by GN 236/2021 (<u>GG 7673</u>).

Regulations: Regulations are authorised by section 23 of the Act and were issued (prior to the Act's coming into force¹⁴²) in GN 161/2021 (GG 7597). They appear to have come into effect at the same time as the Act.

Related international agreements:

Convention on Biological Diversity (Biodiversity Convention), 1992

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of
Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010
The Act refers to the "Nagoya Protocol".

COMMENTARY

Ministry of Environment and Tourism, Toolbox for the Establishment of Communal Area Conservancies, 1996

Andrew Corbett & Clement Daniels, Legislation and Policies Affecting Community-Based Natural Resources Management in Namibia, Social Science Division, University of Namibia, 1996, available here

J Glazewski, NK Kangueehi, M Figueira, "Legal approaches to protecting biodiversity in Namibia" in P Barnard (ed), *Biological diversity in Namibia: A country study*, Windhoek: Namibian National Biodiversity Task Force, 1998

Andrew Corbett & Brian TB Jones, *The legal aspects of Governance in Community-Based Natural Resources Management (CBNRM) in Namibia: DEA Research and Discussion Paper No 41*, Windhoek: Ministry of Environment and Tourism, 2000, available <a href="https://example.com/heres/he

Manfred O Hinz, Without Chiefs There Would Be No Game: Customary Law and Nature Conservation, Windhoek: Out of Africa Publishers, 2003

(b) to make, grant, or issue any... regulations...

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any ... regulations... made... under the power shall not, unless the contrary intention appears in the law or the contrary is necessary for bringing the law into operation, come into operation until the law comes into operation.

A similar issue is discussed in *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) at paras 63-69.

¹⁴² Note that it appears to be competent for the Ministry to publish regulations as preparation for bringing a law into force, but the regulations published in this way may *not* come into force before the relevant portion of the Act is brought into force. See section 12(3) of the Interpretation of Laws Proclamation 37 of 1920:

⁽³⁾ Where a law confers a power -

- Shirley Bethune, "Review of Legislation and Policies pertinent to Combating Desertification a case study from Namibia", 12 (2) *Review of European Community and International Environmental Law* 178 (2003)
- Shirley Bethune, Maria Amakali and Kevin Roberts, "Review of Namibian legislation and policies pertinent to environmental flow", *Physics and Chemistry of the Earth, Parts A/B/C*, Volume 30, Issues 11-16, pages 894-902, 2005
- MO Hinz & OC Ruppel (eds), *Biodiversity and the ancestors: Challenges to customary* and *environmental law, Case studies from Namibia*, Windhoek: Namibia Scientific Society, 2008 (reviewed by Thomas Falk in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available here)
- Legal Assistance Centre/Stanford Law School, *Striking a Better Balance; An Investigation of Mining Practices in Namibia's Protected Areas*, 2009, available here
- Hilma Shindondola-Mote, *Uranium mining in Namibia: The mystery behind 'low level radiation'*, Labour Resource and Research Institute, 2009, available here
- MO Hinz & OC Ruppel, "Biodiversity conservation under Namibian environmental law" in N Jürgens, U Schmiedel, & MT Hoffman (eds), *Biodiversity in Southern Africa, Volume 2: Patterns and processes at regional scale*, Göttingen & Windhoek: Klaus Hess Publishers, 2010
- MO Hinz & C Mapaure, "Traditional and modern use of biodiversity customary law and its potential to protect biodiversity" in N Jürgens, U Schmiedel, & MT Hoffman (eds), *Biodiversity in Southern Africa, Volume 2: Patterns and processes at regional scale,* Göttingen & Windhoek: Klaus Hess Publishers, 2010
- Special Issue on Climate Change, SADC Law Journal, Volume 2, Issue 1, 2012
- MO Hinz, OC Ruppel & C Mapaure (eds), Knowledge lives in the lake: Case studies in environmental and customary law from southern Africa, Windhoek: Namibia Scientific Society, 2012 (reviewed by Johannes DK Kariseb in UNAM Law Review, Volume 1, Issue 2, 2013)
- Special Issue on Climate Change, *South African Journal on Human Rights*, Volume 29, Issue 1, 2013 Kazhila C Chinsembu et al, eds, *Indigenous Knowledge of Namibia*, Windhoek: University of Namibia Press, 2015
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 3 discusses the "precautionary principle" relating to environmental impact; "All public and private entities are required to observe precaution when it comes to any conduct, which may be detrimental to the ecological processes and biological diversity of Namibia and utilization of living natural resources" (para 3.1.14))
- Oliver C Ruppel & Katharina Ruppel-Schlichting, "Namibia's Constitution in the context of environmental protection and combatting climate change" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017
- Christian Harris, "Indigenous Peoples Right to Land: Revisiting the envisaged Epupa/Baynes Hydroelectric Dam in Namibia's Kunene Region", *Namibia Law Journal*, Volume 10, Issue 1, 2018
- Jordan Lesser, "The Future of Conservation in Namibia: Making the Case for an Environmental Court and Legislative Reforms to Improve Enforcement of Wildlife Crimes", 32 *Tulane Environmental Law Journal* 49 (2018), available here
- Oliver C Ruppel & Katharina Ruppel-Schlichting (eds), Environmental Law and Policy in Namibia; Towards Making Africa the Tree of Life (Fully Revised Fourth Edition), Windhoek: Hanns Seidel Foundation, 2022 (previous editions reviewed by Cord Luedemann in Namibia Law Journal, Volume 4, Issue 2, 2012, available here, and by Johannes D K Kariseb in UNAM Law Review, Volume 2, Issue 1, 2014)

See also www.the-eis.com and www.conservationnamibia.com.

INTERNATIONAL LAW

Global:

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), 1989

Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1995

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 Convention on Biological Diversity (Biodiversity Convention), 1992

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

Amendment to Article XI of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Bonn, 1979

Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997 Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), 1971

Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982

Amendments to Article 6 and 7 of the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1987

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978

Annex I – Regulations for the Prevention of Pollution by Oil

Annex II – Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk

Annex III – Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

Annex IV – Regulations for the Prevention of Pollution by Sewage from Ships

Annex V – Prevention of Pollution by Garbage from Ships

Annex VI – Regulations for the Prevention of Air Pollution from Ships

International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS), 2001
International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990
International Convention relating to Intervention on the High Seas in Cases of Oil Pollution
Casualties (INTERVENTION), 1969

Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil (INTERVENTION PROT), 1973

International Plant Protection Convention, 1951, as revised in 1979 and 1997

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

Minamata Convention on Mercury, 2013

Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CCL PROT) 1992

Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (1992 Fund Convention)

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), 1998

Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983

Protocol of the Reconvened Plenipotentiary Meeting on the Establishment of the International Centre for Genetic Engineering and Biotechnology, 1984

Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007

Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), 2001

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994

United Nations Framework Convention on Climate Change (UNFCCC), 1992

Kyoto Protocol to the UN Framework Convention on Climate Change, 1997

*Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 2012

Paris Agreement, 2015

Vienna Convention for the Protection of the Ozone Layer, 1985

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Second Meeting of the Parties at London on 29 June 1990 (London Amendment)
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Fourth Meeting of the Parties at Copenhagen on 25 November 1992 (Copenhagen Amendment)
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Ninth Meeting of the Parties at Montreal on 17 September 1997 (Montreal Amendment)
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Eleventh Meeting of the Parties at Beijing on 3 December 1999 (Beijing Amendment)
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Twenty-Eighth Meeting of the Parties at Kigali from 10 to 15 October 2016 (Kigali Amendment)

Regional:

***African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003 Agreement for the Establishment of the Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes Agreement, 2004

Agreement for the Establishment of the Southern African Centre for Ivory Marketing (SACIM), 1991 Agreement between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the establishment of a permanent Okavango river basin water commission (OKACOM), 1994

Agreement between the Governments of the Republic of Angola, the Republic of Botswana and the Republic of Namibia on the Organizational Structure of OKACOM, 2007

Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Sengu River Commission (ORASECOM), 2000

Agreement on the Establishment of the Zambezi Watercourse Commission (ZAMCOM), 2004

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

**Revised Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Senqu River Commission (ORASECOM), 2018

*SADC Protocol on Environmental Management for Sustainable Development, 2014 SADC Protocol on Forestry, 2002

SADC Protocol on Shared Watercourse Systems, 1995

Note: This Protocol has been repealed and replaced by the SADC Revised Protocol on Shared Watercourses, 2000, for the SADC member states that are parties to the Revised Protocol. The 1995 Protocol remains in force between Namibia and SADC states that are party to it but not to the Revised Protocol.

SADC Revised Protocol on Shared Watercourses, 2000

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

**Treaty of the Southern African Science Centre for Climate Change and Adaptive Land Management (SASSCAL), 2019

Treaty on the Establishment of the Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA), 2011

See also AGRICULTURE.

See also ANIMALS.

See also Namibia Wildlife Resorts Company Act 3 of 1998 (TOURISM).

See also FUEL AND ENERGY.

See also HEALTH.

See also Labour Act 11 of 2007 (section 40: hazards extending beyond workplace) (LABOUR).

See also LAND AND HOUSING.

See also MARINE AND FRESHWATER RESOURCES.

See also MINING AND MINERALS.

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

See also **SEA AND SEASHORE**.

See also Foreign Investments Act 27 of 1990 and Controlled Wildlife Products and Trade Act 9 of 2008 (TRADE AND INDUSTRY).

See also WATER.

EVIDENCE

Civil Proceedings Evidence Act 25 of 1965, as amended in South Africa to November 1979

Summary: This Act (originally published in <u>RSA GG 1066</u>) regulates the law of evidence in civil proceedings.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 43 states "This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Transfer of Powers and Duties of the State President Act 97 of 1986* and the *Law of Evidence Amendment Act 45 of 1988* – neither of which was made expressly applicable to SWA.

Section 3(1)(n) of the transfer proclamation excluded all references to the "Republic" in the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning given to it in the definition section of the Act (South Africa and SWA).

Amendments: An item in the Schedule to the Act is repealed by the *Criminal Procedure Act 51 of 1977* (RSA GG 5532).

Regulations: The Act makes no provision for regulations.

Cases:

Cultura 2000 v Government of the Republic of Namibia 1992 NR 110 (HC); S v Taapopi & Another 2001 NR 101 (HC) (sections 34-35)

Seagull's Cry CC v Council of the Municipality of Swakopmund & Others 2009 (2) NR 769 (HC) (section 5 discussed at 782G-H)

Husselmann & Others v Saem & Others 2017 (3) NR 761 (HC) (section 18(1))

Damaseb v Minister of Land Reform & Others 2019 (3) NR 775 (HC) (section 36); overturned on appeal on other grounds in Shalukeni & Others v Damaseb & Others 2021 (1) NR 50 (SC).

General Law Amendment Act 101 of 1969, section 29, as amended in South Africa by General Law Amendment Act 102 of 1972 [2]

Summary: Section 29 of this Act (originally published in <u>RSA GG 2464</u>) authorises the withholding of evidence from any court of law if the Administrator-General (or the responsible Minister) is of the opinion that disclosure of the information could be detrimental to state security.

Applicability to SWA: Section 29(3) states "The provisions of this section and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer to SWA: It is not clear how this Act was administered, and thus we have not ascertained what, if any, transfer proclamation applied. However, the case of *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A) at 784C-785E considered who is empowered to act in respect of South West Africa for purposes of this provision:

This then brings me to South West Africa. In the section South West Africa is grouped together with the provincial administrations, and this is hardly surprising. Whatever the constitutional differences may have been between the provinces and South West Africa, they had, at all relevant times, one feature in common which is of decisive importance for present purposes. This feature is that their administrations were divided ones. Certain governmental functions were performed in the provinces and South West Africa by the central Government in the course of governing the country as a whole (including South West Africa) whereas others were performed by the local administrations (see eg the South West Africa Constitution Act 39 of 1968 and, in particular, ss 22 and 38). There was therefore a need for the head of the administration of South West Africa (at that stage the Administrator) to be granted the same rights in respect of his administration as were granted to the heads of the provincial administrations and the Government departments. The fact that, in s 29, South West Africa is included without comment with the provincial administrations suggests that this indeed was what was intended. However, Mr Gauntlett points out that there is a difference in the wording. Whereas the Act speaks of 'a provincial administration' it refers to the 'territory of South-West Africa'. A territory, he contends, cannot be responsible for governmental actions, and therefore the section must mean something different in reference to South West Africa from what it does in reference to the provincial administrations.

Now, of course, a possible explanation for this wording is simply that the draftsman did not repeat the word 'administration' with respect to South West Africa: in other words, that he meant 'in the case of a provincial administration or the administration of the territory of South West Africa'. Elliptical expressions of this sort are, as we know, quite common. This possibility gains added force if one considers possible alternative meanings of the reference to South West Africa. In his written heads of argument Mr Gauntlett contended that

'(w)here as a matter of territorial jurisdiction South West Africa is "concerned", its Administrator is the relevant authority'.

This contention raises the question: when is South West Africa concerned as a matter of territorial jurisdiction? It can hardly be suggested, and was not in fact suggested, that this happens whenever the performance of a governmental action affects the territory or its inhabitants, since this would cover a large part of the central Government's activities. At one stage Mr Gauntlett suggested that the test was whether the proceedings in which privilege was claimed were conducted in South West Africa. This would, however, mean that governmental actions of the administration of South West Africa could not be protected from disclosure before a tribunal in any other part of the country, and Mr Gauntlett later accepted that the place where the privilege is claimed, could not be decisive. In the result the appellant's argument did not attribute any clear meaning to the expression 'in the case of ... the territory of South West Africa', and a great deal of extensive interpretation would be required to ascribe a sensible meaning to it which would afford the Administrator of South West Africa greater powers than his counterparts in the provinces. I conclude, therefore, that there was no intention to distinguish between the various provinces on the one hand, and South West Africa on the other, and that the power of an Administrator of any of these territories to invoke the privilege was limited to matters falling under the authority of his administration. As I have indicated, this result is achieved by simply reading the word 'administration' as also being implied in respect of South West Africa. In the present matter the affidavit signed by the Minister of Defence clearly related to a matter falling under the Department of Defence and not under the administration of South West Africa. The Minister of Defence was, accordingly, the proper person to make this affidavit.

This case holds that the statute empowered the Administrator-General *and* any other Minister to act in terms of section 29 with respect to a power falling under their administration – thus implying that there was no single authority which 'administered' the provision in question. In any event, the issue of transfer is not relevant to the content of section 29 since there were no amendments to that section in South Africa between the earliest possible date of transfer and the repeal of the section in South Africa.

Section 29 was repealed in South Africa by the *Internal Security Act 74 of 1982* (RSA GG 8232), which was not applicable to SWA. It was held in *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A) at 780H-781G that this repeal was not effective in respect of SWA:

I now turn to the merits of the appeal. It will be recalled that the affidavit by the Minister of Defence which was filed in the interlocutory application purported to be based on both s 66 of the Internal Security Act of 1982 and s 29 of the General Law Amendment Act of 1969. As appears from the judgment of the Court a quo, the appellant contended in that Court that neither of these Acts applied in South West Africa. The Court held that the Internal Security Act did not apply in South West Africa but that s 29 of the General Law Amendment Act was in force there, although the latter section had, insofar as the Republic of South Africa was concerned, been repealed by s 73 of the Internal Security Act [...]

On appeal before us Mr Gauntlett, for the appellant, accepted the Court's finding that s 29 of the General Law Amendment Act applied in South West Africa, but that the Internal Security Act did not. I agree with this. Section 29(3) of the General Law Amendment Act specifically provides that the provisions of s 29 and any amendment thereof apply also in the territory of South West Africa. No corresponding provision is found in the Internal Security Act. And it is noteworthy that s 66(1) and (2) of the Internal Security Act corresponds almost word for word with s 29(1) and (2) of the General Law Amendment Act (as substituted by s 25 of the General Law Amendment Act 102 of 1972) save that the latter contains a reference to South West Africa whereas the former does not. [...] [I]ts absence from s 66 of the Internal Security Act is a further indication that the latter Act was not intended to apply in South West Africa.

Amendments: The *General Law Amendment Act 102 of 1972* (<u>RSA GG 3610</u>) substitutes subsections (1) and (2) of section 29.

Regulations: There is no provision in this section for regulations.

Cases: Director-General of the Namibian Central Intelligence Service & Another v Haufiku & Others 2019 (2) NR 556 (SC).

Second General Law Amendment Act 94 of 1974, section 2 🕎 🙀

Summary: Section 2 of this Act (originally published in <u>RSA GG 4510</u>) requires the permission of the Minister of Trade and Industry for the furnishing of information on business carried on in or outside Namibia in compliance with any order, direction or letter of request emanating from outside Namibia in connection with any civil proceedings.

Applicability to SWA: The text of the Act itself makes no reference to South West Africa. No legal authority for the application of the Act to South West Africa has been located, but section 2 of the Act was 'substituted' in post-independence Namibia (effective 15 September 2001), which would seem to make it part of Namibian law now even if it was not previously.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 (<u>GG 2327</u>) substitutes section 2.

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

Regulations: There is no provision in this section for regulations.

Foreign Courts Evidence Act 2 of 1995 🕎 📻

Summary: This Act (originally published in <u>GG 1033</u>) provides for the obtaining of evidence of persons in Namibia by courts outside Namibia.

Repeals: The Act repeals the South African Foreign Counts Evidence Act 80 of 1962.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 (<u>GG 2327</u>), brought into force on 15 September 2001 (GN 185/2001, <u>GG 2614</u>), amends sections 2, 4 and 7.

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

Note that section 10 of the Act gives the Minister of Justice the power to amend the Schedules to the Act by notice in the *Gazette*.

Savings: Section 12 of the Act provides a savings clause:

Anything done under the Foreign Court Evidence Act, 1962 (Act 80 of 1962), and which could have been done under a provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

Regulations: Neither the current Act nor the repealed Act make provision for regulations.

Rules: Section 11 provides that any power to make rules under the High Court Act 16 of 1990 shall be deemed to include the power to make rules for giving effect to the provisions of section 2 of this Ac, while any power to make rules under the Magistrates' Courts Act 32 of 1944 shall be deemed to include the power to make rules for giving effect to the provisions of section 3 of this Act. Those provisions deal with examination of witnesses in Namibia in connection with civil proceedings pending in a foreign court, by the High Court and a magistrate's court respectively.

Cases: The following case concerns the predecessor to this Act, the *Foreign Courts Evidence Act 80 of* 1962 –

S v Lofty-Eaton & Others (2) 1993 NR 405 (HC).

Electronic Transactions Act 4 of 2019 🗐 📻

Summary: This Act ($\underline{\text{GG 7068}}$) provides for the legal recognition of electronic transactions and the admissibility of electronic evidence, as well as consumer protection in electronic commerce. It repeals the Computer Evidence Act 32 of 1985 ($\underline{\text{OG 5152}}$). It was brought into force on 16 March 2020 – with the exceptions of section 20, Chapter 4 and Chapter 5 – by GN 75/2020 ($\underline{\text{GG 7142}}$).

Regulations: Regulations are authorised by section 58. There is no savings clause for regulations made under the repealed Act, which in any event contained no authority for regulations.

Proposed regulations: Proposed regulations regarding accreditation of security products and services and providers of such products and services are published in General Notice 836/2024 (<u>GG 8540</u>).

Proposed Electronic Signature Regulations are published in General Notice 837/2024 (GG 8541).

Appointments: Members of the Electronic Information Systems Management Advisory Council are announced in GN 371/2024 (GG 8520).

Cases: S v Kennedy 2024 (1) NR 99 (HC) (admissibility and authenticity of electronic messages to be assessed by trial court and not in bail application, citing section 25(4)).

The following cases were decided under the repealed Act:

S v Ningisa & Others 2013 (2) HC 504 (SC) (Act applicable only to civil proceedings, as it explicitly states, and not relevant to criminal proceedings)

Rally for Democracy and Progress & Others v Electoral Commission & Others 2013 (2) NR 390 (HC).

Commentary: PH Masake & P Balhao, "A Need to Reform the Computer Evidence Act 32 of 1985: A Letter to the Law Reform and Development Commission of Namibia", *UNAM Law Review*, Volume 1, Issue 2, 2013.

Related international agreements:

*African Union Convention on Cyber Security and Personal Data Protection, 2014

COMMENTARY

Alet Greeff, "Does Namibia's Constitution provide an enforceable and pursuable environmental right?", *Namibia Law Journal*, Volume 4, Issue 1, 2012, available here
Sisa Namandje, *The Law on Hearsay Evidence in Namibia*, PPC Press, 2016.

See also Combating of Rape Act 8 of 2000 (evidence in rape cases) and Witness Protection Act 11 of 2017 (CRIMINAL LAW AND PROCEDURE).

EXPLOSIVES

Explosives Act 26 of 1956, as amended in South Africa to April 1978 🕎 🙀

Summary: This Act (originally published in <u>SA GG 5676</u>) regulates the manufacture, storage, sale, transport, import, export, use and possession of a wide range of explosives.

Repeals: The Act repeals the *Explosives Act 8 of 1911*, as amended.

Applicability to SWA: Section 31A, which was inserted by *Act 74 of 1972*, states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. At that time, the Act was administered in respect of SWA by the Minister of Economic Affairs.

In the original Act, "Minister" was defined as the Minister of Economic Affairs (section 1). In South Africa, RSA GN R.661/1978 (RSA GG 5960), published on 31 March 1978, assigned the administration of the Act to the Minister of Police with effect from 1 April 1978. However, this Government Notice was issued in terms of the South African *Interpretation Act 33 of 1957*, which never applied to SWA. In South Africa, the *Explosives Amendment Act 5 of 1981* substituted the Minister of Police for the Minister of Economic Affairs, but this amendment was made after the date of transfer and so did not apply to SWA. This is underscored by the fact that the Executive Powers (Commerce) Transfer Proclamation makes explicit reference to the transfer of administration of the Explosives Act.

Section 3(1)(c) of the transfer proclamation excluded the reference to the "Republic" in the Act from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA (Act 5/1981, Act 18/1983 and Act 97/1986).

In South Africa, the *Application of Certain Laws in Namibia Abolition Act* 56 of 1991 removed the references to SWA from the Act as it applies in South Africa.

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

- Explosives Amendment Act 79 of 1962 (RSA GG 280)
- Explosives Amendment Act 21 of 1963 (RSA GG 456)
- Mines and Works and Explosives Amendment Act 46 of 1964 (RSA GG 807)
- Explosives Amendment Act 20 of 1965 (RSA GG 1066)
- Explosives Amendment Act 12 of 1967 (RSA GG 1665)
- Explosives Amendment Act 74 of 1972 (RSA GG 3573)
- Explosives Amendment Act 35 of 1975 (RSA GG 4698)
- Explosives Amendment Act 101 of 1977 (RSA GG 5638).

Act 16/1986 (OG 5238) amends the Act substantially.

The Police Act 19 of 1990 (GG 113) amends the definition of "Minister" in section 1.

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

Savings: Enactments issued under the repealed *Explosives Act 8 of 1911* survive pursuant to section 32(2):

Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted and any other action taken under any provision of a law repealed by sub-section (1), shall be deemed to have been issued, made, given, granted or taken under the corresponding provision of this Act.

Regulations: Regulations issued under the current Act are contained in RSA Government Notice R.1604/1972 (RSA GG 3648), as corrected in respect of both English and Afrikaans texts by RSA GN R.474/1973 (RSA GG 3826) and as amended by –

RSA GN R.2371/1973 (RSA GG 4103)

RSA GN R.155/1977 (RSA GG 5395)

RSA GN R.2153/1977 (<u>RSA GG 5779</u>) (as corrected by RSA GN R.2497/1977 (<u>RSA GG 5825</u>) with respect to the Afrikaans text only)

RSA GN R.2135/1979 (RSA GG 6665)

RSA GN R.2292/1979 (RSA GG 6706)

AG GN 49/1989 (OG 5761)

GN 51/2002 (GG 2717).¹⁴³

No other surviving regulations issued under the current Act or the repealed Act have been located.

Notices: Substances declared to be explosives are listed in Proc. 136/1961 (<u>SA GG 6694</u>) (Zinc-dust) and Proc. 221/1977 (<u>RSA GG 5739</u>) (which repeals Proc. 30/1956 (<u>SA GG 5630</u>)).

Exemptions are contained in RSA GN 1037/1962 (<u>RSA GG 280</u>), which exempts the defence force of the United Kingdom from the provisions of the Act relating to the importation, storage, use or transport of explosives.

RSA GN R.1603/1972 (RSA GG 3648) lists **authorised explosives**, repealing RSA GN R.1151/1966. (RSA GN R.2372/1973 (RSA GG 4103)) amends RSA GN R.1603/1972, but this amendment affects only the Afrikaans text.)

Cases: S v Haimo 1993 NR 301 (HC).

Commentary: Legal Assistance Centre, "Use of force by law enforcement officials in Namibia", 2019, available here.

INTERNATIONAL LAW

*Comprehensive Nuclear-Test-Ban Treaty, 1996

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty), 1997

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 International Convention for the Suppression of Terrorist Bombings, 1997

EXPLOSIVES-2

 $^{^{143}}$ These 1972 regulations repeal the regulations contained in RSA GN R.2131/1962 (RSA GG 409), as amended by RSA GN R.848/1965, RSA GN R.568/1966, RSA GN R.753/1966 and RSA GN R.69/1968 (as corrected by RSA GN R.230/1968).

The 1962 regulations replace the regulations published in SA GN 876/1939 (SA GG 2655), as amended by SA GN 1141/1939, SA GN 1848/1940, SA GN 1900/1940, SA GN 1606/1941 and RSA GN 1273/1961.

The 1939 regulations repeal the regulations published in SA GN 1923/1911, as amended by SA GN 1425/1912, SA GN 1190/1913, SA GN 1933/1913, SA GN 189/1920, SA GN 1624/1920, SA GN 381/1922, SA GN 49/1924, SA GN 151/1925, SA GN 1468/1925, SA GN 1805/1925, SA GN 1631/1927, SA GN 1697/1927, SA GN 1881/1927, SA GN 1753/1928 and SA GN 1114/1931.

See also ARMS AND AMMUNITION.

See also *Riotous Assemblies Act 17 of 1956* (power to regulate transport of explosives) (**CRIMINAL LAW AND PROCEDURE**).

FINANCE AND DEVELOPMENT

HISTORICAL NOTE ON THE STATE REVENUE FUND

The Exchequer and Audit Proclamation 85 of 1979 (originally published in RSA GG 6426, reprinted in OG 3949) was issued by the State President of South Africa in terms of the law-making powers afforded by section 38 of the South-West Africa Constitution Act 39 of 1968. ¹⁴⁴ Part III of this Proclamation was brought into force on 1 April 1980 by South African GN 150/1980 (RSA GG 6822), which had the effect of establishing the Central Revenue Fund in the Treasury of South West Africa.

The Exchequer and Audit Proclamation 85 of 1979 made the Exchequer and Audit Act 66 of 1975 (originally published in RSA GG 4794) applicable to SWA with some amendments. It essentially functioned as a transfer proclamation for the Exchequer and Audit Act 66 of 1975, by deleting the references to South African government officials and substituting SWA officials and by stating as follows in section 32:

The provisions of sections 3(4), 4 and 4bis of the Executive Powers Transfer (General Provisions) Proclamation, 1977, of the Administrator-General, shall apply *mutatis mutandis* in relation to the Act as if this Proclamation were a transfer proclamation referred to in that Proclamation: Provided that in such application any reference in the said provisions to section 3(1) of that Proclamation shall be deemed to be deleted.

The Exchequer and Audit Act 66 of 1975 was repealed in its entirety by the **State Finance Act 1 of 1982** (OG 4610), 145 which defined "Central Revenue Fund" as "the Central Revenue Fund established by section 3 of the Exchequer and Audit Proclamation, 1979 (Proclamation 85 of 1979)".

The Central Revenue Fund was transformed into the State Revenue Fund by Article 125(1) of the Namibian Constitution:

The Central Revenue Fund of the mandated territory of South West Africa instituted in terms of Section 3 of the Exchequer and Audit Proclamation, 1979 (Proclamation 85 of 1979) and Section 31(1) of Proclamation R.101 of 1985 shall continue as the State Revenue Fund of the Republic of Namibia.

The State Finance Act 1 of 1982 was replaced by the post-independence **State Finance Act 31 of 1991** (see the Namlex entry below), which defines "State Revenue Fund" as the State Revenue Fund referred to in Article 125(1) of the Namibian Constitution.

Sections 1, 3 and 4 of the *Exchequer and Audit Proclamation 85 of 1979* were amended by sections 34-36 of the SWA Exchequer and Audit Amendment Proclamation 35 of 1979 (OG 4042) 146. Sections 1-

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¹⁴⁴ The South-West Africa Constitution Act 39 of 1968 was repealed by Article 147 of the Namibian Constitution. ¹⁴⁵ The Repeal of Obsolete Laws Act 21 of 2018 purports to repeal the provisions in the Schedule of the *Exchequer* and Audit Act 66 of 1975 that amends the *Development of Self-Government for Native Nations in South-West* Africa Act 54 of 1968 - although the Exchequer and Audit Act 66 of 1975 had already been repealed in its entirely by the State Finance Act 1 of 1982.

The State Finance Act 1 of 1982 also repealed the whole of the Exchequer and Audit Amendment Act 5 of 1981.

¹⁴⁶ The State Finance Act 1 of 1982 (OG 4610) repealed sections 1-15, 25 and 27 of the SWA Exchequer and Audit Amendment Proclamation 35 of 1979 (OG 4042), most of which constituted amendments to the repealed *Exchequer and Audit Act 66 of 1975* – thus leaving in place only the following:

[•] most of the provisions that amend the Post Office Act 44 of 1958 (aside from the amendments to that Act contained in sections 25 and 27); the Post Office Act 44 of 1958 has since been repealed by the Posts and Telecommunications Companies Establishment Act 17 of 1992

[•] the amendments to the Executive Powers (Posts and Telecommunications) Transfer Proclamation 12 of, 1978 contained in sections 32-33

[•] the amendments to sections 1, 3 and 4 of the RSA Exchequer and Audit Proclamation 85 of 1979 in sections 34-36

[•] some interpretative and transitional provisions in sections 37-38 and the short title in section 39.

2, 4-34 and 40 were repealed by the SWA State Finance Act 1 of 1982 (OG 4610), which also amended section 3. Thus, the only substantive provision of the *Exchequer and Audit Proclamation 85 of 1979* left in force in SWA at that stage was amended section 3 on the Central Revenue Fund. along with the short title in section 41. ¹⁴⁷ The remainder of the *Exchequer and Audit Proclamation 85 of 1979* was repealed by the *South West Africa Legislative and Executive Authority Establishment Proclamation, RSA Proc. R.101 of 1985* (RSA GG 9790), which was repealed in turn by the Repeal of the Laws on the National Assembly, the Cabinet and the Constitutional Council Proclamation, AG 16 of 1989 (OG 5730).

State Finance Act 31 of 1991 🕎 🙀

Summary: This Act (originally published in <u>GG 333</u>) regulates the treatment of state moneys, stamps, securities, forms having a face value or a potential value, equipment, stores and other movable goods owned or leased by the state. It also covers the defrayal of expenditure on services of the state; payments made from bank accounts maintained in respect of state monies; the recovery of losses or damages caused to the state; the powers and duties of the Treasury and the Auditor-General; the raising and repayment of loans by the state; the determination of interest rates in respect of certain debts due to the state; and the furnishing of guarantees, indemnities and securities by the government in respect of certain statutory institutions, banks, companies or juristic persons.

Repeals: The Act repeals the State Finance Act 1 of 1982 (OG 4610), as amended.

Amendments: The Act is amended by the Public Service Act 13 of 1995 (<u>GG 1121</u>), brought into force on 1 November 1995 by GN 210/1995 (<u>GG 1185</u>), and by the State Finance Amendment Act 1 of 2022 (<u>GG 7766</u>).

Savings: Section 38(2) is a savings clause which states:

Anything done under a provision of a law repealed by subsection (1), and which could have been done under a corresponding provision of this Act, shall be deemed to have been done under the provision of this Act.

Regulations: Since this Act makes no provision for regulations, any regulations made under the repealed laws would not survive.

State of Emergency Covid-19: Finance Regulations suspending certain provisions of section 9(2) of this Act were issued in terms of the President's emergency powers under the Namibian Constitution in Proc. 14/2020 (GG 7182). These regulations stated in their entirety:

Despite the provisions of section 9(2) of the State Finance Act, 1991 (Act No. 31 of 1991), the Minister of Finance is empowered to authorise the withdrawal of an amount of money exceeding three percent of the total amount appropriated by the current Appropriation Act for the period from 9 April 2020 to 30

After independence, the Posts and Telecommunications Companies Establishment Act 17 of 1992 repealed sections 16-24, 26, 28-31, 37 and 38 of the SWA Exchequer and Audit Amendment Proclamation 35 of 1979, thus leaving in force only:

[•] the amendments to the Executive Powers (Posts and Telecommunications) Transfer Proclamation 12 of 1978 contained in sections 32-33

[•] the amendments to sections 1, 3 and 4 of the RSA Exchequer and Audit Proclamation 85 of 1979 in sections 34-36

[•] the short title in section 39.

The Repeal of Obsolete Laws Act 21 of 2018 repealed all the remaining portions of the SWA Exchequer and Audit Amendment Proclamation 35 of 1979.

¹⁴⁷ The repeals by Act 1 of 1982 also left in place sections 35-39 of the Proclamation, but these provisions expressly applied only to the *Exchequer and Audit Act 66 of 1975 as it applied in South Africa and NOT in SWA*. Thus, they had no application in SWA.)

June 2020 in order to defray expenditure on services of a special nature as contemplated in section 9(1)(b)(ii) of the said Act.

Directives: Administrative Directive 1/2006 relating to over-expenditure is contained in GN 56/2006 (GG 3611). It calls attention to sections 6, 9, 16 and 17 of the Act.

Cases:

S v Skivikua 1991 NR 101 (HC)

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) (sections 1(1), 6, 7, 17 and 21)

Babyface Civils CC Jv Hennimma Investments & Others v //Kharas Regional Council & Others 2018 (1) NR 277 (HC) (section 17; tender award); upheld on appeal in Babyface Civils CC Jv Hennimma Investments CC & Others v //Kharas Regional Council & Others 2020 (1) NR 1 (SC).

Commentary:

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 1, April 2015, available here (section 4.1 discusses alienation of State property under sections 18. 23 and 24)

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 2.2 discusses the provisions of the Act relating to motor vehicle accidents involving Government-owned motor vehicles (section 11 and related Treasury Instructions); section 2.3 discusses the provisions of the Act relating to recovery of losses or damages to the State as a result of fruitless expenditure (section 11)).

State Repudiation (Cultura 2000) Act 32 of 1991 🕎 🙀

Summary: This Act (<u>GG 334</u>) provides for the repudiation of certain actions taken under laws in force prior to independence, pursuant to Article 140(3) of the Constitution. It was brought into force on 12 March 1992 by Proc. 5/1992 (<u>GG 366</u>). Much of the Act was declared unconstitutional in 1992. The remainder was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021, ¹⁴⁸ but the Act was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Regulations: The Act makes no provision for regulations.

Notices: Proc. 5/1992 (GG 366) assigned the administration of the Act to the Minister of Finance.

Cases: Most of the Act was declared unconstitutional in *Cultura 2000 v Government of the Republic of Namibia* 1992 NR 110 (HC), 1993 NR 328 (SC). All that remains in force is section 2(1) (read with sections 1 and 7).

Development Bank of Namibia Act 8 of 2002 🗐 😜

Summary: This Act (originally published in <u>GG 2826</u>) establishes a Development Bank of Namibia to promote economic growth and social development through the financing of key development activities. It was brought into force on 15 May 2003, with the exception of sections 21 and 22 (which concern repeals), by GN 99/2003 (<u>GG 2978</u>).

Repeals: Section 21 of the Act, which repeals the Development Fund of South West Africa/Namibia Act 29 of 1987, was brought into force on 14 July 2005 by GN 76/2005 (GG 3459).

¹⁴⁸ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 77-ff.

Section 22, which repeals the Namibia Development Corporation Act 18 of 1993, was never brought into force and was subsequently repealed by the Namibia Industrial Development Agency Act 16 of 2016 (GG 6202), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 (GG 6767), and which repeals the Namibia Development Corporation Act 18 of 1993.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 9 and 13. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Namibia Industrial Development Agency Act 16 of 2016 (GG 6202), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 (GG 6767), repeals section 22 (which was never brought into force).

Regulations: Regulations are authorised by section 19 of the Act, but none have yet been promulgated. There is no savings clause for regulations issued under the repealed Act.

Application of law: The Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>) places certain duties on the Development Bank of Namibia.

Notices: GN 77/2005 (GG 3459) transfers the assets, liabilities, rights and obligations of the Development Fund of South West Africa/Namibia to the Development Bank of Namibia with effect from 14 July 2005.

Appointments: Appointments to the Board of the Development Bank of Namibia are announced in GN 177/2018 (GG 6680) and GN 224/2021 (GG 7660).

INTERNATIONAL LAW

African, Caribbean and Pacific (ACP) – European Union (EU) Partnership Agreement, Cotonou (Cotonou Agreement), 2000

Amendment to the Partnership Agreement, Luxembourg, 2005

Amendment to the Partnership Agreement, Ouagadougou, 2010

Agreement Establishing the African Development Bank, 1963

Agreement Establishing the International Fund for Agricultural Development, 1976

Agreement Establishing the NORSAD Fund and the NORSAD Agency (with Statutes of the NORSAD Fund and Statutes of the NORSAD Agency), 1990

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

**Agreement to Establish the South Centre, 1994

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944 Articles of Agreement of the International Finance Corporation (IFC), 1955

Articles of Agreement of the International Monetary Fund (IMF), 1944

†Constitution of the United Nations Industrial Development Organization (UNIDO), 1979

Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, 2016 (published in Proc. 2/2017, GG 6237)

Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (hereinafter referred to as the "SACUM-UK EPA"), 2019

**Georgetown Agreement, as revised by the 110th Session of the ACP Council of Ministers (Revised Georgetown Agreement), 2019

Multilateral Monetary Agreement between Eswatini, Lesotho, Namibia and South Africa (MMA),

SADC Protocol on Finance and Investment, 2006

Treaty Establishing the African Economic Community (AEC), 1991

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

Treaty of the Southern African Development Community (SADC), 1992

Protocol to the Treaty establishing SADC on Immunities and Privileges, 1992

See also Agricultural Bank of Namibia Act 5 of 2003 (AGRICULTURE).

See also Environment Investment Fund of Namibia Act 13 of 2001 (ENVIRONMENT).

See also FINANCIAL INSTITUTIONS.

See also Lotteries Act 15 of 2002 and the Lotteries Act 13 of 2017 (GAMBLING).

See also National Housing Enterprise Act 5 of 1993 and National Housing Development Act 28 of 2000 (LAND AND HOUSING).

See also Trust Fund for Regional Development and Equity Provisions Act 22 of 2000 (REGIONAL AND LOCAL GOVERNMENT).

See also REVENUE.

See also Road Fund Administration Act 18 of 1999 (ROADS AND ROAD TRANSPORTATION).

See also **TENDERS**.

See also the National Youth Service Act 6 of 2005 (Youth Service Fund) and the National Youth Council Act 6 of 2005 (Youth Development Fund) (**YOUTH**).

FINANCIAL INSTITUTIONS

Inspection of Financial Institutions Act 38 of 1984, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 9155</u>) provides for inspection of the affairs of insurers, pension fund organisations, friendly societies, medical schemes and unit trust schemes.

This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: The Act repeals the Inspection of Financial Institutions Act 68 of 1962, as amended.

Applicability to SWA: Section 10 states "This Act and any amendment thereof also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel."

Amendments: The Building Societies Act 2 of 1986 (OG 5189) repeals the portions of this Act relating to building societies.

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

- Building Societies Act 82 of 1986 (RSA GG 10401) (brought into force on 29 August 1986 by RSA Proc. R.152/1986 (RSA GG 10406); note that the amendments made by this Act are irrelevant since the Act was already repealed insofar as it relates to building societies by Act 2 of 1986, and furthermore, the portions of the Act amended by Act 82 of 1986 were repealed by Act 6 of 1987)
- Financial Institutions Amendment Act 6 of 1987 (RSA GG 10645)
- Financial Institutions Amendment Act 51 of 1988 (RSA GG 11313)
- Trust Property Control Act 57 of 1988 (RSA GG 11357)
- Accountants' and Auditors' and Financial Institutions Amendment Act 92 of 1988 (RSA GG 11414)
- Financial Institutions Second Amendment Act 54 of 1989 (RSA GG 11893).

The Banking Institutions Act 2 of 1998 (GG 1808) repeals section 11(1).

The Banking Institutions Act 2 of 1998 has since been replaced by the Banking Institutions Act 13 of 2023.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (GG 2529) amends sections 1 and 2.

Act 6/2011 (GG 4753) amends section 6.

Savings: Section 11(2) is a savings clause which states:

Anything done or deemed to have been done under any provision of a law repealed or amended by subsection (1) and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

Regulations: Since this Act makes no provision for regulations, any regulations made under the repealed Act would not survive.

Cases: Van Straten NO & Another v Namibia Financial Institutions Supervisory Authority & Another 2016 (3) NR 747 (SC), overturning Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2014 (2) NR 425 (HC).

Financial Institutions (Investment of Funds) Act 39 of 1984, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 9156</u>) governs the administration of funds and trust property by financial institutions.

Repeals: The Act repeals the *Financial Institutions (Investment of Funds) Act 56 of 1964*, as amended.

Applicability to SWA: Section 10 states "This Act and any amendment thereof shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel."

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

- Financial Institutions Amendment Act 6 of 1987 (RSA GG 10645)
- Financial Institutions Amendment Act 51 of 1988 (RSA GG 11313).

The Act was amended in South Africa by section 38 of the *Financial Markets Control Act 55 of 1989* (RSA GG 11894). This amending Act, which amended the definitions of "financial institution" and "registrar", was gazetted prior to Namibian independence, on 26 May 1989 – but it was brought into force in relevant part on 10 August 1990, by RSA Proc. 133/1990 (RSA GG 12690), *after* the date of Namibian independence. (That Proclamation brought sections 2, 3 and 18 of *Act 55 of 1989* into force with effect from 7 August 1989, prior to Namibian independence, but the amendments to *Act 39 of 1984* were effected by section 38.) Therefore, the amendments made by *Act 55 of 1989* were not applicable to South West Africa.

The Act is amended by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force.

Savings: Section 11(2) is a savings clause which states:

Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which could be done under a provision of this Act is deemed to have been done under the last-mentioned provision.

Regulations: Since this Act makes no provision for regulations, any regulations made under the repealed Act would not survive.

Cases:

Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shield Namibia Ltd 2005 NR 151 (HC)

Chief Executive Officer of Namibia Financial Institutions Supervisory Authority & Another v FIS Life Assurance Co Ltd & Others 2013 (2) NR 532 (HC)(section 6(1)).

Building Societies Act 2 of 1986 🕎 🙀

Summary: This Act (originally published in <u>OG 5189</u>), which came into force on 1 April 1986 pursuant to section 80 of the Act, regulates the registration, management and dissolution of building societies.

Repeals: The Act repeals the *Building Societies Act 24 of 1965* (initially promulgated in <u>RSA GG 1066</u>), which applied explicitly to SWA (by virtue of section 52) and which in turn repealed the *Building*

Societies Act 62 of 1934. 149

Amendments: Prior to independence, this Act was amended by Act 15/1987 (OG 5413).

Act 25/1990 (GG 124) amends sections 1, 2 and 49 and substitutes certain words and expressions.

Act 8/1992 (<u>GG 392</u>) amends section 38 so as to remove the prescribed limitation on the amount which may be advanced by a building society on immovable property used for residential purposes.

Act 25/1994 (GG 967) substitutes the title of Chapter VII and adds a new section 52A.

The Married Persons Equality Act 1 of 1996 (<u>GG 1316</u>), which was brought into force on 15 July 1996 by GN 154/1996 (<u>GG 1340</u>), substitutes section 62.

The Deposit Guarantee Act 16 of 2018 (<u>GG 6806</u>), which was brought into force in relevant part on 20 May 2019 by GN 122/2019 (<u>GG 6904</u>), amends section 10.

Savings: In terms of section 79(2) of the Act:

Any regulation made or anything else done under any law repealed by subsection (1), shall, in so far as it is not contrary to or inconsistent with this Act, be deemed to have been made or done under the corresponding provisions of this Act.

Regulations: Regulations are authorised by section 78 of the Act, but no post-independence regulations have been promulgated.

Pre-independence regulations issued in terms of the *Building Societies Act 24 of 1965* appear to remain in force pursuant to this savings clause. That Act was applicable to South West Africa by virtue of section 85. It was administered by the South African Minister of Finance, and the administration does not seem to have been transferred to SWA in terms of any of the transfer proclamations.

Regulations were issued in terms of that Act by RSA GN R.1039/1980 (RSA GG 7029). These regulations, which do not seem to have been amended, were repealed in South Africa by new regulations contained in RSA GN R.1761/1986, which were also issued in terms of the *Building Societies Act 24 of 1965*. However, these regulations were dated 29 August 1986 (RSA GG 10409) and so came into force *after* the Building Societies Act 2 of 1986 came into force in SWA on 1 April 1986. Thus, the regulations in RSA GN R.1039/1980 appear to remain in force in Namibia.

Application of law: The application of the Act is affected by GN 61/1990 (role of the Central Bank), GN 63/1990 (approval to undertake certain business), GN 64/1990 (approval of certain shares and loans as securities), GN 54/1993 and GN 187/1999 (liquid assets).

Related international agreements:

Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), 1985.

Namibia Financial Institutions Supervisory Authority Act 3 of 2001 🕎 🙀

Summary: This Act (originally published in <u>GG 2529</u>) establishes an authority to exercise supervision over the business of financial institutions and services, often referred to by its acronym NAMFISA. The Act was brought into force on 14 May 2001 by GN 85/2001 (<u>GG 2528</u>). It will be repealed by the Namibia Financial Institutions Supervisory Authority Act 3 of 2021 (<u>GG 7646</u>), which will be brought

¹⁴⁹ In South Africa, the *Building Societies Act 24 of 1965* was replaced by the *Building Societies Act 82 of 1986*. ¹⁵⁰ These regulations repealed the regulations in RSA GN R.70/1965 (RSA GG 1005, republished in OG 260) which were issued under the previous *Building Societies Act 62 of 1934*.

into force on a date set by the Minister by notice in the Government Gazette.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 5, 10, 13, 14 and 16, substitutes section 7 and deletes section 12. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Appeal Regulations are contained in GN 160/2006 (GG 3705).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>), which places certain duties on the Namibia Financial Institutions Supervisory Authority and on some of the financial institutions and businesses it regulates.

Notices: Irregular or undesirable practices pertaining to registered medical aid funds are declared in GN 121/2002 (GG 2774).

The Road Fund Administration is designated as an institution which may issue loan stock in General Notice 202/2002 (GG 2796).

Provisions pertaining to levies on financial institutions were initially contained in GN 82/2002 (GG 2746) as amended by GN 154/2002 (GG 2804). However, this notice was replaced by GN 78/2003 (GG 2947), as amended by GN 64/2004 (GG 3181), GN 160/2004 (GG 3254), GN 161/2004 (GG 3254) and GN 24/2011 (GG 4666). GN 78/2003 is replaced in turn by GN 265/2017 (GG 6438) with effect from 1 November 2017.

GN 265//2017 ($\underline{GG\ 6438}$) withdraws GN 78/2003 ($\underline{GG\ 2947}$) and GN 64/2004 ($\underline{GG\ 3181}$), but makes no mention of GN 160/2004 ($\underline{GG\ 3254}$), GN 161/2004 ($\underline{GG\ 3254}$) or GN 24/2011 ($\underline{GG\ 4666}$). Note that GN 160/2004 and GN 161/2004 in $\underline{GG\ 3254}$ are identical.

A notice on cessation of over-the-counter payments to NAMFISA was issued in GN 331/2012 (GG 5041), requiring that all future payments of fees be made via direct deposit or electronic funds transfers.

Notices pertaining to specific financial agents, brokers and institutions have not been recorded here.

Appointments: Members of the Board are announced in GN 124/2001 (<u>GG 2552</u>), GN 78/2005 (<u>GG 3460</u>), GN 119/2009 (<u>GG 4270</u>), GN 282/2010 (<u>GG 4637</u>), GN 181/2010 (GG 4544), GN 212/2017 (GG 6384) and GN 212/2021 (GG 7647).

Cases:

Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others 2006 (1) NR 275 (HC)

Van Straten NO & Another v Namibia Financial Institutions Supervisory Authority & Another 2016 (3) NR 747 (SC), overturning Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2014 (2) NR 425 (HC)

Christian t/a Hope Financial Services v Namibia Financial Institutions Supervisory Authority 2019 (4) NR 1109 (SC) (authority of acting CEO regarding litigation on behalf of NAMFISA).

Financial Intelligence Act 13 of 2012 🕎 🙀

Summary: This Act (originally published in <u>GG 5096</u>) establishes the Financial Intelligence Centre and the Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council, to address suspicious financial activities and transactions which may relate to money laundering, or terrorism or proliferation. It also places certain duties on persons and institutions identified as accountable and reporting institutions, supervisory and regulatory bodies, the Registrar of Companies and Close Corporations and the Master of the High Court. It was brought into force on 21 December

2012 by GN 304/2012 (GG 5104).

Repeals: The Act repeals the Financial Intelligence Act 3 of 2007 (GG 3880).¹⁵¹

Amendments: The Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (<u>GG 5490</u>), which was brought into force on 1 July 2014 by GN 80/2014 (<u>GG 5497</u>), amends the long title and sections 1, 9, 35, 37 and 50 and substitutes certain expressions.

Schedule 1 of the Act is amended by GN 339/2019 (GG 7049).

Proposed amendments to Schedule 1 of the Act were published, after consultation with the Anti-Money Laundering and Combating the Financing of Terrorism Council and the Financial Intelligence Centre, in GN 66/2018 (GG 6568) and in GN 85/2018 (GG 6595).

The Act is also amended by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 1.

Act 6 of 2023 (GG 8139) amends the Act substantially.

Savings: Regulations and other subsidiary enactments made under the repealed Act survive in terms of section 73(2):

Any regulation made or any exemption, notice, circular, determination or guidance issued or any other thing done under the Act repealed by section 72 is deemed to have been made, issued or done under the corresponding provision of this Act.

Regulations: Regulations made under the repealed Act survive in terms of section 73(2), quoted above. Regulations under the previous Act were previously contained in GN 74/2009 (GG 4253). However, all the regulations made under the previous Act and their amendments are repealed by the **Financial Intelligence Regulations** issued under the current law and contained in GN 3/2015 (GG 5658), as amended by GN 48/2021 (GG 7484) and by GN 271/2023 (GG 8191).

Additional **Regulations relating to non-profit organisations** are contained in GN 272/2023 (<u>GG</u> 8192).

Determinations: Determinations made under the repealed Act survive in terms of section 73(2), quoted above:

A Determination on the Period within Which an Accountable Institution May Not Proceed with the Carrying Out of a Transaction (FICD 1) is contained in General Notice 68/2009 (GG 4256).

A Determination on the Period for Establishment of Identity of Existing Clients by Accountable Institutions (FICD 2) is contained in General Notice 69/2009 (GG 4256). An exemption for certain accountable institutions made in terms of FICD 2 is extended by GN 159/2012 (GG 4977).

A Determination on (1) the Amount of Transaction above Which Accountable Institutions Must Establish Identity of Clients; and (2) the Period during Which Multiple Transactions Must Be Considered a Single Transaction (FICD 3) is contained in General Notice 70/2009 (GG 4256).

The following determinations are made in terms of the current Act.

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¹⁵¹ The previous Financial Intelligence Act 3 of 2007 was brought into force on 5 May 2009 by GN 73/2009 (GG 4253).

Determination No. 01 of 2016: The period within which the Master of the High Court must obtain and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts. General Notice 62/2017 (<u>GG 6253</u>), as corrected by General Notice 226/2018 (<u>GG 6622</u>) (effective, as corrected, on 1 March 2017).

The correction notice states that it substitutes the words "effective date 19 July 2016" and the words "the date of issue" with the words "date of publication". However, the words "effective date 19 July 2016" do not appear in the original General Notice.

Determination No. 02 of 2016: The period within which the Registrar of Companies and Close Corporations collects information in respect of each member, director, shareholder and beneficial owner of companies and close corporations registered before the Financial Intelligence Act 13 of 2012 came into force, General Notice 63/2017 (GG 6253), as corrected by General Notice 227/2018 (GG 6622) (effective, as corrected, on 1 March 2017).

Determination No. 03 of 2016: The amount of cash and value of a bearer negotiable instrument to be declared at the point of entry into or departure from Namibia, General Notice 63/2017 (<u>GG 6253</u>), as corrected by General Notice 228/2018 (<u>GG 6622</u>) (effective, as corrected, on 1 March 2017).

Determination No. FICD 01 of 2024: (1) The amount of transaction above which accountable and reporting institutions must establish the identity of clients; and (2) To provide that multiple-related transactions be considered a single transaction for purposes of meeting the identification threshold, General Notice 560/2024 (GG 8456) (effective 1 October 2024).

Determination No. FICD 02 of 2024: Determination on Sharing of Information between Accountable and Reporting Institutions General Notice 846/2024 (<u>GG 8553</u>) (effective 1 January 2025).

Notices: Exemptions, notices, circulars and guidances made under the repealed Act survive in terms of this legislation.

Exemption orders in terms of section 51 of the previous Act were issued in GN 75/2009 (GG 4253) and GN 76/2009 (GG 4253), but these were both withdrawn by GN 220/2021 (GG 7657).

An exemption order in terms of section 51 of the previous Act, applicable to all accountable institutions in respect of e-money accounts, is contained in GN 160/2012 (GG 4977).

GN 49/2021 (GG 7484), issued under section 57(5) of the current Act, determines the remuneration and allowances to be paid to members of the Appeal Board appointed in terms of section 57(1) of the Act.

Many of the exemptions, notices, circulars and guidances issued under the current law are not gazetted, but are available on the FIC website: www.fic.na (last checked 23 January 2025).

The following **directives** have been issued:

<u>2015</u>

• **Directive No 01 of 2015**: Directive on Compliance with Intervention Orders issued by the Financial Intelligence Centre-December 2015

<u> 2016</u>

- Revised Directive No 01 of 2016: Directive to Strengthen Controls on Cross Border Remittances-First Issued: February 2016; Revised and Re-Issued: 13 July 2017; Revised and Re-Issued: 30 January 2023
- **Directive No 02 of 2016**: Directive to Legal Practitioners on Mandatory Cash Transactions Reporting-October 2016
- Directive No 03 of 2016: Directive on Fit And Proper Expectations for Accountable and

- Reporting Institutions under the Supervision of the Namibia Financial Institutions Supervisory Authority (NAMFISA)-October 2016
- **Directive No 04 of 2016**: Directive on Reporting of Structured Cash Transactions-November 2016
- **Directive No 05 of 2016**: Directive to Motor Vehicle Dealers on Mandatory Cash Transactions Reporting-November 2016
- **Directive No 06 of 2016**: Directive to Auctioneers on Mandatory Cash Transactions Reporting-November 2016

2017

- **Directive No 01 of 2017**: Directive to the Real Estate Industry on Mandatory Cash Transaction Reporting-January 2017
- Directive No 02 of 2017: Availing Records and Information To FIC/NAMFISA Timely-06 October 2017
- Directive No 03 of 2017: Registration of Discretionary Trusts-September 2017
 2018
- **Directive No 01 of 2018**: New Reporting Business Rules-27 April 2018
- Directive No 02 of 2018: Registration of Dividend Access Trusts Established For Giving Access to Namibian Shareholders to Dividends Declared by Companies with Publicly Listed Shares-July 2018
- **Directive No 03 of 2018**: Directive on Managing Obligations under Section 42 and 46 of the Financial Intelligence Act, 2012-October 2018

<u>2019</u>

• **Directive No 01 of 2019**: Registration of Trusts by the Master of the High Court (Proof of Registration with the FIC)-March 2019

2020

- **Directive No 01 of 2020**: Insurance Brokers and the Insurer's Compliance with the Financial Intelligence Act, 2012 and Subordinate Instruments-30 April 2020
 - Note that this Directive is no longer on the website and may have been withdrawn or replaced.
- **Directive No 02 of 2020**: Politically Exposed Persons (PEPs)-First Issued: 30 April 2020; Second Revision: 17 April 2023
 - Note that this Directive is no longer on the website and may have been withdrawn or replaced.
- **Directive No 03 of 2020**: Requirement to Register with the Financial Intelligence Centre in terms of the Financial Intelligence Act 13 (Act No. 13 of 2012), as amended (FIA)-08 September 2020
- **Directive No 04 of 2020**: Directive for Non-Profit Organisations to comply with the Financial Intelligence Act 13 (Act No. 13 of 2012), as amended (FIA)-26 November 2020; **REPLACED by Revised Directive No 04 of 2023**

2021

- **Directive No 01 of 2021**: Requirements relating to the Introduction of New Innovations, Products, Services or Expansions and Amendments to Pre-Existing Ones-First Issued: 17 September 2021; Revised and Updated: 22 March 2022
- **Directive No 02 of 2021**: Financial Intelligence Act, 2012 (FIA) Compliance Requirements for Virtual Assets Service Providers (VAPSs)-Date issued: 17 September 2021; Revised and Updated: 22 March 2022
- **Directive No 03 of 2021**: Directive to the Master of the High Court to De-Register Trusts who are in Non-compliance with the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended-22 September 2021

2022

- **Directive No 01 of 2022**: Effectiveness of Sanctions Screening Systems-02 March 2022 **2023**
- **Directive No 01 of 2023**: Mandatory Implementation of Targeted Financial Sanctions (TFS) for all Institutions providing Services listed in Schedules 1 and 3 of the Financial Intelligence Act, 2012-First Issued: 14 April 2023

- Directive No 02 of 2023: Simplified Due Diligence Measures for Low-Risk Sectors: Short Term Insurance Service Providers; Dealers in Jewellery, Arts & Antiques; and Dealers in Second Hand Goods-First Issued: 14 April 2023
- **Directive No 03 of 2023**: Submission of FIA Compliance Returns: Banking Sector-First Issued: 09 June 2023
- Revised Directive No 04 of 2023: Mandatory NPO Registrations with the Financial Intelligence Centre-First Issued: 30 June 2023; Revised and Updated: 25 August 2023
- Revised Directive No 05 of 2023: Conducting NPO Risk Assessments: Banking Sector-First Issued: 21 August 2023 (with an accompanying risk assessment tool); Revised and Updated: 29 April 2024
- **Directive No 06 of 2023**: Bank of Namibia Licensing and Registration with the Financial Intelligence Centre: Virtual Assets Service Providers (VASPs)-First Issued: 26 September 2023
- **Directive No 06A of 2023**: Restricting Access to Banking Services by Unlicensed and Unregistered Virtual Assets Service Providers (VASPs), dated 26 September 2023
- **Directive No 7 of 2023:** Directive to Limit Terrorism Financing Risk Exposure that may arise from Non-Profit Organisations not registered with the Financial Intelligence Centre, dated 6 October 2023

2024

- **Directive No 01 of 2024**: Requirement to Manage Beneficial Ownership Related Risks in View of Noted Failures to Submit Beneficial Ownership Information to BIPA: 25 April 2024
- **Directive No 02 of 2024**: Deadline Extension for Finalization of NPO Risk Assessments: Banking Sector: 25 April 2024
- **Directive No 03 of 2024**: Call for Enhanced Due Diligence based on South Africa's Escalated Terrorism Financing Risk: 20 August 2024

The website also contains circulars, guidance notes, notices and other material.

Related laws: See the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM) and the Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE).

Cases:

Pinto v First National Bank of Namibia Ltd & Another 2013 (1) NR 175 (HC) (dealing with the preceding Financial Intelligence Act 3 of 2007)

Atlantic Ocean Management Group (Pty) Ltd & Another v Prosecutor-General 2017 (4) NR 939 (HC), confirmed on appeal in Atlantic Ocean Management Group (Pty) Ltd v Prosecutor-General 2019 (4) NR 1031 (SC)

Eises v First National Bank (Namibia Holdings) Ltd & Another NO 2020 (3) NR 670 (LC) (discussion of sections 42(2) and 56(4) at paras 46-ff).

Commentary: Frederico Links & Clement Daniels, "Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia", Institute for Public Policy Research, 2011, available here (on the Financial Intelligence Act 3 of 2007).

Microlending Act 7 of 2018 🗐 📻

Summary: This Act (<u>GG 6664</u>) regulates the microlending business in Namibia, to promote responsible borrowing and lending. It was brought into force on 15 October 2018 by GN 261/2018 (<u>GG 6736</u>).

Regulations: Regulations relating to the maximum penalty interest chargeable by microlenders in the event of default by borrowers are contained in GN 263/2018 (GG 6736).

Regulations relating to penalties for non-compliance with the Act are contained in GN 320/2020 (GG 7425), as amended by GN 324/2022 (GG 7928).

Standards: Microlending Standard ML.S.1 is issued in General Notice 598/2018 (GG 6745).

Microlending Standards ML.S.2, ML.S.3, ML.S.4 and ML.S.5 were initially issued in General Notice 599/2018 (GG 6745). Microlending Standards ML.S.1 and ML.S.2 are re-issued in General Notice 362/2019 (GG 6994), which makes no reference to the fact that standards with these titles were previously issued. Microlending Standards ML.S.3, ML.S.4 and ML.S.5 are re-issued in General Notice 74/2020 (GG 7130), which again makes no reference to the fact that standards with these titles were previously issued.

Microlending Standard ML.S.6 is issued in General Notice 176/2021 (<u>GG 7531</u>). This standard is revoked and replaced by Microlending Standard ML.S.6 issued in General Notice 399/2023 (<u>GG 8133</u>).

Draft standards: Draft Microlending Standard ML.S.6 on the form and manner of application for renewal of registration as a microlender is contained in General Notice 180/2023 (<u>GG 8068</u>).

Deposit Guarantee Act 16 of 2018 🕎 😓

Summary: This Act (<u>GG 6806</u>) establishes the Namibia Deposit Guarantee Authority, the Deposit Guarantee Scheme and the Deposit Guarantee Fund for the purpose of providing compensation to depositors if their deposits in member institutions become unavailable. Parts 1, 2, 3, 9 (excluding sections 47, 48 and 49) and 10 of the Act were brought into force by GN 122/2019 (<u>GG 6904</u>). The remainder of the Act was brought into force with effect from 1 February 2020 by GN 23/2020 (<u>GG 7117</u>).

The correct name of the Act is the "Deposit Guarantee Act", according to section 62(1) of the Act. However, the table of contents and header of *Government Gazette* 6806 erroneously refer to the "Namibia Deposit Guarantee Act".

Regulations: Regulations relating to maximum coverage limits for guaranteed deposits are contained in GN 24/2020 (GG 7117); they set the maximum coverage limit at N\$25 000 per depositor.

The listing for GN 24/2020 in the table of contents in GG 7117 refers to the "Guarantee Act, 2018", while it should read "Deposit Guarantee Act, 2018".

Determinations: The Namibia Deposit Guarantee Authority issued a "Determination of premiums payable per risk category and interest rates payable by member institution" in terms of section 57(1)(b) of the Act read with section 34(1) and (2), in GN 100/2020 (<u>GG 7163</u>).

A number of "Deposit Guarantee Determinations" have been issued by the Namibia Deposit Guarantee Authority in terms of section 57 of the Act:

No record of DGD-1 (unless GN 100/2020 was intended to be DGD-1)	
Determination on the manner of payment of premiums (DGD-2)	General Notice 143/2020 (<u>GG 7179</u>)
Determination on the manner of payment of financial penalties (DGD-3)	General Notice 144/2020 (<u>GG 7179</u>)
Determination on the proof of entitlement to payment of compensation (DGD-4)	General Notice 145/2020 (<u>GG 7179</u>)
Determination on the format and manner in which information must be kept (DGD-5)	General Notice 146/2020 (<u>GG 7179</u>)

¹⁵² A draft of this standard was published in General Notice 41/2021 (GG 7448).

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Appointments: The appointment of members of the Board of the Namibia Deposit Guarantee Authority is announced in General Notice 445/2019 (<u>GG 7034</u>), General Notice 445/2019 (<u>GG 8447</u>) and General Notice 834/2024 (<u>GG 8535</u>).

Bank of Namibia Act 1 of 2020 🛂 🙀

Summary: This Act (<u>GG 7109</u>) provides for the continuation of the Bank of Namibia as the central bank. It defines the relationship between the bank and the government. It also regulates the issue of bank notes and coins, and the monetary system. It was brought into force by GN 135/2020 (<u>GG 7241</u>) on 15 June 2020.

Repeals: The Act repeals the Bank of Namibia Act 15 of 1997 (<u>GG 1761</u>), which in turn repealed the Bank of Namibia Act 8 of 1990 (<u>GG 42</u>), which repealed the *South African Reserve Bank Act 90 of 1989* (<u>RSA GG 11942</u>), which repealed the *South African Reserve Bank Act 29 of 1944* (<u>SA GG 3342</u>).

Savings: Section 87 of this Act states:

A determination, appointment, regulation, guideline, circular, notice, instruction or anything done under a law repealed by section 86 which - (a) is in force at the commencement of this Act; and (b) could be made, issued or done under a corresponding provision of this Act, is deemed to have been made, issued or done under a corresponding provision of this Act.

Thus, this Act preserves things done in terms of the Bank of Namibia Act 15 of 1997.

Section 60(2) of the Bank of Namibia Act 15 of 1997 (GG 1761) stated:

Anything done in terms of a provision of the Act repealed by subsection (1) and which may or is required to be done in terms of that Act, shall be deemed to have been done in terms of the corresponding provision of this Act.

Thus, Act 15 of 1997 preserved things done in terms of the Bank of Namibia Act 8 of 1990.

Section 62(2) of the Bank of Namibia Act 8 of 1990 (GG 42) stated:

Anything done in terms of a provision of the Act repealed by subsection (1) and which may or is required to be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act.

Thus, Act 8 of 1990 preserved things done in terms of the RSA South African Reserve Bank Act 90 of 1989

Section 40(2) of the RSA South African Reserve Bank Act 90 of 1989 (RSA GG 11942) provides that — any rules and regulations made under sections 22 and 23, respectively, of the said Act [the South African Reserve Bank Act 29 of 1944], or which are deemed to have been made thereunder, shall be deemed to have been made under the corresponding provisions 25 of this Act.

Thus, Act 90 of 1989 preserved things done in terms of the SA South African Reserve Bank Act 29 of 1944 (SA GG 3342).

This chain of savings clauses makes it possible in theory for regulations and notices issued under any of the repealed laws to remain in force.

Regulations: The savings clauses would appear to apply to regulations, which are authorised by section 85 of this Act.

¹⁵³ The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>) purports to amend section 39 of the Bank of Namibia Act 15 of 1997 - which has already been repealed.

The following regulations were made under section 23 of the *South African Reserve Bank Act 29 of 1944* (SA GG 3342) and appear to have survived via the chain of savings clauses: 154

South African Reserve Bank-Regulations, contained in SA GN 629/1945 (<u>SA GG 3474</u>), as amended by RSA GN 965/1962 (<u>RSA GG 265</u>). However, some aspects of these regulations have obviously been superseded by the current Act while others seem to have no current relevance.

The following regulations were made under the Bank of Namibia Act 15 of 1997 and appear to have survived by virtue of the savings clause in the current Act:

Credit Bureau Regulations. contained in GN 103/2014 (GG 5518), as amended by GN 177/2014 (GG 5579).

Notices: The savings clauses also apply to notices. However, the pre-independence notices on the design of various coins would appear to have no relevance in independent Namibia and have not been recorded here. Post-independence notices are listed below.

Monetary units and symbols were set forth under the repealed laws in Proc. 19/1993 (<u>GG 682</u>), General Notice 339/1996 (<u>GG 1452</u>), General Notice 8/2000 (<u>GG 2258</u>) (enhanced N\$50 and N\$100 banknotes), General Notice 108/2012 (<u>GG 4936</u>) (a new series of banknotes with enhanced security features) and General Notice 394/2015 (<u>GG 5811</u>) (modified N\$10 and N\$20 banknotes). However, Proc. 19/1993 was repealed by Act 11/2004.

Characteristics of the modified N\$10.00 banknote being issued by the Bank of Namibia from January 2022 in terms of the current Act are announced in General Notice 1/2022 (GG 7720) (change in the signature of the Governor of the Bank of Namibia). Characteristics of the modified N\$20.00 and N\$200.00 banknote being issued by the Bank of Namibia from February 2023 in terms of the current Act are announced in General Notice 21/2023 (GG 8015) (change in the signature of the Governor of the Bank of Namibia). Characteristics of the modified N\$100.00 banknote being issued by the Bank of Namibia from April 2024 in terms of the current Act are announced in General Notice 129/2024 (GG 8335) (change in the signature of the Governor of the Bank of Namibia).

Commemorative notes and coins were announced under the repealed laws in General Notice 74/1995 (GG 1057), General Notice 125/1995 (GG 1083) General Notice 91/1996 (GG 1308), General Notice 54/1999 (GG 2067), General Notice 7/2000 (GG 2258), General Notice 166/2010 (GG 4520) and General Notice 131/2020 (GG 7171).

A **Directive on the Minimum Reserve Requirement** issued pursuant to section 35 of the previous Act is contained in General Notice 101/2005 (<u>GG 3449</u>).

See also directives issued under the Payment System Management Act 18 of 2003 (GG 3115), which survive under the Payment System Management Act 14 of 2023 (GG 8156).

A memorandum of agreement between the Namibian Competition Commission and the Bank of Namibia, made pursuant to section 67 of the Competition Act 2 of 2003, is published in General Notice 41/2012 (GG 4888).

In South Africa, these regulations appear to have been replaced in 1991 by the South African Reserve Bank Regulations published in RSA GN R.30/1981 (RSA GG 12963), which were amended in 2010 by RSA GN 710/2010 (RSA GG 33457). This set of regulations was then repealed and replaced in South Africa in 2010 by the

regulations contained in RSA GN R.808/2010 (RSA GG 33552).

¹⁵⁴ These regulations are listed as being the only ones surviving under the *South African Reserve Bank Act 90 of 1989* in *Juta's Index to the South African Government and Provincial Gazettes* (formerly "The Windex"), 1920-1989 at pages 180-181. No repeals have been located.

Appointments: Appointments of governors under the repealed laws were announced in Proc. 4/1993 (GG 581), Proc. 3/1994 (GG 791), Proc. 10/2010 (GG 4468), Proc. 11/2012 (GG 4941) and Proc. 10/2017 (GG 6333). Appointments of deputy governors under repealed laws were announced in Proc. 5/1993 (GG 581), Proc. 11/2012 (GG 4941), Proc. 10/2017 (GG 6333) and Proc 4/2019 (GG 6851).

Appointments to the Board under the repealed laws were announced in Proc. 11/1990, Proc. 6/1993, Proc. 4/2002 (GG 2746), Proc. 6/2007 (GG 3785), Proc. 16/2008 (GG 4039), Proc. 39/2008 (GG 4156), Proc. 4/2012 (GG 4875), Proc. 22/2012 (GG 5038), Proc. 20/2013 (GG 5211) and Proc. 9/2017 (GG 6333).

Appointments of governors and deputy governors under the current law are announced in Proc. 54/2020 (GG 7361) and Proc. 50/2021 (GG 7716).

Appointments to the Board under the current law are announced in Proc. 18/2022 (GG 7841) and Proc. 10/2024 (GG 8318).

Related laws: The Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>) places certain duties on the Bank of Namibia.

Cases: The following cases concern this Act -

Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (3) 2018 (1) NR 193 (HC) (objectives of Bank as set out in the Act discussed in light of Articles 95 and 98 of the Namibian Constitution)

Bank of Namibia & Another v CBI Exchange Namibia (Pty) Ltd & Others 2023 (1) NR 22 (SC) (discussion of court orders relating to section 6(2)(f)-(g)).

The following cases concern the Bank of Namibia Act 8 of 1990 which was repealed by the Bank of Namibia Act 15 of 1997 -

S v Kamapoha 1994 NR 322 (HC)

S v Appelgrein 1995 NR 118 (HC)

Dowles Manor Properties Ltd v Bank of Namibia 2005 NR 59 (HC)

S v Candimba & Others 2013 (1) NR 70 (HC) (Exchange Control Regulations, regulation 3).

*Financial Institutions and Markets Act 2 of 2021 🕎 🙀

Summary: This Act (<u>GG 7645</u>), often abbreviated as FIMA, consolidates and harmonises the laws regulating financial institutions, financial intermediaries and financial markets in Namibia. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Repeals: The Act amends several laws and repeals the following laws in their entirety:

- Pension Funds Act 24 of 1956
- Friendly Societies Act 25 of 1956
- Unit Trusts Control Act 54 of 1981
- Participation Bonds Act 55 of 1981
- Inspection of Financial Institutions Act 38 of 1984
- Stock Exchanges Control Act 1 of 1985
- Short-term Insurance Act 4 of 1998
- Long-term Insurance Act 5 of 1998.

However, item 6 of Schedule 3 provides for the continued application of the repealed laws to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Savings: Item 2 of Schedule 3 contains a general savings clause in respect of the laws repealed by the Act:

Any subordinate legislation or measure made under a repealed law remains in force unless it is in conflict with this Act and is deemed to be made thereunder until superseded by a subordinate measure made under this Act.

Draft standards: Draft standards have been published for comment by NAMFISA as follows:

- **Standard No. PRE.S.1.1**: The "categories of professions and persons of which an expert must be a member for the purposes of the definition of "valuator" in section 1 of the Act"-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.1**: Insurance: Capital adequacy requirements for registered insurers and reinsurers-General Notice 737/2021 (<u>GG 7713</u>)
- Standard No: INS.S.2.2: Insurance: The determination, calculation and valuation of the assets and liabilities of registered insurers for the purposes of capital adequacy, including NAMFISA'S right to change a valuation under circumstances determined in such standard-General Notice 737/2021 (GG 7713)
- Standard No. INS.S.2.3: Insurance: Manner and form of application for registration of insurers and reinsurers and the manner in which NAMFISA may approve additional classes of long-term insurance business and additional classes of short-term insurance business for the purposes of section 8-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.4:** Insurance: Registration requirements for insurance broker-General Notice 737/2021 (GG 7713)
- Standard No: INS.S.2.5: Insurance: Terms and conditions applicable to:
 - Foreign insurers and foreign reinsurers exempted under section 5(2) of the Act;
 - Registered insurers and registered brokers effecting or renewing insurance outside Namibia; and
 - Registered insurers reinsuring the whole or any part of their business General Notice 737/2021 (GG 7713)
- Standard No. INS.S. 2.6: Financial reporting requirements for insurance brokers-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.7:** Fair treatment of clients and policyholders by registered insurance intermediaries-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.8:** Matters with respect to entities commonly known as cell captives-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.9:** Amount of commission that may be paid to insurance insurance brokers-General Notice 737/2021 (<u>GG 7713</u>)
- **Standard No. INS.S.2.10:** Point of sale information to be provided by insurers, insurance agents and insurance brokers to policyholders and potential policyholders-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.11:** Provisions governing the registration and on-going requirements for a corporate body to act as an agent-General Notice 737/2021 (<u>GG 7713</u>)
- **Standard No. INS.S.2.12:** The determination of what constitutes a sound financial position of registered insurers or reinsurers-General Notice 737/2021 (GG 7713)
- **Standard INS.S.2.13:** The trust account to be opened by Lloyd's, the minimum value of funds therein and the returns to be furnished by Lloyd's under section 47 of the Act-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.14:** Application by registered insurer or reinsurer for voluntary cancellation of registration granted pursuant to section 11 of the Act or for variation of the classes of business by cancellation of class (es) of business for which it was registered-General Notice 737/2021 (GG 7713)
- Standard No. INS.S.2.15: The accounts and other information to be kept in Namibia relating to insurance business, and to be submitted to NAMFISA, by registered insurers and reinsurers-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.16:** The requirements for the registration, operation and duties of a Lloyd's intermediary in Namibia-General Notice 737/2021 (GG 7713)
- **Standard No. INS.S.2.17:** Application by registered insurance or reinsurance brokers, corporate insurance and reinsurance brokers for cancellation or variation of registration-General Notice 737/2021 (GG 7713)

- Standard No. INS.S.2.18: Form of certificate of registration for an insurer or reinsurer-General Notice 737/2021 (GG 7713)
- Standard No. INS.S.2.19: Insurance: Governance-General Notice 163/2022 (GG 7784)
- **Standard No. INS.S.2.20:** Form of registration certificate for an insurance broker-General Notice 163/2022 (GG 7784)
- Standard No. FM.S.3.1: Matters to be included by a registered exchange in its listing requirements-General Notice 737/2021 (GG 7713)
- Standard No. FM.S.3.2: Annual report of self-regulatory organization-General Notice 737/2021 (GG 7713)
- Standard No. FM.S.3.3: Annual report of self-regulatory organization-General Notice 737/2021 (GG 7713)
- Standard No. FM.S.3.4: Annual report of self-regulatory organization-General Notice 737/2021 (GG 7713)
- **Standard No. FM.S.3.5:** Demutualisation of a self-regulatory organisation-General Notice 737/2021 (<u>GG</u> 7713)
- Standard No. FM.S.3.6: Minimum capital, capital adequacy, solvency and liquidity requirements for investment managers, and the conduct of the business of investment management with integrity, prudence and professional skill, and in a way that ensures that a sound financial position is maintained and does not cause or promote instability in the financial system of Namibia-General Notice 163/2022 (GG 7784)
- Standard No. FM.S.3.7: Manner and form of application for registration as a central securities depository, an exchange, a securities clearing house, an investment manager, a linked investment service provider, a securities rating agency, a securities dealer or a securities advisor pursuant to section 83(4)-General Notice 163/2022 (GG 7784)
- **Standard No. FM.S.3.8:** The limits for the purposes of an affected transaction as defined in section 155 of the Act and disclosure of affected transactions-General Notice 737/2021 (<u>GG 7713</u>)
- Standard No. FM.S.3.9: Form of registration certificate for central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer-General Notice 163/2022 (GG 7784)

No Standard No. FM..S.3.10 published in draft form as yet.

No Standard No. FM..S.3.11 published in draft form as yet.

- Standard No. FM.S.3.12: Application by registered central securities depository, exchange, investment manager, linked investment service provider, securities clearing house, securities rating agency, securities advisor or securities dealer for cancellation of registration granted pursuant to section 85 of the Act or for variation of the conditions for registration-General Notice 737/2021 (GG 7713)
- **Standard No. CIS.S.4.1:** Collective Investments: Additional information required to earble an investor to make an informed decision pursuant to subsection 172(1)(b) of the Act -General Notice 737/2021 (GG 7713)
- **Standard No. CIS.S.4.2:** Collective Investments: Other information and material required for an authorised representative-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.3: Collective Investments: Rules for administration of collective investment schemes under one or more of Parts 3 to 8 of Chapter 4 and solicitation of investments in a foreign collective investment scheme under Part 9 of Chapter 4-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.4: Collective Investments: Minimum investment periods for investments in a collective investment scheme in participation bonds other information and material required for an authorized representative-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.5: Collective Investments: Minimum investment periods for investments in a collective investment scheme in unlisted securities; other information and material required for an authorized representative-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.6: Collective Investments: Actions that may be taken by NAMFISA against a manager or person connected with a foreign country pursuant to section 220(1)-General Notice 737/2021 (GG 7713); republished with significant changes in General Notice 47/2023 (GG 8026)
- Standard No. CIS.S.4.7: Collective Investments: Requirements with respect to trustees and custodians of a
 collective investment scheme other information and material required for an authorized representativeGeneral Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.8: Collective Investments: Assets that must be included in a portfolio of a collective investment scheme at the time that a participatory interest is sold or offered for sale; other information and material required for an authorized representative-General Notice 737/2021 (GG 7713), which appears to be replaced by Standard No. CIS.S.4.8: Collective Investment Schemes: Manner in which, and the limits and conditions subject to which assets that must be included in a portfolio of a collective investment scheme at the time that a participatory interest is sold or offered for sale-General Notice 659/2023 (GG 8237)

- Standard No. CIS.S.4.9: Collective Investments: Requirements for the exercise of voting power conferred on a manager by the assets held in a portfolio other information and material required for an authorized representative-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.10: Collective Investments: Permissible deductions from a portfolio; other information and material required for an authorized representative-General Notice 737/2021 (GG 7713)
- **Standard No. CIS.S.4.11:** Collective Investments: Meaning of "net asset value" for the purposes of section 238 of the Act-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.12: Collective Investments: Matters to be regulated by deed-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.13: Collective Investments: Calculation of fair value of a security-General Notice 737/2021 (GG 7713)
- Standard No. CIS.S.4.14: Collective Investments: Manner and form for registration as manager of a collective investment scheme manner and form of application for registration as manager of a collective investment scheme-General Notice 737/2021 (GG 7713)
- Standard No. CIS S.4.15: Form of registration certificate for a manager of a collective investment scheme-General Notice 737/2021 (GG 7713); republished with format changes in General Notice 163/2022 (GG 7784)
- Standard No. CIS.S.4.16: Form of the certificates for a manager of a collective investment scheme in participation bonds and a nominee company deemed to be registered or approved pursuant to section 202(1)-General Notice 737/2021 (GG 7713)
- **Standard No. CIS.S.4.17:** Manner and form of application for approval as trustee or custodian of a collective investment scheme-General Notice 737/2021 (<u>GG 7713</u>)
- Standard No. CIS.S.4.18: Application by registered manager of a collective investment scheme for cancellation of registration granted pursuant to section 176 of the Act or for variation of the conditions for registration -General Notice 737/2021 (GG 7713)

No Standard No. CIS.S.4.19 has been published in draft form as yet.

No Standard No. CIS.S.4.20 has been published in draft form as yet.

- Standard No. CIS.S.4.21: Manner and form of application for approval as a nominee company General Notice 163/2022 (GG 7784)
- Standard No. CIS.S.4.22: Collective Investment Schemes: Foreign exchanges approved by NAMFISA, the due diligence requirements for investing on such exchanges, and the due diligence requirements on the issuers of foreign non-equity securities-General Notice 659/2023 (GG 8237)
- **Standard No. RF.S.5.1:** Retirement Funds: The definition of "actuarial surplus"-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.2:** Retirement Funds: Requirement for an investigation by and the report of a valuator on the financial position of a fund and the form of a summary of such report-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.3:** Retirement Funds: Minimum information that must be furnished to a fund by an employer with respect to the payment of contributions-General Notice 737/2021 (GG 7713)
- Standard No. RF.S.5.4: Retirement Funds: Requirements for the rules of a fund and any amendment of such rules-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.5:** Retirement Funds: The determination of the soundness of the financial position of a fund for the purposes of section 272(3)-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.6:** Retirement Funds: Requirements for the voluntary termination or dissolution of a fund pursuant to section 278 and in the circumstances specified in its rules-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.7:** Retirement Funds: Minimum benefits that a fund must provide to its members General Notice 737/2021 (GG 7713)

No Standard No. RF.S.5.8 published in draft form as yet.

- Standard No. RF.S.5.9: Retirement Funds: Provision for compulsory beneficiary nomination forms to be completed by members of a fund for the purposes of enabling a member to designate a nominee or nominees to receive benefits from such fund upon the death of such member-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.10:** Retirement Funds: The conditions on which a defined contribution fund may be exempted from the requirement of regular investigations by a valuator-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.11:** Retirement Funds: Alternative forms of payment of pensions for the purposes of defined contribution funds-General Notice 737/2021 (<u>GG 7713</u>)

No Standard No. RF.S.5.12 published in draft form as yet.

• **Standard No. RF.S.5.13:** Retirement Funds: Requirements of a communications strategy to be adopted by the board of a fund to ensure that adequate and appropriate information is communicated to members, employers and sponsors-General Notice 737/2021 (GG 7713)

• **Standard No. RF.S.5.15:** Retirement Funds: Requirements for the annual report of a fund-General Notice 737/2021 (GG 7713)

No Standard No. RF.S.5.16 published in draft form as yet.

- Standard No. RF.S.5.17: Retirement Funds: Categories of persons having an interest in the compliance of a fund with the provisions of section 270(7) and the reports that must be submitted by the principal officer or a person authorized under section 270(8) to such categories of persons with respect to such compliance-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.18:** Retirement Funds: Matters to be included in an investment policy statement-General Notice 737/2021 (GG 7713)
- Standard No. RF.S.5.19: Retirement Funds: Matters to be communicated to members and contributing employers and minimum standards for such communication-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.20**: Retirement Funds: Matters to be included in a code of conduct to be adopted by the fund-General Notice 737/2021 (GG 7713)

No Standard No. RF.S.5.21 published in draft as yet.

- Standard No. RF.S.5.22: Retirement Funds: The transfer of any business from a fund to another fund or the transfer of any business from any other person to a fund-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.23:** Retirement Funds: The fee that may be charged to members for copies of certain documents, and the reports and other information that must be provided by the board of a fund to its members free of charge-General Notice 737/2021 (GG 7713)
- **Standard No. RF.S.5.24**: Retirement Funds: Manner and form of application for registration of a fund-General Notice 737/2021 (<u>GG 7713</u>)
- **Standard No. RF.S.5.25:** Retirement Funds: Form of certificate of registration for a fund-General Notice 737/2021 (GG 7713)
- Standard No. RF.S.5.26: Governance of retirement funds-General Notice 163/2022 (GG 7784)
- Standard No. RF.S.5.27: Manner and form of application, by a registered fund, for cancellation of registration or variation of the conditions subject to which registration was granted-General Notice 163/2022 (GG 7784)
- **Standard No. FS.S.6.1:** Friendly Societies: Statement of the assets of a friendly society-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.2:** Friendly Societies: Statement of the liabilities of a friendly society-General Notice 737/2021 (GG 7713)

No Standard No. FS.S.6.3 published in draft form as yet.

- **Standard No. FS.S.6.4:** Friendly Societies: Management and governance of a friendly society-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.5:** Friendly Societies: Requirements for the annual report of a friendly society-General Notice 737/2021 (GG 7713)
- Standard No. FS.S.6.6: Friendly Societies: Requirements for the rules of a friendly society and any amendments of such rules-General Notice 737/2021 (GG 7713)

No Standard No. FS.S.6.7 published in draft form as yet.

- **Standard No. FS.S.6.8:** Friendly Societies: The determination of the soundness of the financial position of a friendly society for the purposes of section 308(3)-General Notice 737/2021 (GG 7713)
- Standard No. FS.S.6.9: Friendly Societies: Requirements for the voluntary termination or dissolution of a friendly society pursuant to section 316 and in circumstances specified in its rules-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.10:** Friendly Societies: The requirements with which a friendly society referred to in section 286(1) must comply (exempted societies)-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.11:** Friendly Societies: Minimum number of members of a friendly society-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.12:** Friendly Societies: The valuation and report of the valuator of a friendly society referred to in section 304-General Notice 737/2021 (<u>GG 7713</u>)
- Standard No. FS.S.6.13: Friendly Societies: The percentage of the fair value of property referred to in section 306(2) of the Act-General Notice 737/2021 (GG 7713)
- Standard No. FS.S.6.14: Friendly Societies: The books of account and records that must be kept and maintained with respect to the moneys and assets belonging to a friendly society-General Notice 737/2021 (GG 7713)
- Standard No. FS.S.6.15: Friendly Societies: The persons who may keep in the name of a friendly society the money and assets of a friendly society-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.16:** Friendly Societies: The period after which payment of contributions to a friendly society become due-General Notice 737/2021 (GG 7713)

- **Standard No. FS.S.6.17:** Friendly Societies: Manner and form of application for registration of a friendly society-General Notice 737/2021 (GG 7713)
- **Standard No. FS.S.6.18:** Friendly Societies: Form of certificate of registration for a friendly society-General Notice 737/2021 (GG 7713)
- Standard No. FS.S.6.19: Manner and form of application, by a registered society, for cancellation of registration or variation of the conditions subject to which registration was granted-General Notice 163/2022 (GG 7784)
- Standard No. FS.S.6.20: Governance of friendly societies-General Notice 163/2022 (GG 7784)

No Standard No. MAF.S.7.1 published in draft form as yet.

No Standard No. MAF.S.7.2 published in draft form as yet.

No Standard No. MAF.S.7.3 published in draft form as yet.

- **Standard No. MAF.S.7.4:** Requirements for rules of a medical aid fund and any amendments of such rules-General Notice 737/2021 (GG 7713)
- **Standard No. MAF.S.7.5:** The determination of the soundness of the financial position of a medical aid fund for the purposes of section 353(3)-General Notice 737/2021 (GG 7713)

No Standard No. MAF.S.7.6 published in draft form as yet.

- Standard No. MAF.S.7.7: The provision by medical aid funds to their members of written proof of membership, and the particulars such proof must or may contain-General Notice 737/2021 (GG 7713)
- Standard No. MAF.S.7.8: The requirements for the voluntary termination or dissolution of a medical aid fund pursuant to section 358, and in the circumstances specified in its rules-General Notice 737/2021 (GG 7713)

No Standard No. MAF.S.7.9 published in draft form as yet.

- **Standard No. MAF.S.7.10:** Requirements for the report of the valuator of a medical aid fund with respect to the current financial position of the fund and its projected financial soundness-General Notice 737/2021 (<u>GG</u> 7713)
- **Standard No. MAF.S.7.11:** Minimum number of members of a medical aid fund-General Notice 737/2021 (GG 7713)
- **Standard No. MAF.S.7.12:** Requirements for the annual report of a medical aid fund-General Notice 737/2021 (GG 7713)
- Standard No. MAF.S.7.13: The period for general and condition-specific waiting periods and other periods referred to in section 354-General Notice 737/2021 (GG 7713)
- **Standard No. MAF.S.7.14:** Manner and form of application for registration of a medical aid fund-General Notice 737/2021 (GG 7713)
- **Standard No. MAF.S.7.15:** Form of certificate of registration for a medical aid fund-General Notice 737/2021 (GG 7713)
- **Standard No. MAF.S.7.16:** The period after which payment of subscriptions or contributions to a medical aid fund become due-General Notice 737/2021 (GG 7713)
- Standard No. MAF.S.7.17: Manner and form of application for cancellation or variation of registration of a medical aid fund-General Notice 163/2022 (GG 7784)
- **Standard No. MAF.S.7.18:** Manner and form of application for registration of a medical aid fund broker-General Notice 163/2022 (GG 7784)
- **Standard No. MAF.S.7.19:** Form of certificate of registration for a medical aid fund broker-General Notice 163/2022 (GG 7784)
- **Standard No. MAF.S.7.20:** Manner and form of application for cancellation or variation of registration of a medical aid fund broker-General Notice 163/2022 (GG 7784)
- Standard No. MAF.S.7.21: Governance of medical aid funds-General Notice 163/2022 (GG 7784)
- **Standard No. ADM.S.8.1:** Manner and form of application for registration of a fund/society administrator-General Notice 163/2022 (GG 7784)
- **Standard No. ADM.S.8.2:** Form of certificate of registration for a fund and society administrator-General Notice 163/2022 (GG 7784)
- Standard No. ADM.S.8.3: Manner and form of application for cancellation or variation of registration of a fund or society administrator-General Notice 163/2022 (GG 7784)

No standards numbered "9" have been published in draft form as yet.

General Notice 737/2021 (GG 7713) contains a general section on "Standards under the Financial Institutions And Markets Act, 2021 (Act No. 2 of 2021)" which precedes the General Standards listed below. (See pages 419-422 of the *Gazette*.)

No Standard No. GEN.S.10.1 published in draft form as yet.

• **Standard No. GEN.S.10.2:** Fit and proper requirements for any person registered under this act, and for directors, members of a board, principal officers, other officers, trustees, custodians, auditors and valuators of financial institutions and financial intermediaries, and for any other person subject to this Act-General Notice 737/2021 (GG 7713); republished with significant changes in General Notice 47/2023 (GG 8026)

No Standard No. GEN.S.10.3 published in draft form as yet.

No Standard No. GEN.S.10.4 published in draft form as yet.

No Standard No. GEN.S.10.5 published in draft form as yet.

No Standard No. GEN.S.10.6 published in draft form as yet.

No Standard No. GEN.S.10.7 published in draft form as yet.

- Standard No. GEN.S.10.8: The independence of directors, members of a board, trustees, custodians, auditors and valuators and of any other person required to be independent under the Act-General Notice 737/2021 (GG 7713)
- Standard No. GEN.S.10.9: Code of Conduct-General Notice 737/2021 (GG 7713)
- Standard No. GEN.S.10.10: Outsourcing of functions and responsibilities by financial institutions and financial intermediaries-General Notice 737/2021 (GG 7713); republished with significant changes in General Notice 47/2023 (GG 8026); republished with significant changes in General Notice 162/2024 (GG 8327)
- Standard No. GEN.S.10.11: Institutional Investment-General Notice 737/2021 (GG 7713)
- Standard No. GEN.S.10.12: The Content of Investment Mandates-General Notice 737/2021 (GG 7713)
- Standard No. GEN.S.10.13: Payment of Contributions-General Notice 737/2021 (GG 7713)
- **Standard No. GEN.S.10.14:** Information from List Applicants and Others on Listed Individuals, Listed Companies and Others-General Notice 737/2021 (GG 7713)

No Standard No. GEN.S.10.15 published in draft form as yet.

- Standard No. GEN.S.10.16: Imposition of Penalties on List Applicants and Others Pursuant to Sections 56(2), 92(2), 96(6), 181(2) or 183(6)-General Notice 737/2021 (GG 7713)
- Standard No. GEN.S.10.17: Description of Plain Language-General Notice 737/2021 (GG 7713)
- Standard No. GEN.S.10.18: The Fiduciary Responsibilities of Financial Institutions and Financial Intermediaries and of Their Directors, Members of Boards, Principal Officers and Other Officers-General Notice 163/2022 (GG 7784)
- Standard No. GEN.S.10.19: The form and content of any application for approval of a change of name, use of another name or use of a shortened form or derivative form of a name made to NAMFISA under this Act-General Notice 737/2021 (GG 7713)
- **Standard No. GEN.S.10.20:** Definition of related party transactions and identifying those that are prohibited under the Act/Standards-General Notice 737/2021 (<u>GG 7713</u>); replaced by **Standard No. GEN.S.10.20:** Definition of related party transactions and identifying those that are prohibited-General Notice 163/2022 (<u>GG 7784</u>)
- **Standard No. GEN.S.10.21:** General: Treating Consumers Fairly-General Notice 47/2023 (<u>GG 8026</u>) *No Standard No. GEN S.10.22 published in draft form as yet.*
- **Standard No. GEN.S.10.23:** Fees and charges-General Notice 737/2021 (<u>GG 7713</u>) *No Standard No. GEN S.10.24 published in draft form as yet.*
- **Standard No. GEN.S.10.25:** application for annual renewal of registration made to NAMFISA under this Act-General Notice 737/2021 (<u>GG 7713</u>).

*Namibia Financial Institutions Supervisory Authority Act 3 of 2021 📢 🙀

Summary: This Act (<u>GG 7646</u>) replaces the Namibia Financial Institutions Supervisory Authority Act 3 of 2001 as the governing legislation for the authority that exercises supervision over the business of financial institutions and services, often referred to by its acronym NAMFISA. Section 30 of the Act on co-operation with other agencies and organisations was brought into force on 1 September 2023 by GN 288/2023 (<u>GG 8203</u>). The remainder of the Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Repeals: The Act repeals the Namibia Financial Institutions Supervisory Authority Act 3 of 2001 and

provides a number of transitional provisions.

Savings: Section 62(2) contains a general savings clause:

Any subordinate measure made under the repealed law remains in force, unless it is in conflict with this Act, and is deemed to be made under this Act until superseded by a subordinate measure made under this Act.

Banking Institutions Act 13 of 2023 🕎 📻

Summary: This Act (<u>GG 8155</u>) consolidates and amends the laws relating to banking institutions, microfinance banking institutions and controlling companies. It was brought into force on 8 August 2023 by GN 250/2023 (<u>GG 8171</u>).

Repeals: The Act repeals the Banking Institutions Act 2 of 1998 (<u>GG 1808</u>), as amended by Act 14/2010 (<u>GG 4598</u>). The Banking Institutions Act 2 of 1998 in turn repealed the *Banks Act 23 of 1965*, as amended.

The repealed Banking Institutions Act 2 of 1998 was also amended by GN 34/2011 (<u>GG 4679</u>) (which amended section 2), the Deposit Guarantee Act 16 of 2018 (<u>GG 6806</u>) (which amended sections 11, 15 and 19) and the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>) (which had not yet been brought into force when Act 2 of 1998 was repealed). None of these are repealed by the Banking Institutions Act 13 of 2023, but they would have no effect after the repeal of the underlying Act.

Savings: Regulations, determinations, guidelines, circulars or notices made in terms of the previous Banking Institutions Act 2 of 1998 survive in terms of section 109(3) of this Act:

A regulation, determination, guideline, circular or notice made or in force, or any banking institution or controlling company registered as such for the purpose of conducting banking business or any action taken by the Bank under any provision of the repealed law –

- (a) is deemed to have been made or to be in force or to have been authorised to conduct banking business or to be registered under a corresponding provision of this Act; and
- (b) remains in force until it has been repealed or amended under any appropriate provision of this Act.

Regulations (but not other subsidiary enactments) made in terms of the previous *Banks Act 23 of 1965* survive in terms of section 74(2) of the Banking Institutions Act 2 of 1998:

Any regulation made or in force, or any banking institution or controlling company registered as such for the purpose of conducting banking business, under any provision of any law repealed by subsection (1) shall be deemed to have been made or to be in force, or to have been authorised to conduct banking business, under the corresponding provision of this Act.

Regulations: Regulations and determinations are authorised by section 108 of the current Act. The following regulations have been issued:

Regulations relating to restrictions on loan-to-value ratios are contained in GN 342/2023 (GG 8246), which repeals GN 334/2019 (GG 7044). 155

The following regulations made under the Banking Institutions Act 2 of 1998 appear to survive:

Regulations pertaining to fees made under this Act are contained in GN 234/2009 (GG 4386), as amended by GN 323/2017 (GG 6490). 156

Regulations relating to qualifications, terms and conditions for appointment as members of Appeal Board and conducting of appeals are contained in GN 359/2019 (GG 7057).

¹⁵⁵ These regulations replace the regulations in GN 229/2016 (GG 6130).

¹⁵⁶ Previous regulations on fees were contained in GN 75/1998 (GG 1831), repealed by GN 234/2009 (GG 4386).

Regulations relating to unfair terms in transactions or contracts between banking institutions and customers or the general public are contained in GN 296/2020 (GG 7395).

The following regulations made under the *Banks Act 23 of 1965* appear to survive, athough they may lack current relevance:

Regulations under the Banks Act, 1965 are contained in RSA GN R.2747/1986 (<u>RSA GG 10564</u>), as amended by RSA GN R.1458/1988 (<u>RSA GG 11428</u>), and as amended after independence by GN 75/1998 (<u>GG 1831</u>). The remaining portions of these regulations primarily cover forms for financial returns and statements and maximum credit balances on savings accounts. ¹⁵⁷

Determinations: A number of "Banking Institutions Determinations" were issued in terms of the Banking Institutions Act 2 of 1998 and survive under this Act. The table below includes determinations issued under both the current and previous Acts.

Appointment, Duties and Responsibilities of Directors, Principal Officers, and Executive Officers of Banking Institutions and Controlling Companies (BID-1) ¹⁵⁸	General Notice 733/2022 (<u>GG 7980</u>) ¹⁵⁹	
Asset Classification, Suspension of Interest and Provisioning (BID-2)	General Notice 154/2024 (<u>GG 8339</u>) ¹⁶⁰	
BID-3 (General Notice 120/1998, <u>GG 1899</u>), was replaced by the Financial Intelligence Act 3 of 2007 and associated regulations. (See GN 71/2009, <u>GG 4256</u>).) The Financial Intelligence Act 3 of 2007 was subsequently replaced by the Financial Intelligence Act 13 of 2012.		
Limits on Exposures to Single Borrowers, Large Exposures and Concentration Risk (BID-4)	General Notice 48/2019 (<u>GG 6855</u>); ¹⁶¹ para 8.1 is amended by General Notice 661/2024 (<u>GG 8482</u>) with respect to the agriculture sector	
Measurement and Calculation of Capital Charges for Credit Risk, Operational Risk and Market Risk (BID-5)	General Notice 291/2009 (<u>GG 4373</u>) ¹⁶²	
Measurement and Calculation of Capital Charges for Credit Risk, Operational Risk and Market Risk for Domestic Systemically Important Banks (BID-5A)	General Notice 496/2018 (<u>GG 6686</u>)	
Liquidity Risk Management (BID-6)	General Notice 320/2019 (<u>GG 6981</u>) ¹⁶³	
Liquidity Risk Management for Domestic Systemically Important Banks (BID-6A)	General Notice 101/2024 (GG 8325), effective from 31 Mar 2024	

¹⁵⁷ These regulations repeal the regulations contained in RSA GN R.1859/1978 (RSA GG 6155), as amended by RSA GN R.2142/1984 (RSA GG 9437), which in turn repealed the regulations contained in RSA GN R.1886/1972 (RSA GG 3683), which in turn repealed the regulations contained in RSA GN R.950/1965 (RSA GG 1158). ¹⁵⁸ This determination makes reference to the NamCode, which refers to the Corporate Governance Code for Namibia that can be found here.

¹⁵⁹ General Notice 733/2022 replaces General Notice 398/2020 (<u>GG 7339</u>), which replaced General Notice 21/2017 (<u>GG 6221</u>), which replaced General Notice 119/1998 (<u>GG 1899</u>). Note that GG 6220 contains a different General Notice numbered GN 21/2017. Note also that the table of contents in General Notice 733/2022 does not accord with the text.

¹⁶⁰ General Notice 154/2024 replaces General Notice 278/2003 (<u>GG 3078</u>), which replaced General Notice 120/1998 (GG 1899).

¹⁶¹ General Notice 48/2019 replaces General Notice 290/2009 (<u>GG 4373</u>), which replaced General Notice 279/2003 (<u>GG 3078</u>), which replaced General Notice 122/1998 (<u>GG 1899</u>).

¹⁶² General Notice 291/2009 replaces General Notice 280/2003 (<u>GG 3078</u>), which replaced General Notice 123/1998 (<u>GG 1899</u>).

¹⁶³ General Notice 320/2019 replaces General Notice 441/2014 (<u>GG 5634</u>), which replaced General Notice 292/2009 (<u>GG 4373</u>), which replaced General Notice 198/2007 (<u>GG 3879</u>), which replaced General Notice 281/2003 (<u>GG 3078</u>), which replaced General Notice 90/1999 (<u>GG 2105</u>).

Minimum Local Assets (BID-7)	General Notice 199/2007 (<u>GG 3879</u>) ¹⁶⁴
Fees payable in terms of section 64(6) (BID-8)	General Notice 126/1998 (<u>GG 1899</u>)
Fraud and Other Economic Crime (BID-9)	General Notice 16/1999 (<u>GG 2026</u>)
Appointment, Duties and Responsibilities of Independent Auditors (BID-10)	General Notice 407/2017 (<u>GG 6437</u>) ¹⁶⁵
No record of BID-11	
Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12)	General Notice 17/1999 (<u>GG 2026</u>)
Disclosure of Bank Charges, Fees and Commissions (BID-13)	General Notice 18/1999 (GG 2026) General Notice 463/2020 (GG 7384) General Notice 463/2020 came into force on 1 March 2021 and seems to replace General Notice 18/1999 (GG 2026) since both are labelled as "BID-13"; however, General Notice 463/2020 makes no explicit reference to General Notice 18/1999.
Minimum Insurance for Banking Institutions (BID-14)	General Notice 89/1999 (<u>GG 2105</u>)
Limits on Inter-Bank Placements (BID-15)	General Notice 282/2003 (GG 3078)
BID-16 has been repealed. BID-16 was initially contained in General Notice 283/2003 (GG 3078). It was repealed by General Notice 80/2010 (GG 4447) with effect from 10 March 2010. Note that there are two versions of this Government Gazette. The correct citation for the repeal is General Notice 80/2010 and not General Notice 86/2010 as stated in the erroneous Government Gazette which was replaced by the correct one. (General Notice 86/2010 is the Establishment of the township Omuti: Municipality of Okahandja in GG 4451.)	
Country Risk Management (BID-17)	General Notice 100/2007 (<u>GG 3840</u>)
Public Disclosures for Banking Institutions (BID-18)	General Notice 293/2009 (<u>GG 4373</u>)
Cloud Computing (BID-19)	General Notice 765/2024 (<u>GG 8513</u>) ¹⁶⁶
Internal Capital Adequacy Assessment Process (BID-20)	General Notice 294/2009 (<u>GG 4373</u>)
Interest Rate Risk in the Banking Book (BID-21)	General Notice 295/2009 (<u>GG 4373</u>)
Branches of Foreign Banking Institutions (BID-22)	General Notice 450/2012 (<u>GG 5102</u>) ¹⁶⁷
Fit and Proper Test for Substantial and Prospective Substantial Shareholders of Banking Institutions and Controlling Companies (BID-23)	General Notice 240/2020 (GG 7246)
Consolidated Supervision (BID-24)	General Notice 107/2012 (<u>GG 4933</u>)
Imposition of Administrative Fines (BID-25)	General Notice 284/2013 (<u>GG 5244</u>)
Priority of Claims in the event of winding-up of a Banking Institution or Controlling Company (BID-26)	General Notice 158/2017 (<u>GG 6332</u>)
Application for Registration as a Controlling Company	General Notice 442/2014 (<u>GG 5635</u>)

¹⁶⁴ General Notice 199/2007 replaces General Notice 125/1998 (<u>GG 1899</u>).

No record of BID-28 or BID-29.

Information Security (BID-30)

No record of BID-31.
Securitization Schemes (BID-32)

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General Notice 425/2017 (GG 6448)

General Notice 493/2019 (GG 7066)

¹⁶⁵ General Notice 407/2017 replaces General Notice 427/2012 (<u>GG 5089</u>), which replaced General Notice 280/1999 (<u>GG 2190</u>).

¹⁶⁶ General Notice 765/2024 replaces the Determination on Localization of Core Banking Systems (BID-19) contained in General Notice 272/2008 (GG 4109).

¹⁶⁷ General Notice 450/2012 replaces General Notice 169/2012 (GG 4988).

Policy changes in response to economic and financial stability challenges as a result of the Covid-19 Pandemic (BID-33)	General Notice 162/2023 (<u>GG 8061</u>) ¹⁶⁸	
Outsourcing (BID-34)	General Notice 767/2024 (<u>GG 8515</u>) ¹⁶⁹	
No record of BID-35.		
Recovery Plans (BID-36)	General Notice 662/2024 (GG 8483); comes into force on 23 October 2024 for banking institutions and microfinance banking institutions, and on 1 January 2027 for controlling companies of such institutions	
No record of BID-37.		
Microfinance Banking Institutions (BID-38)	General Notice 459/2024 (<u>GG 8421</u>)	
Policy Changes in Response to Economic and Financial Stability Challenges as a Result of the State of Emergency over the Persistent Drought in Namibia (BID-39)	General Notice 661/2024 (GG 8482); effective from 23 October 2024 for a period of 2 years	

Notices: The following notices were issued under the Banking Institutions Act 2 of 1998 and appear to survive, although they may not be relevant to the current law since they all concern specific provisions of the previous Banking Institutions Act 2 of 1998:

General Notice 100/2009 (GG 4284) contains a declaration of conduct which constitutes "receiving of funds from the public" under section 1(d) of Act 2 of 1998 for the purpose of ascertaining if a person is conducting banking business.

GN 378/2019 (GG 7069) concerns an exemption from the definition of "receiving funds from the public" in section 1 of Act 2 of 1998.

GN 159/2020 (GG 7286) provides that multi-level marketing business practices are not considered pyramid schemes under section 55A of Act 2 of 1998.

Authorisations and suspensions: Specific authorisations to conduct banking business and suspensions of banking business are not listed here.

Related law: Note that the Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>) places certain additional duties on persons who carry on "banking business" or are "receiving funds from the public", as defined in section 1 of the Act.

Application of law: GN 34/2011 (GG 4679), issued under the previous Banking Institutions Act 2 of 1998, removed the Post Office Savings Bank from the coverage of section 2(2) of that Act with effect from 1 April 2011. Section 2(2) of this previous Act contained a list of institutions that the Act did *not* apply to; thus, the removal of the Post Office Savings Bank from the coverage of section 2(2) meant that the previous Act *did* apply to the Post Office Savings Bank. ¹⁷⁰ In contrast, the exemptions listed in section 2(1)(d) of the current Act include the Post Office Savings Bank as defined in the Posts and Telecommunications Act 19 of 1992 - meaning that the current Act does *not* apply to the Post Office Savings Bank.

Cases: No cases have yet been decided under this Act.

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¹⁶⁸ General Notice 162/2023 replaces General Notice 668/2022 (<u>GG 7957</u>), which replaced General Notice 590/2021 (<u>GG 7665</u>), which replaced General Notice 127/2020 (<u>GG 7166</u>).

¹⁶⁹ General Notice 767/2024 appears to supersede the Determination on Outsourcing in banking institutions and cloud computing (BID-34) contained in General Notice 286/2022 (<u>GG 7835</u>), although it does not repeal or withdraw this previous BID-34.

¹⁷⁰ See *Negonga v Nampost Ltd* 2018 (3) NR 704 (HC), para 16.

The following cases concern the previous Banking Institutions Act 2 of 1998 -

Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (2) 2018 (1) NR 183 (HC) (provisional order re: insolvency under section 1 read with section 58; compliance with section 28(4)); Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (3) 2018 (1) NR 193 (HC) (final order for winding up due to insolvency under section 1 read with section 58; compliance with section 58(5)(c)); ruling on compliance with section 58(5)(c) upheld on appeal in Metropolitan Bank of Zimbabwe Ltd & Another v Bank of Namibia 2018 (4) NR 155 (SC).

The following case concerns section 30 of the previous legislation, the *Banks Act 23 of 1965 – Grobler v Commercial Bank of Namibia Ltd 2010 (1) NR 313 (SC).*

See generally *Kamushinda & Others v Liquidators*, *Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation)* 2024 (1) NR 277 (SC):

[105] A total of at least N\$247 535 004 was looted from SME Bank in the manner set out above. This occurred over a period spanning several years until BoN [Bank of Namibia] took over control of SME Bank on 1 March 2017 and eventually applied to place it under provisional liquidation on 11 July 2017, made final on 29 November 2017. Quite how this systematic looting of a registered bank was able to proceed over such a sustained period raises questions concerning the efficacy of the regulation and supervision of SME Bank by BoN, especially after SME Bank's external auditors raised concerns about investments totalling N\$196 million with a South African concern and drew these concerns to the attention of BoN more than six months before the latter took over control of SME Bank on 1 March 2017.

[106] The numerous payments to which Mr Kamushinda [former director of SME Bank] was party which are well documented in the counter-application would *prima facie* appear to constitute not only contravention(s) of s 430(4) but also more serious crimes including theft and contraventions of the Prevention of Organised Crime Act 29 of 2004 (POCA). Yet we were informed at the hearing that no warrant for the arrest of Mr Kamushinda has been issued. The *prima facie* criminal conduct on the rampant scale set out in the counter-application is of massive proportions, involving the theft of more than N\$247 million from a registered bank to the detriment of its several deposit holders and creditors. Economic crime of this scale within the context of the Namibian economy justifies an appropriately serious response. The registrar is directed to provide a set of papers in the counter-application to the Prosecutor-General.

[107] Finally, the liquidators are to be commended for the thorough investigation they pursued which has uncovered the nature and extent of the looting of SME Bank. These investigations have involved meticulously gathering evidence to determine and pinpoint liability for those losses and their extent. Not only has the body of creditors been very well served by this exercise, but the public interest has also been served in the process of bringing to light the systematic looting of a registered bank to the detriment of its depositors and creditors and the financial system as a whole.

The following case makes suggestions for self-regulation of mortgages by banks to remedy Namibia's "debtor-unfriendly" laws:

First National Bank of Namibia Ltd v Musheti 2018 (1) NR 144 (HC)

Our law is still debtor-unfriendly: it entitles the creditor like in the present matter, a bank to whom an immovable property was mortgaged, to contractually refuse late payment of home loan instalments; only payment of the full outstanding accelerated amounts, not just the arrears, would save a mortgagor's property. I see no reason in principle why the banks in Namibia cannot adopt a self-regulating system in the absence of legislation to negotiate and agree on the terms of reinstatement of bond agreements. Such reinstatement will offer the mortgagor a lifeline. It spares the mortgagor who is faced with a sale in execution of his or her primary home. Such approach will contribute to and advance socio-economic welfare for the Namibian people which will in turn create a stable and conducive business environment by facilitating home ownership. Then when default on loan repayment occurs, like in the present matter, to accommodate and be prepared to renegotiate new terms of the loan. (para 37, per Angula DJP).

Commentary: Frederico Links & Clement Daniels, "Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia", Institute for Public Policy Research, 2011, available here.

Payme1' nt System Management Act 14 of 2023 🗐 🙀

Summary: This Act (<u>GG 8156</u>) provides for the management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia. It also provides for the continuation of the Payment System Management Body established under the previous Payment System Management Act 18 of 2003 as the Payments Association of Namibia. The current Act was brought into force on 8 August 2023 by GN 251/2023 (<u>GG 8171</u>).

Repeals: This Act replaces the Payment System Management Act 18 of 2003 (<u>GG 3115</u>), as amended by Act 6/2010 (<u>GG 4479</u>).

Savings: Section 50(1) of the Act contains a broad savings provision:

Any regulation, determination, directive, guideline, circular, exemption, order, notice, standard, specification or instructions made, issued or granted, under any provision of any law repealed by section 49 is deemed to have been made, issued or granted under the corresponding provision of this Act.

The savings provision refers to regulations made under the repealed law, but that law made no provision for regulations.

Regulations: Regulations relating to fees payable to the Bank of Namibia are contained in GN 252/2023 (GG 8171).

Regulations relating to the variation or revocation of designated entities are contained in GN 253/2023 (GG 8171).

Determinations: Note that a number of "Payment System Determinations" were issued in terms of the Payment System Management Act 18 of 2003 and survive pursuant to the savings clause. The table below includes determinations issued under both the current and previous Acts.

Licensing and Authorisation of Payment Service Providers in Namibia (PSD-1)	General Notice 84/2024 (GG 8308) 171
Reduction of the Item Limit for Domestic Cheque Payments within the Namibian National Payment System (PSD-2) Note: This Determination is referred to variously in GG 6492 as "Reduction of the Item limit for Domestic Cheque Payments within the Namibian National Payment System" (text of General Notice), "Reduction of the Item Limit for Cheque Payments within the Namibian National Payment System" (title of determination) and "Reduction of the domestic cheque item limit to N\$ 100,000" ("Short title").	General Notice 504/2017 (GG 6492) ¹⁷²
Issuing of Electronic Money in Namibia (PSD-3)	General Notice 561/2024 (<u>GG 8457</u>), which comes into force 6 months after its publication on 27 September 2004, when it will replace the current PSD-3 in General Notice 492/2019 (<u>GG 7064</u>) ¹⁷³
Conduct of Card Transactions within the National Payment System (PSD-4)	General Notice 341/2022 (<u>GG 7859</u>) ¹⁷⁴

¹⁷¹ General Notice 84/2024 repeals and replaces General Notice 184/2007 (<u>GG 3872</u>). It also repeals the the Guidelines for Electronic Money Issuers in Namibia, the Guidelines for Payment Intermediation Service Providers in the National Payment System of Namibia, and the PAN Entry and Participation Criteria for Authorisation to Act as a Service Provider in the National Payment System.

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¹⁷² General Notice 504/2017 replaces General Notice 4/2016 (<u>GG 5940</u>) (as corrected by General Notice 57/2016 (<u>GG 5962</u>)), which in turn replaced General Notice 255/2009 (<u>GG 4364</u>).

¹⁷³ General Notice 492/2019 replaces General Notice 667/2018 (<u>GG 6768</u>), which replaced General Notice 66/2012 (GG 4909).

¹⁷⁴ General Notice 341/2022 replaces General Notice 448/2012 (<u>GG 5098</u>).

Standards for a Basic Bank Account and Cash Deposit Fees (PSD-5)	General Notice 516/2019 (<u>GG 7079</u>) ¹⁷⁵	
Authorisation of Payment System Operators and System Participants in the National Payment System (PSD-6)	General Notice 289/2024 (<u>GG 8382</u>) ¹⁷⁶	
Efficiency of the National Payment System (PSD-7)	General Notice 472/2013 (GG 5355)	
No record of PSD-8		
Conduct of Electronic Funds Transfer Transactions in the National Payment System (PSD-9)	General Notice 571/2022 (GG 7927) (comes into operation 6 months from publication date of 14 October 2022), as amended by General Notice 155/2024 (GG 8343) (which changes the effective date to 30 Sept 2024)	
Standards for Fees and Charges for Payment System Services within the National Payment System (PSD-10)	General Notice 323/2020 (GG 7304)	
Card Interchange and ATM Surcharging (PSD-11)	General Notice 181/2022 (GG 7798); General Notice 413/2022 (GG 7878) brings the rates in respect of the Card Interchange for Fuel Transactions under section 9.2.1 of PSD-11 into force on 22 August 2022 and the remainder of PSD-11 into force on 1 October 2022 ¹⁷⁷	
Operational and Cybersecurity Standards within the National Payment System (PSD-12)	General Notice 737/2022 (<u>GG 7984</u>) (effective 1 July 2023)	
Designation of Systemically Important Systems and Authorisation of Financial Market Infrastructures in Namibia (PSD-13)	General Notice 766/2024 (<u>GG 8514</u>)	

Directives: The following "Payment System Directive" was issued in terms of the repealed Payment System Management Act 18 of 2003 and survives pursuant to the savings clause -

Conduct within the National Payment System in Namibia (PSDIR-1): General Notice 183/2007 (GG 3872)

The following Directive was issued in terms of the current Act –

Directive on the User Fees and Charges and Speed of Cross-border Common Monetary Area (CMA) Low Value Transactions (PSDIR-9): General Notice 156/2024 (<u>GG 8343</u>) (effective from 30 Sept 2024)

The text of PSDIR-9 is not included in the *Government Gazette*, but according to the *Gazette* is available on the Bank of Namibia's website under the National Payment System's Legal Framework at www.bon.com.na. (See below.)

The following Directives have not been gazetted, but were on the Bank of Namibia website (last checked on 23 January 2025) -

Directive on Early Square-Off within the Namibia Inter-Bank Settlement System (PSDIR-4)

¹⁷⁵ General Notice 516/2019 repeals and replaces General Notice 295/2014 (<u>GG 5544</u>). General Notice 159/2014 (<u>GG 5485</u>) and General Notice 295/2014 (<u>GG 5544</u>) both purport to repeal and replace General Notice 130/2013 (<u>GG 5187</u>) with effect from 31 March 2015; General Notice 295/2014 makes no reference to General Notice 159/2014, but it repeats General Notice 159/2014 with only minor changes to punctuation, etc.

¹⁷⁶ General Notice 289/2024 replaces the Determination on the Criteria for Authorisation of Participants in the Clearing and Settlement Systems in General Notice 103/2013 (<u>GG 5164</u>).

¹⁷⁷ General Notice 181/2022 repeals and replaces the card interchange rates contained in Schedule "5C" of the Payments Association of Namibia's Payment Clearing House Card Schedule.

Directive to Prohibit the Practice of Sorting-at-Source of EFT Payment Instructions within the Namibian National Payment System (PSDIR-5)

Directive on the Routing of Three Debit Card Bins (i.e. bins 479053,479057 and 417307) of First National Bank (FNB) of Namibia (PSDIR-7).

Directive on Straight-Through-Processing within the Namibia Interbank Settlement System (PSDIR-8)

Directive on the Speed and User Fees and Charges of CMA Transactions (PSDIR-9).

Exemptions: In terms of the previous Payment System Management Act 18 of 2003, every "payment instrument issuer" was exempted from the application of section 7(1) of that Act by GN 136/2013 (GG 5211); a "payment instrument issuer" was defined as a person who issues a payment instrument registered in terms of section 5(1)(a) of that Act, and who complies with the Determination on Issuing Electronic Money [PSD-3] published in General Notice 66/2012 (GG 4909).

Service providers registered as contemplated in section 3(6) of the previous Act were exempted from compliance with section 7(1) of that Act by GN 14/2018 (GG 6524).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096).

Cases: No cases have yet been decided under this Act.

The following case was decided under the previous Payment System Management Act 18 of 2003: *Prosecutor-General v Standard Bank Namibia Ltd & Others* 2019 (1) NR 159 (HC) (forfeiture of money gained in violation of section 16B of the Act).

COMMENTARY

Athalia Wallace-McNab & Dunia P Zongwe, "Collateral in Namibia: A plea for Umbrella Regulation" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here

Iyaloo Hamulungu, "Online Robberies and Privacy Rights: An Appraisal of the Namibia Banking Sector and its Vulnerability to Cybercrimes" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available <a href="https://example.com/here-new-commission-new-commiss

INTERNATIONAL LAW

Agreement Establishing the African Development Bank, 1963

Agreement Establishing the International Fund for Agricultural Development, 1976.

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944

Articles of Agreement of the International Finance Corporation (IFC), 1955

Articles of Agreement of the International Monetary Fund (IMF), 1944

Multilateral Monetary Agreement between Eswatini, Lesotho, Namibia and South Africa (MMA), 1992

See also Agricultural Bank of Namibia Act 5 of 2003 (AGRICULTURE).

See also FINANCE AND DEVELOPMENT.

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 and Posts and Telecommunications Act 19 of 1992 with regard to the Post Office Savings Bank (MEDIA AND COMMUNICATION).

FUEL AND ENERGY

Petroleum Products and Energy Act 13 of 1990 🕎 🙀

Summary: This Act (originally published in <u>GG 64</u>) provides measures for the saving of petroleum products and economy in the cost of distributing such products. It controls pricing and certain information about petroleum products, and regulates certain services in connection with motor vehicles. The Act also establishes a National Energy Fund and a National Energy Council, and provides for levies on fuel.

Repeals: The Act repeals the *Petroleum Products Act 120 of 1977* and the Levies on Fuel Proclamation AG. 16 of 1984 (OG 4917).

Amendments: Act 29/1994 (GG 979) amends sections 2, 14, 15 and 21.

Act 3/2000 (GG 2289), which was brought into force on 3 July 2000 by GN 154/2000 (GG 2357), amends sections 1, 6, 8 and 21 and inserts sections 2A and 4A.

Act 16/2003 (GG 3113), which was brought into force on 17 March 2005 by GN 29/2005 (GG 3396), amends sections 1, 2A, 11,13, 17, 18, 19, and the long title, and inserts sections 11A, 11B, 18A, 18B, 19A and 19B.

Savings: Section 23(2) is a broad savings clause which states:

A regulation made, notice given or any other act done under any provision of the Act or Proclamation referred to in subsection (1), and which is in force at the repeal of that Act and Proclamation by this section, shall, notwithstanding such repeal, remain in force after the commencement of this Act in so far as it deals with any matter in respect of which the Minister may make regulations or give any notice or perform any act under this Act, until it is repealed, replaced, amended or withdrawn under any provision of this Act.

Regulations: There appear to be no surviving pre-independence regulations.

GN 38/1993 (GG 617) repeals the Regulations in respect of Petroleum Products contained in RSA GN R.1614/1985 (RSA GG 9846), made under the repealed *Petroleum Products Act 120 of 1977* (RSA GG 5672), without promulgating any new regulations.¹⁷⁸

The repealed Levies on Fuel Proclamation AG. 16 of 1984 made no provision for regulations.

The following regulations were issued under the current Act:

Regulations relating to the purchase, sale, supply, acquisition, possession, disposal, storage, transportation, recovery and re-refinement of used mineral oil are contained in GN 48/1991 (GG 183), which is replaced by GN 112/1991 (GG 281).

Petroleum Products Regulations are contained in GN 155/2000 (<u>GG 2357</u>), which repeals the regulations in RSA GN R.1829 of 28 August 1981, R.1614 of 19 July 1985 (already repealed by GN 38/1993, as noted above), R.2298 of 11 October 1985 and R.1100 of 2 June 1986. GN 155/2000 is amended by GN 202/2002 (<u>GG 2866</u>), GN 122/2016 (<u>GG 6036</u>) and GN 270/2021 (<u>GG 7698</u>).

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¹⁷⁸ These regulations repeal RSA GN R.1129 dated 24 May 1985. Note that the relevant transfer proclamation is the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, but it excludes *the Petroleum Products Act 120 of 1977* from transfer.

GN 122/2016 states that these regulations were amended by GN 3/2001. This is incorrect. GN 3/2001 (GG 2468) was an extension of a time period issued under regulation 64(3)(a) and has no relevance beyond 2001.

GN 122/2016 also states that these regulations were amended by GN 75/2003, dated 23 July 2003. This is incorrect. GN 75/2003 (GG 2946) is actually dated 1 April 2003. It was an application of certain specifications and standards under regulation 44 which was withdrawn by GN 166/2007 (GG 3900).

Regulations for arbitration procedures are contained in GN 93/2003 (GG 2970).

Regulations on funding of approved agencies are contained in GN 230/2004 (<u>GG 3307</u>), which is withdrawn by GN 30/2005 (<u>GG 3397</u>), which publishes new regulations on the same topic. However, GN 247/2013 (<u>GG 5287</u>) purports to amend the regulations in GN 230/2004, leaving the correct text of these regulations uncertain.

Regulations relating to the reselling price of petrol and petrol products are issued frequently, with each one revoking or replacing the previous one. These have not been recorded here.

Notices: Pursuant to regulation 44 of the Petroleum Products Regulations promulgated by GN 155/2000, GN 166/2007 (GG 3900) and GN 149/2013 (GG 5222) apply certain **codes of practice** and **specifications and standards**. (Previous codes, specifications and standards were contained in GN 21/2002 (GG 2696) and GN 75/2003 (GG 2946).)

There is some confusion here. GN 166/2007 ($\underline{GG\ 3900}$) withdraws GN 75/2003. However, GN 149/2013 ($\underline{GG\ 5222}$) purports to repeal the same GN 75/2003. It appears that GN 149/2013 ($\underline{GG\ 5222}$) may have intended to repeal GN 166/2007.

Pursuant to sections 2 and 2A of the Act, certain **specifications and standards of petroleum products and storage** were initially contained in GN 54/2016 (<u>GG 5984</u>), which was repealed and replaced by GN 69/2020 (<u>GG 7140</u>)

A levy on electricity supplied by NamPower as a transmission licensee is imposed in terms of section 19(1) of the Act by a series of Government Notices, each of which replaces the previous one: GN 296/2012 (GG 5094), with the particulars referred to in section 19(3) of the Act set out in the Schedule; GN 93/2014 (GG 5509); GN 225/2014 (GG 5606); GN 145/2016 (GG 6059) and GN 331/2017 (GG 6494).

Levies imposed on gasoil diesel and unleaded petrol are issued from time to time, with each one revoking or replacing the previous one. These have not been recorded here.

Cases

BP Namibia (Pty) Ltd v Southline Retail Centre CC 2009 (1) NR 268 (HC) (Note: The Act is mistakenly referred to in the headnote as the Petroleum Products Act 120 of 1977.)

Southline Retail Centre CC v BP Namibia (Pty) Ltd 2011 (2) NR 562 (HC) (section 4A and Regs 29 and 30 of the Petroleum Products Regulations in relation to whether or not Minister has a direct legal interest in proceedings between wholesaler and operator and section 4A(1)(e) on promotion of security of tenure).

INTERNATIONAL LAW

Convention of the African Energy Commission, 2001

Framework Agreement on the establishment of the International Solar Alliance (ISA), 2016
**Memorandum of Agreement between SADC Member States regarding the establishment of SADC
Centre for Renewal Energy and Energy Efficiency (SACREEE), 2017
SADC Protocol on Energy, 1996

†Statute of the International Atomic Energy Agency (IAEA), 1956 Statute of the International Renewable Energy Agency (IRENA), 2009

See also **ELECTRICITY**.

See also Atomic Energy and Radiation Protection Act 5 of 2005 (ENVIRONMENT).

GAMBLING

Lotteries Act 13 of 2017 w 🗐 📻

Summary: This Act (<u>GG 6500</u>) establishes a Lotteries Board for the promotion and conduct of the National Lottery, and provides for the administration of the National Lottery and sports pool by this Board. It also provides for and regulates other lotteries and promotional competitions. Proceeds from the State Lottery are paid into a State Lottery Trust Fund, which is to be used for funding –

charitable expenditures;

arts, culture, sport, national heritage and conservation; youth empowerment, psycho-social disorders, science and innovation; and national emergencies such as droughts and floods.

The Act was brought into force on 1 December 2021 by GN 255/2021 (GG 7694).

Repeals: The Act repeals the Lotteries Act 15 of 2002 (GG 2885), which was never brought into force.

Regulations: Regulations are contained in GN 256/2021 (GG 7694).

Appointments: Members of the Lotteries Board are announced in GN 259/2021 (GG 7695).

Commentary: Max Weylandt, "The State Lottery comes to Namibia", *Perspectives on Parliament*, Issue No. 6, Institute for Public Policy Research, June 2017, available here.

Gaming and Entertainment Control Act 13 of 2018 🗐 🙀

Summary: This Act (originally published in <u>GG 6793</u>) regulates gambling and gambling activities in Namibia. It also establishes the Gambling Board and the Gambling Trust Fund. It was brought into force on 1 December 2021 by GN 253/2021 (GG 7693).

Note that the *Government Gazette* containing this Act was initially issued with the incorrect number 6792. The *Gazette* was re-issued with the correct number 6793.

Repeals: The Act repeals the *Gambling Act 51 of 1965*, ¹⁷⁹ the Casinos and Gambling Houses Act 32 of 1994 and the Licensing of Totalisators Ordinance 5 of 1938. ¹⁸⁰

Amendments: Act 5 of 2020 (<u>GG 7269</u>), which was brought into force along with the Act on 1 December 2021 by GN 253/2021 (<u>GG 7693</u>), amends sections 1, 6, 17 and 20 and inserts sections 40A and 88A.

Regulations: Regulations made under the repealed laws survive in terms of section 110(1) of this Act: Any regulation or any other thing done under a provision of a repealed law and which could have be [sic] made or issued under a corresponding provision of this Act is deemed to have been made or issued under such corresponding provision of this Act.

However, the *Gambling Act 51 of 1965* and the Licensing of Totalizators Ordinance 5 of 1938 made no provision for regulations and the only set of regulations surviving under the Casinos and Gambling Houses Act 32 of 1994 was repealed by the regulations issued under this Act.

¹⁸⁰ This Act does not repeal the amendment to the Licensing of Totalisators Ordinance 5 of 1938 contained in the Licensing of Totalisators Amendment Ordinance 13 of 1953 (OG 1771), but it would have no independent effect.

¹⁷⁹ This Act does not repeal the amendments to the Gambling Act 51 of 1965 in the *General Law Amendment Act* 70 of 1968 (RSA GG 2106) and the Posts and Telecommunications Companies Establishment Act 17 of 1992 (GG 447), but they would have no independent effect.

Regulations issued pursuant to this Act are contained in GN 254/2021 (GG 7693). As noted, these regulations repeal the regulations issued under the Casinos and Gambling Houses Act 32 of 1994. 181

Appointments: Members of the Gambling Board are announced in GN 258/2021 (<u>GG 7695</u>), GN 37/2023 (<u>GG 8040</u>) and GN 22/2024 (<u>GG 8318</u>).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>), which places certain duties on casinos, gambling houses and persons carrying on the business of a totalisator or bookmaker.

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¹⁸¹ Regulations issued under the Casinos and Gambling Houses Act 32 of 1994 were contained in GN 231/1994 (<u>GG 984</u>), as amended by GN 84/1995 (<u>GG 1084</u>), GN 136/1995 (<u>GG 1124</u>), GN 121/1996 (<u>GG 1317</u>), GN 76/2010 (<u>GG 4460</u>), GN 95/2017 (<u>GG 6295</u>) and GN 255/2020 (<u>GG 7361</u>). GN 254/2021 (<u>GG 7693</u>) repeals the regulations published in GN 230/1994, which appears to have been intended to refer to GN 231/1994. GN 254/2021 also neglects to repeal the amendments to these regulations contained in GN 95/2017 and in GN 255/2020, but these remaining amendments would have no independent effect.

HEALTH

Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965

Summary: This Ordinance (OG 2614) provides for the certification of institutions for the treatment of persons addicted to drink, drugs, gambling, etc. and the detention of such persons for treatment. It was brought into force on 1 September 1965 by Proc. 78/1965 (OG 2674).

Section 63(1) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 states:

Subject to the provisions of subsections (2) and (3), the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963), is, except in so far as it is necessary for the administration thereof by the Minister of Coloured Affairs in terms of Proclamation No. 57 of 1964, and the Ordinance for the Prevention and Combating of Alcoholism and Anti-social Conduct, 1965 (Ordinance No. 11 of 1965), of the territory, hereby repealed.

Although the wording may seem at first glance to be somewhat ambiguous, this provision is understood to mean that Act 86 of 1963 is repealed – except insofar as that Act is relevant to the administration of the other two laws cited (Proc. 57 of 1964 and Ord. 11 of 1965). This interpretation is supported by the use of the verb "is....repealed" – which indicates that the provision refers to only a single repealed law – and by the placement of commas in the provision. Thus, it appears that Act 41 of 1973 does *not* repeal this Ordinance as has been assumed in some sources.

Regulations: Regulations are contained in GN 182/1965 (OG 2670). No amendments have been located.

International Health Regulations Act 28 of 1974, as amended to December 1977 w

Summary: This Act (originally published in <u>RSA GG 4219</u>) applies the International Health Regulations adopted by the World Health Assembly in 1969 to South Africa.

On 25 May 1951 WHO Member States adopted the *International Sanitary Regulations – World Health Organisation Regulations No. 2*, which entered into force internationally on 01 October 1952 (Source: UNTC). In accordance with Article 106 - 110 of the Regulations entered into force in the Union of South Africa (including the territory of South West Africa) upon acceptance on the same date 01 October 1952 (Source: UNTC).

The International Sanitary Regulations were replaced by the *International Health Regulations* in 1969. The 1969 Regulations were subject to minor modifications in 1973 and 1981.

The 1969 International Health Regulations were replaced in turn by the *International Health Regulations*, 2005, which entered into force internationally on 15 June 2007 (source: WHO). Namibia is bound by these 2005 Regulations from that date in accordance with Articles 21(a) and 22 of the WHO Constitution.

According to Article 58 of these regulations, headed "International sanitary agreements and regulations", the 2005 Regulations replace inter alia the International Sanitary Regulations, 1951 and the Additional Regulations of 1955, 1956, 1960, 1963 and 1965, as well as the International Health Regulations of 1969 and the amendments of 1973 and 1981.

However, this South African statute, which is still in force in Namibia, incorporates the 1969 version of the International Health Regulations directly into Namibian domestic law.

For more information on the international context, see the Namlex Appendix entry on the Constitution of the World Health Organization (WHO), 1946.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 5 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) – which was not made expressly applicable to SWA.

Amendments: The regulations in this law are amended by RSA Proc. R.139/1975 (RSA GG 4741).

Regulations: Supplementary regulations (in the sense of being "supplementary" to the International Health Regulations applied to South Africa and SWA in terms of the Act) are contained in RSA GN R.2001/1975 (RSA GG 4878), reprinted in OG 3500) and amended in South Africa by RSA GN R.2069/1978 (RSA GG 6188) and RSA GN R.790/1980 (RSA GG 6954). The 1975 and 1980 notices specifically mention that they are being effected with the consent of the Administrator-General for the Territory of South-West Africa and that they also apply in the Territory. The 1978 notice makes no mention of SWA and thus – being after the date of transfer – does not seem to be applicable to SWA. (In any event, the final outcome is the same because the sole amendment made by the 1978 notice is superseded by the amendment made by the 1980 notice.) Thus, the supplementary regulations appear to apply to SWA as issued in RSA GN R.2001/1975 (RSA GG 4878) and amended by RSA GN R.790/1980 (RSA GG 6954).

Notices: Designations of approved ports and airports are contained in RSA Proc 241/1975 (<u>RSA GG</u> 4877).

Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 🗐 😓

Summary: This Ordinance (OG 4011) controls the sale, manufacture and import of foodstuffs, cosmetics and disinfectants. This Ordinance originally authorised local authorities to enforce it locally. It was extended to all of SWA by the Health Act 21 of 1988 (OG 5651).

Repeals: The Ordinance repeals the Food, Drugs and Disinfectants Ordinance 36 of 1952 (OG 1701), which came into operation on 8 May 1956 (OG 1993). 182

Regulations: Regulations made in terms of the repealed Food, Drugs and Disinfectants Ordinance 36 of 1952 survive pursuant to section 28(2) of this Ordinance:

Any proclamation, regulation, notice, authority or order issued, made or granted, or any other thing done in terms of any provision of the said Ordinance, shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been issued, made, granted or done in terms of the corresponding provision of this Ordinance.

Regulations relating to the standards of food, drugs and disinfectants were made under the repealed Ordinance and are contained in GN 195/1968 (OG 2949). They were amended after independence by GN 124/1994 (OG 883). 183

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¹⁸² In South Africa, the analogous law was the *Food, Drugs and Disinfectants Act 13 of 1929* (SA GG 1772), which was repealed by the *Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972* (RSA GG 3530).

¹⁸³ These regulations are in substitution for those promulgated under GN 103/1956 (OG 1993).

Related laws: See GN 179/2008 (<u>GG 4088</u>) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 (<u>GG 3051</u>) to certain substances approved under this Act.

Public and Environmental Health Act 1 of 2015 🗐 🙀

Summary: This Act (<u>GG 5740</u>) provides a framework for a structured, uniform public and environmental health system in Namibia. It covers notification, prevention and control of diseases and sexually-transmitted infections; maternal, ante-natal and neo-natal care; water and food supplies; infant nutrition; waste management; health nuisances; public and environmental health planning and reporting.

Part 3 of the Act was brought into force temporarily by the State of Emergency - COVID-19 Regulations, Proclamation 9 of 2020 (GG 7159) issued pursuant to Article 26(5) of the Namibian Constitution, subsequent to the declaration of a State of Emergency in the whole of Namibia, following a worldwide outbreak of the disease known as Coronavirus Disease 2019 (COVID-19), in Proclamation No. 7 of 2020 (GG 7148). In addition, these regulations provided that, despite the provisions of section 22(2) of the Act, Covid-19 is deemed to be a "formidable epidemic disease" which necessitates the measures referred to in section 29(1) of the Act.

After the end of the State of Emergency, the Act was brought permanently into force on 17 September 2020 by GN 230/2020 (GG 7338). The "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) known as COVID-19" is deemed to be a "formidable epidemic disease" for the purposes of the Act in GN 232/2020 (GG 7338).

Repeals: The Act repeals the *Public Health Act 36 of 1919* (SA GG 979) and the SWA Public Health Proclamation 36 of 1920 (OG 35) (which made the *Public Health Act 36 of 1919* applicable to South West Africa as well as amending it) and some of its other amendments. ¹⁸⁴

The SWA Public Health Proclamation 36 of 1920 (OG 35) repealed the following laws:

- Ordinance by the Governor relating to slaughter of stock and inspection of meat, dated 27 June 1911
- Ordinance by the Governor relating to vaccination, dated 30 July 1912
- Notice by the Governor relating to free treatment of natives suffering from sexual disease, dated 31 July 1912.
- Ordinance by the Governor relating to the prevention of the spread of diseases which are contagious and dangerous to the public, dated 27 May 1913.

The current Act does not repeal or amend any other laws, but section 91 states: "If any other law is in conflict or inconsistent with this Act, this Act prevails."

Savings: Section 94 of the current Act contains a broad savings clause:

Anything done under a law repealed by section 95 and which could have been done under a corresponding provision of this Act is deemed to have been done under this Act.

The savings clause could include regulations, as regulations on a variety of topics are authorised by the current Act.

Section 155 of the *Public Health Act 36 of 1919* also contains a savings clause that applies explicitly to regulations:

Bye laws or regulations made under any law repealed by this Act shall remain in force unless in conflict with this Act and be deemed to be made thereunder until superseded by regulations made under this Act. All of the laws repealed were provincial ones and have not been further researched.

¹⁸⁴ Regarding the *Public Health Act 36 of 1919*, the amending Acts repealed are Ord. 50/1957 (<u>OG 2094</u>), Ord. 35/1958 (<u>OG 2153</u>), and Ord. 2/1971 (<u>OG 3147</u>). However, the amendments made by Ord. 7/1932 (<u>OG 476</u>), Proc. 16/1936 (<u>OG 676</u>), Proc. 20/1938 (<u>OG 761</u>) and Ord. 10/1964 (<u>OG 2565</u>) are not repealed.

For the purpose of considering what regulations made under the repealed *Public Health Act 36 of 1919* may survive, the SWA Public Health Proclamation 36 of 1920 (OG 35) appears to have served as a transfer proclamation by virtue of its amendments to the 1919 Act, with effect from 1 September 1920. The SWA Public Health Proclamation 36 of 1920 provided that the terms "Administrator", "Governor-General" and "Minister" would be construed throughout the Act to mean the Administrator of the Protectorate of South-West Africa. Thus, it would seem that SA/RSA regulations made after that date did *not* apply to SWA, since the power to make regulations was transferred to SWA.

Regulations: Several provisions of the current Act authorise regulations: section 29(1), section 31(1)(b), sections 74-75 and section 77.

Note that only national pre-independence regulations and regulations authorised under the current Act are recorded here; regulations that applied only to local areas have not been recorded.

The following regulations made under the repealed Act appear to survive: 186

Regulations relating to Nursing and Maternity Homes are contained in GN 81/1922 (<u>OG</u> <u>88</u>).

Regulations relating to Slaughtering, Meat Inspection, Etc. are contained in GN 140/1926 (OG 213). These regulations, originally called "Village Management Board Area, Walvis Bay: Slaughterhouse Regulations", were applied "throughout the areas under the jurisdiction of all local authorities in South West Africa" by GN 94/1927 (OG 238) and refers to them under the more general heading. They were amended by GN 10/1932 (OG 447), GN 78/1988 (OG 5537) and AN GN 76/1989 (OG 5800).

Regulations relating to the Payment of Fees by Patients in Isolation Hospitals are contained in GN 209/1930 (OG 390).

Port Health Regulations are contained in GN 18/1937 (OG 696), as amended by GN 191/1943 (OG 1078).

Regulations regarding Vaccines, Sera and Cultures or Preparations of Pathogenic Micro-Organisms are contained in GN 124/1939 (OG 800).

Rural Sanitary Regulations are contained in GN 175/1943 (OG 1075), "in force within such areas, and in effect from such dates, as the Administrator may from time to time indicate by notice in the Gazette".

Notices bringing these regulations into force are contained in GN 209/1943 (Kalkveld) (OG 1080); GN 279/1947 (Gibeon) (OG 1319); GN 247/1948 (Otavi) (OG 1382); GN 256/1948 (Aroeb) (OG 1385); GN 32/1949 (Aroeb) (OG 1406); GN 115/1949 (Witvlei) (OG 1423); GN 148/1949 (Voigtskub) (OG 1426); GN 243/1949 (Wlotzkasbaken) (OG 1448); GN 268/1949 (Voigtskub); GN 1/1950 (Wlotzkasbaken); GN 272/1951 ("Hentys Bay") (OG 1603); and GN 175/1965 (Hardap Irrigation Settlement) (OG 2663).

¹⁸⁵ As a matter of historical interest, the SWA Public Health Proclamation 36 of 1920 repealed the following:

[•] Ordinance by the Governor relating to slaughter of stock and inspection of meat of 27 June 1911.

[•] Ordinance by the Governor relating to vaccination of 30 July 1912.

Notice by the Governor relating to free treatment of natives suffering from sexual disease of 31 July 1912.

[•] Ordinance by the Governor relating to the prevention of the spread of diseases which are contagious and dangerous to the public of 27 May 1913.

¹⁸⁶ (1) No surviving South African regulations prior to the transfer date have been located. (2) Note that a draft of proposed regulations relating to persons with leprosy is contained in AG GN 88/1931 (OG 433), but no enacted version of these regulations was located.

Regulations on Infectious Diseases: Exclusion of Patients and Contacts from Schools and Hostels and the Closing of Schools and Hostels are contained in GN 80/1964 (OG 2562). 187

Regulations on Compulsory Immunisation against Poliomyelitis are contained in GN 39/1965 (OG 2611), as amended by GN 212/1978 (OG 3818).

Regulations on Smallpox are contained in GN 124/1965 (OG 2649).¹⁸⁸

South African **Regulations regarding Smallpox** are contained in RSA GN R.1826/1963 (reprinted in OG 2518). However, these regulations do not mention SWA and, despite being published in SWA, they were made *after* the power to make regulations under the *Public Health Act 36 of 1919* in respect of SWA was transferred to the Administrator of SWA by the SWA Public Health Proclamation 36 of 1920 (OG 35). Thus, they do not appear to have been applicable to SWA. The **Regulations on Smallpox** in GN 124/1965 (OG 2649) are similar in content.

Regulations on Plague are contained in GN 125/1965 (OG 2649). 189

South African **Regulations regarding Plague** are contained in RSA GN R.1827/1963 (reprinted in OG 2518). However, these regulations do not mention SWA and, despite being published in SWA, they were made *after* the power to make regulations under the *Public Health Act 36 of 1919* in respect of SWA was transferred to the Administrator of SWA by the SWA Public Health Proclamation 36 of 1920 (OG 35). Thus, they do not appear to have been applicable to SWA. The **Regulations on Plague** in GN 125/1965 (OG 2649) are similar in content.

Typhus Fever Regulations are contained in GN 126/1965 (OG 2649). 190

South African **Typhus Fever Regulations** are contained in RSA GN R.1828/1963 (reprinted in OG 2518). However, these regulations do not mention SWA and, despite being published in SWA, they were made *after* the power to make regulations under the *Public Health Act 36 of 1919* in respect of SWA was transferred to the Administrator of SWA by the SWA Public Health Proclamation 36 of 1920 (OG 35). Thus, they do not appear to have been applicable to SWA. The **Typhus Fever Regulations** in GN 126/1965 (OG 2649) are similar in content.

Regulations regarding Human Trypanosomiasis (Sleeping-Sickness) are contained in GN 89/1969 (OG 3014).

Regulations Regarding "Carriers" of Infectious Diseases, GN 78/1968 (OG 2892) and GN 155/1968 (OG 2928).

General Health Regulations are contained in GN 121/1969 (OG 3027) as amended by GN 98/1970 (OG 3102) (with these amendments being substituted by those in GN 139/1970), GN 139/1970 (OG 3112) and GN 168/1976 (OG 3549).

Regulations on the Extermination of Rodents and the Elimination or Improvement of Conditions in the Storage of Grain, Fodder or any other Article which Permits or Promotes the Harbourage or Increase of Rodents are contained in GN 241/1973 (OG 3359). 191

Regulations concerning the Immunisation Certificate are contained in GN 212/1978 (OG 3818).

HEALTH-5

¹⁸⁷ Proposed regulations on Infectious Diseases: Exclusion of Patients and Contacts from Schools and Hostels and the Closing of Schools and Hostels are contained in GN 102/1963 (OG 2491).

¹⁸⁸ These regulations substitute for the ones in in substitution for the regulations in SWA GN 106/1941.

¹⁸⁹ These regulations substitute for the ones in Schedule A of SWA GN 32/1950, SWA GN 7/1924 and SWA GN 8/1925.

¹⁹⁰ These regulations are in substitution for the Typhus Fever Regulations in AG GN 86/1934 (OG 569).

¹⁹¹ These regulations repeal the "Regulations regarding the Prevention of Rodent Infestation and the Storage of Grain, Forage etc., in Urban and Rural Areas" in GN 64/1968 (OG 2887).

Regulations concerning Immunisation against Tuberculosis with BCG are contained in GN 213/1978 (OG 3818).

These regulations are currently being processed for the database.

Public Health Covid-19 General Regulations

(no longer in force)

The following regulations were made under the current Act to address Covid-19, but none of these remain in force:

Public Health Covid-19 General Regulations applicable to the whole of Namibia from 00:00 on 24 September 2020 to 24:00 on 21 October 2020 were contained in GN 233/2020 (GG 7342), as amended by GN 235/2020 (GG 7346). These regulations were then amended by GN 256/2020 (GG 7367) and made applicable as amended from 00:00 on 22 October 2020 to 24:00 on 30 November 2020 (regulation 2(2) as amended). They were again amended by GN 309/2020 (GG 7404) and made applicable as amended from 1 December 2020 to 24:00 on 25 January 2021 (regulation 2(2) as amended). This version of the regulations was superseded by further amendments made by GN 319/2020 (GG 7421), with these amended regulations made applicable with effect from 00:00 on 17 December 2020 to 24:00 on 30 December 2020 (regulation 2(2) as amended). This version was again superseded by amendments made by GN 326/2020 (GG 7429), with these amended regulations made applicable from 00:00 on 24 December 2020 to 24:00 on 13 January 2021 (regulation 2(2) as amended). The regulations were then amended by GN 1/2021 (GG 7436) and made applicable as amended from 00:00 on 14 January 2021 to 24:00 on 3 February 2021 (regulation 2(2) as amended). They were further amended by GN 9/2021 (GG 7451) and made applicable as amended from 00:00 on 4 February 2021 to 24:00 on 24 February 2021 (regulation 2(2) as amended). The regulations were again amended by GN 29/2021 (GG 7467) and made applicable as amended from 00:00 on 25 February 2021 to 24:00 on 31 March 2021 (regulation 2(2) as amended). GN 29/2021 was amended by GN 35/2021 (GG 7472) to change the Government Notice number from 9, as it incorrectly appeared, to 29. The regulations were next amended by GN 54/2021 (GG 7495) and made applicable as amended from 00:00 on 1 April 2021 to 24:00 on 30 April 2021 (regulation 2(2) as amended).

This amended set of Public Health Covid-19 General Regulations was then replaced by a new set of similar Public Health Covid-19 General Regulations contained in Government Notice 91/2021 (GG 7522), with the new regulations being applicable from 00:00 on 1 May 2021 to 31 May 2021 (regulation 2(2)). These regulations were amended by GN 108/2021 (GG 7544) and made applicable as amended from 00:00 on 1 June 2021 to 24:00 on 30 June 2021 (regulation 2(2) as amended). They were further amended by GN 128/2021 (GG 7554) and made applicable as amended from 00:00 on 17 June 2021 to 24:00 on 30 June 2021 (regulation 2(2) as amended). They were further amended by GN 138/2021 (GG 7568) and made applicable as amended from 00:00 on 1 July 2021 to 24:00 on 31 August 2021 (regulation 2(2) as amended), and again amended by GN 144/2021 (GG 7576) with no change to the dates of applicability. The regulations were further amended by GN 151/2021 (GG 7581) and made applicable as amended from 00:00 on 16 July 2021 to 24:00 on 31 July 2021 (regulation 2(2) as amended). They were then further amended by GN 160/2021 (GG 7593) and made applicable as amended from 00:00 on 1 August 2021 to 24:00 on 14 August 2021 (regulation 2(2) as amended). They were further amended by GN 175/2021 (GG 7604) and made applicable as amended from 00:00 on 15 August 2021 to 24:00 on 15 September 2021 (regulation 2(2) as amended), and again amended by GN 176/2021 (GG 7624) with no change to the dates of applicability. The regulations were further amended by GN 205/2021 (GG 7637) and made applicable as amended from 00:00 on 16 August 2021 to 24:00 on 15 October 2021 (regulation 2(2) as amended). They were further amended by GN 232/2021 (GG 7662) and made applicable as amended from 00:00 on 16 October 2021 to 24:00 on 15 November 2021 (regulation 2(2) as amended), then amended by GN 246/2021 (GG 7680) with no change to the dates of applicability. The regulations were further amended by GN 249/2021 (GG 7686) and made applicable as amended from 00:00 on 16 November 2021 to 24:00 on 15 December 2021 (regulation 2(2) as amended). They were further amended by GN 281/2021 (GG 7703) and made applicable as amended from 00:00 on 16 December 2021 to 24:00 on 15 January 2022 (regulation 2(2) as amended).

They were further amended by GN 7/2022 (GG 7726) and made applicable as amended from 00:00 on 16 January 2022 to 24:00 on 15 February 2022 (regulation 2(2) as amended), and then further amended by GN 56/2022 (GG 7748) and made applicable as amended from 00:00 on 16 February 2022 to 24:00 on 15 March 2022 (regulation 2(2) as amended). The regulations were further amended by GN 85/2022 (GG 7765) and made applicable as amended from 00:00 on 16 March 2022 to 24:00 on 15 April 2022 (regulation 2(2) as amended), and then again amended by GN 121/2022 (GG 7788) and made applicable as amended from 00:00 on 16 April 2022 to 24:00 on 15 May 2022 (regulation 2(2) as amended). The dates of applicability of this version of the regulations were extended by GN 145/2022 (GG 7808), to apply from 00:00 on 16 May 2022 to 24:00 on 15 June 2022 (regulation 2(2) as amended), without any other amendments. The regulations were further amended by GN 172/2022 (GG 7829) and made applicable as amended from 00:00 on 16 June 2022 to 24:00 on 15 July 2022 (regulation 2(2) as amended). These regulations were further amended by GN 210/2022 (GG 7855) and made applicable as amended from 00:00 on 16 July 2022 to 24:00 on 15 January 2023 (regulation 2(2) as amended). However, they were almost immediately amended again by GN 211/2022 (GG 7857) and made applicable as amended from 17:00 on 16 July 2022 to 24:00 on 15 January 2023 (regulation 2(2) as amended). These regulations expired on 15 January 2023 and were not extended or replaced.

Notices: Pre-independence notices which could survive in terms of the savings clause have not been researched.

GN 232/2020 (GG 7338) declares under section 22(2) of the Act that the "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) known as COVID-19" is a "formidable epidemic disease" for purposes of the Act.

Cases: S v Mateus (CR 16/2022) [2022] NAHCNLD 39 (19 April 2022) (convictions and sentences for violations of Public Health Covid-19 General Regulations set aside due to improperly formulated charge sheets).

SELECTED CASES

LM & Others v Government of the Republic of Namibia 2012 (2) NR 527 (HC).

COMMENTARY

Chantal J Badul & Ann Strode, "LM and Others v Government of the Republic of Namibia: the first sub-Saharan African case dealing with coerced sterilisations of HIV-positive women – Quo vadis?: recent developments", 13 (1) *African Human Rights Law Journal* 214 (2013).

COMMISSIONS

Commission of Inquiry into Health Services (AG 19/1981)

Commission of Inquiry into Activities, Affairs, Management and Operations of Ministry of Health and Social Service (Proc. 20/2012, GG 5013).

INTERNATIONAL LAW

Constitution of the World Health Organization (WHO), 1946

Amendments to Articles 24 and 25 of the Constitution of the World Health Organization, 1986 Amendments to Articles 24 and 25 of the Constitution of the World Health Organization, 1998 *Amendment to Article 7 of the Constitution of the World Health Organization, 1965

*Amendment to Article 74 of the Constitution of the World Health Organization, 1978

International Convention against Doping in Sport, 2005 Minamata Convention on Mercury, 2013 SADC Protocol on Health, 1999

See also **DISABILITIES**.

See also Atomic Energy and Radiation Protection Act 5 of 2005 (ENVIRONMENT).

See also **HEALTH PROFESSIONS**.

See also **HOSPITALS**.

See also LABOUR (health and safety at workplaces).

See also MEDICINE.

See also MENTAL HEALTH AND MENTAL DISORDERS.

HEALTH PROFESSIONS

Namibia Nursing Association Act 28 of 1993 🖷 😜

Summary: This Act (GG 762) establishes a nursing association for Namibia and defines its powers.

Repeals: The Act repeals the Nursing Association of South West Africa Act 14 of 1979 (OG 4035), which in turn repealed sections 30-40 of the *Nursing Act 69 of 1957* as amended.

Savings: Section 13(2) contains a savings clause:

Any regulation or rule made or deemed to have been made under the provisions of the Act referred to in subsection (1) shall, unless inconsistent with the provisions of this Act, be deemed to be a rule made under the corresponding provisions of this Act.

The repealed Nursing Association of South West Africa Act 14 of 1979 also contained a savings clause in section 13(2) in respect of regulations made under the *Nursing Act 69 of 1957*:

Any regulation or rule made under any provision of an Act repealed by subsection (1) [which repealed sections 30-40 of the *Nursing Act 69 of 1957* as amended], shall, unless inconsistent with the provisions of this Act, be deemed to be a rule made under the corresponding provisions of this Act.

Regulations: The following regulations made under the Nursing Association of South West Africa Act 14 of 1979 appear to survive:

Regulations for the election of members of the management board are contained in General Notice 1/1980 (OG 4264). 192

Regulations regarding the administration of the affairs of the Association are contained in General Notice 2/1980 (OG 4264) as amended by General Notice 28/1982 (OG 4685) and by General Notice 32/1988 (OG 5516). 193

These two regulation sets both repealed South Africa regulations covering similar topics. (The surviving regulations under the *Nursing Act 69 of 1957* are listed below under the entry for the Nursing Act 8 of 2004, which repealed the *Nursing Act 69 of 1957* in its entirety.)

No regulations have been issued under the current Act.

Council for Health and Social Services Professions Repeal Act 3 of 2004

Summary: This Act (<u>GG 3241</u>) repeals the Council for Health and Social Services Professions Act 29 of 1993 (<u>GG 763</u>), and provides for the transfer of moneys standing to that Council's credit. It was brought into force on 10 January 2005 by GN 6/2005 (<u>GG 3369</u>).

Social Work and Psychology Act 6 of 2004 🕎 😜

Summary: This Act (originally published in <u>GG 3246</u>) provides for the establishment and constitution of a professional council for social workers and psychologists. It also regulates the social work and psychology professions. It was brought into force on 1 October 2004 by GN 211/2004 (<u>GG 3291</u>). It

¹⁹² These regulations withdraw the regulations in RSA GN R.1321/1963.

¹⁹³ These regulations withdraw the regulations in RSA GN R.1741/1972.

will be repealed by the Health Professions Act 16 of 2024 (GG 8550), which has not yet been brought into force.

Repeals: The Act repeals the Allied Health Services Professions Act 20 of 1993 (GG 710) insofar as it relates to these professions and the whole of the Social and Social Auxiliary Workers Professions Act 22 of 1993 (GG 712).

Amendments: Act 12/2018 (<u>GG 6705</u>) amends the Act to make provision for the appointment of members of the Social Work and Psychology Council.

Savings: Section 62 includes a savings clause and some related deeming provisions:

- (2) Except as otherwise provided in section 61, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from a register, appointment or any other act done, or regarded to have been issued, made, granted or done under or in terms of any provision of any of the laws repealed by subsection (1), must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act and continues to have force and effect -
 - (a) unless if it is inconsistent with this Act; or
 - (b) until such time as it is set aside or repealed.
- (3) For the purposes of subsection (2), the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act.
- (4) Any reference to the former Social and Social Auxiliary Workers' Board or former Clinical Psychology Board in any law must be regarded, unless the context otherwise indicates, to be a reference to the Council

The Social Auxiliary Workers Professions Act 22 of 1993 repealed by this Act contained a savings clause in section 52 which stated:

Any notice, regulation, rule, authorization, order or approval issued, made or granted or any appointment or any other thing done in terms of a provision of the National Welfare Act, 1965, prior to the amendment of that Act by the National Welfare Amendment Act, 1993, and which may or is required to be issued, made, granted or done under this Act, shall be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act.

Regulations and rules: Prior to independence, regulations on the Registration of Social Workers were made in terms of the *National Welfare Act 79 of 1965* (which is still in force in Namibia) in RSA GN R.1363/1973 (RSA GG 3994). These regulations were made explicitly applicable to SWA, and amended prior to the relevant date of transfer by RSA GN R.2138/1974 (RSA GG 4512) and by RSA GN R.105/1976 (RSA GG 4965). Although no repeal of these regulations has been located in respect of Namibia, the underlying provisions of the *National Welfare Act 79 of 1965* on the registration of social workers (sections 33-37 and the portions of section 42 pertaining to regulations on social workers) were repealed by the National Welfare Amendment Act 9 of 1993 (GG 692) – meaning that there is no longer any authority for these regulations.

Post-independence regulations and rules relating to social work or psychology issued under the repealed laws which have not been explicitly repealed include the following:

- Qualifications for registration with the Clinical Psychology Board, contained in GN 36/2002 (GG 2704), issued under the Allied Health Services Professions Act 20 of 1993.
- Regulations relating to the election of members to the Clinical Psychology Board are contained in GN 215/1999 (GG 2214), issued under the Allied Health Services Professions Act 20 of 1993. (As explained below, it appears that GN 142/2006 intended to withdraw this notice.)
- Regulations relating to the election of members to the Social and Social Auxiliary Workers' Board are contained in GN 229/1999 (GG 2214), issued under the Social and Social Auxiliary Workers Professions Act 22 of 1993. (As explained below, it appears that GN 142/2006 intended to withdraw this notice.)

Regulations and rules issued under the current Act are as follows:

Psychologists: Regulations relating to psychologists are contained in GN 32/2007 and 33/2007 (GG 3795). Regulations relating to the scope of practice of clinical psychologists and educational psychologists are contained in GN 30/2009 (GG 4218), as amended by GN 36/2021 (GG 7473). Regulations relating to the scope of practice of psychological counsellors are contained in GN 31/2009 (GG 4218), as amended by GN 11/2021 (GG 7453). Regulations relating to additional examinations in respect of various categories of psychologists are contained in GN 50/2011 (GG 4699). Regulations relating to the scope of practice of specialist psychologists are contained in GN 58/2014 (GG 5453). Regulations relating to minimum requirements of study for psychologists are contained in GN 25/2015 (GG 5680), which withdraws GN 32/2007 (GG 3795).

Social workers: Regulations on additional examinations that may be conducted in respect of social workers and social auxiliary workers are contained in GN 230/2010 (GG 4581). Regulations on the scope of practice of social workers, social auxiliary workers and students are contained in GN 14/2011 (GG 4656). Regulations relating to the minimum requirements for registration as a social worker are contained in GN 118/2016 (GG 6030), which replaces GN 34/2007 (GG 3795). Regulations relating to the registration of social workers, specialities and additional qualifications, the maintaining of registers of social workers and the restoration of a name to a register are contained in GN 119/2016 (GG 6030).

Social auxiliary workers: Regulations relating to the minimum requirements for registration as a social auxiliary worker are contained in GN 133/2018 (<u>GG 6644</u>).

Appeals: Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Council are contained in GN 66/2009 (GG 4245).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 301/2013 (GG 5340).

General: Regulations relating to the registration of students of social work and psychology are contained in GN 32/2009 (GG 4218).

Regulations concerning allowances payable to members of the Council are contained in GN 294/2015 (GG 5899), which withdraws GN 151/2008 (GG 4068).

Regulations relating to continuing professional development are contained in GN 91/2010 (GG 4482).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 19/2018 (<u>GG 6527</u>), which repeals GN 157/2014 (<u>GG</u> 5559).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to the investigation of alleged unprofessional conduct by registered persons and professional conduct inquiries are contained in GN 138/2015 (<u>GG 5778</u>).

Professional Conduct Rules applicable to registered persons are contained in General Notice 90/2023 (<u>GG 8044</u>).¹⁹⁵

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¹⁹⁴ GN 32/2007 withdraws GN 36/2002. GN 33/2007 withdraws the rules and regulations published in RSA GN R.2330/1976, RSA GN R.821/1977, and RSA GN R.1859/1977, R.1860/1977 and R.1861/1977.

¹⁹⁵ These rules repeal the rules relating to acts or omissions constituting improper conduct or misconduct in respect of which the Clinical Psychology Board may conduct inquiries and take disciplinary steps issued under the Allied Health Services Professions Act 20 of 1993 in GN 219/2001 (GG 2637).

Regulations relating to conditions subject to which registered persons may conduct practices relating to their professions are contained in GN 255/2023 (GG 8175).

Registration fees: Fees payable to the Social Work and Psychology Council are contained in General Notice 597/2023 (GG 8220), which repeals General Notice 496/2020 (GG 7410). 196

Appointments and elections: Note that section 4(1) of this Act states:

The Council [the Social Work and Psychology Council of Namibia] is for all purposes the successor to the former Social and Social Auxiliary Workers' Board and the former Clinical Psychology Board.

As noted above, regulations relating to the election of members to the **Social and Social Auxiliary Workers' Board** are contained in GN 229/1999 (GG 2214). (As explained in the footnote below, it appears that GN 142/2006 intended to withdraw this notice.)

The **Clinical Psychology Board** was established under the Allied Health Services Professions Act 20 of 1993 by GN 146/1994 (GG 910). Members are named in GN 38/1995 (GG 1029), GN 353/1999 (GG 2242) and GN 88/2000 (GG 2304).

An **Interim Council** was established by GN 217/2004 (GG 3293). Regulations relating to the first election of members to the **Social Work and Psychology Council of Namibia** are contained in GN 142/2006 (GG 3691). GN 26/2007 (GG 3795) states in the heading that it contains "regulations", but it is in fact an invitation for nominations for social workers and psychologists eligible as candidates for election.¹⁹⁷

The first **Social Work and Psychology Council** is announced in GN 62/2008 (<u>GG 4008</u>), replacing the Interim Council established by GN 217/2004. The terms of office of certain Council members were extended by GN 223/2012 (<u>GG 5023</u>), GN 68/2013 (<u>GG 5060</u>), GN 255/2013 (<u>GG 5303</u>), GN 31/2014 (<u>GG 5425</u>), GN 150/2014 (<u>GG 5559</u>), GN 193/2015 (<u>GG 5818</u>), GN 220/2016 (<u>GG 6125</u>) and GN 59/2017 (<u>GG 6263</u>).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 298/2018 (GG 6770) and GN 65/2024 (GG 8357).

Cases: CS v CS 2018 (4) NR 973 (HC) (section 17: the practice of a clinical psychologist includes reporting and testifying in a court as an expert; therefore, a clinical psychologist from outside Namibia must be registered under this Act before being allowed to provide expert testimony).

Additional information: The Health Professions Councils of Namibia (HPCNA), which includes the

¹⁹⁶ General Notice 496/2020 (<u>GG 7410</u>) repeals General Notice 488/2019 (<u>GG 7061</u>). General Notice 488/2019 repeals General Notice 498/2017 (<u>GG 6489</u>), which repeals General Notice 353/2013 (<u>GG 5281</u>), which in turn withdraws both General Notice 68/2007 (<u>GG 3804</u>) and General Notice 310/2010 (<u>GG 4600</u>).

¹⁹⁷ GN 142/2006 (<u>GG 3691</u>) and GN 26/2007 (<u>GG 3795</u>), which pertain to the first election of the Social Work and Psychology Council, both withdraw "Government Notices Nos. 215 and 229 of 20 October 2004". However, there were no Government Notices with these numbers gazetted on that date.

GN 215/2004 (GG 3291) was gazetted on 1 October 2004 and is concerned with the commencement of the Medical and Dental Act 2004. GN 229/2004 (GG 3302) was gazetted on 21 October 2004 and is concerned with the final deregistration of companies. It is unlikely that the regulations intended to withdraw either of these provisions.

It is possible that GN 215/1999 (<u>GG 2214</u>) was intended for repeal, instead of GN 215/2004. This is because GN 215/1999 is concerned with regulations relating to the election of members to the Clinical Psychology Board under the Allied Health Services Professions Act 1993. This is relevant to the subject matter of GN 142/2006 (<u>GG 3691</u>) and GN 27/2007 (<u>GG 3795</u>).

For the same reason it is likely that GN 229/1999 (GG 2214) was intended for repeal instead of GN 229/2004, since it is concerned with regulations relating to the election of members to the Social and Social Auxiliary Workers' Board under the Social and Social Auxiliary Workers' Professions Act 1993.

However, since there are no government notices which match both the indicated numbers and dates given, the withdrawals are presumably legally ineffective.

Social Work and Psychology Council, publishes *Ethical Guidelines for Health Professionals*. The HPCNA also investigates complaints from the public against individual health practitioners. See www.hpcna.com.

Allied Health Professions Act 7 of 2004 🗐 🙀

Summary: This Act (originally published in <u>GG 3247</u>) provides for the establishment of a professional council for allied health service professions. It also defines and provides for the registration, training and qualifications of members of such professions, and prohibits unregistered persons from practising such professions. It was brought into force on 1 October 2004 by GN 212/2004 (<u>GG 3291</u>). It will be repealed by the Health Professions Act 16 of 2024 (<u>GG 8550</u>), which has not yet been brought into force.

Repeals: The Act repeals all remaining portions of the Allied Health Services Professions Act 20 of 1993 (GG 710) which repealed the *Chiropractors Act 6 of 1971* and the *Homeopaths, Naturopaths, Osteopaths and Herbalists Act 52 of 1974*.

Amendments: Act 8/2018 (<u>GG 6701</u>) amends the Act to make provision for the appointment of members of the Allied Health Professions Council.

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Applicability of law: The Act has been made applicable to the following professions: orthopaedic technologists and orthopaedic technicians – GN 157/2005 (GG 3535) several health professions – GN 100/2006 (GG 3661)
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Medical Technologists (Blood Transfusion Technology); Medical Technologists (Chemical Pathology); Medical Technologists (Clinical Pathology); Medical Technologists (Cytotechnology); Medical Technologists (Forensic Pathology); Medical Technologists (Haematology); Medical Technologists (Histopathological Technique); Medical Technologists (Immunology); Medical Technologists (Microbiology); Medical Technologists (Pharmacology); Medical Technologists (Virology); Medical Technologists (Virology); Medical Technologists (Pharmacology); Medical Technologists (Virology); Blood Transfusion Technicians; Chemical Pathology Technicians; Cytotechnicians; Clinical Pathology Technicians

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medical orthotists and prosthetists – GN 2/2007 (GG 3771)
ultrasound radiography and nuclear medicine radiography – GN 147/2009 (GG 4302)
emergency care technicians – GN 12/2010 (GG 4419)
art therapy, music therapy, dance movement therapy and drama therapy – GN 254/2012 (GG 5060)
medical laboratory scientists – GN 87/2013 (GG 5173)
traditional Chinese medicine practitioners – GN 101/2013 (GG 5183)
acupuncturists – GN 102/2013 (GG 5183)
dental technologists – GN 103/2013 (GG 5183)
sonographers and sonography technicians – GN 124/2014 (GG 5533)
phlebotomy technicians – GN 117/2015 (GG 5760)
Unani Tibb Practitioner – GN 209/2015 (GG 5891)
Combat Medic – GN 279/2015 (GG 5892)
emergency practitioner assistants – GN 119/2018 (GG 6627)
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Savings: Section 62 includes a savings clause and some related provisions regarding how certain references should be construed:

medical orthotics and prosthetics technologists, and medical orthotics and prosthetics

assistants - GN 161/2019 (GG 6932).

(2) Unless otherwise provided in this Act, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register or appointment made, or any other act done, or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by

subsection (1), must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act, and continues to have force and effect -

- (a) unless it is inconsistent with this Act; or
- (b) until such time as it is set aside or repealed.
- (3) For the purposes of subsection (2), the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act.
- (4) Any reference in any law to any of the former Boards referred to in section 61(5) must be regarded, unless the context otherwise indicates, to be a reference to the Council.

The Allied Health Services Professions Act 20 of 1993 contained a similar savings clause in section 50(2):

Any notice, regulation, rule, authorization or order issued, made or granted, or any registration, removal from a register, appointment or any other thing done in terms of a provision of any law repealed by subsection (1), or of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), or of the Health Service Professions Proclamation, 1989 (Proclamation AG. 70 of 1989), and which may or is required to be issued, made, granted or done in terms of this Act, shall be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act.

This provision would cover enactments under the *Chiropractors Act 6 of 1971* and the *Homeopaths, Naturopaths, Osteopaths and Herbalists Act 52 of 1974*)as well as the *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* or the Health Service Professions Proclamation AG. 70 of 1989.

Note that section 4(1) of the current Act states:

The Council [Allied Health Professions Council of Namibia] is for all purposes the successor of the former Dental Technology Board, the former Health Inspectors Board, the former Homoeopathic Board, the former Medical Technology Board, the former Occupational Therapy Board, the former Optometry Board, the former Physiotherapy Board, the former Radiography Board, the former Joint Allied Health Professions Board, and the former Joint Complementary Health Professions Board.

Regulations made under repealed laws: Regulations made under previous laws which may survive under the current Act are detailed below, followed by a list of regulations made under the current Act.

- (1) Regulations made under the *Chiropractors Act 6 of 1971* and the *Homeopaths, Naturopaths, Osteopaths and Herbalists Act 52 of 1974:* These have not been comprehensively researched, because chiropractors, naturopaths and osteopaths appear to be comprehensively regulated under the current Act. Herbalists are not specifically covered by the current law, but no pre-independence regulations relating to herbalists have been located.
- (2) Regulations under the *Medical, Dental and Supplementary Health Services Professions Act 56 of 1974*: The administration of *Act 56 of 1974* was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. The listed regulations were made prior to the date of transfer and have apparently not been repealed, but some appear to have been superseded by regulations issued under the current Act that cover the same issues.

Rules for the registration of specified health professionals are contained in <u>RSA GG</u> 5349, listed alphabetically, as follows:

Anaesthetist's Assistants - RSA GN R.2361/1976 Audiometricians - RSA GN R.2365/1976 Blood Transfusion Technicians - RSA GN R.2337/1976 Chemical Pathology Technicians - RSA GN R.2341/1976 Chiropodists - RSA GN R.2294/1976 Diagnostic Radiographers - RSA GN R.2321/1976 Electro-Encephalographic Technicians - RSA GN R.2345/1976 Food Inspectors - RSA GN R.2371/1976 Health Assistants - RSA GN R.2349/1976

Haematology Technicians - RSA GN R.2351/1976

Histopathology Technicians - RSA GN R.2537/1976

Interns - RSA GN R.2271/1976

Microbiology Technicians - RSA GN R.2357/1976

Optometrists - RSA GN R.2312/1976

Orthopaedic Orthotists and Prosthetists - RSA GN R.2317/1976

Supplementary Diagnostic Radiographers - RSA GN R.2335/1976

Therapeutic Radiographers - RSA GN R.2322/1976.

Regulations relating to the scope of specified health professions are contained in <u>RSA</u> GG 5349:

Occupational Therapy - RSA GN R.2291/1976, as amended by RSA GN R.1834/1977 (RSA GG 5741)

Optometry - RSA GN R.2315/1976, as amended by RSA GN R.1844/1977 (<u>RSA</u> GG 5741)

Radiography - RSA GN R.2326/1976.

Rules for the registration of additional qualifications are contained in <u>RSA GG 5349</u>, listed alphabetically, as follows:

Chiropodists - RSA GN R.2295/1976

Cyto-Technicians - RSA GN R.2369/1976

Diagnostic and Therapeutic Radiographers - RSA GN R.2323/1976

Health Inspectors - RSA GN R.2309/1976

Occupational Therapists - RSA GN R.2288/1976 as amended by RSA GN R.1832/1977 (RSA GG 5741), GN 11/2010 (GG 4419) (which repeals the Rules published under RSA GN R.2288/1976 "insofar as those Rules are applicable to the qualifications required by a person for registration as an occupational therapist") and GN 48/2010 (GG 4443) (which repeals the Rules published under RSA GN R.2288/1976 "insofar as those Rules are applicable to the registration of radiographers")¹⁹⁸

Orthoptists - RSA GN R.2363/1976

Optometrists - RSA GN R.2313/76

Orthopaedic Orthotists and Prosthetists - RSA GN R.2138/1976

Podiatrists - RSA GN R.2295/1976.

Regulations relating to the conditions under which the following registered persons may practice their professions are contained in RSA GG 5349, listed alphabetically, as follows:

Anaesthetist's Assistants - RSA GN R.2362/1976

Audiometricians - RSA GN R.2366/1976

Blood Transfusion Technicians - RSA GN R.2338/1976

Chemical Pathology Technicians - RSA GN R.2342/1976

Cyto-Technicians - RSA GN R.2370/1976

Diagnostic Radiographers - RSA GN R.2324/1976

Dieticians - RSA GN R.2344/1976

Electro-Encephalographic Technicians - RSA GG R.2346/1976

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¹⁹⁸ Note that this reference appears to be in error. RSA GN R.2288/1976 deals with the registration of occupational therapists. In the same *Government Gazette*, there are three notices that deal with the registration of radiographers:

[•] RSA GN R.2321/1976 - Rules for the registration of diagnostic radiographers

[•] RSA GN R.2322/1976 - Rules for the registration of therapeutic radiographers

RSA GN R.2335/1976 - Rules for the registration of supplementary diagnostic radiographers.

It is possible that the repeal intended to refer to one or all of these, since GN 48/2010 dealt with the registration of diagnostic radiographers, nuclear medicine radiographers, therapeutic radiographers, ultrasound radiographers and radiography assistants.

Haematology Technicians - RSA GN R.2352/1976

Health Assistants - RSA GN R.2350/1976

Histopathology Technicians - RSA GN R.2354/1976

Masseurs - RSA GN R.2356/1976

Microbiology Technicians - RSA GN R.2358/1976

Optical Dispensers - RSA GN R.2340/1976

Oral Hygienists - RSA GN R.2360/1976

Orthopaedic Orthotists and Prosthetists - RSA GN R.2319/1976

Orthoptists, RSA GN R.2364/1976

Remedial Gymnasts - RSA GN R.2368/1976

Speech Therapists and Audiologists - RSA GN R.2334/1976

Supplementary Diagnostic Radiographers - RSA GN R.2336/1976

Therapeutic Radiographers - RSA GN R.2325/1976.

Regulations relating to the constitution, powers, functions and duties of professional boards for specified health professions are contained in RSA GG 5349, listed alphabetically, as follows:

Health Inspectors - RSA GN R.2307/1976

Medical Technology - RSA GN R.2303/1976

Occupational Therapy - RSA GN R.2287/1976

Optometry - RSA GN R.2311/1976

Podiatry - RSA GN R.2293/1976

Radiography - RSA GN R.2320/1976.

Regulations regarding acts or omissions in respect of which disciplinary steps may be taken by the Council and Professional Board in respect of specified health professions are contained in <u>RSA GG 5349</u> and <u>RSA GG 5741</u>, listed alphabetically, as follows:

Health Inspectors - RSA GN R.2310/1976 (RSA GG 5349)

Masseurs - RSA GN R.1869/1977 (RSA GG 5741)

Medical Technology - RSA GN R.2306/1976 (RSA GG 5349)

Occupational Therapy - RSA GN R.2290/1976 (<u>RSA GG 5349</u>), as amended by RSA GN R.1833/1977 (RSA GG 5741)

Occupational Therapy Students - RSA GN R.1835/1977 (RSA GG 5741)

Optometry Students - RSA GN R.1845/1977 (RSA GG 5741)

Physiotherapy - RSA GN R.1838/1977 (<u>RSA GG 5741</u>)

Podiatry - RSA GN R.1836/1977 (RSA GG 5741)

Radiography - RSA GN R.1852/1977 (RSA GG 5741)

Radiography - RSA GN R.1032/17/7 (RSA GO 5/41)

Radiographers (Student) - RSA GN R.1855/1977 (RSA GG 5741)

Speech Therapy and Audiology - RSA GN R.1867/1977 (RSA GG 5741)

Speech Therapists, Audiologists, etc - RSA GN R.1865/1977 ((RSA GG 5741)).

Regulations relating to the conduct of certain professional boards are contained in RSA GG 5349.

Conduct of Business of Professional Boards - RSA GN R.2285/1976

Conduct of the Business of the S.A. Medical and Dental Council and related matters - RSA GN R.2266/1976.

The surviving regulations in this category appear to have been superseded: (a) The boards relating to medical and dental issues appear to have been superseded by regulations issued under the Medical and Dental Act 10 of 2004, which repealed the Medical and Dental Professions Act 21 of 1993 as well as the Allied Health Services Professions Act 20 of 1993, insofar as it relates to the professions regulated by this Act. The Medical and Dental Professions Act 21 of 1993 in turn repealed the *Medical*, *Dental and Supplementary Health Service Professions Act 56 of 1974* and the Health Service Professions Proclamation, AG 70 of 1989. (b) The Allied Health Professions

Council of Namibia replaced more recent boards pertaining to other health professions in terms of section 4(1) of Act 7 of 2004, and regulations governing its operation have been issued under the current Act. Thus, the regulations on the conduct of business of professional boards, if not superseded, would appear to have no current relevance.

None of these regulations are included in the annotated laws database, since most of them appear to be obsolete. However, they are listed here in case some do have continued relevance.

(3) Regulations made under the Allied Health Services Professions Act 20 of 1993 which may be of continued relevance include the following:

Traditional healers: Regulations were made under the Allied Health Services Professions Act 20 of 1993 on election to the Traditional Healers Board, in GN 230/1999 (GG 2214). These regulations are not inconsistent with the current Act as traditional healers do not fall under the Allied Health Professions Council. However, they appear to be obsolete as that Board is no longer in existence. These regulations are not included in the annotated laws database.

Other allied health professions: Regulations for the election of members to other boards which are no longer in existence are not listed, even though not explicitly repealed, as these are clearly of no continued relevance. The same is true for registration fees payable to boards that no longer exist. These all appear to have been superseded by regulations on elections to the Allied Health Professions Council of Namibia, and registration fees payable to that Board.

Regulations made under the current Act: The regulations issued under the current Act are listed below, grouped by profession, in alphabetical order:

Acupuncturists: Minimum requirements of study for registration are contained in GN 324/2013 (<u>GG 5360</u>). Regulations relating to registration are contained in GN 325/2013 (<u>GG 5360</u>). Regulations on scope of practice are contained in GN 269/2019 (<u>GG 6999</u>).

Arts therapists: Regulations on minimum requirements of study for registration, registration and scope of practice are contained in GN 92/2017 (GG 6287).

Biokineticists: Minimum requirements for registration are contained in GN 105/2007 (<u>GG 3853</u>), and other regulations relating to biokineticists are contained in GN 106/2007 (<u>GG 3853</u>). Regulations relating to scope of practice are contained in GN 45/2010 (<u>GG 4443</u>).

Chinese medicine practitioner and acupuncturist: Regulations on minimum requirements of study, interns, scope of practice and additional qualifications are contained in GN 270/2019 (GG 6999).

Chiropractors: Regulations relating to the minimum requirements of study for registration are contained in GN 121/2010 (<u>GG 4502</u>). Regulations relating to additional examinations that may be conducted by the Council are contained in GN 120/2010 (<u>GG 4502</u>). Additional regulations pertaining to chiropractors are contained in GN 123/2010 (<u>GG 4502</u>). Regulations on scope of practice are contained in GN 336/2022 (<u>GG 7938</u>), which repeals GN 229/2010 (<u>GG 4581</u>).

Clinical technologists: Regulations relating to the minimum requirements of study for registration are contained in GN 274/2010 (GG 4633). Regulations on registration and additional qualifications are contained in GN 275/2010 (GG 4633). Regulations relating to scope of practice are contained in GN 385/2019 (GG 7073).

Combat medics: Regulations relating to minimum requirements of study and registration are

contained in GN 36/2017 (GG 6249).

Dental technicians: Regulations relating to the minimum requirements of study for registration are contained in GN 30/2017 (<u>GG 6249</u>).¹⁹⁹ Regulations relating to examinations that may be conducted by the Council are contained in GN 19/2010 (<u>GG 4426</u>). Regulations relating to registration are contained in GN 20/2010 (<u>GG 4426</u>).

Dental technologist: Regulations relating to the minimum requirements of study for registration are contained in GN 31/2017 (<u>GG 6249</u>).

Dental therapists: Regulations relating to the minimum requirements of study for registration, registration and scope of practice are contained in GN 138/2014 (GG 5550).

Dieticians: Regulations relating to the minimum requirements of study for registration as a dietician and the scope of practice of dieticians are contained in GN 329/2022 (<u>GG 7936</u>), which repeals the regulations in GN 67/2009 (<u>GG 4245</u>)²⁰⁰ and GN 69/2009 (<u>GG 4245</u>). Regulations relating to additional examinations that may be conducted by the Council are contained in GN 68/2009 (<u>GG 4245</u>).

Emergency care practitioners and paramedics: Regulations relating to the minimum requirements of study for registration as an emergency care practitioner (basic) are contained in GN 136/2011 (GG 4768). Regulations relating to registration as an emergency care practitioner (basic) are contained in GN 139/2011 (GG 4768).

Regulations relating to the minimum requirements of study for registration as an emergency care practitioner (intermediate) are contained in GN 137/2011 (GG 4768). Regulations relating to registration as an emergency care practitioner (intermediate) are contained in GN 140/2011 (GG 4768).

Regulations relating to the minimum requirements of study for registration as a paramedic (advanced life support) are contained in GN 138/2011 (GG 4768). Regulations relating to registration as a paramedic (advanced life support), and registration of additional qualifications, are contained in GN 141/2011 (GG 4768).

Regulations relating to additional examinations that may be conducted by the Council in respect of these professions are contained in GN 135/2011 (<u>GG 4768</u>). Regulations relating to the scope of practice for emergency care professions are contained in GN 196/2018 (<u>GG 6690</u>).

Emergency care technicians: Regulations relating to the minimum requirements of study for registration are contained in GN 244/2018 (GG 6716).

Environmental health practitioners and assistants: Minimum requirements of study for registration as an environmental health practitioner are contained in GN 88/2014 (GG 5501).²⁰¹ Regulations relating to the scope of practice of environmental health practitioners are contained in GN 160/2014 (GG 5559). Regulations relating to the registration of environmental health practitioners and environmental health practitioner interns are contained in GN 139/2014 (GG 5553). Regulations on additional examinations to be conducted by the Council in respect of environmental health practitioners-are contained in GN 143/2014 (GG 5553).

Minimum requirements of study for registration as an environmental health practitioner assistant are contained in GN 140/2014 (GG 5553). Regulations relating to the registration of environmental health practitioner assistants are contained in GN 141/2014 (GG 5553).

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¹⁹⁹ GN 30/2017 repeals GN 18/2010 (<u>GG 4426</u>).

²⁰⁰ These regulations withdraw the ones contained in RSA GN R.2343/1976 (RSA GG 5349).

²⁰¹ GN 88/2014 repeals the regulations published in RSA GN R.2308/1976 (RSA GG 5349).

Regulations relating to the scope of practice of environmental health practitioner assistants are contained in GN 142/2014 (GG 5553).

Hearing aid acousticians: Regulations relating to minimum requirements of study, interns, additional qualifications and registers are contained in GN 277/2015 (GG 5884). Regulations relating to scope of practice of hearing aid acousticians are contained in GN 10/2021 (GG 7453).

Homeopaths: Minimum requirements of study for registration are contained in GN 74/2011 (GG 4730). Regulations relating to the registration of homeopaths and homeopathy interns, and additional qualifications in this field, are contained in GN 75/2011 (GG 4730). Regulations relating to scope of practice are contained in GN 211/2015 (GG 5831).

Medical laboratory technicians and scientists: Regulations relating to medical laboratory technicians are contained in GN 28/2007 and 29/2007 (<u>GG 3795</u>). Regulations relating to the minimum requirements of study for registration as a medical laboratory scientist are contained in GN 295/2015 (<u>GG 5899</u>). Regulations relating to the registration of medical laboratory scientists and additional qualifications are contained in GN 296/2015 (<u>GG 5899</u>). Regulations on the scope of practice of medical laboratory scientists are contained in GN 319/2023 (<u>GG 8222</u>).

Medical orthotists and prosthetists: Regulations relating to the minimum requirements of study for registration, interns and additional qualifications are contained in GN 360/2019 (GG 7059). Regulations relating to the scope of practice are contained in GN 129/2022 (GG 7794).

Medical orthotics and prosthetics assistants: Regulations relating to minimum requirements of study, registration and scope of practice for medical orthotics and prosthetics assistants are contained in GN 37/2021 (GG 7473).

Medical orthotists and prosthetists technologists: Regulations relating to minimum requirements of study, registration and scope of practice for medical orthotics and prosthetics technologists are contained in GN 190/2021 (GG 7633).

Medical rehabilitation workers: Minimum requirements of study for registration are contained in GN 152/2008 (GG 4068). Regulations relating to registration are contained in GN 153/2008 (GG 4068).

Medical technologists: Regulations relating to medical technologists are contained in GN 35-36/2007 (GG 3795). Regulations on scope of practice are contained in GN 87/2012 (GG 4913).

Naturopaths: Minimum requirements of study for registration as a naturopath are contained in GN 73/2011 (GG 4730). Regulations relating to the registration of naturopaths and naturopathy interns, and additional qualifications in this field, are contained in GN 76/2011 (GG 4730). Regulations relating to the scope of practice of a naturopath are contained in GN 351/2022 (GG 7951), which repeals GN 90/2014 (GG 5503).

Nutritionists: Regulations relating to scope of practice are contained in GN 208/2016 (<u>GG 6114</u>). Regulations relating to minimum requirements of study for registration are contained in GN 184/2017 (<u>GG 6367</u>).

Occupational therapists: Minimum requirements of study for registration as an occupational therapist are contained in GN 7/2010 (GG 4411). Regulations relating to the registration of

²⁰² GN 360/2019 repeals the regulations contained in RSA GN R.1846/1977 (RSA GG 5741).

²⁰³ GN 35/2007 withdraws RSA GN R.2305/1976 (<u>RSA GG 5349</u>), and GN 36/2007 withdraws RSA GN R.2304/1976 (<u>RSA GG 5349</u>).

occupational therapists, occupational therapy interns, specialities and additional qualifications are contained in GN 72/2014 (<u>GG 5477</u>).²⁰⁴ Regulations on additional examinations for conditionally-registered occupational therapists are contained in GN 156/2010 (<u>GG 4530</u>).

Ocularists: Minimum requirements of study for registration are contained in GN 149/2008 (<u>GG</u> 4068). Regulations relating to registration are contained in GN 154/2008 (<u>GG</u> 4068).

Optometrists: Minimum requirements of study for registration are contained in GN 173/2009 (<u>GG 4332</u>). Regulations relating to registration are contained in GN 174/2009 (<u>GG 4332</u>). Additional examinations which may be conducted by the Council are addressed in GN 175/2009 (<u>GG 4332</u>). Regulations on scope of practice are contained in GN 104/2011 (<u>GG 4752</u>).

Opticians: Minimum requirements of study for registration as a dispensing optician are contained in GN 276/2010 (<u>GG 4633</u>).²⁰⁵ Additional regulations are contained in GN 277/2010 (<u>GG 4633</u>). Regulations on the scope of practice of dispensing opticians are contained in GN 105/2011 (<u>GG 4752</u>).

Orthoptists: Regulations relating to the minimum requirements of study for registration are contained in GN 106/2011 (<u>GG 4752</u>). Regulations relating to registration and additional qualifications are contained in GN 107/2011 (<u>GG 4752</u>).

Osteopaths: Regulations relating to scope of practice are contained in GN 20/2023 (<u>GG 8028</u>), which replaces GN 89/2014 (<u>GG 5502</u>). Minimum requirements of study and registration are covered in GN 172/2014 (<u>GG 5569</u>).

Phlebotomy technicians: Regulations relating to minimum requirements of study and registration are contained in GN 37/2017 (GG 6249).

Physiotherapists: Regulations relating to the registration of physiotherapists, specialities, additional qualifications and interns are contained in GN 31/2007 (GG 3795). Additional examinations which may be conducted by the Council are addressed in GN 148/2009 (GG 4302). Regulations on scope of practice are contained in GN 122/2010 (GG 4502). Regulations relating to the minimum requirements of study for registration are contained in GN 228/2010 (GG 4581).

Phytotherapists: Minimum requirements of study for registration as a phytotherapist are contained in GN 72/2011 (GG 4730). Regulations relating to the registration of phytotherapists

²⁰⁶ GN 30/2007 withdraws regulation 27 published in GN 49/1997. GN 31/2007 withdraws regulation No. 26 of PART IV, the whole of PART V and the whole of PART VI of the regulations in GN 49/1997 and "regulation No. 224 of 7 November 2005".

The reference in GN 31/2007 to "regulation No. 224 of 7 November 2005" must be wrong. There was no *Government Gazette* published on that date. GN 224/2005 (GG 3498) was published on 15 September 2005 and is concerned with charges and fees regarding the control of outdoor advertising in Walvis Bay. The regulations published in GN 49/1997 do not contain a regulation numbered 224. It is therefore unclear which regulation was intended to be withdrawn.

Regulations relating to the registration of physiotherapists and to the Physiotherapists Board were contained in GN 49/1997 (GG 1526). Portions of GN 49/1997 were deleted by GN 30/2007 (GG 3795) (which has since been repealed) and by GN 31/2007 (GG 3795). The only remaining portion of this set of regulations concerns the Physiotherapy Board and fees payable to that Board. The Physiotherapy Board has been replaced by the Allied Health Professions Council of Namibia; the regulations concerning the Physiotherapy Board have not been explicitly repealed, but they appear to have been superseded by regulations relating to the Allied Health Professions Council of Namibia.

²⁰⁴ GN 72/2014 replaced the regulations in GN 11/2010 (<u>GG 4419</u>), which repealed the Rules published in RSA GN R.2288/1976 (<u>RSA GG 5349</u>) "insofar as those Rules are applicable to the qualifications required by a person for registration as an occupational therapist".

²⁰⁵ GN 276/2010 repeals the rules published under Government Notice R.2339/1976 (RSA GG 5349).

and interns, and additional qualifications in this field, are contained in GN 77/2011 (<u>GG 4730</u>). Regulations relating to the scope of practice of phytotherapists are contained in GN 327/2022 (<u>GG 7934</u>), which repeals GN 212/2015 (<u>GG 5831</u>).

Radiographers: Regulations relating to minimum requirements of study for registration as a **diagnostic radiographer**, additional qualifications, registers and scope of practice are contained in GN 312/2020 (GG 7411). ²⁰⁷

Regulations relating to minimum requirements of study for registration as a **radiography** assistant and scope of practice are contained in GN 313/2020 (GG 7412).

Regulations relating to minimum requirements of study for registration as a **therapeutic radiographer**, additional qualifications, registers and scope of practice are contained in GN 314/2020 (GG 7413).

Regulations relating to minimum requirements of study for registration as a **nuclear medicine radiographer**, additional qualifications, registers and scope of practice are contained in GN 315/2020 (GG 7414).

Regulations relating to minimum requirements of study for registration as an **ultrasound** radiographer or sonographer, additional qualifications, registers and scope of practice are contained in GN 316/2020 (GG 7415).

Speech therapists and audiologists: Regulations relating to registration of these professionals and registration of additional qualifications are contained in GN 142/2011 (GG 4768). Minimum requirements of study for registration are contained in GN 143/2011 (GG 4768). Regulations on the scope of practice are contained in GN 162/2023 (GG 8102).

Therapeutic aromatherapists: Minimum requirements of study for registration are contained in GN 291/2013 (GG 5332). Regulations relating to the registration of these professionals are contained in GN 292/2013 (GG 5332). Regulations on the scope of practice of therapeutic aromatherapists are contained in GN 293/2013 (GG 5331).

Therapeutic masseurs: Minimum requirements of study for registration are contained in GN 288/2013 (GG 5331). Regulations relating to the registration of these professionals are contained in GN 289/2013 (GG 5331). Regulations on the scope of practice of therapeutic masseurs are contained in GN 290/2013 (GG 5331).

Therapeutic reflexologists: Minimum requirements of study for registration are contained in GN 294/2013 (GG 5333). Regulations relating to the registration of these professionals are

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²⁰⁷ Minimum requirements of study for registration as a diagnostic radiographer, a nuclear medicine radiographer, a therapeutic radiographer, an ultrasound radiographer and a radiography assistant were originally contained in GN 47/2010 (GG 4443), and regulations relating to the registration of radiographers were originally contained in GN 48/2010 (GG 4443). However, both of these sets of regulations were repealed by GN 312/2020 (GG 7411).

GN 47/2010 repealed the Rules made under RSA GN R.1851/1977 (RSA GG 5741). GN 48/2010 repealed the Rules published under RSA GN R.2288/1976 (RSA GG 5349) "insofar as those Rules are applicable to the registration of radiographers". Note that this reference appears to be in error RSA GN R.2288/1976 deal with the registration of occupational therapists. In the same *Government Gazette*, there are three notices that deal with the registration of radiographers:

[•] RSA GN R.2321/1976 - Rules for the registration of diagnostic radiographers

[•] RSA GN R.2322/1976 - Rules for the registration of therapeutic radiographers

[•] RSA GN R.2335/1976 - Rules for the registration of supplementary diagnostic radiographers.

It is possible that the repeal intended to refer to one or all of these, since GN 48/2010 dealt with the registration of diagnostic radiographers, nuclear medicine radiographers, therapeutic radiographers, ultrasound radiographers and radiography assistants.

²⁰⁸ GN 143/2011 repeals the rules published under Government Notice R.2333/1976 (RSA GG 5349).

contained in GN 295/2013 (<u>GG 5333</u>). Regulations on the scope of practice of therapeutic reflexologists are contained in GN 296/2013 (<u>GG 5333</u>).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 302/2013 (GG 5341).

General: Regulations concerning **allowances payable to members of the Council** are contained in GN 207/2024 (<u>GG 8401</u>), which repeals GN 292/2015 (<u>GG 5899</u>), which in turn withdraws GN 148/2008 (<u>GG 4068</u>).

Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Council are contained in GN 161/2009 (GG 4313).

Regulations on **continuing professional development** are contained in GN 46/2010 (GG 4443).

Regulations governing the return to practice after a period of not practising are contained in GN 273/2010 (GG 4633).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 60/2018 (GG 6564).²⁰⁹

Regulations relating to the investigation of alleged unprofessional conduct by registered persons and professional conduct inquiries are contained in GN 40/2015 (GG 5690).

Regulations relating to the **registration of students** are contained in GN 81/2017 (GG 6282).

Regulations on the **conditions subject to which registered persons may conduct professional practices** are contained in GN 197/2018 (GG 6694).

Rules: Professional Conduct Rules are contained in General Notice 387/2007 (GG 3951).

Registration fees: Fees payable to the Allied Health Professions Council are contained in General Notice 593/2023 (GG 8220), which repeals General Notice 495/2020 (GG 7410).²¹⁰

Fees: Fees which registered **homeopaths** may charge for their services are contained in General Notice 82/2004 (GG 3189).²¹¹

Fees which registered **physiotherapists** may charge for their services are contained in General Notice 44/2001 (GG 2489).²¹²

Fees which registered **dental technologists** may charge for their services are contained in General Notice 137/2004 (GG 3231).

Appointments and elections: Boards were established under the repealed Allied Health Services

²⁰⁹ GN 60/2018 repeals GN 20/2018 (GG 6527), which in turn repealed GN 158/2014 (GG 5559).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued. ²¹⁰ General Notice 495/2020 (<u>GG 7410</u>) repeals General Notice 487/2019 (<u>GG 7061</u>), which repeals General Notice 499/2017 (<u>GG 6489</u>), which repeals General Notice 350/2013 (<u>GG 5281</u>), which in turn withdraws both General Notice 358/2006 (<u>OG 3743</u>) and General Notice 306/2010 (<u>GG 4600</u>) which had amended General Notice 358/2006.

Note that General Notice 499/2017 (<u>GG 6489</u>) is numbered correctly in the Contents of GG 6489, but misnumbered as General Notice 479 in the text of that *Government Gazette*.

²¹¹ Such fees were previously contained in General Notice 93/2003 (<u>GG 2985</u>), General Notice 43/2001 (<u>GG</u> 2489), and GN 55/1998 (GG 1817).

²¹² Such fees were previously contained in GN 57/1998 (GG 1819) and GN 41/1997 (GG 1507).

Professions Act 20 of 1993 as follows:

- GN 146/1994 (GG 910) Clinical Psychology Board
- GN 147/1994 (GG 910) Medical Technology Board
- GN 148/1994 (GG 910) Occupational Therapy Board
- GN 149/1994 (GG 910) Optometric Board
- GN 150/1994 (GG 910) Physiotherapy Board
- GN 151/1994 (GG 910) Radiography Board
- GN 192/1994 (GG 950) Dental Technology Board
- GN 192/1994 (GG 950) Medical Assistants and Clinical Officers Board
- GN 49/1996 (GG 1270) Health Inspectors Board
- GN 50/1996 (GG 1270) Homoeopathic Board
- GN 51/1996 (GG 1270) Orthotist Prosthetist Board
- GN 52/1996 (GG 1270) Traditional Healers Board
- GN 199/2001 (GG 2624) Joint Complimentary Health Professions Board (for the professions of Acupuncturist, Chiropractor, Holistic practitioner, Meridian therapist, Naturopath, Osteopath, Phytotherapist, Therapeutic Aromatherapist, Therapeutic Masseur and Therapeutic Reflexologist)
- GN 199/2001 (GG 2624) Joint Allied Health Professions Board (for the professions of Acoustician, Biokinetician. Clinical Technologist, Counselling Psychologist, Dietician, Dental Therapist, Educational Psychologist, Emergency Care Profession, Masseur, Ocularist, Orthotist Prosthetist, Orthotist Prosthetist Assistant, Oral Hygienist, Podiatrist/Chiropodist, Psychometrist and Speech and Audiotherapist)

However, section 4(1) of the current Act states:

The Council [Allied Health Professions Council of Namibia] is for all purposes the successor of the former Dental Technology Board, the former Health Inspectors Board, the former Homoeopathic Board, the former Medical Technology Board, the former Occupational Therapy Board, the former Optometry Board, the former Physiotherapy Board, the former Radiography Board, the former Joint Allied Health Professions Board, and the former Joint Complementary Health Professions Board.

The Social Work and Psychology Council of Namibia established by the Social Work and Psychology Act 6 of 2004 is the successor to the Clinical Psychology Board (section 4(1) of that Act).

There appears to be no successor to the Traditional Healers Board, and the Act has not been made applicable to traditional healers. Regulations on elections to the Traditional Healers Board were made under the Allied Health Services Professions Act 20 of 1993 and are contained in GN 230/1999 (GG 2214); these regulations have not been repealed. However, annual registration fees were last gazetted for that Board in 1993, in GN 229/2003 (GG 3092), and the Board no longer seems to be in existence. For this reason, the regulations on elections to this Board have not been included in the database of annotated laws.

An Interim Council was established by GN 218/2004 (GG 3293). Regulations relating to the first election of the members of the Allied Health Professions Council of Namibia are contained in GN 143/2006 (GG 3692) and GN 27/2007 (GG 3795). Further regulations relating to the first election of members are contained in GN 172/2007 (GG 3861).

The first **Allied Health Professions Council** is announced in GN 61/2008 (\underline{GG} 4008). The terms of office of certain Council members were extended by GN 224/2012 (\underline{GG} 5023), GN 69/2013 (\underline{GG} 5060) GN 258/2013 (\underline{GG} 5303), GN 32/2014 (\underline{GG} 5425), GN 154/2014 (\underline{GG} 5559), GN 192/2015 (\underline{GG} 5818) and GN 221/2016 (\underline{GG} 6125). The terms of office of certain members were extended by GN 60/2017 (\underline{GG} 6263).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 301/2018 (GG 6770) and GN 66/2024 (GG 8357).

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²¹³ GN 27/2007 (<u>GG 3795</u>) withdraws the regulations on elections to the various boards which have been replaced by the Allied Health Professions Council of Namibia, with the exception of GN 72/2003 (<u>GG 2946</u>) – Joint Complimentary Health Professions Board.

Additional information: The Health Professions Councils of Namibia (HPCNA), which includes the Allied Health Professions Council, publishes *Ethical Guidelines for Health Professionals*. The HPCNA also investigates complaints from the public against individual health practitioners. See www.hpcna.com.

Nursing Act 8 of 2004 🕎 📻

Summary: This Act (originally published in <u>GG 3249</u>) provides for the establishment of a professional council for the nursing and midwifery or accoucheury professions. (An accoucheur is a male midwife.) It also defines and provides for the registration, enrolment, training and qualifications of members of such professions, and prohibits unregistered persons from practising such professions. The Act was brought into force on 1 October 2004 by GN 213/2004 (<u>GG 3291</u>). It will be repealed by the Health Professions Act 16 of 2024 (<u>GG 8550</u>), which has not yet been brought into force.

Repeals: The Act repeals the Nursing Professions Act 30 of 1993 (<u>GG 764</u>), which repealed the *Nursing Act 50 of 1978* (<u>RSA GG 5986</u>), as amended, which in turn repealed the *Nursing Act 69 of 1957*, as amended, which in turn repealed the *Nursing Act 45 of 1944*. All of these laws applied to SWA.

Amendments: Act 10/2018 (<u>GG 6703</u>) amends the Act to make provision for the appointment of members of the Nursing Council.

Savings: Section 65 of this Act includes a savings clause and some related provisions regarding how certain references should be construed:

- (2) Unless otherwise provided in this Act, any notice, regulation, rule, authorisation, order or license issued, made or granted, or any removal from the register or roll, or appointment made, or any other act done, or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by subsection (1), must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act, and continues to have force and effect -
 - (a) unless it is inconsistent with this Act; or
 - (b) until such time as it is set aside or repealed.
- (3) For the purposes of subsection (2), the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act.
- (4) Any reference in any law to the former Nursing Board referred to in section 64(5) must be regarded, unless the context otherwise indicates, to be a reference to the Council.

The repealed Nursing Professions Act 30 of 1993 contained a similar savings clause in section 54(2) in respect of the *Nursing Act 50 of 1978*:

Any notice, regulation, rule, authorization, order or approval issued, made or granted or any appointment or any other thing done in terms of a provision of any law repealed by subsection (1) shall, except in so far as may be otherwise required by this Act, be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act.

The repealed *Nursing Act 50 of 1978* contained a similar savings clause in section 46(2) in respect of the *Nursing Act 69 of 1957*:

Any proclamation, notice, regulation, authorization or order issued, made or granted, or any registration or enrolment, or any removal from a register or roll, or any appointment or any other thing done, in terms of a provision of any law repealed by subsection (1) shall, unless inconsistent with any provision of this Act, be deemed to have been issued, made, granted or done under the corresponding provision of this Act.

The repealed *Nursing Act 69 of 1957* contained a similar savings clause in section 57(2) in respect of the *Nursing Act 45 of 1944*:

Any regulation made or anything done under any provision of the Nursing Act, 1944, or of that Act read with the Nursing Council and Board Continuation Act, 1955, or of any law repealed by the Nursing Act,

1944, shall, unless inconsistent with the provisions of this Act, be deemed to have been made or done under the corresponding provision of this Act, and any reference in any such regulation to a chairman or vice-chairman, shall be deemed to be a reference to a president or vice-president.

Possible savings under the repealed Nursing Act 45 of 1944 are still being researched.

For the purposes of considering what regulations may survive under the repealed *Nursing Act 69 of 1957*, note that section 58 of that Act states:

This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel: Provided that only such regulations as are expressly stated to apply in the said territory shall so apply therein.

For the purposes of considering what regulations may survive under the repealed *Nursing Act 50 of 1978* (RSA GG 5986), note that sections 1 to 37 and 39 to 47 of the said Act came into operation with effect from 28 July 1978 (RSA GN R.197/1978, RSA GG 6120), while section 38 (concerning the South African Nursing Association) came into operation with effect from 30 April 1982 (RSA GN R.72/1982, RSA GG 8177). The Act was applied to SWA by RSA Proc. R.163/1982, postdating the relevant transfer proclamation, which is the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977, dated 1 December 1977.

Regulations: Pre-independence regulations made under the repealed laws that may survive due to the chain of savings clauses are still being researched.

Surviving regulations made under the Nursing Professions Act 30 of 1993 are as follows:

Registration and enrolment: Regulations relating to registration and enrolment are contained in GN 11/1999 (GG 2040) (which repeals a long list of regulations promulgated in RSA Government Notices);²¹⁴ Part II of GN 11/1999 is repealed by GN 250/2008 (GG 4140).

Complaints Regulations relating to the lodging of complaints and the conducting of enquiries are contained in GN 12/1999 (GG 2040).²¹⁵

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 300/2013 (GG 5339).

Courses of study: Regulations relating to courses of study which have not been repealed are contained in the following:

- Advanced University Diploma in Operating Room Nursing Science GN 14/1999 (GG 2040)²¹⁶
- Diploma in Ophthalmological Nursing GN 15/1999 (GG 2040)²¹⁷
- Advanced University Diploma in Health Promotion, Clinical Diagnosis and Treatment
 GN 17/1999 (GG 2042)
- Diploma in Midwifery for Registration as a Midwife GN 67/1999 (GG 2083)
- Advanced University Diploma in Nursing Education GN 194/2000 (GG 2392)
- Nurse and Midwife GN 195/2000 (GG 2392)
- Advanced University Diploma in Critical Care Nursing GN 196/2000 (GG 2392).²¹⁸

Regulations issued under the current Act are as follows:

²¹⁷ This notice repeals RSA Government Notices R.83/1970, R.265/1975 and R.1578/1977.

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 $^{^{214}\,} These\ regulations\ repeal\ the\ regulations\ in\ RSA\ Government\ Notices\ R.3588/1969,\ R.3589/1969,\ R.3735/1969,\ R.3736/1969,\ R.170/1971,\ R.171/1971,\ R.1201/1972,\ R.1204/1972,\ R.1205/1972,\ R.1206/1972,\ R.1206/1972,\ R.1206/1972,\ R.1206/1973,\ R.772/1973,\ R.773/1973,\ R.1267/1973,\ R.1647/1974,\ R.1648/1974,\ R.1854/1976,\ R.1855/1976\ and\ R.1856/1976.$

²¹⁵ These regulations repeal RSA Government Notices R.373/1970, R.1737/1972 and R.1707/1974.

²¹⁶ This notice repeals RSA Government Notice R.44/1970.

²¹⁸ This notice repeals RSA Government Notice R.85/1970.

Registration as nurse, midwife or accoucheur specialist: Regulations relating to the minimum requirements for study as registration as a nurse or midwife are contained in GN 143/2008 (GG 4068), which repeals GN 193/2000 (GG 2392). Regulations relating to approval of minimum requirements for education and training leading to bachelor's degree in nursing and midwifery science for registration as a nurse and midwife or accoucheur are contained in GN 182/2017 (GG 6361). Regulations relating to the registration of nurses, midwives and accoucheur specialities are contained in GN 220/2017 (GG 6390), replacing GN 250/2008 (GG 4140) which had in turn repealed Part II of GN 11/1999 (GG 2040).

Dermatology: Regulations relating to a diploma course in dermatology are contained in GN 142/2008 (GG 4068).

Midwives: Regulations concerning the conditions of practice of midwives are contained in GN 178/2009 (GG 4332).²¹⁹

Appeals: Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Nursing Council are contained in GN 117/2009 (GG 4264).

Continuing professional development: Regulations relating to the continuing professional development of persons registered or enrolled under the Act are contained in GN 15/2011 (GG 4656).

Scope of practice: Regulations relating to the scope of practice are contained in GN 206/2014 (<u>GG 5591</u>), which withdraws GN 13/1999 (<u>GG 2040</u>).

Conditions of practice: Regulations concerning conditions subject to which registered or enrolled persons may conduct practices relating to their professions are contained in GN 293/2019 (GG 7011).

Uniforms, badges, etc: Regulations relating to uniforms, badges and other distinguishing devices for nurses are contained in GN 17/2019 (GG 6836).²²⁰

Courses of study: Regulations on minimum requirements for education and training for a diploma in nursing and midwifery science and for registration as nurse, midwife or accoucheur are contained in GN 18/2019 (GG 6836).²²¹

General: Regulations concerning allowances payable to members of the Council are contained in GN 291/2015 (GG 5899), which withdraws GN 146/2008 (GG 4068). Regulations concerning additional examinations by the Council are contained in GN 149/2009 (GG 4302). Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 21/2018 (GG 6527).²²²

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Rules: Rules concerning misconduct are contained in GN 10/1999 (GG 2040).²²³

Registration fees: Fees payable to the Nursing Council are contained in General Notice 595/2023 (GG

²¹⁹ This notice repeals the regulations published in RSA Government Notices R.954/1963, R.1886/1974 and R 1784/1975

²²⁰ This notice repeals GN 56/1999 (<u>GG 2077</u>), as amended by GN 116/2009 (<u>GG 4264</u>).

²²¹ GN 18/2019 repeals GN 55/1999 (GG 2077), which in turn repealed RSA Government Notices R.879/1975, R.2316/1975 and R.1570/1977.

²²² GN 21/2018 repeals GN 156/2014 (GG 5559).

²²³ This notice repeals RSA Government Notices R.1648/1973, R.1649/1973 and R.1650/1973.

8220), which repeals General Notice 489/2019 (GG 7061).²²⁴

Appointments and elections: Regulations relating to the first election of the members of the Nursing Council of Namibia are contained in GN 145/2006 (GG 3694) and GN 23/2007 (GG 3795). Both of these withdraw GN 223/1999 (relating to the previous Nursing Board). Further regulations relating to the first election of the members of the Nursing Council of Namibia are contained in GN 171/2007 (GG 3861).

The first Nursing Council is announced in GN 60/2008 (<u>GG 4008</u>), replacing the Interim Council established by GN 219/2004 (<u>GG 3293</u>). The terms of office of certain Council members were extended by GN 221/2012 (<u>GG 5023</u>), GN 71/2013 (<u>GG 5060</u>), GN 259/2013 (<u>GG 5303</u>), GN 30/2014 (<u>GG 5425</u>), GN 152/2014 (<u>GG 5559</u>), GN 191/2015 (<u>GG 5818</u>) and GN 222/2016 (<u>GG 6125</u>). The terms of office of certain members were extended by GN 57/2017 (<u>GG 6263</u>).

Subsequent amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 299/2018 (GG 6770) and GN 67/2024 (GG 8357).

Additional information: The Health Professions Councils of Namibia (HPCNA), which includes the Nursing Council, publishes *Ethical Guidelines for Health Professionals*. The HPCNA also investigates complaints from the public against individual health practitioners. See www.hpcna.com.

Pharmacy Act 9 of 2004 🗐 👨

Summary: This Act (originally published in <u>GG 3250</u>) provides for the establishment of a professional council for the pharmacy profession. It also defines and provides for the registration, training and qualifications of members of pharmacists, pharmacist interns, pharmacy students, pharmacists' assistants and pharmaceutical technicians, and prohibits unregistered persons from practising in the pharmacy profession. It was brought into force on 1 October 2004 by GN 214/2004 (<u>GG 3291</u>). It will be repealed by the Health Professions Act 16 of 2024 (<u>GG 8550</u>), which has not yet been brought into force.

Repeals: The Act repeals the Pharmacy Profession Act 23 of 1993 (<u>GG 713</u>), which in turn repealed the *Pharmacy Act 53 of 1974*, as amended.

Amendments: Act 11/2018 (<u>GG 6704</u>) amends the Act to make provision for the appointment of members of the Pharmacy Council.

Savings: Section 72 includes a savings clause and some related provisions regarding how certain references should be construed:

- (2) Except as otherwise provided in section 71, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register, appointment or any other act done, or regarded to have been issued, made, granted, or done under or in terms of a provision of the laws repealed by subsection (1) must be regarded as having been issued, made, granted, or done under the corresponding provision of this Act and continues to have force and effect -
 - (a) except if it is inconsistent with this Act; or
 - (b) until it is set aside or repealed.

(3) For the purposes of subsection (2), any rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct.

(4) Any reference to the former Pharmacy Board in any law must be regarded, unless the context otherwise indicates, to be a reference to the Council.

Note: General Notice 18/2007 (<u>GG 3788</u>) amends General Notice 357/2006 (<u>GG 3743</u>), but was not withdrawn along with the principal notice by General Notice 351/2013 (<u>GG 5281</u>); however, it has no independent effect or relevance.

²²⁴ General Notice 489/2019 (<u>GG 7061</u>) repeals General Notice 500/2017 (<u>GG 6489</u>), which repeals General Notice 351/2013 (<u>GG 5281</u>), which in turn withdraws both General Notice 357/2006 (<u>OG 3743</u>) and General Notice 308/2010 (<u>GG 4600</u>).

The Pharmacy Profession Act 23 of 1993 contains a similar saving clause in section 57(2) with respect to the *Pharmacy Act 53 of 1974*.

Any notice, regulation, rule, authorization, order or approval issued, made or granted or any appointment, agreement, or any other thing done in terms of a provision of any law repealed by subsection (1) shall, except in so far as may be otherwise required by this Act, be deemed to have been issued, made, granted or done under the corresponding or allied provisions of this Act.

Regulations: Research on pre-independence regulations is still underway.

The following regulations made under the Pharmacy Profession Act 23 of 1993 appear to survive. These have not yet been processed for the database.

Regulations relating to **fees** are contained in GN 120/1996 (<u>GG 1312</u>), as amended by GN 106/2003 (GG 2985).

Regulations relating to the **election of members to the Pharmacy Board** are contained in GN 226/1999 (GG 2214).

Regulations made under the current Act are as follows:

Study, registration and scope of practice: Minimum requirements of study for registration as a pharmacist are contained in GN 221/2007 (GG 3945). Minimum requirements of study for registration as a pharmaceutical technician are contained in GN 18/2017 (GG 6230). Regulations relating to the registration of students and maintaining of the register of students are contained in GN 352/2023 (GG 8252). Regulations relating to the registration of pharmacists and pharmacist interns and the qualifications for specialities are contained in GN 51/2008 (GG 4000), which repeals the regulations in RSA GN R.1417/1975 (RSA GG 4806). Additional examinations are covered by regulations contained in GN 278/2010 (GG 4633). Regulations relating to the scope of practice of a pharmacist, pharmaceutical technician, pharmacist intern, pharmacy student, pharmacist's assistant and pharmacist's assistant student are contained in GN 294/2017 (GG 6470).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 303/2013 (GG 5342).

Ownership of pharmacies by private hospitals: Regulations relating to the ownership of pharmacies by private hospitals were initially contained in GN 198/2008 (GG 4103), which was repealed and replaced by GN 101/2014 (GG 5515).

Wholesale pharmacists: Regulations relating to the conducting of business as a wholesale pharmacist are contained in GN 9/2022 (<u>GG 7728</u>).

General: Regulations concerning allowances payable to members of the Council are contained in GN 290/2015 (GG 5899), which withdraws GN 147/2008 (GG 4068).

Regulations relating to continuing professional development are contained in GN 90/2010 (GG 4482).

Regulations governing the return to practice after a period of not practising are contained in GN 279/2010 (GG 4633).

Regulations on appeals are contained in GN 280/2010 (GG 4633).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 61/2018 (GG 6564), which repeals GN 22/2018 (GG

6527), which in turn repealed GN 159/2014 (GG 5559).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to the investigation of alleged unprofessional conduct by registered persons and professional conduct inquiries are contained in GN 289/2015 (GG 5898), as amended by GN 237/2016 (GG 6135).

GN 237/2016 amends the enabling formula contained in GN 289/2015, rather than amending the regulations themselves. GN 289/2015 initially stated that the regulations were made under section 66(5) of the Pharmacy Act 9 of 2004. The enabling formula is substituted by GN 237/2016, to state that the regulations were made under section 66(1)(s) of the Pharmacy Act 9 of 2004.

Rules: The following rules were issued under the previous Act –

Rules in respect of misconduct are contained in GN 299/1996 (GG 1444). (Note that section 72(3) of this Act states: "For the purposes of subsection (2) [the savings clause], any rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct."

The following rules were made under this Act –

Rules relating to the qualification and registration of a pharmacist's assistant are contained in General Notice 426/2017 (GG 6456), which repeals GN 263/2014 (GG 5644), which withdraws the rules published in General Notice 4/2013 (GG 5119).

Registration fees: Fees payable to the Pharmacy Council are set by General Notice 596/2023 (<u>GG 8220</u>), which repeals General Notice 69/2022 (<u>GG 7754</u>), and which is amended by General Notice 828/2023 (<u>GG 8286</u>).²²⁵

Appointments and elections: Regulations relating to the first election of the members of the Pharmacy Council of Namibia are contained in GN 144/2006 (GG 3693) and GN 24/2007 (GG 3795). Both of these withdraw GN 226/1999, relating to the previous body. Further regulations relating to the first election of the members of the Pharmacy Council of Namibia are contained in GN 170/2007 (GG 3861).

Members of the first Pharmacy Council are announced in GN 270/2008 (GG 4166). The terms of office of certain Council members were extended by GN 225/2012 (GG 5023), GN 70/2013 (GG 5060), GN 257/2013 (GG 5303), GN 28/2014 (GG 5425), GN 153/2014 (GG 5559), GN 190/2015 (GG 5818) and GN 223/2016 (GG 6125). The terms of office of certain members were extended by GN 56/2017 (GG 6263).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 300/2018 (GG 6770) and GN 68/2024 (GG 8357).

Additional information: The Health Professions Councils of Namibia (HPCNA), which includes the Pharmacy Council, publishes *Ethical Guidelines for Health Professionals*. The HPCNA also investigates complaints from the public against individual health practitioners and pharmacies. See www.hpcna.com.

Notice 386/2012 (GG 5069). All of these have been repealed, withdrawn or superseded.

²²⁵ Previous fees were contained in General Notice 497/2020 (<u>GG 7410</u>), General Notice 490/2019 (<u>GG 7061</u>), General Notice 497/2017 (<u>GG 6489</u>), General Notice 352/2013 (<u>GG 5281</u>), and General Notice 67/2007 (<u>GG 3804</u>) as amended by General Notice 174/2008 (<u>GG 4068</u>), General Notice 309/2010 (<u>GG 4600</u>) and General

Medical and Dental Act 10 of 2004 🚾 📻

Summary: This Act (originally published in <u>GG 3251</u>) provides for the establishment of a professional council for the medical and dental professions. It also defines and provides for the registration, training and qualifications of members of these professions, and prohibits unregistered persons from practising such professions. It was brought into force on 1 October 2004 by GN 215/2004 (<u>GG 3291</u>). It will be repealed by the Health Professions Act 16 of 2024 (<u>GG 8550</u>), which has not yet been brought into force.

Repeals: The Act repeals the Medical and Dental Professions Act 21 of 1993 (<u>GG 711</u>) as amended, and the Allied Health Services Professions Act 20 of 1993 (<u>GG 710</u>) insofar as it relates to the professions regulated by this Act.

The Medical and Dental Professions Act 21 of 1993 repealed the *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* and the Health Service Professions Proclamation, AG 70 of 1989.

The Medical, Dental and Supplementary Health Service Professions Act 56 of 1974 (RSA GG 4445), which applied to SWA and which was brought into force by RSA Proc. R.52/1975 (RSA GG 4594), repealed the Medical, Dental and Pharmacy Act 13 of 1928 (SA GG 1706) and its amending acts – with the exception of sections 83 and 83bis.²²⁶

Sections 83 and 83*bis* of that Act were repealed in South Africa by the *Health Act 63 of 1977* (RSA GG 5558). The relevant section of this repealing act came into force on 1 September 1977 (RSA Proc. R.175/1977, RSA GG 5716), prior to the relevant date of transfer, which was 1 December 1977). Therefore, the RSA *Health Act 63 of 1977* (although not made generally applicable to SWA) would appear to have repealed the remaining sections of *Act 13 of 1928* in SWA by virtue of the wording of section 99 of *Act 13 of 1928*, which provided that the "mandated territory of South West Africa" was to be deemed to be a province of South Africa for all purposes of the Act – except for the purposes of paragraph (*b*) of the proviso to section 2(4), which concerned representation on the council established by the Act.

The RSA *Health Act 63 of 1977* contained a savings clause in section 63(2),²²⁷ but this would not seem to be relevant to South West Africa since the RSA *Health Act 63 of 1977* did not in itself apply to South West Africa. The *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* contained a savings clause in section 64(2), but this would also not seem to be relevant since this Act did not repeal section 83*bis* which was the authority for these regulations.

The date of transfer for South African laws administered by the Minister of Health was 1 December 1977, pursuant to the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977.

GN 215/2004, which brought the Act into force, was arguably withdrawn by GN 142/2006 (GG 3691) and again by GN 26/2007 (GG 3795). However, this appears to be an error.

GN 142/2006 (GG 3691) and GN 26/2007 (GG 3795), both of which pertain to the first election of the Social Work and Psychology Council, withdraw "Government Notices Nos. 215 and 229 of 20 October 2004". However, there were no Government Notices with these numbers gazetted on that date. GN 215/2004, which deals with the commencement of this Act, was gazetted on 1 October 2004 (GG 3291),

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²²⁶ Section 83*bis* was inserted by Act 29 of 1954 (<u>SA GG 5293</u>), substituted by Act 11 of 1957 (<u>SA GG 5842</u>), and amended by Act 31 of 1961 (<u>RSA GG 31</u>).

²²⁷ "Any proclamation, regulation, rule, order, notice, approval, authority, return, certificate, direction or appointment made, issued, given or granted, and any other act done under the provisions of any law repealed by this Act, shall be deemed to have been made, issued, given or granted or done under the corresponding provision of this Act."

and GN 229/2004, which deals with final deregistration of companies, was gazetted on 21 October 2004. It is unlikely that the regulations intended to withdraw either of these notices.

It is possible that GN 215/1999 (GG 2214) was intended for withdrawal, instead of GN 215/2004. This is because GN 215/1999 is concerned with regulations relating to the election of members to the Clinical Psychology Board under the Allied Health Services Professions Act 20 of 1993 (now repealed). This is relevant to the subject matter of GN 142/2006 (GG 3691) and GN 27/2007 (GG 3795). For the same reason, it is likely that GN 229/1999 (GG 2214), instead of GN 229/2004, was intended for repeal, since it is concerned with regulations relating to the election of members to the Social and Social Auxiliary Workers' Board under the Social and Social Auxiliary Workers' Professions Act 22 of 1993.

Since there are no government notices which match both the indicated numbers and dates given, the withdrawal is presumably legally ineffective.

Amendments: Act 9/2018 (<u>GG 6702</u>) amends the Act to make provision for the appointment of members of the Medical and Dental Council.

Savings: Section 65 includes a savings clause and some related provisions regarding how certain references should be construed:

- (2) Unless otherwise provided in this Act, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register or appointment made, or any other act done, or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by subsection (1), must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act, and continues to have force and effect -
 - (a) unless if it is inconsistent with this Act; or
 - (b) until such time as it is set aside or repealed.
- (3) For the purposes of subsection (2), the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act.
- (4) Any reference in any law to any of the former Boards referred to in section 64(5) must be regarded, unless the context otherwise indicates, to be a reference to the Council.

The Medical and Dental Professions Act 21 of 1993 (GG 711) contained a savings clause in section 56(2), and the *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* (RSA GG 4445) contained a savings clause in section 64(2).

The *Health Act 63 of 1977* (RSA GG 5558) (which repealed two provisions of the *Medical, Dental and Pharmacy Act 13 of 1928* authorising regulations) contained a savings clause in section 63(2), but the Act was not generally applicable to SWA so that savings clause would not seem to apply to SWA.

Regulations: Pre-independence regulations have not yet been comprehensively researched.

However, amongst the regulations which may survive are the following, which were issued in terms of the *Medical, Dental and Pharmacy Act 13 of 1928*:

Blood Transfusion Regulations, 1962, RSA GN R.1950/1962 (<u>RSA GG 385</u>, republished in OG 2440A), made in terms of section 83*bis* and amended by RSA GN R.66/1969 (<u>RSA GG 2265</u>, republished in OG 2966) RSA GN R.278/1971 (<u>RSA GG 3002</u>), RSA GN R.2060/1972 (<u>RSA GG 3704</u>), RSA GN R.2354/1975 (<u>RSA GG 4922</u>) and AG GN 31/1979 (<u>OG 3952</u>).²²⁸

Therapeutic Substances Regulations, RSA GN R.740/1966 (<u>RSA GG 1445</u>), made in terms of section 83, as amended by GN R.739/1971 (RSA GG 3090).²²⁹

Surviving post-independence regulations made under the Medical and Dental Professions Act 21 of 1993 repealed by this Act are as follows:

²²⁹ These regulations replace the ones in SA GN 1131 of 9 August 1935 as amended.

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²²⁸ These regulations replace the ones in SA GN R.699 of 20 May 1960 as amended.

Misconduct: Regulations relating to complaints and disciplinary inquiries by the Medical Board are contained in GN 31/2001 (GG 2489) (which repeals RSA GN R.2268 of 3 December 1976).

Regulations regarding the procedures at disciplinary hearings by the Dental Board are contained in GN 222/2003 (GG 3085).

Section 65(3) of this Act states: "For the purposes of subsection (2) [the savings clause], the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act."

The regulations below were promulgated under the current Act:

Biomedical engineers: Regulations relating to the minimum requirements of study, registration, and scope of practice in respect of biomedical engineers are contained in GN 277/2018 (GG 6744).

Clinical biochemists: Regulations relating to the minimum requirements of study for registration as a clinical biochemist are contained in GN 125/2010 (GG 4503). Regulations on the scope of practice of clinical biochemists are contained in GN 124/2010 (GG 4503). Additional regulations pertaining to clinical biochemists are contained in GN 126/2010 (GG 4503).

The background to and interpretation of regulation 10(c) in GN 126/2010 are considered in the context of assessment of prospects of success in an application for condonation in *Kandando v Medical and Dental Council of Namibia & Another* 2020 (2) NR 450 (SC).

Clinical officers: Minimum requirements of study for registration and registration of clinical officers and clinical officer interns are contained in GN 24/2015 (GG 5680).

Dental professions: Regulations on conditions applicable to practice as a dentist, dentist specialist or oral hygienist are contained in GN 80/2005 (<u>GG 3460</u>). Regulations relating to the qualifications for registration of dentists, minimum curriculum requirements for the study of dentistry and professional examinations for dentists are contained in GN 51/2006 (<u>GG 3595</u>). Regulations relating to the registration of dentists are contained in GN 155/2008 (<u>GN 4068</u>), as amended by GN 33/2017 (<u>GG 6249</u>). Regulations relating to the registration of dental interns are contained in GN 121/2016 (<u>GG 6031</u>). Regulations relating to the registration of dental students are contained in GN 32/2017 (<u>GG 6249</u>). Regulations relating to the scope of practice of dentists are contained in GN 34/2017 (<u>GG 6249</u>). Regulations relating to the scope of practice of dental technologists and dental technicians are contained in GN 10/2022 (<u>GG 7728</u>).

Medical biological scientists: Regulations relating to the minimum requirements of study for registration as a medical biological scientist are contained in GN 49/2011 (GG 4699). Regulations relating to the registration and additional qualifications of medical biological scientists and medical biological scientist interns are contained in GN 48/2011 (GG 4699).

Medical scientists: Regulations relating to the minimum requirements of study for registration as a medical scientist and the scope of practice of medical scientists are contained in GN 328/2022 (GG 7936).

Medical students: Regulations relating to the registration of medical students, the maintaining of a register of medical students and the restoration of a name to a register are contained in GN 120/2016 (GG 6031), which withdraws GN 237/2000 (GG 2415) (which in turn repealed RSA

²³⁰ GN 155/2008 (GN 4068) repeals certain South African regulations insofar as they apply to dentists: RSA GN Nos R. 2269, 2273, 2274, 2275, 2276, 2277 and 2278 of 3 December 1976 and R.1829 of 16 September 1977.

GN R.2269 and R.2270 of 3 December 1976).

Medical interns: Regulations relating to the registration of medical interns were originally set out in GN 8/2007 (<u>GG 3783</u>), which withdraw regulations 15-18 and 20 published in GN 238/1999 (<u>GG 2222</u>). GN 8/2007 was repealed by GN 84/2020 (<u>GG 7147</u>), which contained new regulations relating to the registration of medical interns. GN 84/2020 was repealed by GN 317/2020 (<u>GG 7419</u>), which contains new regulations relating to the registration of medical interns.

Medical physicist: Regulations relating to minimum requirements of study of medical physicists, registration of interns, restoration of name to the register and scope of practice of medical physicists are contained in GN 52/2020 (GG 7128).

Medical practitioners: Regulations concerning the minimum requirements of study for registration as a medical practitioner are contained in GN 277/2017 (<u>GG 6442</u>), which repeals GN 177/2009 (<u>GG 4332</u>). Regulations relating to the scope of practice of medical practitioners are contained in GN 35/2017 (<u>GG 6249</u>). Regulations relating to registration of medical practitioners, qualifications that may be registered as specialities and maintaining of registers of medical practitioners are contained in GN 88/2022 (<u>GG 7769</u>), which repeals GN 278/2017 (<u>GG 6442</u>). Regulations relating to the registration of medical practitioners and specialists to undergo training in specialities or sub-specialities are contained in GN 308/2024 (<u>GG 8489</u>).

Oral hygienists: Regulations relating to the minimum requirements of study for registration as an oral hygienist are contained in GN 144/2008 (<u>GG 4068</u>). Regulations relating to the registration of oral hygienists are contained in GN 145/2008 (<u>GG 4068</u>). Regulations related to the scope of practice of oral hygiene are contained in GN 197/2008 (<u>GG 4103</u>), as amended by GN 210/2015 (<u>GG 5831</u>).

Ophthalmic assistants: Regulations relating to minimum requirements and registration of ophthalmic assistants, additional qualifications, maintaining of registers and restoration of a name to a register and scope of practice are contained in GN 130/2022 (GG 7795).

General: Regulations concerning allowances payable to members of the Council are contained in GN 293/2015 (GG 5899), which withdraws GN 150/2008 (GG 4068).

Regulations concerning additional examinations which may be conducted by the Council are contained in GN 259/2008 (GG 4150).

Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Medical and Dental Council are contained in GN 41/2009 (GG 4232).

Regulations concerning the conditions of practice of registered persons other than those in dental professions are contained in GN 176/2009 (GG 4332).

Regulations relating to continuing professional development are contained in GN 92/2010 (GG 4482).

Regulations relating to impaired registered persons are contained in GN 299/2013 (GG 5338).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 62/2018 (GG 6564), which repeals GN 23/2018 (GG 6527), which in turn repealed GN 155/2014 (GG 5559).

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²³¹ Previous regulations concerning the registration of medical practitioners and specialities were contained in GN 278/2017 (<u>GG 6442</u>), which repealed GN 71/2010 (<u>GG 4455</u>), which in turn repealed the regulations contained in GN 238/1999 (<u>GG 2222</u>).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to conditions under which registered persons may conduct practices relating to their professions are contained in GN 61/2017 (GG 6263).

Regulations relating to the practical training of medical students and dental students are contained in GN 279/2017 (GG 6444).

Rules: In terms of section 65(2), any rule, notice, authorization, or order made under any one of the pieces of legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act. Rules made under the repealed laws which continue to survive include the following –

Rules relating to misconduct in respect of the dental profession are contained in GN 151/2001 (GG 2590), as amended by GN 218/2001 (GG 2637), which repeals the rules in RSA GN R.2278 of 3 December 1976 insofar as they relate to the dental profession.

Rules relating to misconduct in respect of the medical profession are contained in GN 197/2002 (GG 2851) as amended by GN 87/2004 (GG 3198), which repeals the rules in RSA GN R.2278 of 3 December 1976 insofar as they relate to medical practitioners.

Registration fees: Fees payable to the Medical and Dental Council are contained in General Notice 594/2023 (GG 8220), which repeals General Notice 498/2020 (GG 7410). 232

Fees: A tariff of fees which may be charged by registered dentists is contained in General Notice 302/2003 (GG 3085) which repeals General Notice 381/2002 (GG 2880).

Appointments and elections: Regulations relating to the first election of the Medical and Dental Council of Namibia are contained in GN 146/2006 (GG 3695) and GN 25/2007 (GG 3795). Both of these withdraw GN 216/1999, 220/1999 and 221/1999, relating to previous bodies. The first Medical and Dental Council is announced in GN 59/2008 (GG 4008), replacing the Interim Council established by GN 220/2004 (GG 3293). The terms of office of certain Council members were extended by GN 222/2012 (GG 5023), GN 72/2013 (GG 5060), GN 256/2013 (GG 5303), GN 29/2014 (GG 5425), GN 151/2014 (GG 5559) GN 189/2015 (GG 5818) and GN 224/2016 (GG 6125). The terms of office of certain members were extended by GN 58/2017 (GG 6263).

Subsequent amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 297/2018 (GG 6770) and GN 69/2024 (GG 8357).

Additional information: The Health Professions Councils of Namibia (HPCNA), which includes the Medical and Dental Council, publishes *Ethical Guidelines for Health Professionals*. The HPCNA also investigates complaints from the public against individual health practitioners. See www.hpcna.com.

Cases: Kandando v Medical and Dental Council of Namibia & Another 2020 (2) NR 450 (SC) (regulations relating to clinical biochemists in GN 126/2010 (GG 4503); background to and interpretation of regulation 10(c) in GN 126/2010 considered in the context of assessment of prospects of success in an application for condonation).

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Prior to the enactment of this law, regulations on fees payable to the Council were contained in GN 223/2003 (GG 3086); annual fees were determined in terms of those regulations in GN 230/2003 (GG 3092). The regulations on fees in GN 223/2003 were withdrawn by General Notice 8/2007 (GG 3771), which was amended by General Notice 307/2010 (GG 4600). Both of these General Notices were withdrawn and replaced by General Notice 285/2013 (GG 5252)

²³² General Notice 498/2020 (<u>GG 7410</u>) repeals General Notice 347/2020 (<u>GG 7317</u>), which repeals General Notice 491/2019 (<u>GG 7061</u>), which repeals General Notice 501/2017 (<u>GG 6489</u>), which repeals General Notice 285/2013 (<u>GG 5252</u>).

*Health Professions Act 16 of 2024 🕎 🙀

Summary: This Act (<u>GG 8550</u>) provides for consolidated regulation of various health professions that were previously regulated by separate statutes. It establishes the Health Professions Council for Namibia, under which various specialised professional boards operate. It also authorises the Minister to introduce requirements that particular categories of health professionals must serve in the public service before being allowed to engage in independent practice. The Act will be brought into force on a date set by the Minister in the *Government Gazette*.

Repeals: The Act repeals the Social Work and Psychology Act 6 of 2004, the Allied Health Professions Act 7 of 2004, the Nursing Act 8 of 2004, the Pharmacy Act 9 of 2004 and the Medical and Dental Act 10 of 2004.

See also Veterinary and Veterinary Para-Professions Act 1 of 2013 (ANIMALS).

See also **HEALTH**.

See also HOSPITALS.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (EDUCATION).

See also MEDICAL AID.

See also MEDICINE.

See also MENTAL HEALTH AND MENTAL DISORDERS.

HOSPITALS

Hospitals and Health Facilities Act 36 of 1994 🕎 🙀

Summary: This Act (originally published in <u>GG 996</u>) consolidates and amends the laws relating to state and private hospitals and health facilities (which are broadly defined to include clinics, pharmacies, laboratories etc). It was brought into force on 15 February 1995 by GN 25/1995 (<u>GG 1028</u>).

Most of this Act is repealed by the National Health Act 2 of 2015 (<u>GG 5742</u>), which has not yet been brought into force. Once it does come into force, the only remaining provisions of this Act will be:

- section 1 (definitions)
- Part VI (private hospitals)
- Part VII (private health facilities)
- section 33(1)(c)-(d)
- section 38(1)(b), (k) and (l)
- section 39(2)(b).

Act 2 of 2015 (<u>GG 5742</u>) will also repeal section 40, which contains the short title of this Act; it is not clear what the title of this Act will be after that repeal becomes effective.

Repeals: The Act repeals the Hospitals Ordinance 14 of 1972 (OG 3265), which repealed the State Hospitals Ordinance 17 of 1966 (OG 2727), which in turn repealed the State Hospitals Ordinance 49 of 1957 (OG 2094).

The State Hospitals Ordinance 49 of 1957 (OG 2094) contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930. The 1930 Ordinance was repealed by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812), which contains no savings clause.

Amendments: Act 1/1998 (<u>GG 1804</u>) amends sections 1, 2, 4, 5, 18, 19, 23, 24, 27, 31, 38 and 39 of the Act. Portions of this amending Act – sections 1, 2, 3, 4, 5, 6, 11, 12 and 13 – are repealed by the National Health Act 2 of 2015 (<u>GG 5742</u>), which has not yet been brought into force.

This Act is also amended by the Health Professions Act 16 of 2024 (<u>GG 8550</u>), which has not yet been brought into force.

The National Health Act 2 of 2015 (GG 5742), which has not yet been brought into force, repeals Part II, Part IV, Part V and sections 33(1)(a)-(b) and (2), 34, 35, 36, 37, 38(1)(a), (c), (d), (e), (f), (g), (h), (i), (j), (m), (n) and (2), 39(1) and (2)(a) and (c) and 40 of the Act.

Savings: Subsidiary enactments under the Hospitals and Health Facilities Act 36 of 1994 (GG 996), which was substantially repealed by this Act (GG 5742), survive in terms of section 67(2)(b) of this Act: Despite subsection (1) [which contains repeals] ... any regulation, notice, approval, appointment, authority, certificate or document made, issued, given or granted, or any other thing done under any law repealed by subsection (1) is, except in so far as may be otherwise required by this Act, is considered to have been made, given, issued, granted or done under the corresponding or allied provision of this Act and continues to have force and effect -

- (i) except if it is inconsistent with this Act; or
- (ii) until it is set aside, cancelled or repealed.

Subsidiary enactments under the Hospitals Ordinance 14 of 1972 (OG 3265), which was repealed by the Hospitals and Health Facilities Act 36 of 1994, survived in terms of section 39(2)(c) of that Act:

Notwithstanding the provisions of subsection (1) [which contains repeals]... any regulation, notice, approval, authority, certificate or document made, issued, given or granted, or any other act done under any law repealed by subsection (1) and not inconsistent with this Act, shall continue in force and shall be deemed to have been made, issued, given, granted or done under the corresponding provisions of this

Act, until expressly revoked.

Subsidiary enactments under the State Hospitals Ordinance 17 of 1966 (OG 2727), which was repealed by the Hospitals Ordinance 14 of 1972 – and again by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812), which was brought into force by GN 32/2019 (GG 6851) – survived in terms of section 43(3) of Ordinance 14 of 1972:

Any regulation, notice, approval, authority, certificate or document issued, made, published, given or granted, and any other steps taken in terms of a provision of an ordinance repealed by subsection (1) shall be deemed to have been issued, made, published, given or granted in terms of the corresponding provisions of this Ordinance.

Regulations made under the State Hospitals Ordinance 49 of 1957 (OG 2094), which was repealed by the State Hospitals Ordinance 17 of 1966, survived in terms of section 41(4) of that Ordinance.

Any regulation, notice, approval, authority, certificate or document promulgated, published, given or issued, and any other steps taken under any provision of any law repealed by sub-section (1) shall be deemed to have been promulgated, published, given or issued under the corresponding provision of this ordinance.

As noted above, the State Hospitals Ordinance 49 of 1957 contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930, which was repealed by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812) – which contains no savings clause.

Regulations: Pre-independence regulations have not yet been researched.

The following regulations were made in terms of the current Act:

Regulations concerning the classification of hospitals and health facilities are contained in GN 184/2001 (GG 2609).

Regulations relating to the classification of state hospitals, the admission of state patients and the fees payable by patients, contained in GN 73/2010 (GG 4459). (These regulations repeal previous regulations made under the Hospitals Ordinance 14 of 1972, contained in GN 43/1993 (GG 621), ²³³ as amended by GN 199/1995 (GG 1183) and GN 12/2001 (GG 2468).

Cases:

Lisse v The Minister of Health and Social Services 2004 NR 107 (HC), Minister of Health and Social Services v Lisse 2006 (2) NR 739 (SC)

Kaulinge v Minister of Health and Social Services 2006 (1) NR 377 (HC).

repealed by Article 147 of the Namibian Constitution".

*National Health Act 2 of 2015 (only section 20(1) is in force)

Summary: This Act (<u>GG 5742</u>) consolidates the laws relating to state hospitals and state health services and regulates the conduct of such hospitals and services. It provides for state hospital committees by the health practitioners and staff at the hospital in question. It covers access to treatment and fees, and establishes a Special Fund for Treatment of State Patients to provide financial assistance for such special treatment. It also establishes regional and district health boards and offices, and provides for the authorisation of research at state hospitals and grants for such research. The Act will be brought into

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²³³ These regulations repealed the regulations promulgated under Government Notices 215/1973 (<u>OG 3357</u>), 43/1974, 81/1974, 57/1976, 181/1977, 199/1977, 144/1988 and 4/1991 (<u>GG 142</u>). GN 215/1973 repeals the regulations in GN 6/1971. GN 4/1991 repeals "all and any regulations made under the said section [section 41 of the Hospitals Ordinance 14 of 1972], by, and for the purposes of, any former Representative Authority contemplated in the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), which was

force on a date set by the Minister by notice in the *Government Gazette*. Section 20(1) was brought into force on 17 September 2020 by GN 231/2020 (GG 7338).

Repeals: The Act repeals most of the Hospitals and Health Facilities Act 36 of 1994 (GG 996) (Part II, Part III, Part IV, Part V and sections 33(1)(a) and (b) and (2), 34, 35, 36, 37, 38(1)(a), (c), (d), (e), (f), (g), (h), (i), (j), (m) and (n) and (2), 39(1) and (2)(a) and (c) and 40) and most of its sole amending Act 1/1998 (GG 1804) (sections 1, 2, 3, 4, 5, 6, 11, 12 and 13).

The Hospitals and Health Facilities Act 36 of 1994 (<u>GG 996</u>) replaced the Hospitals Ordinance 14 of 1972 (<u>OG 3265</u>), which replaced the State Hospitals Ordinance 17 of 1966 (<u>OG 2727</u>), which in turn replaced the State Hospitals Ordinance 49 of 1957 (<u>OG 2094</u>).

The State Hospitals Ordinance 49 of 1957 (OG 2094) contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930. The 1930 Ordinance was repealed by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812), which contains no savings clause.

Savings: Subsidiary enactments under the Hospitals and Health Facilities Act 36 of 1994 (GG 996), which was substantially repealed by this Act (GG 5742), survive in terms of section 67(2)(b) of this Act: Despite subsection (1) [which contains repeals] ... any regulation, notice, approval, appointment, authority, certificate or document made, issued, given or granted, or any other thing done under any law repealed by subsection (1) is, except in so far as may be otherwise required by this Act, is considered to have been made, given, issued, granted or done under the corresponding or allied provision of this Act and continues to have force and effect -

- (i) except if it is inconsistent with this Act; or
- (ii) until it is set aside, cancelled or repealed.

Subsidiary enactments under the Hospitals Ordinance 14 of 1972 (OG 3265), which was repealed by the Hospitals and Health Facilities Act 36 of 1994, survived in terms of section 39(2)(c) of that Act:

Notwithstanding the provisions of subsection (1) [which contains repeals]... any regulation, notice, approval, authority, certificate or document made, issued, given or granted, or any other act done under any law repealed by subsection (1) and not inconsistent with this Act, shall continue in force and shall be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act, until expressly revoked.

Subsidiary enactments under the State Hospitals Ordinance 17 of 1966 (OG 2727), which was repealed by the Hospitals Ordinance 14 of 1972 – and again by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812), which was brought into force by GN 32/2019 (GG 6851) – survived in terms of section 43(3) of Ordinance 14 of 1972:

Any regulation, notice, approval, authority, certificate or document issued, made, published, given or granted, and any other steps taken in terms of a provision of an ordinance repealed by subsection (1) shall be deemed to have been issued, made, published, given or granted in terms of the corresponding provisions of this Ordinance.

Regulations made under the State Hospitals Ordinance 49 of 1957 (OG 2094), which was repealed by the State Hospitals Ordinance 17 of 1966, survived in terms of section 41(4) of that Ordinance.

Any regulation, notice, approval, authority, certificate or document promulgated, published, given or issued, and any other steps taken under any provision of any law repealed by sub-section (1) shall be deemed to have been promulgated, published, given or issued under the corresponding provision of this ordinance.

As noted above, the State Hospitals Ordinance 49 of 1957 contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930, which was repealed by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812) – which contains no savings clause.

Regulations: Pre-independence regulations have yet not been researched.

Surviving regulations made after independence under the Hospitals and Health Facilities Act 36 of 1994 are as follows:

Regulations concerning the classification of hospitals and health facilities are contained in GN 184/2001 (GG 2609).

Regulations relating to the classification of state hospitals, the admission of state patients and the fees payable by patients are contained in GN 73/2010 (GG 4459). These regulations repeal previous regulations contained in GN 43/1993 (GG 621), ²³⁴ as amended by GN 199/1995 (GG 1183) and GN 12/2001 (GG 2468).

SELECTED CASES

Lady Pohamba Private Hospital Operations (Ptv) Ltd v Municipal Council of the Municipality of Windhoek & Others 2022 (4) NR 1109 (HC) (treatment of medical waste by private hospital and Windhoek Municipality: Waste Management Regulations (GG 4650)).

COMMENTARY

Michaela Figueira, "AIDS, the Namibian constitution and human rights: an overview", 9 (1) South African Journal on Human Rights 30 (1993).

See also **HEALTH**.

See also HEALTH PROFESSIONS.

See also MEDICAL AID.

See also MEDICINE.

See also MENTAL HEALTH AND MENTAL DISORDERS.

²³⁴ These regulations repealed the regulations promulgated under Government Notices 215 of 1973, 43 of 1974, 81 of 1974, 57 of 1976, 181 of 1977, 199 of 1977, 144 of 1988 and 4 of 1991 (GG 142). GN 4/1991 repealed "all and any regulations made under the said section [section 41 of the Hospitals Ordinance 14 of 1972], by, and for the purposes of, any former Representative Authority contemplated in the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), which was repealed by Article 147 of the Namibian Constitution".

HUMAN RIGHTS

COMMENTARY

- F Nghiishililwa, "The Constitutional Prohibition on Torture" in M Hinz, S Amoo and D Van Wyk (eds), *The Constitution at Work: Ten Years of Namibian Nationhood*, Windhoek: UNAM Publishers, 2000
- Nico Horn & Anton Bösl (eds), *Human Rights and the Rule of Law in Namibia*. Windhoek: Macmillan Education, 2008, available <u>here</u>
- Oliver C Ruppel, "The protection of children's rights under international law from a Namibian perspective" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available here
- A Bösl & J Diescho (eds), *Human Rights in Africa: Legal Perspectives on their protection and promotion*, Windhoek: Macmillan Education, 2009

INTERNATIONAL LAW

Note: The topic of human rights is a very broad one. The international treaties listed here are core human rights documents which cover a range of issues. International treaties covering more specific topics have been listed under those topics.

UNITED NATIONS

The United Nations (UN) was established on 24 October 1945. Today, nearly every nation in the world belongs to the UN. The Republic of Namibia joined the UN on 23 April 1990. Admission to the UN includes the acceptance of the *Charter of the United Nation*, which sets out basic principles of international relations. According to the Charter, the UN has four purposes: (1) to maintain international peace and security; (2) to develop friendly relations among nations; (3) to cooperate in solving international problems and in promoting respect for human rights for all "without distinction as to race, sex, language, or religion"; and (4) to be a centre for harmonizing the actions of nations.

All UN Member States are represented in the **General Assembly**. Each Member State has one vote. Decisions on "important matters," such as international peace and security, admitting new members, the UN budget and the budget for peacekeeping, are decided by two-thirds majority. Other matters are decided by simple majority. There is usually an effort to reach decisions through consensus, rather than by taking a formal vote.

Primary responsibility for maintaining international peace and security rests with the **Security Council**. Under the Charter, all Member States are obligated to carry out the Security Council's decisions. The Security Council has 15 members. Five of these – China, France, the Russian Federation, the United Kingdom and the United States – are permanent members. The other 10 are elected by the General Assembly for two-year terms. Decisions of the Security Council require nine votes.

According to Art 93 of the Charter of the United Nations, all members of the UN are automatically parties to the *Statute of the International Court of Justice* annexed to the Charter of the United Nations. The International Court of Justice is the main judicial organ of the UN. It consists of 15 judges elected by the UN General Assembly and the UN Security Council. The Court decides disputes between countries. Participation by States in a court proceeding is voluntary, but if a State agrees to participate, it is obliged to comply with the Court's decision. The Court also provides advisory opinions to the General Assembly and the Security Council upon request.

The UN General Assembly adopted the *Universal Declaration of Human Rights* on 10 December 1948. This document has been referred to as an "international bill of rights". Although it is not a binding international treaty, many commentators have argued that provisions of this document have become part of customary international law which is binding on all states. Some of the provisions of the Namibian Constitution are modelled on language in the Universal Declaration. At the 1993 Vienna Conference on Human Rights, representatives of 171 nations, including Namibia, affirmed by consensus their "commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights".

Namibia has ratified several of the core international human rights treaties developed under the auspices of the UN, as reflected in the list below.

Date of admission to United Nations: 23 April 1990

- includes acceptance of the *Charter of the United Nations*
- includes adoption of the *Statute of the International Court of Justice* annexed to the Charter of the United Nations

African Charter on Human and Peoples' Rights (Banjul Charter), 1981

Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990

Charter of the United Nations (UN), 1945 (which includes the Statute of the International Court of Justice as an integral part)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

Convention on the Rights of Persons with Disabilities, 2006

Optional Protocol to Convention on Rights of Persons with Disabilities, 2006

Convention on the Rights of the Child, 1989

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

†International Convention on the Elimination of All Forms of Racial Discrimination, 1966

†International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973

International Covenant on Civil and Political Rights (ICCPR), 1966

Optional Protocol to the International Covenant on Civil and Political Rights, 1966 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, 1989

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

SADC Protocol on Gender and Development, 2008

See also INTERNATIONAL ISSUES.

IMPORT AND EXPORT

Export Credit and Foreign Investments Re-insurance Act 78 of 1957, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>SA GG 5908</u>, and also in <u>OG 2100</u>) provides for state reinsurance of insurance contracts relating to exports in order to promote foreign trade.

Applicability to SWA: Section 1 defines "Republic" to include "the Territory", which is defined as "the Territory of South West Africa and includes for all purposes the portion of the Territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923". Section 12 originally stated: "This Act shall apply also in the Territory." Section 12 (as amended by *Act 88 of 1962*) states "This Act and any amendment thereof, whensoever enacted, shall apply also in the Territory."

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. However, section 3(1)(d) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA. Thus, amendments to the Act in South Africa continued to apply to South West Africa by virtue of the wording of section 12.

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

- Export Credit Re-insurance Amendment Act 66 of 1961 (RSA GG 31)
- Export Credit Re-insurance Amendment Act 88 of 1962 (RSA GG 284)
- Export Credit Re-insurance Amendment Act 75 of 1971 (RSA GG 3186)
- Export Credit Re-insurance Amendment Act 81 of 1981 (RSA GG 7841)
- Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438)
- Export Credit and Foreign Investments Re-insurance Amendment Act 27 of 1988 (RSA GG 11217).

Regulations: Regulations are authorised by section 11 of the Act, but no pre-independence regulations have been located and no post-independence regulations have been promulgated.

Notices: RSA Proc. 84/1989 (<u>RSA GG 11919</u>) concerns the application of the Act to transactions between persons in the Republic of South Africa and UNTAG.

Import and Export Control Act 30 of 1994 🗐 🙀

Summary: This Act (GG 980) provides for import and export control.

Repeals: The Act repeals the *Import and Export Control Act 45 of 1963*.

Regulations: This Act makes no provision for regulations. Section 6(2) of the Act states:

Anything done, or deemed to have been done, under the provisions of the said Act, shall be deemed to have been done under the corresponding provisions of this Act.

However, since this Act does not authorise regulations, any regulations made under the repealed Act could not survive.

Notices: Import and export issues are addressed in AG GN 6/1981 (export permits), AG GN 7/1981 and GN 33/1987 (import permits), all of which appear to survive under the new legislation.

The export of returnable bottles is prohibited by GN 176/1992 (GG 536), which was issued under the previous legislation.

The import of certain ozone-depleting substances is prohibited by GN 148/2020 (GG 7265), which comes into force on 1 January 2021 and which withdraws (with effect from 31 December 2020) GN 281/2010 (GG 4636), which withdraws GN 80/2004 (GG 3193).

A prohibition on the import of certain motor vehicles is contained in GN 257/2004 (GG 3334), as amended by GN 252/2013 (GG 5293). A further prohibition on the import of certain motor vehicles is contained in GN 266/2022 (GG 7902), as corrected by GN 320/2023 (GG 8223). GN 266/2022 as corrected repeals GN 253/2013 (GG 5293) – and does not, as initially stated, repeal GN 257/2004 as amended by GN 252/2013.

The import of certain poultry products is restricted by GN 81/2013 (<u>GG 5167</u>), as amended by GN 321/2013 (<u>GG 5351</u>) (which is amended by GN 79/2015 (<u>GG 5738</u>)). While a court challenge against GN 81/2013 was pending (see the list of cases below), GN 81/2013 was withdrawn by GN 54/2020 (<u>GG 7132</u>), which contains a new restriction on the import of certain poultry products.

Prohibitions pertaining to the export of sheep and goat skins are contained in GN 244/2013 (GG 5285).

Prohibitions pertaining to the import of certain dairy products are contained in GN 245/2013 (GG 5285). However, this Government Notice was set aside by *Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others* 2015 (2) NR 477 (HC), upheld on the basis of different reasoning in *Minister of Trade and Industry v Matador Enterprises (Pty) Ltd* 2020 (2) 362 (SC).

Cases:

Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC) (considering decision-making process under sections 2 and 3, and relationship to Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986 [now repealed], and setting aside GN 245/2013); on appeal, in Minister of Trade and Industry v Matador Enterprises (Pty) Ltd 2020 (2) 362 (SC), the Supreme Court upheld the setting aside of GN 245/2013 on the basis of different reasoning.

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (review application seeking to set aside GN 81/2013 as being ultra vires the Act; this case is an interlocutory judgment dealing with discovery in respect of the underlying matter). The underlying application was dismissed in South African Poultry Association & 5 Others v The Minister of Trade and Industry& 3 Others (A 326/2015) [2016] NAHCMD 199 (8 July 2016) on the basis that an unreasonable time had elapsed before the application had been launched. However, this judgment was appealed to the Supreme Court, which upheld the appeal in South African Poultry Association v Minister of Trade and Industry 2018 (1) NR 1 (SC); the Supreme Court condoned the applicants' delay in launching the application and remitted the matter to the High Court for consideration of the merits. GN 81/2013 was withdrawn before further litigation took place.

Export Levy Act 2 of 2016 🗐 🚍

Summary: This Act (originally published in <u>GG 6042</u>) provides for an export levy on certain goods, to encourage further processing of resources within Namibia, amongst other things. It was brought into force on 1 June 2017 by GN 132/2017 (<u>GG 6320</u>).

Amendments: GN 397/2019 (<u>GG 7080</u>) substitutes Schedules 1, 2 and 3 and inserts Schedule 4, pursuant to the authority of section 7(2)(c) and (d) of the Act. GN 303/2020 (<u>GG 7401</u>) substitutes Schedule 3 pursuant to the authority of section 7(2)(a) of the Act.

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (<u>GG 6486</u>), which was brought into force with effect from 6 April 2021 by GN 55/2021 (<u>GG 7496</u>).

INTERNATIONAL LAW

Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

Amendment to Article XI of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Bonn, 1979

SADC Protocol on Trade, 1996

Southern African Customs Union Agreement (SACU), 2002

Amendments to the SACU Agreement, 2002, to institutionalise the SACU Summit, 2013 Annex E to the SACU Agreement on Mutual Administrative Assistance, 2011.

See also CUSTOMS AND EXCISE.

See also:

- * Cold Storage Works and Abattoirs Proclamation 50 of 1921 (export of meat)
- * Agricultural Produce Export Ordinance 13 of 1928 (export of agricultural produce and meat)
- * Karakul Sheep Farming Industry Protection Proclamation 31 of 1930 (export of Karakul sheep)
- * Tobacco Growers Protection Ordinance 2 of 1933 (import of tobacco for farming purposes)
- * Bonemeal and Superphosphates Control Proclamation 37 of 1944 (import of bonemeal products)
- * Dairy Industry Act 30 of 1961 (import of margarine)
- * Marketing Act 59 of 1968 (regulations concerning the import of vegetable oil were issued under the authority of this Act)
- * Livestock and Livestock Products Act 12 of 1981 (import and export of livestock, meat and meat products)
- * Karakul Pelts and Wool Act 14 of 1982 (import and export of karakul pelts and wool)
- * Seed and Seed Varieties Act 23 of 2018 (import and export of seed) (AGRICULTURE).
- * Liquor Act 6 of 1998 (import and export of methylated spirits and yeast)
- * Tobacco Products Control Act 1 of 2010 (import of tobacco products) (ALCOHOL, DRUGS AND TOBACCO).
- * Animal Health Act 1 of 2011 (the Animal Health Regulations cover the import and export of animals and the import of vaccines)

 (ANIMALS).
- * Tear-gas Act 16 of 1964 (importation of tear-gas and articles which are used to release tear-gas)
- * Arms and Ammunition Act 7 of 1996 (import and export of arms and ammunition) (ARMS AND AMMUNITION).
- * Forest Act 12 of 2001 (provides for regulations governing export of forest produce)
- * Nature Conservation Ordinance 4 of 1975 (import and export of game and game products)
- * Plant Quarantine Act 7 of 2008 (import and export of plants and plant products)

(ENVIRONMENT).

- * Explosives Act 26 of 1956 (import and export of explosives) (EXPLOSIVES).
- * Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 (import of foodstuffs, cosmetics and disinfectants)
 (HEALTH).
- * Diamond Act 13 of 1999 (import and export of diamonds) (MINING AND MINERALS).
- * Aquaculture Act 18 of 2002 (import and export of aquatic organisms and aquaculture products)
- * Inland Fisheries Resources Act 1 of 2003 (import and export of fish) (MARINE AND FRESHWATER RESOURCES).
- * Controlled Wildlife Products and Trade Act 9 of 2008 (export of game and game products)
- * Export Processing Zones Act 9 of 1995 (TRADE AND INDUSTRY).

INCOME TAX

Income Tax Agreement Ratification Ordinance 13 of 1959 🕡 🙀

Summary: This Ordinance (originally published in OG 2194) ratifies a double taxation treaty between South Africa and South West Africa.

Amendments: The Ordinance is amended by Ord. 4/1970 (OG 3060) and Ord. 7/1973 (OG 3329).

Regulations: Section 2 authorises "rules, orders or regulations not inconsistent with the agreement" for "effectually carrying out and giving effect to the object and purposes thereof". No pre-independence regulations have been located. No post-independence regulations have been enacted under the Ordinance.

Income Tax Act 24 of 1981 🗐 🙀

Summary: This Act (originally published in <u>OG 4580</u>) covers income tax comprehensively. It was applied to "citizens of Rehoboth", subject to certain amendments, by section 2(1)(a) of the "Application of the Income Tax Act to Citizens of Rehoboth Act 5 of 1982 (Rehoboth)", (<u>Official Gazette 86 of Rehoboth</u>, dated 23 December 1983):

The Income Tax Act, 1981 (Act 24 of 1981) of the National Assembly of South West Africa, (hereinafter referred to as the Act), shall, subject to the provisions of this Act and in so far as the first-mentioned Act applies to natural persons, apply also to citizens of Rehoboth.

Section 2(1)(a) was deemed to have come into force on 31 December 1981, in terms of section 2(1)(b) of Act 5 of 1982 (Rehoboth). Section 2(2) provided that any future amendments of the Act would be applicable to "citizens of Rehoboth", insofar as those amendments applied to natural persons.

Repeals: The Act repeals a number of South African and South West African enactments on income tax, including the Income Tax Ordinance 5 of 1974 (OG 3404), as amended. which in turn repealed the Income Tax Ordinance 10 of 1961, as amended.

Amendments: This Act was amended prior to independence by Act 12/1982 (OG 4656), AG 10/1985 (OG 5016), Act 13/1985 (OG 5115), Act 11/1986 (OG 5234), Act 8/1987 (OG 5400), Act 1/1989 (OG 5675) and AG 25/1989 (OG 5758).

It has been amended since independence by the Acts listed. Note that many of these Acts incorporate complex provisions on when various amendments come into force, with some providing different commencement dates for different provisions and/or for different categories of taxpayers. These commencement dates are not recorded here.

Act 3/1991 (GG 179) (re: petroleum)

Act 8/1991 (GG 222) (re: housing benefits)

Act 12/1991 (GG 229) (re: married women)

Act 33/1991 (GG 335) (re: employees made redundant and removal of gender distinctions regarding age in the provision affecting applicability of exemption of lump sum paid to retrenched employee)

Act 25/1992 (GG 487) (re: removal of remaining distinctions between men and women, and between married and single persons; tax exemptions for certain categories of persons; deductions relating to pensions and annuities; capital write-offs; and other matters)

Act 10/1993 (GG 693) (various amendments)

Act 17/1994 (GG 932) (various amendments)

Act 22/1995 (GG 1225) (various amendments, including amendments on the taxation of pensions or annuities transferred from one fund to another, the income of unit trusts and deductions in respect of donations to registered welfare organisations and educational

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institutions)
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Act 12/1996 (GG 1375) (various amendments)

Act 5/1997 (GG 1680) (various amendments)

Act 13/1998 (GG 1882) (increase in rate of income tax)

Act 7/1999 (<u>GG 2135</u>) (new tax rates)

Act 21/1999 (GG 2240) (various amendments)

Appeal Laws Amendment Act 10 of 2001 (GG 2585) (section 76)

Act 7/2002 (GG 2820) (various amendments)

Act 11/2003 (GG 3049) (amendment to Schedule 4 – rates of normal tax).

Act 4/2005 (GG 3428) (various amendments)

Act 5/2007 (<u>GG 3964</u>) (various amendments; see GN 118/2009 (<u>GG 4270</u>) regarding commencement dates)

Act 5/2010 (GG 4475) (various amendments)

Act 3/2011 (GG 4732) (various amendments)

However, GN 79/2011 (GG 4732) which published this amending Act was withdrawn by GN 150/2011 (GG 4787).

Act 7/2011 (GG 4755) (adds a definition of "retirement annuity fund" to section 1)

Act 15/2011 (GG 4864) (various amendments)

Act 4/2013 (GG 5206) (amends Schedule 4 to alter tax rates and thresholds)

Act 13/2015 (GG 5912) (amends definition of "gross income", provides for withholding tax on interest paid to non-residents, amends the withholding tax rate on certain fees paid to non-residents, provides a definition of "Namibia", amends the royalty rate and provides for the allocation of tax payments and collection of tax)

Act 4/2016 (GG 6044) (amends section 35A)

Act 2/2020 (GG 7249) (repeals section 5A and 17C and inserts section 101A); it was brought into force by GN 329/2020 (GG 7431) as follows:

- section 1(1) of the amending Act on the repeal of section 5A comes into force on 31 December 2020, provided that the special income tax incentives granted to registered manufacturers in terms of the Act continue to apply until the end of the first tax year after that date (section 1(2) of the amending Act, which was repealed by Act 5/2021 (GG 7705))
- section 2 of the amending Act on the repeal of section 17C comes into force at the end of five years commencing on 31 December 2020 [31 December 2025]
- section 3 of the amending Act on the insertion of section 101A, which repeals certain provisions of the Export Processing Zones Act 9 of 1995, comes into force -
 - (i) at the end of five years commencing on 31 December 2020 [31 December 2025], in respect of an export processing zone enterprise that holds an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 on or before 31 December 2020; and
 - (ii) on 31 December 2020, in respect of an export processing zone enterprise that obtains an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 *after 31 December 2020*.)
- Act 5/2021 (GG 7705) (amends section 17(1)(f) and repeals sections 17A, 17B and 17D, with continued application of these sections as they stood previously in respect of registered manufacturers until the end of the 2025 tax year (see section 4 of Act 5/2021)
- Act 13/2022 (GG 7992) (amends sections 15, 17, 56, 67, 81 and 95A; came into force on 1 January 2023 in terms of section 7 of Act 13/2022)

Act 13/2022 omits to cite Act 12/1991 as a previous amendment to section 15. Act 13/2022 cites Act **9** of 1987 as a previous amendment to section 17. This is an error; the amending Act was actually Act **8** of 1987.

Act 4/2024 (GG 8442) (amends sections 21, 48 and 95A and Schedule 4; inserts section 17E; and makes a global substitution to changes reference to South Africa rand into references to the Namibia dollar).

The Repeal of Obsolete Laws Act 12 of 2022 (GG 7991), which was brought into force on 15 February 2023 by GN 21/2023 (GG 8031), repeals section 16(1)(y) (concerning an exemption related to the

Promotion of the Density of Population in Designated Areas Act 18 of 1979, which is repealed by Act 12 of 2022).

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends sections 44, 47 and 65.

Note that several provisions of the Act were declared unconstitutional by <u>Kruger v Minister of Finance of the Republic of Namibia & Others</u> 2020 (4) NR 913 (HC): sections 73(3), (5)(a) and (b), and (9), and section 83(1)(b). However, the holding on the unconstitutionality of section 83(1)(b) was overturned on appeal in <u>Minister of Finance of the Republic of Namibia NO & Others v Kruger & Another</u> 2022 (3) NR 785 (SC). The High Court's declaration of invalidity was suspended for 12 months from the date of its judgment (27 March 2020) to provide an opportunity for correction of the defects by the legislature. However, no changes were made to the provisions unaffected by the appeal (sections 73(3), (5)(a) and (b), and (9)), meaning that they became invalid on 27 March 2021.

The Supreme Court judgment states as follows at para 20: "It may also be mentioned in passing that it is not apparent from the judgment of the High Court on what conceivable basis s 83(1)(a) was also declared invalid. It is mentioned in passing, because the decision declaring ss 73 and 83(1)(a) unconstitutional has not been appealed against and therefore the validity or otherwise of those sections is not an issue before us. As noted earlier, the appeal concerns a sole and confined issue of the finding of the invalidity of s 83(1)(b)."

With respect, the order issued by the High Court mentions only section 83(1)(b): "The Applicant's application challenging the constitutionality of sections 73(3); 73(5)(a) and (b); 73(9) and section 83(1)(b) of the Income Tax Act, 24 of 1981, as amended, is hereby upheld."

Thus, there appears to be no finding on section 83(1)(a) by either court.

Savings: Section 101(4) of this Act is a savings provision which provides that - any notice or proclamation issued or regulation made or anything done under any provision of any law repealed by subsection (1), shall be deemed to have been issued, made or done in terms of the corresponding provisions of this Act.

Section 86(2) of the repealed Income Tax Ordinance 5 of 1974 contained a similar savings clause:

Any notice or proclamation issued or regulation (other than a regulation specified in Schedule I) made or anything done under any provision of a law repealed by subsection (1) shall be deemed to have been issued, made or done under the corresponding provision of this Ordinance.

Regulations: Regulations are authorised by section 99 of the current Act. However, no regulations issued under the current Act appear to have any current relevance.²³⁵

No regulations issued under the Income Tax Ordinance 5 of 1974 (which was repealed by this Act) have been located.

No regulations issued under the Income Tax Ordinance 10 of 1961 (which was repealed by the Income Tax Ordinance 5 of 1974) appear to have any current relevance.²³⁶

Application of law: The application of the Act was affected by AG Proc. 14/1982 (OG 4648), which

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²³⁵ Regulations regarding the standard value of livestock for the 1994-1995 tax year were issued in GN 50/1995 (GG 1037), which replaced GN 1/1994 (GG 772), which in turn repealed AG GN 47/1982 (OG 4613).

A Standard Values of Livestock Regulation is contained in GN 157/1961 (OG 2319). This regulation was issued in terms of section 93(1) of the Income Tax Ordinance 10 of 1961, which was repealed by the Income Tax Ordinance 5 of 1974, which was repealed in turn by the Income Tax Act 24 of 1981. No repeal of GN 157/1961 has been located.

²³⁶ Regulations made in terms of section 11C(4) of the Income Tax Ordinance 10 of 1961 are contained in GN 73/1971 (OG 3184). No repeal of these regulations has been located, but there appears to be no corresponding authority in the current Income Tax Ordinance – which would mean that they do not survive pursuant to the chain of savings clauses.

Regulations under the Income Tax Ordinance 1961 were contained in GN 156/1961 (<u>OG 2319</u>) but these were repealed by the Income Tax Ordinance 5 of 1974 (<u>OG 3404</u>).

was "abolished" ("afgeskaf") by AG Proc. 31/1987.

The application of the Act in Export Processing Zones is affected by section 7 of the Export Processing Zones Act 9 of 1995 (GG 1069).

The application of the Act is also addressed in the Demutualisation Levy Act 9 of 2002 (GG 2827).

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (<u>GG 6486</u>), which was brought into force with effect from 6 April 2021 by GN 55/2021 (<u>GG 7496</u>).

Notices: A special court for hearing income tax appeals is constituted in GN 320/1996 (<u>GG 1462</u>), replacing the court constituted in AG 31/1981 (<u>OG 5477</u>). Additional special courts for hearing income tax appeals are constituted in GN 222-223/1997 (<u>GG 1730</u>), GN 158/2000 (<u>GG 2361</u>), GN 88-90/2004 (<u>GG 3198</u>), GN 145-146/2010 (<u>GG 4530</u>), GN 190/2011 (<u>GG 4804</u>) and GN 321/2017 (<u>GG 6490</u>).

Rates for exemption under section 16(1)(m)(iii) are set in GN 115/1991 (<u>GG 287</u>), GN 21/1997 (<u>GG 1504</u>) and GN 102/1997 (<u>GG 1569</u>).

The most recent deduction tables for employees' tax (PAYE 10, VOLUME 18) were brought into force by GN 180/2009 (GG 4337).

The most recent tables for optional use by provisional taxpayers (PAYE 12, VOLUME 18) were brought into force by GN 181/2009 (GG 4337).

An amount in terms of section 73A(1) of the Act is fixed at N\$100 000 in GN 107/2006 (GG 3672).

GN 397/2024 (<u>GG 8551</u>) lists institutions or organisations approved as designated authorities that may certify a registered internship agreement in terms of section 17E(1) of the Act.

Appointments: Legal practitioners are appointed to serve on the panel referred to in section 73A(4) in GN 108/2006 (GG 3672), GN 112/2013 (GG 4941), GN 162/2018 (GG 6666), GN 257/2023 (GG 8177) and GN 296/2023 (GG 8214).

Cases:

Esselmann v Secretary of Finance 1990 NR 250 (SC) (concerning previous Income Tax Ordinance 5 of 1974)

Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC) (sections 83(1)(b) and 84 not contrary to Articles 12 or 78 of Constitution)

Oryx Mining and Exploration (Pty) Ltd v Secretary for Finance 1999 NR 80 (SC)

Minister of Finance v De Beers Marine (Pty) Ltd 2007 (1) NR 17 (SC) (para 3(1) of Schedule 4)

Fouche v Minister of Finance (Receiver of Revenue) 2012 (1) NR 109 (SC) (Special Court For Income Tax Appeals) (section 15(1)(f))

Du Preez v Minister of Finance 2012 (2) NR 643 (SC) (sections 71 and 73; sections 56(1A) and 79(1); section 66; section 79(4) prior to amendment in 2009 by Act 5/2007).

See also S v Koch 2006 (2) NR 513 (SC) (section 76(2) of Act discussed in dicta at 526) and Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (deductions from commissions made in terms of this Act not necessarily an indication of an employment relationship)

Mugimu v Minister of Finance & Others 2017 (3) NR 670 (HC) (right to approach court despite allegations of dishonesty in reporting income for tax purposes; sections 67 and 69; also some discussion of sections 76, 78, 86 and 91)

Minister of Finance v TCIMS Industrial (Namibia) (Pty) Ltd 2020 (2) NR 319 (SC), overturning TCIMS Industrial (Namibia) (Pty) Ltd v Minister of Finance & Others 2018 (3) NR 691 (HC) (section 1 definition of "manufacturing activity" and section 5A; Supreme Court holding that application for registration is a composite one requiring applicant to meet all the statutory requirements in section 5A(3)(a)-(b))

Kruger v Minister of Finance of the Republic of Namibia & Others 2020 (4) NR 913 (HC) (declaring sections 73(3), (5)(a) and (b), and (9) and section 83(1)(b) unconstitutional with effect from 27 March 2021); the finding in respect of section 83(1)(b) was overturned on appeal in Minister of Finance of the Republic of Namibia NO & Others v Kruger & Another 2022 (3) NR 785 (SC) on the grounds that the constitutional validity of that section had previously been considered and decided by the Supreme Court in Hindjou v Government of the Republic of Namibia 1997 NR 112 (SC)

Tuzembeho & Others v Namibia Revenue Agency & Others 2023 (4) NR 1020 (HC) (application for interim relief staying deductions from salaries by Namra pending the outcome of a constitutional challenge to certain provisions of the Act is denied, on the grounds that the law remains in force unless and until it is declared unconstitutional)

Commentary: Loammi Wolf, "Namibian taxation procedure in the light of just administrative action", *Namibia Law Journal*, Volume 4, Issue 1, 2012, available here.

Related international agreements:

Convention on Mutual Administrative Assistance in Tax Matters as amended by its Protocol, 2010 **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI Convention), 2016

*SADC Agreement on Assistance in Tax Matters, 2012

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between Republic of South Africa, United Kingdom of Great Britain and Northern Ireland and Southwest Africa (Namibia), 1962

signed at Cape Town, on 28 May 1962; exchange of notes (with annex) constituting an agreement extending to South West Africa the above-mentioned Convention. Pretoria, 8 August, 1962; registered by the Republic of South Africa on 19 July 1963

Convention between the Government of the Republic of Namibia and the Government of the Kingdom of Sweden for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 16 July 1993

contained in the Schedule to Proclamation 3/1999 (GG 2034)

Agreement between the Republic of Namibia and the Federal Republic of Germany for the avoidance of Double Taxation with Respect to Taxes on Income and Capital, 2 December 1993 contained in the Schedule to Proclamation 1/1999 (GG 2032)

Note: There are two Proclamations numbered "Proc. 1/1999" in the 1999 government gazettes – one in <u>GG 2022</u> (which also contains "Proclamation 2/1999") and one in <u>GG 2032</u>. <u>GG 2033</u> contains Proclamation 4/1999, suggesting that the Proclamation in <u>GG 2032</u>, which is the one referenced here, *should have been numbered as Proc. 3/1999* to be in sequence with the others. (To add more confusion, the Proclamation in question is listed as "Proclamation 9/1999" in the Quarterly Return for January-March 1999.)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of Mauritius for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 4 March 1995

contained in the Schedule to Proclamation 5/1999 (GG 2036)

Convention between the Government of the Republic of Namibia and the Government of the French Republic for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 29 May 1996

contained in the Schedule to Proclamation 4/1999 (GG 2033)

Convention between the Government of the Republic of Namibia and the Government of the Republic of India for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 15 February 1997

contained in the Schedule to Proclamation 6/1999 (GG 2035)

Convention between the Government of the Republic of Namibia and the Government of the Republic of Romania for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 25 February 1998

contained in the Schedule to Proclamation 7/1999 (GG 2038)

Convention between the Government of the Republic of Namibia and the Government of the Russian Federation for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 30 March 1998

contained in the Schedule to Proclamation 4/1999 (GG 2033)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 18 May 1998

contained in the Schedule to Proclamation 10/1999 (GG 2037)

Agreement between Namibian and Malaysia on the Avoidance of Double Taxation, 9 November 2001 source: Parliament.

Agreement between Namibian and Malaysia on the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, 28 July 1998.

contained in the Schedule to Proclamation 46/2004 (GG 3284)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of Botswana for the avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 16 June 2004

contained in the Schedule to Proclamation 13/2005 (GG 3514)

INHERITANCE

Political Ordinance of 1 April 1580, articles 20-29 📲 🛖

Summary: This Ordinance unified the law of intestate succession in the provinces of North Holland and South Holland so that the whole of the Netherlands was governed by the "Skependomserfreg" (Southern Provinces System) principle of *per stirpes* inheritance. See a translation and summary of this law in English below.

Amendment and interpretation: The *Interpretation of 13 May 1594* and *Octrooi of 10 January 1661* clarify and amend the 1580 Ordinance.

Applicability to SWA: The *Octrooi of 10 January 1661* clarified that both the Ordinance and the 1594 Interpretation applied to the Cape Colony. (The *Octrooi* applied the Political Ordinance to the "Indies", which at the time included the Cape Colony.) They were subsequently made applicable to SWA by the SWA Administration of Justice Proclamation 21 of 1919, as interpreted by *Tittel v The Master of The High Court* 1921 SWA 58.

Regulations: The Ordinance makes no provision for regulations.

Cases: Frans v Paschke & Others 2007 (2) NR 520 (HC) (citing the Political Ordinance of 1580, the Interpretation of 13 May 1594 and the Octrooi of 1661, explaining their historical background and the route by which they became applicable to SWA at paragraphs 9-14, and finding the rule that children born outside marriage may not inherit intestate from their fathers to be unconstitutional).

Translation and summaries from Howard, *The Administration of Estates*, 1908

See Frans v Paschke & Others 2007 (2) NR 520 (HC), footnotes 10-11

Political Ordinance of 1 April 1580, articles 19-29

- Art 19: Regarding inheritances, the States are hereby withdrawing and repealing all written rights, customs and laws applicable in the States and countries of Holland and Friesland concerned with intestate deaths or where a person dies without a last will. These regulations concern all movable and immovable properties. From now on only these new Articles that follow will be applicable.
- Art. 20: Firstly, children and other direct descendants ad infinitum succeed by representation or per stirpes.
- Art. 21: If both parents of the intestate be alive, they succeed absolutely upon failure of children and descendants of remoter degree.
- Art 22: If one or both of the parents be dead, the succession must go absolutely to the intestate's brothers and sisters and their children and grandchildren *per stirpes* or by representation.
- Art. 23: Half-brothers and half-sisters, their children and grand-children, and other collateral relations who were related to the intestate through one parent only, take with the "half-hand" and according to the degree of consanguinity in which they stood related to him.
- Art. 24: Failing all descendants, father, mother, brothers and sisters and their children and grandchildren, the uncles and aunts, and their children, take *per stirpes*.
- Art. 25: But, however, if grandfather and grandmother on the one side be both alive, they succeed, as regards property derived from that side, in preference to the uncles and aunts and their children descended from these grandparents of the intestate; but these grandparents do not oust the intestate's brothers and sisters as regards such property.

Art 26: In the case of own parents or other ascendants when the bed has been severed and one alone survives, the latter does not participate in the succession.

Art. 27: "The estate of the deceased shall go to his next of kin on the father's and mother's side, and be divided into two equal parts, without any distinction being made whether the deceased inherited more from his father than from his mother, or vice versa." Now, the context clearly shows that this section was intended to apply to the case in which the deceased died without either descendants or parents him surviving. In such a case the general rule is laid down that the succession shall be *per lineas*, one-half of the estate going to the next of kin on the paternal side, and the other half to the next of kin on the maternal side.

Art. 28: Representation shall not be admitted among collaterals, further than the grandchildren of brothers and sisters, and the children of uncles and aunts, inclusively, and all other collaterals, being the next of kin of the deceased, and in equal degrees, shall take per capita, to the exclusion of all who are in a more remote degree of consanguinity, the nearest excluding those more remote.

Art. 29: Children who have received from their parents any money or property given as a marriage gift or for the purpose of benefiting the children in business affair or otherwise in such matters, must collate or bring into the estate of their parents such money or property before sharing the estate with the other successors. the amount to be collated is the value of the donation at the time it was made, if the property had not had a valuation placed upon it; but if such was the case, the valuation must be followed in collating. The property must then be divided into equal parts, one half going to the surviving spouse, and the other half the heirs take: This will also take place in the first, second and third generations. The foregoing rules regarding succession and collation rule when no contrary provisions exist by virtue of a "testament, antenuptial contract, deeds executed before the Orphan Chamber, or any other contracts".

Interpretation of 13 May 1594

This Interpretation essayed to elucidate the difficult and doubtful points that arose in regard to the terms of the Political Ordinance: Half-brothers and half-sisters must succeed with the half-hand if both of the parents of the intestate predeceased him; that is, the full brothers and sisters or their children or grandchildren by representation must take one-half of the estate, whilst the other half they share equally with the half-brothers and half-sisters, or their children or grandchildren by representation, who are related to the intestate on the one side only. But if that parent alone is dead through whom the half-brothers and half-sisters have their claim upon the intestate, the other parent of the intestate being still living, they, or their children or grandchildren by representation, succeed with a full hand: not otherwise, however. The same applies to the case of other collaterals, in their various degrees, when related to the intestate on the one side only. [Compare, however, the rule stated below, regarding collaterals related through other ascendants.] Further descendants of brothers and sisters, in the fifth and remoter degrees, rank before grandparents and remoter ascendants, as also uncles and aunts, their children and grandchildren, and further descendants, and they succeed per capita, not per stirpes. If, on the one side, only one of the ascendants [as in Art 26, the application hereof to parents is nullified by the Charter of 1661] be alive, neither he, nor any persons, related to the intestate through the deceased spouse alone, will succeed to the intestate. The division of the intestate's estate per lineas, to the father's and the mother's side equally, occurs only when the parents are both dead. And the above rules must govern.

Octrooi of 10 January 1661

In applying the above laws to the Indies, this Charter partially altered Art 26 of the Ordinance: When the marriage of the intestate's parents has been dissolved, and only one of them is living, he or she will succeed to the intestate along with the brothers and sisters, whether of the full or the half blood, or their children or grandchildren by representation. That is, the surviving parent takes one-half, and the brothers and sisters, or their children or grandchildren by representation, take the other half; but the half relations in order to succeed must be related to the intestate through his deceased parent. If there be neither brothers nor sisters alive, their children or grandchildren by representation will in like manner take one half, the parent taking the other. If there be neither, brothers, sisters, their children nor grandchildren alive, the surviving parent of the intestate will succeed to the estate absolutely, and exclude all collaterals. Land, houses and other immovable property must follow the law and customs of the Provinces, Districts of places where it is situated.

"By virtue of the Administration of Justice Proclamation, 21 of 1919, the Roman-Dutch common law applied in the Province of the Cape of Good Hope became the common law of Namibia. Mr Schickerling correctly points out that the common law on intestate succession was based upon the old Political

Ordinance of 1580 and the Interpretation Ordinance of 1594, as modified by the Octrooi of 1661, all passed in the Netherlands and imported to the Cape Colony. The system was based upon consanguinity (blood relationships). The unfairness of intestate succession under the common law upon a spouse was ameliorated in South Africa by the Succession Act, 1934 by conferring rights of intestate succession upon a surviving spouse. Similar legislation was enacted in Namibia some 12 years later when the Intestate Succession Ordinance, 1946 was passed. The Ordinance amended the common law of intestate succession by providing that the surviving spouse of a deceased is declared to be an intestate heir of the deceased's spouse according to certain rules set out in that ordinance which essentially provide for a surviving spouse to succeed to the extent of a child's share or a certain amount whichever was the greater. The amount in question was subsequently increased in amendments to the Ordinance in 1963 and again in 1982."

Tjingaete v Lakay NO & Others 2015 (2) NR 431 (HC) at para 34 (footnotes omitted), citing Corbett, Hahlo, Hofmeyr *The Law of Succession in South Africa* (2nd ed) at 565.

***Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941, repealed but with some continued relevance

Summary: This Proclamation (originally published in <u>OG 920</u>) (which was amended by the Administration of Estates Amendment Act 4 of 1981 (Rehoboth), <u>Official Gazette 37 of Rehoboth</u>, dated 21 August 1981) previously regulated the administration of estates in Rehoboth.

Note that Official Gazette 37 of Rehoboth appears to have been misprinted as Official Gazette 38 of Rehoboth. Some copies bear a handwritten notation showing the correct number as Official Gazette 37 of Rehoboth.

The Estates and Succession Amendment Act 15 of 2005 (GG 3566) repeals the Proclamation, but provides that the rules of intestate succession that applied by virtue of Schedule 2 of the Proclamation before the date of its repeal "continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed". Therefore, Schedule 2 of the repealed Act continues to be of relevance. (The repealing Act also provides that the repeal does not affect the validity of a will which would have been valid in terms of the Proclamation had it not been repealed.)

Amendments: The Proclamation was amended by the Administration of Estates Amendment Act 4 of 1981 (Rehoboth) (*Official Gazette 37 of Rehoboth*, dated 21 August 1981). It was repealed by the Estates and Succession Amendment Act 15 of 2005 (GG 3566), with the caveat described above.

Note that Official Gazette 37 of Rehoboth appears to have been misprinted as Official Gazette 38 of Rehoboth. Some copies bear a handwritten notation showing the correct number as Official Gazette 37 of Rehoboth.

Regulations: The Act made no provision for regulations.

Cases: Ayoub v Januarie & A Similar Matter 2023 (4) NR 958 (HC) (requirements for valid redistribution agreement).

Intestate Succession Ordinance 12 of 1946 🗐 🙀

Summary: This Ordinance (originally published in <u>OG 1259</u>) sets forth rules for intestate inheritance by surviving spouses and other relatives.

Amendments: The Ordinance is amended by Ord. 6/1963 (OG 2460) and Act 15/1982 (OG 4721), both of which simply substitute the amounts referred to in section 1. (The amounts which are currently applicable are all set at R50 000.)

Regulations: The Act makes no provision for regulations.

Cases: Legislative history discussed in *Tjingaete v Lakay NO & Others* 2015 (2) NR 431 (HC), as well as section 1(2).

Wills Act 7 of 1953, as amended in South Africa to November 1979 🕎 🙀

Summary: This Act (originally published in <u>SA GG 5018</u>) covers the execution of wills.

Repeals: The Act repeals the Wills Proclamation 23 of 1920 (OG 33) in respect of SWA.

Applicability to SWA: In the original Act, section 8 stated: "This Act shall apply also in the Territory of South-West Africa." Section 8 was substituted, with retrospective effect, by the *General Law Amendment Act 80 of 1964* (RSA GG 829) to make all amendments to the Act automatically applicable to South West Africa. As substituted, section 8 states: "This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)." Section 1 defines "Court" and "Master" accordingly.

Transfer of administration to SWA: The administration of this Act is transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

Amendments: The following pre-independence amendments in South Africa were applicable to SWA –

- Wills Amendment Act 48 of 1958 (SA GG 6122) (The wording of section 8 in the original Act did not make amendments to the Act automatically applicable to South West Africa, but this amendment was made expressly applicable to South West Africa by its own terms; see section 2 of the amending Act.)
- General Law Amendment Act 80 of 1964 (RSA GG 829) (amends section 8 of the Act with retrospective effect to make all amendments to the Act automatically applicable to South West Africa)
- Wills Amendment Act 41 of 1965 (RSA GG 1084).

The definitions of "Court" and "Master" are substituted by the Walvis Bay and Off-shore Islands Act 1 of 1994 (GG 805).

Regulations: The Act makes no provision for regulations.

Cases:

Lerf v Nieft NO & Others 2004 NR 183 (HC) (lack of testamentary capacity)

Hoveka NO & Others v The Master & Another 2006 (1) NR 147 (HC) (factual dispute about compliance with section 2(1)(a); costs)

Kalomo v Master of the High Court & Others 2008 (2) NR 693 (SC) (valid German will of German citizen residing in Namibia at time of death covered by section 3bis)

Vermeulen & Another v Vermeulen & Others 2012 (1) NR 286 (HC) (burden of showing invalidity on grounds of mental incompetency to make a will under section 4 lies with the persons challenging the will; test for testamentary capacity); reversed on appeal in Vermeulen & Others v Vermeulen & Another 2014 (2) NR 528 (SC) (test for lack of testamentary capacity; re-evaluation of factual evidence in light of standard of proof of testamentary capacity and appropriate degree of caution)

Afrikaner v The Master of the High Court of Namibia & Others 2013 (4) NR 1129 (HC) (noncompliance with section 2(1)(a)(v) cannot be condoned; rectification after death of testator is impermissible)

- Mwoombola & Another v Master of the High Court 2018 (2) NR 482 (HC) ("substantial compliance" with formalities in section 2(1)(a) suffices to declare a will to be valid, so as not to frustrate the fundamental Constitutional right to freedom of testation; the court strongly recommended "that the Law Reform and Development Commission investigate the violation of the fundamental human rights that may be caused by the strict and unyielding interpretation of the Wills Act")
- Schkade v Gregory NO & Others 2018 (4) NR 986 (HC) (correct procedure for challenging validity of signature on disputed will is declarator from court, not a challenge to administrative action by Master; question of possible fraud needs to be addressed by means of action rather than application).
- Damaseb v Minister of Land Reform & Others 2019 (3) NR 775 (HC) (discusses sections 2(1)(a) and 4 and determines will to be valid), overturned on appeal in Shalukeni & Others v Damaseb & Others 2021 (1) NR 50 (SC) (which found will to be suspect in several respects, especially since only a copy was presented instead of the original, and held that the validity of the will could not be determined on the papers (at paras 26-35)).
- JN v EN & Others 2022 (3) NR 657 (HC) (interest in property bequeathed by will vests only upon the death of the testator and cannot be considered as having been transferred before that event; to "dispose of" and to "bequeath" property in Art 16 of Namibian Constitution have different meanings).

The following cases deal with the interpretation and construction of wills: Beukes & Others v Engelbrecht & Others 2005 NR 305 (HC) Kuhlmann & Others v The Master & Others 2007 (2) NR 611 (HC)

Commentary:

Namibia Institute for Democracy, Wills, Testaments and Estates, 2001

Legal Assistance Centre, *Training Manual for Trainers on Will Writing and Inheritance in Namibia*, 2004, available here (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali)

Legal Assistance Centre, *Wills and Inheritance*, undated pamphlet, available <u>here</u> Elsie Beukes, Master of the High Court, *Review of Namibian legislation on Wills*, August 2020.

General Law Amendment Ordinance 12 of 1956, section 5 🗐 😓

Summary: Section 5 of this Ordinance (originally published in OG 2018) deals with the power of the High Court in certain situations where an unborn person will be entitled to an interest in immovable property in terms of a will. (Section 4 of this Ordinance is discussed under ARMS AND AMMUNITION. Sections 6-7 of this Ordinance are discussed under CRIMINAL LAW AND PROCEDURE)

Amendments: This portion of the Ordinance is amended by Ord. 36/1965 (OG 2642).

Regulations: There is no provision in this section for regulations.

Administration of Estates Act 66 of 1965, as amended in South Africa to November 1979

Summary: This Act (originally published in RSA GG 1128) governs the liquidation and distribution of the estates of deceased persons. It was brought into force in South Africa, with the exception of Chapter III, on 2 October 1967 by RSA Proc. R.242/1967 (RSA GG 1858). Those portions of the Act in force in South Africa came into force in South West Africa on 1 April 1972 when the amendments made by Act 54 of 1970 (RSA GG 2827), including the insertion of section 108A, were brought into force in respect

of SWA with effect from 1 April 1972 by RSA Proc. R.68/1972 (<u>RSA GG 3425</u>), which also brought into operation the amendments to the Act made by *Act 54 of 1970*.

Repeals: This Act repeals the Administration of Estates Act 24 of 1913.

The Estates and Succession Amendment Act 15 of 2005 (GG 3566) repeals the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 and portions of section 18 of the Native Administration Proclamation 15 of 1928. It makes this Act applicable to all deceased estates, testate or intestate, of persons who died on or after the date of commencement of the amending Act (29 December 2005). Act 15 of 2005 also provides transitional provisions in section 3 in respect of estates already being administered in terms of the repealed laws where the liquidation and distribution were not yet complete; the general rule is that those estates will continue to be administered under the repealed laws, but any person with an interest in an estate has the option to request that the estate be administered in terms of this Act. Act 15 of 2005 also inserts section 4A, which authorises the Minister to assign functions of the Master to magistrates.

Section 18 of the Native Administration Proclamation 15 of 1928 (OG 284), as amended by Act 27/1985 (OG 5147): This section previously governed the administration of the estates of "natives" in some parts of Namibia. Section 18(3) and (9) were applied to the area north of the Police Zone with retroactive effect from 1 August 1950 (GN 67 of 1 April 1954). The whole of section 18 and its accompanying regulations were made applicable to the whole of South West Africa with the exception of Owambo, Kavango and Caprivi by RSA Proclamation R.192 of 15 February 1974. Thus, sections 18(3) and 18(9) on succession applied in Owambo, Kavango and Caprivi (with effect from 1950), while the whole of section 18 on succession applied to the remainder of Namibia (with effect from 1974).

The Estates and Succession Amendment Act 15 of 2005 (<u>GG 3566</u>) repeals section 18(1), (2), (9) and (10), but provides that the *rules of intestate succession* that applied by virtue of those provisions before the date of their repeal "continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed".

Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941: This Proclamation (OG 920) (which was amended by the Administration of Estates Amendment Act 4 of 1981 (Rehoboth) (Official Gazette 37 of Rehoboth, dated 21 August 1981) previously regulated the administration of estates in Rehoboth.

Note that Official Gazette 37 of Rehoboth appears to have been misprinted as Official Gazette 38 of Rehoboth. Some copies bear a handwritten notation showing the correct number as Official Gazette 37 of Rehoboth.

The Estates and Succession Amendment Act 15 of 2005 (<u>GG 3566</u>) repeals the Proclamation, but provides that *the rules of intestate succession* that applied by virtue of Schedule 2 of the Proclamation before the date of its repeal "continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed". Therefore, Schedule 2 of the repealed Act continues to be of relevance.

Applicability to SWA: Section 1, as amended by *Act 54 of 1970*, defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 108A, inserted by *Act 54 of 1970*, states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel, but shall, in the territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to the agreement referred to in the Schedule to Proclamation No. 28 of 1923, of the territory, not apply to the estate of any person to whom Proclamation No. 36 of 1941, of the territory, applies". (The Proclamation referred to was the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (OG 920), which was repealed by the Estates and Succession Amendment Act 15 of 2005 (GG 3566); Act 15 of 2005 provides that the administration of all estates in future falls under this Act.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Section 3(1)(o) of the Transfer Proclamation as originally enacted excluded sections 2, 88, 91, 92, 93, 97 and 103(1)(b) (power to make regulations on payments out of working balances of the guardian's fund) from the operation of section 3(1) of the General Proclamation, and excluded all the references to the Republic in the Act from section 3(1) of the General Proclamation, meaning that Republic retained the meaning given to it in the definition section of the Act (South Africa and SWA). Section 3(1)(o) of the Transfer Proclamation, as amended by the SWA Administration of Estates Amendment Act 2 of 1987, no longer listed any specific sections, but continued to exclude all the references to the Republic in the Act from section 3(1) of the General Proclamation.

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

- General Law Amendment Act 102 of 1967 (RSA GG 1771)
- Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969 (RSA GG 2315)
- Administration of Estates Amendment Act 54 of 1970 (RSA GG 2827)
- Administration of Estates Amendment Act 79 of 1971 (RSA GG 3196)
- General Law Amendment Act 57 of 1975 (RSA GG 4760)
- Administration of Estates Amendment Act 15 of 1978 (RSA GG 5919)
- *Divorce Act 70 of 1979* (RSA GG 6506).

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 17/1981 (OG 4568) amends sections 18, 29 and 34 of the Act.

Act 6/1986 (OG 5196) and Act 2/1987 (OG 5338) both make substantial amendments to the Act.

The Married Persons Equality Act 1 of 1996 (<u>GG 1316</u>), which was brought into force on 15 July 1996 by GN 154/1996 (<u>GG 1340</u>), repeals section 17, amends section 72 and substitutes section 85.

Act 15/2001 (<u>GG 2672</u>), which was brought into force on 1 July 2002 by GN 107/2002 (<u>GG 2760</u>), amends sections 1, 18, 28, 30, 34, 80, 90, 91, 93, 102 and 103 of the Act.

The Estates and Succession Amendment Act 15 of 2005 (GG 3566) inserts section 4A. As mentioned above, it also repeals the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 and portions of section 18 of the Native Administration Proclamation 15 of 1928. The effect is to make this Act applicable to all deceased estates, testate or intestate, of persons who died on or after the date of commencement of the amending Act (29 December 2005). Act 15 of 2005 also provides transitional provisions in respect of estates already being administered in terms of the repealed laws where the liquidation and distribution were not yet complete; the general rule is that those estates will continue to be administered under the repealed laws, but any person with an interest in an estate has the option to request that the estate be administered in terms of this Act. Act 15 of 2005 also inserts section 4A, which authorises the Minister to assign functions of the Master to magistrates.

The Magistrates Amendment Act 5 of 2009 (GG 4307) substitutes the expression "Chief Magistrate" for the expressions "Chief: Lower Courts" and "Chief of lower courts" wherever they occur in any legislation – which was relevant to this Act.

Act 22/2018 (GG 6813) amends sections 1, 87, 88 and 103 and inserts section 87A.

The Child Care and Protection Act 3 of 2015 (GG 5744), which was brought into force by GN 4/2019

(<u>GG 6829</u>), amends section 72.

Act 9 of 2022 (GG 7988) repeals section 87A, which required the payment of certain moneys in respect of minors and persons under curatorship into the guardian's fund (even in cases where there was a will).

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends sections 28, 35 and 87.

RSA Proclamation R.57/1987 (<u>RSA GG 10689</u>) amends section 86 of the Act *as it applied in South Africa* to provide financial arrangements pertaining to the guardian's fund of SWA:

Section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), is hereby amended by the addition of the following subsection:

"(3) Moneys in the guardian's fund received by the Master of the Supreme Court of South-West Africa on or before 31 March 1987 for the benefit of the said guardian's fund, together with the interest allowed thereon in terms of section 88, shall be paid into the guardian's fund of South-West Africa on 1 April 1987."

Regulations: Regulations are authorised by section 103(1) of the Act. Section 103(3) provides that any regulations made under section 118 of the repealed Administration of Estates Act 24 of 1913, shall be deemed to have been made under subsection 103(1).

General regulations are contained in RSA GN R.473/1972 (RSA GG 3425), as amended by the following:

- RSA GN R.817/1977 (RSA GG 5542)
- RSA GN R.1209/1980 (RSA GG 7068)

This amendment is *after the date of transfer*, but it explicitly states that the tariff it contains has been determined with the consent of the Administrator-General for the Territory of South West Africa and shall also apply in the Territory.

• RSA GN R.2542/1981 (RSA GG 7925)

This amendment is *after the date of transfer*, but it explicitly states that it was made with the consent of the Administrator-General for the Territory of South West Africa and shall also apply in the Territory.

- GN 107/1985 (<u>OG 5128</u>)
- GN 56/1993 (<u>GG 645</u>)
- GN 33/1999 (<u>GG 2051</u>).

In South Africa, the regulations were additionally amended *after the date of transfer* by the following, none of which explicitly stated that they applied to SWA: RSA GN R.2482/1985 (RSA GG 9986) (as corrected by RSA GN R.655/1986, RSA GG 10185), RSA GN R.2738/1987 (RSA GG 11063), RSA GN R.610/1989 (RSA GG 11792) and RSA GN R.1208/1989 (RSA GG 11920).

Regulations determining the amounts set in terms of various sections of the Act are contained in GN 108/2002 (GG 2760).

See also the Regulations Prohibiting the Liquidation or Distribution of the Estates of Deceased Persons by any Person other than an Attorney, Notary, Conveyancer or Law Agent, originally made in terms of the Attorneys, Notaries and Conveyancers Admission Act 23 of 1934, contained in RSA GN R.910/1968 (RSA GG 2080) as amended by RSA GN R.1013/1969 (RSA GG 2439) and RSA GN R.1376/1971 (RSA GG 3227); these regulations appear to survive in terms of the Legal Practitioners Act 15 of 1995 due to a chain of saving clauses. (See the entry for that Act for a full explanation.)

Notices: GN 43/2006 (GG 3591), issued in terms of section 4A of the Act, assigns certain powers of the Master of the High Court to magistrates in respect of intestate estates. This notice refers to the amount determined in respect of section 18(3) of the Act. That amount is currently set at N\$100 000 by GN 108/2002 (GG 2760).

Notices of unclaimed monies are not listed here.

Cases:

- Berendt & Another v Stuurmann & Others 2003 NR 81 (HC) (the application of the Act)
- Kuhlmann & Others v The Master & Others 2007 (2) NR 611 (HC) (review under section 95 of Master's refusal to appoint co-executor under section 18; Master's role under sections 18 and 19)
- Kanguatjivi & Others v Shivoro Business and Estate Consultancy & Others 2013 (1) NR 271 (HC) (section 35(4) directory and not peremptory, meaning that substantial compliance suffices)
- Tjingaete v Lakay NO & Others 2015 (2) NR 431 (HC) (section 18(3))
- First National Bank of Namibia Ltd v SSS Motor Spares CC & Another 2015 (4) NR 1112 (HC) (provisions of Act do not preclude creditor from instituting action against deceased estate for payment of money owed, arising in context of unopposed summary judgment)
- Kamuhanga NO v Master of the High Court & Others 2016 (1) NR 141 (SC) (review of decisions under section 35(10); section 47)
- Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 11); Wyss & Another NO v Hungama & Others 2018 (2) NR 596 (SC) (paras 9-11: discussion of whether actions concerning specific property in a deceased estate are premature if the liquidation and distribution account has not yet been finalised)
- Gaya v Rittman NO & Others 2017 (1) NR 80 (HC) (section 54(1)(a)(v); review of decision of Master not to remove executor)
- Husselmann & Others v Saem & Others 2017 (3) NR 761 (HC) (executor to be joined as party in all proceedings affecting deceased estates; new appointment must be made if previous executor has been released from duties)
- Mpasi NO & Another v Master of the High Court & Others 2018 (4) NR 909 (SC) (court has no power to appoint an executor under section 54(1)(a) or 95)
- Schkade v Gregory NO & Others 2018 (4) NR 986 (HC) (section 95; correct procedure for challenging validity of signature on disputed will is declarator from court, not a challenge to administrative action by Master; question of possible fraud needs to be addressed by means of action rather than application)
- Penderis & Others v De Klerk & Others 2021 (1) NR 152 (HC) (section 54(1)(a) ("undesirable") read with section 53); appeal dismissed in De Klerk v Penderis NO & Others (SA 76-2020) [2022] NASC (1 March 2023) (application for condonation and reinstatement refused; prospects of success on appeal not considered)
- Ayoub v Januarie & A Similar Matter 2023 (4) NR 958 (HC) (requirements for valid redistribution agreement).

Commentary: Law Reform and Development Commission, *Report on Succession and Estates*, LRDC 20, 2012, available here.

COMMENTARY

- D LeBeau, et al, *Women's Property and Inheritance Rights in Namibia*, Windhoek: Gender Training and Research Programme and University of Namibia, 2004
- Legal Assistance Centre, Marital Property in Civil and Customary Marriages: Proposals for Law Reform, 2005, available here
- Legal Assistance Centre, *Inheritance Issues: Information and feedback from community consultations on inheritance law reforms*, 2005, available here
- Legal Assistance Centre, Customary Laws on Inheritance in Namibia: Issues and questions for consideration in developing new legislation, 2005, available here
- R Gordon (ed), *The Meanings of Inheritance: Perspectives on Namibian Inheritance Practices*, Legal Assistance Centre, 2005, available here
- K Buschbeck, "Methodological Aspects of Research and Main Features of Inheritance Tradition" in Manfred O Hinz and Helgard K Patemann (eds), *The Shade of New Leaves: Governance in Traditional Authority A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006

- Thomas Widlock, "Good or bad, my heritage: customary legal practices and the liberal constitution of post-colonial States", 31 (1-2) *Anthropology Southern Africa* 13 (2008) (issues relating to reform of customary inheritance laws)
- Law Reform and Development Commission, Report on Succession and Estates, LRDC 20, 2012, available here
- Law Reform and Development Commission, Working Paper on Issues related to Family Law Workshop: Swakopmund Family Law Workshop, LRDC 23, 2012, available here.
- See also Child Care and Protection Act 3 of 2015 (succession by adoptive children; succession by children born outside marriage) (CHILDREN).
- See also Financial Intelligence Act 13 of 2012 (duties in respect of testamentary trusts) (**FINANCIAL INSTITUTIONS**).
- See also Communal Land Reform Act 5 of 2002 (rights of surviving spouses in respect of communal land) (LAND AND HOUSING).

INQUESTS

Inquests Act 6 of 1993 w 🗐 📻

Summary: This Act (originally published in <u>GG 688</u>) provides for the holding of inquests in cases of deaths or alleged deaths apparently occurring otherwise than from natural causes. It was brought into force on 1 January 1994 by GN 156/1993 (<u>GG 756</u>).

Repeals: The Act repeals the South African Inquests Act 58 of 1959.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 (<u>GG 2327</u>) amends section 17.

Note that there are two versions of GG 2327. The correct one states at the top: "This Gazette replaces previous Gazette No. 2327."

Regulations: Section 27(2) states:

Anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

No pre-independence regulations have been located.

Regulations are authorised by section 25 of this Act, but none have yet been promulgated.

Application of law: Persons who give statements or evidence in inquest proceedings may be eligible for protection under the Witness Protection Act 11 of 2017 (<u>GG 6451</u>).

Cases:

Wucher v Retief & Another 1998 NR 21 (HC) S v Smith 1999 NR 182 (HC) In re Outjo Inquest 30 of 2012; In re Outjo Inquest 480 of 2012 2013 (2) NR 477 (HC) In re Rundu Inquest: Venda 2015 (4) NR 1178 (HC).

INSOLVENCY

Insolvency Act 24 of 1936, as amended in South Africa to November 1979 will be a south

Summary: This Act (originally published in <u>SA GG 2365</u>) governs insolvent persons and their estates. It details the sequestration procedure and the rights of various creditors. The Act came into force in SWA on 1 July 1943 when the *Insolvency Law Amendment Act 19 of 1943* (<u>SA GG 3180</u>) was brought into force in SWA by SA Proc. 112/1943 (<u>SA GG 3209</u>).

Repeals: The *Insolvency Law Amendment Act 19 of 1943* (<u>SA GG 3180</u>), which made the Act applicable to SWA, repealed the Insolvency Ordinance 7 of 1928 and its amendments (section 38).

Applicability to SWA: The Act was initially applied to South West Africa by the *Insolvency Amendment Act 16 of 1943*, which stated in section 37: "The principal Act as amended by this Act, shall apply to the mandated territory of South-West Africa and the port and settlement of Walvis Bay, and for the purposes of such application the said port and settlement shall be deemed to be a portion of the said mandated territory." *Act 16 of 1943* also made various amendments to the principal Act to make it appropriate to South West Africa, including defining "Union" to include "the mandated territory of South-West Africa". Section 39 of *Act 16 of 1943* stated "This Act shall be called the Insolvency Law Amendment Act, 1943, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*, in so far as its application to the mandated territory of South-West Africa and the port and settlement of Walvis Bay is concerned, but shall otherwise be in force as from the date of promulgation [16 April 1943]." *Act 16 of 1943* was brought into force in South West Africa on 1 July 1943 by *SA Proc. 112/1943* (SA GG 3209).

Although *Act 16 of 1943* did not refer to the application of subsequent amendments of the Act to South West Africa, they appear to have applied by virtue of the definition of "Union" (and later "Republic") to include South West Africa. *Act 99 of 1965* subsequently made this clear by inserting section 158ter, which was deemed to have come into operation on 1 July 1943 and which states "This Act and any amendment thereof shall apply also in the Territory, including that portion of the Territory known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section *three* of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)." (*Act 99 of 1965* also repealed section 37 of *Act 16 of 1943*.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. The only South African amendment made applicable to SWA after the date of transfer was the *Insolvency Amendment Act 78 of 1980*, which was applied to SWA by Act 18/1980 (OG 4292).

Section 3(1)(a) of the transfer proclamation excluded the references to the "Republic" in the Act from the operation of section 3(1) of the General Proclamation, except where this word occurs for the second and third times in section 148 of the Act. This means that the designated references to "Republic" in section 148 were to be construed as references to the Territory only, while elsewhere "Republic" retained the meaning given to it in the definition section of the Act (South Africa and SWA).

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

- Finance Act 17 of 1938 (SA GG 2572)
- Income Tax Act 25 of 1940 (SA GG 2764)
- Income Tax Act 31 of 1941 (SA GG 2906)
- *Hire-Purchase Act 36 of 1942* (<u>SA GG 3050</u>)
- Insolvency Law Amendment Act 16 of 1943 (SA GG 3180)
- *Insurance Act 27 of 1943* (SA GG 3191)
- Merchant Shipping Act 57 of 1951 (SA GG 4684)
- General Law Amendment Act 32 of 1952 (SA GG 4856)

- General Law Amendment Act 62 of 1955 (SA GG 5512)
- General Law Amendment Act 50 of 1956 (SA GG 5703)
- *SA Proclamation 229 of 1956* (SA GG 5757)
- Farmers' Assistance Amendment Act 16 of 1960 (SA GG 6402)
- Finance Act 64 of 1960 (SA GG 6462)
- *SA Proclamation R.210 of 1960* (<u>SA GG 6479</u>)
- Income Tax Act 80 of 1961 (RSA GG 37)
- RSA Proclamation R.159 of 1961 (<u>RSA GG 136</u>)
- Income Tax Amendment Act 6 of 1963 (RSA GG 438)
- Insolvency Amendment Act 99 of 1965 (RSA GG 1171)
- *RSA Proclamation R.155 of 1971* (<u>RSA GG 3179</u>)
- Insolvency Amendment Act 6 of 1972 (RSA GG 3407)
- *Income Tax Act 90 of 1972* (RSA GG 3593)
- RSA Proclamation R.282 of 1972 (<u>RSA GG 3695</u>)
- *RSA Proclamation R.87 of 1973* (**RSA GG 3826**)
- General Law Amendment Act 62 of 1973 (RSA GG 3947)
- General Law Amendment Act 29 of 1974 (RSA GG 4220)
- *Income Tax Act 85 of 1974* (RSA GG 4516)
- Sales Tax Act 103 of 1978 (RSA GG 6085); the amendment made to this Act technically applied to South West Africa by virtue of section 158ter of the Insolvency Act, but it overlaps with a similar amendment made by the Sales Tax Proclamation (AG 40/1978) (OG 3774)
- Insolvency Amendment Act 78 of 1980 (RSA GG 7083), applied to South West Africa by the Insolvency Act Amendment Act 18 of 1980 (OG 4292), which is deemed to have come into force on 25 June 1980 (section 2 of Act 18 of 1980)
- Proclamation R.118 of 1980 (RSA) (RSA GG 7119), which was issued after the date of transfer but made explicitly applicable to SWA
- *Proclamation R.120 of 1980 (RSA)* (RSA) (RSA GG 7119), which was issued after the date of transfer but made explicitly applicable to SWA.

Section 50 of the Sales Tax Proclamation (AG 40/1978) (OG 3774) amends section 99 of this Act regarding the payment of sales tax from a sequestrated estate.

Act 18/1980 (OG 4292) makes the *Insolvency Amendment Act 78 of 1980* applicable to South West Africa.

Act 14/1985 (OG 5114) amends the Act substantially.

AG 17/1986 (OG 5179) amends Tariff A in the Second Schedule to the Act.

Proc. 12/1999 (<u>GG 2051</u>) substitutes Tariff A and Tariff B in the Second Schedule and the tariff of fees in the Third Schedule.

Act 12/2005 (GG 3551), which will be brought into force on a date set by the Minister of Justice, amends the Act substantially.

The Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which will be brought into force on a date set by the Minister of Justice, inserts a new section 104A.

The Repeal of Obsolete Laws Act 12 of 2022 (<u>GG 7991</u>), which was brought into force on 15 February 2023 by GN 21/2023 (<u>GG 8031</u>), repeals section 99(1)(cB).

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends sections 65, 70, 114, 134 and item 4 of Tariff B in the Second Schedule.

Regulations: Note that the current Act contains no savings clause for regulations made under any of the South African laws which it repeals (see section 1), while the *Insolvency Law Amendment Act 19 of 1943* similarly contains no savings clause for regulations that may have been made under the repealed Insolvency Ordinance 7 of 1928 (see section 38).

Regulations made under this Act are contained in RSA GN R.1359/1962 (RSA GG 317, republished in OG 2436).²³⁷ They were amended in South Africa after the date of transfer by RSA GN 951/1985 (RSA GG 9715); this amendment did not apply to South West Africa, but it was replicated in Namibia after independence by GN 32/1999 (GG 2051).

Virtually-identical regulations are contained in GN 201/1963 (OG 2517), which was issued in SWA – with the exception of references to the SWA *Official Gazette* instead of the RSA *Government Gazette*, and some minor differences in the forms appended to the regulations. The 1963 regulations do not repeal the 1962 ones, and it was the 1962 regulations that were amended in Namibia after independence.²³⁸

Fees: A tariff of fees framed in terms of section 73(2)(a) is contained in GN 37/1999 (<u>GG 2051</u>), which withdraws RSA General Notice 681/1974 (RSA GG 4477).

A similar tariff of fees framed in terms of section 73(2) is contained in AG GN 100/1981 (OG 4511). No repeal of this tariff has been located, but it seems to have been superseded by the tariff of fees in GN 37/1999 (GG 2051).

Cases:

Bekker NO v Kotzé & Another 1994 NR 345 (HC) (section 18(3)). See also the related case of Bekker NO v Kotzé & Another 1994 NR 373 (HC).

Barotti Furniture (Pty) Ltd v Moodley 1996 NR 295 (HC)

Commercial Bank of Namibia v Myburgh & Another 1996 NR 330 (HC)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC) (secured creditor)

Southern Engineering & Another v Council of the Municipality of Windhoek 2011 (2) NR 385 (SC)

Municipal Council of Windhoek v Awaseb 2013 (1) NR 233 (HC) (section 8)

Baard & Another v Serengetti Tourism (Pty) Ltd t/a Etosha Mountain Lodge 2021 (1) NR 17 (SC) (consequences of failure to comply with section 9(3); application of requirements for sequestration in section 12(1)(c); separate sequestration applications must be brought against spouses married out of community of property and implied consent to joinder in this context is not competent)

Graham v Master of the High Court of Namibia (HC-MD-CIV-MOT-REV-2022-00053) [2024] NAHCMD 408 (19 July 2024) (section 66(3), read with section 39(2), of the Act violates Articles 7 and 11(1) of the Namibian Constitution to the extent that it authorises a presiding officer who is not a magistrate to issue a warrant committing to prison a person being examined at a creditors' meeting held under section 65 of the Act; sections 42, 64 and 45 of the Act, read together with sections 344, 421 and 422 of Companies Act, authorise interrogation of any person summoned to a special meeting of creditors, by any creditor who has proved a claim against an insolvent).

Commentary:

Law Reform and Development Commission, Discussion Paper on Issues Relating to the Insolvency Act, 1936 (Act No. 24 of 1936), LRDC 32, 2015

Victoria Weyulu, "A Critical Review of Namibian Insolvency Law" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here

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²³⁷ These regulations repeal SA GN 1546/1916, SA GN 1159/1927, SA GN 1154/1936 and SA GN 1153/1938.

²³⁸ These regulations repeal SA GN 55/1946 and SA GN 56/1946.

²³⁹ This Government Notice contains no repeals.

INSURANCE

War Damage Insurance and Compensation Act 85 of 1976 📲 🙀

Summary: This Act (RSA GG 5175) establishes a War Damage Fund for state insurance schemes against the risk of war damage, and for compensation for war damage on conditions determined by the Minister of Finance. "War damage" includes damage to specified property arising from "any hostile action directed against the security of the Republic", and from attempts by the security forces of the Republic or any of its allies to suppress such hostile action, but only if the Minister of Finance declares these defensive actions to have caused war damage. This Act was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021, 240 but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Applicability to SWA: Section 12 states "This Act and any amendment thereof shall apply also in the territory of South West Africa." Although amendments in South Africa would have thus been automatically applicable to South West Africa, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. In any event, since there were no amendments to the Act in South Africa prior to Namibian independence, the issue of transfer does not affect the content of the Act.

Regulations: Regulations are authorised by section 11 of the Act. No pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Short-term Insurance Act 4 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1832</u>) regulates the short-term insurance business in Namibia. It was brought into force on 1 July 1998 by GN 142/1998 (<u>GG 1887</u>). This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: This Act replaces the portions of the *Insurance Act 27 of 1943* dealing with short-term insurance.

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (<u>GG 2521</u>), which was brought into force on 14 May 2001 by GN 85/2001 (<u>GG 2528</u>), amends section 1 and substitutes section 4.

Act 13/2016 (GG 6183) amends sections 1 and 54 and substitutes section 10.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends Schedule 2.

²⁴⁰ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 84-ff.

Savings: Section 72(2) contains a general savings clause:

Any policy relating to short-term insurance business issued and any other thing done under a provision of any law repealed by subsection (1), and which could have been issued or done under a provision of this Act, shall be deemed to have been issued or done under the corresponding provision of this Act.

Regulations: Regulations made in terms of previous legislation survive in terms of section 72(2) of the current Act, but all of the surviving regulations appear to have been repealed by the regulations made under the current Act insofar as they relate to short-term insurance.

Regulations made under the current Act are contained in GN 143/1998 (<u>GG 1887</u>), as amended by GN 194/2018 (<u>GG 6688</u>). These regulations repeal the regulations made in terms of the previous Act insofar as they relate to short-term insurance.²⁴¹

Application of law: See the notices issued under the Namibia National Reinsurance Corporation Act 22 of 1998.

Notices: A declaration in terms of section 25(3) is contained in GN 10/2003 (GG 2909).

GN 15/2015 (<u>GG 5668</u>), which revokes GN 123/2007 (<u>GG 3877</u>), determines the percentage of value of each reinsurance contract to be ceded by way of reinsurance to the Namibia National Reinsurance Corporation in respect of all classes of reinsurance business specified in Schedule 1 of the Act.

General Notice 220/2014 (<u>GG 5510</u>) emphasises the fact that section 60 of the Act prohibits the conditional sale of insurance products by insurance entities together with banking institutions, furniture stores, motor dealers and micro-lenders. The Notice explains:

Conditional selling is when a transaction is completed if certain conditions are met as agreed by one or both parties. In this instance the condition is that, the insurance policy is taken out with only a certain insurer and the consumer does not have freedom of choice with whom to take out an insurance policy... NAMFISA hereby notifies the public that, should an insurance entity or any institution not allow any person to freely choose his/her own insurer from the beginning of the insurance related transaction such an institution should be reported to the Registrar of short-term insurance...

Notices relating to specific insurers have not been recorded.

Appointments: Appointments to the Short-term Insurance Advisory Committee are announced in GN 155/2018 (GG 6666).

Cases: Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shields Namibia Ltd 2005 NR 151 (HC).

Commentary: Clever Mapaure, "Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions", *UNAM Law Review*, Volume 1, Issue 2, 2013.

²⁴¹ These regulations repeal the following regulations insofar as they relate to short-term insurance business: RSA

1986, R.2288 of 16 October 1987, R.2501 of 9 December 1988, R.1345 of 30 June 1989, R.1447 of 7 July 1989, R.1922 of 1 September 1989 and 59 of 24 March 1995.

GN R.1285 of 27 August 1965, R.252 of 23 February 1968, R.2036 of 2 November 1973, R.2489 of 28 December 1973, R.1442 of20August 1976, R.333 of 1 March 1977, R.838 of 20 May 1977, R.1249 of8 July 1977, R.2274 of4 November 1977, R.947 of 12 May 1978, R.1631 of 11 August 1978, R.120 of 26 January 1979, R.353 of 20 February 1981, R.396 of 27 February 1981, R.905 of 24 April 1981, R.2046 of 2 October 1981, R.446 of 4 March 1983, R.2145 of 28 September 1984, R.81 of 18 January 1985, R.2117 of20 September 1985, R.2324 of 18 October 1985, R.431 of 14 March 1986, R.949 of 16 May 1986, R.2584 of 12 December 1986, R.2628 of 12 December

Long-term Insurance Act 5 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1834</u>) regulates the long-term insurance business in Namibia. It was brought into force on 1 July 1998 by GN 144/1998 (<u>GG 1888</u>) This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: This Act replaces the portions of the *Insurance Act 27 of 1943* remaining after the repeal of parts of that Act by the Short-term Insurance Act 4 of 1998.

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (<u>GG 2529</u>), which was brought into force on 14 May 2001 by GN 85/2001 (<u>GG 2528</u>), amends section 1 and substitutes section 4.

Act 2/2011 (GG 4731) amends section 72.

Act 12/2016 (GG 6182) amends sections 1 and 56 and substitutes section 10.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends Schedule 1.

Savings: Section 73(2) contains a general savings clause:

Any policy relating to long-term insurance business issued and any other thing done under a provision of any law repealed by subsection (1), and which could have been issued or done under a provision of this Act, shall be deemed to have been issued or done under the corresponding provision of this Act.

Regulations: Regulations made in terms of previous legislation survive in terms of section 73(2) of the current Act, but all of the surviving regulations appear to have been repealed by the regulations made under the current Act.

Regulations made under the current Act are contained in GN 145/1998 (GG 1888), as amended by GN 47/2000 (GG 2274), GN 143/2001 (GG 2579), GN 31/2008 (GG 3985), GN 126/2013 (GG 5205), GN 350/2003 (GG 5383) and GN 195/2018 (GG 6688). However, note that GN 350/2003 withdraws GN 126/2013 with effect from its publication date, as if it never existed. These regulations repeal the regulations made in terms of the previous Act insofar as they were unrepealed by the Short-Term Insurance Regulations.²⁴²

Application of law: See the notices issued under the Namibia National Reinsurance Corporation Act 22 of 1998.

December 1988, R.1345 of 30 June 1989, R.1447 of 7 July 1989, R.1922 of 1 September 1989 and 59 of 24 March 1995.

²⁴² The repealed regulations are those published in RSA GN R.1285 of 27 August 1965, R.252 of 23 February 1968, R.2036 of 2 November 1973, R.2489 of 28 December 1973, R.1442 of20August 1976, R.333 of 1 March 1977, R.838 of 20 May 1977, R.1249 of 8 July 1977, R.2274 of 4 November 1977, R.947 of 12 May 1978, R.1631 of 11 August 1978, R.120 of 26 January 1979, R.353 of 20 February 1981, R.396 of 27 February 1981, R.905 of 24 April 1981, R.2046 of 2 October 1981, R.446 of 4 March 1983, R.2145 of 28 September 1984, R.81 of 18 January 1985, R.2117 of 20 September 1985, R.2324 of 18 October 1985, R.431 of 14 March 1986, R.949 of 16 May 1986, R.2584 of 12 December 1986, R.2628 of 12 December 1986, R.2288 of 16 October 1987, R.2501 of 9

Notices: National standards developed by the Long-Term Insurance Industry are published for public comment and general information in General Notice 228/2002 (<u>GG 2805</u>).

A declaration in terms of section 25(3) is contained in GN 11/2003 (GG 2909).

General Notice 220/2014 (<u>GG 5510</u>) emphasises the fact that section 62 of the Act prohibits the conditional sale of insurance products by insurance entities together with banking institutions, furniture stores, motor dealers and micro-lenders. The Notice explains:

Conditional selling is when a transaction is completed if certain conditions are met as agreed by one or both parties. In this instance the condition is that, the insurance policy is taken out with only a certain insurer and the consumer does not have freedom of choice with whom to take out an insurance policy... NAMFISA hereby notifies the public that, should an insurance entity or any institution not allow any person to freely choose his/her own insurer from the beginning of the insurance related transaction such an institution should be reported to the Registrar of short-term insurance....

GN 16/2015 (GG 5668) determines the percentage of value of each reinsurance contract to be ceded by every registered insurer and registered reinsurer to the Namibia National Reinsurance Corporation in respect of all classes of reinsurance business specified in section 13(1) of the Act.

Notices relating to specific insurers have not been recorded.

Appointments: Appointments to the Long-term Insurance Advisory Committee are announced in GN 155/2018 (GG 6666).

Cases:

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC)

Otto v Channel Life Namibia Ltd & Another 2007 (1) NR 328 (HC), Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC) (section 54(1))

Ex Parte Momentum Group Ltd & Another 2007 (2) NR 453 (HC) (section 36)

See also Wilke NO v Swabou Life Assurance Company Limited 1997 NR 224 (HC), confirmed in Wilke NO v Swabou Life Assurance Company Limited 2000 NR 23 (HC), which concerns section 63(3) of the previous Insurance Act 27 of 1943.

Commentary: Clever Mapaure, "Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions", *UNAM Law Review*, Volume 1, Issue 2, 2013.

Namibia National Reinsurance Corporation Act 22 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1949</u>) provides for the establishment of the Namibia National Reinsurance Corporation (known as "NamibRe") to carry on reinsurance business in Namibia. It was brought into force on 1 July 1999 by GN 108/1999 (GG 2129).

Certain provisions of regulations and notices issued under the Act were challenged by the insurance industry in court. At one stage, the application and implementation of the "impugned provisions" of the Act were stayed pending the determination of the relevant cases, by *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* 2018 (4) NR 1133 (HC), but the Supreme Court subsequently overturned this stay in *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* 2020 (1) NR 60 (SC).²⁴³ The challenged notices and regulations were replaced before the underlying court case went forward.

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²⁴³ See also *Minister of Finance & Another v Hollard Insurance Co of Namibia Ltd & Others* 2019 (3) NR 605 (SC) (judge who was petitioned for leave to appeal against order of stay should have recused himself due to his association with a past challenge to the constitutionality of the Namibia National Reinsurance Corporation Act 22

Amendments: The Act is amended by the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which has not yet been brought into force.

Regulations: Regulations relating to short-term and long-term reinsurance business are contained in GN 332/2017 (GG 6496), which repeals the regulations contained in GN 155/1999 (GG 2160).

The 2017 regulations were to come into force 180 days from their date of publication on 29 December 2017 (regulation 12), noting that "day" is defined to mean any day other than a Saturday, Sunday or public holiday (regulation 1). This means that these regulations were to come into force on 19 September 2018. However, the repeal of the 1999 regulations is contained in the text of the Government Notice and not in the regulations contained in the Schedule to the Government Notice. Thus, the repeal would appear to be effective from the date of publication of the Government Notice on 29 December 2017.

Application of law: The application of this Act is affected by the State-Owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Notices: In terms of section 1(2) of the Act, losses due to human-wildlife conflict are declared to be special risks in GN 392/2023 (<u>GG 8277</u>). Property loss and damage due to weather (excessive rainfall or extremely low or insufficient rainfall) are declared to be special risks in GN 393/2023 (<u>GG 8277</u>).

In terms of section 39(5) of the Act, the percentage of value of reinsurance contracts to be ceded by every registered insurer and reinsurer is set by GN 333/2017 (GG 6496), which came into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The percentage of value of each short-term insurance contract to be ceded in reinsurance to the Corporation by every registered insurer and reinsurer is set by GN 334/2017 (GG 6496), which also came into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The percentage of value of each long-term insurance contract to be ceded in reinsurance to the Corporation by every registered insurer and reinsurer is set by GN 335/2017 (GG 6496), which also came into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

In terms of section 39(8) of the Act, certain classes of registered insurers and registered reinsurers carrying on specified classes of business are exempted from the obligation to cede reinsurance to the Corporation by GN 336/2017 (<u>GG 6496</u>), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

In terms of section 43(2) of the Act, the rates of commission payable to registered short-term insurers and reinsurers are set by GN 337/2017 (GG 6496), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The rates of commission payable to registered long-term insurers and reinsurers are set by GN 338/2017 (GG 6496), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

Past notices: The following account of the repeal of certain past notices issued under the Act is based in part on information helpfully provided to the authors by NamibRe:

In terms of section 39(5) of the Act, the percentage of value of reinsurance contracts to be ceded was initially set by GN 109/1999 (GG 2129), which was subsequently replaced by GN 3/2003 (GG 2893) (which revoked GN 109/1999 with retrospective effect). GN 3/2003 was revoked and replaced by GN 123/2007 (GG 3877), with respect to reinsurance businesses specified in Schedule 1 of the Short-Term Insurance Act 4 of 1998. GN 213/2007 was replaced by GN 15/2015 (GN 5668). The percentage of value of reinsurance contracts to be ceded was set by GN 16/2015 (GN 5668), with respect to reinsurance businesses specified in the Long-Term Insurance Act 5 of 1998. GN 15/2015 and GN 16/2015 were both revoked and replaced by GN 266/2016 (GG 6165), as amended by GN 291/2016 (GG 6194) (which

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of 1998, which was relevant to the case at hand).

changed the effective date of GN 266/2016 to 3 January 2017). GN 266/2016 was subsequently withdrawn by GN 25/2017 (GG 6238).

In terms of section 39(2), classes of insurance business and percentage of value of policies to be ceded was initially set by GN 110/1999 (<u>GG 2129</u>), which was revoked with retrospective effect by GN 4/2003 (<u>GG 2893</u>).

In terms of section 43(2), the rate of reinsurance commission payable in respect of insurance business ceded or offered to the Namibia National Reinsurance Corporation was initially set by GN 111/1999 (GG 2129), which was subsequently replaced in its entirety by GN 46/2000 (GG 2274). GN 46/2000 was replaced by GN 124/2007 (GG 3877), which was replaced in turn by GN 267/2016 (GG 6165) with effect from 1 January 2017. GN 267/2016 was subsequently withdrawn by GN 25/2017 (GG 6238).

The effective date for the three initial notices in terms of the Act, GN 109-111/1999, was initially set as 1 September 1999, changed to 1 November 1999 by GN 183-185/1999 (GG 2179), then changed to 1 January 2000 by GN 245-247/1999 (GG 2224), then to 1 April 2000 by GN 8-10/2000 (GG 2259), then to 17 April 2000 by GN 44-46/2000 (GG 2274), then to 22 August 2000 by GN 150-152/2000 (GG 2354), then to 1 October 2000 by GN 203-205/2000 (GG 2399), then to 1 November 2000 by GN 238-240/2000 (GG 2417), then to 1 February 2001 by GN 265-267/2000 (GG 2439). A further change to the effective date was made by GN 2-4/2003 (GG 2893), which applied retrospectively and changed the relevant date for these notices to 1 January 2002. GN 2/2003 (GG 2893) was revoked by GN 124/2007 (GG 3877), which came into effect 60 days after its publication on 16 July 2007. The overall effect is that the successive postponements of Government Notices 109-111/1999 meant that none of them came into force before they were revoked.

GN 266/2016 and GN 267/2016 (GG 6165) (the "2017 notices") were to become effective from 3 January 2017. As indicated above, these notices "revoked" the previous GN 15/2015 and GN 16/2015 (GN 5668) (the "2015 notices") with effect from 1 January 2017. However, in December 2016, before the "2017 notices" came into force, they were challenged by the insurance industry of Namibia on procedural and substantive grounds. Following extensive consultations regarding procedural flaws in the 2017 notices, a decision was taken to withdraw the "2017 notices" and to promulgate fresh notices. The "2017 notices" were subsequently "withdrawn" with effect from 15 February 2017 by GN 25/2017 (GG 6238).

Despite the use of the terms "revoke" and "withdraw" in contrast to "repeal", NamibRe is of the opinion that section 11(2) of the Interpretation of Laws Proclamation 37 of 1920 applies, with the result that none of the revocations and withdrawals of the notices listed here had any effect on their repeal of previous notices, because no contrary intention appears either expressly or impliedly.

This principle also applies to Government Notice 124/2007 (<u>GG 3877</u>) which was "revoked" by Government Notice 267/2016 (<u>GG 6165</u>) with effect from 1 January 2017 – meaning that Government Notice 124/2007 remains revoked despite the subsequent "withdrawal" of GN 267/2016 with effect from 15 February 2017 by Government Notice 25/2017 (<u>GG 6238</u>). However, for the avoidance of any doubt, Government Notice 333/2017 (<u>GG 6496</u>) expressly revokes GN 124/2007 effective from 1 January 2017.

Appointments: Members of the Board are announced in GN 112/1999 (<u>GG 2129</u>), GN 190/2002 (<u>GG 2845</u>), GN 17/2006 (<u>GG 3577</u>), GN 49/2017 (<u>GG 6262</u>), GN 90/2018 (<u>GG 6595</u>) and GN 210/2021 (<u>GG 7647</u>).

Cases:

Namibia Insurance Association v Government of Namibia 2001 NR 1 (HC)

Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others 2018 (4) NR 1133 (HC) (certain provisions of the Act, the 2017 regulations and GN 333-338/2017 stayed pending the outcome of constitutional challenges); Supreme Court subsequently overturned this interim stay in Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others Others 2020 (1) NR 60 (SC).²⁴⁴

²⁴⁴ See also *Minister of Finance & Another v Hollard Insurance Co of Namibia Ltd & Others* 2019 (3) NR 605 (SC) (judge who was petitioned for leave to appeal against order of stay should have recused himself due to his association with a past challenge to the constitutionality of the Namibia National Reinsurance Corporation Act 22 of 1998, which was relevant to the case at hand).

Minister of Finance v Hollard Insurance Company Namibia & Others 2021 (2) NR 524 (SC) (although this case is an appeal of a holding on discovery, the underlying challenge to the 2017 regulations and the 2017 Government Notices issued under the Act is discussed).

Demutualisation Levy Act 9 of 2002 📦 🙀

Summary: This Act (<u>GG 2827</u>) provides for a levy on the free reserves of mutual insurers in respect of their demutualisation.

Regulations: The Act makes no provision for regulations.

Namibia Special Risks Insurance Association Act 5 of 2017 🗐 🙀

Summary: This Act (<u>GG 6420</u>) converts the Namibia Special Risks Insurance Association (NASRIA) established by the Second Finance Act 27 of 1987 (<u>OG 5470</u>) into a public company with a share capital, and determines what insurance business it may underwrite. It was brought into force on 1 August 2018 by GN 154/2018 (<u>GG 6666</u>).

Repeals: The Act repeals the Second Finance Act 27 of 1987.

Regulations: Section 38 of the Act authorises regulations, but none have yet been issued. Section 42(2) of the Act contains a savings clause for anything done in terms of the repealed Act which could have been done under this Act. However, the repealed Act did not authorise the issue of regulations.

Application of law: The application of the Act is affected by the Public Enterprises Governance Act 2 of 2006, which is referred to in several sections of the Act. Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Notices: GN 144/2019 (<u>GG 6932</u>) determines that the Namibia Special Risks Insurance Association established in terms of section 21 of the Companies Act 28 of 2004 is converted into a public company with a share capital, to be known as the Namibia Special Risks Insurance Association Limited, effective from 14 June 2019.

Declarations: GN 142/2020 (<u>GG 7241</u>) contains a declaration, made under section 1(2) of the Act after consultation with the Board of the Namibia Special Risks Insurance Association Limited, that the Credit Guarantee Scheme under the Namibia Financial Sector Strategy is a special risk, subject to the conditions set out in the Schedule of that notice. (The Credit Guarantee Scheme is a government scheme which encourages funding of SMEs by providing collateral cover in favour of the participating institutions.)

See also Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (IMPORT AND EXPORT).

INTELLECTUAL PROPERTY

Note: According to the World Intellectual Property Organisation (WIPO), intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories: (1) industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and (2) copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

Merchandise Marks Act 17 of 1941, as amended in South Africa to April 1978 🕎 📴

Summary: This Act (originally published in SA GG 2893) regulates the marking of merchandise and the packaging in which merchandise is sold.

Repeals: The various laws repealed by this Act do not appear to have been applicable to SWA.

Applicability to SWA: Section 1 defines "Union" to include "the Territory", which is defined as "the territory of South West Africa". Section 21bis states "This Act and any amendment thereof which may be made from time to time shall apply also in the Territory, including the Eastern Caprivi Zipfel referred to in section 3 of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the Territory known, as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the Territory."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. The only South African amendment to the Act after the date of transfer and prior to Namibian independence – the Merchandise Marks Amendment Act 54 of 1987 (RSA GG 10921) – was not made expressly applicable to SWA.

Section 3(1)(a) of the transfer proclamation excluded the reference to the "Republic" in the Act from section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning given to it in the definition section of the Act (South Africa and SWA).

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

- *Merchandise Marks Amendment Act 3 of 1946* (SA GG 3622)
- Merchandise Marks Amendment Act 26 of 1951 (SA GG 4601)
- Merchandise Marks Amendment Act 39 of 1952 (SA GG 4885)
- Merchandise Marks Amendment Act 47 of 1954 (SA GG 5302)
- Merchandise Marks Amendment Act 55 of 1967 (RSA GG 1732).

Sections 8 and 9 of the Act were suspended until further notice by SA Government Notice 1321/1941 (SA GG 2944), which was withdrawn by SA Government Notice 451/1946 (SA GG 3612). However, these sections were again suspended until further notice by SA Government Notice 1682/1946 (SA GG 3687). No notice lifting this suspension has been located.

Regulations: The Act makes no provision for regulations.

Notices: The following notices were issued in terms of the Act prior to the date of transfer.²⁴⁵

²⁴⁵ Juta's Index to the South African Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at page 448.

Minimum standards for items marked as E.P.N.S. ware (Electro-Plated Nickel Silver ware) are contained in SA GN 531/1950 (SA GG 4341).

Conditions for marking silver-plated articles imported into, or sold in, the Union are contained in SA GN R.1120/1952 (<u>SA GG 4849</u>). (This notice was qualified by SA GN 2613/1952 (<u>SA GG 4960</u>), which stated that it does not apply to the sale of goods which were in stock on 3 November 1952 and sold on or before 23 November 1953.)

Minimum standards for items marked as E.P.B.M. ware (Electro-Plated Britannia Metal ware) are contained in SA GN 2617/1952 (SA GG 4960).

The misleading use of the word "Knitting Wool" is prohibited by RSA GN 409/1963 (RSA GG 458).

The unauthorised use of the mark, emblem, seal and name of "United International Bureaux for Protection of Intellectual Property" is prohibited by RSA GN R.1396/1964 (RSA GG 897).

Wool labelling requirements are contained in RSA GN R.271/1973 (RSA GG 3786).²⁴⁶

Heraldry Act 18 of 1962, as amended in South Africa prior to Namibian independence 🕎 😜

Summary: This Act (originally published in <u>RSA GG 202</u>) provides for the registration of coats of arms, badges and other emblems and established bodies to oversee this and all related matters.

Applicability to SWA: Section 1 defines "territory" as "the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)". Section 27 states "This Act and any amendment thereof shall also apply to the territory."

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (National Education) Transfer Proclamation (AG 1/1978), dated 11 January 1978. However, section 3(2)(b) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

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

- Heraldry Amendment Act 54 of 1969 (RSA GG 2401), which also repeals the Protection of Names, Uniforms and Badges Act 23 of 1935 (SA GG 2263)
- Heraldry Amendment Act 63 of 1980 (RSA GG 7017)
- Heraldry Amendment Act 22 of 1982 (RSA GG 8071)
- Education and Heraldry Laws Amendment Act 6 of 1984 (RSA GG 9082).

Regulations: Regulations are contained in RSA GN R.828/1963 (<u>RSA GG 521</u>, reprinted in <u>OG 2491</u>), as amended by RSA GN R.1884/1967 (<u>RSA GG 1903</u>, reprinted in <u>OG 2843</u>).

These regulations are entitled "Regulations, Part I" in the Government Gazette, but "Regulations, Part II" in RSA GN R.829/1963 in the same Government Gazette were issued under the Protection of Names, Uniforms and Badges Act 23 of 1935 in the form of amendments to the regulations in RSA GN R.856/1961 (RSA GG 100). The Protection of Names, Uniforms and Badges Act 23 of 1935 was repealed by the Heraldry Amendment Act 54 of 1969 (RSA GG 2401). The repealing provision contains no savings clause

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The 1973 notice was amended after the date of transfer by RSA GN R.1465/1987 (RSA GG 10818), which was not made explicitly applicable to SWA.

²⁴⁶ This Government Notice repealed SA Government Notice R.1701/1959 (as amended by RSA Government Notice R.393/1966) which in turn withdraws SA Government Notice 2356/1948 (as amended by SA Government Notices 1087/1949, 2612/1950 and 2388/1954).

for regulations. "Regulations, Part II" concerned the transition of certain registrations under the *Protection* of Names, Uniforms and Badges Act 23 of 1935 to registrations under the Heraldry Act 18 of 1962.

Fees: Fees are listed in RSA GN R.899/1978 (<u>RSA GG 6003</u>) (in the form of regulations).²⁴⁷ This list of fees is not included in the database.

Copyright and Neighbouring Rights Protection Act 6 of 1994 🕎 🙀

Summary: This Act (originally published in <u>GG 845</u>) provides for the protection of copyrights and performers' rights. It was brought into force on 15 March 1996 by GN 64/1996 (GG 1273).

Repeals: The Act repeals the *Copyright Act 63 of 1965* (RSA GG 1128), which in turn repealed the provisions on copyright contained in the *Designs and Copyright Act 9 of 1916* (SA GG 727).

Amendments: The Act is amended by the Business and Intellectual Property Authority Act 8 of 2016 (GG 6105), which was brought into force with effect from 16 January 2017 by GN 293/2016 (GG 6197).

Regulations: Regulations issued under the current Act are contained in GN 32/1996 (GG 1257).

Regulations made under the repealed legislation survive in terms of section 68(2) of the Act.

Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision.

The repealed *Copyright Act 63 of 1965* (RSA GG 1128) contained a savings clause in section 48(2) for regulations on copyright made under the *Designs and Copyright Act 9 of 1916* (SA GG 727), stating that -

...any proclamation, regulation or rule having effect under any provision so repealed and in force at the commencement of this Act, shall continue in force and may be repealed, altered or amended as if it had been made under this Act.

However, the regulations issued under the current Act repealed all of the pre-independence regulations that remained in force:

- RSA GN R.407/1966 (<u>RSA GG 1402</u>) Copyright (Notice of Intended Publication) Regulations, 1965
- RSA GN R.408/1966 (<u>RSA GG 1402</u>) Copyright Royalty System (Records) Regulations, 1965²⁴⁸
- RSA GN R.414/1966 (RSA GG 1402) Copyright Tribunal Rules, 1965
- RSA GN R.415/1966 (RSA GG 1402) Copyright (Libraries) Regulations, 1965
- RSA GN R.1289/1972 (<u>RSA GG 3622</u>) Copyright (Makers of Cinematographic Films) Regulations, 1972.

Fees: Regulations relating to fees for acts and services by BIPA relating to copyright are contained in GN 309/2019 (GG 7032).

Cases: S v Marume 2007 (1) NR 12 (HC).

Commentary: Enynna S Nwauche, "The public interest in Namibian copyright law", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available <u>here</u>.

Related international agreements: Certain provisions of the Act are made applicable to the countries

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 $^{^{247}}$ These regulations repeal the ones published in RSA GN R.2105 of 7 November 1975.

²⁴⁸ These regulations repealed the regulations made under the *Designs and Copyright Act 9 of 1916* and published in SA GN 1545 of 1916, as amended by SA GN 317 of 1934 and SA GN 823 of 1942.

Industrial Property Act 1 of 2012 🕎 🙀

Summary: This Act (originally published in <u>GG 4907</u>) provides for the registration and protection of patents, utility model certificates, industrial designs, trade marks, collective marks, certification marks and trade names. It also establishes an Industrial Property Office, a Registrar of Industrial Property, industrial property agents and an Industrial Property Tribunal. It was brought into force with effect from 1 August 2018 by Government Notice 113/2018 (<u>GG 6616</u>).

Repeals: The Act repeals the *Patents, Designs, Trade Marks and Copyright Act 9 of 1916* (SA GG 727), the Patents and Designs Proclamation 17 of 1923 (OG 112) (which it erroneously refers to as the "Patents, Designs and Trade Marks Proclamation") and the *Trade Marks in South West Africa Act 48 of 1973* (RSA GG 3913).

Amendments: The Act is amended by the Business and Intellectual Property Authority Act 8 of 2016 (GG 6105), which was brought into force with effect from 16 January 2017 by GN 293/2016 (GG 6197).

Regulations: There is no savings provision regarding regulations issued under the repealed laws.

Industrial Property Regulations issued in terms of this Act are contained in GN 114/2018 (GG 6616). GN 114/2018 (GG 6616) repeals the following regulations, which were issued in terms of the RSA *Trade Marks Act in South West Africa 48 of 1973* (RSA GG 3913): SA RSA GN R.2498/1973 (RSA GG 4109), as corrected by RSA GN R.87/1974 (RSA GG 4141) and as amended by AG GN 40/1989 (OG 5750) and GN 13/2001 (GG 2470). This repeal was not really necessary since the Act contains no savings clause in respect of regulations issued under the statutes it repeals. (See section 140 of the Act).

Rules: Industrial Property Tribunal Rules made by the Industrial Property Tribunal Rules Board pursuant to section 227 of the Act are published in GN 131/2022 (<u>GG 7799</u>).

Cases: The following case concerns this Act:

Namib Mills (Pty) Ltd v Bokomo Foods Namibia (Pty) Ltd 2020 (3) NR 870 (HC) (section 194(1); criteria for determining what is contrary to "honest practices").

The following cases concern the predecessors to this Act –

Ex Parte Hendrik Krekel (unreported judgement, SWA Supreme Court, 1983/11/11) and Gemfarm Investments v Trans Hex Group 2009 (2) NR 477 (HC) (concerning the repealed Patents, Designs, Trade Marks and Copyright Act 9 of 1916)

Gemfarm Investments v Trans Hex Group 2009 (2) NR 477 (HC) (concerning the repealed Patents and Designs Proclamation 17 of 1923)

Sparletta (Pty) Ltd v Namibia Breweries Ltd 1991 NR 384 (HC) (concerning the repealed Trade Marks in South West Africa Act 48 of 1973)

Elisenheim Property Development Co (Pty) Ltd v Guest Farm Elisenheim & Another 2013 (4) NR 1085 (HC) (concerning the repealed Trade Marks in South West Africa Act 48 of 1973).

Commentary: P M Balhao, "Patentable Subject Matter in Namibia: A Comparative Analysis of the Requirements for Patentability" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here (comparison with South Africa's *Patents Act 57 of 1978*).

Note on related international agreements: The Act refers to the following international bodies and agreements (see sections 1, 12, 29, 37, 57, 63, 76, 85, 92, 126-129, 131, 198, 234) –

WIPO agreements:

- Note: The World Intellectual Property Organization (WIPO) was established by the *Convention Establishing the World Intellectual Property Organization (WIPO Convention)*, 1967. Namibia is a party to this Convention, which is not mentioned in the Act.
- Paris Convention for the Protection of Industrial Property, 1883, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and as amended in 1979 (referred to as the "Paris Convention")
- Madrid Agreement concerning the International Registration of Marks (Madrid System), 1891, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and as amended in 1979 (referred to as the "Madrid Agreement")
 - Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989 (referred to as the "Madrid Protocol")
- Hague Agreement concerning the International Registration of Industrial Designs (Hague System), 1925, as governed by the 1999 Geneva Act (referred to as the "Hague Agreement"; see Part 11)

Notes: The Hague Agreement consists of three separate Acts: the 1934 London Act, the 1960 Hague Act and the 1999 Geneva Act. States can join the 1960 Hague Act, the 1999 Geneva Act, or both. (The London Act, and the Additional Act of Monaco, were terminated with effect from 18 October 2016.) If a State accepts only one Act, then applicants for industrial design protection from that State can use the Hague system to obtain protection for their designs only in other states which are parties to the same Act. Namibia has joined only the 1999 Geneva Act. See the Namlex Appendix for more information.

- Patent Cooperation Treaty (PCT), 1970, as amended in 1979, and as modified in 1984 and 2001 (referred to as the "Patent Cooperation Treaty" in section 37 and as the "Patent Co-operation Treaty" in section 12 and Part 13)
- Locarno Agreement Establishing an International Classification for Industrial Designs (to which Namibia was not yet a party as of 31 October 2020)
- Nice Agreement concerning the International Classification of Goods and Services (to which Namibia was not yet a party as of 31 October 2020).

WTO agreements:

Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994 (see references to "WTO")

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994 (referred to as "TRIPS")

ARIPO agreements:

Lusaka Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO), 1976 (see references to "ARIPO")

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993

Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization, 2010.

See the list of relevant international agreements below for more information.

SELECTED CASES

Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd & Others [2013] NAHCMD 156 (A 171/2013; 7 June 2013); Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd & Others 2015 (2)

NR 315 (SC); Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd & Others 2016 (4) NR 1174 (HC) (common-law delict of "passing off").

COMMENTARY

- S Amoo and S Harring, "Intellectual Property under the Namibian Constitution" in N Horn, A Bösl & A du Pisani (eds), *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, Konrad Adenauer Stiftung, 2010, available here
- Cislé S Jacobs, "The Intellectual Property Regime in Namibia: An Overview of the Legal, Institutional and Policy Framework" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here
- P M Balhao, "Patentable Subject Matter in Namibia: A Comparative Analysis of the Requirements for Patentability" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here.

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Agreements administered by the World Trade Organisation (WTO):

†Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

Agreements administered by the World Intellectual Property Organization (WIPO):

**Beijing Treaty on Audiovisual Performances, 2012

†Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised at Berlin (1908)

Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised in 1971 and amended in 1979

**WIPO Copyright Treaty (WCT), 1996

Convention Establishing the World Intellectual Property Organization (WIPO Convention), 1967 Hague Agreement concerning the International Registration of Industrial Designs (Hague System), 1925, as governed by the 1999 Geneva Act

Madrid Agreement concerning the International Registration of Marks (Madrid System), 1891, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and as amended in 1979

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989

**Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013

Paris Convention for the Protection of Industrial Property, 1883, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and as amended in 1979

Patent Cooperation Treaty (PCT), 1970, as amended in 1979, and as modified in 1984 and 2001 **WIPO Performances and Phonograms Treaty (WPPT), 1996

Agreements administered by the African Regional Industrial Property Organization (ARIPO):

Lusaka Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO), 1976

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993

Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization, 2010.

See also Business and Intellectual Property Authority Act 8 of 2016 (BUSINESS).

INTERNATIONAL ISSUES

Diplomatic Privileges Act 71 of 1951, as amended in South Africa prior to Namibian independence are

Summary: This Act (originally published in <u>SA GG 4668</u>) covers diplomatic immunity, rights and privileges.

Repeals: The Act repeals the Diplomatic Immunities Act 9 of 1932.

Applicability to SWA: The Act was made applicable to South West Africa by the RSA State President Proclamation 63 of 5 May 1989 (RSA GG 11861). Section 2 of that Proclamation states "The Act, as amended by Part II of this Schedule, shall apply in the Territory." The Proclamation does not make any reference to the amendments made to the original Act in South Africa, but references in the Proclamation to text which is to be substituted indicate that the Proclamation referred to Act 71 of 1951 as amended in South Africa prior to 1989. The wording of the Proclamation does not appear to make future amendments to the Act automatically applicable to South West Africa.

Transfer of administration to SWA: The Administrator-General acquired authority to administer this Act in South West Africa by virtue of *RSA Proc. 63 of 1989*. This did not qualify as a "transfer proclamation" in terms of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which defines "transfer proclamation" in section 1 as "a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General" (emphasis added). Therefore, the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, was not applicable to this Act. The Act was repealed in South Africa prior to Namibian independence by the *Diplomatic Immunities and Privileges Act 74 of 1989* (RSA GG 11928). This repeal was not expressly applicable to South West Africa and does not seem to have applied by virtue of the wording of *RSA Proc. 63 of 1989*; furthermore it does not repeal *RSA Proc. 63 of 1989*. Thus, *Act 71 of 1951* appears to have remained in force in South West Africa.

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

- Commonwealth Relations Act 69 of 1962 (RSA GG 264)
- Diplomatic Privileges Amendment Act 61 of 1978 (RSA GG 6016)
- Diplomatic Privileges Amendment Act 39 of 1985 (RSA GG 9790)
- Restoration of South African Citizenship Act 73 of 1986 (RSA GG 10327)
- Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438).

The Diplomatic Privileges Proclamation 63 of 1989 (RSA GG 11861) amends the Act as it applied to SWA.

Regulations: The Act makes no provision for regulations.

Cases: Clear Enterprises (Pty) Ltd v Minister of Finances & Others 2019 (2) NR 578 (HC) (concerning diplomatic immunity of SACU: diplomatic immunity means immunity from being prosecuted or sued; agents with diplomatic immunity are not subject to the jurisdiction of the nation's courts and cannot be subjected to legal process; application of section 2(1); impact of failure to issue certificate or notice in terms of section 4(4); the competent remedy in this case would be for the complainant to approach the SACU Council with a request to place the dispute before the ad hoc tribunal of SACU; Court also notes in passing that there are two classes of acts - acta jure imperii (acts done in conducting sovereign activities) and acta jure gestionis, (acts done in conduct of private acts) – and that diplomatic immunity applies only to the first category of acts).

The yearly publication of the list of conferees and those removed from the list of immunity, should be strictly adhered to... (para 51, commenting on compliance with section 4(3) of the Act).

Commentary: Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 3.1 motivates the view that diplomatic immunity does not apply in respect of labour law cases).

Related international agreements:

Convention on the Privileges and Immunities of the United Nations, 1946

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

General Convention on the Privileges and Immunities of the Organisation of African Unity (OAU),

**Additional Protocol to the OAU General Convention on Privileges and Immunities, 1980

Treaty of the Southern African Development Community (SADC), 1992

Protocol to the Treaty establishing SADC on Immunities and Privileges, 1992

Vienna Convention on Diplomatic Relations, 1961

Vienna Convention on Consular Relations, 1963.

Geneva Conventions Act 15 of 2003 🕎 🚍



Summary: This Act (GG 3109) gives effect to certain conventions concluded at Geneva on 12 August 1949 and to the protocols to those conventions. It was brought into force on 1 October 2004 by GN 207/2004 (GG 3290). The conventions are -

- †Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949
- †Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949
- †Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention),
- †Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949.

Regulations: Regulations are authorised by section 9 of the Act, but none have yet been promulgated.

RELATED MATTERS

Proc. 7/1997 (GG 1605) announces the signing and ratification of the Fourth ACP-EU Convention of Lomé (which has since expired).

Proc. 24/1997 (GG 1723) announces the signing and ratification of the SADC Protocol on Transport, Communications and Meteorology.

Proc. 7/1997 (GG 1605) announces the consent and ratification of the Protocol on the accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé (which has since expired).

Proc. 6/1998 (GG 1803) announces the accession to the memorandum of understanding on road transportation in the Southern African Customs Union.

Proc. 10/1998 (GG 1862) announces the signing and ratification of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

Agreements relating to double taxation and fiscal evasion are announced in Proc. 1/1999 (GG 2032)(Germany), Proc. 4/1999 (GG 2033) (France), Proc. 3/1999 (GG 2034) (Sweden), Proc. 6/1999 (GG 2035) (India), Proc. 5/1999 (GG 2036) (Mauritius), Proc. 10/1999 (GG 2037)

(South Africa), Proc. 7/1999 (<u>GG 2038</u>) (Romania) and Proc. 8/1999 (<u>GG 2039</u>) (Russian Federation).

Note: There are two Proclamations numbered "Proc. 1/1999" in the 1999 government gazettes – one in <u>GG 2022</u> and one in <u>GG 2032</u>. The Proclamation pertaining to double taxation and fiscal evasion with respect to Germany appears in <u>GG 2032</u> and is listed as "Proc. 9/1999" in the Quarterly Return for January-March 1999.

- Proclamation 7 of 2000 (<u>GG 2359</u>) publishes a bilateral transport agreement between Zimbabwe and Namibia, and regulations relating to this agreement are contained in GN 156/2000 (<u>GG 2359</u>).
- GN 59/2001 (<u>GG 2509</u>) publishes for information the United Nations Security Council Resolutions relating to Sanctions against UNITA.
- GN 116/2001 (GG 2548) deals with the SADC Protocol on Trade, in connection with Schedule 1 of the Customs and Excise Act 20 of 1998.

CASES CITING ARTICLE 144

(Note that some other cases cite international law applicable to Namibia without explicit reference to art 144 as the basis for their applicability. Those cases are not listed here.)

Cultura 2000 v Govt of the Republic of Namibia 1992 NR 110 (HC), reversed in part by Government of the Republic of Namibia v Cultura 2000 & Another 1993 NR 328 (SC) (both judgments cite Art 144)

Kauesa v Minister of Home Affairs 1994 NR 102 (HC), which was overruled on other points by Kauesa v Minister of Home Affairs 1995 NR 175 (SC) (Art 144 cited only in High Court judgment)

Sikunda v Government of The Republic of Namibia (2) 2001 NR 86 (HC)

Government of the Republic of Namibia & Others v Mwilima & Others 2002 NR 235 (SC)

S v Mushwena & Others 2004 NR 35 (HC); S v Mushwena & Others 2004 NR 276 (SC)

Note that the Supreme Court ruling in this case was reversed in part by *S v Likanyi* 2017 (3) NR 771 (SC); see also *S v Munuma & Others* 2016 (4) NR 954 (SC) and *S v Lifumbela & Others* 2022 (1) NR 205 (SC) (paras 266-275). However, these subsequent cases do not cite Art 144.

S v Koch 2006 (2) NR 513 (SC)

Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment & Tourism 2010 (1) NR 1 (SC)

Alexander v Minister of Justice 2010 (1) NR 328 (SC) (ICCPR cited to support substantive guarantee of liberty in Constitution)

NS v RH 2011 (2) NR 486 (HC) at 526E-529B, which discusses in *dicta* the subsidiarity principle in Art 21(b) of the UN Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution

JT v AE 2013 (1) NR 1 (SC) (best interests standard applied in case concerning father's access to child born outside marriage)

South African Poultry Association v Ministry of Trade & Industry 2015 (1) NR 260 (HC)

Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC)²⁴⁹

Luehl v Minister of Home Affairs and Immigration 2021 (4) NR 1104 (HC) (unnecessary to discuss the monist versus dualist approach to international law under art 144 because it is plain from the preamble of the Child Care and Protection Act that the United Nations Convention on the Rights of a Child and the African Charter on the Rights of a Child which are relevant to this case are binding on Namibia and "an integral part of Namibian law" (at paras 73-76))

Hatuikulipi v Prosecutor-General & Others 2023 (4) NR 900 (HC) (at para 12).

COMMENTARY

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PC Szasz, "Succession to treaties under the Namibian Constitution", South African Yearbook of International Law, Volume 15 (1989)

²⁴⁹ Upheld on the basis of different reasoning in *Minister of Trade and Industry v Matador Enterprises (Pty) Ltd* 2020 (2) 362 (SC), which does not mention Art 144.

- Gerhard Erasmus, "The Namibian Constitution and the Application of International Law" in D Van Wyk et al (eds), Namibia Constitutional and International Issues, University of Pretoria: VerLoren van Themaat Centre for Public Law Studies, 1991
- Legal Assistance Centre, Gender & International Human Rights Law, 2005, available here
- FX Bangamwabo, "The implementation of international and regional human rights instruments in the Namibian legal framework" in N Horn & A Bösl (eds), Human Rights and the Rule of Law in Namibia, Macmillan Namibia, 2008, available here
- Oliver C Ruppel, "The protection of children's rights under international law from a Namibian perspective" in Oliver C Ruppel (ed), Children's Rights in Namibia, Konrad Adenauer Stiftung, 2009, available here
- N Horn, "International human rights norms and standards: The development of Namibian case and statutory law" in N Horn & A Bösl (eds), Human Rights and the Rule of Law in Namibia, Macmillan Namibia, 2008, available here
- Onkemetse Tshosa, "The status of international law in Namibian national law: A critical appraisal of the constitutional strategy", Namibia Law Journal, Volume 2, Issue 1, 2010, available here
- Dunia P Zongwe, "Equality has no mother but sisters: The preference for comparative law over international law in the equality jurisprudence in Namibia" in Magnus Killander (ed), International Law and Domestic Human Rights Litigation in Africa, Cape Town: Pretoria University Law Press, 2010
- Onkemetse Tshosa, "The status of international law in Namibian national law: A critical appraisal of the constitutional strategy", *Namibia Law Journal*, Volume 2, Issue 1, 2010, available <u>here</u> Francois-Xavier Bangamwabo, "The justiciability of socio-economic rights in Namibia: Legal
- challenges and opportunities", Namibia Law Journal, Volume 5, Issue 1, 2013, available here
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 1 discusses the provisions of the Namibian Constitution on international agreements and case law on their position in terms of domestic law; section 3 discusses the "precautionary principle" relating to environmental impact which is found in many international instruments)
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available <u>here</u> (section 1.1 discusses the procedure for withdrawing from international instruments)
- Ndjodi Ndeunyema, "The Namibian Constitution, International Law and the Courts: a Critique", 9(2) Global Journal of Comparative Law 271-296, 2020, available here.

See also Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (ARBITRATION).

See Reciprocal Service of Civil Process Act 27 of 1994 and Enforcement of Foreign Civil Judgements Act 28 of 1994 (COURTS).

See also One-Stop Border Posts Control Act 8 of 2017 (CITIZENSHIP AND IMMIGRATION).

See also International Co-operation in Criminal Matters Act 9 of 2000 and Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE).

See also Reciprocal Enforcement of Maintenance Orders Act 3 of 1995 (MAINTENANCE).

See also Namibia Red Cross Act 16 of 1991 (SOCIAL WELFARE).

See also Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM).

JUDGES

Judges' Remuneration Act 18 of 1990 📲 🙀

Summary: This Act (originally published in <u>GG 107</u>) covers remuneration, additional service benefits and motor vehicles for judges.

Repeals: The Act repeals the Judges' Remuneration Act 16 of 1981 (OG 4567), as amended.

Amendments: Act 24/1994 (GG 966) amends sections 2 and 3.

Amendments to the Schedules appended to the Act are as follows:

- Proc. 12/1994 (GG 848) amends the First Schedule to the Act.
- Act 24/1994 (<u>GG 966</u>) repeals Proc. 12/1994, substitutes the First Schedule, adds a new Second Schedule, and makes the original Second Schedule into the Third Schedule (laws repealed by the principal Act).
- Proc. 2/1999 (GG 2022) amends the new Second Schedule.
- Proc. 14/2003 (GG 2974) substitutes the Second Schedule.
- Proc. 11/2007 (GG 3869) substitutes the Second Schedule.
- Proc. 10/2012 (<u>GG 4941</u>) substitutes the Second Schedule.
- Proc. 6/2014 (GG 5451) substitutes the Second Schedule.
- Proc. 5/2015 (GG 5689) substitutes the Second Schedule.
- Proc. 45/2015 (GG 5914) substitutes the Second Schedule.
- Proc. 10/2018 (GG 6584) substitutes the Second Schedule.
- Proc. 20/2023 (GG 8120) substitutes the Second Schedule.

Regulations: Regulations relating to Conditions of Service of Judges are contained in Proc. 28/2015 (<u>GG 5834</u>).²⁵⁰ Regulations 5(7)(d), 5(8)(d), 10 and 13 are applied with the necessary changes to the Ombudsman with effect from 23 September 2015 by Proc. 45/2019 (<u>GG 7049</u>).

Judicial Service Commission Act 18 of 1995 🕎 📴

Summary: This Act (<u>GG 1195</u>) governs the operation of the Judicial Service Commission established by Article 85 of the Constitution. It was brought into force on 20 November 1995 by GN 220/1995 (<u>GG 1197</u>).

Appointments: See Proc. 1/1990 (<u>GG 1</u>), GN 96/2002 (<u>GG 2759</u>), Proc. 7/2009 (<u>GG 4251</u>) and Proc. 15/2021 (<u>GG 7482</u>).

Regulations: The Judicial Service Commission issued regulations in terms of Article 85(3) of the Constitution in GN 60/2011 (GG 4674), as amended by GN 377/2023 (GG 8262).

Note that there are two versions of GG 8262, one of which has an incorrect Government Notice number; the correct number is GN 377/2023, not GN 378/2023.

Cases: S v Zemburuka (2) 2003 NR 200 (HC) (appointments of persons to "judicial offices" in acting capacities).

²⁵⁰ This Proclamation repeals the regulations in GN 107/2003 (<u>GG 2986</u>), as amended by GN 33/2005 (<u>GG 3410</u>), Proc. 5/2014 (<u>GG 5451</u>) and Proc. 4/2015 (<u>GG 5689</u>). Regulations were previously promulgated in GN 76/1990 (<u>GG 108</u>), as amended by GN 65/1994 (<u>GG 848</u>) and GN 1/1999 (<u>GG 2022</u>). GN 107/2003 repealed GN 76/1990 and GN 65/1994, but not GN 1/1999. However, GN 1/1999 would appear to have no relevance on its own despite remaining technically in force.

Commentary: Makanatsa Makonese, "Appointment processes for Judicial Services Commissions (JSCs) and their Role in Promoting Independence of the Judiciary in Southern Africa: A Focus on Law Society/Bar Association Representatives on the JSCs", research supported by the American Bar Association Justice Defenders Program, 2017, available here.

Judiciary Act 11 of 2015 🗐 🙀

Summary: This Act (<u>GG 5902</u>) provides for administrative and financial independence of the Office of the Judiciary. It was brought into force on 1 December 2015 by GN 313/2015 (<u>GG 5914</u>).

Regulations: Regulations are authorised by section 17 of the Act, but none have yet been promulgated.

Code of Conduct for Judges: Rules and Guidelines for Ethical Judicial Conduct in Namibia, adopted by the Judges of the Supreme and High Courts, can be found here.

Guidelines on timeframes for the delivery of judgments in both the Supreme Court and the High Court can be found here.

APPOINTMENTS OF JUDGES AND ACTING JUDGES

Chief Justice, Judge President, Judge of High Court, Proc. 31/1991

Judges of High Court, Proc. 17/1992

Judge of High Court, Proc. 26/1994

Chief Justice of Supreme Court, Judge of High Court, and Acting Judge of High Court, Proc. 1/1999 (GG 2022)

Note: There are two Proclamations numbered "Proc. 1/1999" in the 1999 government gazettes – one in <u>GG 2022</u> and one in <u>GG 2032</u>. The one referred to here appears in <u>GG 2022</u>.

Judges of High Court, Judge President of High Court, Judge of Supreme Court, Proc. 22/2003 (GG 3034)

Acting Judges of Supreme Court and High Court, Proc. 30/2003 (GG 3092)

Acting Judge of High Court, Proc. 3/2004 (GG 3128)

Acting Judges of High Court, Proc. 4/2004 (GG 3133)

Acting Judges of High Court, Proc. 35/2004 (GG 3207)

Acting Judges of High Court, Proc. 36/2004 (GG 3207)

Acting Chief Justice of Supreme Court, Judges of High Court, Proc. 41/2004 (GG 3259)

Acting Judges of High Court, Proc. 49/2004 (GG 3304)

Acting Chief Justice of Supreme Court, Acting Judges of High Court, Proc. 55/2004 (GG 3319)

Chief Justice of Supreme Court, Judge President of High Court, Proc. 56/2004 (GG 3322)

Acting Judges of High Court, Proc. 58/2004 (GG 3336)

Acting Judge of High Court, Proc. 59/2004 (GG 3336)

Acting Judges of High Court, Proc. 2/2005 (GG 3410)

Acting Judges of High Court, Proc. 16/2005 (GG 3532)

Acting Judges of High Court and Judge of Supreme Court, Proc. 20/2005 (GG 3562)

Acting Judges of High Court, Proc. 2/2006 (GG 3603)

Acting Judges of High Court, Proc. 6/2006 (GG 3632)

Acting Judge of High Court, Proc. 7/2006 (GG 3647)

Acting Judge of High Court, Proc. 8/2006 (GG 3679)

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Acting Judges of High Court, Proc. 11/2006 (GG 3715)

Judge of High Court, Proc. 14/2006 (<u>GG 3746</u>)

Acting Judges of High Court, Proc. 9/2007 (GG 3826)

Acting Judges of High Court, Proc. 12/2007 (GG 3877)

Acting Judges of Supreme Court and High Court, Proc. 14/2007 (GG 3912)

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Acting Judge of High Court, Proc. 15/2007 (GG 3928)
Acting Judge of High Court, Proc. 18/2007 (GG 3928)
Acting Judges of High Court, Proc. 11/2008 (GG 4005)
Acting Judge of High Court, Proc. 20/2008 (GG 4066)
Judge of High Court, Proc. 21/2008 (GG 4066)
Acting Judges of Supreme Court, Proc. 25/2008 (GG 4085)
Acting Judge of High Court, Proc. 30/2008 (GG 4101)
Acting Judges of High Court, Proc. 36/2008 (GG 4129)
Acting Judges of Supreme Court, Proc. 37/2008 (GG 4153)
Acting Judges of Supreme Court and High Court, Proc. 38/2008 (GG 4156)
Acting Judges of Supreme Court and High Court, Proc. 4/2009 (GG 4225)
Acting Judges of High Court, Proc. 8/2009 (GG 4260)
Acting Judges of Supreme Court and High Court, Proc. 16/2009 (GG 4371)
Acting Judges of High Court, Proc. 17/2009 (GG 4371)
Judges of High Court, and Acting Judges of Supreme Court and High Court, Proc. 20/2009 (GG 4391)
Judges and Acting Judges of High Court and Supreme Court, Proc. 7/2010 (GG 4440)
Acting Judge President, Proc. 11/2010 (GG 4514)
Acting Judges of High Court, Proc. 12/2010 (GG 4514)
Acting Judges of High Court, Proc. 15/2010 (GG 4561)
Acting Judges of Supreme Court and High Court, Proc. 2/2011 (GG 4640)
Acting Judges of High Court, Proc. 6/2011 (GG 4688)
Acting Judges of High Court, Proc. 13/2011 (GG 4787)
Ad Hoc Judge of Supreme Court, Acting Judges of High Court, Proc. 15/2011 (GG 4792)
Acting Judge of High Court, Proc. 7/2012 (GG 4891)
Acting Judge of High Court, Proc. 8/2012 (GG 4915)
Judge of High Court, Proc. 9/2012 (GG 4941)
Acting Judge of High Court, Proc. 12/2012 (GG 4958)
Acting Judge of High Court, Proc. 21/2012 (GG 5015)
Acting Judge of High Court, Proc. 27/2012 (GG 5069)
Acting Judge of High Court, Proc. 28/2012 (GG 5076)
Acting Judges of High Court, Ad Hoc Judges of Supreme Court, Proc. 2/2013 (GG 5519)
Acting Judges of High Court, Proc. 6/2013 (GG 5143)
Ad Hoc Judges of Supreme Court, Proc. 15/2013 (GG 5188)
Acting Judges of High Court, Proc. 17/2013 (GG 5188)
Judge of High Court, Proc. 30/2013 (GG 5284)
Ad Hoc Judges of Supreme Court, Proc. 33/2013 (GG 5328)
Acting Judge of High Court, Proc. 2/2014 (GG 5397)
Ad Hoc Judges of Supreme Court, Proc. 3/2014 (GG 5397)
Acting Judge of High Court, Proc. 29/2014 (GG 5567)
Judge of High Court, Proc. 30/2014 (GG 5567).
Acting Judge of High Court, Proc. 1/2015 (GG 5660)
Judge of Supreme Court and Acting Judges of Supreme Court and High Court, Proc. 10/2015 (GG 5711)
Acting Judge of High Court, Proc. 19/2015 (GG 5751)
Acting Judges of High Court, Proc. 39/2015 (GG 5892)
Ad Hoc Judges of Supreme Court, Proc. 40/2015 (GG 5892)
Acting Judge of High Court, Proc. 42/2015 (GG 5914)
Deputy Judge-President of High Court, Proc. 43/2015 (GG 5914)
Judge of High Court, Proc. 44/2015 (GG 5914)
Judge of High Court, Proc. 46/2015 (GG 5914)
Acting Judge of High Court, Proc. 1/2016 (GG 5986)
Judge of Supreme Court, Proc. 3/2016 (GG 6024)
Acting Judges of High Court, Proc. 6/2016 (GG 6164)
Acting Judges of High Court, Proc. 3/2017 (GG 6238)
Acting Judges of High Court, Proc. 5/2017 (GG 6285)
Acting Judge of High Court, Proc. 12/2017 (GG 6346)
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Acting Judge of High Court, Proc. 25/2017 (GG 6482)
Acting Judge of High Court, Proc. 16/2019 (GG 6920)
Extension of Retiring Ages of Judges of Supreme Court, Proc. 17/2019 (GG 6920)
Acting Judges of High Court, Proc. 26/2019 (GG 6952)
Acting Judges of High Court, Proc. 27/2019 (GG 6965)
Judge of High Court, Proc. 30/2019 (GG 6973)
Acting Judges of High Court, Proc. 63/2019 (GG 7077)
Acting Judge of Supreme Court, Proc. 64/2019 (GG 7077)
Acting Judge of High Court, Proc. 12/2020 (GG 7178)
Acting Judges of High Court, Proc. 35/2020 (GG 7271)
Extension of Retiring Ages of Judges of High Court, Proc. 41/2020 (GG 7290)
Judge of High Court, Proc. 28/2021 (<u>GG 7545</u>)
Acting Judge of High Court, Proc. 29/2021 (GG 7545)
Acting Judge of High Court, Proc. 44/2021 (GG 7636)
Judge and Acting Judges of High Court, Proc. 52/2021 (GG 7716)
Acting Judge of High Court, Proc. 7/2022 (GG 7805)
Acting Judge of High Court, Proc. 19/2022 (GG 7853)
Acting Judges of High Court, Proc. 20/2022 (GG 7853)
Acting Judge of High Court, Proc. 26/2022 (GG 7904)
Acting Judge of High Court, Proc. 3/2023 (GG 8014)
Acting Judge of High Court, Proc. 5/2023 (GG 8042), as amended by Proc. 24/2023 (GG 8177)
Judges of High Court, Proc. 6/2023 (GG 8042)
Acting Judges of Supreme Court, Proc. 7/2023 (GG 8042)
Extension of Retiring Age of Judge of High Court, Proc. 8/2023 (GG 8042)
Acting Judges of High Court, Proc. 12/2023 (GG 8085)
Acting Judges of Supreme Court, Proc. 13/2023 (GG 8085)
Acting Judges of High Court, Proc. 1/2024 (GG 8290)
Acting Judges of Supreme Court, Proc. 2/2024 (GG 8290)
Acting Judge of High Court, Proc. 3/2024 (GG 8290)
Judge of High Court, Proc. 4/2024 (GG 8290)
Judge of High Court, Proc. 23/2024 (GG 8402)
Acting Judge of High Court, Proc. 24/2024 (GG 8402)
Acting Deputy Judge-President of High Court, Proc. 39/2024 (GG 8551).
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Acting Judges of High Court, Proc. 23/2017 (GG 6426)

COMMENTARY

Peter Von Doepp, "Politics and Judicial Decision Making in Namibia: Separate or Connected Realms?", Institute for Public Policy Research, 2006, available here (analysis of 250 cases to test judicial independence)

Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available here (reviewed by Yvonne Dauseb in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available here)

Ndjodi ML Ndeunyema, "Terminological Conundrums: how to refer to Judges of the Supreme Court of Namibia and related abbreviations", *UNAM Law Review*, Volume 1, Issue 2, 2013.

See also COURTS.

See also Medical Scheme for Members of the National Assembly, Judges and other Office Bearers Act 23 of 1990 (MEDICAL AID).

See also Judges' Pensions Act 13 of 2011 (PENSIONS).

LABOUR

Shop Hours Ordinance 15 of 1939 will approximately

Summary: This Ordinance (originally published in OG 796) governs the hours of operation of certain shops.

Repeals: The Ordinance repeals the Shop Hours Proclamation 9 of 1921, as amended, and the Half-Holiday Ordinance 8 of 1927, as amended.

Amendments: This Ordinance is amended by Ord. 4/1940 (OG 840), Proc. 34/1950 (OG 1530), Proc. 50/1950 (OG 1552), Ord. 10/1952 (OG 1687), Ord. 5/1957 (OG 2072), Ord. 39/1957 (OG 2092), Ord. 4/1959 (OG 2185) and the Conditions of Employment Act 12 of 1986 (OG 5221), which was brought into force by AG Proc. 26 of 1986 (OG 5226) and which repealed the portions of the Ordinance relating to shop assistants. The Conditions of Employment Act 12 of 1986 also changed the name of the Ordinance from the "Shop Hours and Shop Assistants Ordinance" to the "Shop Hours Ordinance".

Savings: There is no savings clause.

Regulations: The Ordinance makes provision for regulations in section 18. Regulations are contained in GN 133/1939 (OG 804). Additional regulations are contained in GN 303/1958 (OG 2171), as amended by AG GN 106/1985 (OG 5055).

Notices: Notices made in terms of section 3(2) regarding opening and closing hours in specific local authorities or for specific types of shops are not recorded here. Notices about the appointment of shop inspectors are also not recorded here.

Employees' Compensation Act 30 of 1941, as amended in South Africa prior to Namibian independence w

Summary: This Act (originally published in <u>SA GG 2909</u>) makes provision for the compensation of workers or their dependants if the worker is injured or killed in the course of employment. It was previously known as the Workmen's Compensation Act. The Act came into force in South West Africa on 1 September 1956 when SA Proc. 173/1956 (<u>SA GG 5733</u>) brought the amendments made by the *Workmen's Compensation Amendment Act 51 of 1956*, including the insertion of section 109bis, into force – with that Proclamation explicitly stating that the portions of the Act on the right to compensation would also come into force in South West Africa on that date/

Repeals: The Act repeals the *Workmen's Compensation Act 59 of 1934* as amended. The *Workmen's Compensation Amendment Act 51 of 1956*, which made the Act applicable to SWA, additionally repeals the Workmen's Compensation (Accidents and Industrial Diseases) Proclamation 27 of 1924 (OG 148), as amended - which in turn repealed the "Imperial German- Enactment No. 25 of 7th June 1871 relating to compensation for deaths and bodily injuries occasioned in the working of railways, mines, etc., as amended by Section 42 of the Introductory Act to the German Civil Code of the 18th August 1896, together with so much of any ofher existing law as may be repugnant to or inconsistent with the provisions of this Proclamation".

Applicability to SWA: Section 109*bis* states "This Act and any amendment thereto shall apply also in the territory including the portion of the territory known as the 'Rehoboth Gebiet' and in relation to all persons in the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and defined in the First Schedule to Proclamation No. 28 of 1923 of the territory."

Section 109bis also provides that all proclamations and notices issued under the principal Act prior to the 1956 amendment that made it applicable to SWA shall automatically apply to SWA, unless their applicability is expressly limited to an area that excludes SWA.

Section 1 defines "employers' organization", "Gazette", "provincial or local division of the Supreme Court", "territory" and "Republic" appropriately to include South West Africa.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Labour) Transfer Proclamation, (AG 17/1977), dated 20 December 1977 (OG 3680). However, section 3 of the transfer proclamation excluded this Act from the operation of Section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA.

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

- Workmen's Compensation Amendment Act 27 of 1945 (SA GG 3504)
- *SA Proclamation 95 of 1945* (<u>SA GG 3485</u>)
- Finance Act 48 of 1947 (SA GG 3830)
- Workmen's Compensation Amendment Act 36 of 1949 (SA GG 4182)
- Workmen's Compensation Amendment Act 5 of 1951 (SA GG 4563)
- *SA Proclamation 147 of 1951* (<u>SA GG 4644</u>)
- *SA Proclamation 63 of 1952* (<u>SA GG 4817</u>)
- Workmen's Compensation Amendment Act 51 of 1956 (SA GG 5703)
- *SA Proclamation 170 of 1959* (<u>SA GG 6274</u>)
- Railways and Harbours Superannuation Fund Act 39 of 1960 (SA GG 6431)
- Workmen's Compensation Amendment Act 7 of 1961 (SA GG 6649)
- RSA Proclamation R.90 of 1962 (<u>RSA GG 229</u>)
- Workmen's Compensation Amendment Act 21 of 1964 (RSA GG 746)
- Bantu Laws Amendment Act 42 of 1964 (RSA GG 801)
- Workmen's Compensation Amendment Act 58 of 1967 (RSA GG 1732)
- Pension Laws Amendment Act 98 of 1969 (RSA GG 2463)
- Workmen's Compensation Amendment Act 9 of 1970 (RSA GG 2647)
- Second Black Laws Amendment Act 27 of 1970 (RSA GG 2665)
- Workmen's Compensation Amendment Act 60 of 1971 (RSA GG 3156)
- Insolvency Amendment Act 6 of 1972 (RSA GG 3407)
- RSA Proclamation R.98 of 1973 (RSA GG 3856)
- Workmen's Compensation Amendment Act 11 of 1974 (RSA GG 4194)
- Workmen's Compensation Amendment Act 28 of 1977 (RSA GG 5465)
- Workmen's Compensation Amendment Act 8 of 1979 (RSA GG 6341)
- RSA Proclamation 233 of 1979 (RSA GG 6689)
- Workmen's Compensation Amendment Act 24 of 1981 (RSA GG 7453)
- Workmen's Compensation Amendment Act 29 of 1984 (RSA GG 9127)
- Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438)
- Workmen's Compensation Amendment Act 35 of 1987 (RSA GG 10888)
- Workmen's Compensation Amendment Proclamation 45 of 1990 (RSA GG 12328), which makes substantial amendments to the Act in preparation for Namibian independence.

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 9/1982 (OG 4652) makes minor amendments to section 70 of the Act.

Act 5 of 1995 (<u>GG 1038</u>), which was brought into force on 1 March 1995 by GN 52/1995 (<u>GG 1039</u>), amends the Act substantially and changes its name from the Workmen's Compensation Act to the Employees' Compensation Act.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 20.

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Regulations: Regulations are contained in RSA GN R.581/1961 (RSA GG 73), as amended by –
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RSA GN R.1580/1964 (RSA GG 922)

RSA GN R.1474/1967 (RSA GG 1851)

RSA GN R.1480/1970 (RSA GG 2808)

RSA GN R.143/1972 (RSA GG 3380)

RSA GN R.1354/1975 (RSA GG 4790)

RSA GN R.837/1977 (RSA GG 5549)

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)

RSA GN R.908/1980 (RSA GG 6969)

RSA GN R.1802/1981 (RSA GG 7741)

RSA GN R.1551/1983 (RSA GG 8814)

RSA GN R.2187/1984 (<u>RSA GG 9449</u>)

RSA GN R.223/1988 (<u>RSA GG 11140</u>)

RSA GN R.1134/1989 (<u>RSA GG 11909</u>)

RSA Proc. 45/1990 (RSA GG 12328)

GN 47/2004 (GG 3169)

GN 95/2012 (GG 4919)

GN 251/2013 (GG 5291).251

Note: GN 251/2013 refers to a previous amendment of the regulations by Government Notice 4919 of 2 April 2012. This appears to refer to Government Notice 95 of 2 April 2012, which was published in GG 4919.

Rules: Rules to facilitate the consideration of applications under section 43 are contained in SA GN 1623/1950 (<u>SA GG 4426</u>), in SA GN 1692/1956 (<u>SA GG 5739</u>) and in RSA GN 1980/1982 (<u>RSA GG 8382</u>). None of these sets of rules contain repeals.

Notices: SA GN 379/1942 (<u>SA GG 3011</u>) exempts the State, including Parliament, from the provisions of section 96(1) of the Act (requirement that employers must furnish the Commission with the prescribed particulars of their business).

RSA GN 1291/1989 (RSA GG 11960) varied certain amounts and percentages for the purposes of sections 38(1)(a), 38(4), 39(1)(a), 39(1)(c), 39(2), 40(1)(a), 40(2), 43bis(1) and 43bis(2) with effect from 1 July 1989. Proc. 45 of 1990 provides as follows in section 46(d):

In the application of the Act in the territory...paragraph 1(d) of Government Notice 1291 of 23 June 1989 shall, notwithstanding the provisions of section 43bis, be deemed not to be applicable in respect of any monthly pension which was payable by the State, including a Representative Authority as defined in section 1 of Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), in terms of section 39 or 40 of the Act immediately before 1 July 1989 in connection with the disablement or death of a workman in the service of a department established under section 3(1) of the Government Service Act, 1980 (Act 2 of 1980).

The amount referred to in section 3(2)(b) (exclusion of persons as employees) is set at N\$72 000 with effect from 1 March 2001 (GN 100/2001, <u>GG 2544</u>). This amount is set at N\$76 000 with effect from 1 March 2012 (GN 66/2012, <u>GG 4891</u>), at N\$81 300 with effect from 1 March 2013 (GN 250/2012, <u>GG 5291</u>) and at N\$101 625 with effect from 1 March 2025 (GN 287/2024, <u>GG 8461</u>).²⁵²

The amounts of compensation for temporary, partial, total and permanent disablement and death are increased in GN 46/2004 (GG 3169), which is replaced by GN 96/2012 (GG 4919). The minimum

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²⁵¹ These regulations rescind the regulations contained in SA GN 1580/1956 (<u>SA GG 5733</u>), which rescinded the regulations in SA GN 1622/1950 (<u>SA GG 4426</u>), which rescinded the regulations in SA GN 2448/1942 (<u>SA GG 3120</u>), which rescinded the first set of regulations promulgated under this Act in SA GG 378/1942 (<u>SA GG 3011</u>).
²⁵² Note that a previous version of GG 8461 contained erroneous notice numbers.

amount of compensation payable for permanent disablement in respect of the monthly pension is set at N\$500 with effect from 1 March 2025 in GN 286/2024 ($\underline{GG~8461}$).²⁵³

Notices of unclaimed payments are not listed here.

Fees: Tariffs of fees published in terms of the Act from time to time have not been recorded here.

Application of law: Sections 25(5) and 37 of the National Education Act 30 of 1980 (OG 4358), which is brought into force by AG 6/1981 (OG 4430), provided that state teachers in South West Africa are to be deemed "workmen" while students at government schools may not be deemed "workmen". However, this Act was repealed by the Education Act 16 of 2001 (GG 2673) except insofar as it applies to tertiary education, and by the Teachers' Education Colleges Act 25 of 2003 (GG 3124) insofar as it applies to teachers' education colleges. (The Education Act 16 of 2001 was subsequently repealed by the Basic Education Act 3 of 2020.)

Cases: Social Security Commission & Another v Coetzee 2016 (2) NR 388 (SC) (section 54: timeframes and section 108: delegation; discussion of overall framework of Act in paras 9-24); Muhura NO & Another v Lewcor CC 2019 (1) 288 (HC) (where case falls within ambit of section 7, suit against employer for common law damages is barred; meaning of "employee" and "accident").

Development Brigade Corporation Act 32 of 1992 🕎 🔄

Summary: This Act (<u>GG 563</u>) provides for the establishment of the Development Brigade Corporation, with the object of engaging in agricultural and other business activities for the purpose of providing training and skills development opportunities to unemployed persons. It was brought into force on 1 February 1993 by GN 15/1993 (<u>GG 580</u>).

Regulations: The Act makes no provision for regulations.

Notices: Proc. 3/1993 (<u>GG 577</u>) and Proc. 20/1993 (<u>GG 715</u>) both relate to the designation of the Minister responsible for administering the Act.

Appointments: Directors are appointed in GN 113/1994 (GG 870) and in GN 171/2017 (GG 6358), which withdraws GN 113/1994.

Commissions: Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc. 38/2004, GG 3221).

See also GN 132/2004 (GG 3221).

Affirmative Action (Employment) Act 29 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1962</u>) establishes an Employment Equity Commission and provides for affirmative action measures to achieve equal opportunity in employment for racially disadvantaged persons, women and persons with disabilities. It was brought into force, with the exception of section 2, sections 19-43 and sections 45-48, on 18 November 1998 by GN 278/1998 (<u>GG 1996</u>). The remaining sections were all brought into force on 6 August 1999 by GN 156/1999 (<u>GG 2161</u>).

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²⁵³ Note that a previous version of GG 8461 contained erroneous notice numbers.

Amendments: Act 6/2007 (<u>GG 3965</u>) amends sections 1, 10, 23, 24, 30, 44, 45 and 47. The Labour Act 11 of 2007 (<u>GG 3971</u>) amends section 45.

Regulations: Regulations are contained in GN 159/1999 (GG 2161).

Notices: A "relevant employer" for the purposes of the Act was initially defined as an employer which employs 50 or more employees by GN 158/1999 (GG 2161), which also contains guidelines for calculation and interpretation of this rule. GN 158/1999 was replaced by GN 95/2006 (GG 3658), which defines "relevant employer" as an employer which employs 25 or more employees. GN 95/2006 was replaced by GN 275/2022 (GG 7904), which defines "relevant employer" as an employer which employs 10 or more employees.

GN 157/1999 (GN 2161) provides that the first affirmative action report by "an Office, Ministry or Agency in the Public Service, or by a parastatal, identified as a relevant employer" must be submitted by 6 August 2000.

Appointments: The appointment of members to the Employment Equity Commission is announced in GN 184/2018 (GG 6680).

Cases:

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)

The Act is discussed in *dicta* in *Tlhoro v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 113C

See also *S v Nkeuene* 2010 (1) NR 301 (HC) (conviction on charge of failing to comply with section 27(2)(a) set aside on basis that servant of corporate body was not authorised to plead guilty on behalf of the body).

Commentary:

Namibia Institute for Democracy, Implementing Affirmative Action in Namibia: A summarised guide to the Affirmative Action (Employment) Act (Act 29 of 1998), third edition, 2000

Daniel Motinga & Tjivingurura Mbuende, "Progress on Affirmative Action and Employment Equity: Still a Man's World!", Institute for Public Policy Research, 2003, available here.

Related international agreements:

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999

SADC Protocol on Gender and Development, 2008.

Labour Act 11 of 2007 🕎 😜

Summary: This Act (originally published in <u>GG 3971</u>) consolidates and amends the labour law. It entrenches fundamental labour rights and protections, regulates the basic terms and conditions of employment, ensures the health, safety and welfare of employees, protects employees against unfair labour practices, regulates the registration of trade unions and employers' organizations, regulates collective labour relations, provides for the systemic prevention and resolution of labour disputes, establishes the Labour Advisory Council, Labour Court, Wages Commission and labour inspectorate, and provides for the appointment of the Labour Commissioner and Deputy Labour Commissioner. All the sections of the Act *other than* section 128 (prohibiting labour hire) were brought into force on 1 November 2008 by GN 260/2008 (<u>GG 4151</u>). Section 128 of the Act was brought into force on 1 March 2009 by GN 1/2009 (<u>GG 4192</u>).

Repeals: The Act repeals both the Labour Act 6 of 1992 (<u>GG 388</u>) and the Labour Act 15 of 2004 (<u>GG 3339</u>), which was brought only partially into force. There is an extensive Schedule of transitional

provisions. Any reference to the 1992 Act in any law must be construed insofar as possible as a reference to the corresponding provision of this Act. Regulations, notices, declarations, registrations, collective agreements and exemptions from collective agreements made under the 1992 Act generally remain in force.

The **Labour Act 6 of 1992**, which was repealed by this Act, repealed the Factories, Machinery and Building Work Ordinance 34 of 1952 (OG 1741), the Wage and Industrial Conciliation Ordinance 35 of 1952 (OG 1741), the Validation of Native Service Contracts Ordinance 3 of 1958 (OG 2141), the *Occupational Diseases in Mines and Works Act 78 of 1973* (RSA GG 3970), the Kavango Labour Act 2 of 1974, the National Labour Council Act 9 of 1986 (OG 5215) and the Conditions of Employment Act 12 of 1986 (OG 5221).

The **Labour Act 15 of 2004** was intended to repeal the Labour Act 6 1992, but Act 15 of 2004 never came into force in its entirety. Sections 75, 97(a), (b), (c), (e) and (h), 94(1) and (4), 98, 99, 100 and 101 and items 1 and 11(3) of Schedule 1 were brought into force on 30 November 2005 by GN 162/2005 (GG 3545). Section 118 and item 13(1) of Schedule 1 were brought into force on 27 January 2006 by GN 20/2006 (GG 3582). Section 139 of the Act 15 of 2004, which concerns repeals, was never brought into force, but (unlike the current Act) would have repealed *only* the Labour Act 6 of 1992.

Amendments: Act 2/2012 (<u>GG 4925</u>) amends sections 1, 5, 82, 83, 89 and 128 and inserts sections 128A, 128B and 128C; these amendments relate to the issue of "labour hire". This amending Act was brought into force from 1 August 2012 by GN 136/2012 (<u>GG 4958</u>) – but GN 136/2012 was withdrawn by GN 192/2012 (<u>GG 5005</u>) on 1 August 2012. GN 193/2012 (<u>GG 5005</u>) provides that amending Act 2/2012 will come into force on 1 August 2012 – *except for* the provisions in section 10 in so far as they relate to section 26(2)(a)(ii)-(iii) of the Employment Services Act 8 of 2011.

The Whistleblower Protection Act 10 of 2017 (<u>GG 6450</u>), which has not yet been brought into force, amends section 84.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 11.

Savings: In terms of Item 2(2) of Schedule 1 to this Act concerning transitional provisions - Any regulation promulgated in terms of the previous Act [Labour Act 6 of 1992] or the 2004 Act [Labour Act 15 of 2004] remains in force as if it had been promulgated under this Act as from the effective date.

The Schedule to this Act also sets out details about other continuities in respect of notices, exemptions and other matters.

Section 116(2) of the previous Labour Act 6 of 1992 provides as follows:

Subject to the provisions of subsections (3), (4) and (5) -

- (a) any appointment made;
- (b) any conciliation board established;
- (c) any regulation made;
- (d) any exemption granted; and
- (e) anything else done,

under any provision of any law repealed by subsection (1) and which was in force on the date immediately before the commencement of this Act, shall be deemed to have been made, established, granted or done, as the case may be, under the corresponding provision of this Act.

Regulations: Regulations made in terms of Acts repealed by the Labour Act 6 of 1992 survived in terms of section 116(2) of that Act, and continue to survive pursuant to section 142 of the current Act (read together with item 2(2) of Schedule 1). However, pre-independence regulations have not been comprehensively researched.

Regulations could have been made under the following enactments:

- the Factories, Machinery and Building Work Ordinance 34 of 1952 (OG 1741)
- the Wage and Industrial Conciliation Ordinance 35 of 1952 (OG 1741)
- the Occupational Diseases in Mines and Works Act 78 of 1973 (RSA GG 3970)
- the National Labour Council Act 9 of 1986 (OG 5215)
- the Conditions of Employment Act 12 of 1986 (OG 5221)

Regulations made in terms of the **Labour Act 6 of 1992**, which survive pursuant to section 142 of this Act are as follows –

Regulations relating to the health and safety of employees at work are contained in GN 156/1997 (GG 1617). The administration of these regulations is assigned to various ministers by Proc. 10/1997 (GG 1615). (See also the Namibian Electricity Safety Code contained in GN 200/2011 (GG 4821), which is to be read in conjunction with these regulations.)²⁵⁴

Regulations made under this Act are as follows:

General regulations are contained in GN 261/2008 (<u>GG 4151</u>), which replaces GN 174/1992 (<u>GG 533</u>) and GN 175/1992 (<u>GG 533</u>).

Regulations relating to domestic workers are contained in GN 257/2017 (<u>GG 6428</u>), which repeals GN 257/2014 (<u>GG 5638</u>). They require employers of domestic workers to submit a form annually to the Permanent Secretary of the labour ministry or to the Labour Office containing certain particulars about domestic workers.

Rules: Rules made by the Labour Courts' Rules Board in terms of the previous Act and surviving pursuant to section 14(4) of the current Act are as follows –

Rules of the District Labour Courts are contained in GN 138/1993 (GG 747). These courts no longer exist in Namibia (see section 16(b) of Schedule 1 of the Act), although pending cases before district labour courts are to be completed in terms of section 15(4) of Schedule 1 of the Act.

Rules made under the current Act are as follows:

Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner ("Con-Arb Rules") are contained in GN 262/2008 (GG 4151), as amended by GN 69/2016 (GG 5990), which substitutes Annexure 1.

Labour Court Rules are contained in GN 279/2008 (<u>GG 4175</u>), which replaced GN 63/1994 (<u>GG 841</u>). The new rules became effective on 15 January 2009. Rules 6 and 14 are amended and Rule 22 is substituted by GN 92/2011 (<u>GG 4743</u>).

Codes: A Code of Good Practice on Industrial Action (Strikes and Lock-outs), issued in terms of section 137(1)(a) of the Act, is contained in GN 208/2009 (GG 4361).

²⁵⁴ Note that the Labour Act 6 of 1992 (section 116 read together with the Schedule) repealed the **Employment Bureaux Regulations** contained in RSA GN R.323/1972 (<u>RSA GG 3742</u>), as amended by RSA Proc. R.17/1976 (<u>RSA GG 4981</u>), GN 5/1977 (<u>OG 3657</u>), AG Proc. 33/1978 (<u>OG 3758</u>) and AG Proc. 48/1978 (<u>OG 3782</u>). The Employment Bureaux Regulations were originally made in terms of section 38 of the South-West Africa Constitution Act 39 of 1968, which was repealed by the Labour Act 6 of 1992. Pursuant to section 142 of the Labour Act 11 of 2007, the Employment Bureaux Regulations are deemed to have been made under that Act.

The Labour Act 6 of 1992 also repealed the following ethnic-based regulations:

[•] Labour Enactment for Owambo, Enactment 6 of 1972 (Owambo Legislative Council Enactment 6 of 1972), (published in RSA GN R.1416/1972, <u>RSA GG 3633</u>), as amended by the Owambo Labour Amendment Enactment 12 of 1973.

[•] Employment Bureaux Regulations for Namas, RSA Proc. R.32/1973 (RSA GG 3780)

Namaland Employment Bureau Regulations, RSA Proc. R.65/1976 (RSA GG 5102).

A **Code of Good Practice on Picketing**, issued in terms of section 137(1)(a) of the Act, is contained in GN 208/2009 (GG 4361).

A Code of Ethics for Conciliators and Arbitrators, issued in terms of section 137(1)(c) of the Act, is contained in GN 185/2020 (GG 7301).

A Code of Good Practice for Labour Inspectors, issued in terms of section 137(1)(a) of the Act, is contained in GN 306/2024 (GG 8485).

Application of law: Section 5 of the Act applies to all employers and employees. The remainder of the Act applies to all employers and employees except members of the Namibian Defence Force, the Namibian Police Force, municipal police services, the Namibian Central Intelligence Service or the Prison Service (unless the laws governing any of these services provide otherwise).

Application of the 1992 Act was addressed in the following:

Export processing zones are exempted from the operation of certain provisions of the Labour Act by section 8 of the Export Processing Zones Act 9 of 1995 (GG 1069) (as amended by Act 6/1996 (GG 1337).

Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 (<u>GG 1699</u>) provides that the Labour Act will not apply to the administration of the Service or to its staff members, with the exception of sections 35, 39, 40, 41, 52, 106 and 107.

Section 40 of the Namibia Water Corporation Act 12 of 1997 (GG 1703) provides that employees who would cause or prolong a disruption of water supply to a customer by withholding their services shall be deemed to be rendering an essential service for the purposes of section 79 of the Act.

Notices: Notices made under the previous Act which remain in force include the following (omitting those with no ongoing effect) –

Particulars to be submitted by employers in the agricultural sector are contained in GN 115/2003 (GG 2990), which is replaced by GN 171/2003 (GG 3030); GN 89/2005 (GG 3465) again withdraws GN 115/2003 (although it was probably meant to replace GN 171/2003), and sets forth particulars to be submitted by employers in the agricultural sector.

Guidelines and instructions pertaining to HIV/AIDS in employment were issued in GN 78/1998 (GG 1835), but these do not appear to remain in effect.

Other notices regarding specific topics are listed below.

Wage Orders: GN 258/2017 (<u>GG 6428</u>) contains a Wage Order for Setting Minimum Wage and Supplementary Minimum Conditions of Employment for Domestic Workers. The minimum wage set out in this order was increased by General Notice 639/2018 (<u>GG 6767</u>). However, GN 218/2024 (<u>GG 8409</u>) supersedes this Wage Order for Domestic Workers insofar as it relates to minimum wage.

GN 218/2024 (GG 8409) contains a **Wage Order** setting a minimum wage for all employees of N\$18.00 per hour, with effect from 1 January 2025 – but provides gradual steps to this minimum wage for domestic workers and agricultural workers, who will reach the same minimum wage as of 1 January 2027. This Wage Order supersedes the existing Wage Order for Domestic Workers in GN 258/2017 (GG 6428) and the Collective Agreement between the Agricultural Employer's Association and the Namibian Farmers' Union *insofar as these relate to the rate of minimum wage*. This Wage Order was

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²⁵⁵ GN 258/2017 in turn repealed GN 258/2014 (GG 5638), which was amended by GN 53/2016 (GG 5978).

amended by GN 6/2025 (GG 8562) to provide gradual steps to the minimum wage for "security workers", who will reach the minimum wage of N\$18.00 per hour as of 1 January 2027, along with domestic workers and agricultural workers.

Exemptions: Certain jobs at specific workplaces were exempted from the prohibition on work on Sundays and public holidays in terms of section 33(1) of the 1992 Act. These exemptions are not listed here.

Continuous operations: Certain work at specific workplaces has been declared to be "continuous operations" in terms of section 15 of the 2007 Act. These declarations are not listed here.

Essential services: Certain services are designated as essential services in terms of section 77(4) of the current Act -

- GN 314/2012 (GG 5109), repealed by GN 115/2017 (GG 6309),
- GN 94/2014 (GG 5510)
- GN 115/2017 (GG 6309)
- GN 178/2018 (GG 6680).

Variations: Certain provisions of Chapter 3 of the Act (sections 8, 18, 20, 21, 22 and 28) are varied for a one-year period in respect of employers and employees in the **tourism and hospitality industry** by GN 17/2011 (GG 4660).

Certain provisions of Chapter 3 of the Act (sections 16, 17, 18 and 20) are varied for a five-year period in respect of **fishers** (defined as persons "employed or engaged in any capacity or carrying out an occupation on board a fishing vessel, including persons working on board paid on the basis of a share of the catch but excluding pilots, naval personnel, shore-based persons carrying out work aboard a fishing vessel and fisheries observers") by GN 250/2016 (GG 6149).

Certain provisions of Chapter 3 of the Act (sections 16, 17, 18 and 20) are varied for a five-year period in respect of employers and employees in the **fisheries industry** by GN 38/2023 (<u>GG 8040</u>).

Registered collective agreements: Registered collective agreements have been declared binding on three industries –

Construction industry: The Collective Agreement on Conditions of Employment for Construction Industry, dated 15 November 2017, is set forth in full and extended to the entire construction industry in GN 65/2018 (GG 6567). It sets forth minimum wages, amongst other things, and amends the collective agreement contained in GN 319/2015 (GG 5917). This agreement is extended to 11 April 2021 by GN 72/2020 (GG 7142), and amended and extended for two years from the date of publication of the amendments (2 November 2021), by GN 241/2021 (GG 7675). GN 241/2021 is then amended and extended in accordance with the Collective Agreement on Minimum Wages and Conditions of Employment: Construction Industry contained in GN 156/2025 (GG 8377), which applies for two years from its date of publication (6 June 2024). 256

Agricultural industry: A registered collective agreement relating to minimum wage which is binding on the entire agricultural industry is published in GN 141/2024 (GG 8369), applicable for a period of twelve months starting from 1 October 2023. It sets the minimum entry-level cash wage for agricultural employees at N\$6.00 per hour, with additional requirements for employees who are required to live at the

A request to extend a collective agreement to the construction industry, and an invitation to submit objections to such extension, is published in GN 25/2024 (<u>GG 8326</u>), which withdraws a previous request of the same nature in GN 396/2023 (<u>GG 8280</u>).

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²⁵⁶ Past collective agreements in this industry were published in GN 298/1996 (<u>GG 1444</u>), GN 272/1997 (<u>GG 1752</u>) extended by GN 300/1998 (<u>GG 2010</u>); GN 135/1999 (<u>GG 2144</u>) extended by GN 85/2000 (<u>GG 2301</u>), GN 123/2000 (<u>GG 2340</u>), GN 217/2001 (<u>GG 2637</u>), GN 39/2003 (<u>GG 2927</u>), GN 24/2005 (<u>GG 3392</u>), GN 224/2008 (<u>GG 4115</u>), GN 129/2009 (<u>GG 4271</u>), GN 154/2012 (<u>GG 4970</u>) and GN 319/2015 (<u>GG 5917</u>).

place of employment.²⁵⁷

Security industry: A registered collective agreement extended to all employers and employees in the security industry was most recently published in GN 242/2017 (<u>GG 6414</u>). It sets the minimum wage for entry-level security officers at N\$8.75 per hour as of 1 January 2017 and provides for other wage adjustments. It also contains rules about the provision of uniforms.²⁵⁸

Fuel industry: No minimum wage has been gazetted, but a 2014 news report stated that agreement was reached between the Namibia Fuel and Allied Workers Union (NAFAWU), the Metal and Allied Workers Union (MANWU), the Namibia Wholesalers and Retail Workers Union (NWRWU), the Namibia Food and Allied Workers Union and the Association of Service Station Owners (ASSO) for a N\$7.20/hour minimum wage for a basic minimum salary of N\$1 404 per month. According to the news report, the agreement covers petrol attendants, cashiers and shop attendants at service stations. The minimum amount does not include payment for Sundays, public holidays or overtime It was expected to be implemented on 1 January 2015, and to be renegotiated after two years. The plan was to extend the agreement to the entire industry.²⁵⁹

Wages Commission: A Wages Commission was convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 135/2012 (<u>GG 4956</u>), which sets forth its terms of reference. The date for submission of this Commission's report, originally 15 February 2013, was extended to 15 April 2013 by GN 308/2012 (<u>GG 5109</u>) and to 30 May 2013 by GN 112/2013 (<u>GG 5188</u>).

A Wages Commission was again convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 28/2017 (GG 6245), which sets forth its terms of reference.

A Wages Commission was convened for purposes of investigating a proposed **national minimum wage** by GN 26/2021 (<u>GG 7461</u>), which sets forth its terms of reference.

Cases: The following cases were decided after the Labour Act 11 of 2007 became the operative law –

General

arbitration proceedings (generally):

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC) (recusal of arbitrator)

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (basis for appeal of arbitrator's award)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC) (Labour Court Rules and Conciliation and Arbitration Rules must be read together; para 25: "perhaps consideration should in future be given to creating greater harmony between the different sets of rules, or by co-ordinating matters so that both sets of rules do not regulate the same matters")

City of Windhoek v Katuuo & Others 2016 (2) NR 529 (LC) (arbitrator finding "unfair labour practices" under section 50(1) should indicate which paragraph of that section is relevant; arbitration is not competent in respect of disputes of interest)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (approach to overtime claims in arbitration proceeding)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC) (approach to finding of procedurally and substantively unfair dismissal in arbitration proceedings)

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (criteria for

 $\underline{^{2946}}.$ Past collective agreements in this industry were published in GN 132/2005 ($\underline{GG~3516}$) as amended by a Memorandum of Agreement contained in GN 202/2008 ($\underline{GG~4112}$), GN 190/2009 ($\underline{GG~4342}$), GN 229/2012 ($\underline{GG~5031}$) and GN 248/2014 ($\underline{GG~5628}$).

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²⁵⁷ Past collective agreements in this industry were published in GN 237/2009 (<u>GG 4390</u>) and GN 77/2003 (<u>GG</u> 2946.

²⁵⁹ "Minimum wage for Namibia's fuel sector", *Namibian Sun*, 29 September 2014. A request to extend a collective agreement to the Fuel Retail Industry, and an invitation to submit objections to such extension, is published in GN 309/2015 (GG 5910).

interfering with arbitrator's award on appeal)

- Standard Bank Namibia Ltd. v Gaseb & Another 2017 (1) NR 121 (LC) (appeal against arbitrator's award on questions of law may overturn a factual finding of the arbitrator if there is no evidence that could reasonably support the finding of fact in question, or if no reasonable arbitrator could have made such a finding of fact on the evidence at hand)
- Imene v Namdeb Diamonds (Pty) Ltd & Others 2019 (2) NR 426 (LC) (arbitration award in case concerning theft of 77,324 carat diamond set aside due to irregularities involving inadequate charge sheet, failure to capture inspection in loco as part of record, hearsay evidence by witnesses, failure to examine relevant CCTV footage and presence of an unidentified "observer" at the arbitration proceedings whose role was unclear); see also Namdeb Diamond Corporation (Pty) Ltd v Coetzee 2022 (2) NR 578 (SC), which concerns another arbitration proceeding arising from this alleged theft (arbitration award set aside because (1) not procedurally unfair to hold disciplinary hearing in absence of employee when employee set demands and conditions for his participation; (2) company disciplinary code is a guide regarding procedure, but not immutable; (3) evidence was sufficient to show breakdown of trust between employer and employee)
- Germanus v Dundee Precious Metals Tsumeb & Others 2019 (2) NR 453 (LC) (various grounds of appeal against arbitrator's award considered and rejected)
- Angula v Stuttaford Van Lines & Another 2019 (2) NR 461 (LC) (arbitrator wrong to refuse to order reinstatement after finding unfair dismissal and finding that continuation of employment relationship was reasonable)
- TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (arbitration award rescinded because it gives effect to an act done in violation of a legislative enactment; award thus void ab initio)
- Smith v Desert Fruit Namibia (Pty) Ltd & Others 2021 (2) NR 393 (LC) (what constitutes a reviewable irregularity on the part of the arbitrator)
- Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (person who is not an admitted legal practitioner has no right to represent another person at arbitration proceedings (at para 11); stated *obiter* that arbitration proceedings are not ordinarily public hearings (at para 51))

condonation:

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in Telecom Namibia Ltd v Nangolo & Others 2015 (2) NR 510 (SC))

consistency in disciplinary sanctions:

Standard Bank Namibia Ltd. v Gaseb & Another 2017 (1) NR 121 (LC) (principle of consistency when imposing disciplinary sanctions is part of Namibian labour law, but an employer may show valid reasons for differentiating between employees who are guilty of the same offence)

constructive dismissal:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (burden of proving constructive dismissal lies with employee)

Kvekotora v Transnamib Holdings Ltd & Another 2012 (2) NR 443 (LC)

Council of the City of Windhoek v Brandt 2023 (4) NR 1070 (SC)

contract of employment:

Namrights Inc v Nicodemus & Others 2016 (2) NR 596 (LC) (contract of employment is void ab initio and cannot be basis for any benefits where concluded with refugee in absence of work permit or exemption from work permit requirements)

"double jeopardy" in disciplinary proceedings:

Eises v First National Bank (Namibia Holdings) Ltd & Another NO 2020 (3) NR 670 (LC) (no exceptional circumstances present to justify violation of principle forbidding double jeopardy)

First National Bank of Namibia Ltd v Nghishidivali & Another 2021 (4) NR 1125 (SC) ("double jeopardy" found where new disciplinary hearing held after imposition of final warning,

in absence of new information)

fiduciary duty of employee to employer:

Shoprite Namibia (Pty) Ltd v Petrus 2019 (1) NR 175 (HC) (fiduciary duty of employee not to work against employer's interests)

legal representation:

Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (person who is not an admitted legal practitioner has no right of audience in Labour Court and is not entitled to represent any person other than himself or herself (at para 11))

prescription:

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (Prescription Act 68 of 1969 applies to labour-related claims arising under this Act).

sexual harassment:

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (dicta on sexual harassment at paras 61-62)

Sexual harassment is after all a serious matter. The legislature has provided for sexual harassment in the workplace in ch 2 of the Act, where special remedies are also provided for discrimination in an employment setting. This is a clear indication of the seriousness with which sexual harassment at the workplace is viewed by the legislature and rightly so. Being subjected to unwanted and unwarranted conduct of a sexual nature not only creates a barrier to equality in employment as is stressed in s 2 of the Act, but it also violates an employee's constitutional right to dignity and of the person. The seriousness of sexual harassment in employment is reinforced by the fact that the failure on the part of an employer to prevent it may even attract delictual liability.

team misconduct:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

unfair labour practice:

Wilderness Air Namibia v Janse van Rensburg 2012 (2) NR 764 (LC); Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC)

unfair dismissal:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (arbitrators' finding of unfair dismissal overturned)

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC) (court overturns factual conclusion of arbitrator on grounds that no arbitrator could reasonably have found dismissal unfair; procedural defects can be overlooked if there is substantial fairness)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC)

Lawrence v Gijimaast Technology Services (Pty) Ltd & Another 2019 (1) NR 1154 (LC) (termination of employment contract on grounds of incapacity due to health issues found to be substantively and procedurally fair)

Namdeb Diamond Corporation (Pty) Ltd v Gaseb 2019 (4) NR 1007 (SC) (employee dismissed for a valid and fair reason and in compliance with a fair procedure; violation of fiduciary duty not to work against employer's interests even in absence of specific rules applicable to conduct in question)

Januarie v Namibia Ports Authority (Pty) Ltd 2024 (1) NR 209 (LC) (decision of arbitrator upheld; sanction of dismissal ruled to be fair where employee organised public demonstration outside workplace which made serious allegations against employer, with severe negative impact on good name of employer, in violation of fiduciary duty toward employer as well as employer's disciplinary policy).

Labour Act 11 of 2007

section 1:

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (definition of "employee")

section 9:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 9(3)) Namibia National Teacher's Union v Government of the Republic of Namibia & Others NO

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2018 (2) NR 403 (LC) (collective agreements interpreted against backdrop of section 50(1)(e) in successful appeal against arbitrator's award)

section 10:

Novanam Ltd v Ringuest 2015 (2) NR 447 (LC)

sections 11-12:

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)

Chapter 8, Part B (conciliation) and Part C (arbitration):

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (differences between statutory schemes for conciliation and arbitration discussed at length)

section 33:

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC)

Management Science for Health v Kandungure & Another 2013 (3) NR 632 (LC) (minimum requirements of fair disciplinary hearing set forth at para 5)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Novanam Ltd v Ringuest 2015 (2) NR 447 (LC)

Namibia Custom Smelters (Pty) Ltd v Mupetami & Another 2015 (3) NR 859 (LC) (section 33(1)(a))

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC)

Jurgens v Geixob & Others 2017 (1) NR 160 (LC) (section 33(1) requires an employer to show both a valid and fair reason for dismissal and a fair procedure in order to establish a fair dismissal; an arbitrator has unfettered discretion to make an appropriate award in the case of an unfair dismissal even if there was a fair substantive reason for a dismissal which lacked procedural fairness, and a court will interfere with the arbitrator's exercise of discretion in this regard only if no reasonable arbitrator could have come to the same conclusion)

Rossing Uranium Ltd v Goseb & Another 2019 (2) NR 464 (LC) (section 33(1)(a) encompasses two requirements – a valid reason for dismissal and a decision that dismissal is a fair outcome in the circumstances)

Maree v Amazing Kids Private School & Another 2020 (4) NR 1151 (LC) (section 33(4))

Letshego Bank of Namibia (Pty) Ltd v Bahm 2022 (1) NR 120 (LC) (dishonesty is a serious offence which can in certain cases justify dismissal; trust is a key factor in employment by banking institution)

Council of the City of Windhoek v Brandt 2023 (4) NR 1070 (SC) (application of section 33 to a case of constructive dismissal)

section 34:

Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

section 35:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (amount prescribed in section 35(3) is a minimum and does not preclude court from ordering a higher amount of severance pay)

Gibeon Village Council v Labour Commissioner & Others 2021 (1) NR 94 (LC) (section 35 on severance pay applied)

section 37:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

section 49:

Kandukira v Shinguadja & Another 2013 (4) NR 903 (LC) (section 41(1)(d), read with sections 51(1) and 121(1)(a), includes an unfair labour practice between a trade union and its members, which can be referred to a Labour Commissioner as a dispute)

section 45:

Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC)

section 50:

Namibia National Teacher's Union v Government of the Republic of Namibia & Others NO 2018 (2) NR 403 (LC) (collective agreements interpreted against backdrop of section 9

in successful appeal against arbitrator's award)

section 51:

Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC) section 65:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (application of section discussed in light of Constitutional right of assembly and its limitations)

section 74:

Namibia National Teachers Union & Others v Kayec Trust & Others 2018 (1) NR 21 (HC) (longer time period for notice of strike in collective agreement that binds parties under section 70(1) constitutes compelling reason for departing from 48-hour rule in section 74(1)(d))

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 74 applied)

section 76:

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 76(3)(a)-(b) applied); overruled on appeal in Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Another 2022 (2) NR 325 (SC)

section 79:

Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC) Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC)

section 82:

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (section 82(9)(c); no constitutional bar to service of notice of conciliation or arbitration by a Labour Commissioner or an official who conducts conciliation or arbitration proceedings)

section 85:

Roads Contractor Company v Nambahu & Others 2011 (2) NR 707 (LC) (section 85(6): includes guidelines for arbitration to satisfy constitutional right to fair hearing)

Note that the case erroneously refers to the statute as the "Labour Court Act".

section 86:

Nedbank Ltd v Louw 2011 (1) NR 217 (LC) (section 86(2))

Paulo v Shoprite Namibia (Pty) Ltd & Others 2013 (1) NR 78 (LC) (section 86(15): interpretation of term "re-instatement")

National Housing Enterprise v Hinda-Mbazira & Others 2013 (1) NR 19 (LC) ((section 86(2); six-month time period for referral of a dispute involving a dismissal in section 86(2)(a) begins to run when the dispute has crystallised, after exhaustion of internal remedies, and not from the date of the dismissal, finding that this section must be read intertextually with sections 82(7), (8) and (9)); interpretation confirmed on appeal in National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC)

Classic Engines CC v Nghikofa 2013 (3) 659 (HC) (not applicable to an action for damages for breach of an employment contract, since conciliator and arbitrator have no power to award damages); see also Nghikofa v Classic Engines CC 2014 (2) NR 314 (SC) (section 86(2) of Act does not require that breach of contract claim be referred to Labour Commissioner, discussed in course of considering prospects of success on merits in condonation application)

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (section 86(2)(c) is peremptory and allows for no power of amelioration)

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (section 86(7))

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 86(16)(a))

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (section 86(18): consequence of non-compliance when arbitration award delivered after 30-day time limit); see also Torbitt & Others v International University of Management 2017 (2) NR 323 (SC) (discussed below)

Shaama v Roux 2015 (1) NR 24 (LC) (application of section 86(2))

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (various provisions of section 86 considered, including section 86(7))

Novanam Ltd v Ringuest 2015 (2) NR 447 (LC) (section 86(15))

Torbitt & Others v International University of Management 2017 (2) NR 323 (SC), overturning International University of Management v Torbitt & Others 2015 (3) NR 698 (LC) (Supreme Court: interpretation of "must" in section 86(18) requires substantial rather than rigid compliance with the stated time period for issue of arbitration awards; it would be unjust in the circumstances of the case at hand to treat an award issued 21 days late as a nullity, but the 30-day time limit "must still be regarded as the guiding objective when awards are to be issued by arbitrators")

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (section 86(18)) Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC)

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC) (section 86(16))

Rossing Uranium Ltd v Goseb & Another 2019 (2) NR 464 (LC) (section 86(2)(a) (meaning of "six calendar months") and 86(15))

Employees of Swakopmund Uranium v Swakop Uranium 2020 (2) NR 503 (HC) (time-bars in section 86 not applicable to civil suit in High Court as the time-bars apply only to the availability of certain remedies under the Labour Act and do not extinguish underlying common-law action; the applicable time limits for the High Court action are found in the Prescription Act 68 of 1969); overturned in part by Swakop Uranium v Employees of Swakopmund Uranium 2022 (4) NR 1195 (SC) (High Court has jurisdiction to hear a claim arising from a contract of employment, to which the time limits in section 86 do not apply, but in this case the claim arose from the right to overtime in section 17 of the Act read with section 8 and not from the employment contract; the High Court thus lacked jurisdiction to hear the matter and the time limits in section 86(2)(b) were applicable)

Gibeon Village Council v Labour Commissioner & Others 2021 (1) NR 94 (LC) (section 86(2)(b) of the Labour Act applies to the determination of prescription for an appeal against an arbitration award, and not the Prescription Act 68 of 1969 or the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970; the test is when each "dispute" arose, and not the "cause of action")

section 87:

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 87(1)(b): Labour Court not required to make an arbitration award an order of court)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (section 87(1)(b): once registered under this section, an arbitration award becomes a fully-fledged order of the Labour Court)

section 82:

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 82(17))

section 86:

Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (section 86(16) applied)
Shikemeni & Another v Transnamib Holdings & Another 2023 (3) NR 861 (HC) (section 86(2)(b) applied)

section 88:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (section 88(a)) section 89:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section 89(18))

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (LC) (appeal against arbitration award); Paulo v Shoprite Namibia (Pty) Ltd & Others 2013 (1) NR 78 (LC) (where arbitrator's award adverse to employer is suspended pending appeal under section 89(6)-(8), employer has no obligation to remunerate employee unless employee has invoked section 89(9)(b)(ii)).

Nedbank Ltd v Louw 2011 (1) NR 217 (LC)

- Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (section 89(2); confirmed on appeal in Telecom Namibia Ltd v Nangolo & Others 2015 (2) NR 510 (SC))
- House and Home (a trading division of Shoprite (Pty) Ltd v Majiedt & Others 2013 (2) NR 333 (LC) (section 89(1)(a): question of law v question of fact)
- Purity Manganese (Pty) Ltd v Shikongo NO & Others 2013 (2) NR 473 (LC) (section must be read in conjunction with Arts 12 and 18 of Constitution)
- Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)
- Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC))
- Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)
- Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)
- Atlantic Chicken Co (Pty) Ltd v Mwandingi & Another 2014 (4) NR 915 (SC) (gross irregularities by arbitrator)
- Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (gross irregularity by arbitrator)
- Walvis Bay Municipal Council v Kangumu 2014 (4) NR 978 (LC) (appeal against award of arbitrator can be made on any question of law, and is not limited to questions of law raised by party in conciliation and subsequent arbitration)
- National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (determination of dispute in terms of section 89(10)(a), overturning referral of dispute back to arbitrator in National Housing Enterprise v Hinda-Mbazira & Others 2013 (1) NR 19 (LC))
- Shaama v Roux 2015 (1) NR 24 (LC) (appeal v review of arbitrator's decision; questions of law versus questions of fact under section 89(1) and defects in arbitration proceedings under section 89(4))
- Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal Labour Court decision required under section 18(2)(c) of High Court Act 16 of 1990 when Court refused condonation in appeal against arbitration award in terms of this section of the Labour Act)
- Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (section 89(1)(a): question of law v question of fact)
- Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC) (section 89(1)(a): question of law)
- Swartbooi & Another v Mbengela NO & Others 2016 (1) NR 158 (SC) (review of arbitration proceedings confined to defects set forth in section 89(5); Art 18 of the Namibian Constitution does not apply to arbitration tribunals)
- Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (ambit of question of law in section 89(1)(a); overrules Paulo v Shoprite Namibia (Pty) Ltd & Others 2013 (1) NR 78 (LC) on interpretation of "question of law alone" in section 89(1)(a))
- Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (section 89(1)(a); application of test from Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC))
- Cape Orchard Company Namibia (Pty) Ltd v Yikoghahoha & Others 2021 (1) NR 257 (LC) (section 89(1)(a) applied)
- First National Bank of Namibia Ltd v Nghishidivali & Another 2021 (4) NR 1125 (SC) (appealability of condonation under section 89(3) for failure to comply with section 89(2))
- Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (section 89(4)-(5) applied; no defect present where arbitrator simply sought to identify all persons present to enter this on the record)
- Desert Fruit (Pty) Ltd v Smith & Others 2023 (3) NR 674 (SC) (section 89(1), (4)-(5): Labour Court is acting as a court of first instance in respect of appeal from or review of arbitration under section 89, meaning that no leave is required to appeal Labour Court decision to Supreme Court noting at para 44 that "this court had previously accepted the position [on appeals under section 89] to be to the contrary but without the point

ever being argued and determined"; section 89(9)-(10); powers of Labour Court on review)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (section 89(2) read with rule 23(2) of the Conciliation and Arbitration Rules)

section 91:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (parties may agree to private arbitration only after a dispute has arisen if this is not covered in a collective agreement)

section 117:

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC) (section 117(1); jurisdiction to intervene in disciplinary proceedings should miscarriage of justice otherwise occur)

Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC) (interpretation of section 117(1)(e))

Kamati v Namibia Rights and Responsibilities Inc 2013 (2) NR 452 (LC) (Labour Court jurisdiction under section 117(1))

Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC) (anomaly of section 117(1)(d) discussed; section 117(1)(e) interpreted)

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC)

Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another 2015 (4) NR 1161 (SC) (urgent relief under section 117(1)(e) is temporary in nature and not a final order)

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (High Court sitting as such does not have jurisdiction under section 117(1)(i) which confers exclusive jurisdiction on the Labour Court; enforcement of arbitration award encompassed within reference to "any labour matter")

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 117(1)(e)); this point was confirmed on appeal in Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Another 2022 (2) NR 325 (SC) Smith v Desert Fruit Namibia (Pty) Ltd & Others 2021 (2) NR 393 (LC)

Makili & Others v Council of the Municipality of Gobabis & Others 2021 (4) NR 1074 (HC) (section 117 of Act does not exclude jurisdiction of the High Court: "this court has a discretion to decline to exercise its inherent discretion in labour disputes where appropriate remedies exist in the Labour Court" and "will exercise its jurisdiction where just cause is shown in a particular case" (para 34))

Masule v Prime Minister of the Republic of Namibia & Others 2022 (1) NR 10 (SC) (Labour Court is a division of the High Court and not a lower or separate court (para 47); it is a misdirection for a High Court judge to decline to hear a matter on the basis that it falls within the "exclusive jurisdiction" of the Labour Court; if a matter is brought before a High Court judge instead of in the Labour Court, that judge should hear the matter, consider whether it is the kind of dispute covered by the Labour Act, whether it was brought in terms of the rules of court governing labour disputes and whether the remedies sought are competent under the Labour Act (para 53))

section 118:

Namibia Seaman and Allied Workers Union v Tunacor Group Ltd 2012 (1) NR 126 (LC)

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC)

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC); TM-S v Namibia Estate Agents Board & Another 2016 (4) NR 1030 (SC)

Onesmus v Namibia Farm Workers' Union 2018 (4) NR 922 (LC) ("frivolous or vexatious")

Namibia Tourism Board v Kankondi & Another NO 2018 (4) NR 931 (LC)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (costs awarded due to deplorable conduct of applicant TransNamib)

Smith v Desert Fruit Namibia (Pty) Ltd & Others 2021 (2) NR 393 (LC)

Desert Fruit (Pty) Ltd v Smith & Others 2023 (3) NR 674 (SC) (section 118: finding of Labour Court that party's untenable stance met threshold of vexatiousness cannot be faulted)

section 119:

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC) (section 119(3)) section 128:

Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia & Others 2009 (2) NR 596 (SC) (section 128 prohibiting labour hire struck down as unconstitutional); see also Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (interlocutory order staying implementation of section 128 pending appeal) (court's approach discussed in Felicity !Owoses-/Goagoses, "Reading down words in a statute, the courts' role, and the place of Parliament: The approach of the Namibian courts", Namibia Law Journal, Volume 4, Issue 1, 2012, available here)

Africa Labour Services (Pty) Ltd v The Minister of Labour and Social Welfare & Another 2013 (4) NR 1175 (HC) (upholding constitutionality of section 128 as substituted by Act 2 of 2012)

section 128A:

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC)

Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC)

Tobiko v University of Namibia 2023 (2) NR 528 (NLD)

section 129:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section 89(18))

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (section 129(2)(d) read with rule 23(2) of the Conciliation and Arbitration Rules)

section 134:

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC); TM-S v Namibia Estate Agents Board & Another 2016 (4) NR 1030 (SC).

section 137:

Namibia National Teachers Union & Others v Kayec Trust & Others 2018 (1) NR 21 (HC) (Code of Good Practice on Industrial Action (Strikes and Lock-outs) issued pursuant to this section)

The following cases concern the Labour Court Rules 2008 in GN 279/2008 –

Rule 6(24):

Dr Matti Kimberg Practice v Mwafufya-Shikongo NO & Others 2014 (3) NR 799 (LC)

Rule 6(26):

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC)

Rule 10:

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (discussed obiter as being possibly ultra vires)

Rule 14:

Shaama v Roux 2015 (1) NR 24 (LC)

Rule 15:

First National Bank Namibia Ltd v Van der Westhuizen & Another 2012 (1) NR 195 (LC)

Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)

Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC))

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC)

Rule 16:

Onesmus v Namibia Farm Workers' Union 2018 (4) NR 922 (LC) (rule 16(5); order is obtained in error for purposes of this rule if it contradicts a provision of the Act)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (application for rescission under rule 16(1) and (5) applies to arbitration award registered under section 87(1)(b) of Act)

Rule 17:

Municipal Council of Windhoek v Esau 2010 (2) NR 414 (LC)

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (rule 17(23) takes precedence over Practice Directives, which apply only where there is no specific rule covering the matter which is at variance with the Practice Directives; rule 17(25) requires application for condonation even if parties have agreed to extension of time, but should be re-examined in light of fact that duty to provide record lies with adjudicator (Office of the Labour Commissioner) and not with appellant)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)

Gibeon Village Council v Labour Commissioner & Others 2021 (1) NR 94 (LC) (application of rule 17(25))

Nakambonde v Transnamib Holdings Ltd 2021 (4) NR 1089 (SC) (non-compliance with rule 17(16)(a)-(b) not excused by attorney's incompetence)

B2Gold Namibia (Pty) Ltd v Shitula & Another 2022 (1) NR 91 (LC) (rule 17(25); court proposes steps to improve problematic situation involving records of arbitration proceedings, to be brought to attention of all arbitrators; rule 17(25) should also be reconsidered to mitigate harm to appellants when record is delayed)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (intention of rules 17(1)-(3); application of rules 17(12)-(16))

Rule 18:

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (rule 18(1))

Form 11:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (in an appeal against an arbitration award, it is a peremptory requirement to set out the grounds of appeal in Form LC 41, under the Conciliation and Arbitration Rules, but not to do so in Form 11).

The following cases concern the **Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner** ("Con-Arb Rules") in GN 262/2008 –

Rule 5:

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (meaning of term "must")

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC) Simana v Agribank of Namibia 2016 (4) NR 913 (SC)

Rule 6:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (substantial compliance with rule 6(3)(a))

Rule 13:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

Rule 14(2):

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC)

Rule 18:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 20:

Rossing Uranium Ltd v Goseb & Another 2019 (2) NR 464 (LC)

Rule 21:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (rule 21(1) read with section 86(18) of Act)

Rule 22:

Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC) (Labour Court Rules' omission to provide a procedure for appeals in terms of section 45 of Act is dealt with by applying rule 119 of the Rules of the High Court)

Rule 23:

Standard Bank Namibia v Grace 2011 (1) NR 321 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)

Germanus v Dundee Precious Metals Tsumeb & Others 2019 (2) NR 453 (LC)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (rule 23(2) read with section 89(2) and 129(2)(d) of Act)

Rule 27:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 28:

Cape Orchard Company Namibia (Pty) Ltd v Yikoghahoha & Others 2021 (1) NR 257 (LC) (arbitrator has no authority to set aside a notice of withdrawal which forms part of settlement agreement under this rule)

Rule 29:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 34:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Form LC 41:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (in an appeal against an arbitration award, it is a peremptory requirement to set out the grounds of appeal in Form LC 41, but not to do so in Form 11 under the Labour Court Rules).

The following cases were decided when the Labour Act 6 of 1992 was the operative law –

General

arbitration proceedings:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 1993 NR 270 (LC)

change in conditions of employment:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

constructive dismissal:

Transnamib Limited v Swartz NLLP 2002 (2) 60 NLC

Cymot (Pty) Ltd v McLoud 2002 NR 391 (LC)

costs of appeal:

Ikuambi v Tax Free Warehouse NLLP 2002 (2) 273 NLC

delay in challenging lawfulness of dismissal:

Kröger v Transnamib Limited (Air Namibia) & Others 1995 NR 84 (HC); Krüger v Transnamib Limited (Air Namibia) & Others 1996 NR 168 (SC) (Note: The spellings of Kröger/Krüger are inconsistent between the High Court case and the Supreme Court case in the hard copy of the Namibian Law Reports.)

disciplinary code:

City Council of Windhoek v Pieterse 2000 NR 196 (LC) (effect of Industrial Relations Code as an internal disciplinary code, considered in the context of an application for rescission of a default judgement, on the issue of whether appellant showed a *bona fide* defence with some *prima facie* prospect of success)

disciplinary hearing:

Namibia Tourism Board v Kauapirura-Angula 2009 (1) NR 185 (LC)

"duress":

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC) employment contracts:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (interpretation of Conciliation Board Agreement governing terms and conditions of employment with respect to retirement age)

Bucher v Kalahari Express Airlines NLLP 2002 (2) 104 NLC (letter of appointment)

Ocean Diamond Mining SA v Louw NLLP 2002 (2) 276 RSA HC (C) (ruling by High Court of South Africa on restraint of trade provision in employment contract between Namibian employee and Namibian subsidiary)

Van Rooyen v University of Namibia 2004 NR 150 (LC) (effect of mistake in respect of employment contract)

Overberg Fishing (Pty) Ltd v Docompo 2012 (1) NR 285 (LC) (termination of fixed term contract by effluxion of time)

fair trial and specificity of complaint:

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC)

failure to exhaust internal grievance procedures:

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC jurisdiction:

K Golin t/a Golin Engineering v Cloete 1995 NR 254 (LC) (jurisdiction of district labour court and Labour Court after parties have reached a settlement in respect of alleged unfair dismissal)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC) (respective jurisdiction of district labour court and Labour Court)

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); Beukes & Another v CIC Holdings Ltd 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)

Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (High Court versus district labour court as appropriate forum)

Reilly v Namibian Ports Authority 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC) (jurisdiction of district labour court, Labour Court and High Court)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (jurisdiction of Labour Court and district labour court)

"managerial prerogative":

Consolidated Diamond Mines (Pty) Ltd v Mine Workers' Union of Namibia & Others (1) 1994 NR 180 (LC)

natural justice in disciplinary proceedings:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

recognition agreements:

Consolidated Diamond Mines (Pty) Ltd v Mine Workers' Union of Namibia & Others (1) 1994 NR 180 (LC)

retirement age:

Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (determination of retirement age in view of changed pension fund agreement)

retrenchment:

Schutte & Others v Telecom Namibia Ltd (LC 2/98) (meaning of retrenchment)

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (meaning of retrenchment)

Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC); Namibian Broadcasting Corporation v Kruger & Others 2009 (1) NR 196 (SC) (voluntary retrenchment)

rule *nisi*:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (discharge of rule *nisi* when underlying purpose for it has fallen away because strike has ended)

sanctions for misconduct:

Foodcon (Pty) Ltd v Schwartz NLLP 2002 (2) 181 NLC

settlement agreements:

Mbome & Another v Foodcon Fishing Product NLLP 2002 (2) 202 NLC

sex discrimination (staff housing scheme):

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

stay of District Labour Court judgement pending appeal:

Rössing Uranium Ltd v Cloete & Another 1999 NR 98 (LC)

"transfer" versus "promotion":

Northern Fishing (Pty) v Tsuseb NLLP 2002 (2) 253 NLC

unfair labour practice:

Minister of Works Transport and Communication v Namupembe 2003 NR 90 (LC)

Labour Act 6 of 1992

section 1:

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) ("remuneration")

Smit v Standard Bank Namibia 1994 NR 366 (LC) ("dispute"; "dispute of interests"; "dispute of rights") (see Lameck Mukondomi, "Dispute of right vis-á-vis dispute of interest: An analysis of Smit v Standard Bank of Namibia", UNAM Law Review, Volume 2, Issue 1, 2014)

Paxton v Namib Rand Desert Trails (Pty) Ltd 1996 NR 109 (LC) ("employee" and "employer")

Kruger v Office of the Prime Minister & Another 1996 NR 321 (LC) ("remuneration")

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) ("overtime")

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC) (judge does not fall within definition of "employee")

Ameib Ranch Guest Farm v Matrefu & Others 2002 NR 311 (LC) ("strike")

De Wee v Ackermans (Pty) Ltd 2004 NR 30 (LC) ("casual employee")

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) ("employee" versus agent)

Van Wyk & Another v Rumingo & Others NLLP 2004 (4) 1 NLC; 1997 NR 102 (HC) ("employee" v independent contractor)

Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC) ("remuneration")

Hugo v Council of Municipality of Grootfontein 2015 (1) NR 73 (SC) ("dispute of interests" versus "dispute of rights")

section 2:

Bourgwells Ltd v Shepalov & Others 1999 NR 410 (HC) (section 2(1))

section 4:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

section 15(1):

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (status of Labour Court as lower court)

section 18:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (jurisdiction)

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia 1994 NR 360 (LC) (declaratory orders)

Nyambe v City Savings 1996 NR 31 (LC) (jurisdiction in terms of section 18(1))

Hailemo v Security Force Services 1996 NR 99 (LC) (representation of parties in Labour Court) Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC) (jurisdiction to make declaratory orders)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC) (Labour Court's lack of jurisdiction to hear a case of first instance concerning constructive dismissal)

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC) (meaning of "employment" in section 18(1)(e))

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); Beukes & Another v CIC Holdings Ltd 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC (jurisdiction of Labour Court and district labour court)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (section 18(1)(c))

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (jurisdiction of Labour Court)

Reilly v Namibian Ports Authority 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (review of decision of Permanent Secretary)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC) (section 18(1)(e); right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (possibility of proceeding under section 18(1) does not oust jurisdiction of High Court under Art 18 of Constitution)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC) (costs orders)

See also cases generally discussing jurisdiction in labour matters, listed above.

section 19:

Hailemo v Security Force Services 1996 NR 99 (LC) (section 19(3); representation of parties in Labour Court)

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (section 19(1)(a); not discussed in appeal case Visagie v Namibia Development Corporation 1999 NR 219 (HC))

section 20:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

President of the Republic of Namibia & Others v Vlasiu 1996 NR 36 (LC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC)

Drysdale v Namibia Breweries Ltd & Namibia Resorts International 1996 NR 301 (LC)

Louw v The Chairperson of the District Labour Court & Another (Case 1) NLLP 2002 (2) 147 NLC (appeal versus review of costs order under this section)

Beukes v Peace Trust NLLP 2004 (4) 102 NLC

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC)

Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC), Namibian Broadcasting Corporation v Kruger & Others 2009 (1) NR 196 (SC)

Commercial Investment Corporation (Pty) Ltd v Namibian Food and Allied Workers Union & Others 2007 (2) NR 467 (LC)

National Housing Enterprise v Beukes & Others 2009 (1) NR 82 (LC)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC)

section 21:

President of the Republic of Namibia & Others v Vlasiu 1996 NR 36 (LC) (application for leave to appeal; meaning of "questions of law")

The Council of the Municipality of Windhoek & Another v Kruger NLLP 1998 (1) 161 NLC (points in limine challenging authority of municipality to apply for leave to appeal)

Rumingo & Others v Van Wyk 1997 NR 102 (HC) (interpretation of "question of law")

Visagie v Namibia Development Corporation 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 182 NLC (application for leave to appeal; meaning of "questions of law"); Visagie v Namibia Development Corporation 1999 NR 219 (HC) (questions of law versus findings of fact)

Beukes v Peace Trust 2004 (4) NLLP 102 (NLC)

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC

Namibian Broadcasting Corporation v Mubita NLLP 2004 (4) 114 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

S v Koch 2006 (2) NR 513 (SC) (section discussed in dicta at 526)

Cymot (Pty) Ltd v Cloete & Another 2007 (1) NR 320 (LC)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (amendment of section 21(1) by Act 10/2001 does not affect status of Labour Court as lower court)

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

section 22:

Hailemo v Security Force Services 1996 NR 99 (LC) (representation of parties in Labour Court) section 24:

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC); Transnamib Ltd v Poolman & Others 1999 NR 399 (SC)

Karuaihe-Martin v Telecom Namibia NLLP 2002 (2) 267 NLC

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

Jansen van Vuuren v Namibia Water Corporation Limited 2006 (2) NR 607 (LC)

section 25:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC)

section 28 (shift work):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute shift work for the purposes of this section)

Erongo Mining and Exploration Company Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC) (effect when read together with section 25)

section 32 (overtime):

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC) (calculation of "day")

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (parties can enter into an agreement about what constitutes "work" for purposes of overtime payment; non-active standby duty of firemen does not constitute "work" for the purposes of this section)

section 33 (Sundays and public holidays):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute "work" for the purposes of this section)

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC) (meaning of "remuneration" in section 33(3)(a))

section 34 (night work):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute work performed at night for the purposes of this section) section 37(b):

Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC) section 39:

Erundu Stevedoring (Pty) Ltd v Namibia Seaman & Allied Workers Union NLLP 2004 (4) 187 NLC (meaning of "on full remuneration"; leave to appeal to Supreme Court granted)

Municipal Council, City of Windhoek v Swarts 2006 (1) NR 341 (LC)

section 45:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (unfair dismissal)

Navachab Gold Mine v Izaaks 1996 NR 79 (LC) (section 45(1): unfair dismissal; fair and valid reason for dismissal)

Hailemo v Security Force Services 1996 NR 99 (LC) (unfair dismissal)

Kamanya & Others v Kuiseb Fish Products Ltd 1996 NR 123 (LC) (effect of failure to employ fair procedure where there is a fair reason for dismissal)

Society for the Prevention of Cruelty to Animals v Terblanche 1996 NR 398 (HC) (unfair dismissal; procedure)

M Pupkewitz & Sons v Kankara 1997 NR 70 (LC) (unfair dismissal; substantive fairness)

Rossam v Kraatz Welding Engineering Ltd 1998 NR 90 (LC) (unfair dismissal; procedural fairness)

Goagoseb v Arechenab Fishing and Development Co NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (unfair dismissal)

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC (reinstatement of some but not others following an illegal strike action constitutes *prima facie* case of unfair labour practice)

- Swakopmund Hotel & Entertainment Centre v Kariab NLLP 1998 (1) 213 NLC (unfair dismissal; substantive fairness)
- Cross Country Carriers v Farmer NLLP 1998 (1) 226 NLC; NLLP 2002 (2) 34 NLC (employee's failure to tender services does not constitute a "dismissal")
- Njathi v Permanent Secretary, Ministry of Home Affairs 1998 NR 167 (LC) (dismissal by operation of section 24(5) of Public Service Act is for fair and valid reason and in accordance with fair procedure)
- Oa-Eib v Swakopmund Hotel & Entertainment Centre 1999 NR 137 (LC) (unfair dismissal; procedural and substantive fairness)
- Hartlief Continental Meat Products (Pty) Ltd v Mutota & Others NLLP 2002 (2) 45 NLC (unfair dismissal; procedural and substantive fairness)
- Links v Cross Country Carriers NLLP 2002 (2) 291 NLC (effect of failure to employ fair procedure where there is a fair reason for dismissal)
- Namibia Dairies (Pty) Ltd v Nafau & Others NLLP 2002 (2) 314 NLC (unfair dismissal)
- Mazian v Transnamib Transport (Pty) Ltd NLLP 2002 (2) 352 NLC (unfair dismissal; interpretation of section 45(1) and procedural unfairness)
- Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC) (fair procedure; right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

sections 45-46:

- Du Toit v The Office of the Prime Minister 1996 NR 52 (LC) (holding: sections 45 and 46 (unfair dismissal) do not apply to termination of employment by notice in terms of a contract or a collective agreement in terms of section 47 if sections 47, 49, 51 and 52 read with sections 69-72 are complied with; dicta: sections 45 and 46 on unfair dismissal do not apply to fixed term contracts which expire by the effluxion of time, with the possible exception of cases where there is an "expectation of tenure")
- PEP Stores Namibia (Pty) Ltd v Iyambo & Others 2001 NR 211 (LC) (principle of collective guilt not a fair basis for dismissal)
- Hailulu v Council of the Municipality of Windhoek 2002 NR 305 (LC) (unfair dismissal)
- Model Pick 'n Pay Family Supermarket v Mwaala 2003 NR 175 (LC) (dismissal for theft/dishonesty; when courts will interfere with decision of employer to impose sanction of dismissal)
- Shiimi v Windhoek Schlachterei (Pty) Ltd NLLP 2002 (2) 224 NLC (appropriate award to employee in respect of unfair dismissal)
- PEP Stores (Namibia) (Pty) Ltd. v Iyambo & Others NLLP 2002 (2) 336 NLC

Swartbooi v Heunis NLLP 2002 (2) 367 NLC

- Namibia Beverages v Hoaës NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)
- Meintjies v Joe Gross t/a Joe's Beerhouse 2003 NR 221 (HC); confirmed in Joe Gross t/a Joe's Beerhouse v Meintjies 2005 NR 413 (SC) (sections 45 and 46 on unfair dismissal apply to contracts terminated in accordance with sections 47-53)
- Kausiona v Namibian Institute of Mining & Technology (NIMT) NLLP 2004 (4) 43 NLC
- De Wee v Ackermans (Pty) Ltd 2004 NR 30 (LC) (unfair dismissal of an employee in a situation with a lower degree of permanency but which does not meet the statutory definition of "casual employee")
- Metropolitan Namibia Ltd v Haimbili NLLP 2004 (4) 110 NLC (dismissal upheld in case involving employee dishonesty)
- Van den Heever v Imcor Zinc (Pty) Ltd NLLP 2004 (4) 257 NLC (procedural and substantive fairness of dismissal)
- *Kahoro & Another v Namibia Breweries Limited* 2008 (1) NR 382 (SC) (in the absence of a fair procedure, the employer bears the onus of proving that there was nevertheless a fair and valid reason for a dismissal)
- LL Diamonds (Pty) Ltd v Thobias 2009 (1) NR 346 (LC) (dismissal of employee on probation requires proper enquiry into employee's work performance)
- Peace Trust v Beukes 2010 (1) NR 134 (HC) (both procedural requirements and existence of valid and fair reasons for dismissal considered)

Rosh Pinah Zinc Corporation v Muronga 2013 (2) NR 595 (LC) (applied to dismissal on grounds of incapacity; acceptable for employer to offer to accommodate employee in new position at lower remuneration as alternative)

section 46:

- Navachab Gold Mine v Izaaks 1996 NR 79 (LC) (section 46(1)-remedies)
- Hailemo v Security Force Services 1996 NR 99 (LC) (section 46(3)-standard of proof of fair dismissal by employer is balance of probabilities; section 46(4); considerations relevant to determining fairness)
- Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC)
- Society for the Prevention of Cruelty to Animals v Terblanche 1996 NR 398 (HC) (section 46(1)-remedies)
- M Pupkewitz & Sons v Kankara 1997 NR 70 (LC) (section 46(1)(a)(iii)-remedies; section 46(4)(b)-nature of order in respect of unfair dismissal)
- Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (section 46(3)-employer's duty to lead evidence first in accordance with burden of proof as stated in this section; not discussed in appellate case Visagie v Namibia Development Corporation 1999 NR 219 (HC))
- Swakopmund Hotel & Entertainment Centre v Kariab NLLP 1998 (1) 213 NLC (section 46(3)-employer's burden of proving fair dismissal not discharged)
- Rossam v Kraatz Welding Engineering Ltd 1998 NR 90 (LC) (section 46(4); appropriate relief for unfair dismissal)
- Engelbrecht v Transnamib Holdings Ltd 2003 NR 40 (LC); Transnamib Holdings Ltd v Engelbrecht 2005 NR 372 (SC) (meaning of the term "reinstatement" in section 46(1)(a)(i))
- Commercial Bank of Namibia Ltd. v Van Wyk NLLP 2004 (4) 250 NLC (grounds for dismissal upheld)
- Model Pick 'n Pay Family Supermarkets v Mukosho NLLP 2004 (4) 219 NLC (grounds for dismissal upheld)
- Josob v Namibia Breweries (Pty) Ltd 2008 (1) NR 117 (LC) (onus of proof)
- Parcel Force Namibia (Pty) Ltd v Tsaeb 2008 (1) NR 248 (LC) (unfair dismissal and appropriate remedies; order for reinstatement confirmed despite long passage of time)
- Pioneerspark Service Station v Afrikaner & Another 2008 (1) NR 353 (LC) (dismissal on ground of dishonest conduct held to be fair despite fact that employee did not benefit from the dishonesty)
- Pinks Family Outfitters (Pty) Ltd t/a Woolworths v Hendricks 2010 (2) NR 616 (LC) (application of section 46(1)(a)(iii))

section 47:

- African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (section 47(1)-notice requirements; section 47(5)-"remuneration")
- Meintjies v Joe Gross t/a Joe's Beerhouse 2003 NR 221 (HC); confirmed in Joe Gross t/a Joe's Beerhouse v Meintjies 2005 NR 413 (SC) (termination of contract by notice in terms of section 47 constitutes a dismissal as contemplated by section 45)
- Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (termination of contract with pay in lieu of notice constitutes a dismissal as contemplated by section 45 and requires a fair procedure)

section 50 (retrenchment):

- African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (requirements of notice of intention to retrench; meaning of "opportunity to negotiate")
- Goagoseb v Arechenab Fishing & Development Co NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (section 50(1)(b)-retrenchment)
- Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (employer's duties concerning intended retrenchment; interpretation of section 50(1)(b) as providing only for an opportunity to negotiate in relation to the effects of the proposed retrenchment); Visagie v Namibia Development Corporation 1999 NR 219 (HC) (discussing meaning of "intends" and "negotiate", and overturning finding of Labour Court on compliance with section 50(1)(b))

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC (dismissal following illegal strike action cannot be categorised as retrenchment)

HS Contractors v Vihanga NLLP 2002 (2) 138 NLC (compliance with section 50(1) and procedure in respect of criminal offences under section 50(2))

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (section 50(1)(b)-validity of purported retrenchment)

Namibian Broadcasting Corporation v Kruger & Others 2009 (1) NR 196 (SC)

Seebach v Tauber & Corssen Trading (Pty) Ltd & Another 2009 (1) NR 339 (LC)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC)

section 52:

Namibia Wholesale and Retail Workers Union (NWRWU) & Others v Democratic Media Holdings 1998 NR 109 (LC) (section 52(1)-deduction of employer's contribution to pension fund from severance allowance following retrenchment)

Lalandii (Pty) Ltd v Butshingi NLLP 2002 (2) 409 NLC (section has no application to person with whom there was no subsisting employment contract)

section 54:

Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP 2002 (2) 173 NLC section 58:

PEP Stores Namibia (Pty) Ltd v Iyambo & Others 2001 NR 211 (LC)

Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP 2002 (2) 173 NLC

Namibia Seaman and Allied Workers Union (NASAWU) v Lalandi Fishing (Pty) Ltd & Others 2003 NR 71 (LC)

NASAWU v Lalandi Fishing (Pty) Ltd & Others NLLP 2004 (4) 76 NLC

section 67:

Namdeb Diamond Corporation (Pty) Ltd v Mineworkers Union of Namibia NLLP 2002 (2) 188 NLC (duty to bargain and good faith negotiation)

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (in relation to jurisdiction of Labour Court)

section 74:

Jansen van Vuuren v Namibia Water Corporation Limited 2006 (2) NR 607 (LC)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)

section 79:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (section 79(2)(a)(i)(aa)-lock-outs)

section 81:

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia 1994 NR 360 (LC) (section 81(6)-duties of employees not participating in strike)

Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia & Others 1995 NR 225 (LC) (section 81(3)-right to picket)

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (section 81(1)-notice of strike action need not include exact date and time of intended strike; confirmation of Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia 1995 NR 225 (LC) on section 81(3)-interpretation of right to picket)

section 82:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (interpretation of endangerment of "life, health or safety of any person")

section 107:

Nanditume v Minister of Defence 2000 NR 103 (LC) (exclusion of applicant from the NDF solely on the basis that he was found to be HIV positive constitutes unfair discrimination in terms of section 107)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (does not cover discrimination on the grounds of nationality)

section 111:

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)(section 111(1)(c))

The following cases concern the **Labour Court Rules 1994** contained in GN 63/1994 (now repealed), and the **District Labour Court Rules** contained in GN 138/1993 (such courts no longer being in existence) –

Labour Court Rules 1994

Rule 1:

Nyambe v City Savings 1996 NR 31 (LC)

Rule 4(3):

Hailemo v Security Force Services 1996 NR 99 (LC) (rule 4(3) held to be ultra vires section 22 of the Labour Act)

Rule 6(16)-(17)

Mineworkers Union of Namibia (MUN) v CSO Valuations (Pty) Ltd 2002 (2) 208 NLC

Rule 6(23):

Namibia Food and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 113 (LC) Beukes & Others v National Housing Enterprise 2007 (1) NR 142 (LC)

Rule 6(24):

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (LC)

Rule 6(25):

Van Rooyen v University of Namibia 2004 NR 150 (LC)

Rule 6(27):

Nyambe v City Savings 1996 NR 31 (LC)

Rule 8(1):

Van Rooyen v University of Namibia 2004 NR 150 (LC)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)

Rule 9(b):

Nyambe v City Savings 1996 NR 31 (LC)

Rule 12:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

Nyambe v City Savings 1996 NR 31 (LC)

Rule 15(2):

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)

Rule 16:

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 18:

Shiimi v Windhoek Schlachterei (Pty) Ltd NLLP 2002 (2) 224 NLC

Windhoek Optics (Pty) Ltd v De Jager NLLP 2004 (4) 22 NLC

Ministry of Regional and Local Government and Housing v Muyunda 2005 NR 107 (LC)

Rule 19(1):

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 19(2):

Ministry of Basic Education, Sports & Culture v Sauer NLLP 2004 (4) 192 NLC.

District Labour Court Rules

Rule 4:

Town Debt Collecting CC & Another v Boois & Another NLLP 2002 (2) 392 NLC

Rule 6:

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Rule 7:

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC (effect of failure of respondent to oppose)

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

De Wee v Ackermans (Pty) Ltd 2004 NR 30 (LC)

Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos NLLP 2004 (4) 35 NLC Rule 10:

Transnamib Holdings Ltd v Lourens NLLP 2002 (2) 360 NLC

Transnamib Holdings Ltd v Cartstens 2003 NR 213 (LC)

Louw v The Chairperson of the District Labour Court & Another (Case 1) NLLP 2002 (2) 147 NLC (stated in *dicta* that because the spirit of rule 10 is to avoid formality, unsworn translations may be received into evidence)

Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos NLLP 2004 (4) 35 NLC

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)

Mdaka v Gendev of Namibia 2005 NR 483 (LC)

Rule 13:

Stahn t/a HS Contractors v Kapuka & Others 2000 NR 133 (LC) (joint complaint)

Woermann Brock & Co (Pty) Ltd v Shaanika & Others 2011 (1) NR 98 (LC) (procedure relating to joint complaint)

Rule 18:

Namibia Beverages v Hoaës NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)

Rule 19:

Uazeua & Others v Smith t/a Jakaranda Restaurant 2001 NR 227 (LC)

Shiimi v Windhoek Schlachterei (Pty) Ltd NLLP 2002 (2) 224 NLC

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

Tjihiua v Windhoek Municipality NLLP 2002 (2) 413 NLC

Windhoek Optics (Pty) Ltd v De Jager NLLP 2004 (4) 22 NLC

Kausiona v Namibian Institute of Mining & Technology (NIMT) NLLP 2004 (4) 43 NLC

Rule 21:

Beukes & Another v CIC Holdings Ltd 2005 NR 534 (SC)

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 22:

Transnamib Holdings Ltd v Carstens 2003 NR 213 (LC)

Town Debt Collecting CC & Another v Boois & Another NLLP 2002 (2) 392 NLC

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (obiter noting problems of construction).

The following are post-independence cases dealing with the previous Conditions of Employment Act 12 of 1986 (OG 5221) –

Namib Wood Industries (Pty) Ltd v Mutiltha & Another 1991 NR 158 (HC)

Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others 1991 NR 417 (HC)

Nangombe & Others v Ackermans Ltd 1992 NR 10 (HC)

Engels v Allied Chemical Manufacturers (Pty) Ltd 1992 NR 372 (HC).

The following case discusses *ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer*, 1982 –

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (Article 13; not discussed in appeal case Visagie v Namibia Development Corporation 1999 NR 219 (HC)).

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- Herbert Jauch and John Nakuta, *Understanding Namibia's Labour Law: A Guide to the Labour Act (No 11 of 2007)*, Windhoek: Labour Resource and Research Institute (LaRRI), 2008, available here Legal Assistance Centre, *Gender and the Labour Act 11 of 2007*, 2009, available here
- Dr JWF van Rooyen, Namibian Labour Lexicon, Volume 2 (revised edition), The Labour Act, 2007 A to Z: A Guide to the Understanding and Application of the Labour Act, 2007 (Act No. 11 of 2007), 2011, available here
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- Herbert Jauch & Ntwala Mwilima, *Labour Hire in Namibia: Current Practices and Effects*, Labour Resource and Research Institute (LaRRI) for the Ministry of Labour and Social Welfare, 2006, available here
- Nico Horn & Kaijata Kangueehi, "African Personnel Services v Government of Namibia & Others, decided on 1 December 2008. Case No. A4/2008", Namibia Law Journal, Volume 1, Issue 1, 2009, available here
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- Dr Elizabeth M Terry, Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps, Ministry of Labour and Social Welfare, 2007
- Dr Elizabeth M Terry, Child trafficking linked to child labour and commercial sexual exploitation of children in Namibia: A child labour-related rapid assessment study, Windhoek: Ministry of Labour/ILO, 2007
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- FX Bangamwabo, "Towards the elimination of the worst forms of child labour in Namibia: The implementation and internalisation of international law relating to the worst forms of child labour", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here
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Hilma Shindondola-Mote, *Uranium mining in Namibia: The mystery behind 'low level radiation'*, Labour Resource and Research Institute, 2009, available here

Ute Dieckmann & Theodor Muduva, *Namibia's Black Gold?: Charcoal Production, Practices and Implications*, Legal Assistance Centre, 2010, available here.

Employment Services Act 8 of 2011 🕎 😓

Summary: This Act (originally published in <u>GG 4764</u>) establishes a National Employment Service aimed at achieving full employment in Namibia. The Service consists of an Employment Services Board which plays an advisory role, and an Employment Services Bureau which registers job vacancies and job-seekers, amongst other functions. The Act also requires designated employers to report vacancies and new positions and to provide information about the composition and training of their workforces. It also provides for the licencing of private employment agencies and for the appointment of employment officers to enforce the Act. Portions of the Act were brought into force on 1 September 2012 by GN 194/2012 (<u>GG 5005</u>): Part 1, Part 4 (except section 26(2)) and Part 5. Part 3 of the Act was brought into force on 15 September 2015 by GN 201/2015 (<u>GG 5829</u>)

Note that the short title in section 35(1) of the Act (as promulgated in *Government Gazette*) is the "Employment Services Act". However, the headings and contents section in the *Gazette* refer to it as the "Employment Service Act" (with "Service" being singular instead of plural).

Amendments: Act 2/2012 (<u>GG 4925</u>) amends sections 1, 24 and 26, in relation to "labour hire". This amending Act was brought into force as of 1 August 2012 by GN 136/2012 (<u>GG 4958</u>) – but GN 136/2012 (<u>GG 4958</u>) was withdrawn by GN 192/2012 (<u>GG 5005</u>) on 1 August 2012, while GN 193/2012 (<u>GG 5005</u>) provides that amending Act 2/2012 will come into force on 1 August 2012, *except for* the provisions in section 10 insofar as they relate to section 26(2)(a)(ii)-(iii) of the Employment Service Act.

Regulations: Employment Service Regulations are contained in GN 62/2013 (GG 5147).

A separate set of regulations regarding employment services is published in GN 42/2015 (GG 5702).

Notices: Designations of employers and institutions under section 15(2) of the Act are contained in GN 202/2015 (GG 5829), which provides that each employer employing 25 or more employees is a designated employer for purposes of compliance with Part 3 of the Act, and designates training institutions and educational institutions for the purposes of section 18(1) of the Act.

Note that GN 202/2015 fails to indicate the date from which the designated employers are required to comply with the provisions of Part 3, as required by section 15(3) of the Act – unless the date of publication of the notice is understood as being that date.

GN 311/2022 (GG 7917) designates each employer employing 10 or more employees as a designated employer for purposes of compliance with Part 3 of the Act, not later than 12 months from the date of publication of the notice (30 September 2022).

COMMISSIONS

Commission of Inquiry into Labour Matters in South West Africa (AG 32/1987)

Commission of Inquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees (Proc. 1/1995, <u>GG 1020</u>).

See also GN 14/1995 (GG 1020), as amended by GN 55/1995 (GG 1044).

INTERNATIONAL LAW

Charter of Fundamental Social Rights in SADC, 2003

†Constitution of the International Labour Organization (ILO), 1919

*Instrument of Amendment of the ILO Constitution, 1986 Instrument of Amendment of the ILO Constitution, 1997

ILO Convention 29 concerning Forced or Compulsory Labour, 1930

Protocol of 2014 to the Forced Labour Convention, 1930

- ILO Convention 81 concerning Labour Inspection in Industry and Commerce, 1947
- ILO Convention 87 concerning the Freedom of Association and Protection of the Right to Organise, 1948
- ILO Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949
- ILO Convention 100 concerning Equal Remuneration, 1951
- ILO Convention 105 concerning the Abolition of Forced Labour, 1957
- ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, 1958
- ILO Convention 122 concerning Employment Policy, 1964
- ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973
- ILO Convention 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976
- ILO Convention 150 concerning Labour Administration: Role, Functions and Organisation, 1978
- ILO Convention 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978
- ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
- ILO Convention 188 concerning Work in the Fishing Sector, 2007
- ILO Convention 189 concerning Domestic Workers, 2011
- ILO Convention 190 concerning Violence and Harassment, 2019

Note: In this list, the numbers of the respective ILO Conventions have been placed at the front of their respective names to make searches for each of these conventions easier. Technically, the numbers appear at the end. For example, what is listed here as "ILO Convention 29 concerning Forced or Compulsory Labour, 1930" is in fact "ILO Convention concerning Forced or Compulsory Labour (No. 29), 1930".

**SADC Protocol on Employment and Labour, 2014

**SADC Protocol on the Facilitation of Movement of Persons, 2005

See also Whistleblower Protection Act 10 of 2017 (CRIMINAL LAW AND PROCEDURE).

See also Vocational Education and Training Act 1 of 2008 (EDUCATION).

See also Atomic Energy and Radiation Protection Act 5 of 2005 (ENVIRONMENT).

See also Petroleum (Exploration and Production) Act 2 of 1991 (regulations on health, safety and welfare of employees) (MINING AND MINERALS).

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 (conditions of service of employees of the posts and telecommunications companies (**MEDIA AND COMMUNICATION**).

See also PUBLIC SERVICE.

See also Social Security Act 34 of 1994 (SOCIAL SECURITY).

See also Export Processing Zones Act 9 of 1995 (TRADE AND INDUSTRY).

LAND AND HOUSING

Crown Land Disposal Ordinance 57 of 1903 (Transvaal) 🕡 🙀

Summary: This Ordinance (available here)²⁶⁰ as corrected by the Correction of Errors Ordinance 4 of 1904 (Transvaal) (available here) and as amended by the Crown Land Disposal Amendment Ordinance 13 of 1906 (Transvaal) (available here)²⁶¹ was applied to SWA by the Crown Land Disposal Proclamation 13 of 1920 (OG 29).

The Crown Land Disposal Proclamation 13 of 1920 (OG 29) – as amended by the *Crown Land Disposal Amendment Proclamation 200 of 1950* (SA GG 4435) and amended retroactively by the Crown Land Disposal Amendment Ordinance 7 of 1951 (OG 1601) – amended the Ordinance as it applied to SWA as well as providing definitions for terms in the Ordinance as it applied to SWA.

The Crown Land Disposal Proclamation 13 of 1920 was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021, ²⁶² but it was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Amendments: As noted above, the Ordinance was applied to SWA as corrected by the Correction of Errors Ordinance 4 of 1904 (Transvaal) (available here) and as amended by the Crown Land Disposal Amendment Ordinance 13 of 1906 (Transvaal) (available here).

It was further amended by the Crown Land Disposal Proclamation 13 of 1920 (OG 29), and applied in light of definitions contained in that Proclamation as amended by the *Crown Land Disposal Amendment Proclamation 200 of 1950* (SA GG 4435) and amended retroactively by the Crown Land Disposal Amendment Ordinance 7 of 1951 (OG 1601).

The Ordinance was also amended after it became applicable to SWA by Proc. 54/1920 (<u>OG 41</u>), Ord. 7/1951 (<u>OG 1601</u>), Ord. 36/1958 (<u>OG 2153</u>) and Ord. 17/1965 (<u>OG 2634</u>).

The Crown Land Disposal Proclamation 13 of 1920, along with Ord. 7/1951, was repealed in respect of Walvis Bay by RSA Proclamation 149 of 1982 (<u>RSA GG 8344</u>). However, see section 2 of the Walvis Bay and Off-Shore Islands Act 1 of 1994:

Laws to be applied in Walvis Bay

2. (1) As from the effective date -

- (a) the laws applied in Walvis Bay immediately prior to that date shall cease to be so applied, unless, and to such extent as, the application of any such law is continued by virtue of any provision of this Act;
- (b) no laws other than -
 - (i) the law of Namibia; and
 - (ii) such of the laws referred to in paragraph (a) of which the application is continued as contemplated in that paragraph,

shall be applicable in Walvis Bay, but subject to subsection (2).

(2) Any law which in terms of paragraph (b) of subsection (1) applies in Walvis Bay, shall so apply subject to such amendments, additions, modifications, exceptions or conditions as are provided for in this Act, whether such amendments, additions, modifications, exceptions or conditions are made, effected or imposed to apply -

²⁶⁰ The Ordinances issued by the Transvaal Provincial Government have been digitised by the Open Scholarship & Digitisation Programme, University of Pretoria, 2016.

²⁶¹ Section 3 of the Crown Land Disposal Amendment Ordinance 13 of 1906 (Transvaal) states: "This Ordinance may be cited for all purposes as the Crown Land Disposal Amendment Ordinance 1906 and shall be read as one with the Crown Land Disposal Ordinance 1903."

²⁶² Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 20-ff.

- (a) specifically in or in relation to Walvis Bay only; or
- (b) generally in Namibia as a whole.

Regulations: The Ordinance makes provision for regulations in section 18, but no regulations have been located.

Fencing Proclamation 57 of 1921 🕎 🙀

Summary: This Proclamation (originally published in <u>OG 78</u>) relates to the erection and maintenance of dividing fences between adjoining properties. It was brought into force by GN 4/1923 (<u>OG 101</u>).

Repeals: The Proclamation does not contain any specific repeals, but provides in section 1 that – So much of any law as is repugnant to or inconsistent with the provisions of this Proclamation shall be and is hereby repealed.

Amendments: This Proclamation is amended by Proc. 13/1923 (OG 110), Proc. 18/1925 (OG 177), Proc. 28/1925 (OG 180), Ord. 4/1928 (OG 279), Proc. 22/1935 (OG 639), Proc. 14/1950 (OG 1495), Proc. 48/1950 (OG 1548), Ord. 44/1952 (OG 1732), Ord. 21/1955 (OG 1925), Ord. 6/1958 (OG 2141), Ord. 14/1958 (OG 2150), Ord. 34/1959 (OG 2199), Ord. 23/1963 (OG 2493) and Ord. 26/1965 (OG 2636).

The Proclamation must be read together with Ord. 4/1928 (OG 279), which concerns contributions towards the costs of dividing fences. It must also be read together with Ord. 6/1957 (OG 2072) (as amended by Ord. 28/1959 (OG 2199)), which concerns jackal-proof fencing.

Regulations: The Proclamation makes no provision for regulations.

Notices: According to subsection 5(1) of the Proclamation, contributions towards the cost of a dividing fence shall be obligatory in any area declared for this purpose by the Administrator by notice in the *Gazette*. Subsection 5(3) authorises the administrator to divide districts into wards for this purpose. Notices pursuant to section 5(1) are contained in GN 52/1923 (Windhoek District) (OG 110), GN 9/1924 (Okahandja District) (OG 128), GN 10/1924 (Otjiwarongo District) (OG 128), GN 11/1924 (Grootfontein District) (OG 128), GN 72/1924 (Keetmanshoop District) (OG 137) which was later cancelled by GN 163/1924 (OG 150), GN 92/1924 (Omaruru District) (OG 139), GN 58/1925 (Gobabis District) (OG 162), GN 110/1925 (Rehoboth District) (OG 173), GN 166/1925 (Keetmanshoop District) (OG 179), GN 1/1926 (Gibeon District), GN 9/1926 (Aroab District), GN 111/1926 (division of Karibib District into wards), GN 114/1926 (Outjo District), GN 139/1926 (Eastern Ward, Karibib District) (OG 341) and GN 16/1930 (Ward No. 2, Warmbad District). These notices were followed by the Contribution towards Fencing Costs (Suspension) Proclamation 20 of 1930, dated 8 July 1930.

Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932

Summary: This Proclamation (<u>OG 491</u>) empowers the Administrator to set aside portions of land designated as "reserves for natives or Coloured persons" as sites for churches, schools or missions.

Regulations: Regulations are authorised by section 3 and contained in GN 133/1933 (OG 530).

Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933

Summary: This Proclamation (OG 502) supplements the law relating to the execution of judgements in respect of immovable property, in order to provide assistance to mortgage debtors by providing for suspension periods "in view of the prevailing financial depression". There is, however, no time limit on its application. This Proclamation was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021, ²⁶³ but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Regulations: The Proclamation makes no provision for regulations.

Trespass Ordinance 3 of 1962 🕎 🙀

Summary: This Ordinance (originally published in <u>OG 2390</u>) prohibits entry or presence upon land or in buildings without permission of the owner or lawful occupier.

Amendments: The Ordinance is amended by Act 20/1985 (OG 5140).

Regulations: The Ordinance makes no provision for regulations.

Cases: S v Mynhardt; S v Kuinab 1991 NR 336 (HC); S v Williams 2007 (2) NR 399 (HC).

Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965

Summary: This Act (<u>RSA GG 1171</u>) concerns restrictions imposed on land by wills and similar instruments.

Repeals: The Act repeals the Removal or Modification of Restrictions on Immovable Property Proclamation 16 of 1948.

Applicability to SWA: Section 10 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and referred to in sub-section 3 of section *three* of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all immovable property in that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administration of the said territory." Although amendments to the Act in South Africa would have been automatically applicable to SWA, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: Since the Act does not indicate what Minister administered the Act, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

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²⁶³ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 12-ff.

Land Tenure Act 32 of 1966, as amended in South Africa to November 1977

Summary: This Act (originally published in <u>RSA GG 1554</u>) establishes a Land Tenure Board and provides for the acquisition and development of land in connection with farming purposes.

Applicability to SWA: Section 10A, which was added by RSA Act 67 of 1970, states "This Act and any amendments thereof which may be made from time to time, with the exception of section 5, shall apply also in the territory", which is defined as "the territory of South West Africa". (Section 5 concerns the disposal of state land which is not required for or suitable for farming purposes in terms of the *State Land Disposal Act 48 of 1961.*)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation (AG 13/1977), dated **18 November 1977.** There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by the *Second Community Development Amendment Act 68 of 1982* (RSA GG 8206), which amended the *Community Development Act 3 of 1966* (RSA GG 1373) and was not made expressly applicable to SWA.

Section 3(2) of the General Proclamation excluded from transfer the provisions of any transferred law which "provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic". This would appear to exclude from transfer the provisions of this Act relating to the Land Tenure Board.

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

- Land Tenure Amendment Act 67 of 1970 (RSA GG 2862)
- Land Tenure Amendment Act 16 of 1972 (RSA GG 3458)
- *Expropriation Act 63 of 1975* (RSA GG 4780).

Regulations: Regulations are authorised by section 8 of the Act. However, no pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Subdivision of Agricultural Land Act 70 of 1970 as amended in South Africa to March 1978

Summary: This Act (originally published in <u>RSA GG 2867</u>) controls the subdivision of agricultural land. Generally, subdivision is prohibited unless the Minister of Agriculture has given his consent.

Applicability to SWA: Section 14 states "This Act and any amendment thereof shall apply also in the territory of South West Africa". Section 1 defines "agricultural land", "executive committee" and "scheme" accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated **2 March 1978.** None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Subdivision of Agricultural Land Amendment Act 12 of 1979* (RSA GG 6345), the *Subdivision of Agricultural Land Amendment Act 18 of 1981* (RSA GG 7447) and the *Subdivision of Agricultural Land Amendment Act 33 of 1984* (RSA GG 9170) – were made expressly applicable to SWA.

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

• Subdivision of Agricultural Land Amendment Act 55 of 1972 (RSA GG 3531)

- Subdivision of Agricultural Land Amendment Act 19 of 1974 (RSA GG 4210)
- Subdivision of Agricultural Land Amendment Act 18 of 1977 (RSA GG 5450).

Certain terminology is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Act and two of its amending Acts (the Subdivision of Agricultural Land Amendment Act 55 of 1972 and the Subdivision of Agricultural Land Amendment Act 19 of 1974) were repealed in respect of Rehoboth by the Agricultural Land Act 5 of 1981 (Rehoboth) (Official Gazette 37 of Rehoboth, dated 21 August 1981), brought into force on 1 September 1981 by an unnumbered notice (Official Gazette 41 of Rehoboth, dated 23 September 1981), which provides a substituted law on the topic in respect of Rehoboth.

Note that Official Gazette 37 of Rehoboth appears to have been misprinted as Official Gazette 38 of Rehoboth. Some copies bear a handwritten notation showing the correct number as Official Gazette 37 of Rehoboth.

Regulations: Regulations are authorised by section 10 of the Act, but no pre-independence regulations have been located²⁶⁴ and no post-independence regulations have been promulgated.

Cases: Theron & Another v Tegethoff & Others 2001 NR 203 (HC); Tjihero & Another v Kauri & Another 2018 (3) NR 879 (SC) (no subdivision of agricultural land is possible without permission of Minister, valid for three years, which had lapsed in this case).

Expropriation Ordinance 13 of 1978 🕎 🙀

Summary: This Ordinance (originally published in <u>OG 3796</u>) deals with the expropriation of land for public purposes.

Repeals: The Ordinance repeals the Expropriation Ordinance 32 of 1967.

Note: The South African *Expropriation Act 63 of 1975*, which deals with the expropriation of land (and commenced on 1 January 1977, in terms of RSA Proc. 273 of 1976) once applied to South West Africa in respect of *expropriations by the Railway Administration under section 4*. Section 4(4) of that Act stated: "The provisions of this section, and the other provisions of this Act, in so far as they are connected with the application of this section, shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel", thus making sections 7-24 of the Act applicable to expropriations by the Railway Administration in terms of the *Railways and Harbours Control and Management (Consolidation) Act 70 of 1957* (which is no longer in force in Namibia). However, section 4 of this Act was repealed by the *National Transport Corporation Act 21 of 1987*, thus effectively ending the applicability of any part of the Act to South West Africa (which was always only via section 4). Section 139 of the Minerals (Mining and Prospecting) Act 33 of 1992 (GG 564) confusingly purports to repeal sections 74 and 75 of the *Expropriation Act 63 of 1975*, but these sections were never applicable to Namibia.

Amendments: This Ordinance is amended by the National Transport Corporation Act 21 of 1987 (OG 5439) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961) with effect from 1 April 1999).

Administration of Act: Proc. 8/2005 (<u>GG 3456</u>) assigns the administration of this Ordinance to the minister responsible for works, transport and communication.

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²⁶⁴ There is one set of SA regulations (RSA GN 373/1979, <u>RSA GG 6323</u>) that was brought into force on 1 April 1979 – which is after the date of transfer (2 March 1978) and was not made expressly applicable to SWA. These regulations do not repeal any previous regulations.

Savings: There is no general savings clause in respect of anything done under the repealed Ordinance, only a transitional provision governing expropriation proceedings underway at the time when the 1978 Ordinance came into force.

Regulations: Regulations are authorised by section 20 of the Act, but no pre-independence regulations have been located. No post-independence regulations have been promulgated.

Application of law: The Ordinance is referenced by the Powers of the SWA Water and Electric Corporation Act 14 of 1980 (OG 4225), which makes sections 5-18 of the Ordinance applicable to expropriations by the Corporation.

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995 (GG 1069), and referenced in section 16 of that Act.

Section 13 of the Airports Company Act 25 of 1998 (<u>GG 1958</u>), which was brought into force on 5 February by GN 19/1999 (<u>GG 2045</u>), affects the application of the Ordinance with respect to that Act.

Agricultural Land Act 5 of 1981 (Rehoboth) 🕎 🙀

Summary: This Act (<u>Official Gazette 37 of Rehoboth</u>, dated 21 August 1981) controls the subdivision of agricultural land in Rehoboth. It was brought into force on 1 September 1981 by an unnumbered notice (<u>Official Gazette 41 of Rehoboth</u>, dated 23 September 1981) and has not been amended.

Note that Official Gazette 37 of Rehoboth appears to have been misprinted as Official Gazette 38 of Rehoboth. Some copies bear a handwritten notation showing the correct number as Official Gazette 37 of Rehoboth.

Repeals: The Act repeals the Subdivision of Agricultural Land Act 70 of 1970 in Rehoboth.

Savings: Section 22(2) provides a general savings clause:

Anything done under any provision of any law repealed by subsection (1) which is not contrary to or inconsistent with any provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

Regulations: Section 20 of this Act provides for regulations. However, pre-independence regulations issued under this Act or under the repealed Act have not yet been researched.

Cases: Cloete v Haitengi (I 1611/2015) [2019] NAHCMD 241 (16 July 2019).

Squatters Proclamation, AG 21 of 1985 🕎 🙀

Summary: This Proclamation (OG 5047) provides for the removal of persons unlawfully present on land or in buildings, and for the demolition of structures which are unlawfully erected.

Sections 1, 5, 8, 14, 15, 16 and 17 of the Proclamation came into force on the date of publication (30 May 1985) by virtue of section 16 of the Proclamation. Sections 2, 3, 4, 6, 7, 9, 10 and 13 came into force in the territory of South West Africa on 15 November 1986, by virtue of section 16 of the Proclamation read together with AG 28/1986 (OG 5273). Sections 11 and 12 of the Proclamation do not appear to have come into force.

Regulations: Regulations in respect of emergency camps are authorised by section 8 of the Act, but no pre-independence regulations have been located. No post-independence regulations have been promulgated.

Cases:

- Shaanika & Others v Windhoek City Police & Others 2011 (1) NR 64 (HC), reversed on appeal in Shaanika & Others v Windhoek City Police & Others 2013 (4) NR 1106 (SC) (declaring sections 4(1) and (3) of the Proclamation unconstitutional, on the grounds that they violate Art 12 of the Constitution on the right of access to courts).
- Nauyoma v Government of the Republic of Namibia & Another 2023 (1) NR 201 (HC) (constitutional challenges to proclamation not put forward with sufficient detail to allow for decision; absence of definition of certain terms in the law does not make it unconstitutionally vague, since its provisions are sufficiently clear to prevent arbitrary application)
- See also *Likuwa & Others v Council of The Municipality of Windhoek & Another* 2017 (2) NR 460 (HC) (does not discuss the statute, but finds that applicants who were stopped in the process of establishing unlawful occupation do not qualify for protection of *mandament van spolie;* judicial statements condemning "land-grabbing" as an unacceptable form of "self-help" and calling on municipality to provide access to urban land to ameliorate the deplorable living conditions in Windhoek).
- See also *Government of the Republic of Namibia & Another v Affirmative Repositioning Movement* 2023 (3) NR 713 (SC) (undertaking not to occupy land in a manner which would have been unlawful under section 2(2) cannot be a basis for a legally-enforceable contract)

Land Survey Act 33 of 1993 🕎 📻

Summary: This Act (<u>GG 770</u>) regulates the survey of land. It was brought into force on 1 June 1994 by GN 84/1994 (<u>GG 863</u>).

Repeals: The Act repeals the *Land Survey Act 9 of 1927* (SA GG 1618).

Savings: Section 46(3) of the Act contains a broad savings clause:

Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision.

For the purpose of considering what may survive from the repealed law, note that the administration of the repealed *Land Survey Act 9 of 1927* was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation, AG 13 of 1977 (OG 3669) dated **18 November 1977**.

Regulations: Land Survey Act Regulations made under the *Land Survey Act 9 of 1927* are contained in RSA GN R.1814/1962 (RSA GG 365), amended as follows:

RSA GN R.1395/1964 (RSA GG 897)

RSA GN R.533/1967 (<u>RSA GG 1716</u>)

RSA GN R.1033/1969 (RSA GG 2439)

RSA GN R.1126/1969 (<u>RSA GG 2468</u>)

RSA GN R.2008/1970 (RSA GG 2931)

RSA GN R.959/1972 (<u>RSA GG 3545</u>)

RSA GN R.1804/1972 (RSA GG 3677)

RSA GN R.2320/1974 (RSA GG 4540)

RSA GN R.844/1977 (RSA GG 5549)

RSA GN R.1445/1981 (RSA GG 7655), after the date of transfer but made explicitly applicable to SWA with the exception of regulations 3, 10, 14 and 15

RSA GN R.2562/1981 (RSA GG 7937), after the date of transfer but made explicitly applicable to SWA

RSA GN R.178/1983 (RSA GG 8531), after the date of transfer but made explicitly applicable to SWA

RSA GN R.291/1984 (RSA GG 9071), after the date of transfer but made explicitly applicable

to SWA with the exception of regulation 9 and regulation 10 insofar as it substitutes paragraph 15 of Annexure A of the Regulations

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GN 247/1986 (OG 5302)
GN 34/1988 (OG 5503)
AG GN 68/1989 (OG 5799)
AG GN 24/1990 (OG 5914)
GN 50/1993 (GG 636)
GN 270/1996 (GG 1425)
GN 286/1999 (GG 2253).<sup>265</sup>
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However, according to a Senior Lecturer in Architecture and Spatial Sciences at the Namibia University of Science and Technology (NUST), the 1962 South African regulations are no longer used in practice and are entirely superseded by the post-independence regulations described below. Therefore, the 1962 regulations are not included in the database.

Post-independence regulations pertaining to the manner in which land surveys shall be conducted are contained in GN 58/2002 (GG 2723), which contains no repeals.

Notices: Official co-ordinated values to be used by land surveyors are contained in GN 107/2008 (GG 4044).

Fees: A tariff of fees is published in GN 249/2004 (<u>GG 3323</u>). (This tariff replaces the tariff contained in GN 287/1999 (<u>GG 2253</u>), as amended, and also the tariff contained in GN 134/2002 (<u>GG 2778</u>).)

A scale of fees is published in GN 286/1999 (GG 2253) as amended by GN 17/2016 (GG 5935) (which substitutes the Schedule).

Agricultural (Commercial) Land Reform Act 6 of 1995 🗐 🙀

Summary: This Act (originally published in <u>GG 1040</u>) provides for the acquisition of agricultural land by the Namibian government for the purposes of land reform, and for its redistribution to Namibian citizens "who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices". It also establishes a Land Reform Advisory Commission and a Lands Tribunal.

Part VI (Restriction on Acquisition of Agricultural Land by Foreign Nationals) came into force on the date of publication, 3 March 1995 (section 81(3) of the Act). The remainder of the Act, with the exception of Parts II, III, IV and V, was brought into force on 6 December 1995 by GN 230/1995 (GG 1214). All the remaining sections were brought into force on 17 October 1996 by GN 271/1996 (GG 1426).

Amendments: Act 16/2000 (<u>GG 2378</u>) amends sections 1, 4, and 12, and inserts a new Part establishing a Land Acquisition and Development Fund and a new section 37A. It was brought into force on 29 December 2001 by GN 258/2001 (<u>GG 2678</u>).

Act 2/2001 (GG 2523) amends section 1, substitutes section 13B, section 18 and certain headings, inserts

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²⁶⁵ These regulations replace those contained in SA GN 1997 of 23 November 1928. They were amended in South Africa after the date of transfer and prior to Namibian independence by the following enactments, which were not made explicitly applicable to SWA: RSA GN R.1817/1979 (RSA GG 6628),RSA GN R.1020/1985 (RSA GG 9738), RSA GN R.657/1986 (RSA GG 10185), RSA GN R.1577/1987 (RSA GG 10834), RSA GN R.1578/1987 (RSA GG 10834) as corrected by RSA GN R.2018/1987 (RSA GG 10907) and RSA GN R.829/1989 (RSA GG 11843). The South African amendments contained in RSA GN R.1445/1981 (RSA GG 7655) and in RSA GN R.291/1984 (RSA GG 9071) were made applicable to SWA *in part*.

section 75A, amends section 76 and inserts sections 76A, 76B and 79A. It was brought into force on 29 December 2001 (GN 257/2001, GG 2678). (Note that the short title of this amending Act is amended by Act 13/2002.)

Act 13/2002 (GG 2875) makes substantial amendments to the Act. It was brought into force on 1 March 2003 by GN 26/2003 (GG 2925).

Act 14/2003 (GG 3096) amends sections 1, 14, 19, 20, and 78.

Act 19/2003 (GG 3116) amends sections 18 and 76. It was brought into force on 1 April 2004 by GN 56/2004 (GG 3181).

Act 8/2013 (GG 5210) amends section 9.

Act 1/2014 (GG 5428) amends sections 1, 17, 20 and 62, and substitutes section 9.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 13C.

Regulations: Several sets of regulations have been issued under the Act.

Regulations relating to the acquisition of land by foreign nationals are contained in GN 257/1996 (GG 1411).²⁶⁶

General regulations are contained in GN 272/1996 (<u>GG 1426</u>), as amended by GN 243/2001 (<u>GG 2663</u>) (Form 1) and GN 181/2005 (<u>GG 3555</u>) (Form 1). They are also apparently amended by GN 120/2014 (<u>GG 5530</u>) (see the note above).

Regulations on Procedure to Sublease Portion of Farming Unit are contained in GN 241/2013 (GG 5279).

Regulations relating to the exemption of certain agricultural land from section 17 of the Act are contained in GN 233/2014 (GG 5613).

Regulations on criteria to be used for expropriation of agricultural land are contained in GN 209/2016 (GG 6115).

Land Valuation and Taxation Regulations are contained in GN 285/2018 (GG 6755).²⁶⁷

"In these regulations "the Regulations" means the regulations in relation to Acquisition of Agricultural Land by foreign nationals, published under Government Notice No. 257 of 19 September 1996 as amended by Government Notice Nos. 272 of 17 October 1996, 243 of 15 December 2001, 259 of 29 December 2001, 128 of 1 June 2004, 181 of 15 December 2005, 120 of 3 July 2007, 143 of 1 August 2007, and 241 of 6 September 2013."

This statement is incorrect. Regulations relating to the Acquisition of Agricultural Land by Foreign Nationals were published in GN 257/1996, but all of the other Government Notices cited concern other sets of regulations issued under the Act – with the exception of GN 143/2007, which is not a regulation but a notice issued under regulation 3 of the Land Valuation and Taxation Regulations concerning the dates for a general valuation of agricultural land. ²⁶⁷ These Land Valuation and Taxation Regulations repeal and replace GN 120/2007 (GG 3870), as amended by GN 210/2011 (GG 4833) and GN 185/2015 (GG 5809), which in turn replaced the initial regulations on this topic contained in GN 259/2001 (GG 2678) as amended by GN 128/2004 (GG 3214).

²⁶⁶ GN 120/2014 (<u>GG 5530</u>) purports to amend the **Regulations relating to the Acquisition of Land by Foreign Nationals** contained in GN 257/1996, but this seems to be an error. These Regulations, which are contained in GN 257/1996, contain only one form, which has no number. GN 120/2014 inserts a Form 1A and a Form 4 after Form 3. The **General Regulations** in GN 272/196 contain a Form 1 and a Form 2, but no Form 3. Thus, the numbers of the forms in GN 120/2014 do not fit correctly with either of these sets of regulations. Furthermore, the forms in GN 120/2014 appear to concern sale and waiver in general rather than being relevant only to foreign nationals.

There are other errors in GN 120/2014. The notice states:

Rules: The Rules of the Lands Tribunal are contained in GN 76/1996 (GG 1289).

Notices: Bodies and associations are designated to appoint members to the Land Reform Commission in GN 98/1995 (GG 1090).

A *pro forma* lease agreement for farming units in terms of section 37 of the Act is contained in GN 50/1999 (GG 2075) which is withdrawn by GN 179/2009 (GG 4337).

Certain land is excluded from the definition of "agricultural land" by GN 248/2009 (<u>GG 4403</u>), GN 161/2012 (<u>GG 4978</u>), GN 228/2013 (<u>GG 5264</u>) and GN 123/2016 (<u>GG 6037</u>).

Certain agricultural land is excluded from the land tax imposed in terms of section 76 of the Act by GN 68/2015 (GG 5728).

Documents which must accompany an offer to sell agricultural land to the State are prescribed in GN 227/2016 (GG 6125).

Associations or bodies involved in agricultural affairs are designated in terms of section 4(1)(e) of the Act in GN 234/2016 (GG 6135).

Pursuant to section 76B, certain owners of agricultural land are exempted from paying land tax in terms of section 76 for the financial years 2016/2017, 2018/2019, 2020/2021 and 2021/2022 by GN 217/2024 (GG 8408); this exemption covers 11 churches, 5 deceased estates and 566 individuals, and assessments which cumulatively total just over N\$2 million.

Farming units offered for allotment are periodically announced in the *Government Gazette* but have not been listed here. Rates of land tax have also been omitted.

Notices concerning the rates of land tax payable by owners of agricultural land, specific valuations, valuation rolls and the sittings of specific valuation courts have not been recorded here.

Cases:

Müller v Schweiger 2005 NR 98 (HC) (summary of key provisions of Act; contract contravening section 58(1)(b) void ab initio); Schweiger v Müller 2013 (1) NR 87 (SC) (finding of illegality of contract confirmed on appeal)

Schacht v Schweiger & Another 2005 NR 130 (HC) (obiter discussion of section 58(1))

Bahlsen v Nederloff & Another 2006 (2) NR 416 (HC) (sections 1, 58 and 59)

Kessl v Ministry of Lands Resettlement & Others, and Two Similar Cases 2008 (1) NR 167 (HC) (detailed discussion of Act's requirements for expropriation and constitutionality of expropriation procedure; includes guidelines on correct procedure for expropriation under the Act)

discussed in Cornelia Glintz, "The High Court of Namibia: Günther Kessl v Ministry of Lands and Resettlement and 2 others. case no. 27/2006 and 266/2006 - A test case for the Namibian land reform programme", 42 (2) Verfassung und Recht in Übersee 263 (2009), available here

Marot & Others v Cotterell 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property by virtue of their membership but rather by agreement, and is thus void *ab initio* because of non-compliance with section 58(1)(b)); confirmed in Marot & Others v Cotterell 2014 (2) NR 340 (SC) (which also notes that a foreign national may not occupy or possess agricultural land for the prohibited periods without ministerial consent in terms of section 58(1)(b), no matter how the right of occupation or possession was acquired; section 58 is not contrary to art 16 of the Namibian Constitution; an indefinite period of time violates the specified time periods in section 58(1)(b)(ii))

Strauss & Another v Laubuscagne 2012 (2) 460 (SC) (meaning of "alienate" in section 1; contractual agreement in fraudem legis because simulated to circumvent Act)

- Meroro v Minister of Lands, Resettlement and Rehabilitation & Others 2015 (2) NR 526 (SC) (section 53; assignment under section 53(1) must take place in terms of the applicable law of succession); see also Shalukeni & Others v Damaseb & Others 2021 (1) NR 50 (SC)
- Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC) (section 17 before and after amendment by Act 13/2002)
- Locke v Van der Merwe & Others 2016 (1) NR 1 (SC) (effect of section 17(2) as amended by Act 13/2002; meaning of "until" in that provision)
- Von Wiedts v Minister of Lands and Resettlement & Another 2016 (2) NR 500 (HC) (constitutionality of Act 13/2002 cannot be challenged as a collateral issue in the course of enforcement procedures)
- Buchholz NO & Another v Ewert & Others 2016 (2) NR 511 (HC) (interpretation and application of section 17(1))
- Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 58(1)(b); effect of section 62(1)(a) prior to its repeal); appeal dismissed in Wyss & Another NO v Hungama & Others 2018 (2) NR 596 (SC) without specific discussion of this Act ("One cannot under the concept of freedom of testation seek to exercise powers never possessed or contractually disposed of while alive. The property that one bequeaths assumes that one has the power to bequeath and can only affect the rights to and in the property one possesses at the time of one's death.")
- Kambazembi Guest Farm CC t/a Waterberg Wildnerness v The Minister of Land Reform and 5 Others (A197/2015) [2016] NAHCMD 366 (17 November 2016), upheld on appeal in Kambazembi Guest Farm CC t/a Waterberg Wilderness v Minister of Lands and Resettlement & Others 2018 (3) NR 800 (SC) (unsuccessful constitutional challenge to sections 76-80 on land tax, the Land Valuation and Taxation Regulations published in GN 120/2007 (GG 2678) and related administrative actions; note that the regulations in question have since been repealed and replaced)
- Du Toit v Dreyer & Others 2017 (1) NR 190 (SC) (in a case concerning costs, the Court discusses an illegal contract aimed at circumventing the Act and the consequences of that contract's illegality)
- Denker v Ameib Rhino Sanctuary (Pty) Ltd 2017 (4) NR 1173 (SC) (sections 58(1)(a) and 60)
- Tjirovi v Minister for Lands and Resettlement & Others 2018 (2) NR 358 (HC) (sections 41(8A) and 41(3))
- See *Brink NO & Another v Erongo All Sure Insurance CC & Others* 2018 (3) NR 641 (SC) (procedural matter; underlying case concerns alleged simulated transaction aimed at circumventing the provisions of this Act; see another procedural ruling in the case in *Brink NO v Erongo All Sure Insurance CC* (I 3094/2015) [2020] NAHCMD 568 (24 November 2020))
- Damaseb v Minister of Land Reform & Others 2019 (3) NR 775 (HC) (section 53; 99-year lease issued under this Act did not form part of the joint estate as it was akin to a usufruct), overturned on appeal in Shalukeni & Others v Damaseb & Others 2021 (1) NR 50 (SC) (section 53; unlike a usufruct, "a lease, as a general rule, is not terminated by the death of a party thereto, but the rights and obligations arising from the lease pass to the estate of the party who has died"; interest in the lease must thus be determined in accordance with the laws of succession, taking into account the deceased's marriage in community of property; see paras 17-18 for summary of position upon death of lessee)
- *Tjihero & Another v Kauri & Another* 2018 (3) NR 879 (SC) (agreement at issue fails to comply with section 17, and law provides no basis for any court to condone non-compliance with this section)
- Traube Farming CC & Another v Presiding Officer of the Valuation Court & Others 2020 (1) NR 174 (HC) (challenge to rulings of Valuation Court established in terms of Land Valuation and Taxation Regulations)
- Bergh & Others v Wohlfart & Others 2024 (2) 373 (SC) (sections 58(1)(a) and 60).

Commentary:

- Sam K Amoo, "Land Tenure and Land Reform in Namibia", 3 (1) Review of Southern African Studies 1 (1999)
- Sam K Amoo, "Towards comprehensive land tenure systems and land reform in Namibia", 17 (1) South African Journal on Human Rights 87 (2001)

- Sidney Harring and Willem Odendaal, "One Day We Will All Be Equal": A Socio-Legal Perspective on the Namibian Land Reform and Resettlement Process, Legal Assistance Centre, 2002, available here
- Bertus de Villiers, Land Reform Issues and Challenges: A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia, Johannesburg: Konrad Adenauer Foundation, 2003, available here
- Dr Christina Treeger, *Legal analysis of farmland expropriation in Namibia*, Namibia Institute for Democracy, 2004, available here
- Legal Assistance Centre, Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process, 2005, available here
- Willem Odendaal, Confiscation or Compensation?: An analysis of the Namibian Commercial Agricultural Land Reform Process, Legal Assistance Centre, 2005, available here
- Sidney L Harring and Willem Odendaal, "No Resettlement Available": An assessment of the expropriation principle and its impact on land reform in Namibia, Legal Assistance Centre, 2007, available here
- Sidney L Harring and Willem Odendaal, *Kessl: A new Jurisprudence for Land Reform in Namibia?*, Legal Assistance Centre, 2008, available here
- Phanuel Kaapama, "Commercial land reforms in postcolonial Namibia: What happened to liberation struggle rhetoric?" in H Melber (ed), *Transitions in Namibia: What Changes for Whom?*, Uppsala: Nordiska Afrikainstitutet, 2007
- Cornelia Glintz, "The High Court of Namibia: Günther Kessl v Ministry of Lands and Resettlement and 2 others. case no. 27/2006 and 266/2006 A test case for the Namibian land reform programme", 42 (2) Verfassung und Recht in Übersee 263 (2009), available here
- Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available here.

National Housing Enterprise Act 5 of 1993 🗐 🔄

Summary: This Act (originally published in <u>GG 687</u>) provides for the continued existence of a corporation to provide for the housing needs of the inhabitants of Namibia, changes its name from the "National Building and Investment Corporation" to the "National Housing Enterprise" and sets forth its powers, duties and functions.

Repeals: The Act repeals the National Building and Investment Corporation of South West Africa Proclamation, AG 60 of 1978 (OG 3824).

Amendments: Act 32/2000 (<u>GG 2463</u>), which was brought into force on 5 March 2001 by GN 37/2001 (<u>GG 2492</u>), amends sections 1, 4, 5, 6, 8, 9, 10, 14, 15, 18, 20, 22, 23 and 26.

The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 5, 6, 8 and 10. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are contained in GN 62/2001 (GG 2513).

Application of law: The Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>) places certain duties on the National Housing Enterprise.

National Housing Development Act 28 of 2000 🗐 🙀

Summary: This Act (GG 2459) establishes a National Housing Advisory Committee to advise on

housing programmes, and provides for Housing Revolving Funds to be established by regional and local authorities to be used for low-cost housing. It further provides for the establishment of Decentralised Build Together Committees for each region, to deal with applications for assistance from the Housing Revolving Funds. The Act was brought into force on 5 March 2001 by GN 36/2001 (GG 2492).

Repeals: The Act repeals the Native Housing Levy and Contributions Ordinance 22 of 1961 and the Housing Ordinance of the Administration of Coloureds 4 of 1983 (OG 4914).

Savings: Section 37(2) contains the following savings clause:

Any notice, regulation, authorisation, order, approval or certificate issued, made or granted, or any other thing done in terms of a provision of any law repealed by subsection (1) shall be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act, except in so far as may be otherwise required by this Act.

Regulations: Pre-independence regulations have not yet been fully researched. However, since the repealed laws were all race-based, any surviving regulations made pursuant to them could have no place in independent Namibia.

Regulations made in terms of the current law were initially contained in GN 44/2001 (GG 2492), but these were revoked by GN 57/2001 (GG 2507).

Appointments: The National Housing Advisory Committee is announced in GN 188/2001 (<u>GG 2615</u>). Committee members are appointed in GN 155/2003 (<u>GG 3019</u>), GN 258/2004 (<u>GG 3334</u>), GN 110/2006 (<u>GG 3672</u>), GN 34/2008 (<u>GG 3991</u>), GN 238/2013 (<u>GG 5274</u>) and GN 224/2018 (<u>GG 6710</u>). Alternate committee members are appointed in GN 24/2009 (<u>GG 4216</u>) and GN 258/2019 (<u>GG 6983</u>).

Communal Land Reform Act 5 of 2002 🕎 🙀

Summary: This Act (originally published in <u>GG 2787</u>) provides for the allocation of rights in respect of communal land. It establishes Communal Land Boards and provides for the rights and powers of traditional leaders and Communal Land Boards in relation to communal land. The Act was brought into force on 1 March 2003 by GN 33/2003 (<u>GG 2926</u>). This is also the relevant date in respect of section 18 (on fencing), and section 28(2) and (3) (the date which begins the three-year period for application for recognition of existing customary land rights and fences). See GN 34-36/2003 (<u>GG 2926</u>).

Repeals: The Act repeals the *Development Trust and Land Act 18 of 1936*, the *South West Africa Native Affairs Administration Act 56 of 1954* and the Administration of the South African Bantu Trust in South West Africa Proclamation, AG 19 of 1978.

Amendments: Act 11/2005 (<u>GG 3550</u>) amends section 1 and Schedule 1 of the Act. Its effect is to add and amend certain definitions, to incorporate certain portions of unalienated State land into existing communal land areas and to replace an incorrect reference in the description of the Damaraland Communal Land Area.

Proc. 9/2013 (GG 5150) and Proc. 27/2013 (GG 5264) amend Schedule 1 of the Act.

Act 13/2013 (GG 5385), which was brought into force on 1 December 2016 by GN 286/2016 (GG 6188), amends sections 1, 23, 28, 31, 44 and inserts section 17B and Part 3.

Note that GN 286/2016 is correctly numbered in the Contents section of GG 6188, but the actual Government Notice is misnumbered as GN 287/2016.

Proc. 36/2024 (GG 8520) amends Schedule 1 of the Act.

Regulations: There is no savings clause for regulations made in terms of the repealed laws.

General regulations are contained in GN 37/2003 (<u>GG 2926</u>), as amended by GN 120/2003 (<u>GG 2994</u>), GN 15/2014 (<u>GG 5412</u>), GN 100/2015 (<u>GG 5760</u>) and GN 159/2016 (<u>GG 6069</u>).²⁶⁸

Note that *Joseph & Others v Joseph* 2020 (3) NR 689 (SC) declares regulation 35 to be *ultra vires* the provisions of the Act and thus invalid and of no force and effect.

Regulations relating to occupational land rights are contained in GN 278/2016 (GG 6177).

Namundjebo-Tilahun NO & Another v Northgate Properties (Pty) Ltd & Others (SA 33/2011) [2013] NASC 12 (07 October 2013)

Note that certain statements in this opinion are, with respect, confusing. The opinion notes at para 32 that "in terms of s 25(1) of the Black Administration Act, No 38 of 1927, read with s 21(1) and 48(1) of the Black Trust and Land Act, No 18 of 1936 and in terms of Government Notice R.188 of 1969, the then State President of South Africa issued certain Black Areas Land Regulations which also applied to the then South West Africa". The authority for the **Black Areas Land Regulations** is misstated here.

The opinion states correctly at para 34 that pre-independence laws, survived the independence of Namibia, and notes that Article 140(4) of the Namibian Constitution provides that "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 Namibia, or to a corresponding Minister, official or institution of the Republic of Namibia..."

However, the footnote to this paragraph incorrectly implies that the Black Areas Land Regulations were still in force at the date of the judgement, by stating: "The corresponding officer to the "Bantu Affairs Commissioner' in [regulation] 6(1) is now the Permanent Secretary in the Ministry."

The *Black Administration Act 38 of 1927* was apparently never applicable to South West Africa; the equivalent law in South West Africa was the Native Administration Proclamation 15 of 1928.

The Black Areas Land Regulations in RSA Proc. R.188 of 1969 (RSA GG 6364) were issued in terms of the *Development Trust and Land Act 18 of 1936* and did indeed remain in force after Namibian independence. However, the *Development Trust and Land Act 18 of 1936* was repealed in Namibia by the Communal Land Reform Act 5 of 2002 (brought into force on 1 March 2003). There was no savings clause in the Communal Land Reform Act 5 of 2002 for regulations issued under the repealed laws. Thus, the Black Areas Land Regulations ceased to have effect in Namibia in 2003.

Alteration of communal land areas: Proc. 9/2013 (<u>GG 5150</u>) incorporates certain unalienated state land into the existing communal land areas of Damaraland and Namaland. Proc. 27/2013 (<u>GG 5264</u>) incorporates certain unalienated state land into the existing communal land area of Damaraland. Proc. 36/2024 (<u>GG 8520</u>) incorporates certain unalienated state land into the existing communal land area of Namaland.

Designation of areas for leasehold: Areas are designated for leasehold for agricultural purposes as follows:

Caprivi Communal Land Board – GN 126/2007 (GG 3878)

Note that there are two *Government Gazettes* numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: "This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007."

Kavango Communal Land Board – GN 98/2005 (<u>GG 3479</u>), GN 61/2006 (<u>GG 3620</u>), GN 125/2007 (<u>GG 3878</u>), GN 127/2007 (<u>GG 3878</u>) and GN 129/2007 (<u>GG 3878</u>)

Note that there are two *Government Gazettes* numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: "This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007."

Kavango East Communal Land Board – GN 37/2014 (<u>GG 5433</u>), GN 208/2017 (<u>GG 6384</u>) Ohangwena Communal Land Board – GN 128/2007 (<u>GG 3878</u>).

 $^{^{268}}$ These regulations repeal those contained in RSA Proclamation R.188 of 11 July 1969 (<u>RSA GG 2486</u>) – despite the absence of a savings clause.

Note that there are two *Government Gazettes* numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: "This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007."

- Omusati Communal Land Board GN 209/2017 (<u>GG 6384</u>), GN 210/2017 (<u>GG 6384</u>), GN 211/2017 (<u>GG 6384</u>)
- Oshikoto Communal Land Board GN 156/2011 (<u>GG 4787</u>), which is withdrawn by GN 218/2011 (<u>GG 4834</u>); GN 219/2011 (<u>GG 4834</u>), which is withdrawn by GN 227/2011 (<u>GG 4843</u>); GN 228/2011 (<u>GG 4843</u>).

Recognition of existing land rights: GN 44/2006 (GG 3591) requires all persons issued with a right to occupy communal land (*other than* a right under customary law) to apply for recognition of that right and the grant of a leasehold, and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date for applying for the recognition of existing rights was extended to the end of February 2012 by GN 18/2009 (GG 4210) and then to the end of February 2014 by GN 104/2012 (GG 4929).

In terms of section 28 of the Act, GN 45/2006 (GG 3591) similarly requires all persons with existing customary land rights to apply for the recognition and registration of such rights and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date was extended to the end of February 2012 by GN 19/2009 (GG 4210), then to the end of February 2014 by GN 140/2012 (GG 4958) and then extended indefinitely by GN 19/2014 (GG 5416).

GN 19/2014 states: "Under subsection (3) of section 28 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I, further extend the period within which an application may be made for recognition of existing customary land rights in terms of subsection (2) of that section, as notified by Government Notice No. 140 of 1 June 2012, with effect from 1 March 2014 until further notice."

Establishment of Communal Land Boards: Twelve communal land boards are established by GN 203/2003 (GG 3060), which is replaced by GN 18/2014 (GG 5416) as amended by GN 30/2021 (GG 7470), to take into account the split of the Kavango Region into two new regions (Kavango East and Kavango West) and the renaming of two regions (Caprivi to Zambezi and Karas to //Kharas).

Cases:

- Shingenge v Hamunyela 2004 NR 1 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns an *actio rei vindictio* in respect of fencing material used in a fence erected on communal land)
- Uvhungu-Vhungu Farm Development CC v Minister of Agriculture, Water and Forestry 2009 (1) NR 89 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns a successful application for mandament van spolie by a party occupying communal land in terms of an agreement with government)
- Hikumwah & Others v Nelumbu & Others 2015 (4) NR 955 (HC) (brief discussion of appointment in terms of section 4(1) and removals in terms of section 6(3) at paras 158-162, but issue had become moot and was therefore not decided by court); overturned on appeal in Nelumbu & Others v Hikumwah & Others 2017 (2) NR 433 (SC) without discussion of this issue
- Mashahu & Others v Katima Mulilo Town Council & Others 2016 (2) NR 586 (HC) (person claiming customary land right must identify category of right under section 21; impact of establishment of local authority under section 15(2); section 28)
- Naango & Others v Kalekela & Others 2017 (1) NR 66 (HC) (sections 17 and 18(a); illegal fencing of portion of communal area)
- MM v VT 2017 (3) NR 743 (HC) (customary land right under section 28 is a personal right akin to a usufruct that endures for the natural life of the right-holder; no provision for joint allocation of such rights, which do not form part of joint matrimonial estate)
- Chairman Ohangwena Communal Land Board NO v Wapulile 2017 (4) NR 1017 (SC) (fencing: operation of section 18 prohibiting unauthorised fences is suspended only if application for retention of pre-existing fences has been made under section 28)

- Kashela v Katima Mulilo Town Council & Others 2018 (4) NR 1160 (SC) (rights of occupier of communal land when tenure transferred by Government to a local authority; effect of Art 16 and Schedule 5(3) of the Namibian Constitution on communal land rights; rejected notion that a customary land right is a personal right and found it to be a *sui generis* right)
- Ndevahoma v Shimwooshili & Others 2019 (2) NR 394 (HC) (consideration of the provisions of the Act which relate to leasehold rights; differentiation of leasehold rights and customary land rights; application of section 35; leaseholder has no right to exclusive occupation due to the vesting of communal land in the State under section 17, and no right to institute eviction proceedings against another occupier because he is not the owner and because of the provisions on eviction in section 43; note that the case mistakenly refers to the relevant Act throughout as the "Agricultural Communal Land Reform Act 5 of 2002"); but see differing interpretation of section 43 in Joseph & Others v Joseph 2020 (3) NR 689 (SC), discussed below
- Jonas v Ongwediva Town Council 2020 (1) NR 50 (SC) (section 16(1)(c) of Act inapplicable where land withdrawn from communal land area pursuant to section 4(1)(b) of Local Authorities Act 23 of 1992; discussed in application for condonation)
- Joseph & Others v Joseph 2020 (3) NR 689 (SC) (section 43 does not give a chief, traditional authority or land board the sole right to evict persons from communal land; it does not eliminate the common-law vindicatory action of a possessor because it does not include the word "only"; regulation 35 (contained in Government Notice 37 of 2003 as amended) is ultra vires the provisions of the Act and thus invalid and of no force and effect; section 40 of the Act is irrelevant to claims for improvements by persons who occupied communal land against the recognised holder of communal land rights over that land, with this issue falling under the common law).
- Mbuto v Scholtz & Others 2022 (1) NR 58 (HC) (possession under common law gives applicant standing to bring eviction action involving communal land even if there was non-compliance with legislative framework)
- Anabeb Conservancy Committee v Muharuka & Others 2022 (2) NR 492 (HC) (section 24(1))
- Salambala Conservancy v Mukata & Others 2022 (3) NR 769 (HC) (section 43(2); applies holding in *Joseph* case discussed above)
- Ministry of Agriculture, Water and Forestry & Another v Srve Investments (Pty) Ltd & Others 2022 (4) NR 1086 (SC) (section 17B not applicable to contract for management of agricultural project in communal area)
- *Iipinge v Taapopi & Others* 2023 (1) NR 78 (HC) (section 15(6) read with the Local Authorities Act 23 of 1992, on disposition of communal land which became part of a local authority)
- Numwa v Ndapopiwa NO & Others 2023 (1) NR 143 (HC) (powers of Appeal Tribunal under section 39 read with section 37; interpretation of "received" in regulation 25(5))
- Dengeinge v Uugwanga 2023 (2) NR 348 (HC) (although the Act does not explicitly provide for joint holders of communal land rights, it does not exclude a communal land right from forming part of a joint estate of spouses; supported by fact that section 26 gives a surviving spouse a "right of first refusal" in respect of the customary land right held by the deceased spouse; at para 29:
 - [29] The default legal position in respect of marriages in community of property is that all property acquisitions made during the subsistence of the marriage by either spouse fall automatically into the joint estate. It is common cause that the customary land right in the present matter was acquired during the subsistence of marriage. It is trite that during the marriage the parties own the assets of the joint estate in equal undivided shares. This common-law position has been entrenched by art 14 of the Constitution. In my judgment, there is no doubt that a customary land right has economic value and as such is a sui generis incorporeal right which forms part of the assets of the joint estate.)
- Mendonca v Billy 2024 (2) NR 446 (SC) (applying Kashela v Katima Mulilo Town Council & Others 2018 (4) NR 1160 (SC); right to occupy communal land is protected by Schedule 5(3) of the Namibian Constitution and is not extinguished when land is transferred by Government to a local authority; this right is not inferior or subservient to rights of owners of land under the Deeds Registries Act 47 of 1937, and is not required to be registered or validated under the Communal Land Reform Act 5 of 2002 or confirmed by a permit to occupy (PTO); mere physical presence on the land with the approval of the relevant traditional authority is sufficient to trigger the constitutional protection).

Commentary:

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- Wolfgang Werner, "What has happened has happened": The Complexity of Fencing in Namibia's Communal Areas, Windhoek: Legal Assistance Centre, 2012, available hereas/.
- Wolfgang Werner, "Tenure reform in Namibia's communal areas", 18 *Journal of Namibian Studies* 67 (2015)
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 1, April 2015, available here (rules and procedures relating to illegal fencing discussed in section 4.2)
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 5.1 discusses "Customary Land Rights Vis-a-Vis the Rights of a Local Authority When an Area is Proclaimed as a Town")
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 4.1 discusses the legal nature of a "right of leasehold" under the Act)
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- Romie Vonkie Nghitevelekwa, Securing Land Rights: Communal Land Reform in Namibia, UNAM Press 2021.

Sectional Titles Act 2 of 2009 📦 🙀

Summary: This Act (<u>GG 4259</u>) provides for the division of buildings into sections and common property, and the acquisition of separate ownership in sections coupled with joint ownership in common property. It was brought into force on 15 December 2014 by GN 252/2014 (<u>GG 5633</u>).

Repeals: The Act repeals the Sectional Titles Act 66 of 1971.

Regulations: Regulations made under the repealed Act initially survived pursuant to section 61(11) of this Act, but GN 223/2014 (GG 5604) repealed all the regulations made under the previous Act and their amendments (if any).

Regulations issued under this Act are contained in GN 223/2014 (GG 5604), as amended by GN

Rules: Rules for sectional titles are contained in GN 224/2014 (GG 5604).

Cases: The following case deals with the Sectional Titles Act 66 of 1971 – Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees under section 40 of Act not in violation of Art 21(1)(j) or Art 18 of Constitution).

Flexible Land Tenure Act 4 of 2012 🕎 📻

Summary: This Act (<u>GG 4963</u>) creates new forms of land title designed to be simpler and cheaper to administer than existing forms of land title, and creates mechanisms for the registration of these new forms of title, which include "starter title" and "land hold title". The Act was brought into force on 31 May 2018 by GN 100/2018 (<u>GG 6607</u>).

Regulations: Flexible Land Tenure Regulations are contained in GN 101/2018 (GG 6607).

Notices: GN 102/2018 (<u>GG 6607</u>) establishes a Land Rights Office in Windhoek, to serve the whole of Namibia, pursuant to section 4 of the Act.

Commentary:

- Søren Fauerholm Christensen, Wolfgang Werner and Pia Dahl Højgaard, "Innovative Land Surveying and Land Registration in Namibia", Working Paper 93 of the Development Planning Unit, University College London, 1999, available here
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Kennedy Kariseb & Samual K Amoo, "Land Security in the midst of flexible land tenure reforms in Namibia", *Namibia Law Journal*, Volume 10, Issue 1, 2018.

Urban and Regional Planning Act 5 of 2018 🗐 🙀

Summary: This Act (<u>GG 6631</u>) consolidates the laws relating to urban and regional planning, and provides a legal framework for spatial planning. It establishes the Urban and Regional Planning Board, which replaces the Namibia Planning Advisory Board (NAMPAB) and the Townships Board. It also covers urban zoning and subdivision, as well as structure plans and the establishment of new townships. It was brought into force on 3 September 2020 by GN 222/2020 (<u>GG 7327</u>).

Repeals: The Act repeals the Town Planning Ordinance 18 of 1954, the Townships and Division of Land Ordinance 11 of 1963 and the Removal of Restrictions Ordinance 15 of 1975

The Act neglects to repeal the Townships and Division of Land Amendment Act 21 of 1998 (<u>GG 1948</u>) or Government Notice 63 of 1999 (<u>GG 2083</u>), both of which amend the Townships and Division of Land Ordinance 11 of 1963, but these amendments would have no ongoing effect on their own.

Savings: The Act contains a savings clause in section 132(2):

Unless otherwise provided in this Act, any notice, regulation, rule or authorisation, made or granted, or an appointment made or any other act done or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by section 132, must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act.

Regulations: Regulations are issued in terms of this Act in GN 223/2020 (GG 7327), as amended by GN 25/2023 (GG 8031).

Note that GN 25/2023 erroneously refers to the underlying regulations as being issued in GN 222/2020 instead of GN 223/2020.

These regulations repeal the following regulations:

- Town Planning Regulations issued under the Town Planning Ordinance 18 of 1954 in GN 102/1974 (OG 3400);
- Regulations relating to fees charged under the Town Planning Ordinance 18 of 1954, in GN 11/2008 (GG 3983);
- Townships Board Regulations issued under the Townships and Division of Land Ordinance 11 of 1963 in GN 165/1973 (OG 3352);
- Regulations relating to fees charged under the Township and Division of Land Ordinance 11 of 1963, in GN 10/2008 (GG 3983).²⁶⁹

The regulations issued under the current Act thus appear to be the only ones now in force. (Note that the Removal of Restrictions Ordinance 15 of 1975 made no provision for regulations.)

Notices: Section 132(2) of the Act provides that, unless otherwise provided in the Act, any notice, rule, authorisation, appointment or other act done under any of the repealed laws must be regarded as having been done in terms of the corresponding provision of this Act.

Notices relating to specific townships and zoning schemes have not been recorded. Notices regarding specific requests for rezoning, subdivision or consent use are also not recorded here.

Appointments: Members of the Urban and Regional Planning Board are announced in GN 196/2021 (GG 7636).

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²⁶⁹ These fees replace the ones contained in GN 88 of 2 May 2007.

Cases: The following case concerns the Swakopmund Town Planning Amendment Scheme No 12 prepared in terms of the Town Planning Ordinance 18 of 1954, which remains in place in terms of section 133(1) of this Act –

Village Hotel (Pty) Ltd v Chairperson of the Council for the Municipality of Swakopmund & Others 2015 (3) NR 643 (SC).

The following cases concern the **Town Planning Ordinance 18 of 1954** – Grobbelaar & Another v Walvis Bay Municipality & Another 1997 NR 259 (HC)

Municipal Council of Windhoek v Claudia Properties CC & Another 2015 (1) NR 248 (HC)

Auas Valley Residents Association & Others v Minister of Environment and Tourism & Others 2022 (3)

NR 758 (SC) (approved town planning scheme assumes force of law).

The following cases concern the **Windhoek Town Planning Scheme** prepared in terms of the Town Planning Ordinance 18 of 1954, and which remains in place in terms of section 133(1) of the Act – *Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others* 1996 NR 213 (SC)

Roland & Others v Chairperson of the Council of the Municipality of Windhoek & Others 2013 (1) NR 12 (HC) (to avoid anomalies, court reading proviso to regulation 29B(1)(c) of Windhoek Building Regulations, which defines "ground storey" and so assists application of clause 21(3) of Windhoek Town Planning Scheme, to read "any adjoining pavement" instead of "the adjoining pavement"); upheld on appeal on different reasoning in Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others 2014 (1) NR 247 (SC) (clause 21 of Windhoek Town Planning Scheme; clause 21(3) required council to approve building plans of more than two storeys in a residential area after considering stipulated criteria, which did not take place; High Court erred in relying on Regulation 29B(1)(c) of Windhoek Building Regulations to govern meaning of clause 21(3); Reg 29B(6) of Windhoek Building Regulations not relevant)

Municipal Council of Windhoek v Claudia Properties CC & Another 2015 (1) NR 248 (HC)

Gawaseb v Council of the Municipality of Windhoek 2019 (2) NR 409 (HC) (concerning Windhoek Building Regulations issued in GN 57/1969 (OG 2992), as amended; building permit issued under regulation 10)

Imalwa v Gaweseb 2021 (1) NR 183 (SC) (concerning **Windhoek Town Planning Scheme**, (clause 20) and Windhoek Building Regulations issued in GN 57/1969 (OG 2992), as amended (regulations 9 and 10).

The following case concerns the Townships and Division of Land Ordinance 11 of 1963 –

Erongo Regional Council v Wlotzkasbaken Home Owners Association 2009 (1) NR 252 (SC) (discussion of township development process applied to Wlotzkasbaken)

Auas Valley Residents Association & Others v Minister of Environment and Tourism & Others 2022 (3) NR 758 (SC) (pre-eminence of approved town planning scheme demonstrated by sections 6(3) and 29(2)).

Alienation of State Property

A 2015 opinion of the Attorney-General outlines the authority for the procedure for alienation of state property (emphasis added):

- 4.1 Alienation of Government Property
- 4.1.1 Section 18 of the **State Finance Act, 1991 (Act No. 31 of 1991)**, as amended, states that regardless of what is contained in any other law, property of the State, movable and immovable, shall be alienated, let, exchanged, donated or disposed of in any other way, only with the authorisation of the Treasury.
- 4.1.2 Section 23(1) of State Finance Act, 1991, determines that authorisation shall be granted by Treasury in writing, the authorisation must be acquired beforehand, the authorisation may be granted in respect of

any specific case or by way of general direction, the authorisation may be granted on such conditions as Treasury may deem fit and the authorisation may be varied or withdrawn by Treasury at any time.

- 4.1.3 The procedures for the different forms of alienation of government property are set out in the Treasury Instructions, issued in terms of the section 24 of the State Finance Act, 1991.
- 4.1.4 Upon granting approval for the alienation of property, the Treasury shall, in terms of section 23(2) of the State Finance Act, 1991, inform the Permanent Secretary of the Ministry of Finance and the Auditor-General of all cases in respect of which it has, whether in terms of the Act or any other law, granted any authorization or approval or has issued, made or laid down any instruction, determination or condition.
- 4.1.5 Furthermore the **Special General Power of Attorney No. 15 of 1983** granted by the then Administrator-General of South West Africa dated 04 May 1983, conferred upon the Secretary, Director, Deputy-Director, Assistant Director, Control Administrative Officer and Administrative Officer of the then Department of Civic Affairs and Manpower, with the powers to contract on behalf of Government in respect of immovable property.

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 1, April 2015, available here

Historical context of land rights in Namibia

including the background to PTOs (permission to occupy)

A helpful summary of the legislative history of land rights in Namibia is set out by the High Court in the 2023 *Iipinge* case:

- [34] Because of the complex historical facts that have defined Namibians' right to land, I find it appropriate to briefly set out the historical context in which rights to land in Namibia evolved. It is now an accepted fact that prior to the intrusion of Europeans into Africa, indigenous African communities knew no private ownership of land. Africans for instance, customarily regarded land as a gift from God or a bequest by the ancestors. A basic feature of indigenous communities' perception of their right to occupy land is that land was given to them as a community for that community to use in a manner that it regards as most beneficial. Pastoral indigenous communities not only had the general right to use the land to sustain themselves by gathering and hunting, but also used specific areas of the land as grazing.
- [35] It is a painful reality that at the beginning of the twentieth century, Germany as the colonial power terminated, by chicanery, 'protection treaties' and violent conquests, the indigenous Namibians' land rights. German colonial rule over Namibia (then South West Africa) came to an end with the surrender of the German armed forces during World War I in 1915. South West Africa became a protectorate of Great Britain, with the British King's mandate held by South Africa in terms of the Treaty of Versailles signed in 1919. Under the Treaty of Versailles and the South West Africa Act of 1919, land held by the German colonial administration effectively became Crown (or State) land of South West Africa.
- [36] After 1920, land alienation in Namibia by Europeans and the introduction of new property rights were implemented in a more systematic manner by legislation. The Governor-General of the Union of South Africa had, in terms of the Treaty of Versailles and the South West Africa Act, the power to legislate on all matters, including land allocation in South West Africa. During the period 1915 to 1920, Namibia was under military rule and during this period, no legislation existed under which land settlement could be carried out.
- [37] When martial law came to an end in 1920, land settlement laws in force in the Union of South Africa were applied to Namibia. I will briefly highlight the most significant pieces of legislation that transformed property rights in Namibia between 1920 and 1990. The first piece of legislation dealing with land that was introduced (by the Union Government) in Namibia was the Transvaal Crown Land Disposal Ordinance of 1903. This ordinance was made applicable to South West Africa by virtue of the Crown Land Disposal Proclamation 13 of 1920. Firstly, the ordinance proclaimed the territory as crown land and, secondly, in terms of s 12 certain areas of crown land could be reserved 'for the use and benefit of aboriginal natives'.

- The general effect of this ordinance was to vest ownership of tribal land (land historically occupied and utilised by indigenous Africans) in the mandatory power, South Africa.
- [38] Another piece of legislation that was introduced by the Union Government was the Native Administration Proclamation 11 of 1922. This law provided that natives not employed by landowners or lessees were not permitted to squat on land without a magistrate's permission. It also authorised the administrator to set aside areas as 'native reserves' for the sole use and occupation of natives generally or for any race or tribe in particular. Land allocation and utilisation in the reserves were regulated by the Native Reserve Regulations 68 of 1924. These regulations vested ownership of the land in the administration and further provided that, after the land had been set aside as a reserve, 'it [could] not be alienated or used for any other purpose except with the consent of both Houses of Parliament of the Union of South Africa'. In 1928, the Union Government introduced the Native Administration Proclamation 15 of 1928, which amongst other powers gave the Union Government the power to define tribal areas.
- [39] In 1936, the Union Government, by virtue of the Development Trust and Land Act, 1936, converted and placed all 'native reserves' or 'tribal areas' into a trust known as the Development Trust. Under s 5(2) of this Act, all land placed under the Development Trust was declared the property of the state, to be administered by the State President of South Africa as trustee. The administration of native affairs was transferred from the administrator of South West Africa to the responsible South African minister. Section 18(3) and (4) of the Development Trust and Land Act provided:
 - '(3) With the approval of Parliament signified by resolutions of both Houses the Trustee may for the support, advantage or well-being of natives or purposes connected therewith, grant, sell, exchange, lease or otherwise dispose of land the property of the Trust to persons other than natives.
 - (4) The Trustee may, in accordance with the regulations, authorise the grant to or occupation by any person, board of trustees, educational authority or religious body for church, school, mission or trading purposes of such areas of land the property of the Trust as he may deem necessary: Provided that no grant of any extent greater than two morgen shall be made without the consent of Parliament signified by resolutions of both Houses '
- [40] In 1978, by Proclamation AG 19 of 1978, the trusteeship was transferred from the South African State President, to the Administrator General of South West Africa. The Development Trust and Land Act, 1936 [18 of 1936] remained in force in Namibia until 2002, when it was repealed by the Communal Land Reform Act.
- [41] What is clear from s 18(3) and (4) of the Development Trust and Land Act, 1936 is that, that Act formally introduced what has come to be known as a PTO (permission to occupy). A PTO is a licence granted, by the trustee, under the Development Trust and Land Act, 1936 which allows the licensee to occupy state land under conditions attached to the permission to occupy certificate. Since the interest granted by the PTO is a licence it's as such similar to leasehold, a PTO conveys no rights of ownership, but it does contain an option for the holder to obtain secure title to the land if at any time during the currency of the PTO such title becomes available. A PTO provides a limited right to occupy an identified site for a limited period, but the rights conveyed by a PTO do not amount to a freehold tenure.
- [42] Thus, in the scheme of the applicable colonial laws, 'ownership' of land was the exclusive preserve of whites, and 'permission to occupy' land applied exclusively to blacks. Thus, in South West Africa like in South Africa, blacks could only be granted 'permission to occupy' land in the so-called homelands, which have now become known as communal land, as opposed to 'ownership' of land.
- [43] From what I have stated in the preceding paragraphs, it is clear that in the areas known as communal land today the rights to land did not equate to freehold tenure and that only permission to occupy could be granted in respect of the homeland of colonial years. What is furthermore clear is that a permission to occupy had to meet both legal and physical requirements for it to qualify as a document that serves as a representation of land for all legal purposes.
- [44] In the unreported judgment of *Namundjebo-Tilahun NO and Another v Northgate Properties (Pty) Ltd and Others* [NASC SA 33/2011 (7 October 2013)], the Supreme Court per Strydom AJA said:

'The granting of a PTO was a matter of record. . . . in terms of s 25(1) of the Black Administration Act 38 of 1927, read with s 21(1) and 48(1) of the Black Trust and Land Act 18 of 1936 and in terms of Government Notice R188 of 1969, the then State President of South Africa issued certain Black Areas Land Regulations which also applied to the then South West Africa. In terms of reg 47(1) a person could apply for a trading allotment in the form of a PTO. Regulation 47(5) provided:

"(5) No person shall occupy any Trust land (read: 'communal land') within a black area unless he has been or has been deemed to have been duly authorised to do so under these regulations or any other law.

The occupation of land for business purposes was provided for in terms of reg 6(1) of the regulations and stated as follows:

"6(1) No person shall remain in occupation of any portion of land acquired by the Trust after the commencement of these regulations except with the permission in writing of the Bantu Affairs Commissioner and on such terms and conditions as such Bantu Affairs Commissioner may specify in such permission."

In terms of art 140(1) of the Namibian Constitution this statutory regime of pre-Independence laws, survived the Independence of Namibia and art 140(4) stated that "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 Namibia, or to a corresponding Minister, official or institution of the Republic of Namibia . . .". The corresponding officer to the Bantu Affairs Commissioner in reg 6(1) is now the Permanent Secretary in the ministry.'

- [45] After the Independence of Namibia the Government of the Republic of Namibia introduced two pieces of legislation, which have an impact on land rights in respect of land situated in communal land, namely the Local Authorities Act, and the Communal Land Reform Act. Section 3 of the Local Authorities Act empowers the minister responsible for local government to, from time to time by notice in the Gazette, establish any area specified in such notice as the area of a local authority, and to declare such area to be a municipality, town or village under the name specified in such notice.
- [46] Section 15(2) of the Communal Land Reform Act, provides that where a local authority area is situated or established within the boundaries of any communal land area, the land comprising such local authority area shall not form part of that communal land area and shall not be communal land.

Iipinge v Taapopi & Others 2023 (1) NR 78 (HC), paragraphs 34-ff (footnotes omitted), Ueitele J

COMMISSIONS

Commission of Inquiry into Claims of Ancestral Land Rights and Restitution (Proc 5/2019, <u>GG 6858</u>). See also GN 59/2019 (<u>GG 6858</u>).

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See also **DEEDS**.

See also Soil Conservation Act 76 of 1969 and Mountain Catchment Areas Act 63 of 1970 (ENVIRONMENT).

See also LANDLORD AND TENANT.

See also Formalities in Respect of Contracts of Sale of Land Act 71 of 1969 and Sale of Land on Instalments Act 72 of 1971 (PURCHASE AND SALE).

See also Transfer Duty Act 14 of 1993 (REVENUE).

LAND AND HOUSING PROFESSIONS

Estate Agents Act 112 of 1976, as amended in South Africa to April 1978 w

Summary: This Act (originally published in <u>RSA GG 5221</u>) establishes an Estate Agents Board and an Estate Agents Fidelity Fund and regulates the activities of estate agents. It was brought into force in South Africa and South West Africa on 1 August 1977 by RSA Proc. R.110/1977 (<u>RSA GG 5580</u>), pursuant to section 36 of the Act. It will be replaced by the Property Practitioners Act 11 of 2024 (<u>GG 8503</u>), which is not yet in force.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 36 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel". It was amended in SWA by Act 28 of 1987 to state that the Act applied to SWA, but not the amendments: "This Act shall apply in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. There were no amendments to the Act in South Africa prior to the date of transfer. (The *Estate Agents Amendment Act 60 of 1978* came into force on the date of its publication, 17 May 1978, shortly after the date of transfer.) None of the six amendments to the Act in South Africa after the date of transfer and prior to Namibian independence were made expressly applicable to SWA. (This was confirmed by the 1987 amendment referred to above.)

Amendments: Act 28/1987 (<u>OG 5476</u>), which is brought into force on 1 April 1988 by AG 5/1988 (<u>OG 5514</u>), amends the Act substantially.

Regulations: Act 28/1987 (OG 5476) states:

The regulations published under section 33 of the principal Act in the *Government Gazette* of the Republic of South Africa which were of force and effect in the Republic immediately before the commencement of this Act [Act 28/1987, which commenced on 1 April 1988] shall, subject to the provisions of subsection (2), apply in the territory of South West Africa as if it were made by the Cabinet under the said section 33 and published in the *Official Gazette* on the date of commencement of this Act.

This amending Act also contains rules about how certain terms in the South African regulations are to be construed, and amends the Regulations relating to the Standard of Training of Estate Agents published in RSA GN R.1409/1983 (RSA GG 8783).²⁷⁰

Regulations relating to Trust Account of an Estate Agent and Investment of Trust Moneys are contained in RSA GN R.1472/1977 (RSA GG 5694), as amended by RSA GN R.604/1979 (RSA GG 6364), RSA GN R.2418/1980 (RSA GG 7312), RSA GN R.948/1981 (RSA GG 7566), RSA GN R.1415/1981 (RSA GG 7648), RSA GN R.2499/1981 (RSA GG 7913), RSA GN R.1157/1985 (RSA GG 9759) and GN 221/2015 (GG 5845) (which erroneously states that it amends the regulations in RSA GN R.604/1979). Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations.

and the date when that amending Act commenced (1 April 1988).

²⁷⁰ **Regulations NOT applicable to SWA:** RSA GN R.1485/1981 (RSA GG 7663) creates "regulations" to specify services under the definition of "estate agent", but these regulations were made after the date of transfer in terms of paragraph (a)(iv) of the definition of "estate agent" in section 1 of the Act (which actually authorises "notices" rather than regulations in any event). They were therefore not made applicable to SWA by Act 28/1987 (OG 5476), which covered only regulations published under section 33 of the Act between the date of transfer (28 April 1978)

Regulations relating to Investment of Moneys in Estate Agents Fidelity Fund are contained in RSA GN R.2206/1978 (<u>RSA GG 6199</u>), which withdraws RSA GN R.388/1978. Act 28/1987 (<u>OG 5476</u>) contains some rules of construction which apply to these regulations.

Regulations relating to the Standard of Training of Estate Agents are contained in RSA GN R.1409/1983 (RSA GG 8783), as "deemed" to be amended by Act 28/1987 (OG 5476), and as amended by GN 221/1996 (GG 1395) and GN 220/2015 (GG 5845). Act 28/1987 (OG 5476) also contains some rules of construction which apply to these regulations.

Regulations relating to the Manner in which a Charge of Improper Conduct against any Estate Agent shall be Brought and Investigated are contained in RSA GN R.1263/1984 (RSA GG 9269), which withdraws RSA GN R.1471/1977 (RSA GG 5694) and its amendments. Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations.

Regulations relating to Issue of Fidelity Fund and Registration Certificates are contained in RSA GN R.1798/1986 (RSA GG 10403) as corrected by RSA GN R.2106/1986 (RSA GG 10476) (affecting only the Afrikaans text), and as amended by AG GN 97 of 1989 (OG GG 5844), GN 222/1996 (GG 1395) and GN 222/2015 (GG 5845). Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations. These regulations withdraw RSA GN R.956/1977 (RSA GG 5568) and its amendments, and RSA GN R.2071/1983 (RSA GG 8900) and its amendments.

In South Africa, the regulations were also amended by RSA GN R.1699/1988 (<u>RSA GG 11474</u>) and RSA GN R.1526/1989 (<u>RSA GG 12003</u>). However, both of these amendments post-dated both the date of transfer and the date referred to in Act 28/1987 regarding the applicability of South African regulations to SWA.

Code of Conduct: The most recent **Code of Conduct** is contained in GN 16/1996 (<u>GG 1242</u>), which substitutes the Code of Conduct promulgated in AG GN 98/1989 (<u>OG 5845</u>).²⁷¹

Exemptions: RSA GN R.1474/1977 (RSA GG 5694) exempts a company as defined in section 1(1) of the *Companies Act 61 of 1973* (replaced by the Companies Act 28 of 2004), registered in terms of section 4(9) of the Banks Act 23 of 1965 (replaced by the Banking Institutions Act 2 of 1998 and then by the Banking Institutions Act 13 of 1923), as a banking institution, a director and an employee of such company from specified provisions of this Act.

Similar exemption regulations were published after the date of transfer in RSA GN R.31/1981 (<u>RSA GG 7356</u>), RSA GN R.1485/ 1981 (<u>RSA GG 7663</u>) and RSA GN R.1922/1986 (<u>RSA GG 10443</u>), but these were not made expressly applicable to SWA.

Specification of services: RSA GN R.1473/1977 (RSA GG 5694) states that acting as an agent for or a representative of any financial institution as defined in section 1 of the *Financial Institutions (Investment of Funds) Act 56 of 1964* is specified as a service for the purposes of paragraph (a)(iv)(cc) of the definition of "estate agent" in section 1 of the Estate Agents Act 112 of 1976. The *Financial Institutions*

²⁷¹ Previous Codes of Conduct were issued by the Estate Agents Board in terms of section 8(b) of the Act in -

[•] RSA GN R.603/1979 (<u>RSA GG 6364</u>), as amended by RSA GN R.1122/1980 (<u>RSA GG 7054</u>), RSA GN R.2653/1983 (<u>RSA GG 8986</u>) and RSA GN R.2695/1983 (<u>RSA GG 8993</u>)

[•] RSA GN R.571/1985 (<u>RSA GG 9620</u>), as corrected by RSA GN R.847/1985 (<u>RSA GG 9689</u>), which withdrew RSA GN R.603/1979 and its amendments.

These notices were *all* withdrawn by RSA GN R.1799/1986 (<u>RSA GG 10403</u>). All of these came after the date of transfer, but section 27 of Act 28/1987 (<u>OG 5476</u>), which is brought into force on 1 April 1988 by AG 5/1988 (<u>OG 5514</u>), states:

[&]quot;Anything purporting to have been done by the Estate Agents Board, established by section 2 of the principal Act, before the commencement of this Act under any provision of the principal Act, as amended by the Estate Agents Amendment Act, 1978 (Act 60 of 1978), the Estate Agents Amendment Act, 1980 (Act 57 of 1980), the Estate Agents Amendment Act, 1982 (Act 53 of 1982), and the Estate Agents Amendment Act, 1984 (Act 51 of 1984), and the regulations made thereunder, shall be deemed to have been done as if those Amendment Acts and regulations were at all relevant times also applicable in the territory of South West Africa."

RSA GN R.1799/1986 was withdrawn by AG GN 98/1989.

(Investment of Funds) Act 39 of 1984, as amended in South Africa prior to Namibian independence, repealed Act 56 of 1964 with a general savings clause in section 11(2).

RSA GN R.1485/1981 (RSA GG 7663) is a notice in terms of section 1 of the Act containing regulations that specify services for the purposes of paragraph (a)(iv) of the definition of "estate agent" in section 1. RSA GN R.1922/1986 (RSA GG 10443) contains a notice that specifies services for the purposes of paragraph (a)(iv) of the definition of "estate agent" in section 1. Both of these notices were issued after the date of transfer and were therefore not applicable to SWA.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>), which places certain duties on estate agents and on the Estate Agents Board.

Architects' and Quantity Surveyors' Act 13 of 1979 🕎 🙀

Summary: This Act (originally published in OG 4029) provides for the establishment of a Namibia Council for Architects and Quantity Surveyors, and for the registration of persons in these professions. It was brought into force, with the exception of section 13(1)(b), on 1 January 1980 by AG 36/1979 (OG 4057). Section 13(1)(b) was brought into force on 2 May 1983 by AG Proc. 10/1983 (OG 4773).

Repeals: The Act repeals the *Architects' Act 35 of 1970* as amended, and the *Quantity Surveyors' Act 36 of 1970*.

Amendments: Act 11/1992 (<u>GG 420</u>) amends sections 1, 2, 3, 11, and 25, and substitutes certain words and expressions and the long title of the Act to make it consistent with an independent Namibia.

Regulations: Regulations are authorised by section 18 of the Act. Section 18(2) of the Act contains a savings clause for any regulations made regarding any work prescribed as being reserved for architects or quantity surveyors under the repealed laws, and provides directions on how to construe certain terms in such prior enactments, but the 1981 regulations discussed below explicitly repealed the regulations made under the repealed laws.

AG GN 91/1981 (OG 4508) contains regulations issued in terms of the Act. No amendments to these regulations have been located and no post-independence regulations have been promulgated under the Act.²⁷²

• RSA GN R.319/1971 (RSA GG 3010), a notice concerning requirements with which an association of quantity surveyors shall comply in order to qualify for recognition as a quantity surveyors' association

LAND AND HOUSING PROFESSIONS-3

²⁷² **Repealed regulations:** The regulations contained in AG GN 91/1981 (OG 4508) repeal the regulations contained in RSA GN R.314/1971 (RSA GG 3010), made under the *Architects' Act 35 of 1970*, as amended by RSA GN R.2247/1973 (RSA GG 4091), RSA GN R.238/1976 (RSA GG 4985), RSA GN R.1966/1977 (RSA GG 5753) and RSA GN R.1967/1977 (RSA GG 5753).

They also repeal the regulations contained in RSA GN R.318/1971 (RSA GG 3010) made under the *Quantity Surveyors' Act 36 of 1970*, as amended by RSA GN R.947/1973 (RSA GG 3919) and by RSA GN R.1150/1975 (RSA GG 4741).

The regulations in AG GN 91/1981 also repeal the following –

the Association of South African Quantity Surveyors Constitution and By-Laws (unnumbered) contained in RSA GG 3023 (mistakenly referred to in AG GN 91/1981 as Government Notice "3023 of 19 March 1971"), as amended by RSA General Notice 462/1977 (RSA GG 5655) (mistakenly referred to in AG GN 91/1981 as Government Notice "5655 of 15 July 1977") and by RSA General Notice 645/1978 (RSA GG 6124) (mistakenly referred to in AG GN 91/1981 as Government Notice "6124 of 4 August 1978").

The regulations also state that they repeal RSA GN 4527/1974, published on 6 December 1974. No such notice could be located. Perhaps the intention was to refer to RSA GG R.2295/1974 (RSA GG 4530) containing annual fees for quantity surveyors, which is the only document pertaining to either architects or quantity surveyors published on that date. (RSA GG 4527, published on 29 November 1974, was also checked, but contained nothing on the relevant topics.)

Fees: Section 18(2) of the Act contains a savings clause for any fees prescribed under the repealed laws, but the post-independence enactments on fees appear to have superseded any prior fee tariffs.

Minimum fees for architects and quantity surveyors are contained in GN 250/1998 (GG 1968), as amended by GN 221/2003 (GG 3082). (This tariff of fees has been included in the database of annotated regulations since it contains a number of rules about fees in addition to setting fee amounts.)

Minimum hourly fees for architects and quantity surveyors are contained in GN 105/2013 (GG 5183).²⁷³

Exemptions: Exemptions from the provisions of section 13 are contained in GN 190/1994 (GG 948).

Exemptions from the provisions of sections 11 and 13 in respect of work for the Millennium Challenge Account are contained in GN 12/2009 (GG 4210).

Exemptions of listed persons from registration, pursuant to section 23(1) read with section 11, were originally contained in GN 87/2017 (GG 6285), but this notice was repealed by GN 297/2017 (GG 6472).

Reservation of work: Section 24(2) of the Act contains a savings clause for any work prescribed as being reserved for architects or quantity surveyors under the repealed laws, and provides directions on how to construe certain terms in such prior enactments.

GN 19/1981 (OG 4508) lists reservations of work for architects in RSA GN R.1769/1979 (RSA GG 6620) in terms of section 7(3)(c) of the Architects' Act 35 of 1970 which are deemed in terms of section 24(2) to have also been so reserved in SWA.

Similarly, GN 20/1981 (OG 4508) lists reservations of work for quantity surveyors in RSA GN R.1452/1973 (RSA GG 3999) in terms of section 7(3)(b) of the Quantity Surveyors' Act 36 of 1970, which are deemed in terms of section 24(2) to have also been so reserved in SWA.

Appointments: Members of the Namibian Council for Architects and Quantity Surveyors are appointed in GN 15/1990 (GG 33), GN 143/1992 (GG 512), GN 61/1993 (GG 662), GN 114/1994 (GG 870), GN 86/1995 (GG 1090), GN 123/1996 (GG 1320), GN 44/1997 (GG 1518), GN 48/1998 (GG 1816), GN 128/1998 (GG 1885), GN 253/1999 (GG 2229), GN 280/1999 (GG 2248), GN 211/2001 (GG 2630), GN 84/2003 (GG 2956), GN 45/2004 (GG 3169), GN 198/2006 (GG 3738), GN 23/2009 (GG 4216), GN 207/2009 (GG 4357), GN 141/2010 (GG 4523), GN 217/2016 (GG 6125), GN 280/2019 (GG 7009) and GN 261/2020 (GG 7373).

Cases:

Kondjeni Nkandi Architects & Another v Namibian Airports Company Ltd 2016 (1) NR 223 (HC) (section 13); contradicted in Claud Bosch Architects cc v Auas Business Enterprise 123 (Pty) Ltd 2018 (1) NR 155 (SC) (section 13; departing from the approach taken in the Nkandi case "which was incorrectly decided")

Graceland Architects CC v Howard & Chamberlain Architects & Another 2018 (1) NR 34 (HC) (sections 11 and 13; section 13(1)(b)(i) does not prohibit the utilisation of work performed outside Namibia in erecting a building which happens to be in Namibia).

Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993 🕎 📻

²⁷³ Previous minimum hourly fees were set in GN 94/1992 (GG 449), GN 237/1997 (GG 1741) as corrected by GN 13/1998 (GG 1796), GN 156/2002 (GG 2810), GN 145/2005 (GG 3529), GN 197/2006 (GG 3738) and GN 232/2009 (GG 4386). Each of these notices repeals the previous one.

Summary: This Act (originally published in <u>GG 769</u>) – sometimes referred to as the "SURCON Act" – provides for the establishment of a Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians, and sets forth its powers and functions. It also provides for the registration of professional land surveyors, apprentice land surveyors, technical surveyors, survey technicians and apprentice survey technicians, and regulates their qualifications and their professional conduct and practice. It was brought into force on 1 June 1994 by GN 85/1994 (GG 863).

Repeals: The Act repeals the Land Surveyors' Ordinance 10 of 1963 and the Land Surveyors' Registration Act 14 of 1950.

Amendments: Act 16/1995 (<u>GG 1155</u>) inserts section 14A and amends section 15. Its primary purpose is to provide for the authorisation of professional land surveyors, technical surveyors and survey technicians in the public service.

Regulations: There is no savings clause for regulations that may have been made under the repealed laws. Regulations under the current Act are contained in GN 216/1998 (GG 1945).

Notices: The Institute of Land Surveyors is recognised as an approved society in GN 264/1998 (GG 1982).

Fees: Tariffs of fees are published from time to time, with the new tariffs replacing the previous ones. The current tariffs (with related regulations) are contained in GN 196/2015 (GG 5820).

Appointments: The Council is announced in GN 62/1996 (<u>GG 1273</u>), which is repeated in GN 74/1996 (<u>GG 1284</u>). Members of the Council are also announced in GN 36/1999 (<u>GG 2054</u>) and GN 68/2002 (<u>GG 2734</u>).

Town and Regional Planners Act 9 of 1996 🗐 🙀

Summary: This Act (originally published in <u>GG 1354</u>) establishes a Namibian Council for Town and Regional Planners and provides for the registration and training of town and regional planners. It was brought into force on 20 July 1998 by GN 170/1998 (GG 1909).

Amendments: Act 32/1998 (<u>GG 1994</u>) (which is deemed to have come into force on 20 July 1998) amends section 3.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 9.

Regulations: Regulations are contained in GN 126/2001 (<u>GG 2561</u>), as amended by GN 149/2007 (<u>GG 3896</u>), GN 82/2010 (<u>GG 4473</u>) and GN 1/2014 (<u>GG 5389</u>) (all of which amend Annexure A).

Fees: Minimum fees and related guidelines are set forth in GN 62/2009 (<u>GG 4237</u>), as amended by GN 240/2009 (<u>GG 4391</u>) and GN 86/2014 (<u>GG 5497</u>).

Appointments: Appointments to the Namibian Council for Town and Regional Planners are contained in GN 33/2000 (GG 2266), with effect from 2 November 1999.

*Property Valuers Profession Act 7 of 2012 🕎 🙀

Summary: This Act (originally published in <u>GG 4973</u>) establishes the Namibian Council for Property Valuers Profession and provides for the registration of professional valuers and related professionals

and trainees. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Amendments: Act 2/2018 (GG 6563) amends several sections of the Act.

Act 15 of 2022 (GG 7994) also amends several sections of the Act. It will come into force at the same time as the principal Act.

Regulations: Regulations are authorised by section 34 of the Act, but none have yet been promulgated.

Appointments: Appointments to the Namibian Council for Property Valuers Profession are announced in GN 304/2013 (GG 5344).

*Property Practitioners Act 11 of 2024 📳 🙀

Summary: This Act (GG 8503) regulates property practitioners and transforms the Namibian Estate Agents Board into the Property Practitioners Regulatory Authority and the Estate Agents Fidelity Fund into the Property Practitioners Fidelity Fund. It governs the professional conduct and behaviour of property practitioners and makes provision for the resolution of disputes between property practitioners and consumers. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Repeals: The Act repeals the *Estate Agents Act 112 of 1976.*²⁷⁴

Savings: Section 92 of the current Act contains a number of transitional provisions. Section 92(1)(d) states:

any regulation, rule or code of conduct or rule made in terms of the repealed law made [sic] remains in full force and effect as if it was made in terms of or under this Act.

Act 28/1987 (OG 5476), which amended the previous Estate Agents Act 112 of 1976, states:

The regulations published under section 33 of the principal Act in the *Government Gazette* of the Republic of South Africa which were of force and effect in the Republic immediately before the commencement of this Act [Act 28/1987, which commenced on 1 April 1988] shall, subject to the provisions of subsection (2), apply in the territory of South West Africa as if it were made by the Cabinet under the said section 33 and published in the *Official Gazette* on the date of commencement of this Act.

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²⁷⁴ The *Estate Agents Act 112 of 1976*, originally published in RSA GG 5221), was brought into force in South Africa and South West Africa on 1 August 1977 by RSA Proc. R.110/1977 (RSA GG 5580). It was amended by Act 28/1987 (OG 5476), which was brought into force on 1 April 1988 by AG 5/1988 (OG 5514). This previous was applicable to SWA by viture of section 1, which defined "Republic" to include "the territory of South West Africa". Section 36 also stated: "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel". However, section 36 was amended in SWA by Act 28 of 1987 to state that the Act applied to SWA, but not the amendments: "This Act shall apply in the territory of South West Africa, including the Eastern Caprivi Zipfel." The administration of the previous Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. There were no amendments to the Act in South Africa prior to the date of transfer. None of the six amendments to the Act in South Africa after the date of transfer and prior to Namibian independence were made expressly applicable to SWA. ²⁷⁴ (This was confirmed by the 1987 amendment referred to above.)

This amending Act also contains rules about how certain terms in the South African regulations are to be construed, and amends the Regulations relating to the Standard of Training of Estate Agents published in RSA GN R.1409/1983 (RSA GG 8783).²⁷⁵

Regulations: Regulations are authorised by section 90 of the current Act, but none have yet been promulgated.

Regulations made under the previous Act which survive pursuant to the savings clause of the current Act are as follows:

Regulations relating to Trust Account of an Estate Agent and Investment of Trust Moneys are contained in RSA GN R.1472/1977 (RSA GG 5694), as amended by RSA GN R.604/1979 (RSA GG 6364), RSA GN R.2418/1980 (RSA GG 7312), RSA GN R.948/1981 (RSA GG 7566), RSA GN R.1415/1981 (RSA GG 7648), RSA GN R.2499/1981 (RSA GG 7913), RSA GN R.1157/1985 (RSA GG 9759) and GN 221/2015 (GG 5845) (which erroneously states that it amends the regulations in RSA GN R.604/1979). Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations.

Regulations relating to Investment of Moneys in Estate Agents Fidelity Fund are contained in RSA GN R.2206/1978 (RSA GG 6199), which withdraws RSA GN R.388/1978. Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations.

Regulations relating to the Standard of Training of Estate Agents are contained in RSA GN R.1409/1983 (RSA GG 8783), as "deemed" to be amended by Act 28/1987 (OG 5476), and as amended by GN 221/1996 (GG 1395) and GN 220/2015 (GG 5845). Act 28/1987 (OG 5476) also contains some rules of construction which apply to these regulations.

Regulations relating to the Manner in which a Charge of Improper Conduct against any Estate Agent shall be Brought and Investigated are contained in RSA GN R.1263/1984 (RSA GG 9269), which withdraws RSA GN R.1471/1977 (RSA GG 5694) and its amendments. Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations.

Regulations relating to Issue of Fidelity Fund and Registration Certificates are contained in RSA GN R.1798/1986 (RSA GG 10403) as corrected by RSA GN R.2106/1986 (RSA GG 10476) (affecting only the Afrikaans text), and as amended by AG GN 97 of 1989 (OG GG 5844), GN 222/1996 (GG 1395) and GN 222/2015 (GG 5845). Act 28/1987 (OG 5476) contains some rules of construction which apply to these regulations. These regulations withdraw RSA GN R.956/1977 (RSA GG 5568) and its amendments, and RSA GN R.2071/1983 (RSA GG 8900) and its amendments.

In South Africa, the regulations were also amended by RSA GN R.1699/1988 (<u>RSA GG 11474</u>) and RSA GN R.1526/1989 (<u>RSA GG 12003</u>). However, both of these amendments post-dated both the date of transfer and the date referred to in Act 28/1987 regarding the applicability of South African regulations to SWA.

Codes of Conduct: The most recent **Code of Conduct** issued under the previous Act, which survives pursuant to the savings clause in the current Act, is contained in GN 16/1996 (<u>GG 1242</u>), which substitutes the Code of Conduct promulgated in AG GN 98/1989 (<u>OG 5845</u>).²⁷⁶

RSA GN R.603/1979 (<u>RSA GG 6364</u>), as amended by RSA GN R.1122/1980 (<u>RSA GG 7054</u>), RSA GN R.2653/1983 (<u>RSA GG 8986</u>) and RSA GN R.2695/1983 (<u>RSA GG 8993</u>)

²⁷⁵ **Regulations NOT applicable to SWA:** RSA GN R.1485/1981 (RSA GG 7663) creates "regulations" to specify services under the definition of "estate agent", but these regulations were made after the date of transfer in terms of paragraph (a)(iv) of the definition of "estate agent" in section 1 of the Act (which actually authorises "notices" rather than regulations in any event). They were therefore not made applicable to SWA by Act 28/1987 (OG 5476), which covered only regulations published under section 33 of the Act between the date of transfer (28 April 1978) and the date when that amending Act commenced (1 April 1988).

²⁷⁶ Previous Codes of Conduct were issued by the Estate Agents Board in terms of section 8(b) of the Act in -

Note: It should be noted that the Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>), which places certain duties on estate agents and on the Estate Agents Board.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (EDUCATION).

RSA GN R.571/1985 (<u>RSA GG 9620</u>), as corrected by RSA GN R.847/1985 (<u>RSA GG 9689</u>), which withdrew RSA GN R.603/1979 and its amendments.

These notices were *all* withdrawn by RSA GN R.1799/1986 (<u>RSA GG 10403</u>). All of these came after the date of transfer, but section 27 of Act 28/1987 (<u>OG 5476</u>), which is brought into force on 1 April 1988 by AG 5/1988 (<u>OG 5514</u>), states:

[&]quot;Anything purporting to have been done by the Estate Agents Board, established by section 2 of the principal Act, before the commencement of this Act under any provision of the principal Act, as amended by the Estate Agents Amendment Act, 1978 (Act 60 of 1978), the Estate Agents Amendment Act, 1980 (Act 57 of 1980), the Estate Agents Amendment Act, 1982 (Act 53 of 1982), and the Estate Agents Amendment Act, 1984 (Act 51 of 1984), and the regulations made thereunder, shall be deemed to have been done as if those Amendment Acts and regulations were at all relevant times also applicable in the territory of South West Africa."

RSA GN R.1799/1986 was withdrawn by AG GN 98/1989.

LANDLORD AND TENANT

Formalities in respect of Leases of Land Act 18 of 1969, as amended in South Africa prior to independence

Summary: This Act (<u>RSA GG 2318</u>) concerns formalities in leases of land.

Applicability to SWA: Section 2 states "This Act and any amendment thereof shall apply also in the territory of South West Africa." Although amendments to the Act in South Africa would have been automatically applicable to SWA, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: Since the Act does not indicate what Minister administered the Act, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Rents Ordinance 13 of 1977 🕎 🙀

Summary: This Ordinance (originally published in <u>OG 3634</u>) regulates the letting and hiring of noncommercial immovable property. It was brought into force with effect from 1 January 1978 by Proc. 1/1978 (OG 3685).

Repeals: The Ordinance repeals the Rents Proclamation 4 of 1944 (<u>OG 1088</u>), as amended, which in turn repealed the Rents Proclamation 43 of 1920, as amended.

Amendments: The Ordinance is amended by Ord. 4/1980 (OG 4134) and by the Married Persons Equality Act 1 of 1996 (GG 1316) (which substitutes section 1).

Savings: Section 39(3) of the Ordinance contains a savings clause:

Any notice issued or anything done under a provision of a law repealed by subsection (1) shall be deemed to have been issued or done under the corresponding provisions of this Ordinance.

However, the repealed Rents Proclamation 4 of 1944 contained no provision for regulations and no savings clause in respect of anything done under the laws which it in turn repealed.

Regulations: Regulations are authorised by section 38 of this Ordinance.

Regulations issued pursuant to this Ordinance are contained in GN 10/1978 (OG 3685). These regulations came into operation with effect from 1 January 1978.

No post-independence regulations have been promulgated.

Application of law: Proc. 24/1973 (OG 3300), issued in terms of the repealed Rents Proclamation 4 of 1944, exempts all dwellings which are let by any municipality in terms of section 233(1)(a) or 240(19) of the Municipal Ordinance 13 of 1963 or any village management board in terms of section 28 of the Village Management Boards Ordinance 14 of 1963 from the provisions of the Rents Proclamation 4 of 1944.

The Local Authorities Act 23 of 1992 repealed the Municipal Ordinance 13 of 1963 and the Village Management Boards Ordinance 14 of 1963.

GN 147/1978 (OG 3759) and AG 21/1985 (OG 5005) exempt certain dwellings from the provisions of the Ordinance. 277

GN 147/1978 applies to the properties owned by certain listed municipalities, where these properties are being leased by the municipalities and are situated in the municipality's area of jurisdiction. AG 21/1985 applies to every dwelling leased by any Village Management Board constituted under the provisions of the Village Management Boards Ordinance 14 of 1963 or the Peri-Urban Development Board constituted under the provisions of the Peri-Urban Development Board Ordinance 19 of 1970. The Local Authorities Act 23 of 1992 repealed the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970.

Appointments: GN 318/2018 (<u>GG 6784</u>) establishes Rent Boards for certain areas (Oshana Region, Kavango East Region, Erongo Region (Swakopmund), Erongo Region (Walvis Bay) and Khomas Region (City of Windhoek)), and announces the appointment of their members.

Cases: Lida Marie CC v O'Portuga Restaurant CC 2013 (3) NR 895 (HC) (application re: notice to vacate in terms of section 31(1)(a), decided on basis of incorrect identity of tenant).

See also LAND AND HOUSING.

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²⁷⁷ Proc. 86/1967 (<u>OG 2831</u>), issued in terms of the repealed Rents Proclamation 4 of 1944, excluded certain rent boards, but this Proclamation was repealed by Proc. 25/1973 (<u>OG 3342</u>).

Crown Liabilities Act 1 of 1910 📲 🙀

Summary: This Act (<u>SA GG 72</u>) concerns state liability.

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

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

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

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

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

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

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

Regulations: The Act makes no provision for regulations.

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

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

Administration of Justice Proclamation 21 of 1919 📢 🔄

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

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

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

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

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

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

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

Regulations: The Act makes no provision for regulations.

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

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

See also –

R v Goseb 1956 (2) SA 696 (SWA) Binga v Administrator-General, South West Africa & Others 1984 (3) SA 949 (SWA) S v Redondo 1992 NR 133 (SC).

Interpretation of Laws Proclamation 37 of 1920 🕎 🙀

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

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

Regulations: The Act makes no provision for regulations.

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

Cases:

- DTA of Namibia & Another v SWAPO Party of Namibia & Others 2005 NR 1 (HC) (meaning of "day" in Electoral Act 24 of 1992 interpreted in light of section 4)
- S v Nghitukwa 2005 NR 116 (HC) (section 12(1): where commencement date not specified in Act of Parliament, it comes into operation on date of publication in Government Gazette)
- Gemfarm Investments v Trans Hex Group 2009 (2) NR 477 (HC) (section 11(1)).
- Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2010 (2) NR 660 (HC); overruled by Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC) (addressing the meaning of section 12(3)(c) read together with the definition of "law" at paras 64-69)
- Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (section 11(2)(c); reference to section 2 in concurring judgment)
- Esau & Others v Director-General: Anti-Corruption Commission & Others 2020 (1) NR 123 (HC) (application of section 6 rule that the singular includes the plural)
- Roads Authority of Namibia v Chairperson: Public Procurement Review Panel & Others 2024 (1) NR 14 (HC) (section 4 applied to interpretation of "days" in Public Procurement Act 15 of 2015, following approach in S v Paulo NACH CC 10/2009 (10 March 2011)).

Related international agreements:

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

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

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

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

The Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970 (RSA GG 2828), which made the Act applicable to SWA, repealed the SWA Commissioners of Oaths Proclamation 24 of 1928 (OG 296), which in turn repealed the SWA Commissioners of Oaths Proclamation 17 of 1915 (OG 3).

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

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

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

- General Law Amendment Act 80 of 1964 (RSA GG 829)
- Justices of the Peace and Commissioners of Oaths Amendment Act 8 of 1965 (RSA GG 1054)
- Justices of the Peace and Commissioners of Oaths Amendment Act 21 of 1967 (RSA GG 1677)
- Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970 (RSA GG 2828)
- Parliamentary Service Act 33 of 1974 (RSA GG 4374)
- Second Bantu Laws Amendment Act 102 of 1978 (RSA GG 6095)

Terminology in the Act was amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

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

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

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

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

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

Regulations governing the Administering of an Oath or Affirmation issued in terms of this Act are contained in RSA GN R.1258/1972 (<u>RSA GG 3619</u>), as amended by RSA GN R.1648/1977 (<u>RSA GG 5716</u>) and by RSA GN R.1428/1980 (<u>RSA GG 7119</u>), which was made after the date of transfer but was made expressly applicable to SWA.²⁷⁸

No post-independence regulations have been issued.

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

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

Then, in South Africa, RSA GN R.1429/1976 as amended was replaced after the date of transfer and prior to Namibian independence by RSA GN R.2477/1984 (RSA GG 9499), as amended/corrected by RSA GN

²⁷⁸ In South Africa, the regulations were further amended by RSA GN R.774/1982 (<u>RSA GG 8169</u>), which came into force on the date of publication (23 April 1982) and deleted regulation 5. However, this amendment was made after the date of transfer and was not made expressly applicable to SWA.

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

²⁷⁹ The historical chain of such designations was as follows: A list of holders of office who are commissioners of oath was contained in RSA GN R.1257/1972 (RSA GG 3619) (which withdrew RSA GN R.1038/1967), as amended by RSA GN R.399/1974 (RSA GG 4227) and by RSA GN R.56/1975 (RSA GG 4558).

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

- Elected members of Regional Councils are designated as Commissioners of Oaths for the regions in which they have been elected and for the duration of their terms of office in GN 100/2000 (GG 2312).
- Investigating officers of the Anti-Corruption Commission established by the Anti-Corruption Act 8 of 2003, already appointed and to be appointed, are appointed as justices of the peace for all magisterial districts by GN 33/2012 (GG 4883).
- Certain inspectors for the Communications Regulatory Authority of Namibia are appointed as ex officio Commissioners of Oaths, with effect from 15 February 2016, by GN 48/2016 (GG 5971).
- Maintenance investigators are designated as *ex officio* Commissioners of Oaths in the area in which they are appointed, with effect from 1 June 2020, by GN 146/2020 (GG 7258).
- The holders of certain offices at the Namibia Revenue Agency are designated as *ex officio* Commissioners of Oaths, with effect from 2 December 2024, by GN 363/2024 (GG 8520).

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

SCHEDULE

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

Cases:

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

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

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

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

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R.1138/1986 (RSA GG 10270), RSA GN R.616/1987 (RSA GG 10672), RSA GN R.2852/1987 (RSA GG 11086), RSA GN R.1804/1988 (RSA GG 11497), RSA GN R.20/1989 (RSA GG 11658), RSA GN R.256/1989 (RSA GG 11708) and RSA GN R.400/1991 (RSA GG 13036) – but none of these were made expressly applicable to SWA, meaning that RSA GN R.1257/1972 as corrected continued to be the operative list in SWA.

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

²⁸⁰ This notice withdraws RSA GN R.1717/1972 (RSA GG 3663).

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

Delegation of Powers Ordinance 24 of 1973 🕎 🙀

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

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

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

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

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

Regulations: The Act makes no provision for regulations.

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

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

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

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

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

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

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

- Control and Treatment of Natives on Mines and Works Proclamation 3 of 1917 (OG 14)
- Native Locations (Entry of Europeans) Proclamation 6 of 1919 (OG 24)

- Natives employed on Mines and Works Proclamation 6 of 1924 (OG 130)
- Native Labour Regulation Proclamation 6 of 1925 (OG 155)
- Native Labour Regulation (Mines and Works) Proclamation 33 of 1929 (OG 348)
- South West Africa Affairs Proclamation 51 of 1937
- Internal Security Act 44 of 1950²⁸¹
- Public Safety Act 3 of 1953 (republished in OG 1750)
- Unlawful Organizations Act 34 of 1960 (republished in OG 2261)
- Deportation of Undesirable Persons from South West Africa Proclamation 148 of 1962 (republished in OG 2411)
- Terrorism Act 83 of 1967 (republished in OG 2820)
- Security Districts Proclamation AG 9 of 1977 (OG 3664)
- Detention for the Prevention of Political Violence and Intimidation Proclamation 26 of 1978 (OG 3740)
- Amnesty Proclamation 3 of 1980 (OG 4073)
- Defence Matters in South West Africa Proclamation 131 of 1980 (republished in OG 4236)
- Second Defence Matters in South West Africa Proclamation 198 of 1980 (republished in OG 4300)
- Prohibition and Notification of Meetings Act 22 of 1981 (OG 4574)
- State Council for South West Africa Proclamation, AG 14 of 1983 (OG 4800).

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

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

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

Amendments: The Proclamation is amended by the Police Act 19 of 1990 (<u>GG 113</u>) and by the Namibia Central Intelligence Service Act 10 of 1997 (<u>GG 1699</u>).

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

Law Reform and Development Commission Act 29 of 1991 🕎 🙀

Summary: This Act (originally published in <u>GG 331</u>) establishes a Law Reform and Development Commission. It was brought into force on 15 July 1992 by Proc. 21/1992 (GG 439).

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

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

Appointments: Proc. 35/2023 (GG 8272) announces the appointment of a Chairperson and members of

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²⁸¹ Originally the "Suppression of Communism Act" and made applicable to South West Africa from the outset; renamed by the Internal Security Amendment Act 79 of 1976 (RSA GG 5159).

the Law Reform and Development Commission. The appointment of a Chairperson is announced in Proc. 34/2015 (GG 5869) and in Proc. 12/2011 (GG 4767).

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

No previous announcements could be located, although there were several previous Chairpersons. (See, for example, GN 21/1997 (GG 1712), which refers to Mr U D Nujoma as a full-time Chairperson.)

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

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

Repeal of Obsolete Laws Act 21 of 2018 🕎 🙀

Summary: This Act (<u>GG 6812</u>), which was brought into force as of 1 March 2019 by GN 32/2019 (<u>GG 6851</u>), repeals or amends 143 laws, including the repeal of 39 principal statutes and their amendments.

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

- Assistance Fund of South West Africa Repeal Act 13 of 1992 (<u>GG 429</u>) (which repealed the Assistance Fund of South West Africa Act 1 of 1979)
- Caprivi Zipfel Affairs Proclamation 27 of 1930 (OG 383)
- Commissions' Powers Ordinance 6 of 1927 (OG 234)²⁸²
- Concessions from Natives Proclamation 8 of 1915 (OG 1)
- Development Fund of South West Africa/Namibia Act 29 of 1987 (OG 5477)
- Development of Self-Government for Native Nations in South-West Africa Act 54 of 1968 (RSA GG 2100)²⁸³
- Dried Peas Control Ordinance 35 of 1957 (OG 2092)
- Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920 (OG 33)
- Hospitals and Charitable Institutions Ordinance 16 of 1930 (OG 377)²⁸⁴
- Housing Levy Ordinance 18 of 1976 (OG 3580)
- Industrial Development Act 22 of 1940 (SA GG 2764)²⁸⁵

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²⁸² As amended by Ord. 2/1976 (OG 3521).

Amendment Act") (RSA GG 2665), Black Laws Amendment Act 27 of 1970 (originally called the "Second Bantu Laws Amendment Act") (RSA GG 2665), Black Laws Amendment Act 23 of 1972 (originally called the "Bantu Laws Amendment Act") (RSA GG 3447), Act 20 of 1973 (RSA GG 3845), Black Laws Amendment Act 70 of 1974 (originally called the "Bantu Laws Amendment Act") (RSA GG 4486), Second Black Laws Amendment Act 71 of 1974 (originally called the "Second Bantu Laws Amendment Act") (RSA GG 4487), Black Laws Amendment Act 9 of 1975 (originally called the "Bantu Laws Amendment Act") (RSA GG 4628), Exchequer and Audit Act 66 of 1975 (RSA GG 4794), and the Black Laws Amendment Act 4 of 1976 (originally called the "Bantu Laws Amendment Act") (RSA GG 5012). Section 52 of the Representative Authorities Proclamation, AG 8/1980 (OG 4401) (amended by AG 4/1981 and repealed by the Namibian Constitution) provided that the Act would be repealed in Hereroland, Kaokoland, Kavango, Eastern Caprivi, Owamboland and Damaraland when representative authorities for these areas came into operation, and in other parts of the territory on a date determined by the Administrator-General by proclamation. No proclamation specifying dates for repeals in other parts of South West Africa was located.

²⁸⁴ As amended by Proc. 1/1934 (<u>OG 541</u>), Ord. 10/1938 (<u>OG 748</u>), Ord. 5/1944 (<u>OG 1115</u>), Ord. 22/1953 (<u>OG 1774</u>), Ord. 24/1955 (<u>OG 1927</u>), Ord. 11/1960 (<u>OG 2254</u>), and Ord. 14/1969 (<u>OG 2991</u>).

²⁸⁵ As amended by Act 27 of 1942 (<u>SA GG 3041</u>), Act 40 of 1951 (<u>SA GG 4627</u>), Act 67 of 1961 (<u>RSA GG 31</u>), Act 52 of 1964 (<u>RSA GG 815</u>), Act 89 of 1965 (<u>RSA GG 1163</u>), Act 45 of 1966 (<u>RSA GG 1576</u>), Finance Act 88

- Lord's Day Observance Proclamation 54 of 1921 (OG 75)
- Namaland Consolidation and Administration Act 79 of 1972 (RSA GG 3578)²⁸⁶
- *Native Affairs Act 55 of 1959* (SA GG 6253)²⁸⁷
- Native Reserves Fencing Proclamation 12 of 1926 (OG 205)
- Native Reserves Trust Funds Administration Proclamation 9 of 1924 (OG 131)²⁸⁸
- Natives Trust Funds Proclamation 23 of 1939 (OG 792)
- Okavango Native Territory Affairs Proclamation 32 of 1937 (OG 728)²⁸⁹
- Ovamboland Affairs Proclamation 27 of 1929 (OG 345)²⁹⁰
- Payment of Loans Proclamation 28 of 1933 (OG 538)
- Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation 8 of 1990 (OG 5918)
- Pension Matters of Government Institutions Proclamation AG 56 of 1989 (OG 5831)²⁹¹
- Price Control and Preservation of Game Admissions of Guilt Proclamation 40 of 1944 (OG 1154)²⁹²
- Railways and Harbours Pension Act 35 of 1971 (RSA GG 3104)²⁹³
- Railways and Harbours Pensions for Non-Whites Act 43 of 1974 (RSA GG 4432)²⁹⁴
- Rehoboth Gebiet Income Tax Proclamation 92 of 1961 (OG 2362)
- Reservation of State Land for Natives Ordinance 35 of 1967 (OG 2837)²⁹⁵

of 1972 (RSA GG 3591), Second General Law Amendment Act 94 of 1974 (RSA GG 4510), Act 47 of 1975 (RSA GG 4730), Finance Act 102 of 1976 (RSA GG 5199), Act 96 of 1980 (RSA GG 7149), Act 53 of 1984 (RSA GG 9186) and Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438). The Finance Act 21 of 1980 (RSA GG 6915) previously repealed section 5bis.

²⁸⁶ As amended by AG 39/1978 (<u>OG 3770</u>), Act 15/1979 (<u>OG 4036</u>), Representative Authority of the Namas Proclamation (AG 35/1980) (<u>OG 4207</u>) (which was repealed by the Namibian Constitution), AG Proc. 71/1980 (<u>OG 4343</u>) and Act 4/1986 (<u>OG 5194</u>). The Act fails to repeal the amendments in AG Proc. 71/1980 (<u>OG 4343</u>), but these would have no ongoing effect.

²⁸⁷ Originally named the "Native Affairs Act" and amended by the *Black Laws Amendment Act 63 of 1966* (originally called the "Bantu Laws Amendment Act") (<u>RSA GG 1585</u>) and the *Third Black Laws Amendment Act* 49 of 1970 (originally called the "Third Bantu Laws Amendment Act") (<u>RSA GG 2820</u>).

²⁸⁸ As amended by the Native Administration Proclamation 15 of 1928 (OG 284), Proc. 21/1936 (OG 677), Proc. 6/1939 (OG 776), Ord. 11/1954 (OG 1846), RSA Proc. 62/1963 (RSA GG 470), RSA Proc. 228/1969 (RSA GG 2510) and RSA Proc. 84/1977 (RSA GG 5537); repealed in respect of Damaraland by the Damara Community and Regional Authorities and Paramount Chief and Headman Ordinance 2 of 1986 of the Damara Legislative Assembly (OG 5355). (Repeals in respect of other areas may exist, but have not been located.)

²⁸⁹ As amended by Proc. 38/1940 (OG 873), Proc. 26/1948 (OG 1367) and Proc. 53/1950 (OG 1552).

²⁹⁰ As amended by Proc. 26/1930 (OG 382), Proc. 34/1940 (OG 871), Proc. 38/1940 (OG 873), Proc. 15/1941 (OG 907), Proc. 20/1941 (OG 911), Proc. 2/1948 (OG 1339), Proc. 52/1950 (OG 1552) and RSA Proc. R.1/1976 (RSA GG 4946).

²⁹¹ As amended by Act 5/1990 (<u>GG 30</u>). The Act fails to repeal these amendments, but they would have no ongoing effect.

²⁹² As amended by Ord. 11/1954 (<u>OG 1846</u>) and Ord. 17/1958 (<u>OG 2152</u>).

²⁹³ As amended by *Act 33 of 1972* (RSA GG 3493), *Act 47 of 1973* (RSA GG 3912), *Act 44 of 1974* (RSA GG 4433), *Act 46 of 1975* (RSA GG 4719), *Act 8 of 1976* (RSA GG 5016), *Act 64 of 1978* (RSA GG 6019), *Act 80 of 1979* (RSA GG 6528), *Act 67 of 1980* (RSA GG 7039), *Act 29 of 1981* (RSA GG 7475), *Act 60 of 1981* (RSA GG 7753), *South African Transport Services Amendment Act 6 of 1982* (RSA GG 8039), *South African Transport Services Amendment Act 5 of 1984* (RSA GG 9081), *South African Transport Services Amendment Act 44 of 1985* (RSA GG 9708), *Finance Act 88 of 1988* (RSA GG 11410), and *Finance Act 80 of 1989* (RSA GG 11935).

²⁹⁴ As amended by *Act 89 of 1976* (RSA GG 5179), *Act 64 of 1978* (RSA GG 6019), *Act 67 of 1980* (RSA GG 7039), *Act 29 of 1981* (RSA GG 7475), *Act 60 of 1981* (RSA GG 7753), *South African Transport Services Amendment Act 6 of 1982* (RSA GG 8039), *South African Transport Services Amendment Act 13 of 1983* (RSA GG 8595), *South African Transport Services Amendment Act 5 of 1984* (RSA GG 9081), *South African Transport Services Amendment Act 44 of 1985* (RSA GG 9708), *South African Transport Services Amendment Act 91 of 1987* (RSA GG 10983), *Finance Act 88 of 1988* (RSA GG 11410) and *Finance Act 80 of 1989* (RSA GG 11935). The Act fails to repeal the amendments made by section 12 of the *Finance Act 80 of 1989* (RSA GG 11935). but these would have no ongoing effect.

²⁹⁵ As amended by Ord. 5/1969 (<u>OG 2983</u>), Ord. 19/1971 (<u>OG 3198</u>), Ord. 16/1974 (<u>OG 3442</u>), Ord. 5/1975 (<u>OG 3472</u>), Ord. 6/1977 (<u>OG 3605</u>) and Ord. 5/1978 (<u>OG 3736</u>).

- Silver Coin (Control of Importation) Proclamation 26 of 1932 (OG 489)²⁹⁶
- Social Pensions Ordinance 2 of 1965 (OG 2614)²⁹⁷
- South West Africa Affairs Act 25 of 1969 (RSA GG 2331)²⁹⁸
- South West Africa Medical Research Council Act 19 of 1969 (RSA GG 2319)
- South West African Meat Industry Ordinance 39 of 1955 (OG 1959)²⁹⁹
- State Hospitals Ordinance 17 of 1966 (OG 2727)³⁰⁰
- Teachers' Pensions Proclamation 39 of 1931 (OG 435)³⁰¹
- Treaty of Peace and South West Africa Mandate Act 49 of 1919 (SA GG 1000)
- Trespass of Donkeys Proclamation 18 of 1941 (OG 909)
- Usury Proclamation 26 of 1921 (OG 63)³⁰²
- Vagrancy Proclamation 25 of 1920 (OG 33)³⁰³
- Venereal Diseases Prevention Proclamation 5 of 1919 (OG 24).

Notes: This Act purports to repeal the provisions in the Schedule of the Exchequer and Audit Act 66 of 1975 (originally published in RSA GG 4794) that amend the Development of Self-Government for Native Nations in South-West Africa Act 54 of 1968. However, the Exchequer and Audit Act 66 of 1975 had already been repealed in its entirely by the State Finance Act 1 of 1982 (OG 4610). (For more information, see the "Historical Note on the State Revenue Fund" in the Namlex section on FINANCE AND DEVELOPMENT.)

This Act also repeals all remaining portions of the SWA Exchequer and Audit Amendment Proclamation 35 of 1979 (OG 4042) – which had already been partially repealed by the State Finance Act 1 of 1982 (OG 4610) and the Posts and Telecommunications Companies Establishment Act 17 of 1992 (originally published in GG 447). The remaining portions of the Proclamation repealed by this Act were:

- amendments to the Executive Powers (Posts and Telecommunications) Transfer Proclamation 12 of 1978 contained in sections 32-33
- amendments to sections 1, 3 and 4 of the RSA Exchequer and Audit Proclamation 85 of 1979 in sections 34-36 (The underlying RSA Exchequer and Audit Proclamation 85 of 1979 had been amended by the SWA Exchequer and Audit Amendment Proclamation 35 of 1979 and repealed with the exception of section 3 by the State Finance Act 1 of 1982 (OG 4610), with section 3 being later repealed by the South West Africa Legislative and Executive Authority Establishment Proclamation, RSA Proc. R.101 of 1985 (RSA GG 9790), which was repealed in turn by the Repeal of the Laws on the National Assembly, the Cabinet and the Constitutional Council Proclamation, AG 16 of 1989 (OG 5730).)
- the short title in section 39.

²⁹⁶ As amended by Proc. 33/1932 (OG 493).

²⁹⁷ Previously repealed in part by the RSA Aged Persons Amendment Act 14 of 1971 (RSA GG 3062) and the RSA Blind Persons Amendment Act 16 of 1971 (RSA GG 3064).

²⁹⁸ As amended by the *Finance Act 102 of 1969* (RSA GG 2465). The Customs and Excise Act 20 of 1998 (GG 1900), brought into force on 1 August 1998 (GN 186/1998, GG 1918), previously repealed section 6.

²⁹⁹ As amended by Ord. 7/1958 (OG 2141). The Financial Affairs Ordinance 8 of 1982 (Official Gazette 23 of the *Representative Authority of the Whites*) previously repealed section 36.

³⁰⁰ Repealed with the exception of its transitional provisions by the Hospitals Ordinance 14 of 1972 (OG 3265). ³⁰¹ As amended by Proc. 33/1936 (OG 687), Proc. 33/1937 (OG 731), Proc. 15/1938 (OG 749), Proc. 5/1942 (OG 939), Proc. 3/1943 (OG 1017), Proc. 18/1943 (OG 1063), Proc. 18/1944 (OG 1113), Proc. 1/1945 (OG 1158), Proc. 30/1945 (OG 1209), Proc. 40/1945 (OG 1222), Proc. 19/1946 (OG 1264), Proc. 16/1947 (OG 1312), Ord. 8/1951 (OG 1601), Ord. 8/1953 (OG 1755), Ord. 5/1954 (OG 1823), Ord. 34/1957 (OG 2092), Ord. 21/1959 (OG 2199), Ord. 26/1959 (OG 2199), Ord. 20/1960 (OG 2254), Ord. 17/1962 (OG 2409), Ord. 27/1963 (OG 2493), and Ord. 21/1969 (OG 3008).

³⁰² As amended by Ord. 25/1965 (OG 2636).

³⁰³ As amended by Proc. 32/1927 (OG 255); extended to the Rehoboth Gebiet by Proc. 7/1939 (OG 776). The Trespass Ordinance 3 of 1962 (OG 2390) previously repealed section 4-7.

Repeal of Obsolete Laws Act 12 of 2022 🛂 📻

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

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

- Census of Dwellings Proclamation 24 of 1945 (OG 1196)
- Commonwealth Relations (Temporary Provision) Act 41 of 1961 (SA GG 6700)
- Criminal Law Amendment Act 8 of 1953 (SA GG 5018, republished in OG 1750)
- Crown Lands (Trespass) Proclamation 7 of 1919 (OG 24)³⁰⁴
- Cultural Promotion Ordinance 9 of 1980 (OG 4159)³⁰⁵
- Ex-Volunteers Assistance Proclamation 2 of 1945 (OG 1166)³⁰⁶
- Finance and Financial Adjustments Acts Consolidation Act 11 of 1977 (RSA GG 5443)³⁰⁷
- Importation of Cement Ordinance 24 of 1963 (OG 2493)
- Indecent or Obscene Photographic Matter Act 37 of 1967 (RSA GG 1689)³⁰⁸
- Indemnity Proclamation 8 of 1923 (OG 103)
- Karakul Pelt Export Duty Amendment Proclamation 34 of 1939 (OG 801)³⁰⁹
- Land Titles Proclamation 2 of 1921 (OG 50)³¹⁰
- National Supplies Procurement Act 89 of 1970 (RSA GG 2898)³¹¹
- Natives Minimum Wage Proclamation 1 of 1944 (OG 1088)³¹²
- Promotion of the Density of Population in Designated Areas Act 18 of 1979 (OG 4052)³¹³
- Promotion of the Economic Development of National States Act 46 of 1968 (RSA GG 2054)³¹⁴

³⁰⁴ As amended by Proc. 4/1937 (OG 701), Proc. 31/1938 (OG 770) and Proc. 18/1948 (OG 1357).

³⁰⁵ As amended by the Libraries Ordinance 4 of 1981 (Official Gazette 2 of the Representative Authority of the Whites), already repealed by the Namibia Library and Information Service Act 4 of 2000 (GG 2290).

³⁰⁶ As amended by Proc. 14/1945 (OG 1186), Proc. 19/1945 (OG 1192), Proc. 25/1946 (OG 1273), Proc. 23/1948 (OG 1364) and Proc. 20/1949 (OG 1423).

³⁰⁷ Certain terms in the Act were amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

³⁰⁸ As amended by the General Law Amendment Act 101 of 1969 (RSA GG 2464), the Publications Act 42 of 1974 (RSA GG 4426) and Act 4/1985 (OG 5093). See also Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others 1998 NR 96 (HC) (section 2(1) declared unconstitutional; remainder of Act not severable from the unconstitutional section).

³⁰⁹ As amended by Ord. 5/1941 (OG 897), Ord. 7/1943 (OG 1055), Ord. 7/1953 (OG 1755), Ord. 13/1957 (OG 2072) and Ord. 9/1965 (OG 2614). The Proclamation is referred to an "Amendment" Proclamation because it repeals and replaces an earlier Proclamation, the Karakul Pelt Export Duty Proclamation 21 of 1939 - even though it does not actually "amend" that earlier law.

³¹⁰ As amended by Proc. 14/1922 (OG 84), Proc. 1/1937 (OG 696), Proc. 6/1942 (OG 939) and Proc. 3/1949 (OG 1406); extended to the Rehoboth Gebiet by the Rehoboth Gebiet (Extension of Laws Proclamation 12 of 1930 (OG 365). Portions of the Proclamation were previously repealed by the Registration of Deeds in Rehoboth Act 93 of 1976 (RSA GG 5183). This Act also repeals a provision in the RSA General Law Amendment Act 57 of 1975 (RSA GG 4760) which authorizes the issue of land titles in respect of certain land in the Rehoboth Gebiet in terms of the Proclamation.

³¹¹ As amended by the Finance Act 63 of 1973 (RSA GG 3948), General Law Amendment Act 29 of 1974 (RSA GG 4220), Act 89 of 1974 (RSA GG 4520), Act 54 of 1975 (RSA GG 4754), Act 70 of 1976 (RSA GG 5129), Act 73 of 1979 (RSA GG 6516), Finance Act 21 of 1980 (RSA GG 6915), Act 31 of 1982 (RSA GG 8083), and Act 25 of 1988 (RSA GG 11215). This Act also repeals a provision in the Insolvency Act 24 of 1936 (SA), still currently in force, that was inserted by the General Law Amendment Act 29 of 1974 (RSA) (RSA GG 4220) and cited the National Supplies Procurement Act 89 of 1970.

³¹² As amended by Proc. 5/1944 (**OG 1092**).

³¹³ As amended by AG 30/1985 (OG 5060).). This Act also repeals a provision in the Income Tax Act 24 of 1981, still currently in force, that cited the Promotion of the Density of Population in Designated Areas Act 18 of 1979. ³¹⁴ The Act was originally called the "Promotion of the Economic Development of Bantu Homelands Act" and was amended by the Black Laws Amendment Act 70 of 1974 (originally called the "Bantu Laws Amendment Act") (RSA GG 4486), Black Laws Amendment Act 4 of 1976 (originally called the "Bantu Laws Amendment Act") (RSA GG 5012), Promotion of the Economic Development of National States Amendment Act 80 of 1977 (originally called the "Promotion of the Economic Development of Bantu Homelands Amendment Act") (RSA

- Railways and Harbours Pensions Amendment Act 26 of 1941 (SA GG 2904)³¹⁵
- Railways and Harbours Special Pensions Act 36 of 1955 (<u>SA GG 5494</u>, republished in <u>OG</u> 1915)³¹⁶
- Small Settlements Commonages Subdivision Proclamation 13 of 1926 (OG 205)
- Travelling Privileges Ordinance 14 of 1980 (OG 4164).³¹⁷

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

- South-West Africa Constitution Act 39 of 1968 (RSA)
- Rehoboth Self-Government Act 56 of 1976 (RSA)
- Establishment of Office of Administrator-General for the Territory of South-West Africa Proclamation 180 of 1977 (RSA)
- Empowering of the Administrator-General for the Territory of South-West Africa to make Laws Proclamation 181 of 1977 (RSA)
- Representative Authorities Proclamation, AG 8 of 1980
- Representative Authority of the Whites Proclamation, AG 12 of 1980
- Representative Authority of the Coloureds Proclamation, AG 14 of 1980
- Representative Authority of the Ovambos Proclamation, AG 23 of 1980
- Representative Authority of the Kavangos Proclamation, AG 26 of 1980
- Representative Authority of the Caprivians Proclamation, AG 29 of 1980
- Representative Authority of the Damaras Proclamation, AG 32 of 1980
- Representative Authority of the Namas Proclamation, AG 35 of 1980
- Representative Authority of the Tswanas Proclamation, AG 47 of 1980
- Representative Authority of the Hereros Proclamation, AG 50 of 1980
- Representative Authority Powers Transfer Proclamation, AG 8 of 1989
- Government of Rehoboth Powers Transfers Proclamation, AG 32 of 1989.

GG 5595), Black Laws Amendment Act 12 of 1978 (originally called the "Bantu Laws Amendment Act") (RSA GG 5916), Laws on Co-operation and Development Amendment Act 3 of 1980 (RSA GG 6906), Finance Act 21 of 1980 (RSA GG 6915), Laws on Co-operation and Development Amendment Act 102 of 1983 (RSA GG 8868), Laws on Co-operation and Development Amendment Act 83 of 1984 (RSA GG 9310), Laws on Development Aid Second Amendment Act 105 of 1986 (RSA GG 10451), and Development Aid Laws Amendment Act 53 of 1988 (RSA GG 11323).

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

Railway Administration upon retirement and for the dependants of deceased employees. As amended by *Act 23 of 1944* (SA GG 3338), *Act 44 of 1959* (SA GG 6237), *Act 62 of 1962* (RSA GG 253), *Act 6 of 1965* (RSA GG 1050), *Act 85 of 1971* (RSA GG 3202), *Act 45 of 1974* (RSA GG 4434), *Act 89 of 1976* (RSA GG 5179), *Act 67 of 1980* (RSA GG 7039), *Act 29 of 1981* (RSA GG 7475), *Act 60 of 1981* (RSA GG 7753), *South African Transport Services Amendment Act 6 of 1982* (RSA GG 8039) and *South African Transport Services Amendment Act 44 of 1985* (RSA GG 9708). The latter four amending laws in this list were already repealed in their entirety by the Repeal of Obsolete Laws Act 21 of 2018.

³¹⁶ As amended by *Act 22 of 1956* (SA GG 5679) and *Act 34 of 1957* (SA GG 5882).

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

MISCELLANEOUS

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

SELECTED CASES

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

- [52] To understand the meaning of words in a statute, the court must understand the legislature's intent. To that end, the purpose of the statute, ie why it was enacted and how it came to be, is not just a relevant factor in deciding how to give effect to a statute's words, but is essential to determining its meaning.
- [53] The modern approach to statutory interpretation requires that the words of a statute be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Thus, the court strives to construe statutory language in accordance with the object and intent of the legislation.
- [54] But there are limits to purposive interpretation. Lord Scarman noted in *R v Barnett London Borough Council, Ex parte Shah* that judges may only adopt purposive interpretation if they 'can find in the statute read as a whole or in the material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy'.
- [55] The courts of the UK have also held that in purposively interpreting a statute, judges must respect the 'fundamental features' of the statute. On this approach, it is important to identify the particular statutory provision being interpreted and guard against interpretations that are devised to give effect to an abstract purpose in the statute. In addition, a purposive interpretation should not render any of the provisions in the statute redundant.
- [56] It must follow that the court must not through purposive interpretation contradict a provision in the statute which calls for interpretation, for doing so would be to usurp the legislative function. Purposive interpretation should not become the means by which courts undermine the sovereign will of Parliament.

[...]

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

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

[...]

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

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

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

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INTERNATIONAL LAW

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

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

See also GN 104/2018 (<u>GG 6614</u>) and GN 58/2021 (<u>GG 7496</u>) on fees for the issue of apostilles.

Statute of the Hague Conference on Private International Law, 1951

SADC Protocol on Legal Affairs, 2000

SADC Protocol Against Corruption, 2001

SADC Protocol on Extradition, 2002

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

See also **COURTS**.

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

See also CUSTOMARY LAW.

See also **DAMAGES**.

See also **EVIDENCE**.

See also JUDGES.

See also LEGAL PRACTITIONERS.

See also **PRESCRIPTION**.

For additional statutes that primarily or exclusively repeal other statutes, see:

- * Amortization Fund Repeal Act 7 of 1992 (REVENUE)
- * Criminal Procedure Act Repeal Act 14 of 2018 (CRIMINAL LAW AND PROCEDURE)
- * Council for Health and Social Services Professions Repeal Act 3 of 2004 (HEALTH PROFESSIONS)
- * Dairy Industry Control Ordinance Repeal Act 21 of 1982 (OG 4731), which repeals the Dairy Industry Control Ordinance 29 of 1962) and RSA Proclamations R.203 and R.211 of 1970 (no independent entry in NAMLEX)
- * Diamond Taxation Proclamation Repeal Act 21 of 1995 (MINING AND MINERALS)
- * Dog Tax Ordinance, 1927, Repeal Act 14 of 1987 (OG 5411), which repeals the Dog Tax Ordinance, 1927 and its amendments: the Dog Tax Amendment Ordinance, 1936; Dog Tax Amendment Ordinance, 1942; Finance Ordinance, 1953, section 1; the Dog Tax Amendment Ordinance, 1958; the Dog Tax Amendment Ordinance, 1964 and the Municipal Dog Tax Ordinance, 1967 section 17 (no independent entry in NAMLEX)
- * Repeal of Certain Laws Proclamation, AG 4 of 1977 (OG 3656), which repeals the Immorality Proclamation 19 of 1934 (OG 574)³¹⁸ and the Prohibition of Mixed Marriages Ordinance 19 of 1953 (OG 1774)³¹⁹ (the SWA versions of the South African *Immorality Act 5 of 1927*³²⁰, *Immorality Act 23 of 1957* and *Prohibition of Mixed Marriages Act 55 of 1949*³²¹ none of which were made applicable to SWA; no independent entry in NAMLEX)
- * Repeal of the Laws on the National Assembly, the Cabinet and the Constitutional Council Proclamation, AG 16 of 1989 (OG 5730), which repeals, with effect from 1 March 1989, the South West Africa Legislative and Executive Authority Establishment Proclamation, RSA Proc. R.101 of 1985 (RSA GG 9790)³²² and the Constitutional Council Act 8 of 1985 (OG 5103);³²³ it also contained transitional provisions which were relevant only prior to Namibian independence (no independent entry in NAMLEX)
- * Trades and Occupational Licences Repeal Act 10 of 1995 (TRADE AND INDUSTRY).

The following such statutes have been repealed:

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

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³¹⁸ Similarly, this South West African Ordinance initially prohibited sexual intercourse between "Europeans" and "natives". It was amended by the Immorality Amendment Ordinance 20 of 1953 (OG 1774) to extend the prohibition to sexual intercourse between "Europeans" and "non-Europeans"

³¹⁹ This South West African Ordinance prohibited marriages between "Europeans" and "non-Europeans".

³²⁰ This South African Act initially prohibited sexual intercourse between "Europeans" and "natives". It was amended by the Immorality Amendment Act 21 of 1950 to extend the prohibition to sexual intercourse between "Europeans" and "non-Europeans".

³²¹ This South African Act prohibited marriage between "whites" and "non-whites".

³²² As amended by RSA Proc. 222/1985, RSA Proc. 25/1986, RSA Proc. 157/1986 and RSA Proc. R. 73/1988,

 $^{^{323}}$ As amended by Act 19/1985 and Act 7/ 1986.

LEGAL PRACTITIONERS

Government Attorney Proclamation R.161 of 1982 🗐 🔄

Summary: This Proclamation (<u>RSA GG 8367</u>) concerns the functions of the Government Attorney. It converts the Windhoek branch of the Office of the State Attorney in Pretoria into the Government Attorney's Office for the Territory of South West Africa. It was brought into force on 1 April 1984 by RSA Proc. 52 /1984 (RSA GG 9162).

Repeals: This Proclamation appears to have replaced the State Attorney Act 56 of 1957 in SWA.

Applicability to SWA: The Proclamation applies to SWA because it was issued in terms of section 38 of the *South-West Africa Constitution Act 39 of 1968*, which gave the State President of South Africa certain powers to make laws for SWA. It appears to replace the *State Attorney Act 56 of 1957* in SWA.

The State Attorney Act 56 of 1957 (SA GG 5894) – as amended by the General Law Further Amendment Act 93 of 1962 (RSA GG 284) and the State Attorney Amendment Act 7 of 1966 (RSA GG 1380) – was made applicable to SWA by section 6 of Act 7 of 1966 which states:

The principal Act and any amendment thereof shall apply also in the territory of South-West Africa, (including the Eastern Caprivi Zipfel referred to in section 3 of the South-Africa West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)), and in relation to all persons in that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of the said territory.

Section 7 of Act 7 of 1966 provided:

In the principal Act, unless the context otherwise indicates, "Republic" also includes the territory of South-West Africa.

These two sections were independent provisions of Act 7 of 1966 rather than amendments to Act 56 of 1957.

Section 9 of *Act 7 of 1966* also repealed the State Attorney Proclamation, 46 of 1921, and the State Attorney Proclamation, 1921 Amendment Ordinance 17 of 1963 (in respect of SWA)

Act 7 of 1966 was brought into force on 3 January 1967 by RSA Proc. R.376/1966 (RSA GG 1626). After the State Attorney Act 56 of 1957 and its amendments became applicable to SWA, Act 56 of 1957 was further amended by the State Attorney Amendment Act 45 of 1980 (RSA GG 6992), which was deemed to have come into force on 13 September 1979 (section 2 of the amending Act).

Sections 6 and 7 of *Act 7 of 1966* were both repealed by the *Government Attorney Proclamation, R.161* of 1982, which converted the Windhoek branch of the Office of the State Attorney in Pretoria into the Government Attorney's Office for the Territory of South West Africa. (This Proclamation states in section 13 that sections 11-14, which amend some provisions of the *State Attorney Act 56 of 1957*, repeal sections 6 and 7 of the *State Attorney Amendment Act 7 of 1966*, and provide transitional provisions, "shall apply also in the Republic of South Africa".)

Some of these amendments refer to South West Africa, but without making *Act* 56 of 1957 applicable to SWA; they seem rather to have given the South African State Attorney's Office authority to act on behalf of the SWA administration or the government of Rehoboth, if arrangements were made with that administration or government. Section 3(2) of the *State Attorney Act* 56 of 1957, as substituted by *Act* 7 of 1966 and amended by *Proclamation R.161 of 1982*, states:

There may also be performed at the State Attorney's office or at any of its branches like functions for or on behalf of the administration of any province, any department established under the laws relating to the government service of the Territory of South-West Africa, the government of Rehoboth and the South

African Railways and Harbours Administration, subject to such terms and conditions as may be arranged between the Minister of Justice and the administration, department or government concerned.

Section 3(3) of the *State Attorney Act 56 of 1957*, as substituted by *Act 93 of 1962* and amended by *Proclamation R.161 of 1982*, states:

Unless the Minister of Justice otherwise directs, there may also be performed at the State Attorney's office or at any of its branches like functions in or in connection with any matter in which the Government or such an administration, department or government as aforesaid, though not a party, is interested or concerned in, or in connection with any matter where, in the opinion of the State Attorney or of any person acting under his authority, it is in the public interest that such functions be performed at the said office or at one of its branches.

Section 8 of *Act* 7 of 1966, provided that any references in any law to the State Attorney for the territory of South-West Africa should be construed as references to the State Attorney in *Act* 56 of 1957. Section 12 of *Proclamation R.161* of 1982 appears to follow on section 8 of *Act* 7 of 1966 (which was not repealed), by providing that references in any law to the Windhoek branch of the State Attorney shall be construed as references to the Government Attorney's office. Thus, *Proclamation R.161* of 1982 appears to have replaced the *State Attorney Act* 56 of 1957 in SWA – an understanding which is supported by the fact that *Proclamation R.161* of 1982 duplicates much of *Act* 56 of 1957.

Transfer of administration to SWA: This Proclamation post-dated the SWA transfer proclamations.

The relevant transfer proclamation for the *State Attorney Act 56 of 1957* which preceded it was the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. However, section 3(1)(g) of this transfer proclamation excluded the *State Attorney Act 56 of 1957* from the provisions of section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA. Therefore, the amendments made to that Act in South Africa after the date of the transfer proclamation continued to be automatically applicable to SWA – until the legal provision which made that Act applicable to SWA was repealed by the *Government Attorney Proclamation, R.161 of 1982* with effect from 1 April 1984.

Transitional provisions: There is no "savings" clause as such, but section 12(2) and (3) of the Proclamation reads as follows:

- (2) Anything done by, in or in relation to the Windhoek branch of the office of the State Attorney or the holder of any office therein in the exercise of his powers or the performance of his functions, shall be deemed to have been done by, in or in relation to the Government Attorney's office or, as the case may be, the holder of a similar office in such office.
- (3) Subject to the provisions of subsections (1) and (2), any reference in any law or document to the holder of any office in the Windhoek branch of the State Attorney shall be construed as a reference to the holder of a similar office in the Government Attorney's office.

Regulations: Regulations are authorised by section 10 of the Proclamation.

In South Africa, the following regulations were issued under the *State Attorney Act 56 of 1957*: RSA GN R.2117/1966 (RSA GG 1626), as amended by RSA GN R.274/1970 (RSA GN 2627), R.2714/1985 (RSA GN 10029) and RSA GN R.1918/1988 (RSA GG 11512). These regulations initially applied to SWA, as evidenced by the previous regulations they repealed. Their continued applicability after *Proclamation R.161 of 1982* replaced the *State Attorney Act 56 of 1957* in SWA is unclear, but in any event they appear to be superseded by the regulations cited below. They are thus omitted from the database of annotated laws.

The following regulations were made in terms of section 10 of this Proclamation: Government Notice AG 61 of 1984 (OG 4895). They do not include any repeals.

No post-independence regulations have been promulgated.

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³²⁴ These regulations repealed GN 199/1963 of the Territory of South West Africa, and RSA GN R.40/1964.

Cases:

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) refers to this Proclamation at page 18:

The Government Attorney acted in terms of his functions in pursuance of s 4 of the Government Attorney Proclamation No R161 of 1982, which came into force on 1 April 1984 and which is still in force.

Minister of Health and Social Services v Medical Association of Namibia 2012 (2) NR 566 (SC) (discusses the role of the Government Attorney; also discusses State Attorney Act 56 of 1957 and Government Attorney Proclamation R.161 of 1982 in para 28)

Prior to independence, the State Attorney at Windhoek was a branch office of the office of the State Attorney, Pretoria, in terms of the State Attorney Act 56 of 1957. (Section 3(2) of Act 56 of 1957.) However, by State President's proclamation R161 of 1982, the Windhoek branch office was converted into the Government Attorney's office for the Territory of South West Africa. It did not repeal Act 56 of 1957 but amended certain words to bring it in line with the proclamation. Section 4 of the proclamation sets out the functions of the Government Attorney which, in general, are the same as set out in s 3 of Act 56 of 1957. (para 28)

Maletzky v The President of the Republic of Namibia & Others 2016 (2) NR 420 (HC) (it is not improper for the Government Attorney to represent a judicial officer in the employ of the State; section 4(b)(ii) of the Proclamation)

Bukalo Village Council v Labour Commissioner & Others 2022 (1) NR 99 (LC) (it is not necessary for the Government Attorney to file a power of attorney when representing the government, which includes regional and local authorities).

Legal Aid Act 29 of 1990 🕎 🙀

Summary: This Act (originally published in <u>GG 131</u>) provides for the granting of legal aid in civil and criminal matters to persons whose means are inadequate to enable them to engage legal practitioners to assist and represent them. It was brought into force on 7 October 1991 by Proc. 23/1991 (GG 272).

Repeals: The Act repeals the *Legal Aid Act 22 of 1969*.

Amendments: Act 17/2000 (<u>GG 2421</u>) amends sections 1, 3, 6, 8, 10, 13, 15, and 20 and inserts section 24A.

Regulations: There is no savings clause for regulations issued under the repealed Act.

Legal Aid Regulations issued under this Act are contained in GN 374/2018 (<u>GG 6818</u>), as amended by GN 85/2019 (<u>GG 6892</u>) and by GN 144/2024 (<u>GG 8375</u>).³²⁵

Notices: Specified offences in terms of the Act are listed in GN 106/1991 (GG 273).

Cases:

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Mwilima & Others v Government of the Republic of Namibia & Others 2001 NR 307 (HC), Government of the Republic of Namibia & Others v Mwilima & all other accused in the Caprivi treason trial 2002 NR 235 (SC)

S v Monday 2002 NR 167 (HC) S v Tembwe 2005 NR 409 (HC)

³²⁵ Legal Aid Regulations issued under this Act were initially contained in GN 107/1991 (<u>GG 273</u>). These regulations were first repealed by the regulations contained in GN 303/2018 (<u>GG 6774</u>), but then GN 303/2018 was withdrawn and replaced by GN 374/2018 (<u>GG 6818</u>). (GN 303/2018 was withdrawn because it accidentally repealed the regulations in GN 107/1991 with immediate effect but brought the replacement regulations into force only on 1 April 2019.) GN 374/2018 simultaneously repeals the regulations in GN 107/1991 (<u>GG 273</u>) and substitutes new regulations with effect from 1 April 2019.

S v Kasanga 2006 (1) NR 348 (HC)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC)

Sv Luboya & Another 2007 (1) NR 96 (SC) (application of Article 18 of Constitution to application for legal aid)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (applicability to artificial persons discussed in *dicta* at 300-301)

Ultimate Safaris (Pty) Ltd v Gariseb 2022 (2) NR 487 (SC) (taxation of costs: section 17(2) and reg 6(1) of the Legal Aid Regulations).

Commentary:

Brigit Rudd, Dianne Hubbard and Yolandé Engelbrecht, "Trapped In Marriage? Divorce Law and Legal Aid", *The Namibian*, 8 November 2013

D Zongwe, "Nobody can Really Afford Legal Services: The Price of Justice in Namibia". 24 Potchefstroom Electronic Law Journal 1, 2021, available here

Ministry of Justice, "Requirements for Legal Aid Applications" (brochure), undated.

Legal Practitioners Act 15 of 1995 will en

Summary: This Act (originally published in <u>GG 1141</u>) governs the legal profession and legal practitioners, who were formerly known as attorneys and advocates. It establishes a Board for Legal Education, a Law Society of Namibia and a Legal Practitioners' Fidelity Fund. It was brought into force on 7 September 1995 by GN 150/1995 (<u>GG 1148</u>).

Repeals: The Act repeals the Legal Practitioners' Fidelity Fund Act 22 of 1990 (<u>GG 117</u>) and the Legal Practitioners' Fidelity Fund Ordinance 28 of 1967 (<u>OG 2805</u>), as well as the RSA *Attorneys Act 53 of 1979* (RSA GG 6473) and RSA *Admission of Advocates Act 74 of 1964* (RSA GG 835).

Amendments: Act 4/1997 (<u>GG 1586</u>) amends sections 11, 21, 54, 67, 72, and 87 and substitutes section 22.

Act 6/1999 (<u>GG 2126</u>) temporarily suspends sections 79(1), (2) and (3) relating to the conferment of Senior Counsel status, until such time as the Minister of Justice reinstates them by notice in the *Gazette*. However, Act 6/1999 was repealed by Act 22/2002 (<u>GG 2892</u>), which was brought into force on 1 November 2005 by GN 139/2005 (<u>GG 3529</u>).

Act 10/2002 (GG 2849) amends sections 5 and 18.

Act 22/2002 (GG 2892), which was brought into force on 1 November 2005 by GN 139/2005 (GG 3529), amends sections 1, 21, 32, 52 and 72, substitutes section 45 and repeals section 79.

Savings: Section 94(4) contains a broad savings clause:

Anything made or prescribed, including regulations or rules, or done under the provisions of any law repealed by subsection (1), and having the force of law immediately before the commencement of this Act shall, insofar as they are not inconsistent with any of the provisions of this Act, continue to be in force, until altered or revoked by the competent authority under the provisions of this Act.

The Legal Practitioners' Fidelity Fund Act 22 of 1990 (GG 117) repealed Chapter II and subsections 81(2) and (3) of the RSA *Attorneys Act 53 of 1979*, but provided in section 31(3) that regulations made under section 81(2) would survive:

Any regulations made under section 81(2) of the Attorneys Act which were in force in Namibia before the commencement of this Act, shall remain in force in so far as any such regulations are compatible with the provisions of this Act.

The RSA Attorneys Act 53 of 1979 (RSA GG 6473) repealed the Attorneys, Notaries and Conveyancers Admission Act 23 of 1934 (SA GG 2196), as amended and the Attorneys' Admission Amendment and

Legal Practitioners' Fidelity Fund Act 19 of 1941 (SA GG 2893), both of which authorised regulations. It also repealed the Law Societies' Act 41 of 1975, which gave individual law society councils the power to make rules. Section 86(3) of the RSA Attorneys Act 53 of 1979 contains a broad savings clause in respect of these repealed laws:³²⁶

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

The Law Societies' Act 41 of 1975 (RSA GG 4708) in turn repealed (in respect of SWA) the Law Society (South West Africa) Private Proclamation 32 of 1921, the Law Society (South West Africa) Amendment Ordinance 30 of 1961 and the Attorneys, Notaries and Conveyancers Admission Amendment Ordinance 21 of 1966 – and provided a savings clause in section 24(2)(a):

Any rule, bye-law or regulation made under any provision of a law repealed by subsection (1) shall be deemed to be a rule made under the corresponding provision of this Act, and any provision of any law so repealed prescribing or otherwise dealing with any matter which in terms of this Act may be prescribed shall notwithstanding the repeal of such law be deemed to be a rule made in terms of this Act.

The RSA Admission of Advocates Act 74 of 1964 (RSA GG 6473) repealed the Admission of Advocates Act 19 of 1921, and provided only a limited and time-bound savings clause for rules made under that Act in section 13(1):

...notwithstanding the repeal of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), the rules made under section two of the said Act and in force at the commencement of this Act, shall remain in force until the thirty-first day of December, 1974.

The relevant transfer proclamation for both the *Admission of Advocates Act 74 of 1964* and the *Attorneys Act 53 of 1979* was the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, but both Acts were explicitly excluded from transfer to SWA.

Regulations: The following subsidiary enactments are in force and are listed by the Law Society of Namibia on its webpage:

Regulations relating to the **fidelity fund** are contained in GN 136/1993 (GG 741). These regulations were issued in terms of the previous Legal Practitioners' Fidelity Fund Act 22 of 1990, but survive under the new Act in terms of section 94(4).³²⁷ (This position is confirmed in *Van der Merwe v Director of the Law Society of Namibia & Others* 2013 (1) NR 98 at para 26, but the case erroneously refers to GN 135/1993 instead of GN 136/1993.)

Regulations relating to **candidate legal practitioners** issued in terms of this Act are contained in GN 228/1995 (GG 1207), as amended by GN 58/1997 (GG 1528), GN 67/1997 (GG 1537) and GN 8/1999 (GG 2025). GN 8/2011 (GG 4649) substitutes Annexure 6 to these regulations.

The following regulations appear to remain technically in force as a result of the chain of savings clauses:

Regulations under section 81(1) of the Attorneys Act, 1979 (Act 53 of 1979), originally made under section 30 of the *Attorneys, Notaries and Conveyancers Admission Act 23 of 1934* as "rules", but later referred to as "regulations" under the RSA *Attorneys Act 53 of 1979*, are contained in SA GN 638/1937 (<u>SA GG 2431</u>) as amended by SA GN 830/1940 (<u>SA GG 2768</u>), SA GN 1206/1944 (<u>SA GG 3370</u>), SA GN 1613/1948 (<u>SA GG 4006</u>), SA GN 1048/1959 (<u>SA</u>

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³²⁶ The RSA *Attorneys Act 53 of 1979* repealed several other laws which did not make provision for subsidiary enactments and so are not relevant here.

³²⁷ These regulations repeal the regulations in SA R.1581/1941 (SA GG 2960) and all the amendments thereof. These previous regulations were made under the *Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act 19 of 1941* in SA GN R.1581/1941 (SA GG 2960) as amended by SA GN 2691/1942, SA GN 2144/1943, SA GN 1476/1948, SA GN 1264/1951, SA GN 354/1955, SA GN1785/1955, SA GN 731/1957 – and further amended after the date of the Fidelity Fund Ordinance 28 of 1967 – by RSA GN 508/1972, RSA GN 1458/1984 and RSA GN 47/1987.

GG 6257), RSA GN 833/1961 (RSA GG 95), RSA GN 2113/1962 (RSA GG 405), RSA GN 2022/1964 (RSA GG 967), RSA GN 1726/1965 (RSA GG 1273), RSA GN R.1065/1982 (RSA GG 8226) RSA GN R.872/1987 (RSA GG 10716), RSA GN R.1708/1987 (RSA GG 10852), RSA GN R.1936/1988 (RSA GG 11512), RSA GN R.1350/1989 (RSA GG 11979). These regulations seem to primarily concern recognition of degrees, exemptions from examinations and the syllabus for certain examinations. They appear to have been superseded by the current Act and regulations. They have thus not been included in the regulations database.

Regulations issued in terms of the Fidelity Fund Ordinance 28 of 1967 are contained in GN 193/1967 (OG 2836). No repeal has been located, but they have been superseded by Chapter VI of the current Act and the more recent regulations in GN 136/1993 (GG 741), which address the same issues. They have thus not been included in the regulations database.

Regulations Prohibiting the Liquidation or Distribution of the Estates of Deceased Persons by any Person other than an Attorney, Notary, Conveyancer or Law Agent, originally made in terms of the *Attorneys, Notaries and Conveyancers Admission Act 23 of 1934*, are contained in RSA GN R.910/1968 (RSA GG 2080) as amended by RSA GN R.1013/1969 (RSA GG 2439) and RSA GN R.1376/1971 (RSA GG 3227). These are included in the database in case they have continued relevance.

Rules: Rules governing the Disciplinary Committee are set forth in GN 54/1996 (GG 1270).

Rules of the Law Society of Namibia are set forth in General Notice 340/2002 (<u>GG 2848</u>). General Notice 251/2004 (<u>GG 3313</u>) amends rule 24. General Notice 385/2007 (<u>GG 3948</u>) amends rules 1, 6, 9, 13, 19, 20, 21, 22 and 24 and inserts rule 20A. General Notice 308/2008 (<u>GG 4120</u>) amends rule 21. General Notice 376/2017 (<u>GG 6410</u>) amends rules 21 and 23 and Annexure A. Note that professional standards for legal practitioners are set out in rule 21.

The following rules made in terms of the *Attorneys Act 53 of 1979* appear to survive as a result of the chain of savings clauses, but it is not clear if they have any current relevance:

Rules of court governing the practical examinations and the admission of attorneys, notaries and conveyancers are contained RSA GN 23/1988 (RSA GG 11091).³²⁸

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012, which places certain duties on legal practitioners and on the Law Society.

A decision of the Namibian Competition Commission on an application by the Law Society for exemption in respect of professional rules is contained in General Notice 564/2015 (GG 5906).

Notices: Various *Government Gazettes* have prescribed degrees which are recognised in Namibia for the purpose of the practice of law. These have not been recorded here.

Fees: Regulations relating to the fee for a certificate of enrolment as a legal practitioner are contained in GN 201/1995 (GG 1183).

The following scale of fees appears to survive as a result of the chain of savings clauses, but it is unclear whether it has any ongoing relevance:

Scale of fees payable to Law Societies contained in RSA GN R.898/1964 (RSA GG 824), originally made in terms of section 20 of the *Attorneys, Notaries and Conveyancers Admission Act 23 of 1934*.

Appointments: The Board for Legal Education is announced in GN 184/1995 (GG 1165) and GN

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³²⁸ These rules withdraw RSA GN R.1127 of 4 July 1969 as amended.

Cases:

- Vaatz v Law Society of Namibia 1990 NR 332 (HC) (dealing with Attorneys Act 53 of 1979)
- Vaatz v Law Society of Namibia 1991 (4) SA 382 (Nm) (dealing with Law Society Rule 95.1.3 promulgated in terms of Attorneys Act 53 of 1979).
- Hailemo v Security Force Services (LC 5/95), reported as 1996 NR 99 (LC) (section 21)
- Vaatz v Law Society of Namibia & Others 1996 NR 272 (HC) (dealing with Law Society Rule 114 promulgated in terms of Attorneys Act 53 of 1979).
- Compania Romana De Pescuit (SA) v Rosteve Fishing 2002 NR 297 (HC) (section 21)
- Miller & Paschke v The Law Society of Namibia NLLP 2002 (2) 328 NHC (application of section 4 to non-Namibians married to Namibian citizens and domiciled in Namibia)
- Ekandjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC) (amending Act 10/2002; sections 5(1)(cA) (ii) and 18(1)(b))
- Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC) (sections 4(1), 5, 41, 42(1)), upheld on appeal in Ex parte in re: Kamwi v Law Society of Namibia 2009 (2) NR 569 (SC) (sections 21 and 22(1)); see also Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC), Kamwi v Law Society of Namibia 2011 (1) NR 196 (SC) and Ex parte Kamwi 2023 (2) NR 494 (SC) (which includes an overview of the statutory requirements for admission and authorisation to practise as a legal practitioner; at para 28: "It eludes comprehension why the applicant should repeatedly make applications for admission when it is clear as daylight that he has not complied with the requirements set out in the Act.")
- Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (approach to costs since law no longer distinguishes between attorneys and advocates)
- Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (section 21(1)(c))
- Worku v Equity Aviation (Pty) Ltd 2010 (2) NR 621 (SC) (although not dealing with Act specifically, includes general discussion of attorney-client relationship with reference to authority to settle at 6630E-ff)
- Disciplinary Committee for Legal Practitioners v Murorua & Another 2012 (2) NR 481 (HC) (construction and application of sections 32-33; 12-month suspension from practice wholly suspended for 3 years imposed for unprofessional, dishonourable or unworthy conduct; dissenting judge would have found wilful misleading of court and struck respondent from roll of legal practitioners); appeal dismissed on basis of late filing in Disciplinary Committee for Legal Practitioners v Murorua & Another 2016 (2) NR 374 (SC) (discussion of mandate of Disciplinary Committee in course of discussion of the Committee's non-compliance with Rules of the High Court)
- Van der Merwe v Director of the Law Society of Namibia & Others 2013 (1) NR 98 (HC) (requirements for issue of Fidelity Fund Certificate under section 68)
- S v Hoabeb 2013 (1) NR 222 (HC) (example of contravention of section 21(1)(c)) (discussed in Nico Horn, S v Hoabeb: A Dummy's Guide on How to Avoid Justice in Namibia for Ten Years", Namibia Law Journal, Volume 5, Issue 1, 2013, available here)
- Witvlei Meat (Pty) Ltd v Disciplinary Committee for Legal Practitioners & Others 2013 (1) NR 245 (HC) (section 35), confirmed on appeal in Witvlei Meat (Pty) Ltd & Others v Disciplinary Committee for Legal Practitioners & Others 2014 (1) NR 217 (SC) (meaning of appeal in section 35(3); principles relating to legal practitioner's duties of loyalty and confidentiality)
- Maletzky v Zaaluka 2013 (3) NR 649 (HC) (cessation of claim as a ruse to circumvent prohibition in section 3 on practising law without being admitted as a legal practitioner, in violation of section 21); see also Maletzky v Zaaruka, Maletzkey v Hope Village [2013] NAHCMD 343 (19 November 2013))
- De Beers Marine Namibia (Pty) Ltd v Lange NO & Others 2014 (2) NR 437 (HC) (section 85(2)) Maletzky v Gaseb & Another 2014 (3) NR 645 (HC) (section 21)
- S v Conradie 2015 (3) NR 863 (HC) (although not dealing with the Act specifically, grant of postponement in criminal case based on constitutional right to legal representative of choice)
- Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (SC) (section 35:

Disciplinary Committee is an administrative body in terms of Art 18 of Namibian Constitution, but section 35 procedure does not violate that Article; issue considered in context of prospects of success in condonation application).

This case includes criticism of the Disciplinary Committee at para 23: "Once again this court must chide the Disciplinary Committee for its failure to comply with the time limits stipulated in the rules of this court. It is not acceptable for an institution charged with the responsibility of regulating the conduct of legal practitioners itself to fail to observe the rules." It also includes similar criticism of the Law Society of Namibia at para 27.)

- De Beers Marine Namibia (Pty) Ltd v Loubser 2017 (1) NR 20 (SC) (certificates of authorisation under section 85(2) of the Act had been refused to South African legal practitioners who were acting for the respondent on a contingency basis, which is not allowed in Namibia; the same legal practitioners then agreed to act gratuitously for the respondent, who was allowed to proceed on an *in forma pauperis* basis)
- Ex parte: Mukondomi (HC-NLD-CIV-MOT-ALP-2020/00004) [2020] NAHCNLD 89 (20 July 2020) (deals with question of domicile by virtue of good faith marriage for purposes of an application for admission as a legal practitioner; discusses requirements of good faith marriage for this purpose)
- EK v BK 2017 (2) NR 474 (HC) (duties of legal practitioners in connection with hierarchy of courts; duty of legal practitioner to client is secondary to duty to court)
- Ex parte Siambango 2020 (1) NR 162 (HC) (discussion of role of Law Society; "fit and proper person" under section 4(1))
- Watson v Law Society of Namibia 2022 (4) NR 919 (SC) (section 5(1)(d); "fit and proper person" to be admitted and enrolled as a legal practitioner in Namibia)
- Kisilipile & Another v First National Bank of Namibia Ltd 2021 (4) NR 921 (SC) (comments at paras 44-ff on "important aspects of legal ethics":
 - [44] [...] The first is that a legal practitioner should not accept, and if already seized therewith should return, an instruction if he or she does not have the time to attend to the matter. Secondly, a legal practitioner should not accept an instruction if it relates to a matter or subject that falls outside his or her competence.
 - [45] When a legal practitioner accepts instructions, he or she must be in a position to fulfil his or her mandate properly and timeously and if, because of his or her workload, the practitioner is unable to do so then he or she has an ethical duty to refuse the work. Where a legal practitioner has received acquiescence from client to attend to the work at a later stage, he or she has a further duty to satisfy himself or herself that the work can wait without prejudice to the client and if it cannot he or she must refer the client elsewhere.
 - [46] A legal practitioner is required to have reasonable competence in the performance of his or her work. Where the practitioner is seized with an instruction which is outside his or her expertise and skill, the practitioner should not be eager to undertake it, but should consider referring the client to a colleague who has the experience and/or expertise. (footnote omitted)).
- *Iipinge v Taapopi & Others* 2023 (1) NR 78 (HC) (duties of lawyers at paragraphs 54-57:
 - It is further the duty of a legal practitioner to familiarise themselves with the full content and context of the authority which they cite. It has become evident and common practice for legal practitioners in the profession to consider the headnote of a case, and extract the decision, without understanding the context and content within which the decisions were made. It is incumbent on legal practitioners to appreciate the difference in the factual matrix of every single case before court, different to the previous matter, and it is necessary to understand the application of the law to the different circumstances and facts of that case, and the case which they intend to make. The only route to success for a trial attorney is to read, read, and read.)
- Law Society of Namibia v Mukondo & Others 2023 (2) NR 328 (HC) (Law Society powers under section 32; Law Society's application for extension of legal practitioner's suspension and appointment of a *curator bonis* are not interlocutory applications; discussion of obligations relating to trust funds, citing sections 20 and 26(1) and Rules 17 and 18(5) of Rules of the Law Society; punitive costs order based on legal practitioner's unsubstantiated allegations of dishonourable conduct on the part of the Law Society)

Ex parte Kamwi 2023 (2) NR 494 (SC) (criticism of Law Society's "lackadaisical" approach to opposing appeal at paras 4-6, 30)

Akpabio v Minister of Justice & Another 2023 (3) NR 641 (SC) (procedure for making recommendation on equivalence of foreign law degree pursuant to section 5(4). 11(2) and 11(3))

S v DJJ & Another 2023 (4) NR 1098 (SC) (section 85(2) discussed).

Commentary:

Clive L Kavendjii and Nico Horn, "The independence of the legal profession in Namibia" in Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available here

Fritz Nghiishililwa, "Adda K Angula & Others v The Board for Legal Education & Others, Case No. A 348/2009", Namibia Law Journal, Volume 2, Issue 1, 2010, available here.

COMMENTARY

New Perimeter, Namibia-Access to Justice: Paralegal Manual, 2012, available here.

See also COURTS.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational and curriculum standards) (EDUCATION).

See also LAW.

LIBRARIES

Namibia Library and Information Service Act 4 of 2000 🕎 🙀

Summary: This Act (<u>GG 2290</u>) covers the Namibia Library and Information Service and its constituent libraries, as well as the National Library and the Namibia Library and Information Council. It was brought into force on 30 April 2001 by GN 69/2001 (<u>GG 2519</u>).

Repeals: The Act repeals the Libraries Ordinance 4 of 1981 (*Official Gazette 2 of the Representative Authority of the Whites*), which repealed the South West Africa Library Service Ordinance 15 of 1968.

Regulations: There is no savings clause for regulations promulgated under the repealed laws.

Regulations issued in terms of this Act are contained in GN 70/2001 (GG 2519).

Notices: The National Library is identified in GN 71/2001 (<u>GG 2519</u>). Places of legal deposit are identified in GN 72/2001 (<u>GG 2519</u>).

See also ARCHIVES.

MAINTENANCE

Reciprocal Enforcement of Maintenance Orders Act 3 of 1995 w 🙀

Summary: This Act (originally published in GG 1035) provides for the reciprocal enforcement of maintenance orders between Namibia and other countries designated by the Minister of Justice.

Repeals: The Act repeals the Reciprocal Enforcement of Maintenance Orders Act 80 of 1963.

Amendments: Sections 1, 5, 6, 7, 8, and 9 are amended by the Maintenance Act 9 of 2003 (GG 3043), which was brought into force on 17 November 2003 (GN 232/2003, GG 3093).

Savings: Section 13(2) states -

Any order registered or confirmed or any other thing done under any provision of the Reciprocal Enforcement of Maintenance Orders Act, 1963, or deemed to have been so registered or confirmed or done, shall be deemed to have been registered or confirmed or done under the corresponding provision of this Act.

Rules: This Act makes provision for rules rather than regulations, as did the repealed Reciprocal Enforcement of Maintenance Orders Act 80 of 1963.

Rules issued under the previous Act were initially contained in RSA GN R.98/1965 (RSA GG 1011), but these rules were replaced by rules in RSA GN R.299/1971 (RSA GG 3002).

No rules have been issued under this Act since independence, so the 1971 rules appear to be the ones which are currently operative.

Designations: Section 13 of the Act provides that any country designated under the *Reciprocal* Enforcement of Maintenance Orders Act 80 of 1963 will be deemed to be a designated country for the purposes of the Act. South Africa was named as a designated country in GN 124/1993 (GG 727), effective 10 September 1993.

Although South Africa is the only country that was designated under the 1963 Act by an independent Namibian government, some of the designations made prior to Namibian independence by the State President of South Africa were applicable to "South West Africa" and thus survive in independent Namibia.

The Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 was an Act of the South African Parliament that was made applicable to the "territory of South West Africa" by the Reciprocal Enforcement of Maintenance Orders Amendment Act 40 of 1970, with effect from 1 March 1971.

The 1963 Act was administered by the Minister of Justice of South Africa; thus, its administration was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979. However, section 3(1)(k) of this Proclamation explicitly excluded the Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 from the provisions of section 3(1) of the General Proclamation – meaning that the functions of the Minister were not transferred.

Nevertheless, section 2 of the 1963 Act empowered the State President to issue Proclamations designating countries to which the Act was applicable.³²⁹ This power was not affected by the exclusion

Section 2(1) of the Act was substituted by the General Law Amendment Act 70 of 1968 (RSA GG 2106) to read as follows:

³²⁹ Section 1 of the original Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 (RSA GG 550) stated: 2. (1) The State President may by proclamation in the Gazette declare that this Act shall apply in respect of any country or territory in which there is in his opinion a law providing for the enforcement therein of maintenance orders made by courts of the Republic.

⁽²⁾ The State President may by like proclamation withdraw any such proclamation.

from section 3(1) of the General Proclamation, but was governed by section 3(4) of the General Proclamation which states that any proclamation issued by the State President after the commencement of any transfer proclamation under a law which at the time of such commencement applied to both South Africa and the territory of South West Africa and which is published in the Government Gazette of the Republic "shall, notwithstanding the provisions of (1), apply in the territory if such proclamation ... or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory ...". None of the Proclamations issued by the State President under the 1963 Act after the date of transfer, or the notices publishing them, make any explicit reference to the territory or the Administrator-General, and thus were not applicable to the "territory of South West Africa".

The South African Transfer of Powers and Duties of the State President Act 97 of 1986 amended section 2 of the 1963 Act so that the power to designate countries under the Act was in future to be exercised by means of a notice issued by the Minister of Justice rather than by a Proclamation of the State President. The effect of this change would have been that any subsequent notices issued by the Minister of Justice in this regard would have been applicable to the Territory of South West Africa by virtue of the exclusion of the 1963 Act from section 3(1) of the General Proclamation. However, we have not located any such notices between 1986 and Namibian independence on 21 March 1990.

The result is that the only designations applicable to "South West Africa" were those which were made prior to the date of the relevant transfer proclamation in 1979.

The countries in question are as follows (excluding the South African "homelands" which existed as semi-autonomous political units under apartheid but are now part of a unitary South Africa, as declarations in respect of these "homelands" are of no ongoing relevance):

- North-West Territories, Canada (Proclamation R.160 of 19 June 1970)
- State of California, USA (Proclamation R.1 of 8 January 1971)
- Province of Alberta, Canada (Proclamation R.175 of 13 August 1971)
- United Kingdom (Proclamation R.9 of 1976).

Several secondary sources list RSA Government Notice 68 of 1968 as designating Germany under the Act. However, it has not been possible to locate this Government Notice, and it seems impossible that it could have been a valid designation under the Act because prior to 1986 such a designation could only have been made by means of a Proclamation of the State President. Therefore, Germany is not included in the list of designated countries.

Upon Namibia's independence, the powers given to the South African Minister of Justice under the 1963 Act were vested in the Minister of Justice of Namibia by virtue of the transitional provisions contained in Article 140 of the Namibia Constitution. However, as noted above, the only country designated under the 1963 Act since independence is South Africa.

Cases: JG v LG & Others 2023 (3) NR 768 (HC) (appeal procedure in Maintenance Act 9 of 2003 not applicable to orders under this Act, which contains its own appeal procedure; a provisional maintenance order made in terms of section 5(2)(a) is not a final order but an order akin to a *rule nisi* which is not appealable, and the court which issued it is not *functus officio* in the matter).

⁽¹⁾ This Act shall apply in respect of any country or territory designated by the State President by proclamation in the Gazette

Section 2 of the Act was amended again by the *South African Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) to substitute "Minister" for "State President", and to substitute "notice" for "proclamation".

Maintenance Act 9 of 2003 🚾 🙀

Summary: This Act (<u>GG 3043</u>) concerns the payment of maintenance, the holding of maintenance enquiries, and the enforcement of maintenance orders. It was brought into force on 17 November 2003 by GN 232/2003 (GG 3093).

Repeals: The Act repeals the Support of Dependants (Natives) Proclamation of 1936 and the Maintenance Act 23 of 1963.

Savings: Section 50(5) states: "Notwithstanding the repeal of the Maintenance Act, 1963 (Act No. 23 of 1963) by subsection (1) the rules which were made under that Act and were in force immediately before the commencement of this Act and which are not inconsistent with this Act, continue in force until repealed, withdrawn or amended by regulations made under section 49." Pre-independence rules and regulations have not been researched.

Savings: The savings clause appears to apply to rules but not regulations made in terms of the repealed *Maintenance Act 23 of 1963*. Section 50(5) states:

Notwithstanding the repeal of the Maintenance Act, 1963 (Act No. 23 of 1963) by subsection (1) the rules which were made under that Act and were in force immediately before the commencement of this Act and which are not inconsistent with this Act, continue in force until repealed, withdrawn or amended by regulations made under section 49.

The Maintenance Act 23 of 1963 has no savings clause in respect of any of the enactments that it repeals.

Regulations: Regulations relating to Maintenance made in terms of this Act are contained in GN 233/2003 (GG 3093).

Section 15 of the repealed *Maintenance Act 23 of 1963* authorises the Minister to make "rules" rather than regulations. which is presumably why the savings clause in section 50(5) of the current Act refers to "rules". Rules for Maintenance Courts in respect of Bantu Persons" were contained in RSA GN R.97/1965 (RSA GG 1011); they were amended and renamed "Rules for Maintenance Courts in respect of Bantu and Native Persons" by RSA GN R.2332/1970 (RSA GG 2958). "Rules made in terms of Section 15 of the Maintenance Act, 1963" were contained in RSA GN R.99/1965 (RSA GG 1011); these rules were withdrawn and replaced by another set of rules with the same name in RSA GN R.2331/1970 (RSA GG 2958). However, these race-based rules which would otherwise have survived pursuant to the savings clause were all repealed by the regulations contained in GN 233/2003 (GG 3093) at the time when this Act came into force. 331

Notices: Maintenance investigators are designated as *ex officio* Commissioners of Oath in the area in which they are appointed, with effect from 1 June 2020, in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963* by GN 146/2020 (GG 7258).

Cases: Cases decided under the present Act –

See Main NO v Van Tonder NO & Another 2006 (1) NR 389 (HC), which discusses the Act in dicta at 397E-G.

S v Gawaseb 2007 (2) NR 600 (HC) (sentence under section 39(1); section 33(1))

³³⁰ To provide the context for possible savings, section 1 of the *Maintenance Act 23 of 1963* defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 16A states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel." In 1977, the Act was administered in part by the Minister of Justice and in part by the Minister of Bantu Administration and Development. Therefore, the administration of the Act was transferred to SWA by both the Executive Powers Transfer Proclamation(AG 3/1977, as amended), dated **28 September 1977**, and the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended),dated **12 November 1979**.

³³¹ GN 233/2003 (<u>GG 3093</u>) repeals RSA GN R.97/1965, RSA GN R.99/1965, RSA GN R.2331/1970 and RSA GN R.2332/1970 – even though the repeal of RSA GN R.99/1965 is redundant.

- S v Kalundu 2013 (2) NR 387 (HC) (section 33; order of court in respect of voluntary payments towards arrears while criminal case pending)
- S v EZ 2014 (1) NR 18 (HC) (sentence for failure to pay maintenance not to be treated lightly, and correct approach to periodical imprisonment for this offence)
- S v Kapitango & Others 2016 (4) NR 976 (NLD) (appeal procedure under section 47)
- S v Guibeb 2017 (4) NR 1210 (HC) (unemployment which does not result from unwillingness to work is a defence to charge of failure to pay maintenance under section 39(1); informal substitution of order instead of substitution pursuant to section 17(1)(b)(i) is not competent; suspension of maintenance order until arrears are paid in full as a condition of sentence, without section 17 enquiry, is not competent)

S v Aukongo 2018 (2) NR 398 (NLD) (section 39(2)).

Cases decided under the repealed Maintenance Act 23 of 1963 –

S v Koyoko 1991 NR 369 (HC) (section 5(4))

S v Shivute & Several Other Cases 1991 NR 433 (HC) (sections 11(1) and (2))

S v Afrikaner 1991 NR 109 (HC) (section 11(1))

S v Exabuja 1992 NR 196 (HC) (section 11(3))

S v De Koe 1993 NR 359 (HC) (section 11(3))

S v Geiseb 1994 NR 175 (HC) (section 11(3))

Tsauseb v Geingos 1995 NR 107 (HC)

Van Zyl v Fourie 1997 NR 85 (HC) (section 4(1)(b))

Jantjies v Jantjies & Another 2001 NR 26 (HC) (principle of set-off not applicable to maintenance order).

SELECTED CASES

- Main NO v Van Tonder NO & Another 2006 (1) NR 389 (HC) (dealing with maintenance from a deceased estate and extending common law to provide for support from estate of parent to major child in need)
- S v Gawaseb 2007 (2) NR 600 (HC) (quotes with approval at 602I-603B the following statement from a South African case:

Systemic failures to enforce maintenance orders have a negative impact on the rule of law. The courts are there to ensure that the rights of all are protected. The judiciary must endeavour to secure for vulnerable children and disempowered women their small but life sustaining legal entitlements. If court orders are habitually evaded and defied with relative impunity the justice system is discredited and the constitutional promise of human dignity and equality is seriously compromised for those dependent on the law. It is a function of the State not only to provide a good legal framework but to put in place systems that will enable these frameworks to operate effectively. Our maintenance courts and the laws that they implement are important mechanisms to give effect to the rights of children protected by s 28 of the Constitution. Failure to ensure their effective operation amounts to a failure to protect children against those who take advantage of the weaknesses of the system.).

COMMENTARY

Legal Assistance Centre, Maintenance: A Study of the Operation of Namibia's Maintenance Courts, 1995, available here

Law Reform and Development Commission, *Report on Maintenance*, LRDC 5, 1997, available here Legal Assistance Centre, *Guide to the Maintenance Act 9 of 2003*, 2005, available here (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Rukwangali)

See also Child Care and Protection Act 3 of 2015 (state maintenance grants) (CHILDREN).

MARINE AND FRESHWATER RESOURCES

National Fishing Corporation of Namibia Act 28 of 1991 🗐 🙀

Summary: This Act (<u>GG 330</u>) provides for the formation of the National Fishing Corporation of Namibia Limited, a company with the object of exploiting fish and other marine resources, and promoting the establishment, development and efficiency of other businesses engaged in the fishing industry.

Regulations: The Act makes no provision for regulations.

Application of law: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Agreements: An agreement between the Minister of Fisheries and Marine Resources and FISHCOR, in terms of section 5(1)(b) of the Act, is published in GN 140/2019 (<u>GG 6825</u>).

Marine Resources Act 27 of 2000 🕎 📻

Summary: This Act (originally published in <u>GG 2458</u>) provides for the conservation of the marine ecosystem; for the responsible utilisation, conservation, protection and promotion of marine resources on a sustainable basis; and for the control of marine resources for these purposes. It was brought into force on 1 August 2001 by GN 152/2001 (<u>GG 2591</u>).

Repeals: The Act repeals the Sea Fisheries Act 29 of 1992 (<u>GG 492</u>), which in turn replaced the *Sea Fisheries Act 58 of 1973* (<u>RSA GG 3935</u>). It also repeals the *Sea Birds and Seals Protection Act 46 of 1973* (<u>RSA GG 3909</u>), and the Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 13, 16, and 17, and deletes section 15. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Act 9/2015 (GG 5837) amends sections 1, 3, 32, 38 and 39 and inserts section 39A.

Regulations: Regulations made under previous legislation remain in force, in terms of section 64(2) of the Act.

Regulations made under the repealed Sea Fisheries Act 58 of 1973:

The surviving pre-independence regulations made under the repealed *Sea Fisheries Act 58 of 1973* were repealed by the regulations made under this Act.³³²

These regulations were then repealed and replaced by regulations made under the *Sea Fisheries Act 29 of 1992* in GN 1/1993 (<u>GG 566</u>), as amended by GN 2/1994 (<u>GG 777</u>), GN 204/1994 (<u>GG 962</u>), GN 88/1995 (<u>GG 1090</u>), GN 153/1995 (<u>GG 1151</u>), GN 26/1996 (<u>GG 1255</u>), GN 79/1996 (<u>GG 1291</u>), GN 14/1997 (<u>GG 1500</u>), GN 64/1997 (<u>GG 1537</u>), GN 157/1997 (<u>GG 1622</u>) and GN 9/1998 (<u>GG 1785</u>).

³³² Previous regulations contained in RSA GN 1912/1973 (<u>RSA GG 4049</u>), made in terms of the *Sea Fisheries Act* 58 of 1973, were amended after independence by GN 3/1990 (<u>GG 10</u>), GN 48/1992 (<u>GG 399</u>), GN 63/1992 (<u>GG</u> 417), GN 92/1992 (<u>GG 449</u>), GN 123/1992 (<u>GN 478</u>) and GN 158/1992 (<u>GG 527</u>).

Regulations made under the repealed Sea Birds and Seals Protection Act 46 of 1973:

The Sea Birds and Seals Protection Act 46 of 1973 was, in the 1970s, administered by the Minister of Economic Affairs, Department of Industries. This means that the relevant transfer proclamation was the Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978, which came into force on 30 January 1978. Sealing Regulations made under this 1973 Act prior to the date of transfer are contained in RSA GN R.1933/1976 (RSA GG 5317). They were amended in South Africa after the date of transfer by RSA GN R.2722/1979 (RSA GG 6765), which was not made explicitly applicable to SWA.

Additional regulations relating to the conservation and protection of seals were made under the repealed *Sea Birds and Seals Protection Act 46 of 1973* in GN R.1168/1982 (RSA GG 8257), but these regulations were made after the relevant date of transfer and were not made expressly applicable to Namibia. (They contain no repeals.)

Thus, the only surviving pre-independence regulations made under the *Sea Birds and Seals Protection Act 46 of 1973* appear to be the Sealing Regulations contained in RSA GN R.1933/1976 (RSA GG 5317). Even though no repeal of these regulations has been located, they appear to be superseded by the **Regulations relating to the Exploitation of Marine Resources** under the current Act (as detailed below). They have therefore not been included in the database of regulations.

Regulations made under the repealed Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968:

Regulations made under the repealed Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968 are contained in GN 4/1969 (OG 2951). Although no repeal has been located, these regulations relate only to members and meetings of the committee referred to in sections 5(2) and 5(3) of the repealed Ordinance and would thus have no continued relevance. They have therefore not been included in the database of regulations.

Regulations made under the current Act are as follows:

Regulations relating to the Exploitation of Marine Resources are contained in GN 241/2001 (GG 2657), as amended by GN 63/2015 (GG 5721), GN 55/2016 (GG 5985) and GN 93/2018 (GG 6601). These regulations repeal the ones on the same topic contained in GN 153/2001 (GG 2591), which in turn repeal the regulations contained in GN 1/1993 (GG 566).³³⁴

GN 92/2018 (GG 6601) announces a period for applications for rights to harvest certain marine resources in terms of these regulations, along with criteria for granting rights to harvest these resources. Both the time period and the criteria were amended by GN 150/2018 (GG 6657).

Vessel Monitoring Regulations are contained in GN 65/2005 (<u>GG 3446</u>), as amended by GN 2/2014 (GG 5391).

Regulations relating to the licensing of foreign flag vessels for the purpose of harvesting

These regulations appear to have been repealed by regulations issued under this Act, although there is an error in the relevant repealing regulation in GN 153/2001 (<u>GG 2591</u>). GN 153/2001 (<u>GG 2591</u>) states that it repeals the "regulations promulgated by Government Notice No. 566 of 4 January 1993". There is no such Government Notice. However, the repeal probably intended to refer to **Government Notice No. 1** of 4 January 1993, which was published in *Government Gazette* 566.

³³³ See, for example, RSA GN R.1933/1976 (<u>RSA GG 5317</u>).

³³⁴ As noted above, GN 153/2001 (<u>GG 2591</u>) states that it repeals the "regulations promulgated by Government Notice No. 566 of 4 January 1993" – but probably intended to refer to **Government Notice No. 1** of 4 January 1993, which was published in *Government Gazette* 566.

Namibia's marine resources are contained in GN 147/2006 (GG 3696).

These regulations refer to "conservation and management measures published by Government Notice No. 126 of 30 August 2006". This appears to be an error. GN 126/2006 is dated 1 September 2006 and contains Otjiwarongo Amendment Scheme No. 8 (GG 3688). No Government Gazette was published on 30 August 2006. The reference was probably intended to be to the conservation and management measures published by Government Notice 148 of 8 September 2006 (GG 3696).

Regulations relating to Namibian Islands' Marine Protected Area are contained in GN 316/2012 (GG 5111).

Regulations relating to Inspection of Register are contained in GN 238/2015 (GG 5853).

Regulations to Reduce Incidental By-catch of Seabirds in the Hake Demersal Trawl Vessels are contained in GN 269/2015 (GG 5877).

Regulations to Reduce Incidental By-catch of Seabirds in the Hake Demersal Longline Vessels (07) are contained in GN 270/2015 (GG 5877), as amended by GN 68/2016 (GG 5990).

Notices: In terms of section 37(2) of the Act, conservation and management measures adopted under Article VIII of the International Convention for the Conservation of Atlantic Tunas are published in GN 148/2006 (GG 3696).

These measures refer to "Article VIII of the International Convention for the Conservation of Atlantic Tunas, a copy of which is set out in the Regulations promulgated under Government Notice No. 127 of 30 August 2006". This appears to be an error. A copy of the International Convention for the Conservation of Atlantic Tunas appears in Annexure D to GN 147/2006, dated 8 September 2006 (GG 3696).

The northern limit of Namibian waters was determined under the Sea Fisheries Act 29 of 1992 in Proc. 47/1992 (GG 557). A fishing harbour is declared under the Sea Fisheries Act 29 of 1992 in GN 46/1994 (GG 832).

The Namibian Islands Marine Reserve was declared in GN 17/2009 (GG 4210).

GN 2/2013 (GG 5119) requires persons harvesting marine resources under a right, an exploratory right or a fisheries agreement to carry aboard a fishing vessel a specified number of fisheries observers, depending on the type and size of vessel.

A Designation Agreement between the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited is published in GN 74/2016 (GG 5996). A Co-operation Agreement and a Designation Agreement between the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited are published in GN 99/2016 (GG 6017), which withdraws GN 74/2016, and is amended by GN 113/2017 (GG 6307) (by the addition of Addendum No. 1 to the Co-operation Agreement as set out in the Schedule).

GN 92/2018 (GG 6601) announces a period for applications for rights to harvest certain marine resources, along with criteria for granting rights to harvest these resources. Both the time period and the criteria were amended by GN 150/2018 (GG 6657). The time period for harvesting by listed persons and entities was extended by GN 9/2020 (GG 7102).

Total allowable catches: Total allowable catches for various types of fish are set periodically in terms of the relevant law and have not been recorded here.

Fees and levies: Fees and levies on certain marine resources have been issued in terms of this Act, each of which replaces its predecessor – with the most recent one in this series contained in GN 158/2017 (GG 6342).

Fees and levies on other marine resources have been issued in another series of notices, each of which

replaces its predecessor – with the most recent one in this series contained in GN 159/2017 (GG 6342).

Levies for the benefit of the Fisheries Observer Fund are imposed in another series of notices, each of which replaces its predecessor – with the most recent one in this series contained in GN 146/2014 (GG 5559).

Agreements: An agreement between the Minister of Fisheries and Marine Resources and FISHCOR which refers to compensation to FISHCOR in terms of sections 39(3A) and 45(3) of the Act, is published in GN 140/2019 (GG 6825).

Cases: The following case concerns the current Act –

Ehika Fishing (Pty) Ltd v Minister of Fisheries and Marine Resources & Others 2021 (1) NR 142 (HC) (sections 1-definition of "reserve", 38 and 41)

Prosecutor-General v Gustavo & Others 2023 (2) NR 444 (HC) (includes a detailed discussion of the "Fishrot" matter, involving sections 32 and 35 of this Act).

The following are post-independence cases relevant to the 1973 Sea Fisheries Act 58 of 1973 – S v Curras 1991 NR 208 (HC)

Pineiro & Others v Minister of Justice & Others 1991 NR 283 (HC)

Slabber v Blanco & Others 1991 NR 404 (HC)

S v Pineiro & Others 1991 NR 424 (HC); 1993 NR 424 (HC) (concurring judgement)

S v Redondo 1992 NR 133 (SC)

S v Carracelas & Others (1) 1992 NR 322 (HC)

S v Carracelas & Others (2) 1992 NR 329 (HC)

S v Carracelas & Others (3) 1992 NR 336 (HC)

Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)

S v Martinez 1993 NR 1 (HC)

S v Pineiro & Others (1) 1993 NR 24 (HC)

S v Pineiro & Others (2) 1993 NR 49 (HC)

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) (holding that part of the proviso to section 17(1) was unconstitutional)

S v Pineiro & Others 1999 NR 13 (HC).

Commentary: Law Reform and Development Commission, *Urgent and Targetted Report on Fisheries*, LRDC 21, 2012, available here.

Related international agreements: An agreement between Namibia and Mozambique on co-operation in the fisheries sector, in terms of section 35(1) of the Act, is announced in Proc. 2/2003 (GG 2910).

An agreement providing for the implementation of a 1990 General Agreement on Economic, Scientific, Technical and Cultural Co-operation between Namibia and Mozambique in respect of fisheries and aquaculture is announced in Proc. 21/2015 (GG 5784).

An agreement between Namibia and Angola on co-operation in fisheries and aquaculture is published in Proc. 22/2015 (GG 5785).

Aquaculture Act 18 of 2002 📲 🙀

Summary: This Act (<u>GG 2888</u>) regulates and controls aquaculture activities and provides for the sustainable development of aquaculture resources. It was brought into force on 3 December 2003 by GN 245/2003 (GG 3104).

Regulations: Regulations related to licensing are contained in GN 246/2003 (GG 3104).

Regulations related to the import and export of aquatic organisms and aquaculture products are contained in GN 70/2010 (GG 4453).

Notices: Under section 45 of the Act, GN 182/2020 (GG 7298) exempts certain persons from applying for an aquaculture licence subject to the conditions set out in the Schedule to the notice. This applies to persons who conduct any scientific investigation, experiment or research for aquaculture or related purposes on local species; aquaculture facility belonging to the Ministry of Fisheries and Marine Resources; and persons or small scale fish farmers who produce less than 10 tons of local fish species per year.

Inland Fisheries Resources Act 1 of 2003 🖷 🔄

Summary: This Act (<u>GG 2962</u>) provides for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources. It was brought into force on 6 June 2003 by GN 117/2003 (<u>GG 2992</u>).

Regulations: Regulations are contained in GN 118/2003 (<u>GG 2992</u>), as amended by GN 12/2004 (<u>GG 3141</u>) and by GN 80/2006 (<u>GG 3639</u>).

Notices: Fisheries reserves are declared in GN 276/2015 (<u>GG 5883</u>), GN 298/2015 (<u>GG 5903</u>), GN 270/2016 (<u>GG 6172</u>), GN 297/2016 (<u>GG 6197</u>), GN 298/2016 (<u>GG 6197</u>), GN 65/2020 (<u>GG 7138</u>), GN 66/2020 (<u>GG 7138</u>), GN 68/2020 (<u>GG 7138</u>) and GN 206/2021 (<u>GG 7641</u>).

GN 296/2016 (GG 6197), issued under section 22(3) of the Act, prohibits the use of monofilament nets in inland waters of Namibia and the issue of licences for the use of such nets as regulated fishing gear.

Designations: GN 11/2004 (<u>GG 3141</u>) designates the officer stipulated in column 1 of the Schedule to the Act, of the regional council listed in column 2, to perform functions mentioned in column 3 of that Schedule.

COMMISSIONS

Commission of Inquiry into the Procedures and Practices Applied in the Allocation and Utilisation of Existing Fishing Rights (Proc. 18/1991, <u>GG 258</u>).

See also GN 103/1991 (GG 258).

INTERNATIONAL LAW

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009

Benguela Current Convention, 2013

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, 2001

Convention on the Conservation of Antarctic Marine Living Resources, 1980 International Convention for the Conservation of Atlantic Tunas (ICCAT), 1966 Paris Protocol, 1984 Madrid Protocol, 1992

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

SADC Protocol on Fisheries, 2001

†United Nations Convention on the Law of the Sea (UNCLOS), 1982

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994

United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement), 1995

**Protocol on the Privileges and Immunities of the International Seabed Authority, 1998.

See also ENVIRONMENT.

See also **SEA AND SEASHORE**.

MARRIAGE AND DIVORCE

Divorce Laws Amendment Ordinance 18 of 1935 📲 🙀

Summary: This Ordinance (OG 643) amends the common law by setting forth additional grounds for divorce. It will be repealed by the Dissolution of Marriages Act 10 of 2024 (GG 8487), which has not yet been brought into force.

Regulations: The Act makes no provision for regulations.

Cases: WWB v Aipanda NO 2018 (2) NR 446 (HC) (sections 1(1)(a) and 2(b)).

Matrimonial Causes Jurisdiction Act 22 of 1939, as amended in South Africa to November 1979 as amended in South Africa to

Summary: This Act (originally published in <u>SA GG 2635</u>) concerns jurisdiction over divorce proceedings. It will be repealed by the Dissolution of Marriages Act 10 of 2024 (<u>GG 8487</u>), which has not yet been brought into force.

Applicability to SWA: Section 7bis of the Act defines "Republic" to include the territory of South West Africa. Section 7ter, as inserted by Act 17 of 1943, originally stated: "This Act shall apply to the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay, and for the purpose of such application the High Court of South-West Africa shall be deemed to be a provincial division of the Supreme Court of South Africa." As substituted by Act 70 of 1968 with retroactive effect from 18 October 1953, section 7ter states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)." Section 7ter (as amended) states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended.

The Act was repealed in South Africa with effect from 1 July 1979 by the *Divorce Act 70 of 1979* (<u>RSA GG 6505</u>), shortly *before* it was transferred to SWA in November 1979. The repealing Act was not made expressly applicable to SWA, but should have repealed the Act in respect of SWA by virtue of section 7ter of Act 22 of 1939. However, the principal Act was specifically mentioned in the subsequent SWA transfer proclamation. Therefore, it apparently remained in force in SWA – and it has been amended in independent Namibia, and applied in practice by the High Court in several post-Independence cases.

Note that the *Matrimonial Causes Jurisdiction Act 35 of 1945*, which once applied to SWA by virtue of the references in the text of the Act to the Supreme Court of South Africa ("including the High Court of South West Africa") and to certain decrees and orders "to be recognised in the Union and in South West Africa", was also repealed by the *Divorce Act 70 of 1979*, shortly *before* the relevant SWA transfer proclamation was issued in November 1979. There have been no further references to this Act in SWA or in independent Namibia, meaning that there is no reason to think that the repeal in question was not effective for both SWA and SA.

Section 3(1)(c) of the transfer proclamation excluded the reference to the "Republic" in the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning given to it in section 7*bis* of the Act (South Africa and SWA).

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

- Matrimonial Causes Jurisdiction Amendment Act 17 of 1943 (SA GG 3180)
- Matrimonial Affairs Act 37 of 1953 (SA GG 5170)
- General Law Amendment Act 70 of 1968 (RSA GG 2106).

Section 1 on jurisdiction is amended by the Married Persons Equality Act 1 of 1996 (GG 1316).

Regulations: The Act makes no provision for regulations.

Cases: SS v YS 2013 (1) NR 32 (HC) (jurisdiction under sections 1 and 5); ZS v ES 2014 (3) NR 713 (HC); QJ v EJ 2019 (2) NR 494 (HC) (jurisdiction under section 5, noting that Namibia is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction).

Matrimonial Affairs Ordinance 25 of 1955 🕎 😓

Summary: Only sections 4-6 remain in force. The surviving portions of this Ordinance (originally published in <u>OG 1927</u>) deal with the Court's power to make an order of sole guardianship for a minor child in cases of divorce or separation of married parents and that guardian's power to name a guardian in a will, and with spousal maintenance in divorce cases.

Amendments: The Ordinance is amended by Ord. 9/1967 (OG 2777) and by the Married Persons Equality Act 1 of 1996 (OG 1316), which repeals sections 1, 2 and 3 and amends section 4.

Regulations: The Act makes no provision for regulations.

Cases:

NS v PS 2010 (2) NR 418 (HC) (issues to be considered in respect of maintenance)

DK v DK 2010 (2) NR 761 (HC) (section 5, which authorises the court to order a guilty spouse to maintain an innocent spouse, does not prevent a court from ordering an innocent spouse to pay maintenance to a guilty spouse who is in need of it)

S v S 2011 (1) NR 212 (HC) (the issue of guilt still remains an issue to be determined in respect of maintenance for the innocent spouse, with guilt already having been determined in the case at hand; in absence of proof of maintenance needs, a nominal amount of maintenance awarded to reserve innocent party's right of entitlement to maintenance should circumstances change)

AP v PP 2014 (3) NR 671 (no spousal maintenance justified for defendant where plaintiff has agreed to pay more than a fair share of child maintenance costs).

Marriage Act 25 of 1961, as amended in South Africa to March 1978 🕎 🖨

Summary: This Act (originally published in <u>SA GG 6670</u>) governs the solemnisation of civil marriages. It will be replaced by the Marriage Act 14 of 2024 (<u>GG 8548</u>), which has not yet been brought into force.

Repeals: The Act repeals the Marriage Ordinance 33 of 1963 (OG 2502) in respect of SWA.

Applicability to SWA: Section 39A, which was added to the Act by the *Marriage Amendment Act 51 of 1970* (RSA GG 2822) with effect from 1 February 1972 (RSA Proc. 169/1971 (RSA GG 3220)),

states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated **30 March 1978**.

Section 3(2) of the transfer proclamation excluded references to the "Republic" in the Act from the operation of section 3(1)(c) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

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

- Marriage Amendment Act 11 of 1964 (RSA GG 734)
- Bantu Laws Amendment 42 of 1964 (RSA GG 801)
- Marriage Amendment Act 19 of 1968 (RSA GG 2023)
- Marriage Amendment Act 51 of 1970 (RSA GG 2822)
- Marriage Amendment Act 26 of 1972 (RSA GG 3464)
- Marriage Amendment Act 12 of 1973 (RSA GG 3831).

In South West Africa -

• the Marriage Amendment Proclamation, AG 8 of 1977 (OG 3666) amends sections 2 and 3 of the Act and inserts section 5bis;

- the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), substitutes certain expressions; and
- the Marriages, Births and Deaths Amendment Act 5 of 1987 (OG 5356) makes substantial amendments to the Act.

The Married Persons Equality Act 1 of 1996 (GG 1316) amends sections 1 and 26 and substitutes "Minister" for "Cabinet".

The Child Care and Protection Act 3 of 2015 (<u>GG 5744</u>), which was brought into force by GN 4/2019 (<u>GG 6829</u>), substitutes section 24.

Savings: Section 39(2) contains a general savings clause:

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

Regulations: Regulations under the Marriage Act 25 of 1961 are contained in GN 213/1987 (OG 5480), which repeals the race-based regulations that were previously in force.³³⁵

³³⁵ GN 213/1987 (OG 5480) repeals the regulations contained in RSA GN R.1779 of 8 October 1971 (RSA GG 3281). (These regulations were amended in South Africa, after the date of transfer, by RSA GN R.11 of 8 January 1982 (RSA GG 7983).) They were "in substitution for the regulations contained in Government Notice R.1308 of 29 December 1961, in so far as they are applicable to a person who is not a Bantu as defined in the Population Registration Act, 1950 (Act 30 of 1950), or is not a native (excluding a Nama) as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), of South-West Africa".

GN 213/1987 (OG 5480) also repeals the regulations contained in RSA GN R.115 of 28 January 1972 (RSA GG 3371), as amended by RSA GN R. 71 of 18 January 1974 (RSA GG 4141). (These regulations were amended in South Africa, after the date of transfer, by RSA GN R.849 of 16 April 1981 (RSA GG 7549).) They applied "in relation to persons who are Bantu as defined in the Population Registration Act. 1950 (Act 30 of 1950) or who are natives (excluding Namas) as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928) of South West Africa".

In South Africa, these two regulation sets were replaced after the date of transfer by RSA GN R.2207/1986 (RSA GG 10500).

Note that there are two Official Gazettes numbered 5480. The correct one has a notation at the top stating "This Official Gazette replaces the Official Gazette of the same number and date."

Cases: Ex parte Groebler & Another 2004 NR 105 (HC) (procedure regarding consent to marriage of child under age 18); Gurirab v Minister of Home Affairs and Immigration & Another 2016 (1) NR 37 (HC) (review of decision to revoke licence of marriage officer in terms of section 9 of the Act; review cannot be undertaken until potential remedies under section 9(2) have been exhausted).

Recognition of Certain Marriages Act 18 of 1991 🕎 🙀

Summary: This Act (<u>GG 315</u>) provides for the recognition of marriages contracted in terms of the SWAPO Family Act, 1977, and for the adoption of children in terms of this Act.

Regulations: The Act makes no provision for regulations.

Cases: Amadhila v Amadhila (I.77/96) [1996] NAHC 34 (8 November 1996):

With the exception of the rights and obligations of the spouses in relation to the matrimonial property (both during the subsistence of the marriage and on dissolution thereof), the status of all marriages contracted outside Namibia prior to the date of independence in accordance with the provisions of the Family Act, is in all respects the same as those marriages contracted in terms of the Marriages Act, 1961. It follows that, notwithstanding the wide ranging grounds for dissolution of a marriage provided for in articles 55 to 63 of the Family Act (some of them rather progressive but alien to our common law), the grounds on which one or both partners in such a marital relationship can sue for divorce are the same as those applicable to common law marriages.

Dissolution of Marriages on Presumption of Death Act 31 of 1993 🕎 🙀

Summary: This Act (<u>GG 768</u>) provides for the dissolution of marriages of persons presumed to be dead.

Repeals: The Act repeals the Dissolution of Marriages on Presumption of Death Act 23 of 1979.

Regulations: The Act makes no provision for regulations.

Married Persons Equality Act 1 of 1996 🗐 😜

Summary: This Act (originally published in <u>GG 1316</u>) abolishes the marital power which previously applied to civil marriages and amends the law on matrimonial property in civil marriages in community of property. It also amends the common law on the domicile of married women and minor children and on the guardianship of minor children, and amends numerous statutes. It was brought into force on 15 July 1996 by GN 154/1996 (<u>GG 1340</u>).

Amendments: The Banking Institutions Act 2 of 1998 (<u>GG 1808</u>), brought into force on 1 April 1998 (GN 63/1998, <u>GG 1827</u>), repeals section 26.

The Banking Institutions Act 2 of 1998 was subsequently repealed by the Banking Institutions Act 13 of 2023.

The Defence Act 1 of 2002 (<u>GG 2749</u>), which was brought into force on 15 July 2002 by GN 109/2002 (<u>GG 2765</u>), repeals section 22.

The Companies Act 28 of 2004 (GG 3362), brought into force on 1 November 2010 by GN 172/2010 (GG 4536), repeals sections 31 and 32.

The Marriage Act 14 of 2024 (<u>GG 8548</u>), which has not yet been brought into force, will delete sections 23, 24 and 25.

Regulations: The Act makes no provision for regulations.

Application of law: Act 2/1996 (GG 1323) contains amendments to the *Deeds Registries Act 47 of 1937* which are consequential to the Married Persons Equality Act. See also Act 8/1996 (GG 1352), which makes similar consequential amendments to *Registration of Deeds in Rehoboth Act 93 of 1976*.

Cases:

- Myburgh v Commercial Bank of Namibia 1999 NR 287 (HC); 2000 NR 255 (SC) (abolition of marital power prior to promulgation of Married Persons Equality Act)
- S v Gariseb 2001 NR 62 (HC) (abolition of marital power makes it possible for husband to be charged with theft of wife's property in marriage in community of property)
- Stipp & Another v Shade Centre & Others 2007 (2) NR 627 (SC) (necessary allegations for application in respect of section 7(1)(j) read together with section 7(6))
- Intamba v Tjapaka [2015] NAHCMD 218 (16 September 2015) (what constitutes evidence of consent / lack of spousal consent to enter into a sales agreement)
- *Tjihero v Kauari* (I 2845/2012) [2017] NAHCMD 269 (19 September 2017) (consent to a written agreement for purposes of section 7(1) requires signature by the spouse married in community of property); overturned on appeal on other grounds in *Tjihero & Another v Kauri & Another* 2018 (3) NR 879 (SC)
- Standard Bank Namibia Ltd v Groenewald & Others 2019 (4) NR 986 (HC) (effect of section 7 on suretyship entered into by one spouse without consent of the other; where none of the statutory exceptions in sections 7(5) or 8(1)(a) are applicable, the invalidity of the suretyship agreement applies to the creditor and not just between the spouses), overturned on appeal in Standard Bank Namibia Ltd v Groenewald & Others 2021 (4) NR 968 (SC) (onus of proof of absence of consent lies on the persons seeking the protection of section 7 and was not satisfied here; necessary spousal consent was present as a result of section 7(1)(h) and 7(2)(b), as there was no evidence of maladministration of joint estate by one spouse in absence of other's consent; secondarily, given the conduct of the spouse in question, the bank could not have known that the requisite spousal consent was lacking, meaning that consent is deemed to have been given under section 8(1)(a))
- MN v LI & Another 2022 (1) NR 135 (SC) (Act discussed in dicta)
- Dengeinge v Uugwanga 2023 (2) NR 348 (HC) (communal land right forms part of joint estate:
 - To hold otherwise would have a retrogressive effect on the gains made since the advent of the Constitution and those achieved through the implementation of the provisions of the Married Persons Equality Act. In particular, it would contradict the specific provision of art 14 of the Constitution which provides that '(m)en and women of full age . . . [are] entitled to equal rights . . . during marriage and at its dissolution'. Furthermore, a holding to the contrary would contradict the provisions of s 4 of that Act, which provides that a husband and wife married in community of property have equal rights.).

Commentary:

- Law Reform and Development Commission, Aspects of Family Law: The Abolition of Marital Power and Equalization of Rights between Spouses, LRDC 1, 1994, available here
- Legal Assistance Centre, *Guide to the Married Persons Equality Act*, 2001, available <u>here</u> in English and Afrikaans.

*Dissolution of Marriages Act 10 of 2024 🗐 📻

Summary: This Act (<u>GG 8487</u>) consolidates and reforms the law on divorce in respect of civil marriage, making irretrievable breakdown the only ground for divorce. It covers custody, guardianship and access in respect of children of the marriage and provides for spousal maintenance, child maintenance and the

division of marital assets as well as the forfeiture of patrimonial benefits. It paves the way for allowing regional magistrate's courts to hear divorce cases and makes it possible for spouses to make a joint application for a divorce. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Repeals: This Act repeals the Divorce Laws Amendment Ordinance 18 of 1935, the *Matrimonial Causes Jurisdiction Act 22 of 1939* and the Matrimonial Affairs Ordinance 25 of 1955, and most of their amendments.

Notes: (1) The Act also repeals the *Matrimonial Causes Jurisdiction Act 35 of 1945* in its entirety. This law once applied to South West Africa by virtue of the references in the text of the Act to the Supreme Court of South Africa ("including the High Court of South West Africa") and to certain decrees and orders "to be recognised in the Union and in South West Africa". However, it was repealed by the South African Divorce Act 70 of 1979 shortly *before* the relevant transfer proclamation (the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979) was issued. The repeal in question was apparently effective for both South West Africa and South Africa. Thus, the current repeal apears to be superfluous.

- (2) The Act repeals the *Matrimonial Affairs Act 37 of 1953* in its entirety. This law amended the *Matrimonial Causes Jurisdiction Act 22 of 1939*, which was applicable to SWA, but the 1953 Act was not independently applicable to South West Africa, where the Matrimonial Affairs Ordinance 25 of 1955 applied.
- (3) The Act repeals the *General Law Amendment Act 70 of 1968* in its entirety. Note that portions of this Act amend the *Magistrates' Courts Act 32 of 1944*, which remains in force in Namibia. This repeal would not affect the current validity of those amendments, however, since they were actioned before the repeal.
- (4) The amendments to the *Matrimonial Causes Jurisdiction Act 22 of 1939* and the Matrimonial Affairs Ordinance 25 of 1955 made by the Married Persons Equality Act 1 of 1996 (GG 1316) are not repealed.

Regulations: The Act makes no provision for regulations. However, it amends the High Court Act 16 of 1990 to authorise the Judge-President to make rules pertaining to various aspects of divorce proceedings. It also amends the Magistrates' Courts Act 32 of 1944 to authorise the Rules Board to makes rules pertaining to various aspects of divorce proceedings in regional magistrates' courts.

Cases: The following case was decided under the Divorce Laws Amendment Ordinance 18 of 1935: *WWB v Aipanda NO* 2018 (2) NR 446 (HC) (sections 1(1)(a) and 2(b)).

The following cases were decided under the Matrimonial Causes Jurisdiction Act 22 of 1939:

SS v YS 2013 (1) NR 32 (HC) (jurisdiction under sections 1 and 5)

ZS v ES 2014 (3) NR 713 (HC)

QJ v EJ 2019 (2) NR 494 (HC) (jurisdiction under section 5, noting that Namibia is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction).

The following cases were decided under the Matrimonial Affairs Ordinance 25 of 1955:

NS v PS 2010 (2) NR 418 (HC) (issues to be considered in respect of maintenance)

- DK v DK 2010 (2) NR 761 (HC) (section 5, which authorises the court to order a guilty spouse to maintain an innocent spouse, does not prevent a court from ordering an innocent spouse to pay maintenance to a guilty spouse who is in need of it)
- S v S 2011 (1) NR 212 (HC) (the issue of guilt still remains an issue to be determined in respect of maintenance for the innocent spouse, with guilt already having been determined in the case at hand; in absence of proof of maintenance needs, a nominal amount of maintenance awarded to reserve innocent party's right of entitlement to maintenance should circumstances change)
- AP v PP 2014 (3) NR 671 (no spousal maintenance justified for defendant where plaintiff has agreed to pay more than a fair share of child maintenance costs).

*Marriage Act 14 of 2024 🗐 👨

Summary: This Act (<u>GG 8548</u>) consolidates and reforms the law on the solemnisation of civil marriage. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Repeals: The Act repeals the *Marriage Act 35 of 1961* as amended (with the exception of section 267(6) of the amendment made by the Child Care and Protection Act 3 of 2015, which substituted section 24 of the 1961 Act).

Savings: Regulations are authorised by section 44 of the Act. Section 46 of the Act on transitional provisions provides as follows:

Despite the repeal of the laws by section 45 any marriage that, prior to the coming into force of this Act, was valid under the repealed law is not affected by the repeal of that law, and anything done under any provision of that law is deemed to have been done under the corresponding provision, if any, of this Act.

This wording could apply to regulations, which were authorised by section 38 of the *Marriage Act 35* of 1961.

Regulations: Regulations under the *Marriage Act 25 of 1961* are contained in GN 213/1987 (OG 5480), which repeals the race-based regulations that were previously in force.³³⁶

Note that there are two Official Gazettes numbered 5480. The correct one has a notation at the top stating "This Official Gazette replaces the Official Gazette of the same number and date."

Cases: The following cases were decided under the *Marriage Act 35 of 1961*:

Ex parte Groebler & Another 2004 NR 105 (HC) (procedure regarding consent to marriage of child under age 18)

Gurirab v Minister of Home Affairs and Immigration & Another 2016 (1) NR 37 (HC) (review of decision to revoke licence of marriage officer in terms of section 9 of the Act; review cannot be undertaken until potential remedies under section 9(2) have been exhausted).

SELECTED CASES

Myburgh v Commercial Bank of Namibia 2000 NR 255 (SC) (unconstitutionality of marital power) Mpasi NO & Another v Master of the High Court & Others 2018 (4) NR 909 (SC) (presumption in favour of marriage; common law approach to proof of marriage).

Civil actions for adultery:

Matthews v Ipinge 2007 (1) NR 110 (HC) Burger v Burger & Another [2012] NAHCMD 15 (10 October 2012) Jaspert v Siepker [2013] NAHCMD 267 Van Wyk v Van Wyk & Another [2013] NAHCMD 125

³³⁶ GN 213/1987 (OG 5480) repeals the regulations contained in RSA GN R.1779 of 8 October 1971 (RSA GG 3281). (These regulations were amended in South Africa, after the date of transfer, by RSA GN R.11 of 8 January 1982 (RSA GG 7983).) They were "in substitution for the regulations contained in Government Notice R.1308 of 29 December 1961, in so far as they are applicable to a person who is not a Bantu as defined in the Population Registration Act, 1950 (Act 30 of 1950), or is not a native (excluding a Nama) as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), of South-West Africa".

GN 213/1987 (OG 5480) also repeals the regulations contained in RSA GN R.115 of 28 January 1972 (RSA GG 3371), as amended by RSA GN R. 71 of 18 January 1974 (RSA GG 4141). (These regulations were amended in South Africa, after the date of transfer, by RSA GN R.849 of 16 April 1981 (RSA GG 7549).) They applied "in relation to persons who are Bantu as defined in the Population Registration Act. 1950 (Act 30 of 1950) or who are natives (excluding Namas) as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928) of South West Africa".

In South Africa, these two regulation sets were replaced after the date of transfer by RSA GN R.2207/1986 (RSA GG 10500).

- *Useb v Gawaseb* [2014] NAHCMD 283 (1 October 2014)
- JS v LC & Another 2016 (4) NR 939 (SC) (delict of adultery no longer sustainable in Namibian law)
- Van Straten v Bekker (I 6056-2014) [2016] NAHCMD 243 (25 August 2016) (delict of adultery no longer sustainable in Namibian law)
- For a discussion of the two cases ruling that the delict of adultery is no longer sustainable in Namibian law, see Dianne Hubbard, "Infusions of the Constitution into the Common Law" in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available here; and Tapiwa Victor Warikandwa & Lizazi Eugene Libebe, "Namibia Superior Courts' findings on adultery claims: A case of undermining African jurisprudence?" in Tapiwa Victor Warikandwa & John Baloro, eds, *Namibia's Supreme Court at 30 Years: A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era*, Konrad Adenauer Foundation, 2022, available here.

Divorce-grounds for divorce:

- Valindi v Valindi & Another 2009 (2) NR 504 (HC) (divorce case which addresses condonation of adultery by plaintiff and adultery and malicious desertion as grounds for divorce)
- NS v RH 2011 (2) NR 486 (HC) (defences to adultery; condonation of adultery)
- HV v SV (2) 2014 (3) NR 842 (HC) (condonation of adultery in context of domestic violence; criticism of fault-based grounds for divorce and call for urgent law reform)
- S v S (I 61/2015) [2015] NAHCNLD 30 (8 July 2015) (no order for restitution of conjugal rights granted because of past domestic violence)
- ZS v ES 2014 (3) NR 713 (HC) (constructive desertion can be present even where the plaintiff has not left the common home).

Divorce-restitution of conjugal rights:

- Vahekeni v Vahekeni 2008 (1) NR 125 (SC) (role of court in restitution of conjugal rights, with particular reference to protecting best interests of children)
- HV v SV (1) 2014 (3) NR 808 (HC) (order for the restitution of conjugal rights: it is the deserter spouse and not the deserted spouse who bears the onus of showing that an offer to return is genuine; change of heart by the deserter and a commitment to reform are crucial elements of bona fides)
- RW v AW 2023 (2) NR 554 (HC) (order for restitution of conjugal rights inappropriate where protection order is in place prohibiting husband from contact with wife or approaching her residence; final divorce order issued, but no order for access made pending investigation by a social worker in terms of sections 42 and 139 of the Child Care and Protection Act 3 of 2015 due to allegations that minor child was threatened with physical harm).

Divorce-custody:

- DM v SM 2008 (2) NR 704 (HC) (custody dispute resolved in favour of father) (see also DM v SM 2014 (4) NR 1074 (HC))
- NS v PS 2010 (2) NR 418 (HC) (custody of 7-year-old and 10-year-old boys awarded to father, after discussion of gender-neutral role of parenting).
- A v A 2011 (1) NR 70 (HC) (joint custody of minor children upon divorce should be awarded only in exceptional circumstances)
- NS v RH 2011 (2) NR 486 (HC) (factors to consider in determining best interest of minor child for purposes of awarding custody in situation involving relocation of parents to different countries, including discussions of gender dimensions of this issue; advantages of mediation in family matters)
- T v T [2013] NAHCMD 377 (13 December 2013) (notes that joint custody is sometimes awarded in Namibia; disagrees with statement in A v A 2011 (1) NR 70 (HC) that joint custody is appropriate only when children are mature enough to decide this issue for themselves; "It often happens that parents divorce on amicable terms. They might be ideal candidates for joint custody even if the children are still too young to indicate any preferences.")
- SK v SK 2018 (1) NR 268 (HC) (custody of minor children is never *res judicata* but always subject to variation on good cause shown and subject to best interests of child)
- CS (born S) v CS 2021 (4) NR 1156 (HC), upheld on appeal in CJS v CS (born S) 2021 (4) NR 1208

- (SC) (approach to proposed cross-border relocation of custodian parent after divorce; see outline of key principles in paras 40-44)
- CJV v DG (previously V) 2024 (1) NR 80 (HC) (views of child taken into account in decision on temporary custody after divorce of parents: assistance provided by Children's Advocate; principles on best interests of child in Child Care and Protection Act 3 of 2015, section 3 applied)
 - [77] I hold the view that since the dispute between the parties is about the care of the child, it is only befitting that the child, depending on his or her age, maturity and development stage, be heard on the subject that concerns him or her. Courts preach the *audi alteram partem* rule day in, day out, and it is only fair that the child whose welfare is at stake takes part in the proceedings that will determine his or her fate. Children should be afforded an opportunity to be involved in the process that affects them and determines their future. I take cognisance of the fact that a child may be influenced by one of the parents, another child or any other person, but this, in my view, should not be elevated to a bar from hearing the views and opinions of the concerned child for appropriate consideration.
 - [78] The views and opinions of the child expressed should be balanced with all other relevant factors in order to arrive at a decision that is in the best interests of the child. (at paragraphs 77-78)

Divorce-marital property / forfeiture of benefits

Mofuka v Mofuka 2001 NR 318 (HC); 2003 NR 1(SC) (marital property regime)

Hamutenya v Hamutenya 2005 NR 76 (HC) (application for amendment of divorce order not allowed while applicant in contempt of existing order)

Nakashololo v Nakashololo 2007 (1) NR 27 (HC) (marital property regime)

Valindi v Valindi & Another 2009 (2) NR 504 (HC) (divorce case which addresses section 17(6) of Native Administration Proclamation 15 of 1928)

- NS v RH 2011 (2) NR 486 (HC) (effective date for division of joint estate, dissipation of joint assets and appointment of liquidator to calculate value of estate, taking into account dissipated assets, and to effect division of estate; advantages of mediation in family matters)
- C v C; L v L 2012 (1) NR 37 (HC) (general principles to be applied regarding forfeiture of benefits upon divorce from marriage in community of property, discussing general, quantified and specific forfeiture orders)

Bluntly put, the drunken adulterous and maliciously deserting husband, who happens to be a millionaire, and who contributed far more to the joint estate than his innocent spouse, forfeits nothing, even in circumstances where the court makes a general forfeiture order against him. The practical effect of a general forfeiture order in such circumstances would be a mere division of the joint estate. Thus, he is obliged to give 50% of the joint estate to his innocent wife, but he forfeits nothing. The 50% division of the estate is a natural consequence of the law, and does not concern forfeiture at all. On the other hand, the worthless drunken gambler who has committed adultery, but has contributed far less to the value of the joint estate, is not entitled to half the estate when his wife sues him for divorce. In such circumstances, what he forfeits is the benefit which would have accrued to him (by operation of law), as a result of the fact that the parties were married in community of property. (para 6)

- S v S 2013 (1) NR 114 (SC) (no basis for argument that forfeiture of benefits implicates Art 16 of Constitution; exposition of common law on forfeiture of patrimonial benefits)
- Mieze v Mieze [2013] NAHCMD 181 (28 June 2013) (a lease for a resettlement farm is part of the joint estate of a couple married in community of property, even if the lease is in the name of one spouse only)
- HP v FP 2014 (3) NR 701 (HC) (parties are entitled to amend or vary the terms of a settlement agreement which has been made an order of court, without a formal application to court to have further terms of their agreement recorded in a court order)
- ZS v ES 2014 (3) NR 713 (HC) (choice of law rules on marital property; even where there is an antenuptial contract, depending on its terms, the domiciliary law of the husband at the time of the marriage may or may not apply; where such domiciliary law applies, a court must have regard to changes in the law of the husband's matrimonial domicile, subject to public policy; whether the redistribution rules of section 7(3) of South Africa's Divorce Act 70 of 1979 can be characterised as relating to the patrimonial consequences of the marriage is a question of fact which must be proved by expert evidence or agreed between the parties; existence of universal

partnership between married couple).

- AP v EP & Others 2017 (1) NR 109 (HC), read together with AP v EP [2013] NAHCMD 355 (I 799/2010; 26 November 2013) (parties married out of community of property may establish a universal partnership in respect of commercial ventures (societas universorum quae ex quaestu venuint) but not a universal partnership in respect of all their property (societas universorum bonorum))
- WWB v Aipanda NO 2018 (2) NR 446 (HC) (applying principles set out in C v C; L v L 2012 (1) NR 37 (HC), finding of exceptional circumstances that justified the forfeiture of a specific property).
- JN v EN & Others 2022 (3) NR 657 (HC) (duties and responsibilities of receivers tasked with dividing joint estate of divorced parties; receiver has a duty to report to court where settlement agreement is made into a court order; court retains control over joint estate until it is finally liquidated, meaning that a party dissatisfied with the division can approach the court to have it set aside).

Divorce – maintenance

Oberholzer v Loots & Another 2023 (4) NR 1047 (SC) (agreement made for the purpose of hiding assets and thereby frustrating child maintenance claims after a divorce is invalid as being against public policy)

Divorce-Namibia's antiquated divorce law:

- HV v SV (2) 2014 (3) NR 842 (HC), para 8: "There is, to the best of my knowledge, not a single modern constitutional democracy where the fault-based principle of divorce has not been abandoned in favour of 'irretrievable breakdown' or some other more flexible criteria such as the parties having lived apart for a certain period of time. The state of our law is such that even if a court is satisfied that a marriage between two people has no hope of ever being salvaged, the court must keep them together as long as one spouse wants to remain married.... under our law, love is an irrelevant consideration when it comes to whether or not a deserted spouse who does not want to continue with a marriage, should be granted her wish. A more fertile ground for violence in the family is hardly imaginable!"
- ZS v ES 2014 (3) NR 713 (HC), para 44: "Although it is already the second decade of the twenty-first century, Namibia is, in this area of the law [divorce and matrimonial property], still hobbling along in antiquity. It has remained stuck in the distant past instead of joining 'the worldwide shift to irretrievable marriage breakdown as the main or only ground of divorce' (Hahlo supra 5 ed at 331) or some similar approach which more accurately reflects the reality of the modern marriage. I agree with the learned author's view that 'the guilt principle has long been little more than a polite fiction' in many, if not most, of the divorce cases that serve before this court. In spite of many calls for reform, the current state of affairs continues, forcing this court to continue to apply laws which, I am convinced, do not reflect the values and aspirations of the Namibian people who have embraced a progressive Constitution based on modern democratic principles."

Divorce-variation of final divorce order:

RB v AB 2019 (4) NR 1160 (HC) (law does not permit court to vary own final order of divorce in respect of proprietary aspects of settlement agreement incorporated into order).

Donations between spouses

CAD v VED 2019 (3) NR 889 (SC).

Putative marriage:

- S v S 2011 (1) NR 144 (HC) (questions the continued relevance of the concept of putative marriage since statutory reforms have put children born out of wedlock on the same legal footing as the children born in wedlock); rejected as having been wrongly decided by MN v LI & Another 2022 (1) NR 135 (SC)
- Konrad v Ndapanda 2019 (2) NR 301 (SC) ("As a matter of public policy, equity and fairness to both parties to the union, it is imperative that the declaration of the invalidity of a marriage and that of a putative marriage, if properly raised, should be determined in tandem and not in isolation." (para 12)).

Universal partnerships between spouses

- CAD v VED 2019 (3) NR 889 (SC) (summarises relevant common law at paras 4-6 and finds "tacit commercial partnership")
- MN v FN 2019 (4) NR 1176 (SC); MN v LI & Another 2022 (1) NR 135 (SC) (competent for one spouse married in community of property prior to advent of Married Persons Equality Act 1 of 1996 to form a universal partnership with another woman; Court declines to reverse its previous decision under art 81 of the Namibian Constitution and explicitly rejects the Namibian case of S v S 2011 (1) NR 144 (HC) and the South African case of Zulu v Zulu & Others 2008 (4) SA 12 (D) as having been wrongly decided; Court notes at para 67 that the approach of the Zulu case "has the potential to leave a lot of women who cohabit with married men and raise families with them without an effective remedy and give succour to patriarchy and perpetuate inequality based on gender", and states at para 74 that "common law should make a decisive break with our patriarchal past and infuse ethos that promotes equal value to the woman's contribution within the home setting"; endorses the principles quoted below)
 - (a) The contract is increasingly becoming a remedial measure to assist parties in putative marriages, cohabitation situations and customary marriages when otherwise by the application of the strict laws of marriage, they would have no remedy;
 - (b) the institution of universal partnership should be more liberally applied by the courts to assist unmarried cohabiting persons who are often without a remedy in the absence of legislative intervention;
 - a 'reformative, progressive and liberal application of the universal partnership . . . may certainly allow our courts to protect . . . vulnerable parties' in domestic relationships';
 - (d) the universal partnership is 'constantly developing, adapting and finding application in our law'.

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INTERNATIONAL LAW

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999

African Charter on Human and Peoples' Rights (Banjul Charter), 1981

Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003

SADC Protocol on Gender and Development, 2008.

See also Native Administration Proclamation 15 of 1928 (marriages between blacks) ('BLACKS').

See also *Aliens Act 1 of 1937* (name changes upon marriage); *Births, Marriages and Deaths Registration Act 81 of 1963* (registration of marriages); and Identification Act 21 of 1996 (population register which includes record of marriages and divorces) (CIVIL REGISTRATION).

See also Combating of Domestic Violence Act 4 of 2003 (DOMESTIC VIOLENCE).

See also Communal Land Reform Act 5 of 2002 (rights of spouses in respect of communal land) (LAND AND HOUSING).

MEDIA AND COMMUNICATION

This section combines the laws previously indexed under BROADCASTING, CENSORSHIP, FILMS, POSTS AND TELECOMMUNICATIONS and PRESS AND PRINTING, to reflect the increasing integration of these modes of communication and their legal regulation.

Newspaper and Imprint Registration Act 63 of 1971, as amended in South Africa to March 1978

Summary: This Act (<u>RSA GG 3159</u>) provides for the registration of newspapers and printer's imprints and requires that the printer of all printed matter be identified. It was brought into force in South Africa and South West Africa on 1 April 1972 by RSA Proc. R.80/1972 (<u>RSA GG 3441</u>), pursuant to section 14 of the Act.

Repeals: The Act repeals the *Newspaper and Imprint Act 14 of 1934*.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 14(1) states that "this Act and any amendment thereof shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel".

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated **30 March 1978**. The only amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Registration of Newspapers Amendment Act 98 of 1982* (RSA GG 8280) – was not made expressly applicable to SWA. (There were no South African amendments to the Act prior to the date of transfer.)

Section 3(2)(c) of the transfer proclamation excluded section 8 of the Act from the operation of section 3(1)(c) of the General Proclamation, which concerns the interpretation of the term "Republic". Section 8 requires that the editor of a newspaper published in the Republic must reside in the Republic; "Republic" in this section retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Savings: Section 15(2) contains a broad savings clause:

Anything done under a provision of the said Act [the repealed *Newspaper and Imprint Act 14 of 1934*] and which could be done under any provision of this Act, shall be deemed to have been done under the last-mentioned provision.

Regulations: Regulations are authorised by section 13 of the Act.

Pre-independence regulations relating to prescribed fees and prescribed forms made under this Act prior to the date of transfer are contained in RSA GN R.506/1972 (<u>RSA GG 3441</u>), as amended by RSA GN R.359/1978 (<u>RSA GG 5895</u>), dated 3 March 1978.³³⁷

No regulations made in terms of the repealed *Newspaper and Imprint Act 14 of 1934* appear to remain in force.³³⁸

No post-independence regulations have been promulgated.

³³⁷ In South Africa, RSA GN R.2422/1979 (<u>RSA GG 6716</u>) substitutes Annexure A, but this amendment was made after the relevant date of transfer and was not made explicitly applicable to SWA.

³³⁸ Juta's Index to the South African Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at 464.

Publications Act 42 of 1974, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 4426</u>) establishes a Directorate of Publications and provides for the control of certain publications, objects, films and public entertainments. It was brought into force in South Africa and South West Africa as follows pursuant to section 46 of the Act:

- sections 1- 14, 16-24, 26-27, 29-32 and 34-53 were brought into force on 1 April 1975 by RSA Proc. R.74/1975 (RSA GG 4617);
- sections 15 and 33 were brought into force on 1 September 1975 by RSA Proc. R.187/1975 (<u>RSA</u> GG 4815);
- sections 25 and 28 were brought into force on 1 October 1975 by RSA Proc. 229/1975 (RSA GG 4855).

Repeals: The Act repeals the *Publications and Entertainments Act 26 of 1963*, as amended, applied to SWA by the *Publications and Entertainments Amendment Act 32 of 1971* (RSA GG 3096) which also repealed the Obscene Publications Suppression Ordinance 5 of 1926 (OG 208) and the Cinematographic Film Ordinance 9 of 1928 (OG 283), as amended.

Applicability to SWA: Section 46 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." Section 47 defines "Republic" to include "the territory of South West Africa".

Transfer of administration to SWA: The Act was under the authority of "the Minister to whom the administration of this Act is from time to time assigned" rather than under any particular government department (section 47). Section 3(2) of the Executive Powers (Interior) Transfer Proclamation (AG 17/1978) specifically exempted the Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA by that transfer proclamation.

Certain powers under the Act were transferred to the Administrator-General by the Publications Proclamation (AG 43/1978) (OG 3776). However, this Proclamation did not seem to function as a transfer proclamation. Under section 2 of AG 43/1978, the Administrator-General was given the power to amend, set aside or substitute any decision made by any committee referred to in the principal Act, by the Publications Appeal Board, or by the Directorate of Publications. However, these bodies were still in a position to make decisions which were applicable to South West Africa if the Administrator-General did not intervene.

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

- Publications Amendment Act 79 of 1977 (RSA GG 5594)
- Publications Amendment Act 109 of 1978 (RSA GG 6101)
- Publications Amendment Act 44 of 1979 (RSA GG 6433)
- Divorce Act 70 of 1979 (RSA GG 6506)
- Registration of Newspapers Amendment Act 98 of 1982, section 3(b) (RSA GG 8280), brought into force in part on 1 May 1983 by RSA Proc. 64/1983 (RSA GG 8688)
- Publications Amendment Act 60 of 1986 (RSA GG 10306).

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) (OG 5726) amends the definition of "undesirable" in section 48 of the Act.

The Customs and Excise Act 20 of 1998 (<u>GG 1900</u>), brought into force on 1 August 1998 (GN 186/1998, <u>GG 1918</u>), repeals section 49.

The Repeal of Obsolete Laws Act 12 of 2022 (<u>GG 7991</u>), which was brought into force on 15 February 2023 by GN 21/2023 (<u>GG 8031</u>), repeals sections 50 and 51 (both of which amend the Indecent or Obscene Photographic Matter Act 37 of 1967 that is repealed by Act 12 of 2022).

Regulations: Regulations are authorised by section 44 of the Act.

Pre-independence regulations are contained in RSA GN R.2665/1986 (RSA GG 10557). 339

No post-independence regulations have been promulgated.

Application of law: The Publications Proclamation (AG 43/1978) (OG 3776) supplements the Act, without actually amending it, to give the Administrator-General the power to overrule the Publications Appeal Board or any of the other committees or persons referred to in the Act.

Commentary: Law Reform and Development Commission, *Report on Publications*, LRDC 16, 2010.

Namibian Broadcasting Act 9 of 1991 📲 📻

Summary: This Act (originally published in <u>GG 223</u>) provides for the establishment of a broadcasting corporation for Namibia and sets forth its objectives, powers, duties and functions.

Repeals: The Act repeals the *Broadcasting Act 73 of 1976* (RSA GG 5138), which was made explicitly applicable to SWA and which in turn repealed the *Broadcasting Act 22 of 1936* (SA GG 2362), which was made applicable to SWA by the *Broadcasting Amendment Act 60 of 1969* (RSA GG 2411).

Note that the SWA Radio Ordinance 7 of 1957 (OG 2072) supplemented the *Broadcasting Act 22 of 1936* in SWA³⁴⁰; the Radio Ordinance 7 of 1957 was repealed by the *Radio Act 3 of 1952* (SA GG 4802) – which was made applicable to SWA by the *Radio Amendment Act 93 of 1969* (RSA GG 2477) – and which was repealed in Namibia by the Communications Act 8 of 2009. (See the separate entry for the Communications Act 8 of 2009 below.)

Amendments: Sections 1 and 6 are amended by section 1 of the General Law Amendment Act 18 of 2000 (GG 2422), which was brought into force on 2 February 2001 by GN 25/2001 (GG 2483).

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 6, 8 and 13. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Schedule to the Act is amended by the Communications Act 8 of 2009 (<u>GG 4378</u>), brought into force in relevant part on 18 May 2011 by GN 64/2011 (<u>GG 4714</u>).

Savings: Section 34(2)(c)(ii) of the current Act contains a specific savings clause for regulations made under the repealed *Broadcasting Act 73 of 1976*:

On the date of commencement of this Act - [...]

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³³⁹ These regulations repeal the regulations contained in RSA GN R.536 of 18 March 1975, as amended by Government Notices R.819 of 25 April 1975, R.1751 of 24 September 1976, R.2014 of 30 September 1977, R.835 of 21 April 1978, R.1974 of 29 September 1978, R.670 of 30 March 1979, R.1917 of 31 August 1979, R.668 of 28 March 1980, R.2326 of 14 November 1980, R.1890 of 4 September 1981, R.2329 of 30 October 1981, R.1235 of 25 June 1982, R.1236 of 25 June 1982, R.277 of 15 February 1985, R.1204 of 30 May 1985 and R.1090 of 6 June 1986.

³⁴⁰ Section 2 of the Radio Ordinance stated: "Radio activities within the Territory shall, subject to the provisions of the Broadcasting Act, 1936 (Act 22 of 1936) as amended by the Broadcasting .Amendment Act, 1949, (Act 14 of 1949), and of this Ordinance, be under the control of the Director who shall exercise his powers and perform his functions under this Ordinance under the control and direction of the Administrator."

- (c) anything done in respect of the South West African Broadcasting Corporation under any provision repealed by subsection (1) which may be done in respect of the Corporation under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision as if -
 - (i) in the case of any member appointed under the said Broadcasting Act, 1976, the Minister has appointed such member in terms of section 6 of this Act; and
 - (ii) in the case of any regulation made under the said Broadcasting Act, 1976, the Minister has made such regulation in terms of section 27 of this Act.

Section 32(2)(a) of the *Broadcasting Act 73 of 1976* contained a savings clause that specifically mentioned regulations issued under the repealed *Broadcasting Act 22 of 1936*:

Any regulation, licence, appointment, designation, determination or other thing which was made, issued or done under a law repealed by subsection (1) and which could be made, issued or done under any provision of this Act, shall be deemed to have been made, issued or done under the last-mentioned provision.

Regulations: For the purpose of considering what regulations may survive under the current Act, the relevant transfer proclamation is the Executive Powers (National Education) Transfer Proclamation, AG 1 of 1978. However, the *Broadcasting Act 73 of 1976* was explicitly excluded from transfer by section 3(2)(3) of that transfer proclamation. The administration of the *Broadcasting Act 73 of 1976* in South Africa was given to the "Minister of Foreign Affairs and Information" by the *Broadcasting Amendment Act 61 of 1982*. It is not clear if this change would have made the Executive Powers (Information) Transfer Proclamation, AG 7 of 1978, dated **10 February 1978**, applicable to the amended *Broadcasting Act 73 of 1976*.

The following regulations regarding television licences were made under the *Broadcasting Act 73 of 1976*:

Pre-independence regulations relating to television licences are contained in RSA GN R.1720/1987 (RSA GG 10859), as amended by RSA GN R.1566/1988 (RSA GG 11452).

These regulations repeal the regulations in respect of television licences in RSA GN R.1727/1982 (RSA GG 8338), as amended by RSA GN R.1203/1984, RSA GN R.1225/1986 and RSA GN R.2039/1986.

However, it should be noted that the regulations in RSA GN R.1727/1982 (RSA GG 5301) were made explicitly applicable to SWA, while the regulations in RSA GN R.1720/1987 (RSA GG 10859) make no mention of SWA. It is possible that the 1987 regulations were not applicable to SWA because the Executive Powers (Information) Transfer Proclamation, AG 7 of 1978 had effect after the 1982 amendment of the *Broadcasting Act 73 of 1976*.

Namibia's post-independence regulations regarding television licences in GN 118/1993 (<u>GG 726</u>) repealed the regulations in RSA GN R.1763/1976 (<u>RSA GG 5301</u>)³⁴¹ – which were explicitly applicable to SWA.

This history appears to mean that (1) the 1982 and 1987 regulations were not applicable to SWA because the Executive Powers (Information) Transfer Proclamation, AG 7 of 1978 had effect after the 1982 amendment of the *Broadcasting Act 73 of 1976*; or (2) the post-independence regulations repealed the wrong predecessor in error.

³⁴¹ These regulations repeal the regulations published in RSA Government Notices R.1574/1970, R.921/1973, R. 1475/1974, and R.1789/1975.

In any case, it seems clear that the 1993 regulations regarding television licences intended to repeal the applicable South African regulations on the same topic. Thus, it appears that there are no surviving pre-independence regulations of relevance to independent Namibia.³⁴²

The following regulations were made under the current Act:

Regulations regarding television licences are contained in GN 118/1993 (GG 726). License fees are increased to N\$132 by General Notice 245/1995 (GG 1128), which does not technically amend the regulations. Regulation 6 and the Annexure on television licence fees are substituted by General Notice 95/1999 (GG 2113), which also raises the standard television licence fee from N\$132 to N\$180. (General Notice 245/1995 states that it is amending the Annexure, but it appears to substitute the Annexure in its entirety.) The Annexure is again substituted in its entirety by Government Notice 220/2001 (GG 2637), which is substituted in turn by GN 235/2004 (GG 3313).

Notices: Pursuant to section 93(1) of the Communications Act 8 of 2009, GN 327/2020 (<u>GG 7431</u>) sets 31 December 2020 as the date from which Chapter VI of that Act (on promotion of competition) applies to the Namibian Broadcasting Corporation.

Appointments: The initial board was appointed by GN 88/1990 (<u>GG 120</u>), with the appointments of new board members being announced in GN 93/1995 (<u>GG 1062</u>) and GN 175/2000 (<u>GG 2374</u>).

Cases:

Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC), Namibian Broadcasting Corporation v Kruger & Others 2009 (1) NR 196 (SC) (voluntary retrenchment of employees) Factcrown Ltd v Namibia Broadcasting Corporation 2014 (2) NR 447 (SC) (position of Namibian Broadcasting Organisation as parastatal and powers of CEO and board discussed in appeal against absolution from the instance).

New Era Publication Corporation Act 1 of 1992 📲 🙀

Summary: This Act (originally published in <u>GG 377</u>) establishes a publication corporation for Namibia and sets forth its powers, duties and functions.

Amendments: Sections 1 and 5 are amended by section 2 of the General Law Amendment Act 18 of 2000 (<u>GG 2422</u>), which is deemed by GN 25/2001 to have come into force on 29 November 2000 (<u>GG 2483</u>).

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 5, 6 and 10. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Appointments: The appointment of a Board of Directors is announced in GN 26/2001 (<u>GG 2483</u>) and GN 60/2004 (<u>GG 3181</u>).

³⁴² Juta's Index to the South African Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at 228 does list any regulations made or surviving under the *Broadcasting Act 73 of 1976* aside from the 1987 regulations on television licences in RSA GN R.1720/1987 as amended.

MEDIA AND COMMUNICATION-5

Namibia Press Agency Act 3 of 1992 🕎 🙀

Summary: This Act (originally published in <u>GG 382</u>) establishes a news agency for Namibia (commonly known by its acronym NAMPA) and sets forth its powers, duties and functions.

Amendments: Sections 1 and 6 are amended by section 3 of the General Law Amendment Act 18 of 2000 (<u>GG 2422</u>), which is deemed to have come into force on 29 November 2000 (GN 25/2001, <u>GG 2483</u>).

Act 13/2004 (GG 3283) amends sections 4, 5, 6, 11, and 14.

The State-owned Enterprises Governance Act 2 of 2006, which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 6, 7, 11 and 13. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Application of law: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Appointments: The appointment of Boards of Directors is announced in GN 114/1992 (<u>GG 468</u>), GN 197/1998 (<u>GG 1927</u>) and GN 27/2001 (<u>GG 2483</u>).

Posts and Telecommunications Companies Establishment Act 17 of 1992

Summary: This Act (originally published in <u>GG 447</u>) provides for the incorporation of a postal company, a telecommunications company and a holding company, and for the transfer of Namibia's postal and telecommunications enterprises to the postal and telecommunications companies. It also provides for the conditions of service of persons transferred to or employed by the postal or telecommunications companies, and for the control of the Post Office Savings Bank by the postal company.

Section 10 of the Act provided that the Act, with the exception of Chapter I, would come into force on a date to be determined by the Minister in the *Government Gazette*. The entire Act actually came into force at the same time: Chapter I came into force on 31 July 1992, the date of publication of the Act, and the remainder of the Act was brought into force on 31 July 1992 by virtue of GN 88/1992 (GG 446).

Repeals: The Act repeals the *Post Office Act 44 of 1958* (SA GG 6122), as amended, which was made applicable to SWA by the *Post Office Amendment Act 56 of 1973* (RSA GG 3933), which was made applicable to SWA by AG Proc. 6 of 1979 (OG 3904) with effect from 1 February 1979; *Act 56 of 1973* repealed the SWA Post Office Ordinance 30 of 1963 (OG 2500), as amended – which in turn repealed the Post Office Administration Proclamation 15 of 1931 (OG 414), as amended.

With respect to the *Post Office Act 44 of 1958*, the relevant transfer proclamation was the Executive Powers (Post and Telecommunications) Transfer Proclamation, AG 12 of 1978, which came into force on **1 April 1978**, as amended by AG Proc. 35/1979 (OG 4042).

Amendments: The Customs and Excise Act 20 of 1998 (<u>GG 1900</u>), which was brought into force on 1 August 1998 by GN 186/1998 (<u>GG 1918</u>), repeals the amendments to the Customs and Excise Act 91 of 1964 set forth in the Schedule to this Act.

Act 20/2000 (GG 2425) amends section 2 of the Act with respect to the number of company directors, but the amendment actually re-iterates the original Act – and it was in any event never brought into force.

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 2. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Schedule to the Act is amended by the Communications Act 8 of 2009 (<u>GG 4378</u>), brought into force in relevant part on 18 May 2011 by GN 64/2011 (<u>GG 4714</u>).

Act 7/2020 (GG 7305) provides for the dissolution of the holding company. It was brought into force on 19 August 2024 by GN 239/2024 (GG 8420).

Regulations: The Act makes no provision for regulations.

Notices: GN 89/1992 (GG 446) announces a transfer date of 1 August 1992 in terms of section 4(1) of the Act. GN 240/2024 (GG 8420) determines 19 August 2024 as the date of transfer of assets of the dissolved holding company to the successor companies, as set out in Schedule 2 of the Act, in terms of section 4A(2) of the Act.

See also General Notice 279/2002 (GG 2823) with respect to the application to Telecom Namibia of amendments to the Value-Added Tax Act 10 of 2000.

Cases: Purpose of Telecom discussed in *Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others* 2011 (2) NR 670 (SC).

Posts and Telecommunications Act 19 of 1992 🕎 🙀

Summary: This Act (originally published in <u>GG 464</u>) provides for the regulation and control of postal and telecommunications services. It also sets forth the powers, duties and functions of Namibia Post Limited and Telecom Namibia Limited. Section 55 of the current Act provides that it is deemed to have come into force on 1 August 1992, *with the exception of* section 2 (prohibition of conduct of a postal service or a telecommunications service), which was deemed to have come into force on 15 February 1995 (GN 126/2000, <u>GG 2340</u>).

Repeals: This Act replaces the *Post Office Act 44 of 1958* (SA GG 6122), which was repealed by the Posts and Telecommunications Establishment Act 17 of 1992 (See the NAMLEX entry above). The *Post Office Act 44 of 1958* was made applicable to SWA by the *Post Office Amendment Act 56 of 1973* (RSA GG 3933), which repealed the SWA Post Office Ordinance 30 of 1963 (OG 2500), as amended — which in turn repealed the Post Office Administration Proclamation 15 of 1931 (OG 414), as amended.

Amendments: Act 20/1995 (GG 1223) adds section 18A, which enables Namibian Post Ltd. to prescribe and levy service fees.

The Communications Act 8 of 2009 (<u>GG 4378</u>), brought into force in relevant part on 18 May 2011 by GN 64/2011 (<u>GG 4714</u>), repeals Chapters II and IV and section 45.

Savings: Section 54 of the Act contains a savings clause for regulations issued under the *Post Office Act 44 of 1958*:

Notwithstanding the repeal of the Post Office Act, 1958 by section 10 of the Posts and Telecommunications Establishment Act, 1992 [Act 17 of 1992] any regulation made or anything done

under any provision of the Post Office Act, 1958 or any contract concluded in connection with the postal enterprise or the telecommunications enterprise, as defined in section 1 of the Posts and Telecommunications Establishment Act, 1992 [Act 17 of 1992], shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made by the postal company or the telecommunications company, as the case may be, under the corresponding provision of this Act.

Section 19(2) of the *Post Office Amendment Act 56 of 1973* which made the *Post Office Act 44 of 1958* applicable to SWA contains a broad savings clause for actions taken under the repealed Post Office Ordinance 30 of 1963:

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

Section 114(2) of the Post Office Ordinance 30 of 1963 contains a savings clause that applies to regulations and other enactments under the repealed Post Office Administration Proclamation 15 of 1931.

Any convention or agreement entered into or in force or any regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by sub-section (1), shall be deemed to have been entered into, issued, made, promulgated, given, granted or taken under the corresponding provision of this Ordinance.

Regulations: For purposes of assessing what regulations made under the previous laws survive, the administration of the *Post Office Act 44 of 1958* was transferred to SWA by the Executive Powers (Posts and Telecommunications) Transfer Proclamation, AG 12 of 1978 (OG 3714), which came into force on **1 April 1978**. (See also AG GN 35/1979 (OG 4042) which amended the *Post Office Act 44 of 1958* to provide for its administration by SWA authorities.)

The following regulations issued under the Post Office Act 44 of 1958 appear to survive: 343

Postal Regulations are contained in SA GN R.550/1960 (SA GG 6420), as amended by SA GN R.939/1960 (SA GG 6479), SA GN R.1791/1960 (SA GG 6567), SA GN R.287/1961 (SA GG 6633), SA GN R.682/1961 (SA GG 6678), RSA GN R.221/1965 (RSA GG 1039), RSA GN R.233/1966 (RSA GG 1376), RSA GN R.1978/1966 (RSA GG 1610), RSA GN R.2135/1967 (RSA GG 1934), RSA GN R.12/1968 (RSA GG 1944), RSA GN R.494/1968 (RSA GG 2027), RSA GN R.1513/1968 (<u>RSA GG 2154</u>), RSA GN R.1558/1968 (<u>RSA GG 2157</u>), RSA GN R.1936/1968 (RSA GG 2198), RSA GN R.2038/1968 (RSA GG 2210), RSA GN R.2261/1968 (RSA GG 2234), RSA GN R.172/1969 (RSA GG 2279), RSA GN R 1042/1970 (RSA GG 2740), RSA GN R.432/1971 (RSA GG 3028), RSA GN R.1102/1971 (RSA GG 3163), RSA GN R.1522/1971 (RSA GG 3241), RSA GN R.495/1972 (RSA GG 3434), RSA GN R.1862/1972 (RSA GG 3682), RSA GN R.2296/1972 (RSA GG 3735), RSA GN R.663/1973 (RSA GG 3869), RSA GN R.1441/1973 (RSA GG 3999), RSA GN R.1512/1973 (RSA GG 4005), RSA GN R.1752/1973 (RSA GG 4031), RSA GN R.234/1974 (RSA GG 4164), RSA GN R.135/1975 (<u>RSA GG 4569</u>), RSA GN R.402/1975 (<u>RSA GG 4601</u>), RSA GN R.1178/1975 (RSA GG 4749), RSA GN R.1596/1975 (RSA GG 4824), RSA GN R.2384/1975 (RSA GG 4932), RSA GN R.2/1976 (RSA GG 4946), RSA GN R.72/1976 (RSA GG 4959), RSA GN R.217/1976 (RSA GG 4985), RSA GN R.242/1976 (RSA GG 4985), RSA GN R.650/1977 (<u>RSA GG 5516</u>), RSA GN R. 2134/1977 (<u>RSA GG 5779</u>), RSA GN R.2316/1977 (<u>RSA GG</u> 5800), RSA GN R.2317/1977 (RSA GG 5800), AG GN 2/1982 (OG 4587), AG GN 3/1982 (OG 4587), AG GN 5/1982 (OG 4590), GN 76/1988 (OG 5534).³⁴⁴ These regulations are still being processed for the database.

Note that SWA GN 76/1988 mistakenly refers to the Postal Regulations "promulgated by GN R.550 of **1964**" instead of **1960**.

In South Africa, these regulations were also amended by RSA GN R.228/1978 (<u>RSA GG 5879</u>), RSA GN R.1899/1978 (<u>RSA GG 6163</u>), RSA GN R.2013/1978 (<u>RSA GG 6654</u>), RSA GN R.1383/1980 (<u>RSA GG 7112</u>), RSA General Notice 240/1981 (<u>RSA GG 7524</u>), RSA General

³⁴³ Juta's Index to the South African Government and Provincial Gazettes (formerly "The Windex"), 1920-1989 at 228-229 does list any regulations surviving from the Post Office Administration and Shipping Combinations Discouragement Act 10 of 1911.

³⁴⁴ These regulations repeal SA GN 1600/1937 as amended.

Notice 143/1982 (<u>RSA GG 8053</u>) — but these amendments were made after the date of transfer and were not made explicitly applicable to SWA.

Postal Order Regulations are contained in SA GN R.608/1960 (<u>SA GG 6429</u>) as amended by SA GN R.1792/1960 (<u>SA GG 6567</u>), SA GN R.682/1961 (<u>SA GG 6678</u>); RSA GN R.1709/1966 (<u>RSA GG 1579</u>), RSA GN R.1661/1968 (<u>RSA GG 2162</u>), RSA GN R.266/1971 (<u>RSA GG 3002</u>), RSA GN R.493/1972 (<u>RSA GG 3434</u>), RSA GN R.1152/1972 (<u>RSA GG 3599</u>), RSA GN R.2416/1973 (<u>RSA GG 4112</u>), and RSA GN R.589/1975 (<u>RSA GG 4638</u>).³⁴⁵ These regulations are still being processed for the database.

In South Africa, these regulations were further amended by RSA GN R.1899/1980 (RSA GG 7215), RSA GN R.2713/1983 (RSA GG 9000), RSA GN R.1195/1987 (RSA GG 10753) and RSA General Notice 170/1989 (RSA GG 11728) – but these amendments were made after the date of transfer and were not made explicitly applicable to SWA.

Money Order Regulations are contained in SA GN R.609/1960 (SA GG 6429) as amended by SA GN R.1792/1960 (SA GG 6567), RSA GN R.980/1965 (RSA GG 1167), RSA GN R.602/1971 (RSA GG 3071), RSA GN R.492/1972 (RSA GG 3434), RSA GN R.2415/1973 (RSA GG 4112), RSA GN R.590/1975 (RSA GG 4638), RSA GN R.2123/1976 (RSA GG 5332) and RSA GN R.519/1979 (RSA GG 6349) (issued after the date of transfer but made explicitly applicable to SWA). These regulations are still being processed for the database.

In South Africa, these regulations were further amended by RSA GN R.1194/1987 (<u>RSA GG 10753</u>) and RSA General Notice 169/1989 (<u>RSA GG 11728</u>) – but these amendments were made after the date of transfer and were not made explicitly applicable to SWA.

Savings Bank Regulations are contained in RSA GN R.1265/1974 (RSA GG 4343), as amended by SWA GN AG 74/1983 (OG 4770).³⁴⁷

There appears to be some confusion in respect of the Savings Bank Regulations. The most recent **Post Office Savings Bank Regulations** were published after independence in General Notice 113/1996 (GG 1322), as amended by General Notice 276/1997 (GG 1684) and General Notice 64/1998 (GG 1829). These post-independence regulations replace the **Savings Bank Regulations** issued in SWA GN 16/1961 (OG 2297), as amended, which were issued in terms of the Post Office Administration Proclamation 15 of 1931 and which withdraw the Savings Bank Regulations in GN 252/1949, as amended.

No repeal has been located for the **Savings Bank Regulations** in RSA GN R.1265/1974 (<u>RSA GG 4343</u>), which withdraw the Savings Bank Regulations in SA GN R.1087/1960 (<u>SA GG 6485</u>).³⁴⁸ Yet it seems clear that the 1974 South African regulations were applicable to SWA since (as noted above) they were amended by a SWA enactment in 1983).

New Savings Bank Regulations were promulgated in South Africa after the date of transfer in RSA GN R.1687/1982 (RSA GG 8331), as amended. These replaced the Post Office Savings Bank Regulations in RSA GN R.1265/1974, as amended by RSA GN R.190 of 3 February 1978, R.196 of 2 February 1979, R.1652 of 27 July 1979 and R.2547 of 16 November 1979 in respect of South Africa – but these 1982 regulations made no mention of SWA.

Despite this confusing history, it appears that the post-independence **Post Office Savings Bank Regulations** were intended to replace any surviving pre-independence regulations on this topic. Nevertheless, the 1974 **Savings Bank Regulations** will be processed for the database in future since they are still technically in force, so that the degree of overlap can be assessed.

Postal Regulations were published in SWA GN 19/1961 (OG 2297) and amended by RSA GN R.433/1971 (RSA GG 3028) - but were withdrawn by RSA GN R.1753/1973 (RSA GG 4031),

³⁴⁵ These regulations withdraw the Postal Order Regulations issued in SA GN 1129/1956, as amended.

³⁴⁶ These regulations withdraw the Money Order Regulations issued in SA GN 1128/1956.

³⁴⁷ These regulations withdraw the Savings Bank Regulations in RSA GN R.1087/1960.

³⁴⁸ The Savings Bank Regulations in SA GN R.1087/1960 withdrew the Savings Bank Regulations in GN 1468/1911, as amended, in respect of South Africa but these would not have applied to SWA.

with the exception of Regulation 34 and Schedule C.³⁴⁹ (These two surviving provisions have not yet been processed for the database.) At the same time, RSA GN R.1752/1973 (RSA GG 4031) amended the SA Postal Regulations (described above) to make them more clearly applicable to SWA as well as South Africa, by defining "the Republic" in section 1 as "the Republic of South Africa including South West Africa".

Financial Regulations for the Department of Posts and Telecommunications are contained in RSA GN R.1633/1977 (RSA GG 5716). These regulations are still being processed for the database.

The following regulations were made under the current Act:

Post Office Savings Bank Regulations were published in General Notice 113/1996 (<u>GG 1322</u>), as amended by General Notice 276/1997 (<u>GG 1684</u>) and General Notice 64/1998 (<u>GG 1829</u>).³⁵⁰

These regulations replace the Savings Bank Regulations issued in SWA GN 16/1961 (OG 2297), as amended, which were issued in terms of the Post Office Administration Proclamation 15 of 1931. However, subsequent to the 1961 regulations and prior to the transfer date, Savings Bank Regulations contained in RSA GN R.1265/1974 (RSA GG 4343) were issued in terms of section 2(4) of the *Post Office Act 44 of 1958*, and amended by SWA AG GN 74/1983 (OG 4770), amongst other amendments. These 1974 Savings Bank Regulations withdraw the Savings Bank Regulations in RSA GN R.1087/1960 but are silent on the SWA regulations in SWA GN 16/1961.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096), which places certain duties on Namibia Post Limited. The Financial Intelligence Act 13 of 2012 (GG 5096) also gives certain powers to officers of the post office.

Related laws: GN 34/2011 (GG 4679), issued in terms of section 2(3) of the Banking Institutions Act 2 of 1998, removed the Post Office Savings Bank from the coverage of section 2(2) of the Banking Institutions Act 2 of 1998 with effect from 1 April 2011. Section 2(2) of that Act contained a list of institutions that the Banking Institutions Act 2 of 1998 did *not* apply to; thus, the removal of the Post Office Savings Bank from the coverage of section 2(2) meant that the Banking Institutions Act 2 of 1998 *did* apply to the Post Office Savings Bank.³⁵¹ The Banking Institutions Act 2 of 1998 has now been replaced by the Banking Institutions Act 13 of 2023, which includes the Post Office Savings Bank in the list of exemptions in section 2(1)(d) of the Act, meaning that the current Banking Institutions Act 13 of 2023 does *not* apply to the Post Office Savings Bank.

Fees and tariffs: Tariffs set in terms of the Act are set and amended periodically and have not been recorded here. Notices setting fees, rates and charges in respect of Post Office Savings Bank transactions and services have also not been recorded here.

Cases:

Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others 2011 (2) NR 670 (SC) (constitutionality of section 2(2) upheld)

Municipal Council of Windhoek v Telecom Namibia Ltd 2015 (3) NR 629 (SC) (interpretation of section 24, which is now repealed; constitutionality of section 24 upheld)

Negonga v Nampost Ltd 2018 (3) NR 704 (HC) (relationship between Post Office Savings Bank and its customers).

³⁴⁹ RSA GN R.1753/1973 (<u>RSA GG 4031</u>) also withdraws the SWA Telegraph Regulations issued in SWA GN 21/1961 (<u>OG 2297</u>) and the SWA Telephone Regulations issued in SWA GN 22/1961 (<u>OG 2297</u>).

³⁵⁰ These replace the Savings Bank Regulations issued in SWA GN 16/1961, as amended.

³⁵¹ See *Negonga v Nampost Ltd* 2018 (3) NR 704 (HC), para 16.

*Namibia Film Commission Act 6 of 2000 🗐 🙀

Summary: This Act (originally published in <u>GG 2322</u>) establishes a Namibia Film Commission to encourage film production in Namibia, as well as a Film and Video Development Fund. It also regulates activities relating to film production, and provides for the encouragement and promotion of a film industry in Namibia. The Act will be brought into force on a date set by the minister responsible for information and broadcasting by notice in the *Government Gazette*.

Amendments: Act 11/2001 (GG 2620) amends sections 1 and 5.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 15.

Regulations: Regulations are authorised by section 28 of the Act, but none have yet been promulgated.

Appointments: Members of the Namibia Film Commission are appointed in GN 220/2002 (GG 2879) and GN 69/2003 (GG 2946).

Communications Act 8 of 2009 🕎 🙀

Summary: This Act (originally published in <u>GG 4378</u>) provides for the regulation of telecommunications services and networks, broadcasting, postal services and the use and allocation of the radio spectrum. It establishes an independent Communications Regulatory Authority of Namibia (CRAN) and an association to manage the internet domain ".na". It also provides for the interception of telecommunications.

This Act was brought into force, *with the exception of* Parts 4 and 6 of Chapter V (universal service and interception of telecommunications) and Chapter IX (establishment and incorporation of .na domain name association), on 18 May 2011 by GN 64/2011 (<u>GG 4714</u>).

Part 4 of Chapter V (universal service) was brought into force on 1 December 2016 by GN 285/2016 (GG 6188).

Note that GN 285/2016 is correctly numbered in the Contents section of GG 6188, but the actual Government Notice is misnumbered as GN 286/2016.

Part 6 of Chapter 5 (interception of telecommunications) was brought into force with effect from 1 January 2023 by GN 292/2022 (GG 7917).

Repeals: The Act repeals the *Radio Act 3 of 1952* (SA GG 4802), which was made applicable to SWA by the *Radio Amendment Act 93 of 1969* (RSA GG 2477), and the Namibian Communications Commission Act 4 of 1992 (GG 384).

It also repeals some sections of the Posts and Telecommunications Act 19 of 1992 (Chapter II, Chapter IV and section 45); this Act otherwise remains in force and has a separate entry above.

The Radio Act 3 of 1952 in turn repealed the Radio Act 20 of 1926 in South Africa, and the Radio Ordinance 7 of 1957 (OG 2072) in SWA.

The Radio Ordinance 7 of 1957 did not repeal any primary legislation, but instead supplemented the *Broadcasting Act 22 of 1936* in SWA.³⁵²

³⁵² Section 2 of the Radio Ordinance stated: "Radio activities within the Territory shall, subject to the provisions of the Broadcasting Act, 1936 (Act 22 of 1936) as amended by the Broadcasting Amendment Act, 1949, (Act 14

The Namibian Communications Commission Act 4 of 1992 (GG 384) does not contain any repeals.

Amendments: Act 6/2020 (<u>GG 7274</u>) amends sections 1 and 22, substitutes section 23 and amends sections 54. 56 and 75.

Savings: Section 135(1) of this Act states:

Any regulation or notice issued under a law repealed by section 133 that may be made under any provision of this Act, is deemed to have been made under such provision.

Section 54 of the Posts and Telecommunications Act 19 of 1992, which was repealed in part by this Act, states:

Notwithstanding the repeal of the Post Office Act, 1958 by section 10 of the Posts and Telecommunications Establishment Act, 1992 [Act 17 of 1992] any regulation made or anything done under any provision of the Post Office Act, 1958 or any contract concluded in connection with the postal enterprise or the telecommunications enterprise, as defined in section 1 of the Posts and Telecommunications Establishment Act, 1992 [Act 17 of 1992], shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made by the postal company or the telecommunications company, as the case may be, under the corresponding provision of this Act.

This Act repealed the provisions of the Posts and Telecommunications Act 19 of 1992 concerning telecommunications. Thus, section 54 of the Posts and Telecommunications Act 19 of 1992 read together with the savings clause in this Act has the result that regulations on telecommunications that survived under the Posts and Telecommunications Act 19 of 1992 – including those made in terms of the Post Office Act 44 of 1958, which was repealed by the Posts and Telecommunications Establishment Act 17 of 1992 – are now considered to have been made under this Act.

The *Radio Act 3 of 1952* (SA GG 4802) does not contain a savings clause in respect of the repealed South African *Radio Act 20 of 1926*, but section 19A – which was inserted by the *Radio Amendment Act 93 of 1969* (RSA GG 2477), and which made the statute applicable to SWA – contains a savings clause in subsection (3) in respect of the repealed SWA Radio Ordinance 7 of 1957 (OG 2072).

Any regulation made or licence or certificate issued or authorization granted or any other thing done under any provision of a law repealed by subsection (1) [(2] shall be deemed to have been made, issued, granted or done under the corresponding provision of this Act or the Broadcasting Act, 1936 (Act 22 of 1936).³⁵³

Regulations: For purposes of assessing what regulations made under the previous Act survive, the administration of the *Post Office Act 44 of 1958* and the *Radio Act 3 of 1952* was transferred to SWA by the Executive Powers (Posts and Telecommunications) Transfer Proclamation, AG 12 of 1978 (OG 3714), which came into force on **1 April 1978**.

The following regulations were made in terms of the Post Office Act 44 of 1958:³⁵⁴

Telecommunication Regulations are contained in RSA GN R. 1191/1977 (<u>RSA GG 5631</u>), as corrected by RSA GN R.1618/1977 (<u>RSA GG 5716</u>) and as amended by RSA GN R.2000/1977 (<u>RSA GG 5753</u>), RSA GN R.2119/1977 (<u>RSA GG 5779</u>), RSA GN R.13/1979 (<u>RSA GG 6264</u>),

of 1949), and of this Ordinance, be under the control of the Director who shall exercise his powers and perform his functions under this Ordinance under the control and direction of the Administrator."

³⁵³ The *Broadcasting Act 22 of 1936* (<u>SA GG 2362</u>), which was made applicable to SWA by the *Broadcasting Amendment Act 60 of 1969* (<u>RSA GG 2411</u>), was replaced by the *Broadcasting Act 73 of 1976* (<u>RSA GG 5138</u>), which was made explicitly applicable to SWA and which was in turn repealed by the Namibian Broadcasting Act 9 of 1991 (which remains in force and has a separate entry above).

³⁵⁴ **Telegraph Regulations** made in terms of the SWA Post Office Administration Proclamation 15 of 1931 (<u>OG</u> 414) were published in SWA GN 21/1961 (<u>OG</u> 2297), but were withdrawn by RSA GN R.1753/1973 (<u>RSA GG</u> 4031). **Telephone Regulations** made in terms of the SWA Post Office Administration Proclamation 15 of 1931 (<u>OG</u> 414) were published in SWA GN 23/1961 (<u>OG</u> 2297), but were withdrawn by RSA GN R.1753/1973 (<u>RSA GG</u> 4031).

RSA GN R.2329/1979 (RSA GG 6706), RSA GN R.2841/1981 (RSA GG 7974), RSA GN R.2417/1982 (RSA GG 8442), 355 AG GN 9/1989 (OG 5698) and AG GN 41/1989 (OG 5751). In South Africa, these regulations were further amended by RSA GN R.903/1981 (RSA GG 7558), RSA GN R.365/1982 (RSA GG 8054), RSA GN R.367/1983 (RSA GG 8549), RSA GN R.740/1983 (RSA GG 8652), RSA GN R.2790/1983 (RSA GG 9008), RSA GN R.740/1984 (RSA GG 9175), RSA GN R.983/1984 (RSA GG 9226), RSA GN R.333/1986 (RSA GG 10107), RSA GN R.506/1986 (RSA GG 10152), RSA GN R.1410/1986 (RSA GG 10321), RSA GN R.2263/1986 (RSA GG 10502), RSA GN R.1193/1987 (RSA GG 10753), RSA GN R.1760/1987 (RSA GG 10867), RSA GN R.1762/1987 (RSA GG 10867), RSA GN R.350/1988 (RSA GG 11161), RSA GN R.518/1988 (RSA GG 11197), RSA GN R.1437/1988 (RSA GG 111428) – but these amendments were made after the date of transfer and were not made explicitly applicable to SWA.

The following regulations were made in terms of the Radio Act 3 of 1952:

Radio Regulations are contained in RSA GN R.2862/1979 (RSA GG 6794) (which post-dates the relevant date of transfer but was made explicitly applicable to SWA), as corrected by RSA GN R.148/1980 (RSA GG 6823), and as amended prior to independence by RSA GN R.2661/1981 (RSA GG 7947) (which also post-dates the relevant date of transfer but was made explicitly applicable to SWA), AG GN 51/1982 (OG 4615), AG GN 153/1982 (OG 4703) and GN 122/1987 (OG 5407). They have been amended since independence by GN 71/1990 (GG 102), GN 76/1992 (GG 427), General Notice 286/1993 (GG 760), General Notice 203 of 1994 (GG 941), GN 250/1997 (GG 1741), GN 52/1999 (GG 2075), GN 147/2001 (GG 2579), GN 245/2001 (GG 2663), GN 250/2004 (GG 3326), GN 6/2006 (GG 3573), GN 213/2007 (GG 3942) (as amended by General Notice 311/2012 in GG 5037) and General Notice 395/2011 (GG 4839). Chapter 5 of the regulations is repealed by General Notice 74/2013 (GG 5148).

The original regulations post-date the relevant transfer proclamation, the Executive Powers (Posts and Telecommunications) Transfer Proclamation, AG 12 of 1978, dated 2 March 1978. However, RSA GN R.2862/1979 states: "The Regulations are made with the consent of the Administrator General of the Territory of South West Africa and shall also apply in that Territory."

Note that the regulations regarding the licence exempt spectrum in General Notice 395/2011 (GG 4839) amend the Radio Regulations contained in RSA GN R.2862/1979, insofar as they are inconsistent with the new regulations.

The regulations regarding administrative and licence fees for service licences in General Notice 311/2012 (<u>GG 5037</u>) also amend the regulations in GN 213/2007 (<u>GG 3942</u>) (which amend these regulations) insofar as they are inconsistent with the new regulations.

Regulations made in terms of the repealed SWA Radio Ordinance 7 of 1957 are contained in GN 110/1957. These regulations are still being researched, including checking for a possible repeal.

The following regulations were made in terms of the Namibian Communications Commission Act 4 of 1992:

Regulations relating to broadcasting licences are contained in GN 25/1994 (<u>GG 802</u>), as amended by GN 251/2004 (<u>GG 3326</u>), GN 6/2006 (<u>GG 3573</u>) and GN 212/2007 (<u>GG 3942</u>).

Note that the regulations regarding administrative and licence fees for service licences in General Notice 311/2012 (\underline{GG} 5037) amend GN 212/2007 insofar as it is inconsistent with the new regulations.

Regulations pertaining to VSAT (very small aperture terminal) telecommunications

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³⁵⁵ The list of previous amendments in RSA GN R.2417/1982 (<u>RSA GG 8442</u>) erroneously lists R.362 of 26 February 1982 instead of R.365 of 26 February 1982; this amendment was not applicable to SWA.

³⁵⁶ Regulation G18 of these regulations repeals the Radio Regulations in SA GN R.611/1960.

licences are contained in GN 108/2007 (GG 3858).

Note that the regulations regarding administrative and licence fees for service licences in General Notice 311/2012 (GG 5037) amend the regulations in GN 108/2007 insofar as they are inconsistent with the new regulations.

The following regulations have been made in terms of the current Act:

- Rule-making procedures General Notice 334/2010 (<u>GG 4630</u>), as amended by General Notice 554/2021 (<u>GG 7659</u>)
- Broadcasting and telecommunications service licence categories-General Notice 124/2011 (GG 4714), as amended by General Notice 74/2013 (GG 5148) and General Notice 387/2015 (GG 5805).
- Transitional procedures for holders of telecommunications and broadcasting service licences and spectrum use licences initially contained in General Notice 125/2011 (GG 4714), effective from the date the Act came into force, then replaced by General Notice 171/2011 (GG 4737), which applies retrospectively from the date the Act came into force

Notes: Forms relating to the initial regulations were published in General Notice 130/2011 (<u>GG</u> <u>4714</u>). They appear to continue to apply in respect of the replacement regulations on the same topic.

- Submission of interconnection agreements and tariffs General Notice 126/2011 (GG 4714)

 Notes: (1) Note that the Table of Contents of GG 6588 indicates that these regulations are withdrawn by General Notice 175/2018. This is an error. GN 175/2018 is actually a notice of the submission of some specific tariffs in terms of the regulations.
 - (2) Guidelines relating to these regulations are contained in General Notice 455/2018 (GG 6668).
- Licencing procedures for telecommunications and broadcasting service licences -

These regulations were initially contained in General Notice 127/2011 (GG 4714), which is repealed by General Notice 170/2011 (GG 4737), replaced in turn by General Notice 272/2011 (GG 4785), as amended by General Notice 330/2013 (GG 5269), General Notice 182/2016 (GG 6035) and General Notice 104/2019 (GG 6888) (which amends the title of the regulations by deleting the words "and Spectrum Use Licences"). All three successive sets of regulations state that they apply retrospectively from the date the Act came into force.

Notes: Forms **CRAN 1-11** which accompany these regulations are contained in the separate Regulations prescribing Forms for Applications, contained in General Notice 328/2013 (GG 5269), which repeals General Notice 131/2011 (GG 4714) and which is amended by General Notice 18/2016 (GG 5947). (Note that General Notice 328/2013 states that General Notice 272/2011 is amended by GN 74/2013 (GG 5148), but this is incorrect; GN 74/2013 amends the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories published in General Notice 124/2011.) Form **CRAN 15** is appended to these regulations by General Notice 182/2016 (GG 6035). (Forms **CRAN 12-14** are appended to the Regulations prescribing the National Numbering Plan for Use in the Provision of Telecommunications Services in the Republic of Namibia, Numbering Licence Fees and Procedures for Number Licences General Notice 97 of 2016 (GG 5983).)

- Confidential information and confidential communications with CRAN General Notice 307/2012 (GG 5037)
- Licence conditions for telecommunications services licences General Notice 308/2012 (<u>GG</u> 5037), as amended by the regulations in General Notice 159/2020 (<u>GG 7197</u>) and by General Notice 24/2021 (<u>GG 7445</u>)
- Licence conditions for broadcasting service licences General Notice 309/2012 (<u>GG 5037</u>), as amended by the regulations in General Notice 159/2020 (<u>GG 7197</u>) and by General Notice 24/2021 (<u>GG 7445</u>)
- Hearings General Notice 310/2012 (GG 5037)
- Frequency channelling plan for digital terrestrial television General Notice 166/2013 (GG 5201)
- **Regulations prescribing forms for applications** General Notice 328/2013 (<u>GG 5269</u>), as amended by General Notice 18/2016 (<u>GG 5947</u>)

General Notice 328/2013 (GG 5269) repeals General Notice 131/2011 (GG 4714).

- Licence conditions for class comprehensive multiplex and signal distribution licences General Notice 329/2013 (GG 5269), as amended by the regulations in General Notice 159/2020 (GG 7197)
- **Minimum technical standards for set-top box decoders** General Notice 475/2013 (<u>GG</u> 5357), as amended by the regulations in General Notice 159/2020 (<u>GG</u> 7197)
- Quality of service standards applicable to service licensees General Notice 152/2015 (<u>GG</u> 5713), as amended by the regulations in General Notice 159/2020 (<u>GG</u> 7197) and by General Notice 24/2021 (<u>GG</u> 7445)
- National numbering plan for use in the provision of telecommunications services in the Republic of Namibia, numbering licence fees and procedures for number licences equipment General Notice 97/2016 (GG 5983), as amended by General Notice 500/2018 (GG 6692) (number portability), General Notice 150/2020 (GG 7196) (timeframe for implementation of number portability), regulation 11 read with Annexure A of the regulations in General Notice 159/2020 (GG 7197), General Notice 445/2021 (GG 7613), General Notice 675/2022 (GG 7961) and General Notice 668/2024 (GG 8491)
 - **Notes:** (1) Reasons for the initial amendment of these regulations are contained in General Notice 63/2019 (GG 6863).
 - (2) See decision in respect of application for reconsideration of number portability in General Notice 500/2018, published in General Notice 380/2019 (GG 7005).
 - (3) Note that another *Government Gazette* incorrectly numbered as GG 6692 was issued and subsequently withdrawn. Note also that the *Government Gazette* containing General Notice 500/2018 was issued at one stage as GG 6693, but this incorrectly-numbered version was withdrawn.
 - (4) General Notice 150/2020 (GG 7196) erroneously refers to a previous amendment of these regulations by "Government Notice No. 500 of 30 August 2018"; the amendment referred to was contained in General Notice 150/2020.
 - (5) General Notice 445/2021 (<u>GG 7613</u>) erroneously refers to the publication of the National Numbering Plan in "General Notice 18 of 1 April 2021"; the correct reference is General Notice 97 of 1 April 2016.
 - (6) General Notice 445/2021 (<u>GG 7613</u>), which inserts Annexure E, also contains a discussion paper on the numbering fees.
 - (7) Note that General Notice 668/2024 (<u>GG 8491</u>) omits mention of the previous amendments to the regulations in General Notice 150/2020 (<u>GG 7196</u>) and General Notice 159/2020 (<u>GG 7197</u>).
 - (8) General Notice 668/2024 (<u>GG 8491</u>) includes comments and responses on the proposals to amend the numbering regulation and an updated discussion paper on the review of the numbering fees.
- Sharing of infrastructure General Notice 400/2016 (<u>GG 6141</u>), as amended by the regulations in General Notice 159/2020 (<u>GG 7197</u>)
- Frequency Channeling Plan for the spectrum bands 694-790 Mhz and 790-862 Mhz General Notice 424/2016 (GG 6160)
- Procedures for the adjudication of disputes General Notice 468/2017 (<u>GG 6466</u>), as amended by General Notice 105/2019 (<u>GG 6889</u>), by the regulations in General Notice 159/2020 (<u>GG 7197</u>) and by General Notice 24/2021 (<u>GG 7445</u>); see also the Guidelines for mediation proceedings set out in General Notice 43/2020 (<u>GG 7108</u>)
 - **Notes:** (1) The regulations in General Notice 468/2017 (<u>GG 6466</u>) *repeal* the following regulations:
 - * Regulations regarding consumer complaints General Notice 128/2011 (GG 4714)
 - * Regulations regarding licensee disputes General Notice 148/2013 (GG 5194).
 - (2) Forms were published pursuant to the repealed Regulations regarding Consumer Complaints in General Notice 129/2011 (GG 4714). The General Notice containing these forms has not been repealed or withdrawn, but they have no current relevance. The replacement regulations contained in General Notice 468/2017 (GG 6466) contain their own forms.
- Provision of universal service by telecommunications service licensees General Notice 178/2018 (GG 6589), as amended by the regulations in General Notice 159/2020 (GG 7197) and General Notice 559/2024 (GG 8455); see also the Universal Service Obligations Guidelines in General Notice 103/2019 (GG 6886)

• Fair competition in the telecommunications sector - General Notice 179/2018 (GG 6593) as amended by the regulations in General Notice 159/2020 (GG 7197)

Note: Although the regulations refer to "Form A hereto", no such form is included in the *Government Gazette*.

• Spectrum licences - General Notice 104/2019 (<u>GG 6888</u>), as amended by General Notice 152/2020 (<u>GG 7196</u>), and by the regulations in General Notice 159/2020 (<u>GG 7197</u>), and by General Notice 446/2021 (<u>GG 7613</u>) and General Notice 161/2023 (<u>GG 8060</u>)

Notes:

- (1) General Notice 104/2019 (GG 6888) repeals the following regulations:
 - * Regulations regarding Licence Exempt Spectrum Use General Notice 395/2011 (GG 4839)
 - * Regulations setting out License Conditions for Spectrum Use Licenses -General Notice 469/2013 (GG 5354).
- (2) General Notice 152/2020 (GG 7196) contains a Schedule setting out the reasons for the amendments:

The purpose of the amendment of the Regulations Prescribing Procedures Regarding Application for, and Amendment, Renewal, Transfer and Cancellation of Spectrum Licences is to conform the list of Radio Apparatus Exempt from Spectrum License to the International Telecommunications (ITU) standards.

- (3) General Notice 446/2021 (<u>GG 7613</u>) repeals the amendments to these regulations contained in General Notice 152/2020 (<u>GG 7196</u>) (which affected only Annexure B).
- License Categories and Licensing Procedures for Postal Service Licensees General Notice 506/2019 (GG 7072), as amended by General Notice 238/2021 (GG 7559)
- **Penalty Regulations** General Notice 159/2020 (GG 7197)

Note: These regulations made amendments to many other sets of regulations. Throughout the list of amendments, the references to "Government Notice" should be "General Notice".

- Fees for spectrum licences, certificates and examinations-General Notice 417/2020 (GG 7359), as amended by General Notice 738/2023 (GG 8251); these fees replaced General Notice 155/2017 (GG 6322) as of 1 January 2021.
- Reporting Obligations for Licensees-General Notice 24/2021 (GG 7445) which repeals the Cost accounting procedures and reporting requirements in General Notice 474/2013 (GG 5357), as amended by the regulations in General Notice 159/2020 (GG 7197). (The amendment to these regulations is not repealed but would have no independent effect.)

Note: General Notice 24/2021 also amends several previous sets of regulations and the Broadcasting Code:

- Regulations Regarding Licence conditions for telecommunications services licences General Notice 308/2012 (GG 5037);
- Regulations Regarding Licence conditions for broadcasting service licences in General Notice 309/2012 (GG 5037);
- Regulations Prescribing Quality of Service Standards applicable to Service Licensees in General Notice 152/2015 (GG 5713);
- Regulations Regarding Procedures for the Adjudication of Disputes in General Notice 468/2017 (GG 6466);
- Broadcasting Code for Broadcasting Licensees in General Notice 602/2018 (GG 6750).
- Regulations in terms of Part 6 of Chapter V were issued in terms of section 77 of the Act in GN 40/2021 (GG 7481) dated 15 March 2021.

Notes: (1) The Government Notice which publishes these regulations states that they were made after consultation with CRAN, the Director-General of the Namibia Central Intelligence Service and "all providers of telecommunications services who may be affected by the regulations".

(2) Part 6, Chapter V of the Act had not been brought into force at the time when the regulations were issued.³⁵⁷

(3) Where a law confers a power -

(b) to make, grant, or issue any... regulations...

. . .

³⁵⁷ Note that it appears to be competent for the Ministry to publish regulations as preparation for bringing this portion of the law into force, but the regulations published in this way may *not* come into force before the relevant portion of the Act is brought into force. See section 12(3) of the Interpretation of Laws Proclamation 37 of 1920:

- (3) See also Imposition of further conditions on Telecommunications Service Licensees in terms of section 72(4) of the Act relating to matters prescribed by the Minister responsible for communications by virtue of the regulations in terms of Part 6 of Chapter V of the Act-General Notice 180/2022 (GG 7797) (covering SIM card registration, security and confidentiality of telecommunications and forms of assistance and compensation).
- (4) These regulations came into effect only when Part 6 of Chapter V of the Act was brought into force, on 1 January 2023 by GN 292/2022 (GG 7917). Regulation 10(1) states that a "telecommunications service provider must obtain the information set out in regulation 7 from each customer within 12 months from the date of commencement of these regulations". The deadline for submission of information of existing customers referred to in regulation 10(1) was extended for a period of three months, from 1 January 2024 to 31 March 2024, by General Notice 402/2023 (GG 8286).
- Licence fees and regulatory levies under section 129 are contained in General Notice 238/2021 (GG 7559).³⁵⁸

These regulations were struck down in their entirety on constitutional grounds by *Mobile Telecommunications Ltd v Communications Regulatory Authority of Namibia* (HC-MD-CIV-MOT-GEN-2020/00526) [2022] NAHCMD 443 (31 August 2022), but this judgment was overturned on appeal in *Communications Regulatory Authority of Namibia v Mobile Telecommunications Ltd & Others* 2024 (2) NR 340 (SC).

- Functions of carriers in respect of installation and maintenance of telecommunications facilities-General Notice 447/2021 (GG 7614)
- The Frequency Band Plan for Namibia-General Notice 448/2021 (GG 7617)

Note: Regulations setting out a Frequency Band Plan were initially contained in General Notice 191/2013 (<u>GG 5214</u>), but these were replaced by a Frequency Band Plan contained in General Notice 424/2016 (<u>GG 6160</u>) which was not in the form of regulations. This Plan was repealed by General Notice 448/2021.

- Telecommunications Equipment requiring Type Approval-General Notice 495/2023 (GG 8180), which repeals the regulations in General Notice 22/2015 (GG 5659), as amended by General Notice 361/2019 (GG 6992). (The repealed regulations were also amended by General Notice 159/2020 (GG 7197).)
- Frequency Channelling Plan in respect of Analogue Frequency Modulation Radio Broadcasting General Notice 628/2023 (GG 8231) which repeals General Notice 321/2020 (GG 7300)
- Universal Service Levy General Notice 559/2024 (GG 8455).

Note: "Regulations relating to the issuing of licences, categories and licencing procedures for broadcasting service licences" were published in General Notice 67/2022 (<u>GG 7750</u>). However, General Notice 67/2022 was withdrawn by General Notice 88/2022 (<u>GG 7758</u>) on the basis that it had been published erroneously. A new notice of intention to publish regulations on this topic was published in General Notice 90/2022 (<u>GG 7762</u>).

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any ... regulations... made... under the power shall not, unless the contrary intention appears in the law or the contrary is necessary for bringing the law into operation, come into operation until the law comes into operation.

A similar issue is discussed in *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) at paras 63-69.

³⁵⁸ These regulations repeal the regulations on administrative and licence fees for service licences contained in General Notice 311/2012 (<u>GG 5037</u>), as amended by General Notice 331/2013 (<u>GG 5269</u>) and General Notice 181/2016 (<u>GG 6035</u>). (General Notice 238/2021 repeals General Notice 311/2012 and General Notice 331/2013, but does not repeal General Notice 181/2016.)

Note that the repealed regulations amended the regulations in GN 212/2007 (<u>GG 3942</u>), GN 213/2007 (<u>GG 3942</u>) and GN 108/2007 (<u>GG 3858</u>) insofar as they were inconsistent with the regulations in General Notice 311/2012.

The case Communications Regulatory Authority of Namibia v Telecom Namibia Ltd & Others 2018 NASC (11 June 2018), struck down item 6 of these repealed regulations with effect from 11 June 2018, and held that this item, during its period of validity, could not be applied retrospectively to anything which occurred before the date on which the regulations came into force (13 September 2012).

Similarly, "Regulations prescribing licence categories and licensing procedures for telecommunications service licences" were published in General Notice 68/2022 (GG 7750). However, General Notice 68/2022 was also withdrawn by General Notice 88/2022 (GG 7758) on the basis that it had been published erroneously. A notice of intention to publish regulations on this topic was published in General Notice 91/2022 (GG 7762).

Notices: Notices of general interest or applicability are as follows:

- "Reasons Document" explaining certain decisions made in respect of the various draft regulations: 1) Regulations Setting out Broadcasting and Telecommunications Service Licence Categories; 2) Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting; Service Licences and Spectrum Use Licences; 3) Regulations Regarding the Submission of Interconnection Agreements and Tariffs; 4) Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences; and 5) Regulations Regarding Consumer Complaints General Notice 123/2011 (GG 4714).
- Discussion document entitled "Telecommunications Market Study and Dominance", published as a prelude to a public hearing on dominance in the telecommunications and broadcasting markets General Notice 62/2012 (GG 4905).
- Clarification on the 2012 High Court judgement, Mobile Telecommunications Ltd (MTC) v Namibia Communications Commission [the predecessor to CRAN], Telecom Namibia Ltd & Powercom (Pty) Ltd t/a Leo [2012 (2) NR 421 (HC)] General Notice 335/2012 (GG 5044).
- Universal Access and Service Policy for Information and Communications Technologies GN 82/2013 (GG 5169)
- Determination of dominant position in the telecommunications market in Namibia (in terms of section 78) General Notice 167/2013 (GG 5201)
- Digital Terrestrial Television Policy Guidelines GN 316/2013 (GG 5346).
- Study to establish the feasibility of the usage of TV white space technologies for telecommunications services on a secondary basis in the 470 MHz to 694 MHz spectrum band allocated to broadcasting services a notice of intention to conduct a study of this topic, and the reasons and purpose for the proposed study was published in General Notice 150/2014 (GG 5480), and the study was published in General Notice 293/2014 (GG 5535)
- Report on the outcomes of the infrastructure sharing study General Notice 192/2014 (GG 5505)
- Reduction in fixed and mobile termination rates a notice of new rates, including the background to the decision to reduce these rates, is contained in General Notice 401/2016 (GG 6141); see also General Notice 510/2022 (GG 7909) on a reduction of fixed and mobile termination rates
- Frequency Channeling Plan for the Spectrum Bands 694-790 Mhz General Notice 444/2021 (GG 7613) which repeals 423/2016 (GG 6160)
- Guidelines on the general interpretation and applicability of enforcement, hearing and penalty provisions in the Act General Notice 191/2018 (GG 6602)
- Guidelines on the interpretation and application of section 53 of the Act and the Regulations Regarding the Submission of Interconnection Agreements and Tariffs -General Notice 455/2018 (GG 6668)
- **Broadcasting Code for Broadcasting Licensees** General Notice 602/2018 (<u>GG 6750</u>), as amended by General Notice 134/2019 (<u>GG 6915</u>) and by General Notice 24/2021 (<u>GG 7445</u>)
- Spectrum Assignment Strategy General Notice 673/2018 (GG 6776)
- Imposition of a moratorium on applications for spectrum use licenses in the frequency band 87.5-108 MHz for analogue FM radio broadcasting and broadcasting service licenses for analogue FM radio services General Notice 5/2018 (GG 6826)
- Universal Service Obligations Guidelines General Notice 103/2019 (GG 6886)
- Frequency Channelling Plan, Digital Sound Broadcasting General Notice 320/2020 (GG 7300)

Note that the title of this Government Notice refers to a "proposed" Frequency Channelling Plan, but the text states that it "prescribes" the Frequency Channelling Plan set out in the Schedule of the Government Notice. This Frequency Channelling Plan is not characterised as "regulations",

but a subsequent Frequency Channelling Plan for Analogue Frequency Modulation Radio Broadcasting in General Notice 628/2023 (<u>GG 8231</u>) is described as "regulations" (and so is listed in section on "Regulations" above).

- National Broadband Policy GN 189/2020 (GG 7308)
- **Determination of dominant position in the telecommunications sector in Namibia** (in terms of section 78(1)), including a study document on this topic General Notice 40/2021 (<u>GG 7447</u>)
- Issue of Public Broadcasting Service License to the Namibian Broadcasting Corporation (NBC) (noted here due to public interest in the national broadcaster)-General Notice 361/2021 (GG 7584)
- Imposition of further conditions on Telecommunications Service Licensees in terms of section 72(4) of the Act relating to matters prescribed by the Minister responsible for communications by virtue of the regulations in terms of Part 6 of Chapter V of the Act-General Notice 180/2022 (GG 7797) (covering SIM card registration, security and confidentiality of telecommunications and forms of assistance and compensation).

This notice states that it imposes conditions pursuant to the regulations made in terms of Part 6 of Chapter V of the Act in GN 40/2021 (GG 7481); however, note that Part 6 of Chapter V of the Act (which contains section 72(4)) – and by extension the regulations in GN 40/2021 (made in terms of section 77 which is also contained in Part 6 of Chapter V of the Act – were not yet in force at the time when the conditions relating to them in General Notice 180/2022 were published. Paragraph 11 of the conditions published in General Notice 180/2022 states that the conditions will "enter into force with effect from the date communicated by the Authority by written notice to all service providers".

- Spectrum Assignment Strategy 2022 to 2024-General Notice 390/2022 (GG 7876)
- Strategy in Respect of Implementation of IMT-2020 (5G) in the Republic of Namibia-General Notice 6/2023 (GG 8000)
- **Determination of dominant position in the telecommunications market** (in terms of section 78(1)), including a study document on this topic-General Notice 456/2024 (<u>GG 8416</u>).

Licences issued under the repealed laws had to be reviewed for compliance with this Act, but remained valid until so reviewed.

Notices pertaining to specific licences under the repealed laws and under this Act have not been recorded here.

Notices pertaining to specific licensees, applications, transfers, tariffs, etc have been omitted, as well as all notices dealing with administrative matters such as hearings.

A memorandum of agreement between the Namibian Competition Commission and the Communications Regulatory Authority of Namibia (CRAN), made pursuant to section 67 of the Competition Act 2 of 2003, is published in General Notice 17/2012 (GG 4868).

GN 257/2019 (GG 6983) sets 30 August 2019 as the date on which Namibia Post Limited will require a licence authorising the rendering of postal services, under section 95(2) of the Act.

Proposed regulations, plans and policies, some of which contain useful background information, have been published under this Act as follows:

- broadcasting and telecommunications service licence categories-General Notice 14/2011 (GG 4647)
- licensing procedures for broadcasting and telecommunications service licences and spectrum use licences-General Notice 15/2011 (<u>GG 4647</u>); General Notice 150/2013 (<u>GG 5194</u>)
- submission of interconnection agreements and tariffs-General Notice 16/2011 (GG 4647)
- transitional procedures for telecommunications and broadcasting service licences-General Notice 17/2011 (GG 4647)
- consumer complaints-General Notice 18/2011 (GG 4647)
- frequency band plan-General Notice 322/2011 (GG 4807)
- broadcasting service licence conditions-General Notice 331/2011 (GG 4814)
- application and licence fees for service licences-General Notice 394/2011 (GG 4839)

- licence conditions for telecommunications services licences-General Notice 110/2012 (GG 4938)
- hearings-General Notice 148/2012 (GG 4962)
- confidential information and confidential communications with CRAN-General Notice 149/2012 (GG 4962)
- frequency channelling plan for digital terrestrial television-General Notice 334/2012 (<u>GG 5044</u>); General Notice 410/2012 (<u>GG 5078</u>)

The text of the second General Notice is the same as the previous one, but the Table of Frequency Allocations in Regulation 3 is different.

- licensee disputes-General Notice 432/2012 (GG 5092)
- amendments to the regulations on broadcasting and telecommunications service licence categories-General Notice 433/2012 (GG 5092)
- amendments to the regulations on administrative and licence fees for service licences-General Notice 110/2013 (GG 5179)
- minimal technical standards for set-top box decoders-General Notice 111/2013 (GG 5179)
- cost accounting procedures-General Notice 116/2013 (GG 5180)
- licence conditions for class comprehensive multiplex and signal distribution service licences, multiplex licences and signal distribution service licences-General Notice 149/2013 (GG 5194)
- forms for applications-General Notice 155/2013 (GG 5197)
- licence conditions for spectrum use licences-General Notice 165/2013 (GG 5201)
- telecommunications equipment requiring type approval-General Notice 192/2013 (GG 5214)
- minimum quality of service standards applicable to service licences-General Notice 406/2013 (GG 5313)
- amendments to the regulations regarding the submission of interconnection agreements and tariffs-General Notice 473/2013 (GG 5356)
- national numbering plan for provision of telecommunications services-General Notice 46/2014 (<u>GG</u> 5414)
- quality of service standards applicable to service licensees-General Notice 83/2014 (GG 5443)
- national numbering plan for use in the provision of telecommunications services, numbering licence fees and procedures for number licences-General Notice 352/2014 (GG 5571)
- amendments to the regulations on type, approval and technical standards for telecommunications equipment-General Notice 122/2015 (GG 5692)
- amendments to the regulations setting out broadcasting and telecommunications service licence categories-General Notice 162/2015 (GG 5725)
- universal service levy on telecommunications service providers-General Notice 235/2015 (GG 5755)
- universal services levy by telecommunications service licensees-General Notice 236/2015 (GG 5755)
- amendments to the regulations on administrative and licence fees for service licences-General Notice 384/2015 (GG 5805)
- regulations regarding sharing of infrastructure-General Notice 446/2015 (GG 5836)
- provision of roaming services for telecommunications service licences-General Notice 453/2015 (<u>GG</u> 5849), withdrawn by General Notice 466/2017 (GG 6464)
- amendments to the regulations regarding licensing procedures for telecommunications and broadcasting service licences and spectrum use licences-General Notice 19/2016 (GG 5947)
- sharing of infrastructure-General Notice 177/2016 (GG 6032)
- spectrum band plan of Namibia-General Notice 179/2016 (GG 6033)
- frequency channeling plan for the spectrum band 694-790 MHz and 790-862 MHz-General Notice 213/2016 (GG 6054)
- price caps for dominant operators for leased lines and all other pre-arranged connectivity-General Notice 267/2016 (GG 6074)
- code of conduct for broadcasting service licensees-General Notice 343/2016 (GG 6097)
- fees for spectrum licences, certificates and examinations-General Notice 393/2016 (GG 6141)
- price cap regulations-General Notice 156/2017 (GG 6322), withdrawn by GN 18/2018 (GG 6514)
- procedures for the adjudication of disputes-General Notice 157/2017 (GG 6322)
- amendments to the regulations prescribing the national numbering plan-General Notice 250/2017 (GG 6350)
- code of conduct for broadcasting service licensees-General Notice 251/2017 (GG 6350)
- fair competition in the telecommunications sector-General Notice 467/2017 (GG 6465)
- guidelines on the general interpretation and applicability of enforcement, hearings and penalty provisions-General Notice 471/2017 (GG 6469)

- guidelines on the general interpretation and the applicability of section 53 and the regulations regarding the submission of interconnection agreements and tariffs-General Notice 487/2017 (GG 6479)
- spectrum assignment strategy-General Notice 188/2018 (GG 6596)
- broadcasting code-General Notice 192/2018 (<u>GG 6603</u>)
- license categories and procedures for postal service licensees-General Notice 374/2018 (GG 6651)
- amendments to the regulations on type approval and technical standards for telecommunications equipment-General Notice 603/2018 (GG 6750)
- license categories and licensing procedures for postal service licensees-General Notice 672/2018 (GG 6773)
- moratorium on the issue of spectrum use licenses in the frequency band 87.5-108 MHz, for the provision of analogue FM radio broadcasting; and the issue of broadcasting service licenses for analogue FM radio services which entail the use of radio waves-General Notice 674/2018 (GG 6777)
- amendments to the regulations regarding procedures for the adjudication of disputes-General Notice 688/2018 (GG 6798)
- amendments to the regulations regarding type approval and technical standards for telecommunications equipment-General Notice 689/2018 (GG 6798)
- license categories and licensing procedures for postal service licensees-General Notice 692/2018 (GG 6798)
- guidelines on universal service obligations-General Notice 694/2018 (GG 6800)
- procedures regarding application for and amendment, renewal or transfer of spectrum licences-General Notice 695/2018 (GG 6802)
- procedures regarding application for and amendment, renewal or transfer of spectrum licences-General Notice 3/2019 (GG 6826)
- guidelines for mediation proceedings-General Notice 102/2019 (GG 6885)
- penalties under section 129(2) of the Act-General Notice 379/2019 (GG 7004)
- amendments to the regulations on the national numbering plan for telecommunications services, numbering licence fees and procedures for number licences-General Notice 504/2019 (GG 7071)
- amendments to the regulations on spectrum licences-General Notice 26/2020 (GG 7098)
- Frequency Band Plan, Digital Sound Broadcasting-General Notice 72/2020 (GG 7123)
- Frequency Band Plan, Analogue Frequency Modulation Broadcasting-General Notice 73/2020 (<u>GG 7123</u>)
- Determination of Dominant Position in the Telecommunications Sector-General Notice 105/2020 (GG 7156)
- reporting obligations for licensees-General Notice 106/2020 (GG 7162)
- fees for spectrum licenses, certificates and examinations-General Notice 187/2020 (GG 7216)
- reporting obligations for licensees-General Notice 296/2020 (GG 7289)
- amendments to the regulations on spectrum licences-General Notice 402/2020 (GG 7344)
- Frequency Band Plan of Namibia-General Notice 409/2020 (GG 7350)
- functions of carriers in respect of installation and maintenance of telecommunications facilities-General Notice 410/2020 (GG 7354)
- licence fees and regulatory levies-General Notice 416/2020 (GG 7356)
- determination of dominant position in the telecommunications sector (including a draft market study)-General Notice 441/2020 (GG 7368)
- amendments to the regulations regarding rule-making procedures-General Notice 457/2020 (GG 7376)
- functions of carriers in respect of installation and maintenance of telecommunications facilities- General Notice 104/2021 (GG 7492)
- regulations on the functions of carriers in respect of installation and maintenance of telecommunications facilities-General Notice 135/2021 (GG 7503)
- intention to issue a Public Broadcasting Service License to the Namibian Broadcasting Corporation, with proposed conditions (noted here due to public interest in the national broadcaster)-General Notice 147/2021 (GG 7510)
- amendments to the regulations on the national numbering plan for telecommunications services, numbering licence fees and procedures for number licences-General Notice 154/2021 (GG 7518)
- Frequency Channeling Plan for the Spectrum Bands 694-790 Mhz-General Notice 194/2021 (GG 7539)
- amendments to the regulations on rule-making procedures-General Notice 223/2021 (GG 7548)
- regulations relating to the issuing of licences, categories and licencing procedures for broadcasting service licences-General Notice 90/2022 (GG 7762); WITHDRAWN by General Notice 570/2022 (GG 7926), which provides reasons for the withdrawal

- regulations prescribing licence categories and licensing procedures for telecommunications service licences-General Notice 91/2022 (<u>GG 7762</u>); WITHDRAWN by General Notice 570/2022 (<u>GG 7926</u>), which provides reasons for the withdrawal
- regulations prescribing the universal service levy-General Notice 343/2022 (<u>GG 7860</u>); withdrawn by General Notice 291/2024 (<u>GG 8384</u>) (which erroneously refers to General Notice 342/2022 instead of 343/2022)
- amendments to the regulations on the national numbering plan for telecommunications services, numbering licence fees and procedures for number licences-General Notice 514/2022 (GG 7909)
- amendments to the regulations prescribing procedures regarding application for, and amendment, renewal, transfer and cancellation of spectrum licences-General Notice 676/2022 (GG 7962)
- regulations in respect of telecommunications equipment requiring type approval- General Notice 7/2023 (GG 8002).
- Frequency Band Plan in respect of Analogue Frequency Modulation Radio Broadcasting-General Notice 230/2023 (<u>GG 8094</u>)
- amendments to the regulations setting out fees for spectrum licences, certificates and examinations-General Notice 494/2023 (GG 8180)
- Determination of Dominant Position in the Telecommunications Market-General Notice 157/2024 (GG 8344)
- regulations prescribing Universal Service Levy-General Notice 292/2024 (GG 8384)
- amendments to the regulations on the national numbering plan for telecommunications services, numbering licence fees and procedures for number licences-General Notice 388/2024 (GG 8405)
- regulations prescribing limits on tariffs for telecommunications services- General Notice 389/2024 (GG 8405); see also GN 667/2024 (GG 8491) (final publication of regulations deferred)
- regulations prescribing quality of service standards applicable to service licensees-General Notice 625/2024 (GG 8466)
- amendments to the Broadcasting Code-General Notice 626/2024 (GG 8467)
- Frequency Band Plan of Namibia-General Notice 704/2024 (GG 8497)

A previous notice of an intended Frequency Band Plan was published in General Notice 630/2024 (GG 8472). However, there was some confusion in that *Gazette*. That notice indicated that it was a Notice of Intention to prescribe a Frequency Band Plan and announced a 30-day period for comments on the proposed plan - but the proposed plan was presented in the same *Gazette* as General Notice 631/2024, as if it were the final version. General Notices 630/2024 and 631/2024 were both withdrawn by General Notice 703/2024 (GG 8497).

Application of law: The application of this Act with respect to the Communications Regulatory Authority of Namibia is affected by the State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Pursuant to section 93(1) of the Act, GN 327/2020 (GG 7431) sets 31 December 2020 as the date from which Chapter VI of the Act (on promotion of competition) applies to the Namibian Broadcasting Corporation.

Appointments: Members of the Board of the Communications Regulatory Authority of Namibia are announced in GN 131/2010 (GG 4514), GN 169/2023 (GG 8112) and GN 288/2024 (GG 8461). 359

Certain inspectors for the Communication Regulatory Authority of Namibia are appointed as *ex officio* Commissioners of Oaths, with effect from 15 February 2016, in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963*, by GN 48/2016 (GG 5971).

Appointments of inspectors pursuant to section 123(1) of the Act were announced in General Notice 444/2015 (GG 5836), but revocations of these appointments were announced in General Notice 686/2018 (GG 6798), which also announced the appointment of *ex officio* inspectors in terms of section 123(1).

³⁵⁹ Note that a previous version of GG 8461 contained erroneous notice numbers.

Appointments of inspectors pursuant to section 123(1) of the Act with effect from 19 November 2020 are announced in General Notice 474/2020 (GG 7393).

Appointments of an inspector and a special investigator pursuant to sections 123(1) and 124 of the Act are announced in General Notice 218/2021 (GG 7547). The appointment of the special investigator is extended in General Notice 496/2021 (GG 7627).

An appointment of an inspector pursuant to section 123(1) of the Act is announced in General Notice 474/2020 (GG 8172), which also lists persons who are no longer inspectors in terms of the Act due to resignations, promotions, retirements and changes in position.

Cases:

Mobile Telecommunications Ltd v Namibia Communications Commission & Others 2012 (2) NR 421 (HC) (regulatory decision on tariffs which can be charged by mobile telephone operators generally upheld on review; certain portions of decision excised on grounds that they had not served before NCC)

Note: The court judgment refers to "the decision taken by the NCC as published in Government Gazette 36 of 2011". There is no such Government Gazette. It appears that the case intended to refer to General Notice 56 of 2011 (GG 4669), which contains "Amendment of tariffs of mobile operators" (reporting a decision of the NCC taken on 9 February 2011). See discussion of case by CRAN in General Notice 335/2012 (GG 5044).

- Municipal Council of Windhoek v Telecom Namibia Ltd 2015 (3) NR 629 (SC) (in interpreting and upholding constitutionality of section 24 of Posts and Telecommunications Act 19 of 1992, now repealed, Court notes at para 1 that section 60 of this Act is similar)
- Communications Regulatory Authority of Namibia v Telecom Namibia Ltd & Others 2018 (3) NR 663 (SC) (striking down section 23(2)(a) of the Act on constitutional grounds, with effect from 11 June 2018, as an uncircumscribed discretionary power; also striking down item 6 in the "Administrative and licence fees for service licences", General Notice 311/2012 (GG 5037), which was made in terms of that provision, with effect from 11 June 2018; holding further that this regulation, during its period of validity, may not be applied retrospectively to anything which occurred before the date on which the regulation came into force (13 September 2012), meaning that it applied only to the period between that date and the date on which it has been declared unconstitutional (13 Sept 2013-11 June 2018).
- See also Communications Regulatory Authority of Namibia v Telecom Namibia Ltd 2020 (4) NR 1182 (HC) and Communications Regulatory Authority of Namibia v Mobile Telecommunications Company 2021 (1) NR 247 (HC), two conflicting High Court judgments on the date of invalidity of the section struck down, which affects the amount of regulatory levies owing: the first case held that the order took effect on the date of the Supreme Court judgment (11 June 2018), while the second case held that it took effect from the date of the initial High Court judgment (29 September 2016) because the Supreme Court order substituted for that order; in Communications Regulatory Authority of Namibia v Mobile Telecommunications Company of Namibia 2021 (4) NR 1039 (SC), the Supreme Court held that its order took effect as from the date of the Supreme Court order (11 June 2018)

Section 23 of the Act was subsequently substituted in its entirety by Act 6/2020 (<u>GG 7274</u>). The affected regulations were subsequently repealed by General Notice 239/2021 (<u>GG 7559</u>). However, see the case below.

Mobile Telecommunications Ltd v Communications Regulatory Authority of Namibia (HC-MD-CIV-MOT-GEN-2020/00526) [2022] NAHCMD 443 (31 August 2022) (holding that section 23 as amended still constitutes an impermissible outsourcing of plenary legislative power to CRAN because it lacks sufficiently circumscribed guidelines and limits for the exercise of CRAN's discretion; the amended section 23 is struck down in its entirety as being unconstitutional, along with the regulations promulgated pursuant to it); overturned on appeal in Communications Regulatory Authority of Namibia v Mobile Telecommunications Ltd & Others 2024 (2) NR 340 (SC) (holding that section 23 circumscribes CRAN's discretionary powers sufficiently to pass constitutional muster).

CRAN decisions with general applicability:

- "Notice of decision pertaining to the "usage of the word "unlimited" in the advertisements for telecommunications services by all telecommunications service licensees providing services within the borders of Namibia or any part thereof", General Notice 92/2019 (GG 6883)
- "Notice of the following decision which is applicable to all telecommunications service licensees from date of publication of this notice in the *Gazette*", General Notice 93/2019 (GG 6883) (concerning extensions and lapses of customer subscription agreements and packages)
- "Notice of the following decision which is applicable to all telecommunications service licensees from date of publication of this notice in the *Gazette*", General Notice 152/2019 (GG 6931) (concerning automatic renewal of contracts).

COMMENTARY

SADC Media Law: A Handbook for Media Practitioners, Volume 1, A comparative overview of the laws and practice in Malawi, Namibia, South Africa and Zimbabwe, Johannesburg: Konrad Adenauer Foundation, 2003, available here

Daniel Motinga, "Liberalising the Telecommunications Sector in Namibia: Better Regulation is the Key", Institute for Public Policy Research, 2003, available here

Frederico Links, "Spying on Speech", Institute for Public Policy Research, 2019, available here.

INTERNATIONAL LAW

*African Union Convention on Cyber Security and Personal Data Protection, 2014 Agreement relating to the International Telecommunications Satellite Organisation (INTELSAT),

Amendment of Article XVII(f) of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 1995

Amendments of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 2000

Amendment of Article XII(c)(ii) of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 2007

Constitution and Convention of the African Telecommunications Union, 1999, revised 2014 Constitution and Convention of the International Telecommunication Union (ITU), 1992

- **Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992), Kyoto 1994
- **Instruments amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), Minneapolis 1998
- **Instruments amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002), Antalya 2006
- **Instrument amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998), by the Plenipotentiary Conference (Marrakesh, 2002) and by the Plenipotentiary Conference (Antalya, 2006), Guadalajara 2010

International Telecommunication Regulations, 1988

International Telecommunication Regulations, 2012

†Radio Regulations, 1979

Radio Regulations, 1995

**Regional Agreement GE06, adopted by RRC-06, relating to the planning of the digital terrestrial broadcasting service in Region 1 (parts of Region 1 situated to the west of meridian 170° E and to the north of parallel 40° S, except the territory of Mongolia)

and in the Islamic Republic of Iran, in the frequency bands 174-230 MHz and 470-862 MHz. 2006

Constitution of the Universal Postal Union (UPU), 1964 Convention of the Pan-African Postal Union (PAPU), 1980 SADC Protocol on Transport, Communications and Meteorology, 1996

- See also Child Care and Protection Act 3 of 2015 (prohibits any information relating to the proceedings of a children's court which reveals or may reveal the name or identity of a child who is or was a party or a witness in the proceedings, without the permission of the children's commissioner) (CHILDREN).
- See also General Law Amendment Ordinance 22 of 1958, section 1 (offence to publish details of any person under 18 years old who is a party to civil proceedings) (**COURTS**).
- See also *Criminal Procedure Act 51 of 1977*, section 154 (prohibits the publication of any information which may reveal the identity of an accused or a witness in criminal proceedings who is under the age of 18, as well as the publication of information about any criminal proceedings held in closed court) (**CRIMINAL LAW AND PROCEDURE**).
- See also Racial Discrimination Prohibition Act 26 of 1991 (prohibits certain advertisements and language) (CRIMINAL LAW AND PROCEDURE).
- See also *Protection of Information Act 84 of 1982* (prohibits disclosure of security-related information) (**DEFENCE**).
- See also Combating of Domestic Violence Act 4 of 2003 (prohibits publication of any information concerning legal proceedings under the Act which reveals or might reveal the identity of an applicant, a complainant or any child or other person involved in such proceedings, without the court's authorisation) (**DOMESTIC VIOLENCE**).

MEDICAL AID

Medical Scheme for Members of the National Assembly, Judges and other Office Bearers Act 23 of 1990 ₩ ₽

Summary: This Act (<u>GG 118</u>) extends membership of the medical scheme established for the public service under the Public Service Act 2 of 1980 to members and former members of the National Assembly, judges and former judges of the Supreme Court and the High Court, certain other office-bearers and other persons, and to their surviving spouses.

Regulations: The Act makes no provision for regulations.

Notices: Certain officials are named as office-bearers for purposes of the Act from time to time, but these designations have not been recorded here.

Medical Aid Funds Act 23 of 1995 📲 🙀

Summary: This Act (originally published in <u>GG 1226</u>) regulates medical aid funds and establishes the Namibian Association of Medical Aid Funds. Part III of the Act was brought into force on 1 February 1996 by GN 25/1996 (<u>GG 1255</u>). The remainder of the Act was brought into force on 11 February 1997 by GN 11/1997 (<u>GG 1496</u>).

Repeals: The Act repeals the *Medical Schemes Act 72 of 1967* (RSA GG 1759), as amended.

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (<u>GG 2529</u>), which was brought into force by GN 85/2001 (<u>GG 2528</u>), amends section 1 and substitutes section 3.

Act 11/2016 (GG 6180) amends section 1 and substitutes section 7 and 45.

The Act is also amended by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force.

Regulations: Section 46(2) provides that anything done under a repealed law "which could have been done under a corresponding provision of this Act" survives.

With respect to regulations made under the *Medical Schemes Act 72 of 1967*, the relevant transfer proclamation was the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977, which came into force on **1 December 1977**. The most recent regulations made prior to the transfer date were contained in RSA GN R.2395/1976 (<u>RSA GG 5352</u>), but these were repealed in Namibia by the regulations made under the current Act.³⁶⁰

Regulations made under the current Act are contained in GN 12/1997 (GG 1496), as amended by GN 193/2018 (GG 6688).³⁶¹

³⁶¹ As noted above, these regulations repeal the ones contained in RSA GN R.2395/1976 (RSA GG 5352),.

³⁶⁰ These regulations replace the ones contained in RSA GN R.2417/1972 (<u>RSA GG 3750</u>), as amended by RSA GN R.908/1974 (<u>RSA GG 4287</u>), which replaced the regulations in RSA GN R.1486/1970 (<u>RSA GG 2806</u>), which in turn replaced those published in RSA GN R.174/1968 (<u>RSA GG 1977</u>, republished in <u>OG 2858</u>).

The 1972 regulations were replaced in South Africa by a new set of regulations made under the *Medical Schemes Act 72 of 1967*, contained in RSA GN R.2768/1984 (RSA GG 9533), but these regulations were made after the relevant transfer date and were not made expressly applicable to SWA. The 1972 regulations were repealed in Namibia by the regulations made under the current Act and contained in GN 12/1997 (GG 1496).

Notices: General Notice 19/2007 (<u>GG 3788</u>) declares it an undesirable practice for medical aid funds to use certain game shows and other competitions as forms of advertisement.

General Notice 363/2017 (GG 6399) declares certain rules on restrictions and exclusions in respect of third party claims to be undesirable practices for medical aid funds.

General Notice 129/2020 (GG 7169) issues a "Covid-19 Pandemic: Declaration of undesirable practice" in terms of section 4(9) of the Act.

The particulars of individual registered funds are not recorded here.

Cases:

Namibian Association of Medical Aid Funds v Namibia Competition Commission 2017 (3) NR 853 (SC), overturning Namibian Association of Medical Aid Funds v Namibian Competition Commission (A 348/2014) [2016] NAHCMD 80 (17 March 2016) (Supreme Court: funds established pursuant to the Act do not fall within the definition of "undertaking" in the Competition Act 2 of 2003)

Heritage Health Medical Aid Fund v Registrar of Medical Aid Funds & Others 2022 (4) NR 1127 (SC) (sections 30 (1)(1) and (m), 31(1) and (3)).

Commentary:

Patric Kauta & Mercy Kuzeeko, "Supreme Court of Namibia: NAMAF and others v Namibian Competition Commission and another. Where is the solidarity?", *Namibia Law Journal*, Volume 9, Issue 1, 2017

PM Balhao, "NAMAF v NCC: Was the wealth behind the health overlooked?", *Namibia Law Journal*, Volume 10, Issue 1, 2018.

See also Hospitals and Health Facilities Act 36 of 1994 (tariffs for state patients) (HOSPITALS).

See also Employees' Compensation Act 30 of 1941 (tariff of fees for medical aid) (LABOUR).

See also the Presidential Emoluments Act 17 of 1990 and Former Presidents' Pension and Other Benefits Act 18 of 2004 (medical aid benefits for President and former Presidents) (**PRESIDENT**).

See also Social Security Act 34 of 1994 (Maternity Leave, Sick Leave and Death Benefit Fund; National Medical Benefit Fund) (**SOCIAL SECURITY**).

MEDICINE

Abortion and Sterilization Act 2 of 1975, as amended in South Africa to December 1977

Summary: This Act (originally published in <u>RSA GG 4608</u>) regulates abortion and sterilization. Abortion is legal only in cases of severe mental or physical risk to the woman concerned, cases where there is a serious risk that the child will suffer a severe physical or mental handicap, and cases where the child was conceived as a result of rape or incest.

Applicability to SWA: Section 11 states that "this Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**. Neither of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Abortion and Sterilization Amendment Act 38 of 1980* (RSA GG 6985) and the *Abortion and Sterilization Amendment Act 48 of 1982* (RSA GG 8107) – was made expressly applicable to SWA.

Amendments: The following pre-independence South African amendment was applicable to SWA – *Abortion and Sterilization Amendment Act 18 of 1976* (RSA GG 5034).

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends some of the terminology in the Act.

Regulations: Regulations are authorised by section 8 of the Act. Pre-independence regulations are contained in RSA GN R.1210/1975 (<u>RSA GG 4749</u>).³⁶²

No post-independence regulations have been promulgated.

Cases:

S v Haimbodi 1993 NR 129 (HC) (specimen charge provided for future use)

S v Alweendo 1993 NR 177 (HC)

S v Iyambo 2007 (2) NR 842 (HC) (lenient sentence appropriate where a very young foetus is involved) S v Absolom 2019 (2) NR 483 (NLD) (conviction and sentence to community service overturned due to defective charge)

Commentary: Charles Ngwena, "Access to safe abortion as a human right in the African region: lessons from emerging jurisprudence of UN treaty-monitoring bodies", 29 (2) *South African Journal on Human Rights* 2013; Legal Assistance Centre, "Becoming Pregnant from Rape: Your Options", 2021 (includes an explanation of the steps for a legal abortion when a rape results in pregnancy).

³⁶² In South Africa, subsequent regulations were issued in RSA GN R.2164/1977 (RSA GG 5779), withdrawing RSA GN R.1210/1975. This *Government Gazette* was dated 21 October 1977, prior to the date of transfer, but the relevant Government Notice came into effect only on 1 January 1978, after the date of transfer. An additional regulation was issued in South Africa in RSA GN R.2165/1977 (RSA GG 5779), which also came into effect only on 1 January 1978, after the date of transfer. These two regulations made no reference to SWA and were thus not applicable to SWA.

In South Africa, new regulations were made in RSA GN R.610/1983 (RSA GG 8617) (as corrected by RSA GN R.774/1983, RSA GG 8652) after the date of transfer and prior to Namibian independence, repealing RSA GN R.2164/1977 and RSA GN R.2165/1977. Again, these regulations made no reference to SWA and were thus not applicable to SWA.

Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977

Summary: This Ordinance (originally published in <u>OG 3633</u>) covers the donation of human bodies and tissue (including flesh, organs, bones and body fluids) for therapeutic and scientific purposes. It also regulates post-mortems.

Repeals: The Act repeals the Post-Mortem Examination and Removal of Human Tissues Ordinance 21 of 1956.

Amendments: This Ordinance is affected by the Health Act 21 of 1988 (OG 5651), which made it applicable to all of SWA.

Regulations: Anatomical Donations and Post-Mortem Examinations Regulations are contained in GN 87/1980 (OG 4114). (These 1980 regulations do not repeal the similar Anatomical Donations and Post-Mortem Examinations Regulations contained in GN 275/1978 (OG 3866), but they cover identical topics and so must supersede the 1978 regulations.)

Notices: AG GN 92/1981 (OG 4504), issued in terms of regulation 4 of the 1980 regulations, lists institutions which are authorised to receive, acquire, preserve or use the bodies of deceased persons for therapeutic or scientific purposes, and institutions which are authorised to perform post-mortem examinations for any of the purposes stated in regulation 2(1).

Namibia Institute of Pathology Act 15 of 1999 🗐 🔄

Summary: This Act (originally published in <u>GG 2210</u>) establishes the Namibia Institute of Pathology Limited and sets forth its duties and functions. Medical laboratory functions of the Ministry of Health and Social Services will be transferred to the Institute on a date determined by the Minister. This Act was brought into force on 1 April 2020 by GN 91/2020 (GG 7163).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 11, 12, 13, 15, 16 and 22. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 34 of the Act, but none have yet been promulgated.

Notices: The date for the transfer of medical laboratory functions from the Ministry of Health and Social Services to the Namibia Institute of Pathology Limited is set as 1 December 2000 (GN 283/2000, GG 2444).

Appointments: The Board of Directors is announced in GN 125/2000 (<u>GG 2340</u>), GN 140/2005 (<u>GG 3529</u>) and GN 206/2009 (<u>GG 4357</u>). The term of office of one board member is extended in GN 203/2015 (<u>GG 5829</u>). After the date that the Act was brought into force, the Board of Directors is announced (with effect from 7 December 2019) in GN 91/2020 (<u>GG 7163</u>).

Medicines and Related Substances Control Act 13 of 2003 🗐 🔄

Summary: This Act (originally published in <u>GG 3051</u>) provides for the establishment of a Namibia Medicines Regulatory Council, for the registration of medicines intended for human and animal use, and for the control of medicines and scheduled substances. It was brought into force on 25 July 2008 by GN 177/2008 (GG 4088).

Repeals: The Act repeals the *Medicines and Related Substances Control Act 101 of 1965* (RSA GG 1171).³⁶³

Amendments: Act 8/2007 (<u>GG 3968</u>) – which was brought into force on 1 August 2008 by GN 187/2008 (<u>GG 4091</u>) – amends the Act substantially.

Portions of the Act were found unconstitutional by *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others* 2017 (2) NR 544 (SC):

- section 31(3) is "of no force and effect" because it is unconstitutionally vague;
- the words "... who holds a licence contemplated in section 31(3), subject to the conditions of that licence" in sections 29(7)(b), 29(9)(b), 29(13)(b) and 29(19)(b) are "declared to be inconsistent with the Constitution and therefore invalid and accordingly severed from those provisions".

Note that the Court's order also states that these words should be severed from section 31(3), but the words in question do not appear there and section 31(3) is in any event declared entirely void.

Savings: Pursuant to section 46(2), the schedules of the *Medicines and Related Substances Act 101 of 1965* continue to apply until the Minister publishes a notice in the Gazette in terms of section 29(1). Note that the notice referred to has been published: GN 180/2008 (<u>GG 4088</u>), as amended and as subsequently replaced (see the section on "Notices" below).

Pursuant to section 46(1A), the Medicines Control Council established under the previous legislation is to serve the functions of the new Namibia Medicines Regulatory Council until such time as the Minister appoints the new Council. A new Council was initially appointed in GN 209/2009 (<u>GG 4367</u>), which has been followed by subsequent appointments.

Notices, regulations, authorisations, orders, approvals, certificates made and other things done under the previous legislation survive, by virtue of section 47(2), as amended:

Notwithstanding subsection (1) [repeals] any notice, regulation, authorisation, order, approval or certificate issued, made or granted or any other thing done in terms of a provision of a law repealed or amended by that subsection is, except in so far as may be otherwise required by this Act, deemed to have been issued, made, granted or done under the corresponding provision of this Act.

Regulations: For the purposes of considering what pre-independence regulations may survive under the current Act, the relevant transfer proclamation appears to have been the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977, dated **1 December 1977**.

The only surviving pre-independence regulations (enacted before the date of transfer) appear to have been repealed by the post-independence regulations issued in 2008.³⁶⁴

Proposed regulations under the current Act were published in GN 241/2004 (GG 3317).

Extensive regulations pertaining to medicines and related substances were subsequently issued in

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³⁶³ This Act was originally named the "Drugs Control Act"; it was renamed by the Medicines and Related Substances Control Amendment Act 19 of 1976 (RSA GG 5035).

³⁶⁴ See *Juta's Index to the South African Government and Provincial Gazettes* (formerly "The Windex"), 1920-1989 at 424. which lists only the pre-independence regulations contained in RSA GN R.352/1975 (RSA GG 4594) which were repealed in Namibia by the regulations in GN 178/2008 (GG 4088).

GN 178/2008 (GG 4088), 365 and amended by -

- GN 28/2015 (GG 5681) (substitution of Regulation 4 and repeal of Annexure II)
- GN 316/2015 (<u>GG 5915</u>) (substitution of Annexure XXXVIII, with effect from 1 April 2016);

Note that GN 316/2015 refers to "Annexure XXXVIII of regulation 47 published in Government Notice 1 of 25 July 2008". It should refer to Annexure XXXVIII of the regulations published in Government Notice 178 of 25 July 2008.

- GN 66/2019 (GG 6868) (amendment of regulations 11 and 14)
- GN 202/2019 (GG 6958) (amendment of regulation 23; substitution of regulation 46, Annexure XXXVI and Annexure XXXVII; and insertion of Annexures XXXVI(A) and XXXVII(A))
- GN 219/2020 (GG 7321) (insertion of regulation 45A)

 Note that GN 219/2020 states that the regulations were previously amended by Government Notice No. 228 of 27 February 2015. This is incorrect and should refer to Government Notice No. 28 of 27 February 2015.
- GN 178/2021 (GG 7608) (substitution of Annexure XXXVIII)
 Note that GN 178/2021 states that the regulations were previously amended by Government Notice No. 228 of 27 February 2015. This is incorrect and should refer to Government Notice No. 28 of 27 February 2015.
- GN 57/2023 (<u>GG 8057</u>) (amendment of regulation 5).

These regulations were initially ruled invalid in *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others*, 2010 (2) NR 660 (HC). Subsequently, *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others* 2011 (1) NR 272 (HC) suspended the operation of sections 46(3) and (4) of the Act until such time as new regulations were made. However, these holdings were overruled by *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC), which found the regulations to be generally valid, with the exception of **regulation 34(3)(a), (c), (d) and (e)**, all declared invalid as being *ultra vires* the powers of the Minister under the Act. The Supreme Court also found that it was not competent for the High Court to have suspended the operation of section 46(3) of the Act.

Exemptions: Exemptions from the application of section 29 of the Act are contained in GN 179/2008 (GG 4088), as amended by GN 43/2015 (GG 5703).

Temporary exemptions from section 18(1) of the Act are contained in GN 85/2010 (GG 4473) and GN 194/2011 (GG 4808), subject to certain conditions. Specified COVID-19 vaccines are exempted from section 18(1) of the Act, subject to certain conditions, by GN 39/2021 (GG 7479).

A temporary exemption from sections 19 and 31(5)(c) of the Act, until 31 December 2021, is contained in GN 304/2020 (GG 7402).

Certain medicines are exempted from the operation of certain regulations for specified time periods in GN 272/2008 (GG 4174), GN 49/2010 (GG 4444), GN 84/2011 (GG 4736), GN 187/2012 (GG 5003), GN 22/2014 (GG 5425), GN 29/2015 (GG 5681), GN 76/2017 (GG 6277), Certain medicines are permanently exempted from the operation of certain regulations, and portions of annexures issued pursuant to certain regulations, in GN 207/2017 (GG 6384) and GN 52/2018 (GG 6552).

Registrations and cancellations: Registrations and cancellations under the previous Act are as follows:

GN 64/2001 (GG 2512) relates to the continued registration of medicines registered prior to independence.

Certain medicines are registered in GN 202/1995 (GG 1183), GN 4/1997 (GG 1480), GN

 $^{^{365}}$ GN 178/2008 repeals the pre-independence regulations contained in RSA GN R.352/1975 (RSA GG 4594), as amended by RSA GN R.1188/1976 (RSA GG 5209) and GN 47/2001 (GG 2485).

144/1997 (<u>GG 1603</u>), GN 210/1998 (<u>GG 1942</u>), GN 254/1998 (<u>GG 1972</u>), GN 66/1999 (<u>GG 2083</u>), GN 105/2002 (<u>GG 2759</u>), GN 240/2004 (<u>GG 3317</u>), General Notice 39/2005 (<u>GG 3391</u>), GN 131/2005 (<u>GG 3511</u>), GN 182/2005 (<u>GG 3556</u>), GN 159/2006 (<u>GG 3704</u>), GN 193/2006 (<u>GG 3735</u>), GN 138/2007 (<u>GG 3887</u>), GN 211/2007 (<u>GG 3937</u>) (which withdraws GN 138/2007), GN 220/2007 (<u>GG 3945</u>), GN 15/2008 (<u>GG 3983</u>), and GN 90/2008 (<u>GG 4032</u>).

The registration of certain medicines is cancelled in GN 26/2006 (<u>GG 3584</u>), GN 203/2006 (<u>GG</u> 3746) and GN 137/2007 (GG 3887).

Certain medicines are **registered** under the current Act in GN 196/2008 (<u>GG 4103</u>), GN 210/2009 (<u>GG 4367</u>), GN 50/2010 (<u>GG 4444</u>), GN 128/2010 (<u>GG 4505</u>), GN 225-226/2010 (<u>GG 4577</u>), GN 39-40/2011 (<u>GG 4683</u>), GN 47/2011 (<u>GG 4695</u>), GN 71/2011 (<u>GG 4726</u>), GN 122/2011 (<u>GG 4761</u>), GG 197/2011 (<u>GG 4812</u>), GG 188/2012 (<u>GG 5003</u>), GN 244/2012 (<u>GG 5042</u>), GN 245/2012 (<u>GG 5042</u>), GG 30/2013 (<u>GG 5142</u>), GN 212/2013 (<u>GG 5263</u>), GN 211/2014 (<u>GG 5596</u>), GN 50/2018 (<u>GG 6551</u>) (veterinary medicines), GN 51/2018 (<u>GG 6552</u>), GN 63/2018 (<u>GG 6566</u>) (veterinary medicines), GN 64/2018 (<u>GG 6566</u>), GN 305/2018 (<u>GG 6779</u>), GN 306/2018 (<u>GG 6779</u>) (veterinary medicines), GN 22/2019 (<u>GG 6840</u>), GN 23/2019 (<u>GG 6840</u>), GN 127/2019 (<u>GG 6910</u>), GN 128/2019 (<u>GG 6910</u>), GN 201/2019 (<u>GG 6956</u>), GN 354/2019 (<u>GG 7052</u>), GN 355/2019 (<u>GG 7052</u>), GN 356/2019 (<u>GG 7052</u>), GN 180/2020 (<u>GG 7296</u>), GN 248/2020 (<u>GG 7353</u>), GN 94/2021 (<u>GG 7527</u>), GN 181/2021 (<u>GG 7615</u>), GN 222/2021 (<u>GG 7658</u>), GN 20/2022 (<u>GG 7744</u>), GN 157/2022 (<u>GG 7819</u>), GN 1/2023 (<u>GG 7999</u>), GN 88/2023 (<u>GG 8064</u>) and GN 242/2024 (<u>GG 8422</u>).

The registration of certain medicines is **cancelled** in terms of the current Act in GN 51/2010 (<u>GG 4444</u>), GN 89/2012 (<u>GG 4915</u>), GN 186/2012 (<u>GG 5003</u>) and GN 31/2013 (<u>GG 5142</u>), GN 210/2014 (<u>GG 5596</u>), GN 98/2015 (<u>GG 5758</u>), GN 37/2018 (<u>GG 6534</u>), GN 80/2018 (<u>GG 6580</u>), GN 307/2018 (<u>GG 6779</u>), GN 308/2018 (<u>GG 6779</u>), GN 20/2019 (<u>GG 6840</u>), GN 21/2019 (<u>GG 6840</u>), GN 92/2019 (<u>GG 6901</u>), GN 93/2019 (<u>GG 6901</u>), GN 200/2019 (<u>GG 6956</u>), GN 353/2019 (<u>GG 7052</u>), GN 179/2020 (<u>GG 7296</u>), GN 180/2021 (<u>GG 7615</u>), GN 221/2021 (<u>GG 7658</u>), GN 19/2022 (<u>GG 7744</u>), GN 146/2022 (<u>GG 7811</u>), GN 2/2023 (<u>GG 7999</u>), GN 87/2023 (<u>GG 8064</u>) and GN 241/2024 (<u>GG 8422</u>).

GN 111/2011 (GG 4756) determines classes of veterinary medicines which are subject to registration under the Act.

Health care practitioners are ordered to return certain cancelled medicines to the manufacturers, suppliers or importers of those medicines in terms of GN 90/2012 (GG 4915).

Notices: Notices under the previous Act which appear to survive include the following –

GN 154/1999 (GG 2155) is a notice requiring the return to the suppliers of certain undesirable medicines (those containing chlormezanone).

GN 105/2002 (GG 2759) is a notice concerning medicines and classes of medicines subject to registration.

GN 104/2002 (GG 2759) is a notice about inspection of the Medicines Register.

A number of RSA Government Notices amended the Schedules to the previous Act. These have not been recorded here.

In terms of the current Act, GN 80/2021 (<u>GG 7509</u>) currently classifies certain medicines and other substances as Schedule 0, Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5. 366

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³⁶⁶ Initially, GN 180/2008 (<u>GG 4088</u>), as amended by GN 163/2012 (<u>GG 4978</u>), GN 198/2013 (<u>GG 5255</u>), GN 190/2014 (<u>GG 5582</u>) and GN 53/2018 (<u>GG 6552</u>), classified certain medicines and other substances as Schedule 0, Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5. It was published in terms of section 29(1) of the Act – and so replaces the Schedules of the Medicines and Related Substances Act 101 of 1965 which survived in

Appointments: Members of the Namibia Medicines Regulatory Council are announced in GN 209/2009 (GG 4367), GN 195/2010 (GG 4561), GN 162/2012 (GG 4978), GN 278/2012 (GG 5076), GN 277/2013 (GG 5328), GN 278/2013 (GG 5328), GN 337/2013 (GG 5379), GN 218/2016 (GG 6125), GN 4/2017 (GG 6217), GN 17/2008 (GG 6527), GN 141/2018 (GG 6649), GN 370/2018 (GG 6816) and GN 305/2020 (GG 7402).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Cases:

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2010 (2) NR 660 (HC) finds the proposed regulations published in GN 241/2004 (GG 3317) and the regulations published in GN 178/2008 (GG 4088) to be unlawful and ultra vires; it also affects the application of section 31(3) and 34(1) and suspends the application of 46(3) until such time as valid new regulations are in place; Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC) varies the order made in the previous case, but still suspends the operation of sections 46(3) and (4) of the Act until such time as new regulations are made; and Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC) finds the regulations to be generally valid – with the exception of regulation 34(3)(a), (c), (d) and (e) which are invalid as being ultra vires the powers of the Minister under the Act – and finding that it was not competent for the High Court to suspend the operation of section 46(3) of the Act.

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2015 (1) NR 1 (HC) (licensing scheme for dispensing of medicines under section 31(3) – read together with sections 29(7)(b), 29(9)(b), 29(13)(b) and 29(19)(b) – is not unconstitutional; the Namibia Medicines Regulatory Council is a tribunal as envisaged by Art 12(1)(a) of the Namibian Constitution); overruled by Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2017 (2) NR 544 (SC) (This case holds that section 31(3) is "of no force and effect", finding it unconstitutionally vague; also holding that the words ". . . . who holds a licence contemplated in section 31(3), subject to the conditions of that licence" in sections 29(7)(b), 29(9)(b), 29(13)(b), 29(19)(b) of the Act are "declared to be inconsistent with the Constitution and therefore invalid and accordingly severed from those provisions". Note that the court's order (point 1.1 at para 106) also states that these words should be severed from section 31(3), but the words in question do not appear there and section 31(3) is in any event declared entirely void.)

Novecy Pharmacy CC v Minister of Health and Social Services & Others 2024 (2) NR 491 (HC) (interpretation of sections 18(1) and (5); reg 19(2) found to be *ultra vires* section 18(5)(b) insofar as it prohibits anticipatory compounding).

SELECTED CASES

LM & Others v Government of the Republic of Namibia 2012 (2) NR 527 (HC) (unlawful sterilisations); upheld on appeal and remitted to High Court for determination of quantum of damages in Government of the Republic of Namibia v LM & Others 2015 (1) NR 175 (SC); see also Priti Patel, "How did we get here and where to now? The coerced sterilisation of HIV-positive women in Namibia", Agenda, Issue 75, 2008

Ex Parte Chingufo: In re Semente v Chingufo 2013 (2) NR 328 (HC) (patient's right to refuse treatment if sufficient mental capacity present, but requisite capacity missing in the case at hand), overturned on appeal in ES v AC 2015 (4) NR 921 (SC) (patient autonomy as a basic human right, notwithstanding children's right to be cared for by their parents).

See also Nico Horn, "Ex Parte Chingufo. In re E Semente; E Semente v Chingufo: Another unfortunate victory for formalist law", Namibia Law Journal, Volume 5, Issue 1, 2013, available

terms of section 47(2) of the Act. GN 180/2008 was repealed and replaced, initially by GN 278/2018 (<u>GG 6749</u>) which was withdrawn by GN 7/2019 (<u>GG 6830</u>), and then by GN 8/2019 (<u>GG 6830</u>) and by GN 80/2021 (<u>GG 7509</u>).

here; Carmen C Visser, Medical treatment vis-à-vis patient's rights", *Namibia Law Journal*, Volume 8, Issue 1, 2016; Boniface S. Konga, "The right to refuse medical treatment on religious grounds: A critical analysis of the Supreme Court Judgment in *ES v AC* Case No: SA 57/2012" in Tapiwa Victor Warikandwa & John Baloro, eds, *Namibia's Supreme Court at 30 Years: A Review of the Superior Court's Role in the Development of Namibia's Jurisprudence in the Post-Independence Era*, Konrad Adenauer Foundation, 2022, available here.

COMMENTARY

Clever Mapaure, "Melancholic medical law: Namibian medical practitioners may get away with homicide – The story of Mr H", *Namibia Law Journal*, Volume 6, Issue 1, 2014, available here.

INTERNATIONAL LAW

Treaty for the Establishment of the African Medicines Agency, 2019

See also Veterinary and Veterinary Para-Professions Act 1 of 2013 (ANIMALS).

See also **HEALTH**.

See also HOSPITALS.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (EDUCATION).

See also MEDICAL AID.

See also MENTAL HEALTH AND MENTAL DISORDERS.

See also **SOCIAL WELFARE**.

MENTAL HEALTH AND MENTAL DISORDERS

Mental Health Act 18 of 1973, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 3837</u>) provides for the detention and treatment of the mentally ill. It was brought into force in South Africa and South West Africa on 27 March 1975 by RSA Proc. R.76/1975 (<u>RSA GG 4627</u>).

Repeals: The Act repeals the *Mental Disorders Act 38 of 1916* (SA GG 741), with the exception of sections 27 to 29bis inclusive. It also repeals the *South-West Africa Mental Disorders Act 22 of 1926* (SA GG 1555), which made the *Mental Disorders Act 38 of 1916* and any amendment of the Act and any regulations made thereunder applicable to SWA - except that the repeal did not apply insofar as that Act applied sections 27 to 29bis of the *Mental Disorders Act 38 of 1916* to SWA.³⁶⁷ (These remaining provisions of the *Mental Disorders Act 38 of 1916* were repealed by the Criminal Procedure Act 51 of 1977 (RSA GG 5532).)

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 78 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

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

- Mental Health Amendment Act 48 of 1976 (RSA GG 5074)
- Health Laws Amendment Act 36 of 1977 (RSA GG 5481).

One definition in the Act is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Section 1(2) of Proc. 33/1924 then set out some amendments and modifications of *Act 38 of 1916* as it applied to SWA, none of which were relevant to the issue of regulations.

Section 1 of the *South-West Africa Mental Disorders Act 22 of 1926* (SA GG 1555), which was brought into force by SA Proclamation 182 of 28 June 1926, subsequently made the entire Act applicable to SWA:

The Mental Disorders Act, 1916, and any amendment thereof and any regulations made thereunder, shall apply to the mandated territory of South-West Africa (hereinafter referred to as the territory), and for the purposes of the said Act the mandated territory shall be regarded as a province of the Union, the High Court of the territory shall have the jurisdiction of a Provincial Division of the Supreme Court of South Africa, and the Attorney-General of the territory and the Master of the said High Court shall have the same power, authority and duties as the Attorney-General of any such province and the Master of any such Provincial Division respectively.

The SA Mental Disorders (Eastern Caprivi Zipfel) Proclamation 213 of 1940, which is reprinted in <u>OG 871</u>, authorises the Magistrate of the Eastern Caprivi Zipfel to order the arrest and detention of certain persons who are apparently mentally disordered or defective, followed by their removal to South Africa to be dealt with under the *Mental Disorders Act 38 of 1916*.

The Rehoboth Gebiet Mental Disorders Proclamation 52 of 1955 (OG 1944) made the *Mental Disorders Act* 38 of 1916 applicable to the Rehoboth Gebiet.

³⁶⁸ RSA GN R.925/1977 (RSA GG 5565) assigned the administration of the Act to the Minister of Health with effect from 1 June 1977.

³⁶⁷ In 1924, section 1(1) of the SWA Mental Disorders Proc. 33 of 1924 (<u>OG 150</u>) made portions of the *Mental Disorders Act 38 of 1916* applicable to SWA:

The provisions of sections two and three and of Chapters one, five, seven, nine, ten and eleven of the Mental Disorders Act 1916 of the Union Parliament (Act No. 38 of 1916) and any amendment thereof and regulation for the time being in force thereunder shall so far as circumstances permit and subject to the modifications and amendments set forth in sub-section (2) hereof be of force and effect within the Territory of South West Africa and for the purposes of the application of the provisions thereof the said Territory shall be deemed to form part of the Union of South Africa and the High Court of South West Africa shall be deemed to be a Provincial Division of the Supreme Court of South Africa.

Savings: Section 79(2) states:

Any regulation, application, report, enquiry, finding, request, return, direction, examination or appointment made, held or given or any medical certificate or other certificate, reception order or other order, summons, warrant or authority issued, made or given, or any condition imposed or any board established or any other act done under any provision of any law repealed by this Act and which was of force immediately prior to the commencement of this Act, shall be deemed to have been made, held, issued, given, imposed, established or done, as the case may be, under the corresponding provision of this Act.

Regulations: Regulations are authorised by section 77 of this Act.

General Regulations made in terms of this Act are contained in RSA GN R.565/1975 (<u>RSA GG 4627</u>), as amended by RSA GN R.52/1976 (<u>RSA GG 4951</u>), RSA GN R.1000/1976 (<u>RSA GG 5153</u>) and RSA GN R.599/1977 (<u>RSA GG 5510</u>), dated 15 April 1977.³⁶⁹ Note that these regulations contain race-based fees payable in respect of the maintenance and treatment of patients who are voluntarily admitted to a State institution.

The following regulations were made in terms of section 86(1) of the Mental Disorders Act 38 of 1916:

General Regulations are contained ni SA GN 1173/1916 (<u>SA GG 764</u>), as amended by SA GN 1143/1926 (<u>SA GG 1566</u>), SA GN 1546/1944 (<u>SA GG 3394</u>), SA GN 1547/1944 (<u>SA GG 3394</u>), and SA 446/1958 (<u>SA GG 6038</u>). These regulations survive pursuant to the savings clause quoted above, but they appear to be superseded by the General Regulations issued under the current Act and so are not included in the database.

No regulations have been promulgated since independence.

Notices: SA Proc. 225/1960 (<u>SA GG 6483</u>), issued in terms of the *Mental Disorders Act 38 of 1916*, provides that curators appointed under the Laws of the Netherlands relating to mentally disordered or defective persons shall be recognised by the Master and subject to the same duties as curators appointed under Chapter IX of that Act.

AG GN 33/1978 (OG 3795) designates certain members of the prison service to sign orders, warrants and documents in terms of sections 28 and 30-41.³⁷⁰

Appointments: A Psychiatry Board in respect of Windhoek Central Hospital is announced in GN 198/2001 (<u>GG 2624</u>). A Mental Health Hospital Board for Windhoek Central Hospital is announced in GN 14/2015 (<u>GG 5668</u>) and in GN 281/2018 (<u>GG 6753</u>). Appointments of members of the Hospital Board for Oshakati State Hospital are announced in GN 70/2024 (<u>GG 8357</u>). Appointments of members of the Hospital Board for Windhoek Central Hospital are announced in GN 71/2024 (<u>GG 8357</u>).

Cases:

S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (relation of sections 28-29 to section 77(6) of Criminal Procedure Act 51 of 1977)

Gawanas v Government of the Republic of Namibia 2012 (2) NR 401 (SC) (procedure for discharge of President's patient under section 29).

³⁶⁹ In South Africa these regulations were further amended after the date of transfer and prior to Namibian independence by RSA GN R.2315/1978 (<u>RSA GG 6224</u>), RSA GN R.2295/1979 (<u>RSA GG 6706</u>), RSA GN R.1889/1981 (<u>RSA GG 7795</u>), RSA GN R.2629/1982 (<u>RSA GG 8474</u>), RSA GN R.943/1983 (<u>RSA GG 8694</u>) and RSA GN R.858/1985 (<u>RSA GG 9700</u>). However, none of these amendments refer explicitly to SWA and thus were not applicable to SWA. The 1975 regulations do not repeal any previous regulations.

³⁷⁰ This notice repeals RSA GN 1601/1975 (RSA GG 4823).

See also *Criminal Procedure Act 51 of 1977*, Chapter 13 (mental illness and criminal responsibility) (CRIMINAL LAW AND PROCEDURE).

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (HEALTH).

MINING AND MINERALS

Sperrgebiet-Delimitation Proclamation 11 of 1920 🕎 🙀

Summary: This Proclamation (OG 29) defines the area known as the "Sperrgebiet".

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

Regulations: The Proclamation makes no provision for regulations.

Concessions Modification and Mining Law Amendment Proclamation 59 of 1920 🖼 🙀

Summary: This Proclamation (OG 42) concerns the cancellation of grants and concessions of rights of land, mining and other rights during the German colonial period "by agreements between native chiefs or tribes in the Protectorate and the late Government of the Protectorate". It details the cancellation and repudiation of the rights of specified companies.³⁷¹

The Proclamation also applied the Imperial Mining Ordinance 1905, as amended by Proclamation 24 of 1919 (OG 25), throughout the whole Protectorate, and amends section 93 of that Ordinance.

The Imperial Mining Ordinance for German South-West Africa of 8 August 1905 replaced the 1888 Imperial Mining Decree. It was amended by the Mining Law Amendment Proclamation 24 of 1919 (OG 25), this Concessions Modification and Mining Law Amendment Proclamation 59 of 1920 (OG 42), Proclamation of the Administrator of South West Africa 29 of 1921 (OG 63) and Proclamation 11 of 1923 (OG 110) - and applied to the Caprivi Zipel by SA Proc 9 of 1924 (SA GG 1184). It was repealed, as amended, by the Mining Consolidation and Amendment Proclamation 4 of 1940 (OG 832), which was repealed along with the Supervision of Machinery Proclamation 36 of 1929 (OG 349) by the Mines, Works and Minerals Ordinance 26 of 1954, which was in turn repealed by the Mines, Works and Minerals Ordinance 20 of 1968 (OG 2897) that has also been largely repealed. (See the entry for that Ordinance below).

No repeal of the Concessions Modification and Mining Law Amendment Proclamation 59 of 1920 has been located.

Mines, Works and Minerals Ordinance 20 of 1968 🕎 🙀

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

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

³⁷¹ "The legal consequence of the proclamation was that mining concessions held by a number of companies during the German period were abrogated without compensation, and without the dispossessed holders being entitled to make any appeal. The main argument of the South African Government was that it acted under its ordinary right, and it was in the "public interest" to pass legislation expropriating private property without paying any compensation." Albert Jacob Kawana. "The Political Economy of Mining Laws and Regulations in Namibia from 1884 to 1986", University of Warwiock thesis, 1988, page 73; available here.

works.

The Labour Act 6 of 1992 (<u>GG 388</u>), which has since been replaced by the Labour Act 11 of 2007, repealed section 93 and the whole of the Ordinance "in so far as it relates to the health and safety of workers employed in or in connection with mining and prospecting operations" with effect from 31 July 1997.³⁷²

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

Repeals: The Ordinance repeals the Mines, Works and Minerals Ordinance 26 of 1954, as amended., which repealed the Mining Consolidation and Amendment Proclamation 4 of 1940 (OG 832), as well as the Supervision of Machinery Proclamation 36 of 1929 (OG 349). The Mining Consolidation and Amendment Proclamation 4 of 1940 repealed the Imperial Mining Ordinance for German South-West Africa of 8 August 1905, as amended, which replaced the 1888 Imperial Mining Decree.

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

Amendments: The Ordinance was amended by:

- RSA Proc. R.89/1969 (<u>RSA GG 2354</u>, republished in <u>OG 3002</u>), which also amended the regulations issued under the Ordinance
- Deed Registries Amendment Act 3 of 1972 (RSA GG 3404), which repeals sections 96 to 100
- RSA Mines, Works and Minerals in South-West Africa Amendment Act 47 of 1972 (RSA GG 3518); section 11 of the amending Act was repealed by the Labour Act 6 of 1992
- RSA Sea Birds and Seals Protection Act 46 of 1973 (<u>RSA GG 3909</u>) (section 15), which amends the definition of "mineral" in section 1
- RSA General Law Amendment Act 62 of 1973 (RSA GG 3947), which amends section 95
- SWA Mines, Works and Minerals Amendment Act 26 of 1980 (OG 4354)
- SWA Mines, Works and Minerals Amendment Act 4 of 1981 (OG 4411)
- Petroleum (Exploration and Production) Act 2 of 1991 (GG 178)
- Minerals (Prospecting and Mining) Act 33 of 1992 (GG 564)
- Labour Act 6 of 1992 (<u>GG 388</u>), which was brought into force with respect to health and safety issues on 31 July 1997 by GN 155/1997 (<u>GG 1614</u>).

RSA Proc. 344/1977 (<u>RSA GG 5819</u>) repeals the Ordinance in respect of "the port and settlement of Walvis Bay".

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

- SWA GN 196/1968 (OG 2950)
- RSA Proc. R.89/1969 (<u>RSA GG 2354</u>, republished in OG 3002)
- RSA GN R.817/1972 (<u>RSA GG 3506</u>)
- RSA GN 1730/1972 (RSA GG 3662), which substitutes Form C
- SWA AG GN 179/1980 (OG 4325).³⁷³

Aspects of these regulations may have some continued relevance to the portions of the Ordinance concerning the appointment and powers, duties and functions of the Chief Inspector of Mines and

³⁷³ These regulations repeal SA GN 26/1940 and SA GN 33/1956.

³⁷² The Labour Act 6 of 1992, with the *exception* of Part XI on health and safety and section 116 insofar as it relates to Part XI, was brought into force on 1 November 1992 by GN 134/1992 (<u>GG 491</u>). The remaining portions of the Act were brought into force on 31 July 1997 by GN 155/1997 (<u>GG 1614</u>).

inspectors of mines that remain in force. They are presented in the database in full.

Notices: GN 109/1963 (OG 2491) declares that in the area south of latitude 28° 30', the mining or working of stone, clay, sand or gravel for the purpose of disposal for profit, is subject to the provisions of the Mines, Works and Minerals Ordinance 26 of 1954 and its regulations.

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

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

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

Summary: This Proclamation (<u>OG 5060</u>) authorises the purchase of shares in Rössing Uranium Limited by the government. It was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,³⁷⁴ but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Regulations: The Proclamation makes no provision for regulations.

Petroleum (Exploration and Production) Act 2 of 1991 🕎 🔄

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

Amendments: The Petroleum Matters (Amendment and Validation) Act 27 of 1992 (<u>GG 489</u>) amends section 79.

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

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

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

The Petroleum Laws Amendment Act 24 of 1998 (GG 1954), which was brought into force on 1 April

³⁷⁴ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 10-ff.

1999 by GN 44/1999 (GG 2075), amends sections 30, 38, 41, 46, 62 and 67, and inserts a new Part XA.

Regulations: Regulations relating to the health, safety and welfare of employees and the protection of other persons' property, the environment and natural resources are contained in GN 190/1999 (GG 2188).

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

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

Minerals (Prospecting and Mining) Act 33 of 1992 w

Summary: This Act (originally published in GG 564) provides for the reconnaissance, prospecting, mining, disposal and control of minerals in Namibia. It was brought into force on 1 April 1994 by GN 41/1994 (<u>GG 828</u>).

Repeals: The Act repeals the following:

- Dealing in Unwrought Precious Metals Proclamation 5 of 1938
- Nuclear Installations Act (Licensing and Security Systems) 43 of 1963
- Atomic Energy Act 90 of 1967
- Mines, Works and Minerals Ordinance 20 of 1968 (except in so far as it relates to the appointment and powers, duties and functions of the Chief Inspector of Mines and an inspector of mines, and the safety and health of persons employed in or in connection with mines and works) It should be noted that the Labour Act 6 of 1992, prior to its replacement by the Labour Act 11 of 2007, had already repealed portions of the Mines, Works and Minerals Ordinance 20 of 1968 (section 93 and the whole of the Act "in so far as it relates to the health and safety of workers employed in or in connection with mining and prospecting operations").
- Mines Titles Registration Proclamation R.90 of 1969
- Mineral Rights Proclamation AG 57 of 1978 (and their amendments).

Amendments: Act 8/2008 (GG 4189) amends section 114.

Savings: Section 139 of the Act contains savings provisions that pertain primarily to the repealed portions of the Mines, Works and Minerals Ordinance 20 of 1968, and the continuity of claims, licences, etc issued under the repealed laws. Section 139(20(f) states that -

anything else done under any provision of the repealed Ordinance [the Mines, Works and Minerals Ordinance 20 of 1968] before its repeal under subsection (1) which may be done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision.

Regulations: This Act contains no provision for regulations. Section 139(2)(f) of this Act (quoted above) contains a general savings clause for anything done under any provision of the Mines, Works and Minerals Ordinance 20 of 1968 (which is mostly repealed by this Act) which could have been done under a corresponding provision of this Act. However, this could not apply to regulations since regulations are not authorised by the current Act. 375

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

³⁷⁵ Regulations made in terms of the Mines, Works and Minerals Ordinance 20 of 1968 may still be in force to some extent under the surviving portions of that Ordinance and are listed in the entry for that Ordinance.

Notices: Section 139(2)(f) of this Act contains a general savings clause for anything done under any provision of the repealed Mines, Works and Minerals Ordinance 20 of 1968 which could have been done under a corresponding provision of this Act. The abandonment and forfeiture of mining areas under the repealed Ordinance are addressed in GN 138/1991 (GG 320), GN 139/1991 (GG 320), GN 161/1992 (GG 527) and GN 144/1993 (GG 750).

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

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

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

Notices pertaining to individual licence applications are not listed here.

Fees and royalties: Fees are determined with effect from 1 September 2021 in GN 179/2021 (<u>GG 7611</u>), which repeals GN 42/1994 (<u>GG 828</u>).

Royalties in respect of certain groups of minerals are set by GN 248/2004 (<u>GG 3322</u>), GN 192/2006 (<u>GG 3733</u>), GN 204/2006 (<u>GG 3746</u>) and GN 45/2009 (<u>GG 4236</u>) (which is amended by GN 277/2012, GG 5076).

Cases:

Hoffman v Maier 1994 NR 61 (HC) (previous Mines, Works and Minerals Ordinance 20 of 1968) S v McDonald & Others 2000 NR 174 (HC)

- Namibia Grape Growers and Exporters Association & Others v The Minister of Mines & Energy & Others 2002 NR 328 (HC); 2004 NR 194 (SC) (upholding constitutionality of Part XV; also deals with reasonable time period for review of licence and application for declarator under section 52)
- Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC) (discussed in case background; case holding does not pertain to this statute)
- Auas Diamond Co (Pty) Ltd v Minister of Mines and Energy 2006 (2)NR 406 (HC) (renewal of an exclusive prospective licence); upheld on appeal in Auas Diamond Company (Pty) Ltd v Minister of Mines and Energy 2017 (2) NR 418 (SC) (meaning of "person concerned" in section 48)
- Otjozondu Mining (Pty) Ltd v Minister of Mines and Energy & Another 2007 (2) NR 469 (HC) (section 92)
- Tlhoro v Minister of Home Affairs 2008 (1) NR 97 (HC) (Act discussed in dicta beginning at 113G)
- S v Auala (No 1) 2008 (1) NR 223 (HC) (effect of section 90(1) re: ownership and control in connection with charge of theft), confirmed in S v Auala 2010 (1) NR 175 (SC)
- Tumas Granite CC v Minister of Mines and Energy & Others 2008 (2) NR 711 (HC) (sections 59 and 62)
- Black Range Mining (Pty) Ltd v Minister of Mines and Energy & Another 2009 (1) NR 140 (HC) (sections 68(c) and 69(2)(g)); Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd 2011 (1) NR 31 (SC) (section 69(2)(g))
- Purity Manganese (Pty) Ltd v Minister of Mines and Energy & Others; Global Industrial Development (Pty) Ltd v Minister of Mines and Energy & Another 2009 (1) NR 277 (HC) (delay in seeking review of refusal of Exclusive Prospecting Licences)
- Rostock CC & Another v Van Biljon 2011 (2) NR 751 (HC) (basis for interim remedy in respect of dispute regarding agreement concluded in terms of section 52 of Act)

- Tumas Granite CC v Minister of Mines and Energy & Another 2013 (2) NR 383 (HC) (section 59(1)) Samicor Diamond Mining (Pty) Ltd v Minister of Mines and Energy & Others 2014 (1) NR 1 (HC) (unreasonable delay for review of administrative decision granting applications for exclusive prospecting licences)
- Black Range Mining (Pty) Ltd v Minister of Mines and Energy & Others NNO 2014 (2) NR 320 (SC) (GN 41/2007 and sections of the Act on exclusive prospecting licences, particularly the relationship between sections 47 and 122; section 122 consistent with art 21(1)(j) of the Namibian Constitution)
- Koujo v Minister of Mines and Energy & Others 2018 (4) NR 1097 (HC) (functions of mining commissioner under section 4; section 44 read together with section 55; section 138 (delegation of powers) not applicable to powers vested in Mining Commissioner by section 44 of Act itself; section 125); upheld on appeal in Koujo v Minister of Mines and Energy & Others 2020 (3) NR 809 (SC) (provisions of section 125 peremptory)
- Tumas Granite CC & Another v Minister of Mines and Energy & Others 2023 (1) NR 163 (HC) (section 6).

Commentary:

- Michelle R Munyanduki, "Aligning the Mining Sector with Sustainable Development: A Focus on Uranium Mining at Rössing" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here (rehabilitation)
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 5.4 discusses the constitutional justification for conditions on mineral licences.

Diamond Taxation Proclamation Repeal Act 21 of 1995 🚾 🙀

Summary: The surviving portions of this Act (originally published in <u>GG 1224</u>) concern only repeals.

Repeals: The Act repeals the Diamond Taxation Proclamation 16 of 1941 as amended by the Diamond Taxation Amendment Ordinance 5 of 1951 (OG 1601) and the Diamond Taxation Amendment Ordinance 22 of 1963 (OG 2493).

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

Minerals Development Fund of Namibia Act 19 of 1996 📲 🙀

Summary: This Act (originally published in <u>GG 1386</u>) provides for the establishment and control of a Minerals Development Fund. It also sets up a Minerals Development Fund Control Board.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 6, 8 and 16. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Diamond Act 13 of 1999 🕎 🙀

Summary: This Act (originally published in <u>GG 2205</u>) regulates a wide range of matters connected with diamonds. It also establishes the Diamond Board of Namibia, the Diamond Board Fund and the

Diamond Valuation Fund. It was brought into force on 1 April 2000 by GN 83/2000 (GG 2300).

Repeals: The Act repeals the Diamond Industry Protection Proclamation 17 of 1939, as amended, and amends the Diamond Taxation Proclamation Repeal Act 21 of 1995 (GG 1224).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1, 4, 6 and 7, and substitutes section 9. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations made under the repealed Diamond Industry Protection Proclamation 17 of 1939 survive pursuant to section 80(2) of this Act:

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

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

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

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

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

Cases: The following cases pertain to the current Act –

- S v Auala (No 1) 2008 (1) NR 223 (HC) (contravention of section 74, including discussion of proof of ownership for purposes of proving theft in respect of this section); S v Auala (No 2) 2008 (1) NR 240 (HC) (sentencing for this offence); both confirmed in S v Auala 2010 (1) NR 175 (SC)
- S v Sankwasa 2014 (3) NR 751 (HC) (contravention of section 74, including discussion of when suspect must be advised of right to legal representation, right to remain silent and right not to incriminate himself; legality of search of accused and propriety of admission of diamonds found into evidence).

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

- S v Mbali 1990 NR 1 (HC)
- *S v Kramer & Others* 1990 NR 49 (HC)
- S v Strauss 1990 NR 71 (HC) (appropriate sentence for common-law crime of theft of diamonds)
- S v Koekemoer & Another 1990 NR 116 (HC)
- S v Eiseb & Another 1990 NR 142 (HC)
- *S v Da Costa & Another* 1990 NR 149 (HC)
- S v Campbell & Others 1990 NR 310 (HC)
- S v Small 1990 NR 358 (HC)
- *S v De Beer* 1990 NR 379 (HC)
- S v Du Plessis & Another 1992 NR 74 (HC) (bail in a case where accused charged with theft of diamonds and contravention of section 28(a) of the Act)
- S v Nassar 1994 NR 233 (HC)
- S v Nangombe 1993 NR 178 (HC); 1994 NR 276 (SC)
- S v van der Berg 1995 NR 23 (HC) (sections 28(b) and 35A)
- S v de Bruyn 1999 NR 1 (HC) (lawful use of "entrapment" to gather evidence for offences in terms of section 28)
- Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC) (section 34ter).

Commentary:

- Nico Horn, "Minister of Home Affairs v Van der Berg, Case No. 19/2004, Supreme Court of Namibia, delivered 12 December 2008", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available here (discussing case arising under Diamond Industry Protection Proclamation 17 of 1939)
- Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available here.

COMMENTARY

- Albert Jacob Kawana. "The Political Economy of Mining Laws and Regulations in Namibia from 1884 to 1986", University of Warwick thesis, 1988, available here
- Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, Striking a Better Balance; An Investigation of Mining Practices in Namibia's Protected Areas, 2009, available here
- Hilma Shindondola-Mote, "Uranium mining in Namibia: The mystery behind 'low level radiation", Labour Resource and Research Institute, 2009, available here
- Frederico Links, "On a Slippery Slope: Corruption and the Extractive Industries in Namibia", Institute for Public Policy Research, 2012, available here
- Graham Hopwood (ed), "Namibia's New Frontiers: Transparency and Accountability in Extractive Industry Exploration", Institute for Public Policy Research, 2013, available here
- Nico Horn, "The process of human rights protection in Namibia", 5 Journal of Namibian Studies 99 (2009)
- Jamey Janke & Wilhelmina Shakela, "Is the Mine Rehabilitation Legal Framework in Namibia Adequate?", *UNAM Law Review*, Volume 3, Issue 1, 2016
- Max Weylandt, "Transparency in the Namibian Extractives Sector", Institute for Public Policy Research & Open Society Initiative for Southern Africa, 2017, available here
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 1.3 discusses State sovereignty over natural resources under Article 100)
- Alec Crawford, Jessica Mooney & Harmony Musiyarira, *IGF Mining Policy Framework Assessment:* Namibia, International Institute for Sustainable Development, 2018, available here.

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SADC Protocol on Mining, 1997

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

See also LABOUR.

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

NATIONAL HERITAGE

War Graves Control and Maintenance Ordinance 2 of 1927 🗐 🙀

Summary: This Ordinance (OG 232) provides for the control and maintenance of war graves. The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930 (OG 365).

Regulations: The Ordinance makes no provision for regulations.

Notices: Proc. 17/1928 (OG 284) vests control of war graves in SWA in the Administrator of SWA.

GN 191/1960 (OG 2276) concerns the Graves Commission.

National Heritage Act 27 of 2004 🕎 🙀

Summary: This Act (originally published in <u>GG 3361</u>) provides for the preservation and registration of places and objects of national significance. It establishes a National Heritage Council and a National Heritage Register. It was brought into force on 1 September 2005 by GN 105/2005 (<u>GG 3490</u>).

Repeals: The Act repeals the *National Monuments Act 28 of 1969*, which repealed the Natural and Historical Monuments, Relics and Antiques Ordinance 13 of 1948 (as amended) in respect of SWA.

For the purpose of identifying surviving enactments, the administration of this Act was transferred to SWA by the Executive Powers (National Education) Transfer Proclamation (AG. 1/1978), dated 11 January 1978. Section 3(3) of the transfer proclamation provided that the reference to the Minister of National Education in sections 5(1)(j) and (l) and section 5(4) of the Act (which relate to certain powers and functions of the National Monuments Council) shall be construed as a reference to the Administrator-General, notwithstanding section 3(2)(b) of the General Proclamation. The other provisions of the Act relating to the National Monuments Council were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation "those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic". None of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to SWA, but the SWA National Monuments Act Amendment Act 7 of 1979 (OG 4015) makes the National Monuments Amendment Act 35 of 1979 applicable to SWA, with the exception of sections 14 and 15

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1, 4 and 7, deletes section 6 and substitutes section 18. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 20.

Savings: Section 69(2) of the Act contains a broad savings clause:

Any regulation or by-law made and anything done under a provision of a law repealed by subsection (1), and which may be made or done under a provision of this Act, is deemed to have been made or done under the corresponding provision of this Act.

Section 20(2)-(3) of the repealed *National Monuments Act 28 of 1969* contained similarly-broad savings provisions:

- (2) Any notice issued under any law repealed by this Act whereby anything has been proclaimed to be a monument, relic or antique shall be deemed to be a notice issued under this Act whereby any such thing has been declared to be a national monument.
- (3) Any by-law made by any local authority under any provision of any law repealed by this Act, shall be deemed to have been made under the corresponding provision of this Act, and any reference in any such by-law to a monument, relic or antique shall be deemed to be a reference to a monument as defined in this Act.

Regulations: Regulations are promulgated under this Act in GN 106/2005 (GG 3490).

Pre-independence regulations made under this Act and regulations made under the various repealed laws that may survive pursuant to the chain of savings clauses have not yet been researched.

Declarations of national monuments and other protected areas: Designations of national monuments under the Natural and Historical Monuments, Relics and Antiques Ordinance 13 of 1948 have not yet been researched.

The following places were declared as national monuments under the *National Monuments Act 28 of 1969* prior to Namibian independence (noting that this list may not be comprehensive):

Nautila Monument, Outjo	RSA GN 917/1971 (OG 3181)
Woermann House, Swakopmund	RSA GN R.2224/1971 (OG 3225)
Battlefield Area, Franke Tower, Omaruru	SA GN 615/1972 (OG 3248)
Rhenish Mission Church and Cemetery, Okahandja	RSA GN R.1282/1972 (OG 3273)
Moordkoppie, Okahandja	RSA GN R.1283/1972 (OG 3273)
Otjikoto Lake near Tsumeb	RSA GN 1621/1972 (OG 3280)
Railway Station, Swakopmund	RSA GN 1909/1972 (OG 3289)
Old Rhenish Mission Church, Walvis Bay	RSA GN 2087/1972
Dias Point Lighthouse, near Lüderitz	RSA GN 31/1973 (OG 3297)
Khorab Memorial, near Otavi	RSA GN 1739/1973
Prison Building, Erf 22, Swakopmund	RSA GN R.1471/1973 (OG 3352)
Old Barracks, Swakopmund	RSA GN R.2028/1973 (OG 3359)
Historical gateways or forts near Albrecht Street, Warmbad	RSA R.283/1974 (OG 3388)
Grave of Axel Eriksson at Urupupa near Grootfontein	RSA GN 451/1974 (OG 3394)
Christus Kirche, Windhoek	RSA GN R.2211/1974 (OG 3440)
German Lazaret building, Gobabis	RSA GN 2357/1974 (OG 3444)
Rhenish Mission Church, Otjimbingwe	RSA GN 355/1975 (OG 3454)
Martin Luther Steam Tractor, Swakopmund	RSA GN 519/1975 (OG 3458)
"Martin Luther" steam tractor, Swakopmund	RSA GN 520/1975 (OG 3458)
Erf 927, Swakopmund	RSA GN R.1777/1975 (OG 3491)
Magistrate's Residence, Lüderitz	RSA GN 1823/1975 (OG 3494)
"Prinzessin Rapprecht Heim", Swakopmund	RSA GN 2096/1976 (OG 3583)
Station Building, Lüderitz	RSA GN 2248/1976 (OG 3584)
Kramersdorf Building, Swakopmund	RSA GN 2567/1977 (OG 3584)
Regimental Badges of Second Battalions of	,
Kimberley & Durban Light Infantry Regiments,	
Unregistered Farm Titbit 157, near 3705,	
Swakopmund	AG GN 6/1978 (<u>OG 3706</u>)
Regimental Badges of Second Battalion of	,
Durban Light Infantry Regiment &	
First Battalion of Transvaal Scottish Regiment	
situate on the Unregistered Farm Badges 158,	
near Swakopmund	AG GN 7/1978 (<u>OG 3706</u>)
Okaharui War Memorial, District of Okahandja	AG GN 11/1978 (OG 3744)
Edward Cook's Commemorative Stone, Warmbad	AG GN 17/1978 (OG 3752)
Rhenish Mission Church, Keetmanshoop	AG GN 18/1978 (OG 3761)
Evangelical Lutheran Church Complex, Bethanie	AG GN 41/1978 (OG 3810)
Evangelical Lutheran Church, Liideritz	AG GN 57/1978 (OG 3825)
Evangelical Lutheran Church, Swakopmund	AG GN 58/1978 (OG 3825)
Ovikokorero War Memorial, Okahandja	AG GN 18/1979 (OG 3918)

Hoba Meteorite, Farm Hoba West 322,	
District of Grootfontein	AG GN 27/1979 (OG 3948)
Rösemann Building facade, Hauptstrasse, Karibib	AG GN 115/1979 (OG 4060)
Krabenhöft & Lampe Building, Corner of Bismarck	
and Berg Streets, Liideritz	AG GN 116/1979 (OG 4060)
Two Historic Dwellings [Troost Houses],	
Erf 652, Berg Street, Liideritz	AG GN 117/1979 (OG 4060)
Grave of Kahimemua Nguvauva, Okahandja	AG GN 6/1980 (OG 4786)
Deutsche Afrika Building, 12 Bismarck Street, Liideritz	AG GN 7/1980 (OG 4786)
Kreplin House, Lüderitz	AG GN 108/1983 (OG 4786)
"Hohenzollern" Building, Swakopmund	AG GN 109/1983 (OG 4786)
Roman Catholic Cathedral, Windhoek	AG GN 110/1983 (OG 4786)
Kubas Station Building, Karibib	AG GN 111/1983 (<u>OG 4786</u>)
Ship wrecks	RSA GN 537/1984
Prisoner-of-war camp site, Aus	GN 31/1985 (<u>OG 5084</u>)
Old German school building, Klein Windhoek	GN 67/1985 (<u>OG 5105</u>)
Ship wrecks	RSA GN 641/1985
Remaining portion of Erf 269, Liideritz	GN 2/1986 (<u>OG 5158</u>)
Rhenish Mission House, Omaruru	GN 8/1986 (<u>OG 5162</u>)
Old Prison Building, Windhoek	GN 53/1986 (<u>OG 5187</u>)
Four buildings (E. Halbich & Co] Erf 46, Karabib	GN 54/1986 (<u>OG 5187</u>)
Three historical sites, Karabib [Woll buildings,	
former Hotel Zurn Grünen Kranze,	
and former "Proviantamt"]	GN 89/1986 (<u>OG 5210</u>)
Elizabeth Haus, Windhoek	GN 92/1986 (<u>OG 5210</u>)
Kaiserbrunnen, Karibib	GN 126/1986 (<u>OG 5224</u>)
Ten Man House, Windhoek	GN 154/1986 (<u>OG 5241</u>)
Old Post Office, Keetmanshoop	GN 22/1987 (<u>OG 5314</u>)
Second Director's House, Tsumeb	AG GN 12/1990 (<u>OG 5895</u>)
Otavi Minen und Eisenbahn Gesellschaft (Omeg)	
Minenbiiro, Tsumeb	AG GN 13/1990 (<u>OG 5895</u>)
German Private School Building, Tsumeb	AG GN 14/1990 (<u>OG 5895</u>)
Roman Catholic Church Building, Tsumeb	AG GN 15/1990 (<u>OG 5895</u>)
Herero graves and ring-wall, Okahandja	AG GN 26/1990 (<u>OG 5916</u>).

The following place was declared as a national monument under the *National Monuments Act 28 of 1969* after Namibian independence:

Heroes Acre GN 144/2002 (<u>GG 2801</u>).

The following places were declared national monuments or heritage places under the current Act:

Grave No 171 (the Mass Grave) in the Old Location Cemetery and Omugulugwombashe are designated as national monuments in GN 118/2006 (GG 3679).

An area in and around Swakopmund is designated a conservation area by General Notice 260/2006 (GG 3688), and the demolition of any building situated for 50 years or more in this area is prohibited by General Notice 79/2008 (GG 4022).

Note that the original <u>GG 3688</u> was replaced by a subsequent corrected version. The corrected version states at the top: "*This Gazette replace* [sic] *Gazette No. 3688 of 1 September 2006*".

Betholdt Himumuine Primary School is declared to be a heritage place by General Notice 298/2006 (GG 3714).

Dorslandtrekker is declared to be a heritage place by General Notice 299/2006 (GG 3714).

Twyfelfontein is declared to be a conservation area in General Notice 20/2007 (GG 3788).

A number of places are designated as heritage places in GN 155/2011 (GG 4787):

Mataratara, Rundu, Kavango Region

Farm AAR, Karas Region

House of the First Native Commissioner of Kavango, Kavango Region

Monument of the PLAN Unknown Soldiers-Outapi, Outapi, Omusati Region

Eenhana Shrine, Eenhana, Ohangwena Region

Ozombu Zovindimba near Otjikorondo village, Otjinene Constituency, Omaheke Region

Ombalantu Baobab, Erf 1123, Outapi, Omusati Region

Monument of the PLAN Unknown Soldiers-Ondeshifiilwa, Ondeshifiilwa village, Engela Constituency, Ohangwena Region

Omhedi Cultural Landscape, Omhedi Village, Engela Constituency, Ohangwena Region

Okahao Baobab Erf 206, Okahao Constituency, Omusati Region

Onelungo Ponds near Outapi, Omusati Region.

A number of places and objects are designated as heritage places and heritage objects in General Notice 393/2013 (GG 5306):

House Gluck, Lüderitz, Karas Region

King Lipumbu ya Tshilongo Memorial, Uukwambi, Omusati Region

Blue Files, in Windhoek, Khomas Region; Omaruru, Karibib, Usakos, Erongo Region and Lüderitz, Karas Region (heritage objects).

The Omandongo Mission was declared to be a heritage place by General Notice 273/2014 (<u>GG</u> <u>5533</u>).

The Equestrian Statue Monument was *removed* as a national monument from the National Heritage Register by General Notice 274/2014 (GG 5533).

The King Iipumbu ya Tshilongo Memorial Site was declared to be a heritage place by General Notice 275/2014 (GG 5533).

Shark Island in Luderitz (//Kharas Region) and Driedoornvlagte Fossil Reef (Hardap Region) are declared to be heritage places by General Notice 23/2019 (GG 6844).

Several places are designated as heritage places by General Notice 293/2022 (GG 7839):

Witbooi Einde !Amab /Unis, 125 km east of Keetmanshoop, //Kharas Region

House of Hendrick Witbooi !Nanseb /Gabemab, Gibeon, Hardap Region

House of Samuel Hendrick Witbooi (!Gae-nub !Nagamab !Nansemab), Gibeon, Hardap Region

House of Rev. Markus and Mrs. Lea Witbooi, Gibeon, Hardap Region

Farm House of Samuel Hendrick Witbooi (!Gae-nub !Nagamab !Nansemab), Gibeon, Hardap Region

ELCRN Churchm Gibeon, Hardap Region.

Fees: General Notice 291/2022 (<u>GG 7839</u>) sets the fee payable for a certificate under section 38 of the Act at N\$ 250.00.

General Notice 292/2022 (GG 7839) determines the fees payable in respect of inspection of the Namibian Heritage Register.

General Notice 559/2023 (<u>GG 8206</u>) determines the fees payable for admission of members of the public to certain protected places, replacing General Notice 294/2022 (<u>GG 7839</u>) with effect from 1 April 2024 to 30 April 2025.

Appointments: Council appointments under the previous Act were announced in GN 76/1991 (GG 232), GN 318/1996 (GG 1462), GN 270/2000 (GG 2444) and GN 20/2003 (GG 2915). Council appointments under this Act were announced in GN 82/2009 (GG 4260) and GN 94/2011 (GG 4747).

Cases: Ekungungu (Pty) Ltd v National Heritage Council of Namibia & Others 2023 (2) NR 504 (HC) ((1) appointment of members of Council pre-dated Public Enterprises Governance Act 1 of 2019 and thus were not required to comply with that Act; (2) Council's decision to embark on a joint archaeological study under section 5(1)(b) and (e) and to place certain sites under a provisional protection order under section 41(1) are preliminary steps that are not ripe for review).

INTERNATIONAL LAW

†Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 Convention on the Protection of the Underwater Cultural Heritage, 2001

See also CULTURE AND CULTURAL INSTITUTIONS.

NEGOTIABLE INSTRUMENTS

Bills of Exchange Act 22 of 2003 🕎 🙀

Summary: This Act (originally published in <u>GG 3121</u>) regulates bills of exchange, cheques and promissory notes. It was brought into force on 15 May 2004 by GN 110/2004 (<u>GG 3207</u>).

Repeals: The Act repeals the *Bills of Exchange Act 34 of 1964* and part of the *Suretyship Amendment Act 57 of 1971*.

Amendments: The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), makes substantial amendments to this Act, including the repeal of Parts I and II and the substitution of Part III.

Savings: Section 98(a) provides that "anything done under any law repealed by this Act, and which could have been done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision".

Regulations: The Act makes no provision for regulations.

Cases: Atlantic Meat Market (Pty) Ltd v Standard Bank of Namibia Ltd 2005 NR 140 (HC) involves cessation of a claim arising under section 22 of the Bills of Exchange Act 34 of 1964.

Abolition of Payment by Cheque Act 16 of 2022 📢 🙀

Summary: This Act (<u>GG 7995</u>), as its name suggests, brings an end to the use of cheques as a method of payment in Namibia. It also amends 35 other laws that refer to cheques as a method of payment or require the opening or maintenance of cheque accounts.³⁷⁶ The Act was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>).

Repeals: The Act repeals the Procedure and Evidence Proclamation 8 of 1938 in its entirety.

Virtual Assets Act 10 of 2023 🕎 🙀

Summary: This Act (<u>GG 8143</u>) regulates "virtual assets", which are digital representations of value that can be digitally transferred, stored or traded. It regulates and supervises virtual asset service providers with a view to protecting consumers, preventing market abuse and preventing money laundering and the financing of terrorism through virtual assets markets. It was brought into force on 25 July 2023 by GN 218/2023 (<u>GG 8148</u>).

Regulations: Regulations are authorised by section 52 of the Act.

Rules: The following sets of rules have been issued under the Act-

Travel Rules
General Notice 510/2023 (GG 8194)
Virtual Assets Rules
General Notice 511/2023 (GG 8195)
Advertising Rules
General Notice 512/2023 (GG 8196)
Capital and Other Financial Requirements
Risk Management Rules
General Notice 513/2023 (GG 8197)
General Notice 514/2023 (GG 8198)

³⁷⁶ Note that the Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>) purports to amend the Bank of Namibia Act 15 of 1997, which has already been repealed by the Bank of Namibia Act 1 of 2020.

Custody of Client Assets Rules	General Notice 515/2023 (GG 8199)
Cyber Security Rules	General Notice 516/2023 (GG 8200)
Statutory Returns Rules	General Notice 517/2023 (GG 8201)
Client Disclosure Rules	General Notice 518/2023 (GG 8202).

Guidelines: Guidelines relating to the fit and proper person requirements for virtual asset service providers, officers, beneficial owners, associates and other persons to whom the Act applies are issued in General Notice 509/2023 (GG 8193).

Notices: GN 218/2023 (GG 8148) designates the Bank of Namibia as the Regulatory Authority for the Act.

PENSIONS

Pension Funds Act 24 of 1956, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>SA GG 5679</u>) regulates pension funds. It was brought into force in South Africa and South West Africa on 1 January 1958 by SA Proc. 330/1957 (<u>SA GG 5971</u>). This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Applicability to SWA: Section 1 defines "Union" to include "the Territory", which is defined as "the Territory of South West Africa". Section 40 states "This Act shall apply also in the Territory." Although section 40 did not make amendments to the Act in South Africa automatically applicable to SWA, they appear to have applied to SWA by virtue of the definition of "Union" in section 1. (Act 9/1994 supports this assumption by referring to previous amendments made by Act 103 of 1979, Act 86 of 1984 and Act 53 of 1989).

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance at the time, as indicated by government notices pertaining to the Registrar and Deputy Registrar of Friendly Societies issued during the 1970s. See, for example, Government Notice 1317/1970 (RSA GG 2768) and Government Notice 1640/1977 (RSA GG 5715). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

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

- Finance Act 81 of 1957 (SA GG 5907)
- Finance Act 80 of 1959 (SA GG 6255)
- Inspection of Financial Institutions Act 68 of 1962 (RSA GG 264)
- Second Finance Act 58 of 1966 (RSA GG 1577)
- Financial Institutions Amendment Act 65 of 1968 (RSA GG 2107)
- Financial Institutions Amendment Act 80 of 1969 (RSA GG 2446)
- Financial Institutions Amendment Act 23 of 1970 (RSA GG 2661)
- Financial Institutions Amendment Act 91 of 1972 (RSA GG 3594)
- Financial Institutions Amendment Act 101 of 1976 (RSA GG 5217)
- Financial Institutions Amendment Act 94 of 1977 (RSA GG 5624)
- Financial Institutions Amendment Act 80 of 1978 (RSA GG 6060)
- Financial Institutions Amendment Act 103 of 1979 (RSA GG 6568)
 Financial Institutions Amendment Act 99 of 1980 (RSA GG 7151)
- Financial Institutions Amendment Act 82 of 1982 (RSA GG 8240)
- Corporation for Public Deposits Act 46 of 1984 (RSA GG 9149)
- Financial Institutions Amendment Act 86 of 1984 (RSA GG 9313)
- Financial Institutions Amendment Act 50 of 1986 (RSA GG 10248)
- Financial Institutions Amendment Act 51 of 1988 (RSA GG 11313)
- Financial Institutions Amendment Act 53 of 1989 (RSA GG 11892)
- Financial Institutions Second Amendment Act 54 of 1989 (RSA GG 11893).

Act 94 of 1969 was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* (RSA GG 11743). However, the portions of Act 9 of 1989 which amended Act 94 of 1969 came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* (RSA GG 12364) as being 1 April 1990. Therefore these amendments were not applicable to South West Africa.

After Namibian independence, Act 4/1994 (<u>GG 812</u>) amends section 36 to allow the imposition of limits on the amount of funds which may be invested outside Namibia.

The Short-term Insurance Act 4 of 1998 (<u>GG 1832</u>), which was brought into force on 1 July 1998 by GN 142/1998 (<u>GG 1887</u>), repeals section 39 insofar as it relates to short-term insurance.

The Long-term Insurance Act 5 of 1998 (<u>GG 1834</u>), which was brought into force on 1 July 1998 by GN 144/1998 (<u>GG 1888</u>), repeals the remainder of section 39.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (<u>GG 2529</u>), which was brought into force on 14 May 2001 by GN 85/2001 (<u>GG 2528</u>), amends section 1, substitutes section 3 and repeals section 3A.

The Maintenance Act 9 of 2003 (<u>GG 3043</u>), which was brought into force on 17 November 2003 by GN 232/2003 (<u>GG 3093</u>), amends section 37.

Act 5/2011 (GG 4735) amends sections 1, 19, 36 and 37.

Act 6/2014 (GG 5584) amends sections 19 and 37D.

Regulations: Pensions Funds Regulations are contained in GN 211/2018 (GG 6697).³⁷⁷

Application of law: The application of the Act is affected by the Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 (<u>GG 2239</u>), in respect of the fund created by that Act.

The Government Institutions Pension Fund (GIPF) is exempted from section 19(4) of the Act, subject to specified limitations, by GN 91/2015 (GG 5751).

Appointments: A Registrar and Deputy Registrar of Pension Funds are appointed in General Notice 29/1991 (GG 174).

Cases:

Old Mutual Life Assurance Co Namibia Ltd v Old Mutual Namibia Staff Pension Fund & Another 2006 (1) NR 211 (HC) (section 37D)

³⁷⁷ The 2018 regulations repeal the regulations in RSA GN R.98 of 1962 (without mentioning their amendments). The repealed regulations were contained in RSA GN R.98 of 1962 (<u>RSA GG 162</u>), as amended by RSA GN R.2144/1984 (<u>RSA GG 9437</u>), RSA GN R.1790/1985 (<u>RSA GG 9892</u>), RSA GN R.1037/1986 (<u>RSA GG 10249</u>), RSA GN R. 232/1987 (<u>RSA GG 10601</u>), RSA GN R.1452/1989 (<u>RSA GG 11992</u>), GN 103/1994 (<u>GG 870</u>), GN 143/1994 (<u>GG 899</u>), GN 56/1995 (<u>GG 1044</u>), GN 108/1995 (<u>GG 1095</u>), GN 30/2008 (<u>GG 3985</u>) and GN 127/2013 (<u>GG 5205</u>) (note that GN 350/2003 withdraws GN 127/2013 with effect from its publication date, as if it never existed), GN 351/2003 (<u>GG 5383</u>), GN 38/2015 (<u>GG 5689</u>).

This Government Notice refers to a previous amendment made by GN 321 of 18 December 2013. This is in error. GN 321/2013 (GG 5351) was published on 29 November 2013 and concerns the import of poultry products into Namibia. The only *Government Gazette* published on 18 December 2013 (GG 5365) contains nothing relating to this Act. This erroneous reference was probably intended to refer to GN 351/2003 (GG 5383) published on 31 December 2013.

Rössing Uranium Ltd v Former Members of the Rössing Pension Fund 2017 (3) NR 819 (SC) (pension fund rules binding on trustees of private pension fund under section 13 of Act and their decisions are not subject to administrative review under the Act or under the rules of the fund; at para 80, decision criticises lack of provision for distribution of surpluses in the Act)

See also *Prosecutor-General v Gustavo & Others* 2023 (2) NR 444 (HC), concerning "Fishrot" matter, on section 37A(1) at para 114.

Commentary:

Florian Beukes, "Freedom of testation v section 37C of the Pension Funds Act, 1956 (No. 24 of 1956)", *Namibia Law Journal*, Volume 4, Issue 1, 2012, available here

Law Reform and Development Commission, *Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper*, LRDC 26, 2013, available here.

Administration Employees Pension Ordinance 19 of 1959 📢 🙀

Summary: This Ordinance (originally published in <u>OG 2199</u>) provides for pensions and benefits for certain employees of the administration of South West Africa.

Amendments: This Proclamation is amended by Ord. 18/1960 (OG 2254) and Ord. 23/1962 (OG 2409).

See also the Regulation of Membership of the Union Widows' Pension Fund Ordinance 15 of 1960 (OG 2254), which provides for male contributors of the Administration Employees Pension Fund to be members of the Union Widows Pension Fund.

Regulations: Regulations are authorised by section 29 of the Ordinance. No pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Members of Statutory Bodies Pension Act 94 of 1969, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 2459</u>) establishes a pension scheme for employees of statutory bodies.

Applicability to SWA: Section 7 states "This Act and any amendment thereof shall, so far as is necessary for the effective application thereof, apply also in the territory." Section 1 defines "territory" as "the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)".

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the Transfer Proclamation provided that section 3(1) of the General Proclamation shall not apply to "the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...". Therefore, the administration of the Act was not transferred to SWA.

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

- Pension Laws Amendment Act 73 of 1973 (RSA GG 3955)
- Pension Laws Amendment Act 50 of 1975 (RSA GG 4739)
- Pension Laws Amendment Act 100 of 1979 (RSA GG 6549)
- Pension Laws Amendment Act 96 of 1983 (RSA GG 8809).

Act 94 of 1969 was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* (RSA GG 11743). However, the portions of Act 9 of 1989 that amended Act 94 of 1969 came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* (RSA GG 12364) as being 1 April 1990. Therefore these amendments were not applicable to South West Africa.

Regulations: The Act makes no provision for regulations.

Black Authorities' Service Pensions Act 6 of 1971, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 3022</u>) (originally called the "Bantu Authorities' Service Pensions Act") provides for the establishment and control of a pension fund for the employees of certain "black authorities".

Applicability to SWA: Section 1 defines the authorities covered by the Act to include "any executive council, tribal authority, community authority or regional authority referred to in the Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968)". Section 1 defines "the territory as "the territory of South West Africa," and section 8 states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel."

Transfer of administration of SWA: The relevant transfer proclamation is the Executive Powers Transfer Proclamation (AG 3/1977) dated 28 September 1977, as amended. However, section 3(1)(e) exempts from transfer "those provisions of any law providing for or relating to... pension rights and privileges of any person who is, or is engaged, in the service of the state...". Thus, the administration of the Act was not transferred to SWA.

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

- Black Education Account Abolition Act 20 of 1972 (originally "Bantu Education Account Abolition Act") (RSA GG 3431)
- Black Laws Amendment Act 23 of 1972 (originally "Bantu Laws Amendment Act") (RSA GG 3447)
- Black Laws Amendment Act 4 of 1976 (originally "Bantu Laws Amendment Act") (RSA GG 5012)
- Black Laws Amendment Act 119 of 1977 (originally "Bantu Laws Amendment Act") (RSA GG 5671).

Terminology in this law was affected by the following two general laws:

- Second Bantu Laws Amendment Act 102 of 1978 (RSA GG 6095)
- Laws on Plural Relations and Development Second Amendment Act 98 of 1979 (RSA GG 6547).

Regulations: Regulations are authorised by section 5 of the Act. Two sets of pre-independence regulations have been located which appear to remain in force.

Authorities' Service Superannuation Fund Regulations are published under RSA GN R.1954 of 1971 (RSA GG 3300). These regulations were amended prior to Namibian independence by the following:

- RSA GN R.1618/1972 (<u>RSA GG 3651</u>)
- RSA GN R.1182/1976 (<u>RSA GG 5209</u>)
- RSA GN R.1315/1977 (RSA GG 5654)
- RSA GN R.1316/1977 (<u>RSA GG 5654</u>)
- RSA GN R.2854/1979 (RSA GG 6794)

- RSA GN R.1444/1981 (RSA GG 7655)
- RSA GN R.1258/1985 (<u>RSA GG 9782</u>).

Authorities' Service Pension Fund Regulations are published in RSA GN R.317/1978 (RSA GG 5888). These regulations were specifically made applicable to "the Territory of South West Africa with the consent of the Administrator-General for the Territory of South West Africa". The Government Notice that issues these regulations repeals the regulations contained in RSA GN R.1955/1971 as amended. The regulations were amended prior to Namibian independence by the following:

- RSA GN R.2861/1979 (RSA GG 6794)
- RSA GN R.1443/1981 (RSA GG 7655)
- RSA GN R.1988/1982 (<u>RSA GG 8383</u>)
- RSA GN R.1259/1985 (RSA GG 9782)
- RSA GN R.2141/1988 (RSA GG 11548).

Neither of these sets of regulations has been included in the database of annotated regulations because they appear to have limited, if any, current relevance.

No post-independence regulations have been promulgated.

Government Service Pension Act 57 of 1973, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 3934</u>) provides for pensions and other financial benefits for certain persons employed by the South African Government, the Administration of South West Africa, and provincial administrations.

Applicability to SWA: Section 1 defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 19 states "This Act shall apply also in the territory, including the Eastern Caprivi Zipfel." The wording of section 19 did not make amendments to the Act automatically applicable to SWA, but they are probably applicable by virtue of the definition of "Republic" in section 1.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation shall not apply to "the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...". Therefore, the administration of the Act was not transferred to SWA.

Amendments: Only one South African amending Act – the *Pension Laws Amendment Act 83 of 1976* (RSA GG 5173) – was made expressly applicable to SWA. However, the other amendments to the Act in South Africa were probably applicable to SWA by virtue of the definition of Republic, making the following list of amendments applicable to SWA –

- Pension Laws Amendment Act 15 of 1974 (RSA GG 4198) (repeals section 17(2)(i))
- Pension Laws Amendment Act 83 of 1976 (RSA GG 5173) (amends sections 5 and 7)
- Pension Laws Amendment Act 26 of 1977 (RSA GG 5463)
- General Pensions Act 29 of 1979 (RSA GG 6390)
- Pension Laws Amendment Act 97 of 1980 (RSA GG 7150)
- Pension Laws Amendment Act 106 of 1986 (RSA GG 10452)
- Pension Laws Amendment Act 89 of 1988 (RSA GG 11411).

Notes:

- (1) *Pension Laws Amendment Act 83 of 1976* (RSA GG 5173): Sections 1, 2, 3, 4, 5 and 8 of this Act were made applicable to SWA by section 10 of the Act, which stated that sections 1, 2, 3, 4, 5 and 8 "shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel".
- Sections 1-2 amend the *Government Service Pension Act 57 of 1973*, which was made applicable to SWA and appears to remain in force.
- Section 3 amends section 2 of the *Pension Laws Amendment Act 15 of 1974* (RSA GG 4198), which was applicable to SWA and appears to remain in force. (See the entry for the *Government Service Pension Act 57 of 1973* above.)
- Section 4 amends section 16 of the Second Pension Laws Amendment Act 77 of 1974 (RSA GG 4503) which was applicable to SWA (although only that section; not the rest of the Act) and which was previously amended by the Pension Laws Amendment Act 50 of 1975 (RSA GG 4739) (which makes no explicit mention of SWA). Section 16 of the Second Pension Laws Amendment Act 77 of 1974 was repealed by the General Pensions Act 29 of 1979 (RSA GG 6390), which was not made independently applicable to SWA, along with several other sections of the Act. The remainder of the Second Pension Laws Amendment Act 77 of 1974 was repealed by the Members of Parliament and Political Office-Bearers Pension Scheme Act 112 of 1984 (RSA GG 9362), which was not made generally applicable to SWA, but did cover "the Administrator-General for the territory of South West Africa appointed under Proclamation No. 180 of 19 August 1977" (section 1(1) of Act 112 of 1984).
- Section 5 relates to the consolidation of pensions or benefits under the *Simonstown Naval Base Employees' Transfer Act 72 of 1956* and allowances or bonuses under any other law.
- Section 8 contains presumptions and definitions for purposes of laws relating to social pensions.

The relevant Transfer Proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the Transfer Proclamation provided that section 3(1) of the General Proclamation shall not apply to "the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...". Therefore, the administration of the Act was not transferred to SWA. In any event, the wording of section 10 did not make amendments made to the Act in South Africa prior to Namibian independence automatically applicable to South West Africa.

Section 8 of this Act was amended in South Africa prior to Namibian independence by the *Pension Laws Amendment Act 40 of 1978* (RSA GG 5965), which was not made independently applicable to SWA.

The General Pensions Act 29 of 1979 (RSA GG 6390), which was also not made independently applicable to SWA, repealed sections 1-4 and 8 as well as section 10, which made the selected sections of the Act applicable to SWA. It has been assumed that these amendments were effective in respect of SWA due to the absence of a transfer proclamation. However, the amendments to the Government Service Pension Act 57 of 1973 would have been actioned before the repeal and so presumably remain in place.

(2) Pension Laws Amendment Act 15 of 1974 (RSA GG 4198): Section 2 of the Pension Laws Amendment Act 15 of 1974, which was brought into force with effect from 1 April 1974 by Proc. 6 /1974 (RSA GG 4237), is an independent provision which was made explicitly applicable to South West Africa. Subsection (5) of this provision was substituted by section 3 of the Pension Laws Amendment Act 83 of 1976 (RSA GG 5173), with this amendment also being made explicitly applicable to SWA by section 10 of Act 83 of 1976. Section 2 was amended further in RSA by the General Pensions Act 29 of 1979 (RSA GG 6390) which repealed all of section 2 except subsection (4) – but that amending law was not made explicitly applicable to SWA. The General Pensions Act 29 of 1979 also repealed section 3 of Act 83 of 1976, as well as section 10 of that Act which made section 3 of the Act applicable to

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³⁷⁸ Section 2 was amended further in RSA by the *General Pensions Act 29 of 1979* (RSA GG 6390) which repealed all of section 2 except subsection (4) – but that amending law was *not* made explicitly applicable to SWA, nor was the Act itself applicable in any way to SWA, not even by a definition of "Republic".

SWA. It is not entirely clear what portions of the provision, if any, continued to be in force with respect to SWA. Prior to the changes made by the RSA *General Pensions Act 29 of 1979*, the provision read as follows:

Regulations relating to payment of compensation and rendering of medical treatment

- **2.** (1) Notwithstanding anything to contrary any law contained, the Minister of Social Welfare and Pensions may, in consultation with the Minister of Finance, the Minister of Posts and Telecommunications and the Administrators, and after consultation with -
 - (a) the Minister who is responsible for the Bureau;
 - (b) the Minister of the Interior;
 - (c) the Minister of Defence;
 - (d) the Minister of Police; and
 - (e) the Minister of Prisons,

make regulations which provide for the payment of compensation to or in respect of, or to a dependant of, any officer or employee who dies or is retired or as a result of injury or ill-health out of and in the course of his employment by the Government or by an administration of any province or of the territory South West Africa, and for the rendering of medical treatment (including surgical or hospital treatment, skilled nursing services and the supply and repair of any artificial part of the body or any device), to such officer or employee in respect of such injury or ill-health.

- (2) Regulations referred to in subsection (1), except regulations which reduce compensation, may be made with retrospective effect and different regulations may be made in respect of different classes or categories of officers or employees.
 - (3) For the purposes of this section -
 - "employee" means any member of the Reserve Police Force established under section 34(2) of the Police Act, 1958 (Act 7 of 1958), or any member of the Police Reserve established under 34A(1) of the Police Act, 1958, or any member of the Government Employees' Provident Fund referred to in section 2(3) of the Government Service Pensions Act, 1965 (Act 62 of 1965), and includes any person who in terms of section 2 of the Simonstown Naval Base Employees' Transfer Act, 1956 (Act No. 72 of 1956), became an employee referred to that section but does not include any employee to whom the provisions of the War Pensions Act, 1967 (Act No. 62 of 1967), apply in relation to the injury or ill-health referred to in subsection (1) of this section;
 - "officer" means any member of the Government Service Pension Fund established under section 3 of the Government Service Pension Act, 1973 (Act No. 57 of 1973), and includes a specified officer as defined in section 3(6) of the Pension Laws Amendment Act, 1973 (Act No. 73 of 1973), but does not include any officer to whom the provisions of the War Pensions Act, 1967, apply in relation to the injury or ill-health referred to in subsection (1) of this section.
- (4) Any annuity, pension or benefit payable immediately before 1 July 1973 in terms of the regulations promulgated by Government Notice R.1929 of 8 December 1965, and any amendment thereof, shall be continued at the rates and subject to the conditions which were applicable immediately before the date of commencement of this section.
 - (5) Notwithstanding anything to the contrary in any law contained -
 - (a) any increase of a pension or other benefit effected under section 5(1)(bA) of the Government Service Pensions Act, 1965, or in terms of any regulation made under that Act on or after 1 July 1973, but before the date of commencement of this section, shall be deemed to be compensation in terms of the regulations promulgated under subsection (1);
 - (b) any military service as defined in section 1 of the Military Pensions Act, 1976, and rendered by an officer or employee, shall, for the purposes of this section and the regulations made thereunder, be deemed to have been service in the Government or in the administration of the province or of the territory of South West Africa in whose service he was during the time he rendered such military service;
 - (c) an officer or employee who renders military service or undergoes training within the meaning of the Defence Act, 1957 (Act No. 44 of 1957), shall, for the purposes of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), be deemed to be a workman while rendering such military service or undergoing such training.

[subsection (5) substituted by the Pension Laws Amendment Act 83 of 1976 (RSA GG 5173)] (6) This section shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.

Regulations: Regulations are authorised by section 17 of the Act, as well as the independent supplementary provision on regulations discussed above. No post-independence regulations have been promulgated. The following pre-independence regulations issued under the Act were in force at the time of Namibian independence:

General regulations are contained in RSA GN R.1062/1973 (RSA GG 3940), as amended by RSA GN R.781/1974 (RSA GN 4273), R.2390/1974 (RSA GG 4542), RSA GN R.2248/1975 (RSA GG 4911), RSA GN R.1526/1976 (RSA GG 5263), RSA GN R.2246/1976 (RSA GG 5347), RSA GN R.1671/1977 (RSA GG 5721), RSA GN R.1791/1978 (RSA GG 6149), RSA GN R.1096/1979 (RSA GG 6460), RSA GN R.1631/1979 (RSA GG 6601), RSA GN R.1653/1979 (RSA GG 6601), RSA GN R.295/1980 (RSA GG 6849), RSA GN R.2490/1980 (RSA GG 7318), RSA GN R.651/1981 (RSA GG 7516), RSA GN R.2689/1983 (RSA GG 8994), RSA GN R.1182/1984 (RSA GG 9257), RSA GN R.1254/1984 (RSA GG 9269), RSA GN R.2059/1984 (RSA GG 9419), RSA GN R.444/1985 (RSA GG 9609), RSA GN R.848/1985 (RSA GG 9700), RSA GN R.258/1986 (RSA GG 10094), RSA GN R.231619/86 (RSA GG 10517), RSA GN R.2121/1987 (RSA GG 10945), RSA GN R.1179/1989 (RSA GG 11133), RSA GN R.416/1988 (RSA GG 11174), RSA GN R.1179/1989 (RSA GG 11920), RSA GN R.1251/1989 (RSA GG 11954) and RSA GN R.2353/1989 (RSA GG 12163).

Note that three of these notices specifically state that they apply to SWA - RSA GN R.2390/1974, RSA GN R.2248/1975 and RSA GN R.1526/1976. The import of this is unclear, since the administration of the law does not seem to have been transferred to SWA.

The following regulations made under section 2 of the *Pension Laws Amendment Act 15 of 1974* were in force at the time of Namibian independence:

Related regulations concerning compensation and medical treatment in respect of injury or ill-health are contained in GN 780/1974 (RSA GG 4275). These regulations were made explicitly applicable to SWA and the Eastern Caprivi Zipfel (reg 8).³⁷⁹

These two regulation sets have not been included in the database, given their limited applicability in independent Namibia.

Military Pensions Act 84 of 1976, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 5174</u>) provides benefits and medical treatment in regard to disablement caused or exacerbated by military service under the Defence Act. It also consolidates other war pensions.

Repeals: The Act repeals the *Special War Pensions Act 35 of 1962* and the *War Pensions Act 82 of 1967*.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 25 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977.

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³⁷⁹ These regulations repeal the ones contained in RSA GN R.1929 of 8 December 1965.

However, section 3(b) of this Transfer Proclamation explicitly excluded this Act from section 3(1) of the General Proclamation. Therefore, the administration of the Act was not transferred to SWA.

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

- Pension Laws Amendment Act 26 of 1977 (RSA GG 5463)
- General Pensions Act 29 of 1979 (RSA GG 6390)
- Pension Laws Amendment Act 100 of 1979 (RSA GG 6549)
- Pension Laws Amendment Act 97 of 1980 (RSA GG 7150)
- Pension Laws Amendment Act 81 of 1982 (RSA GG 8239)
- Pension Laws Amendment Act 96 of 1983 (RSA GG 8809)
- Pension Laws Amendment Act 123 of 1984 (RSA GG 9381)
- Pension Laws Amendment Act 106 of 1986 (RSA GG 10452)
- Pension Laws Amendment Act 88 of 1987 (RSA GG 10980).

Regulations: No post-independence regulations have been promulgated. Pre-independence regulations are contained in RSA GN R.1806/1976 (RSA GG 5304), which is deemed to have come into force on 30 June 1976 by section 15(2) of the *Pension Laws Amendment Act 26 of 1977* (RSA GG 5463). These regulations were amended by RSA GN R.9/1987 and RSA GN R.1673/1987 (RSA GG 10853). These regulations have not yet been processed for the database.

Temporary Employees Pension Fund Act 75 of 1979, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in RSA GG 6518), which was brought into force in SWA on 1 October 1979 by RSA Proc. R.216/1979 (RSA GG 6665) read together with RSA Proc. R.217/1979 (RSA GG 6665), provides pensions and other benefits to certain temporary employees and their dependants. It was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,³⁸² but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Repeals: The Act repeals the Government Service Pensions Act 62 of 1965 and the Government Non-white Employees Pensions Act 42 of 1966. There is no savings clause for notices or regulations issued under the repealed laws.

Applicability to SWA: Section 9A (added by RSA Proclamation R.217 of 1979) states "This Act and any amendment thereof shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel." This section also provides special definitions for "revenue" and "Government" in regard to South West Africa.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation shall not apply to "the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...". Therefore, the administration of the Act was not transferred to SWA.

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

- RSA Proclamation R.217 of 1979 (<u>RSA GG 6665</u>)
- Pension Laws Amendment Act 106 of 1986 (RSA GG 10452)

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³⁸⁰ Section 15 of this Act was subsequently repealed by the *General Pensions Act 29 of 1979* (RSA GG 6390).

³⁸¹ No other surviving regulations are listed in *Juta's Index to the South African Government and Provincial Gazettes* (formerly "The Windex"), 1920-1989 at 451.

³⁸² Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 81-ff.

• Pension Laws Amendment Act 89 of 1988 (RSA GG 11411).

Regulations: Regulations are authorised by section 8 of the Act.

Regulations under the Temporary Employees Pension Fund Act, 1979 are contained in GN R.2099/1979 (RSA GG 6665) as amended by the following:

- GN R.2491/1980 (RSA GG 7318)
- GN R.2691/1983 (RSA GG 8994)
- GN R.443/1985 (RSA GG 9609)
- GN R.257/1986 (<u>RSA GG 10094</u>)
- GN R.2123/1987 (<u>RSA GG 10945</u>), as amended by GN R.1181/1989 (<u>RSA GG 11920</u>)
- GN R.192/1988 (RSA GG 11133)
- GN R.418/1988 (RSA GG 11174), as amended by GN R.1253/1989 (RSA GG 11954)
- GN R.2355/1989 (RSA GG 12163) (amends only the Afrikaans text of the regulations).

Regulations concerning the Rights of Affected Persons are contained in GN R.2550/1980 (<u>RSA GG</u> 7328).

No post-independence regulations have been promulgated.

National Pensions Act 10 of 1992 🕡 🙀

Summary: This Act (<u>GG 395</u>) provides for national pensions to be paid to aged, blind and disabled persons. It was brought into force on 1 October 1994 by Proc. 25/1994 (GG 942).

Repeals: This Act repeals the German War Veterans' Pensions Ordinance 3 of 1965 and the *Social Pensions Act 37 of 1973*.

Savings Regulations made under the repealed laws survive pursuant to section 17(2) of this Act, which states that –

any regulation, made, or any act done under any provision of any law repealed by subsection (1), shall be deemed to have been made or done under the corresponding provisions of this Act: Provided that in the case of any regulation made in relation to any old age pension or veteran's pension, as the case may be, such regulation shall be deemed to have been made in relation to a basic state pension payable under this Act.

Regulations: Section 16 of this Act authorises regulations, but none have yet been promulgated.

Pre-independence regulations have not been comprehensively researched. It appears that many of the surviving regulations are race-based and therefore inappropriate to independent Namibia.

Notices: All national pensions were equalised at N\$135/month in terms of section 17(3) by GN 201/1994 (GG 962). Subsequent pension increases were not gazetted; section 16 of the Act authorises regulations on maximum pension amounts but does not require that such amounts be contained in regulations.

The old age pension was increased from N\$600/month to N\$1000/month in April 2015. (See "Old age pension to increase by N\$100 next year", *The Namibian*, 6 November 2015.) Disability pensions also increased from N\$600/month to N\$1000/month in April 2015. (See Verua Kavezeri, "Daily struggles of a maimed villager", *The Namibian*, 3 September 2015.) Both old age and disability pensions were increased to N\$1100/month effective 1 April 2016. (See "Increase in pensioner, disability grants", *New Era*, 8 June 2016.) Both old age and disability pensions were again increased, to N\$1200/month, effective 1 April 2017. (This was reported in a press release of the Ministry of Poverty Eradication and Social Welfare dated 14 July 2017; the increased amount was provided from August 2017, with a once-

off extra amount to cover the increase for the period from April to August.) Both "pensions and grants" were again increased, to N\$1250/month, effective 1 April 2018. The increased amount was provided from August 2018, with a once-off extra amount to cover the increase for the period from April to August. (See Alwonda Izaaks "Govt increases pensions and grants by N\$50", *The Namibian*, 3 July 2018.)

Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 ₩ ₽

Summary: This Act (<u>GG 2239</u>) establishes a pension fund for Members of Parliament and other Office-bearers. It was brought into force on 4 January 2000 by GN 284/1999 (<u>GG 2253</u>).

Repeals: The Act replaces the Members of Parliament and other Office-bearers Pensions Act 21 of 1990 (GG 116) which was repealed with effect from the date when this Act came into force by GN 285/1999 (GG 2253).

Regulations: The Act makes no provision for regulations.

Rules: The pension fund established under this Act was registered in terms of the *Pension Fund Act 24* of 1956. The rules approved by the Registrar of Pension Funds and the announcement of the registration are contained in GN 269/2000 (GG 2443).

Application of law: Note that the Judges' Pensions Act 13 of 2011, provides for the transfer of judges' pensions and gratuities from the State Revenue Fund to the Members of Parliament and other Office-bearers Pension Fund.

Notices: Certain specific officials are named as office-bearers for purposes of the Act from time to time, but these designations have not been recorded here.

Judges' Pensions Act 13 of 2011 🕎 🙀

Summary: This Act (<u>GG 4862</u>) provides for the transfer of judges' pensions and gratuities from the State Revenue Fund to the Members of Parliament and other Office-bearers Pension Fund. (See Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999.) The Act was brought into force on 30 March 2012 by GN 92/2012 (<u>GG 4915</u>), which was also set as the transfer date for the pension funds in terms of section 2 of the Act by GN 93/2012 (<u>GG 4915</u>).

Repeals: The Act repeals the Judges Pensions Act 28 of 1990. It should be noted that section 7 of the current Act provides that, if there is a dispute or doubt regarding entitlement to a pension under the repealed law on the transfer date, then the repealed Act will continue to apply as if this Act had not been passed, and the transfer date will become the date on which the dispute is settled or the doubt resolved.

Regulations: The Act makes no provision for regulations.

See also Presidential Emoluments Act 17 of 1990 and Former Presidents' Pension and Other Benefits Act 18 of 2004 (**PRESIDENT**).

See also Social Security Act 34 of 1994 (National Pension Fund) (SOCIAL SECURITY).

See also Veterans Act 2 of 2008 (SOCIAL WELFARE).

POLICE

Police Act 19 of 1990 📲 📻

Summary: This Act (originally published in <u>GG 113</u>) provides for the establishment, organisation, administration, and powers and duties of the Namibian Police Force. It prescribes procedures to protect the internal security of Namibia and to maintain law and order. It also regulates the appointment, promotion, discipline and discharge of members of the Namibian Police Force.

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

Repeals: The Act repeals the *Police Act 7 of 1958* (<u>SA GG 6015</u>), which repealed the *Police Act 14 of 1912* (<u>SA GG 246</u>) – which was amended and made applicable to SWA by section 1 of the *Police (South-West Africa) Act 19 of 1939* (<u>SA GG 2635</u>) as from 1 June 1939 in terms of the Incorporation of the South West Africa Police Proclamation 100 of 1939 (<u>SA GG 2642</u>).

Amendments: The Act is substantially amended by Act 3/1999 (<u>GG 2072</u>). Particularly notable is the amendment of section 14, which substantially broadens police powers of search and seizure.

Section 4 of the Act is amended by Act 5/2001 (<u>GG 2566</u>) (regarding standards for physical and mental fitness).

The General Law Amendment Act 14 of 2005 (GG 3565) amends section 1 of the Act.

Act 3/2023 (GG 8136) amends section 1 and inserts section 14A.

Savings: Section 45(2) of the Act contains a general savings clause:

Any regulation, direction, rule, notice, approval or appointment made, issued or given or anything done under any provision of any law repealed or amended by subsection (1), shall be deemed to have been made, issued, given or done under the corresponding provision of this Act.

Section 45(3)-(4) provides some rules of construction for all surviving regulations and makes some amendments to specific regulations which initially survived pursuant to this provision but have since been repealed.

Section 36(2) of the repealed *Police Act 7 of 1958* contained a savings clause in respect of acts done under the repealed *Police Act 14 of 1912*:

Any regulation made or anything done under any provision of a law repealed by sub-section (1), shall be deemed to have been made or done under the corresponding provision of this Act.

Regulations: The following regulations were made under the current Act:

General regulations are contained in GN 167/1994 (<u>GG 919</u>), as amended by GN 143/1996 (<u>GG 1332</u>), GN 246/1998 (<u>GG 1965</u>), GN 166/2001 (<u>GG 2593</u>), GN 55/2002 (<u>GG 2718</u>), GN 252/2010 (<u>GG 4613</u>), GN 56/2011 (<u>GG 4708</u>), GN 298/2013 (<u>GG 5337</u>), GN 238/2014 (<u>GG 5616</u>) (which withdraws GN 56/2011) and GN 391/2022 (<u>GG 7969</u>). 383

GN 238//2014 (<u>GG 5616</u>) refers to a previous amendment made by GN 201/2002 (<u>GG 2862</u>), but this is in fact a separate set of regulations which was replaced by GN 124/2003 (<u>GG 2997</u>). (See below.)

Regulations for Municipal Police Services are contained in GN 184/2002 (GG 2833), as

³⁸³ As noted above, these regulations withdraw the Regulations for the South African Police contained in GN R.203/1964 (RSA GG 719), with the exception of regulation 58(32) which was subsequently declared unconstitutional. In *Minister of Safety and Security & Others v Longer* 2020 (4) NR 1048 (SC), footnote 1 erroneously states that these regulations are contained in "GG 299".

amended by GN 253/2003 (GG 3108) and GN 197/2004 (GG 3270).

Regulations relating to the award of decorations and medals to members of the Namibian Police Force are contained in GN 124/2003 (GG 2997), as amended by GN 198/2022 (GG 7850) which substitutes regulations 39-40. These regulations replaced the ones contained in GN 201/2002 (GG 2862).

When considering regulations which may remain in force, it should be noted that the relevant transfer proclamation was the Executive Powers (Police) Transfer Proclamation 169 of 1980 (RSA GG 7207), which came into force on 1 September 1980. However, that transfer proclamation excluded most of the references to the "Minister", the "State President" and the "Government Gazette" in the Police Act 7 of 1958 — which had the effect that the power to make regulations under the Act was not transferred to SWA on 1 September 1980, but only on 1 April 1981 by the Police Amendment Proclamation contained in AG GN 9/1981 (OG 4434).

Regulation 58(32), the only surviving regulation of the **Regulations for the South African Police**, contained in RSA Government Notice R.203/1964 (<u>RSA GG 719</u>, republished in <u>OG 2542</u>) and made under the previous *Police Act 7 of 1958*, ³⁸⁴ remained in force under the current Act but was declared unconstitutional in the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), which reversed the High Court judgment *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC).

The following additional regulations made under the *Police Act 7 of 1958* have not been explicitly repealed:

Regulations for the Control and Award of Decorations, Orders and Medals to the South African Police are contained in RSA GN R.990/1963 (RSA GG 547), as corrected by R.1130/1963 (RSA GG 567) and as amended by R.1035/1979 (RSA GG 6451) — which was amended by RSA GN R.424/1980 (RSA GG 6874). However, these regulations may be superseded by the Regulations made under the Police Act, 1958 (Act 7 of 1958); Decorations and Medals contained in AG GN 155/1981 (OG 4558), as amended, and by the Regulations relating to the award of decorations and medals to members of the Namibian Police Force, made under the current Act, originally contained in GN 201/2002 (GG 2862), and since replaced by GN 124/2003 (GG 2997).

Regulations for the Reserve Police Force are contained in RSA GN R.1016/1962 (<u>RSA GG 275</u>), as amended by RSA GN R.1285/1962 (<u>RSA GG 309</u>), R.1543/1964 (<u>RSA GG 918</u>), R.1880/1967 (<u>RSA GG 1899</u>), R.2353/1968 (<u>RSA GG 2244</u>), R.1507/1971 (<u>RSA GG 3238</u>), R.1682/1973 (<u>RSA GG 4023</u>), R.993/1975 (<u>RSA GG 4714</u>) and R.2728/1979 (<u>RSA GG 6765</u>).³⁸⁵ These regulations seem to remain in force, as no regulations have been promulgated under the current Act to replace them.

Regulations for the Police Reserve are contained in RSA GN R.1931/1973 (<u>RSA GG 4053</u>), as amended by RSA GN R.2147/1973 (<u>RSA GG 4081</u>), RSA GN R.1595/1975 (<u>RSA GG 4824</u>),

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The Regulations for the South African Police were contained in RSA GN R.203/1964 (RSA GG 719, republished in OG 2542), as amended by GN 16/1991 (GG 159). However, the regulations issued in GN 167/1994 (GG 919) repealed and replaced these regulations, with the exception of regulation 58(32) - which was subsequently declared unconstitutional by the Supreme Court case of Kauesa v Minister of Home Affairs 1995 NR 175 (SC). Prior to being struck down on constitutional grounds, this regulation read as follows:

Offences against Duty and Discipline

^{58.} A member shall be guilty of an offence and may be dealt with in accordance with the provisions of Chapter II of the Act and these regulations if he -

⁽³²⁾ comments unfavourably in public upon the administration of the Force or any other Government department.

³⁸⁵ These regulations were further amended in South Africa after the relevant date of transfer and prior to Namibian independence by RSA Government Notices R.2169/1981, R.257/1983, R.1183/1986, R.1517/1987 and R.2852/1989.

RSA GN R. 140/1976 (RSA GG 4972), RSA GN R.2333/1978 (RSA GG 6224). These regulations seem to remain in force as no regulations have been promulgated under the current Act to replace them. 387

Regulations made under the Police Act, 1958 (Act 7 of 1958); Decorations and Medals are contained in AG GN 155/1981 (OG 4558), as amended by AG GN 44/1986 (OG 5181) and AG GN 45/1986 (OG 5181). However, these regulations may be superseded by the Regulations relating to the award of decorations and medals to members of the Namibian Police Force, made under the current Act, originally contained in GN 201/2002 (GG 2862), and since replaced by GN 124/2003 (GG 2997).

Notices: Decorations and Medals for the South West African Police are set out in AG GN 156/1981 (OG 4558), as supplemented and amended by AG GN 46/1986 (OG 5181).

Warrants: Pre-independence warrants relating to the award of decorations and medals have not been recorded.

Municipal regulations: Windhoek Municipal Police Service Regulations issued by the Council of the Municipality of Windhoek are contained in General Notice 32/2013 (<u>GG 5137</u>), which replaced and replaced General Notice 296/2004 (<u>GG 3335</u>).

Note that General Notice 32/2013 states that it repeals *Government* Notice 296 of 1 December 2004 and not *General* Notice 296 of 1 December 2004.

Cases: The following cases concern this Act –

S v Boois; S v Thomas 1991 NR 455 (HC) (application of section 35(2) to allegation of resisting arrest) S v Eigowab 1994 NR 192 (HC) (refusal to have blood sample taken after arrest for drunken driving can constitute violation of section 35(2)(a))

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) (section 24(1))

S v Kandume 1997 NR 79 (HC) (sentence for assaulting a member of the police force and resisting arrest in contravention of sections 35(1) and 35(2)(a) of the Act)

S v Diergaardt 2000 NR 78 (HC) (section 35(1) in context of resisting unlawful attempt by police to enter premises)

Dresselhaus Transport CC v Government of the Republic of Namibia 2003 NR 54 (HC)(section 13); 2005 NR 214 (SC) (police duties)

Viljoen & Another v Inspector-General of the Namibian Police 2004 NR 225 (HC) (section 1(1) and regulations on transfers)

Sheehama v Inspector–General, Namibian Police 2006 (1) NR 106 (HC) (section 23(3); also discusses sections 18 and 24).

Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC) (section 8 enquiry)

S v Malumo & Others 2007 (2) NR 198 (HC) (effect of "Judges' Rules", which are administrative directives to be observed by police)

Minister of Home Affairs v Majiedt & Others 2007 (2) NR 475 (SC) (prescription period in section 39(1) not unconstitutional; paras 43-45: prescription period reasonably related to legitimate governmental purpose "of regulating claims against the State in a way that promotes speed, prompt investigation of surrounding circumstances, and settlement, if justified")

S v Afrikaner 2007 (2) NR 584 (HC) (definition of assault in section 35, as amended by Act 3/1999, GG 2072)

Ongombe Farmers Association v Tjiuro & Others 2011 (2) NR 630 (HC) ("civil proceedings" in section 39 do not include urgent interdictory relief)

³⁸⁷ **Regulations relating to Municipal Police Units** were contained in RSA GN R.2167/1989 (<u>RSA GG 12124</u>), but these regulations were promulgated after the date of transfer of the administration of the Police Act to SWA and were not made expressly applicable to SWA. They would, in any event, be superseded by the **Regulations for Municipal Police Services** issued under the current Act.

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³⁸⁶ These regulations were further amended in South Africa after the relevant date of transfer and prior to Namibian independence by RSA Government Notice RSA GN R.835/1988 (<u>RSA GG 11278</u>).

- Nakanyala v Inspector-General Namibia & Others 2012 (1) NR 200 (HC) (section 3A does not require exhaustion of internal remedies before seeking administrative review in court; section 23 on suspension and regulations on transfers)
- Shaanika v The Windhoek City Police 2013 (4) NR 1106 (SC) (section 43C(5))
- S v Malumo & Others (In re Ndala) 2014 (3) NR 690 (the question of whether this Act is applicable to the Eastern Caprivi Zipfel was raised, but the Court ruled that the issue can be considered only after the conclusion of the trial in terms of section 319 of the Criminal Procedure Act 51 of 1977)
- Mahupelo v Minister of Safety and Security & Others 2017 (1) NR 275 (HC) (section 39(1) notice); overruled on appeal without discussion of this Act in Minister of Safety and Security & Others v Mahupelo 2019 (2) NR 308 (SC)
- Lazarus v Government of The Republic of Namibia (Ministry of Safety and Security) (1) 2018 (1) NR 38 (HC) (quantum of damages for repeated unlawful warrantless search, arrest and detention, including being fired upon by police; one arrest appeared to be a direct response to a notice under s 39 of the Act regarding a claim for the previous illegal arrests and detentions, which attracted particular censure from the Court

The naked level of callousness and disregard for the right to other people's liberty displayed by the police officers in this case is worrying and a lesson that this is a constitutional state, where the rule of law and the fundamental rights and freedoms are upheld, must be driven home very strongly and sternly too. It must be made plain to the relevant police officers that regard for fundamental human rights, including the right to liberty and dignity are paramount and that a high price and value is attached to such rights by the courts of this land. (para 44)

See also Lazarus v Government of the Republic of Namibia (Ministry of Safety & Security) (2) 2018 (1) NR 56 (HC) (costs awarded against two police officers in their personal capacities in view of their "objectionable, unreasonable, unjustifiable and oppressive" violation of the rights of the victim of the repeated unlawful arrests)

S v Teek 2019 (1) NR 215 (SC) (dicta on irregularities of police investigative process)

Great challenges facing our communities include the growing sexual violence especially against women and children. The sexual transgressions denude a sexual offence victim of her or his dignity and also violate her or his physical, emotional and moral status. This case shows that, although there are a number of progressive legal policies and legal instruments developed to protect rape or sexual offence victims, the investigative processes are still not up to scratch as police officials seem not to be adequately equipped to deal with the challenges regarding sexual offences more effectively. The systemic failures including those illustrated in this judgment engender the persistent sexual exploitations across gender lines to grow. The case also highlights potential human rights violations and statutory breaches that require the investigative agents, especially members of the police services, to pay more attention in compliance with their constitutional and statutory investigative obligations. Anything short of these constitutional imperatives may not only bring the system of criminal justice into disrepute but may also result in a travesty of justice. (para 1)

Article 118 of the Namibian Constitution establishes the police force and enjoins the police to 'maintain law and order'. It provides that an Act of Parliament shall establish a national police force with prescribed powers, duties and procedures. In terms of s 13(c) of the Police Act, the police are enjoined, among other things, to investigate any offence or alleged offence. Neither the Namibian Constitution nor the Police Act, empower the police to investigate any crime against any person in a selective manner for the purpose of securing a conviction of an accused person. Any person accused of having committed any offence, whether that person is a judge or is holding a position of high office, should not be treated differently because of his or her public status. (para 89)

- Khariseb v Ministry of Safety and Security & Others 2018 (4) NR 1180 (HC); upheld on appeal in Khariseb v Ministry of Safety and Security & Others 2020 (3) NR 794 (SC) (sections 3A(1)(b), 9 and 39)
- Government of the Republic of Namibia v Fillipus 2018 (2) NR 581 (SC) (application of section 39 discussed in passing in para 5); see also Fillipus vs Government of the Republic of Namibia (I 1598-2013) [2016] NAHCMD 238 (18 August 2016)
- Minister of Safety and Security & Others v Longer 2020 (4) NR 1048 (SC) (section 8(2); resignation to avoid disciplinary proceedings does not constitute a dismissal)

- Owoses v Government of the Republic of Namibia & Others 2023 (1) NR 92 (HC) (quantum of damages for police assault)
- Blaauw t/a Suide Distributors v Minister of Safety and Security 2023 (1) NR 98 (HC) (section 13; liability of police for failure to carry out duty to prevent looting by public at accident scene)
- Bruni & Another NNO v Inspector-General of Police & Others (HC-MD-CIV-ACT-OTH-2022/00521) [2023] NAHCMD 347 (22 June 2023) (prescription under section 39(1): difference between acting in the course and scope of one's duty, which is associated with vicarious liability under the common law, and acting in pursuance of the Act, which is the wording of section 39(1))
- Shigwedha v Government of the Republic of Namibia & Another 2023 (4) NR 1003 (HC) (section 39(1) on prescription is violated by either the failure to institute proceedings within 12 months or the failure to give one month's notice of the suit to the defendants, but can only be invoked upon a showing that the actions in question were "in pursuance of" the Act – which is not the same as acting within the course and scope of employment with the police, or "in the furtherance of the interest, with the consent and to the benefit" of the Government).

The following cases concern the 2004 Regulations for the Windhoek Municipal Police Service (now repealed) -

Keramen v Council of The Municipality of Windhoek & Others 2014 (4) NR 992 (HC) (Regs 18-19; referral for disciplinary inquiry does not preclude fitness inquiry or constitute "double jeopardy" as the two inquiries have different purposes).

The following are post-independence cases concerning the previous *Police Act 7 of 1958* – Minister of Police v Haunawa 1991 NR 28 (SC)

Simon v Administrator-General, South West Africa 1991 NR 151 (HC)

Kauesa v Minister of Home Affairs 1995 NR 175 (SC), which reversed the High Court judgment Kauesa v Minister of Home Affairs 1994 NR 102 (HC) (declared unconstitutional Regulation 58(32), the only surviving regulation of the Regulations for the South African Police, contained in RSA Government Notice R.203/1964 (RSA GG 719, republished in OG 2542) and made under the previous *Police Act 7 of 1958*).³⁸⁸

Commentary:

Clinton Light, Namibian Police Human Rights Manual, Legal Assistance Centre, 1999, available here Chuks Okpaluba, "State liability for acts and omissions of police and prison officers: recent developments in Namibia" 46 (2) The Comparative and International Law Journal of Southern *Africa* 184 (2013)

John Nakuta & Vincia Cloete, The Justice Sector & the Rule of Law in Namibia: The Criminal Justice System, Namibia Institute for Democracy / Human Rights and Documentation Centre, [2010], available here

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 5.1 discusses the powers of the police under the Act in relation to public gatherings)

Clemens Artz, "Constitutionalism, Rule of Law and Preventive Powers of Police in Namibia", Namibia Law Journal, Volume 11, Issue 1, 2019

Legal Assistance Centre, "Use of force by law enforcement officials in Namibia", 2019, available here See the entry for the Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES) for commentary on conditions in police cells.

APPOINTMENTS

Appointment of First Inspector-General of Police, Proc. 8/1990 (GG 46). Appointment of Inspector-General of Police, Proc. 35/1997 (GG 1765).

Appointment of Inspector-General of Police, Proc. 7/2005 (GG 3450).

³⁸⁸ The Regulations for the South African Police were amended by GN 16/1991 (GG 159), but then GN 167/1994 (GG 919) repealed all the regulations promulgated under RSA GN R.203/1964 except regulation 58(32).

See also Security Commission Act 18 of 2001 (CONSTITUTION).

See also **DISASTERS** (involvement of uniformed forces in disaster situations).

PRESCRIPTION

Prescription Act 68 of 1969, as amended in South Africa to November 1979 w

Summary: This Act (originally published in <u>RSA GG 2421</u>) governs prescription (time limits on instituting legal proceedings).

Repeals: The Act replaced the *Prescription Act 18 of 1943* in South Africa, and the Prescription Proclamation 13 of 1943 in respect of SWA. According to *O'Linn v Minister of Agriculture, Water and Forestry & Others* 2008 (2) NR 792 (HC) at 797F-G, the South African *Prescription Act 18 of 1943* was never applicable to SWA or Namibia.).

Applicability to SWA: Section 21 states "This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)."

Transfer to SWA: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended, by virtue of its subject matter. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* (RSA GG 17129).) There was one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Prescription Amendment Act 11 of 1984* (RSA GG 9087) – which was not made expressly applicable to SWA.

Amendments: The following pre-independence amendments in South Africa were applicable to SWA:

- General Law Amendment Act 62 of 1973 (RSA GG 3947)
- General Law Amendment Act 57 of 1975 (RSA GG 4760).

Terminology in the Act was amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Married Persons Equality Act 1 of 1996 (GG 1316) amends section 3.

Regulations: The Act makes no provision for regulations.

Cases:

H Charney & Co (Pty) Ltd) v Segall & Matheson Properties 1995 NR 148 (HC) (sections 11(d) and 12(1))

Seaflower Whitefish Corporation v Namibia Ports Authority 1998 NR 316 (HC) (section 12(1) and (3)) Section 12(3) was amended in South Africa prior to Namibian independence by the Prescription Amendment Act 11 of 1984 (RSA GG 9087) which was not made expressly applicable to South West Africa. This amendment removed the phrase "which does not arise from contract" from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that this case assumes without discussion that section 12(3) reads with the amendment in question, stating at 322B-E: "The relevant section of the Prescription Act 68 of 1969, is s 12 and the relevant portions of that section are as follows:

'(1) Subject to the provisions of ss (2) and (3), prescription shall commence to run as soon as the debt is due.

. . .

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.'

Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC) (sections 11 and 12)

Bank Windhoek Ltd v Kessler 2001 NR 234 (HC) (section 13(1)(b))

Andreas v La Cock & Another 2006 (2) NR 472 (HC) (section 11)

Karuaihe-Martin v Telecom Namibia NLLP 2002 (2) 267 NLC (section 15)

South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419 (HC)

O'Linn v Minister of Agriculture, Water and Forestry & Others 2008 (2) NR 792 (HC) (sections 6 and 19); Minister of Agriculture, Water and Forestry v O'Linn 2008 (2) NR 792 (SC)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) at 731F-732H Basfour 2482 (Pty) Ltd v Atlantic Meat Market (Pty) Ltd & Another 2011 (1) NR 164 (HC)

Merlus Seafood Processors (Pty) Ltd v Minister of Finance 2013 (1) NR 42 (HC)(section 10)

Wellman v Hollard Insurance Co of Namibia Ltd 2013 (2) NR 568 (HC) (application of section 12(3) to agent and principal; discussed in Clever Mapaure, "Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions", UNAM Law Review, Volume 1, Issue 2, 2013

Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984* (RSA GG 9087) which was not made expressly applicable to South West Africa. This amendment removed the phrase "which does not arise from contract" from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that the *Wellman* case applies section 12(3) to a contractual debt (see paragraph 78); thus, although the issue is not discussed, the case appears to assume that section 12(3) applies as amended by *Act 11 of 1984*.

- Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (Act applies to labour-related claims arising under Labour Act 6 of 1992 or Labour Act 11 of 2007)
- Ongopolo Mining Ltd v Uris Safari Lodge (Pty) Ltd & Others 2014 (1) NR 290 (HC) (section 10; meaning of "debt")
- Lisse v Minister of Health & Social Services 2015 (2) NR 381 (SC) (interruption of prescription by notice of motion in judicial review proceedings relating to the damages claim; discussion of principles of prescription)
- Municipal Council of Windhoek v Telecom Namibia Ltd 2015 (3) NR 629 (SC) (section 11(b): "the State" includes a local authority)
- Shambo v Amukugo 2016 (1) NR 44 (HC) (interruption of running of prescription under sections 14 and 15)
- Tjamuaha & Another v Master of the High Court & Others 2016 (1) NR 186 (HC) (vindicatory claim is not a "debt" for purposes of Act).
- Hartzenberg v Standard Bank Namibia 2016 (2) NR 307 (SC) (an amendment to a claim which is proposed after the prescription period cannot be allowed where it claims new debts not arising from the same material facts relied upon in the original claim)
- Okorusu Flurospar (Pty) Ltd v Tanaka Trading CC & Another 2016 (2) NR 486 (HC) (an amendment which does not introduce a new cause of action but merely expands on the initial plea may be made after the prescription period has run)
- Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC)

Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984* (RSA GG 9087), which was not made expressly applicable to South West Africa. This amendment removed the phrase "which does not arise from contract" from section 12(3). This amendment does not appear to have been applicable to South West Africa. The *Van Straten* case is in agreement, as it assumes (without discussion of the historical background) that section 12(3) as it applies in Namibia was *not* amended by the *Prescription Amendment Act 11 of 1984*. The Court states at paragraph 127 (footnotes omitted):

Section 12(3) of the Prescription Act 68 of 1969 at the time provided that claims arising from contract arose when the debtor fails to perform contractual obligations, with knowledge of the breach being irrelevant. On the other hand, in respect of debts which do not arise under contract, prescription only would begin to run when the creditor has knowledge of both the identity of the debtor and the facts from which the debt arises, provided that the creditor is deemed to have that knowledge by exercising reasonable care. [...] [T]his distinction was abolished by the legislature in South Africa in 1984 by amending s 12(3) of that Act. [...] Knowledge thus became a requisite for the commencement of prescription in contractual claims in South Africa after that amendment to s 12(3) in 1984. But the prior distinction in s 12(3) of the Prescription Act remains applicable in its unamended form in Namibia despite its removal more than 30 years ago in South Africa.

Louw v Strauss 2017 (3) NR 808 (HC) (meaning of "debt" in section 11(d); acquisitive prescription also

discussed)

- Arangies v Neves & Others 2019 (3) NR (SC) (section 65 upheld against constitutional challenge under article 10)
- Kruger v Minister of Finance of the Republic of Namibia & Others 2020 (4) NR 913 (HC) (paras 107-117: the 30-year prescription period in section 11(a)(iii) operates in favour of the State but not in favour of the taxpayer); overturned in part on other grounds in Minister of Finance of the Republic of Namibia NO & Others v Kruger & Another 2022 (3) NR 785 (SC)
- Council of the Itireleng Village Community v Madi 2017 (4) NR 1127 (SC) ("debt" for purposes of the Act does not include the setting aside of disciplinary action by a voluntary association, even though damages arising from this could conceivably constitute a debt)
- Shiimi v City of Windhoek Municipality Council 2018 (1) NR 292 (HC) (section 12)
- Tjmuaaha & Another v Master of the High Court & Others 2018 (3) NR 605 (SC) (co-ownership of property by spouses married in community of property is a personal right and not a real right for a surviving spouse, meaning that the three-year prescription period in the Act is applicable)
- Negonga v Nampost Ltd 2018 (3) NR 704 (HC) (section 12(3); prescription begins to run in respect of customer of bank on date of demand for deposited funds and not on date of deposit of those funds; what constitutes "reasonable care" measured by reasonable person with the creditor's characteristics)
- Mbelle Panel Beaters & Transport CC v Willemse 2018 (3) NR 745 (NLD) (sections 11(d), 12(1) and 15(1); letter of demand does not constitute legal process for purposes of section 15(1))
- Nottingham Inc v Rockview Investment Number Seventy-one (Pty) Ltd & a similar case 2019 (1) NR 8 (HC) (section 11: prescription period starts running when arbitration award concerning debt was made an order of court, constituting a new cause of action, and not when original debt became due); overturned on appeal on other grounds in Rockview Investment Number Seventy One CC v Nottingham Incorporated 2020 (3) NR 853 (SC)
- McLean & Others v Botes (SA 54-2019) [2022] NASC (17 May 2022) (sections 11(d) and 12(3))
- Kamushinda & Others v President of the Republic of Namibia & Others 2020 (4) NR 1058 (HC) (a claim for rectification of a share register under the Companies Act 28 of 2004 is not a debt for purposes of this Act; application of Act to debtors outside Namibia under section 13(1))
- Bruni & Another v Yatsua Investments CC & Others 2021 (1) NR 116 (HC) (section 11 versus section 12; section 12 applied)
- Desert Wear CC & Others v Chairperson of the Council of the Municipality of Swakopmund & Others 2021 (2) NR 365 (HC) (section 6 on servitude by prescription read together with section 9)
- Samukuta v Minister of Safety and Security & Others 2023 (4) NR 1155 (HC) (commencement of prescription period under this Act discussed in some detail in case concerning prescription under Correctional Service Act 9 of 2012)
- Haindongo v Neumbo & Another 2023 (4) NR 1183 (HC) (sections 11(d) and 12(3); outcome of criminal charge against plaintiff irrelevant to date when prescription started running in defamation claim)
- Kamushinda & Others v Liquidators, Small and Medium Enterprises Bank Ltd (SME Bank in Liquidation) 2024 (1) NR 277 (SC) (section 13(1)).

Commentary: C Mapaure, "A Comparative Discussion of the Approach to Characterisation in Laconian Maritime Enterprises Ltd v Agromar Lineas Ltd 1986 (3) SA 509 (D), Laurens No v Von Hohne 1993 (2) SA 104 (W) and Society of Lloyds v Price; Society of Lloyds v Lee 2005 (3) SA 548 (T)", UNAM Students Law Review, Volume 1, No 1, 2013, available here.

Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970, as amended in South Africa to November 1979

Summary: This Act (originally published in <u>RSA GG 2902</u>) prescribes time limits for legal proceedings in respect of certain debts against provincial administrations, local authorities and the Administration of the territory of South West Africa.

Applicability to SWA: Section 7 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. There were no amendments to the Act in South Africa before or after the date of transfer.

Amendments: The Limitation of Legal Proceedings Act 25 of 1985 (OG 5145) amends section 1.

Section 95(1) of the Local Authorities Act 23 of 1992 (<u>GG 470</u>) repeals section 9, insofar as it relates to the Municipal Ordinance 13 of 1963, which is repealed by Act 23 of 1992.

Regulations: The Act makes no provision for regulations.

Cases: Sebatane & Another v Mutumba & Others 2013 (1) NR 284 (HC) (section 2(1)(a) upheld against constitutional challenge); Shiimi v City of Windhoek Municipality Council 2018 (1) NR 292 (HC) (section 2(1)(a) and (c), (2)(b)).

PRESIDENT

Former Presidents' Pension and Other Benefits Act 18 of 2004 🗐 🙀

Summary: This Act (originally published in <u>GG 3350</u>) provides for the payment of tax-free pensions and other benefits to former Presidents of Namibia and their families.

Amendments: The Act is amended by Act 14/2012 (<u>GG 5105</u>), which amends section 2 to increase the gratuity paid to former Presidents from a single gratuity to a gratuity in respect of each term of office, and substitutes item 3(a) of the Schedule with respect to residential accommodation. With an unusual degree of retrospectivity, the amending Act is deemed to have come into force on 18 December 2004.

Regulations: The Act makes no provision for regulations.

Summary: This Act (<u>GG 3567</u>) confers the status of Founding Father of the Namibian Nation on the first President of the Republic of Namibia, His Excellency Dr Sam Nujoma.

Regulations: The Act makes no provision for regulations.

Presidential Remuneration and Other Benefits Act 5 of 2016 🕎 😜

Summary: This Act (<u>GG 6045</u>) covers the remuneration payable to the President, the allowance payable to the President's spouse, medical aid benefits for the President and his or her spouse and exemption of these amounts from income tax. The President's remuneration is set at 15% above the remuneration "payable at any given time" to the Vice President, and the Vice-President's remuneration is 15% above the remuneration "payable at any given time" to the Prime Minister under the Public Office-Bearers (Remuneration and Benefits) Act 3 of 2005.

Repeals: This Act repeals the Presidential Remuneration and Other Benefits Act 15 of 2012 (<u>GG 5114</u>). The previous Act pre-dated the introduction of the Office of Vice-President by the Namibian Constitution Third Amendment Act 8 of 2014. It set the President's remuneration at 15% above the remuneration "currently payable" to the Prime Minister under the Public Office-Bearers (Remuneration and Benefits) Act 3 of 2005.

The Presidential Remuneration and Other Benefits Act 15 of 2012 in turn replaced the Presidential Emoluments Act 17 of 1990 (GG 100) – which was originally the "Presidential Emoluments and Pension Act 17 of 1990" until the short title (and other provisions) were amended by the Former Presidents' Pension and Other Benefits Act 18 of 2004 (GG 3550).

See also Proc. 32/2015 (GG 5838), issued prior to this Act, after the Vice-President was added to the Presidency by the Namibian Constitution Third Amendment Act 8 of 2014; it set the initial remuneration of the Vice-President at 10 per cent above the remuneration payable to the Prime Minister, in terms of the Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005.

Regulations: The Act makes no provision for regulations.

Notices: The remuneration of the President and the Vice-President and the pension of the first former President and former President are set out in Proc. 4/2017 (<u>GG 6259</u>), which makes reference to the authority of this Act.

COMMENTARY

Legal Assistance Centre, "Namibia's Perplexing Presidential Immunity", 2018, available here.

See also Assignment of Powers Act 4 of 1990 (CONSTITUTION).

See also Namibian Constitution First Amendment Act 34 of 1998 (CONSTITUTION) (amending Article 134 of the Namibian Constitution to provide that the first President of Namibia may hold office for three terms).

PUBLIC GATHERINGS

Demonstrations in or near Court Buildings Prohibition Act 71 of 1982 🕎 🙀





Summary: This Act (originally published in <u>RSA GG 8221</u>) prohibits demonstrations and gatherings connected with or coinciding with any court or inquest proceedings within a five-hundred-metre radius of a building containing a courtroom, except on weekends and public holidays.

Applicability to SWA: The Security Matters Proclamation (AG 29/1985) (OG 5059) made this Act applicable to South West Africa, with minor amendments.

Transfer of administration to SWA: This Act post-dated the transfer proclamations.

Amendments: Note that a portion of section 4 was *not* applied to SWA by AG 29/1985 (OG 5059). AG 29/1985 also amends section 2.

Regulations: The Act makes no provision for regulations.

Public Gatherings Proclamation, AG 23 of 1989 🕎 📻

Summary: This Proclamation (OG 5756) requires advance notice to the police of all public gatherings and prohibits the carrying of weapons (other than concealed pistols or revolvers). It also gives the police powers to place conditions on gatherings and to disperse riots.

Repeals: The Proclamation repeals portions of the Riotous Assemblies Act 17 of 1956.

Regulations: The Act makes no provision for regulations.

Notices: See General Notice 143/1992 (GG 503), which refers to the Proclamation in connection with guidelines for the holding of elections.

Cases: Namibia Economic Freedom Fighters v Inspector-General of the Namibian Police & Another 2023 (2) NR 406 (HC).

Commentary:

Law Reform and Development Commission, Report on Public Gatherings, LRDC 14, 2006, available

Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 5.1 discusses the powers of the police in relation to public gatherings).

See also Criminal Law Amendment Act 8 of 1953 (offences committed in the course of protests) (CRIMINAL LAW AND PROCEDURE).

See also Labour Act 11 of 2007 (section 76(2) on picketing) (LABOUR).

PUBLIC SERVICE

Post Office Service Act 66 of 1974, as amended in South Africa to April 1978

Summary: This Act (originally published in <u>RSA GG 4470</u>) governs employment in the Department of Posts and Telecommunications.

Applicability to SWA: Section 1 defines "Republic" to include "the territory", which is defined as "the territory of South West Africa".

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Post and Telecommunications) Transfer Proclamation (AG 12/1978) which came into force on **1 April 1978**, as amended. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Sections 55 and 56 are repealed by the Posts and Telecommunications Companies Establishment Act 17 of 1992 (GG 447).

Regulations: There are no post-independence regulations.

A single regulation concerning membership of the Staff Management Board is contained in RSA GG R.2013/1974 (RSA GG 4478).

Extensive **Post Office Service Regulations** relating to the conditions of service of post office employees are contained in RSA GN R.1373/1976 (<u>RSA GG 5252</u>), as amended prior to the date of transfer by RSA GN R.2002/1976 (<u>RSA GG 5324</u>), RSA GN R.839/1977 (<u>RSA GG 5549</u>), RSA GN R.1387/1977 (<u>RSA GG 5680</u>) and RSA GN R.2248/1977 (<u>RSA GG 5795</u>). In South Africa, these regulations were substantially amended after the date of transfer and prior to Namibian independence, but none of these amendments were made explicitly applicable to SWA.³⁸⁹ These regulations have not yet been processed for the database.

Public Service Commission Act 2 of 1990 📦 🙀

Summary: This Act (<u>GG 27</u>) provides for the establishment of a Public Service Commission in accordance with Chapter 13 of the Namibian Constitution.

Amendments: This Act is amended by the Public Service Act 13 of 1995 (<u>GG 1121</u>), brought into force on 1 November 1995 (GN 210/1995, <u>GG 1185</u>).

Regulations: The Act makes no provision for regulations.

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³⁸⁹ RSA GN R.2145/1978 (<u>RSA GG 6195</u>), RSA GN R.2259/1978 (<u>RSA GG 6217</u>), RSA GN R.250/1979 (<u>RSA GG 6299</u>), RSA GN R.801/1979 (<u>RSA GG 6409</u>), RSA GN R.333/1980 (<u>RSA GG 6862</u>), RSA GN R.1445/1980 (<u>RSA GG 7119</u>), RSA GN R.1620/1980 (<u>RSA GG 7168</u>), RSA GN R.2052/1980 (<u>RSA GG 7249</u>), RSA GN R.2095/1980 (<u>RSA GG 7260</u>), RSA GN R.439/1981 (<u>RSA GG 7467</u>), RSA GN R.1955/1983 (<u>RSA GG 8879</u>), RSA GN R.538/1984 (<u>RSA GG 9135</u>), RSA GN R.2732/1985 (<u>RSA GG 10036</u>), RSA GN R.2182/1986 (<u>RSA GG 10494</u>), RSA GN R.896/1987 (<u>RSA GG 10714</u>), RSA GN R.945/1987 (<u>RSA GG 10723</u>), RSA GN R.1065/1987 (<u>RSA GG 10739</u>), RSA GN R.1470/1987 (<u>RSA GG 10818</u>), RSA GN R.1545/1988 (<u>RSA GG 11443</u>), RSA GN R.1919/1988 (<u>RSA GG 11512</u>), RSA GN R.2038/1988 (<u>RSA GG 11534</u>), RSA GN R.2129/1988 (<u>RSA GG 11548</u>), RSA GN R.2546/1988 (<u>RSA GG 11617</u>), RSA GN R.81/1989 (<u>RSA GG 11667</u>), RSA GN R.1272/1989 (<u>RSA GG 11954</u>), RSA GN R.2146/1989 (<u>RSA GG 12119</u>).

Public Service Act 13 of 1995 🕎 🙀

Summary: This Act (originally published in <u>GG 1121</u>) governs employment in the public service. It was brought into force on 1 November 1995 by GN 210/1995 (<u>GG 1185</u>).

Repeals: The Act repeals the Public Service Act 2 of 1980, originally named the Government Service Act 2 of 1980 (OG 4116). Note that transitional provisions in section 37 of the current Act provide for the continued application of sections 10(A) and 14 of the Public Service Act 2 of 1980 to permanent secretaries, regional councils and chief regional officers under certain circumstances.

Before the enactment of the Government Service Act 2 of 1980, the South African *Public Service Act* 54 of 1957 applied to the public service in SWA. However, the "Administration of South West Africa" and the "Secretary for South West Africa" were removed from the coverage of the *Public Service Act* 54 of 1957 by RSA Proc. R.112/1980 (RSA GG 7097).

Amendments: Schedule 2 to the Act is amended by Proclamation 3/1997 (<u>GG 1500</u>), which changes "Ministry of Labour and Human Resources Development" to "Ministry of Labour".

Schedule 3 is amended by the Namibia Central Intelligence Service Act 10 of 1997 (<u>GG 1699</u>), which was brought into force on 5 June 1998 by Proc. 12/1998 (<u>GG 1876</u>) and changes "Namibia Security Intelligence Agency" to "Namibia Central Intelligence Service".

Act 33/1998 (<u>GG 1995</u>), which was brought into force on 2 August 1999 by GN 152/1999 (<u>GG 2155</u>), amends section 3 and Schedule 3 to designate the Electoral Commission as an agency in terms of the Act.

Schedule 1 is amended by Proc. 19/1999 (<u>GG 2088</u>), which substitutes the expression "Secretary to the President" for the term "Deputy Secretary to the President".

Schedule 2 is substituted in its entirety by Proc. 9/2000 (GG 2366).

Schedules 1 and 3 are amended by Proc. 4/2001 (GG 2501).

Schedule 3 to the Act is amended by the Anti-Corruption Act 8 of 2003 (<u>GG 3037</u>) which was brought into force on 15 April 2005 by GN 37/2005 (<u>GG 3411</u>), as subsequently amended by Act 10/2016 (<u>GG 6156</u>). As amended, this Act inserts the expression "Anti-Corruption Commission" into the first column and the expression "Director-General: Anti-Corruption Commission" into the second column.

Schedules 1 and 2 are substituted by Proc. 5/2005 (GG 3436), as part of a substantial reorganisation of ministries.

Schedule 2 is substituted in its entirety by Proc. 10/2009 (GG 4331).

Act 6/2012 (GG 4972), which came into force on the date of publication (25 June 2012), amends section 27.

The definition of "member of the services" in section 1 is amended by the Correctional Service Act 9 of 2012 (GG 5008), which was brought into force on 1 January 2014 by GN 330/2013 (GG 5365).

Schedule 3 is amended by the Electoral Act 5 of 2014 (<u>GG 5583</u>), which was brought into force in relevant part on 17 October 2014 by GN 208/2014 (<u>GG 5593</u>) and substitutes "Electoral Commission of Namibia" for "Electoral Commission", and "Chief Electoral Officer" for "Director of Elections".

Schedules 1 and 2 are substituted in their entirety by Proc. 35/2015 (GG 5869).

Schedules 1, 2 and 3 are substituted in their entirety by Proc. 17/2017 (GG 6387).

Act 18/2018 (GG 6808) makes several amendments to the Act to substitute the term "executive director" for the term "permanent secretary" and to provide for the appointment of executive directors on fixed-term contracts.

Schedules 1, 2 and 3 are substituted in their entirety by Proc. 3/2021 (GG 7456).

Schedule 2 is amended by Proc. 30/2022 (<u>GG 7965</u>).

Savings: Section 37(1) of the Act contains a broad savings clause:

Anything done under the Public Service Act, 1980 (Act 2 of 1980), and which could have been done under a provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

Regulations: Regulations are issued under the current Act in GN 211/1995 (<u>GG 1187</u>), as amended by GN 179/2001 (<u>GG 2607</u>) (amends Reg 12) and GN 233/2015 (<u>GG 5851</u>) (substitutes Reg 11). These regulations do not repeal any previous regulations.

Regulations issued under the previous Act which survive in terms of the savings clause are contained in AG GN 28/1981 (OG 4429), as amended by AG GN 75/1982 (OG 4632), GN 90/1986 (OG 5210), AG GN 14/1989 (OG 5664) and GN 1/1995 (OG 1006). These pre-independence regulations have been added to the database, but it should be noted that they appear to have been superseded by the regulations issued under the current Act.

Rules: The **Public Service Staff Rules** referred to in section 35 of the Act are not published in the *Government Gazette*. The same is true of the **Public Service Code of Conduct** referred to in sections 25(1)(q) and 34. However, the Code of Conduct can be accessed <u>here</u>.

Application of law: Section 10 of the Namibia Wildlife Resorts Company Act 3 of 1998 (GG 1809) deals with transfers of members of the public service to employment with the company established by the Act, and the status of existing public service employees who elect not to enter employment with the new company.

Cases:

Mwellie v Minister of Works, Transport and Communication & Another 1995 (9) BCLR 1118 (NmH) (constitutionality of prescription period upheld)

Du Toit v The Office of the Prime Minister 1996 NR 52 (LC) (Public Service Staff Code)

Kruger v Office of the Prime Minister & Another 1996 NR 321 (LC) (Public Service Staff Code)

Njathi v Permanent Secretary, Ministry of Home Affairs 1998 NR 167 (LC) (section 24(5))

Public Service Union of Namibia & Another v Prime Minister of Namibia & Others 2000 NR 82 (HC) (sections 5(1) and 19(a))

Mostert v Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC) (section 23(2) not applicable to magistrates)

Minister of Works Transport and Communication v Namupembe 2003 NR 90 (LC) (sections 13, 15, 31 and 33)

Tjivikua v The Minister of Works, Transport and Communication 2005 NR 403 (LC) (sections 24(5) and 26)

Zephania M Tjihumino v The Permanent Secretary of the Ministry of Finance & Others (Case No. LC3/2006, unreported judgment, 2 November 2006) (section 26(6))

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (Rules pertaining to Recruitment for the Public Service of Namibia issued on 20 November 2002 and 17 February 2002)

Permanent Secretary of the Ministry of Finance & Others v Ward 2009 (1) NR 314 (SC) (section 34; rules and regulations pertaining to Public Service Employees' Medical Aid Scheme)

HN & Others v Government of the Republic of Namibia 2009 (2) NR 752 (HC) (section 33; GN

211/1995)

- Onesmus v Permanent Secretary: Finance & Others 2010 (2) NR 460 (HC) (sections 5, 23(1) and 23(2)(a) and principles of administrative justice)
- Dixon v Government of the Republic of Namibia (Ministry of Education) & Another 2011(1) NR 111 (HC) (section 33)
- Gouws v Office of the Prime Minister 2011 (2) NR 433 (LC) (section 24(5)(a)(i))
- Simataa v The Public Service Commission (A12-2003) [2013] NAHCMD 306 (30 October 2013) (sections 26(5)-(6))
- Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (transitional provisions in section 37(2))
- Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (section 33)
- Mwoombola v Simaata & Others 2020 (1) NR 113 (LC) (sections 26(19) and 27(5))
- Phillemon v Minister of Justice & Another 2024 (2) NR 326 (HC) (sections 24(5) and 25(1)(a) and (o)).

Commentary:

- Frederico Links and Ellison Tjirera, "Nothing to Disclose: Critiquing Namibia's passive approach to conflict of interest", Institute for Public Policy Research, 2011, available here
- Dennis U Zaire, "Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place", *Namibia Law Journal*, Volume 6, Issue 1, 2014, available here
- Law Reform and Development Commission, *Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper*, LRDC 26, 2013, available here
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 1, April 2015, available here (sections 2 and 3 discuss issues relating to the Public Service Act 13 of 1995, including some recommendations for law reform)
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 2, May 2016, available here (section 4 discusses secondment and transfer of public servants under sections 23 and 24 of the Act)
- Office of the Attorney-General, "Frequently Asked Legal Questions", Volume 3, April 2017, available here (section 3.2 discusses the suspension of public service staff members charged with misconduct under section 26 of the Act, and the application of section 24(5) of the Act and related Public Service Staff Rules)
- Charles Keyter, ed, Namibian Governance: A Public Administration and Management Perspective, Juta, 2018.

MISCELLANEOUS

- "Administrative Directives: Certain Guidelines for Government Ministers and Public Servants" are contained in GN 171/1992 (GG 529), GN 182/1992 (GG 550), GN 16/1993 (GG 583) and GN 34/1993 (GG 609).
- An administrative directive regarding effective communication was issued to all government ministers and public servants on 23 July 1996 (GN 194/1996, GG 1362).

INTERNATIONAL LAW

African Charter on Values and Principles of Public Service and Administration, 2011.

See also **CONSTITUTION**.

See also Anti-Corruption Act 8 of 2003 (prohibiting bribes to public officials) (CRIMINAL LAW AND PROCEDURE).

See also Namibia Institute of Public Administration and Management Act 10 of 2010 (EDUCATION).

See also JUDGES.

See also LABOUR.

See also laws on pensions for government employees (PENSIONS).

See also PRESIDENT.

PURCHASE AND SALE

Formalities in respect of Contracts of Sale of Land Act 71 of 1969, as amended in South Africa to April 1978

Summary: This Act (<u>RSA GG 2427</u>) sets forth the necessary formalities in contracts for the sale of land or certain interests in land.

Applicability to SWA: Section 3 of the Act states "This Act and any amendment thereof shall apply also in the territory of South West Africa."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. There were no amendments to the Act prior to its repeal in South Africa by the *Alienation of Land Act 68 of 1981* (RSA GG 7789), which was not made applicable to SWA.

Regulations: The Act makes no provision for regulations.

Cases: Mack v Uni-Signal (Pty) Ltd 1993 NR 304 (HC); Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others 2016 (3) NR 893 (HC) (section 2); Naluno v Nanghala 2023 (4) NR 933 (SC) (section 1(1)); Schneiders & Another v Van der Merwe & Another 2024 (2) NR 585 (SC) (section 1(1)).

Note: Tjihero & Another v Kauri & Another 2018 (3) NR 879 (SC) cites section 2(1) of the Alienation of Land Act 68 of 1981 for the proposition that contracts for the sale of land must be in writing (para 27). This appears to be an oversight. The Alienation of Land Act 68 of 1981 replaced the Formalities in respect of Contracts of Sale of Land Act 71 of 1969 in South Africa, but the 1981 Act was enacted after the date of transfer and was not made explicitly applicable to SWA. The other cases cited above refer to the Formalities in respect of Contracts of Sale of Land Act 71 of 1969 as the operative law. Section 1(1) of the 1969 Act contains a similar rule that contracts for the sale of land or any interest in land (other than a lease, mynpacht or mining claim or stand) must be in writing.

Sale of Land on Instalments Act 72 of 1971, as amended in South Africa to April 1978

Summary: This Act (originally published in <u>RSA GG 3175</u>) regulates the purchase and sale of residential land, where payments are to be made in instalments over a period of at least one year.

Applicability to SWA: Section 19 of the Act states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**.

Section 3(2)(b) of the transfer proclamation stated that the reference to the "Minister" in section 2(b)(i) of the Act should be construed as including a reference to the Administrator-General (rather than being construed as the Administrator-General only).

The only amendment to the Act in South Africa after the date of transfer – the *Sale of Land on Instalment Amendment Act 74 of 1978* (RSA GG 6049) – was not made expressly applicable to SWA.

Like the Formalities in Respect of Contracts of Sale of Land Act 71 of 1969, this Act was replaced in South Africa by the Alienation of Land Act 68 of 1981 (RSA GG 7789), which was not made applicable to SWA.

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

- Sale of Land on Instalments Amendment Act 72 of 1972 (RSA GG 3571)
- Sale of Land on Instalments Amendment Act 49 of 1975 (RSA GG 4738)
- Sale of Land on Instalments Amendment Act 25 of 1976 (RSA GG 5041).

Section 4 of the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978) (OG 3743) amends section 2 of the Act.

The Native Laws Amendment Proclamation (AG 3/1979) (OG 3898) amends certain terminology.

Regulations: The Act makes provision only for regulations which set the maximum rate of interest from time to time in respect of contracts governed by the Act. The regulations setting such rates have not been researched.

Credit Agreements Act 75 of 1980, as amended in South Africa to May 1981

Summary: This Act (originally published in <u>RSA GG 7073</u>). It regulates transactions where movable goods are purchased or leased on credit. It also applies to services rendered on credit. It was applied to South West Africa as of 27 May 1981 by AG Proc. 17/1981 (<u>OG 4472</u>).

Repeals: The Act repeals the *Hire-Purchase Act 36 of 1942*.

Applicability to SWA: Section 30 of the Act, as substituted by the Credit Agreements Proclamation, AG 17 of 1981 (OG 4472), states "This Act shall be called the Credit Agreements Act, 1980, and shall come into operation on the date on which the Credit Agreements Proclamation, 1981, of the Administrator-General is published in the *Official Gazette*."

Section 1 of the Credit Agreements Proclamation, AG 17 of 1981, states "Subject to the provisions of this Proclamation, the Credit Agreements Act, 1980 (hereinafter referred to as the Act), shall apply to the territory of South West Africa." This wording did not make subsequent amendments to the Act automatically applicable to South West Africa.

Transfer of administration to SWA: Section 4 of the Credit Agreements Proclamation AG 17 of 1981 (OG 4472), which came into force on 27 May 1981, made certain amendments to the Act which had the effect of transferring the administration of the Act to SWA. This satisfies the definition of a transfer proclamation in section 1 of the General Proclamation ("a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General"). Furthermore, as noted above, the terms of the application of the Act to SWA do not make subsequent amendments to the Act automatically applicable to SWA. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Credit Agreements Amendment Act 9 of 1985* (RSA GG 9642) and the *Credit Agreements Amendment Act 53 of 1987* (RSA GG 10920) – neither of which was made expressly applicable to SWA.

Amendments: The Credit Agreements Proclamation (AG 17/1981) (OG 4472) amends section 1 and section 30 of the Act.

Act 3/2016 (GG 6043) amends sections 1, 2 and 23.

Savings: There is no savings clause in respect of things done under the repealed Act.

Regulations: Regulations issued in South Africa prior to the effective date of transfer are contained in RSA GN R.401/1981 (RSA GG 7440), which was promulgated on 27 February 1981 and came into force on 2 March 1981 (pursuant to regulation 7). However, the same topics are covered by regulations issued by the Administrator-General of SWA in AG GN 68/1981 (OG 4473), which was promulgated on 27 May 1981 and came into force on 1 July 1981 (pursuant to regulation 5). (Amendments to these SWA regulations are detailed below.) Thus, although the latter SWA regulations do not explicitly repeal the earlier South African ones, the SWA regulations clearly supersede the South African ones.

All of the other South African regulations located were issued after the effective date of transfer; after that date, the amendments made to the Act by the Credit Agreements Proclamation AG 17 of 1981 (OG 4472) empowered only the Administrator-General of SWA to make regulations for SWA under the Act.

Thus, the only regulations that appear to be currently in force under the Act are those contained in AG GN 68/1981 (OG 4473), as amended by GN 118/1984 (OG 4955), AG GN 47/1985 (OG 5035), GN 1/1986 (OG 5158), GN 177/1992 (OG 536), GN 142/2016 (OG 6052), GN 97/2017 (OG 6297) and GN 218/2020 (OG 7321).

Application of law: AG GN 67/1981 (OG 4473), which is replaced by GN 141/2016 (GG 6052), affects the application of the Act.

Cases: Courtney-Clarke v Bassingthwaighte 1990 NR 89 (HC).

Commentary: HP Masake, "The Validity and Legal Implications of *Pactum Reservati Dominii* in Credit Agreements: A Namibian Perspective", *UNAM Students Law Review*, Volume 1, Issue 1, 2013, available here.

See also LAND AND HOUSING.

See also LAND AND HOUSING PROFESSIONS.

RAILWAYS

The authors of this index have not yet been able to determine whether any pre-independence laws on railways remain in force. Further research will be conducted.

The Railway Management Proclamation 70 of 1920 (OG 46) states:

- 1. (1) The control and management of the Railways and Harbours within the Protectorate of South West Africa and of all subsidiary undertakings connected therewith hitherto controlled and managed by the Railways and Harbours Administration of the Union of South Africa (hereinafter called the Railway Administration) shall continue to be vested in and to be exercised by the Railway Administration, and for that purpose
 - (a) the Railway Administration shall and may have and exercise within the Protectorate all and several the powers and authorities and be subject to all the liabilities and duties, which it has, may exercise, or is subject to in the Union of South Africa under and by virtue of the Railways and Harbours Control and Management Act 1916, of the Union Parliament, the regulations now or hereafter existing thereunder, and the Railways and Harbours Control and Management Act Amendment Act 1920, of the Union Parliament:
 - (b) the following acts of the Union Parliament together with any regulations now or hereafter existing thereunder shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate:-

The Railways and Harbours Regulation, Control and Management Act, 1916, with the exception of the following words as contained in paragraph (e) of section 3 of the said Act, viz:

"No railway for the conveyance of public traffic and no port or harbour or similar work shall be constructed or acquired without the sanction of Parliament, but the sanction of Parliament shall not be necessary for the construction of sidings or short branch lines to mines, stores, warehouses, or other works or premises if those sidings or branch lines are not intended for public traffic."

and also with the exception of sections 59, 62 and 63 of the said Act.

The Railways and Harbours Regulation Control and Management Act Amendment Act 1920.

The Railway Board Act 1916.

The Railways and Harbours Service Act 1912.

The Railways and Harbours Strike and Service Amendment Act, 1914.

The Railways and Harbours Service Act Amendment and Further Provision Act 1917.

The Railways and Harbours. Strike and Service Act Amendment Act 1920.

The Crown Liabilities Act, 1910.

- (c) all and several [of] the provisions of the Exchequer and Audit Act 1911, of the Union Parliament, of the Exchequer and Audit Act 1911 Amendment Act 1916, of the Union Parliament and of any other law or regulation applicable within the Union defining the powers and functions of the Controller and Auditor General and the keeping and presentation of Railways and Harbours Administration Accounts, and the receipt, custody and issue of moneys of the Railway and Harbours Administration shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate.
- (2) Wherever in any Act or Regulation extended to the Protectorate by this Section the words "within the Union" or words to the like effect appear, there shall, in the application of the Act or regulation to the Protectorate, unless inconsistent with the context be read for those words the words "within the Protectorate" or words to the like effect.
- (3) Anything whatever to the contrary and in particular any provision of an agreement dated at Berlin the 23rd November 1909, between the Imperial Governor of German South-West Africa and the Otavi Minen und Eisenbahn Gesellschaft, or of any amendment or modification thereof or addition thereto notwithstanding, the railway lines from Swakopmund to Tsumeb and from Otavi to

Grootfontein shall be included in the railways referred to herein and shall be subject to the provisions of this Proclamation.

- 2. (1) For a period of twelve months from the date of this Proclamation the Railway Administration shall be entitled to occupy or retain possession of, and to use, all houses, buildings, premises, lands, rights in land, or water rights which, at the date of this Proclamation are temporarily held by it within the Protectorate for Railway and Harbour purposes or any purposes subsidiary thereto, and the title to which has not been acquired under and by virtue of the validation of any taking, expropriation or other acquisition thereof. During such period of twelve-months no action of ejectment shall be capable of being brought against the Railway Administration in respect of any such occupation, possession or use.
- (2) The owner of any property occupied, possessed or used by the Railway Administration in terms of this section shall, for the period of such occupation, possession or use, be entitled to the payment of a monthly rental therefor at a rate to be mutually agreed upon between the Railway Administration and himself and failing agreement, at a rate to be fixed by arbitration in accordance with any law of the Protectorate providing for the decision of disputes by arbitration or in the absence of any such provision, then in accordance with the provisions of the Expropriation of Lands and Arbitration Clauses Proclamation 1902, of the Transvaal Province.
- 3. No private railways shall be constructed within the Protectorate and no private railway, whether constructed before or after the date of this proclamation, shall be worked within the Protectorate without the written authority of the Governor-General first had and obtained.
- **4.** (1) Proclamation No. 14 of 1919 and Martial Law Regulations Nos. 48, 51, 56, 79, 80, 81, 82, 83, 84, 88, and 91 shall be and are hereby repealed.
- (2) All other laws repugnant to or inconsistent with any provisions of this Proclamation are to the extent of such repugnance or inconsistency hereby repealed.
- 5. Notwithstanding anything herein contained, all tariffs of rates and fares operating throughout the Railways and Harbours of the Protectorate and the subsidiary Services connected therewith at the date of this Proclamation shall continue until duly altered or amended.
- **6.** This Proclamation may be cited for all purposes as the "Railway Management Proclamation, 1920".

GOD SAVE THE KING. Given under my hand at Windhoek this 18th day of November, 1920. GIJS. R. HOFMEYR Administrator

The South-West Africa Railways and Harbours Act 20 of 1922 (SA GG 1249) also made the following laws applicable to the railways and harbours in SWA:

Railways and Harbours Service Act 28 of 1912 Railways and Harbours Strike and Service Amendment Act 7 of 1914

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Railway Board Act 17 of 1916
Railways and Harbours Regulation. (

Railways and Harbours Regulation, Control and Management Act 22 of 1916, with the exception of section 59

Railways and Harbours Service Act Amendment and Further Provision Act 33 of 1917 Public Servants (Military Service) Act 25 of 1919, so far as it relates to railway and harbour servants

Railways and Harbours Regulation Control and Management Act Amendment Act 32 of 1920.

Most of the laws contained in these lists have since been repealed.

- The SA Railways and Harbours Regulation, Control and Management Act 22 of 1916 (SA GG 737) was repealed by the SA Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 (SA GG 5908), which was applicable to SWA (section 79) and which was repealed in South Africa by the South African Transport Services Act 65 of 1981 (RSA GG 7786), which was made expressly applicable to SWA (see section 78); the South African Transport Services Act 65 of 1981 was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 (OG 5439).
- Public Servants (Military Service) Act 25 of 1919 (SA GG 973) was repealed in South Africa by the Public Servants (Military Service) Act 27 of 1944 (SA GG 3342); this repealing Act applied to SWA by

virtue of the definition of "Government" as including the Railway Administration, a provincial administration and the administration of the mandated territory of South-West Africa and expired on 15 March 1957 by virtue of SA Proc. 59 of 1957 (SA GG 5834)

- The Railways and Harbours Regulation Control and Management Act Amendment Act 32 of 1920 (SA GG 1087) was repealed by the SA Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 (SA GG 5908), which was applicable to SWA (section 79) and which was repealed in South Africa by the South African Transport Services Act 65 of 1981 (RSA GG 7786), which was made expressly applicable to SWA (see section 78); the South African Transport Services Act 65 of 1981 was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 (OG 5439).
- The *Railway Board Act 17 of 1916* (SA GG 737) as amended was repealed by the RSA *Railway Board Act 73 of 1962* (RSA GG 271), which was the clear successor to the 1916 Act but was not made explicitly applicable to SWA.
- The Railways and Harbours. Strike and Service Act Amendment Act 34 of 1920 (SA GG 1087) was repealed by the RSA Railways and Harbours Pensions Act 35 of 1971 (RSA GG 3104), which was applicable to SWA and remained in force in Namibia until it was repealed by the Repeal of Obsolete Laws Act 21 of 2018.

One exception is the *Crown Liabilities Act 1 of 1910*, which has not been repealed. According to *Mwandingi v Minister of Defence* 1990 NR 363 (HC) at 377C-D (approved on appeal in *Minister of Defence v Mwandingi* 1993 NR 63 (SC) at 77C-F):

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

The Crown Liabilities Act 1 of 2010 is accordingly listed in the more general category of LAW.

There are several other laws in the lists quoted above for which no repeals have been located:

- Railways and Harbours Service Act 28 of 1912 (SA GG 252)
- Railways and Harbours Strike and Service Amendment Act 7 of 1914 (SA GG 503)
- Railways and Harbours Service Act Amendment and Further Provision Act 33 of 1917 (SA GG 835).

These laws may still be technically in force, but they appear to have no ongoing effect.

According to research by the late Klaus Dierks:

The legal basis for the operation of the Namibian railways under South African control was the [South-West Africa Railways and Harbours] Act No. 20 of 1922 which provided that the railway and harbours in the then territory of 'South-West Africa' as they existed on the 10th of January 1920, should as from that date be transferred to and vested in the Governor-General of the (South African) Union and should be controlled, managed and worked by the Railway Administration of the Union as part of the South African railway system...

Under the pressure of the League of Nations the South African Government was obliged to amend the 'South West Africa Railways and Harbours Act, 1922' by Act No. 9 of 1930 where it was stipulated that Act 22 should be carried only 'subject to the Mandate issued by the Council of the League of Nations in pursuance of Article 22 of the Treaty of Versailles'. This Amendment Act No. 9 of 1930 to Act 20 of 1922 is of great importance, although subsequently it was ignored by the South African authorities...

The former Interim Government of Namibia has transformed the Namibian railways and adjacent transport means into a state-owned corporation 'National Transport Corporation' which came into being on 1 July 1988. The name of the corporation was changed to 'TransNamib Limited (TNL)' with effect from 1 July 1989.³⁹⁰

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³⁹⁰ Klaus Dierks, "Namibia's Railway System – Future Link To Africa", Windhoek, 31 January 1997 (updated 12 December 2004), available <u>here</u> (footnotes omitted).

The South-West Africa Railways and Harbours Act 20 of 1922 (SA GG 1249) and the South West Africa Railways and Harbours (Amendment) Act 9 of 1930 (SA GG 1854) placed the railways and harbours of South-West Africa under the administration and control of South Africa (with the 1930 amendment requiring that they be held subject to the Mandate issued by the Council of the League of Nations in pursuance of Article 22 of the Treaty of Versailles), but these laws were not actually made applicable to SWA.

Other past laws on the topic of railways include the following:

- The SA *Rating of Railway Property Act 25 of 1959* (SA GG 6202) was applicable to SWA, but was repealed both by the *South African Transport Services Act 65 of 1981* (RSA GG 7786), which was expressly applicable to SWA (section 78), and also by the Municipal Amendment Act 18 of 1985 (OG 5111); the *South African Transport Services Act 65 of 1981* was repealed by the National Transport Corporation Act 21 of 1987 (OG 5439).
- The RSA *Railways and Harbours Finances and Accounts Act 48 of 1977* (SA GG 5493) was applicable to SWA, but was repealed by the *South African Transport Services Finances and Accounts Act 17 of 1983* (RSA GG 8599), which was expressly applicable to SWA (see section 16) and was subsequently repealed by the National Transport Corporation Act 21 of 1987 (OG 5439).
- Railways fell under the National Transport Corporation Act 21 of 1987 (OG 5439) at independence, which was replaced after independence by the National Transport Services Holding Company Act 28 of 1998 (GG 1961). This Act, which provides for the incorporation of a holding company to undertake transport services, is listed in Namlex under TRANSPORTATION.

Note

The Liquor Act 6 of 1998 (GG 1843) states that it repeals Chapter V of the Railways and Harbours Control and Management Consolidation Act 70 of 1957 (SA GG 5908). However, research by the authors of this index indicates that this Act was not actually in force in Namibia at that time. Act 70 of 1957 was repealed in South Africa by the South African Transport Services Act 65 of 1981 (RSA GG 7786), which was made expressly applicable to SWA (see section 78). (Act 65 of 1981 was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 (OG 5439).) Thus, it is our theory that even if the Railways and Harbours Control and Management Consolidation Act 70 of 1957 had already been transferred to SWA in terms of a Transfer Proclamation, the repealing Act would have repealed it in respect of SWA because it was explicitly made applicable to SWA.

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, <u>GG 2499</u>).

See also GN 51/2001 (GG 2499).

See also laws on pensions paid to railway employees (PENSIONS).

See also **TRANSPORTATION**.

REGIONAL AND LOCAL GOVERNMENT

Regional Councils Act 22 of 1992 📲 🙀

Summary: This Act (originally published in <u>GG 469</u>) provides for the establishment of regional councils in respect of regions determined in accordance with Article 103 of the Constitution and sets forth the rights, powers, duties and functions of such councils. It also provides for the election of National Council members by regional councils.

The Act was brought into force on 31 August 1992 by GN 117/1992 (GG 472), except for section 45(1) which came into force on the date for regional elections fixed in terms of Article 137(6) of the Constitution. This date was set as 30 November-3 December 1992 in Proc. 39/1992 (GG 502).

Amendments: Act 17/1997 (<u>GG 1764</u>) amends sections 5 and 21 and inserts section 18A (erroneously numbered as "(19A)").

Act 30/2000 (GG 2461), which was brought into force on 5 March 2001 by GN 35/2001 (GG 2492), amends sections 1, 17, 18A (also correcting its erroneous numbering), 20, 28, and 32 and inserts sections 24A, 24B, 24C, 44A and 44B.

Act 12/2002 (<u>GG 2870</u>), which was brought into force on 15 February 2003 by GN 18/2003 (<u>GG 2915</u>), amends sections 1 and 24, substitutes section 23, and repeals sections 24A, 24B, and 24C.

Act 12/2010 (GG 4543) amends sections 7 and 8 to reduce the term of office of regional councillors from six years to five years.

Act 16/2010 (GG 4618) amends sections 1, 11, 18 and 21 to delineate the functions of chairpersons of regional councils and regional governors.

Act 7/2017 (GG 6422) amends sections 1, 18, 23, 44 and 44A. Amongst other things, these amendments provide that a member of a Regional Council who is a member of the Council's management committee is not eligible for election to the National Council, and that the appointment of the chief regional officer of a Regional Council is subject to the approval of the Minister.

Schedule 1 of the Act indicates the regions for which regional councils have been established. Schedule 2 indicates the number of council members for each of these regions. These Schedules are amended by Proc. 25/2013 (GG 5261) "so as to bring those Schedules in line with the changes effected by this Proclamation and previous Proclamations issued under section 5(3)". Proc. 25/2013 is amended by Proc. 34/2015 (GG 5853) to substitute "//Kharas" for "!Karas".

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

Regulations: Commercialisation Regulations are contained in GN 41/2001 (GG 2492).

Joint Business Venture Regulations are contained in GN 42/2001 (GG 2492).

Tender Board Regulations are contained in GN 43/2001 (GG 2492).

Rules: A Code of Conduct for members of Regional Councils is contained in GN 174/2004 (GG 3255).

Standing rules in connection with meetings of Regional Councils and committees established by Regional Councils, are contained in GN 175/2004 (GG 3255).

Fees: Remuneration, allowances and benefits for members of Regional Councils are contained in Proc. 35/2008 (<u>GG 4129</u>).

Appointments: The First Delimitation Commission was appointed before this Act was passed in Proc. 12/1990 (<u>GG 69</u>), in terms of the Constitution. Delimitation Commissions are appointed in terms of the Constitution read with section 5 of the Act by Proc. 9/1998 (<u>GG 1855</u>), Proc. 6/2002 (<u>GG 2855</u>) and Proc. 1/2013 (<u>GG 5119</u>). A Boundaries Delimitation and Demarcation Commission is announced in Proc. 17/2024 (<u>GG 8365</u>) in terms of Article 104(1) of the Constitution (as amended in 2014), without reference to this Act.

Designation and boundaries of regions: Prior to the enactment of this law, the boundaries of **regions** were established in the Boundaries of Regions and Local Authorities Proclamation 6 of 1992 (GG 368).

The boundaries of many regions are defined with reference to land boundaries established by various pre-independence government notices, proclamations and AG proclamations. Some of the pre-independence government notices and proclamations were subsequently amended. However, Proclamation 6 of 1992 does not appear to adopt the amendments; it refers to boundaries established by pre-independence government notices and proclamations, but does not say "as amended". Furthermore, some of the boundaries it adopts come from proclamations that it identifies as being repealed. This further supports the interpretation that Proclamation 6 of 1992 adopts the original boundaries described in the referenced government notices and proclamations, and not the boundaries as they were subsequently amended. Therefore, only post-independence changes which clearly affected regional boundaries in Namibia are recorded here.

Proc. 20/1992 (GG 436) amends the First Schedule of the Proclamation to correct the spelling of the Otjozondjupa Region.

Section 45(2) of Act 22/1992 (<u>GG 469</u>) amends the First Schedule of the Proclamation to re-name the Liambezi Region as Caprivi Region.

Proc. 15/1998 (GG 1940) amends the First Schedule to Proclamation 6 of 1992 to alter the boundaries of six regions (Kunene, Omusati, Oshana, Oshikoto, Okavango and Caprivi). It also renames the Okavango Region as the Kavango Region.

Proc. 7/2003 (GG 2942) amends the First Schedule to Proclamation 6 of 1992 to alter the boundaries of two regions (Omaheke and Khomas).

Proc. 25/2013 (GG 5261) amends the First Schedule to Proclamation 6 of 1992 to rename "Caprivi Region" as "Zambezi Region", and "Karas Region" as "!Karas Region" and to divide "Kavango Region" into "Kavango East Region" and "Kavango West Region".

The boundaries of the **constituencies** within the regions are set forth in Proc. 25/1992 (GG 473), which is amended by Proc. 42/1992 (GG 506) (substitutes description of boundaries of Rehoboth West Urban Constituency), Proc. 16/1998 (GG 1940) (re-divides constituencies in all regions other than Karas), Proc. 35/1999 (GG 2233) (affecting two constituencies in the Oshikoto Region), Proc. 7/2003 (GG 2942) (which affects constituencies in a number of regions), Proc. 11/2011 (GG 4767) (renaming "Soweto Constituency" in the Khomas Region as "John Pandeni Constituency") and Proc. 25/2013 (GG 5261) (which substitutes names and/or boundaries of many constituencies pursuant to the report of the Fourth Delimitation Commission). As in the case of the regions, the boundaries of some constituencies are defined with reference to land boundaries established by various pre-independence government notices, proclamations and AG proclamations – but apparently without the intention to incorporate amendments to these documents which are not referenced. In fact, some of the constituency descriptions make reference to certain Government Notices as they stood before particular amendments.

Note: Proc. 25/2013 re-named several constituencies, amongst them the "Luderitz Constituency" in !Karas Region which was re-named "!Nami≠Nüs Constituency". This was widely reported in the press as having changed the name of the local authority of Lüderitz to !Nami≠Nüs, but in fact the Proclamation was issued in terms of section 5(3) of the Regional Councils Act and does not purport to affect the names of any local authorities.

Designations of settlement areas and withdrawals of such designations have not been recorded here.

Cases: Babyface Civils CC JV Hennimma Investments & Others v //Kharas Regional Council & Others 2018 (1) NR 277 (HC) (section 37(2); tender award), upheld on appeal in Babyface Civils CC JV Hennimma Investments CC & Others v //Kharas Regional Council & Others 2020 (1) NR 1 (SC).

Commentary:

- Christian Keulder & Deon van Zyl, "Delimiting Regional and Constituency Boundaries: Considering the Impact of Malapportionment, Population Size, Population Density, and Area Size", Institute for Public Policy Research, 2002, available here
- Graham Hopwood, "Regional Councils and Decentralisation: At the Crossroads", Namibia Institute for Democracy, 2005, available here
- Graham Hopwood, "Regional development and decentralisation" in H Melber (ed), *Transitions in Namibia: What Changes for Whom?*, Uppsala: Nordiska Afrikainstitutet, 2007
- Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, "Risking Corruption: Regional and Local Governance in Namibia", Institute for Public Policy Research, 2012, available here
- "Delimitation underway", Institute for Public Policy Research, 2013, available here.

Local Authorities Act 23 of 1992 🕎 🙀

Summary: This Act (originally published in <u>GG 470</u>) provides for the determination of local authorities and the establishment of local authority councils. It also sets forth the powers, duties and functions of such councils. It was brought into force on 31 August 1992 by GN 118/1992 (<u>GG 472</u>), with the exception of section 94(5), which is deemed to have come into force retroactively on 1 April 2018 pursuant to section 96(1A) of the Act as inserted by Act 3/2018 (<u>GG 6578</u>).

Repeals: The Act repeals the Municipal Ordinance 13 of 1963, the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970.

It also repeals a number of other laws, including the Native Administration Proclamation 11 of 1922 (OG 82), the Local Loans Ordinance 7 of 1927 (OG 234), the Natives (Urban Areas) Proclamation 56 of 1951 (OG 1634), the Housing Schemes Loans Ordinance 24 of 1952 (OG 1690), the Establishment of Local Government in Coloured Townships Ordinance 34 of 1965, and the Co-operation in relation to Housing Schemes Act 20 of 1982 (OG 4726).

Amendments: The Registration of Deeds in Rehoboth Amendment Act 35 of 1994 (<u>GG 995</u>) amends section 78.

Act 3/1997 (GG 1584) substitutes sections 5 and 6 to provide that the second local government elections shall be held on a party list system and defer the delimitation of local authorities into wards until after the second elections. These substitutions also increase the maximum size of municipal councils from 12 to 15, and strengthen the affirmative action provisions for women in respect of the second local elections.

Act 14/1997 (GG 1743) amends section 8 of the Act in connection with the postponement of Namibia's second local authority elections.

Act 24/2000 (GG 2455), which was brought into force on 15 February 2001 by GN 29/2001 (GG 2486), amends the Act substantially.

Act 17/2002 (GG 2887), which was brought into force on 15 February 2003 by GN 19/2003 (GG 2915), amends the Act substantially. Amongst other things, it eliminates provisions for a ward system and extends the period for the third general elections for members of local authority councils.

The Electoral Amendment Act 7 of 2003 (<u>GG 3013</u>), which was brought into force on 8 July 2003 by GN 146/2003 (<u>GG 3014</u>), substitutes the definition of 'party list' in section 1 of the Act.

Act 27/2003 (GG 3126) substitutes the date for elections for members of local authority councils in section 8 of the Act.

Act 14/2004 (GG 3330), which was brought into force on 27 November 2004 by GN 254/2004 (GG 3331), amends sections 1 and 30 and inserts section 94C.

The Electoral Amendment Act 4 of 2006 (GG 3759) amends section 1 of the Act.

Act 1/2009 (GG 4258) amends section 8 on the dates for elections of local authority councils.

Act 3/2018 (GG 6578) amends the Act substantially. Note that there are two versions of GG 6578.

The Water Resources Management Act 11 of 2013 (<u>GG 5367</u>), brought into force on 29 August 2023 by GN 268/2023 (<u>GG 8187</u>), amends section 30(1).

The following Proclamations and Government Notices – which establish new local authorities, change the designations of local authorities or alter the size of local authority councils – amend or substitute the Schedules to the Act accordingly:

Schedule 1 is amended by Proc. 16/1994 (<u>GG 873</u>) and Proc. 18/1994 (<u>GG 893</u>); substituted by Proc. 13/1997 (<u>GG 1639</u>); and amended by Proc. 22 of 1997(<u>GG 1714</u>).

Schedule 2 is substituted by Proc. 28/1992 (<u>GG 479</u>), Proc. 13/1997 (<u>GG 1639</u>), Proc. 14/1997 (<u>GG 1673</u>), GN 194/2003 (<u>GG 3054</u>), GN 233/2004 (<u>GG 3313</u>), GN 155/2006 (<u>GG 3699</u>), GN 4/2008 (<u>GG 3974</u>), GN 130/2011 (<u>GG 4767</u>) and GN 59/2015 (<u>GG 5721</u>).

Schedule 3 is substituted by Proc. 27/1992 (<u>GG 479</u>), Proc. 22/1993 (<u>GG 718</u>), Proc. 1/1996 (<u>GG 1241</u>), Proc. 6/1996 (<u>GG 1454</u>), GN 234/2004 (<u>GG 3313</u>) and GN 70/2005 (<u>GN 3456</u>); amended by GN 193/2010 (<u>GG 4556</u>); and substituted by GN 6/2011 (<u>GG 4649</u>), GN 225/2013 (<u>GG 5264</u>), GN 54/2015 (<u>GG 5721</u>), GN 56/2015 (<u>GG 5721</u>) and GN 61/2015 (<u>GG 5721</u>).

Savings: Section 95(5) of this Act contains a broad savings clause -

Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.

Regulations: The following regulations were made in terms of the current Act:

Model Pound Regulations are contained in GN 191/1994 (GG 945).

Model Electricity Supply Regulations are contained in GN 71/1996 (GG 1283).

Model Water Supply Regulations are contained in GN 72/1996 (GG 1283).

Model Sewerage and Drainage Regulations are contained in GN 99/1996 (GG 1311).

Model Regulations for the Control of Dogs in Local Authority Areas are contained in GN 166/2008 (GG 4077). These regulations repeal a number of regulations made under the Municipal Dog Tax Ordinance 13 of 1967.

Note that there is a corrected version of <u>GG 4077</u>. The correct version states at the top: "This gazette replaces Government Gazette No. 4077 of 3 July 2008."

Commercialisation Regulations are contained in GN 39/2001 (<u>GG 2492</u>), as amended by GN 113/2007 (<u>GG 3864</u>).

Joint Business Venture Regulations are contained in GN 40/2001 (<u>GG 2492</u>), which is replaced by GN 114/2007 (<u>GG 3864</u>).

Tender Board Regulations were originally contained in GN 30/2001 (<u>GG 2486</u>), which was subsequently replaced by General Notice 73/2011 (<u>GG 4685</u>).

Recruitment and Selection Regulations for Local Authority Councils are contained in GN 131/2019 (GG 6913).

The following pre-independence regulations appear to survive under the current law: 391

Model Staff Regulations made in terms of the Municipal Ordinance 13 of 1969 are contained in GN 119/1969 (OG 3025), as amended by GN 10/1970 (OG 3047), GN 38/1971 (OG 3151), GN 162/1971 (OG 3217), GN 225/1973 (OG 3359), GN 128/1977 (OG 3606), GN 128/1980 (OG 4224), and GN 30/1981 (OG 4456). It is possible that some of these regulations may not survive, given that the savings clause in section 95(5) of the Local Authorities Act 23 of 1992 is limited to regulations that could be made under a provision of the current Act. Regulations pertaining to the appointment, re-appointment, suspension and discharge of staff members are to be prescribed by the Minister under section 94A of the current Act, whereas model regulations pertain to matters which local authorities may regulate under section 94 of the current Act. However, some of the regulations in the Model Staff Regulations relate to staff matters such as remuneration, leave and overtime, which are not listed under regulations to be prescribed by the Minister in section 94A and may fall under local authorities' general power to make regulations "in relation to any matter which the local authority council may consider necessary or expedient to prescribe or regulate in order to attain or further the objects of this Act" (section 94(1)).

Model Regulations for Municipal Public Libraries made in terms of the Municipal Ordinance 13 of 1969 are contained in GN 85/1977 (OG 3597), as amended by GN 39/1979 (OG 3909). These regulations survive pursuant to the savings clause in section 95(5) of the Local Authorities Act 23 of 1992, as section 94(1)(r)(iii) gives local authorities the power to regulate libraries, meaning that section 94(2)(a) authorises model regulations on this topic.

Rules: A Code of Conduct for Members of Local Authority Councils is published in General Notice 139/2015 (GG 5704).

Standing Rules for meetings of Local Authority Councils are contained in General Notice 140/2015 (GG

³⁹¹ No explicit repeals have been located for the following race-based regulations, but they cannot survive under section 95(5) of the current law because they could not be authorised by any provision of the current law:

Native Reserve Regulations made under the Native Administration Proclamation 11 of 1922 and contained in GN 68/1924 (OG 137), as amended, cannot survive under section 95(5) as there is no provision for "native reserves" in the current law.

The same is true of the **Native Reserve Regulations: Berseba and Bondels Reserves** made under the Native Administration Proclamation 11 of 1922 and contained in GN 239/1930 (OG 394), as amended.

The **Regulations for Natives in Proclaimed Areas** made under the Natives (Urban Areas) Proclamation 56 of 1951 and contained in RSA GN R.65 of 1951 (reprinted in <u>OG 1891</u>), as amended, also could not be authorised by any provision of the current law.

Regulations in Respect of Nomination Meetings for Village Management Boards made in terms of the Village Management Boards Ordinance 14 of 1963 are contained in GN 97/1964 (OG 2566), but could not be authorised by any provision of the current law since Village Management Boards no longer exist.

Regulations relating to Consultative Committees for Coloured Townships made in terms of the Establishment of Local Government in Coloured Townships Ordinance 34 of 1965 are contained in GN 151/1966 (OG 2736), could not be authorised by any provision of the current law since Consultative Committees for Coloured Townships no longer exist.

Individual local authorities: Regulations, rules and tariffs issued by individual local authorities and notices concerning valuations in individual local authorities are not recorded here.

Designation of local authorities: Prior to the enactment of this law, the boundaries of local authorities were established in the Boundaries of Regions and Local Authorities Proclamation 6 of 1992 (GG 368), as amended by Proc. 20/1992 (GG 436) and Act 22/1992 (GG 469). The local authorities covered were Aranos, Ariamsvlei, Aris, Aroab, Aus, Bethanie, Gobabis, Gochas, Grootfontein, Grünau, Hentiesbaai, Kalkveld, Kalkrand, Kamanjab, Kappsfarm, Karasburg, Karibib, Keetmanshoop, Koës, Leonardville, Lüderitz, Maltahöhe, Mariental, Noordoewer, Okahandja, Okakarara, Omaruru, Omitara, Ondangwa, Ongwediva, Opuwo, Oshakati, Otavi, Otjiwarongo, Outjo, Rehoboth, Stampriet, Summerdown, Swakopmund, Tsumeb, Usakos, Warmbad, Windhoek, Witylei and Wlotzkasbaken.

Four additional villages (**Berseba**, **Gibeon**, **Tses** and **Uis**) are proclaimed by Proc. 27/1992 (<u>GG 479</u>), which accordingly substitutes Schedule 3 of the Act.

Four additional towns (**Arandis, Katima Mulilo, Khorixas** and **Rundu**) are proclaimed in Proc. 28/1992 (<u>GG 479</u>), which accordingly substitutes Schedule 2 of the Act.

Five villages are deproclaimed in Proc. 22/1993 (GG 718) (Aris, Kappsfarm, Omitara, Summerdown and Wlotzkasbaken), which accordingly substitutes Schedule 3 of the Act.

Walvis Bay is established as a municipality in Proc. 16/1994 (<u>GG 873</u>), as amended by Proc. 18/1994 (<u>GG 893</u>) – both of which accordingly substitute Schedule 1 of the Act. Proc. 15/1994 (<u>GG 873</u>) ends the application of the Walvis Bay Municipal Ordinance 26 of 1978 in Walvis Bay, effective 16 August 1994. The Walvis Bay and Off-Shore Islands Amendment Act 14 of 1998 (<u>GG 1884</u>) provides for the retrospective application of certain provisions of the Local Authorities Act in Walvis Bay.

The history of the Walvis Bay municipal area is set forth in *Walvis Bay Municipality & Another v Occupiers of the Caravan Sites at Long Beach Caravan Park, Walvis Bay* 2007 (2) NR 643 (SC) at 647I-648C.

Five villages are deproclaimed in Proc. 1/1996 (GG 1241) (Ariamsvlei, Grünau, Kalkfeld, Noordoewer and Warmbad), which accordingly substitutes Schedule 3 of the Act.

The village of **Aus** is deproclaimed in Proc. 6/1996 (<u>GG 1454</u>), which accordingly substitutes Schedule 3 of the Act.

Eenhana and **Outapi** are proclaimed as towns in Proc. 14/1997 (<u>GG 1673</u>), which accordingly substitutes Schedule 2 of the Act. (Proc. 18/1997 (<u>GG 1698</u>), Proc. 26/1997 (<u>GG 1738</u>) and Proc. 31/1997 (<u>GG 1749</u>) amend the election date set for these towns in Proc. 14/1997.)

Helao Nafidi is proclaimed as a town in GN 194/2003 (<u>GG 3054</u>), which accordingly substitutes Schedule 2 of the Act. Its boundaries are amended by GN 11/2005 (GG 3379).

Okahao is established as a town by GN 233/2004 (<u>GG 3313</u>), which accordingly substitutes Schedule 2 of the Act. Its boundaries are amended by GN 170/2016 (<u>GG 6086</u>) and GN 27/2020 (<u>GG 7177</u>).

Oshikuku is established as a village by GN 234/2004 (<u>GG 3313</u>), which accordingly substitutes Schedule 3 of the Act.

Ruacana is established as a village by GN 70/2005 (GN 3456), which accordingly substitutes Schedule 3 of the Act. Its boundaries were altered by GN 176/2014 (GG 5579).

Nkurenkuru is established as a town by GN 155/2006 (GG 3699), which accordingly substitutes

Schedule 2 of the Act.

Omuthiya is established as a town by GN 4/2008 (<u>GG 3974</u>), which accordingly substitutes Schedule 2 of the Act.

Uis is abolished as a local authority in GN 193/2010 (GG 4556), which amends Schedule 3 of the Act accordingly.

Otjinene is proclaimed as a village in GN 6/2011 (<u>GG 4649</u>), which accordingly substitutes Schedule 3 of the Act.

Note that GN 6/2011 contains a confusing error of wording. It does not "substitute section 3(4)(c) of the Local Authorities Act, 1992, for Schedule 3 of that Act" as it states; instead, *pursuant to* section 3(4)(c) of the Act, it *substitutes Schedule 3* of the Act.

Oranjemund is established as a town by GN 130/2011 (<u>GG 4767</u>), which accordingly substitutes Schedule 2 of the Act.

Bukalo is established as a village by GN 225/2013 (GN 5264), which accordingly substitutes Schedule 3 of the Act.

Divundu is established as a village by GN 54/2015 (<u>GG 5721</u>), which accordingly substitutes Schedule 3 of the Act.

Okongo is established as a village by GN 56/2015 (<u>GG 5721</u>), which accordingly substitutes Schedule 3 of the Act.

Oniipa is established as a town by GN 59/2015 (<u>GG 5721</u>), which accordingly substitutes Schedule 2 of the Act. GN 59/2015 is corrected by GN 102/2015 (<u>GG 5670</u>).

Tsandi is established as a village by GN 61/2015 (<u>GG 5721</u>), which accordingly substitutes Schedule 3 of the Act.

The current local authorities in Namibia are as follows (57 in total): Arandis, Aranos, Aroab, Berseba, Bethanie, Bukalo, Divundu, Eenhana, Gibeon, Gobabis, Gochas, Grootfontein, Helao Nafidi, Hentiesbaai, Kalkrand, Kamanjab, Karasburg, Karibib, Katima Mulilo, Keetmanshoop, Khorixas, Koës, Leonardville, Lüderitz, Maltahöhe, Mariental, Nkurenkuru, Okahandja, Okahao, Okakarara, Okongo, Omaruru, Omuthiya, Ondangwa, Ongwediva, Oniipa, Opuwo, Oranjemund, Oshakati, Oshikuku, Otavi, Otjinene, Otjiwarongo, Outapi, Outjo, Rehoboth, Ruacana, Rundu, Stampriet, Swakopmund, Tsandi, Tses, Tsumeb, Usakos, Walvis Bay, Windhoek, and Witvlei.

Designation of local authorities as municipality, town or village: Proc. 13/1997 (<u>GG 1639</u>) changes the designation of **Hentiesbaai** from a town to a municipality and amends Schedules 1 and 2 of the Act accordingly. The designations of several local authorities (**Karibib, Karasburg, Usakos, Ruacana, Aranos, Oshikuku, Otavi**) are altered in GN 193/2010 (<u>GG 4556</u>), which designates all of these local authorities as towns and amends Schedules 1-3 of the Act accordingly.

Size of local authority councils: Proc. 22/1997 (GG 1714) increases the number of members of the **Swakopmund Municipal Council** from 7 to 10, and increases the number of members of the **Windhoek Municipal Council** from 10 to 15. This Proclamation also amends Schedule 1 of the Act.

Schedule 2 of the Act, which deals with the **number of members on town councils**, is substituted by GN 194/2003 (GG 3054).

Changes to the boundaries of local authorities: As noted above, prior to the enactment of this law, the boundaries of local authorities were established in the Boundaries of Regions and Local Authorities

Proclamation 6 of 1992 (GG 368), as amended by Proc. 20/1992 (GG 436) and Act 22/1992 (GG 469). The boundaries of many local authorities were initially defined with reference to land boundaries established by various pre-independence government notices, proclamations and AG proclamations. Some of the pre-independence government notices and proclamations were subsequently amended. However, the Boundaries of Regions and Local Authorities Proclamation 6 of 1992 (GG 368) does not appear to adopt these amendments; it refers to boundaries established by pre-independence government notices and proclamations, but does not say "as amended". In fact, some of the local authority descriptions make reference to certain Government Notices as they stood *before* particular amendments. Furthermore, some of the boundaries referenced in Proclamation 6 of 1992 come from proclamations that it identifies as repealed. This further supports the interpretation that Proclamation 6 of 1992 adopts the original boundaries described in the referenced government notices and proclamations, and not the boundaries as they were subsequently amended. Therefore, only post-independence changes which clearly affected local authority boundaries in Namibia are recorded here, in alphabetical order by the name of the affected local authority.

Local authority	Boundary changes
Divundu	GN 258/2024 (GG 8438)
Gobabis	GN 331/2024 (GG 8507)
Grootfontein	GN 160/2019 (GG 6932), GN 279/2019 (GG 7009) and
	GN 253/2020 (GG 7361)
Karibib	GN 115/2011 (GG 4756), GN 330/2024 (GG 8507)
Lüderitz	GN 250/2003 (GG 3108), GN 242/2013 (GG 5284) and
	GN 135/2014 (<u>GG 5547</u>).
Okahandja	GN 114/2011 (<u>GG 4756</u>), GN 216/2011 (<u>GG 4834</u>), GN 127/2014
	(<u>GG 5533</u>), GN 235/2014 (<u>GG 5613</u>), GN 126/2015 (<u>GG 5772</u>),
	GN 127/2015 (<u>GG 5772</u>), GN 128/2015 (<u>GG 5772</u>), GN 224/2017
	(<u>GG 6397</u>), GN 158/2019 (<u>GG 6932</u>), GN 159/2019 (<u>GG 6932</u>),
	GN 365/2019 (<u>GG 7069</u>), GN 15/2024 (<u>GG 8307</u>) and
	GN 246/2024 (<u>GG 8428</u>)
Omaruru	GN 267/2012 (<u>GG 5069</u>), GN 129/2015 (<u>GG 5772</u>),
	GN 1445/2015 (GG 5783) and GN 20/2021 (GG 7459)
Ongwediva	GN 238/2012 (<u>GG 5038</u>)
Opuwo	GN 233/2009 (<u>GG 4386</u>)
Otavi	The boundaries are altered by GN 145/2011 (GG 4774). However,
	all previous legal references to the boundaries of Otavi were
	subsequently repealed and replaced by GN 248/2012 (GG 5049).
	These boundaries were amended by GN 27/2020 (GG 7177).
Otjiwarongo	GN 130/2015 (<u>GG 5772</u>)
Outjo	GN 217/2011 (<u>GG 4834</u>), GN 35/2012 (<u>GG 4883</u>), GN 132/2022
D 1 1 4	(<u>GG 7800</u>) and GN 76/2024 (<u>GG 8357</u>)
Rehoboth	GN 400/2024 (<u>GG 8551</u>)
Stampriet	GN 169/2016 (<u>GG 6086</u>)
Swakopmund	GN 202/2014 (<u>GG 5590</u>)
Tsumeb	Proc. 17/1993 (<u>GG 668</u>), GN 39/2010 (<u>GG 4440</u>), GN 115/2012
	(<u>GG 4941</u>) and GN 26/2020 (<u>GG 7177</u>) Note that GN 39/2010 is erroneously labelled as GN 49 on the
	list of contents in the relevant <i>Gazette</i> .
Usakos	GN 65/2010 (GG 4451)
Walvis Bay	Proc. 17/1999 (GG 2088)
Windhoek	Proc. 26/1992 (GG 479) (incorporation of Brakwater into the
	municipality under the previous Municipal Ordinance 13 of 1963),
	GN 184/2011 (GG 4801), GN 260/2022 (GG 7890), GN 209/2024
	(<u>GG 8402</u>), GN 311/2024 (<u>GG 8494</u>) and GN 312/2024 (<u>GG 8494</u>).
	The boundaries were also altered by GN 305/2016 (GG 6209),
	but this notice was withdrawn by GN 52/2017 (GG 6262).

Wards: A notice pertaining to inspection of a map of local authorities showing the demarcation of each local authority into wards by the Delimitation Commission is contained in GN 92/1996 (GG 1300). However, Act 17/2002 (GG 2887), which was brought into force on 15 February 2003 by GN 19/2003 (GG 2915), eliminates the provisions in the Act pertaining to a ward system.

Other: The members of the **Rehoboth Town Council** were removed from office by GN 68/2001 (<u>GG</u> <u>2516</u>), pursuant to section 92 of the Act. The powers of the Council were transferred to the Minister of Regional and Local Government and Housing and a date was set for the election of a new council.

The members of the **Omaruru Municipal Council** were suspended by GN 326/2013 (<u>GG 5364</u>), pursuant to section 92, and the powers of the Council were transferred to the Minister of Regional and Local Government and Housing.

The members of the **Rehoboth Town Council** were suspended by GN 45/2018 (<u>GG 6546</u>), pursuant to section 92, and the powers of the Council were transferred to the Minister of Regional and Local Government and Housing.

The members of the **Okahandja Municipal Council** were suspended by GN 82/2020 (<u>GG 7146</u>), pursuant to section 92(2), and the powers of the Council were transferred to the Minister of Regional and Local Government and Housing.

The members of the **Rundu Town Council** were suspended by GN 83/2020 (<u>GG 7146</u>), pursuant to section 92(2), and the powers of the Council were transferred to the Minister of Regional and Local Government and Housing.

The members of the **Town Council of Karasburg** were suspended by GN 29/2024 (<u>GG 8329</u>), pursuant to section 92(2), and the powers of the Council were transferred to the Minister of Urban and Rural Development.

The Minister assigned the power to establish a traffic service to the **Rundu Town Council** in terms of section 30(1)(k)(x) of the Act in GN 50/2024 (GG 8346).

Appointments: The First Delimitation Commission was appointed before this Act was passed in Proc. 12/1990 (<u>GG 69</u>), in terms of the Namibian Constitution. A Delimitation Commission was appointed in terms of section 5 of the Act by Proc. 9/1995 (<u>GG 1089</u>).

Cases:

- Sv Negongo 1992 NR 352 (HC) (Regulation 48 of the Street and Traffic Regulations of the Municipality of Windhoek)
- Council of the Municipality of Windhoek v Petersen & Others 1998 NR 8 (HC) (discusses the powers of local authorities to regulate trade by hawkers and pedlars, specifically Regulation 15(3) of the Hawker and Pedlar Regulations of the Municipality of Windhoek, in relation to Article 21(2) of the Namibian Constitution and section 94(3) of the Act)
- Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC (refers to section 239 of the predecessor to this Act, the Municipal Ordinance 13 of 1963)
- The Council of the Municipality of Windhoek & Another v Kruger NLLP 1998 (1) 161 NLC (discusses the exercise of the power to litigate by a local authority established in terms of the Act)
- Municipality of Walvis Bay v Du Preez 1999 NR 106 (LC) (section 27 of the Act; also sections 47 and 61 of the Walvis Bay Municipal Ordinance 26 of 1978 repealed by Proc. 15/1994)
- Hailulu v Council 2002 NR 305 (LC) (section 27(3))
- RBH Construction & Another v Windhoek Municipal Council & Another 2002 NR 443 (HC) (Tender Board Regulations)
- Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC (interpretation of section 27, as amended in 2000, and transition from the Municipal Ordinance 13 of 1963)

- The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 207 (HC) (a municipal council has legal personality to sue and be sued, but not a municipality); Walvis Bay Municipality & Another v Occupiers of the Caravan Sites at Long Beach Caravan Park, Walvis Bay 2007 (2) NR 643 (SC) (dealing with the Walvis Bay Municipal Ordinance 26 of 1978 which applied to the municipality prior to its reintegration into Namibia)
- Grobelaar & Another v Council of the Municipality of Walvis Bay & Others 2007 (1) NR 259 (HC) (sections 50 and 63(2))
- Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (powers and duties of Council and requirement of ratification, citing sections 27(5), 30, 31, 31A, 63 and 93(1))
- Erongo Regional Council v Wlotzkasbaken Home Owners Association 2009 (1) NR 252 (SC) (discussion of history of Wlotzkasbaken)
- Seagull's Cry CC v Council of the Municipality of Swakopmund & Others 2009 (2) NR 769 (HC) (sections 6(3), 11(1) and 14(2))
- Council of the Municipality of Keetmanshoop v Van Rooi & Others 2012 (2) NR 525 (HC) (section 27(1))
- Oka Investments (Pty) Ltd v Chair of the Tender Board, City of Windhoek & Another 2013 (4) NR 916 (HC) (Tender Board Regulations: interpretation of regulations 6 and 27; cancellation of an agreement made in terms of those regulations is a commercial act and not a reviewable administrative act; note that the Tender Board Regulations are erroneously cited in the case as being contained in GN 73/2011 instead of General Notice 73/2011).
- Luderitz Town Council v Shipepe 2013 (4) NR 1039 (LC) (section 27(1)(c)(ii)(bb))
- Strauss & Another v Witt & Another 2014 (1) NR 213 (HC) (section 65)
- Walvis Bay Municipal Council v Kangumu 2014 (4) NR 978 (LC) (a municipality has no legal personality and therefore cannot sue or be sued; it is the local authority council which has legal personality; section 1 read with sections 3(1), 6(1) and 6(3))
- Kandetu v Karibib Town Council 2014 (4) NR 1097 (LC) (section 29(4)(a)-(b))
- Hugo v Council of Municipality of Grootfontein 2015 (1) NR 73 (SC) (section 27)
- Helao Nafidi Town Council v Shivolo 2016 (2) NR 401 (HC) (breach of fiduciary duty of CEO found to have violated Act and Tender Board Regulations)
- Vaatz v Municipal Council of the Municipality of Windhoek 2017 (1) NR 32 (SC) (section 30(1)(q); policy and procedure for street re-naming pursuant to this provision; Art 18 of Constitution does not apply)
- Nghidimbwa v Swapo Party of Namibia & Others 2017 (4) NR 1107 (HC) (principles of natural justice, particularly notice of intended action and opportunity to be heard, must be applied by political party before exercising powers under section 13(1)(g), and withdrawal pursuant to that section must be rationally connected to the purpose for which the power was given).³⁹²
- Kamwi v Chairperson of the Council of the Local Authority of Katima Mulilo & Others 2019 (2) NR 435 (HC) (compliance with statutory requirements in sections 30(1)(t) and 63(2) are part and parcel of any contract for sale and purchase of municipal property)
- Mouse Properties Ninety Eight CC v Minister of Urban and Rural Development & Others 2022 (2) NR 426 (SC) (sections 30(1)(t) and 63)
- Jonas v Ongwediva Town Council 2020 (1) NR 50 (SC) (section 16(1)(c) of Communal Land Reform Act 5 of 2002 inapplicable where communal land is withdrawn pursuant to section 4(1)(b) of this Act, whereupon State acquires all the rights provided for by section 16(2) of the Communal Land Reform Act; discussed in application for condonation)
- Theron v Village Council of Stampriet & Another 2020 (2) NR 524 (HC) (section 36 of Act does not give a local authority the power to cut off water supply for non-payment, noting that the local authority is entitled to take lawful steps to collect payment for utility charges)

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³⁹² This case references the "Amushigambo matter" without any citation. The case referred to is *Angeline Amushingamo & 3 Others v Swapo Party & 6 Others*, Case No. (P) A 147/04; reasons delivered on 14 June 2004. The name of the first plaintiff appears in the relevant Government Gazette as "Angeline Amushigamo". General Notice 138/2004 (GG 3237).

- Municipal Council of Windhoek v Pioneerspark Dam Investment CC 2021 (3) NR 670 (SC) (sections 63(2) and 31A discussed in context of considering proposed amendments to pleadings)
- Lady Pohamba Private Hospital Operations (Pty) Ltd v Municipal Council of the Municipality of Windhoek & Others 2022 (4) NR 1109 (HC) (Windhoek Municipality: Waste Management Regulations (GG 4650), reg 35: municipality cannot by resolution divest itself of, or fetter, its discretion under this regulation)
- Natural Namibia Meat Producers (Pty) Ltd v Council for the Town of Aranos 2023 (1) NR 131 (HC) (supply of electricity under section 30(1)(f) must be regulated by an agreement)
- Mbango v Omuthiya Town Council & Others 2024 (1) NR 114 (NLD) (effect of defective notice in terms of section 27(3)(b)(i)).

Commentary:

- Dianne Hubbard & Kaveri Kavari, Affirmative Action for Women in Local Government in Namibia, Legal Assistance Centre, 1993
- Kapena L Tjihero, Doufi Namalambo & Dianne Hubbard, Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections, Legal Assistance Centre, 1998, available here
- Clever Mapaure, "Jurisprudential aspects of proclaiming towns in communal areas in Namibia", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available here
- Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, "Risking Corruption: Regional and Local Governance in Namibia", Institute for Public Policy Research, 2012, available here
- Max Weylandt, "The Local Authorities Amendment Bill: Time for a Pause and a Re-think", Institute for Public Policy Research, 2015, available here
- Marvin R Awarab, "Corporate Governance and Municipalities: Are the King III Principles Exportable to Local Government in Namibia?" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available here.

Trust Fund for Regional Development and Equity Provisions Act 22 of 2000

Summary: This Act (originally published in <u>GG 2451</u>) establishes a Trust Fund to be used for financial and technical assistance to the development of regions and local authorities, and assistance with the implementation of decentralisation programmes. It was brought into force on 5 March 2001 by GN 38/2001 (GG 2492).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 5 and substitutes section 11. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Appointments: The Board of Trustees is announced in GN 189/2001 (GG 2615).

Decentralisation Enabling Act 33 of 2000 🕎 🔁

Summary: This Act (<u>GG 2464</u>) provides for and regulates the decentralisation of central government functions to regional and local authorities. It was brought into force on 5 March 2001 by GN 34/2001 (<u>GG 2492</u>).

Regulations: The Act makes no provision for regulations.

Notices: Certain functions are delegated to regional councils in GN 173/2007 (<u>GG 3907</u>), GN 83/2009 (<u>GG 4260</u>) as amended by GN 363/2022 (<u>GG 7966</u>), GN 84/2009 (<u>GG 4260</u>) as amended by GN 364/2022 (<u>GG 7966</u>), GN 11/2015 (<u>GG 5668</u>), GN 33/2016 (<u>GG 5961</u>), GN 83/2018 (<u>GG 6590</u>), GN 134/2018 (<u>GG 6646</u>), GN 388/2019 (<u>GG 7077</u>), GN 271/2020 (<u>GG 7377</u>), GN 22/2021 (<u>GG 7459</u>), GN 184/2021 (<u>GG 7619</u>), GN 84/2022 (<u>GG 7764</u>) - which is repealed and replaced by GN 342/2022 (<u>GG 7943</u>) – and GN 142/2024 (<u>GG 8371</u>).

Cases: Babyface Civils CC JV Hennimma Investments & Others v //Kharas Regional Council & Others 2018 (1) NR 277 (HC) (delegation versus devolution; in respect of delegation, regional council acts as an agent for the relevant line ministry); upheld on appeal in Babyface Civils CC JV Hennimma Investments CC & Others v //Kharas Regional Council & Others 2020 (1) NR 1 (SC).

Commentary:

Graham Hopwood, *Regional Councils and Decentralisation: At the Crossroads*, Namibia Institute for Democracy, 2005

Graham Hopwood, "Regional development and decentralisation" in H Melber (ed), *Transitions in Namibia: What Changes for Whom?*, Uppsala: Nordiska Afrikainstitutet, 2007

Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, "Risking Corruption: Regional and Local Governance in Namibia", Institute for Public Policy Research, 2012, available here

Kitty McGirr, "Regional Government in Namibia: Is Decentralisation A Reality?", Institute for Public Policy Research, 2021, available here.

Local Authorities Fire Brigade Services Act 5 of 2006 🕎 🙀

Summary: This Act (<u>GG 3760</u>) provides for the establishment, maintenance, utilisation, co-ordination and standardisation of fire brigade services by local authorities. It was brought into force on 13 August 2010 by GN 175/2010 (<u>GG 4540</u>).

Repeals: The Act repeals the Fire Brigade Services Ordinance 10 of 1978 (OG 3792), as amended.

Regulations: The repealed law authorised only local authority regulations. Section 32(3) of the current Act states:

Any regulation made by, for or in respect of a local authority under a provision of law repealed by subsection (1) is deemed, to the extent that it is consistent with this Act, to have been made in terms of section 20 of this Act.

Local regulations are not currently recorded here or included in the annotated laws database.

Model Fire Brigade Services Regulations issued under this Act are contained in GN 176/2010 (GG 4540). In terms of section 20 of the Act, these are applicable until a town council, village council or regional council makes its own regulations. Note that model regulations 13, 14, 15(6), 15(7), 15(8) and 18(3) come into force only after the expiry of a period of six months after the date of publication of the model regulations (13 August 2010).

Other regulations are contained in GN 177/2010 (GG 4540).

INTERNATIONAL LAW

*African Charter on the Values and Principles of Decentralisation, Local Government and Local Development, 2014

See also Electoral Act 5 of 2014 (regional and local elections) (ELECTIONS).

See also Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 (remuneration, benefits and conditions of service of members of Regional Councils) (**CONSTITUTION**).

See also Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 (pensions for members of Regional Councils) (**PENSIONS**).

REHOBOTH GEBIET

The legal history of the Rehoboth Gebiet is summarised in the BACKGROUND DOCUMENT to NAMLEX, available here.

See Registration of Deeds in Rehoboth Act 93 of 1976 (DEEDS).

See Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (repealed, but still has some ongoing effect) (INHERITANCE)

See Agricultural Land Act 5 of 1981 (Rehoboth) (LAND AND HOUSING).

See generally *Rehoboth Bastergemeente v Government of the Republic of Namibia & Others* 1996 NR 238 (SC).

REVENUE

Petroleum (Taxation) Act 3 of 1991 🕎 🙀

Summary: This Act (originally published in <u>GG 179</u>) provides for the levying and collection of a petroleum income tax and additional profits tax in respect of certain income received or accrued in connection with petroleum exploration, development or production operations. It came into force on 30 September 1992, in terms of section 25 as amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992 (GG 489).

Amendments: The Act is amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992 (<u>GG 489</u>) (section 25) and the Petroleum Laws Amendment Act 24 of 1998 (<u>GG 1954</u>), which was brought into force on 1 April 1999 by GN 44/1999 (<u>GG 2075</u>) (sections 1, 6, 8, 9, 10, 14, 16, 19, 21, 22 and insertion of a new Part IIIA).

Regulations: The Act makes no provision for regulations.

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (GG 6486), which was brought into force with effect from 6 April 2021 by GN 55/2021 (GG 7496).

Amortization Fund Repeal Act 7 of 1992 🕡 🙀

Summary: This Act (<u>GG 391</u>) repeals the Amortization Fund of South West Africa Act 11 of 1987 and provides that all moneys in the Amortization Fund be transferred to the State Revenue Fund. It has no other ongoing effect.

Repeals: The Act repeals the Amortization Fund of South West Africa Act 11 of 1987.

Moratorium on the Payment of Stamp Duty or Transfer Duty in Respect of Rationalisation Schemes Act 13 of 1993 ₩ ₩

Summary: This Act (originally published in <u>GG 696</u>) provides that certain acquisitions of marketable securities or property or the transfer of certain rights or obligations under mortgage bonds under a scheme for the rationalization of a group of companies shall be exempt from stamp duty and transfer duty. It also provides for the assessment of companies in any such group for income tax purposes in certain circumstances. It was brought into force on 1 September 1993 by GN 97/1993 (GG 707).

Amendments: Act 26/1994 (<u>GG 968</u>), which is deemed to have come into force on 1 September 1993, amends sections 1 and 2.

Regulations: The Act makes no provision for regulations.

Transfer Duty Act 14 of 1993 🕶 🔄

Summary: This Act (originally published in <u>GG 697</u>) consolidates and amends the laws relating to transfer duty. It was brought into force on 1 September 1993 by GN 96/1993 (GG 707).

Repeals: The Act repeals the Transfer Duty Act 40 of 1949.

Amendments: Act 20/2003 (GG 3119) substitutes section 2 and amends section 9 of the Act; this amendment came into force on the first day of the month following the month of its publication in the *Government Gazette*, which made it effective as of 1 January 2004.

Act 3/2010 (GG 4472) amends section 2; this amendment came into force one month after the date of its publication in the *Government Gazette*, which made it effective from 29 May 2010.

Act 8/2010 (GG 4494) amends section 2 and came into force on the date of promulgation (1 June 2010).

Act 6/2013 (<u>GG 5208</u>) amends section 2 and came into force on the first day of the month following the month of its publication in the *Government Gazette*, which made it effective as of 1 June 2013.

Act 6/2024 (GG 8444), which was brought into force on 1 October 2024 by GN 280/2024 (GG 8460), amends sections 1 and 2 and substitutes "Executive Director" for "Permanent Secretary" throughout the Act.

Regulations: The Act makes no provision for regulations.

Application of law: Export Processing Zones are exempted from transfer duties by section 5 of the Export Processing Zones Act 9 of 1995 (GG 1069).

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (<u>GG 6486</u>), which was brought into force with effect from 6 April 2021 by GN 55/2021 (<u>GG 7496</u>).

Cases: Permanent Secretary of Finance & Another v Shelfco Fifty-One (Pty) Ltd 2007 (2) NR 774 (SC); Ellis & Others NNO v Noabeb 2015(2) NR 325 (HC) (simulated transaction intended to evade transfer duty is in fraudem legis of the Act and therefore void; analysed in John Balero and Phillipus Balhao, "The application of trust law in Ellis v Noabeb: Did the court raise the correct issue?", Namibia Law Journal, Volume 11, Issue 1, 2019).

Stamp Duties Act 15 of 1993 📳 🗐

Summary: This Act (<u>GG 698</u>) consolidates and amends the laws relating to stamp duties. It was brought into force on 1 September 1993 by GN 98/1993 (<u>GG 707</u>).

Repeals: The Act replaces the *Stamp Duties Act* 77 of 1968.

Amendments: Act 12/1994 (originally published in <u>GG 924</u>) amends section 5 and Schedule 1, with retroactive effect from 1 September 1993.

Act 12/2011 (GG 4861) substitutes Item 16 in Schedule I. This amendment came into force on the first day of the month following its publication in the *Government Gazette*, making it effective from 1 January 2012. (See section 2 of Act 12/2011.)

Note that Act 12/2011 erroneously refers throughout to Schedule I. The principal Act does not contain a Schedule I.

Act 7/2013 (<u>GG 5209</u>) substitutes Item 16 in Schedule 1 and came into force on the first day of the month following the month of its publication in the *Government Gazette*, making it effective as of 1 June 2013.

Note that the heading of section 1 of the amending Act erroneously refers to Schedule I. The text of section 1 of the amending Act, however, correctly refers to Schedule 1. The principal Act does not contain a Schedule I.

Act 10/2022 (GG 7889) amends section 23 and Schedule 1, with effect from 1 January 2023.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 1, repeals sections 34-35 and amends Schedule 1.

Act 7/2024 (<u>GG 8445</u>), which was brought into force on 1 October 2024 by GN 279/2024 (<u>GG 8460</u>), amends sections 1 and 5 and Schedule 1, and makes some global substitutions.

Regulations: Regulations and notices made under the repealed Act survive in terms of section 36(2). Pre-independence regulations have not been researched.

Regulations are authorised by section 33 of this Act. No post-independence regulations have been promulgated.

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (<u>GG 6486</u>), which was brought into force with effect from 6 April 2021 by GN 55/2021 (<u>GG</u> 7496).

Notices: Notices made under the repealed Act survive in terms of section 36(2). Since independence, a notice under the previous Act was issued in GN 12/1990 (<u>GG 33</u>) (new issue of stamps) and regulations concerning the demonetization and withdrawal of stamps were issued in GN 13/1990 (<u>GG 33</u>).

Exemptions: Export Processing Zones are exempted from stamp duties by section 5 of the Export Processing Zones Act 9 of 1995 (<u>GG 1069</u>).

Cases: Denker v Ameib Rhino Sanctuary (Pty) Ltd 2017 (4) NR 1173 (SC) (effect of non-compliance)' WS Trading and Investment CC & Others v Capx Finance Namibia (Pty) Ltd 2021 (3) NR 694 (SC) (section 12; default judgment on suretyship agreements is not void simply because the underlying agreements lacked stamps).

Value-Added Tax Act 10 of 2000 🗐 📻

Summary: This Act (originally published in <u>GG 2337</u>) replaces sales tax with VAT. It was brought into force on 27 November 2000 by GN 220/2000 (<u>GG 2402</u>).

Repeals: The Act repeals the Sales Tax Act 5 of 1992 (<u>GG 386</u>) and the Additional Sales Levy Act 11 of 1993 (<u>GG 694</u>).

Amendments: Act 34/2000 (<u>GG 2465</u>) amends the Act and the Schedules to the Act substantially. It is deemed to have come into force on the date of commencement of the primary Act. (See section 34 of Act 34/2000.)

Tariff changes were made to Schedule II by GN 54/2002 (<u>GG 2717</u>), under the authority of paragraph 3 of that Schedule, but Schedule II was subsequently repealed by Act 6 of 2002.

The primary Act is substantially amended by Act 6/2002 (GG 2818), which came into force on 1 November 2002. (See section 15 of Act 6/2002, which provides that the amending Act shall come into force on the first day of the month following the month in which it is published in the *Gazette*.)

Act 12/2004 (GG 3282) amends the Act and the Schedules to the Act substantially. This amending act came into force on the first day of the month following the month of publication, which made it effective on 1 October 2004 – except for sections 1 and 2 which are deemed to have come into force on 1 October 2002, section 4 which is deemed to have come into force on 28 November 2002, and section 10 to the

extent that it relates to subparagraph (o) of paragraph 2 of Schedule V, which is deemed to have come into force on 1 April 2004. (See section 11 of Act 12/2004 regarding commencement dates.)

Act 2/2007 (GG 3874) – which came into force the first day of the month following the month of publication, making it effective as of 1 August 2007 (with the exception of section 2, which is deemed to have commenced on 27 November 2000) – amends sections 1, 18, 19, 27 and Schedule IV, and inserts section 46A. (See section 7 of Act 2/2007 regarding commencement dates.)

Act 4/2008 (GG 4084) amends Schedule III. It came into force on the first day of the month following the month of publication, which made it effective on 1 August 2008. (See section 2 of Act 4/2008.)

Act 4/2010 (GG 4474) amends sections 3, 7, 8, 18, 46A, Schedule III and Schedule IV. It came into force on the first day of the month following the month of publication, which made it effective on 1 May 2010. (See section 8 of Act 4/2010.)

Act 11/2011 (GG 4860) amends sections 23, 28, Schedule III and Schedule IV. It came into force on the first day of the month following the month of publication, which made it effective on 1 January 2012. (See section 5 of Act 11/2011.)

Act 12/2015 (GG 5911) amends sections 14-17, 23, 61 and Schedule IV, and inserts sections 37A and 84A. It came into force on the first day of the month following the month of publication, which made it effective on 1 January 2016. (See section 5 of Act 12/2015.)

Act 14/2022 (<u>GG 7993</u>) amends sections 1, 15, 18, 25, 31, 38, 39 and Schedule III. It came into force on the first day of the month following the month of publication, which made it effective on 1 January 2023. (See section 10 of Act 14/2022.)

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 1.

Act 5/2024 (<u>GG 8443</u>), which was brought into force on 1 October 2024 by GN 281/2024 (<u>GG 8460</u>), amends sections 14, 15, 21, 39, and 53 and substitutes "Executive Director" for "Permanent Secretary" throughout the Act.

Regulations: There is no savings clause for regulations which may have been made under the repealed laws. Regulations are authorised by section 84 of the Act, but none have yet been promulgated.

Application of law: See General Notice 279/2002 (<u>GG 2823</u>) with respect to the implementation by Telecom Namibia of the amendments to section 1 of this Act by Act 34 of 2000.

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 (<u>GG 6486</u>), which was brought into force with effect from 6 April 2021 by GN 55/2021 (<u>GG 7496</u>).

Notices: A special court for hearing value added tax appeals is constituted in GN 321/2017 (GG 6490).

GN 282/2024 (GG 8460) sets the rate of interest applicable to value-added tax *refunds* at 7.50 percent per annum, effective 1 October 2024. GN 283/2024 (GG 8460) sets the rate of interest applicable to value-added tax *debts* at 11.25 percent per annum, effective 1 October 2024.

Cases:

Commissioner of Inland Revenue v Namsov Fishing Enterprises (Pty) Ltd 2008 (1) NR 89 (SC) Moolman & Another v Jeandre Development CC 2016 (2) NR 322 (SC) (discussion of meaning of "taxable supply")

Stuttafords Stores Namibia (Pty) Ltd v Commissioner of Inland Revenue & Others 2020 (4) NR 967 (HC) (review powers of High Court not ousted by section 38(9) of this Act)

Acting Deputy Sheriff for Walvis Bay v Deutsche Bank AG & Another 2021 (1) NR 272 (HC) (section 1 definition of "foreign-going ship" and "exported from Namibia" as applied to ship under arrest in Namibia; application of definition of "entertainment" in section 18).

Namibia Revenue Agency Act 12 of 2017 🗐 🙀

Summary: This Act (<u>GG 6486</u>) establishes the Namibia Revenue Agency ("NamRA") and gives it authority over the administration of seven different revenue laws:

- Customs and Excise Act 20 of 1998
- Export Levy Act 2 of 2016
- Income Tax Act 24 of 1981
- Petroleum (Taxation) Act 3 of 1991
- Stamp Duties Act 15 of 1993
- Transfer Duty Act 14 of 1993
- Value-Added Tax Act 10 of 2000.

It was brought into force with effect from 6 April 2021 by GN 55/2021 (GG 7496).

Regulations: Regulations are authorised by section 37 of the Act, but none have yet been promulgated.

Notices: The holders of certain offices at the Namibia Revenue Agency are designated as *ex officio* Commissioners of Oaths, with effect from 2 December 2024, by GN 363/2024 (<u>GG 8520</u>).

Application of law: Section 26 and section 39(11) of the Namibia Revenue Agency Act 12 of 2017 both provide that a reference in any law to the Commissioner of Inland Revenue or the Commissioner of Customs and Excise must now be construed as a reference to the Commissioner of the Revenue Agency. This presumably also applies to references to the Commissioner *for* Inland Revenue and the Commissioner *for* Customs and Excise.

See also CUSTOMS AND EXCISE.

See also FINANCE AND DEVELOPMENT.

See also IMPORT AND EXPORT.

See also INCOME TAX.

See also Petroleum Products and Energy Act 13 of 1990 (fuel levies) (FUEL AND ENERGY).

See also REGIONAL AND LOCAL GOVERNMENT.

ROADS AND ROAD TRANSPORTATION

Advertising on Roads and Ribbon Development Ordinance 30 of 1960 🕎 🙀





Summary: This Ordinance (originally published in OG 2254) regulates the display of advertisements near public roads, the erection of structures near certain proclaimed roads, access to land from such roads and drive-in cinemas. It is extended to Eastern Caprivi, Owambo, Kavango and Damaraland by Act 5/1982 (OG 4618).

Amendments: The Ordinance is amended by Ord. 3/1967 (OG 2777) and by the Entertainment Tax Abolition Ordinance 11 of 1972 (OG 3260).

Regulations: Regulations are authorised by section 12 of the Act. No pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Administration of Act: Prior to independence, the administration of certain provisions of this Ordinance was assigned to the Minister of Transportation by GN 179/1986 (OG 5254).

After independence, the President assigned the administration of the provisions of this law to the Minister of Works, Transport and Communication, with effect from 17 July 1992, in GN 98/1992 (GG 455) which was issued pursuant to section 3(1)(a) of the Assignment of Powers Act 4 of 1990. The assignment of administration included the administration of any provisions of the Ordinance or any regulations made under it which confer or impose powers, duties and functions on the President - but excluded any provision conferring a power which is required to be exercised by proclamation in the Gazette or conferring a power to enter into international agreements. The functions assigned to the Minister by this Act have been assigned to the Roads Authority established by the Roads Authority Act 17 of 1999 (GG 2215) (GN 169/2000, GG 2374).

Roads Ordinance 17 of 1972 🚾 📻

Summary: This Ordinance (originally published in OG 3268) consolidates the laws relating to roads. It is applied to Eastern Caprivi, Owambo, Kavango and Damaraland, insofar as it was not already so applicable, by Act 5/1982 (OG 4618), with effect from 1 July 1980.

Repeals: The Ordinance repeals the Roads Ordinance 28 of 1962 (OG 2114), which repealed the Roads Ordinance 17 of 1953, which in turn repealed the Roads Ordinance 46 of 1952.

Amendments: The Ordinance is amended by –

Ord. 16/1973 (OG 3340) Ord. 22/1973 (OG 3363)

Ord. 10/1974(OG 3411)

Ord. 18/1975(OG 3496)

Ord. 6/1980 (OG 4136)

AG 21/1984 (OG 4926)

Act 13/1986 (OG 5235)

Act 3/1993 (GG 620).

Savings: Section 70(2) of the current Ordinance provides as follows:

All proclamations, notices and regulations made, promulgated or framed in terms of the provisions of any law repealed by this Ordinance shall, if not inconsistent with the provisions hereof, remain in force until revoked or amended in terms of the provisions of this Ordinance: Provided that every proclaimed road proclaimed in terms of the provisions of any law prior to the commencement of this Ordinance shall continue to exist as it has thus been proclaimed and shall retain the classification and number allocated to it.

Additional savings clauses in the chain of successive laws have not been recorded here as no regulations were located under any of the Roads Ordinances.

Regulations: Regulations are authorised by section 66 of the Act. No pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Application of law: See Application of laws relating to Roads in Eastern Caprivi, Owambo, Kavango and Damaraland Act 5 of 1982 (OG 4618), which is deemed to have come into force on 1 July 1980 (section 5 of that Act). See also Walvis Bay and Off-shore Islands Act 1 of 1994 (GG 805), Schedule, Part IV, clause 3, which was brought into force on 1 March 1994 by Proc. 6/1994 (GG 806).

Notices: Certain functions assigned to the Minister and the Permanent Secretary by this Act have been assigned to the Roads Authority established by the Roads Authority Act 17 of 1999 (<u>GG 2215</u>) in GN 171/2000, <u>GG 2374</u>.

Notices relating to specific roads and road closures have not been recorded here.

Appointments: Roads Boards for areas outside local authorities are established by Proclamation 4/1995, which came into force on 1 October 1995 (GG 1063).

Cases: Wirtz v Orford & Another 2005 NR 175 (SC) (section 64(8)); Telecom Namibia Ltd v Regenstein (Pty) Ltd & Another 2013 (1) NR 128 (HC) (section 48).

National Road Safety Act 9 of 1972, as amended in South Africa prior to Namibian independence are

Summary: This Act (originally published in <u>RSA GG 3415</u>) establishes the National Road Safety Council and includes provisions intended to promote road safety.

Repeals: The Act repeals the South African Road Safety Council Act 1 of 1960.

Applicability to SWA: Section 1 defines "Republic" to include "any territory in respect of which Parliament is competent to legislate". Section 29 states "This Act and any amendment thereof shall also apply in every territory in respect of which Parliament is competent to legislate."

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, this Act is excluded from the operation of section 3(1) of the General Proclamation by section 3(1)(f), meaning that the administration of the Act was not transferred to SWA.

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

- National Road Safety Amendment Act 46 of 1974 (RSA GG 4435)
- General Law Amendment Act 57 of 1975 (RSA GG 4760)
- National Road Safety Amendment Act 40 of 1976 (RSA GG 5067)
- National Road Safety Amendment Act 16 of 1980 (RSA GG 6925)
- National Road Safety Amendment Act 59 of 1981 (RSA GG 7765)
- Motor Vehicle Accidents Act 84 of 1986 (RSA GG 10419)
- Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 (RSA GG 11944).

Regulations: There is no savings clause for regulations issued under the repealed Act. Regulations are authorised by section 27 of this Act.

National Road Safety Council Service Regulations were issued prior to independence in RSA GN R.1100/1973 (<u>RSA GG 3957</u>) as amended by RSA GN R.1297/1976 (<u>RSA GG 5327</u>) and by RSA GN R.2003/1979 (<u>RSA GG 6654</u>).

No post-independence regulations have been promulgated.

Notices: The levy payable on a motor vehicle in terms of section 25(1) of the Act, subject to the other provisions of that section, is fixed at R1,50 with effect from 1 May 1983 by RSA GN 2064/1982 (<u>RSA GG 8389</u>). This appears to be the last levy fixed in South Africa prior to Namibian independence.

Related international agreements:

*African Road Safety Charter, 2016

Road Transportation Act 74 of 1977, as amended in South Africa to March 1978 🕎 😜

Summary: This Act (originally published in RSA GG 5589) was brought into force on 1 January 1978 by RSA GN 361/1977 (RSA GG 5837). The Act, as amended, is repealed by the Road Traffic and Transport Act 22 of 1999 (GG 2251). However, the repeal of this Act and its amendments by section 112 of the Road Traffic and Transport Act 22 of 1999 is not yet in force *insofar as these laws relate to passenger transport*. See GN 52/2001 (GG 2503).

Repeals: The Act repeals the *Motor Carrier Transportation Act 39 of 1930*, as amended, which was made applicable to SWA by the *Motor Carrier Transportation Amendment Act 44 of 1955* (republished in OG 1917).

Applicability to SWA: Section 46 states "The provisions of this Act and any amendment thereof shall apply also in the Territory, including the Eastern Caprivi Zipfel." Section 1 defines "Administration", "local authority", "province", "Republic" and "Territory" accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. Section 3(1)(i) of the transfer proclamation excluded the reference to the "Republic" in the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning given to it in the definition section of the Act (South Africa and SWA). None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: There were no amendments to the Act in South Africa prior to the date of transfer. After the date of transfer, the Act was amended by several SWA enactments.

Act 29/1980 (OG 4357), which was brought into force by AG 15/1981 (OG 4454) and repealed by the Road Traffic and Transport Act 22 of 1999 (GG 2251), made substantial amendments to the Act to abolish the power to set aside different transportation facilities for different population groups.

Further substantial amendments are contained in Act 18/1981 (OG 4570), Act 16/1982 (OG 4722) and AG Proc. 33/1985 (OG 5060).

Act 16/1982 (OG 4722) was brought into force by AG 23/1983 (OG 4850). Sections 3, 9 and 24 of AG 33/1985 (OG 5060) came into force on the date of publication: 15 June 1985. Sections 1(a), (b), (c), (e), (f), (g), (h), (i) and (j), 2, 4-8 and 10-22 were brought into force on 3 November 1989 by AG Proc. 60/1989 (OG 5848). Sections 1(d) and 23 were repealed by the Second Road Transportation Act 20 of 1988 (OG 5650) without ever being brought into force.

Section 59 of the National Transport Corporation Act 21 of 1987 (OG 5439) (which was brought into force in relevant part by AG GN 19/1988 (OG 5567) and repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961) with effect from 1 April 1999) amends section 1.

Act 8/1988 (OG 5561) amends section 21.

Act 20/1988 (OG 5650) amends section 2, as well as a previous amending proclamation, AG Proc. 33/1985 (OG 5060).

AG Proc. 61/1989 (<u>OG 5849</u>), which is brought into force by AG Proc. 69/1989 (<u>OG 5870</u>), amends the Act substantially.

The Air Services Amendment Act 6 of 1991 (GG 216) amends sections 1 and 2A.

Application of law: The Roads Transportation Proclamation AG 31/1978 (OG 3749) makes this Act applicable to Owamboland (where the Owambo Legislative Council had previously exercised authority over road transportation). This Proclamation, which came into force on its date of publication (15 May 1978), provides that the Act shall be applicable to "Owambo" from 15 May 1978 subject to two conditions:

- (a) A reference to the date of commencement of the Act in Ovambo shall be deemed to be the commencement date of the Proclamation (15 May 1978).
- (b) Any local transportation area and local road transportation board, as referred to in section 48(1) of the Act, which existed immediately before the Proclamation came into effect shall cease to exist from that date.

The Roads Transportation Proclamation AG 31/1978 also repeals RSA GN R.1738/1976 (RSA GG 5293), which transferred authority over motor transportation in Ovambo to Ovambo authorities, and provides that from the date of repeal it shall be deemed not to have been issued.

Exemptions: Section 4 of the Cross-Border Road Transportation Act 18 of 1996 (<u>GG 1384</u>) exempts from the provisions of this Act cross-border road transportation covered by both Act 18 of 1996 and a cross-border road transportation agreement. However, note that the Cross-Border Road Transportation Act 18 of 1996 was repealed by the Road Traffic and Transport Act 22 of 1999 (<u>GG 2251</u>).

Certain goods are exempted from the Act by GN 100/1989 (<u>OG 5850</u>), which withdraws GN 46/1985 (OG 5084), which in turn withdraws AG GN 119/1981 (OG 4517) and AG GN 70/1979 (OG 3999).

GN 90/1992 (GG 448) withdraws AG GN 101/1989 (OG 5851), which prohibited consideration of permits for transportation of certain goods between certain places by rail.

Administration of law: After independence, in GN 98/1992 (GG 455) issued pursuant to section 3(1)(a) of the Assignment of Powers Act 4 of 1990, the President assigned the administration of the provisions of this law to the Minister of Works, Transport and Communication with effect from 17 July 1992. The assignment of administration included the administration of any provisions of the Ordinance or any regulations made under it which confer or impose powers, duties and functions on the President - but excluded any provision conferring a power which is required to be exercised by proclamation in the *Gazette* or conferring a power to enter into international agreements.

Regulations: Regulations made under this Act survive in terms of the Road Traffic and Transport Act 22 of 1999 which has replaced it *except* as it relates to passenger transport; thus regulations other than those relating to passenger transport are listed under the entry for that law.

Regulations made under the surviving portions of this Act on passenger transport are contained in GN 112/2022 (GG 7782), which repeals the Road Transportation Regulations published in RSA GN R.2653/1977 (RSA GG 5843), as amended.³⁹³

Notices: The Public Road Carrier Permits Proclamation (AG 55/1978) (OG 3807) extends the validity of certain permits issued pursuant to the Act for a limited time period.

Cases:

Kersten t/a Witvlei Transport v National Transport Commission & Another 1991 NR 234 (HC) S v Khoza 1992 NR 158 (HC)

Roads Contractor Company Act 14 of 1999 🕎 🙀

Summary: This Act (originally published in <u>GG 2208</u>) provides for the incorporation of a company to undertake road construction and maintenance previously carried out by the Department of Transport. It was brought into force on 25 October 1999 by GN 236/1999 (<u>GG 2220</u>), with the exception of sections 5-9 and 11, which came into force on the transfer date, which is the date set in terms of section 10(1) for "transfer to the Company, with effect from a date determined by the Minister by notice in the *Gazette*, such assets, liabilities, rights or obligations of the State which relate to or are connected with the construction and maintenance of roads by the Department of Transport of the Ministry responsible for Transport, as may, in the opinion of the Minister, be required by the Company for the effective achievement of its objects" (section 14 of Act 14 of 1999). This date was set as 1 April 2000 (GN 24/2003, GG 2922).

Amendments: Act 11/2002 (<u>GG 2868</u>) amends sections 1 and 4, to extend the object of the company to include construction works as well as roads.

The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1-10. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Notices: GN 7/2002 (<u>GG 2679</u>) sets 1 April 2000 as the effective date of transfer of title, rights and interest in immovable property described in the Schedule to the Roads Contractor Company Ltd.

GN 194/2002 (GG 2845) sets 1 April 2000 as the effective date of transfer for other listed immovable property.

GN 24/2003 (GG 2922) sets 1 April 2000 as the date for the transfer of certain specified liabilities and obligations of the State to the Roads Contractor Company Ltd. – including "the liabilities and obligations of the State, which relate to or are connected with the construction and maintenance of roads by the Department of Transport of the Ministry of Works, Transport and Communication, as are specified in Column 1 of the Schedule to this Notice, with the respective values specified in Column 2 thereof".

GN 25/2003 (GG 2922) similarly sets 1 April 2000 as the date for the transfer of certain specified movable assets.

GN 92/2004 (GG 3198) and GN 202/2006 (GG 3746) both set 1 April 2000 as the date of transfer of

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³⁹³ The repealed regulations were amended by AG GN 56/1978 (<u>OG 3817</u>), AG GN 50/1981 (<u>OG 4455</u>), AG GN 171/1983 (<u>OG 4852</u>) and AG GN 99/1989 (<u>OG 5848</u>). None of the amendments have been repealed, but they would have no independent effect.

title, rights, and interests in certain immovable property to the Roads Contractor Company Ltd.

GN 122/2007 (GG 3877) sets 12 December 2006 as the date of transfer of title, rights, and interests in certain immovable property to the Roads Contractor Company Ltd.

Appointments: Appointments of members of the Board of Directors of the Roads Contractor Company are announced in GN 11/2009 (GG 4210) and GN 80/2012 (GG 4901).

Roads Authority Act 17 of 1999 🕡 🙀

Summary: This Act (originally published in <u>GG 2215</u>) establishes a Roads Authority to manage the national road network of Namibia. It was brought into force on 25 October 1999 by GN 235/1999 (<u>GG 2220</u>), with the exception of sections 15(1)(a) and 16, which was brought into force on 1 April 2000 by GN 90/2000 (<u>GG 2303</u>).

Amendments: Act 20/2004 (<u>GG 3352</u>) amends sections 6 and 7, which deal with the term of office of directors of the board and the minister's power to remove a director from office.

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4, 9, 11 and 14, and deletes section 6. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 26 of the Act, but none have yet been promulgated.

Notices: The date set for the transfer of assets, liabilities, rights and obligations of the State to the Roads Authority in terms of section 27(1) of the Act is set as 1 April 2000 (GN 91/2000, <u>GG 2303</u>).

The functions given to the Minister under the Advertising on Roads and Ribbon Development Ordinance 30 of 1960 are assigned to the Roads Authority by GN 169/2000 (GG 2374).

Certain functions given to the Minister and the Permanent Secretary by the Roads Ordinance 17 of 1972 are assigned to the Roads Authority by GN 171/2000 (GG 2374).

Appointments: Appointments of members of the Board of Directors of the Roads Authority are announced in GN 76/2000 (<u>GG 2287</u>), GN 102/2001 (<u>GG 2544</u>), GN 97/2003 (<u>GG 2974</u>), GN 251/2003 (<u>GG 3108</u>), GN 9/2005 (<u>GG 3374</u>), GN 21/2006 (<u>GG 3584</u>), GN 11/2009 (<u>GG 4210</u>) and GN 80/2012 (<u>GG 4901</u>).

Commissions: The appointment of a Commission of Inquiry into the activities, affairs, management and operation of the Roads Authority is announced in Proc. 21/2003 (<u>GG 3031</u>) and GN 172/2003 (<u>GG 3031</u>). An amendment of the Appointment of the Commission of Inquiry by the addition of regulation 17 was announced in Proc. 1/2004 (<u>GG 3127</u>). An extension of the period for submission of the final report of this Commission of Inquiry is announced in GN 1/2004 (<u>GG 3127</u>).

Cases: New Era Investment (Pty) Ltd v Roads Authority 2014 (2) NR 596 (HC), upheld on appeal in New Era Investment (Pty) Ltd v Roads Authority & Others 2017 (4) NR 1160 (SC) (discusses the application of the Ministry of Works and Transport Policy in respect of a tender decision by the Roads Authority).

Road Fund Administration Act 18 of 1999 🗐 🙀

Summary: This Act (originally published in <u>GG 2217</u>) establishes a Road Fund Administration to manage a road user charging system. It was brought into force on 25 October 1999 by GN 234/1999 (<u>GG 2220</u>), with the exception of sections 15(1)(b) and 16, which was brought into force on 1 April 2000 by GN 92/2000 (<u>GG 2305</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4, 9, 11 and 14, and deletes section 6. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Act 11/2022 (GG 7990), which has not yet been brought into force, amends sections 18 and 29.

The Vehicle Mass Act 1 of 2024 (<u>GG 8349</u>), which has not yet been brought into force, amends section 16.

Act 9/2024 (GG 8471), which has not yet been brought into force, amends section 18.

Regulations: Regulations are authorised by section 28 of the Act, but none have yet been promulgated.

Notices: Local authorities which are eligible for funding under the Act are listed in GN 262/2000 (GN 2438).

Fees and levies: Registration and annual licence fees are contained in GN 94/2000 (GG 2305).

This notice is replaced by GN 134/2000 (<u>GG 2340</u>), as amended by GN 91/2001 (<u>GG 2531</u>), GN 71/2002 (<u>GG 2734</u>), GN 76/2003 (<u>GG 2946</u>), GN 66/2004 (<u>GG 3181</u>), General Notice 70/2005 (<u>GG 3410</u>) and General Notice 88/2006 (<u>GG 3614</u>).

Entry fees for foreign vehicles are set forth in GN 263/2000 (<u>GG 2438</u>), as amended by GN 114/2001 (<u>GG 2544</u>), GN 70/2002 (<u>GG 2734</u>), GN 198/2002 (<u>GG 2855</u>), GN 90/2003 (<u>GG 2956</u>), GN 65/2004 (<u>GG 3181</u>), General Notice 69/2005 (<u>GG 3410</u>) and General Notice 88/2006 (<u>GG 3614</u>).

Road user charges, including entry fees for foreign vehicles and registration and annual licence fees, are set in General Notice 126/2006 (<u>GG 3640</u>) – which repeals Government Notice 134/2000 (<u>GG 2340</u>), Government Notice 263/2000 (<u>GG 2438</u>) and General Notice 88/2006 (<u>GG 3614</u>).

Road user charges, including entry fees for foreign vehicles and registration and annual licence fees, are again set in General Notice 70/2007 (GG 3816) – which repeals General Notice 126/2006 (GG 3640) – and which is amended by General Notice 29/2009 (GG 4220), General Notice 68/2010 (GG 4438), General Notice 61/2011 (GG 4677), General Notice 177/2015 (GG 5733), General Notice 168/2016 (GG 6029), General Notice 116/2017 (GG 6293), General Notice 171/2018 (GG 6585), General Notice 90/2019 (GG 6880), General Notice 243/2020 (GG 7253), General Notice 175/2021 (GG 7528), General Notice 191/2023 (GG 8074) and General Notice 183/2024 (GG 8356).

Notes: (1) General Notice 29/2009 (GG 4220) states that it amends Government Gazette 3816 of 30 March 2007; it probably intended to state that it amends General Notice 70/2007 published in that Gazette. (2) General Notice 68/2010 (GG 4438) states that it amends GN 4220 of 9 March 2009. This is an error. This was probably intended to be a reference to GN 29/2009, which is published in GG 4438 of 9 March 2009. However, the amendment appears to apply to the underlying General Notice 70/2007, which is amended by GN 29/2009.

(3) Similarly, General Notice 61/2011 (GG 4677) states that it amends GN 4438 of 8 March 2010. This is an error. This was probably intended to be a reference to GN 68/2010, which is published in GG 4438 of 8 March 2010. However, the amendment appears to apply to the underlying General Notice 70/2007, which is amended by GN 68/2010.

- (4) General Notice 177/2015 (GG 5733) states that it is amending General Notice 61/2011, but the amendment appears to apply to the underlying General Notice 70/2007, which is amended by General Notice 61/2011.
- (5) General Notice 168/2016 (<u>GG 6029</u>) states that it is amending General Notice 177/2015, but the amendment appears to apply to the underlying General Notice 70/2007, which is amended by General Notice 177/2015.
- (6) General Notice 116/2017 (GG 6293) states that it is amending General Notice 168/2016, but the amendment appears to apply to the underlying General Notice 70/2007, which is amended by General Notice 168/2016.
- (7) General Notice 171/2018 (<u>GG 6585</u>) refers to the previous amendment in General Notice 61/2011, but omits the year of this notice.
- (8) General Notice 171/2018 (GG 6585), General Notice 90/2019 (GG 6880), General Notice 243/2020 (GG 7253), General Notice 191/2023 (GG 8074) and General Notice 183/2024 (GG 8356) all list General Notice 117 of 11 May 2015 as a previous amendment to General Notice 70/2007. This is incorrect. The correct reference is General Notice 177 of 11 May 2015 (GG 5733).

The power to collect these entry fees is delegated to African Namibia / Architech Joint Venture in GN 264/2000 (GG 2438).

A levy on petrol and diesel was originally set forth in GN 95/2000 (GG 2305), which is revoked by GN 183/2001 (GG 2608). GN 183/2001 is amended by GN 18/2002 (GG 2688), GN 17/2003 (GG 2909), General Notice 264/2005 (GG 3535), General Notice 176/2015 (GG 5733), General Notice 115/2017 (GG 6293), General Notice 170/2018 (GG 6585), General Notice 89/2019 (GG 6880), General Notice 242/2020 (GG 7253), General Notice 174/2021 (GG 7528) and General Notice 252/2023 (GG 8101).

Notes: (1) GN 18/2002 (<u>GG 2688</u>) refers to the amendment of GN 138/2001 in the list of contents of the *Government Gazette*, which is incorrect. The text of the Government Notice in the body of the *Gazette* correctly refers to GN 183/2001.

(2) General Notice 176/2015 (GG 5733) states that it is amending GN 17/2003; it appears that it should have stated that it was amending GN 183/2001. Similarly, General Notice 115/2017 (GG 6293) states that it is amending General Notice 176/2015; it appears that it should have stated that it was amending GN 183/2001. See the text of General Notice 170/2018 (GG 6585) and General Notice 89/2019 (GG 6880), both of which state that they are amending GN 183/2001 and cite all of the previous notices listed here as being amendments to GN 183/2001.

Appointments: Members of the Road Fund Administration Board of Directors are announced in GN 104/2013 (GG 5183), GN 231/2017 (GG 6397), GN 239/2020 (GG 7349) and GN 23/2023 (GG 8031).

Cases:

Road Fund Administration v Government of the Republic of Namibia & Others 2012 (1) NR 28 (HC) (Court takes *prima facie* view that Government and Cabinet are not entitled to interfere with executive decisions taken by board of parastatal)

Skorpion Mining Company (Pty) Ltd v Road Fund Administration 2016 (3) NR 864 (HC) (Road Fund Administration is an administrative body bound by Art 18 of Namibian Constitution; section 2 of Act read together with GN 183/2001 (GG 2608) issued under section 18 of Act; suggestion that legislation and policy on refunds may require law reform to bring it in line with Art 18 of the Namibian Constitution); overturned on appeal in Road Fund Administration v Skorpion Mining Company (Pty) Ltd 2018 (3) NR 829 (SC) (High Court erred by granting constitutional damages rather than approaching the case as a private law action for damages; para 45: "The Constitution must be the last and not the first report in the resolution of disputes that come before the courts."; by its failure to refer the matter back to the administrative body for reconsideration and by its stance that a right to claim a refund equated to a perfected property right; the subordinate legislative scheme for refunds was not challenged as being ultra vires the Act or the Constitution and so remains valid and binding, and the High Court's suggestion that there is a duty to put in place mechanisms for appeal against rejected claims is unsustainable).

Road Traffic and Transport Act 22 of 1999 🚾 🛖

Summary: This Act (originally published in <u>GG 2251</u>) establishes a Transportation Commission of Namibia and regulates traffic on public roads, the licensing of drivers, the registration and licensing of vehicles and cross-border road transportation. The Act was brought into force on 6 April 2001 by GN 52/2001 (GG 2503), with the following exceptions:

- Section 23 did not come into effect at all.
- Section 112 in so far as it relates to repeals, did not come into effect insofar as it relates to the repeal of the *Road Transportation Act 74 of 1977* and its amendments, *as these laws relate to passenger transport.* See GN 52/2001 (GG 2503). Thus, the *Road Transportation Act 74 of 1977* and its amendments remain partially in force.

Repeals: The Act repeals the Road Traffic Ordinance 30 of 1967, the *Road Transportation Act 74 of 1977* and the Cross-Border Road Transportation Act 18 of 1996 (GG 1384) – with the exceptions described above. The effect is that the *Road Transportation Act 74 of 1977* and its amendments remain in force as these laws relate to passenger transport.

Furthermore, although the Road Traffic Ordinance 30 of 1967 (OG 2080) was repealed by this Act, section 113(1)(a) of this Act, read together with Schedule 2, states that sections 78, 88, 89, 90, 91, 92, 93, 95, 96, 97(1) and 98 of Ordinance 30 of 1967 remain in force (with some amendments made by the Schedule) *insofar as they relate to public driving permits* "until the date fixed by the Minister under section 40(2) or such later date as may be determined by the Minister by notice in the *Gazette*". According to section 40(2):

With effect from a date to be fixed by the Minister by notice in the *Gazette*, but not later than the date contemplated in subsection (5), any holder of a driving licence referred to in subsection (1) [a licence authorising the driving of a motor vehicle which was issued under the repealed Ordinance] may apply to a driving testing centre for the replacement of such licence by a driving licence issued under this Act.

Section 40(5) refers to the date determined by the Minister by notice in the *Gazette* as to when a driving licence issued under a previous law ceases to be valid if not replaced in accordance with subsection (2). GN 102/2002 (GG 2759) set 1 July 2002 as the date in terms of section 40(2) with effect from which any person who is the holder of a driving licence issued in Namibia in terms of the Road Traffic Ordinance 30 of 1967, and contained in an identity document issued by the South African Government, may apply for the replacement of such licence by a driving licence issued under Act 22 of 1999. GN 162/2002 (GG 2815) set additional dates for the exchange of various driving licences issued in terms of the Road Traffic Ordinance 30 of 1967, with those dates ranging from 2 September 2002 to 1 July 2005. GN 43/2005 (GG 3419) set 31 August 2005 as the relevant date in respect of section 40(5) of the Act, when driving licences not replaced in accordance with section 40(2) cease to be valid. Thus, the provisions of Ordinance 30 of 1967 which temporarily remained in force are now extinguished.

The Act curiously repeals section 59 of the National Transport Corporation Act 21 of 1987 (OG 5439) insofar as it relates to Act 44 of 1977 in the Second Schedule. However, Act 21 of 1987 was previously repealed in its entirety by the National Transport Services Holding Company Act 28 of 1998 (GG 1961) with effect from 1 April 1999.

Amendments: Act 6/2008 (promulgated by GN 280/2008, <u>GG 4179</u>) amends sections 11, 37, 40 and 87, and withdraws a previous Act 6/2008 (promulgated by GN 257/2008, <u>GG 4147</u>).

The Vehicle Mass Act 1 of 2024 (<u>GG 8349</u>), which has not yet been brought into force, amends sections 14, 64, 91, 99 and 107.

Savings: In terms of section 113(3), any "proclamation, regulation, notice, order, prohibition, authority, appointment, permission, information or document" made under any one of the pieces of legislation repealed by this Act remains in force insofar as it is not inconsistent with this Act.

Regulations and notices made under repealed laws: Regulations and notices made under the repealed laws are as follows -

Road Traffic Ordinance 30 of 1967

Regulations: Regulations are contained in GN 95/1967 (OG 2809),³⁹⁴ as amended by GN 88/1968 (OG 2902), GN 97/1969 (OG 3015), GN 123/1969 (OG 3028), GN 130/1970 (OG 3109), GN 176/1971 (OG 3223), GN 51/1972 (OG 3238), GN 56/1972 (OG 3243), GN 58/1972 (OG 3243), GN 90/1972 (OG 3256), GN 144/1972 (OG 3273), GN 158/1972 (OG 3278) (as amended by GN 376/1977, OG 3667), GN 158/1972 (OG 3278), GN 159/1972 (OG 3279), GN 42/1973 (OG 3308), GN 124/1973 (OG 3341), GN 164/1973 (OG 3350), GN 30/1974 (OG 3378), GN 31/1974 (OG 3378), GN 135/1974 (OG 3408), GN 238/1974 (OG 3440), GN 1/1975 (<u>OG 3444</u>), GN 68/1975 (<u>OG 3454</u>), GN 87/1975 (<u>OG 3459</u>), GN 175/1975 (<u>OG 3474</u>), GN 214/1975 (OG 3484), GN 272/1975 (OG 3491), GN 310/1975 (OG 3500), GN 341/1975 (OG 3508), GN 214/1976 (OG 3551), GN 400/1976 (OG 3585), GN 61/1977 (OG 3593), GN 376/1977 (OG 3667), GN 404/1977 (OG 3673), GN 215/1978 (OG 3818), GN 280/1978 (OG 3871), GN 38/1979 (OG 3909), GN 41/1979 (OG 3909), AG GN 131/1981 (OG 4529), AG GN 137/1981 (OG 4542), AG GN 141/1981 (OG 4546), AG GN 8/1982 (OG 4590), AG GN 9/1982 OG 4590), AG GN 151/1982 (OG 4703), AG GN 152/1982 (OG 4703), AG GN 123/1983 (OG 4805), AG GN 133/1983 (OG 4812), AG GN 2/1984 (OG 4856), AG GN 56/1984 (OG 4891), AG GN 60/1984 (OG 4895), GN 78/1985 (OG 5106), GN 47/1990 (GG 68), GN 95/1992 (GG 449), GN 96/1992 (GG 449), GN 48/1993 (GG 635), GN 102/1993 (GG 708), the Walvis Bay and Off-shore Islands Act 1 of 1994 (GG 805), GN 190/1996 (GG 1356), GN 42/1997 (GG 1512), GN 20/1998 (GG 1801), GN 305/1998 (GG 2017), GN 2/2000 (GG 2259), GN 144/2000 (GG 2350) and GN 2/2001 (GG 2468). These regulations have not been processed for the database, as they seem to have been superseded by the Road Traffic and Transport Regulations, 2001 issued under the current Act. 395

Notices: Registration marks for motor vehicles are assigned in GN 57/1990 (<u>GG 89</u>), as amended by GN 229/1998 (<u>GG 1951</u>).

Registration marks for government vehicles are assigned in GN 388/2023 (<u>GG 8267</u>), which repealed GN 72/2021 (<u>GG 7506</u>). Previous assignments which were repealed and replaced in turn were contained in GN 195/2020 (<u>GG 7309</u>), GN 76/2018 (<u>GG 6573</u>), GN 322/2017 (<u>GG 6490</u>) and GN 23/2001 (<u>GG 2481</u>).

The Namibia Traffic Information System contemplated in section 55A(1) of the Ordinance is made applicable to the Windhoek Registering Authority Area by GN 16/1998 (GG 1796).

Registering authorities for other areas are appointed in GN 230/1998 (<u>GG 1951</u>), GN 75/1999 (<u>GG 2092</u>), GN 138/1999 (<u>GG 2146</u>), GN 193/1999 (<u>GG 2192</u>) and GN 281/1999 (<u>GG 2248</u>). The Namibia Traffic Information System is applied to certain areas outside Windhoek by GN 228/1998 (<u>GG 1951</u>), GN 76/1999 (<u>GG 2092</u>), GN 137/1999 (<u>GG 2146</u>) and GN 193/1999 (<u>GG 2192</u>).

The applicability of NaTIS to motor vehicles owned by the state is addressed in GN 145/2000, GN 147/2000 and GN 148/2000 (all contained in GG 2350).

Fees: The payment of fees for motor vehicles of government, regional councils and local authorities is addressed in GN 146/2000 (<u>GG 2350</u>).

Road Transportation Act 74 of 1977

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³⁹⁴ These regulations repeal the Road Traffic Regulations in RSA GN 209/1965.

³⁹⁵ Proposed regulations on the transportation of dangerous goods by road are published for comment in General Notice 17/1998 (<u>GG 1781</u>).

Regulations: The Road Transport Regulations contained in RSA GN R.2653/1977 (<u>RSA GG 5843</u>) as amended by AG GN 56/1978 (<u>OG 3817</u>), AG GN 50/1981 (<u>OG 4455</u>), AG GN 171/1983 (<u>OG 4852</u>) and AG GN 99/1989 (<u>OG 5848</u>) initially remained in force, until these regulations were repealed by GN 112/2022 (<u>GG 7782</u>), which is referenced above under the entry for the *Road Transportation Act 74 of 1977*.

Cross-Border Road Transportation Act 18 of 1996 (GG 1384)

Notice: The Southern African Customs Union Memorandum of Understanding on Road Transportation in the Common Customs Area pursuant to the Customs Union Agreement between the governments of Botswana, Lesotho, South Africa and Swaziland, 1998 is published in GN 33/1998 (<u>GG 1803</u>), and amended by GN 43/1998 (<u>GG 1810</u>) and by GN 218/2021 (<u>GG 7653</u>).

Regulations in terms of the current Act: GN 53/2001 (GG 2503) contains the extensive Road Traffic and Transport Regulations, 2001. These regulations came into force on 6 April 2001, with the following exceptions:

Chapter 3, Parts 3 and 5 Chapter 4 (which consists of Parts 1 and 2) Chapter 5, Parts 1 and 2 Chapter 6, Parts 2 and 4 Regulation 235.

Part 1 of Chapter 4 and Part 1 of Chapter 5 were brought into force on 1 November 2001 by GN 222/2001 (GG 2641).

Part 2 of Chapter 4 was brought into force on 2 September 2002 by GN 161/2002 (GG 2815).

Part 2 of Chapter 5 was brought into force on 17 November 2007 by GN 172/2007 (GG 3907).

GN 86/2017 (GG 6285) states that it is bringing Part 3 of *Chapter 10* into force on 13 April 2017. However, this must have been intended to refer to Part 3 of *Chapter 3*, which is amended by the same Government Notice. Chapter 10 was not divided into parts and was already in force.

Part 5 of Chapter 3 and Part 4 of Chapter 6 were brought into force on 30 September 2022 by GN 293/2022 (GG 7917).

The remainder of the regulations exempted from GN 53/2001 (Part 2 of Chapter 6 and regulation 235) do not appear to have been brought into force.

<u>Part</u>	Date of coming into force
Chapter 1	6 April 2001 (GN 53/2001)
Chapter 2	6 April 2001 (GN 53/2001)
Chapter 3	
Part 1	6 April 2001 (GN 53/2001)
Part 2	6 April 2001 (GN 53/2001)
Part 3	13 April 2017 (GN 86/2017)
Part 4	6 April 2001 (GN 53/2001)
Part 5	30 Sept 2022 (GN 293/2022)
Part 6	6 April 2001 (GN 53/2001)
Chapter 4	
Part 1	1 Nov 2001 (GN 222/2001)
Part 2	2 September 2002 (GN 161/2002)
Chapter 5	
Part 1	1 Nov 2001 (GN 222/2001)
Part 2	17 Nov 2007 (GN 172/2007)
Part 3	6 April 2001 (GN 53/2001)-except Reg 235 not yet in force

Part 4	6 April 2001 (GN 53/2001)	
Part 5	6 April 2001 (GN 53/2001)	
Part 6	6 April 2001 (GN 53/2001)	
Chapter 6	• , ,	
Part 1	6 April 2001 (GN 53/2001)	
Part 2	not yet in force	
Part 3	6 April 2001 (GN 53/2001)	
Part 4	30 Sept 2022 (GN 293/2022)	
Chapter 7 (all parts)	6 April 2001 (GN 53/2001)	
Chapter 8 (all parts)	6 April 2001 (GN 53/2001)	
Chapter 9	6 April 2001 (GN 53/2001)	
Chapter 10	6 April 2001 (GN 53/2001)	

The 2001 regulations are amended by:

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GN 97/2001 (<u>GG 2538</u>)
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GN 103/2002 (GG 2759)

GN 163/2002 (<u>GG 2815</u>)

GN 205/2004 (GG 3287)

GN 206/2004 (GG 3287)

These amendments were withdrawn by GN 45/2005 (GG 3422) without ever coming into force.

GN 32/2005 (GG 3402)

GN 45/2005 (GG 3422)

GN 183/2005 (GG 3560)

GN 188/2006 (GG 3732)

GN 104/2007 (GG 3851)

GN 172/2007 (GG 3907)

GN 2/2008 (GG 3972)

GN 73/2008 (GG 4022)

GN 290/2008 (GG 4186)

GN 81/2010 (GG 4473)

GN 156/2015 (GG 5792)

GN 156/2015 states that the regulations were amended by GN 222/2001 (<u>GG 2641</u>) and GN 161/2002 (<u>GG 2815</u>). This is not correct; these two notices deal only with the commencement of various portions of the regulations.

GN 98/2016 (GG 6016)

GN 98/2016 states that the regulations were amended by GN 222/2001 (<u>GG 2641</u>) and by GN 161/2002 (<u>GG 2815</u>). This is not correct; these two notices deal only with the commencement of various portions of the regulations.

GN 86/2017 (GG 6285)

GN 86/2017 states that the regulations were amended by GN 222/2001 (GG 2641) and GN 161/2002 (GG 2815). This is not correct; these two notices deal only with the commencement of various portions of the regulations.

GN 130/2018 (GG 6637)

GN 130/2018 states that the regulations were amended by GN 222/2001 (GG 2641) and GN 161/2002 (GG 2815). This is not correct; these two notices deal only with the commencement of various portions of the regulations. GN 130/2018 also states that the regulations were amended by GN 322/2017 (GG 6490). This is not correct; GN 322/2017 is a notice issued in terms of regulation 34(3).

GN 31/2019 (GG 6844)

GN 102/2020 (GG 7172)

GN 102/2020 states that the regulations were amended by GN 222/2001 (GG 2641). This is not correct; this notice deals only with the commencement of various portions of the regulations.

GN 298/2021 (<u>GG 7716</u>)

GN 298/2020 states that the regulations were amended by GN 222/2001 (<u>GG 2641</u>). This is not correct; this notice deals only with the commencement of various portions of the regulations.

Section 94 of the Act empowers the Minister to incorporate any standard publication in any regulation

issued under section 91, 92 or 93 by mere reference to the number, title and year of issue of that standard publication or any other particulars which sufficiently identify it. The Minister utilised this power in GN 262/2020 (GG 7373) to incorporate the Namibian Standards (NAMS) published under General Notice 362/2018 (GG 6649) and General Notice 590/2018 (GG 6737) into the 2001 Road Traffic and Transport Regulations.

GN 262/2020 omits the number of the General Notice published on 15 October 2018, but the General Notice referred to is obviously General Notice 590/2018, which announces the standards listed in GN 262/2020

Section 113(1)(b) of the Act refers to the Road Traffic Ordinance 30 of 1967 (OG 2080) and states that "the Minister may, under the power conferred by section 91 to make regulations, incorporate in any regulation so made *any of the repealed provisions of that Ordinance which relate to the registration and licensing of motor vehicles*, by mere reference to the provisions concerned, subject to such amendments or modifications as may be provided for in such regulation, and the provisions so incorporated shall, for the purposes of this Act, be deemed to be regulations made thereunder by virtue of the provisions of section 20". To date, provisions from Ordinance 30 of 1967 seem to be re-iterated as needed rather than incorporated by mere reference (see, for example, GG 2503). However, should any of the provisions of Ordinance 30 of 1967 be incorporated by mere reference in future, the amendments to that Ordinance prior to its repeal may be of relevance:

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Ord. 19/1968 (OG 2895)
Ord. 25/1969 (OG 3010)
Ord. 18/1970 (OG 3099)
Ord. 18/1971 (OG 3194)
Ord. 16/1972 (OG 3267)
Ord. 4/1973 (OG 3304)
Ord. 19/1973 (OG 3345)
Ord. 3/1974 (OG 3387)
Ord. 11/1974 (OG 3412)
Ord. 19/1975 (OG 3497)
Ord. 10/1976 (OG 3546)
Ord. 13/1976 (OG 3572)
Ord. 2/1978 (OG 3733)
Ord. 4/1979 (OG 3925)
Ord. 17/1980 (OG 4167)
Act 8/1981 (OG 4498)
AG 22/1983 (OG 4844)
Act 4/1983 (Rehoboth) (Official Gazette 70 of Rehoboth)
Act 17/1985 (OG 5110)
Act 30/1985 (OG 5150)
Act 28/1986 (OG 5303)
Act 22/1987 (OG 5457)
Act 2/1988 (OG 5525)
Act 19/1988 (OG 5649)
Act 1/1994 (GG 805) (Walvis Bay)
Act 25/1995 (GG 1229)
Act 20/1996 (GG 1431)
Act 27/1996 (GG 1474)
Act 18/1997 (GG 1766) (which establishes a new registration and licensing system and was brought into
        force by GN 7/1998, GG 1781)
Act 19/1997 (<u>GG 1767</u>) (fees and penalties)
Act 4/1999 (GG 2095) (alcohol breath tests and fees). <sup>396</sup>
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Notices in terms of the current Act: GN 102/2002 (GG 2759) fixed 1 July 2002 as the date in terms of section 40(2) with effect from which any person who is the holder of a driving licence which was issued in Namibia in terms of the Road Traffic Ordinance 30 of 1967 and which is contained in an identity document issued by the South African Government, may apply for the replacement of such

³⁹⁶ Proposed road traffic and transport regulations were published for comment in GN 268/2000 (<u>GG</u> 2441). Proposed amendments to the 2001 regulations were published in GN 135/2005 (<u>GG 3520</u>).

licence by a driving licence issued under Act 22 of 1999. GN 162/2002 (GG 2815) set additional dates for the exchange of various driving licences issued in terms of the Road Traffic Ordinance 30 of 1967, with those dates ranging from 2 September 2002 to 1 July 2005. GN 43/2005 (GG 3419) sets 31 August 2005 as the relevant date in respect of section 40(5) of the Act, when driving licences not replaced in accordance with section 40(2) cease to be valid.

GN 44/2005 (<u>GG 3419</u>) sets 30 September 2005 as the date on which all persons travelling on pedal cycles on a public road must wear protective helmets in terms of Regulation 226(3).

Certain officers employed by the Roads Authority established in terms of the Roads Authority Act 17 of 1999 (GG 2215) are authorised as road transport inspectors and traffic officers in terms of section 11(6) of the Act by GN 103/2001 (GG 2544).

GN 209/2006 (GG 3746) concerns the appointment of authorised officers by the Roads Authority as vehicle examiners, driving examiners and licence inspectors.

A Bilateral Road Transport Agreement between Namibia and Zimbabwe is published in Proc. 7/2000 (GG 2359), and regulations relating to this agreement are contained in GN 156/2000 (GG 2359).

Pursuant to section 105 of the Act, exemptions from certain regulations made in terms of the Act are contained in GN 102/2021 (GG 7538), as amended by GN 217/2021 (GG 7653). (These exemptions are issued from time to time, with each one replacing the previous exemptions.)

GN 100/2003 (GG 2978) concerns devices to be used to test breath for alcohol concentrations. *S v Titus & Others* 2014 (1) NR 129 (HC) held that it did not meet the requirements of section 82(7) of the Act read together with section 94, confirming the decision in *S v Heathcote* (CA 24/2013) [2013] NAHCMD 195 (12 July 2013). GN 100/2003 was withdrawn and replaced by GN 280/2015 (GG 5892).

An agreement between the Minister of Works, Transport and Communication and the Roads Authority on functions delegated by the Ministry to the Roads Authority is published in GN 163/2005 (<u>GG 3546</u>).

An aircraft investigation vehicle is determined to be an emergency service vehicle in terms of section 1 of the Act in GN 195/2009 (GG 4350).

The powers of the Namibian Police to perform certain functions in terms of the Act (such as testing for learners' permits, driving licences, and vehicle roadworthiness) have been withdrawn in respect of specific locations from time to time, but these notices are not recorded here. Also not recorded are dates for registration at driving and vehicle testing centres in specific locations; appointments or withdrawals of the Roads Authority, various local authorities or other agencies to act as registering authorities or to operate driving testing centres and vehicle testing centres in specific locations; or the determination of letters denoting specific registration authorities.

Administration of law: After independence, in GN 98/1992 (GG 455) issued pursuant to section 3(1)(a) of the Assignment of Powers Act 4 of 1990, the President assigned the administration of the provisions of this law to the Minister of Works, Transport and Communication with effect from 17 July 1992. The assignment of administration included the administration of any provisions of the Ordinance or any regulations made under it which confer or impose powers, duties and functions on the President - but excluded any provision conferring a power which is required to be exercised by proclamation in the *Gazette* or conferring a power to enter into international agreements.

Appointments: Members of the Transportation Commission of Namibia are announced in GN 142/2004 (<u>GG 3237</u>), GN 107/2014 (<u>GG 5523</u>), GN 99/2015 (<u>GG 5760</u>) (which substitutes the Table in the Schedule of GN 107/2014), GN 230/2017 (<u>GG 6397</u>), GN 166/2020 (<u>GG 7290</u>), GN 19/2021 (<u>GG 7459</u>) and GN 116/2021 (<u>GG 7545</u>) (which withdraws GN 19/2021).

Cases: The following cases concern the current Act –

- Ojo v Government of the Republic of Namibia & Another 2005 NR 118 (HC) (sections 1, 74, 75, 77 and Reg 341)
- Dresselhaus Transport CC v The Government of the Republic of Namibia 2005 NR 214 (SC)
- S v Jansen 2006 (1) NR 337 (HC) (elements of proof under section 82)
- S v Garoeb 2006 (2) NR 500 (HC) (components of charge sheet and questioning of accused in respect of offence under section 82)
- S v Kaffer 2006 (2) NR 577 (HC) (sections 80(1), 106(6)(b) and 51(1)(b))
- S v Blaauw's Transport (Pty) Ltd & Another 2006 (2) NR 587 (HC) (section 87; Regs 254, 259 and 267)
- S v Shindi 2007 (1) NR 160 (HC) (section 80(1); erroneous conviction under repealed legislation set aside)
- S v Tjikotoke 2014 (1) NR 38 (HC) (comprehensive sentencing under sections 31(1)(a), 84(b) and Reg 232(4), in light of prescribed penalty under section 106(7))
- S v Titus & Others 2014 (1) NR 129 (HC) (GN 100/2003 concerning devices to be used to test breath for alcohol concentrations not compliant with section 82(7) read together with section 94, confirming the decision in S v Heathcote (CA 24/2013) [2013 NAHCMD 195 (12 July 2013); the Act is erroneously referred to as Act 22 of 1996 in the headnote to the case)
- Uvanga v Steenkamp & Others 2016 (2) NR 465 (HC) (common-law concept of ownership contrasted with concepts of "owner" and "title-holder" in reg 15A of the Road Traffic Regulations in GN 95/1967, read with reg 382 in GN 53/2001 ("owner" must assume the duties of the "title-holder"))
- S v Willem & Two Other Cases 2017 (4) NR 977 (HC) (section 51: court must explain import of this section to the offender and invite representations before exercising discretion to disqualify offenders from obtaining learner's permit or driving licence for specified period).
- S v Nekundi 2020 (1) NR 233 (NLD) (meaning of "relating to the driving of a motor vehicle" in section 50; suspension of driving licence inappropriate sentence for passenger who failed to wear safety belt)
- S v Claasen & Others 2020 (1) NR 266 (HC) (section 83(2) covers passengers as well as driver, but not a passenger who travelled in the vehicle out of necessity)
- Shiikwa v Kauta 2020 (3) NR 831 (HC) (presumption in section 89(1) applies only in criminal cases).

The following cases concern previous legislation replaced by this Act –

Road Traffic Ordinance 30 of 1967

- *S v Van der Merwe* 1991 NR 199 (HC) (section 146)
- S v Davids 1991 NR 255 (HC) (sections 138(1) and 140(1)(a))
- S v Shivute & Several Other Cases 1991 NR 433 (HC) at 440 (section 140)
- S v Danoka 1992 NR 189 (HC) (section 138)
- S v Moffat 1992 NR 193 (HC) (section 140)
- *S v Kayumba* 1993 NR 354 (HC) (sections 135 and 150)
- *S v Amuntenya* 1993 NR 417 (HC) (section 138(1))
- S v Diergaardt 1993 NR 421 (HC) (sections 71 and 146)
- S v Mostert 1994 NR 83 (HC) (section 140(1)(a))
- S v David 1994 NR 179 (HC) (section 140(3))
- S v Cloete 1994 NR 190 (HC) (section 140(1)(a))
- S v Eigowab 1994 NR 192 (HC) (section 140(1)(a))
- S v Mostert/S v de Koker 1995 NR 131 (HC)(sections 138(1) and 135(1)(a))
- S v Muhenje 1995 NR 133 (HC) (sections 56(1) and 138(1))
- S v Arebeb 1997 NR 1 (HC) (sections 56(1), 135, 138(1) and 146)
- S v Joseph 1997 NR 108 (HC) (section 138(1) creating two separate offences)
- S v Tjingaveta 1997 NR 197 (HC) (section 101(3))
- S v Amutenya 1998 NR 204 (HC) (section 138(1))
- S v Nekongo 2001 NR 96 (HC) (section 138(1)(a) and 140(1)).
- S v Gillmore 2002 NR 92 (HC) (section 138(1))
- Gerson Hoveka t/a Hovy Namibia Tour and Safari v FGI Namibia 2002 NR 146 (HC).

Regulations issued under the Road Traffic Ordinance 30 of 1967

Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd & Another 2003 NR 183 (HC)

Road Transportation Act 74 of 1977

Kersten t/a Witvlei Transport v National Transport Commission & Another 1991 NR 234 (HC) *S v Khoza* 1992 NR 158 (HC).

Motor Vehicle Accident Fund Act 10 of 2007 🗐 🙀

Summary: This Act (<u>GG 3970</u>) provides for a Motor Vehicle Accident Fund for the payment of assistance and benefits to persons injured in motor vehicle accidents and their dependants. It was brought into force on 2 May 2008 by GN 103/2008 (<u>GG 4040</u>).

Repeals: The Act repeals the Motor Vehicle Accidents Fund Act 4 of 2001 (<u>GG 2547</u>), which in turn replaced the Motor Vehicle Accidents Act 30 of 1990 (<u>GG 132</u>). Claims arising before the commencement of the new law are to be dealt with under the repealed Motor Vehicle Accidents Fund Act 4 of 2001, in terms of section 36. The assets and liabilities of the previous fund are transferred to the new Fund.

Regulations: Regulations made under the current Act are contained in GN 104/2008 (GG 4040).

There is no savings clause pertaining to regulations made or surviving under the previous law. Even so, the regulations made under the previous Act were repealed by GN 104/2008 (GG 4040).

Appointments: Members of the Board are announced in GN 211/2021 (GG 7647).

Cases: The following cases were decided in terms of the current Act – *Hangula v Motor Vehicle Accident Fund* 2013 (2) NR 358 (HC) (section 32)

The following cases pertain to the Motor Vehicle Accidents Fund Act 4 of 2001 – *Bock v Motor Vehicle Accident Fund of Namibia* 2008 (2) NR 722 (HC) *July v Motor Vehicle Accident Fund* 2010 (1) NR 368 (HC) (section 10)

Visser v Minister of Finance & Others (I 3178/2007) [2014] NAHCMD 321 (29 October 2014) (Constitutional challenge to section 10(2) and related regulations dismissed) (discussed in Y Dauseb and K Pinkosky, "Visser v Minister of Finance: A Missed Opportunity to Clarify the Equality Provision within a Namibian Disability Rights Paradigm" in Dunia P Zongwe & Yvonne Dauseb, eds, The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry, Ministry of Justice, LRDC: 2017, available here); upheld on appeal in Visser v Minister of Finance & Others 2017 (2) NR 359 (SC) ((1) Minister's powers under section 10(2) are clearly authorised and circumscribed, and thus constitute a permissible delegation by Parliament; (2) there is no unfair discrimination under the law, since caps on compensation are applied in the same way to all, so no need to reach issue of whether "social status" in Art 10 of Constitution includes disability; (3) Court emphasises structure of MVA scheme with reference to sections 10-11, as not being intended to provide full compensation for all losses and not preventing ability to seek remainder of damages from the wrongdoer)

Mbambus v Motor Vehicle Accident Fund 2015 (3) NR 605 (SC) (section 10 discussed), overturning Mbambus v Motor Vehicle Accident Fund 2011 (1) NR 238 (HC) (section 10(1) and (5)(b)).

The following cases pertain to the Motor Vehicle Accidents Act 30 of 1990 –

Van Rensberg & Another v Russer 1990 NR 45 (HC) (dealing with previous legislation)

Beukes v Mutual and Federal Insurance 1990 NR 105 (HC) (dealing with previous legislation)

Pack & Others v Mutual & Federal Insurance Company Limited 1996 NR 264 (HC)

Oosthuizen v Motor Vehicle Accident Fund of Namibia 2005 NR 128 (HC) (discussion of a necessary witness in a claim arising under the 1990 Act)

*Vehicle Mass Act 1 of 2024 🕎 🙀

Summary: This Act (<u>GG 8349</u>) is aimed at minimising damage to the national road network. It sets the permissible mass for vehicles using the national road network and makes provision for weigh stations and other enforcement mechanisms. It will come into force on a date set by the Minister in the *Government Gazette*.

Regulations: Regulations are authorised under section 18, but none have yet been issued.

INTERNATIONAL LAW

†Geneva Convention on Road Traffic, 1949

OTHER INTERNATIONAL DOCUMENTS

SACU Memorandum of Understanding on Road Transportation (non-binding) (Proc. 6/1998, GG 1803)

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003 (non-binding)

(published in GN 193/2007 (GG 3927)

Bilateral Road Transport Agreement (Namibia and Zimbabwe)

(published in Proc. 7/2000, GG 2359)

Note: This index does not generally list bilateral agreements, but includes this one since it was gazetted in Namibia.

See also Motor Vehicle Theft Act 12 of 1999 (CRIMINAL LAW AND PROCEDURE).

See the Financial Intelligence Act 13 of 2012 (duties of persons and institutions carrying on the business of a motor vehicle dealership) (**FINANCIAL INSTITUTIONS**).

See also TRANSPORTATION.

SCIENCE AND SCIENTIFIC RESEARCH

Research, Science and Technology Act 23 of 2004 🕎 🙀

Summary: This Act (originally published in GG 3356) provides for the promotion, coordination and development of research, science and technology. It establishes the National Commission on Research, Science and Technology and the National Research, Science and Technology Fund. It was brought into force on 1 November 2011 by GN 201/2011 (GG 4823).

Repeals: The Act repeals the Scientific Research Council Act 46 of 1988.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, substitutes section 6 and deletes section 8. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are contained in GN 208/2011 (GG 4828), as amended by GN 66/2016 (GG 5990) to delete the expression "Namibian based researcher" throughout. There is no savings clause for regulations which may have been made under the repealed law.

Geoscience Professions Act 3 of 2012 🕎 📻

Summary: This Act (GG 4935) establishes a Geosciences Council of Namibia and provides for training, qualifications and registration of geoscience professions, including regional geology; geophysics; hydrogeology; economic, exploration or mining geology; geochemistry; engineering geology; environmental geology; hydrocarbon geology; palaeontology; and geoscience education. "Geoscience" is defined as "all scientific disciplines researching the earth as a whole, including, but not restricted to, its origin, structure, composition, history and the natural processes that resulted in its present state". The Act was brought into force by GN 228/2017 (GG 6397).

Regulations: Regulations relating to registration and other fees payable by geoscientists are contained in GN 320/2017 (GG 6488).³⁹⁷

Regulations relating to the nomination of candidates and election of members of the Council are contained in GN 358/2019 (GG 7056).

Notices: A Code of Professional Conduct of Geoscience Professionals of Namibia is published by the Geoscience Professions Council in General Notice 496/2017 (GG 6488).

Appointments: Members of the Geoscience Council are announced in GN 229/2017 (GG 6397), GN 190/2020 (GG 7309) and General Notice 630/2023 (GG 8232).

INTERNATIONAL LAW

**African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA), 2019

Charter Establishing the Centre for Coordination of Agricultural Research and Development (CCARDESA), 2010

*Charter Establishing SADC Women in Science, Engineering and Technology Organisation, 2018 *SADC Protocol on Science, Technology and Innovation, 2008.

³⁹⁷ Regulations on this topic were originally contained in GN 102/2014 (GG 5517), which was withdrawn by GN 154/2017 (GG 6333).

SEA AND SEASHORE

Sea-shore Ordinance 37 of 1958 🕎 🙀

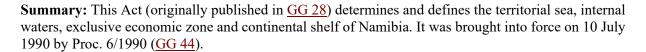
Summary: This Ordinance (originally published in OG 2153) provides for the determination of the position of the high-water mark. (Note that we have found no indication that the South Africa *Sea-shore Act 21 of 1935* was ever made applicable to South West Africa.)

Amendments: The Ordinance is repealed in Walvis Bay by RSA Proclamation 149 of 1982 (<u>RSA GG 8344</u>). However, see section 2 of the Walvis Bay and Off-Shore Islands Act 1 of 1994.

Regulations: Regulations are authorised by section 3 of the Act. No pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Commentary: Review of Policy and Legislation Pertaining To Coastal Zone Management, Namib Coast Biodiversity Conservation And Management (Nacoma) Project: Preparation Phase, EcoAfrica Environmental Consultants, Draft Version, March 2005, section 5.5, available here.

Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990 🚾 🙀



Repeals: The Act repeals the Territorial Waters of South West Africa Proclamation, AG 32 of 1979.

Amendments: Act 30/1991 (<u>GG 332</u>) amends sections 4 and 6, inserts section 3A and substitutes the long title in order to establish a contiguous zone in which Namibia shall have the right to prevent the contravention of certain laws and to further provide for matters relating to the continental shelf.

The Sea Fisheries Act 29 of 1992 (GG 493), which was brought into force on 23 December 1992 (Proc. 46/1992, GG 556) and subsequently repealed by the Marine Resources Act 27 of 2000, repeals the items in the Schedule of Act 3 of 1990 relating to the Sea Fisheries Act 58 of 1973 (which is repealed by Act 29 of 1992).

Regulations: The Act makes no provision for regulations.

Cases:

Pineiro & Others v Minister of Justice & Others 1991 NR 283 (HC)

S v Carracelas & Others (1) 1992 NR 322 (HC)

S v Carracelas & Others (2) 1992 NR 329 (HC)

S v Carracelas & Others (3) 1992 NR 336 (HC)

S v Martinez 1993 NR 1 (HC)

S v Pineiro & Others 1993 NR 24 (HC).

INTERNATIONAL LAW

†United Nations Convention on the Law of the Sea (UNCLOS), 1982

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994

United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement), 1995

**Protocol on the Privileges and Immunities of the International Seabed Authority, 1998.

See also Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (ENVIRONMENT).

See also MARINE AND FRESHWATER RESOURCES.

SECURITY OFFICERS

Security Enterprises and Security Officers Act 19 of 1998 🕡 🙀

Summary: This Act (originally published in <u>GG 1896</u>) establishes a Security Enterprises and Security Officers Regulation Board and provides for the registration of security enterprises. It also provides for the establishment of a fidelity guarantee fund. The Act was brought into force on 1 August 1998 by GN 181/1998 (<u>GG 1917</u>).

Amendments: Act 21/2002 (<u>GG 2891</u>) amends sections 1, 5, 9 and 38.

The General Law Amendment Act 14 of 2005 (GG 3565) amends section 1. It also amends section 2 of amending Act 21/2002 (which affects section 5 of the principal Act), and substitutes section 5 of amending Act 21/2002 to bring that amending Act into effect as of 1 September 2004.

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1, 5, 9 and 13. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: Regulations are authorised by section 38 of the Act, but none have yet been promulgated.

Appointments: Members of the Security Enterprises and Security Officers Regulations Board are appointed in GN 283/1999 (GG 2253) and GN 201/2004 (GG 3276).

See also collective agreements and Wage Order containing minimum wages for the security industry under Labour Act 11 of 2007 (**LABOUR**).

SHIPPING

Merchant Shipping Act 57 of 1951, as amended in South Africa prior to Namibian independence are

Summary: This Act (originally published in <u>SA GG 4684</u>) controls merchant shipping. It was brought into force in South Africa and South West Africa, with the exceptions of sections 68-72, on 1 January 1960 by SA Proc. 298/1959 (<u>SA GG 6337</u>); the remaining sections were brought into force in South Africa and South West Africa on 1 November 1961 by RSA Proc. 92 /1961 (<u>RSA GG 94</u>).

Repeals: The Act repeals the English Merchant Shipping Act, 1894 in so far as that Act was in force in SWA, and the Merchant Shipping (Walvis Bay) Proclamation, 12 of 1929, as well as a number of South African laws including the *Merchant Shipping Act 16 of 1929*.

Applicability to SWA: Section 3(1) states "This Act and any amendment thereof shall apply to the Territory of South West Africa and the port and settlement of Walvis Bay, and the said territory shall for the purposes of this Act be deemed to form part of the Republic." The Act expressly states that it does not affect the competency of the Legislative Assembly of South West Africa to make ordinances dealing with sealing, sea fisheries, and the licensing of sealing and fishing vessels.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, section 3(1)(c) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: The Act was amended by the following prior to Namibian independence:

- Merchant Shipping Amendment Act 30 of 1959 (SA GG 6216), as amended in respect of its amendment to this Act by the South African Transport Services Act 65 of 1981 (RSA GG 7786)
- Commonwealth Relations Act 69 of 1962 (RSA GG 264)
- Merchant Shipping Amendment Act 40 of 1963 (RSA GG 498)
- Merchant Shipping Amendment Act 13 of 1965 (RSA GG 1060)
- RSA Proclamation R.228 of 1965 (RSA GG 1235), under the authority of section 356bis(1)
- *Unemployment Insurance Act 30 of 1966* (RSA GG 1554)
- RSA Proclamation R.12 of 1968 (RSA GG 1972), under the authority of section 356bis(1)
- RSA Proclamation R.280 of 1968 (RSA GG 2173) under the authority of section 356bis(1)
- Merchant Shipping Amendment Act 42 of 1969 (RSA GG 2382)
- Births, Marriages and Deaths Registration Amendment Act 58 of 1970 (RSA GG 2843)
- RSA Proclamation R.209 of 1972 (RSA GG 3641), under the authority of section 356bis(1)
- *Merchant Shipping Amendment Act 24 of 1974* (RSA GG 4215)
- *Merchant Shipping Amendment Act 5 of 1976* (RSA GG 5013)
- Merchant Shipping Amendment Act 70 of 1977 (RSA GG 5571)
- RSA Proclamation R.107 of 1977 (RSA GG 5577), under the authority of section 356bis(1), as corrected by RSA GN R.2620/1977 (RSA GG 5846)
- *Merchant Shipping Amendment Act 62 of 1978* (RSA GG 6017)
- Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)
- RSA Proclamation R.203 of 1980 (RSA GG 7270), under the authority of section 356bis(1)(b)(ii)
- *Merchant Shipping Amendment Act 3 of 1981* (RSA GG 7409)
- *Merchant Shipping Amendment Act 3 of 1982* (RSA GG 8036)
- RSA Proclamation R. 168 of 1982 (RSA GG 8378), under the authority of section 356bis(2)(b)(i)
- Admiralty Jurisdiction Regulation Act 105 of 1983 (RSA GG 8891)
- RSA Proclamation R.71 of 1984 (RSA GG 9236), under the authority of section 356bis(1)
- RSA Proclamation R.162 of 1985 (RSA GG 9940), under the authority of section 356bis(1)

- *Merchant Shipping Amendment Act 25 of 1985* (RSA GG 9675)
- Carriage of Goods by Sea Act 1 of 1986 (RSA GG 10125)
- Transport Advisory Council Act 58 of 1987 (RSA GG 10925)
- *Merchant Shipping Amendment Act 3 of 1989* (RSA GG 11736).

Act 7/1991 (GG 217) amends the Act substantially to make it consistent with an independent Namibia (affecting sections 2, 3, 10, 11, 64, 135, 152, 161, 180, 267, 292, 298, 355, 356, 356bis and substituting certain words, and repealing sections 14 and 251).

The Namibian Ports Authority Act 2 of 1994 (GG 810) amends the definition of "port" in section 2.

The Wreck and Salvage Act 5 of 2004 (<u>GG 3244</u>), which was brought into force on 1 November 2004 by GN 232/2004 (<u>GN 3313</u>), amends sections 134, 135, and 345 and repeals sections 234, 258, 293-306, 330 and 331.

The Civil Registration and Identification Act 13 of 2024 (<u>GG 8547</u>), which has not yet been brought into force, will delete section 189.

Regulations: Pre-independence regulations have not yet been comprehensively researched.

Record Book Regulations are contained in RSA GN R.2080 of 14 October 1977, as amended by GN 80/1998 (GG 1837).

Previous Examination Regulations for Certificates of Competence as Marine Motormen and Fishermen are repealed by GN 180/2004 (<u>GG 3261</u>).

Construction and Equipment Regulations for fishing vessels are contained in GN 61/2002 (GG 2729), which repeals the regulations contained in RSA GN 79 of 19 January 1968 insofar as they apply to fishing vessels.

Manning of Ships Regulations are contained in GN 240/2003 (GG 3097).

Certificates of Qualifications Regulations are contained in GN 41/2004 (GG 3164), as amended by GN 185/2007 (GG 3919).

Merchant Shipping Fees Regulations are contained in GN 206/2023 (<u>GG 8134</u>), which repeals GN 39/2009 (<u>GG 4227</u>), which in turn repeals GN 80/1998 (<u>GG 1837</u>). (Note that GN 80/1998 repealed a number of previous regulations and amended the Record Book Regulations contained in RSA GN R.2080 of 14 October 1977.) These regulations have not yet been processed for the database.

Merchant Shipping (Radio Installations) Regulations are contained in GN 105/2010 (GG 4486).

Notices: Ports of registry for the registration of ships are identified in GN 77/1990 (<u>GG 112</u>) and GN 24/1994 (<u>GG 801</u>).

The measurement of tonnage is addressed in GN 22/1991 (GG 162) and GN 109/1991 (GG 276).

Cases: Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others 1999 NR 410 (HC) (sections 135 and 172).

Related international agreements: The Schedules to the Act reproduce the following international conventions applicable to Namibia, but without including all of the amendments and protocols which are applicable –

• International Convention for the Safety of Life at Sea (SOLAS), 1974

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974

- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG)
- International Convention on Load Lines (LL), 1966

Protocol of 1988 relating to the International Convention on Load Lines (LL PROT), 1966

- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978
- International Convention on Tonnage Measurement of Ships (TONNAGE), 1969.

Marine Traffic Act 2 of 1981, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 7408</u>) regulates marine traffic comprehensively.

Applicability to SWA: RSA Proclamation 93 of 1985 (RSA GG 9774), issued in terms of the South-West Africa Constitution Act 39 of 1968, makes the Act "and all amendments thereof" applicable to SWA from 7 June 1985. The only amendment to the Act in South Africa prior to Namibian independence was the Marine Traffic Amendment Act 5 of 1983 (RSA GG 8571), which was applicable to SWA by virtue of RSA Proc. 93 of 1985.

Amendments: The following pre-independence South African amendment was applicable to SWA –

• Marine Traffic Amendment Act 5 of 1983 (RSA GG 8571.

Act 15/1991 (GG 312) amended sections 1, 5, 9, and 14 and substituted certain words and expressions and the long title of the Act, to make it consistent with an independent Namibia.

The Namibian Ports Authority Act 2 of 1994 (GG 810) amends the definition of "harbour" in section 1.

Regulations: Regulations are authorised by section 14 of the Act.

Pre-independence regulations issued in South Africa are contained in RSA GN R. 39/1985 (RSA GG 9544). However, RSA GN R.39/1985 was erroneously published, so the regulations are re-published in RSA GN R.194/1985 (RSA GG 9575). 398

No post-independence regulations have been promulgated.

Namibian Ports Authority Act 2 of 1994 🕎 🙀

Summary: This Act (originally published in <u>GG 810</u>) provides for the establishment of the Namibian Ports Authority to undertake the management of ports and lighthouses in Namibia. The Act – with the exception of paragraphs 4, 5, 6, 7, 8 and 9 of Schedule 2 – came into force on 1 March 1994. The excepted provisions – all of which deal with amendments to the National Transport Corporation Act 21 of 1987 (<u>OG 5439</u>) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 (<u>GG 1961</u>) with effect from 1 April 1999) – were brought into force on 1 April 1995 by GN 58/1995 (<u>GG 1044</u>).

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³⁹⁸ Note that this statute post-dates the transfer proclamations that transferred the administration of various South African laws to SWA.

Amendments: The National Transport Services Holding Company Act 28 of 1998 (<u>GG 1961</u>), brought into force in relevant part on 1 April 1999 (GN 51/1999, <u>GG 2075</u>), amends Schedule 2.

The Act is also amended by Act 12/2000 (GG 2365) (sections 4, 5, 6, 9, 14, 23A, plus provisions relating to a Performance Agreement, and to the transfer of the Walvis Bay Port to the Namibia Ports Authority), which came into force on 8 November 2001 with the exception of sections 1, 2, 3 and 4 of the amending Act. These sections of the amending Act came into force on 2 May 2002. (See GN 221/2001 (GG 2641) and GN 66/2002 (GG 2734).)

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4, 6, 7 and 9 and substitutes section 16. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Savings: Section 30(1) includes a broad, general savings clause:

Notwithstanding anything to the contrary in this Act or the Walvis Bay and Off-shore Islands Act, 1994, any regulations and any tariff of fees applied in relation to the Walvis Bay port and which, in terms of any law applied in Walvis Bay before 1 March 1994, were in force immediately before that date, shall, in so far as they relate to any matter which, in terms of this Act, may be -

- (a) determined or prescribed by the Authority; or
- (b) regulated by the Minister by regulation, continue to be of force until repealed or substituted by determinations made by the Authority or regulations made by the Minister in terms of this Act.

Regulations: Regulations issued in terms of the current Act are contained in GN 117/2001 (<u>GG 2549</u>), which repeals RSA GN R.562 of 26 March 1982 (as amended).

Regulations that may have survived pursuant to the savings clause have not yet been researched.

Notices: The date determined under section 11(1)(b) for transfer of management and control of the Lüderitz port and the Diaz Point lighthouse to the Namibian Ports Authority is 1 April 1995 (GN 58/1995, GG 1044). See also GN 131/1998 (GG 1885) on this topic.

The area defined in Schedule 1 of the Act is extended by GN 215/2011 (GG 4834).

Tariffs: Tariffs prescribed by the Namibian Ports Authority from time to time have not been comprehensively recorded here. The most recent tariffs are contained in General Notice 177/2021 (GG 7532) (for the 2020/2021 financial year) and General Notice 178/2021 (GG 7533) (for the 2021/2022 financial year). ³⁹⁹

Appointments: Appointments to the Board of Directors are announced in GN 8/2005 (GG 3374), GN 78/2012 (GG 4901) and GN 81/2012 (GG 4901).

Cases: Seaflower Whitefish Corporation v Namibia Ports Authority 1998 NR 316 (HC) and Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC) (application of wharfage rates in Harbour Tariff (Lüderitz)).

Wreck and Salvage Act 5 of 2004 🕎 🙀

Summary: This Act (<u>GG 3244</u>) provides for the salvage of ships, aircraft and persons in danger at sea, and for the protection of the marine environment. It also amends or repeals certain sections of the *Merchant Shipping Act 57 of 1951*. It was brought into force on 1 November 2004 by GN 232/2004 (<u>GN</u> 3313).

³⁹⁹ The tariffs in these two notices appear to be identical.

Regulations: Regulations are authorised by section 36 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

African Maritime Transport Charter, 1993

Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 1988

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT), 1988

Convention on the International Maritime Organization (IMO), 1948

Amendments to the Convention on the International Maritime Organization (institutionalization of the Facilitation Committee), 1991

Amendments to Articles 16, 17 and 19(b) of the Convention on the International Maritime Organization, 1993

Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972 International Convention for the Control and Management of Ships' Ballast Water and Sediments (BMW), 2004

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978

Annex I – Regulations for the Prevention of Pollution by Oil

Annex II – Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk

Annex III – Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

Annex IV – Regulations for the Prevention of Pollution by Sewage from Ships

Annex V – Prevention of Pollution by Garbage from Ships

Annex VI – Regulations for the Prevention of Air Pollution from Ships

International Convention for the Safety of Life at Sea (SOLAS), 1974

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974

International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1952

International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS), 2001 International Convention on Load Lines (LL), 1966

Protocol of 1988 relating to the International Convention on Load Lines (LL PROT), 1966

International Convention on Maritime Search and Rescue (SAR), 1979

International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978

International Convention on Tonnage Measurement of Ships (TONNAGE), 1969

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969

Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil (INTERVENTION PROT), 1973

Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CCL PROT 1992)

Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (1992 Fund Convention)

**Revised African Maritime Transport Charter, 2010 (which will supersede the African Maritime Transport Charter, 1993 when it comes into force).

See also **SEA AND SEASHORE**.

SOCIAL SECURITY

Social Security Act 34 of 1994 🕎 🙀

Summary: This Act (originally published in <u>GG 992</u>) establishes a Social Security Commission as well as the following funds: a Maternity Leave, Sick Leave and Death Benefit Fund; a National Medical Benefit Fund; a National Pension Fund; and a Development Fund. The Act – *with the exception of* Parts VI (National Medical Benefit Fund) and VII (National Pension Fund) – was brought into force on 15 January 1995 by GN 7/1995 (<u>GG 1006</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 4, 5 and 12. That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The State-owned Enterprises Governance Act incorrectly refers to this Act as the "Social Security Commission Act" in Schedule 2.

The Labour Act 11 of 2007 (<u>GG 3971</u>), brought into force in relevant part on 1 November 2008 (GN 260/2008, <u>GG 4151</u>), amends the definition of "employee" in section 1.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 16.

Regulations: Regulations are contained in GN 198/1995 (GN 1181), as amended by:

GN 31/1996 (GG 1258) (amends Reg 2)

GN 80/1996 (GG 1291) (amends Reg 2)

GN 244/1997 (<u>GG 1741</u>) (amends Regs 9-10 and substitutes Form 7)

GN 235/1998 (GG 1952) (substitutes Form 7 with a Social Security Card confirming registration as an employee)

GN 101/2001 (GG 2544) (amends Reg 11 to increase the death benefit)

GN 227/2003 (GG 3092) (amends Reg 11 to increase the death benefit)

GN 53/2008 (GG 4002) (amends definition of "remuneration" and Regs 2, 3, 5; amends Reg 9 to make maternity benefits 100 per cent of remuneration up to a specified ceiling, and adjusts the ceiling; amends Reg 10 to adjust the percentage of sick leave benefits; and amends Reg 11 to increase the death benefit)

GN 49/2009 (<u>GG 4236</u>) (substitutes "basic wage" for "remuneration"; amends Reg 9 to increase the ceiling for maternity benefits; amends Reg 10 to raise sick leave benefits; and amends Reg 11 to increase the death benefit)

GN 147/2010 (GG 4530) (amends Reg 9 to increase the ceiling for maternity benefits; amends Reg 10 to raise the ceiling for sick leave benefits; and amends Reg 11 to increase the death benefit)

GN 147/2010 states that the regulations were previously amended by Government Notice 101 of 11 May 2001, but this is an error; there is no such Government Notice. This Government Notice also lists Government Notice 101 of 1 June 2001, which is correct.

GN 69/2011 (GG 4725) (amends Reg 9 to raise the ceiling for maternity leave benefits)

GN 129/2011 (GG 4767) (substitutes Reg 3(4), authorising fee as fixed by Commission for replacement social security card or registration certificate)

GN 129/2011 states that the regulations were previously amended by Government Notice 101 of 11 May 2001; the correct date for this Government Notice is 1 June 2001. GN 129/2011 lists GN 5 of 2 January 2009 as a previous amendment to these regulations, but this is an error as GN 5/2009 is actually an announcement of members of the Social Security Commission.

GN 97/2012 (GG 4919) (amends Reg 9 to raise the ceiling for maternity leave benefits to N\$10 500/month; amends Reg 10 to set sick leave benefits at 75% of basic wage up to ceiling of N\$7 875/month for first 12 months, and 65% of basic wage up to ceiling of N\$6 825/month thereafter; and amends Reg 11 to raise the death benefit to a single payment of N\$5 515)

This Government Notice states that the regulations were previously amended by Government Notice 101 of 11 May 2001, but this is an error; there is no such Government Notice. This Government Notice also lists Government Notice 101 of 1 June 2001, which is correct.

GN 301/2012 (GG 5101) (amends definition of "basic wage" in Reg 1)

GN 44/2016 (GG 5967), as corrected by GN 51/2016 (GG 5971) (amends maternity, sick leave and death benefits; amends reg 9 to raise the ceiling for maternity leave benefits to N\$13 500/month; amends reg 10 to set sick leave benefits at 75% of basic wage up to ceiling of N\$9 750/month for first 12 months, and 65% of basic wage up to ceiling of N\$8 450/month thereafter; and amends reg 11 to raise the death benefit to a single payment of N\$8 475)

This Government Notice states that the regulations were previously amended by Government Notice 101 of 11 May 2001, but this is an error; there is no such Government Notice. This Government Notice also lists Government Notice 101 of 1 June 2001, which is correct. It also states that the regulations were previously amended by Government Notice 277 of 15 November 2003; the correct reference is Government Notice 227 of 15 November 2003. It also states that the regulations were previously amended by Government Notice 301 of 18 December 2012; the correct date is 20 December 2012.

GN 89/2022 (GG 7773) (amends maternity, sick leave and death benefits; amends reg 9 to raise the ceiling for maternity leave benefits to N\$15 000/month; amends reg 10 to set sick leave benefits at 75% of basic wage up to ceiling of N\$11 250/month for first 12 months, and 65% of basic wage up to ceiling of N\$9 750/month thereafter; and amends reg 11 to raise the death benefit to a single payment of N\$12 000).

This Government Notice states that the regulations were previously amended by Government Notice 277 of 15 November 2003; the correct reference is Government Notice 227 of 15 November 2003. It also states that the regulations were previously amended by Government Notice 301 of 1 March 2012, but this is an error; there is no such Government Notice. This reference must have been intended to refer to Government Notice 301 of 20 December 2012, which came into force on 1 March 2013, and is also listed.

GN 285/2024 (GG 8461) (substitutes the proviso in the definition of "basic wage" in reg 1)

This Government Notice states that the regulations were previously amended by Government Notice 301 of 1 March 2012, but this is an error; there is no such Government Notice. This reference must have been intended to refer to Government Notice 301 of 20 December 2012, which came into force on 1 March 2013, and is also listed.

Note that a previous version of GG 8461 contained erroneous notice numbers.

Social Security Development Fund Regulations are contained in GN 215/2010 (GG 4565), as substantially amended by GN 302/2012 (GG 5101).

Notices: Notices regarding unclaimed monies in terms of the maternity leave, sick leave and death benefits fund are not listed here.

Appointments: Members of the Social Security Commission are announced in GN 133/1995 (GG 1119), GN 38/2003 (GG 2927), GN 5/2009 (GG 4192), GN 237/2011 (GG 4859), GN 327/2013 (GG 5364), GN 267/2014 (GG 5644), GN 167/2016 (GG 6086), GN 251/2017 (GG 6426), GN 39/2018 (GG 6538), GN 316/2018 (GG 6784), GN 85/2021 (GG 7521), GN 16/2023 (GG 8021) and GN 169/2024 (GG 8379).

Notes: (1) The wording of the appointments differs in these different Government Notices. Most of the notices refer to the appointment of members of the Social Security Commission, but two notices have different wordings: GN 167/2016 (GG 6086) (appointed as Commissioners) and GN 39/2018 (GG 6538) (appointed as board members). (2) Note that there are two versions of GG 8021. However, GN 16/2023 is identical in both versions.

A Chairperson is announced in GN 234/1998 (<u>GG 1952</u>), GN 38/2003 (<u>GG 2927</u>), GN 5/2009 (<u>GG 4192</u>) and GN 21/2015 (<u>GG 5853</u>).

Cases:

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (deductions made from commissions in respect of social security payments are an indication of an employment relationship)

Christian Congregation of Jehovah's Witnesses of Namibia v Social Security Commission 2017 (3) NR 724 (LC) (application of section 45 on form of appeal given elimination of district labour courts;

definitions of "employee" and "employer" in section 1, and indications of employment relationship; lack of provision in Act for de-registration of employers once registered); Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC) (definitions of "employee" and "employer" in section 1; Commission's refusal to deregister the religious group as an employer upheld).

COMMISSIONS

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Social Security Commission (Proc. 7/2002, <u>GG 2857</u>).

See also GN 200/2002 (GG 2857), GN 81/2003 (GG 2956).

See also LABOUR.

SOCIAL WELFARE

Friendly Societies Act 25 of 1956, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>SA GG 5679</u>) regulates friendly societies, which are associations of persons established to provide relief to children, the aged, the sick, widows and so forth. It was brought into force in South Africa and South West Africa on 31 December 1959 by SA Proc. 289/1959 (<u>SA GG 6335</u>), pursuant to section 52 of the Act. This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (<u>GG 7645</u>), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: The Act repeals so much of the *Friendly Societies Act 5 of 1892* as was not previously repealed.

Applicability to SWA: Section 1 defines "Union" to include "the Territory", which is defined as "the Territory of South West Africa". "Court" and "Gazette" are defined accordingly. Section 52 states "This Act shall apply also in the Territory." Although the wording of section 52 did not make amendments to the Act automatically applicable to South West Africa, they are probably applicable by virtue of the definition of "Union".

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance at the time, as indicated by government notices pertaining to the Registrar and Deputy Registrar of Friendly Societies issued during the 1970s. See, for example, Government Notice 1317/1970 (RSA GG 2768) and Government Notice 1640/1977 (RSA GG 5715). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance. Thus, it appears that the administration of the Act was not transferred to SWA.

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

- Finance Act 81 of 1957 (SA GG 5907)
- Finance Act 80 of 1959 (SA GG 6255)
- Inspection of Financial Institutions Act 68 of 1962 (RSA GG 264)
- Friendly Societies Amendment Act 60 of 1963 (RSA GG 540)
- Friendly Societies Amendment Act 67 of 1965 (RSA GG 1128)
- Financial Institutions Amendment Act 65 of 1968 (RSA GG 2107)
- Financial Institutions Amendment Act 91 of 1972 (RSA GG 3594)
- Medical Schemes Amendment Act 43 of 1975 (RSA GG 4721)
- Financial Institutions Amendment Act 101 of 1976 (RSA GG 5217)
- Financial Institutions Amendment Act 103 of 1979 (RSA GG 6568)
- Financial Institutions Amendment Act 99 of 1980 (RSA GG 7151)
- Financial Institutions Amendment Act 86 of 1984 (RSA GG 9313)
- Financial Institutions Amendment Act 51 of 1988 (RSA GG 11313)
- Financial Institutions Amendment Act 53 of 1989 (RSA GG 11892)
- Financial Institutions Second Amendment Act 54 of 1989 (RSA GG 11893).

The Act was amended in South Africa by the *Friendly Societies Amendment Act 44 of 1988* (RSA GG 11273), but *Act 44 of 1988* was brought into force only after Namibian independence, on 1 July 1993

by RSA Proc. 54/1993 (<u>RSA GG 14931</u>). Act 25 of 1956 was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* (<u>RSA GG 11743</u>). However, the portions of this Act which amended *Act 25 of 1956* came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* (<u>RSA GG 12364</u>) as being 1 April 1990. These amendments were thus not applicable to South West Africa.

The Short-term Insurance Act 4 of 1998 (<u>GG 1832</u>), which was brought into force on 1 July 1998 by GN 142/1998 (<u>GG 1887</u>), repeals section 50 insofar as it relates to short-term insurance.

The Long-term Insurance Act 5 of 1998 (<u>GG 1834</u>), which was brought into force on 1 July 1998 by GN 144/1998 (<u>GG 1888</u>), repeals the remainder of section 50.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (<u>GG 2529</u>), which was brought into force on 14 May 2001 by GN 85/2001 (<u>GG 2528</u>), amends section 1, substitutes section 4 and repeals section 4A.

Regulations: Regulations are authorised by section 47 of the Act. No post-independence regulations have been promulgated.

Regulations issued prior to independence are contained in RSA GN R.479/1966 (RSA GG 1409, republished in OG 2710), as amended by RSA GN R.2143/1984 (RSA GG 9437) and RSA 1921/1989 (RSA GG 12079).

Notices: Statistical information which must be provided annually to the Registrar of Friendly Societies by any friendly society established in terms of an agreement published or deemed to have been published under section 48 of the Industrial Conciliation Act 28 of 1956 are contained in RSA GN R.101/1962 (RSA GG 162) and RSA GN R.484/1966 (RSA GG 1409). These notices appear to have no current relevance in Namibia.⁴⁰¹

Appointments: A Registrar and Deputy Registrar of Friendly Societies are appointed in General Notice 27/1991 (GG 174).

National Welfare Act 79 of 1965, as amended in South Africa to November 1977 w 🔄 🙀

Summary: This Act (originally published in <u>RSA GG 1163</u>) establishes a National Welfare Board of Namibia and provides for the registration and control of certain welfare organisations.

Repeals: The Act repeals the Welfare Organizations Act 40 of 1947 (SA GG 3834), as amended. 402

The *National Welfare Amendment Act 13 of 1971* (RSA GG 3061), which made the Act applicable to SWA, repealed the Welfare Organisations Ordinance 33 of 1965.

Applicability to SWA: Section 1 defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 43A, which was inserted by *Act 13 of 1971* and repealed by Act 9 of 1993, stated: "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel."

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⁴⁰⁰ These regulations repeal the regulations in RSA GN R.100 of 26 January 1962.

⁴⁰¹ The Industrial Conciliation Act 28 of 1956 (renamed the Labour Relations Act in South Africa by the Labour Relations Amendment Act 57 of 1981) was not applicable to South West Africa. The analogous law in South West Africa was the Wage and Industrial Conciliation Ordinance 35 of 1952, which was replaced by the Labour Act 6 of 1992, which was replaced in turn by the Labour Act 11 of 2007.

⁴⁰² The only repeals in Act 40 of 1947 pertain to South African provincial legislation.

Transfer of administration to SWA: The administration of this Act appears to have been transferred to SWA by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated **30 November 1977.** None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

In South Africa, the portions of the Act relating to the National Welfare Board and to welfare organisations were repealed by the *National Welfare Act 100 of 1978* (RSA GG 6094). The portions of the Act relating to social workers were repealed by the *Social and Associated Workers Act 110 of 1978* (RSA GG 6102). The remainder of the Act was repealed by the *Pension Laws Amendment Act 81 of 1982* (RSA GG 8239). None of the repealing acts were made expressly applicable to SWA.

Section 3(2) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, excluded from transfer the provisions of any transferred law "which provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic". This may have at some stage have excluded from transfer the provisions of this Act relating to the National Welfare Board, as well as possibly some commissions and committees established under this Act.

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

- General Law Amendment Act 102 of 1967 (RSA GG 1771)
- National Welfare Amendment Act 13 of 1971 (RSA GG 3061)
- National Welfare Amendment Act 44 of 1976 (RSA GG 5070).

Act 12/1979 (OG 4028) amends this Act substantially to provide for a National Welfare Board of South West Africa.

The Act is also substantially amended to make it consistent with an independent Namibia by Act 9/1993 (GG 692), which was brought into force on 1 July 1994 by GN 117/1994 (GG 875). This amending act amends sections 1-8, 10, 11, 14, 18, 19, 21, 25 38, 39, 42; repeals sections 33-37, 40 and 43A; and substitutes certain expressions and the long title.

Act 20/1994 (GG 935) amends section 1 and repeals section 38, which formerly required that only registered welfare workers could be appointed as professional welfare officers in the public service.

Savings: Section 43(2) contains a savings clause for things done under the repealed law:

Any proclamation, regulation, rule, direction, notice, certificate, authority, consent, letter of delegation, evidence of authority, order or appointment issued, made, given, prepared, published or granted and any other action taken under any provision of any law repealed by sub-section (1), shall be deemed to have been issued, made, given, prepared, published, granted or taken under the corresponding provision of this Act.

The *National Welfare Amendment Act 13 of 1971* (RSA GG 3061), which made an additional repeal, also contains a savings clause in section 6(3):

Any notice, certificate, authority, consent, letter of delegation, evidence of authority, order or appointment issued, prepared, published, granted or made, and any other action taken under a provision of the Ordinance, shall be deemed to have been issued, prepared, published, granted, made or taken under the corresponding provision of the principal Act.

This savings clause does not explicitly mention regulations, but it does broadly refer to "any other action taken" under a provision of the repealed Ordinance.

Regulations: Regulations are authorised by section 42 of the Act. No post-independence regulations have been promulgated.

General regulations are contained in RSA GN R.1413/1971 (<u>RSA GG 3227</u>). 403 Regulation 28 states: "These regulations shall also apply in the territory, including the Eastern Caprivi Zipfel." No amendments to these regulations have been located, and they appear to remain in force in Namibia. 404

Aged Persons Act 81 of 1967, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 1771</u>) provides for the protection and welfare of certain aged and debilitated persons. It also governs old age homes.

Repeals: The Act repeals the Old Age Pensions Act 38 of 1962, as amended.

Applicability to SWA: Section 16 of the *Pension Laws Amendment Act 79 of 1968* (RSA GG 2119, and also published in OG 2915), without amending the *Aged Persons Act 81 of 1967*, empowered the State President to make the provisions of the Act "*mutatis mutandis* applicable in the territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said territory, in so far as those provisions relate to Bantu or Bantu persons", subject to "such conditions, amendments or exceptions as may be specified in the proclamation". It also empowered the State President to withdraw or amend any such proclamation. Section 16(4) stated:

"With effect from the date on which any Act referred to in subsection (1) becomes applicable in the said territory in terms of a proclamation issued under that subsection, the corresponding Act which under section 45(1) of the Pension Laws Amendment Act, 1965 (Act No. 102 of 1965), was declared to be applicable in the said territory, shall cease to be applicable therein: Provided that anything done in terms of the relevant corresponding Act and which could be done in terms of the relevant Act referred to in subsection (1) which becomes applicable in the territory on the said date, shall be deemed to have been done in terms of the last-mentioned Act."

(The corresponding Act cited in section 45(1) of the Pension Laws Amendment Act 102 of 1965 (RSA GG 1171) was the Old Age Pensions Act 38 of 1962 (RSA GG 231).)

Pursuant to this authority, RSA Proc. R.293/1968 (RSA GG 2182) provided that the provisions of the Act were brought into force on 1 October 1968 "in the Territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of Natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said Territory, in so far as those provisions relate to Bantu".

The Act was brought into force generally in SWA only when the amendments made by *Act 14 of 1971* were brought into with effect from 1 January 1972 by RSA Proc. 269/1971 (RSA GG 3327). Section

⁴⁰³ These regulations repeal the South African regulations contained in RSA GN R.1055/1966 (RSA GG 1483), and the accompanying forms contained in RSA GN R.397/1967 (RSA GG 1693). They also repeal the SWA regulations, made under the repealed SWA Welfare Organisations Ordinance 33 of 1965, in SWA GN 183/1965 (OG 2670)

The repealed South African regulations contained in RSA GN R.1055/1966 (RSA GG 1483) repealed the regulations in RSA GN R.759 dated 29th September 1961, with effect from 1 July 1966.

The repealed SWA regulations contained in GN 183/1965 (OG 2670) repealed the regulations contained in RSA GN 252 of 15th October 1945.

⁴⁰⁴ Regulations regulating the Registration of Social Workers were made in RSA GN R.1363/1973 (RSA GG 3994). These regulations were made explicitly applicable to SWA and amended prior to the date of transfer by RSA GN R.2138/1974 (RSA GG 4512) and by RSA GN R.105/1976 (RSA GG 4965). Although no repeal of these regulations has been located in respect of Namibia, the underlying provisions of the Act on the registration of social workers (sections 33-37 and the portions of section 42 pertaining to regulations on social workers) were repealed by the National Welfare Amendment Act 9 of 1993 (GG 692) – meaning that there is no longer any authority for these regulations.

21A (which was added by Act 14 of 1971) states "This Act and any amendment thereof shall, save in so far as it has already been declared to be applicable in the territory in terms of section 16(1) of the Pension Laws Amendment Act, 1968 (Act No. 79 of 1968), also apply in the territory, including the Eastern Caprivi Zipfel." Section 1 (as inserted by Act 14 of 1971) also defines "Republic" to include "the territory", which is defined as "the territory of South West Africa".

The original Act also dealt with old age pensions, but this portion of the Act was repealed by section 21 of the *Social Pensions Act 37 of 1973* (RSA GG 3866), which was applicable to SWA but has since been repealed by the National Pensions Act 10 of 1992.

Transfer of administration to SWA: Section 21 of the Act gives the State President the power to assign the administration of the Act to one or more Ministers and to vary this assignment from time to time.

RSA Proc. R.283/1968 (<u>RSA GG 2176</u>) assigned the administration of the Act to the Minister of Social Welfare and Pensions, with the following exceptions:

- (a) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu as defined in section 1 of the Aged Persons Act. 1967;
- (b) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons as defined in section 1 of the Aged Persons Act, 1967;
- (c) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians as defined in section 1 of the Aged Persons Act, 1967; and
- (d) to the Minister of the Interior in so far as the said provisions refer to Chinese as defined in section 1 of the Aged Persons Act, 1967.

It was repealed by RSA Proc. R. 270/1971 (RSA GG 3327).

Subsequent to this repeal, RSA Proc. R.154/1985 (RSA GG 9917) purported to amend RSA Proc. R.283/1968 to substitute "Minister of Constitutional Development and Planning" for "Minister of Cooperation and Development" in paragraph (a); the reference to RSA Proc. R.283/1968 must be an error, as there is no reference to such a Minister even in the repealed Proclamation. RSA GN 22/1985 (RSA GG 10565) provides new assignments of administration of the Aged Persons Act, 1967 (Act 81 of 1967), which are purportedly to be read together with the (repealed) Proclamation R. 283/1968 as amended. This RSA Proclamation is probably irrelevant to SWA in any event, since it would appear to post-date all relevant transfers.

RSA Proc. R. 270/1971 (RSA GG 3327) assigned the administration of the Act as follows:

- (a) to the Minister of Social Welfare and Pensions, in so far as the said provisions refer to White persons;
- (b) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu;
- (c) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons and Namas;
- (d) to the Minister of Rehoboth Affairs, in so far as the said provisions refer to Burghers;
- (e) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians; and
- (f) to the Minister of the Interior, in so far as the said provisions refer to Chinese.

This 1971 Proclamation also included definitions of "Bantu", "Burgher", "Chinese, "Coloured person", "Indian", "Nama" and "White person", and repealed RSA Proc. R.283/1968 with effect from 1 January 1972. The 1971 Proclamation was repealed by RSA Proc. 219/1973 (RSA GG 4030), which assigns the administration of provisions of the *Social Pensions Act 37 of 1973*.

RSA Proc. 320/1972 (<u>RSA GG 3734</u>) transferred the administration of the Aged Persons Act 81 of 1967 in respect of "Natives resident in the area of jurisdiction of the Eastern Caprivi Legislative Council" from the South African Department of Bantu Administration and Development to the Eastern Caprivi Legislative Council.

RSA Proc. 224/1988 (RSA GG 11643) also assigns the administration of the Act in respect of Black persons resident on certain categories of land to the Minister of Education and Development Aid, but this

Proclamation almost certainly post-dates any transfer proclamations that may have applied and so appears to be irrelevant to SWA.

Given the complex chain of administration, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa after 1976 (the date of the earliest transfer proclamation) and before Namibian independence.

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

- Pension Laws Amendment Act 98 of 1969 (RSA GG 2463)
- Second Pension Laws Amendment Act 86 of 1970 (RSA GG 2896)
- Aged Persons Amendment Act 14 of 1971 (RSA GG 3062)
- Pension Laws Amendment Act 97 of 1972 (RSA GG 3605)
- Social Pensions Act 37 of 1973 (RSA GG 3866), which was made expressly applicable to SWA and which repealed the Act "in so far as it relates to pension matters;
- Aged Persons Amendment Act 46 of 1976 (<u>RSA GG 5072</u>).

Some terminology was also amended by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

There have been no amendments to the Act in Namibia since independence.

The original Act covered pensions for aged persons, but this portion of the Act was repealed by section 21 of the *Social Pensions Act 37 of 1973*, which was applicable to SWA.

Regulations: Regulations are authorised by section 20 of the Act. No post-independence regulations have been promulgated, but some race-based pre-independence regulations relating to homes for the aged appear to remain in force:

- RSA GN R.1813/1968 (RSA GG 2182; re-published in OG 2944) was withdrawn by RSA GN R.1034/1974 (RSA GG 4308) in so far as it relates to pension matters, but some of the regulations pertain to homes for aged persons classified as "Native" as defined in section 25 of the Native Administration Proclamation 15 of 1928 and so technically remain in force.
 - RSA GN R.1813/1968 was amended numerous other times in South Africa, both before and after the probable date of transfer, but all of the other amendments located concern only the provisions of the regulations relating to pensions.
- RSA GN R.3759/1969 (<u>RSA GG 2564</u>), as corrected by RSA GN R.1235/1970 (<u>RSA GG 2762</u>) and as amended by RSA GNs R.1625/1976 (<u>RSA GG 5276</u>) contains regulations for the registration of homes for the aged for "White persons".
- RSA GN R.1699/1971 (RSA GG 3270) contains regulations governing the registration and management of homes for the aged for "Coloured persons" that apply to "every person classified as a member of the Cape Coloured, Malay, Griqua or the Other Coloured Group in terms of the Population Registration Act, 1950 (Act 30 of 1950)".

Race-based regulations on old age pensions for persons resident in SWA were issued under the Act, but these were all replaced by new race-based regulations issued under the *Social Pensions Act 37 of 1963* – which are discussed in the entry for the National Pensions Act 10 of 1992, which repealed the *Social Pensions Act 37 of 1963*.

Regulations relating to old age pensions in respect of "Burghers" resident in SWA are contained in RSA GN R.82/1972 (RSA GG 3367), as corrected by RSA GN R.1318/1972 (RSA GG 3622) and amended by RSA GN R.1455/1972 (RSA GG 3633). According to RSA Proc. R. 270/1971 (RSA GG 3327), "Burgher" is defined as any member of the Rehoboth Community referred to in SWA Proc. 28/1923. We have not been able to locate a repeal of these regulations, but they would have no relevance even if they remain technically in force since the underlying provisions of the Act on old age pensions have been repealed.

As noted above, it is not clear what transfer proclamation (if any) applied – but all of the regulations with relevance to SWA that have been located are dated before 1976 (the date of the earliest transfer proclamation).

Blind Persons Act 26 of 1968, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 2032</u>) concerns the promotion of the welfare of blind persons.

Repeals: The Act repeals the *Blind Persons Act 39 of 1962*, as amended.

Applicability to SWA: Section 16 of the Pension Laws Amendment Act 79 of 1968 (RSA GG 2119, also published in OG 2915) – which came into force on 1 October 1968 (section 17(1) of Act 79 of 1968) – without amending the *Blind Persons Act 26 of 1968*, empowered the State President to make the provisions of the Act "mutatis mutandis applicable in the territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said territory, in so far as those provisions relate to Bantu or Bantu persons", subject to "such conditions, amendments or exceptions as may be specified in the proclamation". It also empowered the State President to withdraw or amend any such proclamation. Section 16(4) stated:

With effect from the date on which any Act referred to in subsection (1) becomes applicable in the said territory in terms of a proclamation issued under that subsection, the corresponding Act which under section 45(1) of the Pension Laws Amendment Act, 1965 (Act No. 102 of 1965), was declared to be applicable in the said territory, shall cease to be applicable therein: Provided that anything done in terms of the relevant corresponding Act and which could be done in terms of the relevant Act referred to in subsection (1) which becomes applicable in the territory on the said date, shall be deemed to have been done in terms of the last-mentioned Act.

(The corresponding Act cited in section 45(1) of the Pension Laws Amendment Act 102 of 1965 (RSA GG 1171) was the Blind Persons Act 39 of 1962.)

Pursuant to this authority, RSA Proc. R.293/1968 (RSA GG 2182) provided that the provisions of the Act were brought into force on 1 October 1968 "in the Territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of Natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said Territory, in so far as those provisions relate to Bantu".

The Act was brought into force generally in SWA only when the amendments made by *Act 16 of 1971* came into force on 1 January 1972. Section 18A (inserted by *Act 16 of 1971*) states: "This Act and any amendment thereof shall, save in so far as it has already been declared to be applicable in the territory in terms of section 16(1) of the Pension Laws Amendment Act, 1968 (Act No. 79 of 1968), also apply in the territory, including the Eastern Caprivi Zipfel." Section 1 (as inserted by *Act 16 of 1971*) also defines "Republic" to include "the territory", which is defined as "the territory of South West Africa".

The original Act covered pensions for blind persons, but this portion of the Act was repealed by section 21 of the *Social Pensions Act 37 of 1973*, which was applicable to SWA.

Transfer of administration to SWA: Section 18 of the Act gives the State President the power to assign the administration of the Act to one or more Ministers and to vary this assignment from time to time.

RSA Proc. R.285/1968 (RSA GG 2176) assigned the administration of the Act as follows:

(a) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu as defined in section 1 of the Blind Persons Act, 1968;

- (b) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons as defined in section 1 of the Blind Persons Act, 1968;
- (c) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians as defined in section 1 of the Blind Persons Act, 1968;
- (d) to the Minister of the Interior, in so far as the said provisions refer to Chinese as defined in section 1 of the Blind Persons Act, 1968.

RSA Proc. R. 273/1971 (RSA GG 3327) assigned the administration of the Act as follows:

- (a) to the Minister of Social Welfare and Pensions, in so far as the said provisions refer to White persons;
- (b) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu;
- (c) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons and Namas:
- (d) to the Minister of Rehoboth Affairs, in so far as the said provisions refer to Burghers;
- (e) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians;
- (f) to the Minister of the Interior, in so far as the said provisions refer to Chinese; and
- (g) to the Minister of Labour, in so far as the said provisions refer to
 - the making of contributions to a welfare organisation registered under the National Welfare Act, 1965 (Act 79 of 1965), towards the provision or maintenance by such organisation of workshops for the training or employment of members of the population groups, excluding Bantu and Natives, referred to in this Proclamation, and the remuneration of persons employed by such organisation for the purpose of conducting any such workshop; and
 - (ii) the making of contributions towards the augmentation of the earnings of members of the population excluding Bantu and Natives, referred to in this 'on, who are employed in the aforementioned workshop.

This 1971 Proclamation was repealed by RSA Proc. 219/1973 (RSA GG 4030).

The Department of "Bantu Administration and Development" must have become the "Department of Co-operation and Development" at some stage – as RSA Proc. No. R.285/1968 was amended by RSA Proc. R.153/1985 (RSA GG 9917) to substitute "Minister of Constitutional Development and Planning" for "Minister of Co-operation and Development" in paragraph (a).

Thus, it is not clear from the face of the Act which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa after 1976 (the date of the earliest transfer proclamation) and before Namibian independence.

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

- Second Pension Laws Amendment Act 86 of 1970 (RSA GG 2896)
- Blind Persons Amendment Act 16 of 1971 (RSA GG 3064)
- Pensions Laws Amendment Act 97 of 1972 (RSA GG 3605)
- Social Pensions Act 37 of 1973 (RSA GG 3866), which was made expressly applicable to SWA and which repealed the Act "in so far as it relates to pension matters".

Regulations: Regulations are authorised by section 17 of the Act. There are some pre-independence regulations that appear to remain in force. However, since the portions of the Act relating to pensions for blind persons have been repealed, any regulations on this topic would have no current relevance. Furthermore, the regulations issued under the Act prior to Namibian independence were all race-based and thus would be inappropriate in respect of independent Namibia. Thus, the regulations listed below are not included in the database of annotated laws.

The following regulations were made specifically applicable to SWA (or were amended by notices that specifically mentioned SWA):

"Burghers" of SWA: Regulations in respect of "Burghers" resident in the Territory of South-West Africa are contained in RSA GN R.83/1972 (<u>RSA GG 3367</u>), as corrected by RSA GN

R.1318/1972 (RSA GG 3622) and as amended by RSA GN R.1456/1972 (RSA GG 3633). Burghers are defined as "members of the Rehoboth Community referred to in Proclamation 28 of 1923 of the Administrator of the Territory of South-West Africa".

Chinese: RSA GN R.388/1972 (<u>RSA GG 3418</u>), RSA GN R.329/1973 (<u>RSA GG 3797</u>), RSA GN R.2151/1975 (<u>RSA GG 4898</u>), which applies specifically to SWA (see regulation 26) and withdraws RSA GN R.388/1972 insofar as it relates to pension matters (see regulation 25).

Namas: Regulations in respect of Namas resident in SWA are contained in RSA GN R.80/1972 (<u>RSA GG 3367</u>), as corrected by RSA GN R.1318/1972 (<u>RSA GG 3622</u>) and as amended by RSA GN R.1453/1972 (<u>RSA GG 3633</u>).

"Natives": Regulations in respect of "Bantu in the Republic and Natives in Southwest Africa including the Eastern Caprivi Zipfel" are contained in R.1814/1968 (RSA GG 2182; republished in OG 2944), as amended by RSA GN R.3399/1969 (RSA GG 2526), RSA GN R. 467/1970 (RSA GG 2674), RSA GN R.1022/1971 (RSA GG 3153). RSA GN R.1866/1972 (RSA GG 3682), RSA GN R.2244/1972 (RSA GG 3726), RSA GN R.1181/1973 (RSA GG 3974), RSA GN R.2090/1972 (RSA GG 3713), RSA GN R.2165/1972 (RSA GG 3718), RSA GN R.2299/1972 (RSA GG 3735), RSA GN 2105/1973 (RSA GG 4073), RSA GN R.2208/1973 (which simply republishes RSA GN 2105/1973 in RSA GG 4086), RSA GN R.2255/1973 (RSA GG 4091), RSA GN R.415/1974 (RSA GG 4227), RSA GN R.2136/1474 (RSA GG 4512) and RSA GN R. 659/1977 (RSA GG 5516)

"Coloureds in SWA": Regulations applicable to Coloured persons resident in SWA are contained in RSA GN 77/1972 (RSA GG 3367), as corrected by RSA GN R.1318/1972 (RSA GG 3622) and as amended by RSA GN R.1450/1972 (RSA GG 3633). (There was a separate set of regulations for Coloured persons resident in South Africa.)

Whites: RSA GN R.2226/1972 (<u>RSA GG 3726</u>), as amended by RSA GN R.140/1974 (<u>RSA GG 4154</u>), which applies specifically to SWA (see regulation 27) and withdraws RSA GN R.2226/1972 insofar as it relates to pension matters (see regulation 26).

The following regulations were made under the Act prior to Namibian independence, but do not mention SWA specifically:

Indians: Regulations applicable to "Indians" are contained in RSA GN R.2037/1968 (RSA GG 2210), as amended by RSA GN R.425/1970 (RSA GG 2671), RSA GN R.473/1970 (RSA GG 2674), RSA GN R.1268/1971 (RSA GG 3218) and RSA GN R.2404/1972 (RSA GG 3750).

No post-independence regulations have been promulgated under the Act.

Namibia Red Cross Act 16 of 1991 📦 🙀

Summary: This Act (<u>GG 313</u>) recognises the Namibia Red Cross Society as the only Red Cross society in Namibia, and prohibits the unauthorised use of the name or emblem of the Red Cross or Red Crescent.

Regulations: The Act makes no provision for regulations.

Veterans Act 2 of 2008 🕎 🙀

Summary: This Act (originally published in <u>GG 4051</u>) provides for the establishment of a Veterans Fund for the provision of assistance to veterans and their dependants, and projects for the benefit of

veterans. It also provides for the integration of the pension benefits of veterans. It establishes a Veterans Board and Veterans Appeal Board.

Repeals: The Act repeals the War Veterans Subvention Act 16 of 1999 (GG 2211), which in turn repealed the unrepealed portions of the *War Veterans' Pensions Act 25 of 1968*, which applied only to coloured persons resident outside the territory of South West Africa.

Part IV of the Act was brought into force on 23 June 2008 by GN 156/2008 (GG 4072). The remainder of the Act, except for section 37, was brought into force on 8 July 2008 by GN 167/2008 (GG 4080). Section 37, which deals with the pension integration scheme for veterans, will be brought into force on a date set by the Minister.

Amendments: Act 3/2013 (<u>GG 5185</u>) amends sections 1, 6, 15, 22, 30, 35, 36, 44 and 46; substitutes sections 27 and 37 and inserts section 37A. Amongst other things, it replaces the provisions on a pension scheme for veterans with a once-off gratuity and provides for tokens of appreciation in monetary or material form. It also changes the qualifications for registration as a veteran or a dependant of a veteran. The amending Act was originally to come into force on a date set by the Minister in the *Gazette*, but it was amended by Act 5/2015 (GG 5774) to provide that it comes into force on its date of publication.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 8.

Savings: Enactments under the repealed War Veterans Subvention Act 16 of 1999 appear to survive under section 47(2) of this Act:

Anything done under the provisions of any law repealed by subsection (1) and which could have been done under a provision of this Act, is deemed to have been done under the corresponding provisions of this Act.

Enactments under the *War Veterans' Pensions Act 25 of 1968* which was repealed by the War Veterans Subvention Act 16 of 1999 also appear to survive pursuant to section 40(2) of the 1999 Act:

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

Regulations: Regulations made under this Act on the **registration and benefits of veterans and their dependants** are contained in GN 168/2008 (<u>GG 4080</u>). GN 134/2010 (<u>GG 4514</u>) substitutes regulation 25.

Regulations relating to **appeals to the Veterans Appeal Board** are contained in GN 45/2011 (<u>GG</u> 4693). GN 96/2019 (<u>GG</u> 6904) substitutes Regulation 28.

No regulations were made under the 1999 Act, but pre-independence regulations that may survive have not yet been fully researched.

Notices: General Notice 271/2010 (<u>GG 2574</u>) recognises the National Liberation Veterans Association as the organisation representing veterans with effect from 1 September 2010, in terms of section 44(3) of the Act.

Appointments: Members of the Veterans Appeal Board are announced in GN 70/2011 (GG 4725).

Cases: Kashe v Veterans Board & Others 2020 (4) NR 1165 (HC) (section 27(2)(b) discussed in context of application for condonation; Regulations relating to appeals to the Veterans Appeal Board, regulation 24); Kamupo v Veteran Appeal Board 2021 (1) NR 131 (HC) (application of section 1 regarding who qualifies as a veteran).

COMMENTARY

Namibia Social Protection Floor Assessment, International Labour Office (ILO) & Oxford Policy Management (OPM), 2014

The Effectiveness of Child Welfare Grants in Namibia: Study Findings and Technical Notes, Windhoek: Ministry of Gender Equality and Child Welfare, 2010

Home Truths: Facing the Facts on Children, AIDS, and Poverty, Joint Learning Initiative on Children and HIV/AIDS, 2009

Making the Difference: The BIG in Namibia, Basic Income Grant Pilot Project Assessment Report, Basic Income Grant Coalition, 2009.

Claudia & Dirk Haarmann, Herbert Jauch & Engelhardt Unaeb, *Basic Income Grant, Otjivero, Namibia* - 10 years later, Economic & Social Justice Trust, August 2018, available <a href="https://example.com/herbert-base-based-new-months.com/herbert-base

See also Child Care and Protection Act 3 of 2015 (child grants) (CHILDREN).

See also Social Work and Psychology Act 6 of 2004 (HEALTH PROFESSIONS).

See also **PENSIONS**.

See also Social Security Act 34 of 1994 (SOCIAL SECURITY).

See also National Youth Service Act 6 of 2005 (YOUTH).

SPORTS

Boxing and Wrestling Control Act 11 of 1980 🕎 🙀

Summary: This Act (originally published in <u>OG 4221</u>) establishes boards of control for boxing and wrestling. It was brought into force in respect of boxing by AG Proc. 5/1981 <u>OG 4402</u>). It appears not to be in force in respect of wrestling.

Amendments: The Act is amended by Act 25/1980 (OG 4353) and by the Married Persons Equality Act 1 of 1996 (GG 1316) (which repeals section 13).

Regulations: Regulations are authorised by section 8 of the Act. Pre-independence **Regulations in Respect of the Regulation and Control of Professional Boxing** are contained in AG GN 122/1981 (OG 4521). No amendments to these regulations have been located, and no post-independence regulations have been promulgated.

Notices: GN 153/1986 (OG 5241) assigned the administration of certain sections of the Act to the Minister of National Education and the Central Personnel Institution.

Namibia Sports Act 12 of 2003 🕎 👨

Summary: This Act (originally published in <u>GG 3050</u>) establishes the Namibia Sports Commission and a Sports Development Fund. The Act was brought into force on 2 December 2003 by GN 243/2003 (<u>GG</u> 3103).

Repeals: The Act repeals the Namibia Sports Act 7 of 1995 (GG 1041).

Amendments: The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 17.

Savings: Section 39(7) contains a broad savings clause:

Unless otherwise provided in this Act, anything done under the law repealed by section 40 and which could have been done under this Act is deemed to have been done under this Act.

Regulations: Regulations made under the current Act are contained in GN 244/2003 (GG 3103).

No regulations were made under the repealed law.

INTERNATIONAL LAW

International Convention against Doping in Sport, 2005 SADC Protocol on Culture, Information and Sport, 2001.

STOCKS AND SECURITIES

Unit Trusts Control Act 54 of 1981, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in <u>RSA GG 7760</u>) regulates trust schemes relating to securities and prohibits similar schemes relating to other assets.

This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: The Act repeals the *Unit Trusts Control Act 18 of 1947*.

Applicability to SWA: Section 45 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

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

- *Inspection of Financial Institutions Act 38 of 1984* (RSA GG 9155)
- Financial Institutions Amendment Act 51 of 1988 (RSA GG 11313).

In South Africa, the *Financial Institutions Amendment Act 64 of 1990* (RSA GG 12564) amended section 38 (section 12 of Act 64 of 1990), with this amendment being deemed to have come into force on 6 July 1987 (section 18(2) of *Act 64 of 1990*). However, since *Act 64 of 1990* was gazetted on 29 June 1990, after the date of Namibian independence, this retroactive amendment was not applicable to South West Africa.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (GG 2529) amends section 1, substitutes section 2 and repeals section 2A.

Act 10/2011 (GG 4847) amends the Act substantially (sections 1, 3, 5A, 6, 7, 8, 9, 11, 20, 29, 37, 42, 44).

Act 14/2016 (GG 6184) amends sections 1 and 5.

Savings: Section 46(2) of this Act contains a broad savings clause:

Anything done or deemed to have been done under any provision of a law repealed by subsection (1), and which could be done under a provision of this Act, shall be deemed to have been done under the last-mentioned provision.

Regulations: Regulations are authorised by section 51 of this Act. The only surviving pre-independence regulations located are the "Regulations under the Unit Trusts Control Act, 1947, as amended" which are contained in RSA GN R.1378/1963 (RSA GG 595). 405

After independence, regulations relating to unit trust schemes capital requirements were issued in GN 256/2014 (GG 5637).

⁴⁰⁵ These regulations repeal the previous regulations issued under the *Unit Trusts Control Act 18 of 1947* in SA Government Notice No. 2697 dated 24 December 1947.

Notices: A determination of the securities and other assets that may be included in a unit portfolio of a unit trust scheme and minimum and maximum restrictions and conditions for such securities and other assets is contained in General Notice 443/2014 (GG 5637).

Other determinations relating to unit trust management companies are contained in General Notice 444/2014 (GG 5637).

Appointments: A Registrar and Deputy Registrar of Unit Trust Companies are appointed in General Notice 31/1991 (GG 174).

Stock Exchanges Control Act 1 of 1985, as amended in South Africa prior to Namibian independence are

Summary: This Act (originally published in <u>RSA GG 9634</u>) regulates stock exchanges, stock-brokers and loans made against securities.

This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Repeals: The Act repeals the *Stock Exchanges Control Act 7 of 1947*.

Applicability to SWA: Section 1 defines "Republic" to include "the Territory", which is defined as "the territory of South West Africa". Section 52 states "The provisions of this Act and any amendment thereof, whenever made, shall apply also in the Territory, including the Eastern Caprivi Zipfel."

Amendments: Act 26/1992 (<u>GG 488</u>) amends sections 1, 3, 7, 8, 10, 14, 19, 21, 34, and 43, and repeals section 52, to make the Act consistent with an independent Namibia and to facilitate the establishment of a Namibian Stock Exchange.

Act 29/2000 (<u>GG 2460</u>) amends sections 3, 7, 8, 9, 10, 11, 12, 15, 33 and 39, repeals section 13 and inserts section 45A.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (GG 2529) amends section 1, substitutes section 2 and repeals section 2A.

Savings: Section 53(2) of this Act contains a broad savings clause:

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

Regulations: Regulations are authorised by section 51 of this Act. The only pre-independence regulations that remain in force are the **Stock Exchanges Regulations** made in terms of this Act and contained in RSA GN R.1493/1986 (RSA GG 10350). 406 No post-independence regulations have been promulgated.

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⁴⁰⁶ These regulations repeals the ones promulgated under the previous Act in RSA Government Notice R.1817 of 8 October 1976.

Rules: The Namibian Stock Exchange Rules are contained in GN 151/1995 (<u>GG 1147</u>), as amended by GN 145/1997 (<u>GG 1603</u>), GN 81/1999 (<u>GG 2098</u>), GN 12/2002 (<u>GG 2688</u>), General Notice 203/2002 (<u>GG 2796</u>) and General Notice 251/2005 (<u>GG 3518</u>) and General Notice 113/2012 (<u>GG 4940</u>).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (GG 5096), which places certain duties on members of stock exchanges licensed under the Act and on the Namibia Stock Exchange.

Notices: Notices of applications for approval of amendment of the rules are contained in GN 12/2002 (<u>GG 2688</u>), General Notice 203/2002 (<u>GG 2796</u>), General Notice 251/2005 (<u>GG 3518</u>) and General Notice 113/2012 (<u>GG 4940</u>).

The conditions that apply to a person who, as a regular feature of that person's business, administers or holds in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form a part, are contained in GN 31/2016 (GG 5955). These conditions are determined under section 4(1)(f) of the Act.

The conditions that apply to a person who, as a regular feature of that person's business, intends to operate a central securities depository that administers or holds in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form a part, are contained in GN 213/2022 (GG 7864). These conditions are determined under section 4(1)(f) of the Act. (These conditions do not reference or repeal the ones in GN 31/2016 (GG 5955).)

Appointments: A Registrar and Deputy Registrar of Stock Exchanges are appointed in General Notice 30/1991 (GG 174).

Notes: The **Corporate Governance Code for Namibia (NamCode)** can be found here. This Code applies to "entities incorporated by statute or in terms of the Companies Act (2004) or registered in terms thereof and any other legislation applicable in Namibia". It became applicable beginning with financial years that started after 1 January 2014. The NamCode is based on international best practices and on the *King Code on Governance for South Africa, 2009 ("King III")*. Compliance with the NamCode is voluntary, but companies which are listed on the Namibian Stock Exchange are expected to apply the NamCode, or to explain the reasons for the areas where they are non-compliant (the "apply or explain" principle). The Board of Directors of the Namibian Stock Exchange has recommended (in the introduction to the publication containing the NamCode) that the NamCode should be applied to all Namibian entities regardless of their form of incorporation or establishment, including entities in the public, private and non-profit sectors, to achieve good governance.

Cases: Van Straten NO & Another v Namibia Financial Institutions Supervisory Authority & Another 2016 (3) NR 747 (SC), overturning Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2014 (2) NR 425 (HC).

SUNDAYS AND PUBLIC HOLIDAYS

Sunday Trading Proclamation 12 of 1919 📲 🙀

Summary: This Proclamation (originally published in <u>OG 24</u>) regulates trading on Sunday, Christmas Day and Good Friday. It also provides exemptions from the general rules for some specific goods and services.

Amendments: The Proclamation was amended by the following:

- Proclamation 16/1919 (<u>OG 25</u>)
- Sale of Motor Spirit and Accessories for Motor Vehicles and Water-raising Appliances (Removal of Restrictions) Ordinance 14 of 1928 (OG 283)
- Ord 15/1935 (OG 643)
- Proc. 24/1944 (OG 1147)
- Ord. 10/1948 (sourced only in The Laws of South West Africa 1948)
- Proc. 50/1950 (OG 1552)
- Conditions of Employment Act 12 of 1986 (OG 5221), which was brought into force by AG Proc. 26 of 1986 (OG 5226), by repealing the amendments in Proclamation 50 of 1950.

Note that the Conditions of Employment Act 12 of 1986 erroneously refers to Proclamation 50 of 1950 as the "Shop Hours and Shop Assistants Amendment Proclamation". Its correct name is the "Sunday Trading Amendment Proclamation".

Regulations: The Proclamation makes no provision for regulations.

Public Holidays Act 26 of 1990 🕎 🙀

Summary: This Act (originally published in <u>GG 125</u>), which came into force on 1 February 1991 (section 4), sets the following public holidays:

New Year's Day (1 January)

Good Friday

Easter Monday

Independence Day (21 March)

Workers Day (1 May)

Cassinga Day (4 May)

Ascension Day

Africa Day (25 May)

Heroes Day (26 August)

International Human Rights Day (10 December)

Christmas Day (25 December)

Family Day (26 December).

It also authorises the President to declare additional public holidays in any particular year by Proclamation.

Repeals: The Act repeals the Public Holidays Act 7 of 1987 (OG 5367), which in turn replaced the South African *Public Holidays Act 5 of 1952*.

Amendments: Act 16/2004 (<u>GG 3348</u>) renames "International Human Rights Day" (10 December) as "Day of the Namibian Women and International Human Rights Day".

Regulations: The Act makes no provision for regulations.

Notices: Additional public holidays were declared in particular years in Proc. 4/1990, Proc. 5/1994, Proc. 30/1994, Proc. 13/1995, Proc. 16/1997, Proc. 20/1998, Proc. 30/1999, Proc. 36/1999, Proc. 35/2014 (<u>GG 5609</u>), Proc. 38/2015 (<u>GG 5885</u>), Proc. 60/2020 (<u>GG 7394</u>), Proc. 7/2024 (<u>GG 8312</u>) and Proc. 29/2024 (<u>GG 8454</u>).

General Notice 250/2001 (GG 2610) proclaims 28 September as the Day of the Namibian Child, but this date is not made into a public holiday.

Proc.19/2020 (<u>GG 8373</u>) declares 28 May as a public holiday to be known as Genocide Remembrance Day with effect from 28 May 2025. 407

COMMISSIONS

Commission of Inquiry into Public Holidays (AG 32/1981).

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⁴⁰⁷ Section 1(3) of the Act states: "The President may by proclamation in the *Gazette* declare *any day in a particular year*, not being a public holiday in terms of subsection (1) or (2), to be a public holiday." This suggests that the Act will require amendment if 28 May is intended to be a permanent public holiday.

TENDERS

Public Procurement Act 15 of 2015 📲 🙀

Summary: This Act (originally published in <u>GG 5922</u>) regulates the procurement of goods, works and services by public entities, and establishes the Procurement Policy Unit and the Central Procurement Board of Namibia. It was brought into force with effect from 1 April 2017 by GN 46/2017 (GG 6255).

Repeals: The Act repeals the Tender Board of Namibia Act 16 of 1996.

Amendments: The Act is substantially amended by Act 3/2022 (GG 7874), which was brought into force *in part* by GN 318/2022 (GG 7923) and *in part* by GN 20/2024 (GG 8314). The following provisions of the amending Act are *not yet in force*: the definitions of "framework agreement" and "pooled procurement" in section 1, section 15(b) - which will insert subsection (1A) into section 27 of the Act, and section 18 – which will insert sections 38A and 38B into the Act.

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 21.

Savings: Regulations issued under the repealed Act appear to survive in terms of section 80(2) of this Act:

Subject to section 81 [on the treatment of tender contracts already concluded and tender advertisements already issued when the Act came into force], anything done under a provision of the law repealed by subsection (1) and which could have been done under a provision of this Act is deemed to have been done under the corresponding provision.

Regulations: Public Procurement Regulations promulgated under this Act are contained in GN 47/2017 (GG 6255), as amended by GN 129/2017 (GG 6315) (which amends regulation 1 and inserts Part 2A), GN 78/2018 (GG 6576) and GN 297/2023 (GG 8214) (which substitutes regulation 4D(5). These regulations do not repeal any previous regulations.

Tender Board Regulations issued under the repealed Act are contained in GN 237/1996 (<u>GG 1403</u>), as amended by GN 140/2013 (<u>GG 5212</u>); these appear to be superseded by the Public Procurement Regulations.

Rules: Rules issued under the repealed Act survive in terms of section 80(2). The "Tender Board of Namibia Code of Procedure" is contained in GN 191/1997 (<u>GG 1692</u>), as amended by GN 180/2010 (GG 4544) which substitutes paragraph 23.

Note that GN 180//2010 contains an error in the name of the principal Act.

Codes of Good Practice: GN 235/2021 (GG 7671) gives notice of an intention to issue a code of good practice on preferences referred to in the Act in section 71 (national preference) and section 72 (exclusive preference to local suppliers), and publishes a draft code for comment. The final Code of Good Practice on Preferences was published in GN 13/2023 (GG 8020).

Notices: Notices issued under the repealed Act survive in terms of section 80(2). General Notice 160/1992 (GG 551) contains "Tender Board of Namibia: Preferences" and addresses issues such as local content.

with effect from 1 April 2024.

⁴⁰⁸ The amending Act was brought into force on 7 October 2022 by GN 318/2022 with the exception of the definitions of "chief executive officer", "framework agreement" and "pooled procurement" in section 1 and sections 5, 6, 9, 10, 12, 15(b) and 18 of the amending Act. Section 5(b) of the amending Act was brought into force by GN 20/2024 on the date of publication of that notice: 22 February 2024; GN 20/2024 further brought into force the definition of "chief executive officer" in section 1 and sections 5(a), 6, 9, 10 and 12 of the amending Act

Directives: Directives issued under the repealed Act survive in terms of section 80(2). Administrative Directive 1/2006 relating to over-expenditure is contained in GN 56/2006 (GG 3611).

Appointments: The Chairperson, Deputy Chairperson and members of the Central Procurement Board are announced in GN 152/2017 (GG 6333). Lists of individuals eligible for appointment as members of Review Panels are announced in GN 200/2017 (GG 6374) and GN 150/2021 (GG 7579). Board members are announced in GN 34/2021 (GG 7470), GN 169/2022 (GG 7828) and GN 156/2023 (GG 8101).

Cases: The following cases were decided in terms of this Act –

Central Procurement Board v Nangolo NO & Others 2018 (4) NR 1188 (HC) (problems with procedure utilised by review panel; section 26 interpreted with regard to regulation 13 of the Public Procurement Regulations; "standstill period" in section 55(5) apparently rendered nugatory by section 59(2); conflict between sections 59 and 60 resolved by interpretation; section 60(c); section 81(2))

Regarding sections 55(5) and 59(2): "It would seem that our legislation gives the standstill period with the right hand but simultaneously takes it away with the left. This is a matter that may need to be considered and rectified by the legislature, in my considered view." (para 60).

Radial Truss Industries (Pty) Ltd v Chairperson of the Central Procurement Board of Namibia & Others 2021 (3) NR 752 (HC) (sections 55, 59 and 60; regulation 38 of the Public Procurement Regulations is null and void to the extent that it conflicts with the Act; impermissible for a regulation to create a right for an unsuccessful bidder to request the Board for a "reconsideration" of its selection for award when the Act provides only for reviews of the Board's selections for award by a review panel appointed by the Minister; the Board has no power under the Act to review its own decisions)

Note that this issue was addressed by the addition of section 55(4A)-(4D) to the Act by the Public Procurement Amendment Act 3 of 2022 (GG 7874), which was brought into force in relevant part by GN 318/2022 (GG 7923). See *Motor Vehicle Accident Fund v Public Procurement Review Panel & Others* 2023 (1) NR 148 (HC) at para 35.

- ABB Namibia (Pty) Ltd v Central Procurement Board of Namibia & Others 2021 (3) NR 770 (HC) (section 59 language is not peremptory so no exhaustion of internal remedies is required before administrative review by court; conflicts of interest are not comprehensively covered by section 26(8), and an undisclosed conflict of interest involving a member of the Bid Evaluation Committee, in the form of an acrimonious relationship resulting from legal steps taken by a tendering company "poisons the entire process" and invalidates the decisions taken; Board's record-keeping and discovery criticised at paras 48-ff)
 - [96] It is thus important that all those who are involved in the procurement chain, ie in the process of filing, adjudicating and awarding tenders, should, regardless of the level of participation, have proper regard for the principles set out in s 2(a) of the Act. These objects must constitute a constant beacon as they navigate the way through all tender processes. Persons who have an interest should disclose it without having to be confronted so that pureness and impartiality of the decisions is not compromised thereby.
 - [97] A lot of precious time and resources are wasted when people involved in procurement do not act appropriately. This affects the delivery of necessary goods and services to Namibians, not to mention the delay and costs associated with having to start some of these processes afresh. The lesson to be learnt is that hiding or hoarding a conflict of interest a person has in procurement, in the final analysis, is very costly to the taxpayer and to the proper administration of justice. It must thus be avoided at all costs, like the plague.
 - [99] It would seem to me that a policy needs to be put in place by the Minister of Finance regarding the potentially conflicting roles that persons should not be allowed to play in the procurement chain. It is disturbing that a person, who holds a senior position in a company may be appointed as a member of the BEC but on other occasions, the company in which he or she holds a position becomes a tenderer before the [Central

- Procurement Board of Namibia]. In such circumstances, it would mean that that person runs with the hares today and hunts with the hounds tomorrow and this is unseemly.
- Motor Vehicle Accident Fund v Public Procurement Review Panel & Others 2023 (1) NR 148 (HC) (section 55(4A) makes an application for reconsideration of a decision of the Central Procurement Board a necessary pre-condition for review of the decision by a review panel, and the review panel has no power to review the decision in the absence of a request for reconsideration)
- Chairperson of the Review Panel & Others v Stream Two Properties CC 2024 (1) NR 1 (SC) (powers of review panel; importance of preventing conflicts of interest amongst bidders; Public Procurement Regulations, regulation 43)
- Roads Authority of Namibia v Chairperson: Public Procurement Review Panel & Others 2024 (1) NR 14 (HC) ((1) changes between previous and current Act regarding review procedure: under current Act, unsuccessful bidder that does not exercise or participate in internal review has waived right to be joined in application for review by High Court, disagreeing with holding on this point in in SJV Medical Supplies CC v Review Panel & Others) (HC-MD-CIV-MOT-GEN 318 of 2020) [2020] NAHCMD 460 (6 October 2020); (2) fourth respondent's application for internal review violated peremptory requirements in section 59 and Public Procurement Regulations, reg 42 and so should not have been considered by review panel; (3) review panel improperly considered an issue which was not raised before it, in violation of reg 44, as well as basing its decision on irrelevant considerations; (4) "threshold" in section 8(a) and reg 2(1) and (2) must be interpreted with reference to individual contract amounts, not the entire bidding process; (5) seven-day notice period in section 59(1) interpreted with reference to section 4 of the Interpretation of Laws Proclamation 37 of 1920)
- Central Technical Supplies (Pty) Ltd v Paragon Investment (Pty) Ltd JV China Huayun Group & Others 2024 (1) NR 254 (SC) (default judgment by High Court in review application cannot be appealed by party that did not oppose the review application or take part in it in any way; party must approach High Court to request rescission of judgment or leave to appeal).
- The following cases were decided in terms of the previous Tender Board of Namibia Act 16 of 1996 Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC) (brief discussion of allegations concerning applicability of Act to Transnamib)
- Disposable Medical Products v Tender Board of Namibia 1997 NR 129 (HC) (General Notice 160/1992, Regulation 8(3)(c), Regulation 8(5))
- Serenity Manufacturers v Minister of Health and Social Services & Another 2007 (2) NR 756 (SC) (Regulation 7)
- Minister of Education & Others v Free Namibia Caterers (Pty) Ltd 2013 (4) NR 1061 (SC) (administrative review of decision of Tender Board; effect of failure to comply with section 16(1)(b))
- CSC Neckertal Dam Joint Venture v Tender Board of Namibia & Others 2014 (1) NR 135 (HC) (review of tender award; considers application of sections 15(1) and 19)
- *United Africa Group (Pty) Ltd v Chairperson of the Tender Board of Namibia & Others* 2015 (2) NR 370 (SC) (section 15(5)-(6) and regulation 7)
- Anhui Foreign Economic Construction (Group) Corp Ltd v Minister of Works and Transport & Others 2016 (4) NR 1087 (HC) (relationship between section 7(1)(a) of the Tender Board Act 16 of 1996 and section 5(2)(a) of the Airports Company Act 28 of 1998); overturned on this point by President of the Republic of Namibia & Others v Anhui Foreign Economic Construction (Group) Corp Ltd 2017 (2) NR 340 (SC) which found that failure to follow the procedures in the Tender Board Act was fatal to the validity of the purported award)
- Chairperson of the Tender Board of Namibia v Pamo Trading Enterprises CC & Another 2017 (1) NR 1 (SC) (application of Arts 18 and 12 of the Namibian Constitution to decision-making under the Act; no right of access to minutes and documentation of Tender Board in pre-litigation discovery); further proceedings in Chairperson of the Tender Board of Namibia & Others v Pamo Trading Enterprises CC & Another 2017 (4) NR 998 (HC); overturned in large part in Pamo Trading Enterprises CC v Chairperson of the Tender Board 2019 (3) NR 834 (SC) (holding that procurement decisions are administrative action subject to Art 18 of Constitution;

- cancellation of tender in this case was both procedurally and substantively unlawful; right to be heard applies even where award was tainted by corruption)
- Free Namibia Caterers CC v Chairperson of the Tender Board of Namibia 2017 (3) NR 898 (SC) (damages and restitution not applicable to review of tender board decision; estoppel and legitimate expectation in context of tender award)
- Newpoint Electronic Solutions (Pty) Ltd v Permanent Secretary, Office of the Prime Minister & Another 2022 (4) NR 1051 (SC) (sections 7(1) and 18(3))

The following cases were decided in terms of Tender Board Regulations promulgated under section 26A of the Finance and Audit Ordinance 1 of 1926 –

Skeleton Coast Safaris v Namibia Tender Board & Others 1993 NR 288 (HC)

Kerry McNamara Architects Inc v Ministry of Works, Transport and Communication & Others 2000 NR 1 (HC).

Commentary:

- Frederico Links, "The Public Procurement Bill: A lot of good, some significant bad, but certainly not ugly", Institute for Public Policy Research, *Democracy Report, Special Briefing Paper No. 9*, September 2015, available here
- Frederico Links, "Promoting Integrity: The New Public Procurement Framework", Institute for Public Policy Research & Open Society Initiative for Southern Africa, *Briefing Paper*, August 2017.

COMMENTARY

- Frederico Links & Clement Daniels, "The Tender Board: Need for Root and Branch Reform", Institute for Public Policy Research, 2011, available here
- Malakia Haimbodi, "Public Procurement: Are There Lessons to be Learnt?", Institute for Public Policy Research, 2011, available here
- Ellison Tjirera, "Public Procurement in Namibia: The Role of Codes of Conduct in Reducing Corruption", Institute for Public Policy Research, 2011, available here
- Frederico Links & Malakia Haimbodi, "Building Integrity: Corruption and the Construction Industry", Institute for Public Policy Research, 2011, available here
- Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, "Risking Corruption: Regional and Local Governance in Namibia", Institute for Public Policy Research, 2012, available here
- SK Amoo & S Dicken, "The Regulatory Framework for Public Procurement in Namibia" in Sue Arrowsmith & Geo Quinot (eds), *Public Procurement Regulation in Africa*, Cambridge: Cambridge University Press, 2012
- Anne Schmidt, "The need to reform the Namibian public procurement system: A comment on the Neckertal Dam saga," *Namibia Law Journal*, Volume 6, Issue 1, 2014, available here
- The Institute for Public Policy Research publishes regular "Procurement Trackers" which look at the application of the laws on procurement, available here.

TERRORISM

Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 🖳 🔄

Summary: This Act (originally published in <u>GG 5490</u>) provides for various criminal offences connected with terrorism and proliferation activities, and measures to combat and prevent such activities and the funding of such activities. It also gives effect to international conventions, United Nations Security Council Resolutions, instruments and best practices on measures to combat terrorist and proliferation activities. Some of its provisions are to be implemented by the Security Commission established under Article 114 of the Namibian Constitution. The Act was brought into force on 1 July 2014 by GN 80/2014 (GG 5497).

Repeals: The Act repeals the Prevention and Combating of Terrorist Activities Act 12 of 2012 (GG 5095).

Amendments: Act 8/2023 (<u>GG 8141</u>), which was brought into force on 25 July 2023 by GN 222/2023 (<u>GG 8152</u>), amends several sections of the Act.

Regulations: Section 64 provides that anything done under the repealed Prevention and Combating of Terrorist Activities Act 12 of 2012 that could be done under a corresponding provision of this Act is deemed to have been done under this Act. However, the only regulations issued under the 2014 Act have been repealed. 409

In terms of the current Act, **Regulations relating to the Implementation of Security Council Decisions** are contained in GN 163/2014 (GG 5560), which repeals GN 196/2013 (GG 5250). These regulations are amended by GN 223/2023 (GG 8152).

Notices: In terms of the previous Act (and surviving pursuant to section 654 of this Act), GN 276/2013 (GG 5318) publishes a United Nations list of persons and organisations, and persons associated with such persons and organisations, against whom Member States of the United Nations must take actions in order to combat or prevent any terrorist activity in terms of regulation 4(2)(c).

In terms of this Act, GN 172/2015 (GG 5804) issues an arms embargo preventing the direct or indirect supply, sale, brokering or transfer of all types of arms and related materials to designated persons, organisations or countries by Namibian citizens or residents of Namibia, Namibian citizens outside Namibia or by making use of Namibian flagged vessels or aircraft or aircraft registered in Namibia.

From time to time, sanction lists issued by the United Nations Security Council pursuant to various Security Council Resolutions are published and freezing orders relating to these lists are issued. These are published frequently and have not been recorded here.

Commentary:

The second of

These articles discuss the repealed Act –

"Anti-Terrorism Act of 2012: When 'urgency' trumps proper Parliamentary debate", Institute for Public Policy Research, 2013, available here

Phillip Balhao, "Principle of legality: Assessing the definition of 'Terrorist Activity' with regards to the Combating and Prevention of Terrorist Activities Act No. 21 of 2012", UNAM Law Review, Volume 2, Issue 1, 2014.

⁴⁰⁹ The repealed regulations are the Prevention and Combating of Terrorist Activities Regulations contained in GN 196/2013 (<u>GG 5250</u>). GN 276/2013 (<u>GG 5318</u>) published a United Nations list of persons and organisations, and persons associated with such persons and organisations, against whom Member States of the United Nations must take actions in order to combat or prevent any terrorist activity, in terms of repealed regulation 4(2)(c).

This article discusses the current law –

Graham Hopwood, "Rushed and Ill-considered: Namibia's Anti-Terrorism Law", Institute for Public Policy Research, 2015, available here.

Related international agreements: Section 1 of the Act defines "terrorist activity" to include any act which constitutes an offence within the scope of, and as defined in one of the following treaties -

- Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)
- International Convention against the Taking of Hostages (1979)
- Convention on the Physical Protection of Nuclear Material (1980)

Note that this convention is now known as the "Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980", due to the Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005, which Namibia has accepted.

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988)
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005)
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005)
- International Convention for the Suppression of Terrorist Bombings (1997)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- International Convention for the Suppression of Acts of Nuclear Terrorism (2005)
- Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (2010) (not yet agreed to by Namibia nor in force internationally)
- Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (2010) (not yet agreed to by Namibia nor in force internationally).

INTERNATIONAL LAW

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970

**Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol), 2010

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Supplementary Protocol), Montreal, 1988

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT), 1988

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963

**Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol), 2014

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty), 1997

**Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention), 2010

International Convention against the Taking of Hostages, 1979
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005
International Convention for the Suppression of Terrorist Bombings, 1997
International Convention for the Suppression of the Financing of Terrorism, 1999
OAU Convention on the Prevention and Combating of Terrorism, 1999
SADC Declaration on Terrorism, 2002 (not legally-binding).

See also Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE).

See also Financial Intelligence Act 13 of 2012 (FINANCIAL INSTITUTIONS).

TOURISM

Accommodation Establishments and Tourism Ordinance 20 of 1973 🛂 🔄





Summary: This Ordinance (originally published in OG 3348) consolidates the laws on accommodation establishments and tourism and provides for the establishment of recreation areas.

Repeals: The Act repeals the Accommodation Establishments and Tourism Ordinance 29 of 1967.

This Ordinance was extended to the Rehoboth Gebiet by the Accommodation Establishments and Tourism in Rehoboth Proclamation, AG Proc. 56 of 1978 (OG 3809), which came into force on its date of publication: 16 August 1978, and applied to the Eastern Caprivi Zipfel with effect from 1 February 2000 by GN 4/2000 (GG 2259).

Amendments: The Ordinance is amended by Ord. 25/1973 (OG 3366), Ord. 17/1974 (OG 3443) and Ord. 5/1977 (OG 3604).

The Namibia Tourism Board Act 21 of 2000 (GG 2437) repeals sections 2-47A and section 56(1)(b)-(1).

The Ordinance was previously amended by Ord. 12/1975 (OG 3481), Ord. 14/1977 (OG 3637), Ord. 4/1978 (OG 3735), Ord. 11/1978 (OG 3735) and Ord. 14/1979 (OG 3983), but all of these amending Ordinances were repealed by the Namibia Tourism Board Act 21 of 2000 (GG 2437), which also repealed the affected sections of the Ordinance.

Regulations: Regulations are authorised by section 56 of the Ordinance. There is no savings clause for regulations issued under the repealed law.

Regulations relating to Accommodation Establishments and Tourism are contained in GN 75/1974 (OG 3391), as amended by the following:

- GN 119/1974 (OG 3405)
- GN 130/1975 (OG 3467)
- GN 315/1977 (OG 3647)
- Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), which amends certain terminology in the regulations
- GN 24/2000 (GG 2264)
- GN 89/2000 (GG 2304).

These regulations repeal the regulations published in Government Notice 188/1968 (OG 2945), as amended.

Regulations on Tourist Recreation Areas are contained in GN 236/1974 (OG 3437), as amended by the following:

- GN 248/1976 (OG 3559)
- GN 356/1976 (OG 3581)
- GN 268/1977 (OG 3639)
- GN 37/1978 (OG 3709)
- GN 9/1979 (OG 3894)
- AG GN 11/1981 (OG 4368)
- AG 60/1983 (OG 4757).

These regulations repeal the regulations published in GN 73/1974 (OG 3389).

Notices: GN 25/1974 (OG 3378) establishes the National West Coast Tourist Recreation Area in terms of section 48(2)(a) of the Ordinance.

Namibia Wildlife Resorts Company Act 3 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1809</u>) creates a company known as Namibia Wildlife Resorts Limited and provides for the transfer to this company of the state's wildlife resorts enterprise (including the resorts in Etosha National Park, in other game parks and nature reserves and in any tourist recreation area). In terms of the Act, the state is the only shareholder of the company.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4 and 5. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Regulations: The Act makes no provision for regulations.

Notices: Title, rights and interests in certain immovable properties were transferred to the Namibia Wildlife Resorts Company by GN 161/2007 (GG 3900). This transfer includes land in a number of public parks: Gross Barmen, Popa Falls, Duwiseb, Hobas, Daan Viljoen, two erven at Lüderitz, Sesriem, Etosha (Namutoni, Halali and Okaukeujo), Torra Bay, Terrace Bay, Naukluft, Reho Spa and Khorixas Rest Camp.

Certain immovable property was transferred to the Namibia Wildlife Resorts Company as of 15 March 2011 by GN 30/2011 (<u>GG 4669</u>).

Cases: Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC).

Namibia Tourism Board Act 21 of 2000 🕎 🙀

Summary: This Act (originally published in <u>GG 2437</u>) establishes the Namibia Tourism Board and provides for its functions. It also provides for the registration and grading of accommodation establishments, and the regulations of sectors of the tourism industry. The Act was brought into force on 15 May 2001 by GN 87/2001 (<u>GG 2531</u>).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4, 7, 8 and 11, and substitutes section 13. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Savings: Regulations made under the repealed provisions of the Accommodation Establishments and Tourism Ordinance 20 of 1973 appear to survive in terms of section 35(2) of this Act:

Anything done under any law repealed by subsection (1) which could have been done in terms of a corresponding provision of this Act, shall be deemed to have been done under that provision.

Regulations: Regulations are authorised by section 30 of this Act. The following regulations have been issued under the current Act:

Regulations relating to **levies payable by accommodation establishments** are contained in GN 137/2004 (GG 3235), which states that these regulations come into effect on 1 November 2004.

Regulations relating to the **registration of regulated businesses** are contained in GN 138/2004 (<u>GG 3235</u>), which states that these regulations come into effect on 1 February 2005.

Regulations relating to the **registration of accommodation establishments** are contained in GN 139/2004 (<u>GG 3235</u>), which states that these regulations come into effect on 1 November 2004.

National Star Grading Regulations relating to Accommodation Establishments are contained in GN 204/2012 (<u>GG 5009</u>), which states that these regulations come into effect on 1 October 2013.

Regulations made in terms of the Accommodation Establishments and Tourism Ordinance 20 of 1973 are listed under the entry for that Act, which has not been entirely repealed. None of the regulations issued under this Act repeal any of the regulations made in terms of the Accommodation Establishments and Tourism Ordinance 20 of 1973, although there seems to be some overlap in subject matter.

Notices: GN 136/2004 (<u>GG 3235</u>) contains a declaration of business sectors relating to the tourism industry to be regulated. It came into effect on 1 February 2005.

Appointments: Members of the Namibia Tourism Board are announced in GN 88/2001 (<u>GG 2531</u>), GN 191/2020 (<u>GG 7309</u>) and GN 18/2024 (<u>GG 8307</u>).

INTERNATIONAL LAW

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997 SADC Protocol on the Development of Tourism, 1998 Statutes of the World Tourism Organization (UNWTO), 1970.

TRADE AND INDUSTRY

Sugar Act 28 of 1936, with some South African amendments $\boxed{\bullet}$

Summary: This Act (originally published in <u>SA GG 2365</u>) provides for the control of the sugar industry and regulates sugar prices.

Repeals: The Act repeals the Sugar Prices Act 47 of 1926.

Applicability to SWA: Section 10(2), which was added by *Act 17 of 1955* (SA GG 5465, also published in OG 1902), states that "This Act shall apply also in the territory", which is defined in section 13 of the Act as "the Territory of South West Africa". There is no definition of "Union" or "Republic".

This wording does not seem to make amendments to the Act automatically applicable to SWA. However, the amendments contained in Act 17 of 1955 are presumably applicable to SWA since it was that amending act which applied the principal Act to SWA. There was only one other amending act in South Africa – the *Sugar Amendment Act 26 of 1958* (SA GG 6109) – which was not made expressly applicable to Namibia.

The Act was repealed in South Africa in its entirety by the *Sugar Act 9 of 1978* (RSA GG 5907), which was brought into force on 27 April 1979 by Proc. R.81/1979 (RSA GG 6419). However, this repeal came into force in SA after the date of transfer to SWA.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28 of 1978), dated **28 April 1978**.

Amendments: The following pre-independence South African amendment was applicable to SWA –

• Sugar Amendment Act 17 of 1955 (SA GG 5465).

Regulations: There is no savings clause for regulations issued under the repealed Act. Regulations are authorised by section 11 of this Act, but no pre-independence regulations have been located, and no post-independence regulations have been promulgated.

Notices: A Sugar Industry Agreement under section 2(1)(b) of the Act was published in RSA GN 1286/1943 (<u>SA GG 3218</u>), as amended by RSA GN 955/1975 (<u>RSA GG 4709</u>), RSA GN 306/1976 (<u>RSA GG 4991</u>), RSA GN 688/1976 (<u>RSA GG 5092</u>), RSA GN 1037/1976 (<u>RSA GG 5160</u>), RSA GN 65/1977 (<u>RSA GG 5515</u>), RSA GG 248/1977 (<u>RSA GG 5405</u>) and RSA GN 864/1978 (<u>RSA GG 5999</u>). Note that this last amendment was made *on* the transfer date, so its applicability is unclear. Note also that this list of amendments may not be complete.

Price Control Act 25 of 1964, as amended in South Africa to April 1978 w 🕎 😜

Summary: This Act (originally published in <u>RSA GG 750</u>) allows for state control of the prices of goods and services. It was brought into force in South Africa and South West Africa on 2 October 1964 by RSA Proc. R.255/1964 (RSA GG 911), pursuant to section 21 of the original Act.

Applicability to SWA: Section 21 of the original Act stated: "This Act shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of that territory."

Section 21 was substituted by Act 80 of 1967, to make amendments to the Act also applicable to South West Africa. Section 21 as substituted states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and in relation to all persons in the portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administration of that territory." Section 1 defines "Gazette" accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Price Control Amendment Act 16 of 1984* (RSA GG 9092) and the *Coal Resources Act 60 of 1985* (RSA GG 9773) – neither of which was made expressly applicable to SWA.

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

- Price Control Amendment Act 80 of 1967 (RSA GG 1764)
- Price Control Amendment Act 39 of 1976 (RSA GG 5066).

Regulations: The Act makes no provision for regulations.

Notices: The application of the Act is affected by a large number of Government Notices which have not been comprehensively recorded here.

Maximum margarine prices were contained in GN 72 of 15 April 1986, as amended by GN 43/1990 (GG 60), GN 68/1991 (GG 220) and GN 41/1992 (GG 390) and supplemented by GN 146/1992 (GG 512). GN 72/1986 is repealed by GN 64/1993 (GG 662), which is replaced by GN 115/1994 (GG 870), which is replaced in turn by GN 209/1995 (GG 1183), which is repealed by GN 57/1997 (GG 1528).

Deposits and refunds on returnable containers were addressed after independence by GN 96/91 (GG 249), as amended by GN 19/92 (GG 359), which was replaced by GN 27/2003 (GG 2925), which was replaced by GN 130/2005 (GG 3507), which was replaced by GN 237/2008 (GG 4136).

Trade Practices Act 76 of 1976, as amended in South Africa to April 1978 🕎 😜

Summary: This Act (<u>RSA GG 5150</u>) regulates certain advertisements, restricts the use of trade coupons in connection with the sale of goods and services, and controls various other trade practices.

Repeals: The Act repeals the *Trade Coupons Act 18 of 1935*.

Applicability to SWA: Section 23 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." There were no amendments to the Act in South Africa prior to the date of transfer.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. (The first amendment to the Act in South Africa, the *Trade Practices Amendment Act 78 of 1978*, came into force shortly after the date of transfer, on 9 June 1978.) None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Regulations: The Act makes no provision for regulations.

Foreign Investments Act 27 of 1990 🛂 🙀

Summary: This Act (originally published in <u>GG 129</u>) provides for the promotion of foreign investments in Namibia. It was brought into force on 7 July 1992 by Proc. 19/1992 (<u>GG 433</u>). This Act and its amending Act (Act 24 of 1993) will both be repealed by the Namibia Investment Promotion Act 9 of 2016 (<u>GG 6110</u>), which has not yet been brought into force.

Amendments: Act 24/1993 (<u>GG 752</u>) amends sections 3, 10 and 18.

Regulations: Regulations are contained in GN 120/1992 (GG 477).

Application of law: Export processing zones are exempted from the operation of the Act by section 9 of the Export Processing Zones Act 9 of 1995 (<u>GG 1069</u>).

Notices: The minimum value of eligible investments under the Act in terms of section 5(1) is set at N\$2 million by GN 283/1996 (GG 1436), which repeals GN 121/1992.

Businesses and categories of businesses which are prohibited to foreign investors because they can be adequately provided by Namibians are specified in terms of section 3(4) of the Act by GN 75/2010 (GG 4460). However, paragraph (a) of this notice was declared invalid on the grounds that it is beyond the authority conferred by the Act in *Namibian Competition Commission & Another v Wal-Mart Stores Incorporated* 2012 (1) NR 69 (SC).

Cases: Namibian Competition Commission & Another v Wal-Mart Stores Incorporated 2012 (1) NR 69 (SC).

Related international agreement:

Articles of Agreement of the International Finance Corporation (IFC), 1955.

Export Processing Zones Act 9 of 1995 🕎 🙀

Summary: This Act (originally published in <u>GG 1069</u>) provides for the establishment, development and management of Export Processing Zones. It was brought into force on 10 October 1995 by GN 186/1995 (GG 1174).

Amendments: Act 6/1996 (<u>GG 1337</u>) amends section 8 of the Act, which makes the Labour Act 6 of 1992 (<u>GG 388</u>) applicable in Export Processing Zones, subject to certain modifications and exceptions.

The Electricity Act 4 of 2007 (GG 3922), which was brought into force on 15 November 2007 by GN 201/2007 (GG 3933), amends section 22.

The Namibia Industrial Development Agency Act 16 of 2016 (<u>GG 6202</u>), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 (<u>GG 6767</u>), amends section 26, repeals sections 27 and 28 and makes other consequential amendments.

The Income Tax Amendment Act 2 of 2020 (GG 7249) inserts section 101A into the Income Tax Act 24 of 1981, which repeals sections 5, 6 and 7(2) of this Act, and is brought into force in relevant part by GN 329/2020 (GG 7431) as follows:

- (i) at the end of five years commencing on 31 December 2020 [31 December 2025], in respect of an export processing zone enterprise that holds an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 on or before 31 December 2020; and
- (ii) on 31 December 2020, in respect of an export processing zone enterprise that obtains an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9

of 1995 after 31 December 2020.

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

Notices: The Walvis Bay Export Processing Zone is described in GN 183/1997 (<u>GG 1681</u>), replacing GN 14/1996 (<u>GG 1241</u>) which in turn replaced GN 185/1995 (<u>GG 1174</u>).

Trades and Occupational Licences Repeal Act 10 of 1995 🕡 🙀

Summary: This Act (<u>GG 1070</u>) repeals and amends a number of laws relating to trades and licencing. It has no independent provisions.

Repeals: The principal laws repealed are as follows:

- Licences Consolidation Ordinance 13 of 1935
- Extension of Laws to the Rehoboth Gebiet Proclamation 28 of 1935
- Owambo Trading and Licensing Enactment 3 of 1972
- Trading and Licensing Enactment of Kavango 3 of 1973
- Eastern Caprivi Trading and Licensing Enactment 4 of 1973.

Second Hand Goods Act 23 of 1998 🕎 🙀

Summary: This Act (originally published in <u>GG 1955</u>) regulates the business of dealers in second hand goods and scrap metal, auctioneers and pawnbrokers. It establishes record-keeping requirements aimed at detecting stolen goods. It was brought into force on 1 November 1999 by GN 211/1999 (GG 2209).

Amendments: The General Law Amendment Act 14 of 2005 (GG 3565) amends section 1 of the Act.

Regulations: Regulations are contained in GN 212/1999 (GG 2209).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 (<u>GG 5096</u>), which places certain duties on dealers in second hand goods and auctioneers.

Competition Act 2 of 2003 🗐 🙀

Summary: This Act (originally published in <u>GG 2964</u>) safeguards and promotes competition in the Namibian market and establishes the Namibian Competition Commission. It was brought into force on 3 March 2008 by GN 54/2008 (<u>GG 4004</u>).

Note that the Arrangement of Sections in this Act lists a Schedule, but the *Government Gazette* does not contain a Schedule, and there is no reference to a Schedule in the text of the Act.

Repeals: The Act repeals the Regulation of Monopolistic Conditions Act 24 of 1955.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, substitutes section 5, deletes section 7, and amends section 13. That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 18.

Regulations: The Act makes no provision for regulations.

Rules: Rules are contained in General Notice 41/2008 (<u>GG 4004</u>). These rules were amended by GN 2/2017 (GG 6213), but GN 2/2017 was withdrawn and replaced by GN 63/2017 (GG 6266).

Note that both GN 2/2017 and GN 63/2017 erroneously state that the original rules are contained in *Government* Notice 41/2008. They actually appear in *General* Notice 41/2008.

Application of law: The class of mergers excluded from Chapter 4 of the Act pursuant to section 43 is determined in GN 288/2012 (<u>GG 5090</u>), which is withdrawn and replaced by GN 307/2012 (<u>GG 5107</u>), which is in turn withdrawn and replaced by GN 307/2015 (<u>GG 5905</u>).

The threshold of annual turnover or asset value for the application of Part II of Chapter 3 of the Act is determined pursuant to section 24 in GN 289/2012 (GG 5090), which is withdrawn and replaced by GN 306/2012 (GG 5107).

Notices: The office address of the Namibian Competition Commission for the purposes of communications to the Commission is set out in General Notice 30/2010 (GG 4423).

A memorandum of agreement between the Namibian Competition Commission and the Communications Regulatory Authority of Namibia (CRAN), made pursuant to section 67 of the Act, is published in General Notice 17/2012 (GG 4868).

A memorandum of agreement between the Namibian Competition Commission and the Bank of Namibia, made pursuant to section 67 of the Act, is published in General Notice 41/2012 (<u>GG 4888</u>).

A memorandum of agreement between the Namibian Competition Commission and NAMFISA, made pursuant to section 67(3) of the Competition Act 2 of 2003, is published in General Notice 270/2014 (GG 5527).

A Corporate Leniency Programme is established by General Notice 562/2018 (GG 6732).

A memorandum of agreement between the Namibian Competition Commission and the Electricity Control Board, made pursuant to section 67 of the Act, is published in General Notice 675/2021 (GG 7688).

Notices on referrals for investigation, reports of specific cases, consent agreements and determinations made by the Commission in respect of specific proposed mergers have not been included here.

Appointments: Appointments to the Namibian Competition Commission are announced in GN 93/2010 (GG 4483), GN 141/2015 (GG 5783), GN 3/2017 (GG 6217) and GN 355/2023 (GG 8257).

Cases:

Namibian Competition Commission & Another v Wal-Mart Stores Incorporated 2012 (1) NR 69 (SC) (section 49)

Namibian Association of Medical Aid Funds v Namibia Competition Commission 2017 (3) NR 853 (SC), overturning Namibian Association of Medical Aid Funds v Namibian Competition Commission (A 348/2014) [2016] NAHCMD 80 (17 March 2016) (Supreme Court: funds established pursuant to the Medical Aid Funds Act 23 of 1995 do not fall within the definition of "undertaking" in this Act)

Namibian Competition Commission v Namib Mills (Pty) Ltd & Another 2019 (4) NR 916 (HC) (section 26, and dicta regarding section 23; section 26 must be applied on a "per se" basis - which "allows courts to presume that certain types of conduct have anticompetitive effects without engaging in a detailed analysis to ascertain whether the conduct in fact had such an effect and should be prohibited", and "creates an irrebuttable presumption of illegality" such that "firms may not raise any defence to their alleged anti-competitive practices" - in contrast to section 23, which takes an effect-based approach; erroneously refers to Act as the "Namibian Competition Act")

Namibian Competition Commission v Puma Energy Namibia (Pty) Ltd 2021 (1) NR 1 (SC) (sections 16. 33 and 34; power to seek warrant of search and seizure in connection with investigation of suspected abuse of a dominant position lies with an inspector, and not in the commission, and since it is not conferred on the commission, the commission could not lawfully delegate that power).

Commentary:

- Bernhard Tjatjara, "The Competition Act, 2003: Out with the old and in with the new Part 1", *Namibia Law Journal*, Volume 6, Issue 2, 2014, available here
- Diane R Hazel, "Competition in Context: The Limitations of using Competition Law as a Vehicle for Social Policy in the Developing World", 37 (2) *Houston Journal of International Law* 275 (2015), available here
- Patric Kauta & Mercy Kuzeeko, "Supreme Court of Namibia: NAMAF and others v Namibian Competition Commission and another. Where is the solidarity?", *Namibia Law Journal*, Volume 9, Issue 1, 2017
- PM Balhao, "NAMAF v NCC: Was the wealth behind the health overlooked?", *Namibia Law Journal*, Volume 10, Issue 1, 2018.

Related international agreements:

Agreement Establishing the African Continental Free Trade Area, 2018

SADC Declaration on Regional Cooperation in Competition and Consumer Policies, 2009 (not legally-binding; issued in terms of Article 25 of the SADC Protocol on Trade).

Controlled Wildlife Products and Trade Act 9 of 2008 🗐 🔄

Summary: This Act (originally published in <u>GG 4190</u>) implements the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*. It was brought into force on 15 February 2012 by GN 31/2012 (GG 4883).

Repeals: The Act repeals the Controlled Game Products Proclamation AG 42 of 1980 (OG 4238).

Amendments: Act 6/2017 (<u>GG 6421</u>) amends sections 1, 4, 8 and 9 and Schedule 1 to increase the penalties for certain wildlife crimes and to address other crime-related matters.

Pursuant to section 11 of the Act, Schedule 3 of the Act is substituted by GN 94/2017 (<u>GG 6291</u>), GN 122/2020 (<u>GG 7221</u>) and GN 254/2023 (<u>GG 8173</u>).

Regulations: There is no savings clause for anything done in terms of the repealed Proclamation (which in any event, did not seem to provide for regulations).

Regulations relating to controlled wildlife products and trade are contained in GN 144/2011 (GG 4773).

Cases: The following cases concern the Controlled Game Products Proclamation 42 of 1980 –

- S v Machinga 1990 NR 157 (HC)
- *S v Tuzembeho* 1993 NR 134 (HC)
- S v Khumalo & Another 1994 NR 3 (HC).

Note: See also Nature Conservation Ordinance 4 of 1975 re: export of game and game products.

Note on possible effect of discrepancies between Appendices in Act and CITES

The Appendices to CITES can be, and regularly are, amended by "the Conference of the Parties" under Articles XV and XVI of the Convention, and the amendments enter into force automatically for all parties.

However, section 11(1) of this Act states: "Whenever Appendices I, II or III is amended [sic], the Minister *must* by notice in the *Gazette* amend Schedule 3 accordingly." (emphasis added). In addition, section 1(3)(c) of this Act states: "Any provision of this Act is construed with reference to the Convention and any provision of the Convention is deemed to be part of this Act and for that purpose... (c) a species is deemed to be included in an Appendix only if it appears in the relevant column of Schedule 3 and also subject to such further qualifications as set out in the relevant entry or such further notes as may appear in that Schedule." (emphasis added).

The problem is that the version of the Appendices which appeared in the Act for the first nine years appeared to be those that were in force in 2008, when the Act was promulgated; subsequent amendments to the Appendices were not accompanied by amendments to Schedule 3 by notice in the *Gazette*, as the Act requires, until 2017.

The version of the Appendices on the CITES website, <<u>www.cites.org/eng/app/appendices.php</u>>, is updated to include the latest amendments to the CITES Appendices in a convenient table format. It is advisable to consult this website for additional amendments.

In light of the sections of this Act quoted above, the question arises as to what the position would be where the Minister has not carried out the mandatory duty imposed by section 11(3) of the Act to ensure that international amendments to the Appendices are incorporated into Schedule 3.

In general, where it is clear from the language of the Act that the draftsman intended to include the text of a Convention in an Act, and got it wrong, courts will (or at least should) follow the text of the Convention. Anything else would thwart the intention of the lawmaker. But it does depend on the language of the particular Act.

The preamble to this Act states that its purpose is "To provide for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora". This is further emphasised by section 1(3), which provides that "Any provision of this Act is construed with reference to the Convention and any provision of the Convention is deemed to be part of this Act and for that purpose".

However, there is a specific qualification as far as the different species in Schedule 3 are concerned: while there is a duty on the Minister to update this Schedule under Art 11, section 1(3)(c) provides specifically that "a species is deemed to be included in an Appendix only if it appears in the relevant column of Schedule 3 and also subject to such further qualifications as set out in the relevant entry or such further notes as may appear in that Schedule".

So assume that a question arises before a Namibian court that turns on whether a species is listed in an Appendix to the Convention. It is, but in a later version not included in Schedule 3 to the Act. It seems possible that the court might follow the Schedule, and not the actual Appendix, because this law seems to be an example of the legislator intending to override or qualify the international obligation. However, there could be an ancillary action against the Minister to force him to amend the Schedule, or alternatively an action for damages if he has failed to do so and this has led to a loss (which is not an ideal remedy in the context of endangered species).

Such concerns raise the question of whether it would have been possible for the legislature to have incorporated the Appendices to CITES into Namibian domestic law by reference, as updated from time to time, rather than requiring regular amendment of the Schedule to the Act.

*Namibia Investment Promotion Act 9 of 2016 🗐 📻

Summary: This Act (<u>GG 6110</u>) provides for the promotion of foreign and domestic investment. It also provides for the reservation of certain economic sectors and business activities to certain categories of investors – the State; Namibians and entities which are majority-owned by Namibians; joint venture partnership between Namibian investors and foreign investors; and investors which meet certain requirements (such as employment of Namibians, skills transfer, etc). The Act also provides for dispute resolution mechanisms involving investment. The Act will be brought into force on a date set by the Minister in the *Government Gazette*.

Repeals: The Act repeals the Foreign Investment Act 27 of 1990, as amended; however, it provides that the Namibia Investment Centre established by Act 27 of 1990 will continue to exist as a department of the Ministry responsible for investment.

Regulations: Regulations made under the repealed Foreign Investment Act 27 of 1990 survive pursuant to section 35(3) of this Act:

Anything done under a provision of the repealed Foreign Investment Act, 1990 (Act No. 27 of 1990), and that could have been done under this Act is deemed to have been done under a corresponding provision of this Act.

Regulations made under the repealed Act are contained in GN 120/1992 (GG 477).

Regulations are authorised by section 30 of this Act, but none have yet been promulgated.

Commentary: Frederico Links, "The Namibian Investment Promotion Act Saga", *insight* magazine, Nov/Dec 2016.

Namibia Industrial Development Agency Act 16 of 2016 🗐 🙀

Summary: This Act (<u>GG 6202</u>) establishes the Namibia Industrial Development Agency (NIDA) and provides for its power and duties. The Agency replaces the Namibia Development Corporation and the Offshore Development Company. The Act was brought into force, with the *exception* of sections 30, 32, 33 and 34, on 1 October 2018 by GN 253/2018 (<u>GG 6724</u>). These sections, which concern the transfer of assets to the Agency, and amendments and repeals of other laws, were all brought into force on 15 November 2018 by GN 295/2018 (<u>GG 6767</u>).

Repeals: The Act repeals the Namibia Development Corporation Act 18 of 1993.

Regulations: The Act makes no provision for regulations.

Cases: The following case pertains to the repealed Namibia Development Corporation Act 18 of 1993 – Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC, appeal judgement in Visagie v Namibia Development Corporation 1999 NR 219 (HC) (section 29 and personnel regulations).

See also Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC).

GENERAL

An Automotive Production and Development Programme (APDP) Policy for Namibia is set out in General Notice 497/2021 (GG 7629).

COMMENTARY

Cons Karamata, *Review of Studies on Namibia's International Trade Agreements*, Labour Resource and Research Institute (LaRRI), 2003, available here

Gerhard Erasmus, "Is the SADC trade regime a rules-based system?", SADC Law Journal, Volume 1, 2011, available here

Clement Ng'ong'ola, "Replication of WTO dispute settlement processes in SADC", SADC Law Journal, Volume 1, 2011, available here

Henry Kibet Mutai, "Regional trade integration strategies under SADC and the EAC: A comparative analysis", *SADC Law Journal*, Volume 1, 2011, available here.

INTERNATIONAL LAW

Global:

†Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014

Arms Trade Treaty (ATT), 2013

Convention Establishing a Customs Co-operation Council, 1950

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

Amendment to Article XI of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Bonn, 1979

Convention relating to International Exhibitions (Paris Convention), 1928, as revised in 1972 and amended in 1982 and 1988

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), 1998

Regional:

African, Caribbean and Pacific (ACP) – European Union (EU) Partnership Agreement, Cotonou (Cotonou Agreement), 2000

Amendment to the Partnership Agreement, Luxembourg, 2005 Amendment to the Partnership Agreement, Ouagadougou, 2010

**Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010

*Agreement Establishing a Tripartite Free Trade Area among the Common Market For Eastern And Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC) (Tripartite Free Trade Agreement or TFTA), 2015

Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa (INFOPÉCHE), 1991

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991 Economic Partnership Agreement between the European Union and its Member States, of the one

part, and the SADC EPA States, of the other part, 2016 (published in Proc. 2/2017, GG 6237) Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (hereinafter referred to as the "SACUM-UK EPA"), 2019

Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006

**Georgetown Agreement, as revised by the 110th Session of the ACP Council of Ministers (Revised Georgetown Agreement), 2019

Preferential Trade Agreement Between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU), 2009

**SADC Protocol on Industry, 2019

SADC Protocol on Trade, 1996

Amendment Protocol on Trade, 2000

Agreement Amending Article 20 of the Protocol on Trade, 2008

SADC Protocol on Trade in Services, 2012

South African Customs Union Agreement (SACU), 2002

Amendments to the SACU Agreement, 2002, to institutionalise the SACU Summit, 2013

Annex E to the SACU Agreement on Mutual Administrative Assistance, 2011

Treaty Establishing the African Economic Community (AEC), 1991

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

Treaty of the Southern African Development Community (SADC), 1992

Protocol to the Treaty establishing SADC on Immunities and Privileges, 1992

Trade, Investment, and Development Cooperative Agreement between SACU and the United States of America (TIDCA), 2008

OTHER INTERNATIONAL DOCUMENTS

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003 (non-binding; published in GN 193/2007, GG 3927).

See also AGRICULTURE.
See also ALCOHOL, DRUGS AND TOBACCO.
See also BUSINESS.
See also CUSTOMS AND EXCISE.
See also FINANCE AND DEVELOPMENT.
See also GAMBLING.
See also IMPORT AND EXPORT.
See also INTELLECTUAL PROPERTY.
See also Aquaculture Act 18 of 2002 (MARINE AND FRESHWATER RESOURCES).
See also MINING AND MINERALS.
See also REVENUE.
See also TENDERS.
See also TOURISM.

TRANSFER PROCLAMATIONS

These pre-independence transfer proclamations governed the transfer of the administration of certain laws from South Africa to "South West Africa". The transfer proclamations are particularly relevant in determining which South African amendments made prior to Namibian independence have become part of Namibian law. This section lists general transfer proclamations which governed multiple transfers. Laws which functioned as transfer proclamations for individual pieces of legislation are listed only in the entry for the statute in question. Most of these transfer proclamations remain in force, although their function is only historical. This section also lists laws and notices relating to pre-independence assignments and delegations of powers, some of which determined which transfer proclamation applied.

Executive Powers Transfer Proclamation, AG 3 of 1977 (OG 3651)

Amendments: AG Proc. 7/1977 (OG 3668), AG Proc. 10/1978 (OG 3712), Native Laws Amendment Proclamation, AG Proc. 3/1979 (OG 3898), RSA Proc. 101/1985 (RSA GG 9790).

References: AG Proc. 29/1978 (OG 3745).

Executive Powers (Prisons) Transfer Proclamation, AG 6 of 1977 (OG 3663)

Amendments: AG 10/1978 (OG 3712)

References: Prisons Act Amendment Proclamation, AG 49 of 1978 (OG 3787)

Repeal: repealed by Prisons Act 17 of 1998 (GG 1894).

Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 (OG 3668)
Amendments: AG Proc. 10/1978 (OG 3712), AG Proc. 82/1978 (OG 3873), AG Proc. 20/1982 (OG 4668), RSA Proc. 101/1985 (RSA GG 9790) (as amended by RSA Proc. 222 of 1985 (RSA GG 10035)).

References: Amendment of Tariff A in the Second Schedule to the Insolvency Act, 1936 (Act 24 of 1936), AG Proc. 17/1986 (OG 5179).

Note: The *Official Gazette* containing this Proclamation is numbered as OG 3668. However, it is referred to as OG 3667 in the relevant Quarterly Return.

Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG 11 of 1977 (OG 3675)

Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation, AG 13 of 1977 (OG 3669)

Executive Powers (Health) Transfer Proclamation, AG 14 of 1977 (OG 3676)

Executive Powers (Statistics) Transfer Proclamation, AG 15 of 1977 (OG 3677)

Executive Powers (Forestry) Transfer Proclamation, AG 16 of 1977 (OG 3678)

Executive Powers (Labour) Transfer Proclamation, AG 17 of 1977 (OG 3680) 🕎 🙀

Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation, AG 18 of 1977 (OG 3681)

Amendments: Karakul Scheme Amendment Proclamation, AG 41/1978 (OG 3771).

Executive Powers (National Education) Transfer Proclamation, AG 1 of 1978 (OG 3687) References: Act 5/1979 (OG 4013).

Executive Powers (Mines) Transfer Proclamation, AG 4 of 1978 (OG 3696)

Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978 (OG 3697)

Executive Powers (Information) Transfer Proclamation, AG 7 of 1978 (OG 3702) 🕎 📴

Executive Powers Transfer (Community Development) Proclamation, AG 8 of 1978 (OG 3703)

Executive Powers (Immigration) Transfer Proclamation, AG 9 of 1978 (OG 3704) Amendments: Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 (OG 5728).

Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978 (OG 3713)

Executive Powers (Post and Telecommunications) Transfer Proclamation, AG 12 of 1978 (OG 3714)

Amendments: AG Proc. 35/1979 (OG 4042) (relevant sections subsequently repealed by the Repeal of Obsolete Laws Act 21 of 2018 (GG 6812)).

Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978 (OG 3717)

Executive Powers (Planning and the Environment) Transfer Proclamation, AG 15 of 1978 (OG 3719)

Executive Powers (Public Works) Transfer Proclamation, AG 16 of 1978 (OG 3720)

Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978 (OG 3721) Amendments: Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 (OG 5728); Immigration Control Act 7 of 1993 (GG 690) (repeals section 4)

Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978 (OG 3722) References: Revenue Laws Amendment Proclamation, AG 66/1978 (OG 3831), Income Tax Amendment Proclamation, AG 67/1978 (OG 3832) (subsequently repealed by the Income Tax Act 24 of 1981); Rates of Normal Tax (Companies) Act 11 of 1979 (OG 4026) (subsequently repealed by the Income Tax Act 24 of 1981).

Administration of the South African Development Trust in South West Africa Proclamation, AG 19 of 1978 (OG 3724)

Amendments: AG Proc. 3/1979 (OG 3898).

Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978 (OG 3743)

Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979 (OG 4038)

Amendments: AG Proc. 24/1983 (OG 4854), Deeds Registries Amendment Act 26 of 1985 (OG 5146), AG Proc. 32/1985 (OG 5060), Administration of Estates Amendment Act 2 of 1987 (OG 5338).

References: AG Proc. 17/1986 (OG 5179).

Executive Powers (Police) Transfer Proclamation 169 of 1980 (RSA GG 7207)

ASSIGNMENTS OF POWERS

Assignment of the administration of certain provisions of law to the Minister of National Education and

- the Central Personnel Institution, GN 153/1986 (OG 5241).
- Assignment of the administration of certain provisions of law to the Minister of Agriculture, Water Affairs and Sea Fisheries, GN 166/1986 (OG 5254).
- Delegation of powers granted in terms of the Water Act, 1956 (Act 54 of 1956 (OG 2015)), and the regulations promulgated thereunder, to officials of the Department of Water Affairs, GN 167/1986 (OG 5254).
- Assignment of the administration of certain provisions of law of the Minister of Agriculture, Water Affairs and Sea Fisheries, GN 168/1986 (OG 5254).
- Assignment of the administration of certain provisions of law of the Minister of Finance and Governmental Affairs, GN 169/1986 (OG 5254).
- Assignment of the administration of certain provisions of law to the Minister of Transportation, GN 179/1986 (OG 5254).
- Assignment of the administration of certain provisions of law to the Minister of Justice, GN 55/1987 (OG 5348).
- Assignment of the administration of certain provisions of law to the Minister of Nature Conservation, Mining, Trade and Tourism, GN 95/1987 (OG 5378).
- Assignment of the administration of certain provisions of law to the Minister of Nature Conservation, Mining, Commerce and Tourism, GN 96/1987 (OG 5378).
- Assignment of the administration of certain provisions of law to the Minister of Local Authorities and Civic Affairs, GN 116/1987 (OG 5406).
- Assignment of the administration of certain provisions of law to the Chairman of the Cabinet, GN 164/1987 (OG 5440).
- Assignment of the administration of certain provisions of the Regulations under the National Education Act, 1980 (Act 30 of 1980, OG 4358): Pupils in Government Schools to the Minister of National Education and the Central Personnel Institution, GN 115/1988 (OG 5567).
- Assignment of the administration of certain provisions of law to the Minister of National Education and the Central Personnel Institution, GN 141/1988 (OG 5590).
- Assignment of the administration of certain provisions of law to the Minister of Finance, GN 155/1988 (OG 5607).
- Amendment of the assignment of the administration of certain provisions of law to the Minister of Local Authorities and Civic Affairs, GN 173/1988 (OG 5623).
- Assignment of the administration of certain provisions of law to the Minister of Justice, GN 194/1988 (OG 5638).

TRANSPORTATION

Namibian Transport Advisory Board Act 23 of 1991 🕎 🙀

Summary: This Act (<u>GG 324</u>) establishes the Namibian Transport Advisory Board and sets forth its composition and functions.

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

Amendments: Act 12/1998 (GG 1880) amends sections 4 and 5.

National Transport Services Holding Company Act 28 of 1998 🕎

Summary: This Act (originally published in <u>GG 1961</u>) provides for the incorporation of a holding company to undertake transport services. Most of the Act was brought into force on 1 January 1999 by GN 306/1998 (<u>GG 2018</u>). However, sections 5-13 and 15-19 came into force only on the date of transfer of services to the holding company, which was 1 April 1999 in terms of GN 51/1999 (<u>GG 2075</u>).

Repeals: The Act repeals the National Transport Corporation Act 21 of 1987 (OG 5439).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1-10, 14 and 17. That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Savings: In terms of section 19(2) of this Act, anything done under the National Transport Corporation Act 21 of 1987 which could have been done under a corresponding provision of the new Act remains valid.

Regulations: Since this Act makes no provision for regulations, regulations made under the repealed law would not survive.

Cases: The following cases concern the current Act –

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC) (section 14(4))

Coetzee v Transnamib Holdings Ltd & Another 2015 (4) NR 1183 (HC) (Schedule 1, Item 8).

The following cases concern the previous National Transport Corporation Act 21 of 1987 – Krüger v Transnamib Ltd (Air Namibia) & Others 1996 NR 168 (SC) (section 48)

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC); Transnamib Ltd v Poolman & Others 1999 NR 399 (SC) (section 48).

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, <u>GG 2499</u>).

See also GN 51/2001 (GG 2499).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616).

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

INTERNATIONAL LAW

Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980

Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005

SADC Protocol on Transport, Communications and Meteorology, 1996

See also AVIATION.	
See also RAILWAYS.	
See also ROADS AND ROAD TRANSPORTATION.	
See also SHIPPING.	

TRUSTS

Trust Administration Act 11 of 2023 🗐 📻

Summary: This Act (<u>GG 8144</u>) provides for the control and administration of trusts. It also regulates trustees and trust practitioners providing services relating to trusts, and sets out the powers and functions of trustees, the Master of the High Court and the court in respect of trusts. It was brought into force on 3 August 2023 by GN 244/2023 (<u>GG 8164</u>).

Repeals: This Act repeals the Trust Moneys Protection Act 34 of 1934, as amended.

Regulations: Trust Administration Regulations are contained in GN 245/2023 (GG 8164). A separate set of Trust Administration Regulations concerning trust practitioners is contained in GN 289/2023 (GG 8205).

Cases: No cases have yet been decided under this Act.

The following cases were decided when the previous *Trust Moneys Protection Act 34 of 1934* was in force -

Ellis & Others NNO v Noabeb 2015 (2) NR 325 (HC) (a sole trustee cannot become the sole beneficiary of a trust; the notion of a trust was abused in this case to achieve a transfer in ownership of immovable property while avoiding transfer duty), overturned on appeal in Ellis & Others v Noabeb Ellis & Others NNO v Noabeb 2019 (3) NR 811 (SC) (a situation where the sole trustee will also become the sole beneficiary of a trust, while not invalidating a previously validly-constituted trust, is undesirable because it does not provide for a functional separation of the enjoyment and control of the trust property and thus does not secure diligence and independence of judgment on the part of the trustee in dealing with the trust property; to avoid this undesirable situation, the court ordered the appointment of an independent trustee and directed that there must at all times be not less than two trustees of this trust).

McLean & Others v Botes (SA 54-2019) [2022] NASC (17 May 2022) (general lack of diligence on part of trustees; fiduciary duty of all trustees to act in interest of trust)

Schütte & Another v Schütte & Others 2020 (4) NR 1008 (HC) (confirming that a trust is not a legal person); overturned in Schütte & Others v Schütte 2021 (2) NR 309 (SC) on issues relating solely to the interpretation of the trust deed; see also Schütte & Others v Schütte & Another 2024 (1) NR 39 (SC) (power of trustees to amend trust deed to remove beneficiaries; revocation versus variation of trust).

SELECTED CASES

Egerer & Others NO v Executrust (Pty) Ltd & Others 2018 (1) NR 230 (SC)

A Nature of a trust in our law

[30] A trust is a legal relationship created by a donor or trust founder in terms whereof he or she places assets under the control of trustees — either *inter vivos* or in a will. The assets that the founder bequeaths to beneficiaries under the trust do not belong to him or her, but are held by the trustees for the benefit of trust beneficiaries. Therefore, the defining characteristic of a trust is the transfer of ownership and control of trust assets from the donor or founder to one or more trustees who hold those assets not in their personal capacities or for their personal benefit, but for that of trust beneficiaries. Trust beneficiaries enjoy the benefits given under the trust even if the founder or one of the trustees dies.

[31] The constitution of a trust is the trust deed which sets out the framework in which the trust must operate. The trustees of a trust owe a fiduciary duty to the trust beneficiaries and they must administer the trust solely for the benefit of the trust beneficiaries. (*Sackville West v Nourse and Another* 1925 AD 516.)

[32] The vesting date of a trust is the date when the trust will conclude and the trustees must wind up the trust by distributing all of the trust assets to the beneficiaries." (footnotes omitted).

The law on nomination of trustees

"[33] The wording of the trust deed is decisive as to whether the power to appoint additional trustees is qualified. A trust founder has the right to prescribe the mode of appointment of trustees. He or she may by contract reserve for himself or herself the power to appoint additional trustees, or confer a power on trustees to appoint other trustees. The latter is referred to as the power of assumption. The power of assumption does not attach to the office of trustee by operation of law (*Smit v Van de Werke NO en Andere* 1984 (1) SA 164 (T) at 169) and must be granted in the trust deed. It is trite that a power of assumption may be granted by a founder unconditionally or be limited, for example, to the filling only of a vacancy (*Ex parte Davenport and Another* 1963 (1) SA 728 (SR)). There is no rule of the common law that the power to appoint trustees by the founder or trustees is limited to the filling of a vacancy. A trust founder may therefore in a trust instrument grant himself or herself greater powers than those enjoyed by cotrustees. In fact, in *Roper and Bryce v Connock* 1954 (1) SA 65 (W), the power of assumption was reserved for the founder-trustee only. (footnotes omitted).

Schütte & Another v Schütte & Others 2020 (4) NR 1008 (HC), overturned on appeal on grounds of interpretation of trust deed in Schütte & Others v Schütte 2021 (2) NR 309 (SC)

2020 (4) NR 1008 (HC) at para 12: "As regards the legal position, a trust is not a legal entity. In this regard, the Supreme Court of South Africa (SCA) in *Griessel NO and Others v De Kock and Another* (2019 (5) SA 396 (SCA) para 11) said the following with respect to the nature of a trust:

'[11] It is trite that a trust is not a legal person. An *inter vivos* trust is governed by the terms of a trust deed as well as the provisions of the Trust Property Control Act 57 of 1988 [the South African statute on trusts]. In its strictly technical sense, a trust is a legal institution *sui generis*. In *Lupacchini v Minister of Safety and Security*, Nugent JA observed:

"A trust that is established by a trust deed is not a legal person — it is a legal relationship of a special kind that is described by the authors of Honoré's South African Law of Trusts as a legal institution in which a person, the trustee, subject to public supervision, holds or administers property separately from his or her own, for the benefit of another person or persons or for the furtherance of a charitable or other purpose ". '

That is also the legal position in Namibia as regards the nature of a trust [citing *Egerer & Others NO v Executrust (Pty) Ltd & Others* 2018 (1) NR 230 (SC) para 30]." (footnotes omitted)

WATER

Water Research Act 34 of 1971, as amended in South Africa to October 1972 w

Summary: This Act (originally published in <u>RSA GG 3105</u>) establishes a Water Research Commission to promote research into water affairs, as well as a Water Research Fund. It appears to be superseded by the Research, Science and Technology Act 23 of 2004, which provides for the promotion, co-ordination and development of research, science and technology in Namibia. This Act was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,⁴¹⁰ but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

Applicability to SWA: Section 15 states "The State President may by proclamation in the Gazette declare any of or all the provisions of this Act and of any amendment thereof to be applicable in the territory of South West Africa (including the Eastern Caprivi Zipfel) or any portion thereof." All of the provisions of the Act were made applicable to SWA by RSA Proc. 279/1972 (RSA GG 3685) as from 27 October 1972, but not future amendments: "Now, therefore, under the powers vested in me by the said section 15, I do hereby declare that all the provisions of the said Act shall, with effect from the date of publication hereof, be applicable in the Territory of South-West Africa." This Proclamation did not make amendments to the Act in South Africa automatically applicable to SWA.

Neither of the two amending Acts enacted prior to the date of transfer – the *Water Research Amendment Act 16 of 1974* (RSA GG 4199) and the *Water Research Amendment Act 37 of 1975* (RSA GG 4700) – were applied to South West Africa by Proclamation of the State President, and it is debatable whether the wording of *RSA Proc. 279 of 1972* was intended to incorporate future amendments ("...all the provisions of the said Act... with effect from the date of publication hereof..."). However, based on the approach to the Act taken by the Administrator-General of South West Africa after the date of transfer, it appears that the wording of *RSA Proc. 279 of 1972* was understood to incorporate amendments to the Act.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated **28 September 1977**, as amended. (The Act gives the term Minister the meaning assigned to it in the *Water Act 54 of 1956*, where it is defined as being the Minister of Water Affairs; AG 3/1977 applies to all laws administered by that Minister.)

After the date of transfer, the Administrator General made one South African amendment – the *Water Research Amendment Act 106 of 1977* – applicable to South West Africa, by means of AG Proclamation 29 of 1978 (OG 3745): "Under the powers vested in me by section 2 of the Water Research Amendment Act, 1977 (Act 106 of 1977), as applied by the Executive Powers Transfer Proclamation, 1977 (Proclamation AG. 3 of 1977), I hereby determine that the said Act shall come into operation on 1 July 1978". (Section 2 of *Act 106 of 1977* states "This Act shall be called the Water Research Amendment Act, 1977, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.")

Note that this Proclamation appears to assume that amendments to the principal Act were automatically applicable to South West Africa, with the power to declare a *commencement date* lying with the Administrator-General of South West Africa instead of the State President of South Africa after the date of transfer by virtue of the Transfer Proclamation.

 $\begin{tabular}{ll} \bf Amendments: The following pre-independence South African amendments were apparently applicable to SWA-\\ \end{tabular}$

• Water Research Amendment Act 16 of 1974 (RSA GG 4199)

⁴¹⁰ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 86-ff.

Water Research Amendment Act 37 of 1975 (RSA GG 4700).

AG 29/1978 makes the *Water Research Amendment Act 106 of 1977* (RSA GG 5658) applicable to SWA as from 1 July 1978. This Act amends section 11, which deals with the levying of rates and charges.

Regulations: The Act makes no provision for regulations.

Namibia Water Corporation Act 12 of 1997 🕎 🙀

Summary: This Act (originally published in <u>GG 1703</u>) establishes "NamWater" and provides for its powers, duties and functions. It was brought into force on 20 November 1997 by GN 234/1997 (<u>GG</u> 1732).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 17, 18, 19, 21, 22 and 28. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Water Resources Management Act 11 of 2013 (<u>GG 5367</u>), which was brought into force on 29 August 2023 by GN 268/2023 (<u>GG 8187</u>), amends sections 6, 7 and 14.

Act 17/2001 (GG 2674), which has not yet been brought into force, would amend sections 17, 18 and 19 and substitute section 21.

The Water Resources Management Act 24 of 2004 (GG 3357), which was repealed by the Water Resources Management Act 11 of 2013 (GG 5367), without ever being brought into force, would have also amended the Act.

Regulations: Regulations are authorised by section 43 of the Act, but none have yet been promulgated.

Notices: The date for the transfer of bulk water supply functions from the Department of Water Affairs to the Namibia Water Corporation Ltd is determined to be 1 April 1998 in GN 169/1998 (GG 1909).

Tariffs: Bulk water supply tariffs are set forth from time to time and have not been recorded here.

Appointments: Directors of the Board are announced in GN 248/1998 (<u>GG 1965</u>), GN 186/2000 (<u>GG 2386</u>) and GN 58/2004 (<u>GG 3181</u>).

Water Resources Management Act 11 of 2013 🕎 📻

Summary: This Act (<u>GG 5367</u>) concerns the management, development, protection, conservation and use of water resources. It establishes a Water Advisory Council, a Water Regulator and a Water Tribunal, as well as Basin Management Committees and Water Point Committees. It provides for an Integrated Water Resources Management Plan and a Water Pricing Policy, and covers licencing for water services providers and for water abstraction and use. Amongst the other topics it addresses are management of internationally shared water resources, protection of groundwater, control of water pollution, dams, flood management and wetlands. The Act was brought into force on 29 August 2023 by GN 268/2023 (<u>GG 8187</u>).

Repeals: The Act repeals the *Water Act 54 of 1956* (<u>SA GG 5718</u>) as amended, ⁴¹¹ and the Water Resources Management Act 24 of 2004 (<u>GG 3357</u>) which was never brought into force.

The current Act also repeals the SWA regulations in RSA GN R.1278/1971 (RSA GG 3218), issued pursuant to section 30(2) of the *Water Act 54 of 1956*. 412

Note that SWA regulations in RSA GN R.1277/1971 (RSA GG 3218) - which are *not* repealed by the current Act - repeal the SWA Water Ordinance 13 of 1932 (OG 478) as amended⁴¹³ and the Artesian Water Control Ordinance 35 of 1955 (OG 1930), both of which had been converted into regulations applicable to SWA by section 180 of the *Water Act 54 of 1956*.

Savings: Subject to certain transitional provisions set out in section 132, section 133(2) of the current Water Resources Management Act 11 of 2013 provides that –

anything done under a law repealed by subsection (1), which was of force immediately before the date of such repeal and which may be done under a corresponding provision of this Act, continues to be of force and is deemed to have been done under that corresponding provision.

The history of the Water Act 54 of 1956 is relevant to the issue of savings.

The South African version of the *Water Act 54 of 1956* repealed a number of laws, but the section on repeals was not made applicable to SWA – so presumably none of the repealed laws were applicable to SWA. Section 180 of the original *Water Act 54 of 1956* stated:

The Governor-General may, by proclamation in the *Gazette*, apply the provisions of this Act to the territory of South-West Africa or any area within that territory.

As amended by Act 77 of 1969, section 180(1) of the Water Act 54 of 1956 stated:

The State President may, by proclamation in the Gazette, apply any of or all the provisions of this Act to the territory of South West Africa or any portion thereof.

Section 180(2) of the *Water Act 54 of 1956* applied sections 1-4 of the Act to SWA from the date of commencement of *Act 77 of 1969* (25 June 1969).

RSA Proclamation 281 of 1970 (RSA GG 2921) applied section 162 of the Water Act 54 of 1956 to SWA with effect from 1 April 1971. It makes no mention of the applicability of future amendments to South West Africa, stating:

I do hereby declare that as from 1 April 1971, the provisions of section 162 of the Water Act shall apply to the Territory of South-West Africa.

This proclamation presumably applied the stated sections as they stood at 1 April 1971.

RSA Proclamation 151 of 1971 (RSA GG 3167) applied sections 5-7, 9A, 21-23, 26 (excluding paragraph (a)), 27, 28(1), 30, 34-43, 44(2), 45-51, 54-56, 57(1), 59(2), 61, 66, 67, 69, 70 (excluding paragraphs (d),

⁴¹¹ Specific sections of the *Water Act 54 of 1958* were applied to SWA on varying dates by the *Water Amendment Act 77 of 1969* (RSA GG 2443), RSA Proc. 281/1970 (RSA GG 2921), RSA Proc. 151/1971 (RSA GG 3167) and Act 22 of 1985 (OG 5142).

Section 180(2), as amended by *Act 77 of 1969*, applied sections 1-4 of the Act to South West Africa from the date of commencement of *Act 77 of 1969* (25 June 1969). *RSA Proclamation 281 of 1970* (RSA GG 2921) applied section 162 to South West Africa with effect from 1 April 1971. *RSA Proclamation 151 of 1971* (RSA GG 3167) applied sections 5-7, 9A, 21-23, 26 (excluding paragraph (a)), 27, 28(1), 30, 34-43, 44(2), 45-51, 54-56, 57(1), 59(2), 61, 66, 67, 69, 70 (excluding paragraphs (d), (f), (g) and (h)), 139-152, 164*bis*, 164*ter*, 165, 166, 170 (excluding paragraphs (3) and (5)(c)) and 171 to South West Africa. The *Water Amendment Act 22 of 1985* (OG 5142) made sections 9B, 30A(a) and 170(3) applicable to "the Territory of South West Africa".

The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated 28 September 1977, as amended. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments to the Water Act 54 of 1958 are listed in the text of this entry in the section on "savings".

⁴¹² These regulations were amended by section 8 of the SWA Water Amendment Act 22 of 1985 (<u>OG 5142</u>), which is also repealed by the current Water Resources Management Act 11 of 2013.

⁴¹³ The repealed amendments are the Water Amendment Ordinance 24 of 1954, the Water Amendment Ordinance 13 of 1955, the Water Amendment Ordinance 29 of 1957, the Water Further Amendment Ordinance 37 of 1957, the Water Amendment Ordinance 11 of 1959 and the Water Amendment Ordinance 18 of 1968.

(f), (g) and (h)), 139-152, 164*bis*, 164*ter*, 165, 166, 170 (excluding paragraphs (3) and (5)(c)) and 171 of the *Water Act 54 of 1956* to SWA. This Proclamation became effective from the date of its publication, 25 June 1971. It makes no mention of the applicability of future amendments to South West Africa, stating:

I hereby declare, in terms of section 180(1) of the Water Act, 1956 (Act 54 of 1956), the provisions of the following sections of the said Act to be applicable to the Territory of South-West Africa with effect from the date of publication hereof... [followed by a list of section numbers].

This Proclamation presumably applied the stated sections as they stood at 25 June 1971.

The Water Amendment Act 22 of 1985 (OG 5142) made sections 9B, 30A(a) and 170(3) of the Water Act 54 of 1956 applicable to "the Territory of South West Africa". Section 1(2) of Act 22 of 1985 stated:

For the purposes of any provision of the principal Act the provisions of subsection (1) shall be deemed to be a proclamation made under section 180 of the principal Act.

Act 22 of 1985 came into force on its date of publication (18 December 1985). It stated:

Sections 9B, 30A(a) and 170(3) of the Water Act, 1956 (hereinafter referred to as the principal Act), shall apply in the territory of South West Africa.

Act 22 of 1985 did not make any of the amendments to these sections after the date of transfer explicitly applicable to SwA, and so apparently applied the stated sections as they stood in South Africa at the date of transfer, 28 September 1977. Alternatively, it is possible that Act 22 of 1985 applied the sections in question as they stood in South Africa as of 18 December 1985. However, the first interpretation is supported by Act 22 of 1985: it amends section 9B "as inserted by section 2 of Act 36 of 1971 and amended by section 1 of Act 42 of 1975 and section 1 of Act 108 of 1977". This marginal notation makes no mention of the amendment of section 9B by Act 96 of 1984, which amended section 9B in South Africa after the date of transfer but prior to Act 22 of 1985.

The administration of the *Water Act 54 of 1956* was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated **28 September 1977**, as amended. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

The following pre-independence South African amendments to the *Water Act 54 of 1956* were applicable to SWA –

- Water Amendment Act 56 of 1961 (RSA GG 30)
- Water Amendment Act 71 of 1965 (RSA GG 1136)
- Water Amendment Act 11 of 1966 (RSA GG 1380)
- Agricultural Credit Act 28 of 1966 (RSA GG 1546)
- *Water Amendment Act 79 of 1967* (<u>RSA GG 1763</u>)
- Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969 (RSA GG 2315)
- Water Amendment Act 77 of 1969 (RSA GG 2443)

Amendments in South Africa to section 162 were not applicable to South West Africa after this point.

• Water Amendment Act 36 of 1971 (RSA GG 3106)

Amendments in South Africa to other provisions of the Act which applied to South West Africa, with the *exception* of sections 9B, 30A(a) and 170(3), were not applicable after this point.

- Water Amendment Act 45 of 1972 (RSA GG 3516)
- Water Amendment Act 42 of 1975 (RSA GG 4720)
- Water Amendment Act 108 of 1977 (<u>RSA GG 5660</u>)

Amendments in South Africa to sections 9B, 30A(a) and 170(3) of the Act were not applicable to South West Africa after this point.

The following South African amending Acts were not relevant to SWA because they amend only provisions of the *Water Act 54 of 1956* which were not applicable to SWA:

- Water Amendment Act 75 of 1957 (<u>SA GG 5908</u>)
- Water Amendment Act 63 of 1963 (RSA GG 540)
- General Law Amendment Act 102 of 1972 (RSA GG 3610)
- Water Amendment Act 58 of 1974 (RSA GG 4452).
- Expropriation Act 63 of 1975 (RSA GG 4780)
- Water Amendment Act 27 of 1976 (<u>RSA GG 5043</u>).

Section 33 of the Public Service Act 2 of 1980 (OG 4116) repealed section 3(2) of the *Water Act 54 of 1956*. However, AG 18/1980 (OG 4212), which brought Act 2 of 1980 into force, excluded section 33 - and the reference to the Water Act in section 33 of Act 2 of 1980 was deleted altogether by the Water Amendment Act 4 of 1982 (OG 4617).

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology in the *Water Act 54 of 1956*.

The Water Act 54 of 1956 was also amended by Act 4/1982 (OG 4617) and Act 22/1985 (OG 5142).

Section 42 of the Namibia Water Corporation Act 12 of 1997 (GG 1703) affected the applicability of the *Water Act 54 of 1956* to the NamWater Corporation.

The Water Act 54 of 1956 was initially repealed by the Water Resources Management Act 24 of 2004 (GG 3357), which never came into force.

As noted above, the current Water Resources Management Act 11 of 2013 (GG 5367) repealed the *Water Act 54 of 1956* as well as the Water Resources Management Act 24 of 2004.

Regulations: Water Resources Management Regulations issued under the current Water Resources Management Act 11 of 2013 are contained in GN 269/2023 (GG 8187).

Regulations relating to appeals to Water Tribunal issued under the current Water Resources Management Act 11 of 2013 are contained in GN 270/2023 (GG 8188).

Research into regulations made under the repealed Water Act 54 of 1956 is summarised below:

Section 181 of the *Water Act 54 of 1956* repealed certain previous laws and provided a savings provision for regulations made under the repealed laws, *but this section was not made applicable to SWA*.

Section 180 of the *Water Act 54 of 1956* was not made applicable to SWA. Nevertheless, it determines how the Act was applied to SWA and transforms some SWA Ordinances into regulations under the Act. Section 180(3) and (4) of the Act gave the State President of South Africa the power to make such regulations as he deemed necessary applicable in South West Africa, so long as such regulations were approved by both the Senate and the House of Assembly. However, notwithstanding the provision on Senate and House approval, section 180(5), as amended by the *Water Amendment Act 77 of 1969*, provided that the South West African Water Ordinance 13 of 1932 and the Artesian Water Control Ordinance 35 of 1955 were deemed to be regulations issued under the Act and applicable to SWA, and provided rules for their interpretation.⁴¹⁴

⁴¹⁴ Section 180(5) of the *Water Act 54 of 1956* provided the following rules of construction in respect of these Ordinances as regulations:

⁽a) References to the "Administration" shall be construed as a reference to the Department of Water Affairs established under section 3 of the Government Service Act 2 of 1980 (which has since been replaced by the Public Service Act 13 of 1995).

⁽b) References to the "Administrator" shall, except in certain specified sections of each Ordinance, be construed as a reference to the Minister.

⁽c) References in section 19bis of the Water Ordinance 13 of 1932 to the "Department" shall be construed as a reference to the "Branch" as defined in section 1 of the Ordinance; and

⁽d) References to the "Legislative Assembly" shall be construed as a reference to Parliament. Section 180(5) of the *Water Act 54 of 1956* also provided that anything done by any authority under any provision of these Ordinances prior to the commencement of the *Water Amendment Act 77 of 1969* would be deemed to have been done by the corresponding authority under such provision as so construed.

The Water Ordinance 13 of 1932 (OG 478), initially enacted as an Ordinance and brought into force by GN 283/1951 (OG 1603), was amended by the following:

- Water Amendment Ordinance 24 of 1954 (OG 1846)
- Water Amendment Ordinance 13 of 1955 (OG 1924)
- Water Amendment Ordinance 29 of 1957 (OG 2087)
- Water Further Amendment Ordinance 37 of 1957 (OG 2092)
- Water Amendment Ordinance 11 of 1959 (OG 2179)
- Water Amendment Ordinance 18 of 1968.

However, the regulations in RSA GN R.1277/1971 (RSA GG 3218) repealed the Water Ordinance 13 of 1932 as amended; since this repeal is contained in a set of regulations, it must have been applicable to the Ordinance as transformed into regulations.

The Artesian Water Control Ordinance 35 of 1955 (OG 1930) was also initially enacted as an Ordinance before being deemed to constitute regulations. It was not amended.

The regulations in RSA GN R.1277/1971 (RSA GG 3218) also repealed the Artesian Water Control Ordinance 35 of 1955; again, since this repeal is contained in a set of regulations, it must have been applicable to the Ordinance as transformed into regulations.

RSA GN R.1277/1971 (RSA GG 3218) sets forth regulations for SWA pursuant to section 180(3) of the *Water Act 54 of 1956*. (These regulations are not given a title.) They are amended by RSA GN R.875/1975 (RSA GG 4692), AG GN 16/1980 (OG 4097) and section 8 of the SWA Water Amendment Act 22 of 1985 (OG 5142) which amends regulation 1 and repeals regulations 15-27 and 33. No repeal of the remaining regulations has been located. However, the only portions that survive are as follows:

- regulation 1 (definitions)
- regulations 2-14 (which concern the Advisory Water Board for South West Africa and so are probably obsolete)
- regulations 28-32 (control and use of subterranean water and water found underground)
- regulation 34 (repeals).

Regulations in respect of subterranean water control areas specifically applicable to SWA were contained in RSA GN R.1278/1971 (<u>RSA GG 3218</u>), but these regulations are repealed by the current Act.

Regulations made under other repealed laws:

As noted above, section 181 of the *Water Act 54 of 1956* repealed certain previous laws and provided a savings provision for regulations made under the repealed laws, *but this section was not made applicable to SWA*.

The Water Ordinance 13 of 1932 (OG 478) did not contain any repeals.

The Artesian Water Control Ordinance 35 of 1955 (OG 1930) repealed the Artesian Water Control Proclamation 49 of 1921 (OG 72) as amended, and provided a savings clause in the proviso to section 13 in respect of that repeal:

Provided that any regulations or notices or licences issued under the provisions of the abovementioned laws [the Artesian Water Control Proclamation 49 of 1921 as amended by the Artesian Water Control Proclamation Amendment Ordinance 7 of 1949 and the Artesian Water Control Amendment Proclamation 40 of 1950] shall, unless they are in conflict with or repugnant to the provisions of this Ordinance, remain of force and effect until repealed, altered or substituted.

However, the savings clause in regulation 34 of RSA GN R.1277/1971 (RSA GG 3218), which repealed the regulations based on the Artesian Water Control Ordinance 35 of 1955, did not cover regulations. Subregulation 34(2) states:

Any proclamation, right, permit, authority, servitude, determination, condition, order, direction or requirement issued, granted, given, awarded, done, imposed or laid down under any provision of an ordinance mentioned in the said Schedule or any water work constructed or action

Thus, the only surviving regulations made under the repealed laws are the untitled regulations in RSA GN R.1277/1971 (RSA GG 3218).

Notices: AG GN 12/1980 (<u>OG 4089</u>), GN 166/1986 (<u>OG 5254</u>) as corrected by GN 21/1987 (<u>OG 5308</u>) and by GN 25/1987 (<u>OG 5314</u>), GN 167/1986 (<u>OG 5254</u>) and GN 50/2000 (<u>GG 2280</u>) concern the delegation of powers under the repealed *Water Act 54 of 1956* and its associated regulations.

Rates and charges: Rates and charges have not been recorded here.

Cases: No cases have yet been decided under the current Act.

The following post-independence case concerns the repealed *Water Act 54 of 1956* – *Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others* 2011 (2) NR 469 (SC) at 480C-481E and 482A-E, summarising and discussing the unreported High Court case in the same matter, which discussed sections 27, 28 and 30 of the repealed Act.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia's scarce water resources by mining operations*, Windhoek: Legal Assistance Centre, 2009, available here.

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Dietrich Remmert, "Water Governance in Namibia – A Tale of Delayed Implementation, Policy Shortfalls, and Miscommunication", Institute for Public Policy Research, 2016, available here

Ndjodi Ndeunyema, "Unmuddying the Waters: Evaluating the Legal Basis of the Human Right to Water under Treaty Law, Customary International Law, and the General Principles of Law", 41 (3) *Michigan Journal of International Law* 455 (2020), available here.

See also Mountain Catchment Areas Act 63 of 1970 (ENVIRONMENT).

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

WEIGHTS, MEASURES AND STANDARDS

Metrology Act 77 of 1973, as amended in South Africa to January 1978 w



Summary: This Act (originally published in RSA GG 3969) regulates the use of weights and measures in trade.

Repeals: The Act repeals the Weights and Measures Act 13 of 1958 (SA GG 6020), as amended.

The Metrology Amendment Act 17 of 2005 (GG 3568), which was brought into force on 20 June 2022 by GN 173/2022 (GG 7834), repeals the Measuring Units and National Measuring Standards Act 76 of 1973 (RSA GG 3968).

Note that the name of this Act was changed from the "Trade Metrology Act 77 of 1973" to the "Metrology Act 77 of 1973" by the Metrology Amendment Act 17 of 2005.

This Act will be replaced by the Metrology Act 5 of 2022 (GG 7953), which has not yet been brought into force.

Applicability to SWA: Section 45, before its repeal in post-independence Namibia, stated: "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." Section 1 defined "Republic" and "statutory body" accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence - the Trade Metrology Amendment Act 14 of 1984 (RSA GG 9090) - which was not made expressly applicable to SWA.

Amendments: The following pre-independence South African amendment was applicable to SWA –

Trade Metrology Amendment Act 34 of 1975 (RSA GG 4697).

Act 14/1995 (GG 1129) repeals sections 6 and 45, amends sections 1, 3, 8, 13, 18, 23, 24, 27 and 40, and substitutes sections 7 and 43 and certain terminology.

The Metrology Amendment Act 17 of 2005 (GG 3568), which was brought into force on 20 June 2022 by GN 173/2022 (GG 7834), makes substantial amendments to this Act. This amending Act also repeals the Measuring Units and National Measuring Standards Act 76 of 1973 (RSA GG 3968).

Savings: The Act contains a savings clause in section 46(2) in respect of its repeal of the Weights and Measures Act 13 of 1958:

Any proclamation (other than a proclamation referred to in the Second Schedule), regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

The Second Schedule referred to lists RSA Proclamation R.334 of 1970 as amended by RSA Proclamation R.217 of 1971 and RSA Proclamation R. 316 of 1972 – meaning that these Proclamations do not remain in force.

The Metrology Amendment Act 17 of 2005, which repeals the Measuring Units and National Measuring Standards Act 76 of 1973 (RSA GG 3968), contains the following savings clauses in section 21:

(2) Any notice issued or any other thing done under a provision of the law repealed by subsection (1) [the Measuring Units and National Measuring Standards Act 76 of 1973], and which was in force immediately before the repeal of that law, remains, notwithstanding that repeal, in force after the commencement of this Act, except in so far as it is incompatible or in conflict with the Metrology Act, 1973 (Act No. 77 of 1973), as amended by this Act.

(3) Any pending criminal proceedings instituted under section 8 of the Measuring Units and National Measuring Standards Act, 1973, before the repeal of that Act by subsection (1) of this section must be continued and concluded as if that Act had not been so repealed.

For the purpose of considering the effect of the savings clauses, the administration of the *Measuring Units and National Measuring Standards Act 76 of 1973* was transferred to SWA by the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated **30 January 1978**.

Regulations: Regulations are authorised by section 42 of the Act. Pre-independence regulations issued under this Act are contained in RSA GN R.2362/1977 (<u>RSA GG 5806</u>),⁴¹⁵ as amended by GN 192/1986 (<u>OG 5258</u>) (which affects only regulation 11).⁴¹⁶

No regulations have been issued under the Act since independence.

Notices: The following notices issued under repealed laws appear to remain in force.

National Measuring Standards were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA GN R.1144/1974 (<u>RSA GG 4326</u>), as amended by RSA GN R.1232/1977.⁴¹⁷

Equivalents of measuring units were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA GN R.1145/1974 (<u>RSA GG 4326</u>), as amended by RSA GN R.712/1976 (<u>RSA GG 5103</u>).

Measuring units, symbols and rules were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA GN R.1146/1974 (<u>RSA GG 4326</u>), as amended by RSA GN R.713/1976 (<u>RSA GG 5103</u>) and by RSA GN R.1234/1977 (<u>RSA GG 5648</u>).⁴¹⁸

They also repeal **Part II** of the regulations promulgated by RSA GN R.4007/1969 (**RSA GG 2597**), as amended by RSA Government Notices R.884 of 28 May 1971, R.2294 of 15 December 1972, R.496 of 30 March 1973 and R.1190 of 9 July 1976; **Part III** of the regulations in RSA GN R.4007/1969 (**RSA GG 2597**), as amended by RSA GN R.2294 of 15 December 1972; and **Part IV** and **Part V** of the regulations in RSA GN R.4007/1969 (**RSA GG 2597**)

Due to the substitutions and renumberings of the initial set of regulations published in RSA GN R.1425/1962 (<u>RSA GG 323</u>), as amended by RSA GN R.62/1969 (<u>RSA GG 2266</u>) and RSA GN R.4007/1969 (<u>RSA GG 2597</u>), these various repeals appear to have repealed the previous set of regulations in its entirety.

416 These regulations were amended in South Africa after the date of transfer and prior to Namibian independence by RSA GN R.2052/1978 (RSA GG 6182), RSA GN R.527/1980 (RSA GG 6892), RSA GN R.1805/1982 (RSA GG 8351), RSA GN R.192/1984 (RSA GG 9056), RSA GN R.1739/1985 (RSA GG 9885), RSA GN R.2110/1985 (RSA GG 9934), RSA GN R.1868/1986 (RSA GG 10431), RSA GN R.125/1987 (RSA GG 10580) and RSA GN R.861/1989. However, none of these amendments were made explicitly applicable to SWA.

⁴¹⁷ In South Africa, these standards were further amended after the date of transfer and prior to Namibian independence by RSA GN R.2210/1978 (<u>RSA GG 6206</u>), RSA GN R.525/1980 (<u>RSA GG 6892</u>), RSA GN 1806/1982 (<u>RSA GG 8351</u>) and RSA GN R.1742/1988 (<u>RSA GG 11488</u>). However, none of these amendments were made explicitly applicable to SWA.

⁴¹⁸ In South Africa, these standards were further amended after the date of transfer and prior to Namibian independence by RSA GN R.2026/1979 (<u>RSA GG 6654</u>), RSA GN R.1610/1980 (<u>RSA GG 7168</u>) and RSA GN R.1743/1988 (<u>RSA GG 11488</u>), However, none of these amendments were made explicitly applicable to SWA.

⁴¹⁵ These regulations repeal **Part I** of the regulations in RSA GN R.62/1969 (<u>RSA GG 2266</u>), as amended by RSA Government Notices R.4006/1969 (<u>RSA GG 2597</u>), R.998 dated 26 June 1970, R.2276 dated 18 December 1970, R.883 dated 28 May 1971, R.1597 dated 17 September 1971 (as corrected by R.2074 dated 12 November 1971), R.2307 dated 24 December 1971, R.1194 dated 7 July 1972, R.2293 dated 15 December 1972, R.496 dated 30 March 1973, R.1575 dated 31 August 1973, R.2444 dated 21 December 1973, R.1129 dated 28 June 1974, R.376 dated 28 February 1975 and R.238 dated 18 February 1977.

A **prohibition** of the expression of the magnitude of quantities by means of units other than prescribed units and the designation of units by symbols other than prescribed symbols was issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA Proc. R.1791/1974 (<u>RSA GG 4419</u>), as amended prior to the date of transfer by RSA Proc. R.711/1976 (<u>RSA GG 5103</u>), RSA Proc. R.2482/1976 (<u>RSA GG 5361</u>) and RSA GG R.1233/1977 (<u>RSA GG 5648</u>).

The following **prohibitions** issued in terms of section 11A of the *Weights and Measures Act 13 of 1958* prior to the date of transfer also seem to remain in force in Namibia; they were all repealed in South Africa after the date of transfer by RSA Proc. R.526/1980 (RSA GG 6892).

A prohibition on use or possession of certain containers is contained in RSA Proc. R.167/1970 (RSA GG 2740).

A prohibition on use or possession of certain containers is contained in RSA Proc. R.333/1970 (<u>RSA GG 2951</u>), as amended by RSA Proc. R. 211/1972 (<u>RSA GG 3641</u>) and RSA Proc. 300/1973 (<u>RSA GG 4112</u>).

A prohibition of possession for sale of certain weighing or measuring instruments and measures is contained in RSA Proc. R.212/1972 (<u>RSA GG 3641</u>). This prohibition applies specifically to SWA. It is amended by RSA Proc. R.317/1972 (<u>RSA GG 3735</u>) and RSA Proc. R.296/1973 (<u>RSA GG 4112</u>).

A prohibition of possession for sale of new milk cans and cream cans is contained in RSA Proc. R.214/1972 (RSA GG 3641).

A prohibition of use or possession of weighing or measuring instruments, weights or measures is contained in RSA Proc. R.297/1973 (<u>RSA GG 4112</u>). This prohibition applies specifically to SWA. It is amended by RSA Proc. R.120/1974 (<u>RSA GG 4319</u>).

A prohibition of use or possession of baby's feeding bottles is contained in RSA Proc. R.299/1973 (RSA GG 4112). This prohibition applies specifically to SWA.

A prohibition of the use or possession of certain measuring instruments or containers is contained in RSA Proc. R.187/1974 (<u>RSA GG 4419</u>). This prohibition applies specifically to SWA. It is amended by RSA Proc. R.168/1975 (<u>RSA GG 4790</u>)

A prohibition of use or possession for use of certain weighing or measuring instruments, weights or measures for prescribed purposes issued is contained in RSA Proc. R.169/1975 (<u>RSA GG</u> 4790). This prohibition applies specifically to SWA.

A prohibition of use or possession of containers is contained in RSA Proc. R.67/1977 (<u>RSA GG 5497</u>).

The following notices were issued in terms of the current Act.

The Minister, after consultation with the Metrology Advisory Board, announced an **agreement with the Namibian Standards Institute (NSI) for the NSI to be a metrology agency** for the performance of functions contemplated in section 7(1) of the Act, in GN 209/2022 (<u>GG 7853</u>), with effect from 15 July 2022.

Fees: A tariff of fees to be charged by an inspector in respect of the verification, testing, adjustment, certification or recertification of measuring instruments is contained in GN 19/2024 (GG 8307), which replaces GN 75/1993 (GG 681).⁴¹⁹

 $^{^{419}}$ This notice withdraws AG GN 59/1984 (OG 4895), which in turn withdraws the tariff of assize fees in RSA GN R.1298 of 30 July 1971 (RSA GG 3221).

Note that GN 19/2024 refers to the Act as the "Trade Metrology Act" even though the statute's name was changed to "Metrology Act" by the Metrology Amendment Act 17 of 2005.

A tariff of examination fees issued under the *Weights and Measures Act 13 of 1958* in RSA GN R.2073/1971 (RSA GG 3310) also appears to remain in force, unless this tariff has been superseded by the one cited above. 420

Appointments: Members of the Metrology Advisory Board are announced in GN 174/2022 (GG 7834).

Cases: S v Blaauw's Transport (Pty) Ltd & Another 2006 (2) NR 587 (HC).

*Accreditation Board of Namibia Act 8 of 2005 🕎 🙀

Summary: This Act (originally published in <u>GG 3480</u>) establishes the Accreditation Board of Namibia and provides for the accreditation of laboratories providing testing and calibration, bodies which provide certain certification and inspection services and certifications of competence. The Act will be brought into force on a date set by the Minister by notice in the Government Gazette.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 (<u>GG 3698</u>), which was brought into force on 1 November 2006 by Proc. 13/2006 (<u>GG 3733</u>) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 6, 7, 8, 13 and 15, and substitutes section 9. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 16.

Regulations: The Act makes no provision for regulations.

Standards Act 18 of 2005 🕎 🙀

Summary: This Act (originally published in <u>GG 3569</u>) provides for the promotion, regulation and maintenance of standardisation relating to the quality of commodities and establishes the Namibian Standards Institution and the Namibian Standards Council. It was brought into force on 20 September 2013 by GN 248/2013 (<u>GG 5290</u>).

Repeals: The Act repeals the *Standards Act 33 of 1962* (RSA GG 207), which in turn repealed the *Standards Act 24 of 1945* and the *Standards (Transfer of Administration) Act 63 of 1956*.

Amendments: The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 18.

Savings: Savings clauses are contained in section 35(2)-(3) of the Act:

- (2) Any proclamation, regulation, notice, order, prohibition, authorisation, appointment, permission, information or document made, issued, imposed, granted or given or any other thing done under a provision of any law repealed by subsection (1), and which could have been made, issued, imposed, granted, given or done under a provision of this Act, is deemed to have been made, issued, imposed, granted, given or done under the corresponding provision of this Act.
- (3) Any standard building regulation which was framed and published in terms of section 14*bis* of the Standards Act, 1962 (Act No. 33 of 1962), and which was in force immediately before the

⁴²⁰ This notice was replaced in South Africa after the date of transfer by RSA GN R.2025/1979 (RSA GG 6654).

commencement of this Act, remains in force, as if that section had not been repealed by this Act, until otherwise provided by any other law.

The Standards Act 33 of 1962, which repealed the Standards Act 24 of 1945, also contained a savings clause in section 31(2).

Anything done or in terms of any Jaw deemed to have been done by the research council or any person on the authority of the council in terms of any provision of a law repealed by sub-section (I), which could be done by the councilor any person on the authority of the council, in terms of any provision of this Act, shall be deemed to have been done in terms of such lastmentioned provision by the councilor such person, as the case may be, and any other thing done in terms of a provision of a law so repealed and which could be done in terms of any provision of this Act, shall be deemed to have been done in terms of such lastmentioned provision.

For the purpose of considering what regulations may survive under the current Act, the relevant transfer proclamation for the *Standards Act 33 of 1962* is the Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978, dated **30 January 1978.** There were some exceptions to the application of the General Proclamation to the Standards Act, but none of these are relevant to the section on regulations.

Regulations: The following regulations were issued in terms of the current Act:

Standards Regulations are contained in GN 249/2013 (GG 5290).

Cement Regulations were initially set out in GN 259/2019 (<u>GG 6993</u>), which was repealed and replaced by GN 45/2020 (<u>GG 7125</u>).

Alcohol-based Hand Sanitisers Regulations are contained in GN 114/2020 (<u>GG 7201</u>), as amended by GN 250/2021 (GG 7687).

Pre-independence regulations have not yet been researched.

Rules: Rules relating to fees for services rendered by the Namibian Standards Institution are contained in General Notice 190/2023 (<u>GG 8073</u>). Previous rules on fees were contained in General Notice 95/2017 (<u>GG 6270</u>), General Notice 190/2018 (<u>GG 6599</u>) and General Notice 440/2020 (<u>GG 7363</u>).

Notices: In General Notice 294/2014 (<u>GG 5537</u>), the Namibian Standards Institution declares marks of conformity, in terms of section 21(1) of the Act, which may be applied to any commodity, system or document falling within the scope of a Namibian Standard that has been issued under section 20 of the Act.

Specific Namibian Standards are announced and withdrawn from time to time, in General Notices which have not been recorded here.

Appointments: The appointment of members of the Namibian Standards Council is announced in GN 233/2010 (GG 4584) and GN 257/2022 (GG 7890) (pursuant to section 8(7) of the Public Enterprises Governance Act 1 of 2019 read with section 6(3) of this Act).

Related international agreements: Note that the Act and the regulations in GN 249/2013 make reference to the Code of Good Practice for the Preparation, Adoption and Application of Standards contained in Annex 3 to the Agreement on Technical Barriers to Trade (TBT), 1994, which is part of the Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994.

Namibian Time Act 9 of 2017 🕎 🙀

Summary: This Act (GG 6449) sets the standard time of Namibia at two hours in advance of the

Greenwich Mean Time. It repeals the Namibian Time Act 3 of 1994 (GG 811), which provided for differentiations in the standard time of Namibia for the summer and winter periods.

Regulations: The Act makes no provision for regulations.

*Metrology Act 5 of 2022 🕎 🙀

Summary: This Act (<u>GG 7953</u>) regulates the use of weights and measures in trade. It will be brought into force on a date set by the minister responsible for industrialisation and trade by notice in the *Government Gazette*.

Repeals: The Act repeals the *Metrology Act 77 of 1973* (RSA GG 3969), as amended – which was previously called the "Trade Metrology Act 77 of 1973" before being renamed by the Metrology Amendment Act 17 of 2005. The *Metrology Act 77 of 1973* repealed the *Weights and Measures Act 13 of 1958* (SA GG 6020), as amended.

This Act also states that it repeals the *Measuring Units and National Measuring Standards Act 76 of 1973* (RSA GG 3968); however, that Act was already repealed by the Metrology Amendment Act 17 of 2005 (GG 3568), which was brought into force on 20 June 2022 by GN 173/2022 (GG 7834).

Savings: Section 54(2)-(3) of the Act contains a broad savings clause:

- (2) Anything made or done under the law repealed by subsection (1) which could be made or done under a corresponding provision of this Act is deemed to have been made or done under that corresponding provision.
 - (3) Anything made or done, including -
 - (a) regulations made or other subordinate action taken; and
 - (b) any appointments validly made,

under a provision of the law repealed by subsection (1) remains valid until such time that it is repealed, amended or replaced under any provision of this Act.

The Metrology Act 77 of 1973 contained a savings clause in section 46(2) in respect of its repeal of the Weights and Measures Act 13 of 1958:

Any proclamation (other than a proclamation referred to in the Second Schedule), regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

The Second Schedule referred to lists RSA Proclamation R.334 of 1970 as amended by RSA Proclamation R.217 of 1971 and RSA Proclamation R. 316 of 1972 – meaning that these Proclamations do not remain in force.

It should also be noted that the Metrology Amendment Act 17 of 2005 (RSA GG 3968), which repeals the *Measuring Units and National Measuring Standards Act 76 of 1973* (RSA GG 3968), contains the following savings clauses in section 21:

- (2) Any notice issued or any other thing done under a provision of the law repealed by subsection (1) [the *Measuring Units and National Measuring Standards Act 76 of 1973*], and which was in force immediately before the repeal of that law, remains, notwithstanding that repeal, in force after the commencement of this Act, except in so far as it is incompatible or in conflict with the Metrology Act, 1973 (Act No. 77 of 1973), as amended by this Act.
- (3) Any pending criminal proceedings instituted under section 8 of the Measuring Units and National Measuring Standards Act, 1973, before the repeal of that Act by subsection (1) of this section must be continued and concluded as if that Act had not been so repealed.

For the purpose of considering the effect of the savings clauses, the administration of both the *Metrology Act 77 of 1973* and the *Measuring Units and National Measuring Standards Act 76 of 1973* was transferred to SWA by the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated **30 January 1978**.

Regulations: Regulations are authorised by section 53 of the current Act.

The following regulations were issued under the repealed Metrology Act 77 of 1973 and appear to remain in force:

General regulations are contained in RSA GN R.2362/1977 (<u>RSA GG 5806</u>), ⁴²¹ as amended by GN 192/1986 (<u>OG 5258</u>) (which affects only regulation 11). ⁴²²

Notices: The following notices were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* prior to the date of transfer and appear to remain in force:

National Measuring Standards were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA GN R.1144/1974 (<u>RSA GG 4326</u>), as amended by RSA GN R.1232/1977.⁴²³

Equivalents of measuring units were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA GN R.1145/1974 (RSA GG 4326), as amended by RSA GN R.712/1976 (RSA GG 5103).

Measuring units, symbols and rules were issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA GN R.1146/1974 (RSA GG 4326), as amended by RSA GN R.713/1976 (RSA GG 5103) and by RSA GN R.1234/1977 (RSA GG 5648). 424

A **prohibition** of the expression of the magnitude of quantities by means of units other than prescribed units and the designation of units by symbols other than prescribed symbols was issued under the *Measuring Units and National Measuring Standards Act 76 of 1973* in RSA Proc. R.1791/1974 (RSA GG 4419), as amended prior to the date of transfer by RSA Proc. R.711/1976 (RSA GG 5103), RSA Proc. R.2482/1976 (RSA GG 5361) and RSA GG R.1233/1977 (RSA GG 5648).

They also repeal **Part II** of the regulations promulgated by RSA GN R.4007/1969 (**RSA GG 2597**), as amended by RSA Government Notices R.884 of 28 May 1971, R.2294 of 15 December 1972, R.496 of 30 March 1973 and R.1190 of 9 July 1976; **Part III** of the regulations in RSA GN R.4007/1969 (**RSA GG 2597**), as amended by RSA GN R.2294 of 15 December 1972; and **Part IV** and **Part V** of the regulations in RSA GN R.4007/1969 (**RSA GG 2597**)

Due to the substitutions and renumberings of the initial set of regulations published in RSA GN R.1425/1962 (<u>RSA GG 323</u>), as amended by RSA GN R.62/1969 (<u>RSA GG 2266</u>) and RSA GN R.4007/1969 (<u>RSA GG 2597</u>), these various repeals appear to have repealed the previous set of regulations in its entirety.

⁴²² These regulations were amended in South Africa after the date of transfer and prior to Namibian independence by RSA GN R.2052/1978 (<u>RSA GG 6182</u>), RSA GN R.527/1980 (<u>RSA GG 6892</u>), RSA GN R.1805/1982 (<u>RSA GG 8351</u>), RSA GN R.192/1984 (<u>RSA GG 9056</u>), RSA GN R.1739/1985 (<u>RSA GG 9885</u>), RSA GN R.2110/1985 (<u>RSA GG 9934</u>), RSA GN R.1868/1986 (<u>RSA GG 10431</u>), RSA GN R.125/1987 (<u>RSA GG 10580</u>) and RSA GN R.861/1989. However, none of these amendments were made explicitly applicable to SWA.

⁴²³ In South Africa, these standards were further amended after the date of transfer and prior to Namibian independence by RSA GN R.2210/1978 (<u>RSA GG 6206</u>), RSA GN R.525/1980 (<u>RSA GG 6892</u>), RSA GN 1806/1982 (<u>RSA GG 8351</u>) and RSA GN R.1742/1988 (<u>RSA GG 11488</u>). However, none of these amendments were made explicitly applicable to SWA.

⁴²⁴ In South Africa, these standards were further amended after the date of transfer and prior to Namibian independence by RSA GN R.2026/1979 (<u>RSA GG 6654</u>), RSA GN R.1610/1980 (<u>RSA GG 7168</u>) and RSA GN R.1743/1988 (<u>RSA GG 11488</u>), However, none of these amendments were made explicitly applicable to SWA.

⁴²¹ These regulations repeal **Part I** of the regulations in RSA GN R.62/1969 (<u>RSA GG 2266</u>), as amended by RSA Government Notices R.4006/1969 (<u>RSA GG 2597</u>), R.998 dated 26 June 1970, R.2276 dated 18 December 1970, R.883 dated 28 May 1971, R.1597 dated 17 September 1971 (as corrected by R.2074 dated 12 November 1971), R.2307 dated 24 December 1971, R.1194 dated 7 July 1972, R.2293 dated 15 December 1972, R.496 dated 30 March 1973, R.1575 dated 31 August 1973, R.2444 dated 21 December 1973, R.1129 dated 28 June 1974, R.376 dated 28 February 1975 and R.238 dated 18 February 1977.

The following **prohibitions** were issued in terms of section 11A of the *Weights and Measures Act 13 of 1958* prior to the date of transfer, and also seem to remain in force in Namibia; they were all repealed in South Africa after the date of transfer by RSA Proc. R.526/1980 (RSA GG 6892).

A prohibition on use or possession of certain containers is contained in RSA Proc. R.167/1970 (RSA GG 2740).

A prohibition on use or possession of certain containers is contained in RSA Proc. R.333/1970 (RSA GG 2951), as amended by RSA Proc. R. 211/1972 (RSA GG 3641) and RSA Proc. 300/1973 (RSA GG 4112).

A prohibition of possession for sale of certain weighing or measuring instruments and measures is contained in RSA Proc. R.212/1972 (<u>RSA GG 3641</u>). This prohibition applies specifically to SWA. It is amended by RSA Proc. R.317/1972 (<u>RSA GG 3735</u>) and RSA Proc. R.296/1973 (<u>RSA GG 4112</u>).

A prohibition of possession for sale of new milk cans and cream cans is contained in RSA Proc. R.214/1972 (RSA GG 3641).

A prohibition of use or possession of weighing or measuring instruments, weights or measures is contained in RSA Proc. R.297/1973 (<u>RSA GG 4112</u>). This prohibition applies specifically to SWA. It is amended by RSA Proc. R.120/1974 (<u>RSA GG 4319</u>).

A prohibition of use or possession of baby's feeding bottles is contained in RSA Proc. R.299/1973 (RSA GG 4112). This prohibition applies specifically to SWA.

A prohibition of the use or possession of certain measuring instruments or containers is contained in RSA Proc. R.187/1974 (RSA GG 4419). This prohibition applies specifically to SWA. It is amended by RSA Proc. R.168/1975 (RSA GG 4790)

A prohibition of use or possession for use of certain weighing or measuring instruments, weights or measures for prescribed purposes issued is contained in RSA Proc. R.169/1975 (RSA GG 4790). This prohibition applies specifically to SWA.

A prohibition of use or possession of containers is contained in RSA Proc. R.67/1977 (<u>RSA GG</u> 5497).

The following notices were issued in terms of the Metrology Act 77 of 1973.

The Minister, after consultation with the Metrology Advisory Board, announced an **agreement** with the Namibian Standards Institute (NSI) for the NSI to be a metrology agency for the performance of functions contemplated in section 7(1) of the Act, in GN 209/2022 (GG 7853), with effect from 15 July 2022.

Fees: A tariff of fees to be charged by an inspector in respect of the verification, testing, adjustment, certification or recertification of measuring instruments was issued in terms of the *Metrology Act 77 of 1973* is contained in GN 75/1993 (GG 681). 425

A tariff of examination fees issued under the *Weights and Measures Act 13 of 1958* in RSA GN R.2073/1971 (RSA GG 3310) also appears to remain in force, unless this tariff has been superseded by the one cited above.⁴²⁶

⁴²⁶ This notice was replaced in South Africa after the date of transfer by RSA GN R.2025/1979 (RSA GG 6654).

⁴²⁵ This notice withdraws AG GN 59/1984 (<u>OG 4895</u>), which in turn withdraws the tariff of assize fees in RSA GN R.1298 of 30 July 1971 (<u>RSA GG 3221</u>).

Appointments: Members of the Metrology Advisory Board appointed under the *Metrology Act* 77 of 1973 are announced in GN 174/2022 (GG 7834).

Cases: The following case concerns the *Metrology Act* 77 of 1973: S v Blaauw's Transport (Pty) Ltd & Another 2006 (2) NR 587 (HC).

INTERNATIONAL LAW

†Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014

OTHER INTERNATIONAL DOCUMENTS

Memorandum of Understanding on Co-operation in Standardization, Quality Assurance, Accreditation and Metrology in SADC, 1999 (non-binding)

YOUTH

National Youth Service Act 6 of 2005 🗐 🙀

Summary: This Act (<u>GG 3468</u>) establishes the National Youth Service and the Youth Service Fund. It defines "youth" as persons between the ages of 16 and 30. It was brought into force on 7 September 2005 by GN 11/2005 (<u>GG 3494</u>).

Administration of Act: Proc. 1/2006 (<u>GG 3582</u>) assigns the administration of this Act to the Minister responsible for youth, national service, sport and culture.

Regulations: Regulations are authorised by section 30 of the Act, but none have yet been promulgated.

Appointments: Appointments of members of the Board of the National Youth Service are announced in Proc. 18/2019 (<u>GG 6932</u>), Proc. 55/2020 (<u>GG 7361</u>) and Proc. 49/2021 (<u>GG 7716</u>). The appointment of a Commissioner of the National Youth Service is announced in Proc. 55/2020 (<u>GG 7361</u>).

National Youth Council Act 3 of 2009 📲 🙀

Summary: This Act (originally published in <u>GG 4276</u>) establishes the National Youth Council and the Youth Development Fund intended to finance the activities of the Council and projects aimed at youth development. It also provides for youth forums at regional and constituency level, and for the registration of youth organizations and youth associations as affiliates to the Council. It defines "youth" as persons between the ages of 16 and 35. The Act was brought into force on 15 November 2011 by GN 211/2011 (GG 4834).

Amendments: The Abolition of Payment by Cheque Act 16 of 2022 (<u>GG 7995</u>), which was brought into force on 15 March 2023 by GN 47/2023 (<u>GG 8050</u>), amends section 30.

Regulations: Regulations are authorised by section 48 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

African Youth Charter, 2006

See also CHILDREN.