

ADVANCING THE RULE OF LAW IN NAMIBIA: OVERVIEW OF LEGAL MATERIALS



13 November 2017

1. NAMLEX

NAMLEX is a list of the laws in force in Namibia, organised by topic, with brief descriptions of each law. In the case of laws inherited from South Africa, NAMLEX explains how they came to apply to Namibia and which South African amendments are in force in Namibia. The index also provides other information, including references to rules and regulations, appointments, court cases and commentary under each statute. The idea for NAMLEX was conceived by the late Adv Anton Lubowski, with the work being continued by the Legal Assistance Centre after his death.

The LAC first published NAMLEX in hard copy in 1997. We have updated NAMLEX seven times since then (in 1999, 2000, 2001, 2003, 2004, 2010 and 2015). The original work under Adv Lubowski and the updates by LAC have all been carried out primarily by Dianne Hubbard. Most of these updates have been unfunded. Sales of hard copies of the updated index were insufficient to cover publication costs, so in 2004 LAC opted to reduce costs by ceasing hard copy publication and posting updated versions free of charge on our website instead. Each update involves several months of staff time. The LAC holds copyright in NAMLEX, but makes it available free to all on the LAC website.

The Office of the Attorney-General has secured funding for the update of NAMLEX to end-2018. We have completed the update to 31 July 2017, and this updated NAMLEX will be made available on the LAC website. The next update will be done jointly with the Namlex Update Team, which consists of personnel from different government agencies who are being trained by LAC. This public-private project will also culminate in an update manual.

SAMPLE ENTRY

Public Procurement Act 15 of 2015.

Summary: This Act ([GG 5922](#)) 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 replaces the Tender Board of Namibia Act 16 of 1996. It was brought into force with effect from 1 April 2017 by GN 46/2017 ([GG 6255](#)).

Regulations: Regulations issued under the repealed Act survive in terms of section 80(2), which states: “Subject to section 81 [on the treatment of tender contracts already concluded and tender advertisements already issued when the Act came into force], anything done under a provision of the law repealed by subsection (1) and which could have been done under a provision of this Act is deemed to have been done under the corresponding provision.”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 issued under the repealed

Act are contained in GN 237/1996 ([GG 1403](#)), as amended by GN 140/2013 ([GG 5212](#)).

Public Procurement Regulations promulgated under this Act are contained in GN 47/2017 (GG 6255). These regulations do not repeal any previous 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 ([GG 1692](#)), 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.

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.

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](#)).

Cases: 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 and 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).

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 at [Special Briefing no 9.pdf](#)

Frederico Links, “Promoting Integrity: The New Public Procurement Framework”, Institute for Public Policy Research & Open Society Initiative for Southern Africa, *Briefing Paper*, August 2017.

2. NAMLEX APPENDIX

The Legal Assistance Centre has supplemented NAMLEX with a separate, linked document called the NAMLEX APPENDIX, which contains detailed NAMLEX-style entries for all multilateral international treaties binding on Namibia, including a summary of the treaty, the date of signature and ratification/accession, and other explanatory information including relevant case citations.

The NAMLEX APPENDIX has been prepared under the supervision of Dianne Hubbard with the aid of three volunteer international law experts working under the direction of the Legal Assistance Centre, with assistance from the Ministry of International Relations and Cooperation. The LAC holds copyright in the NAMLEX APPENDIX, but it will be made available free to the public on the LAC website.

SAMPLE ENTRY

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Summary: The Convention requires states to take effective measures to prevent torture within their borders (including criminalizing torture), and forbids states to transport people to any country where there is reason to believe they will be tortured. The Convention also establishes the Committee against Torture.

Binding on Namibia: 28 December 1994 (Article 27(2) of the Convention)

- accession: 28 November 1994 (source: UNTC)
- entry into force internationally: 26 June 1987 (source: UNTC)

Depositary: UN Secretary-General

Cases: *Namunjepo & Others v Commanding Officer, Windhoek Prison & Another*, 1999 NR 271 (SC); *Engelbrech v Minister of Prisons and Correctional Services* 2000 NR 230 (HC); *S v Malumo & Others*, 2013 (3) NR 868 (HC).

Commentary: Legal Assistance Centre, *Know your Rights: Torture*, 2003, available at www.lac.org.na/projects/huricon/Pdf/toreng.pdf; F Nghiishiliwa, “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, “International human rights norms and standards: The development of Namibian case and statutory law” in Nico Horn and Anton Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan, 2008.

Amendments and protocols: Namibia has not yet agreed to the **Optional Protocol to the Convention**, which entered into force internationally on 22 June 2006 (source: UNTC). Namibia has not yet agreed to the **Amendments to Articles 17(7) and 18(5) of the Convention**, which are not yet in force internationally (source: UNTC). Namibia has not yet made a **declaration under Article 22** of the Convention which enables the Committee against Torture to consider individual complaints alleging violations of the rights set out in the Convention by States parties (source: UNTC).

3. UPDATES OF ANNOTATED LAWS

The Legal Assistance Centre was contracted by the Parliamentary Support Project (PSP) to prepare annotated versions of all **statutes** and **post-Independence regulations** in force in Namibia (save for a few obsolete laws which are included in the indexes with hyperlinks to the relevant gazettes, but omitted by agreement from the dataset of annotated texts). The cutoff-date for these annotated laws was late 2015. Since the end of that project, the LAC has continued to update the database of annotated laws as new *Government Gazettes* are issued (without any funding).

The annotated laws are not copyrighted by anyone. The updated versions prepared by LAC are current through 31 October 2017. The database will be made available free to the public on the LAC website, and provided to relevant institutions including NamibLII and Parliament, for posting on their websites should they so wish, to ensure harmonious and updated information on the laws in force.

The Namlex Update Team, as part of the training programme, will investigate and confirm pre-Independence regulations during 2018 in the hope of paving the way for an accurate and up-to-date set of all the regulations which are in force in Namibia.

SAMPLE



Stock Theft Act 12 of 1990

(GG 63)
came into force on date of publication: 28 August 1990

as amended by

Stock Theft Amendment Act 4 of 1991 (GG 201)

came into force on date of publication: 14 May 1991

Stock Theft Amendment Act 19 of 1993 (GG 702)

brought into force on 1 October 1993 by GN 117/1993 (GG 725)

Stock Theft Amendment Act 19 of 2004 (GG 3351)

came into force on date of publication: 20 December 2004

General Law Amendment Act 14 of 2005 (GG 3565)

came into force in relevant part on date of publication: 28 December 2005

Note that portions of section 14 were struck out and read down as a result of *Daniel v Attorney-General & Others; Peter v Attorney-General & Others* 2011 (1) NR 336 (HC), confirmed on appeal in *Prosecutor-General v Daniel & Others* (SA 15/2011) [2017] NASC 31 (28 July 2017).

ACT

To consolidate and amend the laws relating to the theft of stock and produce.

(Signed by the President on 20 August 1990)

ARRANGEMENT OF SECTIONS

1. Definitions
2. Failure to give satisfactory account of possession of stock or produce
3. Absence of reasonable cause for believing stock or produce properly acquired
4. Entering enclosed land or kraal, shed, stable, or other walled place with intent to steal stock or produce
5. Delivery of stock or produce between sunset and sunrise
6. Document of identification to be furnished by person who disposes of stock
7. Acquisition of stock or produce from persons whose places of residence are unknown
8. Stock or produce driven, conveyed or transported on or along public roads
9. Arrest and search without warrant