



Republic of Namibia
Annotated Statutes

Government Attorney Proclamation R.161 of 1982 (RSA)

([RSA GG 8367](#))

brought into force in South West Africa on 1 April 1984
by RSA Proc. 52/1984 ([RSA GG 9162](#))

APPLICABILITY TO SOUTH WEST AFRICA: The Proclamation applies to South West Africa 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 South West Africa. (Note that section 13 of the Proclamation makes certain sections of the Proclamation explicitly applicable to South Africa.) The Proclamation appears to replace the *State Attorney Act 56 of 1957* in South West Africa, as it repeals the sections of the *State Attorney Amendment Act 7 of 1966* (RSA GG 1380) which, without amending the *State Attorney Act 56 of 1957*, made that Act applicable to South West Africa.

TRANSFER TO SOUTH WEST AFRICA: This Proclamation post-dated the South West Africa transfer proclamations. The case of *Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC) at 18 confirms that this Proclamation remains in force in independent Namibia. See also *Minister of Health and Social Services v Medical Association of Namibia* 2012 (2) NR 566 (SC) at para 28.

PROCLAMATION

PROCLAMATION TO CONVERT THE WINDHOEK BRANCH OF OFFICE
OF THE STATE ATTORNEY IN PRETORIA INTO THE GOVERNMENT ATTORNEY'S
OFFICE FOR THE TERRITORY OF SOUTH WEST AFRICA AND TO
PROVIDE FOR OTHER INCIDENTAL MATTERS

*[issued by the State President of South Africa on 18 August 1982 in terms of
section 38 of the South-West Africa Constitution Act 39 of 1968]*

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ANNEXURE: LAWS REPEALED OR AMENDED**Definitions**

1. In this Proclamation, unless the context otherwise indicates -

“department” means a department as defined in the Government Service Act, 1980 (Act 2 of 1980), including the Government of Rehoboth;

[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995; section 38(a) of Act 13 of 1995 provides that any reference in any other law to a department “shall be construed as a reference to the corresponding office, ministry or agency”.]

“Territory” the Territory of South West Africa.

[The word “means” should appear after the word “Territory”.]

Government Attorney's office

2. (1) The Windhoek branch of office of the State Attorney in Pretoria, as it existed immediately prior to the commencement of this Proclamation, shall cease to be such a branch, but shall continue to exist as the Government Attorney's office for the Territory, for the performance of the functions provided for by this Proclamation.

(2) The Council of Ministers may, subject to the laws relating to the government service, from time to time establish at places other than Windhoek branch offices of the Government Attorney's office forming part of such last-mentioned office.

Appointment of Government Attorney

3. Subject at the laws relating to the government service, the Council of Ministers may -

- (a) appoint any person admitted an entitled to practise as an attorney in the Territory, as Government Attorney to be in charge of the Government Attorney's office;

[The word “an” should be “and” in the phrase “admitted an entitled to practise”.]

- (b) appoint any such person to supervise any branch of the said office.

Functions of Government Attorney's office

4. Such functions as may be performed in accordance with the law, practice or custom by attorneys, notaries or conveyancers -

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- (a) shall be performed by the Government Attorney's office -
 - (i) for or on behalf of any department other than the administration for a population group or the Government for Rehoboth;
 - (ii) for or on behalf of any department other than a department referred to in subparagraph (i), subject to such conditions as to costs as the Council of Ministers may determine;
- (b) may be so performed -
 - (i) for or on behalf of the Government of the Republic of South Africa or of any state to which independence has been granted by any law of the said republic, subject to such conditions as may have been agreed upon by the Council of Ministers and the government concerned;
 - (ii) in connection with any matter in which any department or any government as aforesaid, though not a party, has an interest or is concerned, or in respect of which, in the opinion of the Government Attorney or any person acting under his authority, it is in the public interest that the functions concerned shall be performed by the said office.

Rights, privileges and duties of practitioners performing functions under this Proclamation

5. (1) Subject to any provisions of this Proclamation to the contrary, any person performing any functions in terms of this Proclamation as an attorney or a notary or conveyancer, shall have all the rights, privileges and duties vesting in or imposed upon any attorney, notary or conveyancer practising in the Territory.

(2) Notwithstanding anything to the contrary in any law, practice or custom contained, the Government Attorney or any other person employed in the Government Attorney's office may receive a salary in respect of all services rendered in terms of his appointment, despite the fact that he is an attorney or a notary or conveyancer.

Functions of attorneys, notaries or conveyancers to be exercised by them only

6. Functions of the Government Attorney's office of such a nature as may according to law, practice or custom be performed only by a person who is an attorney or a notary or conveyancer, shall only be performed by any such person admitted and entitled to practise in the Territory.

Recovery of costs and exemption from certain stamp duties and fees of office where work performed by Government Attorney

7. (1) In connection with the performance of any functions referred to in section 4 by or on the authority of the Government Attorney, fees and costs may be taxed and recovered in the same manner as if such functions had been performed by a practitioner in private practice.

(2) Notwithstanding anything to the contrary in any law contained, but subject to the provisions of subsection (3), no stamp duties or fees of office shall be payable by means of stamps in respect of any document filed, lodged, registered or issued by or on the authority of the Government Attorney.

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(3) Notwithstanding anything to the contrary in any law contained and the provisions of subsection (2), there shall, for the purposes of subsection (1), be included in the fees and costs referred to therein, the amount in respect of stamps, stamp duties and fees of office which would have been payable if a practitioner in private practice had performed the functions concerned for or on behalf of any party other than a department.

(4) Any duties, fees of office or costs recovered, shall accrue to the Central Revenue Fund.

Government Attorney and others may perform functions of Government Attorney's office also where they have no office

8. Notwithstanding anything to the contrary in any law, practice or custom contained, the Government Attorney or any person authorised by him, admitted and entitled to practise in the Territory as an attorney, may perform any function of the Government Attorney's office in any court in the Territory, even though he may have no permanent office at the place where the court may be sitting.

Correspondents

9. (1) The Government Attorney or any person authorised by him, may, as if he were an attorney in private practice, instruct and employ any attorney as correspondent to perform any function of the Government Attorney and may so receive or recover any allowances from such correspondent.

(2) The provisions of subsections (2), (3) and (4) of section 7 shall apply *mutatis mutandis* in respect of any functions performed under subsection (1) of this section.

(3) Any correspondent referred to in subsection (1) may accept the commission and appointment concerned and surrender the allowances concerned.

(4) Any allowances received under subsection (1) shall accrue to the Central Revenue Fund.

Regulations

10. The Council of Ministers may make regulations relating to -

- (a) the amount, calculated according to the period of his service under articles in the Government Attorney's office, to be paid by any person to the said office on failure to complete such service;
- (b) the minimum period, calculated according to the period of service under articles in the Government Attorney's office, any person shall, after completion of such service, remain in service in such office, and the amount, calculated according to the period of his last-mentioned service after such completion, the said person shall pay to the said office on failure so to remain for such minimum period;
- (c) the recovery of any amount referred to in paragraph (a) or (b);
- (d) all matters the Council of Ministers may deem necessary or expedient to prescribe in order to achieve the objects of this Proclamation.

Repeal and amendment of laws

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11. The laws mentioned in the Annexure are hereby repealed or amended to the extent set out in the third column thereof.

Transitional provisions

12. (1) The person in charge of the Windhoek branch of the office of the State Attorney immediately prior to the date of commencement of this Proclamation, shall be deemed to have been appointed under this Proclamation as Government Attorney on the said date and any other person holding office at the said branch immediately prior to the said date shall be deemed to have been appointed on such date to a similar office in the Government Attorney's office, while any articles entered into by any such person with such first-mentioned person, shall be deemed to have been entered into with the Government Attorney as if the Government Attorney and the Government Attorney's office had already been in existence when such articles were entered into.

(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.

Application of sections 11 to 14, both inclusive

13. Sections 11 to 14, both inclusive, shall apply also in the Republic of South Africa.

Short title and commencement

14. This Proclamation shall be called the Government Attorney Proclamation, 1982, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

ANNEXURE

LAWS REPEALED OR AMENDED

| <i>No. and year</i> | <i>Short title</i> | <i>Extent of repeal or amendment</i> |
|---------------------|--|---|
| Act 56 of 1957 | The State Attorney Act, 1957 | The amendment of section 3(2) by the substitution for the words "the administration of the Territory of South-West Africa" of the words "any department established under the laws relating to the government service of the Territory of South-West Africa, the government of Rehoboth" and for the words "Administration concerned" of the words "administration, department or government concerned". The amendment of section 3(3) by the insertion after the word "administration" of the words "department or government". |
| Act 7 of 1966 | The State Attorney Amendment Act, 1966 | The repeal of sections 6 and 7. |

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Act 53 of 1979 The Attorneys Act, 1979 The amendment of section 3(1)(d) by the insertion after the words “State Attorney” of the words “or as Government Attorney of the Territory”.

The amendment of section 3(1)(i)(ii) by the insertion after the words “State Attorney”, where they occur for the first time, of the words “or Government Attorney of the Territory” and by the insertion after the word “thereof” of the words “or in the Government Attorney’s office of the Territory”.

The amendment of section 6(1) by the substitution for paragraph (b) of the following paragraph:

“(b) in the case of a clerk articulated to the State Attorney or to a member of his professional staff or to the Government Attorney of the Territory, in the office of the State Attorney or any branch thereof or in the Government Attorney’s office of the Territory and under the direct personal supervision of the State Attorney or a member of his professional staff or the said Government Attorney.”.

The amendment of section 83(12)(c) by the substitution for the words “the administration of the Territory or the Land and Agricultural Bank of South Africa” of the words “any department established under the laws relating to the government service of the Territory, the government for Rehoboth or the Land and Agricultural Bank of South Africa or of the Territory”.