

# CUSTOMARY LAW

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## Council of Traditional Leaders Act 13 of 1997

**Summary:** This Act ([GG 1706](#)) 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 ([GG 4305](#)), GN 171/2014 ([GG 5564](#)), GN 188/2017 ([GG 6373](#)) and GN 20/2020 ([GG 7115](#)). The table of chiefs, senior traditional councillors, traditional councillors and community members contained in GN 171/2014 ([GG 5564](#)) is amended by GN 188/2017 ([GG 6373](#)).

## Traditional Authorities Act 25 of 2000

**Summary:** This Act ([GG 2456](#)) provides for the election or recognition of traditional authorities and sets forth their functions, duties and powers. It repeals the Traditional Authorities Act 17 of 1995 ([GG 1158](#)). It was brought into force on 17 May 2001 by GN 93/2001 ([GG 2532](#)).

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.*”

**Regulations:** Anything done under the previous law which is not inconsistent with the new law survives in terms of section 20(3) of this Act.

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](#)).

**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 ([GG 1828](#)), as corrected by GN 98/1998 ([GG 1855](#)) and as amended by GN 99/1998 ([GG 1855](#)), GN 307/1998 ([GG 2020](#)), GN 113/1999 ([GG 2130](#)) and GN 61/2001 ([GG 2513](#)). 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 Geiiuku 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
- 3.4 Mayeyi Traditional Authority

### **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:**

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](#))  
Proc. 32/2019 ([GG 6996](#))  
Proc. 37/2019 ([GG 7020](#)).

After the current Act came into force, **GN 65/1998** was further amended by the following (which also designated various traditional authorities):

GN 63/2002 ([GG 2733](#))  
GN 64/2002 ([GG 2733](#))  
GN 68/2008 ([GG 4018](#))  
GN 181/2008 ([GG 4090](#))

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.

GN 115/2009 ([GG 4263](#))  
GN 205/2009 ([GG 4355](#))  
GN 43/2010 ([GG 4441](#))  
GN 110/2010 ([GG 4490](#))  
GN 242/2010 ([GG 4596](#))  
GN 33/2011 ([GG 4671](#))  
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](#)).

The following announced the appointments of **senior traditional councillors and traditional councillors in terms of section 10(5), without amending GN 65/1998:**

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](#)).

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 Geiriku 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-#An Traditional Authority
- 4.3 /Khomani Traditional Authority
- 4.4 /Gao-Daman Traditional Authority
- 4.5 Tsoaxudaman Traditional Authority
- 4.6 #Aodaman Traditional Authority

4.7 Dâure 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 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 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.

**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).

**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 at [www.kas.de](http://www.kas.de)
- Law Reform and Development Commission, *Working Paper on Issues related to the Traditional Authorities in the Ovawambo Communities*, LRDC 22, 2012, available at [www.namiblii.org](http://www.namiblii.org)
- Manfred O Hinz, "The Traditional Authorities Act and the 'mushrooming' of traditional authorities", *Namibia Law Journal*, Volume 8, Issue 1, 2016
- 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).

## **COMMENTARY**

- H Becker, *Gender Aspects of Traditional Authorities and Traditional Courts in a Democratic Society: Examples from Northern Namibia*. Windhoek: Centre for Applied Social Sciences, 1995
- MO Hinz (assisted by S Joas), *Developing Customary Law: Self-Styled 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 at [www.kas.de](http://www.kas.de)
- 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 at [www.namiblii.org](http://www.namiblii.org)
- 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 at [www.kas.de](http://www.kas.de) (reviewed by Chuma Himonga in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at [www.kas.de](http://www.kas.de)).
- 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 at [www.kas.de](http://www.kas.de)
- 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 at [www.kas.de](http://www.kas.de))
- 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
- Manfred O Hinz (ed), assisted by Alexander Gairiseb, *Customary Law Ascertained, Volume 3: The Customary Law of the Nama, Ovaherero and Ovambanderu, and San Communities of Namibia*, Windhoek: UNAM Press, 2015, available at [http://sandbox.unam.edu.na/bitstream/handle/11070/1821/Hinz\\_Customary\\_2015.pdf?sequence=1](http://sandbox.unam.edu.na/bitstream/handle/11070/1821/Hinz_Customary_2015.pdf?sequence=1)
- Manfred O Hinz, “The ascertainment of customary law: What is *ascertainment of customary law* and what is it for? The experience of the Customary Law Ascertainment Project in Namibia”, 2 (7) *Oñati Socio-legal Series* 85, 2012, available at <http://opo.ijsi.net/index.php/osls/article/view/181/67>
- 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 at [www.kas.de/c/document\\_library/get\\_file?uuid=a5ffb5ba-ea3f-1dbf-9bf4-6786386808a7&groupId=252038](http://www.kas.de/c/document_library/get_file?uuid=a5ffb5ba-ea3f-1dbf-9bf4-6786386808a7&groupId=252038)
- 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**).