

LAND AND HOUSING

Some of these laws, while still technically in force, are primarily of historical interest.

Crown Lands (Trespass) Proclamation 7 of 1919

Summary: This Proclamation ([OG 24](#)) covers trespassing, removal of vegetation and the presence of animals on “crown lands in the protectorate”.

Amendments: This Proclamation is amended by Proc. 4/1937 ([OG 701](#)), Proc. 31/1938 ([OG 770](#)) and Proc. 18/1948 ([OG 1357](#)).

Crown Land Disposal Proclamation 13 of 1920

Summary: This Proclamation ([OG 29](#)) made the Crown Land Disposal Ordinance, 1903, of the Transvaal – as amended by the Crown Land Disposal Amendment Ordinance, 1906, of the Transvaal and by this Proclamation – applicable to South West Africa. According to one commentator (S. Amoo): “This effectively gave the South African Administration the power to either extend the application of existing South African legislation on property to South-West Africa or to promulgate completely new legislation for the territory.” It also authorised the Administrator of South West Africa to set aside Crown Lands as reserves “for the use and benefit of aboriginal natives, coloured persons and Asiatics”, as well as for various public purposes.

Amendments: The Proclamation is amended by Proc. 54/1920 ([OG 41](#)), SA Proc. 200 of 1950 ([SA GG 4435](#)), Ord. 7/1951 ([OG 1601](#)), Ord. 36/1958 ([OG 2153](#)) and Ord. 17/1965 ([OG 2634](#)).

It was repealed in respect of Walvis Bay, along with Ord. 7/1951, by RSA Proclamation 149 of 1982 ([RSA GG 8344](#)).

Land Titles Proclamation 2 of 1921

Summary: This Proclamation ([OG 50](#)) makes provision for the issue of registered title to certain lands in the territory. It was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](#)).

Amendments: This Proclamation is amended by Proc. 14/1922 ([OG 84](#)), Proc. 1/1937 ([OG 696](#)), Proc. 6/1942 ([OG 939](#)), Proc. 3/1949 ([OG 1406](#)) and the *Registration of Deeds in Rehoboth Act 93 of 1976* ([RSA GG 5183](#)).

Regulations: Regulations are authorised by section 8 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Fencing Proclamation 57 of 1921

Summary: This Proclamation ([OG 78](#)) relates to the erection and maintenance of dividing

fences between adjoining properties.

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](#)).

It 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.

Small Settlements Commonages Subdivision Proclamation 13 of 1926

Summary: This Proclamation ([OG 205](#)) provides for the subdivision of commonages assigned to “Small Settlements” established by the German administration.

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

Summary: This Proclamation ([OG 491](#)) 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: Pre-independence regulations have not been researched.

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.

Trespass Ordinance 3 of 1962

Summary: This Ordinance ([OG 2390](#)) 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 ([RSA GG 1171](#)) concerns restrictions imposed on land by wills and similar instruments. It repeals the SWA 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.

Land Tenure Act 32 of 1966, as amended in South Africa to November 1977

Summary: This Act ([RSA GG 1554](#)) 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 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. Pre-independence regulations have not been researched. 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 ([RSA GG 2867](#)) 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](#)), 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 this Gazette appears to have been misnumbered as *Official Gazette 38 of Rehoboth*; it bears a handwritten notation altering it to *Official Gazette 37 of Rehoboth*.

Regulations: Regulations are authorised by section 10 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Cases: *Theron & Another v Tegethoff & Others* 2001 NR 203 (HC).

Expropriation Ordinance 13 of 1978

Summary: This Ordinance ([OG 3796](#)) deals with the expropriation of land for public purposes. It repeals the Expropriation Ordinance 32 of 1967.

Appointments: Proc. 8/2005 ([GG 3456](#)) assigns the administration of this Ordinance to the minister responsible for works, transport and communication.

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).

Regulations: Regulations are authorised by section 20 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Application: 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 ([GG 1958](#)), which was brought into force on 5 February by GN 19/1999 ([GG 2045](#)), affects the application of the Ordinance with respect to that Act.

Promotion of the Density of Population in Designated Areas Act 18 of 1979

Summary: This Act ([OG 4052](#)) provides for the designation of certain areas for the promotion of population density and farming activities. It was brought into force on 1 January 1980 by AG 38/1979 ([OG 4059](#)).

Amendments: The Act is amended by AG 30/1985 ([OG 5060](#)).

Regulations: The Act makes no provision for regulations.

Notices: A designated area is declared in terms of the Act in AG 39/1979 ([OG 4062](#)); there may have been other such designations.

Agricultural Land Act 5 of 1981 (Rehoboth)

Summary: This Act ([Official Gazette 37 of Rehoboth](#)) controls the subdivision of agricultural land in Rehoboth. It was brought into force on 1 September 1981 by an unnumbered notice ([Official Gazette 41 of Rehoboth](#), dated 23 September 1981) and has not been amended. It repeals the *Subdivision of Agricultural Land Act 70 of 1970* in Rehoboth.

Note that *Official Gazette 37 of Rehoboth* was misprinted as *Official Gazette 38 of Rehoboth*. Some copies bear a handwritten correction showing the correct number, which was *Official Gazette 37 of Rehoboth*.

Regulations: Section 22(2) 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.” Section 20 of this Act provides for regulations. However, pre-independence regulations have not been researched, under this Act or the repealed Act.

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. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Cases: *Shaanika & Others v Windhoek City Police & Others* 2011 (1) NR 64 (HC), reversed on appeal in 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).

Land Survey Act 33 of 1993

Summary: This Act ([GG 770](#)) regulates the survey of land. It repeals the *Land Survey Act 9 of 1927* and was brought into force on 1 June 1994 by GN 84/1994 ([GG 863](#)).

Regulations: Regulations made under the previous legislation survive in terms of section 46(3). Pre-independence regulations have not been comprehensively researched.

Regulations made under the *Land Survey Act 9 of 1927* are contained in RSA GN R.1814/1962 (RSA GG 365) with the following amendments:

- RSA GN R.1395/1964 (RSA GG 897)
- RSA GN R.533/1967 (RSA GG 1716)
- RSA GN R.1033/1969 (RSA GG 2439)
- RSA GN R.1126/1969 (RSA GG 2469)
- RSA GN R.2008/1970 (RSA GG 2931)
- RSA GN R.959/1972 (RSA GG 3545)
- RSA GN R.1804/1972 (RSA GG 3677)
- RSA GN R.2320/1974 (RSA GG 4540)
- RSA GN R.844 of 1977 (RSA GG 5549)
- 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](#)).

Post-independence regulations pertaining to the manner in which land surveys shall be conducted are contained in GN 58/2002 ([GG 2723](#)).

Notices: Official co-ordinated values to be used by land surveyors are contained in GN 107/2008 ([GG 4044](#)).

A tariff of fees is published in GN 249/2004 ([GG 3323](#)). (This tariff replaces the tariff contained in GN 287/1999 ([GG 2253](#)), as amended, and also the tariff contained in GN 134/2002 ([GG 2778](#)).

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 ([GG 1040](#)) 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 ([GG 2378](#)) 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 (GN 258/2001, [GG 2678](#)).

Act 2/2001 ([GG 2523](#)) amends section 1, substitutes section 13B, section 18 and certain headings, inserts 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 section 1, 17, 20 and 62, and substitutes section 9.

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](#))

GN 120/2014 ([GG 5530](#)) 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. The Regulations relating to the Acquisition of Land by Foreign Nationals 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. However, the forms in GN 120/2014 appear to concern sale and wavier in general rather than being relevant only to foreign nationals.

There are other errors in GN 120/2014. It states “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 referred to 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.

General regulations are contained in GN 272/1996 ([GG 1426](#)), as amended by GN 243/2001 ([GG 2663](#)) (Form 1) and GN 181/2005 ([GG 3555](#)) (Form 1). They are also apparently amended by GN 120/2014 ([GG 5530](#)) (see the note above).

Land Valuation and Taxation Regulations were initially contained in GN 259/2001 ([GG 2678](#)), as amended by GN 128/2004 ([GG 3214](#)). These Land Valuation and Taxation Regulations were repealed and replaced by GN 120/2007 ([GG 3870](#)), as amended by GN 210/2011 ([GG 4833](#)) and GN 185/2015 ([GG 5809](#)). These regulations were in turn repealed and replaced by a new set of Land Valuation and Taxation Regulations contained in GN 285/2018 ([GG 6755](#)).

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](#)).

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 ([GG 4403](#)), GN 161/2012 ([GG 4978](#)), GN 228/2013 ([GG 5264](#)) and GN 123/2016 ([GG 6037](#)).

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](#)).

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)

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)

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)

Kambazembi Guest Farm CC T/A Waterberg Wilderness v The Minister of Land Reform and 5 Others (A197/2015) [2016] NAHCMD 366 (17 November 2016) (constitutional challenge to sections 76 to 80 and the regulations issued under GN 120/2007 fails)

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).

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 Haring 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 at www.lac.org.na
- 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 at www.kas.de
- Dr Christina Treeger, *Legal analysis of farmland expropriation in Namibia*, Namibia Institute for Democracy, 2004, available at www.kas.de
- Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, available at www.lac.org.na
- Willem Odendaal, *Confiscation or Compensation?: An analysis of the Namibian Commercial Agricultural Land Reform Process*, Legal Assistance Centre, 2005, available at www.lac.org.na
- Sidney L Haring 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 at www.lac.org.na
- Sidney L Haring and Willem Odendaal, *Kessl: A new Jurisprudence for Land Reform in Namibia?*, Legal Assistance Centre, 2008, available at www.lac.org.na
- 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)
- Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na.

National Housing Enterprise Act 5 of 1993

Summary: This Act ([GG 687](#)) 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. It repeals the National Building and Investment Corporation of South West Africa Proclamation (AG 60/1978).

Amendments: Act 32/2000 ([GG 2463](#)), which was brought into force on 5 March 2001 by GN 37/2001 ([GG 2492](#)), 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 ([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 5, 6, 8 and 10.

Application of law: The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain duties on the National Housing Enterprise.

Regulations: Regulations are contained in GN 62/2001 ([GG 2513](#)).

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 repeals the Native Housing Levy and Contributions Ordinance 22 of 1961 and the Housing Ordinance of the Administration of Coloureds 4 of 1983. The Act was brought into force on 5 March 2001 by GN 36/2001 ([GG 2492](#)).

Regulations: Regulations were 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 ([GG 2615](#)). Committee members are appointed in GN 155/2003 ([GG 3019](#)), GN 258/2004 ([GG 3334](#)), GN 110/2006 ([GG 3672](#)), GN 34/2008 ([GG 3991](#)), GN 238/2013 ([GG 5274](#)) and GN 224/2018 ([GG 6710](#)). Alternate committee members are appointed in GN 24/2009 ([GG 4216](#)) and GN 258/2019 ([GG 6983](#)).

Communal Land Reform Act 5 of 2002

Summary: This Act ([GG 2787](#)) 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 ([GG 2926](#)). 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 ([GG 2926](#)).

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 ([GG 3550](#)) 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.

Regulations: There is no savings clause for regulations made in terms of the repealed laws.

Regulations are contained in GN 37/2003 ([GG 2926](#)), as amended by GN 120/2003 ([GG 2994](#)), GN 15/2014 ([GG 5412](#)), GN 100/2015 ([GG 5760](#)) and GN 159/2016 ([GG 6069](#)). These regulations repeal those contained in RSA Proclamation R.188 of 11 July 1969 (RSA GG 2486) – despite the absence of a savings clause.

Regulations relating to occupational land rights are contained in GN 278/2016 ([GG 6177](#)).

Alteration of communal land areas: Proc. 9/2013 ([GG 5150](#)) incorporates certain unalienated state land into the existing communal land areas of Damaraland and Namaland. Proc. 27/2013 ([GG 5264](#)) incorporates certain unalienated state land into the existing communal land areas of Damaraland.

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 ([GG 3479](#)), GN 61/2006 ([GG 3620](#)), GN 125/2007 ([GG 3878](#)), GN 127/2007 ([GG 3878](#)) and GN 129/2007 ([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 East Communal Land Board – GN 37/2014 ([GG 5433](#)), GN 208/2017 ([GG 6384](#))

Ohangwena Communal Land Board – GN 128/2007 ([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.”

Omusati Communal Land Board – GN 209/2017 ([GG 6384](#)), GN 210/2017 ([GG 6384](#)), GN 211/2017 ([GG 6384](#))

Oshikoto Communal Land Board – GN 156/2011 ([GG 4787](#)), which is withdrawn by GN 218/2011 ([GG 4834](#)); GN 219/2011 ([GG 4834](#)), which is withdrawn by GN 227/2011 ([GG 4843](#)); GN 228/2011 ([GG 4843](#)).

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 //Karas).

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)

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)

Kashela v Katima Mulilo Town Council & Others 2018 (4) NR 1160 (SC) (effect of Art 16 and Schedule 5(3) of the Namibian Constitution on communal land rights)

Naango & Others v Kalekela & Others 2017 (1) NR 66 (HC) (sections 17 and 18(a); illegal fencing of portion of communal area).

Commentary:

Wolfgang Werner, *Protection for Women in Namibia's Communal Land Reform Act: Is it Working?*, Windhoek: Legal Assistance Centre, 2006, available at www.lac.org.na

More Security for All – Registration of Communal Land in Namibia, DVD, 2008 (available from GIZ in English and Afrikaans)

Clever Mapaure, “Jurisprudential aspects of proclaiming towns in communal areas in Namibia”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de

Legal Assistance Centre, *Guide to the Communal Land Reform Act 5 of 2002*, second edition, 2009, 1st edition and 2nd edition, available at www.lac.org.na

Ministry of Lands and Resettlement, *More Security for All*, 2007 (a guide to communal land registration with an accompanying film)

Willem Odendaal, *Elite land grabbing in Namibian communal areas and its impact on subsistence farmers' livelihoods*, Windhoek: Legal Assistance Centre, 2011, available at www.lac.org.na

MO Hinz, “Traditional governance and communal conservancies”, *Namibia Law Journal*, Volume 3, Issue 2, 2011

John Mendelsohn, Louise Shixwameni and Uda Nakamhela, “An Overview of Communal Land Tenure in Namibia: Unlocking its Economic Potential”, [2011], available at www.the-eis.com/data/literature/Overview%20of%20Communal%20Land%20Tenure%20in%20Namibia.pdf

Sidney L Harring & Willem Odendaal, “*God stopped making land!*”: *Land Rights, Conflict and Law in Namibia's Caprivi Region*, Windhoek: Legal Assistance Centre, 2012, available at www.lac.org.na

Wolfgang Werner, “*What has happened has happened*”: *The Complexity of Fencing in Namibia's Communal Areas*, Windhoek: Legal Assistance Centre, 2012, available at www.lac.org.na.

Wolfgang Werner, “Tenure reform in Namibia's communal areas”, 18 *Journal of Namibian Studies* 67 (2015)

Manfred O Hinz, “Conservancies and communal land rights”, *Namibia Law Journal*, Volume 10, Issue 1, 2018

Tapiwa Victor Warikandwa, “Enlarging the place for communal land rights in post-colonial Namibia: towards cultural citizenship?”, *Namibia Law Journal*, Volume 11, Issue 1, 2019.

Sectional Titles Act 2 of 2009

Summary: This Act ([GG 4259](#)) 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 repeals the *Sectional Titles Act 66 of 1971*. It was brought into force on 15 December 2014 by GN 252/2014 ([GG 5633](#)).

Regulations: Regulations made under the previous Act 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](#)).

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 ([GG 4963](#)) 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 ([GG 6607](#)).

Regulations: Flexible Land Tenure Regulations are contained in GN 101/2018 ([GG 6607](#)).

Notices: GN 102/2018 ([GG 6607](#)) 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 at www.wholesem.ac.uk/bartlett/dpu/publications/latest/publications/dpu-working-papers/WP93.pdf

Søren Fauerholm Christensen, “The Flexible Land Tenure System – The Namibian solution: Bringing the informal settlers under the register”, Expert Group Meeting on secure land tenure: new legal frameworks and tools, UN-Gigiri in Nairobi, Kenya, 10-12 November 2004, available at www.fig.net/resources/proceedings/2004/nairobi_2004_comm7/papers/ts_02_2_christensen.pdf

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- Charl-Thom Bayer, “Namibia-The Failure of Institutions”, *The Namibian*, 3 April 2012, www.namibian.com.na/index.php?id=93641&page=archive-read
- Dr Kennedy Gastorn, “Effectiveness of flexible land tenure in unplanned urban areas in the SADC region: a case study of Tanzania and experiences from Zambia and Namibia”, *SADC Law Journal* 2013 (1) (available from Juta)
- Willem Odendaal, “The Flexible Land Tenure System Experience in Namibia: an affordable, secure and sustainable solution for low-income households?”, paper for World Bank Conference on Land and Poverty, Washington, DC, 24-27 March 2014 (available from Legal Assistance Centre)
- Åse Christensen, “The new Flexible Land Tenure Act: an update”, Document No. 2/2015, Integrated Land Management Institute (ILMI), Namibia University of Science and Technology (NUST), October 2015, available at <http://ilmi.nust.na/sites/default/files/ILMI-CHRISTENSEN-The-new-flexible-land-tenure-act-An-update.pdf>
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- Joe Lewis, “Law Reform for Improved Delivery of Land to the Urban Poor” 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, Law Reform and Development Commission, 2017, available at <https://namiblii.org/system/files/other/lrdc-25-years/lrdc-25-years.pdf>
- Kennedy Kariseb & Samuel 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 ([GG 6631](#)) 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 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. It was brought into force on 3 September 2020 by GN 222/2020 ([GG 7327](#)).

The Act neglects to repeal the Townships and Division of Land Amendment Act 21 of 1998 ([GG 1948](#)) or Government Notice 63 of 1999 ([GG 2083](#)), 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.

Regulations: The Act contains a savings clause. Section 132(2) of the Act provides that, unless otherwise provided in the Act, any regulation issued under any of the repealed laws must be

regarded as having been issued in terms of the corresponding provision of this Act. Note that the Removal of Restrictions Ordinance 15 of 1975 made no provision for regulations.

Regulations are issued in terms of this Act in GN 223/2020 ([GG 7327](#)). These regulations repeal the following regulations:

- Townships Board regulations in GN 165/1973, dated 15 September 1973;
- Town Planning regulations in GN 102/1974, dated 1 June 1974;
- regulations relating to fees charged under the Township and Division of Land Ordinance 11 of 1963, in GN 10/2008 ([GG 3983](#));
- regulations relating to fees charged under the Town Planning Ordinance 18 of 1954, in GN 11/2008 ([GG 3983](#)).

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 issued under the Townships and Division of Land Ordinance 11 of 1963 have not been recorded.

Cases: 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).

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).

The following case concerns the **Swakopmund Town Planning Amendment Scheme No 12** 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 –

Village Hotel (Pty) Ltd v Chairperson of the Council for the Municipality of Swakopmund & Others 2015 (3) NR 643 (SC).

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).

COMMISSIONS

Commission of Inquiry into Claims of Ancestral Land Rights and Restitution (Proc 5/2019, [GG 6858](#)).

See also GN 59/2019 ([GG 6858](#)).

COMMENTARY

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S Amoo, “The exercise of the right of sovereignty and the laws of expropriation of Namibia, South Africa, Zambia and Zimbabwe” in M Hinz, S Amoo and D Van Wyk (eds), *The Constitution at Work: Ten Years of Namibian Nationhood*, Windhoek: UNAM Publishers, 2000

S Harring, “The ‘stolen lands’ under the Constitution of Namibia.: Land reform under the rule of law” in M Hinz, S Amoo and D Van Wyk (eds), *The Constitution at Work: Ten Years of Namibian Nationhood*, Windhoek: UNAM Publishers, 2000

Sam Amoo, “Towards comprehensive land tenure systems and land reform in Namibia”, *South African Journal on Human Rights*, Volume 17, Part 1, 2001

Justine Hunter (ed), *Who Should Own the Land: Analyses and Views on Land Reform and the Land Question in Namibia and Southern Africa*, Namibia Institute for Democracy, 2003

Legal Assistance Centre, *Our Land they Took: San Land Rights under Threat in Namibia*, 2006, available at www.lac.org.na

Legal Assistance Centre, *A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia*, 2005, available at www.lac.org.na

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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**).