

# LAW

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## ***Crown Liabilities Act 1 of 1910***

**Summary:** This Act ([SA GG 72](#)) 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 One of the laws listed in paragraph (b) is the Crown Liabilities Act 1 of 1910, along with several other laws since repealed.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 of 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The Act was repealed in South Africa by the State Liability Act 20 of 1957 ([SA GG 5850](#)), which was not made expressly applicable to South West Africa.

**Regulations:** The Act makes no provision for regulations.

## ***Administration of Justice Proclamation 21 of 1919***

**Summary:** This Proclamation ([OG 25](#)) introduced Roman Dutch law to SWA. It originally contained provisions relating to courts and legal practitioners, but these have been repealed.

**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](#)).

**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.

**Regulations:** The Act makes no provision for regulations.

**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 ([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.

### **Cases:**

*DTA of Namibia & Another v SWAPO Party of Namibia & Others* 2005 NR 1 (HC); *S v Nghitukwa* 2005 NR 116 (HC)

*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).

## ***Justices of the Peace and Commissioners of Oaths Act 16 of 1963*, as amended in South Africa to November 1979**

**Summary:** This Act ([RSA GG 456](#)) covers the appointment, powers and duties of justices of the peace and commissioners of oaths. It repeals the Justices of the Peace and Oaths Act 16 of 1914. The *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970*, which made the Act applicable to SWA, was brought into force on 21 July 1972 by RSA Proc. R.168/1972 ([RSA GG 3619](#)); it repealed the SWA Commissioners of Oaths Proclamation 24 of 1928.

**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).

**Regulations:** Section 11(4) states: “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 governing the Administering of an Oath or Affirmation** are contained in RSA GN R.1258/1972 ([RSA GG 3619](#)), as amended by RSA GN R.1648/1977 ([RSA GG 5716](#)) and by RSA GN R.1428/1980 ([RSA GG 7119](#)), which was made after the date of transfer but was made expressly applicable to SWA.

In South Africa, the regulations were further amended by RSA GN R.774/1982 ([RSA GG 8169](#)), 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.

No post-independence regulations have been issued.

**Appointment of *ex officio* commissioners of oaths:** Section 11(2) of the Act saves appointments made under any law repealed by the Act, along with any condition that applied in relation to any such appointment. However, appointments made prior to the date when this Act came into force in South West Africa (21 July 1972) have not been researched.

The holders of certain offices outside the Republic are considered to have the powers of Commissioners of Oaths by virtue of RSA GN R.1717/1972 ([RSA GG 3663](#)).

RSA GN R.1717/1972 repeals RSA GN R.1950/1964 (RSA GG 958), as amended by RSA GN R.410/1967 (RSA GG 1693). In South Africa, RSA GN R.1717/1972 was replaced after the date of transfer and prior to Namibian independence by RSA GN R.1872/1980 (RSA GG 7215), as amended by RSA GN R.2828/1983 (RSA GG 9018) and RSA GN R.527/1985 (RSA GG 9621). However, none of these notices were made expressly applicable to South West Africa.

A list of *ex officio* Commissioners of Oaths is contained in AG GN 128/1982 ([OG 4672](#)).

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.

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 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.

The list in AG GN 128/1982 has been supplemented since independence as follows:

- 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 Oath in the area in which they are appointed, with effect from 1 June 2020, by GN 146/2020 ([GG 7258](#)).

#### **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 (Reg 7)

*Prosecutor-General v Kennedy* 2017 (1) NR 228 (HC) at paras 32-33 (compliance with regulations).

## **Delegation of Powers Ordinance 24 of 1973**

**Summary:** This Ordinance ([OG 3365](#)) 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.

**Amendments:** The Ordinance is amended by Ord. 20/1975([OG 3498](#)). It was also amended for the purposes of the pre-independence Representative Authority for Whites by Ordinance 3 of 1982 ([Official Gazette 15 of the Representative Authority of the Whites](#)).

**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.”

## **Law Reform and Development Commission Act 29 of 1991**

**Summary:** This Act ([GG 331](#)) 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 ([GG 1036](#)) amends sections 3, 5, 8 and 12. Act 2/2004 ([GG 3238](#)) 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 ([GG 3239](#)).

**Regulations:** Regulations are authorised by section 14 of the Act, but none have yet been promulgated.

**Appointments:** The appointment of a Chairperson is announced in Proc. 12/2011 ([GG 4767](#)). 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.) A Chairperson is announced in Proc. 34/2015 ([GG 5869](#)).

Note that there are two Proclamations numbered as Proclamation 34 of 2015, in GG 5853 and GG 5869.

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 at <https://namiblii.org/system/files/other/lrdc-25-years/lrdc-25-years.pdf>.

## **Repeal of Obsolete Laws Act 21 of 2018**

**Summary:** This Act ([GG 6812](#)), which was brought into force as of 1 March 2019 by GN 32/2019 ([GG 6851](#)), repeals 143 laws (including 38 principal statutes and their amending statutes).

### **MISCELLANEOUS**

Administrative Directive 1/1993 (Government Notice 16/1993, [GG 583](#)) sets forth the procedures regarding proposed legislation.

## **COMMENTARY**

- Legal Assistance Centre, *How Laws Are Made*, 1996, available at [www.lac.org.na](http://www.lac.org.na)
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- SK Amoo and I Skeffers, "The rule of law in Namibia" in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at [www.kas.de](http://www.kas.de)
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- 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 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)
- Ministry of Justice, "The Law Making Process" (brochure), undated.

## **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 ([GG 6614](#)) on fees for the issue of apostilles.

### ***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**.