

MINING AND MINERALS

Sperrgebiet-Delimitation Proclamation 11 of 1920

Summary: This Proclamation ([OG 29](#)) defines the area known as the “Sperrgebiet”.

Amendments: The Proclamation is amended by Proc. 35/1922 ([OG 99](#)).

Acquisition of Shares in Rössing Uranium Limited Proclamation, AG 31 of 1985

Summary: This Proclamation ([OG 5060](#)) authorises the purchase of shares in Rössing Uranium Limited by the government.

Petroleum (Exploration and Production) Act 2 of 1991

Summary: This Act ([GG 178](#)) provides for the reconnaissance, exploration, production, disposal and control of petroleum. It came into force on 30 September 1992, in terms of section 79 as amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992 ([GG 489](#)).

Amendments: The Petroleum Matters (Amendment and Validation) Act 27 of 1992 ([GG 489](#)) amends section 79.

The Minerals (Prospecting and Mining) Act 33 of 1992 ([GG 564](#)), which was brought into force on 1 April 1994 by GN 41/1994 ([GG 828](#)), amends sections 4, 16 and 78.

Act 2/1993 ([GG 616](#)) amends section 14.

Act 11/1997 ([GG 1700](#)) amends sections 1 and 38, and inserts sections 76A and 76B.

The Petroleum Laws Amendment Act 24 of 1998 ([GG 1954](#)), which was brought into force on 1 April 1999 by GN 44/1999 ([GG 2075](#)), amends sections 30, 38, 41, 46, 62 and 67, and inserts a new Part XA.

Regulations: Regulations relating to the health, safety and welfare of employees and the protection of other persons’ property, the environment and natural resources are contained in GN 190/1999 ([GG 2188](#)).

Notices: A petroleum field is declared in terms of section 42(1) in GN 158/1997 ([GG 1622](#)).

GN 308/2020 ([GG 7402](#)), issued under section 122(1) of the Act, states that no person other than the holder of a reconnaissance licence is allowed to carry on any prospecting or mining operations in Namibia from 1 December 2020 until 31 August 2021, notwithstanding anything to the contrary in the Act or any other law.

Minerals (Prospecting and Mining) Act 33 of 1992

Summary: This Act ([GG 564](#)) provides for the reconnaissance, prospecting, mining, disposal and control of minerals in Namibia. It repeals the Dealing in Unwrought Precious Metals Proclamation 5 of 1938, the *Nuclear Installations Act (Licensing and Security Systems) 43 of 1963*, the *Atomic Energy Act 90 of 1967*, the Mines, Works and Minerals Ordinance 20 of 1968, the *Mines Titles Registration Proclamation R.90 of 1969* and the Mineral Rights Proclamation AG 57 of 1978 (and their amendments). It was brought into force on 1 April 1994 by GN 41/1994 ([GG 828](#)).

It should be noted that the Labour Act 6 of 1992, prior to its replacement by the Labour Act 11 of 2007, had already repealed portions of the Mines, Works and Minerals Ordinance 20 of 1968 (section 93 and the whole of the Act “in so far as it relates to the health and safety of workers employed in or in connection with mining and prospecting operations”).

Amendments: Act 8/2008 ([GG 4189](#)) amends section 114.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on persons in the business of trading in minerals.

Regulations: Section 139(2)(f) of this Act contains a general savings clause for anything done under any provision of the repealed Mines, Works and Minerals Ordinance 20 of 1968 which could have been done under a corresponding provision of this Act. However, this Act contains no provision for regulations, so no regulations made under the 1968 Ordinance survive.

Notices: Section 139(2)(f) of this Act contains a general savings clause for anything done under any provision of the repealed Mines, Works and Minerals Ordinance 20 of 1968 which could have been done under a corresponding provision of this Act. The abandonment and forfeiture of mining areas under the repealed Ordinance are addressed in GN 138/1991 ([GG 320](#)), GN 139/1991 ([GG 320](#)), GN 161/1992 ([GG 527](#)) and GN 144/1993 ([GG 750](#)).

In terms of section 1(3)(b) of the current Act, certain semi-precious stones are declared to be high value minerals by GN 34/1999 ([GG 2054](#)). Royalties in respect of these stones are set by GN 35/1999 ([GG 2054](#)), which is replaced by GN 248/2004 ([GG 3322](#)).

A moratorium on prospecting and mining in respect of nuclear fuel group materials throughout Namibia is contained in GN 41/2007 ([GG 3803](#)) (discussed in *Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC)*, which disallowed a collateral challenge to the validity of the notice).

Reservations of land from prospecting and mining operations are published from time to time but have not been recorded here. A reservation of land previously enacted under the repealed Mines, Works and Minerals Ordinance 20 of 1968 is cancelled by GN 284/1996 ([GG 1435](#)).

Notices pertaining to individual licence applications are not listed here.

Fees and royalties: Fees are determined in GN 42/1994 ([GG 828](#)). Royalties in respect of certain groups of minerals are set by GN 248/2004 ([GG 3322](#)), GN 192/2006 ([GG 3733](#)), GN 204/2006 ([GG 3746](#)) and GN 45/2009 ([GG 4236](#)) (which is amended by GN 277/2012, [GG 5076](#)).

Cases:

Hoffman v Maier 1994 NR 61 (HC) (previous Mines, Works and Minerals Ordinance 20 of 1968)

S v McDonald & Others 2000 NR 174 (HC)

Namibia Grape Growers and Exporters Association & Others v The Minister of Mines & Energy & Others 2002 NR 328 (HC); 2004 NR 194 (SC) (upholding constitutionality of Part XV; also deals with reasonable time period for review of licence and application for declarator under section 52)

Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC) (discussed in case background; case holding does not pertain to this statute)

Auas Diamond Co (Pty) Ltd v Minister of Mines and Energy 2006 (2) NR 406 (HC) (renewal of an exclusive prospective licence)

Otjozondu Mining (Pty) Ltd v Minister of Mines and Energy & Another 2007 (2) NR 469 (HC) (section 92)

Tlthoro v Minister of Home Affairs 2008 (1) NR 97 (HC) (Act discussed in *dicta* beginning at 113G)

S v Auala (No 1) 2008 (1) NR 223 (HC) (effect of section 90(1) re: ownership and control in connection with charge of theft), confirmed in *S v Auala* 2010 (1) NR 175 (SC)

Tumas Granite CC v Minister of Mines and Energy & Others 2008 (2) NR 711 (HC) (sections 59 and 62)

Black Range Mining (Pty) Ltd v Minister of Mines and Energy & Another 2009 (1) NR 140 (HC) (sections 68(c) and 69(2)(g)); *Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd* 2011 (1) NR 31 (SC) (section 69(2)(g))

Purity Manganese (Pty) Ltd v Minister of Mines and Energy & Others; Global Industrial Development (Pty) Ltd v Minister of Mines and Energy & Another 2009 (1) NR 277 (HC) (delay in seeking review of refusal of Exclusive Prospecting Licences)

Rostock CC & Another v Van Biljon 2011 (2) NR 751 (HC) (basis for interim remedy in respect of dispute regarding agreement concluded in terms of section 52 of Act)

Tumas Granite CC v Minister of Mines and Energy & Another 2013 (2) NR 383 (HC) (section 59(1))

Samicor Diamond Mining (Pty) Ltd v Minister of Mines and Energy & Others 2014 (1) NR 1 (HC) (unreasonable delay for review of administrative decision granting applications for exclusive prospecting licences)

Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC) (GN 41/2007 and sections of the Act on exclusive prospecting licences, particularly the relationship between sections 47 and 122; section 122 consistent with art 21(1)(j) of the Namibian Constitution).

Commentary: Michelle R Munyanduki, “Aligning the Mining Sector with Sustainable Development: A Focus on Uranium Mining at Rössing” 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> (rehabilitation).

Minerals Development Fund of Namibia Act 19 of 1996

Summary: This Act ([GG 1386](#)) provides for the establishment and control of a Minerals Development Fund. It also sets up a Minerals Development Fund Control Board.

Amendments: 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 6, 8 and 16.

Regulations: The Act makes no provision for regulations.

Diamond Act 13 of 1999

Summary: This Act ([GG 2205](#)) regulates a wide range of matters connected with diamonds. It also establishes the Diamond Board of Namibia, the Diamond Board Fund and the Diamond Valuation Fund. It repeals the Diamond Industry Protection Proclamation 17 of 1939. It was brought into force on 1 April 2000 by GN 83/2000 ([GG 2300](#)).

Amendments: 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 1, 4, 6 and 7, and substitutes section 9.

Regulations: Regulations made under the repealed law survive pursuant to section 80(2) of this Act. Pre-independence regulations have not been researched.

Regulations issued under this Act are contained in GN 84/2000 ([GG 2300](#)), as amended by GN 104/2003 ([GG 2984](#)).

Note that GN 104/2003 incorrectly indicates that it is amending the regulations in Government Notice 83 of 31 March 2000. GN 83/2000 was published in the same *Government Gazette* as the regulations, but was the preceding notice which brought the Diamond Act 13 of 1999 into force. GN 104/2003 obviously intended to amend the regulations published in GN 84/2000.

Notices: Restricted diamond areas are declared in GN 97/2000 ([GG 2306](#)).

Cases: The following cases pertain to the present Act –

- S v Auala (No 1)* 2008 (1) NR 223 (HC) (contravention of section 74, including discussion of proof of ownership for purposes of proving theft in respect of this section); *S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing for this offence); both confirmed in *S v Auala* 2010 (1) NR 175 (SC)
- S v Sankwasa* 2014 (3) NR 751 (HC) (contravention of section 74, including discussion of when suspect must be advised of right to legal representation, right to remain silent and right not to incriminate himself; legality of search of accused and propriety of admission of diamonds found into evidence).

The following cases were decided under the previous Diamond Industry Protection Proclamation 17 of 1939 –

- S v Mbali* 1990 NR 1 (HC)
- S v Kramer & Others* 1990 NR 49 (HC)
- S v Strauss* 1990 NR 71 (HC) (appropriate sentence for common-law crime of theft of diamonds)
- S v Koekemoer & Another* 1990 NR 116 (HC)
- S v Eiseb & Another* 1990 NR 142 (HC)
- S v Da Costa & Another* 1990 NR 149 (HC)
- S v Campbell & Others* 1990 NR 310 (HC)
- S v Small* 1990 NR 358 (HC)
- S v De Beer* 1990 NR 379 (HC)
- S v Du Plessis & Another* 1992 NR 74 (HC) (bail in a case where accused charged with theft of diamonds and contravention of section 28(a) of the Act)
- S v Nassar* 1994 NR 233 (HC)
- S v Nangombe* 1993 NR 178 (HC); 1994 NR 276 (SC)
- S v van der Berg* 1995 NR 23 (HC) (sections 28(b) and 35A)
- S v de Bruyn* 1999 NR 1 (HC) (lawful use of “entrapment” to gather evidence for offences in terms of section 28)
- Minister of Home Affairs, Minister Ekandjo v Van der Berg* 2008 (2) NR 548 (SC) (section 34ter).

Commentary:

Nico Horn, “Minister of Home Affairs v Van der Berg, Case No. 19/2004, Supreme Court of Namibia, delivered 12 December 2008”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.kas.de (discussing case arising under Diamond Industry Protection Proclamation 17 of 1939)

Frederico Links & Clement Daniels, “Protected Disclosure: Informing the Whistleblowing Debate in Namibia”, Institute for Public Policy Research, 2012, available at www.ippr.org.na.

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Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Striking a Better Balance; An Investigation of Mining Practices in Namibia’s Protected Areas*, 2009, available at www.lac.org.na

Hilma Shindondola-Mote, “Uranium mining in Namibia: The mystery behind ‘low level radiation’”, Labour Resource and Research Institute, 2009, available at <http://larri-namibia.org>

Frederico Links, “On a Slippery Slope: Corruption and the Extractive Industries in Namibia”, Institute for Public Policy Research, 2012, available at www.ippr.org.na

Graham Hopwood (ed), “Namibia’s New Frontiers: Transparency and Accountability in Extractive Industry Exploration”, Institute for Public Policy Research, 2013, available at www.ippr.org.na

Nico Horn, “The process of human rights protection in Namibia”, 5 *Journal of Namibian Studies* 99 (2009)

Jamey Janke & Wilhelmina Shakela, “Is the Mine Rehabilitation Legal Framework in Namibia Adequate?”, *UNAM Law Review*, Volume 3, Issue 1, 2016, available at <http://unamlawreview.info>

Max Weylandt, “Transparency in the Namibian Extractives Sector”, Institute for Public Policy Research & Open Society Initiative for Southern Africa, 2017, available at www.ippr.org.na.

INTERNATIONAL LAW

SADC Protocol on Mining, 1997

See also Petroleum (Taxation) Act 3 of 1991 (**REVENUE**).

See also **LABOUR**.

See also Geoscience Professions Act 3 of 2012 (**SCIENCE AND SCIENTIFIC RESEARCH**).

See also **Concessions Modification and Mining Law Amendment Proclamation 59 of 1920 (OG 42)**. This Proclamation concerns the cancellation of grants and concessions of rights of land, mining and other rights during the German colonial period “by agreements between native chiefs or tribes in the Protectorate and the late Government of the Protectorate”. No entry has been provided for this Proclamation in this database as it appears to have no ongoing effect.